From Islamic Legal Maxims to Environmental Regulation: Reframing Qawaid Fiqhiyyah Kubra in Contemporary Environmental Governance

Siti Nor Fazillah Abdullah*[1] & Azli Fairuz[2]

[1]Faculty of Applied Social Sciences, Universiti Sultan Zainal Abidin, Malaysia

[2]Faculty of Islamic Contemporary Studies, Universiti Sultan Zainal Abidin, Malaysia

***Corresponding Author**

DOI: https://doi.org/10.47772/IJRISS.2025.91200137

Received: 22 December 2025; Accepted: 27 December 2025; Published: 03 January 2026

ABSTRACT

Environmental governance in Muslim majority societies continues to face challenges in translating Islamic legal principles into effective regulatory mechanisms that resonate with both international standards and local legal consciousness. While Islamic environmental discourse has largely been framed through ethical concepts such as stewardship and trust, these narratives remain predominantly normative and insufficient for addressing contemporary demands of environmental regulation and enforcement. This study responds to this gap by reframing Qawaid Fiqhiyyah Kubra from abstract legal maxims into a juridical foundation for environmental regulation.

Employing qualitative doctrinal analysis, the study examines a selected set of Qawaid Fiqhiyyah Kubra, namely la darar wa la dirar, al darar yuzal, al mashaqqah tajlib al taysir, al adah muhakkamah, al umur bi maqasidiha, and al yaqin la yazul bi al shakk, and systematically maps them onto key principles of contemporary environmental law and governance. Through this reframing, the study advances the argument that Qawaid Fiqhiyyah Kubra can function as enforceable regulatory standards rather than merely ethical or theological reference points.

The findings demonstrate that these legal maxims provide a coherent Islamic juridical basis for core regulatory doctrines, including environmental tort liability, the Polluter Pays Principle, and precautionary governance under conditions of scientific uncertainty. The analysis further shows that Maqasid al Shariah operates as an evaluative framework capable of addressing regulatory shortcomings such as greenwashing and distributive injustices inherent in neoliberal environmental market mechanisms. By situating Qawaid Fiqhiyyah Kubra within the domain of Siyasah Shariyyah, this article advances a conception of environmental governance that legitimises state regulatory authority, analogous to a modern Hisbah, in safeguarding ecological integrity. This reframed approach offers a culturally grounded and legally rigorous pathway to environmental sustainability that complements, rather than competes with, international environmental standards.

Keywords: Qawaid Fiqhiyyah, Environmental Governance, Environmental Regulation, Maqasid al Shariah, Precautionary Principle

INTRODUCTION

The global environmental crisis, characterised by unprecedented biodiversity loss, climate instability, and systemic pollution, is no longer merely a scientific challenge but a crisis of governance, ethics, and legal implementation **[1]**. For Muslim majority societies, responses to this crisis often reveal a structural tension. On the one hand, states adopt international environmental instruments and regulatory frameworks. On the other, these frameworks frequently lack normative resonance with the religious and legal consciousness of the population **[2]**.

Existing scholarship on Islam and the environment has been dominated by ethical and theological narratives emphasising stewardship, trusteeship, and moral responsibility. While such approaches contribute to environmental awareness, they remain largely confined to moral exhortation and offer limited guidance for legal adjudication or regulatory design. To address this gap, a shift from ethical discourse to jurisprudential reasoning is required. Qawaid Fiqhiyyah provide a structured legal methodology capable of translating abstract moral values into enforceable regulatory standards **[3]**.

Despite their centrality in Islamic legal reasoning, limited attention has been given to the role of Qawaid Fiqhiyyah Kubra in environmental governance, particularly in relation to environmental tort liability, precautionary regulation, and administrative enforcement. As a result, Islamic environmental discourse continues to reiterate ethical commitments without developing operative legal mechanisms capable of guiding courts, regulators, and policy makers. This article responds directly to this lacuna by repositioning Qawaid Fiqhiyyah Kubra as a jurisprudential framework for environmental governance.

