



Centre for Asian Legal Studies
Faculty of Law

NUS Centre for Asian Legal Studies Working Paper 19/03

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

Shazny RAMLAN

lawshaz@nus.edu.sg

[June 2019]

This paper is part of the larger National University of Singapore, Faculty of Law Working Paper Series and can also be downloaded without charge at : <http://law.nus.edu.sg/wps/>.

© Copyright is held by the author or authors of each working paper. No part of this paper may be republished, reprinted, or reproduced in any format without the permission of the paper's author or authors. **Note:** The views expressed in each paper are those of the author or authors of the paper. They do not necessarily represent or reflect the views of the National University of Singapore.

Citations of this electronic publication should be made in the following manner: Author, "Title", CALS Working Paper Series, Paper Number, Month & Year of publication, <http://law.nus.edu.sg/cals/wps.html>. For instance, Varottil, Umakanth, "The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony", CALS Working Paper Series, No.15/01 , January 2015, <http://law.nus.edu.sg/cals/wps.html>

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

Shazny Ramlan*
lawshaz@nus.edu.sg

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.

* Research Assistant, Centre for Asian Legal Studies (CALS), National University of Singapore Faculty of Law (NUS Law). The author thanks CALS for its support and funding of a presentation of this paper at the Socio-Legal Studies Association (SLSA) 2019 Conference held on 3–5 April at the University of Leeds. The author also thanks attendees of the CALS Researchers Seminar held on 29 November 2018 for their comments on an earlier version of the paper. Finally, the author thanks Paul Reddish (NUS Psychology), and Kimin Eom (School of Social Sciences, Singapore Management University), for their research assistance on the psychology of religion and experimental social psychology of pro-environment behaviour respectively. All errors remain mine.

¹ International Panel on Climate Change, 'Special Report – Global warming of 1.5°C' (IPCC) <<https://www.ipcc.ch/sr15/>> accessed 19 December 2018.

One of the foundations of environmental rule of law,² according to the *World Declaration on the Environmental Rule of Law*³ 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.⁴ 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.⁵ 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.⁶ 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 nation-states, 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

² The United Nations Environmental Programme (UNEP) declared the centrality of environmental rule of law to the achievement of sustainable development, and the outcome document of the Rio+10 Conference, *The Future We Want*, reiterates this point. See UNEP, 'Issue Brief' (UNEP May 2015) <<http://wedocs.unep.org/bitstream/handle/20.500.11822/10664/issue-brief-erol.pdf>> accessed 21 May 2019; United Nations Conference on Sustainable Development Rio+20, *The Future We Want: Outcome Document* (United Nations 2012) <<https://sustainabledevelopment.un.org/content/documents/733FutureWeWant.pdf>> accessed 21 May 2019.

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.'

⁴ See Brian Bix, *Jurisprudence: Theory and Context* (6th edn, Sweet & Maxwell 2012) 181–190.

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 Zamir 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.

⁶ Pew-Templeton Global Religious Futures, 'The Global Religious Landscape: A Report on the Size and Distribution of the World's Major Religious Groups as of 2010' (Pew Research Center's Forum on Religion & Public Life, December 2012) <<https://www.pewforum.org/2012/12/18/global-religious-landscape-exec/>> accessed 25 February 2019.

environmental laws, religious law can also effect behavioural change in believers towards becoming more eco-friendly.⁷ 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*).⁸ 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.⁹ In 1986¹⁰ and 1995,¹¹ 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.'¹² 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

⁷ See Edward A Ross, 'Social Control V. Religion' (1986) 2(3) American Journal of Sociology 433.

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.

⁹ See eg David Livingston, 'Intra-Muslim Debates on Ecology: Is Shari'a Still Relevant?' (2012) 16(3) Worldviews: Global Religions, Culture and Ecology 218; Abubakr A Bagader and others(eds), *Environmental Protection in Islam* (2nd edn, IUCN 1994); Islamic Educational, Scientific and Cultural Organization, *Islamic Declaration on Sustainable Development* (2002) <www.isesco.org.ma/wp-content/uploads/2015/05/5env-decla_en.pdf> accessed 8 November 2018; *Islamic Declaration on Global Climate Change* (IFEES, 9 July 2016) <www.ifees.org.uk/wp-content/uploads/2016/10/climate_declarationmMWB.pdf> accessed 8 November 2018.

¹⁰ The gathering resulted in the creation of 'The Assisi Declarations'. See Alliance of Religions and Conservation, 'The Assisi Declarations: Messages on Humanity and Nature from Buddhism, Christianity, Hinduism, Islam & Judaism' (ARC 1986) <<http://www.arcworld.org/downloads/THE%20ASSISI%20DECLARATIONS.pdf>> accessed 14 June 2019.

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'¹³ in support of religions' biophilic objectives.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.¹⁵ Likewise, Islamic religious leaders and scholars have created 'international instruments' such as the *Islamic Declaration on Sustainable Development*¹⁶ and the *Islamic Declaration on Global Climate Change*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.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.¹⁹ Hence, environmental protection has always been part of the *Shari'a* or Islamic law.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

¹³ World Wildlife Fund for Nature, 'Sacred Earth: Faiths for Conservation' (World Wildlife Fund, 2019)

<<https://www.worldwildlife.org/initiatives/sacred-earth-faiths-for-conservation>> accessed 12 February 2019.

¹⁴ Nicholas A Robinson, 'Evolved Norms: A canon for the Anthropocene' in Christina Voigt (ed), *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law* (CUP 2013) 64–5.

¹⁵ See eg Pope Francis, *Encyclical Letter Laudato Si' of the Holy Father Francis on Care for Our Common Home* <http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html> accessed 29 October 2018; Stephanie Kirchgaessner, 'Pope's climate change encyclical tells rich nations: pay your debt to the poor' *The Guardian* (London, 18 June 2015) <www.theguardian.com/world/2015/jun/18/popes-climate-change-encyclical-calls-on-rich-nations-to-pay-social-debt> accessed 29 October 2018.

¹⁶ Islamic Educational, Scientific and Cultural Organization, 'Islamic Declaration on Sustainable Development', Publications (IESCO, May 2015) <https://www.isesco.org.ma/wp-content/uploads/2015/05/5env-decla_en.pdf> accessed 4 January 2019.

¹⁷ The Islamic Foundation for Ecology and Environmental Sciences, 'Islamic Declaration on Global Climate Change' (IFEES, October 2016) <http://www.ifees.org.uk/wp-content/uploads/2016/10/climate_declarationmWB.pdf> accessed 4 January 2019.

¹⁸ See eg Rosemary R Ruether, 'The Biblical Vision of the Ecological Crisis' (1978) 95(38) *Christian Century* 1129; Lynn White, Jr, 'The Historical Roots of Our Ecological Crisis' (1967) 155(3767) *Science* 1203; Anna Peterson, 'In and Of the World? Christian Theological Anthropology and Environmental Ethics' (2000) 12 *Journal of Agricultural & Environmental Ethics* 237; Asian Tribune, 'Judge Weeramantry focuses on Hindu contribution to environment protection' (Asian Tribune, 9 June 2007)

<www.asiantribune.com/index.php?q=node/6083> accessed 29 October 2018; Asian Tribune, 'Buddhist contribution to environmental protection – Judge Weeramantry' (Asian Tribune, 20 June 2007)

<www.asiantribune.com/index.php?q=node/6210> accessed 29 October 2018; Shera Lhundup, 'The Genesis of Environmental Ethics and Sustaining its Heritage in the Kingdom of Bhutan' (2002) 14(4) *Georgetown International Environmental Law Review* 693; Mohammad Abbas Abdul Razak, 'Man and Nature: An Islamic Perspective' (2014) 5(2) *Peshawar Islamicus* 1.

¹⁹ See Mohammad Assayed Jamil, *A Study on Environmental Issues with Reference to the Qur'an and the Sunna* (Lahcen Haddad tr, Islamic Educational, Scientific and Cultural Organization 1999); Mohamed A 'Arafa, 'Islamic Policy of Environmental Conservation: 1,500 Years Old – Yet Thoroughly Modern' (2014) 16(2) *European Journal of Law Reform* 465; Geoffrey E Roughton, 'The Ancient and the Modern: Environmental Law and Governance in Islam' (2007) 32(1) *Columbia Journal of Environmental Law* 99.

