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THEOLOGICAL PRAGMATISM IN ENVIRONMENTAL GOVERNANCE: OPERATIONALIZING TAQYID AL-MUBAH (REGULATORY DISCRETION) WITHIN SAUDI ARABIA'S GREEN TRANSITION

Abdullah Ali A. Alhammami^{1*} and Mohammed Ali M. Alasmari²

¹Department of Sharia, College of Sharia and Fundamentals of Religion,
Najran University, Najran, Kingdom of Saudi Arabia, aaalhammami@nu.edu.sa

²College of Sharia, Islamic University of Madinah, Kingdom of Saudi Arabia, m.alasmari@iu.edu.sa
<https://orcid.org/0009-0006-3016-3283>

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Corresponding Author: Abdullah Ali A. Alhammami
(aaalhammami@nu.edu.sa)

ABSTRACT

As Saudi Arabia accelerates its transition toward ecological sustainability under Vision 2030, the legal harmonization between modern environmental regulations and traditional Islamic jurisprudence remains a critical area of inquiry. While classical Islamic law establishes a presumption of permissibility (Ibahah) for resource use, modern conservation requires strict regulatory limitations. This study addresses this juridical tension by reframing the Islamic legal maxim of Taqyid al-Mubah (restriction of the permissible) not merely as a theological exception, but as a foundational mechanism for modern state environmental governance. Building upon foundational descriptive work by Alhammami and Alasmari (2024), this article advances a normative-analytical argument: that Taqyid al-Mubah functions analogously to the "Police Power" or "Public Trust Doctrine" in Western law, granting the state the mandate to curtail private property rights for intergenerational ecological equity. Through a critical analysis of the Saudi Environmental Law of 2020—specifically regarding land tenure, resource extraction, and wildlife conservation—this paper demonstrates how Saudi legislation effectively operationalizes "Theological Pragmatism," transforming passive religious stewardship into active, codified state enforcement.

KEYWORDS: Islamic Environmental Law, Saudi Vision 2030, Taqyid al-Mubah, Public Trust Doctrine, Environmental Governance, Sustainability.

1. INTRODUCTION

The global environmental crisis has precipitated a "normative turn" in legal studies, prompting scholars to investigate how distinct legal traditions can support sustainability goals. In the Muslim world, and specifically in the Kingdom of Saudi Arabia, this challenge is unique: how to reconcile the urgent need for restrictive environmental legislation with a legal tradition that historically prioritizes the freedom of the individual to utilize natural resources (Ibahah) (Al-Sulami, n.d.). Saudi Arabia's "Saudi Green Initiative" represents a massive regulatory overhaul aimed at combating desertification and biodiversity loss.

However, from a jurisprudential perspective, this raises a fundamental question of legitimacy. Islamic law (Sharia) posits that the natural state of things is permissibility (Al-Asl fi al-Ashya al-Ibahah). Historically, individuals enjoyed broad rights to graze, hunt, and cultivate "dead land" (Mawat). The modern environmental state, by contrast, relies on zoning, licensure, and prohibition (Al-Fiqi, 1999).

1.1. Research Gap and Ethical Disclosure

Previous scholarship has largely focused on the theological validation of environmental protection, listing Quranic verses urging stewardship (Morsi, 1999). A preliminary descriptive study by the authors established that Saudi regulations are generally compatible with Sharia principles (Alhammami & Alasmari, 2024).

However, that work was limited to a descriptive compliance check. This article departs significantly from that foundation to offer a legal-theoretical analysis.

It asks: How does the specific mechanism of 'Taqyid al-Mubah' function as a tool of public policy (Siyasah Shar'iyah) to override the default presumption of liberty in favor of ecological survival?

1.2. The Argument

- We argue that the Saudi Environmental Law of

2020 represents a paradigm shift from "passive stewardship" (moral exhortation) to "active custodianship" (codified restriction).

This shift is legally anchored in Taqyid al-Mubah, which we interpret here as the Islamic equivalent of the state's "Police Power" to regulate for the public good.

