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The Use of Explosives in Sabah Fishing Industry from the History and Malaysian Legal Perspective

ABSTRAK

Makalah ini bertujuan untuk membincangkan penyalahgunaan bahan letupan, atau lebih dikenali sebagai "bom ikan", dalam industri perikanan di Sabah dari perspektif sejarah dan penguatkuasaan perundangan perikanan di Malaysia. Walau bagaimanapun, pengajian mengenai industri perikanan di Sabah telah wujud selepas Perang Dunia II hingga Malaysia memperolehi kemerdekaan. Ianya semakin berkembang di Sabah pada tahun 1970-an sehingga sekarang. Masalahnya adalah walaupun teknologi ini terbukti mampu mendaratkan hasil tangkapan ikan dengan berkesan, namun kaedah ini diharamkan penggunaannya oleh kerajaan Malaysia di bawah Akta Perikanan 1985 (Akta 317), kerana telah mengundang pelbagai kemusnahan kepada ekosistem marin dan mengancam industri perikanan di Sabah. Sungguhpun pelbagai tindakan penguatkuasaan dan perundangan telah dilaksanakan oleh pihak berwajib, namun penggunaan bahan letupan ini untuk menangkap ikan oleh nelayan berbangsa Filipina di kawasan perairan Sabah, yang berkongsi dengan bisnismen tempatan, nampaknya sukar dibendung sepenuhnya. Berbagai dasar dan cadangan daripada kerajaan Malaysia cuba diamalkan untuk mengedepani masalah ini dari dahulu sehingga sekarang.

Kata-kata kunci: industri perikanan, penggunaan dan penyalahgunaan bahan letupan, dan penguatkuasaan undang-undang perikanan di Sabah, Malaysia.



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INTRODUCTION

The fishing industry in Sabah has undergone a tremendous leap in advancement after Sabah achieved her independence through the formation of Malaysia in 1963. In fact, this commendable achievement is more than that obtained during the period before Sabah's independence. At the moment, the fishing industry in Sabah is not only seen as a major and cheap source of protein but also as an employment opportunity for the people of Sabah, as well as an income generator for the Sabah government. As with other economic sectors, the fishing industry in Sabah has its own share of complications.

One of the major problems faced by this industry at present is the utilization of explosive, or more commonly known as the "fish bomb" (*bom ikan*), by the local fishermen for the purpose of fishing. Apart from causing a major disruption in the coastal fishing industry, the sea's ecosystem balance and the legal system, this activity has also brought about negative effects to other related industries, for example the tourism and the oil industries. During the period of 1990 to 1999, 816 cases involving fish bombing along the Sabah coast have been reported. As mentioned by Quazi Abdul Manan:

Dynamiting of fish, which in Sabah is popularly known as "fish bombs", is another cause. Explosion of such deadly devices not only result in the death of small fish but also cause pollution havoc to the total fish population on a particular area. It also disturbs the ecological balance of the sea. Besides, it sometimes causes death to those who make or use them. Sometimes when the device is inaccurately used, or carelessly handled, the target is not only the fish but the human being as well (Abdul Manan, 1991:81).

Due to this, 414 fishermen were detained under the Section 26(1) Fisheries Act 1985 which involves the compound of RM 28,000.00. As a result of this worrying growth in the number of fish bombing activities, the state government has formed a special committee at the highest level to help curb this problem and this committee is headed by the Federal Special Task Force for Sabah and Federal Territory of Labuan (Malaysian Government, 1985).

THE HISTORICAL BACKGROUND OF FISH BOMBING IN SABAH

Although the issue of fish bombing has long been the topic of commentaries and concern, not many are aware of the history of fish

bombing in Sabah. Many assume that the utilization of explosives in the Sabah fishing industry only started after her independence in 1963, more specifically during the 1970s when the operations were conducted by the illegal immigrants from the Philippines. Studies have shown that fish bombing has been practiced in Sabah since World War II when Sabah, formerly known at that time as North Borneo, was under the Japanese rule (1941-1945). H.M. Baker (1962:29) expresses the development of the fishing industry in North Borneo during the Japanese rule as "out of the question". This situation was the result of the great destruction in fishing technology brought about by the war and the Japanese system of government which emphasized only on military measures and did very little in terms of re-establishing the natural resources which were almost totally destroyed during World War II. According to J.A. Tubb:

