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## From Remedial to Preventive Justice: A Contemporary Reframing of Civil Liability in Islamic and Comparative Law

**Abstract:** This study examines the evolution of civil liability from its traditional compensatory function toward a preventive model capable of addressing contemporary technological, environmental, and industrial risks. The research aims to analyze the legal foundations of the preventive function of civil liability, identify gaps in modern legislation, particularly in Arab jurisdictions, and explore how principles derived from Islamic jurisprudence can enhance contemporary legal frameworks. The study adopts a descriptive and comparative analytical methodology, examining statutory provisions, judicial rulings, and doctrinal writings in selected legal systems, including French, Chinese, and Indonesian law, alongside Islamic juristic maxims grounded in *uṣūl al-fiqh*, particularly the principles of *lā ḍarar wa lā ḍirār* and *sadd al-dharā'i*. The findings reveal that modern legal systems increasingly recognize preventive liability through mechanisms such as judicial injunctions, the duty of care, elimination-of-danger actions, and public interest litigation. However, these mechanisms vary in scope and philosophical foundation, and many Arab civil codes lack explicit and coherent preventive provisions. In contrast, Islamic jurisprudence offers a deeply rooted preventive framework that prioritizes averting harm over compensating for it, grounding liability in ethical responsibility and risk avoidance rather than solely in actual damage. The study concludes that integrating preventive principles into civil liability is both a legal and ethical necessity in the era of complex risks. It proposes a forward-looking legislative framework combining comparative legal techniques with Islamic preventive maxims to strengthen risk management and judicial intervention. Academically, the research contributes a novel comparative model that bridges Islamic jurisprudence and contemporary civil law theory, reconceptualizing liability as a proactive instrument of preventive justice rather than a merely remedial mechanism.

**Keywords:** Islamic Jurisprudence; Preventive Civil Liability; Precautionary Principle; Risk Regulation.

## INTRODUCTION

Civil liability is among the most dynamic legal systems, highly responsive to contemporary needs. After centuries of relying on the traditional “compensatory function,” aimed at redressing harm after its occurrence and restoring the previous state, modern legal thought is witnessing a profound shift toward the “preventive function” (The Preventive Function). This shift is no longer a theoretical luxury but a practical necessity imposed by the complexities of modern risks.<sup>1</sup> At present, contemporary legislation increasingly adopts a legislative approach of enacting flexible rules that establish multiple orders and duties, grounded in the principles of caution and prudence. This principle imposes on individuals a set of precautionary obligations to prevent harm or reduce risk. This approach is evident in numerous modern special laws, to the extent that virtually all newly enacted special legislation now contains provisions primarily oriented toward prevention.<sup>2</sup> This includes special legislation regulating traffic, environmental protection laws, and laws related to technological developments and artificial intelligence.<sup>3</sup>

This shift resulted from juristic reasoning that adopted a preventive approach to liability<sup>4</sup>, through which a person can be held accountable for failing to fulfill their duty to avoid risks that may lead to actual or potential harm.<sup>5</sup> While this approach is relatively recent in positive law, Islamic jurisprudence offers a deeper, more fundamental vision of liability, grounded in an ethical and purposive understanding of harm. In this view,

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<sup>1</sup> Mohammad Muslim Al-Zawahreh and Kawakeb Abu Risha, ‘Civil Liability for Environmental Pollution Damages in Light of Modern Pollution Monitoring Technologies’, in *Artificial Intelligence for Sustainable Innovation Management and Risk Management* (Springer, Cham, 2026), [https://doi.org/10.1007/978-3-031-95310-1\\_32](https://doi.org/10.1007/978-3-031-95310-1_32).

<sup>2</sup> Ibrahim Abdul Aziz Dawood, ‘The Danger of Legal Insecurity and the Necessity of Activating the Legislative Role: A Comparative Analytical Study’, *Special Issue for the Conference ‘Law in the Face of Global Crises - Means and Challenges,’ College of Law, Qatar University* 10, no. 3 (2021), <https://doi.org/10.29117/irl.2021.0188>.

<sup>3</sup> Dalal Tafkir Murad and Raghad Abd Muslim Ubaid, “The Role of Civil Liability in Limiting Cyberattacks: A Comparative Study,” *AlNahrain Journal of Legal Sciences* 27, no. 3 (2025): 338.

<sup>4</sup> Nikos Th Nikolinos, ‘Reforming the EU Civil Liability Framework Applicable to Artificial Intelligence and Other Emerging Digital Technologies: The Proposed AI Liability Directive’, in *Adapting the EU Civil Liability Regime to the Digital Age: Artificial Intelligence, Robotics, and Other Emerging Technologies* (Springer, Cham, 2024), [https://doi.org/10.1007/978-3-031-67969-8\\_8](https://doi.org/10.1007/978-3-031-67969-8_8).

<sup>5</sup> Joko Budi Darmawan et al., ‘Incorporating Islah Principles into Restorative Justice: Bridging Contemporary Legal Practice and Islamic Values’, *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 269-294, <https://doi.org/10.32332/milrev.v4i1.10435>.

responsibility is not limited to the actual occurrence of damage but extends to mere transgression, causation, or exposing others to risk. Accordingly, Islamic law<sup>6</sup> established a comprehensive preventive framework aimed at averting harm before it occurs, blocking the means (*sadd al-dharā'i*) that could lead to damage, and holding individuals accountable whenever their actions involve foreseeable risks. This is clearly reflected in the major juristic maxims, particularly the principle “*lā ḍarar wa lā ḍirār*,” along with its derivative preventive applications.

Civil liability has traditionally focused on compensating harm after it occurs. However, rapid technological advancements, environmental risks, and emerging societal hazards have exposed the limitations of this compensatory approach. Existing laws, particularly in many Arab countries, fail to address preventive liability effectively, leaving a gap in protecting individuals and society from imminent or potential harm. Islamic jurisprudence, by contrast, offers a comprehensive preventive framework, emphasizing the prevention of harm and the ethical responsibility of individuals before damage occurs. The main challenge lies in understanding how modern legal systems adopt preventive liability, assessing their effectiveness, and determining how insights from Islamic law can enhance contemporary civil liability frameworks.

Despite the growing importance of preventive civil liability, significant research gaps remain. Comparative studies examining the preventive function of civil liability across Islamic jurisprudence and modern legal systems are limited, leaving a lack of understanding of how these frameworks can inform one another. Moreover, current legislation in many jurisdictions, particularly in Arab countries, lacks explicit provisions for preventive measures against technological, environmental, and emerging risks, thereby reducing the effectiveness of civil liability in mitigating harm before it occurs. Additionally, there is insufficient guidance on integrating preventive principles into civil law in a way that

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<sup>6</sup> Allam Khalifa Ramadan, ‘Obstacles to Civil Liability for Damage to Waqf Property in Islamic Jurisprudence’, *Damietta Journal of Legal and Economic Studies, Faculty of Law* 11, no. 11 (2025): 1555-1630., <https://doi.org/10.21608/MHDL.2025.306495.1112>.

balances individual freedoms with societal protection, underscoring the need for both theoretical and practical exploration in this field.