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.'

contemporary legal, political, and practical life challenges not explicitly covered by these primary sources.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-sharī’a*).²²

Fundamentally, the study of theology and the legal sciences are inseparable in Islam.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.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.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*)²⁶ in which God is the Creator²⁷ and the Sovereign.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,²⁹ both quantitatively and qualitatively.³⁰ Thus, God created and fashioned all things with purpose and value,³¹ pre-determined their forms and functions as well as their life and death.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.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*.³⁴

The concept of *khilafah* or stewardship imposed on humankind involves a ‘duty paradigm’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

²¹ Wael B Hallaq, *The Origins and Evolution of Islamic Law* (CUP 2005).

²² For an introduction to these methodologies, see Hashim Kamali, *An Introduction to Sharī’ah* (Ilmiah Publishers 2006), Hashim Kamali, *Sharī’ah Law: An Introduction* (Oneworld 2008). For more substantive texts on the *maqasid as-sharī’ah*, see Muhammad Al-Tahir Ibn Ashur, *Treatise on Maqasid al-Sharī’ah* (Muhammad El-Tahir El-Mesawi tr, The International Institute of Islamic Thought 2006); Gamal Eldin Attia, *Towards Realization of the Higher Intents of Islamic Law – Maqasid al-Sharī’ah: A Functional Approach* (Nancy Roberts tr, The International Institute of Islamic Thought 2007).

²³ See Wan Azhar Wan Ahmad, *Imām al-Ḥaramayn Al-Juwaynī on the Symbiosis between Theology and Legal Theory* (Islamic & Strategic Studies Institute 2017).

²⁴ See Anver M Emon, *Islamic Natural Law Theories* (OUP 2010).

²⁵ See Seyyed Hossein Nasr, *Man and Nature: The Spiritual Crisis in Modern Man* (Mandala 1991); William C Chittick (ed) *The Essential Seyyed Hossein Nasr* (World Wisdom 2007).

²⁶ Fazlun M Khalid, ‘Exploring Environmental Ethics in Islam: Insights from the Qur’an and the Practices of the Prophet Muhammad’ in John Hart (ed), *The Wiley Blackwell Companion to Religion and Ecology* (John Wiley & Sons 2017) 131–132; Roughton (n 19) 104–105; Mawil Y Izzī Deen Sammarai, ‘Islamic Environmental Ethics, Law, and Society’ in Roger S Gottlieb (ed), *This Sacred Earth: Religion, Nature, Environment* (2nd edn, Routledge 2004) 160–161.

²⁷ Qur’an 39:62, 50:38; Roughton (n 19) 105–107.

²⁸ Qur’an 2:255.

²⁹ Qur’an 13:8.

³⁰ Qur’an 55:7–10.

³¹ Qur’an 15:85, 38:27, 44:38–39.

³² Qur’an 2:29, 15:21, 25:2.

³³ Saadia K K Chishtī, ‘Islam, the Contemporary Islamic World, and the Environmental Crisis’ in Richard Foltz, Frederick M. Denny and Azizan Haji Baharudin, *Islam and Ecology, a Bestowed Trust* (Center for the Study of World Religions, Harvard Divinity School 2003) 67–71, 76–78.

³⁴ Sammarai (n 26) 159.

³⁵ ‘Arafa (n 19) 470.

(*khalifah al-ard*) is fiduciary in nature (*amanah*)³⁶ – human beings are both trustees and beneficiaries of the Earth,³⁷ which they care for on behalf of God.³⁸ While they are free to exploit the natural resources which God provides for their material needs,³⁹ 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-Allah*.⁴⁰ 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.⁴¹

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*'),⁴² equity (*ihsan*),⁴³ and mercy (*rahmah*).⁴⁴ 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*).⁴⁵ For non-human communities, such as animals and plants, human beings have the additional duty of protection (*hurmah*) owed to them.⁴⁶ This duty is imposed because all other creations live in communities like human beings,⁴⁷ and that they too continuously worship and praise God.⁴⁸ These duties of just dealings and protection also extend to future generations of creations, thereby calling for both intra- and inter-generational equity.⁴⁹

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'minūn (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.

³⁸ Qur'an 4:126; 'Arafa (n 19) 470; Omar A Bakhashab, 'Islamic Law and the Environment: Some Basic Principles' (1988) 3(3) Arab Law Quarterly 287.

³⁹ Qur'an 11:61, 17:70, 67:15.

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.

⁴⁵ Qur'an 21:107.

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.⁵⁰ 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*.⁵¹ 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.⁵²

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'⁵³ has been used as a basis for Islamist legal activists to challenge the 'un-Islamic' character of laws and government actions in the courts.⁵⁴ 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'rūf 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'.⁵⁵

In Pakistan where Islam is the state religion⁵⁶ and is foundational to its statehood,⁵⁷ its Supreme Court held that Pakistan's constitutional framework makes compatible Islamic principles of justice, equality, and democracy with secular fundamental rights;⁵⁸ and that Islamic principles are manifested in as well as motivate the public interest litigation (PIL)

⁵⁰ See Rudolph Peters, 'From Jurists' Law to Statute, What Happens When the Shari'a is Codified' (2002) 7(3) *Mediterranean Politics* 82; Robert W Hefner, 'Introduction' in Robert W Hefner (ed), *Shari'a Politics: Islamic Law and Society in the Modern World* (Indiana University Press 2011) 2.

⁵¹ Basic Law of Governance 1992, art 1.

⁵² For an in-depth study of Saudi environmental law and how Islamic environmental law manifests in it, see Norah binti Hamad, 'Foundations for Sustainable Development: Harmonizing Islam, Nature and Law' (SJD Dissertation, Pace University 2017).

⁵³ Constitution of the Arab Republic of Egypt, art 2. The positioning of this provision remains unchanged since 1971, although there was a change in the wording from 'a main source of legislation' to 'the main source of legislation' in 1980. See Tamir Moustafa, 'The Islamist Trend in Egyptian Law' (2010) 3 *Politics and Religion* 610; Clark B Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari'a* (Brill 2006), 123–140; Clark B Lombardi, 'Constitutional Provisions Making Sharia 'A' or 'The' Chief Source of Legislation: Where Did They Come from? What Do They Mean? Do They Matter?' (2013) 28 *American University International Law Review* 733.

⁵⁴ Clark B Lombardi and Connie J Cannon, 'Transformations in Muslim Views about "Forbidding Wrong": The Rise and Fall of Islamist Litigation in Egypt' in Robert W Hefner, *Shari'a Law and Modern Muslim Ethics* (Indiana University Press 2016) 145–149.

⁵⁵ *ibid* 151, case in Helmi al-Namnam, *Al-Hisba wa Hurriyat al-Ta'bīr* (Al-Shabaka Al-'Arabiyya l-Ma'lūmāt Huqūq al-Insān 2012) 186–190.

⁵⁶ Constitution of Pakistan 1973, art 2 (1973 Constitution).

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.

⁵⁸ *Benazir Bhutto v The Federation of Pakistan* (1988) PLD SC 416 (Supreme Court of Pakistan). See Muhammad Afzal Zullah, 'Human Rights in Pakistan' (1992) 18(4) *Commonwealth Law Bulletin* 1343, 1346.

mechanism in Article 184A of the *Constitution of the Islamic Republic of Pakistan*.⁵⁹ 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*⁶⁰ and *Human Rights Case (Environmental Pollution in Baluchistan)*⁶¹ all manifest the exercise of the Islamic right to access to justice, among others.⁶²

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 water⁶³ and natural resource policy,⁶⁴ to organizational management in businesses.⁶⁵ The sole law article available involving praxis discusses ISEL’s incorporation into guidelines applicable to an Islamic financial instrument – the *sukuk*.⁶⁶ Otherwise, the study of the praxis of ISEL remains the domain of anthropologists of religion.⁶⁷ 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).

⁶² Martin Lau, ‘Islam and Judicial Activism: Public Interest Litigation and Environmental Protection In the Islamic Republic of Pakistan’ in Alan E Boyle and Michael R Anderson (eds), *Human Rights Approaches to Environmental Protection* (OUP 1996) 296–301; Martin Lau, ‘The Right to Public Participation: Public Interest Litigation and Environmental Law in Pakistan’ (1995) 4(1) *Review of European Community & International Environmental Law* 49.

⁶³ See Ali Ahmad, ‘Islamic Water Law as an Antidote for Maintaining Water Quality’ (1999) 2(2) *University of Denver Law Review* 169.