2. THEORETICAL FRAMEWORK: THE JURIDICAL ECOLOGY OF RESTRICTION

To understand the legitimacy of modern environmental laws in a Sharia-based jurisdiction, one must deconstruct the tension between individual liberty and state authority.

2.1. The Default: The Freedom of the Commons

Classical Islamic jurisprudence is highly protective of individual economic freedom.

The maxim Al-Asl fi al-Ashya al-Ibahah (The fundamental premise of things is permissibility) implies that natural resources - water, flora, fauna - are essentially a "commons" accessible to all unless explicitly prohibited by a text (Ibn Manzur, 1994; Al-Sulami, n.d.).

This libertarian baseline creates a challenge for modern regulators: on what basis can the state prohibit a citizen from cutting a tree or hunting a gazelle if the primary texts (Quran/Sunnah) did not explicitly forbid that specific act?

2.2. The Mechanism: Taqyid al-Mubah as Regulatory Discretion

The solution lies in the doctrine of Taqyid al-Mubah (Restricting the Permissible). While linguistically, taqyid implies "binding" or "controlling" (Al-Razi, 1999), legally, it refers to the sovereign's authority to limit an otherwise lawful act to serve a preponderant public interest (Maslahah) or to prevent a greater harm (Darar). As defined by Abu Muzayriq (2011) and Al-Durayni (2013), this involves suspending the permissibility of an act due to circumstances where its exercise would result in predominant harm.

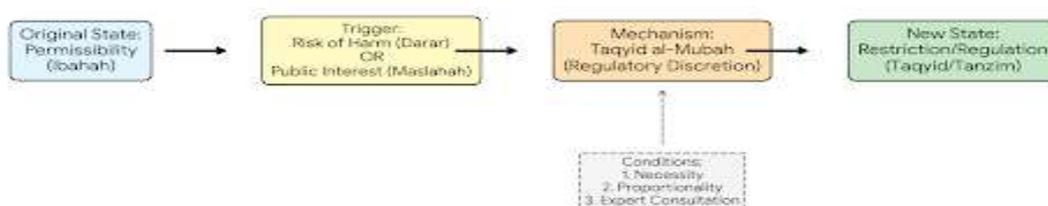


Figure 1: The Jurisprudential Mechanism of Taqyid al-Mubah.

This concept is not a blank check for authoritarianism. It is a calculated jurisprudential

tool governed by strict parameters

1. **Necessity of Public Interest** The restriction must serve a legitimate Maslahah (e.g., preserving life or property).
2. **Proportionality** The limitation must not exceed the need.
3. **Expert Consultation** The ruler must rely on technocratic expertise (e.g., ecologists, geologists).

In the environmental context, this doctrine transforms the "permissible" status of resource extraction into a "restricted" or "prohibited" status based on empirical data regarding ecological scarcity. The operational flow of this jurisprudential mechanism, transforming a permissible act into a regulated one based on public interest, is illustrated in Figure 1.

3. METHODOLOGY

This study employs a Socio-Legal and Inductive approach.

1. **Inductive Analysis:** We scrutinize specific articles of the Saudi Environmental Law (2020) regarding land, mining, and wildlife.
2. **Jurisprudential Mapping:** We map these statutory provisions against the criteria of Taqyid al-Mubah to evaluate their doctrinal consistency.
3. **Comparative Synthesis:** We analyze these findings to demonstrate how the state assumes the role of "Ultimate Guardian," effectively nationalizing the "commons" for conservation purposes.

4. CASE ANALYSIS: THE SAUDI ENVIRONMENTAL LAW (2020)

The practical application of this theory is evident in three critical domains of the Saudi legal landscape.

This section analyzes the shift from open access to state regulation across three critical domains, as visualized in Figure 2.

