

International Legal Aspects of Whale Hunting by Indigenous Legal Communities

Rensy Elma Tahalea^{1*}, Dyah Ridhul Airin Daties², Welly Angela Riry³

^{1,2,3} Faculty of Law, Universitas Pattimura, Ambon, Indonesia.

 : tahalearensy@gmail.com

Corresponding Author*



Abstract

Introduction: Greenland in Denmark, Siberia in Russia, Bequia in the island nation of Saint Vincent and the Grenadines, Alaska in the United States, Canada and the Faroe Islands located in the North Atlantic Ocean are some of the countries that still practice traditional whaling. Unlike Japan, which conducts commercial whaling and uses modern tools. Indonesia is a country that recognizes indigenous peoples and their customary law in the constitution. The Leva Nuang tradition or Lewa tradition is a tradition of the Lamalera people in East Nusa Tenggara Province in carrying out whaling in a traditional way for their own needs. Whales themselves are protected animals in the Convention on International Trade In Endangered Species of Wild Fauna and Flora (CITES 1973).

Purposes of the Research: The issue discussed in this paper is how international legal instruments regulate whaling and how international law protects the right of indigenous peoples to carry out whaling traditions.

Methods of the Research: The research method used is normative juridical, using a concept approach, a statutory approach and a case approach. The sources of legal materials used are primary, secondary, and tertiary legal materials. Analysis of such legal materials uses qualitative analysis techniques.

Results of the Research: The results showed that the Convention on International Trade In Endangered Species of Wild Fauna and Flora (CITES 1973) regulates protected animals, one of which is whales. There is also an international legal instrument governing whaling, the International Convention for the Regulation of Whaling (ICRW 1946). The Government of Indonesia ratified CITES 1973 on December 15, 1978 through Presidential Decree Number 43 of 1978. However, the 1946 ICRW Convention and ILO Convention 169 on Indigenous Peoples have not been ratified by the Indonesian government. Nevertheless, the Indonesian government recognizes and protects the rights of indigenous peoples, including the Leva Nuang tradition or Lewa tradition.

Keywords: International Law; Whaling; Indigenous People.

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INTRODUCTION

The sea has always played a very important and strategic role in the development of human civilization. The importance of the sea to humans makes them always dependent on the sea for their lives and livelihoods.¹ Indonesia is an archipelagic country located in a strategic position and has abundant marine resources.² The natural resources owned by the Indonesian nation are a gift from God Almighty, so we must be grateful by utilizing them through preservation and utilization activities, protection of the life support system sustainably of natural resources and their ecosystems. Indonesia's natural resources and ecosystems have an important position and role for human life, especially for the population

¹ Riry, W. A., Waas, R. M., Hattu, V. V., Tahamata, L., Leatemia, W., Daties, D. R. A., ... & Palijama, T. (2023). *Buku Ajar Hukum Laut Internasional*. p. 109.

² Riry, W. A. (2023). Kedudukan Pengadilan Perikanan dalam Mekanisme Penegakan Hukum Perikanan Indonesia. *Syntax Literate: Jurnal Ilmiah Indonesia*, 8(5), 3598-3609. p. 3598

of the Republic of Indonesia. Natural resources are biological elements in nature consisting of plant natural resources (plants) and animal natural resources (animals) which together with the non-biological elements around them as a whole form an ecosystem.³ Natural biological resources are diverse, there are various kinds of animals or wildlife therefore there needs to be protection for this diversity. There are several benefits of biodiversity that are important for Indonesia, namely helping to maintain the balance of the ecosystem. Various species of plants and animals have their respective roles in the life cycle including in maintaining the quality of air, water, and soil. Plants, animals, and microorganisms can function as sources of medicine. Biodiversity provides various natural ingredients that can be used in modern and traditional medicine. Rich biodiversity is a major attraction for nature tourism so that Indonesia has many interesting tourist destinations because of its unique natural beauty.⁴

The condition of biodiversity and its ecosystem has declined due to the utilization of biological resources for various purposes that are not balanced. In preventing this, the government is making conservation efforts aimed at protecting endangered species, maintaining the balance of the ecosystem, ensuring the sustainable use of natural resources such as forests, water, and land, so that they can be enjoyed by the present and future generations. In addition, involving the community in conservation efforts, so that they have greater concern and awareness of their environment. Based on Law of the Republic of Indonesia Number 5 of 1990 concerning the Conservation of Biological Natural Resources and their Ecosystems (State Gazette of the Republic of Indonesia 1990 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 3419), the management of biological natural resources whose utilization is carried out wisely to ensure the continuity of their supply while continuing to increase and maintain the value and quality of diversity. The aim is to realize the sustainability of biological natural resources and the balance of their ecosystems so that they can support efforts to improve community welfare and the quality of human life.