[...] vessels were destroyed deliberately, or became worn out of suffering the uncommon fate of fishing craft, were seriously damaged or wrecked while carrying out their usual tasks. Fishing lines and nets, particularly the imported types, became worn out and were irreplaceable. The lack of adequate payment for labour and the shortage of food to a large extent prevented even full time fishermen from the replacing even the native fishing materials, the *kelongs*, *bubus* and other types of fish traps so commonly used. At the time of liberation, the fishing industry was in a various condition and imported fishing tackle and other equipment were in tragically short supply (Tubb, 1952:17).

The situation became even more chaotic when the Chinese capitalist groups, who were the major contributors to the fishing industry during the time of the British North Borneo Chartered Company (BNBCC), had to go into hiding in the interior parts of Sabah as a result of the anti-Chinese sentiment practiced by the Japanese government. Due to the never-ending demand for fish products, especially from the Japanese army and the prisoners of war, as well as the inefficiency of the *Muro Ami* used by the Japanese for fishing purposes, the best solution to overcome this vast demand was the grenade or *bom tangan* (Mohammad Raduan Mohd. Ariff, 1995).

Therefore, the statement that the fish bombing activities along the Sabah coast had only begun after her independence in 1963 and was the result of the influx of illegal immigrants to Sabah from the southern territories of the Philippines is totally far from the truth. Annadel S. Cabanban (1997:1), without any specific reference to any



The Structure of Grenade

country in this region, said that the use of explosives in the fishing industry along the waters of Southeast Asia begun during the second World War, by those she calls *"soldiers who probably did not know how to fish in the traditional way"*. The fish bombing activities by the Japanese army came to a halt when the Allied Forces through the "Brigade of the Australian 9th Division" with the slogan "I will return" (Tregonning, 1965:217) succeeded once again in invading North Borneo from the clutches of the Japanese on the 19th October 1945. North Borneo was thus placed under the rule of the Crown Colony.

During this period (1945-1963), the government took various steps in improving the fishing industry which was terribly affected by the Second World War and an example of such steps were the "Reconstruction and Development Plan: 1948-1955"; "Colonial Development and Welfare Scheme"; and the establishment of the Fisheries Department in Sandakan on the 1st April 1948. Through this plan the Crown Colony imported basic and prepared items for industrial technology and these in turn were sold by the Chinese capitalists to the fishermen to be used as fishing technology (Ellison, 1956). At the same time, the Fisheries Department brought in and encouraged the fishermen to use boats powered by engines for high sea fishing. Apart from that the Crown Colony also reinstated "The Boats and Fishery Ordinance No.10 of 1914" which was used during the BNBBC. The Crown Colony also created a new law which was

known as the “Boats and Fishing Law Division 16” which explained in detail matters concerning boats and equipment licensing for fishing in North Borneo.

Although the administrative policy of the Crown Colony and the role played by the Fisheries Department were only able to import and introduce new fishing technologies, these were sufficient in providing ample opportunities for the Chinese capitalists to become masters of the fishing trade in North Borneo. This was achieved through the act of monopolizing the marketing of the fishing technology in the local market and at the same time the Chinese capitalists offered credit facilities for the fishermen and this allowed them to control the amount of profit gathered by the fishermen through this credit system. According to the British Government in *Colony of North Borneo: Annual Report* (1948:32) as follows:

The fishing industry is almost entirely controlled by Chinese *Towkays*. The greater part of the profits finds its way to the pockets of this people. Under this system, the *Towkays* financed the fishermen; both Chinese and native controlled the whole catch. The fishermen are bound to the *Towkays* by debt and as a result any desire they may have to experiment with new equipment or new techniques tends to be frustrated by lack of means needless to say any move in this direction is looked upon with considerable apprehension by the dealers, whose profits are alleged to range from 50% to 250% according to the quantity and quality of the fish sold.

