



## COASTAL ULAMA *IJTIHĀD* AND DESTRUCTIVE FISHING PREVENTION IN INDONESIA

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**Abstrak:** Indonesia memiliki sumber daya perikanan dan kelautan yang besar. Namun, sebagian besar ekosistem laut Indonesia masih terancam di antaranya di pesisir Lamongan. Kerusakan ini disebabkan oleh penangkapan ikan yang merusak dengan menggunakan alat tangkap yang merusak seperti pukat harimau, cantrang, bahan peledak dan lainnya. Pencegahan aktivitas tersebut dengan peraturan pemerintah tidak berjalan efektif. Oleh karena itu, diperlukan pendekatan alternatif yang lebih efektif. Salah satu pendekatan yang dapat dipilih adalah pendekatan hukum Islam karena masyarakat pesisir Lamongan mempunyai kultur keislaman yang kuat. Artikel ini mengkaji *ijtihād* ekologis ulama pesisir Lamongan yang berafiliasi NU dan Muhammadiyah. Penelitian dilakukan dengan pendekatan yuridis-empiris, dengan data didapatkan dari diskusi kelompok dan wawancara mendalam. Penelitian ini menemukan bahwa Ulama NU di Paciran Lamongan telah mengeluarkan fatwa melalui Bahtsul Masail yang menyatakan bahwa menjaga kelestarian ekologi laut adalah kewajiban setiap umat Islam sehingga *destructive fishing* dilarang. Sementara ulama Muhammadiyah belum mengeluarkan fatwa secara kelembagaan, namun mayoritas secara pribadi menyatakan bahwa kegiatan tersebut juga dilarang. Meskipun demikian, fatwa kedua komunitas tersebut menjadi penguat bagi kebijakan pemerintah dalam mencegah kerusakan ekosistem laut melalui *eco-fishing*.

**Kata kunci:** *destructive fishing*; *ijtihād* ekologi; NU; Muhammadiyah

**Abstract:** Indonesia has large fisheries and marine resources. However, most of Indonesia's marine ecosystems are still under threat. One of them is the coast of Lamongan. The damage is caused by destructive fishing using destructive gears such as tiger trawls, *cantrang* (a modified Danish seine), explosives, and others. Government regulations to prevent those activities have not been effective. Therefore, alternative approaches are needed. One approach to be chosen is the Islamic law approach. Because the Lamongan coastal community has a strong Islamic culture, the Islamic view of destructive fishing is expected to offer a better alternative solution. Therefore, this article examines the ecological *ijtihad* of Nahdlatul Ulama (NU) and Muhammadiyah ulama in Lamongan. This is empirical legal research, with data from focused-group discussions and in-depth interviews. The study finds that the NU Ulama had issued a fatwa through Bahtsul Masail, stating that preserving marine ecology is the obligation of every Muslim and destructive fishing is prohibited. Meanwhile, Muhammadiyah ulama have not issued fatwas institutionally. Nonetheless, the fatwa of the two communities has become a reinforcement for government policies in preventing marine ecosystems damage through eco-fishing.

**Keywords:** destructive fishing; ecological *ijtihad*; NU; Muhammadiyah

## Introduction

As one of the largest maritime countries in the world, Indonesia has enormous wealth and potential for fisheries and marine development. This is because Indonesia has 6.4 million square kilometers of water area, or more than 77% of its total area (KKP, 2018: 73). Its coastline reaches 95,181 square kilometers, the longest in the world after Canada, the United States, and Russia (Fauzi, 2005). Indonesia is also considered the largest archipelagic country in the world, with 17,504 islands. Indonesia has more than 60% of regencies/cities located on the coast and has more than 2.6 million fishers (KKP, 2018: 43).

However, most of Indonesia's marine-rich ecosystems are still under threat. Greenpeace, one of the international Non-Government Organizations (NGOs) in the environmental field, noted that Indonesia still faces serious challenges in its efforts to conserve marine ecosystems. This is because, until now, many human activities are still endangering sea ecosystems and biodiversity. Threats, such as damage to coral reefs, seagrass beds, mangroves, and other marine biotas, are due to human activities. These activities include developing coastal areas, waste disposal, sedimentation, mining, fishing with poisons and destructive tools, and coral reef mining (Greenpeace, 2019).

