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Jināyah al-Bī'ah (Environmental Crimes): A Maqāṣid-Based Reconceptualization of Ecocide as *Ḥirābah* in Indonesia's Integrative Legal Framework

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Abstract

Indonesia faces significant challenges in environmental protection as large-scale ecocide continues to occur despite the enforcement of administrative sanctions and the application of the *ultimum remedium* principle. This study aims to reconceptualize ecocide as a form of *Ḥirābah* (a major public crime) rather than a discretionary *Ta'zīr* offense, thereby establishing a stronger framework of corporate accountability within Indonesia's pluralistic legal system. Employing a qualitative normative approach and integrative doctrinal analysis, this research utilizes the framework of *Maqāṣid al-Sharī'ah*, particularly *al-Ḍarūriyyāt al-Khams* (the five essential objectives of Islamic law), to evaluate the ecological consequences of ecocide. The findings indicate that ecocide fulfills the essential elements of *Ḥirābah* because it constitutes *Fasād fi al-Arḍ* (systemic corruption and destruction on earth) that threatens public welfare, environmental security, and the divinely ordained balance of ecosystems. Accordingly, based on the principle of *al-Ghunm bi al-Ghurm* (benefit entails responsibility for risk), this study proposes the establishment of a Green Jināyah model that imposes strict corporate liability and classifies large-scale environmental destruction as a mandatory *Hadd*-based offense. The proposed model is designed to operate within Indonesia's pluralistic legal framework by positioning *Ḥirābah*-based criminal norms as a complementary deterrent mechanism rather than a substitute for existing secular legal instruments. Furthermore, this proposal is situated within a transnational comparative perspective by drawing upon classical *madhhab* jurisprudence—particularly the Mālikī *madhhab*'s expansive interpretation of *Ḥirābah*—and engaging with the emerging global movement to codify ecocide as an international crime under the Rome Statute of the International Criminal Court.

Keywords: Ecocide; Green Jinayah; *Ḥirābah*; *Maqāṣid al-Sharī'ah*.

Abstract

Indonesia menghadapi tantangan yang serius dalam perlindungan lingkungan hidup karena praktik ekosida dalam skala besar terus terjadi meskipun telah diterapkan sanksi



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source are properly credited.

administratif dan prinsip *ultimum remedium*. Penelitian ini bertujuan untuk merekonseptualisasikan ekosida sebagai bentuk *ḥirābah* (kejahatan publik berat) alih-alih sebagai tindak pidana *ta'zīr* yang bersifat diskresioner, sehingga dapat membangun kerangka pertanggungjawaban korporasi yang lebih kuat dalam sistem hukum pluralistik Indonesia. Dengan menggunakan pendekatan normatif-kualitatif dan analisis doktrinal integratif, penelitian ini memanfaatkan kerangka *maqāṣid al-shari'ah*, khususnya *al-darūriyyāt al-khams* (lima tujuan esensial syariat Islam), untuk menilai konsekuensi ekologis dari ekosida. Hasil penelitian menunjukkan bahwa ekosida memenuhi unsur-unsur esensial *ḥirābah* karena merupakan bentuk *fasād fī al-arḍ* (kerusakan dan perusakan sistemik di muka bumi) yang mengancam kesejahteraan publik, keamanan lingkungan, serta keseimbangan ekosistem yang ditetapkan oleh Tuhan. Berdasarkan prinsip *al-ghunm bi al-ghurm* (keuntungan selalu disertai tanggung jawab atas risiko), penelitian ini mengusulkan pembentukan model *Green Jināyah* yang menerapkan pertanggungjawaban korporasi secara ketat (*strict corporate liability*) dan mengklasifikasikan perusakan lingkungan dalam skala besar sebagai tindak pidana berbasis *ḥadd* yang bersifat wajib. Model yang diusulkan dirancang untuk beroperasi dalam kerangka hukum pluralistik Indonesia dengan menempatkan norma pidana berbasis *ḥirābah* sebagai mekanisme pencegahan yang komplementer, bukan sebagai pengganti instrumen hukum sekuler yang telah ada. Selain itu, gagasan ini ditempatkan dalam perspektif perbandingan transnasional dengan merujuk pada khazanah fikih mazhab klasik—khususnya penafsiran luas Mazhab Mālikī terhadap konsep *ḥirābah*—serta merespons gerakan global yang berkembang untuk mengkodifikasikan ekosida sebagai kejahatan internasional di bawah Statuta Roma dari International Criminal Court.

Keywords: Ekosida; Jinayah Hijau; *Ḥirābah*; *Maqāṣid al-Shari'ah*.

