7. Marine Tenure and the Politics of Legality: Cyanide Fishing

Government recognition and support of local resource management in coastal fisheries should be formalized.... In particular, explicit legal recognition needs to be given to the concepts of customary law (hukum adat) and local territorial rights (hak ulayat) (Bailey and Zerner 1992: 12).

Because the basic customary marine law is still maintained and acknowledged by fishing societies, it is expected that basic customary marine law can be uplifted to be a provincial-level regulation which creates the legal and business certainty for fishermen so they can increase their welfare (translated from Lokollo 1994: 20–1).

The above quotations represent a popular recommendation for both central and local Indonesian governments to legalise the existence of customary marine tenure in Maluku and in Indonesia in general. In fact, this recommendation is one of the main elements in the creation of co-management (McCay and Jentoft 1996; Jentof et al. 1998) which refers to a management practice where government and fishing communities work together in crafting, implementing, and evaluating the policies related to marine tenure. Thus, such a recommendation is not unique to Maluku or Indonesia but worldwide.

There are two assumptions supporting this recommendation. First is that there is no government acknowledgement of traditional marine tenure, so far. And second, formal legalisation of traditional marine tenure will not only protect the practice from fading away, but most importantly create a better resource management practice.

This chapter will try to evaluate these recommendations by looking at the legal aspects of marine tenure in the Kei Islands and by placing formal and traditional legal provisions in the context of local practice. The former will be done by examining legal documents pertaining to the issue. A specific incident concerning cyanide fishing in Dullah Laut sea territory will be analysed to shed some light on the latter.

In this regard, contrary to the popular discourse on the subject, I would suggest that there is room to argue for the presence of legal recognition of traditional marine tenure by the government. As I will discuss in greater detail later, some articles in Indonesian law provide evidence that the Indonesian government recognises traditional marine tenure, and that support is even stronger at the provincial and district levels. In fact, referring to the ‘illegal fishing’ incident in the Dullah Laut sea territory, it was government agencies as well as police...
and military officers who forced the village head to address the problem with traditional rules and procedures. However, it was not the legality of the situation that led them to do so, but their interest in covering up the illegal use of cyanide for fishing which they were direct or indirectly involved. Cyanide fishing is against the fishery and environment laws of Indonesia.

Catching Cyanide Fishermen\(^1\)

The Incident

Rumours of the presence of cyanide fishing on Dullah Laut Village’s traditional fishing grounds had been in the air for about two weeks when the village leader and two villagers apprehended four cyanide fishermen on 2 August 1996. Cyanide fishing is the process by which fisherman squirt cyanide under stones or coral which temporarily stuns any fish in the immediate area. The stunned fish are then caught and stored in a holding tank after which fishermen depressurise them by puncturing their air bladders. Cyanide fishing is illegal under Indonesian government rules that prohibit pollution and the destruction of natural resources. Customary law also prohibits outsiders from commercial fishing in village fishing grounds.

The villagers were patrolling Dullah Laut waters when they spotted a foreign speedboat. When they approached, they saw a fisherman holding a hose in the water which was attached to an air compressor on the boat. This, they knew was a sign of cyanide fishing operations. The village head was very upset. He hit the offender and asked him to pull up the air hose. Another fisherman, wearing a wetsuit, was at the end of the hose. As the fisherman boarded the boat, the village head again lost his temper and slapped the fisherman. The village head asked the fishermen whether others were involved. They pointed to another nearby speedboat. An investigation revealed two more men, also using cyanide.

The four men and their boats were brought to the village. On board were diving gear and torches, as well as some pointed metal tubes about the size and diameter of drinking straws with wooden handles. The tubes are used to release the pressure from the distended air bladders of fish brought up from deep water quickly. There were also some live fish in a holding tank on one of the boats. One of the fish was a \emph{Napoleon wrasse} which, by national regulation, is forbidden to be exploited for commercial purpose. Two cyanide pills were also found hidden on one of the boats.

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\(^1\) This section has been published in Adhuri (1998a) and discussed in Adhuri (2001).
The fishermen said that a fishing company owned by a businessman in Makasar employed them. They also confessed to cyanide fishing. Clearly these four fishermen had violated the laws of both the Indonesian government and local custom. According to customary law, the apprehended men had stolen the fish, and by using a destructive fishing method, had also degraded the villagers’ sea territory.

