Religious Law for the Environment: 
Comparative Islamic Environmental Law in Singapore, 
Malaysia, and Indonesia 

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Abstract
The recent 2018 special report on climate change produced by the Intergovernmental Panel on Climate Change (IPCC) of the United Nations unsurprisingly revealed states’ continued failure to properly implement environmental law and meet their climate change pledges, thus bringing the world closer to a point of no return. Considering the imperfections of national environmental laws in most countries, alternative sources of law and normativity can be engaged to complement efforts in effecting social control and fostering compliance. Religious law is one such source, and where the environment is concerned, religious leaders worldwide have highlighted the existence of an environmental ‘law’ in their respective traditions. Logically then, religious law can help effect behavioural change in religious communities such that they can become more ‘pro-environment’. This paper analyzes how Islamic law – specifically Islamic environmental law – has been used in Singapore, Malaysia, and Indonesia for this purpose. It particularly examines and analyzes the dissemination of Islamic environmental law to Muslims in these jurisdictions through religious rulings (fatwa) and mosque sermons (khutbah). The paper then evaluates the challenges to Islamic environmental law by situating its operation in two important contexts: (1) the context of religion-state relations in Southeast Asia, and (2) psychological studies on pro-environment behaviours arguing that religion alone cannot motivate individuals to behave in a pro-environment manner. The paper concludes by reflecting on what these challenges mean for the search for solutions to our environmental predicaments, as well as prospects for further intellectual inquiry.

INTRODUCTION

The recent 2018 special report on climate change produced by the Intergovernmental Panel on Climate Change (IPCC) of the United Nations1 unsurprisingly revealed that states continue to fail in implementing environmental law properly – and their failure to meet goals that address climate change brings the world closer to a point of no return. The installation of governments over the past few years that deny climate change, undermine vital safeguards regulating the exploitation of natural resources and due diligence obligations such as environmental impact assessments (EIAs), among others, reflect a worrying trend that perpetuates the already pervasive problem of the lack of political will. However, there is not just a need to ensure the proper implementation of environmental laws. There is also a need to ensure compliance.

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One of the foundations of environmental rule of law, according to the *World Declaration on the Environmental Rule of Law* produced by the 1st IUCN World Environmental Congress in 2016, is the implementation of:

[m]easures to ensure effective compliance with laws, regulations and policies, including adequate criminal, civil and administrative enforcement actions, and mechanisms for timely, impartial and independent dispute resolution...

However, the achievement of environmental rule of law cannot only depend on state institutions operating properly, as the above principle (and the entire Declaration) proclaimed. As mentioned earlier, this has been difficult to achieve in many states. However, achieving compliance is also no easy feat. While subjects of the law – state agencies, individuals, and businesses, among others – are expected to comply with established positive law, the decision to do so (or not) is largely moral in nature. This makes the issue of compliance complex by involving considerations of a multitude of non-legal factors that shape human behaviour and decision-making generally.

For this reason, the paper strongly supports the operation of other sources of normativity to foster compliance alongside top-down, state-enforced environmental law – especially established sources such as religion that largely operate at the societal level and are bottom-up.

The majority of the world’s population follow a religion and abide by prescribed religious laws in their daily lives. They contain moral rules that are either enforced as social rules, or are institutionally-enforced as religio-legal norms. While the zeitgeist of secularization over the past few centuries have ousted religion from political domination in most modern nations, religious laws continue to operate at the societal level in most countries. Religious laws also have similar social control effects as (that expected of) state laws; and like state

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3 International Union for Conservation of Nature, ‘World Declaration on the Environmental Rule of Law’ (1st World Environmental Congress, 26–29 April 2016) <https://www.iucn.org/sites/dev/files/content/documents/english_world_declaration_on_the_environmental_rule_of_law_final.pdf> accessed 19 December 2018. The Declaration defined environmental rule of law as “the legal framework of procedural and substantive rights and obligations that incorporates the principles of ecologically sustainable development in the rule of law. Strengthening the environmental rule of law is the key to the protection, conservation, and restoration of environmental integrity. Without it, environmental governance and the enforcement of rights and obligations may be arbitrary, subjective, and unpredictable.’


5 In legal studies, the clearest approach to morality and decision making for compliance is that of law and economics. This is especially because of the application of the utilitarian assumption that everyone are rational beings and they always make decisions that maximizes utility ie, benefits outweigh costs. Hence, legal compliance can be achieved where it can be deemed to maximize the benefit of its subjects. See Robert Cooter, *Law and Economics* (2nd edn, Addison-Wesley 1997); Eyal Zavmir and Doron Teichman, *Behavioural Law and Economics* (OUP 2018). For application of law and economics in environmental regulation, see Imad A Moosa, *The Costs and Benefits of Environmental Regulation* (Edward Elgar 2014); Klaus Mathis and Bruce R Huber (eds), *Environmental Law and Economics* (Springer 2017); Sharanya Basu Roy, ‘The Use of Economic Analysis in the Context of Environmental Regulation’ (2018) 18(2) Global Jurist 1.

environmental laws, religious law can also effect behavioural change in believers towards becoming more eco-friendly. In the case of Islamic law, apart from operating at the societal level, many Muslim-majority countries have adopted legislation and established institutions governing Muslims’ affairs at the national level, and it will be shown that Islamic environmental law (ISEL) operates in some way as well.

The paper compares and analyzes how ISEL operates in three countries – Singapore, Malaysia, and Indonesia – through religio-legal rulings (fatwa) and mosque sermons (khutbah). However, the utility and efficacy of these religious instruments are challenged by the complexities around religion-state relations in these countries, and psychological factors demonstrating the futility of motivating pro-environment behaviours through religion alone. These challenges reinforce the long-standing consensus that solutions to environmental problems must be multidisciplinary. The paper will proceed as follows. Part I provides a primer to ISEL in theory and praxis. It ends by presenting a puzzle concerning ISEL as a field of study. Part II looks into the praxis of environmental fatwas in these countries, and Part III does the same for environmental khutbahs. Part IV analyzes the challenges to the implementation of ISEL in these countries from two perspectives: law and religion, and psychology. It concludes thereafter.

I. ISLAMIC ENVIRONMENTAL LAW: THEORY AND PRAXIS

ISEL may be seen as a contemporary response by Islamic scholars to the demands for solutions to the global environmental crisis, entering the discourse of environmental ethics alongside other religious traditions in the late 1970s, 1980s, and into the 1990s. In 1986 and 1995, the World Wildlife Fund for Nature (WWF) organized gatherings of world religious leaders from the five major religions in the world (Buddhism, Christianity, Hinduism, Judaism, and Islam) to address ‘how [religion] could and should help save the natural world.’ Latest efforts of a similar aim includes WWF’s Sacred Earth program that ‘works with religious leaders and faith communities who best articulate ethical and spiritual ideals around the sacred value of the environment.’

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8 Although the proper plural form of fatwa in Arabic is fatāwa, the author consistently uses ‘fatwas’ in the English plural form instead. The same goes for khutbahs and other non-English nouns (eg, pesantren) used in the paper. In addition, the author uses several spellings for Shari’a (eg, syariah, shari’ah, shariah, etc) out of respect of their geographical (spelling conventionally used in a certain jurisdiction) or textual (spelling used by a certain author the paper refers to) origins.
11 This gathering, the Conference on Religions, Land and Conservation, was organized in Ohito, Japan. Its outcome document was the Ohito Declaration on Religions, Land, and Conservation. See Alliance of Religions and Conservation, ‘The Ohito Declaration on Religions, Land and Conservation’ (ARC, 3 May 1995) <www.arcworld.org/news.asp?pageID=871> accessed 8 November 2018.
12 Alliance of Religions and Conservation (n 10) 2.
Earth and its diversity, and are committed to protecting it\textsuperscript{13} in support of religions’ biophilic objectives.\textsuperscript{14}

Apart from fostering interreligious unity for a common aim, these interfaith gatherings also catalyzed a global environmental movement led by religious leadership. Pope Francis’ ‘green crusade’ in recent years is a prominent example.\textsuperscript{15} Likewise, Islamic religious leaders and scholars have created ‘international instruments’ such as the Islamic Declaration on Sustainable Development\textsuperscript{16} and the Islamic Declaration on Global Climate Change\textsuperscript{17} to represent the ‘official stance’ of the global Muslim community on key environmental issues. Additionally, scholarship on religion and ecology highlighting how doctrines in different religious traditions support pro-environment behaviours also thrived.\textsuperscript{18}

A. Islamic Environmental Legal Theory

Nevertheless, ISEL is not new. Over 300 Qur’anic verses deal directly with the environment, and environmental protection mechanisms have been implemented on the basis of Islamic doctrine since the time of the Prophet Muhammad.\textsuperscript{19} Hence, environmental protection has always been part of the Sharī’a or Islamic law.\textsuperscript{20} The primary sources of Islamic law are the Qur’an (Islam’s holy book), and the Sunna (the words, actions, and decisions of the Prophet Muhammad) which are reported as ‘hadith’. Over time, Islamic law developed in response to

\begin{itemize}
\item \textsuperscript{20} See Bernard G Weiss, The Spirit of Islamic Law (University of Georgia Press 1998) 8. The meaning of the Shari’a goes beyond our conventional understanding of law. As Weiss describes it, the Shari’a ‘includes norms beyond those that constitute law in the strict sense, it is incorrect to equate Shari’a and law simpliciter as is often done. On the other hand, law is clearly part of the Shari’a, in Muslim thinking, and must always be understood as such.’
\end{itemize}
contemporary legal, political, and practical life challenges not explicitly covered by these primary sources.\textsuperscript{21} Scholars therefore developed a toolkit for legal reasoning to engage in *ijtihad*, or the scholarly ‘struggle’ to discern Islamic law. These include looking at the scholarly consensus on a particular issue (*’ijma*), analogical reasoning (*qiyas*), public welfare considerations (*maslahah*), and the higher objectives of the *Sharī’a* (*maqasid as-shari’ā*).\textsuperscript{22}