Introduction

Indonesia is at a tipping point in relation to the interaction of ecological preservation and criminal law (Tan, 2022). Indonesia has a systemic problem with decaying, decrepit, and destroyed ecosystems that are causing breakdowns of the foundation of our society (Iskandar & Sofuoğlu, 2025). As the world's largest producer of palm oil and home to many of the largest wetland areas (peatlands) that are responsible for sequestering carbon from the atmosphere, Indonesia continues to fight against illegal logging and the industrial scale destruction of its resources and ecosystems, which, at this point, is more than just an administrative violation of laws; it is now being recognized as not only a significant violation of the security and rights of human beings, but also of our societies (Hidayat, 2023). In this framework, the application of Islamic criminal law (through the concept of Green Jinayah) is undergoing a significant movement to classify the crime of ecocide as something greater than a *Ta'zīr* offense (an offense that is punishable at the discretion of the state) and into the category of *Ḥirābah* (a violent public act that violates the security of society). *Ḥirābah* includes traditional definitions of highway robbery and public terrorism, in addition to acts that are considered "waging war against society" and causing "widespread chaos" (*Fasād fī al-Arḍ*) (Md Asri & Ruslan, 2020). By integrating the objectives of Islamic law (*Maqāṣid al-Shari'ah*) and the environment (*Hifz al-Bi'ah*) into a modern criminal framework (Natsir et al., 2024), the goal of this movement is to recognize environmental crimes as not only unacceptable business practices but also as crimes that

are extremely damaging to our societies and to humanity, and therefore, as crimes against God (Khasan, 2021).

Fasād fī al-Arḍ, or a significant ecological disaster that qualifies as a crime of public concern (*jināyah al-kubrā*), is based on a collective scholarly tradition from multiple madhhabs. As demonstrated in Al-Mughni, classic Hanbali scholars like Ibn Qudamah recognized that *Fasād* is defined as any systematic action that creates an ecological disturbance enough to threaten common security, and therefore, not confined to simply acts of armed violence (Ibn Qudamah, Al-Mughni, Vol 9). The Maliki scholars went on to provide further clarification on how the term *Ḥirābah* is used in the four Sunni madhhabs. For trunk Ibn Rushd says *Ḥirābah* is defined broadly as any systematic disruption by collective terror of the public order, which may occur either inside or outside of cities, and irrespective of whether there are any conventional weapons (Ibn Rushd, Bidayat al-Mujtahid, Vol 2). Shafi'i scholars therefore used the notion of common fear (*isti'rāb*) to establish that any act that causes a widespread fear in a society qualifies as *Ḥirābah*; whereas the Hanafi scholars, while they were originally more limited in associating *Ḥirābah* with a force of arms, have more recently been interpreted by contemporary scholars to include corporate actions that create systemic harm for the common good or welfare of the community, as shown in *Badā'i al-Sanā'i* by Al-Kasani. This comports with *usul al-fiqh*, which helps form a significant foundation for us to view the steps to develop a basis of *Fasād fī al-Arḍ* viewed under the four Madhhabs. When industrial ecocide causes mass displacement and public health crises and the systematic destruction of joint ecological resources, it must be considered *Fasād fī al-Arḍ* by all four Sunni madhhabs, and thus meets the criteria of being a public crime of the highest order.

Maqāṣid al-Sharī'ah (the objectives of Islamic law) have increasingly become a focus of scholarly attention as they relate to Environmental Governance. Nurholis (2025) argues that *hifz al-nafs* (the Preservation of Life) and *hifz al-mal*; however, these traditional principles must be expanded to include both the ethical and practical protection of Ecosystems in order to provide long-term sustainability. In addition, researchers such as Islamy et al. (2025) are stressing the value of *Fiqh al-Bi'ah* (Islamic Environmental Jurisprudence) in addressing global crises such as climate change. While *Fiqh al-Bi'ah* provides a solid moral basis for accountability (*mas'ūliyyah*) and Stewardship (*khilāfa*), many contemporary legal frameworks lack this basis.

Concurrently, several debates focus on whether current Indonesian Regulations can effectively stop the large-scale destruction of the environment through ecocide. Ferdiantoro et al. (2025) state that while ecocide poses a grave threat to Indonesian society, there is no explicit provision for Ecocide as a standalone crime in current National Law. Currently, the only way to hold corporations accountable is through minimal

Administrative Sanctions rather than Criminal Proceedings Against Corporate Leaders. Najemi and Rapik (2024) are investigating the potential of Islamization of legislation as a Solution; for example, discussions of Green Fatwas issued by Nahdlatul Ulama and Muhammadiyah indicate increasing recognition that religious values may promote compliance with law in cases where secular law fails.

The Green Fatwa movement in Indonesia is an example of how the larger movement toward Islamic legal engagement with ecological governance is a global one. The *Muzakarah* of the National Fatwa Council in Malaysia issued a fatwa in 2007 recognizing environmental conservation as an obligation of all Muslims (*fard kifayah*) and this has since been incorporated into Malaysia's National Biodiversity Policy (Nasir et al., 2022). In Jordan, the Royal Islamic Strategic Studies Centre affirmed that the stewardship of the environment is part of *maqāṣid* governing and has influenced national water conservation legislation (Khalid, 2017). In Egypt, *Dar al-Ifta* has also passed fatwas saying that intentionally contaminating water is haram and uses the principle of "do no harm" (*lā darar wa lā dirār*) to justify criminal punishment for those acts (Harnowo and Habib, 2024). The Fiqh Academy of the Organization of Islamic Cooperation (OIC) stated that practices that lead to the destruction of the environment are contrary to the *Maqāṣid al-Sharī'ah* and called for OIC member states to incorporate Islamic environmental ethics into their national legal systems (Ibrahim and Shirazi, 2020). The Green Jinayah model proposed by this study is a part of and the most developed version of a transnational Islamic legal movement to criminalize ecocide and it is the only Green Fatwa to openly label large-scale ecological harm as *Ḥirābah* and prescribe some form of a legal punishment by way of reforming criminal law in all jurisdictions.

