

Corporate Accountability for Environmental Crimes: Perspectives of Islamic Criminal Law and *Maqāṣid al-Sharī'ah*

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Keywords: Islamic Criminal Law, *Jarimah Bi'ah*, Corporate Liability, *Maqasid al-Shari'ah*.

Abstract:

The enforcement of environmental criminal law in Indonesia faces significant challenges due to the weak deterrent effect on corporations and the minimal restorative dimension in sanctions. This study aims to reconstruct the concept of *jarimah bi'ah* (environmental crime) and corporate liability through the lens of *maqasid al-shari'ah* (the objectives of Islamic law). Employing a juridical-normative method with a conceptual approach, this study analyzes the relevance of *fiqh jinayah* (Islamic criminal jurisprudence) principles to the national environmental criminal regime. The results indicate that although classical *fiqh* does not explicitly recognize corporate entities, the mechanism of *ta'zir* (discretionary punishment) based on *siyasah syar'iyah* (Sharia-oriented policy) and the legal maxim of *al-urf* (customary practice) provides strong legitimacy for collective liability. A critical evaluation reveals that sanctions under Law Number 32 of 2009 are retributive and nominal, thus failing to prevent ecosystem damage. As a solution, this article proposes a hybrid *ta'zir* model that integrates progressive fines, corporate probation with public oversight (*hisbah*), and mandatory environmental restoration (*ishlah*). This model aligns with the principles of substantive justice and the protection of future generations. The study concludes that the integration of Islamic legal values can strengthen the national sentencing system, offering a policy framework that is more proportional, preventive, and just for addressing corporate environmental crimes in Indonesia.

Kata Kunci: Hukum Pidana Islam, *Jarimah Bi'ah*, Pertanggungjawaban Korporasi, *Maqasid al-Syari'ah*.

Abstrak:

Penegakan hukum pidana lingkungan di Indonesia menghadapi tantangan serius akibat lemahnya efek jera terhadap korporasi dan minimnya dimensi restoratif dalam sanksi. Penelitian ini bertujuan merekonstruksi konsep *jarimah bi'ah* dan pertanggungjawaban korporasi melalui lensa *maqasid al-syari'ah*. Menggunakan metode yuridis-normatif dengan pendekatan konseptual, studi ini menganalisis relevansi prinsip fikih jinayah terhadap rezim pidana lingkungan nasional. Hasil penelitian menunjukkan bahwa meskipun fikih klasik tidak mengenal entitas korporasi, mekanisme *ta'zir* berbasis *siyasah syar'iyah* dan kaidah *al-urf* memberikan legitimasi kuat bagi pertanggungjawaban kolektif. Evaluasi kritis mengungkapkan bahwa sanksi dalam Undang-Undang Nomor 32 Tahun 2009 bersifat retributif dan nominal, sehingga gagal mencegah kerusakan ekosistem. Sebagai solusi, artikel ini mengajukan model *ta'zir* hibrida yang mengintegrasikan denda progresif, masa percobaan korporasi dengan pengawasan publik (*hisbah*), serta kewajiban restorasi lingkungan (*ishlah*). Model ini harmonis dengan prinsip keadilan substansif dan perlindungan generasi masa depan. Studi ini menyimpulkan bahwa integrasi nilai-nilai hukum Islam dapat memperkuat sistem pemidanaan nasional, menawarkan kerangka kebijakan yang lebih proporsional, preventif, dan berkeadilan bagi penyelesaian kejahatan lingkungan korporatif di Indonesia.

Introduction

The ecological crisis that has hit Indonesia in the last two decades has transformed from a technical environmental issue into a systemic and

multidimensional legal and humanitarian emergency.¹ Data from the Ministry of Environment and Forestry notes that economic losses due to forest and land fires and industrial waste pollution consistently exceed trillions of rupiah every year, not including the chronic health impacts on affected communities and irreversible biodiversity loss. This phenomenon of ecosystem degradation can no longer be seen as a natural consequence of development, but rather a reflection of structural failure in enforcing legal authority over corporate actors who are in control of the exploitation of natural resources.²

Empirical reality shows that the pattern of environmental violations committed by corporations is institutionalized, shrouded in the complexity of management structures, and driven by calculations of economic rationality that prioritize profit accumulation over ecological sustainability. This condition demands a law enforcement response that is not only repressive-punitive, but must be able to break the chain of violations through measurable prevention mechanisms and substantive ecosystem restoration.³

The normative foundation that should be the main instrument in dealing with environmental crimes is explicitly stated in Law Number 32 of 2009 concerning Environmental Protection and Management. Article 88 of the law adopts the principle of absolute responsibility which states that every person whose actions, business, and/or activities use hazardous and toxic materials, produce and/or manage hazardous and toxic material waste, and pose a serious threat to the environment are absolutely liable for losses that occur without the need to prove elements of fault. The explanation of this article is philosophically intended to shift the burden of proof from the victim to the perpetrator, given the technical complexity of proving causality in industrial pollution cases.⁴

Furthermore, Article 116 and Article 117 expressly regulate the criminal liability of corporations and their management, by stipulating that environmental crimes can be committed by corporations and principal and additional criminal sanctions can be imposed on corporations and/or their managers. This provision was born from the

¹ Yudha Nugraha Manguju, "Membangun Kesadaran Sebagai Manusia Spiritual-Ekologis Dalam Menghadapi Krisis Ekologi Di Toraja," *SOPHIA: Jurnal Teologi Dan Pendidikan Kristen* 3, no. 1 (2022): 29–49. <https://doi.org/10.34307/sophia.v3i1.66>

² Muktashim Billah, "Integrasi Nilai-Nilai Maqashid Syariah Dalam Kebijakan Hukum Pidana Penghapusan Kekerasan Dalam Rumah Tangga Di Indonesia," *AL-QANUN Kajian Syariah Dan Hukum Islam* 1, no. 1 (2025): 55–64.

