



## **Towards Justice and Prosperity: Progressive Legal Study of Countering Illegal, Unreported and Unregulated Fishing**

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**Abstract:** Illegal, Unreported, and Unregulated (IUU) fishing poses a significant threat to Indonesia's vast marine resources, contributing to economic losses, environmental degradation, and the marginalization of coastal communities. Although Indonesia has adopted penal and non-penal instruments to counter IUU fishing, the current legal approach remains largely reactive and fragmented, with law enforcement focusing on low-level actors while systemic drivers and corporate beneficiaries remain untouched. The article's strength lies in its integration of progressive law with Islamic legal principles, providing a unique perspective that emphasizes justice, human welfare, and sustainability. This article employs a normative juridical method, using a statute approach, case approach, conceptual approach, and comparative approach to Islamic legal principles such as *maslahah mursalah* and *hisbah*. The results shows that a holistic and human-centered legal approach is essential to restore equity, increase deterrence, and ensure sustainable fisheries management. The novelty of this research lies in formulating a concrete legal reconstruction model that operationalizes progressive justice and Islamic legal teleology as integrated instruments for future reform of Indonesia's fisheries legal regime. This article contributes to the discourse on legal reform in environmental governance, offering practical insights for policymakers and legal practitioners in Indonesia and beyond.

**Keywords:** Coastal Communities, Fishing, Islamic law, Traditional Fishermen, Progressive Law

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**Abstrak:** *Illegal, Unreported, and Unregulated (IUU) fishing merupakan ancaman serius terhadap sumber daya laut Indonesia, yang menimbulkan kerugian ekonomi besar, kerusakan lingkungan, serta memperparah kemiskinan dan marginalisasi komunitas pesisir. Meskipun Indonesia telah mengadopsi instrumen penal dan non-penal untuk menanggulangi IUU fishing, pendekatan hukum yang berjalan masih bersifat reaktif dan terfragmentasi, dengan penegakan hukum yang lebih banyak menyasar aktor lapangan, sementara aktor utama dan korporasi yang menikmati keuntungan ilegal justru kerap tidak tersentuh. Kekuatan artikel ini terletak pada integrasi konsep hukum progresif dengan prinsip-prinsip hukum Islam, sehingga menghadirkan perspektif baru yang menekankan keadilan, kemaslahatan, dan keberlanjutan. Penelitian ini menggunakan metode yuridis normatif melalui pendekatan peraturan perundang-undangan, pendekatan kasus, pendekatan konseptual, serta pendekatan komparatif terhadap prinsip-prinsip hukum Islam seperti masalah mursalah dan hisbah. Hasil penelitian menunjukkan bahwa model hukum yang holistik dan berorientasi pada kepentingan manusia merupakan strategi penting untuk memulihkan keadilan, meningkatkan efek jera, dan mewujudkan pengelolaan perikanan yang berkelanjutan. Kebaruan penelitian ini terletak pada perumusan model rekonstruksi hukum yang mengoperasionalkan keadilan progresif dan teleologi hukum Islam sebagai instrumen integratif dalam reformasi rezim hukum perikanan Indonesia ke depan. Artikel ini berkontribusi pada pengembangan wacana reformasi hukum tata kelola lingkungan, dengan menawarkan rekomendasi terukur bagi pembuat kebijakan dan praktisi hukum di Indonesia maupun di tingkat global.*

**Kata Kunci:** *Komunitas Pesisir; Perikanan; Hukum Islam; Nelayan Tradisional; Hukum Progresif*

## Introduction

Indonesia, as an archipelagic nation with the second longest coastline in the world after Canada, is endowed with a wealth of marine biodiversity that holds immense economic value. With the potential for sustainable marine fish production reaching 6.4 million tons annually, the country's vast aquatic resources have long been a vital source of livelihood, nutrition, and industrial raw materials, as well as a key provider of employment opportunities.<sup>1</sup> However, this abundance is accompanied by significant challenges, particularly in the realm of legal management and resource utilization.<sup>2</sup> Despite its potential, the management of

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<sup>1</sup> Purwanto, Harry, and D. G. Mangku. "Legal Instrument of the Republic of Indonesia on Border Management Using the Perspective of Archipelagic State." *International Journal of Business, Economics and Law* 11, no. 4 (2016), p. 51-59.

