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**Reconceptualizing freedom of
fishing in the high seas under
ecological justice frameworks**

**Reconceptualizando a liberdade
de pesca no alto-mar à luz dos
marcos de justiça ecológica**

Irawati

Syahrul Fauzul Kabir

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Reconceptualizing freedom of fishing in the high seas under ecological justice frameworks*

Reconceptualizando a liberdade de pesca no alto-mar à luz dos marcos de justiça ecológica

Irawati**

Syahrul Fauzul Kabir***

Abstract

The freedom of fishing on the high seas, codified in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), was established when fishing technology was rudimentary and relatively uniform. However, contemporary technological advances have fundamentally altered this freedom, creating inequities between nations with advanced capabilities and those without, while threatening marine sustainability. This research analyzes the adequacy of UNCLOS and Regional Fisheries Management Organizations (RFMOs) in addressing equity and sustainability, and proposes reconceptualization through ecological justice principles. Using normative legal research methodology with doctrinal analysis of UNCLOS, RFMO conventions, and ecological justice literature, this study reveals that current frameworks inadequately address intergenerational equity (obligations to future generations), intragenerational equity (fair distribution among present populations), and ecocentric values (intrinsic worth of marine ecosystems). The research contributes to limited scholarship on international fisheries law by demonstrating freedom of fishing's incompatibility with ecological justice and proposing normative commitments for reform grounded in governance rather than unlimited exploitation.

Keywords: the freedom of fishing; high seas; Regional Fisheries Management Organizations (RFMOs); United Nations Convention on the Law of the Sea (UNCLOS); ecological justice.

Resumo

A liberdade de pesca no alto-mar, codificada na Convenção das Nações Unidas sobre o Direito do Mar (CNUDM) de 1982, foi estabelecida em um contexto em que as tecnologias de pesca eram rudimentares e relativamente homogêneas. Contudo, os avanços tecnológicos contemporâneos alteraram fundamentalmente essa liberdade, criando assimetrias entre Estados dotados de capacidades avançadas e aqueles que delas carecem, ao mesmo tempo em que comprometem a sustentabilidade marinha. A presente

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** Universitas Islam Bandung.
E-mail: ira.wati66@gmail.com

*** Universitas Islam Bandung.
E-mail : syahrul.fauzul@gmail.com

pesquisa analisa a adequação da CNUDM e das Organizações Regionais de Ordenação das Pescas (ORGP) no enfrentamento das exigências de equidade e sustentabilidade, propondo uma reconceitualização à luz dos princípios da justiça ecológica. Utilizando uma metodologia de pesquisa jurídica de caráter normativo, com análise doutrinária da CNUDM, das convenções das ORGP e da literatura sobre justiça ecológica, o estudo demonstra que os marcos atuais são insuficientes para contemplar a equidade intergeracional (obrigações para com as gerações futuras), a equidade intrageracional (distribuição equitativa entre as populações presentes) e os valores ecocêntricos (valor intrínseco dos ecossistemas marinhos). A pesquisa contribui para um campo ainda limitado da doutrina em direito internacional das pescas ao evidenciar a incompatibilidade da liberdade de pesca com os princípios da justiça ecológica, e ao propor compromissos normativos de reforma ancorados em uma lógica de governança, em detrimento de uma exploração ilimitada.

Palavras-chave: liberdade de pesca; alto-mar; Organizações Regionais de Ordenação das Pescas (ORGP); Convenção das Nações Unidas sobre o Direito do Mar (CNUDM); justiça ecológica.

1 Introduction

In the ocean, which covers more than 70% of the earth's area, there are many fish resources, which have long been a very important food source for mankind. The potential for fish is very important, especially in the high seas, because it contains many types of fish that have very high economic value. The high seas are also that are open to all countries, so all countries have an interest.

Freedom of fishing was originated from the dispute between Grotius' *mare liberum* – the high seas open to all nations – and Selden's *mare clausum* – the closed sea. Grotius argued that the high seas are free to all, just like in Roman times where the sea is a common property so that all nations have the right to use it for sailing and fishing without any interference from any party.¹ He put forward two legal concepts about the sea: first, the

sea cannot be controlled by a country by occupation, and second, that fisheries resources cannot be used up (inexhaustible).² The concept of Grotius is put forward by Donald R Rothwell and Tim Stevens as follows:³ "For some reasons the sea is common to all, because it is so limitless that it cannot become a possession of anyone, and because it is adapted for the use of all, whether we consider it from the point of view of navigation or of fisheries."⁴

This legal concept from Grotius is based on the idea that the sea is a common property and all activities in the sea cannot be prohibited for both sailing and fishing. The crux of Grotius' argument is that things which cannot be reduced to possession or are in an unlimited supply and thus sufficient for general use are in common.⁴ In other words, anything that can be used without harming others is considered a common property, and therefore can be used freely by anyone. At the Middle Ages, the right to fish was implemented liberally did not create problems because Fishing technology capabilities are not as modern as they are now and the capabilities of countries are still relatively the same.⁵

The freedom of fishing on the high seas recognized as a right that applies to all countries, both coastal and landlocked states.⁶ This principle has been accepted since the Middle Ages, until today as freedom protected by international law set in 1982 United Nations Convention on the Law of the Sea (UNCLOS).⁷ However, due to the increasing population and the development of fishing technology nowadays, freedom of fishing as regulated in 1982 UNCLOS does not provide a sense of justice for

² ORREGO VICUÑA, Francisco. *The changing international law of high seas fisheries*. Cambridge: Cambridge University Press, 1999.

³ ROTHWELL, Donald R.; STEPHENS, Tim. *The international law of the sea*. Bloomsbury Publishing, 2010.

⁴ YOUNG, Michaela. Then and now: reappraising freedom of the seas in modern law of the sea. *Ocean Development & International Law*, v. 47, n. 2, p. 165-185, 2016.

⁵ YOUNG, Michaela. Then and now: reappraising freedom of the seas in modern law of the sea. *Ocean Development & International Law*, v. 47, n. 2, p. 165-185, 2016.

⁶ TAHINDRO, André. Conservation and management of transboundary fish stocks: comments in light of the adoption of the 1995 agreement for the conservation and management of straddling fish stocks and highly migratory fish stocks. *Ocean Development & International Law*, v. 28, n. 1, p. 1-58, 1997.

⁷ YOUNG, Michaela. Then and now: reappraising freedom of the seas in modern law of the sea. *Ocean Development & International Law*, v. 47, n. 2, p. 165-185, 2016.