⁶⁴ See Walied El-Malik, ‘State Ownership of Minerals under Islamic Law’ (1996) 14(3) *Journal of Energy & Natural Resources Law* 310.

⁶⁵ See Dina M Abdelzaher, Amr Kotb and Akrum Helfaya, ‘Eco-Islam: Beyond the Principles of *Why* and *What*, and Into the Principles of *How*’ (2019) 1533(3) *Journal of Business Ethics* 623.

⁶⁶ Umar F Moghul and Samir HK Safar-Aly, ‘Green Sukuk: The Introduction of Islam’s Environmental Ethics to Contemporary Islamic Finance’ (2014) 27(1) *The Georgetown International Environmental Law Review* 1.

⁶⁷ See (n 122) and (n 125); Fachruddin 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.⁶⁸ Islam arrived in Southeast Asia around the 13th century CE, with primarily merchants and missionaries from Yemen bringing its teachings over.⁶⁹ This resulted in the predominance of one sect (ie, Sunni Islam) and one school of jurisprudence (Shafi'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.⁷⁰ 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'⁷¹ 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'.⁷² 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.⁷³ However, only Malaysia and the autonomous Indonesian province of Aceh codify and enforce Islamic criminal law (*hudud*).⁷⁴

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

⁶⁸ CIA World Factbook, 'Indonesia' < <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html> > accessed 25 April 2019.

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.

⁷¹ Singapore Parliamentary Debates 26 February 2008, vol 84, col 723ff.

⁷² Li-Ann Thio, *A Treatise on Singapore Constitutional Law* (Academy Publishing 2012) 210.

⁷³ See Ahmad Nizam Abbas, 'The Islamic Legal System in Singapore' (2012) 21(1) *Pacific Rim Law & Policy Journal* 163; Andrew Harding, 'Sharia and National Law in Malaysia' in Jan Michiel Otto, *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden University Press 2010), MB Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (ISEAS 2008).

⁷⁴ See Kamaruzzaman Bustamam-Ahmad, *Islamic Law in Southeast Asia: A Study of its Application in Kelantan and Aceh* (Asian Muslim Action Network 2009); Timothy P Daniels, *Living Sharia: Law and Practice in Malaysia* (University of Washington Press 2017); Hashim Kamali, *Punishment in Islamic Law: an Enquiry into the Hudud Bill of Kelantan* (Institut Kajian Dasar 1995); Hasnil Basri Siregar, 'Islamic Law in a National Legal System: A Study of Implementation of Shari'ah in Aceh, Indonesia' (2008) 3(1) *Asian Journal of Comparative Law* 1.

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*⁷⁵ – 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.’⁷⁶ However, *fatwas* are not legally binding and can only serve as scholarly opinions or advice.⁷⁷ This reality is reflective of how *muftis* were historically (and theoretically) the state’s ‘pious opposition’ and were (largely) independent of political influence⁷⁸ and ‘controlled the law on the level of discourse’.⁷⁹ 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*).⁸⁰ Indeed, some *muftis* in the past served as *qadis* or experts in courts – where their *fatwas* can be endorsed and made binding.⁸¹

Fatwa-making (*iftā*) is a process that involves only two parties: a questioner (*mustafti*) 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.⁸² 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.⁸³

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’,⁸⁴ it is imperative that *muftis* clearly state the position of Islamic law on a given issue, and conclude with the invocation ‘And Allah

⁷⁵ Frank E Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (Brill 2000) 5.

⁷⁶ Wael B Hallaq, *The Origins and Evolution of Islamic Law* (CUP 2005) 63.

⁷⁷ Farhanin A Asuhaimi, Nur Amani Pauzai, Maheran Makhtar, and Khairun-nisaa Asari, ‘The Role and Position of Fatwa in Malaysian Court’ (2017) 25 *Pertanika Journal of Social Science and the Humanities* 227.

⁷⁸ Knut S Vikør, *Between God and the Sultan: A History of Islamic Law* (OUP 2005) 143; Roy P Mottahedeh, ‘Introduction’ in Muhammad Baqir as-Sadir, *Lessons in Islamic Jurisprudence* (Roy P Mottahedeh tr, Oneworld 2005) 7.

⁷⁹ Haim Gerber, *Islamic Law and Culture, 1600–1840* (Brill 1999) 56.

⁸⁰ Sherman A Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfi* (Brill 1996) 145–6.

⁸¹ Vikør (n 78) 145–146.

⁸² *ibid* 141–3.

⁸³ Mottahedeh (n 78) 7–8; Muhammad Khalid Masud, Brinkley Messick, and David S Powers, ‘Muftis, Fatwas, and Islamic Legal Interpretation’ in Muhammad Khalid Masud, Brinkley Messick, and David S Powers (eds), *Islamic Legal Interpretation: Muftis and their Fatwas* (Harvard University Press 1996) 20–26.

⁸⁴ *ibid* 149–150.

knows best' (*wallahu a'lam*) as a mark that 'the *mufī* gives... only the best that Man can determine for what God's will really is.'⁸⁵

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.'⁸⁶ 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:⁸⁷

Miscellaneous

Like 0

Number : 825789

Date : 10/31/2018

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 vicegerent 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

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:⁸⁸

⁸⁵ *ibid* 150.

⁸⁶ Richard K Neumann, Jr (ed), *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* (Aspen Publishing 2009) 66–67.

⁸⁷ Fatwa Council of Dar al-Ifta', Fatwa No. 825789 (*Dar al-Ifta' al-Missriyyah*, 31 October 2018) <<http://dar-alifta.org/Foreign/f.aspx?ID=825789>> accessed 14 March 2019.

⁸⁸ Fatwa Council of Dar al-Ifta', Fatwa No. 8315 (*Dar al-Ifta' al-Missriyyah*, 15 October 2013) <<http://www.dar-alifta.org/Foreign/ViewFatwa.aspx?ID=8315>> accessed 19 March 2019.

Sons inheriting without having any knowledge about Islam

My uncle died in the US. He was married to an American woman and has two boys who do not know anything about Islam. Do they have the right to inherit their father's possessions in Egypt?

Answer

The basic presumption is that they are Muslims (as long as there is no evidence that supports otherwise) and are [therefore] entitled to inherit their father's property.

If it is proved that they are non-Muslims, they are not entitled to inherit except if the legal heirs give them something from the estate willingly.

Figure 2: Another *fatwa* issued by Dar al-Ifta al-Missriyyah

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 *mustafti*, reminding the *mustafti* 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

⁸⁹ Administration of Muslim Law Act (Cap 3, 2009 Rev Ed Sing), s 31 [hereinafter 'AMLA'].

⁹⁰ Afif Pasuni, 'Negotiating Statist Islam: Fatwa and State Policy in Singapore' (2018) 37(1) Journal of Current Southeast Asian Affairs 57, 60.

⁹¹ AMLA, s 31(4).

⁹² AMLA, s 31.

members of the public⁹³ or at its own discretion.⁹⁴ They may choose to not answer requests deemed ‘frivolous or for other good reason ought not to be answered’;⁹⁵ and where a *fatwa* is drafted, they may only be issued if Committee members voted unanimously in favour of its contents.⁹⁶ A court may also request for an opinion from the Committee when ‘any question of the Muslim law falls for decision’,⁹⁷ but these opinions are non-binding and persuasive at best.⁹⁸ 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 1987⁹⁹ and 1991¹⁰⁰ 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*.¹⁰¹ 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.¹⁰²

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*)’.¹⁰³ The NFC currently consists of all state *muftis* alongside Islamic experts appointed by the Conference of Rulers.¹⁰⁴ To issue *fatwas*, the NFC has to first recommend the proposed *fatwa* to the Conference of Rulers for approval and authorization.¹⁰⁵ 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.¹⁰⁶ 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

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).

⁹⁸ *Shafeeg bin Salim Talib and Anor v Fatimah bte Abud bin Talib* [2010] SGCA 11. See Muhammad Nurshazny Ramlan, ‘Application of Muslim Law and the Survivorship of Joint Tenancies in Singapore’ (2015/16) 7 *Juris Illuminae* (Singapore Law Review, 2 May 2016) <<http://www.singaporelawreview.com/juris-illuminae-entries/2016/application-of-muslim-law-and-the-survivorship-of-joint-tenancies-in-singapore>> accessed 9 November 2018.