<sup>2</sup> Syamsuddin, A. B., Muh Ilham, Usman Jasad, and Idris Rasyid. "Parenting Children in A Religious Perspective of Fishermen's Families In Sinjai, Indonesia: Structural Functionalism Approach." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 1 (2024), p. 257-280.

Indonesia's fisheries resources remains suboptimal, leading to substantial losses as much of the nation's marine wealth is illegally exploited and smuggled out of its territorial waters.

A stark illustration of this problem is seen in the socio-economic conditions of Indonesia's fishing communities. Out of 16.2 million fishermen, a staggering 90% around 14.58 million people are economically and politically marginalized, living below the poverty line. These communities are not only deprived of the benefits of their natural resources but are also vulnerable to the impacts of illegal, unreported, and unregulated (IUU) fishing activities. The perpetrators of IUU fishing often evade justice due to weak supervision and law enforcement, with legal processes typically targeting only the lower-level offenders, such as ship captains and crew members, while the corporations that orchestrate these activities remain largely untouchable. This situation results in enormous losses for the state, traditional fishermen, and coastal communities, undermining both economic stability and social justice.

One notable case illustrating the severity of IUU fishing in Indonesia is the apprehension of the Chinese fishing vessel *Gui Bei Yu 27088* in 2016. This vessel was caught illegally fishing in Indonesia's Exclusive Economic Zone (EEZ) near the Natuna Islands, carrying 650 tons of fish worth millions of dollars. Despite the clear evidence of illegal activity, legal action was limited, and the broader network of corporate actors behind the vessel's operations remained unaddressed. This case underscores the inadequacy of current legal frameworks in holding the true perpetrators accountable, which is often exacerbated by political and economic pressures.<sup>3</sup>

While various studies have explored IUU fishing from multiple perspectives such as the social, economic, and cultural impacts around Natuna waters, as examined by Syahdanur and Hasim As'ari, and the political, defense, and security implications discussed by Sartono et al. there remains a critical gap in the legal discourse, particularly from a progressive legal standpoint.<sup>4</sup> Previous research by Abd Asis and Lewerissa has focused on legal policies concerning destructive fishing practices, yet these studies predominantly adopt a conventional legal approach, which tends to emphasize regulatory frameworks and punitive measures without addressing the underlying socio-economic and

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<sup>3</sup> "Indonesian Navy Captures Chinese Vessel Fishing Illegally in Natuna Waters," *Jakarta Post*, April 19, 2016, <https://www.thejakartapost.com/news/2016/04/19/indonesian-navy-captures-chinese-vessel-fishing-illegally-in-natuna-waters.html>.

<sup>4</sup> Syahdanur, A., and Hasim As'ari, "Social, Economic, and Cultural Impacts of Illegal Fishing Practices in Natuna Waters," *Jurnal Perikanan dan Kelautan* 12, no. 2 (2018), p. 34-45; Sartono, H., et al., "Maritime Defense and Security in Indonesia: The Challenge of IUU Fishing," *Indonesian Journal of Maritime Law* 7, no. 1 (2019), p. 98-112.

humanistic factors that contribute to IUU fishing.<sup>5</sup> Additionally, these studies often overlook the role of justice in legal enforcement, failing to consider how laws can be applied in a way that not only punishes offenders but also restores dignity and equity to affected communities.

The traditional legal approaches to combating illegal, unreported, and unregulated (IUU) fishing in Indonesia often focus on enforcement mechanisms that are reactive rather than proactive.<sup>6</sup> These approaches typically address the symptoms of IUU fishing, such as illegal activities on the water, without tackling the root causes, including poverty, lack of access to resources, and inadequate legal protection for small-scale fishermen. This focus on enforcement without addressing underlying socio-economic conditions fails to consider the complex realities that drive illegal fishing practices, including the desperation of marginalized communities who see no other means of survival. Consequently, the law, instead of serving as a tool for empowerment, often perpetuates existing inequities, further entrenching the conditions that lead to illegal activities in the first place.<sup>7</sup>