¹ BROWN, E. D. *International law of the sea: introductory manual / The international law of the sea: documents, cases and tables*. Dartmouth Pub Co, 1994.

the international community and does not even guarantee the sustainability to fish on the high seas.⁸

This liberal approach created few problems historically because fishing technology was primitive and relatively uniform across nations.⁹ Whereas contemporary conditions differ fundamentally. Modern industrial fishing employs satellite navigation, fish-finding sonar, large-scale nets, factory trawlers, and vessels operating continuously for months.¹⁰ The Food and Agriculture Organization (FAO) reports that 35.4% of global fish stocks are overfished, with 57.3% fished at maximum sustainable levels.¹¹ Despite 35 Regional Fisheries Management Organizations (RFMOs) established to manage fisheries,¹² overexploitation persists.

Greenpeace's report notes that in the span of 30 years, stocks of Pacific bluefin tuna have collapsed by more than 90 percent.¹³ Furthermore, overfishing at the international level is increasingly widespread.¹⁴ This happens because of the increasing world population supported by the technological capabilities of long-distance fishing countries which enable them to catch any type of fish. The practice of overfishing causes the depletion of fish resources and creates injustice for all states. As to this, it is necessary to have arrangements aimed at maintaining the sustainability of fish resources and promoting justice for all countries.

In the last decade, the competition in the use of living resources in the high seas between developed countries, such as Japan, Korea, America, was increasingly out of control. It raised concerns about the availa-

bility of fish resources, especially straddling fish stocks and highly migratory fish species. For this reason, countries, especially distance fishing countries, proposed a regional fish management organization (RFMO), and currently 35 RFMOs have been formed. RFMOs have a very important role in the management and conservation of living resources in the high seas. They have the authority to conserve, set fish quota, and supervise fishing practices in the high seas. RFMOs as a forum for cooperation, but also as a tool to implement the provisions of the 1982 UNCLOS. However, they cannot implement the provisions of UNCLOS and other resolutions properly, regulate the use of living resources in the high seas, and guarantee the sustainability of natural resources. Even though RFMOs have been formed, over exploitation of fisheries still exists and even expands.¹⁵ This is caused by various reasons, such as the difficulty of law enforcement against countries, especially developed countries that have modern fishing technology. Besides, over exploitation of living resources in the high seas occurs due to lack of management in determining resources management living in the high seas.

In the last decade, there is a criticism on freedom of fishing from several international legal experts, such as Freitas, who stated that freedom to fishing on the high seas could cause injustice.¹⁶ What can be understood from Freitas' criticism is that the principle of freedom of fishing is liberal so that states are free to compete to get the maximum benefits in the high seas which in turn creates injustice. As stated by Donald R Rothwell, currently the management of fish resources in the high seas is a problem in the field of international maritime law which is still a challenge for the international community which is increasingly important to receive attention.¹⁷ The technological capabilities of countries are increasingly disparate between developed and developing countries which finally create injustice.¹⁸

⁸ KIM, Hyung Jung. The return to a mare clausum through regional fisheries management organization? *Ocean Development & International Law*, v. 44, n. 3, 205-218, [n.d.].

⁹ TANAKA, Yoshifumi. *The international law of the sea*. Cambridge: Cambridge University Press, 2019.

¹⁰ FOOD AND AGRICULTURE ORGANIZATION (FAO). *The state of world fisheries and aquaculture: towards blue transformation*. Rome: FAO, 2022.

¹¹ FOOD AND AGRICULTURE ORGANIZATION (FAO). *The state of world fisheries and aquaculture: towards blue transformation*. Rome: FAO, 2022.

¹² FOOD AND AGRICULTURE ORGANIZATION (FAO). *Regional Fisheries Bodies*: FAO fisheries and aquaculture department database. [n.d.]. Available at: <http://www.fao.org/fishery/rfb/em>.

¹³ FONSEGRIVES, Romain. *'Huge' overfishing problem shows need to ratify ocean treaty*: Greenpeace. [n.d.]. Available at: <https://phys.org/news/2023-09-huge-overfishing-problem-ratify-ocean.html>.

¹⁴ SONG, Yann-Huei. The efforts of ICCAT to combat IUU fishing: the roles of Japan and Taiwan in conserving and managing tuna resources. *The International Journal of Marine and Coastal Law*, v. 24, n. 1, p. 101-139, 2009. DOI 10.1163/157180808X353993.

¹⁵ HENRIKSEN, Tore; HOEL, Alf Håkon. Determining allocation: from paper to practice in the distribution of fishing rights between countries. *Ocean Development & International Law*, n. 42, n. 1-2, p. 66-93, 2011.

¹⁶ VIEIRA, Monica Brito. Mare Liberum vs. Mare Clausum: Grotius, Freitas, and Selden's debate on dominion over the seas. *Journal of the History of Ideas*, v. 64, n. 3, p. 361, July 2003. DOI 10.2307/3654231.

¹⁷ ROTHWELL, Donald R.; STEPHENS, Tim. *The international law of the sea*. Bloomsbury Publishing, 2010.

¹⁸ IRAWATI. Model kebijakan pemerintah dalam pengaturan pemanfaatan sumber daya hayati oleh negara asing di wilayah pengelolaan perikanan Indonesia. *Jurnal Hukum Ins Quia Iustum*, v. 20, n. 1,

Based on this background, I argue that the freedom of fishing on the high seas needs to establish a new perspective addressing the development of the international community to be more equitable. I study the freedom of fishing on the high seas from the principles of ecological justice so it can be used as material to find appropriate legal concepts in the management of living resources on the high seas.

2 Literature review and methodology

International fisheries law scholarship has examined UNCLOS frameworks, RFMO effectiveness, and compliance mechanisms.¹⁹ However, most literature adopts technical or managerial approaches without fundamentally questioning freedom of fishing's philosophical foundations.²⁰ Ecological justice theory, developed by scholars like Baxter²¹, Dobson²², and Hilderling²³, emphasizes ecocentrism (recognizing nature's intrinsic value), intergenerational equity, and intragenerational justice. Yet few research have systematically applied ecological justice frameworks to critique freedom of fishing.

This research employs normative legal research using doctrinal analysis. Primary sources include UNCLOS (1982), the UN Fish Stocks Agreement (1995), and RFMO conventions. Secondary sources comprise scholarly literature on international fisheries law and ecological justice theory. The study conducts historical analysis of freedom of fishing's evolution, critical evaluation against ecological justice criteria (intergenerational equity, intragenerational equity, ecocentrism), and normative reconstruction proposing reform principles. The ecological justice framework draws from Western environmental philosophy (Baxter, Dobson, Hilderling, Tremmel), selected for emphasizing ecocentrism, inter-

generational obligations, and applicability to natural resource management.