The village head decided to confiscate the boats and fishing gear. This is the customary action of a village head who, in this context, is considered the leading village official. Traditionally, a village head would only return confiscated items if certain customary procedures were followed. However, in cyanide fishing cases, one or more military officials often go to the village head and ask him to return confiscated goods. In these cases, the company gives a certain amount of money to the village head as ‘smoke and betel nut’ (traditional tokens of exchange). In this instance however, the village head tried to prevent this by making an official report to the government before any military intervention had occurred.

I accompanied the village head to report the case to the local police officer in the regency capital. We met the commander of the intelligence unit of the regency police post and the commander of the sub-regency police post. After we reported what had happened, the officers told us that this case was very difficult to prosecute. First, they said it was difficult to prove because they had no expert to examine whether cyanide fishing causes damage to the environment. We argued this point, but the discussion stopped when they told us what was the real reason for their reluctance to involve themselves in the issue, that ‘we have a problem in prosecuting this case because our superiors are involved in this business’. They seemed to empathise with us but felt that they could do nothing. Nevertheless, they took the four fishermen to their office for questioning. They also suggested that we deal with the issue by means of customary law. This would put the village head in charge and prevent the involvement of government officials, including the military.

On 3 August 1996, an army officer from sub-regency army post came to Dullah Laut Village to ‘invite’ the village head to meet his commander.² The village head told me later that the fishing company had reported the case to the military post commander and asked him to persuade the village head to give the company back their speedboats and all of their equipment, and settle the problem ‘peacefully’. In Indonesia, this almost always meant a request to drop the case. In return, the company will give some money to the village head. However, the village head refused his proposal. He argued that he had planned to report the case to the head of regency and it would be up to him to decide how to handle it.

² The same military post commander was also involved in the conflict I discussed in Chapter Six.
Later that day, we went to the head of regency’s house on Dullah Island. The head of regency responded to our report by saying that this case was not the first. He had known of such cases for some years, but it was a difficult problem. As an example, he told us about a case in a village where a military person was directly involved in the illegal activities. He told us under such circumstances, that there was nothing he could do because prosecuting the military about these activities was not within his authority.

The head of regency asked us to meet the commander of the regency army post. This seemed like an odd suggestion since we believed that our particular issue had nothing to do with the army. Later, the purpose became clear when I was shown a letter signed by the regency post commander (on behalf of the regency army cooperative’s commander) and Mr A. Rahaded, the customary leader from Dullah Laut Village, who was discussed extensively in the previous chapter. The letter showed that Mr A. Rahaded had received an outboard engine from the regency post commander in return for the right to construct a base camp and fish cage and to operate a grouper fishing company in the village’s territory.³ The company was one of those that engaged in cyanide fishing and it also operated in official collaboration with the regency army cooperative. This made it seem likely that the head of regency had warned the regency post commander that the army’s cyanide fishing operation was being challenged. When the regency head sent us to meet the commander was likely the way in which he informed him that his fishing operations were being challenged as well as gave the order for the commander to deal with the issue.

The head of the fishery office in the regency gave me a similar explanation when I questioned him concerning cyanide fishing. He told me that the involvement of Indonesian military officers had made the problem difficult to handle. However, it seemed as though he had found ways to benefit from this situation. One of his staff told me that he, in fact, was the local representative of the company that employed the fishermen we had caught. Moreover, the fisheries chief’s brother told me that he personally had arranged all of the papers needed to export the catch.

I also found the company’s licensing agreement to be unusual. The company had written a letter to the regency fisheries office asking for a letter of recommendation, which is one of the requirements that must be met before

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³ Interestingly, there was no conflict in the village regarding the agreement between Mr A. Rahaded and the regency post commander. Some argue that this is because the fishing activities conducted by the regency post commander were the continuation of fishing activities by a company who had signed a contract with the village leader but went bankrupt before the contract finished. Others argue that it is because no one dares to challenge the regency post commander.
a fishing company is allowed to operate in the regency’s water. In some cases, the letter of recommendation must be produced before a provincial or central fisheries office can grant a fishing license.

