

## “Ocean Grabbing!”: Deprivation of Fishermen’s Rights or Management Rights of Coastal and Marine Resources

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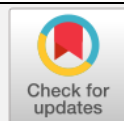
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### ABSTRACT

The state is obliged to strive for the realization of justice for traditional fishing communities. Traditional communities are fishing communities whose traditional rights are still recognized in carrying out fishing activities or other legal activities in certain areas located in archipelagic waters following the international law of the sea. Coastal space areas and small islands that indigenous/traditional communities have managed from the obligation to have location permits and management take national interests and laws and regulations into account. Article 26 A of the Republic of Indonesia Number 1 of 2014 makes it easy for outsiders to control small islands that regulate the use of small islands and surrounding coasts through investment forms based on a ministerial permit that must prioritize the national interest. Positive law must protect traditional fishing communities and indigenous peoples. This research aims to analyze the regulation of fishermen’s protection from deprivation of their rights in earning a living and livelihood. The research method used is normative research, meaning the implementation of legal provisions in the form of legislation in activities for certain legal events in the community, especially the fishing community. Normative research refers to and examines laws and regulations related to the research being conducted. The research locations cover coastal areas throughout Indonesia, especially Banda Aceh, Padang, Jakarta, Semarang, Surabaya, Manado, Kupang, Ternate, and Mataram. The state can provide knowledge, guidance, and protection for fishermen from various actions of deprivation of their rights to earn a living and protection such as piracy, the practice of fishing theft, abuse of trawling, transshipment activities, threats, and violence by foreign

*parties to Indonesian fishers. The central government and local governments are obliged to provide facilities for guaranteeing fishing areas or fishing coverage areas that are safe and do not overlap with other fields.*

**Keywords:** *Coastal and Marine Resources; Fishermen Rights; Fishing Communities; Management Rights; Traditional Communities*

## 1. Introduction

The 1945 Constitution of the Republic of Indonesia in Article 18B Paragraph 2, states, “The State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law”. This shows that the existence of indigenous peoples is recognized on a fundamental basis. The 1945 Constitution of the Republic of Indonesia in Article 28I paragraph (3) states that traditional communities’ cultural identity and rights are respected in line with the development of the times and civilization. The state recognizes customary law society with its traditional nature throughout its life and following the principles of the Unitary State of the Republic of Indonesia. Therefore, traditional communities’ cultural identity and rights are upheld according to the times and globalization ([Republik Indonesia, 2002](#)).

The 1945 Constitution of the Republic of Indonesia Article 28D Paragraph 1 states that everyone has the right to recognition, guarantees, protection and fair legal certainty, and equal treatment before the law. The state itself has laws that apply to all regions and communities whose government laws and regulations are contained in written legislation. In contrast to the traditional indigenous peoples who initially did not know the writing system, the law was a habit not in writing. On the other hand, some indigenous peoples write their laws, although this is not significant.

According to the Economic and Social Council - the United Nations, indigenous peoples are of particular race and ethnicity. Because of their livelihood in an area, they consider themselves different from those living in its territory. The International Labor Organization classifies indigenous peoples as:

- a) One type of indigenous tribe with different social, cultural, and economic conditions from other communities in the area is subject to customs or traditions, or separate laws and regulations, or is fully regulated by them.
- b) Assume that other tribes consider their tribe indigenous because they come from indigenous peoples who lived in the area long before entering other countries or before the current administrative boundaries, the tribe still exists or tries to continue regardless of the tribe’s legal status—some or all of its social, economic, cultural, and political system characteristics ([Keraf, 2002, p. 281](#)).

Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a constitutional state ([Republik Indonesia, 2002](#)). Customary law must become part of current Indonesian law, and the scope of application of this law is limited to certain regions or groups and remains following Indonesian legal propriety.

Whether we realize it or not, the coastal area is an area that continues to grow and develop. In some countries, coastal areas are strategic growth areas and important economic centers. Major cities and provincial capitals are located in coastal areas such as Banda Aceh, Padang, Jakarta, Semarang, Surabaya, Manado, Kupang, Ternate, and Mataram. With the increasing importance of coastal areas for human life, various activities and land use in coastal areas overlap. This causes environmental problems, damage to natural resources, and the land’s inability to support life activities in the area (Marfai, 2005, p. 69).