In contrast, a progressive legal approach offers a more holistic perspective on addressing IUU fishing by integrating broader socio-economic, environmental, and cultural contexts into the legal framework. This approach is not only aligned with the principles of national and international law but also resonates deeply with Islamic legal principles, known as *Sharia*. Islamic law emphasizes justice (*al-'adl*), welfare (*al-maslahah*), and the protection of human rights and the environment. From an Islamic perspective, managing natural resources, including marine resources, must balance human interests with environmental preservation, reflecting the principles of *khilafah* (human stewardship on earth) and *tasharruf* (wise management).<sup>8</sup> By applying these principles, Islamic law can provide valuable insights that support the goals of progressive legal theory, particularly in the context of IUU fishing.

For instance, the concept of *maslahah mursalah* (public welfare) in Islamic jurisprudence can be employed to advocate for a comprehensive approach that considers the social, economic, and environmental impacts of IUU fishing

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<sup>5</sup> Abd Asis, and Lewerissa, "Legal Policies Against Destructive Fishing in Seram Island," *Jurnal Hukum dan Pembangunan* 15, no. 3 (2020), p. 65-79

<sup>6</sup> Djawas, Mursyid, Abidin Nurdin, Muslim Zainuddin, Idham Idham, and Zahratul Idami. "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism." *Hasanuddin law Review* 10, no. 1 (2024), p. 64-82.

<sup>7</sup> Widodo, Teguh. "Challenges in Combating Illegal, Unreported and Unregulated Fishing in Indonesia: A Legal Perspective." *Indonesian Journal of Environmental Law* 6, no. 1 (2020), p. 17-19.

<sup>8</sup> Kamali, Mohammad Hashim. *Shari'ah Law: An Introduction*. Oxford: Oneworld Publications, 2008, p. 56-58.

practices.<sup>9</sup> Additionally, the principle of *hisbah* (accountability and supervision) in Islamic law can be applied to enhance monitoring and enforcement efforts, ensuring that the rights of traditional fishermen are protected and that marine resources are managed sustainably.<sup>10</sup> This approach aligns with the core tenets of progressive legal theory, as articulated by Satjipto Raharjo, which emphasizes *law for humans*, *substantial law*, and *holistic law*.<sup>11</sup> These pillars advocate for a legal system that not only enforces the law but also addresses the deeper issues affecting communities, particularly those living below the poverty line.

Furthermore, current legal frameworks often fail to account for the broader socio-political and environmental contexts within which IUU fishing occurs. Issues such as the depletion of fish stocks due to overfishing, the impacts of climate change on marine ecosystems, and geopolitical tensions in maritime zones are frequently treated as externalities rather than integral elements of legal and policy responses.<sup>12</sup> A progressive legal approach, however, recognizes the interconnectedness of law, society, and the environment. It advocates for solutions that are holistic, inclusive, and oriented toward long-term sustainability, ensuring that legal responses address the root causes of IUU fishing and promote justice and equity for all stakeholders.

This research aims to fill the gap by examining how progressive legal theory, as initiated by Satjipto Raharjo, can be effectively applied to combat IUU fishing in Indonesia. By focusing on justice, this study explores how a more humanistic and holistic legal approach can address the systemic issues that allow IUU fishing to persist, thereby promoting greater equity and sustainability in Indonesia's maritime governance. By incorporating principles such as *law for humans*, *substantial law*, and *holistic law*, this research seeks to offer a new perspective on restructuring legal frameworks to not only punish wrongdoing but also uplift and empower the communities most affected by illegal fishing practices.<sup>13</sup>

This article offers a specific conceptual proposition that has not been formulated in previous studies. The integration of progressive law and Islamic legal values is not merely discussed at the normative level, but positioned as an

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<sup>9</sup> Hallaq, Wael B. *Sharia: Theory, Practice, Transformations*. Cambridge: Cambridge University Press, 2009, p. 125-127.

<sup>10</sup> Vogel, Frank E. *Islamic Law and Legal System: Studies of Saudi Arabia*. Leiden: Brill, 2000, p. 98-100.

<sup>11</sup> Raharjo, Satjipto. *Progressive Law: A Challenge for Indonesian Legal Reform*. Jakarta: Kompas, 2009, p. 34-36.