The letter from the company was dated 2 August 1996—the same day that the cyanide incident took place. The requested letter signed by the head of the Fisheries Office, was issued on 5 August 1996. So it appears that the operation had been unlicensed and that the letter had been requested so the company could use it if they were asked to produce a licence before a court. At the time he signed the letter, the head of the Fisheries Office could not have been unaware of the cyanide incident. He told me, in fact, that he had sent one of his staff to invite the Dullah Laut Village head to discuss it on 4 August.

When I told the acting commander of the regency navy post about the cyanide incident, he said that his post had only very limited resources. There were not enough speedboats and personnel to carry out patrols and it was therefore very difficult to observe illegal fishing practices.

The Customary Court

Frustrated by the lack of support from government officials, the village head decided to handle the case according to customary law. Customary law required him to arrange a customary court. At the time, village functionaries essential to the court were busy preparing local marriage ceremonies, and as a result he could not organise the court before all of the marriage ceremonies were over. But he was unable to ignore the fishing company which, through its representative and commander of the army post, was pressuring him to hold the customary court as soon as possible.

The customary court was finally held four weeks after the incident. An army official, a fishing company representative, and representatives of all origin kin groups in the village attended. After an opening speech from the army representative, the village head explained that the fishing company had violated both customary and government laws. ‘For the latter, the case is in the hands of the officials in the capital’, he said. ‘Our concern in this meeting is the fact that they violated our customary law. It is our right to decide the fine for that violation.’ Although the final court decision would be his, he said he would like to discuss the matter with all customary court committee members and ask their opinion.

A representative from the Christian settlement said that the company should pay ten million rupiah—an amount he said was prescribed in Indonesian law. This idea was not agreed on because it was not based on customary law. Mr A. Rahaded said that because the village head had beaten the fishermen,
the company should decide how much they should pay. This suggestion was controversial because some court participants considered it to be beneficial to the company. However, the suggestion was not unexpected because as previously noted, Mr A. Rahaded was the leader of the modern village leader’s political opposition. He habitually denied the legitimacy of the leadership of the village head, led his own group of villagers, and ran his own village programs (see Chapter Six).

In addition, to support his position in the community, Mr A. Rahaded had tried to develop a good relationship with the military officials in the capital (see Chapter Six). He had also sought support from certain businessmen to run his programmes, for example, his agreement with the regency post commander. By criticising the village head by implying that his act of beating the fishermen was wrong, Mr A. Rahaded tried to show sympathy with the company.

Finally, the court agreed to fine the company six million rupiah and in return, the village head was to return all company property. This approach was due in part to the custom that villagers should not trouble outsiders in order to ensure their relatives who go or live outside their village will be treated well by others. In addition, the people needed money to continue construction of a church and mosque. Not wanting to be too hard on the company, the villagers decided that six million rupiah was a sufficient amount. This figure was not final, however. The company representative was asked to discuss it with his boss in Makasar. Another customary court would then be arranged to reach the final decision.

The court was held two weeks later, attended by the same people plus the army post commander himself. His presence was interesting because he ensured that, unlike the first customary court, the outcome of the second was carefully prearranged. Before the court was held, the military post commander, the village head, and the company representative discussed their plan. The company representative said that he had convinced his boss in Makasar to pay the six million rupiah.

However, the village head told me later that the army post commander had taken one million rupiah to be distributed among his friends. The village head was upset but he was powerless to refuse the army post commander. Interestingly, the village head also took two million rupiah and asked the representative of the company to say in the court that his company could only pay three million rupiah, the amount proposed by the company representative in response to Mr A. Rahaded in the first customary court.

When I asked the village head why he took the two million, he replied that this was not corruption but smoke and betel nut, which was his right as leader of the customary court. According to the customary law, he explained, it was the
price of his effort in settling the problem. He also argued, ‘Why should the army post commander—who had nothing to do with the case—be allowed to take one million if he was not also allowed to take a share?’

The court was run as planned. The representative of the company paid three million rupiah to the court. He also distributed Rp10 000 to each of the customary court committee as uang alas meja (table cloth money) as a token of appreciation for their attendance and contribution to the success of the meeting. Representatives of church and mosque construction committees were each given Rp1.5m. The case was closed when the village head returned the two speedboats and other equipment to the company representative.