Law Number 7 of 2016 concerning the Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers, in Article 1 Paragraph 5, states that “Traditional fishermen are fishermen who catch fish in waters which are traditional fishery rights that have been used for generations following with local culture and wisdom” (Republik Indonesia, 2016).

Definitions that must be considered include: (1) Fishermen who catch fish traditionally in certain waters; (2) Fishermen who traditionally use certain tools based on local culture and wisdom; (3) Fishermen who catch fish are generations of fishermen who catch fish in other areas.

As an archipelagic state, Indonesia certainly views the sea as the main source of life preservation. The sea has commercial and strategic functions and is a food source used by humans to catch fish. The influence of fishermen on the archipelago concept is important because it reflects the existence in the sea or entities that live in the sea. On the other hand, the national law on the interests of fishermen does not cover all matters regulated in the 1982 Convention on the Law of the Sea. Article 51 Paragraph 1 of the 1982 “Convention on the Law of the Sea” stipulates that archipelagic states are obliged to recognize traditional fishing rights, either by agreement or because of habits and properties of water. This is related to the privileges of archipelagic states that are adjacent to other states, and this influence can be detrimental to fishers. Archipelagic states must determine their territorial boundaries following the 1982 “Convention on the Law of the Sea” guidelines, such as territorial sea, inland water, exclusive economic zones, and the continental shelf. Article 47 stipulates that if part of the archipelagic state is adjacent to a neighboring state, the existing rights and other legal rights are traditionally owned by that state. All rights regulated in agreements between those states will become maintained and should be respected (United Nations Convention on the Law of the Sea, 1982).

Based on Law Number 27 of 2007, coastal areas and small islands have a high diversity of natural resource potential and are very important for social, economic, cultural, environmental development, and a buffer for national sovereignty, therefore they need to be managed sustainably and with a global perspective, taking into account the aspirations and participation of the community, and the nation’s values based on national legal norms (Republik Indonesia, 2007).

Among the new law provisions, namely Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands (Republik Indonesia, 2014), many of which could result in exceptions. People ask about rights (custom). Due to terms that allow for the limitation or even the indigenous peoples’ rights abolition, many clauses can create conflicts of interest. According to Subekti (2004), the regulations governing the management of fishery resources are aimed at realizing the basic rights of the community, including:

- 1) Right to decent work;
- 2) The right to be protected by law;

- 3) The right to feel safe;
- 4) The right to affordable needs; and
- 5) The right to justice.

Management of marine fishery resources can also avoid tensions and conflicts between fishermen throughout the region, thereby building social trust between local community groups. Ultimately, both parties will trust each other and be harmonious between local fishing community groups and regional scope (Subekti, 2004, p. 38). Based on the things above, it is crucial to research to determine legal instruments that can be used as a legal basis to regulate the implementation of sustainable management of marine fisheries resources. The government has the right to manage marine resources. Institutions that manage marine resources include:

- 1) Exploration, development, conservation, and management of marine resources;
- 2) Arrangement of administrative benefits;
- 3) Spatial planning;
- 4) Enforcement of laws and regulations entrusted by the regions or the government;
- 5) Participate in security maintenance; and
- 6) Participate in defending national sovereignty.

The problem arises in the contents of Article 21 and Article 22 of Law Number 1 of 2014, coastal areas and small islands managed by indigenous peoples are exempted from the obligation to obtain location and management permits. Article 21 requires stratification requirements. On the one hand, this gives freedom to indigenous peoples to manage their livelihoods, but on the other hand, it is contrary to “considering national interests and laws and regulations”. This can also be seen in Article 26A Paragraph 1 of Law Number 1 of 2014, which states that the use of small islands and surrounding waters for foreign investment must obtain the approval of the Minister of Foreign Investment, and national interests must be prioritized. Therefore, it is necessary to analyze the protection of traditional fishermen from the deprivation of their rights to earn a living.

Therefore, this study aims to analyze the provisions that protect fishermen from being deprived of the right to earn a living and their rights to manage coastal and marine resources.