Fundamentally, the study of theology and the legal sciences are inseparable in Islam.\textsuperscript{23} Islamic law operates and is grounded on several theological presumptions: the existence of an Almighty God, the recognition of God’s Will, the Qur’an as the Word of God, and its provisions as God’s Laws.\textsuperscript{24} This nexus between law and theology is most obvious in ISEL, especially because the duties and obligations of humankind to the natural environment directly involve the Islamic creation story.\textsuperscript{25} The key concepts in Islamic theology forming the basis for these duties and obligations are cosmic symbiosis (*takaful*) and human stewardship (*khilafah*). *Takaful* refers to the natural state of order of the Universe (*fitra*)\textsuperscript{26} in which God is the Creator\textsuperscript{27} and the Sovereign.\textsuperscript{28} This order is possible only because God created the universe to be in balance (*mizan*), where all things are created in due proportion and measure,\textsuperscript{29} both quantitatively and qualitatively.\textsuperscript{30} Thus, God created and fashioned all things with purpose and value,\textsuperscript{31} pre-determined their forms and functions as well as their life and death.\textsuperscript{32} With regard to human beings, Islam sees itself as a ‘*din al-fitra*’ – the religion that seeks to awaken the primordial nature of human beings that conforms to the *fitra* – especially since they are gifted with reason and free will that may cause them to diverge from the natural order of things.\textsuperscript{33} Therefore, this natural order of things and how they should be denotes the existence of a natural law (*Sunnah al-Illah*) that governs the preservation of the *mizan*.\textsuperscript{34}

The concept of *khilafah* or stewardship imposed on humankind involves a ‘duty paradigm’\textsuperscript{35} revolving around three different relationships: God-Human, inter-Human, and Human with other creations. The base duty of human beings as vicegerents of God on Earth

\begin{itemize}
  \item Wael B Hallaq, *The Origins and Evolution of Islamic Law* (CUP 2005).
  \item See Anver M Emon, *Islamic Natural Law Theories* (OUP 2010).
  \item *Qur’an* 39:62, 50:38; Roughton (n 19) 105–107.
  \item *Qur’an* 2:255.
  \item *Qur’an* 13:8.
  \item *Qur’an* 55:7–10.
  \item *Qur’an* 15:85, 38:27, 44:38–39.
  \item *Qur’an* 2:29, 15:21, 25:2.
  \item Sammarai (n 26) 159.
  \item ‘Arafa (n 19) 470.
\end{itemize}
(khalifah al-ard) is fiduciary in nature (amanah) — human beings are both trustees and beneficiaries of the Earth, which they care for on behalf of God. While they are free to exploit the natural resources which God provides for their material needs, this must be done while preserving the God-instituted mizan. This can be achieved by living according to God’s Laws and Will and upholding the Sunnah al-Ilah. Additionally, preservation of the environment is an act of being grateful for God’s provisions (rizq) and bounties (ni’amah), that human beings must consume sustainably, and avoid excessive and wasteful lifestyles.

As for the base duty of human beings to other creations — fellow human beings and other communities of creation such as animals and plants — all dealings between them must be guided by the values of justice (‘adl), equity (ihsan), and mercy (rahmah). This is in line with the Prophetic example articulated in the Qur’an, where God exclaimed that Prophet Muhammad was appointed to be ‘a mercy for all creations’ (rahmatan lil ‘alameen). For non-human communities, such as animals and plants, human beings have the additional duty of protection (hurmah) owed to them. This duty is imposed because all other creations live in communities like human beings, and that they too continuously worship and praise God. These duties of just dealings and protection also extend to future generations of creations, thereby calling for both intra- and inter-generational equity.

B. Praxis of Islamic Environmental Law Today: A Survey

The praxis of ISEL in the Muslim world today varies in form despite the universality of its substance. Most Muslim-majority states today are no longer theocratic. They are founded on constitutions presumably liberal and democratic. The Ottoman and colonial eras also initiated a transformation in Islamic law: from being jurist-centric, Islamic law progressively metamorphosed into its current housing in European-style codes and legislation. Additionally, the scope of Islamic law’s application in states also gradually shrunk to eventually only

36 Qur’an 7:10. See Syed Muhammad Naquib Al-Attas, On Justice and the Nature of Man: A Commentary on Sūrah Al-Nisā’ (4):58 and Sūrah Al-Mu’mīnūn (23):12–14 (IBFIM 2015) 6–7. Al-Attas explained that the term amanah refers to freedom from oppression stemming from ‘the wrongful exercise of power which is ultimately caused by ignorance of the order of proper place leading to a condition of injustice (ẓulm) which is none other than displacement of the right order [ie, the fitra].’

37 Qur’an 6:165.


40 Roughton (n 19) 103.

41 Qur’an 20:53–54.

42 Al-Attas (n 36) 10–23; Qur’an 16:90: ‘Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition.’

43 The term may also be understood to mean ‘kindness’ and ‘compassion’.

44 Qur’an 9:128.


46 Sammarai (n 26) 159–160.

47 Qur’an 6:38: ‘There is not an animal (that lives) on the earth, nor a being that flies on its wings, but (forms part of) communities like you. Nothing have we omitted from the Book, and they (all) shall be gathered to their Lord in the end.’

48 Qur’an 17:44: ‘The seven heavens and the earth, and all beings therein, declare His glory: there is not a thing but celebrates His praise; And yet ye understand not how they declare His glory!’

49 Qur’an 2:29: ‘God is the Creator of all beings on Earth, past, present and future – It is He who created for you all of that which is on the earth. Then He directed Himself to the heaven, [His being above all creation], and made them seven heavens, and He is Knowing of all things.’
covering matters of personal law such as divorce and probate. However, non-theocratic states can still have theocratic constitutions, thereby allowing for the incorporation of Islamic law, and indeed ISEL, into national legal landscapes. This can be observed in three Muslim-majority countries: Saudi Arabia, Egypt, and Pakistan.

In Saudi Arabia, the government expressly declares that it is founded on divine law. In their Basic Law of Governance 1992, Islam is proclaimed to be the state religion, and that the constitution is the *Shari’a* and the Prophetic *Sunna*. By implication, since a constitution is the source of and supreme over all positive law in the land, all laws in Saudi Arabia including the General Environmental Law 2001 are presumed to be grounded on Islamic law, or made to comply with Islamic law where international law is ratified by the state. Additionally, the state obligation to ‘endeavor to preserve, protect and improve the environment and prevent its pollution’ under Article 32 of the Basic Law is reflective of the *khilafah* obligations under ISEL.

In Egypt and Pakistan, the inclusion of Islamic law as a part of the state’s democratic constitutional framework allows for the invocation of Islamic values before national courts in public interest claims. Article 2 of the Constitution of the Arab Republic of Egypt that constitutionally recognizes ‘the principles of Islamic Sharia as the main source of legislation’ has been used as a basis for Islamist legal activists to challenge the ‘un-Islamic’ character of laws and government actions in the courts. Interestingly, one such case involved the alleged ‘un-Islamic’ nature of an environmental agency’s decision. In that case, the Islamic legal principle *‘amr ma’ruf wa nahi munkar* (enjoining good and preventing evil) was invoked to support an argument that in failing to conduct an EIA prior to the building of a local cement factory, the said agency failed to protect ‘the health of citizens when it continued to allow a local cement factory to emit harmful air pollutants’.

In Pakistan where Islam is the state religion and is foundational to its statehood, its Supreme Court held that Pakistan’s constitutional framework makes compatible Islamic principles of justice, equality, and democracy with secular fundamental rights; and that Islamic principles are manifested in as well as motivate the public interest litigation (PIL)

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57 ibid art 2A. This provision adopts the Objectives Resolution which set out the incorporation of Islam and Islamic principles of governance and democracy into Pakistani constitutionalism.

mechanism in Article 184A of the Constitution of the Islamic Republic of Pakistan. Hence, while no environmental PIL cases thus far have been argued on the basis of an Islamic environmental right per se, the sleuth of PIL cases involving environment rights in Pakistan such as Shela Zia v WAPDA and Human Rights Case (Environmental Pollution in Baluchistan) all manifest the exercise of the Islamic right to access to justice, among others.

C. Religious Law for the Environment: The Puzzle

While there are examples from other Muslim-majority Middle Eastern countries that can also be looked at, it suffices to say that religious law and values have been, and are being used, to achieve the same objectives as environmental law implemented by states. However, there is a severe lack of legal literature on this, especially papers looking at a geographical area with Muslim societies other than the Middle East such as Southeast Asia. This presents an interesting puzzle for scholars to solve, and this paper is a first step to filling that epistemic gap.

At a macro level, the vast majority of the literature studying religious environmental law (or ethics) is found in the literature for environmental ethics or religious studies – not law. This indicates that while religious environmental law is part of the discourse on environmental protection, it is not part of the discourse on environmental law and governance despite the existence of religious legal systems operating in full force worldwide. Additionally, much of the literature on religious environmental law is theoretical in nature, and ‘praxis’ as such is rarely made the subject of study. In the case of ISEL, most papers merely postulate how ISEL theory can be made the basis for governance in a myriad of sectors: ranging from water and natural resource policy, to organizational management in businesses. The sole law article available involving praxis discusses ISEL’s incorporation into guidelines applicable to an Islamic financial instrument – the sukuk. Otherwise, the study of the praxis of ISEL remains the domain of anthropologists of religion. It is, therefore, the paper’s mission to fill this gap in the scholarship.

Additionally, the praxis of ISEL in a geographical area beyond the Middle East has never been made the subject of study by legal scholars – especially when Southeast Asia and how Islam manifests in the region is unique and worthy of examination. Demographically, with the exception of Singapore where Muslims are in the minority, they form the majority in

59 Chaudhry Akbar Ali v Secretary, Minister of Defence, Rawalpindi (1991) SCMR 2114 (Supreme Court of Pakistan) 2116. For a brief summary of PIL in South Asia, see Ridwanul Hoque, Judicial Activism in Bangladesh: A Golden Mean Approach (Cambridge Scholars Publishing 2011) 90–91.
60 PLD 1994 SC 416 (Supreme Court of Pakistan).
61 PLD 1994 SC 102 (Supreme Court of Pakistan).
67 See (n 122) and (n 125); Fachrudding M Mangunjaya and Jeanne E Mckay, ‘Reviving an Islamic Approach to Environmental Conservation in Indonesia’ Islam’ (2012) 16(3) WorldViews: Global Religions, Culture and Ecology 286.
Malaysia and Indonesia; and Indonesia houses the largest Muslim population in the world. Islam arrived in Southeast Asia around the 13th century CE, with primarily merchants and missionaries from Yemen bringing its teachings over. This resulted in the predominance of one sect (ie, Sunni Islam) and one school of jurisprudence (Sha’fi’i school) in the region. However, local cultural traditions were retained as long as such practices do not contravene core Islamic beliefs (aqidah) and the Shari’a, instead of being forcefully removed upon conversion. Islamic law thus autochthonized in the region, resulting in peculiarities in Southeast Asian Islam that cannot be found in the Middle East. Furthermore, the sharing of civilizational, cultural, and religious heritage in Singapore, Malaysia and Indonesia by virtue of being part of a sub-region called the ‘Malay Archipelago’ or Nusantara, consequently resulted in similarities in how these peculiarities manifest.