³ Lahmudinur Maulida Hasanah, Muna Hasanah, Noormala Santi, "Hukuman Pidana Dalam Islam: Analisis Konseptual, Maqāsid Asy-Syari'ah, Dan Relevansi Kontemporer Maulida," *Ahsan: Jurnal Ilmiah Keislaman Dan Kemasyarakatan* 2, no. 2 (2025): 221–32. <https://doi.org/10.5281/jurnalilmiahkeagamaandankemasyarakatan.vi.68>

⁴ Sudarti, "Tindak Pidana Pencurian Pada Saat Terjadi Bencana Alam Dalam Hukum Pidana Islam Dan Hukum Positif Perspektif Maqasid Asy-Syari'ah," *AHKAM* 8, no. 1 (2020): 181–212. <https://doi.org/10.21274/ahkam.2020.8.1.181-212>

legislative awareness that corporations have structural and financial capacity that far exceeds that of individuals, so the criminal mechanism must be able to reach business entities as independent legal subjects. However, the implementation of these norms before the courts actually shows a significant gap.⁵

Statistics from the Directorate General of Environmental and Forestry Law Enforcement reveal that of the hundreds of cases handled every year, the proportion of judgments with permanent legal force against corporations is still very low, and the nominal fines imposed are often not proportional to the destructive capacity or illegal profits obtained. These minimalist sanctions not only ignore the principle of criminal proportionality, but also fail to realize ecosystem restoration which is the fundamental goal of environmental regulation.⁶

Legal problems arise when positive legal approaches that tend to be anthropocentric and rigid clash with the demands of substantive justice in the context of corporate crime. The conventional criminal theory that still dominates the discourse of Indonesian criminal law is centered on the retributive paradigm, where sanctions are seen as equal retribution for violations of norms. In corporate practice, this paradigm is distorted into a mere variable of financial calculation, so that criminal fines are often treated as operational costs that can be anticipated in business planning.⁷

The tension between the rigidity of positivist criminal theory and the reality of modern environmental crimes raises fundamental doubts about the effectiveness of existing legal instruments. It is at this point that the construction of *jarimah bi'ah* and the principles of *maqasid al-shari'ah* come together as an alternative theoretical framework that offers philosophical depth to evaluate the adequacy of sanctions.⁸

The research questions that arise inherently are: how can the construction of *jarimah bi'ah* give sharia legitimacy to corporate criminal liability, and to what extent can the principles of *maqasid al-shari'ah* fill the philosophical void and strengthen the framework of environmental criminalization in Indonesia? This research specifically aims to reconstruct a model of corporate criminal liability based on the *ta'zir* mechanism that integrates aspects of proportionality, structural prevention, and ecosystem restoration obligations.

The urgency of this research lies in the urgent need for a solid ethical-juridical foundation for the reform of environmental criminal law, considering that the integration of Islamic law values as *living law* is not only relevant to the socio-cultural

⁵ Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, 2009.

⁶ Kementerian Lingkungan Hidup dan Kehutanan (KLHK), *Statistik Penegakan Hukum Lingkungan Hidup Dan Kehutanan Tahun 2022* (Jakarta: Kementerian Lingkungan Hidup dan Kehutanan (KLHK), 2023).

⁷ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2006).

⁸ Joko Widodo Yasir, Moh.Ali Ashar, "Islamic Law And National Law (Comparative Study of Islamic Criminal Law and Indonesian Criminal Law)," *ALHURRIYAH: Jurnal Hukum Islam* 6, no. 2 (2021): 167-81. <https://doi.org/10.30983/alhurriyah.v6i2.4952>

character of Indonesian society, but also offers a holistic *maqasid* instrument in ensuring intergenerational justice and ecological sustainability that has been neglected in the positive legal discourse.⁹

A critical review of previous research reveals that there are academic gaps that need to be systematically filled. The research conducted by Anwar and Hidayat in 2019 comprehensively discusses the normative review of the basics of fiqh against environmental crimes, but the focus of the discussion is still limited to the level of general principles such as *la darar* and *khalifah*, without touching on the technical complexity of the liability of corporate law subjects that have a separate legal personality structure.¹⁰

On the other hand, the study prepared by Yusuf and Azhari in 2022 has attempted to reconstruct the concept of *jarimah bi'ah* within the framework of contemporary *ji'ah* fiqh, but the analysis built is still descriptive-theoretical and has not conducted a critical evaluation of the effectiveness of criminal sanctions in the Environmental Protection and Management Law as well as the policy implications that can be derived from the construction.¹¹

The novelty of this research expressly lies in the attempt to synthesize the conceptual framework that connects *jarimah bi'ah* with the mechanism of *ta'zir* as an evaluative instrument to criticize and reform the corporate accountability regime in Indonesia's positive law. By placing *maqasid al-shari'ah* as the main normative lens, this research does not stop only at doctrinal exploration, but offers a hybrid model that is applicable to the formulation of criminal policies, thus producing concrete, measurable, and harmonized recommendations in line with the dynamics of environmental law enforcement in contemporary Indonesia.

Method

This study uses a juridical-normative approach with a descriptive-analytical qualitative method, which aims to construct the theoretical framework of *jarimah bi'ah* and evaluate its relevance to the mechanism of corporate criminal liability in Indonesian positive law.¹² This approach was chosen because the research focuses on doctrinal analysis, interpretation of sacred texts, fiqh rules, and provisions of laws and regulations, rather than on the collection of empirical data in the field.¹³ The specification of the approach used is a statute *approach* to study Law No. 32 of 2009 jo.

⁹ Romli Atmasasmita, *Reformasi Sistem Hukum Pidana Indonesia* (Bandung: Refika Aditama, 2012).