## **2. Literature Review**

The term fishermen protection aims to promote the state’s existence and defend the interests of fishermen. Therefore, the meaning of protection has a strong political meaning because it is related to the rights of fishermen and must be guaranteed by the state and laws and regulations. According to Law Number 7 of 2016 concerning the Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers, Article 1 Paragraph 1 states that “All efforts to improve the ability of fishermen, fish raisers and salt farmers to carry out a fishery business or salt business better” (Republik Indonesia, 2016). Protection is when fishermen are looking for a livelihood on the high seas and land.

Protection can provide information and instructions at sea and protect fishermen from piracy, illegal fishing, trawling conflicts, transshipment activities, intimidation, and violence against Indonesian fishermen by outsiders. On land, protection can be in the form of revitalizing Fish Selling Places (*Tempat Pelelangan Ikan* or TPI), which so far have not been appropriately managed. For example, traditional fishermen face more critical problems than

modern fishermen who use trawls and other fishing gear, which will trigger conflict (Satria, 2012, pp. 54-86).

In the theory of legal protection, aspects that need to be studied are human resources, including natural resources, namely resources that need to be protected. The theory of legal protection is critical because the focus is on the legal protection provided to the public. A society based on this theory is a society that is disadvantaged in terms of economy and weakness in terms of law (Darwis & Hertina, 2018, p. 531).

The utilization of marine resources is intended to meet human needs and improve human welfare. Rapid population growth and the feeling of narrowing the land force us to shift our economic activities to the sea gradually. In this regard, fishermen who are directly involved in the development of marine fisheries should receive attention regarding their human resources (Darsono, 1999, pp. 1-9).

### **3. Research Methodology**

This research is normative legal research. This research is legal science research that finds the truth from the normative aspect according to the logic of legal science. The research method adopts the legal method by examining the laws and regulations related to the research conducted (Marzuki, 2011, p. 35).

The data used is secondary data in the form of primary and secondary legal materials. The process of collecting secondary data is done through field observations, especially those that researchers can reach. The process of collecting secondary data is done through library research on library materials and documents. The research locations are coastal and fishing areas along the Indonesian coast, such as Bangka Island, Manado, and Aceh. The analytical technique used is qualitative analysis, analyzing legal data by grouping and selecting legal data from related research results according to the research objectives (Martono, 2014, p. 21). The analysis results are based on an analytical style that views the law from a social perspective. Laws and regulations related to sea confiscation, library materials, and data obtained from the field are analyzed to be clear, direct, and precise. After careful analysis, the results are presented systematically and in detail (Sulaiman et al., 2014, p. 312).

### **4. Results**

As coastal community entities, fishermen have a unique social structure and order; their survival depends on fisheries as the basic economy for community survival and comprehensive sustainable fisheries business assurance from fishing to fish pricing (Hikmah & Nasution, 2017, p. 134).

The characteristics of small-scale fisheries observed in the field on Bangka Island are as follows:

- 1) Activities are carried out in small fishing units, and sometimes small motorboats are used or not used.
- 2) Fishing activities are part-time, and sometimes family income is derived from income other than fishing.
- 3) Vessels and fishing gear usually operate independently
- 4) The fishing gear is self-made and can be operated without the help of a machine.
- 5) The catch is not sold to large, well-organized markets but is distributed at landing sites or sold along the coast.
- 6) Some or all of the catch is eaten separately with family members.

- 7) Groups of fishermen are often geographically and socially isolated, and fishing families have the lowest standard of living.

In a sense, in this plurality of state, indigenous peoples are a minority group in Indonesia. Their constitutional rights need to be protected in the life of the nation and state. Indonesia regulates the provisions of the 1945 Constitution of the Republic of Indonesia, namely Article 18B Paragraph 2, which recognizes the existence of indigenous peoples. Indigenous peoples are referred to as communities or ethnic minority groups, not because of the quantity but the condition of the indigenous peoples. They have their uniqueness, certain local ideologies, socio-cultural systems, and political systems built together through shared settlement areas, namely descendants (territory) and the same lineage (blood relationship), or a combination of both (Republik Indonesia, 2002).