Qawaid Fiqhiyyah as a Regulatory Methodology

Classical jurists conceptualised Qawaid Fiqhiyyah as universal legal principles that structure and discipline juristic reasoning across diverse domains of law. Al Qarafi emphasised that neglecting these maxims leads to fragmentation and inconsistency within the legal system, thereby undermining coherence and predictability in legal outcomes **[4]**. In the context of modern governance, these characteristics render Qawaid Fiqhiyyah particularly suitable as regulatory principles rather than merely judicial aids applied in isolated cases.

Public Interest and Maslahah in Environmental Law

A central tension in environmental law lies between the protection of individual property rights and the preservation of the public good. Islamic law, through the framework of Siyasah Shariyyah, recognises the authority of the state to restrict private interests in order to prevent public harm. Ibn Ashur argues that the preservation of the order of the world constitutes a primary objective of Shariah, an objective that necessarily encompasses ecological systems upon which human life depends **[5]**. From this perspective, environmental governance is not a peripheral policy concern but a legal necessity grounded in the daruriyyat of Islamic law.

Operationalising the Major Legal Maxims for Environmental Governance

This section examines how selected *Qawaid Fiqhiyyah Kubra* may be operationalised as enforceable principles of environmental governance rather than treated as abstract moral guidelines. Moving beyond ethical exhortation, the analysis demonstrates that these legal maxims possess the structural capacity to function as regulatory standards capable of informing environmental tort liability, precautionary decision making, and administrative enforcement within contemporary governance systems [2][3]. By situating these maxims within the domain of public regulation, this section illustrates how Islamic jurisprudence can generate concrete legal responses to environmental harm.

Al Darar Yuzal and the Foundation of Environmental Tort

The maxim *al darar yuzal* establishes a categorical legal obligation that harm must be removed whenever it occurs. Its normative foundation lies in the Prophetic principle *la darar wa la dirar*, which prohibits both the infliction of harm and the reciprocation of harm [6]. While *la darar wa la dirar* operates as a foundational prohibition against harmful conduct, *al darar yuzal* functions as its remedial and regulatory extension within Islamic jurisprudence, directing legal systems towards active harm removal rather than mere moral condemnation [2].

Environmental degradation that adversely affects public health, ecological stability, or communal resources constitutes *darar* that triggers legal responsibility. Islamic jurisprudence grounds liability in the existence of harm itself rather than in subjective intent or contractual fault. This orientation strengthens regulatory intervention by prioritising objective consequences over mental states, thereby enabling legal responses to systemic and diffuse environmental harms that are often difficult to address through fault based doctrines [8].

Darar and Dirar

Classical jurists such as Ibn Nujaym distinguish between *darar* as unilateral harm inflicted by one party and *dirar* as counter harm inflicted in response [6]. This distinction plays a critical regulatory role in environmental governance. While the removal of harm is mandatory, Islamic law cautions against remedial measures that themselves generate greater systemic harm. Excessively punitive or economically destabilising regulatory responses may constitute *dirar* if they undermine social order or produce disproportionate consequences [4].

Accordingly, Islamic law requires proportional remediation that removes environmental harm while preserving social and economic stability. This balance allows regulators to impose robust environmental obligations without precipitating secondary crises, thereby maintaining the legitimacy and sustainability of regulatory intervention.

Strict Liability and the Polluter Pays Principle

Under the doctrine of *la darar*, Islamic law does not require proof of intent to establish liability for harmful activities. Al Zarqa affirms that individuals or entities engaged in inherently hazardous activities bear responsibility for the consequences of those activities regardless of subjective intention [5]. This principle is particularly relevant to industries such as chemical manufacturing, mining, and extractive operations, where environmental harm often arises from lawful but inherently risky conduct.