¹⁰ R. Hidayat M. S. Anwar, "Tinjauan Hukum Pidana Islam Terhadap Kejahatan Korporasi Dalam Lingkungan Hidup," *Al-Jinayah: Jurnal Hukum Pidana Islam* 5, no. 2 (2019): 265–288. <https://doi.org/10.15642/aj.2019.5.2.265-288>

¹¹ F. Azhari M. Yusuf, "Rekonstruksi Konsep Jarimah Bi'ah Dalam Fiqh Jinayah Kontemporer," *Jurnal Hukum Islam* 22, no. 1 (2022): 33–54.

¹² Muhammad Zainuddin and Aisyah Dinda Karina, "Penggunaan Metode Yuridis Normatif Dalam Membuktikan Kebenaran Pada Penelitian Hukum," *Smart Law Journal* 2, no. 2 (2023): 114–23.

¹³ Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).

the Job Creation Law, and a *conceptual approach* to explore the principles of *maqasid al-syari'ah*, *ta'zir*, and *mas'uliyah jama'iyah* from classical and contemporary fiqh literature.¹⁴

The source of research data consists of primary, secondary, and tertiary legal materials. Primary legal materials include the Qur'an, Hadith related to the prohibition of damaging the environment (*lafazd al-dharar*), mu'tabar fiqh books (such as *Al-Mughni* and *Al-Muwafaqat*), as well as national regulations on the environment and the penal system. Secondary legal materials include textbooks, accredited scientific journals, previous research results, and fatwas of contemporary scholars relevant to ecological and corporate issues. Tertiary legal materials in the form of legal dictionaries and Islamic encyclopedias for operational definitions.¹⁵

The data collection technique is carried out through in-depth and systematic library research. Data is collected, classified, and verified for validity based on source authority.¹⁶ The data analysis technique uses legal interpretation methods, analogy (*qiyas*), and critical-comparative analysis. The analysis process begins by identifying the *gap* between the effectiveness of corporate criminal sanctions in positive law and the principles of restorative and preventive justice in fiqh. Furthermore, the principles of *maqasid al-shari'ah* are applied as an evaluative lens (*normative filter*) to measure the *adequacy* of the current penal regime. The analysis focuses on how the concept of *ta'zir* can be adapted to fill the gaps in norms regarding sanctions against corporate entities, resulting in a coherent normative synthesis. The validity of the argument is maintained through the triangulation of sources between classical fiqh texts, modern legal theory, and the reality of court decisions, in order to ensure that the reconstruction of the concepts offered is not only theoretical, but also applicable to the reform of environmental criminal law in Indonesia.¹⁷

Result and Discussion

Conceptual Reconstruction of *Jarimah Bi'ah* and the Legitimacy of Shar'i Corporate Accountability

The theoretical construction of *jarimah bi'ah* within the framework of Islamic Criminal Law cannot be understood simply as a terminological attempt to Islamize the concept of modern environmental crimes, but rather as an epistemological project that aims to explore the substantial relevance of *jiyarah* fiqh to contemporary ecological crises. Although the term *jarimah bi'ah* is not found explicitly in classical fiqh literature (*turats*), the normative essence of environmental protection has been firmly embedded

¹⁴ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–78. <https://doi.org/10.31604/jips.v8i8.2021.2463-2478>

¹⁵ I Gusti Ketut Ariawan, "Metode Penelitian Hukum Normatif," *Kertha Widya* 1, no. 1 (2013).

¹⁶ Muhammad Haramain, "Metodologi Penelitian Kepustakaan (Literature Review)," 2026.

¹⁷ Bahrum Subagiya, "Penelitian Kepustakaan (Library Research) Dalam Penelitian PAI," *Jurnal Pendidikan Islam* 12 (2023): 43.

in the structure of Islamic criminal doctrine through the categorization of *jinayah 'ala al-nafs* (crimes against the soul) and *jinayah 'ala al-mal* (crimes against public property).¹⁸ A deconstructive approach to classical texts reveals that environmental damage, whether in the form of air, water, or soil pollution, is in essence a direct attack on human physical integrity and the sustainability of collective economic resources¹⁹.

In this perspective, industrial pollution that causes respiratory diseases or mass poisoning is not just an administrative offense, but a criminal act that meets the elements of *ta'addi* (aggression) and *ithlaf* (destruction) that are strictly prohibited. The main normative foundation of this construction rests on the fundamental fiqh rule of *la darar wa la dirar*, which serves as the principle of absolute prohibition against all forms of actions that cause harm, both to individuals and society. Imam Al-Suyuthi in *Al-Ashbah wa al-Nazha'ir* affirms that eliminating harm (*darar*) has a higher priority than bringing benefits, a principle that logically places the prevention of environmental damage as a primary obligation (*fardhu kifayah*) for the state and economic actors.²⁰

Furthermore, the historicity of Islamic law records the existence of an institutional precedent relevant to environmental conservation, namely the concept of *hima* (protected zone) which has been applied since the time of the Caliphate of Umar bin Khattab. *Hima* is not just an administrative policy, but a juridical instrument that provides special protection status for critical ecosystem areas, where exploitation activities are restricted or prohibited for the public benefit. The integration of the concept of *hima* into the discourse of *modern jarimah bi'ah* allows the expansion of the object of Islamic criminal law protection from mere private ownership to public ownership (*milkiyyah 'ammah*) in the form of an ecosystem. In addition, the *hisbah* mechanism or public supervision plays a strategic role in the early detection and prevention of *jarimah bi'ah*.²¹

In the context of modern corporations, *hisbah* can be transformed into an independent environmental audit function and civil society participation in reporting violations, thus creating a layered monitoring system that prevents the accumulation of damage before it reaches an irreversible point. Al-Shatibi in *Al-Muwafaqat* emphasizes that the purpose of the sharia (*maqasid*) is to maintain the continuity of the five basic principles (*kulliyat al-khams*), and that environmental damage systematically threatens these five principles at once: damaging health (*hifz al-nafs*), destroying

¹⁸ Rika Fajrini, "Corporate Impunity in Environmental Crimes: A Critical Analysis of Indonesian Law Enforcement," *Jurnal Hukum Lingkungan Indonesia* 9, no. 2 (2023): 112.

