Unifikasi: Jurnal Ilmu Hukum
Volume 12.2(2025): 153-166

Challenges and Prospects of Environmental Legal Politics in Contemporary Era from the Perspective of Fiqh *Bi`Ah*

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https://doi.org/10.25134/unifikasi.v12i02.1154

ARTICLE INFO

Article History

Received: June 30, 2025
Revised: September 18, 2025
Accepted: December 10, 2025

Keywords
Environment;
Fiqh *Bi'ah;*
Legal Politics.

ABSTRACT

Environmental legal politics is a strategic element, ensuring the sustainability of natural resources and the quality of human life. Therefore, this study aimed to determine and analyze environmental legal politics in the context of regulatory reform, spanning from Environmental Protection and Management Law to Job Creation Law. The analysis also aimed to analyze fiqh *bi'ah* in relation to regulatory frameworks governing environmental management and preservation. A normative or doctrinal legal research method was applied, using secondary data, consisting of both primary and secondary legal materials. The results showed that 26 Articles (20.4%) were amended, comprising 10 deleted (7.8%) and 4 added (3.1%). Through the perspective of environmental legal politics, the incorporation of amendments to Environmental Protection and Management Law into the framework of Law Number on Job Creation showed a shift in legal political orientation from the *primum remedium* method. The amendments to the a quo Law had weakened oversight mechanisms and formed greater opportunities for environmental damage. The analysis found that the prospect of contemporary fiqh *bi'ah* should be developed from a conceptual framework into a specific discipline that systematically studies the natural environment. The potential was significant when it was understood as a normative religious concept and incorporated into the public policy system, forming an independent and coherent field of study. Consequently, fiqh *bi'ah* served as a paradigm for promoting environmental sustainability through an ecologically grounded ethical method rooted in Islamic values. This study assumed that environmental management guided by government regulations could be effectively associated with the principle of fiqh *bi'ah*.

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Introduction

Indonesian government has increased their focus on the future of environment that is marked by the inclusion of Law on Environmental Protection and Management within the framework of Job Creation Law. Amendments to environmental regulations were done by revising or deleting several articles. The Central Government's increased attention to environmental feasibility testing is a key focus in the revised Environmental Management Law. [1] Significant amendments in environmental regulations have implications for environmental management. These implications also affect the irregularity in the arrangement of authority between the Central and Regional Governments in the licensing and supervision system.[2] The political legal problems of subsequent amendments to the Law

[1] Nila Amania, "Problematika Undang-Undang Cipta Kerja Sektor Lingkungan Hidup," *Syariati : Jurnal Studi Al-Qur'an Dan Hukum,* Vol. 6 No. 02 (2020), hlm. 209–20, https://doi.org/10.32699/syariati.v6i02.1545.
[2] Wahyu Nugroho dan Erwin Syahruddin, "Politik Hukum Rancangan Undang-Undang Cipta Kerja Disektor Lingkungan Hidup Dan Kehutanan (Suatu Telaah Kritis)," *Jurnal Hukum & Pembangunan*, Vol. 51 No. 3 (2021), hlm. 638-658. https://doi.org/10.21143/jhp.vol51.no3.3127.

on Environmental Protection and Management will have an impact on forest affirmation in a region. Regulatory reforms facilitate affirmative action on forest use by large business groups, excluding traditional and indigenous communities.[3]

The challenge of environmental management after regulatory reform is the centralization of authority within the Central Government in environmental management. This centralization means that the Regional Government must adapt the system created by the Central Government to the environment within the region.[4] Environmental management should determine that regions have a major role in managing their region supported by the Central Government. This system is more effective as the regions experience and understand the obstacles faced in environmental management. In addition, environmental justice has become one of the challenges in the political spirit of environmental law after regulatory reform. The product of regulatory reform appears to disrupt environmental justice in terms of ease of licensing and community rights to the environment.[5] How justice in the contemporary era coincides with the Government's desire for infrastructure development is a major challenge. Prospects for regulatory reform products include the implementation of spatial planning. Sustainable development forces the government to think about good spatial planning management. Derivative rules from regulatory reform products are an opportunity to integrate cross-sector, cross-space, and cross-environment interests.[6] This potential must be realized alongside transparent environmental law enforcement. The revised Environmental Management and Management Law appears to weaken environmental law enforcement. Regional governments in the context of autonomous authority are more effective in enforcing environmental law. Prahesti Sekar in her study revealed that regional policies on environmental protection and management have positive implications for the environmental quality index.[7]