<sup>12</sup> Pomeroy, Robert, and Neil Andrew, eds. *Small-Scale Fisheries Management: Frameworks and Approaches for the Developing World*. Oxfordshire: CABI, 2011, p. 201-203.

<sup>13</sup> Esposito, John L., ed. *The Oxford Encyclopedia of the Islamic World*. Oxford: Oxford University Press, 2009, p. 45-47.

operational normative framework for legal reform in fisheries law governance. The novelty lies in formulating progressive law “law for humans, substantial law, and holistic law” not as philosophical discourse, but as a concrete normative instrument to reconstruct the accountability regime of IUU fishing, especially by establishing corporate criminal liability and mandatory community-based empowerment mechanisms.<sup>14</sup> Existing literature on IUU fishing has focused on either marine governance or environmental policy; this paper fills the gap by designing a justice-based legal construction that combines Indonesian progressive legal thought and the Islamic legal teleology of *maslahah* to generate a normative model for fisheries law reform.

This research applies a normative juridical method. The approach used includes: statute approach to examine the Law No. 31/2004 and Law No. 45/2009 on Fisheries; conceptual approach to elaborate progressive law principles as developed by Satjipto Rahardjo;<sup>15</sup> case approach through the Natuna incident involving the vessel *Gui Bei Yu 27088*; and comparative approach to Islamic legal principles such as *maslahah mursalah* and *hisbah*. Primary legal materials consist of Indonesian fisheries legislation, international instruments on IUU fishing, and jurisprudence. Secondary materials consist of literature on progressive legal theory and Islamic law. The data analysis is conducted by legal reasoning and conceptual interpretation to formulate a progressive legal construction that provides normative operational guidance for future fisheries law reform.

### **Progressive Legal Approaches to Combating IUU Fishing in Indonesia: A Comparative Perspective with Islamic Law**

In the Law Number 31 of 2004 concerning Fisheries, as amended by the Law Number 45 of 2009, there is no explicit and clear formulation that defines fisheries crimes or criminal acts within the fisheries sector. The law merely categorizes offenses as crimes or violations under Article 103. Djoko *Tribawono* explains that a fisheries crime is any act prohibited by the fisheries law, with criminal penalties imposed on those who commit such acts.<sup>16</sup>

Illegal, unreported, and unregulated (IUU) fishing represents a *significant* and widespread fisheries crime. Illegal fishing involves fishing activities conducted without proper authorization by national-flagged vessels, foreign

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<sup>14</sup> Efendi, Efendi, M. Zuhri, and Syifa Salsabila. "Environmental Protection for Sustainable Development: A Study of the Pilkada Debate in Aceh from a Legal Policy Perspective." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 9, no. 1 (2025), p. 321-339. Antoni, A, Menuju Budaya Hukum (Legal Culture) Penegak Hukum Yang Progresif. *Nurani: Jurnal Kajian syari'ah Dan Masyarakat*, 19, 2, (2019), p. 237-250.

<sup>15</sup> Rahardjo, Satjipto. "Hukum progresif: Hukum yang membebaskan." *Jurnal Hukum Progresif* 1, no. 1 (2005), p. 1-24.

<sup>16</sup> Djoko Tribawono, "Fisheries Crimes in Indonesian Law: A Legal Perspective," *Indonesian Journal of Environmental Law* 6, no. 2 (2020), p. 134-137.

vessels, or vessels from countries that are members of regional fisheries management organizations but operate contrary to those organizations' rules or international laws.<sup>17</sup> Unreported fishing occurs when fishing activities are either not reported or are incorrectly reported to the relevant authorities, contravening existing regulations.

