

CUSTOMARY RIGHT ON THE SEA BY INTERNATIONAL LAW OF THE SEA PERSPECTIVE RELATED TO THE LAW NUMBER 5 OF 1960

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Abstract

There are group of communities which still applied the customary law that has an impact to the emerge of the right which is the form consequence of the appliance of customary law, named customary right. The order of customary law ruled that land is handed over by the manager and its use to each of the existing tribes. This custom has been hereditary for a long time. Law Number 5 of 1960 concerning Regulations of Agraria states that the state basically provides protection for the embodiment of customary rights and rights which are similar to the customary rights of customary law communities, as long as in practice there are still conditions for the implementation of these rights. Conception of customary rights as applied in land areas is basically also known by international law of the sea in terms of traditional fisheries rights. However, UNCLOS 1982 on this case does not regulate specifically about the rights of the customary rights on the sea but only regulates the position of the community especially the fishing community to contribute with the government in the management and use of the sea on its territory. This research is juridical normative research that uses a statute approach and conceptual approach. This study aims to find out how the enforcement of customary rights on the sea area through the perspective of international law of the sea considering the sea area is an area whose boundaries must be agreed upon by countries under international law instruments.

Keywords: *Customary Right; Indigenous People; International Law of The Sea*

INTRODUCTION

Before the enactment of Law Number 5 of 1960 concerning Basic Regulations of Agraria, customary law in the colonial period was downgraded and considered the law of the uncivilized. Law Number 5 of 1960 concerning Basic Regulations of Agraria was subsequently formed to provide an effort from the realization of the desire to liberate and prosper the people by abolishing the exploitative practices of the colonial government, both foreign capitalists and feudalisms.¹ Through Law Number 5 of 1960 concerning Basic Regulations of Agraria, customary law is seen as more appropriate and competent to guarantee legal certainty.

¹ Insistpress, 2011, *Proses Pembentukan UU Pokok Agraria No. 5 Tahun 1960*, accessed from www.insistpress.com, January 15th 2020.

Law Number 5 of 1960 concerning Basic Regulations of Agraria, especially in Article 3, stipulates that the implementation of customary rights or similar rights of indigenous and tribal peoples must be carried out as long as the practice is still ongoing. Stated as the similar rights because customary rights in each region in Indonesia have different mention.² The term *ulayat* itself originated from the Minangkabau region, while in Kalimantan the customary rights are called *panjampeto* which means food-producing areas or as a field that is fenced off. Whereas in Ambon the customary rights are called *patuanan*, in Java they are called *wewengkon*. Meanwhile, the management of marine customary rights which is quite widely discussed, among others, such as *sasi* in Maluku, *maneeh* in the Nanusa Islands and *awig-awig* in Lombok, quoted from Basically, customary rights are the authority according to customary law owned by customary law communities over certain areas which are included in the community's environment. The authority in this case includes the rights granted to these indigenous peoples to manage and take advantage of the natural resources contained in the area.³ Thus, it can be seen that customary rights owned by indigenous peoples can not only be applied in land areas but can also be applied in sea areas.

The existence of customary rights on the sea are is still rarely understood and discussed compared to customary rights on land.⁴ The term customary rights on the sea or also known as sea tenure according to Laundsgaarde is a reciprocal right and obligation that arises in relation to ownership of the sea areas. Customary rights on the sea are a form of protection of the sea by regulating the amount of catch and the level of exploitation in the area. This can prevent over-exploitation which can lead to over fishing.⁵ The concept of ownership of the sea area stated by Laundsgaarde basically involves an institution that regulates the management of the resources contained in the region by referring to the customs, restrictions and family concept that has long been practiced by the local community in the region. Thus, the sea area that is encumbered with customary rights to the sea is not only limited by area restrictions but also the exclusivity of the region to marine resources, the technology used, the level of exploitation and other boundaries.

The embodiment of sea customary rights is the emergence of a group of fishermen. This is because according to the Regulation of the Minister of Agrarian Affairs or Head of the National Land Agency Number 5 of 1999 concerning Guidelines for Settlement

² Gatot Yulianto, 2008, *Kajian Kelembagaan Hak Ulayat Laut di Desa-Desa Pesisir Teluk Bintuni*, Buletin Ekonomi Perikanan, Vol. VIII, No. 2, <https://media.neliti.com/media/publications/11031-ID-kajian-kelembagaan-hak-ulayat-laut-di-desadesa-pesisir-teluk-bintuni.pdf>, p. 82, accessed on January, 18th 2020.