This approach provides a strong Shariah foundation for the Polluter Pays Principle, whereby liability arises from the occurrence of harm rather than from fault based negligence. Restitution and remediation therefore remain obligatory even in the absence of intent [6]. By grounding liability in harm rather than culpability, this framework significantly narrows reliance on negligence based defences that frequently limit accountability in conventional environmental litigation [8]. As a result, Islamic law offers a more robust basis for addressing environmental externalities and ensuring that polluters bear the true costs of environmental degradation.

Al Mashaqqah Tajlib al Taysir

The maxim *al mashaqqah tajlib al taysir* recognises that excessive hardship may undermine compliance and frustrate legal objectives. In environmental governance, this maxim provides a jurisprudential basis for regulatory flexibility that does not compromise environmental protection [7]. Environmental regulations often impose transitional burdens on communities and industries, particularly in contexts involving structural economic change.

Islamic law permits facilitative measures such as phased implementation, differentiated obligations, and targeted assistance to ensure that compliance remains feasible. Al Zarqa clarifies that facilitation does not suspend legal obligation but preserves its effectiveness by preventing resistance and non-compliance [7]. This principle supports legally grounded just transition policies that balance environmental imperatives with socio-economic realities [14].

Al Adah Muhakkamah

The maxim *al adah muhakkamah* affirms the normative relevance of custom within Islamic law [11]. In environmental governance, this maxim validates the legal significance of local ecological knowledge and customary resource management systems. Islamic jurisprudence historically recognised community based conservation mechanisms such as *hima* and *harim*, which regulated access to land and water resources in accordance with local environmental conditions.

By incorporating local custom into regulatory frameworks, the state may design environmental policies that empower communities rather than marginalise them. This context sensitive approach enhances regulatory legitimacy, fosters long term compliance, and aligns formal regulation with lived ecological practices [9].

Al Umur bi Maqasidiha

The maxim *al umur bi maqasidiha* requires that legal acts be evaluated according to their underlying purposes [5]. In environmental regulation, this principle addresses symbolic compliance, regulatory formalism, and greenwashing. Environmental initiatives must be assessed based on their substantive ecological outcomes rather than their formal appearance or procedural conformity.

Where sustainability claims diverge from actual environmental impact, such practices may constitute deception under Islamic commercial law. This maxim enables regulators to prioritise material environmental protection over procedural adherence, thereby safeguarding the integrity of environmental governance.

Al Yaqin La Yazul bi al Shakk

The maxim *al yaqin la yazul bi al shakk* establishes a juristic basis for precautionary governance under conditions of uncertainty. Certainty regarding the necessity of ecological stability cannot be displaced by speculative doubt concerning potential risks. Islamic law therefore places the burden of proof on project proponents to demonstrate the absence of catastrophic harm.

Scientific uncertainty does not justify regulatory inaction. This principle aligns with the precautionary principle in international environmental law but carries stronger normative authority within Islamic jurisprudence, as it is embedded within binding legal reasoning rather than soft policy guidance [2][10].

Critique of Neoliberal Environmentalism from a Maqasid Perspective

This section critically examines dominant neoliberal approaches to environmental governance through the lens of *Maqāṣid al-Sharīʿah*. While market-based instruments have gained prominence in international environmental policy for their perceived efficiency and flexibility, their compatibility with Islamic legal objectives requires careful scrutiny. The analysis demonstrates that certain neoliberal mechanisms risk undermining the substantive removal of harm and distributive justice, both of which constitute core concerns within Islamic jurisprudence.

Neoliberal environmentalism is characterised by the commodification of environmental goods and the reliance on market mechanisms to regulate ecological harm. While such approaches may succeed in internalising certain environmental externalities, they often prioritise economic efficiency over substantive ecological protection and social equity. From a Maqāṣid perspective, this orientation raises normative concerns regarding justice, harm prevention, and the preservation of essential communal resources [5].