This Western framework is appropriate for critiquing UNCLOS (itself Western-origin) while acknowledging the need for incorporating diverse cultural perspectives in future research. Data sources include legal texts, FAO reports on fish stocks, and environmental philosophy literature. The research focuses on normative dimensions rather than empirical assessment of fishing practices. These selected approaches share a Western philosophical tradition and have been criticized for potentially neglecting indigenous and non-Western perspectives on human-nature relationships. This limitation is acknowledged; however, given that UNCLOS and the international fisheries law regime are themselves products of predominantly Western legal traditions, engaging with Western ecological justice theory provides appropriate critical leverage for evaluating and reforming these frameworks. Future research should incorporate diverse cultural and philosophical perspectives on marine resource governance.

3 Results and discussions

3.1 The principles of justice in natural resources management

The principle of ecological justice is part of environmental ethics. Etymologically, ethics is the same as the notion of morality which discusses and examines the issue of right and wrong. In this sense, ethics is a critical reflection to determine the right attitude and act as a human being. In today's development, ethics must also be applied to the environment as humans.²⁴ Three theories of environmental ethics include anthropocentrism, biocentrism, and eco-centrism. The current theory of environmental ethics is eco-centrism environmental ethics theory. Ecocentrism extends ethical applicability not only to living things but also to inanimate objects. According to this theory, life is created from the existence of living things and non-living things together in

p. 72-74, 2016.

¹⁹ CHURCHILL, R. R.; LOWE, A. V. *The law of the sea*. Manchester: Manchester University Press, 1999.

²⁰ RAYFUSE, Rosemary. *Non-flag state enforcement in high seas fisheries*. Brill Nijhoff, 2004.

²¹ BAXTER, Brian. *A theory of ecological justice*. London: Routledge, 2004. DOI 10.4324/9780203458495.

²² DOBSON, Andrew. Ecological citizenship and global justice: two paths converging? In: WULFHORST, J. D.; HAUGESTAD, Anne K. (ed.). *Future as fairness ecological justice and global citizenship*. Rodopi, 2004.

²³ HILDERING, Antoinette. *International law, sustainable development and water management*. Eburon Uitgeverij BV, 2004.

²⁴ MÜLLER, Markus M.; CLAYTON, Susan. Introduction to 'environmental justice'. *Social Justice Research*, v. 26, n. 3, p. 227-230, 2013.

a community. Thus, in an environment all things have their respective values and have equal relations.²⁵

Ecocentrism environmental ethics theory is developed in ecological justice.²⁶ According to Briant Baxter, the environmental ethics theory of eco-centrism is developed in ecological justice, which views all elements in nature as having intrinsic value.²⁷ Thus, the relationship between all living things and non-living things must be equal and promote equal justice.²⁸ Therefore, we argue that assessing justice in the management of fish resources in the high seas cannot be separated from the context of ecological justice.

Ecological justice involves two important aspects: fair distribution of environmental benefits, and environmental justice. Gleeson stated that the relationship between humans in an environment in the context of ecological justice is based on two basic ideas, namely: “the justice of the distribution of environments among peoples, and the justice of the relations between humans and the rest of the natural world”.²⁹ Erika S Jermé and Sarah Wakefield argue that environmental justice is a framework to answer how the distribution of the environment and natural resources should be like and ensure that all parties have the right to live healthy.³⁰ Furthermore, Schlosberg stated that ecological justice is the application of the concept of justice to ecological aspects. Furthermore, he stated that ecological justice involves four aspects, namely distributive justice, participation, recognition, and the ability and function of individuals and communities in managing their environment.³¹

Ecological justice offers normative criteria for assessing environmental governance by emphasizing ethical responsibilities toward nature and society. One of its

central principles is ecocentrism, which recognizes that nature has intrinsic value independent of human use.³² Within this perspective, marine ecosystems and species are regarded as possessing moral standing in their own right rather than being treated merely as exploitable resources. Consequently, fishing activities must be limited by respect for ecosystem integrity and the welfare of marine life. Another key principle is intergenerational justice, which requires present generations to ensure that future generations inherit oceans capable of sustaining diverse marine species and viable fisheries.³³ This obligation entails preserving fish stocks, maintaining ecosystem productivity, preventing irreversible environmental harm, and considering the cumulative long-term effects of exploitation. Ecological justice also incorporates intragenerational justice, emphasizing the fair distribution of resources and opportunities among current populations.³⁴ This includes equitable allocation of fishing rights, inclusive governance that involves diverse stakeholders, and recognition of the distinct values and relationships different communities maintain with marine resources. Finally, the precautionary principle holds that when human activities pose threats of serious environmental harm, the absence of complete scientific certainty should not be used as a reason to delay preventive action, thereby ensuring that environmental protection remains a priority even in conditions of uncertainty.³⁵

In the context of ecological justice, humans play a role as moral responsibility holders for their environment.³⁶ Humans act as ecological creatures to the same degree as other creatures. As an ecological creature, human life will depend on other creatures as environmental citizenship.³⁷ In ecological justice, the environment has rights and values so environmental citizens must enter the political sphere. This means that all environmental communities must be taken into consideration

²⁵ BAXTER, Brian. *A theory of ecological justice*. London: Routledge, 2004. DOI 10.4324/9780203458495.

²⁶ SCHLOSBERG, David. *Defining environmental justice: theories, movements, and nature*. Oxford University Press, 2009.

²⁷ BAXTER, Brian. *A theory of ecological justice*. London: Routledge, 2004. DOI 10.4324/9780203458495.

²⁸ BAXTER, Brian. *A theory of ecological justice*. London: Routledge, 2004. DOI 10.4324/9780203458495.

²⁹ BAXTER, Brian. *A theory of ecological justice*. London: Routledge, 2004. DOI 10.4324/9780203458495.

³⁰ JERMÉ, Erika S.; WAKEFIELD, Sarah. Growing a just arden: environmental justice and the development of a ardent arden policy for Hamilton, Ontario. *Planning Theory & Practice*, v. 14, n. 3, p. 295-314, 2013.

³¹ SCHLOSBERG, David. *Defining environmental justice: theories, movements, and nature*. Oxford University Press, 2009.

³² BAXTER, Brian. *A theory of ecological justice*. London: Routledge, 2004. DOI 10.4324/9780203458495.

³³ TREMMEL, Joerg Chet. *The theory of intergenerational justice*. Earthscan, 2009.

³⁴ AGYEMAN, Julian; EVANS, Bob. ‘Just sustainability’: the emerging discourse of environmental justice in Britain? *Geographical Journal*, v. 170, n. 2, p. 155-164, 2004.

³⁵ UNITED NATIONS. *Rio Declaration on Environment and Development*. 1992.