³ Roberth Kurniawan Ruslak Hammar, 2009, *Hak Ulayat Laut dalam Perspektif Otonomi Daerah di Kepulauan Kei dan Papua*, Mimbar Hukum, Vol. 21, No. 2, <https://jurnal.ugm.ac.id/jmh/article/view/16259/10805>, p. 312.

⁴ Gatot Yulianto, *Loc.Cit.*

⁵ Roberth Kurniawan Ruslak Hammar, *Op.Cit.*, p. 315, quoted from M. G. Ohorella, "Hukum Adat Mengenai Tanah dan Air di Pulau Ambon dan Sumbangannya Pembangunan Hukum Agraria Nasional (UUPA) dan Undang Undang Lainnya", 1993, *Disertasi*, Postgraduate Programme Universitas Hasanuddin, p. 172.

of the Customary Rights Rights of the Customary Law Community, customary rights are considered to still exist if:⁶

1. There is a group of people who still feel bound by their customary legal arrangements as a common citizen of a certain legal alliance that recognizes and applies the terms of that community in their daily lives;
2. There is a certain customary land which is the environment of the members of the legal community and the place to take the necessities of daily life; and
3. There is a customary law order regarding the management, control and use of customary land that is applicable and adhered to by the members of the legal community.

The fishing communities that inhabit the waters of the north coast of Irian Jaya are among the other examples of people who have customary rights to manage and exploit the marine resources contained in their territory. In addition, in Central Maluku Regency there are ten fishing groups that are actively formed by the people of the region. The ten groups are the Darma Utama Fishermen Group, the Main Buton Fishermen Group, the Katobengke Fishermen Group, the Rice and Cotton Fishermen Group, the Makmur Fishermen Group, the Mulya Fishermen Group, the Rahayu Fisheries Group, the Mulia Boat Fishermen Group, the Rezeki Fishermen Group and the Purnama Fishermen Group.⁷

Some of these fishing groups function to assist fishermen to facilitate the administrative process of lending goods to the Village Unit Cooperative and facilitate coordination and services to the community. The existence of a fishing community in the waters of the north coast of Irian Jaya and several groups of fishermen in Central Maluku Regency shows that the customary rights of the sea in the area still exist. This is because the fishing communities in the north coast waters of Irian Jaya and several groups of fishermen in Central Maluku Regency in practice fulfill the elements as explained according to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 concerning Guidelines for Settlement of the Customary Rights Rights of the Customary Law Community.

The marine area management system by encumbering marine customary rights on the surrounding community in practice has a positive impact on the development of marine management in Indonesia. Wahyono stated that the customary rights of the sea were basically a collective awareness that was able to force the individuals contained therein to adapt to such coercion.⁸ The granting of sea customary rights can be a tangible form of the implementation of regional autonomy in the area concerned. Regional autonomy in

⁶ *Ibid*, p. 314.

⁷ Pawennari Hijang, 2012, *Penguatan Hak Ulayat Laut Komunitas Nelayan di Maluku Tengah, Provinsi Maluku*, Al Daulah, Vol. 1, No. 1, journal.uin-alaudidin.ac.id/index.php/al_daulah/article/download/1466/1416, p. 160.

⁸ Roberth Kurniawan Ruslak Hammar, *Loc.Cit*.

this case is a manifestation of the principle of decentralization in Indonesia. In a unitary state, all authority within the state is basically controlled by the Central Government but in a unitary state system that adheres to decentralized regional autonomy is a gift from the Central Government to the Regional Government.⁹

Indonesia's fisheries development policies in the past have failed due to common property, centralistic and anti-pluralism legal doctrines.¹⁰ As a result, such policies face complex problems in coastal communities such as damage to coastal and marine ecology and fishermen poverty.¹¹ The granting of sea customary rights to the community in related areas can be a concrete form of implementing the presence of Law No. 23 of 2014 concerning Regional Government which opens access and community involvement in the management of fisheries resources in order to realize sustainable marine and fisheries development.¹²

The sea area is basically an area whose boundaries are pledged by countries under international legal instruments. Thus, international law needs to be used as an ingredient in reviewing discussions on the application of customary rights to the sea in Indonesia. Referring to this, it is necessary to have a discussion related to the position of customary land rights in the regulation of international law. The position of marine customary rights in terms of international legal arrangements can then be linked to legal instruments that apply at the national level. Thus, a comprehensive study can be achieved on the rights of marine customary rights both at international and national levels.