Carbon Trading and the Commodification of Environmental Harm

Carbon trading mechanisms permit polluting actors to purchase emissions credits as a means of regulatory compliance, thereby allowing environmentally harmful activities to continue provided that financial compensation is rendered. From a Maqāṣid perspective, this approach is inherently problematic. The maxim *al-darar yuzāl* establishes that harm must be removed rather than relocated or normalised through economic exchange. When pollution is offset geographically rather than eliminated at its source, the original harm remains operative within affected local environments [7][9].

This practice risks transforming environmental harm into a tradable commodity, thereby reframing ecological injury as an acceptable cost of economic activity. Such commodification introduces elements of uncertainty and speculative behaviour that conflict with principles of justice and accountability in Islamic law. Treating the atmosphere as a marketable asset effectively converts an ecological necessity into a financial instrument subject to market volatility. From a Maqāṣid standpoint, this undermines the objective of preserving the environment as a collective trust rather than a commercial good [11][12].

Islamic legal reasoning prioritises the cessation and remediation of harm over its monetisation. While Islamic law does not preclude the use of economic instruments per se, it rejects regulatory models that permit the persistence of harm so long as it is economically compensated. Accordingly, carbon trading schemes that fail to

achieve actual emissions reduction remain normatively deficient when assessed against the objectives of justice and harm prevention embedded within *Maqāṣid al-Sharīʿah* [5].

Water Governance and Resistance to Privatisation

Water governance provides a particularly illustrative case of tension between neoliberal environmental models and Islamic legal principles. Within Islamic jurisprudence, water occupies a unique normative status as part of *al-amwāl al-mushtarakah*, resources held in common for public benefit. Classical jurists consistently affirmed that access to water constitutes a legal priority grounded in the preservation of life, rendering it non-negotiable within market frameworks.

Neoliberal models of water privatisation often reframe access to water through pricing mechanisms designed to promote efficiency and cost recovery. However, when such mechanisms restrict access for economically marginalised populations, they directly conflict with the Maqāṣid objective of preserving life. In such circumstances, market allocation ceases to be a neutral regulatory tool and instead becomes a source of structural injustice requiring state intervention [7][9].

The maxim *al-ʿādah muḥakkamah* further reinforces the obligation of the state to protect customary water management systems that have historically ensured equitable access. Traditional infrastructures such as *aflāj* and *qanāt* represent socially embedded governance mechanisms adapted to local ecological conditions. The displacement of these systems through corporate commodification not only disrupts ecological balance but also erodes social cohesion and legal certainty. Al-Zarqāʾ emphasises that the protection of customary rights serves both distributive justice and regulatory stability within Islamic legal frameworks [7].

From this perspective, resistance to water privatisation does not constitute ideological opposition to markets as such. Rather, it reflects a juridical commitment to safeguarding communal rights, ecological sustainability, and social justice in accordance with the higher objectives of Islamic law. Islamic environmental governance thus demands that market mechanisms remain subordinate to normative obligations grounded in harm prevention and the preservation of essential human needs.

While the preceding analysis has demonstrated the normative limitations of neoliberal environmental mechanisms when assessed through the lens of *Maqāṣid al-Sharīʿah*, this critique does not imply a rejection of international environmental law as a whole. Rather, it invites a deeper comparative inquiry into how Islamic legal reasoning, articulated through *Qawāʿid Fiqhiyyah Kubra*, converges with, and in certain respects diverges from, key doctrines of international environmental governance. The following section therefore undertakes a structured comparative analysis to situate Islamic legal maxims within contemporary global regulatory discourse.

Deep Comparative Analysis between Qawaid Fiqhiyyah and International Environmental Law

This section undertakes a structured comparative analysis between *Qawaid Fiqhiyyah Kubra* and selected doctrines of international environmental law in order to situate Islamic legal reasoning within contemporary global regulatory discourse. Rather than positioning Islamic law in opposition to international environmental norms, the analysis highlights both areas of normative convergence and principled divergence. This comparative approach demonstrates that Islamic legal maxims not only complement international environmental law but, in certain respects, provide a more coherent and enforceable regulatory foundation for addressing environmental harm [2][3][8].