Article 21 and Article 22 of Law Number 1 of 2014 frees coastal areas and small islands managed by indigenous peoples from the obligation to obtain location and management permits. Article 21 requires stratification requirements. On the one hand, this gives freedom to indigenous peoples to manage their livelihoods, but on the other hand, it is contrary to “considering national interests and laws and regulations” (Republik Indonesia, 2014).

Individual Indonesian citizens or companies established under Indonesian law and cooperatives consisting of communities applying for management permits must meet technical, administrative, and operational requirements. Of course, it is difficult for the community to meet these requirements.

Article 60 Paragraph 1 of Law Number 1 of 2014 stipulates that in the management of coastal areas and small islands, the community has the right to:

- a) obtain access to parts of coastal waters that have been given location permits and management permits;
- b) propose traditional fishing areas into the Zoning Plan for Coastal Areas and Small Islands (*Rencana Zonasi Wilayah Pesisir dan Pulau-Pulau Kecil* or RZWP3K);
- c) propose the territory of the customary law community into the RZWP3K;
- d) carry out the management of coastal resources and small islands based on the applicable customary law and do not conflict with the provisions of the legislation;
- e) obtain benefits from the implementation of the management of coastal areas and small islands;
- f) obtain information regarding the management of coastal areas and small islands;
- g) submit reports and complaints to the competent authorities for the losses that occurred related to the implementation of the management of coastal areas and small islands;
- h) express objections to the management plan that has been announced within a certain period;
- i) report to law enforcement as a result of suspected pollution and/or destruction of coastal areas and small islands that are detrimental to their lives;
- j) file a lawsuit to the court against various problems of coastal areas and small islands that are detrimental to their lives;
- k) obtain compensation; and
- l) receive legal assistance and assistance on problems faced in coastal areas and small islands following the provisions of the legislation.

Article 6 of Law Number 7 of 2004 concerning Water Resources recognizes indigenous peoples’ rights to water resources, as long as the use of these rights does not conflict with national interests and laws and regulations (Republik Indonesia, 2004). This recognition is not given in stages because it is similar to the provisions of the Basic Land Law and Forestry Law. The use of modern systems in the management of coastal areas is not a solution for the management and development of coastal areas, especially for those who still maintain the value of local wisdom. Understanding the sea in detail belongs to those who still hold on to local wisdom and understanding. Functions with the tidal relationship of the moon cycle so that fishing can be predicted effectively. This can be called the traditional protection ethic and will play a role in maintaining the balance of the ecosystem (Syafa’at & Yono, 2017, p. 52).

The process of depriving fishermen of their rights or rights to manage coastal resources must also ensure that the state protects coastal and marine areas as fishermen’s habitats. At the same time ensures that sustainable development and ecosystem balance can be achieved appropriately and coastal areas are protected. Use management must be fair. Of course, specifically to cover the fishing area of fishermen who use environmentally-friendly fishing gear in an area of 4 miles. The protection of a 4-mile area must be interpreted as steps to restore traditional fishing areas.

Fishermen are not opponents, so they must be removed from the sea. They should be like these main participants of protection. Policies that prohibit traditional or coastal fishermen from entering protected areas should be avoided. Traditional or coastal fishermen should be encouraged to become partners in monitoring and protecting policies and prohibiting increased fishing within the 4-mile area. Protecting marine coastal areas is actually to ensure that fishermen can take advantage of coastal areas. It’s not just in an area of 4 miles (in fact, for traditional fishermen). It covers all coastal areas that fishermen can still pass in business and records fishing activities using environmentally friendly fishing gear.

According to Halim (2014, pp. 3-5), the form of revocation of fishermen’s rights or coastal and marine resource management rights shows that at least 22 regencies/cities in Indonesia have and are implementing reclamation projects in coastal areas. More than 18,151 fishermen were evicted because of apartments, hotels, private marine tourism areas, and marine conservation areas for investment. The destruction of mangroves used for oil palm cultivation and the opening of aquaculture ponds also poses the threat of tidal flooding, seawater intrusion into the land, and a tsunami. Law enforcement officials are negligent and relaxed at sea, threatening fishermen’s constitutional rights, including using fishing gear, destroying trawlers, permitting dumping, and piracy.