This research offers a novel comparative approach by integrating Islamic jurisprudence with contemporary legal systems, particularly French, Chinese, and Indonesian law, to develop a framework for preventive civil liability. Unlike existing studies that predominantly emphasize compensation after harm occurs, this study highlights the ethical, social, and functional dimensions of liability that prioritize proactive measures to prevent harm before it arises. In this context, the research seeks to examine the preventive function of civil liability and explore why modern legal systems have increasingly adopted preventive approaches alongside, or even beyond, traditional compensatory mechanisms. It also examines how Islamic jurisprudence conceptualizes preventive liability and identifies the legal and ethical principles that may inform the development of contemporary legal frameworks. Furthermore, the study analyzes the mechanisms modern legal systems employ to implement preventive liability and evaluates their effectiveness in mitigating technological, environmental, and social risks, while also considering how preventive legal rules can be integrated without undermining individual rights and freedoms. Ultimately, this research aims to identify gaps in contemporary legislation and to formulate a more responsive and balanced legal framework that combines preventive principles from Islamic law and comparative legal traditions to strengthen civil liability systems, enhance social protection, and ensure greater legal certainty in the contemporary era.

## **METHOD**

This research employs a descriptive-comparative analytical method to examine the preventive function of civil liability from both modern legal and Islamic jurisprudential perspectives. The study is primarily normative-conceptual, focusing on the analysis of legal doctrines, statutory regulations, judicial decisions, and classical and contemporary Islamic legal literature. Data were collected through a comprehensive document-based approach by examining relevant primary and secondary legal materials, including legislation, court rulings, scholarly journal articles, books on civil liability, and authoritative fiqh texts

discussing the principles of prevention and harm avoidance in Islamic law. In addition, the research explores contemporary legal developments related to technological, environmental, and industrial risks to contextualize the preventive dimension of liability within present-day legal challenges.

The data were analyzed using qualitative legal analysis through descriptive, interpretative, and comparative techniques. The study interprets legal norms and Islamic jurisprudential principles by applying the *usul al-fiqh* approach, particularly through the examination of legal maxims such as *lā ḍarar wa lā ḍirār* and *sadd al-dharā'i'*, to determine their relevance in shaping preventive obligations in civil liability. A comparative analysis was further employed to identify convergences and differences between civil law doctrines and Shariah-based legal reasoning in preventing harm before it occurs. To ensure the validity and reliability of the findings, the research applied source triangulation by comparing statutory provisions, judicial practices, academic opinions, and Islamic legal authorities. Furthermore, doctrinal consistency and contextual interpretation were used to strengthen the analysis's credibility and ensure that the resulting framework remains academically rigorous and relevant to contemporary legal issues.

## RESULTS AND DISCUSSION

### The Legal Foundations of the Preventive Function of Civil Liability

The result is a description of the data obtained, as required by the research question. The results must address the problems raised in the research question. Research results must be clear and concise. Results should summarize scientific findings rather than convey detailed data. The discussion is the main part of the article that analyzes the research results using the main theory and other supporting theories to identify novelty relative to other studies. As a general principle, any person who causes harm shall bear responsibility for it, whether such harm results from fault or negligence. This rule, however, may be subject to exceptions depending on the specific circumstances of the case, particularly given the degree of control and awareness held by the individual concerned. Among these exceptions is the exemption of minors and persons with limited cognitive capacity from

full legal liability, because, from an ethical standpoint, they should not be held entirely accountable.<sup>7</sup>

### **The Evolution and Justifications of the Preventive Function of Civil Liability**

Civil liability has evolved to prevent situations in which no party is held accountable for harm, particularly in cases involving damage caused by certain categories of persons. Such cases are typically addressed through mechanisms of vicarious liability<sup>8</sup> It constitutes an expanded form of liability imposed on parents for their children's acts, owners for their animals' acts, and employers for their employees' acts. This vicarious liability does not require proof of fault or negligence on the part of the parent, owner, or employer. Rather, it is grounded in the generally recognized responsibility borne by parents toward their children, owners toward their animals, and employers toward their employees, an approach consistently affirmed across various legal systems.<sup>9</sup> This does not imply that the law has abandoned the notion of fault in such cases. Rather, the fault is attributed to the act of the minor, the object under the custodian's control, or the subordinate acting on behalf of the principal. This framework is commonly characterized as tort liability.

### **The Conceptual Development: From Remedial to Preventive Approaches**

The advent of technological advancement and the expanding scope of environmental harm have prompted a legislative shift toward a new model of liability grounded in proactive and preventive action. Like other forms of legal regulation, this model has undergone several stages, from its initial emergence to subsequent development. These stages will be outlined sequentially below.

#### **a. Traditional Stage (Compensatory Function)**

In its traditional form, civil liability was primarily compensatory, aiming to restore the injured party after the occurrence of harm. The imbalance between the harmed party

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<sup>7</sup> Tony Ridley and ChatGPT, 'Vicarious Liability What Is "Vicarious Liability"?8: 24', ResearchGate, 2023, <https://doi.org/10.13140/RG.2.2.15015.01445>.

<sup>8</sup> Conca S. Da, 'Bridging the Liability Gap Using Human-Centered Legal Design: Three Scenarios to Apply the Liability from Social Contact.Pap', Research and Innovation, er presented at the 2020 WeRobot conference, 2020, <https://www.uottawa.ca/research-innovation/centre-law-technology-society/werobot/papers>.

<sup>9</sup> Abdelhaq Alawa, 'The Status and Role of the Concept of Fault in Civil Liability', *Journal of Human Sciences* (University of Oum El Bouaghi) 8, no. 2 (2021): 185-198.

and the liable person was rectified through financial compensation, a principle established by classical theory derived from the Napoleonic Code of 1804. Liability arose only upon the actual occurrence of damage, with compensation serving as the sole means of achieving justice, as confirmed by 19th-century French civil doctrine.<sup>10</sup> Some scholars argue that the credit for developing the doctrine of strict liability primarily belongs to English jurisprudence.

**b. Contemporary Stage – The Preventive Function and the Emergence of the Risk Society**

The traditional compensatory approach to liability has faced increasing criticism as industrial societies have developed and economic activities have grown more complex. Modern legal scholarship has highlighted the inadequacy of *ex post* compensation for addressing collective harms or technological disasters, prompting some scholars to advocate for a redefinition of liability as a tool for regulating social risks.<sup>11</sup> Over time, the ethical dimension has played a foundational role in the development of civil liability, leading to a decline in reliance on fault as the basis for compensating the injured party, particularly when the injured party is unable to prove fault.<sup>12</sup> The rapid industrial and technological developments have brought significant social, economic, and technological transformations, directly impacting various aspects of human life. This has prompted legislators in most legal systems to seek new and effective mechanisms within the framework of civil liability to maintain a balance between such developments and the potential risks they entail. The aim has been to mitigate hazards arising from certain activities and practices by applying the principles of caution and prudence, leading to a gradual shift from traditional tort liability rules toward a new framework recognized by private law scholars as

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<sup>10</sup> Marcel Planiol, *Traité Élémentaire de Droit Civil : Conforme Au Programme Officiel Des Facultés de Droit. Tome 2 / Par Marcel Planiol,...* (1931), <https://gallica.bnf.fr/ark:/12148/bpt6k1159982j>.