Furthermore, as Dhonni et al., (2023) ecological *fiqh* actualization demonstrates, the way of thinking about *hifz al-bi'ah* (preserving the environment) as a basic religious obligation is a significant movement in Indonesian Muslim thought. Finally, research on customary environmental law by Imamulhadi et al. (2025) has shown that Indigenous norms and local wisdom in Indonesia are often more effective for conserving nature than formal modern law, thereby promoting a model for transformation by incorporating these values into national legislation.

Scholarship in environmental protection has divided into two distinct approaches: One side is international criminal law and the growing movement for ecocide to be viewed as one of the core crimes equivalent to genocide or war crimes (Elia, 2026); while the other is Islamic legal scholarship; which has been primarily concerned with the duties of humans as stewards of nature (i.e., environmental stewardship (*khilāfah*)), the ethical obligations they owe to the environment, and their legal obligations to preserve the environment through *ta'zir* (punitive) measures (Amiruddin et al., 2024). However, while these studies

provide a strong ethical basis for environmental protection, a gap exists in their jurisprudential categorization of catastrophic destruction of nature as a serious *Jinayah* (major crime). For instance, in the majority of Indonesian legal literature, the *ultimum remedium* rule continues to support the notion that most environmental offences can be adequately punished through administrative sanctions rather than through criminal punishment (Adhari et al., 2024). To fill this gap, this study proposes a doctrinal reinterpretation of ecocide as *Ḥirābah* (crime against public order and security), extending the *Maqāṣid*-based theory of harm and *Fasād fī al-Arḍ* (systemic mischief) doctrine. This proposal reorients the discussion regarding mandatory penalties rather than discretionary ethics, thus contributing to the body of work related to both Islamic criminal law and environmental regulation in Indonesia.

Therefore, the objective of this study will be to explore the interplay between the concept of *ḥirābah* and modern definitions of ecocide by establishing what type of a normative-legal framework could incorporate these ideas into existing Indonesian environmental law and address the enforcement of such legislation through the use of both the symbolic and legal weight of Islamic jurisprudence in protecting Indonesia's environmental integrity for years to come.

This paper proposes three distinct scholarly contributions to the study of both Islamic jurisprudence and Environmental Law. The first contribution is the redefinition of Ecocide as a serious Public Crime (*Jināyah al-Kubrā*), specifically under the category of *Ḥirābah*, which has important implications for changing the nature of discourse around Ecocide from discretionary duties of ethical stewardship to a set of rigorous laws that impose penalties; the second contribution is the development of *Hifz al-Bi'ah* (the protection of the environment) within contemporary Islamic Criminal Law through the lens of *Maqāṣid* methodology; and finally, the third contribution is the creation of an Islamic normative framework to guide the development of environmental regulation in Indonesia and bridge State and Sharia-based corporate accountability. The research proposes that by defining Ecocide as a form of systemic harm (*Fasād fī al-Arḍ*) equivalent to *Ḥirābah*, we develop a more effective protection mechanism for biodiversity in the pluralistic legal systems of contemporary Indonesia.

Methods

This study employs a qualitative, integrative doctrinal-normative legal method. Rather than a mere comparison, this research utilizes a legal pluralism framework—specifically the theory of Integrative Jurisprudence—to harmonize Indonesian statutory law with Islamic penal principles. The research is conducted in three systematic stages:

1. Data Identification and Selection Criteria

The study utilizes two distinct datasets to ensure methodological rigor:

- a. Normative Sources (The Subject): Primary sources include the UUPPLH (Law No. 32/2009) and the 1945 Constitution, alongside primary Islamic texts (*Nushūsh*) regarding *Fasād fī al-Arḍ*. Secondary sources include classical *fiqh* commentaries (*kutub al-turāth*) and MUI fatwas.
- b. Empirical Contextual Data (The Object): Statistical data on Indonesian deforestation and environmental litigation (2016–2025) are utilized through the lens of *tahqīq al-manāt* (verification of the context). This empirical data does not serve as a statistical finding but as a factual basis to determine whether current ecological destruction meets the threshold of "public terror."

2. Operationalization of *Fiqh* Concepts

The analysis avoids broad assertions by applying specific *Usul al-Fiqh* mechanisms:

- a. The *Maqāṣid* Framework: *Al-Dharūriyyāt al-Khams* is used as the evaluative lens to determine the severity of ecocide. Destruction is measured by its impact on *Hifz al-Nafs* (Life) and *Hifz al-Mal* (Property/Resources).
- b. Analogical Extension (*Qiyas*): This study employs *Qiyas* to argue that the systemic, life-threatening nature of industrial ecocide shares the '*illah* (effective cause) of "public insecurity" found in classical *Ḥirābah*.
- c. Philosophical Grounding: The principle of *Al-Ghunm bil Ghurm* (Risk Follows Benefit) is operationalized as a normative basis for Strict Corporate Liability, bridging the gap between individual moral responsibility and corporate legal accountability.

3. Analytical Procedures and Techniques

Data is evaluated using Thematic Content Analysis and Deductive Reasoning. The process involves:

- a. Coding: Categorizing environmental violations in Law 32/2009 according to their scale and intent.
- b. Thematic Synthesis: Mapping these categories against the criteria of *Fasād fī al-Arḍ* and *Ḥirābah*.

Validation: Cross-referencing findings with MUI Fatwas to ensure the proposed reclassification aligns with contemporary Indonesian Islamic legal trends.