⁹⁹ Majlis Ugama Islam Singapura, *Kumpulan Fatwa (1)* (MUIS 1987).

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) <<https://www.channelnewsasia.com/news/singapore/first-compilation-of-local-fatwas-launched-gathering-rulings-on--7598872>> accessed 8 February 2019.

¹⁰² Majlis Ugama Islam Singapura, ‘Office of the Mufti – Fatwa’, <<https://www.muis.gov.sg/officeofthemufti/Fatwa>> accessed 27 December 2018.

¹⁰³ Jabatan Kemajuan Islam Malaysia, ‘Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia’ (JAKIM) <http://e-smaf.islam.gov.my/e-smaf/fatwa/latar_belakang/penubuhan> accessed 13 November 2018; Zaini Nasohah, ‘Undang-undang Penguatkuasaan Fatwa di Malaysia’ (2005) 27(1) *Islāmiyyāt* 25, 31.

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:

¹⁰⁷ Johor (Administration of the Islamic Religion (Johor) Enactment 2003, ss 46–7), Kelantan (Council for the Islamic Religion and Malay Custom Enactment 1994, s 36), Melaka (Administration of the Islamic Religion (Melaka) Enactment 2002, ss 34–6), Negeri Sembilan (Administration of the Islamic Religion (Negeri Sembilan) 2003, ss 48–9), Perak (Administration of the Islamic Religion Enactment (Perak) 2004, ss 35–6), Sabah (Sabah Fatwa Enactment 2004, s 8), Sarawak (Islamic Religious Council of Sarawak Ordinance 2001, ss 36–7), Selangor (Administration of the Islamic Religion (Selangor) Enactment 2003, ss 46–7), and Terengganu (Administration of Islamic Religious Affairs 2001, ss 48–9).

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, s 36.

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

¹¹¹ Jabatan Kemajuan Islam Malaysia, ‘Fatwa/Pandangan Hukum’, (e-SMAF: Sumber Maklumat al-Ahkam al-Fiqhiyyah) <<http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/3>> accessed 14 November 2018.

¹¹² Kevin W Fogg, ‘Reinforcing Charisma in the Bureaucratisation of Indonesian Islamic Organisations’ (2018) 37(1) *Journal of Current Southeast Asian Affairs* 117, 118.

¹¹³ Nico JG Kaptein, ‘The Voice of the ‘Ulamā’: Fatwas and Religious Authority in Indonesia’ (2004) 125 *Archives De Sciences Sociales Des Religions* 115, 120.

¹¹⁴ Majelis Ulama Indonesia, ‘Sejarah MUI’ (Majelis Ulama Indonesia) <<https://mui.or.id/sejarah-mui/>> accessed 15 November 2018. See Jan Michiel Otto, ‘Sharia and National Law in Indonesia’ in Jan Michiel Otto (n 73) 447; Mu’nim Sirry, ‘Fatwas and their Controversy: The case of the Council of Indonesian Ulama (MUI)’ (2013) 44(1) *Journal of Southeast Asian Studies* 100, 101–102.

¹¹⁵ Hooker (n 73) 26–31.

¹¹⁶ See Mohamad Abdun Nasir and Asnawi, ‘The *Majelis Ulama*’s Fatwa on Abortion in Contemporary Indonesia’ (2011) 101(1) *The Muslim World* 33, 34; Piers Gillespie, ‘Current Issues in Indonesian Islam: Analysing the 2005 Council of Indonesian Ulama Fatwa No. 7 Opposing Pluralism, Liberalism and Secularism’ (2007) 18(2) *Journal of Islamic Studies* 202, 203; Ahmad Najib Burhani, ‘Treating Minorities with Fatwas: A Study of the Ahmadiyyah Community in Indonesia’ (2014) 8(3) *Contemporary Islam* 285; Moch Nur Ichwan, ‘*Ulamā*’, State and Politics: Majelis Ulama Indonesia After Suharto’ (2005) 12(1) *Islamic Law and Society* 45.

¹¹⁷ See Luthfie Assyaukanie, ‘Fatwa and Violence in Indonesia’ (2009) 11 *Journal of Religion and Society* 1.

Country	No. of Environmental <i>Fatwas</i>
Singapore	0
Malaysia	1
Indonesia	5

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',¹¹⁸ 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.¹¹⁹ 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 2016.¹²⁰ The Fatwa on the Pollution of the Environment (*Fatwa Pencemaran Alam Sekitar*) states that:¹²¹

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.

¹¹⁸ AMLA, s 32(3).

¹¹⁹ Ramlan (n 98).

¹²⁰ Rashvinjeet S. Bedi, 'Perlis issues a fatwa on environmental pollution' *The Star* (Kuala Lumpur, 1 March 2016) <<https://www.thestar.com.my/news/nation/2016/03/01/perlis-issues-a-fatwa-on-environmental-pollution/>> accessed 14 November 2018; 'Perlis Fatwa Committee bans act of polluting environment' *Malay Mail* (Kuala Lumpur, 1 March 2016) <<https://www.malaymail.com/news/malaysia/2016/03/01/perlis-fatwa-committee-bans-act-of-polluting-environment/1071077>> accessed 14 November 2018; Clean Malaysia, 'Muftis in Perlis Issue a Fatwa Against Pollution' (Clean Malaysia, 2 March 2016) <<https://cleanmalaysia.com/2016/03/02/muftis-in-perlis-issue-a-fatwa-against-pollution/>> accessed 14 November 2019.

¹²¹ Jawatankuasa Fatwa Negeri Perlis, 'Fatwa Pencemaran Alam Sekitar' (e-SMAF: Sumber Maklumat al-Ahkam al-Fiqhiyyah, 19 February 2016) <<http://e-smaf.islam.gov.my/e-smaf/fatwa/fatwa/find/pr/15481>> accessed 14 November 2018.

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*',¹²² 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.¹²³ 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
5. Fatwa No. 001/MUNAS-IX/MUI/2015 on the Utilization of *Zakat* Wealth, *Infaq*, *Sadaqah*, and *Waqf* for the Construction of Clean Water and Sanitation Facilities for Communities
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.¹²⁴ 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.¹²⁵ 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.

¹²² Anna M Gade, 'Islamic Law and the Environment in Indonesia: Fatwa and Da'wa' (2015) 19(2) *Worldviews: Global Religions, Culture and Ecology* 161.

¹²³ *ibid* 162; MB Hooker, *Indonesian Islam: Social Change through Contemporary Fatwa* (University of Hawaii Press 2003).

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.

Fatwa	Accompanying Publication(s)
Fatwa No. 4 of 2014 on the Conservation of Endangered Species for the Preservation of Ecosystem Balance	<ul style="list-style-type: none"> • Conservation of Endangered Species for Ecosystem Balance: The Administration of the Socialization of MUI's Fatwa No. 4 of 2014 on Biodiversity Conservation for the Preservation of Ecosystem Balance (<i>Pelestarian Satwa Langka untuk Keseimbangan Ekosistem</i>) (MUI, June 2017)
Fatwa No. 001/MUNAS-IX/MUI/2015 on the Utilization of <i>Zakat</i> Wealth, <i>Infuq</i> , <i>Sedekah</i> , and <i>Wakaf</i> for the Construction of Clean Water and Sanitation Facilities for Communities	<ul style="list-style-type: none"> • Training Materials for Preachers for Sanitation: Guide to Community-Based Total Sanitation (<i>Materi Pelatihan Dai Sanitasi: Pendampingan Sanitasi Total Berbasis Masyarakat</i>)(MUI, March 2017) • Learning Journey of the Preachers for Sanitation Programme: Rallying For and Controlling Community-Based Total Sanitation (<i>Kisah Pembelajaran Perjalanan Program Dai Sanitasi: Menyeru dan Mengawal Sanitasi Total Berbasis Masyarakat</i>) (MUI, July 2017)
Fatwa No. 30 of 2016 regarding the Law on the Burning of Forests and Land, and the Control Thereof	<ul style="list-style-type: none"> • Module for the Capacity-Building of Preachers for Peatland Restoration: Implementation of MUI's Fatwa No. 30 of 2016 (<i>Modul Peningkatan Kapasitas Da'I Restorasi Gambut: Implementasi Fatwa MUI No 30/2016</i>) (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.¹²⁶ In short, *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.’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 *awamir* and *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.¹²⁸

Like judges drafting court judgments,¹²⁹ *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. *Khutbah*-drafting is made more tedious considering that the vast majority of congregants are laypersons, hence the additional demand that *khutbahs* are ‘interesting and practically oriented lesson[s] on Islamic morality and values’ made palatable for the masses.¹³⁰ With regard to linguistic choice in *khutbahs*, the use of group pronouns such as ‘we’ and ‘our’ help ‘internal[ize] communal norms and the expression of the feelings of communality and unity’.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.’¹³²

In Singapore, most mosques deliver *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 *khutbahs*. The sermons are only available in Malay. In Indonesia, unlike in Singapore and Malaysia, religious authorities do not hold a monopoly in *khutbah* production and the country ‘has its own vibrant *khutbah* publishing industry.’¹³³ Hooker explored the production and use of *khutbahs* in Indonesia, and it revealed that *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, *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 *Pancasila* Day, and gratitude to God during religious holidays such as *Eid al-Fitr* and Prophet Muhammad’s birthday.¹³⁴ Unlike Hooker

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 ‘*sharabi*’ (literally drinker) and the adulterer is a ‘*zani*’ (someone who commits *zina* or sexual relations outside marriage).