Regarding from this background, a problem can be drawn regarding the position of customary land rights in international sea law in relation to the position of customary land rights in terms of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. This research is a juridical normative research that uses a statute approach and a conceptual approach. The statute approach is carried out by examining the laws and regulations that are concerned with the formulation of the problem under discussion.¹³ The conceptual approach moves from the views and doctrines that have developed in the science of law to develop a legal concept. This is done because there is no or no legal regulation for the problem at hand.¹⁴

⁹ *Ibid.*

¹⁰ Akhmad Solihin and Arif Satria, 2007, *Hak Ulayat Laut di Era Otonomi Daerah Sebagai Solusi Pengelolaan Perikanan Berkelanjutan: Kasus Awig-Awig di Lombok Barat*, Jurnal Transdisiplin Sosiologi, Komunikasi dan Ekologi Manusia, <https://repository.ipb.ac.id>, p. 67.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Prenada Media Group, p.133.

¹⁴ *Ibid*, p.177.

DISCUSSION

Regulation of Marine Customary Rights in International Law

1. United Nation Convention on The Law of The Sea (UNCLOS) 1982

The world attention on fisheries management began to develop since 1850 although previously the countries in the world which were mostly still in the form of empire assumed that fish was an inexhaustibility of marine resources.¹⁵ The United Nations Convention on The Law of the Sea 1982 or hereinafter referred to as UNCLOS 1982, as an agreement that had been negotiated for more than nine years, was a plenary decision of a collection of international interests in the law of the sea through the United Nations Conference.¹⁶ Discussion of UNCLOS 1982 basically concerns the limitations of state jurisdiction and serves as a basic guideline for the use of sea areas and their potential wealth.¹⁷

Utilization of the sea area carried out by the state in the area determined in UNCLOS 1982 can be realized by the state through various forms that are inherent in the regulation in international law. As a form of implementation of the provisions of UNCLOS 1982, the Government of the Republic of Indonesia then implemented a decentralized system in utilizing territories and managing the potential of marine wealth in Indonesia. This decentralized system was further realized in the form of granting sea rights to indigenous peoples in the area concerned. The granting of sea customary rights to local indigenous communities has made the management and use of the sea in the area focused. Besides that, the sea can also improve the welfare of fishermen groups who participate in managing the sea area.

UNCLOS 1982 specifically in Article 61 has stated that a country must determine the amount of catch allowed in its Exclusive Economic Zone area. Determination of the amount of catch is determined based on the economic needs of coastal fishing communities and the special needs of developing countries and by taking into account fishing patterns, interdependence of fish species stocks and international minimum standards proposed in general, both at sub-regional, regional and global levels. The granting of sea customary rights as a form of decentralized system used by the Government of the Republic of Indonesia is one step superior to management with a centralized system. This is because a decentralized system can provide opportunities for indigenous peoples to determine the amount of catch. Thus the indigenous people who

¹⁵ Emmy Latifah, 2017, *Perkembangan Pengaturan Pengelolaan Perikanan Berkelanjutan Berdasarkan Hukum Internasional*, Jurnal Bina Mulia Hukum, <http://jurnal.fh.unpad.ac.id/index.php/JBMH/article/download/jbmh.v1n2.3/V1%20CN2%20CA3>, Vol. 1 No. 2, hlm. 127-128.

¹⁶ Adhitya Nini Rizki Apriliana, 2017, "Penerapan Kewajiban Pemerintah Republik Indonesia untuk Memberantas *Illegal Fishing* dalam UNCLOS 1982", *Skripsi*, Fakultas Hukum Universitas Airlangga, p. 16.

¹⁷ *Ibid.*

manage these sea areas can contribute in determining the amount of catch which is then used to support their economic needs.