Result and Discussion

Theoretical Foundations of *Hifz al-Bi'ah* and *Maqāṣid al-Sharī'ah*

The new approach among Islamic jurisprudence regarding environmental protection as an overarching purpose of Islamic law is one of the major developments in the field of contemporary Islamic Law (Abdullah, 2025). Classical Islamic jurisprudence

began with people like Al-Ghazali, and was later codified by Al-Shatibi in *Al-Muwāfaqāt* as having five basic needs (*Al-Dharūriyyāt al-Khams*) which the Sharia aims to protect: religion (*Din*), life (*Nafs*), intellect (*'Aql*), ancestry (*Nasl*), and possessions (*Mal*) (Harun, 2023). Historically, these categories have been the framework for most of the legal reasoning in Islam, but more recently, scholars like Yusuf al-Qardhawi have suggested that environmental protection (*Hifz al-Bi'ah*) must also be considered as the first requirement for fulfilling the five original objectives of the Islamic law (Al Banna & Rosyidah, 2025). This idea of thinking about a system, as has been described by many contemporary scholars, including Jasser Auda, is that these objectives are not totally separate from one another, but instead, they fit together to create a healthy community (Nashuha et al., 2025).

In Indonesia, this religious awareness is becoming formalized through the development of *Fiqh al-Bi'ah*, or environmental jurisprudence. Within this framework, protecting the environment is also part of *Hifz al-Din* (protecting religion), because the earth is created by Allah, and humans are *Khalifa* (caretakers) of the earth and should care for and protect it, not abuse it (Abdullah, 2025). To destroy ecosystems is therefore not only contrary to a person's responsibilities as a *Khalifa*, but also to his or her mission as a *Khalifa* on earth. Also, there are clear empirical connections between environmental health and *Hifz al-Nafs* (protection of life) based on the 2015 fires set by industrial land-clearing practices which released toxic smoke, leading to an estimated 100,000 premature deaths throughout Southeast Asia, in the view of most observers (Clarke, 2017). Therefore, by preserving nature, according to Islamic legal theory, it is preserving not only the quality of life, but also the survival of human life, in accordance with the Quranic teaching that saving one person is equivalent to saving all of humanity (Surah Al-Ma'idah (5:32).

Table 1. Integration of Environmental Protection within *Maqāṣid al-Sharī'ah*

Maqāṣid Category	Relation to <i>Hifz al-Bi'ah</i> (Environmental Protection)	Impact of Ecocide
<i>Hifz al-Din</i> (Religion)	Environmental care as an act of worship and stewardship (<i>Amanah</i>).	Violation of the divine covenant of the <i>Khalifa</i> .
<i>Hifz al-Nafs</i> (Life)	Nature provides life-support systems (clean air, water, food).	Premature death and chronic illness from pollution/haze.
<i>Hifz al-'Aql</i> (Intellect)	Healthy environments support cognitive development and health.	Toxic exposure leads to neurological and physiological damage.
<i>Hifz al-Nasl</i> (Lineage)	Sustainability ensures resources for future generations.	Depletion of resources threatens the survival of descendants.
<i>Hifz al-Mal</i> (Property)	Natural resources as common property (<i>Al-Amwal al-'Ammah</i>).	Private gain through public ecological loss is "theft."

The Legal Anatomy of *Ḥirābah* and *Fasād fī al-Arḍ*

The reclassification of ecocide as a form of *Ḥirābah* will require significant modification in the traditional definitions of *Ḥirābah* as a crime. In Islamic law, *Ḥirābah* is classified as one of the *Hadd* crimes (i.e., a crime) whose punishment is set forth by the Quran and which is to be punished with death, amputation, or imprisonment for a period of time (Ismail, 2025). Generally, *Ḥirābah* has been interpreted by many classical jurists within the context of armed robberies on highways (or piracy). However, there is a growing consensus that the form of public terrorism associated with *Ḥirābah* is public terror in a war against civilization and its people. This is clearly articulated in Surah al-Ma'idah 5:33, which states that there shall be a severe punishment for anyone who "wages war against God and His Messenger" and strives to create mischief (*Fasād*) in the land (Lubis, 2024).

Current legal theory maintains that the form of mischief referred to in the Quran must not be restricted to physical violence, but that it describes a systematic and large-scale destruction of all that sustains our lives upon this planet. Furthermore, when one considers the term *Fasād* in relation to the term *Islah* (putting things right), it becomes clear that the question of the environment is part of how the classical commentators treated the term *Fasād* in this passage (Ghani et al., 2022). Also, classical commentators defined *Fasād* as open disobedience against God, and most modern scholars interpret *Fasād* to be primarily a reference to destruction of nature and its existing systems ('Adalah, 2024). Thus, *Ḥirābah* should be understood as an act that creates fear and insecurity, as well as creating the opposite effect of producing comfort and security through a stable environment (Yahya & Adedeji, 2024). Thus, *Ḥirābah* is not restricted to acts of physical violence; but instead, it includes acts that create an equivalent of fear (i.e., environmental events).

