

Intergenerational Environmental Justice in Islamic Public Law: The State's Duty to Prevent Irreversible Harm

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Abstractt

Environmental decisions frequently distribute benefits to the present while transferring ecological risks to persons who cannot participate in today's political process. The problem becomes acute when the threatened loss is irreversible: extinction, aquifer collapse, permanent contamination, or climate-system change cannot simply be compensated by a later legislature. Contemporary international law increasingly responds through prevention, precaution, long-term assessment, and attention to future generations. Islamic environmental scholarship, meanwhile, has developed rich accounts of stewardship, balance, harm, public interest, and the objectives of the Shari'a. Yet a public-law question remains under-developed: when do these normative materials generate a legal duty of the state, rather than an ethical appeal to individuals, and what does that duty require before irreversible harm occurs? Using doctrinal analysis of Islamic legal sources, conceptual analysis of intergenerational justice, and functional comparison with recent climate and environmental jurisprudence, this article argues for an irreversibility-sensitive duty of prevention in Islamic public law. The duty is triggered by a credible risk of serious, non-substitutable ecological loss within public authority's sphere of control and requires science-based assessment, explicit consideration of future interests, precaution under uncertainty, preference for reasonably available reversible alternatives, and reasoned periodic review. Irreversibility does not create an absolute veto on development. It changes the burden and quality of public justification because the state may otherwise foreclose ecological options that later generations cannot recover.

Keywords: : : Intergenerational Environmental Justice; Islamic Public Law; Irreversible Harm; Precautionary Principle; Future Generations.

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1. Introduction

A government authorizes groundwater extraction from an aquifer that replenishes over centuries, approves the destruction of an old-growth ecosystem, or grants long-lived licenses for activities that consume a substantial part of a remaining carbon budget. The immediate beneficiaries can vote, litigate, lobby, invest, and bargain. The persons who will inhabit the resulting ecological conditions cannot. If the decision later proves mistaken, public-law remedies may be inadequate. A permit can be revoked and money can be paid; an extinct species, a salinized aquifer, or a destabilized climatic condition may not be restored within any meaningful horizon. Intergenerational environmental justice therefore presents a problem of public authority before it presents a problem of compensation.

The legal significance of that asymmetry has become visible. Principle 3 of the Rio Declaration connects development to the environmental needs of present and future generations, while Principle 15 makes threats of serious or irreversible damage central to precaution. The UNFCCC likewise joins intergenerational equity and precaution (UNFCCC 1992, art. 3(1), 3(3)). The 2024 Declaration on Future Generations calls for long-term, science-informed decision-making (UN General Assembly 2024, annex II). Recent courts have sharpened the point. ITLOS treated serious and irreversible marine harm as requiring stringent due diligence based on the best available science (ITLOS 2024, para. 243). In 2025, the ICJ treated intergenerational equity and precaution as relevant to the interpretation and application of existing obligations, especially where scientific uncertainty accompanies serious or irreversible environmental damage (ICJ 2025, paras. 155–158, 283, 293–294).

Islamic thought offers a different but convergent vocabulary. The Qur'an condemns *fasād* on earth, rejects wastefulness, invokes *mīzān* or balance, and presents human agency in terms that have often been understood through responsibility and trust (Qur'an 7:31, 7:56, 30:41, 55:7–9). The maxim *lā ḍarar wa-lā ḍirār*, recorded in Sunan Ibn Mājah, became the basis of the juristic proposition that harm is to be removed (Ibn Mājah 2009, no. 2340; al-Suyūṭī 1983, 83–84). Al-Ghazālī's account of *maṣlaḥa* treats the preservation of basic human goods and the prevention of their loss as central to legally cognizable welfare (al-Ghazālī 1993, 174). Al-Shāṭibī, in turn, insists that the consequences of actions must enter juristic judgment because an apparently beneficial rule can lead to a greater harm once its effects are considered (al-Shāṭibī 1997, 5:177–178). Modern Islamic environmental scholarship has recovered these materials to articulate stewardship, ecological restraint, protected resources, and environmental justice (Haq 2001, 145–151; Llewellyn 2003, 185–247; Idlilène 2021, 31–53).

That literature has made an important contribution, but its success can obscure a doctrinal gap. Showing that Islamic sources value nature does not establish which public institution is legally bound, under what threshold, to do what. A principle originally operating in interpersonal or juristic settings cannot simply be transferred to a contemporary administrative state. Nor does invocation of *khilāfa* or *amāna* automatically specify the legal consequences of licensing a mine,

allocating an aquifer, approving a pipeline, or setting a national emissions pathway. Recent scholarship has moved toward *maqāṣid*-based intergenerational equity and toward the institutionalization of Islamic environmental law (Kurniawan and Fadlillah 2025, 143–162; ‘Arafa 2026, 37–47; Karim 2026, 251–263). A 2026 study of Saudi law likewise examines environmental and bioethical protection of future generations and exposes practical problems of standing and fragmented legal protection (Alslamah 2026, 145–164). What remains insufficiently specified is the public-law trigger that turns diffuse ecological responsibility into an *ex ante* duty of government when delay may close off the possibility of repair.