One of the most important natural resources is animal natural resources that have functions and benefits such as being consumed, as clothing and accessory materials, and can be used as a source of medicine. However, excessive use or irresponsible exploitation of animal natural resources can cause several detrimental consequences, namely that the animal population can experience a significant decline and can result in wider ecosystem disruptions that can cause animals to become rare.⁵

Viewed from the international law that regulates the protection of protected animals is regulated in the Convention on International Trade In Endangered Species of Wild Fauna and Flora (CITES 1973). CITES 1973 is a convention on international trade in endangered species of plants and animals. The CITES 1973 Convention prohibits international trade and reduces the economic value of rare flora and fauna species from excessive exploitation. Indonesia has ratified CITES 1973 through Presidential Decree No. 43 of 1978 concerning the Ratification of CITES 1973. Many countries including Indonesia have ratified CITES 1973 but the extinction of flora and fauna or wild animals continues to increase. The CITES 1973

³ Hardjasoemantri Koesnadi, *Hukum Perlindungan Lingkungan: Koservasi Sumber daya Alam Hayati dan Ekosistemnya*, Gadjah Mada University Press Yogyakarta, 1995, p. 32

⁴ Novita, Kadek Nicky, I. Gst Ngr Parikesit Widiatedja, and Bagian Hukum Administrasi Negara, "Bentuk-Bentuk Dan Perlindungan Konservasi Sumber Daya Alam Hayati Di Indonesia." *Kertha Negara: Jurnal Ilmu Hukum*, 2014, p. 2

⁵ Aristides, Yoshua, Agus Purnomo, and Fx Adji Samekto. "Perlindungan Satwa Langka Di Indonesia Dari Perspektif Convention On International Trade In Endangered Species Of Flora And Fauna (cites)." *Diponegoro Law Journal* 5.4, 2016, p. 4

Convention regulates protection, in addition there is also the International Convention for the Regulation of Whaling (ICRW 1946). ICRW 1946 is a Convention formed in 1946, this Convention aims to protect and provide preservation for Whales.⁶

Greenland in Denmark, Siberia in Russia, Bequia in the island nation of Saint Vincent and the Grenadines, Alaska in the United States, Canada and the Faroe Islands located in the North Atlantic Ocean are some of the countries that still hunt whales traditionally. Unlike Japan, which hunts whales commercially and uses modern tools. Indonesia is a country that recognizes indigenous peoples and their customary laws in its constitution. The Leva Nuang tradition or Lewa tradition is a tradition of the Lamalera people in East Nusa Tenggara Province in hunting whales in a traditional way for their own needs. Until now, the Lamalera people have caught whales in a traditional way, not in a modern way that can kill whales cruelly. Whale hunting carried out by the community is protected. The Lamalera people continue to hunt whales because this activity is a tradition of the indigenous people that cannot be separated.⁷ Article 18B paragraph (2) of the 1945 Constitution recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the principles of the Unitary State of the Republic of Indonesia. The process that ensures indigenous peoples exercise their fundamental rights, stating whether they agree or disagree with an activity or policy that will be implemented in all aspects of community life, is legally contained in ILO Convention 169 on indigenous peoples. *The International Labour Organization (ILO) issued ILO Convention No. 169 in 1989*, which defines indigenous peoples as peoples living in independent countries whose social, cultural and economic conditions distinguish them from other sections of society in that country and whose status is regulated, either wholly or in part, by the customs and traditions of those indigenous peoples or by special laws and regulations.⁸

METHODS OF THE RESEARCH

Research methods which used is normative juridical, using a conceptual approach, a regulatory approach and a case approach. The sources of legal materials used are primary, secondary and tertiary legal materials. The analysis of these legal materials uses qualitative analysis techniques.⁹

RESULTS AND DISCUSSION

A. Regulation of Whales as Protected Animals in International Law

Protection Animals are essential to human well-being because many of the natural resources and ecosystem services that humans need, such as clean water, clean air, and food, depend on the presence of animals and healthy ecosystems. Each species has a specific role in its ecosystem, and the loss of one species can have an impact on the balance of the entire ecosystem. Animals are an important part of the Earth's biodiversity, and play a vital role in maintaining the balance of ecosystems as predators, herbivores, decomposers, playing a role in maintaining populations of other animals, spreading plant seeds, and regulating

⁶ Firdausi, Fatihah, and Emmy Latifah, "Penegakan Hukum di Indonesia Berdasarkan Convention On International Trade In Endangered Species Of Wild Fauna And Flora (Cites)." *Belli ac Pacis* 3.2 (2017), p. 37-43.