¹⁹ Ahmad Imaduddin, "Tinjauan Hukum Pidana Islam Terhadap Kejahatan Korporasi Dalam Lingkungan Hidup," *Al-Jinayah: Jurnal Hukum Pidana Islam* 5, no. 2 (2019): 265–88. <https://doi.org/10.15642/aj.2019.5.2.265-288>

²⁰ Jalaluddin al-Suyuthi, *Al-Ashbah Wa Al-Nazha'ir* (Kairo: Dar al-Kutub al-Haditsa, n.d.).

²¹ Achmad Fikri Oslami, "Penjatuhan Uqubat Pada Jarimah Maisir Menurut Qanun Nomor 6 Tahun 2014 Tentang Hukum Jinayat," *Maqasidi* 2, no. 1 (2022): 31–39. DOI: 10.47498/maqasidi.vi.881

economic resources (*hifz al-mal*), disturbing social tranquility (*hifz al-aql* and *hifz al-din*), as well as threatening the sustainability of future generations (*hifz al-nasl*).²² Therefore, categorizing environmental destruction as *jarimah* is a logical consequence of the commitment to *maqasid al-shari'ah*.

The biggest challenge in integrating *jianyah fiqh* with modern environmental law lies in the issue of the subject of law, considering that classical *fiqh* requires the criminal subject to be a *mukallaf* human being (mature, reasonable, and Muslim). However, the reality of environmental crime is dominated by corporate actors who have complex structures and legal personifications (*persona ficta*). To bridge this ontological gap, this study proposes the thesis that corporate accountability can be legitimized through the mechanism of *ta'zir* based on *siyasa syar' iyyah* (the policy of the rulers)).²³

The flexibility of *ta'zir*, the type and degree of sanctions of which are left to the discretion of the *wali al-amr* for the sake of the common good, provides a wide enough juridical space to reach out to non-human entities. The transformation of the legal subject from *individual taklif* to *mas'uliyah jama' iyyah* (collective responsibility) is carried out by adapting the theory of *vicarious liability* into the framework of *fiqh*. In this scheme, the actions of the directors or employees carried out within the scope of the corporation are considered as a manifestation of the collective will of the entity, so that sanctions can be imposed on the corporation as a functional unit. The juridical legitimacy of the existence of corporations as legal subjects is also strengthened by the rule of *al-urf muhakkam*, which recognizes generally applicable legal customs or practices as long as they do not contradict the *nash*. Since the modern legal system universally recognizes corporations as legal subjects who can have rights and obligations, this recognition is legally valid in *sharia* for the purpose of environmental criminal law enforcement.²⁴

To clarify this conceptual transformation, the following is a comparative table that analyzes the shift in the paradigm of criminal responsibility from a classical approach to a contemporary approach based on *maqasid*:

No	Dimensions of Analysis	Classical Jinayah Fiqh	Contemporary Jarimah Bi'ah Construction	Juridical Implications for Corporations
1	Legal Subject	Human individuals (<i>mukallaf</i>) with	Collective entities including corporations, are	The corporation can be the main defendant, not

²² Abu Ishaq Al-Shatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah* (Kairo: Dar Ibn 'Affan, 1997).

²³ Sudarti, "Tindak Pidana Pencurian Pada Saat Terjadi Bencana Alam Dalam Hukum Pidana Islam Dan Hukum Positif Perspektif Maqasid Asy-Syari'ah."

²⁴ Wahbah al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu* (Damaskus: Dar al-Fikr, 1985).

		specific conditions (puberty, intellect).	recognized through <i>urf</i> and <i>siyasah shar' iyyah</i> .	just its administrators, allowing confiscation of corporate assets.
2	Object of Violation	Soul, private property, honor, and immediate physical security.	Ecosystem as a public asset (<i>milkiyyah 'ammah</i>) and a prerequisite for the sustainability of <i>kulliyat al-khams</i> .	Environmental damage is categorized as a threat to the public interest, triggering heavy <i>ta'zir</i> sanctions .
3	Basis of Accountability	<i>Fi'liyah</i> (individual physical acts) and <i>niyyah</i> (subjective intentions).	<i>Mas'uliyah Jama' iyyah</i> (collective responsibility) and <i>strict liability</i> are limited based on <i>dar' al-mafasid</i> .	Proof of intent (<i>mens rea</i>) was replaced by evidence of systemic negligence or <i>compliance failure</i> .
4	Types of Sanctions	<i>Hudud</i> , <i>Qishash</i> , <i>Diyat</i> , and <i>Ta'zir</i> are physical/financially limited.	Progressive financial <i>ta'zir</i> , license freeze, mandatory environmental restoration, and dissolution of legal entities.	Sanctions are designed for economic <i>deterrence</i> and ecological <i>restoration</i> , not just retaliation.
5	The Role of the State	Law enforcement is reactive after a crime has occurred.	Proactive regulators through <i>hima</i> and <i>hisbah</i> facilitators (public supervision).	The state is obliged to set environmental quality standards as the limit of radiation, and facilitate citizens' lawsuits.