Convergence between the Precautionary Principle and Al Yaqin La Yazul bi al Shakk

The Precautionary Principle, as articulated in Principle 15 of the Rio Declaration, seeks to guide regulatory decision making under conditions of scientific uncertainty. It affirms that the absence of full scientific certainty should not be used as a justification for postponing measures to prevent serious or irreversible environmental damage. Despite its normative appeal, the application of the Precautionary Principle within international

environmental law remains inconsistent, largely due to its classification as soft law. Courts and regulatory authorities often hesitate to impose preventive obligations in the absence of definitive scientific proof of harm [8][10].

By contrast, the maxim *al yaqin la yazul bi al shakk* constitutes a foundational principle within Islamic jurisprudence. It establishes that established certainty cannot be displaced by speculative doubt [2][6]. In environmental governance, the relevant certainty lies in the existing integrity of ecological systems and their recognised necessity for the preservation of life. Claims that proposed developments will not cause harm, particularly where long term or cumulative impacts are uncertain, constitute *shakk* that cannot override this certainty.

Islamic legal reasoning therefore prioritises the preservation of the environmental status quo unless convincing evidence demonstrates the absence of significant risk. This approach places the burden of proof on project proponents rather than affected communities. In doing so, Islamic law offers a more robust normative basis for precautionary regulation than is often available under international environmental law, transforming precaution from a policy preference into a legally grounded obligation [2][5][10].

Divergence between the Polluter Pays Principle and Al Darar Yuzal

The Polluter Pays Principle within international environmental law functions primarily as an economic mechanism designed to internalise environmental externalities. Under this model, environmental harm may be tolerated provided that the polluter bears the associated financial costs. While this approach promotes efficiency and accountability in theory, it may also legitimise the continuation of environmentally harmful activities so long as compensation is paid [8][12].

Islamic law adopts a more stringent normative position through the maxim *al darar yuzal*, which requires that harm be removed rather than monetised [2][7]. Where pollution persists despite the payment of fines or compensation, the legal obligation to eliminate the harm remains unfulfilled. Islamic jurisprudence therefore empowers adjudicative and regulatory authorities to order the cessation of environmentally harmful activities where necessary [3][7].

This divergence reflects a substantive commitment to harm prevention rather than harm pricing. Whereas the Polluter Pays Principle may function as a mechanism for managing harm, *al darar yuzal* functions as a mandate for its elimination. In this respect, Islamic law prioritises ecological integrity and public welfare over economic accommodation, offering a more demanding regulatory standard for environmental governance [5][12].

Intergenerational Equity and Hifz al Nasl

International environmental law increasingly recognises the principle of intergenerational equity, which seeks to protect the interests of future generations. Despite its moral significance, this principle often lacks enforceable legal status and is frequently articulated as a policy aspiration rather than a binding obligation [13]. Its practical impact therefore remains contingent upon political will and institutional discretion.

Within the framework of *Maqasid al Shariah*, environmental protection is embedded in the objective of preserving progeny, or *hifz al nasl* [5][11]. Environmental degradation that compromises the health, resources, and living conditions of future generations constitutes a direct violation of this objective. By situating intergenerational responsibility within the highest tier of legal objectives, Islamic law elevates environmental protection from a discretionary policy goal to a mandatory legal duty.

This framing strengthens the juridical status of environmental rights across temporal boundaries. It also provides a normative basis for regulatory intervention aimed at preventing long term ecological harm, even where immediate economic benefits are apparent. Islamic law thus offers a legally grounded articulation of intergenerational justice that exceeds the aspirational character of many international environmental norms [5][13].

Public Trust Doctrine and the Concepts of Amanah and Hisbah

The Public Trust Doctrine in international and domestic environmental law holds that certain natural resources are preserved for public use and that the state bears fiduciary responsibility for their protection. While widely acknowledged, the doctrine often suffers from weak institutional enforcement mechanisms, particularly in contexts where regulatory agencies lack authority or political independence [8][14].