THE USE OF EXPLOSIVES IN THE FISHING INDUSTRY DURING THE 1970S UNTIL PRESENT

The fish bombing activity along the coast of Sabah has re-emerged during the 1970s and it is still a common practice today. The only difference is that the hand grenades which were used during the World War II days have now lost their places in the fishing industry to the fish bombs or *bom ikan* which are hand-made by the fishermen. During the era of Tun Datu Mustapha bin Datu Harun, there was an influx of Philippines immigrants into Sabah. These immigrants came from the islands in the South of the Philippines such as the Cagayan, Tawi-Tawi, Palawan and other islands situated near the international waters boundaries of the Sabah-Philippines in the Sulu Sea.

It is believed that the immigrants brought with them the expertise in the creation of fish bombs into Sabah. This is because the history of fish bombing in Sabah began before World War II and has become



The Structure of Fish Bombs

more of a problem after the War. There are several identifiable reasons for these fishermen's choice to use fish bombs for fishing in Sabah during the early 1970s. One major reason is that they did not have sufficient financial means to purchase fishing equipment from the market. These immigrants were of course very well versed with the fish bombing techniques as they have been practicing it for a very long time prior to their migration to Sabah. Owing to these factors, fish bombing is seen as the easiest way to gather a large profit from fishing. The technology which they possess cannot compete with other modern technologies and most of the time there is a great demand for fish as a source of protein. These immigrants also assumed that the fishing law in the Malaysia was similar to those in the Philippines and this assumption is further strengthened by the lack of security alert along the Malaysian waters at that time (Mohd. Ariff, 1995).

A study conducted by Quazi Abdul Manan (1991:60), with regard to the use of fishing equipment by the fishermen in Sabah, shows that only the fishermen in Pulau Banggi (0.2%) and Semporna (0.6%) use fish bombs as a fishing equipments. Other districts do not show such a high rate of fish bomb usage. Nevertheless, this cannot be used as the actual guide in order to know and understand the real problems

posed by the use of fish bombs in the state of Sabah. This is owing to the fact that many of the fishermen interviewed refused to give comments and reveal the true scenario of fish bombing as this is seen as a sensitive issue in Sabah. This can be proven by looking at the data gathered by the researcher which reports the percentage of problems faced by the fishermen in several areas in Sabah.

According to his study, the researcher found that only the districts of Kudat (2%), Banggi (2%), Kota Kinabalu (3%), Labuan (1.2%) and Sandakan (3%) faced serious problems in terms of the fishing industry (Abdul Manan, 1991). The activity of fish bombing along the Sabah coast is worsened by the Chinese capitalists who are known as the "fish *towkays*". They are believed to supply the fuse or detonator which is quite difficult to obtain because these items are classified as explosives and cannot be purchased without a license. Apart from that these *towkays* also supply other components for example ammonium nitrate, sulphur, diesel and kerosene. According to Mohd. Sidek Sheikh Osman:

The selling of these fishes is conducted by specific syndicates. They consist of *towkays* who are also believed to be the sponsors of the illegal immigrants for the purpose of fish bombing. These immigrants are equipped with all the necessary equipments for fish bombing and they are also paid and given food for their "services" by the *towkays*. After that the fish caught by these immigrants are sold by the *towkays* through their middle-man in the area as mentioned earlier, especially in the interior regions. Owing to a high demand for fish commodity and the great profit which comes with it, the Chinese *towkays* are more than willing to set aside legal considerations and pay attention to their trade. The fish caught through this technique are usually sold at very low prices (Skeikh Osman, 1997:3).

THE USE OF EXPLOSIVES FROM THE MALAYSIAN LEGAL PERSPECTIVE

The First United Nations Convention on the Law of the Sea (UNCLOS), which was held in Geneva, Switzerland in 1958, has drawn up four conventions which are used as the main reference for countries residing under the United Nations in matters dealing with maritime concerns and they are as follows: (1) Convention on the Territorial Sea; (2) Convention on the High Sea; (3) Convention on Fishing and the Conservation of the Living Resources of the High Sea; and (4) Convention on the Continental Shelf.