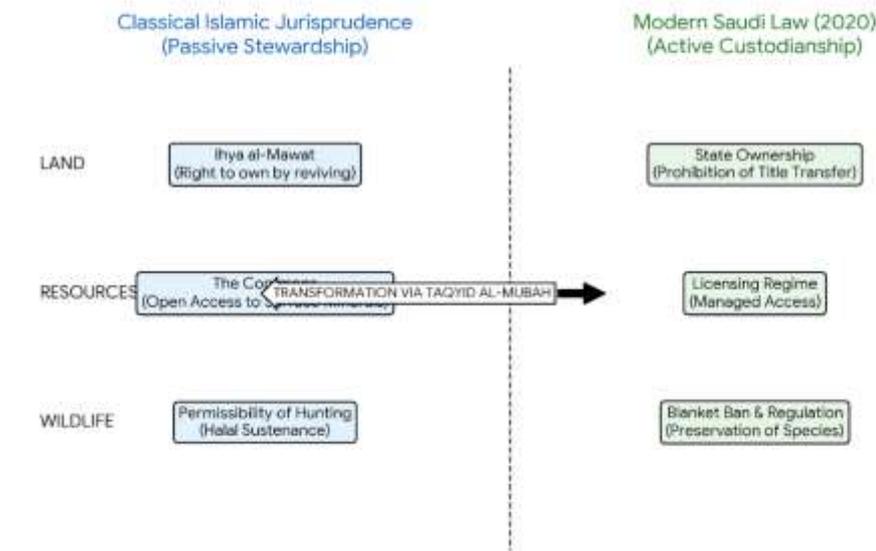


Figure 2: The Shift from Open Access to Regulated Governance.

4.1. The Nationalization of Wilderness: Land Tenure Restrictions

Traditionally, Islamic law recognized the concept of Ihya al-Mawat (Reviving Dead Land), where individuals could acquire ownership of wasteland by cultivating it.

- **The Statute** The new regulations explicitly forbid the ownership or transfer of title for lands designated as forests, rangelands, national parks, or geological sites (Kingdom of Saudi Arabia, 2020).
- **The Shift** This effectively abolishes the

traditional right of Ihya al-Mawat in ecologically sensitive zones.

- **Analysis** By invoking Taqyid al-Mubah, the state reclaims these lands from potential private ownership. The justification is that the collective benefit of climate stability and biodiversity (Public Interest) outweighs the individual's right to acquire property. This mirrors the "Public Trust Doctrine" where the state holds resources in trust for the populace, preventing private enclosure of the commons.

4.2. Regulating the Subsurface: Resource Extraction

- **The Statute** The law mandates strict licensure for the extraction of sand, gravel, rocks, or clay (Kingdom of Saudi Arabia, 2020).
- **The Shift** Historically, surface minerals were often treated as communal property.
- **Analysis** The requirement for permits represents a shift from "open access" to "managed access." This is not a prohibition (Tahrim) but a regulation (Tanzim). The legal rationale here is *Sadd al-Dhara'i* (Blocking the Means). By restricting the "permissible" act of digging, the state blocks the "means" to the "end" of environmental degradation (soil erosion, habitat loss).

4.3. The Suspension of the Hunt: Wildlife Conservation

- **The Statute** A blanket ban on hunting live fungal/animal organisms is imposed, with narrow exceptions requiring licenses, specific seasons, and approved methods (Kingdom of

Saudi Arabia, 2020).

- **The Shift** Hunting is explicitly permitted in the Quran (5:2). The state’s intervention here is the most direct application of *Taqyid al-Mubah*.
- **Analysis** This restriction resolves a conflict between a particular benefit (food/sport) and a universal necessity (*Hifz al-Nasl - Preservation of Lineage/Species*) (Alasmari & Zurib, 2025). The authors posit that "Lineage" in *Maqasid al-Sharia* (Objectives of Law) should be reinterpreted to include "Biological Diversity". Thus, the ruler restricts the permissible act of hunting to prevent the extinction of species, elevating ecological balance over individual consumption.

The juridical transformation across these domains, contrasting the classical default with modern statutory restrictions, is summarized in Table 1.

Table 1: Caption.