Hadianto finds that the exploitation of fishery resources and coastal pollution has caused changes in marine ecology in Indonesia. This phenomenon occurs at global, regional, and local scales. Therefore, Indonesian water areas cannot escape the threat (Hadiyanto, 2017). Lamongan, one of the largest coastal cities in East Java, has also experienced the same. Coral reefs on the north coast of East Java, including Lamongan, have been badly damaged due to waste pollution and overexploitation (Detiknews, 2012).

The damage to marine ecosystems, such as coral reefs, mangrove forests, and seagrass beds, will eventually lead to a wider environmental crisis, particularly in fisheries. This is because coral reefs, mangrove forests, and seagrass beds are ecosystems for fish and other marine organisms, where they live, spawn, find food and grow. Therefore, if the ecosystem is damaged, the survival and life cycle of fish and other marine organisms will be threatened (Greenpeace, 2019).

In addition, the threat of damage to the Lamongan marine

ecosystem is also caused by overfishing. Most of the Lamongan coastal fishers use destructive fishing gear, such as trawlers, which are prohibited by the government (Sujatmiko, 2015). This prohibition is because the trawlers function in ways that can damage marine resources and catch fish that are not suitable for consumption. This leads to the degradation of marine aquatic habitat ecosystems. In the social realm, using illegal fishing gear also causes horizontal conflicts between fishers. Illegal tools causing damage to the sea have greatly impacted other fishers (Rahayu & Arif, 2017).

In this context, protecting marine and coastal ecosystems is critical. The preservation of marine ecosystems guarantees the sustainability of marine wealth and general nature in the future. In addition, in the socio-economic context, the sustainability of marine ecosystems is directly related to the welfare of fishers and coastal communities. In Lamongan Regency, various studies show that the productivity of marine fishery products directly affects fishers' welfare. Lamongan is the centre of the largest fisheries industry in East Java. Micro, Small and Medium Enterprises (MSMEs) in the fisheries sector in Lamongan depend on supplies from marine products in the region (Muhtarom, 2017).

The government has overcome the marine ecosystem crisis by preventing destructive actions with various regulations and policies. However, Yulia argues that the effectiveness of the legislation has not been optimal. Therefore, Yulia recommends other legal instruments to ensnare the perpetrators of fisheries crimes (Yulia, 2017).

From here, Islamic law, as one of the living laws in the coastal community of Lamongan, can take on a bigger role. Islamic law, or in a certain sense called *fiqh* (Islamic jurisprudence), has great potential in efforts to overcome crises at the sea and coast. This is because *fiqh* has relatively adequate methodological tools to formulate legal provisions related to the environment. In addition, the Lamongan coastal community, which is predominantly Muslim, has a distinctive social and cultural character (IPB, 2017). Nur Syam, in his study, finds that the northern coastal communities of Java, including Lamongan, generally have a strong Islamic character integrated with local culture (Syam, 2005). This makes the norms and provisions sourced from Islam an important variable in shaping people's behaviour.

Islamic norms and values influence people's working ethics. A study conducted by Ali Nurdin (2020) shows that the social life of the Lamongan coastal community is currently framed by religious awareness instilled by two major religious organizations, namely Nahdlatul Ulama (NU) and Muhammadiyah (Nurdin, 2020). However, the values and practices differ between NU and Muhammadiyah fishers (Addini, 2016).

This study shows that fiqh provisions regarding destructive actions that threaten marine ecosystems originating from NU's religious and cultural environment and Muhammadiyah have great potential to become a reference for fishers and the Lamongan community, especially in addressing issues of damage to marine ecosystems. Moreover, the fiqh provisions are likely to become guidelines in the social practice of Lamongan fishers in carrying out their activities at sea and other marine-related activities. This is because in the socio-cultural realm of the coastal Muslim community, especially in Lamongan, Islamic scholars or religious leaders (ulama) are positioned as holders of religious authority and the direction of law for the community.

For this reason, it is important to examine the environmental *fatwās* (legal opinions) or ecological *ijtihād* (legal reasoning) containing fiqh provisions on marine conservation sourced from competent ulama representing NU and Muhammadiyah in Lamongan. The study of these fatwas is expected to contribute to the development of Islamic law, particularly in environmental conservation. In addition, the results of this study are also expected to provide alternative insights into marine conservation efforts.

Based on the explanation above, this paper will focus on two issues. *First*, how is the portrait of marine damage in Lamongan due to destructive fishing gear? *Second*, how are the progressive fatwas of Lamongan coastal ulama used as the basis for preventing marine ecosystem damage due to destructive fishing gear?