This article argues that irreversible environmental harm provides that trigger. Its claim is narrower than a general Islamic theory of environmental rights and stronger than a moral exhortation to stewardship. Islamic public law can support an irreversibility-sensitive duty of prevention when four conditions converge: there is credible scientific evidence of a serious ecological threat; the threatened loss is materially irreversible or non-substitutable across generations; the risk falls within the state’s regulatory, licensing, resource-management, or effective-control sphere; and preventive or materially more reversible alternatives are reasonably available after genuine consideration of present basic needs and public costs. When those conditions are met, public authority must investigate the long-term consequences, consider future interests expressly, act precautionarily despite residual uncertainty, justify the rejection of less irreversible alternatives, and keep the decision open to review as knowledge changes.

The argument proceeds by doctrinal and conceptual reconstruction rather than by claiming that premodern jurists anticipated modern environmental administration. Section 2 identifies the distinct problem created by irreversibility in intergenerational justice. Section 3 asks which Islamic legal materials can legitimately inform a public duty and explains why their translation into public law requires institutional reasoning. Section 4 tests the proposed direction against recent comparative and international jurisprudence. Section 5 formulates the duty and its operative requirements. Section 6 examines hard cases and objections concerning development, uncertainty, representation, and judicial competence. The method is functional: comparative law is used to identify legal techniques capable of disciplining temporal externalities, not to import foreign outcomes. The article’s central contribution is therefore a public-law proposition: where a state can authorize a loss that future governments cannot realistically reverse, the state’s justificatory burden should rise before the loss occurs.

2. Intergenerational Justice and the Irreversibility Gap

The difficulty of intergenerational justice is not simply that future people are absent. Ordinary law routinely protects absent, unknown, or contingent interests. The deeper difficulty is that present decisions can alter the number, identity, opportunities, and even existence of future persons. Parfit’s non-identity problem shows why a simple injury model can become unstable: a policy may change which persons later exist, making it difficult for those persons to claim that they would have been better off under a policy under which they would never have

existed (Parfit 1984, 351–379). The problem has generated a large philosophical literature because relations between non-overlapping generations lack the reciprocity characteristic of many accounts of justice (Rawls 1999, 251–258; Gosseries 2008, 62–64). Climate change intensifies this structure by separating causes and burdens across time, thereby creating what Gardiner calls an intergenerational component of a “perfect moral storm” (Gardiner 2006, 397–413).

Public law cannot wait for philosophy to dissolve every aspect of the non-identity problem. Governments must decide today whether to approve activities with long-lived effects. The more useful legal question is therefore modest: what interests can present institutions protect without pretending to know the complete preferences of people who do not yet exist? Intergenerational environmental theory offers one answer in the idea of conserving options, quality, and access across generations. Brown Weiss’s influential account treats each generation as both beneficiary and custodian of the planetary inheritance and argues that intergenerational equity requires maintaining diversity, environmental quality, and equitable access (Brown Weiss 1990, 198–207; Brown Weiss 1992, 19–26). The claim does not demand an unchanged world. It identifies a limit on one generation’s power to consume or destroy ecological goods in a manner that leaves successors with a radically narrowed field of choice.

Irreversibility gives that limit legal precision. Environmental damage lies on a spectrum. Some losses are temporary and repairable at proportionate cost. Others can be mitigated but not restored. Still others destroy an ecological function, stock, or option for periods extending well beyond a human generation. The important category is therefore not every environmental harm that lasts into the future. It is harm for which later political communities lack a realistic restorative choice. Extinction is paradigmatic. So too may be the destruction of a unique habitat, contamination that persists for centuries, depletion of a non-renewing aquifer, or climate change that commits societies to long-lived physical processes. The IPCC has warned that climate change has already produced irreversible impacts in some systems and that further warming increases the risk of abrupt or irreversible changes, including long-term sea-level and polar system losses (IPCC 2022, SPM.B.1–B.5; IPCC 2023, SPM.B.3–B.3.2).

This temporal feature distinguishes irreversibility from ordinary risk. If a policy creates a reversible loss, later governments retain corrective capacity through regulation, restoration, compensation, or reallocation. Where loss is irreversible, present government exercises power over the decision-space of future governments. German constitutional climate jurisprudence captures this point. In its 2021 Climate Change Order, the Federal Constitutional Court emphasized the effective irreversibility of anthropogenic climate change and held that present emissions can have an advance interference-like effect on future freedom because consuming a finite carbon budget today leaves later generations with steeper reduction burdens (BVerfG 2021, paras. 119, 183–194). The defect was temporal allocation: legislation had postponed too much adjustment while narrowing future lawful freedom (paras. 243–248).

Irreversibility also explains why compensation cannot be the primary grammar of intergenerational environmental justice. Monetary redress presupposes that the relevant loss can meaningfully be valued and that a later transfer can restore the injured position. But a later generation cannot purchase the same species after extinction, choose an unpolluted aquifer after permanent salinization, or recover a climatic baseline once physical thresholds have been crossed. Compensation may address distributive consequences, yet it does not recreate foreclosed ecological options. Public law must therefore move upstream, from liability after injury toward justification before authorization.

A focus on irreversibility also avoids two errors. The first is to treat future generations as holders of a comprehensive set of presently enforceable subjective rights whose content judges can fully specify. That can overstate what law knows about future preferences. Justice Leonen's concurring opinion in *Arigo v. Swift* warned that claims to represent unborn generations can oversimplify their interests and bind people whose values cannot be known today (*Arigo v. Swift* 2014, Leonen J., concurring opinion). The second error is to infer from this difficulty that no present constraint exists. *Oposa v. Factoran* allowed minors to invoke responsibility to their own and succeeding generations in challenging timber licenses, showing that future absence need not disable preventive environmental adjudication (*Oposa v. Factoran* 1993, 802–805).