Globally, pollution is a significant problem in the contemporary era. Law enforcement of environmental pollution is a global issue that must be incorporated into Indonesia's regulatory framework. A study conducted by Prince O. Ukaogo *et al.* revealed that in this modern era, all countries are facing the phenomenon of environmental pollution. However, it appears that regulations in developed countries are stricter than those in developing countries.[8] On a global scale, environmental pollution can indirectly affect crime rates. The study showed that based on regional heterogeneity analysis, a significant positive impact of environmental pollution on crime occurs in both eastern and western China.[9] The issue of

[3] Ardiyanto wahyu Nugroho, "Membaca Arah Perubahan Kehutanan Pasca-Terbitnya Undang-Undang Cipta Kerja," *Jurnal Hukum Lingkungan Indonesia*, Vol. 7 No. 2 (2021), hlm. 275–96, https://doi.org/10.38011/jhli.v7i2.278.
[4] Halomoan, "The Position and Process of Designating Customary Forests After the Constitutional Court Decision Number 35/Puu-X/2012 and Its Implementation in Riau Province," *Jurnal Bina Hukum Lingkungan,* Vol. 5 No. 3 (2021), hlm. 523–35, http://dx.doi.org/10.24970/bhl.v5i3.217.
[5] Hario Danang Pambudhi dan Ega Ramadayanti, "Menilai Kembali Politik Hukum Perlindungan Lingkungan Dalam Undang-Undang Cipta Kerja Untuk Mendukung Keberlanjutan Ekologis," *Jurnal Hukum Lingkungan Indonesia*, Vol. 7 No. 2 (2021), hlm. 297–322.
[6] Imas Rosidawati Wiradirja, "Kebijakan Penanganan Lingkungan Hidup Dalam Penyelenggaraan Tata Ruang Pasca Lahirnya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Wacana Paramarta Jurnal Ilmu Hukum*, Vol. 21 No. 4 (2022), hlm. 1–9.
[7] Prahesti Sekar Kumandhani, "Penegakan Hukum Lingkungan Hidup Oleh Pemerintah Daerah Dalam Kerangka Otonomi Daerah," *Dharmasisya*, Vol. 1 No. 3 (2021), hlm. 1367–1382.
[8] Prince O. Ukaogo *et.al., Environmental Pollution: Causes, Effects, and the Remedies*, *Microorganisms for Sustainable Environment and Health* (INC, 2020), https://doi.org/10.1016/B978-0-12-819001-2.00021-8.
[9] Haitao Wu *et. al.*, "Does Environmental Pollution Promote China's Crime Rate? A New Perspective through Government Official Corruption," *Structural Change and Economic Dynamics*, Vol. 57 (2021), hlm. 292–307, https://doi.org/10.1016/j.strueco.2021.04.006.

global warming is a growing concern today. Global warming, climate change, and environmental pollution are increasing the frequency and complexity of ongoing environmental health issues.[10] An additional perspective for viewing the environmental issues is the Fiqh *Bi'ah* perspective. One of the motivations for enacting Islamic law as a solution to contemporary problems is environmental protection. Based on this motivational development, the concept of environmental jurisprudence emerged. Therefore, all efforts outlined in regulations regarding environmental management and preservation are in terms of ethics and moral.[11] This is reinforced by Yusuf Qardhawi who stated that environmental preservation is part of the *maqasid sharia*.[12] The Fiqh *Bi'ah* perspective will analyze the urgency of people's role in protecting the environment. The legal basis for protecting the environment can be analyzed based on the needs outlined in the Fiqh *Bi'ah* concept. In the concept of Fiqh *Bi'ah,* in order to preserve the sustainability of the environment, the Government is obliged to make regulations regarding the pattern of protection and sanctions for environmental damage.[13] Hence, this concept can be used as an analytical tool for updating the Law on Environmental Protection and Management.

The main issues analyzed in this study are divided into two areas. First, how environmental legal politics impacts regulatory reforms from the Environmental Management Law to the Job Creation Law. Second, what the perspective of Fiqh *Bi'ah* on existing regulatory concepts regarding environmental management and maintenance is. Many scholars have conducted studies on environmental legal politics. A study by Fahriza analyzed the legal politics of environmental criminal reform. Specifically, it analyzed environmental legal politics from the criminal law sector in relation to environmental crimes.[14] Next, the political perspective of environmental law in sustainable development by Shafira Arizka in 2022. This study revealed that the progressiveness of environmental development from 1982 based on the Environmental Law to 2009 based on the Environmental Management Law showed regression in environmental legal politics based on the Job Creation Law. This research criticizesd the ideal of environmental legal politics leading to progressive policies, not regressive ones, as in the products of regulatory reform.[15] Then, Yasir Said identified the philosophical perspective of environmental ethics. His study revealed that ecocentrism grants rights to the environment.[16] Among the rights to the environment are the rights to protect, manage and utilize the enviroment properly.