The Legality of Communal Land Territory Rights

Unlike communal territorial rights on land, Indonesian legal scholars rarely, if ever, discuss communal marine tenure. Although some studies reveal that the practice of traditional control over sea territories was once widespread and is still practiced in some parts of Indonesia it seems that Indonesian ‘modern’ legal thought is based on the ‘European understanding that the seas are open to all’ (Peterson and Rigsby 1998: 1). But following the discussions surrounding the legal position of communal or customary land ownership reveals that the legal issue of customary marine tenure is no less complex. Although it is argued that communal marine tenure has never been formally acknowledged (see Panell 1997; Bailey and Zerner 1992; Warren and Elston 1994; Marut 2004), I will suggest that if we examine the laws and other legal documents closely, particularly at the provincial and district levels, traditional marine tenure is acknowledged to some degree.

The Indonesian constitution (art. 33, para. 3) states that “land, water, atmosphere, and the natural resources therein shall be controlled by the state and shall be utilised for the greatest benefit of the people.” This article, which is the basic legal reference for natural resource management in Indonesia, defines the state as holding the control of land and water (sea) territory. This article can also be interpreted to mean that the constitution does not acknowledge communal property rights.

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5 See Haverfield (1999) to appreciate the complexity of legal acknowledgment of traditional land ownership and the need to incorporate the practice in the land reform package in Indonesia.
6 The term ‘water’ refers to inland water (such as lakes and rivers) and sea territory.
Nevertheless, the Indonesian Agrarian Law 1960 stipulates that state authority to control land, water, and atmosphere can, in practice, be delegated to local government and customary law societies (art. 2, para. 4). It also states that the agrarian law applied to land, water, and atmosphere is *adat* law as long as it is not in contradiction with the national interest and the state (art. 5). These two articles while contradictory, clearly demonstrate state acknowledgment of the community rights to land and sea. There is then a legal basis for the argument that customary marine tenure has been formally recognized by the state.

Now, I will examine the laws and regulations that specifically relate to marine territory and resources. If we examine fishery regulations during the Dutch period, we see that the customary rights of indigenous people were acknowledged. In 1916, the Dutch passed pearl shell and coral fishery regulations. Art. 2 of these regulations stated that:

The right of indigenous people to fish [for resources] mentioned in article 1, is fully warranted; in all sea territories not more that five fathoms (nine metres) deep during low tide, indigenous people have exclusive right [to exploit the resources] if they have been making use of the territories since ancient time (translated from Anonymous n.d.).

Again, in *The Law of Coastal Fishery, 1927* (*Kustvisserij Ordonnantie*) the rights of local people were recognised. Article 6 of this law ruled that: ‘those who do fishing according to this law will be allowed to do so only if they take into account the right of local people according to their *adat* and custom’ (Anonymous n.d.).

Unfortunately, the relevant provisions from the agrarian law and the Dutch fishery laws do not appear to have been used in developing contemporary Indonesian laws or regulations pertaining specifically to the sea. The *Fishery Law No. 9, 1985*, for example, has no article referring to communal marine tenure. This law declares fishery management to be in the hands of the Indonesian government. This involves regulating all aspects of fishery operations including fishing gear, quotas, zones, licensing, and punishment for those who break the fishery rules.

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7 The two articles are contradictory because one is based on the assumption that the traditional community law has no right over land, water, and atmosphere (article 2) while the other maintains that these three resources are governed by traditional law (article 5). According to traditional law, the communities own the land and waters.

8 The latest, *Fisheries Law No. 31 of 2004* and the *Law of Coastal and Small Island Management No. 27 of 2007*, explicitly acknowledge—and even respect and protect in the case of the latter—the right of traditional community. Article No. 6 (2) of the new Fisheries Law states that capture fisheries and aquaculture management should consider customary law as well as local wisdom when addressing issues that affect local community participation. The Law on Coastal and Small Island management stipulates that ‘Government acknowledges, respects, and protects the right of traditional communities and local wisdom on coastal area and small islands which have been used for a long time’ [article 61(1)]. Although these laws do not mention customary marine tenure, because it is a form of traditional law, one can argue that customary marine tenure has formal legal status. However, because the discussed incident took place before these two laws were passed, no reference will be made to these laws in relation to the discussion on the legal status of customary marine tenure.
It seems that the basic assumption of this law goes back to article 33 (para. 3) of the Indonesian constitution which states an area’s resources shall be controlled by the state and utilised for the greatest benefit of the people, without opening the possibility of an interpretation that this right is transferable to customary law societies as stated in the Agrarian Law of 1960. Therefore, at this level we cannot find any legal basis to the claim that customary law societies have privileges in relation to their marine territory.