The irreversibility approach takes a middle path. It does not ask current courts to choose a future society's preferred energy mix, landscape, or conception of the good. It asks present authorities to avoid unnecessarily destroying the background ecological conditions within which later societies can make their own choices. The protected object is therefore a minimum range of ecological possibility rather than a detailed projection of future preferences. This reframing is particularly suitable for Islamic public law because it can be connected to prevention of harm, preservation of essential interests, and attention to consequences without converting theological language into a fictional catalogue of rights held by unidentified persons.

The threshold must nonetheless remain demanding. "Irreversible" cannot become a rhetorical synonym for "serious." Public decisions always generate path dependence, sunk costs, and losses that are difficult to undo. A legally useful concept should refer to ecological losses that cannot be restored within a reasonable intergenerational horizon by technically and economically realistic means, or whose substitutes cannot preserve the relevant life-support function. This introduces two inquiries. The first concerns material reversibility: can the ecological condition itself be restored? The second concerns substitutability: if restoration is impossible, can another resource genuinely perform the relevant function without transferring comparable risks? A destroyed recreational amenity may sometimes be replaceable; a collapsed aquifer serving a region's basic water security may not be. Irreversibility is thus a reason for heightened public justification, not an automatic conclusion against action.

3. From Islamic Environmental Norms to Public-Law Duties

Islamic environmental writing has resisted the idea that nature appears in Islamic law only as an object of private ownership. Haq shows that Qur'anic accounts of creation, measure, accountability, and juristic controls over natural resources form a richer field than the modern shorthand of "stewardship" (Haq 2001, 145–151). Llewellyn draws attention to *ḥimā* and *ḥaram*, water rules, public interests, and duties concerning living creatures and shared resources (Llewellyn 2003, 185–247). Idllalène argues for the revival of Islamic environmental law as a discipline that can engage modern conservation. Recent work increasingly moves toward governance and institutional design (Idllalène 2021, 31–53; 'Arafa 2026, 37–47; Ahmad et al. 2026, 323–332).

The doctrinal danger lies in moving too quickly from those materials to the claim that Islam requires the state to protect future generations. Islamic public law needs an intermediate inquiry: why does a norm addressed to believers, owners, judges, or jurists become a duty of public authority, and with what consequences? Modern states possess capacities unknown to classical contexts. They license industrial activity, allocate basin-scale water, regulate cumulative emissions, approve infrastructure, and control public lands. The state may be the only actor able to prevent systemic harm, but also the actor whose authorization makes it possible. The public-law argument must therefore join normative grounds to institutional responsibility.

3.1. Harm and prevention beyond the private dispute

The starting point is the prohibition of harm. The Prophetic report *lā ḍarar wa-lā ḍirār*—there should be neither harming nor reciprocating harm—was received in Islamic jurisprudence as a general legal foundation (Ibn Mājah 2009, no. 2340). Al-Suyūṭī places *al-ḍarar yuzāl*, "harm is to be removed," among the major legal maxims and presents it as a rule with applications across numerous fields (al-Suyūṭī 1983, 83). Modern environmental scholarship understandably sees in this maxim a resource for pollution control and ecological protection (Bsoul et al. 2022, 228; Kurniawan and Fadlillah 2025, 151–157).

Yet the maxim cannot do the entire work of a modern prevention principle. Classical applications often presuppose an identifiable harmful act, an affected party, and a judge capable of adjusting private relations. Environmental risks are frequently cumulative, probabilistic, and geographically dispersed. Climate change results from aggregate emissions; groundwater collapse can emerge from thousands of individually lawful abstractions; biodiversity loss may follow a sequence of permits none of which appears decisive by itself. If the maxim is applied only after a claimant proves individualized injury, its preventive capacity arrives too late for irreversible harm.

The public-law translation should therefore begin with control rather than with private causation. When public authority controls the legal gateways through which a serious ecological risk is created or intensified—licensing, public-resource allocation, standard setting, land-use approval, or enforcement—it bears responsibility for considering the foreseeable harm before authorizing it. This is not because every environmental consequence is legally attributable to

the state. It is because public power changes the background conditions of action: the authority may permit, structure, subsidize, or fail to restrain conduct whose cumulative effects are foreseeable. The duty is strongest where the state has exclusive or dominant competence over a resource or regulatory decision and where no private actor can preserve the threatened ecological function independently.

That reading remains faithful to the logic of harm removal while acknowledging institutional difference. It also avoids converting *al-ḍarar yuzāl* into an absolute prohibition. Islamic legal maxims operate together. Harm cannot simply be removed through equivalent or greater harm (al-Suyūṭī 1983, 83), and necessity and public need can alter the legal assessment. A government confronting severe energy poverty, for example, cannot be told that any emissions increase is unlawful because it contributes to climate change. The question is whether serious irreversible risk has been identified, what alternatives exist, how present basic interests are affected, and whether the state has justified the distribution of burdens across time. Prevention is therefore structured judgment, not ecological absolutism.

