

The Nature of the Status of Ownership of Land Rights to the Bajo Tribe in Pohuwato Regency, Gorontalo Province

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ABSTRACT

The purpose of the study was to find out the nature of the status of ownership of land rights to the Bajo Tribe in Pohuwato Regency, Gorontalo Province. Research methods is nondoctrinal research or sociological legal research (social legal research) or often called empirical legal research. The location of the research was carried out in Gorontalo Province by selecting Pohuwato Regency as a representative of all districts/cities in Gorontalo Province. The reason was that this location had never been conducted. Research on the Status of Ownership of Land Ownership of the Bajo Tribe. The results of the study show that the nature of the status of ownership of land rights for the Bajo Tribe who live above the sea in Pohuwato Regency, Gorontalo Province has not felt a sense of justice based on legal principles, according to article 9 paragraph (2) of the UUPA and the fifth principle of Pancasila and the 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3).

Keywords: Rights; Land; Bajo Tribe

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I. INTRODUCTION

The Bajo people are known as tough sailors. However, history is more familiar with the Makassar tribe, the Bugis tribe, or the Mandar tribe, as kings of the ocean. The Bajo tribe was once said to have been part of the Sriwijaya Royal Navy. So, his toughness and skills to sail the ocean are undeniable.¹

Several anthropologists noted that the Bajo tribe fled to the sea because they avoided war and chaos on the land. Since then, boat people have appeared who fully live on the water.² The name of the Bajo tribe is given by members of other tribes on the island of Sulawesi itself or outside the island of Sulawesi. Meanwhile, the Bajo people refer to themselves as the Same tribe. And, they call people outside their tribe as the Bagai tribe. or the name "Bajo" and they interpret it negatively, namely pirates or pirates. according to the story that developed among anthropologists, the pirates in ancient times were believed to have come from the same tribe. Since then, people have referred to the same tribe as the Bajo tribe. That is, yes the Pirate tribe. Surprisingly, the name of the Bajo tribe is more famous and spread throughout the archipelago. So, any sea tribe in this archipelago is often generalized as the Bajo tribe.

Lately, this negative meaning has generated a prolonged polemic. many people do not agree and dispute the meaning of "Bajo" as pirates or pirates.³ Because it is tantamount to placing the Bajo tribe in an inappropriate place in our history books. Whatever the final outcome of the debate, the fact is that many anthropologists strongly believe in the accuracy of the negative connotation. The funny thing is, debate after debate about a problem, it never produces a more perfect conclusion. Thus, only confusion should be enjoyed by those who intend to study science. This includes the origin of the word "Bajo." What is certain, the Bajo tribe is the Same tribe or sea tribe which until now still inhabits many locations throughout the archipelago. Where there is a headland, that is where the Bajo people build their life.

Where there is the sea, that is where the Same tribe makes a living. By fishing, of course. If the prediction of the impact of climate change occurs between 2050-2100, the Bajo tribe is arguably the most

¹ Suliyati, T. (2017). Social Change of Bajo Tribe Society in Karimunjawa: From "Sea Tribe" to "Land Tribe". *Journal of Maritime Studies and National Integration*, 1(2), 128-138.

² Syam, S., Yudono, A., Wikantari, R., & Harisah, A. (2018, November). Architecture spatial arrangement of Bajo tribes settlement in Kabalutan Island of Central Sulawesi. In *IOP Conference Series: Earth and Environmental Science* (Vol. 202, No. 1, p. 012062). IOP Publishing.

³ Tahara, T. (2014). Kebangkitan Identitas Orang Bajo di Kepulauan Wakatobi. *Antropologi Indonesia*.

prepared community to deal with it. The reason is, since birth, the descendants of the Bajo tribe have been introduced to life on the surface of the water. Amid the busyness of scientists looking for solutions to climate change, it turns out that part of the answer lies in the wisdom of the Bajo tribe.

According to Professor AB Lopian, a historian from the Indonesian Institute of Sciences, the Bajo or Bajau are a group of people who depend on the sea for their lives.⁴ "You could say that their life and death depend on the sea," said Lopian. Stated that all their activities were spent on the boat. Therefore, they are known by the nickname of the nomadic sea tribe. This is what scientists want to study and apply to the threat of sinking islands. On the other hand, researchers have difficulty getting accurate data about the origins of the ancestors of the Bajo tribe. According to Lopian, there are various versions of the history of their ancestral history. The folklore version says the Bajo tribe came from Johor, Malaysia. Some say they come from the Philippines or Bone (South Sulawesi).