But this is not the end of the story. Looking at provincial fishery regulation in Maluku, one can argue that there are at least two indications that there is some recognition of customary marine tenure. The first indication is that fishing companies—particularly those who wish to be involved in aquaculture or inshore fishery—are required to supply a territorial contract when they apply for a fishing licence. The second indication is that within the agreement signed by a fishing company when receiving their fishing licence, one article mentions that in operating their fishing activities, the company should respect the local traditions as they relate to territorial tenure.

Actually, the reason for incorporating a letter of territory contract was an attempt to address practical problems. In the 1970s, when pearl shell companies started their businesses in The Aru Islands, there were many conflicts between the companies and local people. Being assured that they had a government licence in their hands, the fishing companies did not pay much attention to the local people, and driven by their belief that these companies were using their sea territory, local people protested their activities. This conflict was a serious burden for fishery offices in Ambon because they were in the middle of the conflicting parties. Although the fishing licences for these companies were issued by the central government, if there was a conflict at the fishing location, the central government officers did not know about it or more precisely, did not want to know. Therefore, the provincial fishery office was forced to handle any problems. Learning from this situation, the fishery office began to require a contract with the local people and respect for their traditions as one of the conditions upon granting a fishing licence to companies, a practice that resulted in customary marine tenure being officially acknowledged by the government’s fisheries office.

We can find other evidence to support this argument if we check legal documents—particularly court decisions pertaining to conflict over sea

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9 According to government regulation (peraturan pemerintah) No. 15, 1990, the governor or appointed provincial officer—in this case the head of the fishery office—may issue fishing licences for fishing companies located and operating in their administrative territory which use un-motorised vessels up to 30 gross tons (or 90 horse-power) and which do not involve foreign capital or workers.

10 The Aru Islands are an archipelago located on the eastern side of the Kei Islands (see Map 1-1). When I did my field work, this archipelago was part of Southeastern Maluku Regency. Now they form a different district.
territory—in both provincial and regency courts. The Southeastern Maluku
Regency and Maluku Province high courts in Ambon have issued decisions
concerning the boundaries between Sather and Tutrean villages and the
distribution of the disputed sea territory (discussed in further detail in Chapter
Nine). Both decisions clearly mention the ownership of particular social
groups—in this case Sather and Tutrean villagers and the descendants of the
original traditional village leader of Sather—over a particular sea territory
which demonstrates legal acknowledgment of traditional marine tenure. It
could be argued that these two decisions might not be considered to have
legal status given the likelihood of an appeal to the Supreme Court in Jakarta.
However, if we look at the case carefully, we see that the disputed issues were
the boundaries and distribution of sea territory and not the existence of the
communal right itself.

In qualifying the legal position of the above case, I came across another court
document which detailed a conflict between the villages Wulur and Keli in sub-
regency Pulau-pulau Kisar and Southeastern Maluku\(^{11}\) over the Terbang Utara
and Terbang Selatan islands and their surrounding territory.\(^{12}\) The conflict
was brought to the Regency Court of Southeastern Maluku in the early-1970s.
In 1972, the regency Maluku Tenggara court issued a decision that was not
accepted by the Keli villagers who appealed to the High Court in Ambon. In
1974, the high court ruled on the case but the ruling was once again rejected by
the Keli villagers. They then brought the case to the Supreme Court in Jakarta
but their appeal was rejected and the decision of the high court in Ambon was
upheld (Indonesian Supreme Court, No. 1933K/Pdt/1992). This decision was
executed in 1986. Part of the decisions reads as follows:

To conclude that Terbang Utara Island and Terbang Selatan Island with
their *meti* [sea territory] located in southern part of Damer Island, Pulau-
pulau Kisar sub-regency are the property of all Wulur villagers, [these
two islands and their *meti*] are the territory of *petuanan* Wulur village.
(emphasis added, translated from the decision of Maluku High Court, 16
July 1974 No. 113/1973/PT/Perdt)

This decision, which makes specific mention of *meti* and *petuanan*, confirms
that in legal practice, communal marine tenure is acknowledged by the
Indonesian legal system even if formal acknowledgement of traditional marine
tenure is lacking in Indonesian laws. The result is a considerable degree of legal
ambiguity on the issue of customary marine tenure as there also is in relation to
communal tenure on land.\(^{13}\) Some may argue that this ambiguity makes it hard

\(^{11}\) Like the Aru Islands, these islands were part of the Southeastern Maluku when I carried out my research.
Since 1999, they have become part of a new district called Maluku Tenggara Barat.