3.2. Maṣlaḥa, basic goods, and non-substitutable ecological conditions

A second foundation lies in *maṣlaḥa*. Al-Ghazālī's well-known formulation does not identify welfare with whatever rulers or majorities happen to prefer. He defines legally relevant *maṣlaḥa* by reference to preservation of the law's basic purposes and describes the prevention of their loss as itself a form of welfare (al-Ghazālī 1993, 174). A public-law maxim reinforces the point: al-Suyūṭī records that the imām's disposition over the subjects is contingent on *maṣlaḥa*, so public office is justified by welfare rather than personal will (al-Suyūṭī 1983, 121). This matters for environmental governance because ecological systems are often conditions for the preservation of life, health, property, and family security. Water systems, habitable climate conditions, fertile soil, and protective ecosystems are infrastructures of ordinary human goods.

The argument should not be inflated into a new, historically fixed "sixth objective" called the environment. That move can be rhetorically attractive but doctrinally unnecessary. Environmental integrity acquires public-law weight when its degradation foreseeably undermines recognized basic interests at a scale or duration that later corrective action cannot repair. The point is relational: preservation of life and material security can require preserving the ecological conditions on which they depend. This is especially strong where the threatened condition is non-substitutable. If an ecological loss can be fully offset through another resource without comparable harm, *maṣlaḥa* permits more room for political choice. If no realistic substitute exists, the argument for preventive restraint becomes correspondingly stronger.

This approach also clarifies the relation between intragenerational and intergenerational justice. Future-oriented environmental law can unfairly ask poor communities today to sacrifice development for better-off persons tomorrow. Islamic public law cannot treat that result as a routine implication of sustainability because preservation of basic interests applies to present populations as well.

Present access to energy, water, housing, livelihood, and health belongs within the same assessment. The preventive duty is strongest against avoidable degradation and policies that choose a highly irreversible path despite feasible alternatives; it is less categorical where avoiding the risk would itself endanger basic present goods. That balance follows from *maṣlaḥa* rather than constituting an external concession.

3.3. Mīzān, fasād, and the limits of stewardship language

Qur'anic environmental discourse supplies a broader normative orientation. The condemnation of *fasād* on earth and sea associates human conduct with disorder and destructive consequences (Qur'an 7:56; 30:41). The passages on *mīzān* link creation with measure and warn against transgressing balance (Qur'an 55:7–9). Prohibitions of *isrāf* constrain excess in consumption (Qur'an 7:31). Modern Muslim environmental thought has brought these themes into conversation with ecological science and sustainability (Haq 2001, 147–150; Foltz, Denny, and Baharuddin 2003; Bsoul et al. 2022, 228; Gade 2019; Koehrsen 2021).

Khilāfa and *amāna* are often added to this vocabulary. They can illuminate human responsibility, but they should be handled carefully in legal argument. The Qur'anic designation of humanity or Adamic succession and the verse on the *amāna* have theological meanings wider than contemporary environmental stewardship (Qur'an 2:30; 33:72). It would be historically careless to treat them as ready-made administrative-law doctrines. Their more defensible role is justificatory: they weaken claims of unlimited dominion and support an account of human and governmental power as responsibility-bearing rather than absolute. Haq's reconstruction is valuable precisely because it places stewardship within a larger Qur'anic and juristic field rather than deriving ecological regulation from a single word (Haq 2001, 145–151).

For public law, that distinction is productive. A state need not be described metaphorically as a “guardian of nature” to incur concrete duties. The relevant proposition is narrower: public authority over resources is not normatively self-justifying. Where its exercise threatens lasting destruction of conditions on which others, including future communities, depend, reasons are required that take those affected interests seriously. *Mīzān* and the critique of *fasād* help explain why ecological consequences are legally relevant; the rules of harm, *maṣlaḥa*, and institutional competence help determine what follows.

3.4. Maʿālāt al-afʿāl and temporal responsibility

Al-Shāṭibī's doctrine of considering the consequences of acts provides the most direct bridge to long-term public decision-making. In a passage that has significance well beyond environmental law, he states that attention to the outcomes of actions is legally intended: a measure may appear to secure a benefit yet lead to an equal or greater harm, and a jurist cannot assess its permissibility without examining that consequence (al-Shāṭibī 1997, 5:177–178). The doctrine does not establish a modern environmental impact assessment. It does, however, reject a mode of legal reasoning that isolates an act from foreseeable effects.

For administrative decision-making, the implication is substantial. A licensing authority cannot confine its legal analysis to the immediate lawfulness of the proposed activity where the decision predictably alters ecological conditions over decades. Consequence-sensitive reasoning requires temporal breadth proportionate to the duration of risk. If an aquifer needs centuries to recover, a five-year economic appraisal is not a neutral methodology; it excludes the principal legal consequence by design. If a carbon-intensive project locks in emissions beyond a statutory planning period, formal compliance in the first years cannot exhaust the inquiry. The time horizon of public reasoning must correspond to the time horizon of the threatened harm.

This is the point at which intergenerational justice ceases to be an external philosophical supplement and becomes part of legal rationality. The future matters not because current institutions can speak with certainty for unborn persons, but because the consequences of present public acts extend into their conditions of life. Al-Shāṭibī's insistence on *ma'ālāt* supplies a jurisprudential reason to scrutinize those effects; contemporary environmental science supplies the evidence; public law determines the institution, procedure, and standard of review through which the reason becomes operational.