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[10] Sara I. Zandalinas *et.al.,* "Global Warming, Climate Change, and Environmental Pollution: Recipe for a Multifactorial Stress Combination Disaster," *Trends in Plant Science* Vol. 26 No. 6 (2021),hlm. 588–99, https://doi.org/10.1016/j.tplants.2021.02.011.

[11] Muhammad Afwan Romdloni dan Muhammad Sukron Djazilan, "Kiai Dan Lingkungan Hidup; Revitalisasi Krisis Ekologis Berbasis Nilai Keagamaan Di Indonesia," *Journal of Islamic Civilization*, Vo. 1 No. 2 (2019), hlm. 119–29, https://doi.org/10.33086/jic.v1i2.1322.

[12] Rahma Hazalia and Indah Muliati, "Implementasi Konsep Islam Ramah Lingkungan," *An-Nuha* 2, no. 1 (2022): 142–155.

[13] Yunita dan Zahratul Idami, "Pengelolaan Lingkungan Hidup Menurut Perspektif Fiqih," *Jurnal Hukum Samudra Keadilan*, Vol. 15, No. 2 (2020), hlm. 210–22, https://doi.org/10.33059/jhsk.v15i2.2452.

[14] Fahriza Havinanda, "Politik Hukum Dalam Pembaharuan Sistem Hukum Pidana Lingkungan Dan Dampaknya Terhadap Penegakan Hukum Tindak Pidana Lingkungan Hidup," *Jurnal Hukum Al-Hikmah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat*, Vol. 1 No. 1 (2020), hlm. 106–121.

[15] Shafira Arizka Maulidyna, "Politik Hukum Lingkungan Dalam Kebijakan Pembangunan Berkelanjutan Berwawasan Lingkungan Di Indonesia," *Jurnal Simbur Cahaya*, Vol. 29 No. 2 (2022), hlm. 265–92, doi: doi.org/10.28946/sc.v29i2.1814.

[16] Yasir Said dan Yati Nurhayati, "Paradigma Filsafat Etika Lingkungan Dalam Menentukan Arah Politik Hukum Lingkungan," *Al`Adl*, Vol. XII N No. 1 (2020), hlm. 39–60.

A progressive legal perspective of environmental reform legal politics is carried out by Ilham Dwi. The stusy found that the presence of progressive law offers a new perspective in the field of natural resource management carried out based on responsive, participatory and holistic principles.[17] A study by Anika and Suharno in 2020 from a law enforcement perspective on environmental law issues revealed that suboptimal environmental law enforcement is caused by a lack of enforcement mechanisms. Therefore, optimizing law enforcement is necessary.[18] Throughout the previous studies, a gap as a complement is found in terms of study on environmental legal politics in Indonesia. As a differentiator and novelty, this study identifies the challenges and legal prospects in protecting the environment based on the concept of *Fiqh Bi'ah* in Islam. Thus, this study aims to contribute to research on environmental legal politics and the concept of *Fiqh Bi'ah*. Specifically, this study aims to identify and analyze environmental legal politics in terms of regulatory reform starting from the Environmental Protection and Management Law to the Job Creation Law. Besides, this study also tries tro analyze *Fiqh Bi'ah* regarding the existing regulatory frameworks governing environmental management and preservation. This study is expected to contribute to the development of environmental legal politics and the concept of *Fiqh Bi'ah* in environmental management based on Islamic values to be more comprehensive. With legal politics and perspective of *Fiqh Bi'ah*, the extent of human obligations to protect and preserve the environment will be analyzed based on regulations made by the Government.

Research Methods

This study applied a normative legal research method. Secondary data, consisting of primary and secondary legal materials, served as the basis for the analysis. The primary legal materials were in the form of statutory regulations and Supreme Court decisions, while secondary legal materials were books and national and international journal articles. Then, the approach adopted was a case-by-case and statutory approach. Various cases reflecting the consistency of Supreme Court decisions were also analyzed. In an effort to find objective description to the problems, qualitative data analysis was applied.

Results and Discussion

1. *Environmental Legal Politics in Terms of Regulatory Reform Starting from the Environmental Protection and Management Law to the Job Creation Law*

Environmental legal politics is a State's policy and strategic steps in designing, implementing, and enforcing legal regulations that focus on environmental protection and management in a sustainable manner. To address the first problem discussed in this study, the first step was to outline the amendments from the Environmental Management Law to the Job Creation Law. The data is presented in the following table.