An analysis of the table above shows that the reconstruction of *the jarimah bi'ah* does not make a complete break with the fiqh tradition, but rather carries out a radical methodological extension. The shift from the individual subject to the corporation demands a reinterpretation of the concept of *niyyah* (intention). In the context of the corporation, *niyyah* is no longer psychological-individual, but is manifested in corporate *culture* and standard operating procedures. If a corporation systematically ignores environmental protocols for the sake of cost efficiency, it constitutes a *collective niyyah jarimah* that can be punished. The use of *ta'zir instruments* is key because it allows flexibility in formulating sanctions that are in accordance with the destructive capacity of corporations. Traditional sanctions such as nominal fines are often ineffective for large conglomerates; Therefore, *ta'zir* in this context should be translated into structural sanctions such as revocation of business licenses (*tasqit al-rukhsah*) or dissolution of corporations (*tahlil al-shakhsyah al-i' tibariyyah*) if the violation is repetitive and massive.²⁵

This is in line with the principle of *dar' al-mafasid muqaddam 'ala jalb al-mashalih* (rejecting harm over taking advantage), where corporate economic gains cannot justify damage to ecosystems that threaten public lives. Thus, the legitimacy of shari'i corporate accountability in *jarimah bi'ah* stands firmly on the foundation of *maqasid al-shari'ah* which places environmental safety as an absolute prerequisite for the establishment of social justice and the sustainability of civilization.²⁶

Critical Evaluation of Indonesia's Environmental Criminal Regime through the Lens of Maqasid Al-Syari'ah

A critical evaluation of Indonesia's environmental criminal regime reveals a profound structural discrepancy between the normative ambition of legislation and the reality of law enforcement on the ground, especially when the legal framework is tested through the parameters of *maqasid al-shari'ah*. The regulatory framework contained in Law Number 32 of 2009 jo. the environmental cluster of the Job Creation Law textually adopts *strict liability* instruments and expands the scope of corporate responsibility²⁷, However, its implementation empirically shows a systemic failure in achieving *zawajir* (preventive effect) which is actually the main spirit of *the Ta'zir* sanction. The most striking phenomenon is the transformation of criminal sanctions into mere economic calculation variables, or in corporate criminology terminology known as *the cost of doing business*. A comparative analysis between the nominal maximum fine regulated in the criminal provisions of the PPLH Law and the

²⁵ Muhamad Alwi Syahril, "Kejahatan Lingkungan Dalam Tinjauan Hukum Pidana Islam Dan Nasional: Relevansi Konsep Hifdzul Bi'ah Dalam Penanggulangan Pembakaran Liar," *Al-Jina'i Al-Islami* 1, no. 2 (2024): 97–111. <https://doi.org/10.15575/jaa.v1i2.722>

²⁶ Abdul Aziz Harahap Athoillah Islamy, "Paradigma Maqasid Syariah Kontemporer Tentang Sanksi Hukum Kebiri Bagi Pelaku Kejahatan Pedofilia," *Jurnal Al-Maqasid: Jurnal Ilmu-Ilmu Kesyariahan Dan Keperdataan* 7, no. 1 (2021): 123–41.

²⁷ Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup.

ecological loss estimate published by the Ministry of Environment and Forestry shows that there is chronic proportional inequality.²⁸

In a number of court rulings related to forest fires and large-scale industrial waste pollution, fines imposed are often below one percent of the actual value of ecosystem restoration, not counting indirect economic losses and cumulative long-term health impacts. This inequality creates economically rational negative incentives for corporations, where environmental violations are calculatedly more financially advantageous than full compliance with quality standards.

From the perspective of *jinyah fiqh*, this condition is fundamentally contrary to the principles of *ta'dib* and *zawajir* in *ta'zir*, which require that the level of punishment must be proportionate to the destructive power of the act and severe enough to break the criminal motivation and prevent the repetition of the offense (*takarrur al-jarimah*). The failure of positive law in creating an adequate deterrent effect directly ignores the principle of *hifz al-mal*, because the wealth of the state and society continues to be depleted to bear the burden of rehabilitation which should be the primary obligation of the perpetrator, as well as violating the *hifz al-nasl* due to *intergenerational injustice* caused by environmental degradation that is left unrecovered.²⁹

The weak implementation of *strict liability* in national jurisprudence exacerbates this substantive justice deficit. Although the articles in the PPLH Law explicitly remove the element of error (*mens rea*) as a condition for criminal liability, judicial practice is still trapped in the construction of conventional proof that requires a direct causal relationship and proof of the management's subjective negligence. Judges often grant exceptions or acquittal sentences because of the difficulty of proving elements of guilt individually, whereas in modern corporate structures, decision-making is collective, disguised behind corporate protocols, and often decentralized through supply chains. This rigid approach of proof ignores the sociological reality of environmental crime that is systemic and institutionalized.

Within the framework of *maqasid al-shari'ah*, this kind of approach fails to meet the demands of *dar' al-mafasid*, as it allows the entities that are structurally most capable of preventing and bearing the cost of ecological risks to escape full responsibility. Islamic Sharia, through the rule of *al-kharaj bi al-daman* (profit is directly proportional to responsibility), demands that those who derive the greatest economic benefit from the exploitation of resources must also bear the risk of the damage it causes. The failure of positive law to internalize this principle not only weakens the preventive function

²⁸ Hari Rizky Putra Amrullah Bustamam and Universitas, "Hukuman Kebiri: Analisis Maqashid Syariah Dan Undang-Undang Nomor 70 Tahun 2020," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 11, no. 1 (2022): 50–64, <https://doi.org/10.22373/legitimasi.v11i1.13451>.