## 5. Discussion

The Constitutional Court emphasized the scope of the term, which involved the use of the term “small fisherman”. “Small fisherman” is a job with limited production capacity, and cultural traditions, such as *Bapongka*, *Mene’e*, *Panglima Laot*, *Sasi*, etc., are closely related to culture/tradition. In this case, the concept of “traditional fishermen” also introduces or reinforces constitutional rights for people living in coastal areas and small islands, such as:

- 1) Trans-water areas shall not restrict the right of passage,
- 2) The right to manage natural resources based on culture and wisdom,
- 3) They have the right to use, and
- 4) Use the right to enjoy a healthy environment.

It is the need to protect the rights of indigenous peoples. On the other hand, the legal basis and domestic political protection for the rights of indigenous peoples are still weak. There is a trend of globalization, and people forget indigenous peoples and their rights. At first, the interests of indigenous peoples seemed to consist of what they called national interests. As a result, it is not implemented in the form of an important national legal protection. Traditional fishermen have used boats without engines for generations to have a permanent fishing area and meet their daily needs. Traditional fishing areas are fishing areas where traditional fishermen carry out fishing activities.

In Article 3 of Law Number 7 of 2016 (Republik Indonesia, 2016), the protection of fishermen aims to:

- 1) Provide the infrastructure and facilities needed to develop the business;
- 2) Provide certainty of sustainable business;
- 3) Improving the ability and capacity of fishermen to strengthen institutions in managing fish resources and marine resources as well as in running independent, productive, advanced, modern, and sustainable businesses; and develop the principle of environmental sustainability;
- 4) Developing financing systems and institutions that serve business interests;
- 5) Protect from the risk of natural disasters, climate change, and pollution; and
- 6) Provide security and safety guarantees as well as legal assistance.

It is said that the latest regulations for the national interest have caused many cases that harm the country’s economy, harm the community’s economy, damage the environment, and lead to violent conflicts that lead to human rights violations. This also occurs in areas, coasts, and small islands. The impact is frequent food problems and disasters and easily isolated from the Unitary State of the Republic of Indonesia. The rights of fishermen or coastal communities are “denied” by policies that are not conducive to them.

To save the wisdom of local communities, especially traditional fishermen, and return to indigenous peoples, all people in the world must recognize and protect the rights of indigenous peoples. Political commitments must be made at the global and national levels to protect the rights of indigenous peoples and their traditional wisdom (Keraf, 2002, p. 297). In this way, not only to preserve the existence of indigenous peoples and all their wealth and traditional wisdom but also to preserve the existence of indigenous peoples and preserve ecology, mainly because of modern society’s wrong views and behaviors. Article 26A of Law Number 16 of 2014 is also considered conducive to foreign control over small islands. This article regulates small islands and the surrounding waters through an investment plan based on a ministerial permit (Republik Indonesia, 2014).

The United Nations emphasizes the existence of “Ocean Grabbing!”: Deprivation of Fishermen’s Rights or Management of Coastal and Marine Resources. This is the same as the massive land grabbing happening in Asia. In the meeting that discussed global ocean star trends, there were three basic characteristics, namely:

- 1) Confiscation of space;
- 2) Mining in the upstream area will cause the same damage to the environment, coast, and small islands; and
- 3) Violence.



For example, Togean Island is as beautiful as Wakatobi and Bunaken. There is a local tradition on the island called the *Bapongka* tradition, which is the tradition of catching fish collectively by traveling far for about two months and then returning to the same place. This tradition is carried out collectively because of security, cooperation, and protection of fish resources. This long tradition was suddenly disrupted, perhaps even canceled due to a local tourist permit issuance. The meaning of this permit is to prohibit the continued use of the *Bapongka* tradition. As a result, certain fish resources develop that damage the ecosystem in the chain.