## Method

This study employs a juridical-empirical approach (Soemitro, 1990). The juridical aspect of this research is the provisions of the laws and

regulations governing efforts to prevent destructive fishing. Among them are Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia No. 18 of 2021 on the Placement of Fishing Equipment and Fishing Aids in the Fisheries Management Area of the Republic of Indonesia and the High Seas and the Arrangement of Fishing Andon; Law No. 45 of 2009 on Amendments to Law No. 31 of 2004 on Fisheries (hereinafter the 'Fisheries Law'); Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. 2 of 2015 on the Prohibition of the Use of Trawls and Seine Nets in the Fisheries Management Area of the Republic of Indonesia; the Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. 71 of 2016 on Fishing Paths and Placement of Fishing Equipment in the Fisheries Management Area of the Republic of Indonesia.

Meanwhile, the empirical aspect of this study lies in the opinions of the community and coastal ulama of Lamongan about the effectiveness of all regulations related to attempts to prevent destructive fishing by the government. This research also belongs to descriptive-analytical research, describing the applicable laws and regulations associated with legal theories and their implementations. Descriptive research provides a comprehensive and systematic description of a situation as clearly as possible about the object under study (Soekamto & Mamudji, 2013). This research is expected to provide a detailed, systematic, and comprehensive description of matters relating to the *ijtihad* of coastal ulama in Lamongan as living law to strengthen fishing regulations through the Fatwa of NU and Muhammadiyah ulama.

The primary data in this study are from interviews with the NU and Muhammadiyah Lamongan ulama. The secondary data is sourced from the laws and regulations governing efforts to prevent destructive fishing.

### **The Urgency of Fiqh Marine in the Environmental Protection**

Ecological problems are global issues and cross-national and cultural boundaries. The threat to nature sustainability is a problem accompanying the pace of development of modern society. *Ijtihad* in

ecological issues is inevitable. Referring to the Islamic doctrine as a universal teaching relevant to all times and places (*ṣāliḥ li kulli zamān wa makān*), *ijtihād* can be an entry point for Islamic teachings to provide solutions to global problems in today's era, including environmental damage (Rohmah, Herawati, & Kholish, 2021).

Ecological *ijtihād* in today's era is a must because the discussion about the environment has not been included in the attention of classical fiqh experts. This can be seen from the absence of a detailed discussion of environmental conservation or destruction in classical fiqh books. Discussions about the environment and conservation are more ethical and general, such as prohibiting excessive use of natural resources, general prohibitions on activities related to nature that disturb others, such as having open sewers, diffusing kitchen smoke, and building construction that blocks other buildings' sunlight (Muhammad, Muhammad, & Mabur, 2006). This differs from matters of worship such as prayers, fasting, etc., whose detailed discussion is scattered in fiqh books. This is understandable, considering that this classical fiqh ulama lived when environmental damage had not occurred or was not as severe as it is today (Rohmah et al., 2021). Moreover, law, including Islamic law, and economic activities are inseparable entities as the first ensure that the latter does not result in any disadvantages (Muslimin, 2019).

One of the world's ecological problems today is the destruction of marine ecosystems. Therefore, *ijtihād* in matters related to marine conservation is unavoidable. The results of the *ijtihād* are generally referred to as marine conservation fiqh. Generally, marine conservation fiqh is an effort to maintain marine ecosystems with religious approaches or norms. Fiqh of marine conservation is a set of Islamic legal provisions formulated through Islamic legal arguments regarding issues related to marine conservation efforts (Mufid, 2018).

Various Islamic ethics and concepts regarding environmental conservation require "real" instruments to be used as the basis for "regulating" and controlling all destructive behavior carried out by humans towards nature (Idllalène, 2021). Therefore, marine conservation fiqh is part of nature-oriented fiqh discourses and efforts to preserve the environment, or what is known as "*fiqh al-bi'ah*" (environmental fiqh). Scholars, such as Willis Jenkins, consider that

one of the reasons why Muslims are still ignorant of environmental conservation is because there has been no realization of Islamic ethical values related to the environment into a more "down-to-earth" legal instrument or "legal formal" form, such as regulations or legislation (Jenkins, 2005).

In other words, obedience (read: Muslim) cannot be guaranteed only by a moral or ethical system that talks about "good and bad". There must be a system that talks about "right-wrong" or "*ḥalāl-ḥarām*" in a formal legal context. This is necessary to "judge" people who override ethics and be conscious of their actions.