3.5. From normative convergence to a public duty

The foregoing sources do not produce a duty by textual syllogism. Their force is cumulative. The rule against harm supplies a preventive orientation; *maṣlaḥa* distinguishes basic and non-substitutable interests from ordinary preferences; Qur'anic themes of balance, restraint, and responsibility deny unlimited human control; *ma'ālāt* requires attention to foreseeable outcomes; and the public-interest maxim links governmental disposition to welfare. Once these are placed in the institutional setting of a modern state that controls consequential permissions and resources, a public-law duty becomes defensible.

The state is the relevant duty-bearer when three institutional facts coincide. The decision is legally mediated by public authority: without a permit, allocation, public investment, or regulatory choice, the risk would not arise in the same form. The threatened interest is collective or diffuse, making protection through private ordering structurally inadequate. The consequence also extends beyond the ordinary corrective reach of later institutions. Irreversibility intensifies that fact: a government that authorizes a reversible burden leaves successors political room to correct it; one that authorizes irreversible loss may eliminate the object of future correction.

This construction differs from recent *maqāṣid*-based scholarship in its legal focus. Kurniawan and Fadlillah argue for an ecocentric reconstruction oriented to intergenerational equity (2025, 143–162). Conversely, the Cambridge Handbook contributions focus on stewardship, public environmental law, community compliance and governance (ʿArafa 2026, 37–47; Karim 2026, 251–263; Ramlan 2026, 150–169; Ali 2026, 31–36). These works show Islamic environmental law moving beyond individualized ethics. The remaining question is the decision rule for public institutions. Irreversibility supplies a disciplined threshold by linking

ecological severity to the quality of justification required before the state closes options for people excluded from the decision.

4. Comparative Legal Convergence around Precaution and Irreversibility

Comparative law cannot determine Islamic public law, but it can reveal techniques developed for the same structural problem: public power exercised under uncertainty where delay may cause permanent ecological loss. Three developments matter here—precautionary due diligence, intertemporal protection of freedom, and procedural representation of future interests.

International environmental law has long linked precaution to irreversibility. Rio Principle 15 provides that lack of full scientific certainty should not postpone cost-effective measures where threats of serious or irreversible damage exist. Article 3(3) of the UNFCCC repeats the connection in climate-specific form. The importance of these formulations lies in their allocation of error. Ordinary administration may demand stronger proof before restricting valuable activity. Precaution changes that stance when one kind of error—waiting until causal certainty is complete—may make later protection impossible. It does not eliminate evidence. It asks whether the evidence is credible enough, the possible harm serious enough, and the consequences of delay irreversible enough to justify preventive action.

The 2024 ITLOS Climate Advisory Opinion places this logic within due diligence. The Tribunal held that the precautionary approach is relevant to determining the stringency of states' obligations to prevent, reduce, and control marine pollution from anthropogenic greenhouse-gas emissions, emphasizing that the high risks of serious and irreversible damage call for stringent diligence and reliance on the best available science (ITLOS 2024, paras. 241–243). The standard remains one of conduct, not guaranteed environmental success. Yet uncertainty cannot be invoked as a reason for administrative passivity where the risk itself is scientifically credible.

The ICJ's 2025 Climate Advisory Opinion reinforces the temporal dimension. It treats intergenerational equity as a manifestation of equity guiding interpretation within applicable law, rather than an independent license to invent obligations (ICJ 2025, paras. 155–157). That restraint matters. Future interests can shape existing duties without requiring a complete freestanding legal personality for unborn persons. The Court's analysis of precaution also connects due diligence with the probability and gravity of harm, rejecting uncertainty as a basis for delay where serious or irreversible harm is plausibly threatened. (ICJ 2025, paras. 283, 293–294).

German constitutional law offers a complementary technique. In the 2021 Climate Change Order, the Federal Constitutional Court did not recognize an unlimited right to an unchanged climate. It examined how legislation allocated a finite carbon budget through time. Because warming is effectively irreversible and current emissions reduce later emissions space, present law could predetermine severe future restrictions on liberty (BVerfG 2021, paras. 119, 183–188). The Court required sufficient foresight so that later freedom would not be abruptly compressed (paras. 192–194, 243–248). The model is temporal constitutionalism:

the problem is the present exercise of public power that narrows future lawful possibilities.

Philippine jurisprudence illustrates both the promise and the danger of future-generation litigation. *Oposa* permitted minors to challenge timber licensing on behalf of themselves and generations yet unborn and treated ecological protection as sufficiently fundamental to support preventive standing (*Oposa v. Factoran* 1993, 802–805). Two decades later, Justice Leonen’s concurring opinion in *Arigo* warned against assuming that present litigants can know or conclusively represent the values of future generations (*Arigo v. Swift* 2014, Leonen J., concurring opinion). Read together, the cases support a restrained procedural idea: the legal system may need present representatives to trigger review of irreversible ecological risks, but representation should preserve future choice rather than purport to settle it.

These developments reveal a convergence of legal function despite different doctrinal vocabularies. International tribunals emphasize due diligence and precaution; constitutional courts emphasize future freedom; standing doctrines emphasize representation. The common structure is that irreversible harm raises the cost of legal delay. The appropriate response is not necessarily a substantive prohibition. It is to move scrutiny earlier, improve the evidentiary basis of decisions, require explicit temporal reasoning, and demand stronger justification when public authority chooses a path that cannot later be repaired.