³⁶ SCHLOSBERG, David. *Defining environmental justice: theories, movements, and nature*. Oxford University Press, 2009.

³⁷ DOBSON, Andrew. Ecological citizenship and global justice: two paths converging? *In: WULFHORST, J. D.; HAUGESTAD, Anne K. (ed.). Future as fairness ecological justice and global citizenship*. Rodopi, 2004.

in determining a policy because elements in the environment have the same rights.³⁸ The concept of ecological justice emphasizes justice for all elements because they have roles and values in life so.³⁹

Justice in the relationship between humans and the universe is also reflected in environmental justice put forward by the Commonwealth of Massachusetts, as follows:⁴⁰ “Environmental justice is the equal protection and meaningful involvement, implementation and enforcement of environmental laws, regulation and policies and the equitable distribution of environmental benefits”.

Environmental justice is related to two things, namely the protection and enforcement of environmental laws and fair distribution of environmental benefits. Related to environmental justice, humans have two important roles as moral agents and moral subjects.⁴¹ In the context of international relations and international law these two roles are played by the state.

In the distribution of justice within the framework of ecological justice, natural resources have three functions: ecological, economic, and social objects. Natural resources are not only protected for their sustainability but can also provide benefits for life. These functions are also reflected in the principles of sustainable development,⁴² which are based on inter-generation and intra-generation equity.⁴³ As economic objects, natural resources must be used efficiently and fairly while as social objects, natural resources can be utilized to meet human needs as a whole. As ecological objects natural resources need to be regulated to protect their availability through various provisions, both international law and national law.⁴⁴ Therefore, the distribution of natural

benefits, including fish resources in the high seas, must be based on the function of natural resources, namely as ecological, economic, and social objects.

In environmental justice, the state has a role as moral agents. In the context of international law, the state holds the responsibility as a subject of international law that has the ability to act and be responsible.⁴⁵ Brian Baxter mentions the role of humans in the environment as human economic actors. In the context of law and international relations this role is held by the state, the state has an obligation and responsibility to protect and preserve the nature.⁴⁶ The principle of ecological justice is formulated into the principle of sustainable development where intra- and inter-generational justice are developed. The principle of sustainable development is a breakthrough in the field of development economics, which aims to minimize ecological risks. The principle of sustainable development has been adopted as part of the principles of international law. The UN has paid serious attention to the issue of ecological risks, calling for efforts to overcome and overcome the decline in the quality of the environment through development strategies that pay attention to environmental aspects. Currently, environmental issues are not a trade restriction and are not an excuse for violating the principles of national treatment and most favored nation. Therefore, products related to natural resources must be labeled as environmentally friendly.

The ethics that apply in the management of the environment and its natural resources are eco-centrism environmental ethics which are formulated in ecological justice which are further elaborated in the principles of sustainable development. Based on various opinions of several experts such as Brian Baxter, Gleeson, and David Schlosberg, the relationship between ecological justice and sustainable development is depicted in Figure 1.⁴⁷

³⁸ CAMARGO, Ximena Sierra. The ecocentric urno f environmental justice in Colombia. *King's Law Journal*, v. 30, n. 2, p. 224-233, 2019.

³⁹ DOBSON, Andrew. Ecological citizenship and global justice: two paths converging? In: WULFHORST, J. D.; HAUGESTAD, Anne K. (ed.). *Future as fairness ecological justice and global citizenship*. Rodopi, 2004.

⁴⁰ AGYEMAN, Julian; EVANS, Bob. 'Just sustainability': the emerging discourse of environmental justice in Britain? *Geographical Journal*, v. 170, n. 2, p. 155-164, 2004.

⁴¹ BAXTER, Brian. *A theory of ecological justice*. London: Routledge, 2004. DOI 10.4324/9780203458495.

⁴² HILDERING, Antoinette. *International law, sustainable development and water management*. Eburon Uitgeverij BV, 2004.

⁴³ HILDERING, Antoinette. *International law, sustainable development and water management*. Eburon Uitgeverij BV, 2004.

⁴⁴ HILDERING, Antoinette. *International law, sustainable development*

and water management. Eburon Uitgeverij BV, 2004.

⁴⁵ HILDERING, Antoinette. *International law, sustainable development and water management*. Eburon Uitgeverij BV, 2004.

⁴⁶ BAXTER, Brian. *A theory of ecological justice*. London: Routledge, 2004. DOI 10.4324/9780203458495.

⁴⁷ IRAWATI. Model kebijakan pemerintah dalam pengaturan pemanfaatan sumber daya hayati oleh negara asing di wilayah pengelolaan perikanan Indonesia. *Jurnal Hukum Ins Quia Iustum*, v. 20, n. 1, p. 72-74, 2016.

Figure 1 - Relationship between ecological justice and the principle of sustainable development

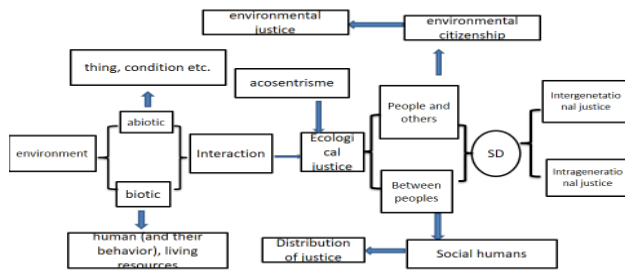


Figure 1 shows the elements that contribute to sustainable development (SD), including the interaction among humans and non-human things and ecological justice, and relationship between ecological justice and sustainable development. As shown in Figure 1, sustainable development is constructed from ecological justice. The principles of sustainable development formulate intra-generation and inter-generation justice.⁴⁸ Intergenerational justice includes ecological and economic sustainability, while intragenerational justice includes social sustainability which includes international and social justice.⁴⁹ Jenifer Elliott stated that the goal of sustainable development is the harmonization of ecological, economic and social goals. Ecological goals are related to environmental productivity and resilience, economic goals are related to efficiency and poverty reduction, and social goals are related to social justice, equity and participation.⁵⁰

3.2 A critique of the principle of freedom to fishing on the high seas from a view of ecological justice

Pound introduced the concept of social engineering which is the central idea of Pound's entire thinking about law.⁵¹ With the concept of social engineering, understanding the law must accommodate the changes that occur in society. In the other word based on Roscoe Pound's theory, good law is law that is in ac-

cordance with the development of society.⁵² All developments that occur in international society, which are influenced by non-judicial aspects such as economic, technological, social, which are increasingly developing in international society must be taken into consideration in establishing rules.