In Malaysia, the legal definition of “explosives”, as stated in the *Explosives Act 1957 (Act 207), Section II: Offences, Penalties, Supervision and Proceeding, Sub-section 2*, is:

“explosives” are defined as explosive powder, *nitroliserina*, dynamites, cotton, explosives, gun powder, *fulminant* mercury or other such metals, hued flames, and other things which are used of manufactured for the purpose of producing a practical effect through explosion or a *pyrotechnique* effect which includes signals, fog, firecrackers, fuse, rockets, explosive cards, detonator, all types of ammunition, and every preparation of explosives, any equipment machines, tools for the preparation of explosives or modified to cause explosion, or with an explosive and any parts of an equipment, machine and the likes (Malaysian Government, 1990).

Meanwhile, the fate that awaits those who commit such offences is described in the *Explosives Act of 1957 (Act 207), Section II: Offences, Penalties, Supervision and Proceedings*, as such:

A person who has broken the law and with cruel intent has caused, with the use of any explosives which can endanger the lives of others or cause damage to property, whether or not such injury to the person and property has been inflicted, when found guilty, will be sentenced to seven years imprisonment and a compound of ten thousand *ringgit* or both (Malaysian Government, 1990).

Section 8: The penalty for the manufacturing or possession of explosives to the extent of causing suspicion:

An individual who manufactures or consciously possesses any explosives in whatever condition which causes reasonable suspicion that the possession of such explosives by him is illegal upon conviction will be sentenced to seven years imprisonment or a compound of ten thousand *ringgit* or both, unless he is able to prove that his manufacturing and possession of these explosives is permissible by law (Malaysian Government, 1990).

As a result of this blatant use of explosives which inevitably threatens the marine ecosystem, the government has introduced several acts in order to prevent these fish bombing activities. In the Fishing Act 1984(2) under the Fishing Bill of 1984, Part IV (Offences) Clause 26 “The act of fishing using any form of explosives, poison etc.” brings conviction upon any individual who commits the offence of using explosives in situations elaborated below:

- (a). Uses or attempts to use any explosive, poison or pollutant, or any apparatus utilizing an electric current, or any prohibited gear, for the purpose of killing, stunning, disabling or catching fish, or in any other way rendering such fish more easily caught;
- (b). Carries or has in his possession or under his control any explosive, poison or pollutant, or any apparatus utilizing an electric current, or any prohibited gear, with the intention of using such explosive, poison or pollutant, or apparatus, or prohibited gear, for any of the purposes referred to in paragraph (a); or
- (c). Knowing or having reasonable cause to believe that any fish is a prohibited species or has been taken in contravention of the provisions of this Act, receives or is found in possession of such fish will be guilty of an offence (Malaysian Government, 1985).

In section 25(b) of the Fishing Act 1985 (Act 317), a allocation has been placed for a maximum two-year prison sentence or a compound of RM 50,000 or both to any individual convicted pf fish bombing. Meanwhile, in the Fishing Act of 1985, Part VI (Offences) Clause (3) Article 76 of the Federal Constitution as a substitute for the Fishing Act of 1963 states that any fish found on any fishing vessel is considered caught in the act of committing an offence until proven otherwise. This allocation has also placed a restriction on the use of explosives, poison or pollutants which can endanger the marine ecological system as is punishable as follows: (1) If the vessel is a foreign vessel, a fine of not more than RM 1,000,000 in the case of the owner or captain of the vessel and RM 100,000 in the case of the other crew members; and (2) In other matters, a fine of not more than RM 20,000 or a maximum of two-year imprisonment or both (Malaysian Government, 1985).

Apart from the legislative aspects, the Sabah Fisheries Department (2000) has put up several notices informing the fishermen in the various fish markets of the offences committed in the practice of fish bombing. At the same time, the notices also function as reminders to the public that the purchase or possession of fish bombs are offences which can lead to conviction if found guilty. The warning given is as follows: "The Act of Fishing with the Use of Explosives is an Offence Punishable by Law" (Sabah Fisheries Department, 2001).