Another common trait shared by these countries is religion’s continued role in the public sphere. In Malaysia and Indonesia, religion continues to influence constitutional politics and culture. Islamic organizations and political parties actively participate in legal and political discourse, allowing for religion to be used as a tool for political persuasion and social mobilization. In Singapore, the country’s ‘secularism with a soul’ makes the state ‘anti-theocratic, [but] not anti-religious’; maintaining general neutrality on religion while still viewing it as a ‘constructive social force’ and ‘a positive factor in Singapore society’. Islamic religious authorities are also established to administer religious affairs, and can either be part of the state or remain non-state actors. Additionally, all three countries formally enforce Muslim personal laws concerning marriage and divorce, inheritance, and religious endowments (waqf), with a system of Islamic courts to enforce them. However, only Malaysia and the autonomous Indonesian province of Aceh codify and enforce Islamic criminal law (hudud).

In conclusion, as a socio-legal phenomenon that advances environmental objectives, ISEL generally and its operation in Southeast Asia specifically, warrants serious study. Its potential contribution to scholarship, especially in the fields of comparative environmental law (specifically the study of environmental protection in religious legal traditions), environmental law more generally (eg, a reconceptualization of ‘environmental law’ and approaches to

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69 See Nicholas Tarling (ed), The Cambridge History of Southeast Asia (CUP 2008); Hussin Mutalib, Islam in Southeast Asia (ISEAS-Yusof Ishak Institute 2015); MB Hooker, Islam in South-east Asia (Brill 1983); Ahmad Ibrahim, Sharon Siddique, and Yasmin Hussain, Readings on Islam and Southeast Asia (ISEAS 1986).
70 This is enabled by the ‘urf or ‘custom’ principle in Islamic jurisprudence. One of the clearest examples of Islamic law’s autochthony in Southeast Asia is its recognition as operating alongside customary law (adat) as well as the incorporation of Islamic norms into adat to the point of itself becoming a branch of adat. This is encapsulated in the Malay saying: ‘Adat bersendi hukum, hukum bersendi Kitabullah’ (adat works together with sanctions, sanctions work together with the Holy Book ie Qur’an). See PP Buss-Tjen, ‘Malay Law’ (1958) 7(2) American Journal of Comparative Law 248; RO Winstedt, ‘Old Malay Legal Digests and Malay Customary Law’ (1945) 1 The Journal of the Royal Asiatic Society of Great Britain and Ireland 17.
resolving key problems in implementation and enforcement), as well as the field of law and religion (eg, limitations of religious environmental law in modern secular states), cannot be ignored. This paper hopes blaze the trail for further developments in this field.

II. ENVIRONMENTAL FATWAS: RELIGIO-LEGAL ADVICE ON THE ENVIRONMENT

The fatwa may generally be understood to be a ruling made by a mufti – jurisconsults ‘driven above all by a profound religious commitment which demanded of them, among other things, the articulation of a law that would deal with all the problems of society.’ However, fatwas are not legally binding and can only serve as scholarly opinions or advice. This reality is reflective of how muftis were historically (and theoretically) the state’s ‘pious opposition’ and were (largely) independent of political influence and ‘controlled the law on the level of discourse’. Although fatwas are not law per se, 13th century jurist al-Qarāfi states that a fatwa becomes law (more accurately, a valid legal ruling) only when it is endorsed by judges (qadi) in court in their judgments (hukm). Indeed, some muftis in the past served as qadis or experts in courts – where their fatwas can be endorsed and made binding.

Fatwa-making (iftā’) is a process that involves only two parties: a questioner (mustaftī) who has a legal question, and the mufti of their choice to answer that question. The question posed to a mufti may be abstract (eg, ‘What is the position of Islamic law on X?’), be enclosed with vague facts (eg, ‘My friend is doing X at Y for Z. Is it prohibited?’), or hypothetical (eg, ‘Say, a person accidentally stole from another person. Is that person considered a thief under Islamic law?’). Depending on the nature of the fatwa, the questioner may be a private individual, the courts, or even the state. Nevertheless, the mufti is expected to observe a protocol in fatwa-making, namely the ‘al-adab al-mufti’, which informs him about, inter alia, the methodology for iftā’, the clothes that must be worn when delivering a fatwa, and the style and mannerisms that must be adopted when delivering fatwas verbally.

Also to note is that fatwas do not apply beyond the parameters of the question provided by the questioner. Muftis, at the end of the day, only provide their legal opinion based on the abstraction or the limited facts provided by the petitioner in her question. Thus, unlike judicial decisions resulting from court proceedings where clearer facts and supporting evidence are presented, the fatwa only addresses questions of law (ie, ‘In case of X, or situations similar to X, the law is Y. Otherwise, the law is Z.’). Keeping in mind that fatwas ‘present the law of Islam, and should therefore have an objective form’, it is imperative that muftis clearly state the position of Islamic law on a given issue, and conclude with the invocation ‘And Allah

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81 Vikør (n 78) 145–146.
82 ibid 141–3.
84 ibid 149–150.
knows best’ (wallahu a’lam) as a mark that ‘the muftī gives... only the best that Man can determine for what God’s will really is.’

The form that fatwas take is also similar to the legal memoranda lawyers prepare, stating first the issues of the case that the memorandum seeks to resolve, and then a ‘brief answer’ that ‘states the writer’s prediction and summarizes concisely why it is likely to happen ... usually involves at least an allusion to the determinative facts and rules, together with some expression of how the facts and rules come together to cause the predicted result.’ Typically, the issued fatwa states the ‘issues of the case’, and then the position of the law on it.

Consider the following fatwa by the Dar al-Ifta al-Missriyyah, an internationally-renowned fatwa-issuing body based in Egypt, issued in response to a request the author submitted:

![Fatwa](http://dar-alifta.org/Foreign/f.aspx?ID=825789)

**Assalamu’alaykum. I have several questions: 1) What are the duties and obligations of Muslims to the environment? 2) What is the Islamic position on the limits of a Muslim’s compliance with their country’s laws? Thank you and Jazakallah khayran.**

**Answer: Fatwa Council**

1. Muslims’ duty towards the environment stems from their understanding that man is a viceroy on earth and God commanded them to work for development and not destruction. 2- Muslims are commanded in Shari’ah to respect the laws of the countries they live in as per the words of God Almighty, ‘O you who have believed, obey Allah and obey the Messenger and those in authority among you.’ (Surah An-Nisa: 59). This is provided these laws do not contradict the fundamentals of religion. God Almighty knows best.

![Figure 1: A fatwa issued by Dar al-Ifta al-Missriyyah to the author’s request](http://dar-alifta.org/Foreign/f.aspx?ID=825789)

Here, the author submitted two questions concerning the Islamic legal position on a Muslim’s environmental obligations and the limits of one’s compliance with national laws. The answer to the first question immediately raised the khilafah principle under ISEL to establish an obligation. The second question was subsequently answered by first stating the general rule on obedience to the state, with a Qur’anic verse as legal authority. The general rule is thereafter qualified by a condition precedent: that these state laws must not ‘contradict the fundamentals of [the Islamic] religion.’

Consider another Dar al-Ifta al-Missriyyah fatwa issued in response to a request concerning inheritance:

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85 ibid 150.
Similarly here, the fatwa began by stating the general rule that only Muslims are legal heirs under Islamic inheritance law (fara‘id). Unlike the previous fatwa, however, a practical advice was also included to address the facts enclosed by the mustafī; reminding the mustafī to confirm whether her cousins are Muslim before proceeding with asset distribution.

These processes are the same in Singapore, Malaysia, and Indonesia. However, the legitimacy of the fatwas issued in these countries arises from the politico-legal infrastructure authorizing and legitimizing their power to issue them.

A. Fatwas: Authority and Politico-Legal Infrastructure

The practice of iftā’ as presented above has remained generally unchanged over the past few centuries, although as exemplified by our case studies, the authority to issue fatwas and the politico-legal infrastructure that defines this authority has clearly undergone development to fit contemporary socio-political circumstances. Notwithstanding fatwas issued by independent muftis, the fatwas examined here are issued those by the ‘religious authorities’, regardless of whether these are part of the state or not. These, in the context of our case studies, are either state agencies (Singapore and Malaysia) or Islamic organizations that operate pervasively in society (Indonesia); hence are recognized and followed by the majority of Muslims in the country. Also important to recall and remember is the existence of private fatwas which may not be disclosed to the public and would be a personal exchange between the mufti and the questioner. Hence, the exact number of fatwas that have been issued by any mufti (or fatwa-issuing agencies) is generally unknown and can only be approximated. Nevertheless, the focus of this paper is on environmental fatwas which are generally political and social in nature, and are therefore made accessible to the public.

In Singapore, fatwas are issued by the Legal Committee within the Islamic Religious Council of Singapore (Majlis Ugama Islam Singapura or MUIS),89 a religious authority ‘legally recognised and bureaucratically embedded in the state’.90 Chaired by the Mufti of Singapore,91 the Legal Committee92 either issues fatwas in response to requests submitted by

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89 Administration of Muslim Law Act (Cap 3, 2009 Rev Ed Sing), s 31 [hereinafter ‘AMLA’].
91 AMLA, s 31(4).
92 AMLA, s 31.
members of the public or at its own discretion. They may choose to not answer requests deemed ‘frivolous or for other good reason ought not to be answered’; and where a fatwa is drafted, they may only be issued if Committee members voted unanimously in favour of its contents. A court may also request for an opinion from the Committee when ‘any question of the Muslim law falls for decision’, but these opinions are non-binding and persuasive at best. It is difficult to know exactly how many fatwas have been issued by MUIS since its establishment in 1968. In two fatwa compilation books published in 1987 and 1991 a total of eighty-seven fatwas were featured. Recently in 2016, a new fatwa compilation book focusing on science, medicine, and health was published, containing twenty-nine fatwas. Eighteen fatwas are made available online on MUIS’ website – some already featured in the fatwa compilation books, while others are relatively new. These fatwas are mostly available in both English and Malay, and are classified into five main categories: (1) aqidah and faith (specifically on heretical and deviant sects or teachings), (2) finance and estate matters, (3) science and medicine, (4) zakat matters (mandatory religious tithe for Muslims), and (5) family and marriage.