⁷ Mengenal Budaya Perburuan Paus yang Dilakukan Masyarakat Lamalera - Semua Halaman - National Geographic (grid.id), Accessed, February 12, 2024

⁸ Golar dkk, *Panduan Pelaksanaan Free Prior Informed Consent (FPIC) Unredd Di Sulawesi Tengah*, Jakarta, 2012, p. 6.

⁹ Peter Marzuki, *Penelitian Hukum*, Prenada Grup, Jakarta, 2005, p. 201.

nutrient cycles.¹⁰ One of the protected animals is the whale. Whales are mammals that are often protected because of their important role in the marine ecosystem and their vulnerable status to human threats. There are several reasons why whales should be protected, many whale species have experienced drastic population declines as a result of commercial hunting, pollution, collisions with ships, and climate change.¹¹

Convention on International Trade In Endangered Species of Wild Fauna and Flora (CITES 1973) and International Convention for the Regulation of Whaling (ICRW 1946) are two international agreements that are both related in discussing the protection of Whales. CITES 1973 aims to regulate international trade in endangered wildlife species including Whales, although CITES 1973 is not specifically intended for Whales. However, Whale species such as Sperm Whales (*Physeter macrocephalus*) are included in Appendix I. Appendix I includes endangered species therefore CITES 1973 provides additional protection for several Whale species. If you look at the main focus of ICRW 1946 is to ensure that Whaling is carried out sustainably so as not to endanger the Whale population excessively, ICRW 1946 also provides a framework for regulating Whaling including quota restrictions, division of fishing areas and regulation of hunting techniques. Both of these conventions work together to protect whale populations worldwide, and CITES 1973 focuses on international trade in endangered whale species, ICRW 1946 focuses on regulating hunting. Although each convention has a different focus, their goal is the same, namely the preservation and protection of whales.¹²

B. Whale Hunting Tradition As Rights of Indigenous Legal Communities

The natural instinct of humans always drives them to live in groups (zoon politicon). The group is called a society, they work together to survive. They seek a certain area or location that is safe and has resources to meet their needs.¹³ Maria SW Sumardjono defines customary law communities as communities that arise spontaneously in certain areas with a great sense of solidarity among its members and view non-members as outsiders, using their territory as a source of wealth that can only be fully utilized by its members, utilization by outsiders must be with permission and the provision of certain rewards in the form of recognition. According to Bushar Muhammad in customary law, there is a close relationship between the legal community as a unit and the land it occupies, which causes the legal community to obtain the right to control, utilize and collect the results of growth and have the right to hunt animals that live on the land.¹⁴

Community rights in customary law refer to the rights held by a community group in a particular territory or community based on existing traditions, customs, and norms. These rights may include rights to land, natural resources, traditional leadership, and other cultural practices recognized by the local community. The importance of recognizing and protecting community rights in customary law is increasingly being recognized in efforts to ensure the sustainability of indigenous peoples' culture and livelihoods. It also relates to the

¹⁰ Hayus Prabowo, *Pelestarian Satwa Langka Untuk Keseimbangan Ekosistem*, Pusat Edisi Pertama, Jakarta, 2017, p. 10.

¹¹ Imam Supardi, *Lingkungan Hidup dan Kelestariannya*, Cetakan ke-3, Bandung, 1994, p. 172.

¹² Ollani Vabiola Bangun, Efektivitas CITES (Convention on International Trade in Endangered Species Of Wild Fauna and Flora) Implementasi di Indonesia, *JOM FISIP*, Volume 1 No.2, Oktober, 2014, p. 2.

¹³ Daties, D. R. A., Hartatie, H., Wibowo, D. E., Budhiartie, A., Maidiantie, S., Sinaga, L. V., ... & Christy, G. P. (2021). *Hukum Lingkungan Pembangunan Berwawasan Lingkungan Yang Berkelanjutan*. p. 33.