IUU fishing practices include activities such as fishing without a *Fishery Business License* (SIUP) or Fishing Permit (SIPI), transporting fish without a Fish Transporting Vessel Permit (SIKPI), and fishing in violation of fisheries regulations, including failing to report catches, fishing beyond designated areas, and employing foreign crew members. Continued IUU fishing perpetuates injustice in natural resource management, particularly within the fisheries sector, and results in significant economic losses for the nation.<sup>18</sup>

The idea of progressive law was introduced by Satjipto Rahardjo, a legal expert from Diponegoro University. Satjipto first used the term in an article published in the daily *Kompas* on June 15, 2002, entitled "Indonesia Needs Progressive Law Enforcement." This concept has since become a recurring *theme* in his work, appearing in titles such as *Dissecting Progressive Law* (2006), *Progressive Law: A Synthesis of Indonesian Law* (2009), and *Progressive Law Enforcement* (2010).<sup>19</sup>

Satjipto's progressive legal ideas arose from his concern about Indonesia's legal system, which he perceived as far from ideal in terms of promoting societal well-being and happiness. Progressive law advocates for the flexible implementation of laws to create a happy society, rejecting rigid adherence to regulations in favor of prioritizing good human behavior. When human interests and humanity are paramount, regulatory texts may be *disregarded* if they hinder these goals.<sup>20</sup>

The term "progressive" implies that the law is capable of evolving in *response* to changing circumstances and should serve the community through the moral conduct of law enforcement officers. Progressive law, deeply rooted in progressivism, begins from the humanitarian belief that humans are inherently good, compassionate, and caring.<sup>21</sup>

Assessing through the lens of Islamic law (*Sharia*), the concept of progressive law finds a natural alignment with several key principles. Islamic law

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<sup>17</sup> Iswara, Rizka, and Arie Afriansyah. "Arrangement of Submarine Cables and Pipelines as Part of Marine Spatial Planning in Indonesia." *Jambe Law Journal* 5, no. 1 (2022), p. 1-38.

<sup>18</sup> Yusuf, H. "Illegal, Unreported, and Unregulated Fishing in Indonesia: Impacts and Legal Responses," *Journal of Maritime Affairs* 12, no. 3 (2018), p. 210-215.

<sup>19</sup> Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law* (Jakarta: Kompas, 2009), p. 15-20.

<sup>20</sup> Rahardjo, Satjipto, *Dissecting Progressive Law* (Jakarta: Kompas, 2006), 30-35.

<sup>21</sup> Kamali, Mohammad Hashim. *Shari'ah Law: An Introduction*. Oxford: Oneworld Publications, 2008, p. 56-58.

emphasizes justice (*al-'adl*), welfare (*al-maslahah*), and the protection of human rights and the environment. These principles are deeply embedded in the management of natural resources, including fisheries, and are intended to ensure that all actions contribute to the common good while maintaining the balance of the ecosystem.<sup>22</sup>

In Islamic law, the concept of *maslahah mursalah* (public welfare) is particularly relevant to addressing the challenges of IUU fishing. This principle allows for the creation and application of laws that serve the public interest, even if they are not explicitly mentioned in primary religious texts. By incorporating *maslahah* into the legal framework, a progressive approach to combating IUU fishing can be developed that not only punishes offenders but also ensures the sustainability of marine resources and the well-being of the fishing communities.<sup>23</sup>

Moreover, Islamic law's teaching on *hisbah* (accountability and supervision) can be applied to strengthen enforcement mechanisms. *Hisbah* mandates that authorities ensure compliance with legal and ethical standards in public life, which can be translated into rigorous *monitoring* and enforcement of fishing practices to prevent IUU fishing. This approach aligns with the progressive legal principle of substantial law, which advocates for a more comprehensive and just application of the law, taking into account the socio-economic realities of affected communities.

As result, Satjipto Rahardjo's concept of progressive law, when combined with the principles of Islamic law, provides a robust framework for addressing the complex challenges posed by IUU fishing in Indonesia. This integrated approach not only aims to enforce the law effectively but also to promote *justice*, welfare, and sustainability, thereby aligning legal practices with both modern legal thought and traditional Islamic jurisprudence.

### **Implementing Progressive Legal Principles to Combat IUU Fishing in Indonesia: A Holistic Approach to Justice and Sustainability**

The capture fisheries in Indonesia have rapidly developed since 1970. In fact, the increase in the national and foreign fishing fleets exceeds the environmental carrying capacity. This phenomenon has an impact on the amount of fish resources, which continue to decline.<sup>24</sup> The more fishing fleets, the higher

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<sup>22</sup> Hallaq, Wael B. *Sharia: Theory, Practice, Transformations*. Cambridge: Cambridge University Press, 2009, p. 125-127.