²⁹ Ruslan Abdul Gani, Rahmi Hidayati, and Anis Malik Toha, "Pertanggungjawaban Pidana Terhadap Pelaku Illegal Logging Menurut Hukum Positif Dan Hukum Islam (Studi Kasus Perkara No : 532 / Pid . Sus LH / 2023 / Pn . Jbi Di Pengadilan Negeri Jambi)," *Indonesian Journal of Social Science and Education (IJOSSE)* 1, no. 3 (2025): 947–59. <https://doi.org/10.62567/ijosse.v1i3.1401>

of criminal law, but also ignores the dimensions of *hifz al-din* and *hifz al-nafs*, considering that environmental damage ultimately undermines the values of social justice and threatens society's basic right to a healthy environment as a divine mandate.³⁰

In addition to the deterrence deficit, Indonesia's environmental penal regime has also experienced a substantive drought in the restorative dimension. Positive criminal law is still dominated by a retributive paradigm that views sanctions as an instrument of retribution against perpetrators, not as a mechanism to restore ecosystem balance. The criminal articles in the PPLH Law predominantly focus on prison penalties and financial fines, while the obligation of rehabilitation or environmental restoration after the verdict is optional, unstructured, and rarely integrated into the judge's decision. The absence of explicit technical guidelines in the Criminal Procedure Code and the implementing regulations of the PPLH Law regarding the procedures for implementing restorative sanctions causes judges to experience an argumentative impasse when trying to impose a verdict that integrates environmental restoration. As a result, court rulings often stop at symbolic punishments that do not touch the root cause of ecological damage. In the perspective of *jidaya fiqh*, this approach is contrary to the spirit of *ishlah* (reparation) which is an integral element of substantive justice.³¹

The concept of *ta'zir* in the Islamic tradition is not only aimed at punishing, but also repairing the perpetrator and restoring the damaged condition. The absence of a restorative dimension in environmental punishment reflects a disagreement with the principle of *jalb al-mashalih*, because court decisions fail to produce concrete benefits in the form of restoration of ecosystem functions. Furthermore, this also violates the principle of *raf' al-haraj*, because the burden of damage is shifted to the affected communities and the state budget, while the perpetrator's corporations only bear financial sanctions that often do not touch their operational capacity.³²

Table. 1
Comparison of Environmental Corporate Crime

No	Evaluation Aspects	Positive Regulation (PPLH Law jo. Criminal Code)	Principles of Maqasid and Fiqh Jinayah	Implementation Gaps and Policy Implications
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³⁰ Syahrial, "Kejahatan Lingkungan Dalam Tinjauan Hukum Pidana Islam Dan Nasional: Relevansi Konsep Hifdzul Bi'ah Dalam Penanggulangan Pembakaran Liar."

³¹ Agus Nurdiansyah, "Paradigma Pidana Terhadap Pelaku Kejahatan Lingkungan Dalam Sistem Hukum Indonesia," *Selaparang: Journal of Law Studies* 1, no. 1 (2026): 26–32. <https://doi.org/10.66277/sejals.1.1.11>

³² Anita Putri Aningsih et al., "Relevansi Ta'zir Sebagai Alternatif Pidana Dalam Sistem Hukum Pidana Modern," *Jurnal Tahqiq: Jurnal Pemikiran Hukum Islam* 20, no. 1 (2026): 64–81. <https://doi.org/10.61393/tahqiq.v20i1.446>

1	Proportionality of Sanctions	The maximum fine is often nominal and static, not tied to the financial capacity of the corporation or the scale of the damage.	Ta'zir requires flexibility in the level of sanctions according to the level of harm and the purpose of <i>zawajir</i> (prevention).	Sanctions fail to create an economic deterrent effect; The implementation of a day-fine system or progressive fines based on illegal profits is needed.
2	Burden of Proof	<i>Strict liability</i> textually exists, but court practice still requires <i>proof of mens rea</i> and individual causality.	The rules of <i>al-dharar yuzal</i> and <i>mas'uliyah jama'iyah</i> emphasize the entity's responsibility for the systemic risks managed.	The application of reverse proof is limited to the administrative aspect; it needs to be extended to the criminal realm with a <i>prima facie</i> standard of damages.
3	Recovery Orientation	Focus on repressive sanctions (imprisonment/fines); Environmental restoration is incremental and does not have a standardized execution mechanism.	Ishlah and <i>raf' al-haraj</i> demand ecosystem restoration as the core of justice, not just financial compensation.	Sentencing is often final without restoration monitoring; environmental <i>probation</i> needs to be adopted with measurable rehabilitation obligations.
4	Judge's Discretion	Limited to the choice of sanctions in the article; There is a lack of judicial guidelines to consider long-term ecological impacts.	Siyasah syar'iyah gives broad authority to judges/rulers to formulate sanctions for	There is a need for PERMA on Environmental Crime Guidelines that integrate <i>maqasid</i> (health, sustainability,

			the sake of maslahah 'ammah.	intergenerational justice) indicators.
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Analysis of the comparative table above confirms that the gap between the positive legal regime and the principles of *maqasid al-shari'ah* is multidimensional, covering substantive, procedural, and executorial aspects. The imbalance in the proportionality of sanctions is not just a technical legislative problem, but a reflection of the systemic failure to adopt a *dynamic ta'zir* logic. In jinyah fiqh, the flexibility of *ta'zir* sanctions is the main force that allows the adjustment of punishment to the socio-economic context and the level of danger caused. When positive law maintains a static fine structure that is not responsive to the scale of the corporation's illegal profits, then the criminal instrument loses its *zawajir* function and is relegated to a purely fiscal instrument.