<sup>11</sup> Mohamed Yassin, 'Al-Mas'ūliyyah al-Mawḍū'iyah 'an al-Makhāṭir al-Mustaḥdathah' [Objective Liability for Emerging Risks], *Benha Journal of Human Sciences*, ahead of print, 1 January 2022, <https://doi.org/10.21608/BJHS.1999.269405>.

<sup>12</sup> Ahmed Hisham Fawaz Al-Omari, 'Civil Liability for Cybersecurity Violations: A Comparative Study between Egyptian Law and Jordanian Law', *Journal of Legal and Economic Research (Mansoura)*, ahead of print, 1 September 2025, <https://doi.org/10.21608/mjle.2025.460352>.

preventive liability.<sup>13</sup> The works of French scholars Boré and Viney have significantly contributed to consolidating this shift, emphasizing that liability is no longer contingent on actual harm but is directly linked to the risk itself. liability refers preventive Legally,<sup>14</sup> to a set of precautionary measures and obligations established by law, aimed at preventing harm from occurring rather than waiting to address its consequences through compensation.<sup>15</sup>

Some scholars have also defined preventive liability as “a set of rules imposing specific duties on individuals and entities that go beyond mere abstention from negligence, aiming at direct intervention to prevent the realization of risk, and including the right to seek judicial orders to restrain and stop conduct whose continuation poses a threat of causing serious or irreparable harm.”<sup>16</sup> According to certain legal scholars, the preventive function constitutes a legal mechanism aimed at averting social harms with collective impact through a distinct preventive action rather than a compensatory claim.<sup>17</sup> In this way, the role of civil liability shifts from merely being remedial to being fundamentally preventive.<sup>18</sup>

In light of the foregoing definitions, preventive liability can be defined as “an innovative mechanism encompassing a set of legal provisions aimed at preventing the occurrence of risk, stopping conduct that poses a threat of irreparable harm, or imposing

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<sup>13</sup> Siham El Babidi, ‘The Precautionary Principle in Civil Liability: A Contribution to the Development of Traditional Rules’, FUTURE GLOBALIST, accessed 18 February 2026, <https://www.future-globalist.org/siham-el-babidi>.

<sup>14</sup> G. Viney, *La responsabilité conditions*, 1982, [https://www.persee.fr/doc/ridc\\_0035-3337\\_1982\\_num\\_34\\_4\\_4019](https://www.persee.fr/doc/ridc_0035-3337_1982_num_34_4_4019).

<sup>15</sup> J. Shahar Dillbary et al., *Incentivized Torts: An Empirical Analysis*, n.d., accessed 18 February 2026, <https://scholarlycommons.law.northwestern.edu/nulr/vol115/iss5/2>.

<sup>16</sup> Johannes W. Flume, ‘Strict Liability in Austrian and German Law’, *Journal of European Tort Law*, 2021, <https://www.semanticscholar.org/paper/Strict-Liability-in-Austrian-and-German-Law-Flume/d28ed143b67e4900e8ddfc720bc21ff75f161b8e>.

<sup>17</sup> Yevhen Leheza et al., ‘Interpretation of Regulatory and Legal Acts in Contemporary Contexts: Foreign Experience, Comparative Perspectives, and Pathways for Regulatory Reform’, *Nusantara: Journal of Law Studies* 5, no. 1 (2026): 102–22, <https://doi.org/10.5281/zenodo.18727992>.

<sup>18</sup> Hamdado Lamia, ‘The Precautionary Principle as a New Dimension of Civil Liability: From Compensation to Prevention’, *Al-Fikr Journal for Legal and Political Studies* 2, no. 1 (2019): 289–319.

penalties to mitigate the effects of damage, through the imposition of a duty of caution and the adoption of necessary measures to prevent and limit harm.”

### **Justifications for the Shift Toward the Preventive Function**

This shift was not accidental; rather, it emerged in response to a set of practical and legal necessities:

#### **a. Emergence of “Irreparable” Harms**

The current technological advancements have given rise to new types of harm that are difficult to trace to their sources, due both to their multiplicity and their extension from the individual to the collective sphere.<sup>19</sup> This is particularly evident in areas such as environmental pollution, genetic engineering, and the leakage of big data.<sup>20</sup> In such cases, no amount of financial compensation can restore the original state. A burned forest or altered genes cannot be remedied with money, making “prevention” the only viable path to justice.

#### **b. The Crisis of Financial Compensation and the Difficulty of Proof**

Modern technologies, such as artificial intelligence, have introduced new risks that are often difficult to trace. In many cases, establishing a causal link between a specific act and harm that occurs years later is highly challenging. Consequently, it is more effective to implement precautionary measures to prevent hazardous activities from the outset rather than engage in complex, evidence-based disputes afterward.<sup>21</sup> Legal scholarship emphasizes that civil liability serves multiple functions, including the preventive and corrective functions.<sup>22</sup>

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<sup>19</sup> Zico Junius Fernando et al., ‘Reconstructing Environmental Criminal Law in Indonesia Through a Comparative Zemiological Legal Study’, *Trunojoyo Law Review* 8, no. 1 (2026): 95-126, <https://doi.org/10.21107/tlr.v8i1.31912>.

<sup>20</sup> El Babidi, ‘The Precautionary Principle in Civil Liability: A Contribution to the Development of Traditional Rules’.

<sup>21</sup> Cabrillac R, *Droit Des Obligations (15e Édition)* (Daloz, 2021), <https://www.librairie-aufildesmots.com/livre/9782247216499-droit-des-obligations-15e-edition-remy-cabrillac/>.

<sup>22</sup> Mirela Costache, ‘The Analysis of the Functions of Civil Liability. Constants and New Valences’, *EIRP Proceedings* 11, no. 1 (2016), <https://proceedings.univ-danubius.ro/index.php/eirp/article/view/1767>.

As a result of the widespread dissemination of national and social solidarity principles, society<sup>23</sup> has increasingly turned to developing new mechanisms for compensating harm, known as automatic or mechanized compensation systems, which now compete with civil liability in its compensatory role. The rapid proliferation of these systems has displaced civil liability from its exclusive position as the primary means of reparation, given the effectiveness these systems have demonstrated in ensuring victims receive compensation often surpassing traditional civil liability, particularly in addressing the challenge of identifying the responsible party.

c. Adoption of the “Precautionary Principle”

This principle has transitioned from international environmental law into the core of civil law, requiring individuals to take preventive measures even in the absence of scientific certainty about the likelihood of harm, provided a potential risk exists.<sup>24</sup> Consequently, precaution has become a strategic cornerstone that integrates compensation and prevention, reducing legal disputes and promoting social justice by balancing individual rights with collective interests.<sup>25</sup>

The judiciary has further reinforced this approach by recognizing that merely exposing others to an unjustified risk can give rise to liability, even in the absence of traditional fault or actual damage. This represents a clear shift from fault-based to risk-based logic. Indeed, some legal systems permit supervisory orders, in which the court requires a company to undertake specific actions and to submit a report within a few months detailing the measures implemented.<sup>26</sup>

In summary, as demonstrated above, traditional civil liability has proven inadequate to compensate for harms arising from environmental pollution caused by modern

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<sup>23</sup> Jihad Moazzi, ‘The Functional Development of Tort Civil Liability: Toward Strengthening the Preventive Function in Light of New Approaches’, *Journal of Legal and Political Thought* (Algeria) 5, no. 3 (2021): 322–43.