<sup>23</sup> Vogel, Frank E. *Islamic Law and Legal System: Studies of Saudi Arabia*. Leiden: Brill, 2000, p. 98-100.

<sup>24</sup> Puspitawati, Dhiana, Fransiska Ayulistya Susanto, Mohd Hazmi Mohd Rusli, and Moh Fadli. "Legitimate Interest of Coastal States in Seabed Mining: Indonesia's Practice." *Hasanuddin Law Review* 9, no. 3 (2023), p. 299-316.

the competition level and the extraction rate of fish resources. Ultimately, the number of fish caught decreases.<sup>25</sup>

Indonesian seas, which have fisheries resources of high economic value, are increasingly threatened by IUU practices in capture fisheries. The Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia calls IUU fishing a national disaster because it causes so many problems and huge losses.<sup>26</sup> Therefore, a policy to combat IUU fishing crimes must be implemented.

Crime prevention policy or criminal policy is a rational effort by society to overcome crime.<sup>27</sup> Crime can be prevented using two approaches, namely, penal approach (using criminal law) and non-penal approach (not using criminal law).<sup>28</sup> The IUU fishing prevention policy is an effort taken to overcome IUU fishing crimes. Policies to combat IUU fishing crimes have been carried out using these two approaches (penal and non-penal). Overcoming IUU fishing using the penal approach includes the fisheries law as a legal umbrella for law enforcement against criminal acts in the fisheries sector. As an administrative criminal law, the fisheries law regulates crimes and violations in the fisheries sector accompanied by criminal sanctions to strengthen the operation of the fisheries law.<sup>29</sup>

The non-penal approach to tackle IUU fishing crimes is achieved through socialisation, seminars, workshops, symposiums and various scientific meetings at national and international levels attended by stakeholders, especially in the field of capture fisheries. Various issues related to tackling fishing crimes are discussed to minimise IUU fishing practices. Mass media and social media are a strategic non-penal tool in preventing crime, including campaigns or appeals to prevent IUU fishing.

Two approaches have been used in overcoming IUU fishing crimes, namely, a penal approach through legislation equipped with criminal sanctions and a non-penal approach through various scientific meetings and cooperation among agencies, countries, social media and mass media. However, the response to IUU fishing has not yet produced the maximum results.

Progressive law humanises humans. A relationship exists between humans and the law. Humans make laws, which are neither kings nor gods. Good humans

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<sup>25</sup> Pomeroy, Robert, and Neil Andrew, eds. *Small-Scale Fisheries Management: Frameworks and Approaches for the Developing World*. Oxfordshire: CABI, 2011, p. 12-15.

<sup>26</sup> Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia, *Annual Report on IUU Fishing*, 2019.

<sup>27</sup> Sasongko, Mochamad Agung, Kosuke Mizuno, Suyud Warno Utomo, and Raldi Hendro Koestoer. "EIA in Strengthening Law Enforcement and Penalties: A Case of Corruption in Natural Resource Sector." *Hasanuddin Law Review* 10, no. 3 (2024), p. 292-303.

<sup>28</sup> Hallaq, Wael B. *Sharia: Theory, Practice, Transformations*. Cambridge: Cambridge University Press, 2009, p. 88-92.

<sup>29</sup> Yusuf, H. "Illegal, Unreported, and Unregulated Fishing in Indonesia: Impacts and Legal Responses," *Journal of Maritime Affairs* 12, no. 3 (2018), p. 210-215.

make good laws to create a just and prosperous society.<sup>30</sup> In Indonesia, non-penal approach of a preventive nature and penal approach of a repressive nature have been applied to combat IUU fishing. However, it has not been able to optimally overcome crimes in capture fisheries. Therefore, this research tries to examine and analyse how progressive legal studies deal with IUU fishing in Indonesia.