In the Philippines, the provision for the offence of using explosives in the fishing industry is stated in the Republic Act.No.8550 (the Philippine Fisheries Code of 1998) which brings the sentence of 5 to 10 years imprisonment for those who use explosives and a 6 to 24

months imprisonment for the offence of selling or marketing fish bombs. Nevertheless, under the No.4003 (1932) Act and the Decree Presidential No.704 (1975), the use of explosives for the purpose of collecting fish species is permissible (Police Law Directory, 1990).

CONCLUSION

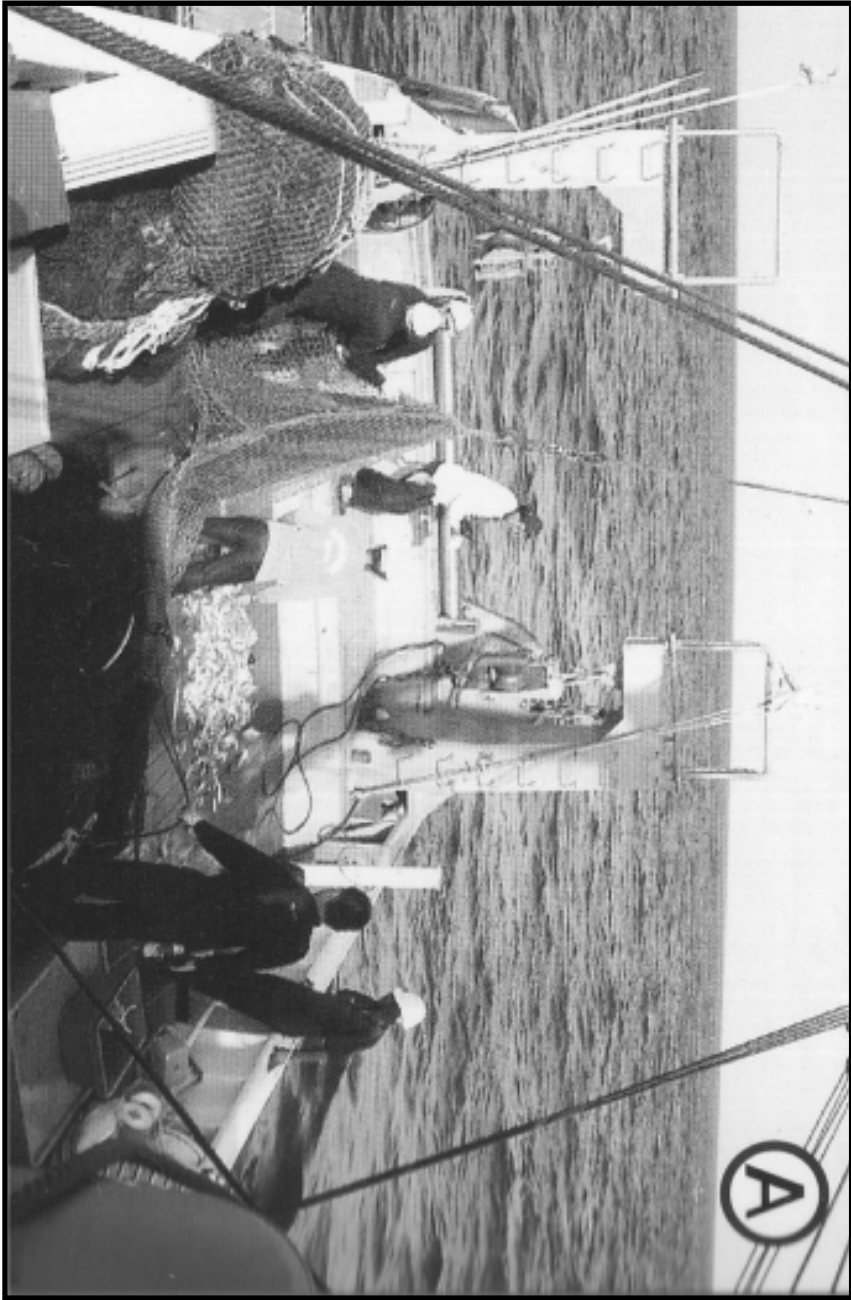
The utilization of explosives, in this case the “fish bombs”, in the fishing industry in Sabah dates back to the years before independence. It would be inaccurate to say that this activity only began during the 1970s. Proof of this can be found at the Sabah National Archives and interviews conducted which reveal that fish bombing is a common practice since the day’s of the Japanese rule in North Borneo (1941-1945).