<sup>24</sup> Mohamed Saadi, *AlNazariyah al‘Ammah Lil-Iltizamat: Dirasah Muqaranah [The General Theory of Obligations: A Comparative Study]* (Dar Al-Ma‘arif, 2023).

<sup>25</sup> Martins Costa Moreira, R., and G. Wedy, ‘Environmental Civil Liability. In: *Brazilian Environmental and Climate Change Law*’, Springer, Cham, 2025, [https://doi.org/https://doi.org/10.1007/978-3-031-87998-2\\_9](https://doi.org/https://doi.org/10.1007/978-3-031-87998-2_9).

<sup>26</sup> Terré François et al., *Les obligations*, 12e éd., 2019, Précis (Dalloz, 2018).

technological devices, as well as risks associated with artificial intelligence, particularly autonomous machines, genetic engineering, biological damage, and other emerging technologies.

### **Legal Mechanisms of the Preventive Function in Contemporary Civil Law**

Contemporary legislation increasingly adopts a flexible regulatory approach that allows the establishment of multiple rules, orders, and duties grounded in the precautionary principle. This principle imposes on individuals a set of preventive obligations to avoid harm or mitigate risks. This approach is evident across various modern special laws, reflecting a primary focus on prevention.<sup>27</sup> Examples include traffic regulations, environmental protection laws, and legislation addressing technological developments and artificial intelligence<sup>28</sup>

Whereas civil liability was traditionally based on the occurrence of actual loss as a prerequisite for claiming compensation, so that liability could not arise from mere risk or potential harm, this understanding has evolved.<sup>29</sup> New provisions have been developed to establish liability for damages that are difficult to remedy or compensate under conventional compensatory rules.<sup>30</sup> This shift stems from scholarly efforts emphasizing a preventive approach to liability, whereby an individual can be held responsible for failing to fulfill their duty to avoid risks that may cause certain or potential harm.<sup>31</sup>

Moreover, the role of the civil judge is no longer limited to assessing compensation after harm occurs; it has expanded to include the authority of “prevention and anticipation.” This preventive function is manifested through legal mechanisms whose

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<sup>27</sup> Dawood, ‘The Danger of Legal Insecurity and the Necessity of Activating the Legislative Role: A Comparative Analytical Study’.

<sup>28</sup> Murad and Ubaid, “The Role of Civil Liability in Limiting Cyberattacks: A Comparative Study,”.

<sup>29</sup> T. Romi Marnelly et al., ‘Customary Law as Living Law in Environmental Forest Governance: A Sociology of Law Perspective on Legal Pluralism’, *Jurnal Hukum* 42, no. 2 (2026): 333–60, <https://doi.org/10.26532/jh.v42i2.46995>.

<sup>30</sup> Andi Sugirman et al., ‘Balancing Individual Political Rights and Institutional Integrity in an Islamic Constitutional Perspective on Party Switching in Indonesia’, *ElMashlahah* 15, no. 2 (2025): 369–92, <https://doi.org/10.23971/el-mashlahah.v15i2.9995>.

<sup>31</sup> Eskafi N et al., ‘Preventive Civil Liability in Administrative Actions, Comparative Study of Iranian and English Law’, *The Journal of Modern Research on Administrative Law*, 2024.

binding force varies across contemporary legislation.<sup>32</sup> For example, First: Judicial Injunctions in French Law: French law is considered a pioneer in this shift, particularly through the 2017 Civil Liability Reform Project. French courts have established the mechanism of “measures aimed at stopping unlawful conduct” (*Cessation de l'illicite*). This mechanism is:

- a. Granting the judge the authority to issue orders to “perform an act” or “refrain from an act” to prevent imminent harm or to stop ongoing harm before it escalates.<sup>33</sup>
- b. Another important manifestation is empowering the judiciary to adopt preventive measures independent of compensation, such as court orders to halt a hazardous activity or remove the source of a threat. This is particularly evident in French administrative courts dealing with environmental and public health protection, where prevention takes precedence over compensation.<sup>34</sup>

Some Western legal scholars view the preventive function as entirely independent of the compensatory function, aiming to avert harm by imposing a duty of caution and adherence to safe conduct standards.<sup>35</sup> This perspective reflects a notable shift in civil law philosophy toward a more regulatory and deterrent character.<sup>36</sup> In this regard, some scholars<sup>37</sup> emphasize that prevention constitutes a fundamental function of legal liability, aiming to deter unlawful conduct before it occurs.<sup>38</sup> Based on this understanding, legal

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<sup>32</sup> Adhistry Sitaresmi et al., ‘Legal Frameworks for Cybersecurity and Data Protection in Cloud-Based Notarial Systems in Indonesia: An Intersectional Analysis of Positive Law and Islamic Legal Principles’, *Al-Adalah* 22, no. 1 (2025): 29–62, <https://doi.org/10.24042/adalah.v22i1.26813>.

<sup>33</sup> G. Viney, *La responsabilité conditions*,

<sup>34</sup> Eric Landot, ‘A Quelle Date Appréhende-t-on Le Principe de Précaution’, 13 January 2025, <https://blog.landot-avocats.net/2025/01/13/a-quelle-date-apprehende-t-on-le-principe-de-precaution-video-et-article/>.

<sup>35</sup> Mohamed Abouyounes, ‘The Legal Underpinnings of Jordanian and Iraqi Law’s Administrative Penalty Systems’, *Al-Biruni Journal of Humanities and Social Sciences*, 2 September 2025, 1, <https://doi.org/10.64440/BIRUNI/BIR003>.

<sup>36</sup> Tichý L, ‘Preventive Liability and System of Sanctions in Tort Law’, in *Law of Remedies: A European Perspective* (Intersentia, 2019), <https://doi.org/10.1017/9781780689449.009>.

<sup>37</sup> Vira Tymoshenko, ‘Essence and Purpose of Preventive and Punitive Functions of Legal Liability’, *Úridičnij Časopis Nacional'noi Akademii Vnutrišnih Sprav* 14, no. 4 (2024): 23–31, <https://doi.org/10.56215/naia-chasopis/4.2024.23>.