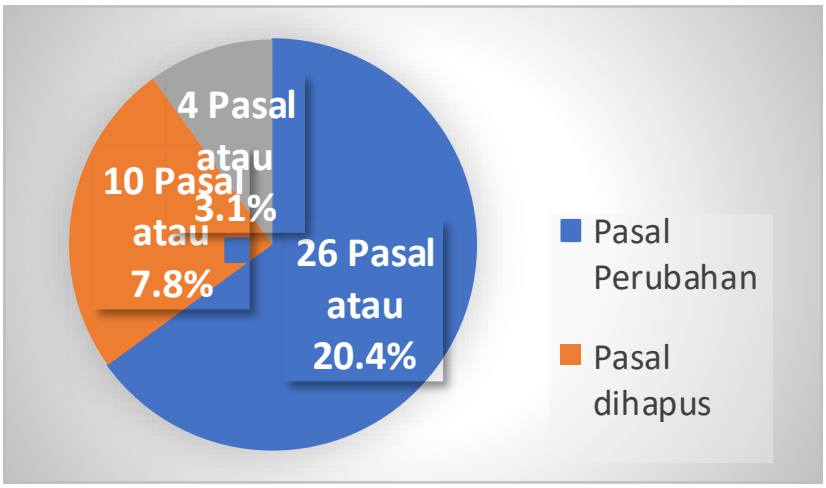
[17] Ilham Dwi Rafiq, "Pembaruan Politik Hukum Pembentukan Perundang-Undangan Di Bidang Pengelolaan Sumber Daya Alam Perspektif Hukum Progresif," *Bina Hukum Lingkungan*, Vol. 5 No. 2 (2021), hlm. 320–339.
[18] Anika Ni'matun Nisa and Suharno Suharno, "Penegakan Hukum Terhadap Permasalahan Lingkungan Hidup Untuk Mewujudkan Pembangunan Berkelanjutan," *Jurnal Bina Mulia Hukum*, Vol. 4 No. 2 (2020), hlm. 294, https://doi.org/10.23920/jbmh.v4i2.337.

Table 1.
Amendments to the Articles of the Environmental Protection and Management Law to the Job Creation Law

Articles of Amendment	Deleted articles	Added Articles
Article 20	Article 29	Article 61A
Article 24 to Article 28	Article 30	Article 82 A
Article 32	Article 31	Article 82 B
Article 34 to Article 35	Article 36	Article 82 C
Article 37	Article 38	
Article 39	Article 40	
Article 55	Article 79	
Article 59	Article 93	
Article 61, Article 63, Article 69	Article 102	
Article 71 to Article 73	Article 110	
Article 76 and Article 77		
Article 82 and Article 88		
Article 109		
Article 111 to Article 112		
Total: 26 Articles	10 Articles	4 Articles

(Data processed by the author)

The amendments to the Environmental Protection and Management Law relate to several specific themes. The amendment to Article 20 concerns environmental quality standards. The next amendments to Articles 24 to 28 are related to environmental impact analysis documents, while the amendment to Article 32 are related to assistance in preparing environmental impact analysis. Amendments to Articles 34 and 35 are related to UKL-UPL. Article 37 concerns the rejection of UKL-UPL by State officials, while Article 39 describes the obligations of State officials in announcing applications. The amended Article 55 describes the recovery and Article 59 relates to the management of hazardous and toxic waste. Further, amendment to Article 61 relates to dumping, Article 63 is regarding the duties of the Central and Regional Government, while Article 69 is regarding prohibitions. Articles 71 to 73 are regarding supervision. Administrative sanctions are described in Articles 76 and 77. Article 82 describes the authority of officials in coercion related to environmental recovery due to pollution, then Article 88 describes the absolute responsibility. The amendments to Articles 109, 111, and 112 address criminal provisions. The deleted articles concerns the Environmental Impact Assessment Commission, in Articles 29 through 31. The licensing provisions in Articles 36, 38, and 40 were also deleted. The provisions on administrative sanctions in Article 79 and administrative lawsuits in Article 93 were deleted. Among the criminal provisions deleted were Articles 102 and 110. The articles added to the Job Creation Law are Article 61A concerning business responsibilities and Articles 82A to 82C concerning administrative sanctions. Therefore, based on the amendments, deletions, and additions to the amended Environmental Protection and Management Law, which originally consisted of 127 articles, the percentage of changes is 20.4% of all articles amended into the Job Creation Law, 7.8% of articles deleted, and 3.1% of articles added. This is illustrated in the following pie chart.



The concept of environmental preservation applied through the Environmental Protection and Management Law is established based on the concept of control. Environmental preservation is achieved through control stages consisting of prevention, mitigation, and recovery. The Environmental Management Law regulates this matter in Article 13. The stages of preventing potential environmental damage are seen based on spatial planning instruments, environmental impact analysis, permits, risk analysis and audits, as well as other instruments stated in Article 14. The barometer of environmental damage is based on Article 14. In terms of mitigation stage for damage, based on the instrument barometer of Article 14, the concept of mitigation in maintaining environmental sustainability is that regulations require anyone who damages the environment to mitigate the damage they caused. Provisions regarding the mitigation mechanism are further described in Government Regulations. Rehabilitation for environmental damage is carried out in stages, starting from cessation to restoration. The Government and the House of Representatives revised the environmental management permit system from requiring an environmental impact analysis (EIA) to requiring approval from the Central or Regional Government. This can be seen in the amendments to Article 1, number 35 of the Job Creation Law. The shift from a licensing mechanism requiring an environmental impact analysis (EIA) to government approval is a step that makes it easier for businesses to explore land. Consequently, the implications for environmental damage become uncontrollable.