Similarly, the gap in the evidentiary aspect reveals the tension between rigid legal positivism and the epistemological needs of modern proof. The half-hearted application of strict liability reflects the judicial system's reluctance to shift the paradigm from subjective proof of error to *risk-based liability*, even though the rules of fiqh *man la yajma' al-nafa' wa la yadhamman al-dharar* (whoever benefits must bear the risk) expressly support this shift.³³

More critically, the absence of an institutionalized restorative mechanism shows that Indonesia's environmental criminal law is still trapped in the old dichotomy between criminal and civil, while *maqasid al-shari'ah* demands the integration of the two through a holistic *ishlah* approach. The policy implications of these findings are clear: environmental criminal reform is not enough simply to increase the nominal amount of fines or increase the number of articles, but it requires a philosophical reconstruction of the criminal justice system that places ecosystem restoration as the primary goal, not the additional consequence. The harmonization between the flexibility of *ta'zir*, the certainty of *strict liability*, and the obligation of *ishlah* will give birth to a criminal regime that is not only procedurally fair, but also substantive in ensuring the sustainability of *hifz al-nasl* and *hifz al-bi'ah* as pillars of the public good.³⁴

Maqasid-Based Ta'zir Integration: Proportional and Restorative Corporate Accountability Model

The theoretical synthesis and normative criticism that have been presented earlier converge on an urgent urgency to formulate a model of corporate criminal liability that is not only repressive, but also proportionate and restorative. The

³³ Yusuf al-Qaradawi, *Fiqh Al-Bi'ah Fi Daw' Al-Qur'an Wa Al-Sunnah* (Kairo: Maktabah Wahbah, 2001).

³⁴ S H Rudi Margono, *Implementasi Asas Legalitas Materiil Dalam Penuntutan Pidana* (PROFESOR RUDI MARGONO, 2026).

integration of the concept of *ta'zir* based on *maqasid al-shari'ah* offers a framework of hybrid solutions that are able to bridge the rigidity of positive law with the ethical-juridical flexibility of Islam. This model is not intended to completely replace the structure of the Criminal Code or the PPLH Law, but rather serves as an interpretive and formulative instrument for policymakers and law enforcement officials in filling the legal *vacuum* and overcoming implementation impasses. At the heart of this reconstruction lies in the transformation of environmental criminal sanctions from a monolithic approach that focuses solely on nominal fines or imprisonment to a multidimensional sanctions system that integrates economic deterrent effects (*zawajir*), structural deterrence (*man'i*), and ecosystem restoration (*ishlah*).³⁵

In the framework of *jinyah fiqh*, *ta'zir* has a unique elasticity characteristic because the type and degree of sanctions are left to the discretion of *the wali al-amr* (ruler) based on considerations of the public interest (*maslahah 'ammah*) and the level of danger (*harm*) caused. This characteristic is a solid juridical basis for adopting a *day-fine system* mechanism or progressive fines calculated based on annual turnover, illegal profits, and the financial capacity of the corporation. This approach is in line with the principle of distributive justice (*'adl*) in Islam, where the burden of sanctions must be felt equally by the perpetrators, regardless of their economic scale. For a giant conglomerate, a static fine worth billions of rupiah may be just an "operational cost", but a progressive fine that reaches a significant percentage of net assets will create a real economic disincentive, thus fulfilling the purpose of *hifz al-mal* by preventing the erosion of public wealth due to environmental damage.³⁶

In addition to the financial aspect, *this hybrid ta'zir model* introduces structural sanctions in the form of *corporate probation* (corporate probation) which is strengthened with the supervision of independent institutions. In the *fiqh* tradition, this can be analogous to *the modern hisbah* mechanism, in which corporations that are found to be in violation are placed under strict supervision for a certain period. During the probation period, corporations are required to reform their internal *governance*, implement environmental standards that are higher than the minimum regulatory requirements, and report on the progress of environmental restoration on a regular basis. Failure to fulfill the probation obligation will have implications for the ultimate sanction in the form of revocation of a business license (*tasqit al-rukhsah*) or even the dissolution of a legal entity (*tahlil al-shakhshiyah*), which in *fiqh* is categorized as the highest *ta'zir ta'dib* (educational/preventive sanction). These sanctions are relevant to

³⁵ Muzakkir, "Green Crime Dalam Perspektif Hukum Pidana Islam: Analisis Terhadap Kejahatan Lingkungan," *Legalite: Jurnal Perundang Undangan Dan Hukum Pidana Islam* 11, no. 1 (2026): 216–30. <https://doi.org/10.32505/legalite.v11i1.14513>

³⁶ Nilawati, "Siyasah Syar'iyah Dan Legislati Lingkungan: Integrasi Ancaman Sanksi Ta'zir Ekologis Ke Dalam Kerangka Hukum Pidana," *Andrew Law Journal* 4, no. 2 (2025): 777–801. <https://doi.org/10.61876/alj.v4i2.132>

the principle of *dar' al-mafasid*, where the existence of corporate entities that are inherently destructive to the environment cannot be justified for the sake of economic benefit alone.³⁷

The restorative dimension (*tazir islah*) becomes a crucial third pillar, where criminal sanctions do not end with the payment of fines to the state treasury, but require corporations to directly finance and carry out land rehabilitation, forest replanting, or waste cleanup. This obligation is *in rem* (attached to the object of damage) and *non-delegable*, meaning that it cannot be transferred to a third party without strict supervision. Thus, criminal sanctions serve a dual purpose: punishing the perpetrator and rehabilitating the victim (in this case, society and ecosystem), which directly embodies the principles of *jalb al-mashalih* and *raf' al-haraj*.³⁸

The implementation of the substantive model requires the support of procedural harmonization, especially in the aspect of proof and the role of non-state actors. A major challenge in environmental law enforcement is the complexity of proving causality between corporate activities and ecological damage. This is where the integration of digital technology and the concept of *qarinah* (proof of clues) in fiqh jinayah becomes very relevant. Satellite data, *real-time air/water quality* sensors, and digital forensic audits can be accepted as *valid bayyinah* (evidence), as recognized in contemporary fiqh that "modern scientific evidence has the same legal force as a witness if it meets the requirements of validity and reliability." The standardization of digital evidence through the Supreme Court Regulation (PERMA) will provide legal certainty for judges in assessing electronic evidence, thereby reducing reliance on expert testimony which is often expensive and biased.