Starting from this assumption, *fiqh* is needed. *Fiqh*, in this case, is positioned as a 'bridge' to connect ethics or morals, sourced from Islamic normative doctrines, with formal legal principles (Rohmah & Alfaldi, 2022; Sumitro, Kholish, & Muttaqin, 2017). Indeed, *fiqh* has not yet fully been used as a powerful instrument to become the basis for environmental protection, such as positive law with its binding rules. Still, in the social space, *fiqh* results are considered more tactical and "powerful" than other ethical or moral guidelines (Rohmah et al., 2021). Exploiting nature, from an ethical point of view, is considered a "despicable/bad" act. However, the act can be considered a "sinful/*ḥarām*" from a *fiqh* perspective. In society, actions with the category of "sinful/*ḥarām*" are socially considered worse than "despicable/bad".

The absence of a detailed discussion of environmental damage and the activities affecting it in the repertoire of classical *fiqh* opens up great opportunities for *ijtihād* in the formulation of laws related to this issue. The process of *ijtihād* (legal reasoning) or *istinbāt* (law determination/fatwa) in environmental *fiqh* can rely on the methodological principles of contextual Islamic law, such as the concept of *maṣlahah* and *maqāṣid al-sharī'ah* (Busriyanti, 2016: 266). *Maṣlahah* means something that brings goodness or can also be interpreted as something that contains or brings benefits. Meanwhile, the concept of *maṣlahah* is terminologically related to what is called *maqāṣid al-sharī'ah* (sharia goals). Al-Ghazali said that *maṣlahah* is everything that ensures the maintenance of *maqāṣid al-sharī'ah*. It is well-known among scholars of *fiqh* that the purpose of sharia in question is to protect religion (*ḥifẓ al-dīn*), protect the soul (*ḥifẓ*



*al-nafs*), protect the mind (*ḥifẓ al-‘aql*), protect property (*ḥifẓ al-māl*), and protect descendants (*ḥifẓ al-nasl*). These five objectives of sharia are also called *al-kulliyāt al-khamsah* (five universal principles) (Zuhdi, 2015: 778).

In the academic area, Mufid (2018) suggests the formulation of marine conservation fiqh with several assumptions. These are: fish and marine biota resources as public property; marine products as commodities; prohibition of over-exploitation of fish (overfishing); Illegal fishing is a form of unlawful activity; and managing marine resources as *fardhu kifayah* (collective obligation) (Mufid, 2018). Likewise, the formulation of fiqh in marine conservation can use contextual methods, as mentioned above. However, until now, there has been no detailed discussion that specifically discusses marine conservation in the works of modern and classical fiqh experts.

### **Portrait of Marine Damage in the Lamongan Coast due to Destructive Fishing Equipment**

Coastal and marine resources are significant potentials for Indonesia's development. It is known that Indonesia's marine area is 62% of the national area, not including the exclusive economic zone of 2.7 million square kilometers (Burhanuddin, 2011). Indonesia's vast sea has abundant resources, which will contribute to its development if used properly. With a variety of rich biodiversity, coastal and marine resources have high economic and ecological value (KKP, 2018)

Currently, Indonesia's marine ecosystem faces the threat of severe damage caused by the exploitation of fishery resources and coastal pollution. This phenomenon occurs on a global, regional, and local scale. Indonesian water areas are not spared from these threats (Hadiyanto, 2017). One of the threats is caused by irresponsible fishing activities. They are not only limited to illegal and destructive fishing activities. Destructive fishing activities generally use materials that can damage marine ecosystems, such as explosives (bombs), toxic materials, and other environmentally unfriendly fishing gear (Adam & Surya, 2013; Greenpeace, 2019).

The threat to marine ecosystems on the Lamongan coast is also caused by destructive fishing activities carried out by coastal fishers.

Among them is destructive fishing gear such as tiger trawls, *cantrang* (a modified Danish seine), explosives, etc. (Sujatmiko, 2015). This destructive fishing practice certainly cannot be justified because it can threaten the future of marine ecological sustainability. On the other hand, this destructive fishing pattern is vital to the economic growth of the Lamongan coastal community. So far, the catch of fish circulating at the Fish Auction Place (TPI) in Paciran depends on the fishers who use trawling, tiger trawl and *cantrang* (Muhtarom, 2017).

Theoretically, fishing gear is used to find and catch fish in the sea. Good fishing gear consists of several parts and is formed based on design techniques and calculated construction. In fishing activities, there are aspects fishers must pay attention to, including ensuring that the fishing gear is suitable for catching the targeted fish. In the fishing industry, fish catches depend on the efficiency of the fishing gear used. The more efficient the fishing gear, the more catches will be produced (Alamudi, Suharno, & Bambang, 2022). In the context of the Lamongan coast, the use of fishing gear such as trawling, *cantrang* (a modified Danish seine) and other similar types of equipment is indeed regarded by most fishers as effective gear, even though the government categorized them as non-environmentally friendly ones (Yulia, 2017).