\(^{12}\) See Panell (1993) for an account of this conflict.

\(^{13}\) See Haverfield (1999) regarding communal land tenure.
for communities to depend on their right to the sea, but I would argue that the ambiguity opens the way for more options, allowing local parties to use either laws or communal marine tenure to adequately address an issue.

In the previous section, I describe how local police and government officials forced the village head to drop the case and handle the issue by means of customary law. The village head did so and an agreement was reached. This course of action meant that the customary law, particularly the traditional law of marine tenure, gained practical legitimacy. Drawing on my discussion of the practical legal use of customary marine tenure, we can say that the decision of the customary court has formal legal ground as well.

However, was it legal reasoning that caused customary marine tenure to gain legitimacy in this case? I am afraid I would answer ‘no’ to this question. Neither the community nor the local military officers and bureaucrats used legal logic when choosing which avenue to follow in pursuing the case. When the local bureaucrats forced the village head to drop the case and choose the customary law option, their motivations were primarily pragmatic in that they wanted to avoid conflict with the district military commander who was involved in the same business. In conclusion, I would argue that the formal legal definition of customary marine tenure is not the most important one. In the case of the cyanide fishermen operating in Dullah Laut’s waters, people did not care about the formal legal definition of customary marine tenure. Its legal recognition was the unintended side-effect of a pragmatic approach to local resource management.

### The Illegality of Cyanide Fishing

Looking back to the customary court, we might notice that the court only discussed the fact that the fishermen had violated the traditional law of the sea. In his opening remarks, the village head told the audience that the fishermen had used cyanide and that this had been reported to government officials. Yet, there was never any talk about this issue between the Indonesian officials and no formal action was taken against the company. Does it mean that cyanide fishing is a legal practice?

There are many laws and regulations that define cyanide fishing as illegal which means that the fishermen and companies using cyanide should be subject to punishment. For example, the Fishery Law stipulates:

> All persons or companies are prohibited to fish or do aquaculture using material and/or tools that endanger the sustainability of the fish resource and its environment. (translated from Fishery Law No. 9, 1985 art. 6, para. 1). Anything that might cause pollution and damage to the
fish resource and/or its environment is forbidden. Violation of one or both articles is subject to ten years maximum in jail and/or a fine of one hundred million rupiah (ibid.: art. 7, para. 1).\(^\text{14}\)

Now, one might ask whether cyanide fishing causes pollution or damages the environment, as the police did when the village head and I reported the case. Indonesian waters were not the first to fall victim to cyanide fishing—the Philippines suffered from the practice as early as 1960. In the Philippines, there were reports that cyanide use had not only stunned the targeted fish but killed smaller fish, fish fry, invertebrates, and coral reefs and even caused skin diseases for people who were exposed to it on a regular basis (Rubec 1986, 1988; Dayton 1995; Milan 1993).\(^\text{15}\) This sort of information as well as widespread local knowledge about the negative impacts of cyanide should have been enough to support the claim that cyanide fishing was damaging to the environment, which should have motivated the police and other legal officers involved in the case to search for stronger proof of local cyanide fishing operations.

In addition to the cyanide fishing violation, the company could also be arrested on at least two other grounds. First, they caught *Napoleon wrasse* which was banned by the Minister of Agriculture in its decision No. 375/Kpts/IK.250/5/1995. Second, the company had operated without a fishing license. As I mentioned in the section describing the incident, the company was in the process of requesting a letter of recommendation from the local fisheries office. This means that they did not have the fishing license that was required by the law (art. 10). This violation might have sent those who were responsible to prison for between two-and-a-half and five years, or led to a fine of between twenty-five to fifty million rupiah.\(^\text{16}\)