According to Dr Munsil Lampe, an anthropologist from Hasanuddin University Makassar said that the number of Bajo tribes who depend on boats for their lives is estimated to be decreasing because they live on the coast and build houses on stilts. As described in the book *Coping with Climate Change in Coastal Areas and Small Islands*, the stilt houses of the Bajo tribe are built using materials that are considered environmentally friendly. The walls are made of a combination of wood and woven bamboo. While the roof of thatch leaves.

Even according to Prof. DR. Edward L. Poelinggomang, Bajo people have been found on the coasts of islands in the South China Sea for centuries, and they still tend to follow the results of research that the origins of the Bajo people come from Johor, Malaysia. They were originally said to be a community of royal citizens who were tasked with finding a princess who disappeared into the ocean. By using a boat, most of the residents then went along the sea to search, including to the waters in the archipelago. However, because they could not find the Princess in question, they were reluctant to return to Johor and decided to live to wander by boat on the coast. However, in several studies conducted later on the Bajo Tribe community on the coast of Indonesia, it is known that they generally have the same language, namely the Bajo language which is used as the language of conversation in everyday families. The language used is also mutually understood between the Bajo communities on the coasts of the islands of Sumatra, Kalimantan, Java, Sulawesi, Bali, Nusa Tenggara, Maluku, and the coast of Papua.

By looking at the existing phenomena associated with the law concerning the rights of the Bajo tribal people's rights to land, it is far from expectations where the Bajo people regarding the status of ownership of land rights because they are constrained by the existing rules that have not fully regulated the rights of the Bajo people so that between the central and regional governments have never considered the status of ownership of land rights of the Bajo tribal people above the sea.

Based on the existing rules of the Indonesian nation as in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that the meaning of national natural wealth is a means in carrying out all activities of people's lives and has a very important role for human survival, in this case, everyone must need land, not only in living life and living, even to die humans still need a piece of land. with the consideration, that land is a form of gift given by God to our country. For this reason, so that problems do not arise, the government tries to regulate them properly. Where Indonesia is a developing country, it demands to do a lot of improvement and development. The number of people who need land, but not increasing the amount of existing land is one of the core problems. Like it or not, to carry out the development, a land acquisition process is held which originates from land that has been occupied by the people. The process took quite a long time because one of the parties felt that there was an injustice.

Research Methods This

type of research is non-doctrinal research or social legal research or often called empirical legal research. Sociological legal research is research with an approach to the legal reality in society. The research is based on the existence of symptoms in the form of a gap between expectations (*das sollen*) and reality (*das Sein*) in the field of law. The location of the research was carried out in Gorontalo Province by selecting Pohuwato Regency as a representative of all districts/cities in Gorontalo Province. The reason is that this location has never been studied on the Status of Ownership of Property Rights on the land of the Bajo Tribe.

II. DISCUSSION

The nature of ownership status of land rights for the Bajo Tribe who live above the sea.

In Indonesia, the issue of agrarian resources (in a broad sense) is regulated in the constitution as stated in Article 33 paragraph (3) of the 1945 Constitution. This article in principle provides a legal basis that the earth and water and the natural wealth contained therein, the authority to regulate land is entirely handed over to the

⁴Baskara, B. (2020). The Expansion Of Jama'ah Tabligh Movement And Its Influence On The Religious Belief Of The Bajo People In South East Sulawesi. *Journal Of Indonesian Islam*, 14(2), 519-540.

State as an organization of power and used for the maximum benefit of the people's prosperity.⁵ Furthermore, the land is regulated in Law no. 5 of 1960 concerning Agrarian Principles (hereinafter abbreviated as UUPA) and its implementing regulations. It is hoped that this control will have an impact on legal certainty, legal protection, justice and prosperity for the people.