<sup>38</sup> Nunuk Hidayati et al., ‘Beyond Religious Bureaucracy: Sapta Darma’s Marriage Registration Struggle in Post-Constitutional Reform Indonesia’, *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 25, no. 2 (2025): 305–334, <https://doi.org/10.18326/ijtihad.v25i2.305-334>.

liability should be viewed within a dual framework, preventive, targeting the adoption of precautionary measures, and deterrent. Accordingly, tort liability serves as a tool to reduce social risks before they materialize into actual harm.<sup>39</sup>

In Anglo-Saxon legal scholarship, some scholars emphasize an expanded understanding of the preventive function, particularly in environmental protection and public health. This reflects an evolution in tort law from being merely a tool for compensating harm to a legal system that imposes positive duties, such as warning and supervision, thereby strengthening the preventive character of liability rules.<sup>40</sup>

Second: The “Duty of Care” in the European Principles of Civil Liability (PETL) The Principles of European Tort Law (PETL) adopt a broad concept of prevention based on the “duty of safety,” the mechanism of which is: As provided in Article 102(2), it imposes a general duty to prevent harm when the risk is significant, and the cost of prevention is reasonable. Here, prevention shifts from being merely a judge’s “option” to an enforceable “obligation” on the individual, with liability arising for breaching this duty even if no harm has yet occurred (through preventive actions).<sup>41</sup>

In our view, the scope of preventive liability is far broader than merely the duty of care. Prevention, in its broad sense, encompasses a set of precautionary measures aimed primarily at averting harm, secondarily at mitigating risks should harm occur, and finally at issuing orders to ensure the cessation of hazardous conduct.<sup>42</sup> Thus, the objective of prevention is not limited to avoiding harm before it happens; it extends to minimizing,

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<sup>39</sup> Fransiska Widyawati and Sumanto Al Qurtuby, ‘Suicide in Manggarai, Eastern Indonesia: Comparative Perspectives from Islamic, Catholic, and Indigenous Law’, *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 20, no. 2 (2025): 393–422, <https://doi.org/10.19105/al-lhkam.v20i2.15959>.

<sup>40</sup> Paula Giliker, ‘Is There a Duty to Prevent Harm in Tort? A Common Law Perspective’, *Journal of European Tort Law* 12, no. 1 (2021): 116–45, <https://doi.org/10.1515/jetl-2021-0007>.

<sup>41</sup> Bjarte Askeland et al., *Basic Questions of Tort Law from a Comparative Perspective* (Jan Sramek Verlag, 2015), [https://doi.org/10.26530/OAPEN\\_574832](https://doi.org/10.26530/OAPEN_574832).

<sup>42</sup> Muhammad Taufik et al., ‘Reassessing the Legitimacy of Civil Disobedience: A Maqasid al-Shari’ah and Sociological Analysis of Legal Authority and Public Rejection of Government Policy’, *Al-Istinbath: Jurnal Hukum Islam* 11, no. 1 (2026): 139–157, <https://doi.org/10.29240/jhi.v11i1.14452>.

controlling, and eliminating the causes of damage. Consequently, proactive measures are not the only mechanism for implementing preventive liability.<sup>43</sup>

Third: Liability for Environmental and Nuclear Harm in the New Chinese Law. The 2020 Chinese Civil Code represents a significant advancement in the preventive function, particularly regarding environmental matters. Article 1167 explicitly provides that, in the presence of an imminent danger threatening the safety of others or their property, the potential victim has the right to demand the “elimination of the danger” or the adoption of precautionary measures.<sup>44</sup> The Chinese experience is notable for its strict preventive and deterrent compensation in environmental offenses, aimed at preventing recurrence.<sup>45</sup>

Fourth: Liability for Damages in Indonesian Civil Law. Indonesian civil law represents a distinctive model in reconciling traditional rules with modern preventive requirements, particularly in light of judicial rulings and trends that have expanded the concept of liability as follows:

- a. Shift Toward a Preventive Interpretation under Article 1365 of the Civil Code  
Although the traditional text of Article 1365 focuses on harmful acts, Indonesian courts, influenced by modern Dutch trends, have begun to apply a “social duty of care.” This standard allows filing claims to prevent actions that pose a “serious risk” to society before actual harm occurs.<sup>46</sup> This approach aligns with the preventive function of liability and parallels the concept of *hisbah* in Islamic jurisprudence.

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<sup>43</sup> Cyril Sintez, ‘La Sanction Préventive En Droit de La Responsabilité Civile : Contribution à La Théorie de l’interprétation et de La Mise En Effet Des Normes.’ (thesis, Orléans, 2009), <https://theses.fr/2009ORLE0002>.

<sup>44</sup> Kenneth M. Lori et al., ‘Technological Advancement and the Decline of Religiosity: A Sociological Analysis of the History of Religions and Their Future in the Twenty-First Century’, *Al-Biruni Journal of Humanities and Social Sciences*, 21 April 2026, 44, <https://doi.org/10.64440/BIRUNI/BIR0023>.

<sup>45</sup> Li Shaohua and Xiao Peng, ‘The Civil Code of the People’s Republic of China: Major Features and Contributions to the World’, *US-China Law Review* 17, no. 8 (2020), <https://doi.org/10.17265/1548-6605/2020.08.001>.

<sup>46</sup> Caelsea Asalyandira Az zahra, et al, ‘Unlawful Act (Tort) as an Instrument for the Protection of Private Civil Rights and Individual Human Rights: A Comparative Analysis between Indonesia and Germany’, *International Journal Of Humanities Education And Social Sciences* 5, no. 3 (2025): 1511-1520.

- b. Public Interest Action (*Actio Popularis*): Indonesian law is distinguished by adopting strict preventive mechanisms in environmental and consumer protection cases. The law allows individuals<sup>47</sup> and organizations to seek judicial injunctions against industrial activities that threaten the environment, based on the principle that the right to a healthy environment requires “proactive prevention” rather than “ex-post compensation.”<sup>48</sup>
- c. Integration with Customary Principles (*Adat Law*): In Indonesia, the preventive function is also grounded in the principle of “balance and harmony.” Liability is not viewed merely as a sanction, means of restoring social harmony and but as a<sup>49</sup> preventing harm before it occurs. This approach closely parallels the objectives of Islamic jurisprudence, particularly the doctrine of *blocking the means* (*sadd al-dharā’i’*), which seeks to avert harm at its source.

Based on the foregoing, it is evident that contemporary legal systems converge in granting judges a “proactive authority,” yet diverge in their approaches.<sup>50</sup> French law emphasizes injunctive relief; European law centers on the “duty of care”; while Chinese law recognizes the “elimination of danger” as an autonomous substantive right. This diversity of models offers valuable guidance to Arab legislators on adopting precautionary orders as an effective mechanism for addressing the risks posed by artificial intelligence and environmental pollution.

Through the foregoing comparative analysis, it becomes evident that contemporary legal systems share a common recognition of the “preventive necessity” of civil liability. Nevertheless, their legislative approaches differ according to the underlying legal

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<sup>47</sup> Muhamad Rakhmat, ‘Construction of Law Enforcement Against Money Laundering Crime with Cyber Laundering Mode’, *Open Journal for Legal Studies* 3, no. 1 (2020): 1-86.

<sup>48</sup> Marzuki P.M, *Pengantar Limu Hukum (Introduction to Jurisprudence)* (Kencana, Jakarta, 2021).

<sup>49</sup> Danang Rahmat Surono and Gunawan Widjaja, ‘The Role Of Judicial Review In The Indonesian Legal System: A Literature Review On Constitutional Protection And Legal Accountability’, *International Journal Of Humanities, Social Sciences And Business (INJOSS)* 4, no. 3 (2025): 611-22.