That structure is compatible with, but does not dictate, an Islamic public-law approach. It resonates with *ma’ālāt* because both reject decision-making that ignores foreseeable downstream consequences. It resonates with removal of harm because prevention becomes more urgent when removal after the event is impossible. It resonates with *maṣlaḥa* because the threatened ecological conditions may underwrite essential human goods. The comparison specifies institutional form without making international law the source of Islamic normativity.

5. An Irreversibility-Sensitive Duty of Prevention

The proposed duty needs enough precision to constrain public power without becoming a judicial veto over environmental policy. It has a threshold stage and a consequence stage. Four threshold elements are required: credible risk, serious non-substitutable loss, public control, and feasible prevention. Crossing that threshold activates duties of long-horizon inquiry, express consideration of future interests, precaution, preference for less irreversible alternatives, and continuing review.

5.1. Threshold one: credible scientific risk

At the threshold, evidence matters first. Islamic legal concern with consequences does not license decisions based on conjecture untethered from knowledge. Nor does precaution mean that any imaginable harm shifts the burden to government. The authority must identify evidence capable of supporting a rational conclusion that the proposed act or policy contributes materially to the threatened harm. Depending on the field, that evidence may include peer-reviewed science, cumulative-impact modelling, hydrological data, biodiversity assessments, or authoritative expert synthesis.

The standard is lower than full scientific certainty but higher than speculative possibility. The reason is asymmetric error. If uncertainty concerns a reversible effect, waiting for stronger evidence may be tolerable. If delay can make credible harm permanent, requiring near-certainty effectively decides in favor of the risk-producing activity. Rio Principle 15, ITLOS, and the ICJ reflect this insight (Rio Declaration 1992, principle 15; ITLOS 2024, paras. 241–243; ICJ 2025, paras. 293–294). Within Islamic reasoning, the same allocation is supported by harm prevention and consequence-sensitive judgment. Uncertainty about the probability of irreversible loss is not the absence of a legal reason to act.

A decision-maker must disclose the quality and limits of the evidence. A bare reference to “scientific studies” is insufficient. The record should distinguish established findings, probability ranges, contested assumptions, data gaps, and plausible worst cases. This disciplines precaution by preventing fear from replacing evidence and enables affected communities and courts to evaluate whether the authority understood the risk it accepted.

5.2. Threshold two: serious, irreversible, and non-substitutable loss

The threshold then turns on the character of the loss. Not every environmental burden justifies heightened intergenerational scrutiny. The threatened harm must be serious in magnitude or function and materially irreversible over an intergenerational period. In addition, the relevant ecological good must be non-substitutable or only imperfectly substitutable in relation to the basic interests at stake.

Three indicators are useful. Duration asks whether restoration is possible within a period that allows the next generations meaningfully to benefit from it. Ecological uniqueness asks whether the damaged function can be recreated elsewhere or through another resource. Dependency asks whether life, health, subsistence, cultural continuity, or basic economic security relies on the threatened system. A wetland that can be restored within a few years after temporary disturbance is different from an endemic habitat whose destruction eliminates species. A short-term drawdown of a renewable water source differs from mining fossil groundwater that will not recharge on a human timescale.

This requirement gives *maṣlaḥa* analytical discipline. It avoids saying that “nature” as an undifferentiated whole overrides every competing public interest. The legal concern intensifies where environmental degradation threatens foundational goods that cannot later be supplied by compensation or substitution. Al-Ghazālī’s association of *maṣlaḥa* with preservation of basic purposes is important here because it directs attention to the function of the threatened resource rather than its market price alone (al-Ghazālī 1993, 174).

5.3. Threshold three: a sufficient nexus to public authority

A further inquiry concerns public control. Public-law duties are strongest when government owns or administers the resource, issues the indispensable license, establishes the regulatory ceiling, funds the activity, or possesses enforcement powers capable of preventing the harm. The nexus weakens where the state lacks jurisdiction, scientific capacity, or a realistic causal means of intervention.

This requirement prevents the theory from becoming a universal attribution of ecological harm to government. It also clarifies omissions. A state may breach the duty not only by approving a destructive project but by maintaining a regulatory arrangement that predictably permits cumulative irreversible damage despite possessing the competence to act. The inquiry is one of institutional capacity and legal responsibility, not metaphysical causation. Recent climate opinions similarly formulate prevention as due diligence responsive to capability, risk, and the means reasonably available to the state (ITLOS 2024, paras. 239–243; ICJ 2025, paras. 276–294).

In Islamic public law, the nexus is normatively important because the justification for imposing a state duty rests partly on public authority's distinctive power. Where individuals cannot protect a shared aquifer or atmospheric interest through private law, the state's competence creates responsibility to use public power for legally cognizable welfare rather than permit the commons to be irretrievably depleted. This is the institutional step missing from a purely ethical account of stewardship.

5.4. Threshold four: feasible preventive or more reversible alternatives

Finally, the threshold limits development and administrative discretion from the analysis. The irreversible effect should lead to increased scrutiny, but the final legal judgement rests on the existence of alternatives and the balance of competing necessities. The authority should consider whether the public objective could be achieved by a route involving less irreversible harm at proportionate cost. The comparison must be real rather than ceremonial: alternatives should be evaluated against the same data, time horizon, and public objectives as the preferred option.

Where a less irreversible alternative can secure substantially the same public benefit without threatening basic present needs, rejection demands strong reasons. Where no such alternative exists and the activity is necessary to protect life, health, subsistence, or comparable essentials, the state retains greater latitude. Even then, it should minimize irreversible loss and include mitigation, monitoring, and transition measures. The maxim that harm should not be removed by equivalent harm is relevant to this structure (al-Suyūṭī 1983, 83). It prevents intergenerational protection from becoming blind to serious present deprivation.