In neighbouring Malaysia, fatwas are issued at the federal and state levels. At the federal level, the National Fatwa Committee (NFC), a component of the National Council for Islamic Affairs, ‘considers, decides, and issues fatwas on anything referred to it by the Conference of Rulers (Majlis Raja-Raja)’. The NFC currently consists of all state muftis alongside Islamic experts appointed by the Conference of Rulers. To issue fatwas, the NFC has to first recommend the proposed fatwa to the Conference of Rulers for approval and authorization. Despite being fatwas that are issued at the federal level, they are not binding at the state level because the NFC plays an exclusively advisory role. At the state level, state legislation on the administration of Islamic law empowers religious authorities to issue fatwas when (1) the Head of State (either the state’s king or Chief Minister) instructs the issuing of a fatwa, or (2) a request is received from a member of the public on a question. In most states, like in Singapore, the state’s Fatwa Committee chaired by the State Mufti is empowered to issue

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93 AMLA, s 32(1).
94 AMLA, s 32(6).
95 AMLA, s 32(3).
96 AMLA, s 32(4).
97 AMLA, s 32(7).
100 Majlis Ugama Islam Singapura, Kumpulan Fatwa (2) (MUIS 1991).
101 Loke Kok Fai, ‘First compilation of local fatwas launched, gathering rulings on science and medicine’ (Channel NewsAsia, 11 February 2017) accessed 8 February 2019.
104 ibid JAKIM.
105 Nasohah (n 103) 31–32.
106 Asuhaimi and others (n 77) 229.
fatwas. 107 In the Federal Territories, the State Mufti is empowered to issue fatwas independently, but is required to consult his Fatwa Committee.108 The only states where the State Mufti is able to truly issue fatwas independently are Kedah and Pahang.109 State fatwas apply exclusively to Muslims living in those states, but are legally binding if they were published in the government Gazette.110 There is a central depository of fatwas that can be publicly accessed.111

Unlike in Singapore and Malaysia, Islam in Indonesia is more prominently defined by the operation of its mass Islamic organizations rather than state agencies; and fatwas are issued by scholars affiliated with these organizations.112 The Council of Indonesian Religious Scholars (Majelis Ulama Indonesia or MUI) was established by then-President Suharto to, inter alia, provide Muslim clerics, scholars, and the many disparate Islamic organizations across Indonesia a platform for consultation, collaboration, and cooperation in addressing issues relating to Islamic affairs in Indonesia, as well as provide religious advice and ‘collective fatwas’113 to the Indonesian state and people.114 Despite being a state-appointed body, MUI is a non-state actor and its collective fatwas are not legally-binding.115 However, some of its collective fatwas on controversial political and social issues have influenced government and society alike116 – even to the point of sparking violence.117

B. Environmental Fatwas in Singapore, Malaysia and Indonesia

The paper will now proceed to look at the extent to which the religious authorities in these countries have issued environmental fatwas. Looking through official depositories of fatwas that are publicly-accessible, the following is observed:


108 Administration of Muslim Law (Federal Territories) Act 1993, ss 34 and 37(5).

109 Mufti and Fatwa (Kedah) Enactment 2008, s 8; Administration of Muslim Law (Pahang) Enactment 1991, ss 36.

110 ibid. This is provided as a procedure in all state enactments on the administration of Islamic law.


115 Hooker (n 73) 26–31.


<table>
<thead>
<tr>
<th>Country</th>
<th>No. of Environmental Fatwas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Singapore</td>
<td>0</td>
</tr>
<tr>
<td>Malaysia</td>
<td>1</td>
</tr>
<tr>
<td>Indonesia</td>
<td>5</td>
</tr>
</tbody>
</table>

Table 1: No. of environmental *fatwas* issued in Singapore, Malaysia, and Indonesia.

In the case of Singapore, it is apparent that MUIS’ Legal Committee has not issued environmental *fatwas*, and the reasons why are unknown. Recall that the *fatwa*-making process in Singapore is initiated either with the submission of a request by a member of the public, or when MUIS itself in exercises its own discretion for a *fatwa* to be issued. The first approach is limited only to the condition that a request made is not ‘frivolous or for other good reason ought not to be answered’, thereby allowing for the request to be rejected upon receipt or during the process of deliberation. It is not known what constitutes frivolity in the context of *fatwa* requests, but it does signal the possibility of ambiguity (and indeed, arbitrariness) of the exercise of the Legal Committee’s discretion. The condition for there to be a good reason to not at all respond to a request is equally vague, and can only be speculated. Possibly, ‘good reason’ here refers to overarching state objectives such as the maintenance of social order or national security. It is also possible that a ‘good reason’ includes where a *fatwa* potentially conflicts with state law – but MUIS have issued such *fatwas* in the past, and the courts have reiterated their non-binding nature and subservience to legislation when invoked. More importantly, the Legal Committee can exercise its own discretion to issue an environmental *fatwa*, but this has not been done. This issue will be revisited in the paper’s analysis from a law and religion perspective in Part IV.

In Malaysia, one environmental *fatwa* has been issued, but only in the State of Perlis on February 2016. The Fatwa on the Pollution of the Environment (*Fatwa Pencemaran Alam Sekitar*) states that:

Islam is a religion that protects the well-being of humans and nature. The purpose of the syariah itself is to uphold what is good (*maslahah*) and avoid harm (*mafsadah*). Thus, the Perlis State Fatwa Committee states that:

1. Any act that pollutes the environment and physically impacts human beings, animals, and plants are prohibited (*haram*), unless there is a greater good (*maslahah muktabar*) in its commission or its commission prevents apparent harms.

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118 AMLA, s 32(3).
119 Ramlan (n 98).
2. Every Muslim must refrain from engaging in any activity that can cause environmental pollution that destroys life and directly disrupts ecosystems. Any effort to care for the environment is encouraged by the religion and is an act of piety (amalan soleh).

Unfortunately (or perhaps fortunately, as the paper explains later), this fatwa is not published in the Gazette, which means that it has no binding effect. The reasons for not publishing the said fatwa in the Gazette are unknown.

In Indonesia, fatwas are the primary instruments of Indonesia’s ‘environmental fiqh’, and is part of the phenomenon of ‘the rhetoric (if not the practice) of “Islamic law”’ being mobilized for social change in the post-Suharto of democratic transition. MUI has issued six collective fatwas concerning the environment thus far:

1. Fatwa No. 128/MUI-KS/XII/2006 on Forest Fires and Smog (Kalimantan)
2. Fatwa No. 22 of 2011 on Environmentally-Friendly Mining Practices
3. Fatwa No. 4 of 2014 on Wildlife Conservation for the Preservation of Ecosystem Balance
4. Fatwa No. 41 of 2014 on Waste Management for the Prevention of Environmental Degradation
6. Fatwa No. 30 of 2016 regarding the Law on the Burning of Forests and Land, and the Control Thereof

As mentioned earlier in the paper, Islamic law enforceable in Indonesia’s syari‘ah courts is restricted to areas of personal law. This means that environmental fatwas are not enforceable by the state and can only be regarded as non-state, ground-up responses to the imperfections of existing environmental policies and laws. However, this does not mean that they are not ‘enforced’ in the broad sense. MUI’s Board for the Sacralization of the Environment and Natural Resources (Lembaga Pemuliaan Lingkungan Hidup dan Sumber Daya Alam), with the aid of NGOs such as Conservation International, initiated the ‘socialization’ (sosialisasi) or implementation of three of their environmental fatwas. The Board have published guidebooks on: (1) the fatwas and their legal bases for education and the adoption of eco-friendly practices in religious boarding schools (pesantren); and (2) the training and capacity-building of preachers (da’i) and local volunteers to engage in environmental advocacy and practical implementation. This affirms the view that these fatwas were never really intended to have top-down legal force and instead intended to provide bottom-up ‘legal’ force to the grassroots.

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124 Salim Arskal, Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism (Edinburgh University Press 2015) 33.
125 Gade (n 122); Anna M Gade, ‘Tradition and Sentiment in Indonesian Environmental Islam’ (2012) 16(3) Worldviews: Global Religions, Culture and Ecology 263.
<table>
<thead>
<tr>
<th>Fatwa</th>
<th>Accompanying Publication(s)</th>
</tr>
</thead>
</table>
• Learning Journey of the Preachers for Sanitation Programme: Rallying For and Controlling Community-Based Total Sanitation (Kisah Pembelajaran Perjalanan Program Dai Sanitasi: Menyeru dan Mengawal Sanitasi Total Berbasis Masyarakat) (MUI, July 2017) |
| Fatwa No. 30 of 2016 regarding the Law on the Burning of Forests and Land, and the Control Thereof | • Module for the Capacity-Building of Preachers for Peatland Restoration: Implementation of MUI’s Fatwa No. 30 of 2016 (Modul Peningkatan Kapasitas Da’I Restorasi Gambut: Implementasi Fatwa MUI No 30/2016) (MUI, April 2018) |

Table 2: MUI fatwas with supplementary publications to support sosialisasi.

III. ENVIRONMENTAL KHUTBAHS: MORE THAN JUST SERMONS

Traditionally, the sermon or khutbah in Islam is produced and delivered by the imam of the prayer in his role as the khatib (sermon-giver) before congregational prayers, especially Friday (juma’ah) and Eid prayers. Khutbahs may be prepared beforehand, or delivered impromptu. However, the existence of religious authorities means that the content of khutbahs can be controlled and regulated. This is especially so if religious authorities are part of the state, thereby allowing the state to influence the content of khutbahs.

A. The Khutbah: Form and Function

At their core, khutbahs are ‘judgments’ by the religious leaders of that community that state and reiterate the legal position of the religion on particular issues, and the ‘instructive’ purpose of khutbahs is supported by its form similar to court judgments. From a sociological perspective, the mosque is an ‘agent of social control’ that functions as ‘an important source of the community’s morality and moral judgements’ – pronouncing on the ‘rules’ of the community, priming the congregants of the stigma that comes with their violation, and the consequences of
rule violation in this world and the next.\textsuperscript{126} In short, \textit{khutbahs} are, as MB Hooker aptly puts it, the ‘public transmission’ of Islamic law which ‘function…is purely didactic: to instruct the faithful in religion…instructing the Muslim in his or her individual duty to God as this is understood in a particular place, at a certain time.’\textsuperscript{127}

In his study of the role of the mosque in the social control of Edinburgh’s Muslim community, Ali Wardak posits that sermons are

essentially a weekly message of reminding the faithful of their commitment to Islamic morality – the \textit{awamir} and \textit{nawahi} (obligations and prohibitions respectively)… from very personal [issues] to the very social – from drinking, eating and dressing to the virtues of cleanliness, honesty, modesty and chastity… to duties and obligations to parents, kin, neighbours, the needy, and to the state and society.\textsuperscript{128}

Like judges drafting court judgments,\textsuperscript{129} \textit{khutbah} drafters are faced with the same task of communicating legal ideas effectively to an audience on issues such as alcohol consumption, pre-marital sex and extra-marital relationships. \textit{Khutbah}-drafting is made more tedious considering that the vast majority of congregants are laypersons, hence the additional demand that \textit{khutbahs} are ‘interesting and practically oriented lesson[s] on Islamic morality and values’ made palatable for the masses.\textsuperscript{130} With regard to linguistic choice in \textit{khutbahs}, the use of group pronouns such as ‘we’ and ‘our’ help ‘internalize’ communal norms and the expression of the feelings of community and unity’.\textsuperscript{131} This, ‘from a social control perspective’, Wardak argues, ‘is the public expression of shared sentiments and the feelings of unity by the faithful during the [congregational] prayer: it is a renewal of the worshippers’ commitment to their shared sets of moral and religious values.’\textsuperscript{132}