Therefore, there are many classical schools of jurisprudence that provide many different definitions or criteria for identifying the person guilty of *Ḥirābah*. For example, in the Maliki school an individual (the *Muharib*) is considered to be guilty of *Ḥirābah* if they are brandishing a weapon to prevent others from having free access and to cause others to suffer from their actions, regardless of whether or not the *Muharib* is a Muslim or a non-Muslim and regardless of whether the act takes place within a city or in the countryside (Khasan, 2021). The modern, corporate context of *Ḥirābah* includes the generation of ecocide; specifically, the "weapons" of ecocide include machinery and/or equipment (i.e., bulldozers) that clear what is supposed to be protected areas (i.e., forest reserves), setting fire to carbon-rich peatlands that are then released into waterways and/or creating toxic wastes that are released into shared waterways. Thus, modern-day corporate ecocide is extremely similar to the classical interpretation of *Ḥirābah* since both are collective acts

(Abdullahi et al., 2024). To reflect this comparison to the classical definition of *Ḥirābah*, it must be emphasized that ecocide is now occurring on a large scale in Indonesia as 66.7% of Indonesian species of rainforest are now considered degraded as of 2020 (Rainforest Foundation Norway, 2025). Thus, the current definition of ecocide for Indonesia has changed due to the aforementioned scale of destruction.

Currently, ecocide in Indonesia is typically treated as a *Ta'zīr* (punishable at the discretion of the judge) as the punishments are generally limited to fines and or short prison terms. However, because of the large-scale nature of ecocide occurring in Indonesia (as of 2020), it would appear that the mischief created by the aforementioned acts currently meets the higher threshold of a *Hadd* offense and should be classified as *nihab*, which would indicate that ecocide represents a direct assault on the civilizational roots of the entire society and therefore, represents a type of war against social order and/or public peace. Consequently, classifying ecocide as the crime of *Ḥirābah* will result in a shift in how the law responds to ecocide—i.e., instead of focusing solely on an administrative response, as under the current approach, it will encourage a greater emphasis on deterrence as the principle of punishment and/or restore order of society.

Table 2. Comparison between Classical *Ḥirābah* and Proposed Ecological *Ḥirābah*

Metric	Classical <i>Ḥirābah</i> (Robbery/Piracy)	Proposed Ecological <i>Ḥirābah</i> (Ecocide)
Perpetrator	Armed groups or individuals.	Corporations or organized illegal syndicates.
Primary Victim	Wayfarers and defenseless individuals.	Society at large, future generations, and ecosystems.
Objective	Seizure of private property by force.	Seizure/Depletion of common resources for profit.
Social Impact	Fear, insecurity, disruption of travel.	Public health crises, displacement, ecological collapse.
Jurisprudential Category	<i>Hadd</i> (Quran-stipulated punishment).	Proposed transition from <i>Ta'zīr</i> to <i>Hadd</i> .

Indonesia's Statutory Context: Law No. 32 of 2009 and the Administrative Failure

In Indonesia, the primary law used to address issues related to the environment is Law Number 32 of 2009 on Environmental Protection and Management (*Undang-undang Perlindungan dan Pengelolaan Lingkungan Hidup* or UUPPLH). It was created systematically to protect the environment and reduce the impact of pollution through three types of punishment; administrative, civil, and criminal (Awewomom et al., 2024). The law has been

faced with practical challenges associated with the concept of *ultimum remedium* (last resort approach), which regards criminal law as the final option after all administrative and civil remedies are exhausted (Puspitasari et al., 2026).

The *ultimum remedium* perspective creates a system in which companies view paying for administrative fines as a typical cost of doing business, contributing to a culture of "pay to pollute" (Najicha et al., 2022). Administrative law is often regarded as more efficient than criminal law because there is no need for the lengthy court processes for administrative cases. However, many criticize the efficiency of administrative law stated as not sufficient to curtail large-scale environmental destruction. As an illustration, administrative penalties such as warnings and temporary license suspensions have not proven to be effective in stopping continuing forest loss in the primary peatlands of Indonesia. Critics state that criminal sanctions must be a primary remedy for significant environmental crimes, and not an *ultimum remedium* (Hurley & Lee, 2021).

The complexity of environmental litigation in Indonesia is made even more complex because of the existence of legal pluralism. There is a pluralism legal system in Indonesia that consists of statutory (formal) laws and local customary laws (*Hukum Adat*) and Islamic law (Hariri & Babussalam, 2024). While UUPPLH provides a framework for determining criminal liability for individuals and companies based on the principle of statutory law, the burden of proof necessary to establish corporate *mens rea* (intention) in environmental litigation creates a challenge, resulting in low crime rates and/or insufficient sentences for corporate environmental crimes (Anam et al., 2025). If people can regard these corporations as *ḥirābah* criminals, it would create a religious and moral obligation to overcome the outside bounds of the *ultimum remedium* standard, creating a perception of immediate threat to the public and therefore requiring immediate, severe punishment for acts of ecocide.

The amount of deforestation that has occurred in Indonesia illustrates the need for a shift to a new paradigm of law. The data indicates that while rates of deforestation from 2016-2021 fluctuated, the trend appears to have shifted back upward, with approximately 2,920 km² of rainforest destroyed in Indonesia from January through May, 2023, averaging approximately 8 km² per day (Rainforest Foundation Norway, 2025). Historically, the primary causes for the deforestation of these vast rainforests were the production of palm oil and pulpwood, which continues to be a problem due to the continued prevalence of illegal logging and the failure of the FLEGT licensing verification systems to properly curb illegal deforestation (Acheampong & Maryudi, 2020).