<sup>50</sup> Fenk Hasan, ‘National Belonging and Its Relationship with Psychological Security Among University Students’, *Al-Biruni Journal of Humanities and Social Sciences*, 15 January 2026, 1, <https://doi.org/10.64440/BIRUNI/BIR0012>.

philosophy of each jurisdiction. First, regarding procedural mechanisms, there is broad agreement on the use of injunctive relief as a preventive tool, though there is variation in its scope. The European and Chinese models primarily emphasize eliminating technological and environmental risks, whereas the Indonesian model expands standing to grant society itself legal capacity to seek collective preventive protection. The second, in Terms of Philosophical Foundations, French law is grounded in the evolving authority of the judge to halt unlawful disturbances. Chinese law, by contrast, recognizes a substantive right to safety that precedes the occurrence of harm. Indonesian law offers a distinctive synthesis, combining a “social duty of care,” influenced by Dutch jurisprudence, with a customary philosophy centered on balance and harmony.<sup>51</sup>

The third, convergence with Islamic Jurisprudence: The Indonesian model presents a noteworthy example of integrating the preventive function within a social and legal framework that respects Islamic and customary values. This demonstrates that the preventive function is not alien to legal systems rooted in Islamic and Arab traditions but rather aligns with their normative foundations. Accordingly, the preventive function of civil liability is no longer a legislative exception or a limited judicial innovation. Rather, it has evolved into a well-established trend reshaping the very theory of liability, positioning prevention as a fundamental component of effective legal protection.

### **The Juristic Foundations of Preventive Liability in Islamic Jurisprudence**

While contemporary legal thought has only recently moved beyond the confines of a purely compensatory function toward a preventive one, Islamic jurisprudence has, since its inception, upheld the principle that preventing harm takes precedence over remedying it. The protection of rights against imminent infringement constitutes a core objective of the *maqāṣid al-sharī‘ah*.<sup>52</sup> From this perspective, liability in Islamic law is not merely an

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<sup>51</sup> Mohamed Tarek Ibrahim, ‘Civil Liability Insurance for the Risks of Artificial Intelligence: A Comparative Study’, Part 2, *Damietta Journal of Legal and Economic Studies* 12, no. 12 (2025): 743–787, <https://doi.org/10.21608/mhdl.2025.375577.1169>.

<sup>52</sup> Maha Ramadan Batikh, ‘The Effect of the Precautionary Principle on Civil Law Rules: Toward Moving Civil Liability from Compensation to Prevention’, *Al-Qanuni Journal* 17, no. 8 (2023): 2355–2460, <https://doi.org/10.21608/jlaw.2023.313319>.

instrument for compensating material damage; rather, it represents an ethical and legal framework primarily aimed at safeguarding the five essential interests (*al-darūriyyāt al-khams*). Accordingly, this section seeks to articulate the major and subsidiary juristic maxims through which the contours of “preventive justice” may be derived, and, on that basis, to advance a forward-looking vision of the preventive function of civil liability.

### **Juristic Maxims Underpinning the Preventive Function and Their Applications**

The major juristic maxims may be regarded as a comprehensive “preventive charter,” as they do not merely prescribe remedies after harm has occurred but establish principles aimed at preventing risks from arising in the first place. This is reflected in their doctrinal formulations and practical applications, as follows: the first, Presentation of the Juristic Maxims Underpinning the Preventive Function. Islamic jurisprudence has developed numerous legal maxims and principles that embody the concepts of responsibility and prevention. Among the most prominent of these maxims and principles are the following:

a. The Maxim “Harm Must Be Removed” and Its Preventive Implications:

Islamic jurisprudence approaches liability from an inherently preventive perspective, where the occurrence of harm is not the sole condition for legal intervention.<sup>53</sup> Special attention is given to preventing the causes and precursors of harm.<sup>54</sup> This maxim is one of the foundational principles, derived from the Prophetic hadith: “No harm and no reciprocating harm” (*lā ḍarar wa lā ḍirār*).<sup>55</sup> Here, “removal” does not merely refer to remedying harm after it occurs, but also encompasses “prevention before occurrence,” which constitutes the preventive application.<sup>56</sup> Jurists and usul scholars have established a

<sup>53</sup> Roy Riady et al., ‘Reformulating the Reversal of the Burden of Proof in Corruption Cases: Integrating Positive Law and Islamic Legal Principles’, *Nurani: Jurnal Kajian Syari’ah Dan Masyarakat* 25, no. 2 (2025): 514–528, <https://doi.org/10.19109/nurani.v25i2.30483>.

<sup>54</sup> Aftab Haider et al., ‘From Stewardship to Sustainability: A Comparative Analysis of Islamic Ecological Jurisprudence and Western Anthropocentric Regimes’, *JURIS (Jurnal Ilmiah Syariah)* 25, no. 1 (2026): 41–60, <https://doi.org/10.31958/juris.v25i1.16040>.

<sup>55</sup> ‘Hadith 32, 40 Hadith an-Nawawi - Forty Hadith of an-Nawawi - Sunnah.’, accessed 20 February 2026, <https://sunnah.com/nawawi40:32>.

<sup>56</sup> Zico Junius Fernando et al., ‘Reconstructing Environmental Criminal Law in Indonesia Through a Comparative Zemiological Legal Study’, *Trunojoyo Law Review* 8, no. 1 (2026): 95–126, <https://doi.org/10.21107/tlr.v8i1.31912>.

governing maxim endorsing “preventing a neighbor from acting in their property” if such action is certain or likely to cause significant harm to the neighbor, such as “demolishing a wall or causing water leakage.”<sup>57</sup> This represents the classical juristic model of injunctions, which modern law has adopted as the foundation for preventive claims.<sup>58</sup> Imam al-Shāṭibī emphasized that the purpose of this maxim in Sharia is to safeguard the public interest before it is compromised, considering the prevention of harm as preferable to its rectification, since averting a detriment takes precedence over attaining a benefit.<sup>59</sup> This endows the maxim with a preventive and functional dimension that extends beyond the narrow compensatory concept of liability.

b. The Maxim of “Blocking the Means” (*Sadd al-dharā'i'*) as a Mechanism for Legal Precaution

The maxim of *sadd al-dharā'i'* represents the pinnacle of preventive thought in Islamic jurisprudence. It entails prohibiting otherwise permissible actions if they are likely to cause real and significant harm. Liability is thus not based solely on harmful acts that have already occurred, but also on acts that may foreseeably cause harm, even if the harm has not yet materialized.<sup>60</sup> In this context, Ibn al-Qayyim emphasizes that Sharia does not merely prevent corruption after it occurs, but also targets its causes and means, considering this a hallmark of its justice and wisdom. This provides a foundation for holding individuals responsible for risks arising from their conduct.<sup>61</sup> Preventive Application: This maxim aligns closely with the contemporary Precautionary Principle. It empowers the ruler

<sup>57</sup> 'Kitāb Al-Ashbāh Wa-al-Nazā'ir : Manuscript, [1675], by Zayn al-Dīn Ibn Ibrāhīm Ibn Nujaym et al. | The Online Books Page', accessed 20 February 2026, <https://onlinebooks.library.upenn.edu/webbin/book/lookupid?key=ha002641714>.

<sup>58</sup> Khamim Khamim et al., 'Convergence of Restorative Justice and Al-'Afwu: Reforming Criminal Procedure Law in Indonesia', *Justicia Islamica* 22, no. 2 (2025): 277–302, <https://doi.org/10.21154/justicia.v22i2.9807>.