In Singapore, most mosques deliver \textit{khutbahs} produced by the Office of the Mufti (OM) in MUIS; and they are available in English, Malay and Tamil. In Malaysia, JAKIM is the official source of \textit{khutbahs}. The sermons are only available in Malay. In Indonesia, unlike in Singapore and Malaysia, religious authorities do not hold a monopoly in \textit{khutbah} production and the country ‘has its own vibrant \textit{khutbah} publishing industry.’\textsuperscript{133} Hooker explored the production and use of \textit{khutbahs} in Indonesia, and it revealed that \textit{khutbahs} have been published in the form of compilations, and have been used to instruct on a range of topics based on certain themes. These themes include political and familial leadership, family life, the role of women in Islam, Muslims’ relationship with non-Muslims, the relationship between science and religion, etc. At certain times of the year, \textit{khutbahs} touch on issues such as, inter alia, the virtues of fasting and reading the Qur’an during the month of Ramadan, loyalty to the country during national holidays such as Independence Day and \textit{Pancasila} Day, and gratitude to God during religious holidays such as \textit{Eid al-Fitr} and Prophet Muhammad’s birthday.\textsuperscript{134} Unlike Hooker

\begin{enumerate}
\item\textsuperscript{126} Ali Wardak, ‘The Mosque and Social Control in Edinburgh’s Muslim Community’ (2002) 3(2) Culture and Religion 201, 214–215. In this case study, Wardak pointed out that this is done by labelling rule violators in derogatory ways so as to allow congregants distinguish between ‘good’ and ‘bad’ Muslims. The label put on alcohol drinkers is ‘\textit{sharabi}’ (literally drinker) and the adulterer is a ‘\textit{zani}’ (someone who commits zina or sexual relations outside marriage).
\item\textsuperscript{127} MB Hooker (n 73) 129.
\item\textsuperscript{128} Wardak (n 126) 214.
\item\textsuperscript{130} Wardak (n 126) 214.
\item\textsuperscript{131} Hooker (n 127) 217.
\item\textsuperscript{132} Wardak (n 126) 214.
\item\textsuperscript{133} Hooker (n 127) 129.
\item\textsuperscript{134} ibid 132–173.
\end{enumerate}
who exclusively examined privately-published khutbah compilations, the paper focuses on khutbahs produced and published by MUI. It also provides a glimpse of environmental khutbahs published by Nahdlatul Ulama and Muhammadiyah – the two largest and longest-established organizational members of MUI and responsible for much of the implementation of MUI’s environmental initiatives on the ground.

B. Environmental Khutbahs in Singapore, Malaysia and Indonesia

Quantitative study of environmental khutbahs in these three jurisdictions reveals that there are more khutbahs than fatwas that pronounce on environmental issues (Table 3). Qualitatively, it is observed that these khutbahs do raise either the khilafah or takaful principle or both in one khutbah. In some, none of these concepts are raised at all. Instead, other related issues such as the maqasid as-shari‘a, Islamic virtue ethics inferred from the Qur’an and Sunna, parables from Islamic history analogized (recall: qiyas) into environmental contexts; as well as practical recommendations for action. It is possible for a khutbah to contain all the above content.

<table>
<thead>
<tr>
<th>Country</th>
<th>No. of Environmental Khutbahs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Singapore</td>
<td>8</td>
</tr>
<tr>
<td>Malaysia</td>
<td>4</td>
</tr>
<tr>
<td>Indonesia</td>
<td>&gt;67</td>
</tr>
</tbody>
</table>

Table 3: No. of environmental khutbahs produced in Singapore, Malaysia, and Indonesia.

Thus far, between 2016 and 2018, MUIS OM have produced eight khutbahs which either addresses environmental issues directly or where the environment is part of a general theme. Seven of these khutbahs are for juma’ah prayers, while one in 2015 was for the Eid al-Fitr prayers (Table 4). In Malaysia, between 2016 and 2018, there are four sermons that address the environment (Table 5). In Indonesia, on the other hand, MUI through its Board for the Sacralization of the Environment and Natural Resources has thus far published four khutbah books that exclusively contain environmental khutbahs, and in total contain 67 khutbahs (Table 6). Still, there may be more environmental khutbahs that are delivered impromptu and are undocumented, which makes sixty-seven the minimum amount of sermons (Table 3).

<table>
<thead>
<tr>
<th>No.</th>
<th>Date (Gregorian/Hijriyyah)</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1 January 2016 / 20 Rabiulawal 1437</td>
<td>Noble Values from the Life of Rasulullah s.a.w.¹³⁶</td>
</tr>
<tr>
<td>2.</td>
<td>11 March 2016 / 2 Jamadilakhir 1437</td>
<td>Doing Justice Towards Allah’s Blessings¹³⁷</td>
</tr>
</tbody>
</table>

¹³⁵ ibid 174–203. Hooker referred exclusively to privately-published khutbah compilations produced by independent scholars in his study, but expertly laid out an overview of the contents of these compilations.


### Table 4: MUIS’ environmental khutbahs (2016–2018)

<table>
<thead>
<tr>
<th>No.</th>
<th>Date (Gregorian/Hijriyyah)</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>5 August 2016 / 2 Zulkaedah 1437</td>
<td><em>Hargai Diri Dengan Menghargai Alam</em> (Valuing Oneself by Valuing the Environment)(^{144})</td>
</tr>
<tr>
<td>2.</td>
<td>20 October 2016 / 20 Muharram 1438</td>
<td><em>Tanggungjawab Bersama Melestarikan Alam Sekitar</em> (Collective Responsibility in Preserving the Environment)(^{145})</td>
</tr>
</tbody>
</table>

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Table 5: JAKIM’s environmental khutbahs (2016–2018)

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Contents (translated from Indonesian)</th>
</tr>
</thead>
</table>
• The Obligations of Muslims in Environmental Preservation  
• Water as a Source of Life  
• Natural Disasters and Human Actions  
• The Islamic Perspective on ‘Greening’  
• The Duty of Humankind in Caring for the Environment  
• The Importance of Awareness about Animal Welfare  
• The Threat of the Global Energy Crisis and its Solution from the Islamic Perspective  
• Islam and Environmental Preservation  
• Hablun Minal ‘Alam: Helping the Environment Prosper  
• Forests as a Source of Provisions and Livelihood  
• Proper Utilization and Management of Marine Resources as an Act of Worship  
• Making Effort to Preserve Forests and the Environment  
• Islam and the Environment  
• The Integration of Knowledge and Religion in Rationalizing the Environment  

- The Repair of the Environment as a Social and Communal Obligation
- Being Thankful for the Blessings Brought About by the Environment
- Islam and the Preservation of the Natural Environment
- Islam as a Motivation in Defending Environmental Balance
- Environmental Jihad
- Humankind and the Environment
- The Relationship between Humans and Nature, Other Humans, with Oneself, and with Allah.
- The Natural Environment According to Islam
- Doing Good to the Environment is the Key to Peace of Humans in this World and the Next
- The Necessity of Caring and Preserving the Natural Environment
- Islam’s Recommendations for Energy Efficiency
- Islam and Conservation Efforts
- The Search for Humane Humans (Eid sermon)
- *Eid al-Adha* as Momentum for the Intensification in Sacrifice and Servitude to the Environment (Eid sermon)
- Gaining Piety Through Concern for the Environment (Eid sermon)

2. ‘Friday Prayer Khutbahs: Water, Cleanliness, Sanitation, and Environmental Health according to Islam’ (*Khutbah Jum’at: Air, Kebersihan, Sanitasi dan Kesehatan Lingkungan menurut Agama Islam*) (2016)<sup>149</sup>

<table>
<thead>
<tr>
<th>The Natural Environment According to Islam</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doing Good to the Environment is the Key to Peace of Humans in this World and the Next</td>
</tr>
<tr>
<td>The Necessity of Caring and Preserving the Natural Environment</td>
</tr>
<tr>
<td>Islam’s Recommendations for Energy Efficiency</td>
</tr>
<tr>
<td>Islam and Conservation Efforts</td>
</tr>
<tr>
<td>The Search for Humane Humans (Eid sermon)</td>
</tr>
<tr>
<td>Eid al-Adha as Momentum for the Intensification in Sacrifice and Servitude to the Environment (Eid sermon)</td>
</tr>
<tr>
<td>Gaining Piety Through Concern for the Environment (Eid sermon)</td>
</tr>
</tbody>
</table>

| Water as a Source of Life |
| Clean Water as a Blessing from Allah that One Must be Grateful For |
| Preserving Clean Water as an Act of Worship |
| Cleanliness as a Part of Islamic Belief |
| Cleanliness as a Way to Paradise |
| The Torment of the Grave Due to Being Unclean |
| Ablution Cleans Oneself of the Dirt Caused by Sin |
| Total Physical Cleanliness |

---

<table>
<thead>
<tr>
<th>Title</th>
<th>Content</th>
</tr>
</thead>
</table>
- Wildlife Trade and the Extermination of Wildlife is Prohibited  
- The Benefits of Biodiversity Conservation  
- Protecting and Conservation of Nature Including Wildlife  
- Protecting Wildlife Against Extinction  
- The Protection of Wildlife and their Trade  
- Loving Allah’s Creations as an Act of Worship  
- All of Creation including Wildlife is Worshipping Allah  
- The Conservation of Nature and Wildlife  
- Why Allah Created Other Creatures Apart from Human Beings  
- Being Thankful for and Mending the Environment Including Wildlife  
- Virtue of the Utilization of Natural Resources Including Wildlife |
| ‘Friday Prayer Khutbahs: Conservation and Restoration of Peatlands’ (Khutbah Jumat: Pelestarian dan Restorasi Lahan Gambut) (2018) | - Peatlands from the Islamic Perspective  
- The Prospects of Peatland Management  
- The Role of the Ulama in Environmental Conservation  
- *Amar Ma’ruf wa Nahi Munkar* (Enjoining Good and Forbidding Evil) in Forestry  
- The Trust of Humans as *Khalifah* |

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150 Majelis Ulama Indonesia-Lembaga Pemuliaan Lingkungan Hidup dan Sumber Daya Alam, ‘Buku Khutbah Jum’at: Pelestarian Satwa Langka Untuk Menjaga Keseimbangan Ekosistem’ (MUI-LPLHSDA)  
151 Badan Restorasi Gambut, ‘Khutbah Jumat Pelestarian dan Restorasi Lahan Gambut’ (BRG)  
Unlike MUI, NU and Muhammadiyah publish their *khutbahs* on their websites. They have not produce *khutbahs* that specifically instruct on the environment, but all *khutbahs* shown here address key ISEL principles. NU’s website *NU Online* has a dedicated page for *khutbahs*, and three of them address an aspect of ISEL (Table 7). Muhammadiyah’s website *Suara Muhammadiyah* features two khutbahs of the same nature (Table 8).