The human and economic costs of ecocide to Indonesia are tremendous. In the past, the World Bank estimated the cost of the forest fires in 2015 was US \$16 billion. Researchers at Harvard and Columbia Universities projected that 100,000 people died

prematurely from inhaling the toxic smoke generated by the Indonesia wildfires (Clarke, 2017). These figures demonstrate that ecocide is not an environmental issue, but rather is a disaster that impacts the economic viability of the government's budget, public health, and human rights, thereby meeting the definition of "spreading corruption in the land" as stated in the verses of the Quran regarding *Ḥirābah*.

Al-Amwāl al-'Ammah and the State as Trustee

A key aspect of the argument that ecocide should be treated as a form of *Ḥirābah* is grounded in Islamic law's view of *Al-Amwāl al-'Ammah* or "public property." Under Sharia, all natural resources are considered to be owned by the community or *Ummah* collectively rather than by individuals or by the state (Rahman, 2020). This perspective is based upon the concept of *Al-Mulk Lillaah*, that is, Allah's ownership of all things; thus, humans are merely custodians (*Amanah*) of these resources for future generations (Muhamad et al., 2020).

According to Islamic scholarly interpretation, the state has a duty not only to act as a representative (*Wali*) for the *Ummah* in the use of their natural resources but also to manage them in a manner that is fair, equitable and accountable to benefit society as a whole (*Maslahah 'Ammah*) (Istanto et al., 2025). This idea is reflected in Article 33(3) of Indonesia's 1945 Constitution, which states that the natural resources of the country must be controlled by the state and used for the greatest prosperity of the people. Therefore, if the state permits private corporations to deplete or destroy natural resources (e.g., forests or water) for short-term profit, then this action would be considered *Ghullul* or treason against the common good (Shamshiyev, 2024).

The depletion of the environment is not just a problem of regulatory failure, but rather represents a theft from the *Ummah's* collective storage of resources (Astutik et al., 2022). The idea of collective ownership provides an argument that criminalizes the destruction of natural resources because such acts harm the entire community by attacking its shared resource base. The rationale, therefore, is to remove the focus from market efficiency and shift to ethical stewardship as the basis for considering persons who violate their fiduciary duty to be criminals.

Corporate Criminal Liability and *Al-Ghunm bil Ghurm*

Criminal law has its flaws when trying to hold institutional (corporate) crime accountable as opposed to just holding an individual actor accountable. One way to evaluate corporate liability for ecocide is through an Islamic law principle called *Al-Ghunm bil Ghurm* (Risk Follows Benefit), which gives both evidence and philosophical support for corporate and criminal liability. The premise behind *Al-Ghunm bil Ghurm* states that

whoever benefits from something must also bear the risk and/or responsibility for the associated risk (Ghazali et al., 2024).

For instance, in the case of ecocide, if a corporation is profiting tremendously from its actions (e.g., planting palm oil or mining), that corporation must be held fully liable for the risks that those activities create to the environment. If the corporation benefits from the clearing of peatlands, it should also bear the criminal and civil responsibility for any pollution and fires that occur as a result of that clearance. This is in line with the "Polluter Pays" doctrine and elevates the doctrine to a level of criminal responsibility/liability (Nacar, 2025). When ecocide is recategorized as *Ḥirābah*—it also allows for the *Ishtirak* approach (substantial participation). In this way, every party involved in the systematic crime is responsible as a perpetrator of *Ḥirābah*.

While the recategorization of ecocide as *Ḥirābah* allows for these approaches, there are challenges regarding evidence in the Indonesian legal system resources (Astutik et al., 2022). The type of scientific information and longitudinal studies required to prove that a specific corporate decision contributes to substantial environmental destruction can be extremely complex, particularly when trying to determine causation. Furthermore, the legal principle of legality (*Nullum Crimen Sine Lege*) requires precise definitions for environmental delict under the penal code (Moise, 2020). Therefore, to use the *Al-Ghunm bil Ghurm* principle, Indonesian Law would have to move toward establishing strict liability for ecocide; such that the benefit derived from industrial expansion creates a legal presumption of responsibility for the resultant environmental mischief.

Recently, the Indonesian government has significantly increased its military presence in the forests to enforce their laws against illegal operations. This new tactic has resulted in the seizure of approximately 2 million hectares of illegal land by early 2025—much greater than their initial target of 500 thousand hectares (Forest Trends, 2026). Although the increase in enforcement is a positive sign of the government's intent to hold culpable parties accountable, there is concern that enforcement actions could disproportionately affect smallholders and indigenous people, while large corporations may be able to escape the full extent of criminal prosecution.

Table 3. Outcomes of Government Enforcement in Environmental Sectors

Sector	Target/Action	Outcome (as of 2025)	Financial/Legal Impact
Palm Oil	Seizure of illegal operations inside forest zones.	4.1 million hectares moved against.	9.3 trillion IDR collected from 54 firms.

Mining	Crackdown on mining without permits.	8,800 hectares of concessions seized.	Potential fines total over 140 trillion IDR.
State Reclaimed	Overall recovery of forest area.	2 million hectares reclaimed.	Handover to state companies (e.g., PT Agrinas).

Source: ([Forest Trends, 2026](#))

This increased military enforcement also illustrates the potential for existing political and social conflict regarding *Ḥirābah* Crimes and further reveals the government's perception of these illegal activities as ultimately detrimental to Indonesia's overall national security.