International law has undergone a fairly progressive development following developments in the international community.⁵³ This is proven by the number of various legal principles which constitute a breakthrough aimed at meeting the needs and interests of the international community. International law develops progressively through various state actions which are manifested in the form of international customary law and international treaties.⁵⁴ Anthony D'Amato stated that international law is not a perfect law, but it needs improvement and various changes.⁵⁵ In this regard, I think that the regulation of international maritime law is not yet perfect and requires various changes, especially laws regarding natural resources management. Apart from paying attention to environmental justice, the law of the sea must also pay attention to economic justice and social justice. The development of the international community which is influenced by various non-judicial aspects as well as the heterogeneous conditions of the international community requires the provisions that accommodate these conditions.⁵⁶

The concept of freedom on the high seas, including the freedom to fishing, contains the seeds of liberalism. Freedom to fishing, which was the result of the struggle of *Mare Liberum* supporters, could accommodate the sense of justice of the international community at that time. However, nowadays, the capabilities of countries in fishing technology are increasingly advanced, the population is increasing and the development of countries is also diverse, so fishing in the high seas becomes a problem if it is implemented liberally.

Modern fishing technology has revolutionized marine resource exploitation. Contemporary methods inclu-

⁴⁸ GLOTZBACH, Stefanie. On the notion of ecological justice. *Working Paper Series in Economics*, n. 204, p. 1-24, May 2011.

⁴⁹ TREMMEL, Joerg Chet. *The theory of intergenerational justice*. Earthscan, 2009.

⁵⁰ ELLIOTT, J A. *Na introduction to sustainable development*. New York: Routledge, 2006.

⁵¹ RASJIDI, Lili; THANIA, Ira. *Pengantar filsafat hukum*. Mandar Maju, 2012.

⁵² RASJIDI, Lili; THANIA, Ira. *Pengantar filsafat hukum*. Mandar Maju, 2012.

⁵³ HARRIS, D. J. *Cases and materials on international law*. 6th ed. London: Sweet & Maxwell, 2004.

⁵⁴ D'AMATO, A. A.; ABBASSI, J. *International law today: a handbook*. Thomson/West, 2006. p. 29-30.

⁵⁵ DIXON, Martin. *Textbook on international law*. Oxford: Oxford University Press, 2007.

⁵⁶ HUNTER, D.; SALZMAN, J.; ZAELEKE, D. *International environmental law and policy*. Foundation Press, 2002. p. 181.

de: GPS and satellite communication enabling precise navigation to remote areas; advanced sonar detecting fish at considerable depths; large-scale drift nets extending kilometers; purse seine nets encircling entire schools; bottom trawls operating at extreme depths; factory trawlers with onboard processing; and vessels exceeding 100 meters capable of processing hundreds of tons daily.⁵⁷

Fishing technology distribution is highly unequal. A small number of countries — China, Japan, South Korea, Taiwan, Spain, Russia — operate the majority of industrial high seas vessels.⁵⁸ These «distant water fishing nations» possess technological advantages enabling far more extensive exploitation than nations with limited capacity. Disparities manifest in capital requirements (modern vessels cost tens of millions of dollars), technical expertise, support infrastructure, and research capacity for stock assessment.⁵⁹

This transforms formal legal equality into substantive inequality. While UNCLOS Articles 87 and 116 declare all states have the right to fish on the high seas,⁶⁰ practical ability depends on technological capacity. Nations with advanced fleets can exploit resources extensively; those with traditional methods cannot meaningfully exercise their formal rights. This creates intragenerational Injustice — unequal access to common resources — and contributes to overexploitation, as technologically advanced nations disproportionately deplete stocks that all nations, including future generations, should share.

In the development of modern international law, as stated earlier, the principle of sustainable development has been recognized as a development principle.⁶¹ Antoinette Hilderling states that sustainable development is part of the development of modern international law, which today is not only a concept but has become a

principle that has been widely accepted in the international community.⁶² A just relationship between economic, social and ecological aspects contained in ecological justice, formulated in the principles of sustainable development.

Fish resources in the high seas are open access, can be categorized as a combination of communal ownership (common property) and open access.⁶³ Furthermore, Eric A Posner and Alan O Sykes stated that the high seas are part of the sea intended for all mankind, so no one owns the natural resources contained so they can be enjoyed together (common pool), so they tend to be exploited inefficiently.⁶⁴ This happens because what is produced by natural resources in the long term is not comparable to what is utilized by users.⁶⁵ Therefore, the management of fish resources in the high seas cannot be left to freedom mechanisms, but requires regulations that can take into account all the interests of the state in order to carry out its rights and obligations properly.

Economic justice requires that the environment and its natural resources can be utilized efficiently, so that it is economically sustainable. Based on the economic approach to law, efficiency is the main principle for assessing whether the policies or laws implemented are proportional to the benefits and costs. If the benefits are smaller than the costs, then the law is an inefficient law. Inefficient laws will hinder improving welfare.⁶⁶ Economic sustainability will greatly depend on the sustainability of the environment and its natural resources.

If we look at the management of fish resources in the high seas within the framework of freedom to fishing on the high seas, as regulated in the 1982 Law of the Sea Convention and its provisions for improvements, both hard-law and soft-law, which do not touch economic and social aspects, then intragenerational and intergenerational justice is violated. Limited fish resources are compared to overall human needs, so management of fish resources in the high seas must be efficient.

⁵⁷ FOOD AND AGRICULTURE ORGANIZATION (FAO). *The state of world fisheries and aquaculture: towards blue transformation*. Rome: FAO, 2022.

⁵⁸ FOOD AND AGRICULTURE ORGANIZATION (FAO). *The state of world fisheries and aquaculture: towards blue transformation*. Rome: FAO, 2022.

⁵⁹ PAULY, Daniel; CHRISTENSEN, Villy; GUÉNETTE, Sylvie; PITCHER, Tony J.; SUMAILA, U. Rashid; WALTERS, Carl J.; WATSON, R.; ZELLER, Dirk. Towards sustainability in world fisheries. *Nature*, v. 418, p. 689-695, 2002.

⁶⁰ UNITED NATIONS. *United Nations Convention on the Law of the Sea (UNCLOS)*. [n.d.].

⁶¹ HUNTER, D.; SALZMAN, J.; ZAELKE, D. *International environmental law and policy*. Foundation Press, 2002.

⁶² HILDERLING, Antoinette. *International law, sustainable development and water management*. Eburon Uitgeverij BV, 2004.

⁶³ TIETENBERG, Tom; LEWIS, Lynne. *Environmental and natural resources economics*. Scott, Foresman and Company Glevieview, 2006.

⁶⁴ POSNER, Eric A.; SYKES, Alan O. Economic foundation of the law of the sea. *The American Journal of International Law*, v. 104, n. 4, 2010.