To contextualise this incident, I will now refer to the formal discourse on conservation and economic sustainability. This national discourse should have led us to expect that local police and bureaucrats would bring the fishermen and the company to court. Since the late 1970s, the issues of environmental conservation and sustainable development have gained popularity in Indonesia due to demands from external and internal agencies that the Indonesian government pay greater attention to these issues (Warren and Elston 1994: 7; Zerner 1994b: 1100; Hardjono 1991). To external donor agencies, attention to environmental issues and sustainable development became an increasingly important condition for the receipt of aid funds. Internally, the emergence of a middle class with a growing awareness of environmental issues—demonstrated

\(^{14}\) A new fishery law (No. 31, 2004) states that the same violation is subject to six to ten years maximum punishment in jail and a fine of Rp1.2–2 billion [article 84 (1–3)].

\(^{15}\) See also Johannes and Riepen (1995) for the Asia-Pacific region.

\(^{16}\) According to the new fishery law (No. 23, 2004), this violation carries eight years maximum imprisonment and a Rp1.5 billion fine (ibid.: art. 93).
by the flourishing of NGOs—put more pressure on the Indonesian government. In addition, practical issues such as conflicts over land tenure and problems associated with environmental degradation forced the Indonesian government to develop laws and regulations which were meant to prevent people from abusing the environment.

Nevertheless, in the case study I have discussed, conservationist discourse and the formal ‘illegality’ of cyanide fishing were not strong enough to drive local police to deal with cyanide fishing as an illegal activity. The case demonstrates that the formal legal definition of a particular issue will not be automatically applied in real situations.

### Conclusion: The Politics of Legality

The discussion on the legality of traditional marine tenure and the illegality of cyanide fishing shows that the ‘practical legality’ of the former emerged out of the ambiguity of its formal legal definition, while the ‘practical legality’ of the latter directly contradicted its formal legal definition. What both examples show is that the formal legal definition did not really count. What mattered were interests and power.

It was in the best interests of all parties—locals, bureaucrats, police etc.—that traditional marine tenure and its associated customary procedures be considered legal. Bringing the case to court within the formal legal system would have threatened their interests. The police and the regency head were keen to maintain good relations with the commander of the military district post (dandim) and other military officers from whom they may require support in the future (as they had in the past). The district commander and the head of the fisheries office had a direct economic interest that would have been threatened by a formal court case. For the villagers, it was in their best interest to deal with the problem according to customary marine law. In fact, the villagers received a twofold benefit from holding the customary court. The first benefit was the money paid by the fishing company, money they would not have received without the customary court. The second benefit arose when the police suggested that they resolve the issue by means of a customary court and the military and local bureaucrats allowed them to do this. This course of action might be considered a good precedent for future cases.

In terms of the power structure, as shown in Figure 7-1, the district military post commander was at the top. Although formally he was on the same level as the regency head, as the top-ranking military leader in the regency, his power was
uncontested.\textsuperscript{17} It was obvious that the regency head and the police officers were forced to ignore cyanide fishing despite their objections to it. Since they had no choice, they—however indirectly—pressured the village head to accept the circumstances, and because the village head was at the bottom of the structure, he had no power to refuse what he was told to do.

\textbf{Figure 7-1: The power relations of the parties involved in the cyanide fishing incident.}

Source: Author’s fieldwork.

Since power and interests define legality, we might then question the effectiveness of formalising traditional marine tenure in the Indonesian legal system. In fact, regarding the unbalanced distribution of power, the formal recognition of marine tenure might only add to those who hold power. The result, as indicated by the case discussed, may disadvantage the powerless and further environmental degradation. Therefore, sustainable and socially just marine resource management might not be as clearly visible in the future as advocates of formal recognition of customary tenure suggest. In saying that,

\textsuperscript{17} During the New Order regime, military forces and policies were extremely powerful. They controlled Indonesia socially, politically and economically (see for examples Vatikonis 1998: 60–91; Samego et al. 1998; Crouch 1979). The case that I am discussing is an example of a general trend throughout Indonesia.
however, I do not mean that the formal acknowledgment of the traditional marine tenure is not important. In various situations, increasing the bargaining position of local communities through legal recognition will play an important role, but we should also be aware that there are some requirements needed to ensure that the legal construction is effective. One of these requirements is relatively equal power distribution between all parties associated with the resource. Unfortunately, we do not find such equality in the community we are discussing.