Next is the deletion of Article 36 of the Environmental Protection and Management Law concerning environmental permits. Every business entity required to have an environmental impact analysis (EIA) must have an environmental permit. Permit applications must be rejected if they do not meet the requirements in this article. Therefore, the deletion of this article represents a government policy aimed at facilitating illegal environmental management and exploitation. This is reinforced by the deletion of Article 40. Based on the deteled articles, the amendment of the Environmental Management Law to the Job Creation Law is a policy that makes it easier to obtain management approval for businesses that have the potential to change environmental conditions. This policy is in line with changes in the licensing context from environmental impact analysis (EIA) obligations to approval from the

Central or Regional Government. The elimination of institutions that control the feasibility of environmental impact assessments is an action that makes it easier for business actors to explore the environment without supervision. Article 22 of the Job Creation Law states that in order to make it easier for someone to obtain environmental approval, several articles in Environmental Protection and Management Law have been amended and deleted. These regulatory changes are an effort that does not reflect the ideal legal ideals in environmental management. The deletion of environmental permits for business activities serves as a preventative mechanism against potential environmental damage.[19]

In the context of sustainable development, simplifying environmental licensing by deleting environmental impact analysis (EIA) provisions is contrary to the principles of sustainable development. In fact, environmental permits are the main formula in achieving sustainable development goals.[20] The deletion of environmental permits places business actors in an uncertain position. This uncertainty arises when business actors engage in activities that cause environmental damage, and the government can, at any given time, shut down those businesses. This clearly contradicts the principles of sustainable development envisioned by the government. Environmental permits are intended to prevent environmental damage, but the government and the House of Representatives have abolished them.[21] From a legal certainty perspective, the policy of deleting several articles related to environmental permits in the Job Creation Law has a good aim in terms of simplifying licensing. These amendment directly simplify licensing and simplify the synergy mechanism between business permits and environmental permits. However, this policy is inconsistent with legal certainty regarding environmental protection. The changes tend to make it easier for high-profile business actors to obtain permits, ignoring environmental conditions and their consequences.[22]

The legal reform policy based on the principle of ease of licensing by the Government leaves behind the backward attitude towards Regional Government. Following these reform, the Central Government took over regional autonomy authority in formulating strategies related to environmental permits, such as environmental impact analysis (AMDAL) and Environmental Management and Liaison (UKL-UPL).[23] Different regional conditions in terms of environmental conditions cannot be used as a standard for the same regulations. The needs and interests related to regional environmental management are absolute regional policies that should not be taken over by the central government. Similarly, with spatial

[19] Roni Sulistyanto Luhukay, "Penghapusan Izin Lingkungan Kegiatan Usaha Dalam Undang Undang Omnibus Law Cipta Kerja," *Jurnal Meta Yuridis*, Vol. 4 No. 1 (2021), hlm. 100–122, https://doi.org/10.26877/10.26877/jm-y.v4i1.7827.

[20] AL. Sentot Sudarwanto, *AMDAL & Proses Penyusunan (Berdasarkan Peraturan Menteri Lingkungan Hidup Nomor 16 Tahun 2012 Tentang Pedoman Penyusunan Dokumen Lingkungan Hidup)* (Surakarta: UNS Press, 2018), hlm. 5.

[21] Al Sentot Sudarwanto and Dona Budi Kharisma, "Pembangunan Berkelanjutan , CSR Pembangunan Berkelanjutan," *Jurnal Rechtsvinding Media Pembinaan Hukum Nasional*, Vol. 9 No. 1 (2020), hlm. 24–25.

[22] Fauzi Hadi Al Amri, "Izin Lingkungan Dalam Kegiatan Usaha Pasca Penetapan Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Bina Hukum Lingkungan*, Vol. 6 No. 3 (2022), hlm. 438–52, https://doi.org/10.24970/bhl.v6i3.265.