The war on the use of destructive fishing gear cannot be separated from political and economic interests. In the era of the Minister of Maritime Affairs and Fisheries Susi Pudjiastuti (2014-2019), destructive fishing methods were prohibited through the Regulation of the Minister of Marine Affairs and Fisheries No. 2/Permen-KP/2015. However, in the era of Minister Edhy Prabowo (2019-2020), the ministerial regulation was revoked because it was considered to paralyze the economic growth of the northern coastal community. Minister Prabowo's regulation above was later annulled by the new Minister of Marine Affairs and Fisheries, Sakti Wahyu Trenggono (2020-present), who reinstated Susi Pudjiastuti's policy of prohibiting fishing using destructive fishing gear through the Regulation of the Minister of Marine Affairs and Fisheries No. 18 of 2021 on Placement of Fishing Equipment and Fishing Aids in WPP-NRI and the High Seas and Arrangement of Fishing Andon. A dualism perspective like this should be viewed objectively with

careful academic considerations instead of being intervened by the person or group interests in the name of economic growth but ignoring environmental conservation.

Since 2015, data from the Department of Fisheries and Maritime Affairs of Lamongan Regency shows that coastal communities in Lamongan catch fish using gears such as pure sein, gillnet, trammel net, *payang*, *dogol*, *prawe* and *bubu*. This is reinforced by a study conducted by Nofi Pujianti, showing fishers' behaviour in Lamongan coastal area. She found that 80% of the fishers had used modified fishing gears such as *payang* or *cantrang*, which were included in the specifications of seine nets. The use of these is proven to contribute to marine ecosystem damage because they do not have good fishing selectivity (Mufid, 2018b).

The Regulation of the Minister of Marine Affairs and Fisheries No. 18 of 2021 on the Placement of Fishing Equipment and Fishing Aids in the Fisheries Management Area of the Republic of Indonesia and the High Seas and the Arrangement of Fishing Andon mentions the types of considered dangerous fishing gears. The Fishing Tools (API) include tensile nets (*dogol*; pair seines; *cantrang*; and basic *lampara*), heel nets (a slatted bottom trawler; shrimp bottom trawler; twin-board trawler; two-ship bottom trawler; trawler midway between two ships, and a fishing trawler), gill nets (jumping fish traps); and other fishing tools consist of muroami.

In the context of Lamongan, the most widely used fishing gear are *cantrang*, *payang* and trawling types of fishing gear. *Payang* is a type of purse seine fishing gear that usually consists of a net, body, and legs. The bottom and mouth of the net have a ballast. At the top, it is given a float with a certain distance. The net size from the bag's top to the bottom varies from 1-40 cm. The *payang* fishing gear works by catching fish schools. *Payang* has long legs used to scare fish into running into the middle of the net. Meanwhile, the body of the net is used to prevent fish from escaping.

*Payang* fishing gear is operated by motorboats or sailing boats. Currently, fishers commonly use motorized boats. The operation requires six people for small-sized *payangs* and 16 for larger *payangs*. The catch from the *payang* fishing gear is a type of fish that lives on the surface of

the water—especially small surface fish, such as anchovies. In addition, there are mackerel, sardines or *lemuru*, rainbow sardines or *japuh*, *kite*, *selar*, etc. This means the catch targets of *payang* are mostly small fish.

A trawl is a fishing tool using a net bag. It is operated by pulling it from behind the ship while sailing along the bottom of the waters. This gear intends to catch fish and other types of demersal fish. The main function of trawling is to catch basic fish, including shrimp, shellfish, and others. Therefore, variations can be found in catches of Java waters, such as *pirek* fish, catfish, *bagong*, mackerel, squid, crabs, and so on. Meanwhile, *cantrang* is a towing net that operates using a long rope at the bottom of the water by circling the demersal fish, then pulling and lifting it to an anchored ship. Although, in some fishers' narratives, they often understand the forms of *cantrang* or *payang* differently.