<table>
<thead>
<tr>
<th>No.</th>
<th>Date</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>20 April 2011</td>
<td>Setting Straight the Meaning of <em>Jihad</em>&lt;sup&gt;153&lt;/sup&gt;</td>
</tr>
<tr>
<td>2.</td>
<td>4 August 2011</td>
<td>Ramadan Reflections&lt;sup&gt;154&lt;/sup&gt;</td>
</tr>
<tr>
<td>3.</td>
<td>May 2018</td>
<td>This Ramadan, Let’s Befriend Nature!&lt;sup&gt;155&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

Table 7: Nahdlatul Ulama’s environmental *khutbahs*

<table>
<thead>
<tr>
<th>No.</th>
<th>Date</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>26 February 2016</td>
<td>Eclipses: Proof of God’s Might&lt;sup&gt;156&lt;/sup&gt;</td>
</tr>
<tr>
<td>2.</td>
<td>16 February 2017</td>
<td>The Muslim Enriches the Earth&lt;sup&gt;157&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

Table 8: Muhammadiyah’s environmental *khutbahs*

An interesting but unsurprising observation in all three jurisdictions is the delivery of environmental *khutbahs* in Ramadan and Eid (both *Eid al-Fitr* and *Eid al-Adha*). Pragmatically, from personal experience, congregants attend Friday prayers, festivity prayers, and throughout

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the month of Ramadan in greater number and frequency compared to other days. This makes for larger congregations in attendance, and therefore greater reach for sermons delivered.\textsuperscript{158} Substantively, Ramadan is understood as a month for the exercise of self-control; not just from physical needs such as hunger, thirst, and sexual gratification, but also psychological and emotional impulses such as greed, envy, and wroth. The link between these impulses and environmental damage is postulated in some of these \textit{khutbahs}.\textsuperscript{159}

Although these environmental \textit{khutbahs} instruct on Muslims’ environmental obligations, mere instruction is insufficient. Without mechanisms of enforcement, \textit{khutbahs} are but speeches that are either hit or miss. They may either deeply impact their audiences, or fall on deaf ears. Or, they may impact their audiences, but in the context of religious obligations concerning the environment – there are external factors that prevent the audience from putting what was preached into practice. The next part of the paper lays out the challenges to ISEL as a subject of religion-state dynamics in Singapore, Malaysia and Indonesia, and as a subject of religious discourse an individual has to account for in personal decision-making and behaviour.

\textbf{IV. CHALLENGES TO ISLAMIC ENVIRONMENTAL LAW}

The implementation of religious law for the purposes discussed above face both conceptual and practical challenges and these challenges can only be identified if the operation of religious law is put in context. This Part situates ISEL in Singapore, Malaysia, and Indonesia within two important contexts: the context of the societies they operate, and the context of individuals whose behaviours it seeks to change for the better. This reveals the praxis of ISEL to be affected and limited. The paper first situates ISEL within the religion-state dynamics of these three countries, and evaluates how the state’s interactions with religion per se (potentially) affect its praxis. Second, it accounts for the findings in recent studies in experimental social psychology concerning pro-environment behaviours and locate the role of religious norms within the complex behavioural framework provided by the field of environmental psychology. The general conclusion reached here is that ISEL faces the same limitations as national environmental law – that of enforcement.

For one, the invocation of religion in order to achieve a social or public good is not new, and religious entities have operated within secular nation-states to provide religious services that cater to the physical and spiritual welfare of their adherents. Furthermore, secular governance in most parts of the world does not prevent religious communities from continuing to exist, flourish, and propagate teachings. However, the relationship between state and religion

\begin{footnotesize} 
\textsuperscript{158} Coupled with the belief that blessings and rewards for acts of worship and performance of good deeds are multiplied in Ramadan compared to most other months of the year, the recommendation to aid believers in their fasting is to be steadfast in worship (\textit{ibadah}) and be in a state of remembrance of God (\textit{wirid}). This explains the phenomenon. However, this has also led to the mockery of the hypocrisy of ‘Ramadan Muslims’, ie people who would engage in acts of piety and portray religiosity during the holy month, but live ‘un-Islamic’ lives the rest of the year.
\end{footnotesize}

\begin{footnotesize} 
\textsuperscript{159} See eg (n 142) and (n 146). MUIS’ sermon entitled ‘Strengthening Our Relationship with Allah s.w.t. through Istiqamah’ states that ‘Ramadan teaches us that ibadah (worship) is not simply confined to the praying mat or even fasting on certain days, nor does it limit us to a mosque to conduct our prayers and remembrance of Allah. A Muslim brings about mercy and goodness to the entire universe: to his family, his neighbours, his guests, his friends, society, animals, plants, and whomever so that he interacts with. A Muslim remains to be a source of compassion to all, not simply in Ramadan, but consistently throughout his entire life. When we practice istiqamah (consistency), the deeds and behaviour that we have portrayed during Ramadan will remain until the end of our lives. Our relationship with Allah s.w.t. that was forged during Ramadan will not fade easily as long as we practice istiqamah in our ibadah.’ On a similar note, JAKIM’s sermon entitled ‘The Fast and Environmental Sustainability’ identified the failure to control ‘nafsu ammarah’, or ‘the desire to perpetuate evil and do evil deeds’ as a cause of destructive behaviours towards the environment.
\end{footnotesize}
determines the limits of religious practice and expression in any particular jurisdiction – and this remains a challenge even in the context of our case studies. This poses two kinds of tensions between the state and religion: the struggle for power and clash of ideologies, which must be understood to complicate the use of religious law to achieve common (especially environmental) good.

Another challenge that must be recognized in the discourse of law, religion, and the environment is one that is in line with what is already recognized by environmentalists generally – that the complexities of the world’s environmental crises require complex solutions that are multidisciplinary. Although religion is an integral part of about 83.7 per cent of the world’s population, we also know that religious people lie within a spectrum between being ultra-conservative to being extremely laidback in terms of religiosity. The implication of this spectrum is irregularities in their compliance of their religious laws as demonstrated by their behaviours, ie, they may follow religious norms in certain situations, and sometimes they do not. I posit that pro-environmental norms in religious doctrine are not spared these irregularities, and religion alone cannot effect pro-environmental behaviour.

A. Complexities in Religion-State Relations

The utility of religious law in a modern state is limited by the latter’s largely secular nature and the degree to which religious law is allowed to operate (ie, whether as a part of the national legal system or as something that operates beyond the state). In Asia where states never really ‘secularized’, where the state never really separated from the church, religion continues to also influence constitutional law, politics, and culture. And in Southeast Asia alone, religious movements such as the Buddhist Sangha in Thailand and Myanmar, and Muslim organizations and parties in Malaysia and Indonesia actively participate in legal and political discourse. It is therefore generally observed that the relationship between the state and ‘religion’ (both doctrinally and institutionally) in each jurisdiction covered in our case study might determine the authority and implementation of ISEL and its instruments of dissemination.

MUIS and its role in serving the Muslim community in Singapore can be traced to Article 153 of the Constitution of the Republic of Singapore, where the state has an obligation to ‘by law make provision for regulating Muslim religious affairs and for constituting a Council to advise the President in matters relating to the Muslim religion.’ This provision resulted in the enactment of the Administration of Muslim Law Act in 1966 that governs the operation of Islamic law in the country and gives MUIS its powers as a fatwa-issuing body. As postulated before, there is no known reason for MUIS to not issue an environmental fatwa; and the non-binding nature of its fatwas allows MUIS to issue these pieces of legal advice even if they contradicted state policy. Hence, since an environmental fatwa in Singapore will be functionally an advisory more than anything else and would be a good signal to the country’s Muslims of their obligations under Islamic environmental law, it is highly unlikely that an environmental fatwa will face political opposition.

Nevertheless, it can be said that much of the heavy lifting of disseminating ISEL in Singapore is done via MUIS khitbahs. In fact, two of the eight sermons delivered were

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160 See Pew-Templeton Global Religious Futures (n 6) 9.
161 See Arif A Jamal, Jaclyn L Neo, and Daniel PS Goh, Regulating Religion in Asia: Norms, Modes, and Challenges (CUP 2019).
162 See Dian AH Shah, Constitutions, Religion and Politics in Asia: Indonesia, Malaysia and Sri Lanka (CUP 2017).
164 It must also be said, however, that these fatwas do not touch issues of great national importance to garner a response from the state. They deal with financial matters relating to property and inheritance, where the position of state law and its exceptions for Muslims are fairly clear.
delivered ‘in response’ to the government’s plans to increase water prices in 2017 and 2018.165 ‘Doing Justice towards Allah’s Blessings’ (delivered on 11 March 2016) and ‘Balance in God’s Creation’ (delivered on 24 March 2017) both contain advice pointing out the need to use water wisely and save water in the context of Singapore:

Allah the Creator has decided that water will be the source of life on this earth. What would happen then if the blessing of water is taken away from us, as what has happened in some countries? Jemaah (Congregation), can you imagine the difficulty that we will face? I am sure many can remember the prolonged dry season we experienced in Singapore not too long ago. We saw how the trees and plants became so dry, and this worried us. We worried that the hot weather can affect our water supply and cause mosquitoes to breed to a higher level, thus posing a substantial threat to ourselves and the environment. Thus, we should always act justly toward the nikmat (blessing) of having water.

Hence, let us work towards saving water; not just when making wudhu’ (ablution) but in all aspects of life. Know that every effort that we undertake in trying to save water is an honourable act in the sight of Allah, and contributes towards efforts of sustaining the world.

(‘Doing Justice towards Allah’s Blessings’, 4–5)

Jemaah (Congregation),

At times, we have to reflect upon how we have been managing our water resources. This is especially true in Singapore that has not had to deal with water shortage thus far.

Because it is so easy for us to gain access to clean water, it may make us less careful of our water usage, and less appreciative of the value of clean water. Imagine if this blessing is taken away from us.

Hence, the way to be thankful and grateful to Allah for blessing us with water is by appreciating water, and trying our best to use water responsibly, with justice and being balanced in our usage.

(‘Balance in God’s Creations’, 4)

Even so, an environmental fatwa may have greater symbolic power compared to khutbahs as legal authorities clarifying Muslims’ environmental obligations. Furthermore, it is unclear at this point about the actual impact of these environmental khutbahs on congregants, and whether congregations comply with these ‘ judgments’ or otherwise require empirical study.