[23] Yulinda dkk., "Kewenangan Daerah Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup Pasca Berlakunya Undang-Undang Cipta Kerja," *Bina Hukum Lingkungan*, Vol. 7 No. 1 (2022), hlm. 40–58.

planning, as a result of these amendments, regional governments are only responsible for implementing spatial planning as outlined by the central government.[24]

The problematic degradation of regional government authority in environmental management has given rise to institutional and sectoral egos. Central government dominance has the potential to threaten the existence of local communities and indigenous peoples in managing the environment based on local wisdom. This potential has led to a reduction in the role of the Regional Government through the Environmental Service. Law Number 23 of 2014 mandates the Regional Government to exercise the authority to control land as one of its autonomous authorities. However, through amendments to the Environmental Management Law, this authority was withdrawn by the central government. This legal harmonization created legal uncertainty regarding regional authority.[25] The government's policy of eliminating several criminal provisions related to the environment at a time when Indonesia's environmental situation is problematic is a wrong legal product. The elimination of criminal provisions in favor of administrative sanctions is a further step backward in environmental law enforcement. Criminal sanctions for violations are considered the most effective in addressing environmental damage caused by certain individuals.[26] Compared to Japan, criminal sanctions for environmental damage committed by an individual are stricter. Apart from being firm and strong in implementing criminal sanctions against environmental pollution, Japan can also be used as an example in terms of awareness and legal culture of people who care about the environment.[27]

The shift in criminal legal politics towards environmental law enforcement from the *primum remedium* principle in the Environmental Protection and Management Law to a principle that prioritizes administrative sanctions are still criminal provisions in certain sectors. The shift in the direction of the legal politics of sanctions can be seen from several changes which were initially criminal provisions to administrative sanction provisions. For example, managing B3 waste without a permit, preparing an environmental impact analysis without a competency certificate, and the consequences of negligence exceeding quality standards.[28] This amendments do not reflect the government's commitment to the issue of environmental damage carried out by certain individuals. Criminal sanctions in the Environmental Protection and Management Law generally fail to mitigate environmental damage caused by dirty hands. Therefore, the potential for further damage will be exacerbated by changing sanctions to administrative sanctions.[29]

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[24] Nyayu Tiara Masayu, "Implikasi Undang-Undang Cipta Kerja Terhadap Kewenangan Pemerintah Daerah Dalam Melaksanakan Penataan Ruang Nasional Dan Penyelenggaraan Penataan Ruang," *Jatiswara*, Vol. 36 No. 3 (2021), hlm. 238–49.

[25] Alofsen Sianturi, "Degradasi Kewenangan Pemerintah Daerah Dalam Pengelolaan Dan Perlindungan Hukum Lingkungan Pasca Omnibus Law" *Journal of Academic Literature Review,* Vol. 2 No. 8 (2023), hlm. 693–701.

[26] Alfikri, "Kebijakan Penghapusan Sanksi Pidana Terhadap Tindak Pidana Lingkungan Hidup Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Eksekusi,*Vol. 3 No. 1 (2021), hlm. 1–17.

[27] Aviany Yanti and Winda Fitri, "Sanksi Pencemaran Lingkungan Hidup Dalam Undang-Undang Cipta Kerja: Studi Komparatif Negara Jepang," *Mulawarman Law Review*, Vol. 7 No. 1 (2022), hlm. 31–48, https://doi.org/10.30872/mulrev.v7i1.772.

[28] Ainun Jiwanti, "Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Lingkungan Hidup Dalam Undang-Undang Cipta Kerja," *Justisi*, Vol. 9 No. 2 (2023), hlm. 158–74, https://doi.org/10.33506/jurnaljustisi.v9i2.2334.

[29] *Ibid.,* hlm. 170

2. Fiqh Bi`ah Regarding the Existing Regulatory Frameworks Governing Environmental Management and Preservation

The Indonesian fiqh *bi`ah* figure and General Chairman of the Central MUI in 1990-2000 stated that there are components in dealing with environmental damage caused by human actions. The first component, *rabbul`alamin*, describes that nature is essentially the creation of God, and therefore controlled and served by God. Second, *rahmatan lil`alamin*, is essentially the trust given to humans by God in the form of love. This compassion can be implemented towards nature. Therefore, the mandate of compassion extends not only to humans horizontally but also to the natural environment.[30] The development of the concept of fiqh *bi'ah* is based on the relationship between God, human, and nature. Subsequent developments in the concept are based on an ontological-theological paradigm. This paradigm development results in a complementary relationship between humans and nature, where neither dominates the other. [31] The construction of the development of the fiqh *bi`ah* paradigm based on the complementary relationship between humans and nature is a product of the objectives of implementing law in Islam. In addition to protecting the existence of life, reason, property, descendants, and the soul, the environment is also a target for the purposes of enacting laws. The enforcement of these laws is realized in the development of national law. The concept of Islamic jurisprudence (fiqh *bi'ah*) regarding environmental management and prevention of damage has been adopted in national development regulations. Nahdlatul Ulama scholars consider environmental pollution a criminal act.[32] The authorities responded to the opinions by creating *ta'zir* punishments for those who pollute the environment. The government's response is outlined in the national development map, one of which is the Environmental Protection and Management Law. This collaboration between religious scholars and authorities represents a collaboration in environmental management and protection within the framework of Fiqh *Bi'ah*.[33]