¹²⁷ MB Hooker (n 73) 129.

¹²⁸ Wardak (n 126) 214.

¹²⁹ Andrew Goodman, *How Judges Decide Cases: Reading, Writing and Analysing Judgments* (2nd edn, Wildy, Simmons & Hill Publishing 2018) 3–4, 76–80.

¹³⁰ Wardak (n 126) 214.

¹³¹ Hooker (n 127) 217.

¹³² Wardak (n 126) 214.

¹³³ Hooker (n 127) 129.

¹³⁴ *ibid* 132–173.

who exclusively examined *privately*-published *khutbah* compilations,¹³⁵ 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.

Country	No. of Environmental <i>Khutbahs</i>
Singapore	8
Malaysia	4
Indonesia	>67

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).

No.	Date (Gregorian/Hijriyyah)	Title
1.	1 January 2016 / 20 Rabiulawal 1437	Noble Values from the Life of Rasulullah s.a.w. ¹³⁶
2.	11 March 2016 / 2 Jamadilakhir 1437	Doing Justice Towards Allah’s Blessings ¹³⁷

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.

¹³⁶ Office of the Mufti, ‘Noble Values from the Life of Rasulullah s.a.w.’ (Majlis Ugama Islam Singapura) <<https://www.muis.gov.sg/-/media/Files/OOM/Khutbah/English/PDF/2016/E16Jan01-Noble-Values-From-The-Life-of-Rasulullah.pdf>> accessed 14 January 2019.

¹³⁷ Office of the Mufti, ‘Doing Justice Towards Allah’s Blessings’ (Majlis Ugama Islam Singapura) <<https://www.muis.gov.sg/-/media/Files/OOM/Khutbah/English/PDF/2016/E16Mar11-Doing-Justice-Towards-Allahs-Blessings.pdf>> accessed 14 January 2019.

3.	27 May 2016 / 20 Sya'aban 1437	Spreading the Message of Mercy ¹³⁸
4.	24 March 2017 / 25 Jamadilakhir 1438	Balance in God's Creations ¹³⁹
5.	6 October 2017 / 15 Muharram 1439	Make Every Step and Breath an Act of Worship to Allah s.w.t. ¹⁴⁰
6.	10 November 2017 / 21 Safar 1439	Holding on to the value of Justice (The story of Umar r.a.) ¹⁴¹
7.	8 June 2018 / 23 Ramadan 1439	Strengthening Our Relationship with Allah s.w.t. through <i>Istiqamah</i> (Consistency in Action) ¹⁴²
8.	15 June 2018 / 1 Syawal 1439	<i>Khutbah Aidilfitri</i> – The Meaning and Potential of Spirituality ¹⁴³

Table 4: MUIS' environmental *khutbahs* (2016–2018)

No.	Date (Gregorian/Hijriyyah)	Title
1.	5 August 2016 / 2 Zulkaedah 1437	<i>Hargai Diri Dengan Menghargai Alam</i> (Valuing Oneself by Valuing the Environment) ¹⁴⁴
2.	20 October 2016 / 20 Muharram 1438	<i>Tanggungjawab Bersama Melestarikan Alam Sekitar</i> (Collective Responsibility in Preserving the Environment) ¹⁴⁵

¹³⁸ Office of the Mufti, 'Spreading the Message of Mercy' (Majlis Ugama Islam Singapura) <<https://www.muis.gov.sg/-/media/Files/OOM/Khutbah/English/PDF/2016/E16May27-Spreading-the-Message-of-Mercy.pdf>> accessed 14 January 2019.

¹³⁹ Office of the Mufti, 'Balance in God's Creations' (Majlis Ugama Islam Singapura) <<https://www.muis.gov.sg/-/media/Files/OOM/Khutbah/English/PDF/2017/E17Mar24-Balance-in-God-Creations.pdf>> accessed 14 January 2019.

¹⁴⁰ Office of the Mufti, 'Make Every Step and Breath an Act of Worship to Allah s.w.t.' (Majlis Ugama Islam Singapura) <<https://www.muis.gov.sg/-/media/Files/OOM/Khutbah/English/PDF/2017/E17Oct06-Make-Every-Step-and-Breath-an-Act-of-Worship-to-Allah-swt.pdf>> accessed 14 January 2019.

¹⁴¹ Office of the Mufti, 'Holding on to the value of Justice: The story of Umar r.a.' (Majlis Ugama Islam Singapura) <<https://www.muis.gov.sg/-/media/Files/OOM/Khutbah/English/PDF/2017/E17Nov10-Holding-on-to-the-value-of-Justice.pdf>> accessed 14 January 2019.

¹⁴² Office of the Mufti, 'Strengthening Our Relationship with Allah s.w.t. through Istiqamah' (Majlis Ugama Islam Singapura) <<https://www.muis.gov.sg/-/media/Files/OOM/Khutbah/English/PDF/2018/E18Jun08--Strengthening-Our-Relationship-with-Allah-swt-through-Istiqamah.pdf>> accessed 14 January 2019.

¹⁴³ Office of the Mufti, 'Khutbah Aidilfitri – The Meaning and Potential of Spirituality' (Majlis Ugama Islam Singapura) <<https://www.muis.gov.sg/-/media/Files/OOM/Khutbah/English/PDF/2018/E18June15---Khutbah-Aidilfitri--1439-2018-The-Meaning-And-Potential-of-Spirituality.pdf>> accessed 14 January 2019.

¹⁴⁴ Jabatan Kemajuan Islam Malaysia, 'Hargai Diri Dengan Menghargai Alam' (JAKIM, 4 August 2016) <http://www.islam.gov.my/images/eKhutbah/Hargai_Diri_Dengan_Menghargai_Alam_-_Rumi.docx> accessed 17 January 2019.

¹⁴⁵ Jabatan Kemajuan Islam Malaysia, 'Tanggungjawab Bersama Melestarikan Alam Sekitar' (JAKIM, 20 October 2016)

3.	2 Jun 2017 / 7 Ramadhan 1438	<i>Puasa dan Kelestarian Alam</i> (The Fast and Environmental Sustainability) ¹⁴⁶
4.	3 August 2018 / 21 Zulkaedah 1439	<i>Tanggungjawab Pemeliharaan Alam Sekitar</i> (The Responsibility of Caring for the Environment) ¹⁴⁷

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

No.	Title	Contents (translated from Indonesian)
1.	'Collection of <i>Khutbahs</i> for Friday and Eid Prayers: Protection and Management of the Environment and Natural Resources' (<i>Hifdzul Bi'ah – Kumpulan Khutbah Jum'at dan Ied: Perlindungan dan Pengelolaan Lingkungan Hidup dan Sumber Daya Alam</i>)(2012) ¹⁴⁸	<ul style="list-style-type: none"> • On 'Paradise' in the Era of Technology • 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 • <i>Hablun Minal 'Alam</i>: 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

<http://www.islam.gov.my/images/eKhutbah/Tanggungjawab_Bersama_Melestarikan_Alam_Sekitar_-_Rumi.docx> accessed 17 January 2019.