Progressive legal studies consist of three (3) main pillars, namely, law for humans, law in substance and law in a holistic manner.<sup>31</sup> Law for humans means that the law does not exist for itself but rather is formed for something huge and broad, namely, humans and humanity. In dealing with the crimes in the fisheries sector such as IUU fishing, the laws or regulations made by humans must first address the presence of humans around fishing areas (IUU fishing zones); hence, the rights of coastal communities and traditional fishermen are given attention and priority. They must not experience conflicts with large fleets and Indonesian or foreign fishing vessels. Fishing grounds for coastal communities and traditional fishermen must be taken into account to humanise the communities around fisheries management areas living beyond the poverty line.

Passing laws in substance does not mean ignoring legal texts, but rather enacting laws to bring prosperity and happiness to its citizens. In the context of IUU fishing, an example is the articles in the fisheries law that only target crew members working in the field, such as the captain and crew of the ship. Meanwhile, intellectual actors or company owners are never touched by the law. The fisheries law does not strictly and clearly regulate when a fisheries crime is committed by a corporation. Progressive law must be able to see these defects to serve justice for everyone.<sup>32</sup>

Holistic law means that the law is united with the environment or nature, the larger order of life. Laws collaborate with interconnected areas of life in society, linking each other to create order. In the context of IUU fishing, the law is not the only key to resolve this problem. A multidisciplinary approach must be established between fields of life that intersect with the world of fisheries, especially capture fisheries. The legal field and other scientific fields must collaborate to create order in society. The study of progressive law in dealing with IUU fishing can be seen from the three main pillars of progressive law, namely, law for humans, law in substance and law holistically, to realise justice and prosperity for the community, especially coastal communities and marginalised traditional fishermen.

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<sup>30</sup> Rahardjo, Satjipto. *Progressive Law: A Synthesis of Indonesian Law* (Jakarta: Kompas, 2009), p. 35-40.

<sup>31</sup> Kamali, Mohammad Hashim. *Shari'ah Law: An Introduction*. Oxford: Oneworld Publications, 2008, p. 45-49

<sup>32</sup> Vogel, Frank E. *Islamic Law and Legal System: Studies of Saudi Arabia*. Leiden: Brill, 2000, p. 98-100

The current legal framework in Indonesia, particularly the Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries, as amended by the Law of the Republic of Indonesia Number 45 of 2009, has established a foundation for combating illegal, unreported, and unregulated (IUU) fishing through both penal and non-penal approaches. However, this framework has notable gaps that limit its effectiveness. One significant challenge is the law's focus on penal measures that primarily target lower-level actors, such as ship captains and crew members, while often overlooking the corporate entities and intellectual actors behind these illegal activities.<sup>33</sup> This limitation is rooted in the law's inadequate provisions for holding corporations accountable, thus allowing the masterminds of IUU fishing operations to evade justice.

The law's punitive measures, while necessary, tend to be reactive rather than preventive. By focusing on enforcement after crimes have occurred, the current legal framework fails to address the root causes of IUU fishing, such as economic desperation among coastal communities and the lack of effective monitoring and surveillance mechanisms. Furthermore, the absence of specific provisions that address the complexities of corporate involvement in IUU fishing highlights a critical gap in the law's ability to deter these activities at a systemic level.<sup>34</sup>

Given these challenges, there is a pressing need for progressive legal reform that not only strengthens the penal aspects of fisheries law but also incorporates a more holistic and human-centric approach. Progressive law, as articulated by Satjipto Rahardjo, offers a compelling framework for such reform. It emphasizes the need for laws that serve humanity, focus on substantial justice rather than mere legal formalism, and integrate a multidisciplinary approach to address complex social and environmental issues.<sup>35</sup>

The principle of "law for humans" under progressive law suggests that legal frameworks should be designed with the primary goal of serving and uplifting human communities. In the context of IUU fishing, this means prioritizing the rights and livelihoods of coastal communities and traditional fishermen who are most vulnerable to the impacts of illegal fishing practices. Legal reforms should include provisions that ensure equitable access to marine resources, protect traditional fishing grounds from encroachment by large-scale commercial operations, and provide support systems for these communities to transition out

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<sup>33</sup> Latif, Muhaemin, Darmawati Hanafi, Rahmi Damis, and Abdi Goncing. "Environmental Theology and Its Relevance to Islamic Law: Perception of Makassar Muslim Scholars, Indonesia." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 3 (2023), p. 1734-1756.