In addition, strengthening the role of *modern Hisbah* through the granting of broader *legal standing* to environmental NGOs and civil society allows for active participation in supervision and prosecution. The community is no longer just a passive object of protection, but an active subject of law enforcement (*muhtasib*) who has the right to sue and monitor the implementation of decisions. This is in line with the spirit of *fardhu kifayah* in protecting the environment, where public involvement becomes effective social control against potential abuse of authority by corporations and state apparatus.

Table. 2
Hybrid Ta'zir Model in Corporate Criminalization of Environmental Crime

No	Components of the Hybrid Ta'zir Model	Operational Mechanisms in Positive Law	Foundations of Fiqh and Maqasid	Expected Impact
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³⁷ Maulida Hasanah, Muna Hasanah, Noormala Santi, "Hukuman Pidana Dalam Islam: Analisis Konseptual, Maqāṣid Asy-Syarī'ah, Dan Relevansi Kontemporer Maulida."

³⁸ Yasir, Moh.Ali Ashar, "Islamic Law And National Law (Comparative Study of Islamic Criminal Law and Indonesian Criminal Law)."

1	Progressive Fine (<i>Day-Fine System</i>)	Calculation of fines based on percentage of illegal turnover/profit and asset capacity, not fixed nominal.	The <i>principle of 'Adl</i> (proportional justice) and <i>Zawajir</i> (economic deterrent).	Eliminate economic incentives violations; ensuring that sanctions are felt heavy for all scales of corporations.
2	Corporate Probation and Hisbah Supervision	Probationary period with governance reform obligations; oversight by independent commissions/accredited NGOs.	The concept of Hisbah (public supervision) and Ta'dib (education/behavior improvement).	Transformation of corporate culture from exploitative to sustainable; prevention of structural recidivism.
3	Mandatory Environmental Restoration (Ishlah)	The mandatory verdict includes a technical plan for ecosystem rehabilitation with measurable deadlines and subsidiary sanctions.	The principles of Ishlah (improvement) and Raf' al-Haraj (removing harm to the victim/nature).	Manifest restoration of ecological functions; restorative justice for affected communities; internalizing environmental costs.
4	Digital Proof and Qarinah	Admissibility of satellite/sensor data as primary evidence; a shift in the burden of proof is limited (<i>prima facie</i>).	The modern rules of Al-Bayyinah and Qarinah (strong indications); <i>Al-Dharar Yuzal</i> (danger must be eliminated).	Efficiency of the proof process; accuracy of causality; reduction of <i>implementation gap</i> due to the difficulty of evidence.
5	Ultimate Sanction:	Permanent freezing or revocation of business	<i>Dar' al-Mafasid Muqaddam</i>	Elimination of destructive

	Revocation of Permit	licenses for repeat violators or massive damage.	(rejecting damage first); Siyasah Syar'iiyyah.	actors from the market; a strong signal of the state's commitment to <i>Hifz al-Bi'ah</i> .
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An in-depth analysis of the model synthesis table above reveals that the integration of *ta'zir* based on *maqasid* is not just a normative discourse, but an operational and measurable policy blueprint. Each component of the model is systemically interconnected: progressive fines paralyze the motivation of the crime economy, probation and probation change the internal structure of corporations, mandatory restoration redresses external impacts, and digital proofing ensures procedural accountability. This combination creates a holistic law enforcement ecosystem, where criminal sanctions are no longer the end of the process, but the beginning of the restoration of ecological balance. The policy implications of this model require a partial amendment to the PPLH Law or at least the issuance of PERMA on Guidelines for Criminalizing Environmental Crimes that adopt *the principles of maqasid*. Judges should be given broader discretion to impose sanctions beyond conventional minimum-maximums, as long as they are based on calculations of real ecological losses and the principle of substantial justice.

Furthermore, the state needs to institute an independent oversight body that functions as *a modern muhtasib*, which has full access to corporate environmental data and the authority to recommend administrative to criminal sanctions. By adopting this hybrid model, Indonesia's criminal law system will not only become more effective in ensnaring corporations that destroy the environment, but also more ethically dignified because it places the sustainability of life (*hifz al-nasl*) and the preservation of nature (*hifz al-bi'ah*) as the highest values protected by the constitution and sharia. This is the essence of the harmonization of Islamic law and national law: not to dominate each other, but to strengthen each other in achieving the noble goals of humanity and universal justice.

Conclusion

This study concludes that the integration of the concept of *jarimah bi'ah* and the principle of *maqāṣid al-syarī'ah* into the Indonesian environmental criminal law system offers a normative reconstruction that is able to overcome the structural weaknesses of law enforcement against corporations. Although classical jurisprudence does not recognize corporations as legal subjects, the concept of *ta'zir* based on *shari'iiyyah* and the rules of *al-'urf al-muḥakkam* provides juridical legitimacy for collective criminal liability, so that environmental damage is positioned as a crime that threatens the protection of life (*ḥifẓ al-nafs*), property (*ḥifẓ al-māl*), and the continuity of generations (*ḥifẓ al-nasl*). On the other hand, the evaluation of Law Number 32 of 2009 jo. The Job

Creation Law shows that the sanction regime that is still retributive, nominal, and minimal restorative dimensions has not been able to create a deterrent effect, and even tends to be perceived as part of the company's operational costs. This condition is exacerbated by the weak application of *the principle of strict liability* and the lack of optimal environmental recovery mechanisms in judicial practice. Alternatively, the study offers a hybrid *ta'zīr model* that integrates progressive fines based on corporate economic capacity, a probationary period of corporations with public supervision (*hisbah*), environmental restoration obligations (*iṣlāḥ*), as well as the recognition of digital evidence as *qarīnah* in proof. This model is expected to be the basis for policy reform through the improvement of penal regulations and guidelines, so that Indonesia's environmental criminal law system develops towards a more preventive, restorative, proportional, and ecological justice paradigm in accordance with the goals of *maqāṣid al-syarī'ah*.

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