⁶⁵ ROTHWELL, Donald R.; STEPHENS, Tim. *The international law of the sea*. Bloomsbury Publishing, 2010.

⁶⁶ ROTHWELL, Donald R.; STEPHENS, Tim. *The international law of the sea*. Bloomsbury Publishing, 2010.

Good law, especially those relating to natural resources, is efficient law, namely law that proportionally integrates 3 aspects of justice, namely environmental justice, economic justice and social justice. The economic approach (the economic account), it can be understood that the law of natural resources management must take into account aspects of efficiency. It has been realized that fisheries as natural resources, although it is natural resources that can renew itself, has limited capacity for self-renewal when compared with technological developments and human consumption needs. On the one hand, technological developments in the fishing sector have resulted in problems with fish resources, thus indirectly causing economic problems.⁶⁷ In this regard, fishing on the high seas as regulated in the 1982 Law of the Sea Convention can no longer be maintained as part of the principle of freedom on the high seas, because it is no longer in accordance with developments occurring in international society, both in the technological and social fields.

Even though freedom to fishing is a traditional right like the right to sail and has become customary international law, the existence of freedom to fish on the high seas is no longer appropriate. This is because the freedom to fish is related to natural resources which are increasingly critical, while other freedoms such as the freedom to sail have no effect on the sustainability of natural resources.⁶⁸ Freedom to fish on the high seas is a matter of customary international law as is freedom of navigation. However, with developments in the international community which pay attention to conservation interests, as well as economic and social aspects, this principle is no longer in accordance with developments occurring in an increasingly dynamic international community.

International law which is based on customary international law can continue to develop. As in the decision of the International Court of Justice regarding the Anglo Norwegian fisheries case, in this case it appears that the rules which constitute customary international law in their implementation can develop. Freedom to

fishing on the high seas can also develop in accordance with developments in various non-judicial aspects. The concept of freedom over natural resources, such as the principle of freedom to fishing on the high seas, means that natural resources may be used by anyone based on free competition. The characteristics of the concept of common property have two meanings, namely, firstly, everyone is free to fish, secondly, in common property there is no distribution or quota, because what applies is the principle of free competition. Humans as rational creatures will try to maximize the benefits they can obtain. In addition, each person will be bound by a system that encourages him to increase the benefits of resources even though those resources are basically limited.⁶⁹

The weakness of the principle of freedom to fish on the high seas is that, on the one hand, conservation of biological resources is the goal, but on the other hand, the governing system and thinking patterns of the system of the principle of freedom to fishing on the high seas do not support the importance of this conservation. Even though in the high seas the state is also obliged to conserve biological resources, especially for highly migratory species, the provisions regarding the principle of freedom to fishing on the high seas as regulated in the 1982 Law of the Sea Convention, contradict the conservation objectives, because of the existing system. Built on this principle, namely free competition, which even contradicts the preamble to the 1982 Law of the Sea Convention itself.⁷⁰

The system, which was built within the framework of freedom to fishing on the high seas, is open access, making it difficult to control fishing, resulting in over-fishing. As stated above, within the framework of freedom to fishing, fish resources on the high seas are a combination of common property and open access, so it will be difficult to control their use. Even though various regulations have been established with the aim of conservation, if the management regulatory framework is based on freedom then conservation is difficult to implement. Therefore, intergenerational justice which emphasizes the importance of sustainability of natural

⁶⁷ AKBARI, Negar; PAN, Haoran; FAILLER, Pierre. The impact of fisheries on the economy: a systematic review on the application of general equilibrium and input-output methods. *Sustainability*, v. 15, n. 7, 2023.

⁶⁸ FRANK, Veronika. *The European Community and marine environmental protection in the international law of the sea*. Martinus Nijhoff Publisher, 2007.

⁶⁹ SUPRIADI; ALIMUDIN. *Hukum perikanan di Indonesia*. Sinar Grafika, 2011.

⁷⁰ See Article 116 dan 117 UNCLOS 1982, among other things, states the rights of countries to catch fish in the high seas and the obligations of countries to carry out conservation. United Nations Convention on the Law of the Sea, adopted 10 December 1982, entered into force 16 November 1994, 1833 UNTS 62.

resources, in this case the sustainability of fish resources in the high seas, will be very difficult to realize.

Based on the principle of intragenerational justice which emphasizes justice within a generation to protect and enjoy natural resources, regulations regarding the management of fish resources in the high seas need regulations that can provide protection for the interests of all countries in a balanced manner. This aims to realize the welfare of the international community as a whole. As stated by Anthony Nyong, one of the causes of poverty is the problem of distribution and access to natural resources.⁷¹

Based on justice in the distribution of natural resources, the use of biological resources in the high seas must be seen as the state's right to living resources. Based on states' rights to biological resources in the high seas, all countries, even though they are not economically and technologically capable, have the same right to obtain benefits from biological resources in the high seas.

Based on the concept of ecological justice, there must be justice in the use of nature and justice for natural resources themselves. This can be realized in justice based on ecological justice formulated in the principles of sustainable development. Sustainable development is based on three main pillars, namely ecology, economy and social. These three basic principles of sustainable development must be applied proportionally in the management of fish resources in the high seas.

Freedom of fishing, as it is currently practiced, is fundamentally incompatible with ecological justice because it systematically undermines core principles of intergenerational and intragenerational fairness while remaining anchored in an instrumental view of nature.

First, it potentially violates intergenerational justice by permitting fishing practices that deplete resources that should remain available to future generations. The FAO reports that 35.4% of assessed fish stocks are overfished⁷², illustrating a transfer of natural capital from the future to the present. Beyond stock depletion, fishing harms marine ecosystems through bycatch, habi-

tat destruction such as bottom trawling, and disruption of food webs⁷³, with some consequences potentially irreversible, including species extinctions, loss of genetic diversity, and long-term ecosystem regime shifts.⁷⁴ The inconsistent application of the precautionary principle further compounds this injustice, effectively allowing present generations to gamble with the ecological inheritance of those who come after them.

Second, freedom of fishing potentially violates intragenerational justice because formal equality in access masks profound substantive inequality driven by technological and economic disparities. In particular, quota allocations within RFMOs often privilege historically active participants, thereby rewarding past overexploitation rather than ensuring a fair distribution of opportunities.⁷⁵ As a result, benefits tend to concentrate among powerful states and industrial fleets, while the social and ecological costs, including depleted stocks and lost livelihoods, are borne disproportionately by coastal communities and developing countries.⁷⁶ This inequity is exacerbated by the absence of meaningful benefit-sharing mechanisms in high seas governance, despite frequent references to seabed areas as part of the "common heritage."⁷⁷

Finally, prevailing legal and governance frameworks largely fail to recognize the intrinsic value of marine life and ecosystems, treating fish and ocean environments primarily as resources for human use.⁷⁸ Management regimes commonly prioritize sustainable yield for consumption rather than safeguarding ecosystem health for its own sake, while impacts on non-target species are framed as externalities to be minimized rather than moral harms to be prevented. Fish welfare also receives li-

⁷³ WORM, Boris *et al.* Impacts of biodiversity loss on ocean ecosystem services. *Science*, v. 314, n. 5800, 2006.