According to local Lombok scholars, the verses that can be used as sources for developing environmental law are based on major themes in the Quran. These include environmental elements, the creation of the universe, the causes of environmental damage, and the role of humans in preserving the environment. [34] In its efforts to prevent environmental damage, the government is intensifying empirical research. The results are then used as solutions to environmental problems. Research by these scholars can be balanced with religious approaches. In general,[35] the obligation to preserve the environment is an individual responsibility. The community's contribution to environmental preservation aligns with the concept of social jurisprudence stating that good law is law that conforms to societal patterns. Applicable positive law adheres to societal values so that it can be effectively

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[30] Ilyas Adhi Purba and Binti Mutafarida, "Eksistensi Green Sukuk Di Indonesia: Analisis Terhadap Fiqih Lingkungan Kh. Ali Yafie," *ADZ DZAHAB Jurnal Ekonomi Dan Bisnis Islam*, Vol. 8 No. 2 (2023), hlm. 167–79.

[31] Syamsul Falah, "Rekonstruksi Uṣûl Fiqih Perspektif Maqāṣid Syarī'ah Sebagai Ikhtiyar Pelestarian Lingkungan," *Syariati : Jurnal Studi Al-Qur'an Dan Hukum*, Vol. 5 No. 1 (2019), hlm. 27-42. https://doi.org/10.32699/syariati.v5i01.1183.

[32] Ruqoyyah Habibaturrahim and Wahyudi Bakrie, "Pencemaran Lingkungan Dalam Fiqih Islam Dan Undang-Undang No. 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Journal of Indonesian Comparative of Law*, Vol. 3 No. 1 (2020), hlm. 59, https://doi.org/10.21111/jicl.v3i1.4513.

[33] Sukarni, *Fikih Lingkungan Hidup Perspektif Ulama Kalimantan Selatan...*,hlm. 190.

[34] Subhan Abdullah Acim and Suharti, "The Concept Of Fiqh Al-Bī'ah In The Qur'an: A Study of the Quranic Verses on Environment in the Ulamas' Views of Lombok," *Ulumuna*, Vol. 27 No. 1 (2023), hlm. 115–40, https://doi.org/10.20414/ujis.v27i1.694.

[35] *Ibid.,* hlm. 111

applied. For example, environmental impact analysis (EIA), waste management, and spatial planning must be covered by law so that they can be implemented by the community.[36] Yusdani's research revealed optimism about the future of environmental conservation in Indonesia from an Islamic perspective. This optimism is based on the teachings of fiqh *bi'ah* and the opinions of Islamic scholars as alternative considerations.[37] A comparison of religious laws governing the environment between Indonesia, Malaysia, and Singapore, is through preaching institutions and religious scholars' speeches. Research conducted by Ramlan suggested that religion and religious law alone cannot provide solutions to environmental problems. Thus, environmental problems can be resolved through integrated multidisciplinary solutions. This combination provides a powerful solution to address environmental issues.[38]

Based on the results, the normative construction of fiqh *bi'ah* encompasses aspects of the interaction between humans and nature. These aspects relate to environmental preservation standards, the opening of settlements by clearing forests, and reforestation.[39] The next aspect as a barometer of the fiqh *bi`ah* view is water, rivers, waste management, and forest management.[40] Based on the aspects described by scholars regarding how to respond to the relationship between humans and nature, it then emerges that fiqh *bi`ah* law must be implemented by the authorities in the form of regulations. As Darliansyah stated in Sukarni, environmental management is a collaboration between religious scholars and those in power. The religious scholars initiate fatwas, while the authorities implement them through their authority in the form of regulations.[41] The environmental impact analysis feasibility assessment by the Assessment Commission, as stipulated in Article 29 of the Environmental Protection and Management Law, has been deleted under the Job Creation Law. Therefore, environmental impact analysis preparation is limited to direct government approval without requiring review by the Assessment Commission. Such policies contradict environmental preservation within the framework of fiqh *bi'ah*. On a global scale, fiqh bi'ah is constructed based on naturalistic intelligence. This basis is influenced by at least three factors. First, current environmental facts indicate increasing damage. Second, a comprehensive understanding of the concept of fiqh *bi'ah* must be formulated as scholars and researchers need it for consideration. Third, formulating fiqh *bi'ah* as a specific discipline provides a complex understanding for society.[42]

Conclusion

Based on the description, the following conclusions can be drawn. First, the environmental legal policics regarding the regulatory reform from the Environmental