5.5. Consequence one: a duty of long-horizon assessment

Once the threshold is plausibly engaged, public authorities must assess consequences over a time horizon proportionate to the ecological process at issue. Conventional project appraisal often reflects electoral, budgetary, or investment cycles. Those periods may be legally irrational where the relevant harm unfolds over decades or centuries. Ma'ālāt al-af'āl supplies a strong jurisprudential basis for refusing such temporal truncation: if consequences bear on legal judgment, the assessment period cannot be chosen so as to hide the consequence that matters most (al-Shāṭibī 1997, 5:177–178).

Long-horizon assessment has at least four components. It identifies cumulative effects rather than evaluating the project in isolation. It distinguishes reversi-

ble from irreversible consequences. It explains the scientific timescale of restoration or loss. And it considers how the decision interacts with other public commitments, such as emissions budgets, water-allocation limits, or biodiversity targets. In climate matters, the BVerfG's focus on a finite carbon budget demonstrates why cumulative temporal accounting is indispensable (BVerfG 2021, paras. 183–194).

5.6. Consequence two: express consideration of future interests

The authority must show how future interests were considered. This is more demanding than inserting the phrase “future generations” into a sustainability statement. The reasons should identify which ecological options may be lost, which future basic interests depend on them, what uncertainties remain, and why present benefits justify the temporal distribution of risk.

The ICJ's 2025 formulation is instructive because it situates intergenerational equity within the application of existing law. Future interests and long-term implications must be taken into account when states contemplate and implement relevant measures (ICJ 2025, paras. 156–157). An Islamic public-law approach can reach a similar procedural requirement through *ma'ālāt* and *maṣlaḥa*. The obligation is not to predict future preferences. It is to demonstrate that the authority did not treat political absence as legal irrelevance.

This requirement also improves accountability. Future people cannot demand reasons today, but present institutions—legislatures, ombuds institutions, audit bodies, environmental agencies, courts, and civil society—can examine whether reasons addressing their interests exist. A legal duty to reason therefore creates a present institutional proxy for future participation without pretending that the proxy has a mandate to speak conclusively for unborn persons.

5.7. Consequence three: precaution with a structured burden of justification

Precaution is the procedural core of the duty. When credible evidence indicates a serious irreversible risk, uncertainty should increase the demand for justification rather than neutralize it. The initial burden lies on the authority proposing or authorizing the risk-producing course to show why delay in protective action, or rejection of safer alternatives, remains reasonable.

This is not a burden to prove zero risk, which would paralyze administration. The authority must establish that it used the best reasonably available knowledge, assessed plausible high-impact outcomes, compared alternatives, and adopted safeguards proportionate to risk. The more irreversible and non-substitutable the threatened loss, the more convincing the justification. This variable intensity resembles due diligence in ITLOS and the ICJ, where seriousness affects the stringency of required conduct (ITLOS 2024, paras. 241–243; ICJ 2025, paras. 283, 293–294).

In judicial review, the burden should operate carefully. Courts need not decide contested scientific questions *de novo*. They can ask whether the administration identified the right question, relied on relevant expertise, confronted substantial contrary evidence, and explained why uncertainty did not warrant additional

safeguards. The judicial function is strongest in reviewing the integrity of the reasoning process and weakest in substituting a preferred technical policy where several adequately protective options remain.

5.8. Consequence four: preference for reversible pathways

Where two strategies can achieve substantially comparable public purposes, the one that preserves greater future reversibility should normally be preferred. This is not a universal environmental maxim; it is a decision rule for circumstances in which irreversible harm is already a credible concern. The rule follows from the asymmetry of political error. A reversible policy leaves later communities room to revise present judgments. An irreversible policy can make present error permanent.

The German climate decision again illustrates the temporal logic without dictating a substantive result. By requiring earlier specification of the emissions-reduction pathway, the Court sought to prevent current law from consuming so much of the available budget that future governments and citizens would confront an abrupt collapse of options (BVerfG 2021, paras. 243–248). The analogous Islamic public-law proposition is that public authority should not needlessly exhaust ecological possibility where a reasonably comparable route preserves it.

A preference is not a prohibition. Cost differences, technological feasibility, national capability, and urgent social needs can rebut it. What changes is the burden of reasons. If the state chooses the more irreversible path, it should explain why the additional loss of future choice is necessary rather than merely convenient.

5.9. Consequence five: periodic review and reopening

Environmental knowledge evolves, and long-lived authorizations often rest on assumptions that become obsolete. A duty directed to irreversible harm therefore requires periodic review where the underlying decision continues to shape risk. Licenses, extraction plans, emissions pathways, and waste-management approvals should contain mechanisms for monitoring and reopening when material scientific evidence changes.

Review serves two opposite values. It prevents old permissions from hardening into entitlements despite new evidence of serious harm, and it prevents precaution from freezing temporary scientific uncertainty into permanent restriction. The state can tighten safeguards when risk proves greater and relax them when reliable evidence reduces concern. This adaptive feature is consistent with consequence-sensitive reasoning because the legal assessment follows actual effects rather than treating the initial prediction as infallible.