¹⁴⁶ Jabatan Kemajuan Islam Malaysia, 'Puasa dan Kelestarian Alam' (JAKIM, 20 October 2016) (JAKIM, 1 June 2017) <http://www.islam.gov.my/images/Puasa_dan_Kelestarian_Alam_-_Rumi_copy.doc> accessed 17 January 2019.

¹⁴⁷ Jabatan Kemajuan Islam Malaysia, 'Tanggungjawab Pemeliharaan Alam Sekitar' (JAKIM, 31 July 2018) <http://www.islam.gov.my/images/Khutbah_3_Ogos_2018_Tanggungjawab_Pemeliharaan_Alam_Sekitar.1_cop y.pdf> accessed 14 June 2019.

¹⁴⁸ Majelis Ulama Indonesia-Lembaga Pemuliaan Lingkungan Hidup dan Sumber Daya Alam, 'Buku khutbah Hifdzul Biah : Perlindungan dan Pengelolaan Lingkungan Hidup dan Sumber Daya Alam' (MUI-LPLHSDA) <<https://drive.google.com/file/d/1jpKkcq3XHsDn4O6B4Fhw0Qla7Kj0JTMq/view>> accessed 17 January 2019.

	<ul style="list-style-type: none"> • 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 <i>Jihad</i> • 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) • <i>Eid al-Adha</i> 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 <i>Khutbahs</i> : Water, Cleanliness, Sanitation, and Environmental Health according to Islam' (<i>Khutbah Jum'at: Air, Kebersihan, Sanitasi dan Kesehatan Lingkungan menurut Agama Islam</i>)(2016) ¹⁴⁹	<ul style="list-style-type: none"> • 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

¹⁴⁹ Majelis Ulama Indonesia-Lembaga Pemuliaan Lingkungan Hidup dan Sumber Daya Alam, 'Buku Khutbah Jum'at Air, Kebersihan, Sanitasi dan Kesehatan Lingkungan menurut Agama Islam' (MUI-LPLHSDA) <<https://drive.google.com/file/d/1ujhDyS7OwRMCzFqnIewKWplG93UiMxzs/view>> accessed 17 January 2019.

	<ul style="list-style-type: none"> • <i>Khisalul Fitrah</i> (Cleanliness in Islam) • Make Your Home a Pleasing Living Space • The Mosque is a Holy Place, So Keep it Clean • Prayer, Cleanliness, and Health • Live Like Bees • The Purpose for Healthy Lives • Preserving the Environmental Health
3. 'Friday Prayer <i>Khutbahs</i> : Conservation of Endangered Species for Ecological Balance' (<i>Khutbah Jumat: Pelestarian Satwa Langka Untuk Keseimbangan Ekosistem</i>)(2017) ¹⁵⁰	<ul style="list-style-type: none"> • Virtue of Caring for Wildlife • 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 Worshiping 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
4. 'Friday Prayer <i>Khutbahs</i> : Conservation and Restoration of Peatlands' (<i>Khutbah Jumat: Pelestarian dan Restorasi Lahan Gambut</i>)(2018) ¹⁵¹	<ul style="list-style-type: none"> • Peatlands from the Islamic Perspective • The Prospects of Peatland Management • The Role of the <i>Ulama</i> in Environmental Conservation • <i>Amar Ma'ruf wa Nahi Munkar</i> (Enjoining Good and Forbidding Evil) in Forestry • The Trust of Humans as <i>Khalifah</i>

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) <https://drive.google.com/file/d/170PRGbTIK2q-qwq3_F5W-Kr18SXqZV95/view> accessed 14 June 2019.

¹⁵¹ Badan Restorasi Gambut, 'Khutbah Jumat Pelestarian dan Restorasi Lahan Gambut' (BRG) <https://brg.go.id/wp-content/uploads/2018/05/Isi-Buku-Khutbah-Jumat_Pelestarian-dan-Restorasi-LAHAN-GAMBUT.pdf> accessed 17 January 2019.

<ul style="list-style-type: none"> • The Islamic Perspective on the Concept of Nature • Caring for Forests and Land • The Prohibition on Forest and Land Burning • The Burning of Forests and Land: Between Need and <i>Zulm</i> (Oppression) • The Important Purpose Behind Preserving Ecological Balance

Table 6: MUI *Khutbah* Books and Contents

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*,¹⁵² 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).

No.	Date	Title
1.	20 April 2011	Setting Straight the Meaning of <i>Jihad</i> ¹⁵³
2.	4 August 2011	Ramadan Reflections ¹⁵⁴
3.	May 2018	This Ramadan, Let's Befriend Nature! ¹⁵⁵

Table 7: Nahdlatul Ulama's environmental *khutbahs*

No.	Date	Title
1.	26 February 2016	Eclipses: Proof of God's Might ¹⁵⁶
2.	16 February 2017	The Muslim Enriches the Earth ¹⁵⁷

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

¹⁵² Nadlatul Ulama, 'Khutbah' (*NU Online*) <<http://www.nu.or.id/post/9/khutbah>> accessed 16 November 2018.

¹⁵³ Nahdlatul Ulama, 'Meluruskan Makna Jihad' (NU Online, 20 April 2011) <<http://www.nu.or.id/post/read/27809/meluruskan-makna-jihad>> accessed 12 September 2018.

¹⁵⁴ Nahdlatul Ulama, 'Renungan Ramadhan' (NU Online, 4 August 2011) <<http://www.nu.or.id/post/read/33305/renungan-ramadhan>> accessed 12 September 2018.

¹⁵⁵ Nahdlatul Ulama, 'Ramadhan, Mari Kian Bersahabat dengan Alam!' (NU Online, 28 Mei 2018) <<http://www.nu.or.id/post/read/90765/-ramadhan-mari-kian-bersahabat-dengan-alam>> accessed 12 September 2018.

¹⁵⁶ Oman Fathurohman SW, 'Gerhana: Bukti Keagungan Allah' (Suara Muhammadiyah, 26 February 2016) <<http://www.suaramuhammadiyah.id/2016/02/26/gerhana-bukti-keagungan-allah/>> accessed 4 February 2019.

¹⁵⁷ Isngadi Marwah Atmadja, 'Muslim Pemakmur Bumi' (Suara Muhammadiyah, 16 February 2017) <<http://www.suaramuhammadiyah.id/2017/02/16/muslim-pemakmur-bumi/>> accessed 13 September 2018.

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.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 wrath. The link between these impulses and environmental damage is postulated in some of these *khutbahs*.¹⁵⁹

Although these environmental *khutbahs* instruct on Muslims' environmental obligations, mere instruction is insufficient. Without mechanisms of enforcement, *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.

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

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 (*ibadah*) and be in a state of remembrance of God (*wird*). 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.

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.

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,¹⁶⁰ 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.¹⁶¹ 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.¹⁶² 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.’¹⁶³ 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.¹⁶⁴ 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 *khutbahs*. In fact, two of the eight sermons delivered were

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).

¹⁶³ Constitution of the Republic of Singapore, art 153.

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

¹⁶⁵ Public Utilities Board, ‘Water Prices’ <<https://www.pub.gov.sg/watersupply/waterprice>> accessed 25 February 2019. Also see Chew Hui Min, ‘Singapore Budget 2017: Water prices to increase by 30% from July 1 in two phases’ *The Straits Times* (Singapore, 20 February 2017) <<https://www.straitstimes.com/singapore/singapore-budget-2017-water-prices-to-increase-by-30-from-july-1-in-two-phases>> accessed 25 February 2019; Monica Kotwani, ‘Budget 2017: Water prices to rise by 30% over 2 years’ (Channel News Asia, 20 February 2017) <<https://www.channelnewsasia.com/news/singapore/budget-2017-water-prices-to-rise-by-30-over-2-years-7595390>> accessed 25 February 2019.

¹⁶⁶ See Joseph M Fernando, ‘The Position of Islam in the Constitution of Malaysia’ (2006) 37(2) *Journal of Southeast Asian Studies* 249; Mohamed Azam Mohamed Adil, ‘Is Malaysia a Secular State?’ *New Straits Times*

of religion in Malaysian constitutional and political culture, and the majoritarian rhetoric of privileging so-called ‘Malay rights’¹⁶⁷ and Islamic law in the country.¹⁶⁸ 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.¹⁶⁹ 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.¹⁷⁰ 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.¹⁷¹

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,¹⁷² and the infamous cases concerning religious freedom before the Malaysian courts

(Kuala Lumpur, 28 December 2018) <<https://www.nst.com.my/opinion/columnists/2018/12/444567/malaysia-secular-state>> accessed 20 February 2019.