In Malaysia, Article 3(1) of the Federal Constitution (FC) recognizes Islam as ‘the religion of the Federation’ while allowing other religions to be ‘practised in peace and harmony’. However, this provision cannot ‘derogates (sic) from any other provision of this Constitution’ under Article 3(4), and Article 4 declares the FC as ‘the supreme law of the Federation’. This makes the nature of the Malaysian state – whether it is Islamic or secular or something in between – a point of contention.166 This, however, does not stymie the influence

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of religion in Malaysian constitutional and political culture, and the majoritarian rhetoric of privileging so-called ‘Malay rights’ and Islamic law in the country. This was briefly buttressed by the promotion of the ‘Islam Hadhari’ ideology in 2004 by former Prime Minister Abdullah Badawi where ‘policies and strategies will be formulated and reviewed to represent the best interests of society’ based on ten principles of Islamic governance. Interestingly, one of the principles of Islam Hadhari was environmental protection. Another interesting observation is the religious dimension to the ‘Total Planning and Development Doctrine’ (Doktrin Perancangan dan Pembangunan Sejagat) applied in land-use planning by the Town and Country Planning Department of the Ministry of Housing and Local Government. The doctrine explicitly integrates spiritual and moral values in planning and development based on the duty paradigm in ISEL, although referring to a generic ‘Creator’ rather than a ‘God’ as such to be inclusive.

Even so, one may be discouraged from expanding the scope of the application of Islamic law in Malaysia any further, even if it was for a universal cause like the environment. Attempts to extend the reach of Islamic law in the recent past saw backlash from civil society, and the infamous cases concerning religious freedom before the Malaysian courts.


170 Abu Bakar Abdul Majeed, ‘Islam in Malaysia’s Planning and Development Doctrine’ in Foltz, Denny and Azizan (n 33) 467–474. The author thanks Prof. Ainul Jaria Maidin of the International Islamic University of Malaysia (IIUM) for her insights on this doctrine during her visit to NUS Law.


172 For example, the attempts over the past few years by Pan-Malaysian Islamic Party (PAS) parliamentarians to, inter alia, include new offences under their Islamic criminal enactment in 2015, as well as propose a national bill strengthening the punitive powers of the Shariah courts, have been heavily criticized by prominent civil society
in the past few decades have had local and international media negatively portray Islamic law in the country. Hence, arguments advancing the use of Islamic law for the environment may exacerbate pre-existent tensions, even though the environment does not discriminate and is genuinely an issue of public interest. Furthermore, the use of Islamic law in Malaysia, in my opinion, is misplaced. Instead of addressing more dire problems such as climate change (beyond its current efforts), Islamic legal institutions are infamous for expending most (if not all) of their resources regulating public morality.

Dealing with the environmental fatwa they have issued specifically, it is possible that the tenuous separation between Islamic and secular courts resulting in the operation of a ‘dualistic jurisdiction’ in Malaysia complicates its enforcement and exacerbates tensions. Consider the hypothetical Muslim polluter domiciled in the State of Perlis where the fatwa was issued. Typically, the polluter would be criminally charged under Malaysia’s Environmental Quality Act 1974 for pollution. However, as a Muslim living and committing the offence in Perlis, she could also be found liable for violating the environmental fatwa if it was gazetted and therefore made legally-binding. Nevertheless, looking through the depository of (both reported and unreported) cases heard before the Syariah Courts since 2004, it seems that the fatwa violations have never been tried in court. Thus, it is possible that even if the pollution fatwa was gazetted, violating it may not necessarily invoke a criminal charge – whether because this has never been done before, or whether it potentially disproportionate to punish a person under two legal systems for essentially the same offence. However, this remains to be seen.


175 ibid 673–677.
of state legislation. The most obvious way this can be observed is by looking at how fatwas are titled – a striking similarity with that of state legislation.

<table>
<thead>
<tr>
<th>Format</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law No. &lt;Number&gt; of &lt;Year&gt; on/regarding/concerning &lt;Subject&gt;</td>
<td>Law No. 18 of 2008 on Waste Management</td>
</tr>
<tr>
<td>Fatwa No. &lt;Number&gt; of &lt;Year&gt; on/regarding/concerning &lt;Subject&gt;</td>
<td>Fatwa No. 41 of 2014 on Waste Management for the Prevention of Environmental Degradation</td>
</tr>
</tbody>
</table>

Table 9: Similarity between the name format of state legislation and MUI fatwas

This can also be observed by how these fatwas are formatted:176

...reminiscent of the textual products of the government bureaucracy, referring to previous decisions of the MUI, government decisions, and summing up the considerations systematically, as in the promulgation of a state law; sometimes even the date from which a certain fatwa will be valid, is mentioned.

This can be demonstrated by examining Fatwa No. 30 of 2016 (on forest burning). Unregulated forest and peatland burning by Indonesian farmers in Sumatra who practice slash-and-burn land-clearing techniques have, for over a decade or two, resulted in severe air pollution that had transnational implications.177 The transboundary nature of the pollution culminated in political pressure at the regional level for Indonesia to regulate such practices – but the annual ‘haze’ plaguing the region reflects the state’s inadequacies in enforcing its forestry laws.178 Hence, when she was elected to office in 2014, the current Minister for the Environment and Forestry, Siti Nurbaya Bakar, requested for a fatwa from MUI to establish a moral basis for compliance with forestry laws and the abandoning of slash-and-burn techniques in agriculture.179 The fatwa, published in both Indonesian and English, does not only prohibit forest burning, but also provides recommendations for state and provincial governments, businesses, and the community at large (Table 10). Hence, although MUI fatwas are not legally binding, mimicking the ‘packaging’ of legal instruments make them appear official, authoritative, and legitimate. This is further boosted if the state endorses MUI fatwas, whether formally (expressly by presidential decree during the Suharto regime, or through the courts) or informally (through press statements).

However, state support for MUI fatwas also depends on who is in power. For example, while the previous President Susilo Bambang Yudhoyono allowed MUI to have greater influence in state policies during his presidency between 2004 and 2014 (as evidenced by the many controversial fatwas issued during this period), the current President Joko Widodo’s indifference to the MUI shows that it is not as influential as during the previous administration. This status quo, however, may change. Since Widodo has been recently re-elected for a second

176 Kaptein (n 113) 121.
term in office with a new Vice-President – Islamic scholar and MUI chief Ma’ruf Amin – its influence on government decisions and the ‘force’ of its fatwas may once again be reignited.\textsuperscript{180}

<table>
<thead>
<tr>
<th>Target Audience</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>National and local governments</td>
<td>• Harmonize the regulations related to the utilization of forests and land to avoid overlaps.</td>
</tr>
<tr>
<td></td>
<td>• Disseminate information on the applicable laws and norms related to the use of forests and land through various approaches, including religious based approaches through the involvement of religious leaders.</td>
</tr>
<tr>
<td></td>
<td>• Provide sustained education to the public regarding the use of forests and land through various approaches, including public education and outreach and religious sermons.</td>
</tr>
<tr>
<td></td>
<td>• Empower communities by reinforcing the concept of ‘social forestry’ (perhutanan sosial) and facilitating the preparation of forest and land area for such purposes without using fire.</td>
</tr>
<tr>
<td></td>
<td>• Provide environmentally friendly technology.</td>
</tr>
<tr>
<td></td>
<td>• Establish equitable policies with regard to the issuance of licenses to utilize forests and land to the public.</td>
</tr>
<tr>
<td></td>
<td>• Control forest and land fires by building synergy among the relevant institutions/agencies.</td>
</tr>
<tr>
<td></td>
<td>• Conduct strict and fair enforcement of the law against perpetrators of forest and land fires that may cause damage, pollution, harm to others, harm to public health, and other adverse effects, whether involving individuals or corporations.</td>
</tr>
<tr>
<td>Businesses</td>
<td>• Comply with every law and regulations concerning the utilization of forests and land.</td>
</tr>
<tr>
<td></td>
<td>• Conduct community empowerment, particularly for communities living around forests and land, to further their prosperity.</td>
</tr>
<tr>
<td></td>
<td>• Ensure the conservation of the environment.</td>
</tr>
<tr>
<td></td>
<td>• Provide human resources and facilities to control forest and land fires.</td>
</tr>
<tr>
<td></td>
<td>• Procure appropriate environmentally technology for the preparation of land clearing.</td>
</tr>
<tr>
<td>The Community</td>
<td>• Conduct constructive measures to prepare forest and land area without setting fire.</td>
</tr>
<tr>
<td></td>
<td>• Conduct measures to prevent and mitigate forest and land fire in accordance with the applicable laws and regulations.</td>
</tr>
<tr>
<td></td>
<td>• Actively participate in monitoring for and preventing the practices of burning forests and land that may cause damage, pollution, harm to others, harm to public health, and other adverse effects.</td>
</tr>
</tbody>
</table>

All three ‘sectors’

- Undertake expedited environmental preservation through post-fire reforestation and restoration.

Table 10: MUI’s recommendations in Fatwa No. 30 of 2016 regarding the Law on the Burning of Forests and Land, and the Control Thereof

Even so, khutbah delivery in Indonesia is unregulated. Neither the state nor MUI has the power to regulate sermons delivered in Indonesian mosques. Unlike the environmental khutbahs in Singapore where MUIS as a statutory board can require government mosques to deliver the sermons they produce, especially if these sermons address national issues, the state cannot do the same in Indonesia.\(^{181}\) Apparently, mosques can choose not to deliver MUI sermons because sermons delivered depend on matters mosque authorities deem to be most important and are in their best interest.\(^{182}\) The voluntary nature of delivering these khutbahs; and indeed, the freedom of khatibs to deliver sermons on any topic without regulation means that MUI’s environmental khutbahs may, in reality, have never seen nor ever see the light of day. This effectively defeats the purpose and potential of environmental sermons to have the social control effects intended.

Nevertheless, returning to Wardak’s study, the efficacy of fatwas and khutbahs require mechanisms of social control through tangible ‘follow-up action’ that coerce members of religious communities to change their behaviours. How ISEL practised in Indonesia can be distinguished from its manifestation in Singapore and Malaysia is ‘socialization’ – the ‘proselytization’ of ISEL by da’i and the implementation of tangible measures in communities by MUI’s member organizations. In spite of environmental fatwas and khutbahs, the lack of ‘coercion’ on members of Muslim communities in Singapore and Malaysia may be undermining the social control effects that these religio-legal instruments were intended to have. Furthermore, this lack of coercion may allow for other factors to influence environmental decision-making. The next section delves into the psychological perspectives that must be accounted for when dealing with the lack of coercion to change behaviours for the benefit of the environment.