Domain of Regulation	Classical Islamic Status (The Default)	Modern Saudi Legal Status (The Restriction)	Jurisprudential Justification
Land Tenure	<i>Ihya al-Mawat</i> (Reviving Dead Land): Individuals acquire ownership by cultivating wasteland.	State Ownership: Absolute prohibition of private ownership in protected zones (Forests, Parks).	<i>Maslahah Mursalah</i> (Public Interest) overriding individual acquisition rights.
Resource Extraction	<i>Al-Musha</i> (The Commons): Surface minerals (water, salt, grazing) are shared communal property.	Licensing Regime: Strict permit requirements for extracting sand, gravel, or rocks.	<i>Sadd al-Dhara'i</i> (Blocking the Means) to prevent resource depletion.
Wildlife	<i>Ibahah</i> (Permissibility): Hunting is permitted for sustenance and sport (Quran 5:2).	Regulated Prohibition: General ban on hunting, with narrow, season-based exceptions.	<i>Hifz al-Nasl</i> (Preservation of Lineage/Biodiversity) as a higher objective.

5. DISCUSSION: THE RULER AS ENVIRONMENTAL STEWARD

The efficacy of Saudi Arabia’s environmental framework hinges on the role of the *Wali al-Amr* (The Ruler/State Authority).

5.1. From Discretion to Duty

Classical jurists like Al-Subki (n.d.) emphasized that the ruler's actions must be driven by the "interest of the Muslims" and devoid of "whim". In the Anthropocene era, this duty expands. The ruler is no longer just a political administrator but an ecological trustee.

The decision to restrict permissible acts is not

merely an administrative choice but a religious imperative to preserve God’s creation.

5.2. Institutionalizing Expertise

A critical safeguard in *Taqyid al-Mubah* is the reliance on experts. The Saudi model integrates scientific data (from meteorology and wildlife centers) into the legislative process. This satisfies the jurisprudential requirement that the "harm" (*Darar*) justifying restriction must be empirically verified, not conjectured.

5.3. Implications for International Law

A comparative analysis reveals striking functional similarities between the Islamic doctrine of *Taqyid*

al-Mubah and Western regulatory concepts, as detailed in Table 2.

Table 2: Caption.

Feature	Taqyid al-Mubah (Islamic Jurisprudence)	Police Power / Public Trust (Western Law)
Source of Authority	The <i>Wali al-Amr</i> (Ruler) acting as a religious trustee.	The Sovereign State acting as the representative of the people.
Primary Justification	<i>Maslahah</i> (Public Interest) and <i>Dar' al-Mafasid</i> (Warding off Harm).	Public Health, Safety, Welfare, and Morals.
Scope of Application	Restricts acts that are originally <i>Mubah</i> (Permissible) but not <i>Wajib</i> (Obligatory).	Restricts private property rights and individual liberties for the common good.
Limit on Power	Must not contradict definitive Text (<i>Nass</i>) and must be proportional (<i>Adum al-Israf</i>).	Must follow Due Process and be "Reasonable" and "Non-Arbitrary".
Environmental Application	The Ruler restricts the "commons" to preserve God's creation.	The State holds natural resources in "trust" for current and future generations.

This model offers a pathway for other Islamic jurisdictions. It demonstrates that "Sharia-compliance" does not mean adhering to pre-modern agricultural norms. Instead, it involves using the sophisticated tools of *Usul al-Fiqh* (Principles of Jurisprudence) to legitimize modern, restrictive environmental states.

6. CONCLUSION

The Saudi Environmental Law of 2020 serves as a compelling case study in Theological Pragmatism. By successfully deploying the doctrine of *Taqyid al-Mubah*, the Saudi legislator has bridged the gap between the libertarian presumption of Islamic property rights and the restrictive necessities of modern conservation.

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This study concludes that

- 1. Harmonization is Possible** There is no inherent conflict between strict environmental regulation and Islamic law; the latter contains the "elasticity" required to accommodate the former.
- 2. The State is the Trustee** The enforcement of these laws confirms the state's status as the ultimate guardian of natural capital, justified by the protection of the "Universal Necessities" (*Daruriyyat*).
- 3. Global Relevance** This framework provides a robust model for the "Green Islam" movement, moving beyond rhetoric to justiciable mechanisms of enforcement.

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