Periodic review also clarifies the relation between generations. Current authorities need not determine policy for a century. Their responsibility is to avoid foreclosing choices and to create institutional points at which later decision-makers can reconsider the course while reconsideration still matters. An authorization that is formally reviewable only after the ecological threshold has been crossed is not meaningfully reversible.

6. Hard Cases, Objections, and the Limits of Judicial Review

Four objections test the duty's limits. Development is the most serious objection. A strong rule against irreversible harm could entrench inequality if communities with unmet basic needs bear preservation costs generated largely by past consumption elsewhere. The duty cannot therefore be a flat ban. Islamic *maṣlaḥa* requires present life, health, livelihood, and material security to be weighed alongside future interests. In climate policy, proportionality should be a function of capacity and difference between subsistence and discretionary consumption. A low-income state may pursue an environmentally costly activity where no feasible alternative can ensure basic needs, but it must minimize irreversible effects and cannot use poverty as a blanket justification for avoidable destruction.

Uncertainty raises a different danger. Precaution can be abused to validate speculative fears or political preferences. The answer is not to abandon precaution but to discipline it through evidence and reasons. The credible-risk threshold, disclosure of uncertainty, comparison of alternatives, and periodic review all reduce the danger of paralysis. Precaution is strongest when uncertainty concerns the probability of a scientifically plausible harm whose consequences cannot later be repaired; it is weakest when both probability and causal mechanism are conjectural.

Representation is harder still. Courts and advocates should not claim comprehensive authority to define future welfare. The legally protected interest is narrower: preservation of basic ecological options and non-substitutable conditions. This responds to the concern articulated in Justice Leonen's *Arigo* opinion while retaining the preventive insight of *Oposa* (*Arigo v. Swift* 2014, Leonen J., concurring opinion, 11–13; *Oposa v. Factoran* 1993, 802–805). Institutional innovations such as future-generations commissioners can improve deliberation, but the underlying duty does not depend on attributing fictional present consent to unborn persons.

Separation of powers supplies another objection. Energy, water, and infrastructure decisions involve polycentric trade-offs and technical expertise. Courts should distinguish the existence of the duty from choice among compliant policies. Scrutiny should be intensive when reviewing whether irreversible risk was identified, relevant science obtained, future interests addressed, alternatives genuinely compared, and reasons given. It should be more restrained among options that satisfy those requirements. Stronger intervention is justified when the state ignores irreversible risk or consumes a critical ecological resource without a defensible temporal plan, because the defect concerns lawful decision-making rather than judicial policy preference.

Consider groundwater depletion. If scientific evidence shows that current extraction will irreversibly salinize or exhaust a strategic aquifer, a licensing authority should identify cumulative withdrawals, model recharge over the actual hydrological horizon, consider future water security, and compare demand-management or alternative-supply options. A claim that all individual wells meet current permit limits would not answer the public-law problem because the irreversible effect is cumulative. Conversely, where extraction is necessary to secure

drinking water during an emergency and no viable alternative exists, temporary use may be justified, provided the state minimizes loss and adopts a credible transition plan.

The same method applies to biodiversity. Approval of a project that destroys the only viable habitat of an endemic species demands more than ordinary cost-benefit balancing because extinction eliminates the possibility of later correction. Present economic benefits may still be weighty, but the authority should show why avoidance, relocation, redesign, or other alternatives cannot achieve the public purpose. The evidentiary burden rises because the value at risk is literally non-recoverable.

Climate licensing presents a difficult cumulative case. No single fossil-fuel project causes global warming, and attribution cannot be reduced to local causation. Yet where the state has an emissions budget or transition pathway, long-lived approvals can be assessed for their contribution to consuming future regulatory space. The BVerfG approach shows that law can review temporal allocation without ordering a specific energy policy (BVerfG 2021, paras. 183–194, 243–248). Islamic public law should similarly ask whether the state considered lock-in effects, consistency with long-term obligations, and less irreversible alternatives, while recognizing differences in national capacity and present development needs.

These examples show the value of treating irreversibility as a multiplier of justification rather than a trump. Government retains room to govern, but cannot treat permanent ecological loss as an ordinary externality whose costs may simply be shifted to people without present political voice.

7. Conclusion

Intergenerational environmental justice becomes a distinctive public-law problem when present authorities can authorize ecological losses that later communities cannot reverse. Islamic legal sources do not contain a ready-made modern environmental code, and their responsible use requires more than attaching contemporary policy to verses about stewardship. The stronger argument arises from a convergence of legal ideas: harm should be prevented and removed; legally cognizable welfare includes protection of foundational human goods; public judgment must attend to foreseeable consequences; and power over shared resources is constrained by responsibility rather than unlimited dominion.

From those premises, this article has developed an irreversibility-sensitive duty of prevention. The duty arises where credible science identifies a serious, non-substitutable ecological risk, public authority has a sufficient nexus of control, and preventive or less irreversible alternatives can meaningfully be considered. It requires long-horizon assessment, express attention to future interests, structured precaution, a preference for reasonably available reversible pathways, and periodic review. Present basic needs, institutional capacity, and proportionate cost remain part of the analysis, so irreversibility does not operate as an automatic veto on development.

The central legal consequence is a shift in public justification. Where errors can be corrected, government may learn through revision. Where a decision can

destroy the possibility of revision itself, the reasons demanded before authorization should be more exacting. This protects future generations without claiming to know their preferences and preserves ecological conditions within which they can exercise agency.

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