Islamic law offers a parallel yet institutionally grounded framework through the concepts of *amanah* and *hisbah*. Natural resources are regarded as a trust held by the state on behalf of the community, and regulatory oversight is historically institutionalised through the office of the *muhtasib* [3][4]. The *muhtasib* possessed the authority to intervene immediately to prevent public harm, including environmental degradation, without awaiting formal litigation.

By revitalising the normative spirit of *hisbah* within modern environmental agencies, Muslim majority states may enhance regulatory effectiveness and enforcement capacity. This institutional dimension provides Islamic law with a practical governance mechanism that complements contemporary public trust doctrines while addressing their enforcement deficits [1][3][14]. Through this lens, Islamic law contributes not only normative principles but also institutional insights relevant to modern environmental governance.

CONCLUSION AND POLICY RECOMMENDATIONS

This article has demonstrated that *Qawaid Fiqhiyyah Kubra* constitute a viable normative and operational framework for environmental governance in Muslim majority contexts. By repositioning Islamic legal maxims as enforceable regulatory standards rather than abstract ethical references, the analysis shows that Islamic jurisprudence possesses internal legal mechanisms capable of addressing contemporary environmental challenges in a systematic and institutionally grounded manner [2][3]. The comparative analysis further establishes that these maxims are not insular legal constructs but engage meaningfully with, and in certain respects strengthen, prevailing doctrines of international environmental law.

At the legislative level, the findings support the incorporation of selected *Qawaid Fiqhiyyah Kubra* into national environmental statutes as guiding principles for statutory interpretation and regulatory design. Such incorporation enhances normative legitimacy by aligning positive environmental law with widely recognised Islamic legal principles without displacing existing regulatory frameworks [1]. At the judicial level, Islamic legal maxims justify a recalibration of evidentiary standards in environmental litigation, particularly through shifting the burden of proof onto actors undertaking potentially harmful activities. This approach strengthens access to environmental justice and reduces structural barriers faced by affected communities [8][5]. At the administrative level, revitalising the regulatory spirit of *hisbah* within modern environmental agencies enhances preventive enforcement and accountability by empowering regulators to intervene proactively in cases of environmental harm [3][4].

In conclusion, operationalising *Qawaid Fiqhiyyah Kubra* provides a culturally grounded and legally robust pathway for environmental governance that complements existing international standards. By embedding environmental protection within binding regulatory obligations oriented towards harm removal, justice, and public welfare, Islamic law offers a globally relevant framework for strengthening environmental regulation and intergenerational responsibility.

REFERENCES

1. United Nations Environment Programme. Environmental Rule of Law: First Global Report. UNEP.
2. Kamali M H. Qawaid al Fiqh: The Legal Maxims of Islamic Law. Islamic Texts Society.
3. Hallaq W B. Shariah: Theory, Practice, Transformations. Cambridge University Press.
4. Al Qarafi S D. Al Furuq. Alam al Kutub.
5. Ibn Ashur M T. Treatise on Maqasid al Shariah. International Institute of Islamic Thought.
6. Ibn Nujaym Z D. Al Ashbah wa al Nazair. Dar al Kutub al Ilmiyyah.
7. Al Zarqa M A. Sharh al Qawaid al Fiqhiyyah. Dar al Qalam.

8. Sands P. Principles of International Environmental Law. Cambridge University Press.
9. Ostrom E. Governing the Commons. Cambridge University Press.
10. Raffensperger C, Tickner J. Protecting Public Health and the Environment: Implementing the Precautionary Principle. Island Press.
11. Auda J. Maqasid al Shariah as Philosophy of Islamic Law. International Institute of Islamic Thought.
12. Bosselmann K. The Principle of Sustainability. Ashgate Publishing.
13. Taylor P. An Ecological Approach to International Law. Routledge.
14. Young O R. Governing Complex Systems. MIT Press.