⁷⁴ FOLKE, Carl; CARPENTER, Steve; WALKER, Brian; SCHEFFER, Marten; ELMQVIST, Thomas; GUNDERSON, Lance; HOLLING, C. S. Regime shifts, resilience, and biodiversity in ecosystem management. *Annual Review of Ecology, Evolution, and Systematics*, v. 35, n. 314, 2004.

⁷⁵ BAILEY, Megan; ISHIMURA, Gakushi; PAISLEY, Richard; SUMAILA, U. Rashid. Moving beyond catch in allocation approaches for internationally shared fish stocks. *Marine Policy*, v. 40, 2012.

⁷⁶ CAROTHERS, Courtney. Equity and access to fishing rights: exploring the community quota program in the Gulf of Alaska. *Human Organization*, v. 70, n. 3, p. 213-223, 2011.

⁷⁷ UNITED NATIONS. *United Nations Convention on the Law of the Sea (UNCLOS)*. [n.d.].

⁷⁸ DALY, Herman E. Sustainable development: from concept and theory to operational principles. *Population and Development Review*, v. 16, p. 25-43, 1990.

⁷¹ NYONG, Anthony. Resources and environmental security. In: BRAINARD, Lael; CHOLLET, Derek (ed.). *Too poor for peace?* global poverty, conflict, and security in the 21st century. Brookings Institution Press, 2007. p. 75.

⁷² FOOD AND AGRICULTURE ORGANIZATION (FAO). *The state of world fisheries and aquaculture: towards blue transformation*. Rome: FAO, 2022.

mitted attention, even though many fishing methods can cause prolonged suffering.⁷⁹ Taken together, these patterns demonstrate a structural and normative incompatibility between contemporary freedom of fishing and the demands of ecological justice.

3.3 Right of access to fisheries on the high seas

Based on the previous discussion, ecologically just fishing can be framed through widely recognized normative commitments in environmental governance. Ecological sustainability and integrity require fishing to maintain ecosystem health, productivity, and resilience. This can be pursued through ecosystem-based management that considers food webs, high seas marine protected areas, bans on destructive practices, precautionary catch limits, and monitoring of cumulative impacts.⁸⁰

Intergenerational equity requires present generations to leave future generations healthy oceans that can sustain biodiversity and viable fisheries. This implies long-term management horizons, rebuilding depleted stocks, preventing irreversible harm, and giving explicit weight to future interests rather than heavily discounting them.⁸¹

Intragenerational equity and fair access stress that access should not be driven only by historical advantage. It calls for quota reforms beyond past catch levels, preferential opportunities for developing states and small-scale fishers, benefit-sharing arrangements, technical and financial assistance, and meaningful stakeholder participation.⁸²

A precautionary approach requires decisions to favor conservation when science is uncertain.⁸³ It supports catch limits below maximum sustainable yield, restrictions on data-poor stocks until assessment, environmental impact assessments for new practices, clear

trigger points for management action, and a burden of proof on those proposing exploitation.

Recognition of intrinsic value treats marine ecosystems and species as more than inputs for human consumption. It supports welfare considerations in regulation, protection of endangered species regardless of commercial value, and biodiversity protection as a value in itself, including limits that allow ecosystems to flourish. Transparency and accountability require open and participatory governance.⁸⁴ This includes public access to information on stock status, catches, and decisions, oversight mechanisms, civil society involvement, and regular evaluation against ecological justice criteria.

As has been emphasized in Article 87 of the 1982 Law of the Sea Convention, freedom on the high seas must be exercised by taking into account the rights and interests of other countries in exercising the same rights. The freedom to fish on the high seas applies to all countries, whether coastal countries that are geographically disadvantaged or landlocked. Implementation of the utilization of fish resources in the high seas must take into account the interests of countries as a whole regarding their rights. If we look at the rights of these countries from the principle of ecological justice, they include the fair distribution of natural benefits. Utilization of fish resources in the high seas apart from paying attention to the rights and obligations of other countries regarding their rights in the high seas, today it has been recognized that the living environment also has value, even inanimate or abiotic objects also have value.

Ecological justice requires reframing freedom of fishing as responsibility of governance. Rather than «What rights do we have to fish?», the question becomes «How can we manage marine resources responsibly to ensure sustainability, equity, and respect for intrinsic value?» Governance entails recognizing marine resources as trust held for future generations and the ecological community, prioritizing conservation over short-term catch, accepting limits based on ecological capacity, and viewing fishing as conditional privilege rather than unlimited right.⁸⁵

As stated earlier, natural resources are assets needed by all nations. In the context of ecological justice, na-

⁷⁹ BRAITHWAITE, Victoria. *Do fish feel pain?* Oxford: Oxford University Press, 2010. Victoria Braithwaite, *Do Fish Feel Pain?* (Oxford University Press, 2010).

⁸⁰ PIKITCH, E. K. *et al.* Ecosystem-based fishery management. *Science*, v. 305, n. 5682, 2004.

⁸¹ TREMMEL, Joerg Chet. *The theory of intergenerational justice*. Earthscan, 2009.

⁸² AGYEMAN, Julian; EVANS, Bob. 'Just sustainability': the emerging discourse of environmental justice in Britain? *Geographical Journal*, v. 170, n. 2, p. 155-164, 2004.

⁸³ DOMMEN, Caroline. Raising human rights concerns in the World Trade Organization. *Human Rights Quarterly*, v. 24, n. 1, 2002.

⁸⁴ BAXTER, Brian. *A theory of ecological justice*. London: Routledge, 2004. DOI 10.4324/9780203458495.

⁸⁵ HILDERING, Antoinette. *International law, sustainable development and water management*. Eburon Uitgeverij BV, 2004.

tural resources including fish have functions as ecological, economic and social objects. The distribution of fish resources in the high seas must be based on these approaches: the economic approach emphasizes natural resources must be used efficiently; the social aspects of these natural resources must be able to pay attention to participation and equity; and the ecological approach that natural resources must be considered for their sustainability.