Coastal areas are characterized by areas with high biological productivity and development intensity and dynamic ecological characteristics. The small islands are a comprehensive understanding that combines physical, ecological, social, cultural, and economic, which has the following characteristics:

- 1) separated from the big island;
- 2) very vulnerable to changes caused by nature and/or caused by humans;
- 3) has limited carrying capacity of the island;
- 4) if inhabited, the population has unique social and cultural conditions (Republik Indonesia, 2007)

During this decade, coastal areas and small islands were vulnerable to damage due to community activities in resource development or natural disasters. In addition, the accumulation of various mining activities in coastal areas and small islands or the impact of other activities carried out in upstream coastal areas with the support of existing laws and regulations usually causes damage. In the context of these problems, synchronization and unity must be directed, especially as a reference in formulating public policies, not always to cause conflicts over natural resources in the regions.

The rate of destruction of coastal resources has reached an alarming level. Damage to coastal resources has a direct impact on decreasing the quality of fishery habitats and decreasing fishery resources to develop and weaken the function of the coastal environment. Coastal pollution reduces water quality and increases the level of toxicity of heavy metal fibers, which impacts threats to coastal ecosystems and fish poisoning. And also the impact of mining such as sand and tin mining in coastal areas such as Bangka Island, covered in sand and silt.

Based on the development impact of national interests, even inviting foreign countries to invest in the fisheries and marine sector will significantly impact social development. In this understanding, the idea of traditional fishermen is contrary to modern fishermen, including the rich culture and local wisdom of traditional fishermen. The country’s development lacks knowledge and misunderstanding and regards traditional fishing communities as environmental nuisances, which must be marginalized or resettled for development. Even though the fishing community is the protector of the environment, it is not affected by the rampant destruction of the community. On the other hand, only looking at nature from the point of view of economic values detaches it from all social, cultural, spiritual, and moral values associated with all the local community’s values around it, which may conflict with foreign businessmen or investors.

The government must protect fishermen who are caught in fisheries criminal cases:

- 1) One kind. Assisting fishermen suspected of committing fisheries crimes;
- 2) Take an active role as an expert witness in the field of fisheries in every process of investigating fisheries crime cases;

- 3) In every process of investigating fisheries, crime cases play an active role in the examination and financing of laboratory projects for analyzing evidence in the form of chemicals used by fishermen; and
- 4) Supervise and guide fishermen who violate the law in the field of fisheries.

Not all regions include coastal zone zoning plans into local regulations, so fishermen have no business certainty. Determining coastal areas is still a problem, and development interests often come at the expense of fishermen and fish cultivators. The government and local governments are obliged to provide appropriate training, consultation, and guidance on aquaculture, catching, processing and marketing. The government (Ministry of Marine Affairs and Fisheries, Ministry of Energy and Mineral Resources, Ministry of Environment and Forestry, Ministry of Tourism and Creative Economy, and Ministry of Public Works and Public Housing) and local governments must jointly improve the economy and develop fishing operations by setting up comprehensive plan to protect fishermen.

In the reform era, the political system impacts government and natural resource management changes in the government system. In several laws and regulations, indigenous/traditional/local communities enjoy rights in the customary law system, local wisdom, and customary governance practices (Mony, 2016, p. 195).

The protection and empowerment of fishermen can become a law to protect and realize the rights of traditional fishermen to go to sea, namely:

- 1) Create an ocean free from environmental damage and marine biota with technology and a variety of fishing gear.
- 2) Maintain the sovereignty of the maritime area and participate in the supervision of illegal fishing activities by foreign fishermen.
- 3) Provide social protection guarantees for fishermen who face marine accidents and cannot go to sea due to bad weather due to climate change
- 4) Stipulate fishing areas (zoning) that can protect traditional fishermen from the competition with large-scale fishermen.
- 5) Coastal waste reclamation projects have led to flooding, mining of sea sand, and dumping of industrial waste into the sea. The government must ensure that the rights of traditional fishermen are truly recognized. Recognition of the rights of traditional fishermen will automatically provide legal and political protection.
- 6) Protect the fishing settlements/fishing villages that are easy to live in and not displaced by development/commercial and other economic activities.
- 7) The arrangement and construction of fishermen's settlements/fishing villages will not keep fishermen from fishing areas.