<sup>59</sup> Izz al-Dīn Abd al-'Azīz ibn 'Abd al-Salām, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām* [The Rules of Legal Rulings in the Public Interests]. Edited by Taha 'Abd al-Ra'ūf Sa'd. Cairo: Maktabat al-Kullīyyāt al-Azharīyah (Dār al-Ma'ārif, 1414).

<sup>60</sup> 'Ilaam al-Muwaqī'in 'an Rabb Il'Alamin - Ibn Qayyim al-Jawziya', Sifatufawqa, accessed 20 February 2026, <https://www.sifatufawqa.com/en/usool-al-fiqh/i-lam-al-muwaqi-in-an-rabb-il-alamin-ibn-qayyim-al-jawziyyah.html>.

<sup>61</sup> Muhammad 'Uthmān Shubayr, *Al-Qawā'id al-Kullīyah wa-al-Dawābiṭ al-Fiqhīyah Fī al-Sharī'ah al-Islāmīyah* [The Universal Principles and Jurisprudential Rules in Islamic Law], 2nd edn (Dār al-Nafā'is, 2007).

or judge to restrict actions that may pose a threat to society or individuals, providing an effective mechanism to address the risks posed by modern technologies and environmental hazards before they escalate.

c. The Maxim of “Liability for Transgression” or Causing Harm Without Intent

Islamic jurisprudence established the principle of liability for transgression or causation, expressed in the maxim “*prevention is stronger than remedy*”, without requiring intent to harm. This principle clearly prioritizes the preventive function over the compensatory one: preventing damage before it occurs is easier and preferable to attempting to remedy or compensate after the fact. Jurists have held that anyone who causes harm intentionally or not through an act that is permitted but carried out negligently bears liability.<sup>62</sup> Ibn Rajab al-Ḥanbali emphasizes that the basis of liability is the actual occurrence or risk of harm to others in an unauthorized manner, not merely intention or will, a concept closely resembling strict liability in modern law.<sup>63</sup>

Preventive Application: This maxim mandates the adoption of precautionary measures in professions and trades, considering negligence in these measures as sufficient to trigger liability even before damage occurs. This aligns with the “duty of safety” principle in contemporary European law.

d. Judicial Authority to Prevent Harm Before It Occurs

Islamic law grants judges broad authority and a fundamental duty to prevent harm before it occurs, based on the maxim “*Harm must be averted as much as possible*”, derived from *lā ḍarar wa lā ḍirār*.<sup>64</sup> Judges are empowered to take preventive measures, such as placing restrictions on wrongdoers, halting harmful activities, and requiring parties to implement precautionary measures to protect lives and property.<sup>65</sup> These applications

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<sup>62</sup> Ibn Rajab al-Ḥanbali, *Al-Qawā'id, Rule: Al-Mubāsharah wa al-Tasabbub [Direct Action and Causation]*. (n.d.).

<sup>63</sup> Mohammed Sadaqi Al-Borno, *Al-Wajeez Fi Idhāh Qawā'id al-Fiqh al-Kulliyya [The Concise Explanation of the General Rules of Fiqh]*, 4th ed (Al-Risālah al-'Ilmiyyah, 1996), <https://shamela.ws/book/8379>.

<sup>64</sup> Hariyanto Hariyanto et al., ‘Eco-Governance Fiqh and Urban Waste Management: A Critical Study of Environmental Policy in Yogyakarta’, *Journal of Islamic Law* 7, no. 1 (2026): 247-74, <https://doi.org/10.24260/jil.v7i1.5167>.

<sup>65</sup> al-Ḥanbali, *Al-Qawā'id, Rule: Al-Mubāsharah wa al-Tasabbub [Direct Action and Causation]*.

reveal that Islamic jurisprudence views liability not merely as a reactive legal tool, but as a behavioral regulatory mechanism aimed at minimizing risks and preventing harm. This aligns closely with contemporary trends that elevate the preventive function of civil liability.

### **Preventive Liability in Islamic Law and Its Comparison with Modern Legislation**

In Egypt, the legislature recognizes preventive liability through explicit provisions in the Civil Code, unlike modern laws in countries such as China and Argentina, and it diverges from the approach of Islamic jurisprudence. Examining contemporary legal trends alongside Islamic principles highlights the need to reform Arab civil liability laws, shifting from a “damage compensation” system to a “risk management” system. This requires integrating modern procedural tools with Islamic legal maxims, emphasizing genuine preventive liability, assigning responsibility for potential risks, and empowering judges to intervene proactively.<sup>66</sup>

In French law, significant preventive trends emerged in the early twentieth century, notably after the *Jand’heur* (1930) ruling, which established strict liability for harm caused by things under a person’s control, reducing reliance on proving traditional fault.<sup>67</sup> Modern French legislation, including the 1998 Product Liability Law and environmental regulations,<sup>68</sup> further reinforces this preventive approach, holding producers or operators responsible for potential harm even before it occurs, echoing the Islamic principle of averting harm (*lā ḍarar wa lā ḍirār*). Similarly, the modern Chinese Civil Code of 2020 imposes strict liability in certain cases, particularly in public safety and hazardous products cases. It imposes a duty of care on actors and allows judicial and administrative authorities to take preventive measures to avert harm. This reflects Western influences while aligning

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<sup>66</sup> Abū al-Ḥasan Al-Māwardī, *Al-Aḥkām al-Sultāniyyah Wa al-Wilāyāt ad-Dīniyyah [The Ordinances of Government and the Religious Authorities]* (Dār al-Kutub al-‘Ilmiyyah, n.d.), accessed 19 February 2026, <https://shamela.ws/book/22881>.

<sup>67</sup> ‘Arrêt Du 13 Février 1930, Jand’heur’, Marie-Anne Frison-Roche, accessed 19 February 2026, <https://mafr.fr/fr/article/cour-de-cassation-chambres-reunies/>.

<sup>68</sup> ‘Court of Cassation, Plenary Assembly, February 13, 1930, Published in the Bulletin - Légifrance’, accessed 21 February 2026, <https://www.legifrance.gouv.fr/juri/id/JURITEXT000006952821/>.

with the Islamic preventive principle by emphasizing the prevention of risks before damage materializes.

### **Toward a Legislative Framework for Preventive Justice**

Based on the preceding discussion of legal and juristic rules on preventive liability and their applicability in civil compensation, we outline a forward-looking perspective that could help address certain challenges in civil liability amid rapid technological, industrial, and environmental developments. This vision is based on the following principles: First: Proposed Legislative Draft for Preventive Liability We suggest adding a general provision to the Civil Code inspired by the maxim "*Harm Must Be Removed*" and the French mechanism of preventive orders: "*Upon request of interested parties, and in the presence of an imminent or unlawful threat, the judge may order all necessary precautionary measures to prevent harm or halt its escalation, including issuing orders to act or refrain from acting, with the imposition of a coercive fine to ensure compliance.*"

Second: Activating a Modern "Civil Hisbah" System. The Islamic *hisbah* system can be revitalized in a contemporary form by granting consumer protection associations and environmental organizations legal standing to bring preventive (class action) lawsuits against activities that threaten public order, health, or the environment before individual harm occurs. This approach gives preventive liability a social dimension aligned with the concept of *maslahah mursalah* (public interest).