UNCLOS 1982 in its substance recognized the existence of traditional fisheries rights that must be considered and respected in carrying out the UNCLOS 1982 provisions to manage and utilize sea areas. However, the traditional fisheries rights referred to in UNCLOS 1982 refer to the conditions of the adjoining countries. Article 47 of UNCLOS 1982 makes it clear that in the case of a part of the archipelagic waters of a country situated between two parts of a neighboring country which are directly side by side, the rights and interests that are traditionally exercised by that country remain valid and must be respected. The understanding of traditional fisheries rights is further discussed in Article 51 of UNCLOS 1982 which states that an island nation must respect agreements with other countries and must recognize the traditional fisheries rights and neighboring activities of a neighboring nature in certain areas within archipelagic waters. These traditional fisheries rights must be regulated in detail in bilateral agreements between these countries and their implementation must be considered.

Referring to Article 47 and Article 51 of UNCLOS 1982, the traditional fishing rights stipulated in UNCLOS 1982 are basically not traditional fishing rights that refer to the customary rights of the sea as imposed by the Government of the Republic of Indonesia. UNCLOS 1982, in this case, does not regulate in detail the rights to customary rights to the sea but only regulates the position of the community, especially fishing communities, to contribute with the government in the management and utilization of the sea area in its territory. Article 51 (1) UNCLOS 1982 states that:

Without prejudice to article 49, an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them. Such rights shall not be transferred to or shared with third States or their nationals. States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them. Such rights shall not be transferred to or shared with third States or their nationals.

This article clearly states that traditional fishing rights are a juridical consequence of the birth of the concept of an archipelago in UNCLOS 1982. Traditional fishing rights in this case are formed as recognition of traditional fishing rights which have been carried

out from generation to generation and are accepted as an international custom.¹⁸ This means that the conditions for the recognition of this right are hereditary and sustainable use that is not timeless, even before the 1982 UNCLOS was agreed as a rules based system of international maritime law which also accommodates the division of sea areas in its regulation.¹⁹ In addition, the traditional fishing rights recognized by UNCLOS 1982 do not apply to local fishermen considering this right is granted to foreign countries affected by the application of the island nation concept.

2. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007

The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a convention formed on the basis of recognition and respect for indigenous knowledge, culture and traditional practices that contribute to good environmental management and sustainable and equitable development.²⁰ The convention, which was established by the United Nations on September 13, 2007, is a convention that has become the minimum standard for the survival, dignity and welfare of the world's indigenous peoples.²¹ The provisions in the 2007 UNDRIP are carried out based on international law but with due regard to customary law imposed by indigenous peoples of an area. Self-recognition as indigenous and tribal peoples will be considered a fundamental criterion for determining the group to which the provisions of this convention apply.

UNDRIP 2007 in its arrangement does not clearly classify the understanding of indigenous peoples. Referring to the classification submitted by the International Labor Organization regarding indigenous peoples, a community can be said to be an indigenous community if it meets the elements including: (a) traditional lifestyle; (b) different cultures and ways of life from national populations; and (c) have social and customary organizations and traditional law.²² Article 8 of the 2007 UNDRIP states that indigenous peoples have the right not to lose the culture they have lived. This provision is accompanied by the obligation of the state to provide protection and provide effective mechanisms to prevent the cultural degradation of these indigenous peoples. Indigenous peoples also in practice must be given a place to participate in decision-

¹⁸ Bruce Campbell and Bu V.E.Wilson, 1993, *The Politics of Exclusion: Indonesian Fishing in the Australian Fishing Zone*, Perth: Indian Ocean Centre for Peace Studies and the Australian Centre for International Agricultural Research, p. 85.

¹⁹ Yoshifuma Tanaka, *The International Law of the Sea*, Cambridge University Press, Eidinburgh, 2012, p. 211-212, quoted from Satria Unggul Wicaksana Prakasa and Al Qodar Purwo, 2019, *Analisis Historical Traditional Fishing Right Pada Zona Ekonomi Eksklusif (ZEE) Indonesia*, Legality Journal, Vol. 27 No. 1, March-August 2019, <http://ejournal.umm.ac.id/index.php/legaliti/article/view/8960/6741>, p. 90.

²⁰ United Nations, 2008, *United Nations Declaration on the Rights of Indigenous Peoples*, accessed from www.un.org on February, 19th 2020, p. 2.

²¹ Erin Hanson, 2019, *United Nations Declaration on the Rights of Indigenous Peoples*, accessed from www.indigenousfoundations.arts.ubc.ca on February, 19th 2020.