¹⁴ Thontowi Jawahir, Pengaturan Masyarakat Hukum Adat dan Implementasi Perlindungan Hak-Hak Tradisional, *Pandecta Research Law Journal*, 2015, p. 4.

principles of justice, participation, and respect for cultural diversity within a country or region.¹⁵

Countries that still hunt whales include Greenland in Denmark, Siberia in Russia, Bequia in the island nation of Saint Vincent and the Grenadines, Alaska in the United States, Canada and the Faroe Islands located in the North Atlantic Ocean. These countries have a tradition of whale hunting and the government allows them to continue the tradition. Unlike Japan which hunts whales commercially and uses modern equipment, in Indonesia they hunt in a traditional way and for their own needs, known as aboriginal subsistence whaling. Whaling is a whale hunting activity that has a history since 6,000 BC. Indonesia has a tradition of whale hunting, this tradition is known as the Leva Nuang tradition or the Lewa tradition in Lamalera.

Lamalera is a village located in Lembata Regency, East Nusa Tenggara Province (NTT). In terminology, the word "Lamalera" according to the Lamaholot language, a regional language in the East Flores region, comes from the word "lama" which means disc or disk and "lera" which means sun, so Lamalera can be interpreted as the edge/disk of the sun.¹⁶ Whales are one of the marine mammals belonging to the cetacean group that are included in the list of endangered species. One of the marine mammals hunted by Lamalera fishermen is the Sperm Whale (*Physeter microcephalus*). Among the various animal conservation campaigns, the tradition of catching whales carried out by the Lamalera community, East Nusa Tenggara (NTT), has not diminished until now. Although sometimes there are still pros and cons, this cultural activity is still maintained in order to meet the needs of the entire Lamalera community. Lamalera Village is known as a village of whale hunters. The habit of hunting whales has been carried out since the 17th century.

Whale hunting or locally known as baleo. Whales in Lamalera waters can appear throughout the year, namely from May to October but not all whales are hunted by the local community.¹⁷ There are several types of whales that are not hunted by the Lamalera community. First, pregnant whales of any type may not be hunted, because it is not allowed by custom and has also been regulated in environmental regulations. In addition, the blue whale, because this type is sacred to the local community. Hunting is not done every day, hunting will only be done when the Lamalera community sees a spout from the whale which is also used as a sign that hunting will be carried out. Traditional hunting in Lamalera and similar areas can be maintained sustainably by implementing strict regulations and educating about the importance of conservation. This will help keep the marine ecosystem and whale species alive. Public law customs that still carry out the tradition of whale hunting must continue to carry it out in accordance with the customary laws they have established and in accordance with national and international legal regulations.¹⁸ Traditional whale hunting has been done for a long time, but unlike other countries, Indonesia does not have regulations governing traditional hunting. For this reason, it is important for Indonesia to ratify the ICRW 1946. In the ICRW 1946, an International Whaling Commission (IWC) was created which aims to protect whales, for example, Aboriginal Subsistence Hunting which regulates the legality of traditional whale hunting by certain countries that still hunt whales for the benefit of indigenous peoples. The

¹⁵ Rikardo Simarmata, *Penegakan Hukum Terhadap Masyarakat Adat Di Indonesia*, UNDP Jakarta, 2006, p. 309-310.

¹⁶ Aliya, *Melihat Budaya Gotong Royong di desa Para Pemburu Paus: Lamalera NTT*, Indrajaya Jakarta Timur, 2017, p. 14-18.

¹⁷ Pusat Data dan Analisa Tempo: Iqbal Syamsi, *Perburuan Ikan Paus di Lamalera*, Tempo Publishing, Jakarta, 2019, p. 13-17.

¹⁸ Litbang Kompas, *Berburu Paus Demi Tradisi*, Kompas Media Nusantara Jakarta, 2021, p. 21.