B. Religious Environmental Law in Society: Practical, Psychological Challenges

According to German jurist and legal anthropologist Wolfgang Fikentscher, ‘religion requires an authorized entity which administers norms, but – except for religious laws – sanctions are absent’.\(^{183}\) Fikentscher’s paradigm here demonstrates the distinction between laws and norms in that the former are supported by sanctions while the latter is not. The enforcement of religious law in the paper’s case studies vary, with sanctions meted out by religious courts largely in cases of personal laws and in very few instances, criminal law. Nevertheless, ISEL in all three jurisdictions are not enforced by the state – relegating religious norms on environmental protection to the realm of social norms for communities to enforce themselves.

While religious people still follow these norms regardless of state involvement, all of them generally lie somewhere in a spectrum of religiosity and observance; ranging from being strict and ultra-conservative to being laidback and ultra-progressive. This results in irregularities in compliance of religious laws. What if there was a lack of ‘coercion’ to foster compliance from within the community? How then can the phenomenon of people following

\(^{181}\) While this ‘hands-off’ approach is the general stance of the state in relation to these Islamic organizations, the state is ‘encroaching’ on their independence to manage certain important religious activities, such as the Hajj. See Alfitri, ‘Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam’ (2018) 13(2) Asian Journal of Comparative Law 389.

\(^{182}\) The author thanks Dr Al Khanif of University of Jember for alerting me to this fact during his visit to CALS.

(and violating) religious law – especially concerning the environment – be best explained? In this section, insights from psychology help us understand the difficulties and complexities of social norms compliance without adequate coercion, whether by state sanctions or by religious institutions.

In his anthropological account of religion, Émile Durkheim posits that religious ‘moral communities’ have internal mechanisms to ensure members’ conformity to the group’s established behavioural norms; and this is largely done through social pressure and collectively-performed religious rites. Literature on the psychology of religion confirms Durkheim’s thesis to an extent – in that apart from the fear of divine judgment and punishment, the social nature of religion facilitates the lives of religious people as communities of believers. This helps ensure conformity – either by groupthink, the fear of being left out, or believers acting as each other’s check. However, beyond apparent human frailties, neither Durkheim nor psychologists of religion explain why members violate social norms despite such mechanisms in place.

Legal scholarship concerning social norms is helpful in providing an answer to this question, albeit imperfect. Most prominently, Eric Posner posits four reasons why members of non-legal cooperative groups (such as religious communities) would choose to violate their group’s social norms despite the possibility of sanctions such as reputational damage – albeit from a law and economics perspective. Three of them, which in my opinion are most relevant, are that: (1) they may not care about such sanctions at all and ‘care more about the intrinsic value of an action contrary to social norms’, (2) they cannot be ostracized from the group because they are too valuable (and Posner gave the example of how we do not (and cannot) ostracize rich people even though they sometimes behave contrary to social norms); and (3) the group’s norms are changing rapidly that they fail to adjust quickly enough.

Meanwhile, literature in environmental and social psychology points to the complexity of behavioural change and the factors that motivate them. In environmental psychology, the first step to effecting positive behavioural change is to alter individuals’ perceptions and beliefs about the environment. Individual beliefs about the environment, informed by cultural factors, social conditions, and contexts, and supported by perceptions of resources in the world (whether finite or infinite, scarce or abundant), influence perceptions about one’s personal responsibility towards the environment that can effect either pro- or anti-environmental

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184 Émile Durkheim, *The Elementary Forms of Religious Life* (Joseph W Swain tr, George Allen & Unwin Ltd 1915) 386: ‘The essential thing is that men are assembled [in the performance of rites], that sentiments are felt in common and expressed in common acts; but the particular nature of these sentiments and acts is something relatively secondary and contingent. To be conscious of itself, the group does not need to perform certain acts in preference to all others. The necessary thing is that *it partakes of the same thought and the same action; the visible forms in which this communion takes place matter but little...* So everything leads us back to this same idea: before all, rites are means by which the social group *reaffirms itself periodically...* Men who feel themselves united, partially by bonds of blood, but still more by a community of interest and tradition, assemble and become conscious of their moral unity.’ [emphasis added]


186 ibid Preston and others (2014) 161.


188 ibid 27–28.
behaviours (Figure 3). For clarity, the term ‘pro-environment behaviours’ here broadly refers to ‘environmentally responsible actions’ or ‘behaviours that benefit the environment’, which may range from those involving personal habits and choices (such as personal lifestyles) to more ambitious actions such as actively engaging in environmental advocacy.

However, recent studies in experimental social psychology on pro-environmental behaviours point to socio-economic status (SES) and cultural values as two strong factors that can affect individuals’ environmental decision-making regardless of their perceptions or beliefs concerning the environment. In the study examining the influence of SES on pro-environmental behaviour, it is found that people belonging to the higher SES segment of a population (i.e., wealthier people) are more likely to act upon their environmental beliefs and concerns compared to their lower SES counterparts. This may be attributed to a belief that they have more control over their lives’ outcomes, with variables such as wealth and disposition (such as reputation and intellect) being enabling factors to support lifestyle changes towards becoming more pro-environment. For example, with greater wealth to dispense, these individuals are more likely to donate to certain pro-environment causes, or invest in solar panels to power their houses. On the other hand, individuals who are considered to belong to the lower SES segment of society are more likely not to act on their environmental beliefs and concerns because of the belief that they do not have much control over their lives’ outcomes, i.e., their lives are subject to uncontrollable external factors. Furthermore, without supportive ‘resources’ such as wealth, low SES individuals may be more reluctant to donate to a cause or adopt pro-environment lifestyles; the limited financial resources they have are more likely channelled towards basic and more pressing material needs.

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Another study examining the influence of culture on pro-environmental behaviour suggests that the cultural values of any given society can predict whether individuals form intentions to act upon their personal environmental concerns.\(^{191}\) Comparing responses from participants in individualistic societies (such as the USA) and collectivistic societies (such as Japan), the study found that participants living in the former are more likely to act upon their personal beliefs and concerns about the environment than the latter.\(^ {192}\) This is attributed to the possibility that the decisions and behaviours of these individuals are mostly motivated by personal convictions and choice. On the flipside, individuals in collectivistic societies are more likely to behave in a particular way when there are perceived social norms supporting such behaviours.\(^ {193}\) This can be explained by the ‘greater value on fitting in’ when living in such societies,\(^ {194}\) motivating individuals to only behave in certain ways if it is practised widely – an indicator of a behaviour being socially acceptable and appropriate.\(^ {195}\)

Notwithstanding the usual methodological problems that problematize works of empirical research generally, when taken together, both these studies reveal that SES and cultural values are intertwined factors. It appears that pro-environmental behaviours are more likely shaped to be influenced by whether or not people believe that they are in control of their lives’ outcomes. While the first study on SES is straight-forward in providing insight on whether an individual is more or less likely to exhibit pro-environment behaviours, the same cannot be said for the latter. Conclusions made involving cultural values require an understanding of the society in question, and must recognize the possibilities for anomalies or nuances within individuals themselves. Nevertheless, these studies have interesting implications to our analysis of the case studies. As observed, the state does not enforce ISEL in any of these countries. This shifts the burden of enforcing ISEL on religious authorities themselves through non-legal means. Accordingly then, the difference between the praxis of ISEL in Singapore and Malaysia, as compared to Indonesia, is the absence of ‘practise what has been preached’ and socio-religious enforcement in the two countries.

Recalling Durkheim’s account of religion, the ‘moral community’ internally enforces religious norms through the performance of rituals and peer pressure. The enforcement of religious environmental norms should logically also rely on these informal mechanisms, requiring collective action and social support for people to change their behaviours towards becoming more pro-environment. The ‘socialization’ of environmental *fatwas* in Indonesia best exemplifies how social enforcement works in the religious context. In the exercise of their socio-religious leadership, MUI and its member organizations actively engage not just in norm-dissemination but also in involving grassroots leaders, volunteers, and preachers in bringing communities along into compliance of these environmental norms; framing initiatives and projects as collective endeavours towards fulfilling key religious obligations. A reference to the study on the impact of cultural values affords the reasoning that society in Indonesia is collectivistic, and society-level change through ‘socialization’ brings individuals into conformity with ISEL. Therefore, it is unsurprising that ‘socialization’ is the best instance of the praxis of ISEL.

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192 ibid 1334.


195 Eom and others (n 191) 1335.
Lest we forget, religious organizations are social organizations, with members that can be tapped on for manpower and logistical support. In the context of 'socialization’, MUI and its member organizations tap on their vast membership\(^{196}\) and financial support from NGOs (such as the Conservation International, which is itself supported by the World Bank)\(^{197}\) the implementation of their environmental fatwas. Plus, this absolves lower SES individuals of the burden of the survival-versus-environment dilemma since initiatives are supported by these organizations for little or no cost. On the other hand, there are no observable attempts at enforcing ISEL by the religious authorities in Singapore and Malaysia as an exercise of social leadership, and neither are there observable enforcement from within the ‘moral community’. This is a hindrance to the proper praxis of ISEL, and consequently, a hindrance to the achievement of its built-in environmental objectives.

CONCLUSION

This paper offered a glimpse of how religious law has been deployed to respond to global environmental crises, and the conceptual and practical challenges to the optimal implementation thereof. Specifically, it showcased the implementation of ISEL in Singapore, Malaysia, and Indonesia through fatwas and khutbahs – two key religio-legal instruments used to disseminate religious environmental law to Muslims in those countries. As shown, there are inconsistencies in the extent to which each of these instruments can be utilized; and these inconsistencies may be explained by examining the challenges preventing its efficacy. Insights gathered from both legal and psychological studies informed our understanding of these challenges, and revealed that the practical problems faced by state environmental law, ie enforcement, plague religious environmental law as well. This affords the conclusion that religion and religious law are not panaceas to our shared environmental woes. Rather, they should form part of integrated, multidisciplinary solutions.

Moving forward, ISEL as a subject of inquiry should be further developed. Empirical study should be conducted to examine the psychological effects of religious law and life on environmental decisions and behaviours. From a public law standpoint, there is potential for in-depth examination of the invocation (or potential invocation) of religion in both constitutional and administrative actions against the state, specifically concerning actions challenging environmental decisions made by industries and state bodies. In the context of Muslim-majority countries like Egypt and Pakistan, it would be interesting to reframe the study of such actions from the encroachment of Islamic law into fundamentally ‘secular’ judicial review, to the use of Islamic law in judicial review for environmental objectives. In sum, ISEL is a rich area of environmental law where much more can be explored.

\(^{196}\) Gade (n 125) 274. This is supported by the system of ‘caderization’ of MUI members that allows mobilization for ‘community empowerment’.

\(^{197}\) Gade (n 122) 166.