The Role of Fatwas in Shaping Green Jinayah

Since the release of fatwas by the Indonesian Ulema Council (MUI), they have played an important role in building a bridge between religion and law for the protection of the environment ([Iskandar & Sofuoğlu, 2025](#)). Despite being non-binding under Indonesia's secular legal system (unless adopted into statute), fatwas are viewed as a source of moral guidance, and have importance as symbols of morality for the 87% of Muslims in Indonesia ([Mujani, 2019](#)).

The MUI Fatwa No. 22 of 2011 concerning environmentally friendly mining is a seminal document that articulates the role of humanity as the steward (*Khalifa*) of the earth, with a spiritual obligation to protect creation ([Permata, 2025](#)). It specifically prohibits mining practices that create irreparable harm to the environment or otherwise threaten to sustain ecosystems ([Ghazali et al., 2024](#)). The fatwa advocates that sustainable mining must be a balance between profit, social and cultural obligations, and environmental preservation. In addition, the fatwa aligns itself with the goals of *Maqāṣid al-Sharī'ah* (to preserve life and property), which serves as the normative basis to reclassify destructive forms of mining as acts of crime.

Additionally, the MUI Fatwa No. 04 of 2014, on the conservation of endangered species, and Fatwa No. 41 of 2014, regarding the management of waste, both reinforce the sentiment that environmental degradation disrupts the "divine balance" (*Mizan*) of the universe. By declaring these activities *Haram* (forbidden) and detrimental to public welfare (*Maslahah*), the MUI has provided a theological basis for the state to upgrade environmental offenses to the level of *Ḥirābah*. MUI Fatwas have promoted the notion of an environmental theology, which seeks to shift the paradigm away from Anthropocentric (Human-Centered) to that of Eco-Centric, where the health and vitality of the earth must be a prerequisite to the exercise of all human rights.

Juridical Justification for The Transition from *Ta'zīr* to *Hadd*: An Usul Al-Fiqh Analysis

A reclassification of ecocide from a *Ta'zīr* offense to a *Hadd* crime in the context of *Ḥirābah* needs an extensive *usul al-fiqh* basis because this is one of the most controversial issues in Islamic law, the questions of who has the power to establish (*ithbat al-hukm*) and change established mandatory punishments (*hudud*). A rationale for this reclassification is provided in the following five interrelated doctrinal mechanisms.

In the first argument based on *Qiyas* (analogical reasoning) the reason for creating *Ḥirābah* was because of the Quran (Al-Ma'idah 5:33) as it related to creating public fear, (*isti'rab*) and harm to communal safety, (*Ikhtal al-Amn Al-Amm*) (Almaqtari et al., 2025). The same reasons apply to the systematic destruction of common water systems, peat lands and forests that create massive fear; displace communities; cause early death; and destroy the ecological foundation of any number of surrounding peoples (Hajad et al., 2025). Due to the same effective reason, *Qiyas* permits and even demands that the same *Hadd* category be applied to ecocide as would be applied in a classic case of *Ḥirābah*. This argument is further supported by the maxim, *al-hukm yadūru ma'a 'illatihi wujūdan wa 'adaman* (The ruling follows its reason in both existence and non-existence), a foundational principle of *Usul Al-Fiqh* and recognized in all four of the Sunni schools of thought.

In the second argument based on *Maslahah Mursalah* (general public interest), Al-Ghazali sets forth that there are three types of interests, interests that are established by the texts (*Mu'tabara*), those that are rejected by the texts (*Mulghā*) and those that the texts are silent on (*Mursala*). The present day, industrial ecocide is too large in scale to even conceive for the classical jurist, and therefore falls into the category of *Mursala*: such a harm is so great and systemic, that silence from the classical texts will not be accepted as a form of permission, but will be seen as an area that needs to be filled by a principle of preservation of five basic human values, (*Al-Dharūriyyāt Al-Khams*) (Syatar et al., 2025). All four of these human values (*Hifz Al-Nafs* (life); *Hifz Al-Mal* (property); *Hifz Al-Nasl* (future generations); and *Hifz Al-Aql* (cognitive function through toxic environments)) are all threatened through large scale, ecocide, and thus lend credence to the argument to elevate ecocide to a *Hadd* crime.

Thirdly, *Sadd al-Dharā'ī'* (blocking the means to harm) argument: This principle, which is especially relevant to the Maliki and Hanbali schools of thought, allows the legal preemptive restriction of acts that create a direct path to prohibited outcomes, even if those acts are not otherwise unlawful. The framework of *dharā'ī'* created by Maliki jurist Ibn al-Qayyim is applicable to this case: While corporate logging, industrial combustion, and toxic discharge are legal acts in and of themselves (under positive law in Indonesia), when at an expansive scale and with an awareness of their ecocide consequences, they

become a *dharā'ī* to the broader public harm of *Fasād fi al-'Ard*. Therefore, *Sadd al-Dharā'ī* stands as a second and independent doctrinal basis for elevating the offense from the discretionary *Ta'zīr* regime to the mandatory *Hadd* framework of *Ḥirābah* (Rannu & Adhari, 2025).