The position of land in these different value systems when viewed from the study of the philosophy of law, the land contains different values, depending on the place and time in which the value system grows and develops. The difference in the value system results in differences in the land law system. In addition, the influence of economic, political and legal factors has resulted in a tendency to impose certain values on other values, which leads to the deconstruction and reconstruction of certain land law systems. With the approach of the philosophy of law will be sought the nature of land and land rights as well as what is behind the land and land rights, as well as investigating the rules of law as a value judgment thus be philosophical, control and ownership of land loaded with the value of the background of the birth legal norms governing the control and ownership of land in which there are authorities, rights and obligations as well as power. Philosophy of legal science is the terminology used to understand land law as a complete reality with a holistic approach which contains three aspects, namely:

- (1) Aspects of justice, justice is equal rights for all people in the control and ownership of land;
- (2) Aspects of the objective of justice or finality, namely determining the content of the law, because the content of the law is following the objectives to be achieved for the control and ownership of land, namely a just and prosperous society;
- (3) Aspects of legal certainty or legality, namely ensuring that land law can function as regulations that must be obeyed and provide legal certainty.

Those who are less fortunate can be given special facilities and treatment in obtaining land rights. And have limited capabilities compared to society in general. Recognizing these differences in abilities, the government must make and implement various policies to ensure that the Bajo people are also Indonesian citizens who can have land rights. One of the traditional communities because it has a lower ability both in terms of economy and education to get land rights. Therefore, the function of government, in exercising power and authority is very important. Because authority, which is defined as the right and power to act, the power to make decisions, govern and delegate responsibilities to other people/agencies, functions that may be carried out. While the authority has the meaning of the authority, the rights and powers that are owned to do something. Authority is often equated with the term authority, the term authority is used in the form of a noun and is often equated with the term "bevoegheid" in Dutch legal terms.

According to Philipus M. Hadjon, if you look closely, there is a slight difference between the term authority and the term "bevoegheid". The difference lies in the legal character. The term "bevoegheid" is used in both public and private law concepts. In our legal concept, the term authority or authority should be used in the concept of public law. Ateng Syafrudin argues that there is a difference between the notion of authority and authority. We must distinguish between authority (authority, gezag) with authority (competence, bevoegheid). Authority is what is called formal power, the power that comes from the power granted by law, while authority only concerns a certain "onderdeel" (part) of authority. Within the authority, there are powers (rechtsbevoegdheden). Authority is the scope of public legal action, the scope of government authority, not only includes the authority to make government decisions (bestuur), but includes authority in the context of carrying out tasks, and giving authority and distribution of authority mainly stipulated in laws and regulations. Juridically, the notion of authority is the ability given by legislation to cause legal consequences. From the various definitions of authority as mentioned above, the author concludes that authority has a different meaning from competence. Authority is formal power that comes from the law, while authority is a specification of authority, meaning whoever (legal subject) is given

in the 1945 Constitution of the Republic of Indonesia (UUD NKRI 1945) that the purpose of the Indonesian nation is to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote the general welfare. The will to protect and promote welfare is then spelt out in the body of the 1945 Constitution of the Republic of Indonesia, namely Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In that article, it is regulated that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.⁶

The definition of people's prosperity as referred to in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is the prosperity of the Indonesian people as a whole, both the majority and the

⁵ Zainuddin, Z. (2021). Right to Own Land by the State in the Frame of Constitutional Law. *Randwick International of Social Science Journal*, 2(2), 46-57.

⁶ Sebastian, L. C., Chen, J., & Priamarizki, A. (2014). Indonesia Beyond Reformasi: Necessity and the "De-centering" of Democracy. *Maryland Series in Contemporary Asian Studies*, 2014(3), 1.

minority.⁷ People's welfare will be created if individual ownership is recognized while still being based on the right to control the state. Private ownership is a human right as regulated in Article 28 H paragraph (4) of the 1945 Constitution of the Republic of Indonesia and such ownership should not be taken arbitrarily by anyone because the state's obligation is not only limited to protecting land ownership but ensuring that the land is distributed fairly so that can be enjoyed by all Indonesian people. In this distribution, it is necessary to pay attention to the condition of the less fortunate people. Referring to Article 28 H paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia, a