²² Dumas-Titoulet Imprimeurs, 2003, *Konvensi ILO Mengenai Masyarakat Hukum Adat*, International Labour Office Publisher, p. 15.

making in matters that will affect their rights and to maintain and develop the customs they have formed to make decisions.

Regarding to the statement of several articles that contain some of the rights and obligations of indigenous peoples and the countries where these indigenous peoples develop, it can be seen that in the 2007 UNDRIP the term sea customary rights is unknown as applied by the Government of the Republic of Indonesia. However, the 2007 UNDRIP in its regulation provides general provisions regarding indigenous peoples, their protection and matters relating to environmental conservation. Environmental conservation in this context is the environment of the territory occupied by the indigenous people. The provisions in the 2007 UNDRIP are general and do not specifically regulate marine customary rights but outline regulates matters that are similar to those of customary sea rights.

Article 29 of the 2007 UNDRIP states that indigenous peoples have the right to conserve and protect the environment and productive capacity of their territories. Thus, the state is obliged to implement these rights by establishing an assistance program for indigenous peoples related to conservation of their territories. The sound of Article 29 of UNDRIP 2007 can be used as a reference to provide regulations regarding sea customary rights as applied by the Government of the Republic of Indonesia. According to the article, the indigenous peoples can use the methods determined by their custom to carry out the management and utilization of the sea area that has been imposed on customary rights by the government to them. This management and utilization is certainly still based on the needs of the indigenous peoples concerned and the sustainability of the natural resources contained in the area.

Regulation of Customary Rights on The Sea by National Law Perspective

1. Law Number 5 of 1960 Concerning Basic Regulations of Agraria

Indonesia has an agrarian country background with a majority population engaged in the agricultural sector. Starting from this, we need a regulation that can accommodate the methods used by the Indonesian people in managing and utilizing the natural resources contained in their territories so that these resources can benefit as best as possible for the prosperity of the Indonesian people. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles begins with a desire to review efforts to improve ownership structures in the community.

Tjondronegoro stated that thinkers of this country after independence had realized the importance of improving the structure of land tenure in society, besides relating to the right to a better life, this effort was the basis for changing the structure of the agrarian

economy into an economic structure based on industrial and agricultural developments that balanced.²³

The implementation of agrarian reform at the initial stage carried out was land reform. The object of land reform object is state land, excess land from the maximum limit, absentee land and private land.²⁴ The regulation contained in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles also refers more to the distribution of land and the exercise of customary rights. Referring to the background of its formation, Law No. 5/1960 concerning Basic Regulations on Agrarian Principles was initially intended to prevent the emergence of cases involving disputes in the field of land, especially agricultural and plantation disputes that have a tendency to increase along with economic, social and economic dynamics. Indonesian politics.

Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles in its substance also regulates customary rights, but the regulation is general in nature and not specifically disclosed. Article 3 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles states that the state basically provides protection for the exercise of customary rights and rights that are similar to the customary rights of indigenous peoples, as long as in practice there is still a condition of the implementation of these rights. these customary rights do not conflict with higher laws and regulations. Departing from this, it can be seen that Law No. 5/1960 concerning Basic Regulations on Agrarian Principles does not include specific rules regarding customary rights to the sea, but instead provides rules regarding overall customary rights. Customary rights in this context also encompass marine customary rights as imposed on indigenous peoples who carry out management and use of sea areas even though Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles was originally intended to regulate land conflicts. However, the word customary rights in Article 3 does not only refer to customary land rights but the entire territory in a country which is an authority according to customary law owned by customary law communities over certain areas included in the community environment.

2. Law Number 26 of 2007 concerning Spatial Planning

Indonesia needs a national instrument that regulates comprehensively about spatial planning because geographically Indonesia is located in a strategic geographical area but prone to disasters that can naturally threaten the safety of the nation.²⁵ Thus, this law was formed to accommodate increased efforts to manage land space, sea space

²³ Erizal Jamal, 2000, *Beberapa Permasalahan Dalam Pelaksanaan Reformasi Agraria di Indonesia*, FAE, Vol. 18, No. 1 and 2, www.media.neliti.com/media/publications/64253-ID-beberapa-permasalahan-dalam-pelaksanaan.pdf, p. 17.

²⁴ *Ibid*, p. 20.