Lamalera community still hunts whales, namely Sperm Whales (*Physeter Microcephalus*) where the status of the whale is protected by international and national regulations. In addition, if the ICRW 1946 convention is ratified, the objectives of the ICRW 1946 will be achieved because the ICRW 1946 convention authorizes the IWC to set hunting limits for indigenous peoples so that the stock of whales hunted by indigenous peoples remains stable and is not threatened with extinction.¹⁹

The protection of indigenous peoples' rights related to whale hunting in Indonesia remains relevant to the principles contained in the ILO Convention 169 of 1989 on Indigenous Peoples. The ILO Convention 169 of 1989 on Indigenous Peoples provides an important international framework for the protection of indigenous peoples' rights, including in the context of whale hunting. Some elements of the protection of the rights of indigenous peoples regarding whale hunting in Indonesia in relation to the principles of ILO Convention 169/1989 concerning customary law communities is ILO Convention 169 recognizes the rights of indigenous peoples to land and natural resources associated with their traditions and customs.²⁰

The 1989 ILO Convention 169 on indigenous and tribal peoples recognizes the importance of protecting the culture, traditions and institutions of indigenous peoples. In the context of whale hunting, this means that whale hunting practices that are part of the culture and traditions of indigenous peoples must be respected and protected, as long as they are carried out sustainably and do not harm the environment. The existence of customary law has been included in the formulation of Article 18B paragraph (2).²¹ However, the Indonesian government has not ratified ILO Convention Number 169 of 1989, the reason being that if the convention is ratified, then... There are very complex legal implications in Indonesia where the concept of indigenous peoples in Indonesia is different from the concept of indigenous peoples in the United States in the United Nations Declaration on the Rights of Indigenous Peoples (*United Nations Declaration on the Rights of Indigenous People-UNDRIP*). However, there is also a view that the ratification of ILO Convention No. 169/1989 concerning customary law communities can bring benefits, ratifying the convention can strengthen the protection of indigenous peoples' rights, including in terms of whale hunting and natural resource management.

The convention can help improve social justice for indigenous peoples, including greater access to natural resources and economic empowerment. Ratifying the convention can improve Indonesia's image at the international level in terms of human rights protection and environmental sustainability. However, to date, the Indonesian government has not yet ratified ILO Convention No. 169/1989 concerning customary law communities and objections to the complex legal implications remain a major obstacle in the process.²²

CONCLUSION

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES 1973) regulates protected animals, one of which is whales. Because whale hunting is part of the

¹⁹ Elannor, Vianny. M. C dan Suwarsono, St, Etnomatematika dalam Pasar Barter Di Nusa Tenggara Timur, *Purwerkerto Sendika* Vol 5, No 1, 2019, p. 35.

²⁰ Kurniasari, Nendah dan Reswati, Elly, Kearifan Lokal Masyarakat Lamalera: Sebuah Ekspresi Hubungan Manusia Dengan Laut, *Buletin Riset Sosek Kelautan dan Perikanan*, Vol. 6 No. 2, 2011, p. 3.

²¹ Ifdhal Kasim, *Konvensi ILO 169: Relevansi dan Urgensinya dalam Upaya Perlindungan Masyarakat Adat di Indonesia*. UII Article, Yogyakarta, 2007, p. 2.

²² Sem Karoba, *Hak Asasi Masyarakat Adat*, Galang Press, Yogyakarta, 2007, p. 73.

traditions of indigenous peoples in several countries, an international convention was established on whale hunting, namely the International Convention for the Regulation of Whaling (ICRW 1946). Protection of Indigenous Peoples' Rights is regulated in the International Labor Organization (ILO) Convention No. 169 of 1989 concerning Indigenous Legal Communities and the Indonesian government has not ratified ILO Convention 169, but in the Indonesian constitution, especially Article 18B paragraph (2) of the 1945 Constitution, it has recognized and respected indigenous legal community units along with their traditional rights as long as they are still alive and in accordance with the principles of the Unitary State of the Republic of Indonesia. It is important for the Indonesian government to ratify The ICRW Convention 1946 and the ILO Convention 169 on the one hand demonstrates Indonesia's commitment to engage in conservation efforts for endangered whale species, and on the other hand demonstrates Indonesia's commitment to strengthening the protection of indigenous peoples' rights, improving their welfare, and maintaining the sustainability of culture and the environment which are an integral part of the nation's heritage. To balance environmental conservation and cultural heritage protection, governments, local communities and conservation organizations must work together. Traditional hunting in Lamalera and similar areas can be maintained sustainably by implementing strict regulations and educating about the importance of conservation. This will help keep the marine ecosystem and whale species alive. Public law customs that still carry out the tradition of whale hunting must continue to carry it out in accordance with the customary laws they have established and in accordance with national and international legal regulations.

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