Fourthly, *Al-Darar al-'Am Yuqaddamu 'alā al-Darar al-Khāss* (public harm is given priority over private harm) principle: Across all Sunni schools, this maxim establishes that when there is a conflict between corporate private interests and collective public harms, Islamic law prioritizes removing the collective harm to the public. The *Ta'zīr* regime's structural preference for corporate economic interest over communal ecological rights is reinforced by providing by leaving judicial/administrative discretion to determine both the qualitative and quantitative punishment for *Ta'zīr* offences. Conversely, the mandatory *Hadd* framework of *Ḥirābah* creates an absolute prohibition against discretionary punishment and guarantees protection for public interest, consistent with the State's role as *Wali* (trustee) of *Al-Amwal al'Ammah*.

Fifthly, addressing the objection of *takhfif al-hudūd* (restriction of *hudud*): The classical scholars were generally conservative about the expansion of *hudud* categories due to their belief that *al-hudūd tudra' bil-shubuhāt* (*hudud* punishments are suspended when there is doubt). This study acknowledges this objection; however, it does not advocate for the automatic application of *Hadd* punishments (i.e., such as death or amputation) to cases of corporate ecocide. Rather, the reclassification as *Ḥirābah* operates on the basis of legal gravity and public law status—removing ecocide from the discretionary *Ta'zīr* regime and establishing as a result it is to be subject to mandatory state prosecution, while not requiring the automatic importation of all classical *Hadd* sanctions. The classical *Hadd* sanctions will continue to be adapted as required through *ta'zīl* (discretionary institutional amendment) by the *Majlis al-Tashrī'* (Islamic legislative authority). This approach is consistent with the opinions of contemporary *usul al-fiqh* scholars such as Yusuf al-Qardhawi and Jasser Auda, who advocate for *maqasid*-based reinterpretation of *Hadd* categories to reflect what their underlying social protection purpose was intended to be rather than as literal historical artefacts.

Synthesizing Ecocide as *Ḥirābah*: A Jurisprudential Reconstruction

To classify ecocide as *Ḥirābah* under the Indonesian legal system a reconfiguration of both national positive law and Islamic legal philosophy must occur. This reconfiguration must also be viewed as a value-based activity rather than simply a technical process related to regulation; thus, placing the ecological responsibility first.

The criteria for determining if large-scale environmental destruction meets the *Ḥirābah* criteria are as follows (Permata, 2025):

1. Collective and Systematic: The offense is not an individual act but rather a product of a larger group (corporations/syndicates) combined, coordinated, and systemic actions.
2. Terrorism and Disorder: The loss of aquatic sources or massive toxic smoke has devastated entire communities and put them in a state of terror due to fear of death and destruction from harm done by corporations.
3. Denial of Common Rights: The depletion or poisoning of *Al-Amwāl al-'Ammah* (common property) is evidence of a trust from the Ummah or global community.
4. *Fasād fi al-Ard* (Mischief): The threat to the balance of creation, and the continuation of life, is enormous as a result of extreme ecological destruction or imbalance caused by activity.

Incorporating Islamic perspectives into Environmental Impact Assessments (EIA) will help overcome barriers to holding corporations criminally liable for their actions against the environment (Nasir et al., 2022). An EIA should be a tool of evaluation to assess both *Fasad* and *Amanah*, not a list of irrelevant technical descriptions. Furthermore, imposing just and firm sanctions should include government authority to seize corporate assets and dissolve corporations or other entities that engage in ecocide against society.

Additionally, the role of the judiciary must change to adapt to the current state of affairs. Courts must evolve from simply applying black-letter law to utilizing the principles contained in symbolic jurisprudence such as *Al-Ghunm bil Ghurm* to determine issues. The Constitutional Court of the Republic of Indonesia is beginning to recognize the rights of indigenous peoples in connection with customary forests (Budiman et al., 2021), even though there are no specific regulations pertaining to them contained in forestry laws (see Decision number 35/PUU-X/2012). The concept of legal pluralism provides a platform for the compatibility of principles derived from the Quran (Sharia) and the 1945 Constitution of Indonesia, creating an excellent basis for Green Jinayah.

Conclusion

This study contemplates the recasting of ecocide as *Ḥirābah* (major public crime) under Indonesia's legal system as a potential strong, value-based means of counteracting catastrophic ecological devastation. It posits that large-scale environmental crimes can be viewed through the lens of *Maqāṣid al-Sharī'ah*, specifically the protection of life (*Hifz al-Nafs*) and the protection of resources (*Hifz al-Mal*) to establish the requirement that large-scale environmental crimes are jurisprudentially viewed as systemic mischief (*Fāsād fil-Ardh*) and therefore warrant the change from discretionary administrative sanctions to mandatory Jinayah status. Additionally, using the principle of *al-Ghunm bil Ghurm* (Risk Comes from Benefit) as a scholarly basis establishes strict corporate liability and proposes moving away from the current "Pay to Pollute" paradigm, further perpetuated by the

ultimum remedium doctrine. However, this study is limited because its scope is normative and doctrinal. While it provides a pathway for jurisprudential development, additional empirical inquiry needs to be conducted to determine whether the Indonesian judiciary is equipped to incorporate Sharia-based ethics into secular environmental litigation. Nevertheless, the policy implications are strong the Indonesian Ulema Council (MUI) and other legislative bodies may want to consider using this integrative framework to strengthen their enforcement of environmental law. Ultimately, the research supports a pluralistic approach to law that ties Islamic jurisprudence and state law together and creates a more deterrent penal sanction that positions the state as a more effective trustee of public property (*Al-Amwāl al-'Ammah*) for future generations.

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