Thus, any effort to stop or prevent this activity from taking place has to take into account the historical realities in order to realize the Sabah state government’s goal in overcoming this problem, as well as two other major problems in Sabah; the influx of illegal immigrants and illegal logging. The responsibility of putting an end to the fish bombing activity is not only the duty of the state government but also lies on the shoulders of the parties concerned. This is to ensure that the treasures of the ocean will still be there to be cherished by the future generations.

Bibliography

- Abdul Manan, Quazi. (1991). *Sabah Fisherman and Their Economy: A Socio-Economy Study*. Kota Kinabalu: Korporasi Kemajuan Perikanan dan Nelayan Sabah [KO-NELAYAN].
- Baker, H.M. (1962). *North Borneo: The First Ten Years, 1946-1956*. Singapore: Malaya Publishing House.
- British Government. (1948). *Colony of North Borneo: Annual Report*. Jesselton.
- Cabanban, Annadel S. (1997). “Strategies and Abating Destructive Fishing Practice in the Southeast Asian Region”. *Paper in Seminar on Prevention of the Utilization of Explosives and Chemicals in Coral Fishing*, organized by the Ministry of Agriculture of Malaysia, the Ministry of Agriculture and Fisheries of Sabah, the Sabah Institute of Developmental Studies (IDS), Universiti Malaysia Sabah and the Sabah Parks at the Promenade Hotel, in Kota Kinabalu, 14-15 April.

- Ellison, E.W. (1956). *Reconstruction and Development Plan for North Borneo, 1948-1955*. Kota Kinabalu: Sabah Archieve.
- Malaysian Government. (1985). *Fisheries Act*. Kuala Lumpur: International Law Book Services.
- Malaysian Government. (1990). *Explosives Act 1957 (Act 207), Section II: Offences, Penalties, Supervision and Proceeding*. Kuala Lumpur: International Law Book Services.
- Mohd. Ariff, Mohammad Raduan. (1995). *From the Gathering of Sea Cucumbers to Prawns: The History of the Development of the Fishing Industry in North Borneo, 1750-1990*. Kuala Lumpur: Universiti Malaya Press.
- Police Law Directory. (1990). *Explosives Act 1957, Section II: Kesalahan, Penalti, Penguatkuasaan dan Prosiding*, Vol.II. Kuala Lumpur: International Law Book Services.
- Sabah Fisheries Department. (2000). *Bilangan Kes Tangkapan Bom Ikan di Negeri Sabah: 1986-1999*. Kota Kinabalu: Kementerian Perikanan Sabah.
- Sabah Fisheries Department. (2001). *Buku Majlis Pelancaran Kempen Kesedaran dan Pencegahan Pengeboman Ikan Peringkat Negeri Sabah*. Kota Kinabalu: Hyatt Regency Kinabalu, 14 Mac.
- Sheikh Osman, Mohd Sidek. (1997). "Penguatkuasaan dan Undang-Undang Pengawalan: Isu yang Dihadapi oleh Pelbagai Pihak bagi Menangani Masalah Penggunaan Bahan Letupan dan Kimia dalam Perikanan Terumbu Karang". *Kertas Kerja* dibentangkan dalam Seminar Mencegah Penggunaan Bahan Letupan dan Kimia dalam Perikanan Terumbu, anjuran Kementerian Pertanian Malaysia, Kementerian Pertanian dan Perikanan Sabah, Institut Kajian Pembangunan (Sabah), Universiti Malaysia Sabah dan Taman-taman Sabah, di Promenade Hotel, Kota Kinabalu, 14-15 April.
- Tregonning, K.G. (1965). *A History of Modern Sabah*. Kuala Lumpur: Universiti Malaya Press.
- Tubb, J.A. (1952). *Colony of North Borneo Fisheries Department: Report for the Years 1947-1950*. Sandakan, Sabah: n.p.



Salah sebuah gambar aktiviti penangkapan ikan di Sabah, Malaysia, sekarang