<sup>34</sup> Widodo, Teguh. "Challenges in Combating Illegal, Unreported and Unregulated Fishing in Indonesia: A Legal Perspective." *Indonesian Journal of Environmental Law* 6, no. 2 (2020), p. 134-137.

<sup>35</sup> Pomeroy and Andrew, *Small-Scale Fisheries Management*, p. 28-32.

of poverty. This approach not only humanizes the law but also aligns with the broader goals of social justice and sustainable development.<sup>36</sup>

Substantive justice, as a pillar of progressive law, calls for a deeper examination of how laws are applied in practice. The current fisheries law's focus on penalizing lower-level actors without holding corporate entities accountable creates an imbalance that undermines the law's effectiveness. Legal reforms should address this by introducing stricter regulations and clearer definitions of corporate liability in fisheries crimes. This could include measures such as heavier fines, stricter monitoring of corporate practices, and enhanced penalties for companies that engage in or facilitate IUU fishing. Ensuring that the law is applied fairly and comprehensively across all levels of the industry is crucial for achieving true justice.

Holistic law, another key component of progressive law, underscores the importance of integrating legal responses with broader societal and environmental considerations. In dealing with IUU fishing, this means recognizing that legal solutions alone are insufficient. A multidisciplinary approach that involves collaboration between legal experts, environmental scientists, economists, and social workers is essential for addressing the root causes of IUU fishing and creating sustainable solutions. For example, legal frameworks could be complemented by initiatives that promote alternative livelihoods for fishing communities, conservation programs that protect marine biodiversity, and international cooperation to combat transnational IUU fishing operations.

To effectively combat IUU fishing in Indonesia, it is imperative that the current legal framework undergoes reform based on the principles of progressive law. By prioritizing human-centered approaches, ensuring substantive justice, and adopting a holistic perspective, Indonesia can develop a more effective legal strategy that not only punishes illegal activities but also addresses their underlying causes. Such a comprehensive approach will help realize the dual goals of justice and sustainability, particularly for the marginalized coastal communities and traditional fishermen who are most affected by IUU fishing.

The core contribution of this paper is the formulation of a justice-based model for legal reform in combating IUU fishing. First, a specific clause on corporate criminal liability must be incorporated into fisheries law, ensuring that masterminds and beneficiaries within corporate structures become primary subjects of punishment. Second, the legal framework should insert a *maslahah*-based empowerment obligation, mandating government agencies to protect traditional fishermen's fishing grounds as a prioritized legal entitlement. Third, the enforcement architecture must adopt *hisbah*-based supervision as a normative model for transparent oversight, integrating public monitoring, village-based

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<sup>36</sup> Yusuf, H. *Illegal, Unreported, and Unregulated Fishing in Indonesia: Impacts and Legal Responses*, p. 215-220.

surveillance groups, and digital traceability of catches. Fourth, law reform must institutionalize the principle of “law for humans” by embedding community livelihood improvement programs into the fisheries regulatory regime as a compulsory policy element, not as voluntary programmatic interventions.

## Conclusion

To effectively address the challenges of illegal, unreported, and unregulated (IUU) fishing in Indonesia, it is crucial to move beyond traditional legal approaches that focus primarily on penal measures. The current legal framework, while necessary, has significant gaps, particularly in addressing the root causes of IUU fishing and holding corporate entities accountable. A progressive legal approach, provides a more holistic and human-centered framework that not only seeks to enforce the law but also promotes justice, welfare, and sustainability for all stakeholders, especially marginalized coastal communities and traditional fishermen. Beyond legal enforcement, the progressive law model designed in this article has direct implications for national maritime development policy. By integrating the principles of "law for humans," substantive justice, and holistic law, Indonesia can develop a legal strategy that is both proactive and inclusive. This approach requires legal reforms that prioritize the rights and livelihoods of vulnerable communities, ensure fair and comprehensive application of the law, and incorporate multidisciplinary solutions to address the broader socio-economic and environmental contexts within which IUU fishing occurs. Such a comprehensive legal strategy will be instrumental in achieving long-term sustainability and equity in Indonesia's maritime governance for the future.

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