At the same time, the development of fishing technology should contribute to creating environmentally friendly fishing gear technology for future sustainability (Martasuganda, 2008). According to Martasuganda, ecological fishing technology is a technology used to catch fish without affecting the quality of the environment. Fishing technology is considered environmentally friendly with the following criteria: 1) having high selectivity, meaning that the fishing gear only catches a small number of species with relatively uniform sizes; 2) not destructive to coral reef habitat; 3) giving no harm to fishers, which mostly depend on certain types of fishing gear and the skills of the fisher; 4) producing good quality fish; 5) resulting in unharmed products for consumers, such as avoiding the use of poisons 6) limited bycatch and wasted catch, which some of them are often sold or thrown back into the sea (discarded); 7) low impact on biodiversity; 8) unharmed for protected fish; 9) Socially accepted. The fishing gear that fishers can use is well accepted by the community that meets the requirements, such as being profitable for fishers, affordable, not causing problems or conflicts between fishers in the area and legal.

### **Fatwa of the Lamongan Coastal Ulama on Eco-Fishing**

Concerning destructive fishing gear, NU and Muhammadiyah ulama issued a fatwa that using destructive fishing gear is prohibited

in religion. For example, one NU Paciran ulama, Kyai Masyhuri, explained that fishing gears that destroy marine ecosystems are illegal. This is because they threaten the sustainability of marine ecology in the future. Although according to him, destructive fishing gears are not the only cause of damage to marine ecosystems on the Lamongan coast (Masyhuri, personal communication, 8 August 2021).

It is relatively obvious that the damage to the marine environment on the Paciran coast was caused by unfriendly fishing gear, such as tiger trawls and trawls, harmful to small fish and coral reefs where fish lay their eggs. This view is in line with the view of Kyai Abdul Ghoni, who said that all fishing gear threatening the preservation of the sea are *haram*. However, what needs to be underlined is that harmful activities are not punished for being unlawful (Ghoni, personal communication, 26 July 2021).

Kyai Hasan Nawawi, one of the Muhammadiyah ulama in Paciran Lamongan, also expressed a similar perspective. According to him, the sustainability of the Paciran marine ecosystem must be protected from various forms of threatening environmental damage, including the use of harmful fishing gear, such as bombs, tiger trawls, trawling, *payang*, etc. According to Kyai Hasan, the destructive power of these fish tools lies in their effectiveness, which often does not match the catch targets. According to him, with the large number of small fish caught and the damage to coral reefs caused by snagging trawl nets, these fishing gear should be replaced with more environmentally friendly ones (Nawawi, personal communication, 28 July 2021).

In line with Kyai Hasan Nawawi, Kyai Hasan Al-Banna also said that fishing gear threatening the preservation of the marine environment is prohibited. The fishing gears have a clear effect, although the results benefit the Lamongan coastal community (Al-Banna, personal communication, 10 August 2021). However, according to Islamic rules, if harms (*mafsadāt*) and benefits meet at one point, avoiding the harms is much more important than prioritizing benefit. This is regulated in the fiqh, stating *dar'u al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* (eliminating harm is more important than taking benefit).

## The Urgency of the Lamongan Coastal Ulama's Fatwa on Eco-Fishing

The accommodation of Islamic law as a source of national law in Indonesia provides a great opportunity for fatwa institutions, such as the Indonesian Ulama Council and Islamic organizations like NU and Muhammadiyah, to fill the vacuum of Islamic law provided by national law. This opportunity is a constitutional necessity because of the fatwa's role in the national legal products. Those institutions offer important instruments in producing progressive fatwas needed by the Indonesian Muslim community. So, the expectation is that future fatwas from religious institutions will not only become theological doctrines considered haunting the very pluralistic Indonesian society. Therefore, the *fatwās* produced must be responsive and progressive, not repressive as perceived by history to legitimate power.

So far, the perceived barrier between Islamic law configured in fatwas and national law is a legal epistemological dualism perspective, leading to a dichotomy between sacred Islamic law and profane national law products (Minhaji, 2004). Of course, the dualist perception of fatwas and national law will collapse when both are viewed with the sociology of Islamic law paradigm. As stated by Imam Syaukani, Islamic law as a social institution has two functions: social control and a new value in the social change process (Kusumaatmadja, 2002). The first regards Islamic law as Devine's blueprint, control, and social engineering of a community. Meanwhile, the second sees Islamic law as more of a historical product that, to some extent, is placed as a justification for social, cultural, and political change demands (Syaukani & Thohari, 2018).

Currently, the coastal ulama's *fatwās* on eco-fishing are a configuration of Islamic law as social control and social engineering. The *fatwās* as social control mean that they can be used to control the use of harmful fishing gear. Meanwhile, as a social engineering tool, the fatwas become a tool to transform destructive fishing behavior or practices into eco-fishing practices.