²⁵ Tim Penataan Ruang, *Undang Undang Nomor 26 Tahun 2007 Tentang Penataan Ruang*, accessed from <http://www.penataanruang.com> on February 21st 2020.

and air space so that wise, efficient and effective management mechanisms can be found. Article 3 of Law Number 26 of 2007 concerning Spatial Planning states that the implementation of spatial planning aims to create a safe, comfortable, productive and sustainable national territory based on national resilience so as to create harmony between: (a) harmony between the natural environment and the artificial environment; (b) the realization of integration in the use of natural resources and artificial resources by taking into account human resources; and (c) the realization of the protection of spatial functions and prevention of negative impacts on the environment due to spatial use. The implementation and supervision of the implementation of Law Number 26 Year 2007 concerning Spatial Planning also involves community contributions, especially the local community. Government regulation which is a derivation of Law Number 26 of 2007 concerning Spatial Planning must pay attention to the interests of the community so that conflicts do not occur in the application of legislation.

With regard to sea customary rights, Law Number 26 of 2007 concerning Spatial Planning does not regulate the term sea customary rights in its substance. Besides this law also does not include the term customary rights in its provisions. However, in its regulation Law Number 26 Year 2007 concerning Spatial Planning regulates more specifically regarding customary rights and indigenous peoples, especially in the explanation section. As explained in the general explanation section, it is stated that the rights, obligations, and role of the community in the management of spatial planning to ensure the involvement of the community, including indigenous peoples in each process of spatial planning. Indigenous peoples are given a position in this law to participate in the organization of spatial planning. Thus in implementing this law the Government of Indonesia is obliged to consider the interests of indigenous peoples such as the enforcement of customary rights, especially the rights of the sea.

Furthermore, indigenous peoples are referred to again in the elucidation of Article 5 Paragraph (5) of Law Number 26 Year 2007 concerning Spatial Planning which states that what is included in the strategic area from the point of social and cultural interests, among other things, are certain customary areas, cultural heritage conservation areas, including cultural heritages recognized as world heritage, such as the Borobudur Temple Complex and the Prambanan Temple Complex. The area granted customary rights in this case belongs to the customary area. This means that the area granted customary rights belongs to a strategic area in which activities take place which have a major influence on: (a) spatial planning in the surrounding area; (b) other activities in similar fields and activities in other fields; and / or (c) increasing community welfare.

Regarding to the several sounds of the article, Law Number 26 of 2007 concerning Spatial Planning provides more specific arrangements regarding the protection of customary rights and indigenous peoples. This is also emphasized in the explanation

of Article 7 Paragraph (3) of Law Number 26 Year 2007 concerning Spatial Planning which states that the rights owned by people also include the rights owned by indigenous peoples in accordance with statutory provisions. Referring to the explanation, it can be interpreted that the rights owned by indigenous peoples in this law are equal to the rights owned by the community in general. Law Number 26 of 2007 concerning Spatial Planning in its provisions does not recognize the terms sea rights or customary rights, but only includes provisions regarding customary rights which, when related to sea rights, are included in customary rights as explained in Law Number 26 of the Year 2007 About Spatial Planning.

CONCLUSION

International maritime law does not recognize the term ulayat rights as it is known in Law Number 5 of 1960 Concerning Basic Agrarian Regulations, although UNCLOS 1982 recognizes the concept of traditional fisheries rights. Both concepts do not have the same definition. This is because the sea area is an area whose boundaries must be agreed by countries under international legal instruments. State territories in the sea area, especially those relating to the regulation of the rights of indigenous peoples in coastal areas, cannot be enforced absolutely as the regulation on customary rights in Law Number 5 of 1960 concerning Basic Regulations on Basic Agrarian Principles. Thus Law No. 26/2007 concerning Spatial Planning in this case provides more specific arrangements for the protection of customary rights and indigenous peoples in coastal areas. This is also emphasized in the explanation of Article 7 Paragraph (3) of Law Number 26 Year 2007 concerning Spatial Planning which states that the rights owned by people also include the rights owned by indigenous peoples in accordance with statutory provisions. Referring to the explanation, it can be interpreted that the rights owned by indigenous peoples in this law are equal to the rights owned by the community in general. Law Number 26 of 2007 concerning Spatial Planning in its provisions does not recognize the terms sea rights or customary rights, but only includes provisions regarding customary rights which, when related to sea rights, are included in customary rights as explained in Law Number 26 of the Year 2007 About Spatial Planning.

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