Ecological justice in the management of fish on the high seas in the from the distribution of justice shows an equitable relationship among countries in obtaining benefits from biological resources in the high seas.⁸⁶ The distribution of justice here means fair distribution of the benefits of nature. However, the distribution of justice for the benefits of fish resources in the high seas must be carried out in the framework of ecological justice. This means that the distribution of justice implemented among countries must be carried out with due regard to environmental justice based on the interests of the environment and natural resources for sustainability.

In the context of international relations and law, the moral responsibility for managing the environment and its natural resources is held by the state. The state has the ability to act and is responsible for managing the environment and its natural resources so that it is just, both justice between countries in utilizing nature (distributive justice of environmental benefits) and justice towards the environment itself (environmental justice). In other words, the state is obliged to manage natural resources with the aim of justice for all environmental residents.

Countries as international subjects in international society have various differences, so their treatment cannot be generalized. Laws related to natural resources must be established in addition to paying attention to ecological justice, they must also take into account the context of a heterogeneous international society. Heterogeneous in several ways, among others, apart from advances in fishing technology owned by countries, countries are also heterogeneous, it is also necessary to pay attention to the existence of countries with coasts and landlocked, countries which are geographically disadvantaged. Law plays a role so that all interests of

countries that have differences with each other can be accommodated based on the inherent rights of each country (right based weight). The role of law provides guarantees that all members of the heterogeneous international community can carry out their rights and obligations properly. Provisions for managing fish resources in the high seas, within the framework of access rights to fisheries in the high seas, will better accommodate all interests. Based on state access rights to fish in the high seas, all countries have the right to obtain proportional fisheries quotas, namely those based on the different circumstances of each country and have obligations in accordance with their rights.

Regulation of fisheries quotas, taking into account ecological, social and economic aspects and paying attention to the function of natural resources as ecological objects, economic objects and social objects. This is based on natural resources which have this function, so the distribution must also be based on the function of natural resources. From social and economic aspects such as the efficiency of natural use, the economic condition of the country concerned in terms of GNP, population, geographical conditions of the country concerned (coastal countries, countries without coasts, countries that are geographically disadvantaged). Apart from that, what must also be taken into consideration is the ecological aspect, regarding the sustainability of natural resources, this requires accurate fisheries data. This is very important so that all interests, both the state's interest in the benefits of fish resources in the high seas, and the interests of the fish resources themselves to be sustainable can be accommodated. As stated by Mark Sagoff, the distribution of economic resources must be based on the welfare economic theory. Welfare economic theory emphasizes that the distribution of economic resources is based on various aspects, namely moral, cultural and ethical, so that it can maintain social and economic stability.⁸⁷

In terms of the function of natural resources as economic and social objects, it should be noted that countries have differences in terms of economy, natural resources, geographical conditions, capabilities in science and technology, and so on. Therefore, cooperation in the form of agreements needs to exist to accommodate differences and interests of each. This agreement

⁸⁶ CAROTHERS, Courtney. Equity and access to fishing rights: exploring the community quota program in the Gulf of Alaska. *Human Organization*, v. 70, n. 3, p. 213-223, 2011.

⁸⁷ SAGOFF, Mark. *The economy of the Earth: philosophy, law, and the environment*. Cambridge University Press, 2008.

must be based on fair justice. International law is built on the consensus of the international community. All countries have the inherent rights and obligations of being a sovereign state. With regard to fair distribution of the benefits of nature, contractual justice which is based on an agreement can guarantee the interests of all parties. In the context of cooperation between countries in managing fish resources in the high seas, the relationship among states must be equal and respect each other as sovereign states. In this context, the provisions on the management of fish resources in the high seas must be built from an agreement between countries and must respect all parties to exercise the same rights and obligations. Therefore, the agreement must be based on the inherent rights of states. The differences that exist between countries must be resolved by means of agreements which aim to make each party obtain its rights and carry out its obligations.

Economic and social justice is very important in natural resources management because it relates to rights. Therefore, regulations that can optimally distribute natural resources based on ecological and economic considerations are needed.⁸⁸ International fisheries laws and the 1982 UNCLOS do not regulate distribution of justice on the resources, but only require countries to establish an RFMO. RFMO has a jurisdiction in certain regions on the high seas, so that the high seas are divided within the jurisdiction of the RFMO. It has the duty, authority and responsibility of implementing conservation within its jurisdiction by setting fisheries quotas for its members. However, there is no regulation regarding the determination of these quotas and thus causing injustice. The RFMO determines fisheries quotas for countries without a provision as a legal basis. The determination of fisheries quotas is related to social justice and economic justice in the management of natural resources in the high seas. Therefore, the authors argue that international fisheries law needs to be refined, including by setting regulations on fisheries quotas.

All countries have the right to utilize fishery resources on the high seas through their membership in the RFMO. In fact, many of these countries have become members of various RFMOs so that they can fish in

various regions of the high seas in accordance with the jurisdiction of the RFMO. The formation of RFMOs in various regions does not eliminate free competition in fishing in the high seas, even the competition is uncontrollable. This damage the sustainability of fishery resources and creates injustice. The authors argue that fishing regulation in the high seas needs to be built in a new legal framework in accordance with the development of the international community and ecological justice. In addition, it is necessary to regulate the establishment of global quotas and fisheries management institutions in the high seas, such as mineral resources management managed by the Seabed Authority – a global body under the United Nations which has the authority to manage mineral resources in the seabed area outside of national jurisdiction. The purpose of establishing this agency is so that natural resources can be used equitably. Therefore, an agency that manages the high seas also needs to be established because the legal position of the high seas is part of the sea owned by the entire nation.

4 Conclusion

This research has examined the principle of freedom of fishing on the high seas through the lens of ecological justice, revealing fundamental incompatibilities between current law and practice on one hand, and principles of sustainability, equity, and respect for nature on the other. Technological advancement has created substantive inequality from formal legal equality, with advanced nations exploiting resources extensively while others cannot meaningfully exercise rights. Despite UNCLOS, UNFSA, and 35 RFMOs, overexploitation persists. Current frameworks inadequately address enforcement, equitable allocation, diverse representation, and ecosystem intrinsic value. Freedom of fishing potentially violates intergenerational justice (depleting resources for future generations), intragenerational justice (unequal access among present populations), and fails to recognize marine life's intrinsic value. From the perspective of ecological justice, management of fish resources can be implemented based on access rights to fisheries, which views fisheries in the high seas as ecological, economic and social objects. Based on access rights to fisheries, fish resources in the high seas are not

⁸⁸ DALY, Herman E. Sustainable development: from concept and theory to operational principles. *Population and Development Review*, v. 16, p. 25-43, 1990.

categorized as a combination of communal ownership (common property) and open access.

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