Islam has been perfectly revealed along with the passing of the Prophet Muhammad. Meanwhile, the demands to respond to realities developed significantly after the death of the Prophet. This development has been triggered by aspects such as acculturation due to the meeting

of Islam with local cultures, economic development, and changes in governance patterns (Kholish & Salam, 2020). In this context, the role of coastal ulama as cultural brokers and agents of social change becomes relevant to answer ecological issues on the north coast of Lamongan. In other words, the fatwas are expected to respond to the needs of the Lamongan northern coastal community.

Fatwa, as one of the Islamic legal products, does not have a binding power as *qaḍā* (judiciary) and *qānūn* (law/regulation). However, the *fatwā* has an ethical binding with the primordially and patrons of the *muftī* (*fatwā* maker). Even in practice, *fatwās* are considered effective enough as a tool of social engineering and social control at the grass root level (Kholish & Salam, 2020). The uncomplicated procedures and mechanisms of fatwa-making are considered more responsive and effective in responding to various problems. This is different from the formulation of *qaḍā* in jurisprudence and *qānūn* in the form of a law that is time-consuming with strict and rigid procedures. In this context, the coastal ulama *fatwas* on eco-fishing once again become relevant.

The government has produced regulations on the prohibition of destructive fishing gear. These regulations are the Minister of Marine Affairs and Fisheries Regulation No. 2 of 2015, promulgated in the era of Minister Susi Pudjiastuti, and the Minister of Marine Affairs and Fisheries Regulation No. 18 of 2021. However, it is quite unfortunate that all these rules are often ignored by fishers on the north coast of Lamongan (Rahayu & Arif A, 2017). This is due to the weak structure and legal culture of the people on the north coast of Lamongan. Many Lamongan coastal fishers choose to negotiate behind the table with law enforcement officials. Thus, the rules made by the state regarding environmentally friendly fishing are considered ineffective (Suryono, personal communication, 11 August 2021). To make these regulations effective, the state must synergize with local religious leaders whose fatwas are relatively heard by the public.

The religious characteristics of the northern coastal community of Lamongan become social and cultural capital in confirming the position of the fatwa to strengthen government regulations on eco-fishing. The fatwa-making authority (*muftī*) also greatly determines the acceptance of the fatwa by the public. The religiosity on the north coast of Lamongan

is shaped by two major mass organizations, NU and Muhammadiyah. Therefore, every fatwa issued by NU and Muhammadiyah ulama will become legal references of each community, respectively.

The fatwas of NU and Muhammadiyah ulama on the north coast of Lamongan are sometimes produced collectively and individually. The collective fatwas of NU are produced through the *Bahtsul Masail* Institute of Branch Representative Council (LBM-MWC) Paciran, Lamongan. Meanwhile, the collective fatwas of Muhammadiyah are produced by the *Tarjih dan Tajdid* Council of Muhammadiyah Branch Leadership (MTT-PCM) Paciran, Lamongan.

In this context, the progressive fatwas of the NU Paciran ulama are expressed in a ruling that prohibits and forbids all forms of damaging fishing practices, including the use of harmful fishing gear. The prohibition of these fishing tools is based on the *ta'bir* of classical and contemporary ulama, most of whom forbid environmental destruction and pollution. As for the Muhammadiyah ulama Paciran, the fatwa is produced personally because, as an institution, Muhammadiyah has not yet issued an official fatwa. Using personal fatwas, the majority of Muhammadiyah kyais also forbid damaging fishing gear.

From the perspective of NU ulama, the destructive power caused by the above-mentioned type of fishing gear is very real. This is expressed by Kyai Abdul Ghoni, stating that all forms of fishing gear considered to threaten the sustainability of the sea life are prohibited (*ḥarām*). Consequently, fishers must travel hundreds of kilometers from the coast because the fish have run out on the Lamongan coast (Ghoni, personal communication, 26 Auguts 2021). NU scholars assess that the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia No. 18 of 2021 can be an effective instrument to break the chain of marine ecosystems damaging practices caused by fishing gear (Ghoni, personal communication, 26 August 2021; Masyhuri, personal communication, 8 August 2021).