Indonesia has four homework in all corners of the country: First, the a high poverty rate. According to the factors causing poverty, poverty in coastal communities is divided into three types: (i) structural poverty, (ii) cultural poverty, and (iii) natural poverty. Second, traditional fishermen use coastal and marine areas and the fair use of natural resources. Third, the ease of access to traditional fishermen's markets is classified as economic (social and cultural) rights regulated in the constitution. In this case, rely on the market. The government must provide the highest level of public services to local fishermen. This is because the goods produced must be immediately sold to meet their daily needs. Otherwise, they will rot before being sold. Fourth, resources cannot be fully obtained to manage access rights because national laws are still

dominant. This is sometimes not done in a participatory manner due to the failure of the central government to pay attention to regional social and economic considerations. As a result, the promulgated policies create new problems because several political parties' interests, desires, and priorities become a source of conflict (Satria, 2012, pp. 54-86).

The development of the law on the protection of fishermen must be related to the most important thing, namely the provision of basic rights services by the state in the constitution. Access restrictions or lack of prejudice have resulted in traditional fishermen being marginalized politically, socially, culturally, and economically. Indonesia's legal efforts to protect traditional fishermen who have problems with neighboring countries are through bilateral agreements ([Memorandum of Understanding between the Government of Australia and the Government of the Republic of Indonesia, 1974](#)). Meanwhile, there are two ways to resolve the dispute when there is a dispute, namely non-legal assistance, and legal assistance. Dispute resolution methods through non-legal means have legal priority before being submitted to dispute resolution methods through legal remedies. Non-legal action is an effort made by each disputing party to resolve the dispute, and it is hoped that the parties can win equally in the sense of receiving the final result (Adolf, 2004, p. 38).

In terms of the relationship between humans and their environment, even between humans and their creators, traditional fishermen's activities utilize fishery resources are also related to culture. Maintaining the independence and ability of traditional fishermen cannot be separated from providing subsidies and supervision of their territory. Second, the following aspects should be considered to explore equity factors to protect traditional fishermen: poverty rate, utilization access, market access, and access to management opportunities.

If we don't work with traditional fishermen, the natural environment can damage, thus impacting their social, cultural, and economic environment. Traditional fishermen believe that all ecosystems in their resource market are interconnected. If a subsystem is disturbed, it will interfere with other subsystems. Third, the formulation of the law on the protection of fishermen must be related to the most important issue, namely the law stipulating that the government must provide services for basic rights. Access restrictions or lack of prejudice result in traditional fishermen being marginalized politically, socially, culturally, and economically.

## 6. Conclusion

The 1945 Constitution of the Republic of Indonesia contains arrangements to protect fishermen from being deprived of their rights to earn a living and their rights to manage coastal and marine resources. In The 1945 Constitution of the Republic of Indonesia Article 18B and Article 28D Paragraph 1; Law Number 7 of 2016 concerning the Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers, Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, and Law Number 7 of 2004 concerning Water Resources is a form of legal protection for traditional fishermen, including policy bias.

The purpose of legal protection is limited to a process and to achieve Indonesia's overall national development goals as regulated in the constitution. The biggest challenge faced by management institutions is related to the state's ability to protect the rights of fishing communities in the era of free competition. So far, people believe that government policies can discriminate against the rights and protection of traditional fishermen, which are always related to national interests. The state is obliged to ensure the implementation of protective measures in the constitution of indigenous and tribal peoples' rights and to protect the state, who lives on

the coast or individually, before being handed over to foreign investors, even though this is a limited part. In the context of these problems, synchronization and unity must be directed, especially as a reference in formulating public policies, not always to cause conflicts over natural resources in the regions.

Laws concerning comprehensive protection of fishermen must be applied concerning protection by the Ministry of Home Affairs, which involves the protection of customary services and indigenous peoples to manage coastal areas and small islands. Also, the Ministry of Social Affairs, the Ministry of Trade, the Ministry of Marine Affairs and Fisheries, and across ministries to be more coordinated in the implementation process.

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## 8. Declaration of Conflicting Interests

The authors have declared no potential conflicts of interest concerning the study, authorship, and/or publication of this article,

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