series of powers, obligations, and or prohibitions for the holder of the right to do something about the land that is in their right. Something that is allowed, obligated or prohibited to be done, which is the content of the right of control is what is the criteria or benchmark for distinguishing between the rights of control over land regulated in the Land Law. where land tenure can be used in a physical sense, as well as in a juridical sense. There are also private and public aspects. Tenure in a juridical sense is control based on rights, which are protected by law and generally gives authority to the right holder to physically control the land being entitled to, for example, the landowner uses or takes advantage of the land being entitled to, not handed over to other parties. There is also juridical control, which even though it gives the authority to control land that has been acquired physically, in fact, the physical control is carried out by another party, for example, someone who owns the land does not use his land but is rented out to another party, in this case, the land is legally owned. by the landowner but physically carried out by the land tenant. There is also a juridical control that does not give the authority to physically control the land in question, for example, creditors (banks) holding collateral rights over land have juridical land tenure rights over land that is used as collateral (collateral), but physically the control remains with the owner. landowner. Mastery of the juridical and physical on the ensuing used in aspects of private or civil mastery juridical beraspek publicly viewable on the acquisition of land as mentioned in Article 33 paragraph (3) of the 1945 Constitution and article 2 of Law Principal agrarian (BAL.)

By **The results of the interview on October 10, 2020, to Jack, the** former head of the Torosiaje Laut Village, stated that the Bajo Tribe community in the marine torosiaje, Pohuwato Regency, Ownership Status, Land rights of the Bajo Tribe, Pohuwato Regency, have not been implemented properly due to the problem of the absence of regulations that specifically regulate the status of the community. ownership of land rights of the Bajo tribal community, which is above the sea, on the other hand, the Government, in this case, the Land Office, when referring to 9 paragraph (2) of the BAL, is in conflict with the Spatial Planning Law. According to the apparatus of the National Land Agency of Pohuwato Regency, legislation is needed New invitation regarding the status of land ownership rights for the Bajo people who live above the sea, but if you look at the geography at low tide, the location becomes land, as evidenced by the Elementary School and Middle School Early Childhood Building, which is permanent and has been filled with the land.

Based on the results of the Questionnaire that Ederakan's research gave to the community giving Opinions/Respondents about the Nature of Ownership Status Land rights for the Bajo tribal people who live above the sea can be seen from the various answers and reasons expressed as material for researchers to analyze and describe and will provide answers as follows: conclusion later.

Table 1. Status of Ownership of Land Rights for the Bajo Tribe who live above the sea

No	Description	Frequency (Number of Respondents)	Percentage (%)
1.	Strongly Agree	160	72,5
2.	Less Agree	29	13,1
3.	Disagree	32	14,5
Jumlah (n)		221	100.

Source of data processed from Primary data Year (2020)

Based on table 1 above shows that the nature of the status of Ownership of Land Rights for the Bajo Tribe People who answered strongly agree 160 respondents (72.5%) said that because of the legal trap, especially the Bajo Tribe because some of the laws and regulations are not implemented because they conflict with regulations which, with other regulations, lack the Government's attention to pay attention to the status of Ownership of Land Rights of the Bajo Tribe community in that location while disagreeing only 29, (13.1%) and

⁷ Joesoef, I. E., & Sugiyono, H. (2019). Transfer of Rights of Customary Land to Private Parties: Reconstruction Thought of Right to Controlled by the State. *International Journal of Multicultural and Multireligious Understanding*, 6(6), 540-554.

disagree. 32 Respondents 14.5% with both of these answered because of the lack of understanding of the status of ownership of land rights due to the absence of socialization from the local government.

From the table above, it indicates that so far, the rights of the Bajo Tribe community in Torosiaje Laut village, Popoyato district, Kab. Pohuwato Gorontalo Province has never been touched by the Government regarding the status of ownership of land rights, it is only a mere promise in the context of political events every year there is a political activity from year to year, but the realization has never happened, this makes research that the Government should pay attention to the status of ownership of land rights for the Bajo people. following the mandate of the 1945 Constitution of the Republic of Indonesia Article 33 Paragraph (3) and UUPA No. 5 Tau 1960 following article 9 (2) so that there is no discrimination against the Bajo people with the Indonesian people in general, especially the Bajo people in Torosiaje Village, Popayato district Pohuwato Regency, Gorontalo Province.

Based on the **results of an interview on October 11, 2020**, one of the shops of the Bajo tribe, **Dg Lewa**, regarding the level of understanding of the Bajo people regarding the Hat ownership status of the land they occupy above the sea is very lacking due to the lack of socialization from the government so that the Bajo people do not understand about their ownership status, and considers that without the certificate it has become a right of ownership because it was a gift from their ancestors as an inheritance. From his ancestors from generation to generation.