[36] Kartika Nur Cahyani, "Environmental Impact Analysis in Indonesia Post-Job Creation Law: A Sociological Jurisprudence Approach," *Journal of Law and Legal Reform*, Vol. 2 No. 3 (2021), hlm. 439–48, https://doi.org/10.15294/jllr.v2i2.46616.
[37] J A Yusdani, "The Enviromental Crisis in the Prespective of Contemporary Islamic Studies in Indonesia," *Russian Law Journal*, Vol. XI No. 5 (2023), hlm. 412–27.
[38] Shazny Ramlan, "Religious Law for the Environment: Comparative Islamic Environmental Law in Singapore, Malaysia, and Indonesia," *SSRN Electronic Journal*, No. 15 (2019), https://doi.org/10.2139/ssrn.3405923.
[39] Trias Nugraha, "Penegakan Hukum Dalam Penanggulangan Pertambangan Batubara Illegal," *Savana: Indonesian Journal of Natural Resources and Environmental Law* 1, no. 1 (2024): 1–8.
[40] Sukarni, *Fikih Lingkungan Hidup Perspektif Ulama Kalimantan Selatan*.
[41] *Ibid.*, hlm. 190.
[42] Muhammad Harfin Zuhdi, "Islam And Global Ecology: Formulating The Fiqh Al-Bi'ah Based On Naturalist Intelligence (Case Study Of Bungin Island, Sumbawa)," *Journal of Xi'an Shiyou University, Natural Science Edition*, Vol. 19 No. 04 (2023), hlm. 31–41.

Protection and Management Law to the Job Creation Law represents a regulatory reform from Law Number 32 of 2009 concerning Environmental Protection and Management to the framework of Law Number 11 of 2020 concerning Job Creation, reflecting the dynamics of environmental legal politics influenced by conflicting interests between the drive for economic growth and the commitment to environmental preservation. However, it shows a shift in the orientation of legal politics from the *primum remedium* approach (criminal approach as the main effort) to the dominance of administrative sanctions. This change, although intended to improve licensing efficiency and facilitate investment, actually weakens oversight instruments and opens up opportunities for increased risks of environmental damage. The deletion of several articles and environmental supervisory agencies indirectly reflects the logic of deregulation which sets aside the precautionary principle in environmental protection. Second, fiqh *bi`ah* on the concept of environmental management and preservation regulations in the contemporary context is able to complement the positive legal approach by providing a transcendental ethical foundation, encouraging the participation of the faithful community in environmental preservation and responding to the ecological crisis with a holistic approach. Thus, fiqh *bi'ah* has significant prospects if it is not only understood as a normative religious concept, but is developed into an independent discipline integrated into education system and public policy. Besides, the integration of fiqh *bi'ah* becomes one of the strategic alternatives in guiding the formation of policies and regulations to create environmental governance that is sustainable, just, and has high spiritual value. This development balances development and environmental sustainability through an ecological ethical approach based on Islamic values.

Suggestion

Based on the results, it is recommended that further studies deepen the understanding of the dynamics of environmental politics in the transition from the Environmental Management Law to the Job Creation Law, which does not only focus on normative and conceptual aspects, but also broadens the scope to the empirical dimension, particularly regarding the implementation of the Job Creation Law in the context of environmental protection and management. Besides, case studies, observations, and interviews with stakeholders in the environmental sector will provide a more concrete description of the effectiveness of the new legal regime in addressing environmental damage and strengthening the oversight instruments which are now more administratively oriented. In addition, further study is recommended to analyze how the principles of fiqh *bi'ah* as a legacy of religious thought have the prospect of being developed into a separate scientific discipline that is applicable and contributive in the formulation of public policy and can be implemented concretely in the formulation of environmental regulations in Indonesia. Therefore, an integrative effort is needed involving Islamic higher education institutions, fatwa institutions, and civil society organizations to form a more operational and relevant fiqh framework for contemporary environmental issues. This integration can be realized through curriculum development, environmental cadre training based on religious values, and the formation of community-based ecological advocacy modules. Further research is also crucial, focusing on an interdisciplinary approach between environmental law, Islamic ethics, and ecology. This approach is expected to produce policy formulations that are not only legally rational but also ethically and ecologically contextual. This combination of normative and scientific

perspectives will enrich the solutions offered to the complex environmental crisis. Thus, fiqh *bi'ah* will not be merely a normative discourse but can develop as a practical paradigm that shapes a sustainable and equitable socio-ecological ecosystem.

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How to Cite :
Ilyas Satria Agung, and Parid Sidik. "Challenges and Prospects of Environmental Legal Politics in the Contemporary Era from the Perspective of Fiqh Bi`Ah". *Unifikasi: Jurnal Ilmu Hukum* 12, no. 02 (December 31, 2025): 153–166.