¹⁶⁷ There is a conflation of Malay and Muslim identities in both Malaysia and Singapore, and this conflation is explicitly endorsed in art 160 of the FC. See Shamsul AB, ‘Debating Identity in Malaysia: a Discourse Analysis’ (1996) 34(3) *Southeast Asian Studies* 8; Shamsul AB, ‘The Construction and Transformation of a Social Identity: Malayness and Bumiputerness Re-examined’ (1996) 52 *Journal of Asian and African Studies* 15; Shamsul AB, ‘A History of an Identity, and Identity of a History: The Idea and Practice of “Malayness” in Malaysia Reconsidered’ (2001) 32(3) *Journal of Southeast Asian Studies* 355; Shamsul AB, “‘Malay’ and ‘Malayness’ in Malaysia Reconsidered: a Critical Review’ (2001) 9(1) *Communal/Plural: Journal of Transnational and Crosscultural Studies* 69; Shamsul AB, ‘Islam Embedded: Religion and Plurality in Southeast Asia as a Mirror for Europe’ (2005) 3 *Asian Europe Journal* 159; Shamsul AB, ‘Making Sense of the Plural-Religious Past and the Modern-Secular Present of the Islamic Malay World and Malaysia’ (2005) 33(3) *Asian Journal of Social Science* 449.

¹⁶⁸ See Michael D Barr and Anantha R Govindasamy, ‘The Islamisation of Malaysia: religious nationalism in the service of ethnonationalism’ (2010) 64(3) *Australian Journal of International Affairs* 293; Chee-Beng Tan, ‘Ethnic Identities and National Identities: Some Examples from Malaysia’ (2000) 6(4) *Identities: Global Studies in Culture and Power* 441; Vejai Subramaniam, ‘A Divided Nation: Malay Political Dominance, *Bumiputera* Material Advancement and National Identity in Malaysia’ (2007) 9(1) *National Identities* 35; Raymond LM Lee, ‘The state, religious nationalism, and ethnic rationalization in Malaysia’ (1990) 13(4) *Ethnic and Racial Studies* 482; Tabitha Frith, ‘Ethno-Religious Identity and Urban Malays in Malaysia’ (2000) 1(2) *Asian Ethnicity* 117. For the conflation of race and religion in Malaysia, see *Lina Joy v. Majlis Agama Islam Wilayah* [2004] 2 MLJ 119 (High Court of Kuala Lumpur) at [58].

¹⁶⁹ See Prime Minister’s Department, ‘Ninth Malaysia Plan, 2006–2010’ (Prime Minister’s Department, Putrajaya, Malaysia 2006) <https://www.pmo.gov.my/dokumenattached/RMK/RM9_E.pdf> accessed 20 February 2019; Ioannis Gatsiounis, ‘Islam Hadhari in Malaysia’ (2006) 3 *Current Trends in Islamist Ideology* 78; Muhammad Haniff Hassan, ‘Islam Hadhari: Abdullah’s vision for Malaysia?’ (IDSS Commentaries No 53, Institute of Defence and Strategic Studies October 2004) <<https://www.rsis.edu.sg/wp-content/uploads/2014/07/CO04053.pdf>> accessed 20 February 2018; Timo Kortteinen, ‘Islamic Resurgence and the Ethnicization of the Malaysian State: the Case of Lina Joy’ (2008) 23(2) *Sojourn: Journal of Social Issues in Southeast Asia* 216, 223.

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.

¹⁷¹ Department of Urban and Rural Development for Peninsular Malaysia, *Garis Panduan Perancangan dan Pembangunan Sejagat* (1st edn, Department of Urban and Rural Development for Peninsular Malaysia 1998) <https://jpbdd.johor.gov.my/images/jpbddj_garisPanduan/10_GP_Sejagat_%20Edisi_Pertama.pdf> accessed 14 June 2019.

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.¹⁷³ 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.¹⁷⁴

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’¹⁷⁵ 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.

In the case of Indonesia, however, religion-state relations do not pose much of a problem where environmental interests are concerned. In fact, with or without state support, the way ISEL is currently operationalized, they will carry on because mass Islamic organizations *have* the resources and manpower to perform community outreach through *eco-dakwah* and operate their *eco-pesantrens* in order to implement MUI’s environmental *fatwas*. Furthermore, MUI *fatwas* mimic the form (and perhaps consequently the ‘authoritative force’)

organizations such as the Malaysian Bar and G25. See Malaysian Bar, ‘Malaysian Bar calls for less haste, more public consultation on Shariah Bill’ (Malaysian Bar, 1 August 2018)

<http://www.malaysianbar.org.my/bar_news/berita_badan_peguam/malaysian_bar_calls_for_less_haste_more_public_consultation_on_shariah_bill.html?date=2018-08-01> accessed 18 April 2019; Roger Tan ‘No room for hudud law’ (The Malaysian Bar, 5 June 2016)

<http://www.malaysianbar.org.my/members_opinions_and_comments/no_room_for_hudud_law.html> accessed 18 April 2019; G25, ‘G25 Statement on PAS’ Hudud Bill 2015’ (25 March 2015)

<<https://www.g25malaysia.org/single-post/2015/03/25/G25-Statement-on-PAS-Hudud-Bill-2015>> accessed 18 April 2019; G25, ‘Countries with hudud are “failed states”, says G25 member’ (29 March 2015)

<<https://www.g25malaysia.org/single-post/2015/03/29/Countries-with-hudud-are-%E2%80%98failed-states%E2%80%99-says-G25-member>> accessed 18 April 2019; Sharanpal Singh Randhawa, ‘G25: Hudud law may not be good for multi-racial Malaysia’ *The Star* (Kuala Lumpur, 29 March 2015) < > <

<https://www.thestar.com.my/news/nation/2015/03/29/consider-impact-in-other-nations-g25-hudud-law-may-not-be-good-for-multiracial-malaysia/>> accessed 18 April 2019; Tan Sri Mohd Sheriff bin Mohd Kassim, ‘Focus on reforms, not political Hudud’ (G25, 6 June 2016) <<https://www.g25malaysia.org/single-post/2016/06/06/Focus-on-reforms-not-Hudud>> accessed 18 April 2019; ‘Malaysia’s unity, freedoms at risk with hudud Bill, interfaith group warns’ *Malay Mail* (Kuala Lumpur, 31 May 2016)

<<https://www.malaymail.com/news/malaysia/2016/05/31/malaysias-unity-freedoms-at-risk-with-hudud-bill-interfaith-group-warns/1131047>> accessed 18 April 2019.

¹⁷³ See Dian AH Shah and Azizuddin Sani, ‘Freedom of Religion in Malaysia: A Tangled Web of Legal, Political, and Social Issues’ (2011) 36(3) *North Carolina Journal of International Law and Commercial Regulation* 647; Nehaluddin Ahmad, Ahmad Masum, and Abdul Mohaimin Ayus, ‘Freedom of Religion and Apostasy: The Malaysian Experience’ 38(3) *Human Rights Quarterly* 736; Eugene Yapp, ‘Religious Freedom in Malaysia: The church’s engagement for justice and equity in the public arena’ (Lausanne Global Analysis, vol 4 issue 1, January 2015) <<https://www.lausanne.org/content/lga/2015-01/religious-freedom-in-malaysia>> accessed 18 April 2019.

¹⁷⁴ See Mohd Darbi Hashim, ‘Of Morality and Individualism in Malaysia’ (2006) 67 *Akademika* 103.

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.

Format	Example
<u>Law</u> No. <Number> of <Year> on/regarding/concerning <Subject>	Law No. 18 of 2008 on Waste Management
<u>Fatwa</u> No. <Number> of <Year> on/regarding/concerning <Subject>	Fatwa No. 41 of 2014 on Waste Management for the Prevention of Environmental Degradation

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.

¹⁷⁷ See Alan KJ Tan, ‘The ASEAN Agreement on Transboundary Haze Pollution: Prospects for Compliance and Effectiveness in Post-Suharto Indonesia’ (2005) 13(3) New York Environmental Law Journal 647.

¹⁷⁸ See Alan KJ Tan, ‘Forest Fires of Indonesia: State Responsibility and International Liability’ (1999) 48(4) The International and Comparative Law Quarterly 826.