Of the many questionnaires that researchers circulated, various Respondents' opinions regarding their understanding of the Status of Ownership of Land Rights for the Bajo Tribe who live above the sea can be seen from the various answers and reasons expressed as material for researchers to analyze and describe and will provide answers as the conclusion. later.

Table 2. Tribal Community Understanding of the Status of Ownership of Land Rights for the Bajo Tribe who live above the sea.

No	Description	Frequency (Number of Respondents)	Percentage (%)
1.	Strongly Agree	45	20,4
2.	Less Agree	30	13,5
3.	Disagree	146	66,1
Jumlah (n)		221	100.

Source of data processed from Primary data Year (2020)

From table 2. above shows that respondents who answered knew about the reason the Government did not give ownership status of land rights to the Bajo Tribe (45) people (20.4%) Respondents Those who answered that they did not know 30 people (13.5%) and Respondents who answered that they did not know 146 people (66.1%) The data shows that so far there has been no socialization from the Government regarding the reasons for not being given land rights by the Bajo people in the village. Torosiaje who live above the sea.

The data in the field found by researchers that there are people who do not know at all about the legal basis for living above the sea, but they admit that what they live in according to him is property rights to land and sea from their ancestors because they have lived on the sea for generations so they think that this is proprietary.

The legal goals that are close to reality are legal certainty and legal benefits, but the Positivism emphasizes legal certainty but these three legal goals have not been felt by the Bajo tribal community so that the researcher concludes that the purpose of national law is not at all following the goals of the Republic of Indonesia.⁸ where the law is part of the power of the State. The objectives of the Republic of Indonesia as formulated in the Preamble to the 1945 Constitution are: (1) to protect the entire Indonesian nation and the entire homeland of Indonesia; (2) promote the general welfare; (3) the intellectual life of the nation; and (4) participate in carrying out world order based on freedom, eternal peace and social justice. Which covers all Indonesian people in general, including tribal communities. Bajo tribe.

III. CONCLUSION

In essence, the status of ownership of land rights for the Bajo Tribe who live above the sea in Pohuwato Regency, Gorontalo Province has not yet felt a sense of justice based on legal principles, following

⁸ Moho, H. (2019). Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan. *Warta Dharmawangsa*, 13(1).

article 9 paragraph (2) of the UUPA and the fifth precept of Pancasila and the 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3).

REFERENCES

- [1] Suliyati, T. (2017). Social Change of Bajo Tribe Society in Karimunjawa: From " Sea Tribe" to " Land Tribe". *Journal of Maritime Studies and National Integration*, 1(2), 128-138.
- [2] Syam, S., Yudono, A., Wikantari, R., & Harisah, A. (2018, November). Architecture spatial arrangement of Bajo tribes settlement in Kabalutan Island of Central Sulawesi. In *IOP Conference Series: Earth and Environmental Science* (Vol. 202, No. 1, p. 012062). IOP Publishing.
- [3] Tahara, T. (2014). Kebangkitan Identitas Orang Bajo di Kepulauan Wakatobi. *Antropologi Indonesia*.
- [4] Baskara, B. (2020). The Expansion Of Jama'ah Tabligh Movement And Its Influence On The Religious Belief Of The Bajo People In South East Sulawesi. *Journal Of Indonesian Islam*, 14(2), 519-540.
- [5] Zainuddin, Z. (2021). Right to Own Land by the State in the Frame of Constitutional Law. *Randwick International of Social Science Journal*, 2(2), 46-57.
- [6] Sebastian, L. C., Chen, J., & Priamarizki, A. (2014). Indonesia Beyond Reformasi: Necessity and the "De-centering" of Democracy. *Maryland Series in Contemporary Asian Studies*, 2014(3), 1.
- [7] Joesoef, I. E., & Sugiyono, H. (2019). Transfer of Rights of Customary Land to Private Parties: Reconstruction Thought of Right to Controlled by the State. *International Journal of Multicultural and Multireligious Understanding*, 6(6), 540-554.
- [8] Moho, H. (2019). Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan. *Warta Dharmawangsa*, 13(1).

Muh. Nasir. "The Nature of the Status of Ownership of Land Rights to the Bajo Tribe in Pohuwato Regency, Gorontalo Province." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 26(08), 2021, pp. 38-43.