Likewise, Kyai Amin stated that the damage to marine ecology is real and is due to illegal fishing and harmful fishing gear. All forms of damage that can threaten environmental sustainability must be prevented. In this context, Kyai Amin maintains personal *ijtihad* that any form of fishing that threatens the sustainability of marine ecosystems is *ḥarām*. Without this prohibition, the future generation



will likely face the consequences (Musthofa, personal communication, 11 August 2021). Both collective and individual *ijtihād* maintained by NU and Muhammadiyah ulama are relevant to the state regulations on fishing.

However, prohibiting fishing gear such as trawls, *cantrang*, and tiger trawls on the Lamongan coast without providing alternative solutions is certainly unwise. Because so far, the sea products circulated in the fish auction place (TPI/Tempat Pelelangan Ikan) of Paciran depend on the work of fishers who use trawlers, tiger trawl, *payang* and *cantrang* fishing gears. In other words, even in destructive ways, the fishers play a vital role in the economic growth of the Lamongan coastal community.

At this point, the wisdom of the ulama of the north coast of Lamongan is in two intersections: increasing economic growth by allowing destructive fishing gear or preserving the environment by prohibiting destructive fishing gear. In the *awlawiyyāt al-fiqh* perspective offered by Yusuf Qaradawi, the conflict between the two benefits must consider the priority scale. If the public benefit (interest) clashes with the specific (individual) benefit (interest), then the public benefit must be prioritized. Even so, if long-term benefits collide with short-term benefits, the priority scale is the long-term benefits (Qaradawi, 2012).

If the operationalization of priority *fiqh* is implemented at the intersection of benefits, ecological preservation is considered a general benefit, while economic growth is a specific benefit. Thus, ecological preservation must be the priority because the impacts or consequences are more general. Likewise, marine ecological preservation generates long-term benefits, while economic growth is short-term. Therefore, the benefit of ecological preservation must take precedence over economic growth.

The Minister of Marine Affairs and Fisheries Regulation No. 18 of 2021 must be regarded as a compromise between the two intersections of the benefits above. The use of fishing gears such as trawling, *cantrang*, or *payang* is allowed with modifications to make them more environmentally friendly. For example, the fishing gears use standard meshes as stipulated in the Regulation, as seen in Article 22 Paragraph (4). In addition, fishers should obey the provisions for

a fishing zone in the fishery management area of the Republic of Indonesia (WPP-NRI).

In this context, the fatwas of Lamongan coastal ulama strengthen the legitimacy of those rules. The progressive fatwas have become social change tools by increasing the fishers' awareness to be ecologically literate. The prohibition proposed by the ulama comes with a recommendation that the government replace all harmful fishing gear with environmentally friendly and modified ones.

At this point, the recommendation of the Lamongan coastal ulama is in line with Satjipto Rahardjo's thesis that the existence of law must be able to provide welfare effects for the community, which include social, economic, and ecological welfare (Rahardjo, 2006). The effort is also in accordance with the constitutional mandate in the preamble of the 1945 Constitution of the Republic of Indonesia, stating that one of the national goals is to promote the general welfare. Article 33 of the 1945 Constitution also states that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

## Conclusion

One of the causes of marine ecological damage on the Lamongan coast is currently caused by destructive fishing activities. Fishing activities using destructive fishing gear such as trawls, *cantrangs*, and *payang* are unjustified. However, the sea products circulating at the fish auction place in Paciran Lamongan depend on the fishers who use those fishing tools. Even though considered illegal and damaging, fishing activities play a vital role in the economic growth of the Lamongan coast.

Nahdlatul Ulama and Muhammadiyah are two influential Islamic mass organizations for Lamongan coastal community. This becomes the reason for the culturally significant role and strong position of kyai (respected religious figures/ulama), both of NU and Muhammadiyah. This study argues that the ulama can bring behavioral changes to preserve marine ecology. At this point, the ecological *ijtihad* of the Lamongan coastal ulama represented by NU and Muhammadiyah *kyais* becomes important.

Regarding marine ecology, NU ulama in Paciran Lamongan has issued a fatwa through their *Bahtsul Masa'il*. The fatwa emphasizes that preserving marine ecology is the duty of every Muslim, and the religion prohibits the use of destructive fishing gear. In contrast, the Muhammadiyah ulama in Paciran has not yet issued a fatwa institutionally. However, the ulama has produced individual fatwas or personal *ijtihad*. Most Muhammadiyah kyais also argue that harmful fishing activities are prohibited, and every Muslim should also be obliged to maintain the preservation and sustainability of the marine ecosystem on the Lamongan coast. Nonetheless, the fatwa of the two communities has become a reinforcement for government policies in preventing marine ecosystems damage through eco-fishing.

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