¹⁷⁹ Wahyu Suryana, ‘MUI Keluarkan Fatwa Pembakaran Hutan Haram’ *Republika* (Jakarta, 13 September 2016) <<https://www.republika.co.id/berita/dunia-islam/islam-nusantara/16/09/13/odfk3g384-mui-keluarkan-fatwa-pembakaran-hutan-haram>> accessed 20 December 2018.

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.¹⁸⁰

Target Audience	Recommendations
National and local governments	<ul style="list-style-type: none"> • Harmonize the regulations related to the utilization of forests and land to avoid overlaps. • 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. • Provide sustained education to the public regarding the use of forests and land through various approaches, including public education and outreach and religious sermons. • Empower communities by reinforcing the concept of ‘social forestry’ (<i>perhutanan sosial</i>) and facilitating the preparation of forest and land area for such purposes without using fire. • Provide environmentally friendly technology. • Establish equitable policies with regard to the issuance of licenses to utilize forests and land to the public. • Control forest and land fires by building synergy among the relevant institutions/agencies. • 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.
Businesses	<ul style="list-style-type: none"> • Comply with every law and regulations concerning the utilization of forests and land. • Conduct community empowerment, particularly for communities living around forests and land, to further their prosperity. • Ensure the conservation of the environment. • Provide human resources and facilities to control forest and land fires. • Procure appropriate environmentally technology for the preparation of land clearing.
The Community	<ul style="list-style-type: none"> • Conduct constructive measures to prepare forest and land area without setting fire. • Conduct measures to prevent and mitigate forest and land fire in accordance with the applicable laws and regulations. • 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.

¹⁸⁰ Amy Chew, ‘Indonesian President Jokowi’s running mate: A Muslim cleric once seen as a hardliner’ *Channel NewsAsia* (Singapore: 12 August 2018) <www.channelnewsasia.com/news/asia/indonesian-election-jokowi-running-mate-muslim-cleric-maruf-amin-10610028> accessed 8 February 2019. For a commentary, see Norshahril Saat, ‘The Implications of a Ma’ruf Amin Vice-Presidency in Indonesia’ (*Perspective*, No. 11, ISEAS-Yusof Ishak Institute 2019) <https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2019_11.pdf> accessed 12 April 2019.

All three ‘sectors’	<ul style="list-style-type: none"> • 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.

¹⁸³ Wolfgang Fikentscher, *Law and Anthropology* (2nd edn, CH Beck, Hart & Nomos 2016) 106.

(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.¹⁸⁴ Literature on the psychology of religion confirms Durkheim’s thesis to an extent – in that apart from the fear of divine judgment and punishment,¹⁸⁵ 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.¹⁸⁶ 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.¹⁸⁷ 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.¹⁸⁸

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

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]

¹⁸⁵ Jesse Lee Preston, Erika Salomon, and Ryan S Ritter, ‘Religious Prosociality: Personal, Cognitive, and Social Factors’ in Vassilis Saroglou (ed), *Religion, Personality, and Social Behavior* (Psychology Press 2014) 159. See Jesse Bering and Dominic Johnson, ‘O Lord... You Perceived My Thoughts from Afar: Recursiveness and the Evolution of Supernatural Agency’ (2005) 5(1) *Journal of Cognition and Culture* 118; Dominic Johnson and Jesse Bering, ‘Hand of God, Mind of Man: Punishment and Cognition in the Evolution of Cooperation’ (2006) 4(1) *Evolutionary Psychology* 219; Michael E McCullough and Evan C Carter, ‘Religion, Self-Control, and Self-Regulation: How and Why are They Related?’ in Kenneth I Pargament (ed), *APA Handbook of Psychology, Religion, and Spirituality Vol. 1. Context, Theory, and Research* (American Psychological Association 2013) 129.

¹⁸⁶ *ibid* Preston and others (2014) 161.

¹⁸⁷ Eric Posner, *Law and Social Norms* (Harvard University Press 2000) 13–16.

¹⁸⁸ *ibid* 27–28.

behaviours (Figure 3).¹⁸⁹ 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.

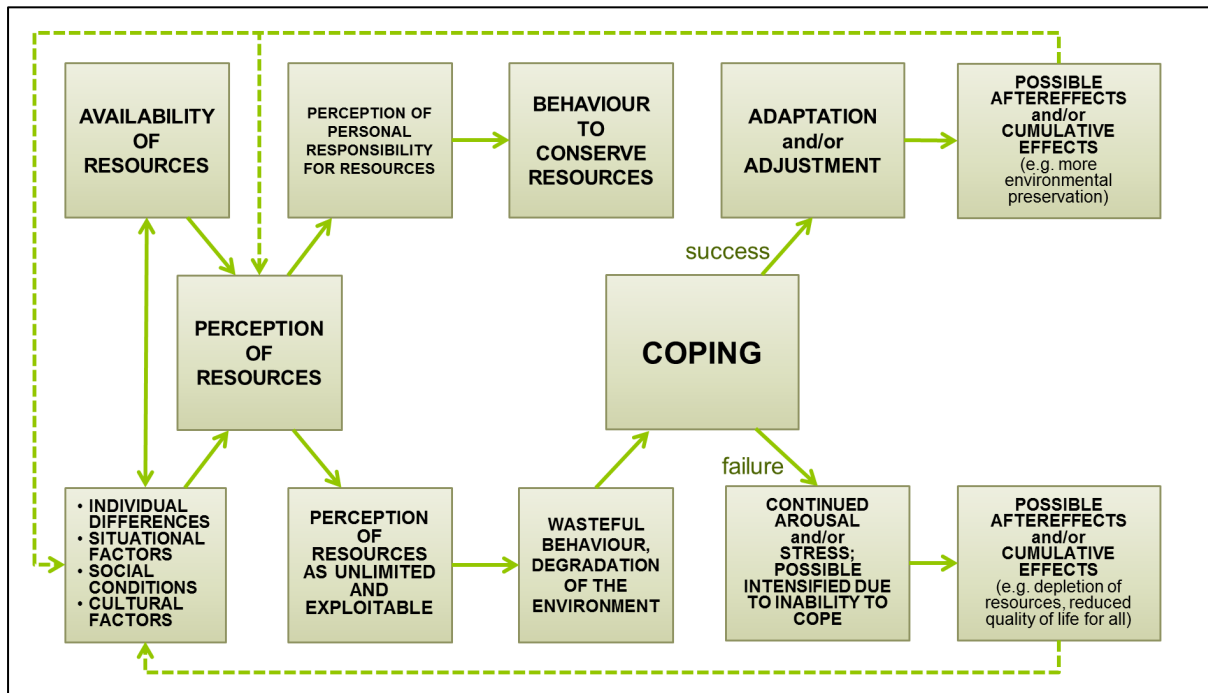


Figure 3: The eclectic model applied to behavioural change to preserve the environment, adapted from Bell and others (2001).

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 (ie, wealthier people) are more likely to act upon their environmental beliefs and concerns compared to their lower SES counterparts.¹⁹⁰ 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 to not act on their environmental beliefs and concerns because of the belief that they do not have much control over their lives’ outcomes, ie, 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.

¹⁸⁹ Paul A Bell and others, *Environmental Psychology* (Lawrence Erlbaum Associates 2001) 470–471.

¹⁹⁰ Kimin Eom, Heejung S Kim and David K Sherman, ‘Social Class, Control, and Action: Socioeconomic Status Differences in Antecedents of Support for Pro-Environmental Action’ (2018) 77 *Journal of Experimental Social Psychology* 60.

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.

¹⁹¹ Kimin Eom, Heejung S Kim, David K Sherman and Keiko Ishii, ‘Cultural Variability in the Link Between Environmental Concern and Support for Environmental Action’ (2016) 27(1) *Psychological Science* 1331, 1332.

¹⁹² *ibid* 1334.

¹⁹³ *ibid* 1335–1337; Hila Reiner, Sharon Shavitt, Minkyung Koo and Hazel Rose Markus, ‘Preferences Don’t Have to be Personal: Expanding Attitude Theorizing with a Cross-Cultural Perspective’ (2014) 121(4) *Psychological Review* 619, 623–636.

¹⁹⁴ See Heejung Kim and Hazel R Markus, ‘Deviance or Uniqueness, Harmony or Conformity?: A Cultural Analysis’ (1999) 77(4) *Journal of Personality and Social Psychology* 785.

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 membership¹⁹⁶ 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.