Third: Transition to Preventive and Punitive Compensation. Given the inadequacy of traditional compensation to curb major corporations, we recommend adopting the concept of punitive damages, inspired by the Islamic idea of financial deterrence. Responsible parties causing significant risk would pay compensation exceeding the actual damage, serving as a deterrent to themselves and others from repeating hazardous conduct. Preventive justice is first an ethical necessity, then a legal one, reflecting the divine protection of human life and property before irreparable harm occurs. Integrating Western legal techniques with the values of Islamic *maqāṣid* provides the only viable path to a resilient civil system capable of addressing modern technological challenges. Finally, Islamic

jurisprudence, French law, and Chinese law converge on the overarching goal of protecting individuals and society and establishing the preventive function of civil liability. Differences arise in theoretical foundations, the nature of judicial intervention, and the scope of application: Islamic law is grounded in general Sharia objectives; French law relies on individual judicial authority; Chinese law balances administrative and economic regulation; while Indonesian law represents a near-ideal model that blends these approaches effectively.

## **CONCLUSION**

This research demonstrates that civil liability has evolved from a purely compensatory tool to a preventive mechanism capable of addressing complex technological, environmental, and industrial risks. The study contributes to legal science by integrating comparative legal analysis with Islamic jurisprudence, showing how preventive principles such as “harm must be removed” and “*sadd al-dharā'i*” can inform modern liability frameworks. Limitations include the focus on selected legal systems and the theoretical nature of preventive mechanisms, which require empirical testing in practice. Future research should explore implementation strategies for preventive civil liability in Arab jurisdictions, particularly regarding emerging technologies like AI, genetic engineering, and environmental hazards, to develop practical legal tools that balance individual rights and societal protection.

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Salah Eldin Ragab Semida contributed to conceptualization, methodology development, data analysis, and manuscript drafting. Zeyad Tareq Al-Rawe contributed to

literature review, data collection, and formal analysis. Sarmad Dalaf Hanoosh contributed to validation, investigation, and interpretation of findings. Tarek El-Sayed Mahmoud Abu Aqil contributed to supervision, project administration, and critical revision of the manuscript. Mahmood Shaker Alaloosh contributed to writing review and editing, visualization, and final approval of the manuscript. All authors have read and approved the final version of the manuscript.

## CONFLICT OF INTEREST

The authors declare that there are no conflicts of interest regarding the publication of this research article. All authors have approved the final manuscript and confirm that the research was conducted without any financial, commercial, or personal relationships that could be construed as a potential conflict of interest.

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The authors acknowledge the use of artificial intelligence (AI)-based tools to assist in language refinement, grammar checking, and improvement of the clarity of academic writing during the preparation of this manuscript. All intellectual content, data analysis, interpretations, and conclusions presented in this study remain the sole responsibility of the authors. The authors carefully reviewed and validated all outputs generated with AI assistance to ensure academic integrity, accuracy, and compliance with ethical scholarly standards.

## BIBLIOGRAPHY

- Abd al-‘Azīz ibn ‘Abd al-Salām, Izz al-Dīn. *Qawā‘id al-Aḥkām fī Maṣāliḥ al-Anām* [The Rules of Legal Rulings in the Public Interests]. Edited by Taha ‘Abd al-Ra’ūf Sa‘d. Cairo: Maktabat al-Kulliyāt al-Azharīyah. Dār al-Ma‘ārif, 1414.
- Abouyounes, Mohamed. ‘The Legal Underpinnings of Jordanian and Iraqi Law’s Administrative Penalty Systems’. *Al-Biruni Journal of Humanities and Social Sciences*, 2 September 2025, 1. <https://doi.org/10.64440/BIRUNI/BIR003>.
- Alawa, Abdelhaq. ‘The Status and Role of the Concept of Fault in Civil Liability’. *Journal of Human Sciences (University of Oum El Bouaghi)* 8, no. 2 (2021): 185–198.

Al-Borno, Mohammed Sadaqi. *Al-Wajeez Fi Idhāh Qawā'id al-Fiqh al-Kulliyah* [The Concise Explanation of the General Rules of Fiqh]. 4th ed. Al-Risālah al-'Ilmiyyah, 1996.

<https://shamela.ws/book/8379>.

al-Ḥanbali, Ibn Rajab. *Al-Qawā'id, Rule: Al-Mubāsharah wa al-Tasabbub* [Direct Action and Causation]. n.d.

Al-Māwardī, Abū al-Ḥasan. *Al-Aḥkām al-Sulṭāniyyah Wa al-Wilāyāt ad-Dīniyyah* [The Ordinances of Government and the Religious Authorities]. Dār al-Kutub al-'Ilmiyyah, n.d. Accessed 19 February 2026. <https://shamela.ws/book/22881>.

Al-Omari, Ahmed Hisham Fawaz. 'Civil Liability for Cybersecurity Violations: A Comparative Study between Egyptian Law and Jordanian Law'. *Journal of Legal and Economic Research (Mansoura)*, ahead of print, 1 September 2025. <https://doi.org/10.21608/mjle.2025.460352>.

Al-Zawahreh, Mohammad Muslim, and Kawakeb Abu Risha. 'Civil Liability for Environmental Pollution Damages in Light of Modern Pollution Monitoring Technologies'. In *Artificial Intelligence for Sustainable Innovation Management and Risk Management*. Springer, Cham, 2026. [https://doi.org/10.1007/978-3-031-95310-1\\_32](https://doi.org/10.1007/978-3-031-95310-1_32).

Askeland, Bjarte, Keizō Yamamoto, Ken Oliphant, et al. *Basic Questions of Tort Law from a Comparative Perspective*. Jan Sramek Verlag, 2015. [https://doi.org/10.26530/OAPEN\\_574832](https://doi.org/10.26530/OAPEN_574832).

Az zahra, et al, Caelsea Asalyandira. 'Unlawful Act (Tort) as an Instrument for the Protection of Private Civil Rights and Individual Human Rights: A Comparative Analysis between Indonesia and Germany'. *International Journal Of Humanities Education And Social Sciences* 5, no. 3 (2025): 1511-1520.

Batikh, Maha Ramadan. 'The Effect of the Precautionary Principle on Civil Law Rules: Toward Moving Civil Liability from Compensation to Prevention'. *Al-Qanuni Journal* 17, no. 8 (2023): 2355-2460. <https://doi.org/10.21608/jlaw.2023.313319>.

'Civil Code of the People's Republic of China'. Accessed 21 February 2026.  
[https://english.www.gov.cn/archive/lawsregulations/202012/31/content\\_WS5fedad98c6d0f72576943005.html](https://english.www.gov.cn/archive/lawsregulations/202012/31/content_WS5fedad98c6d0f72576943005.html).

Costa Moreira, R., Martins, and G. Wedy. 'Environmental Civil Liability. In: Brazilian Environmental and Climate Change Law'. Springer, Cham, 2025.  
[https://doi.org/https://doi.org/10.1007/978-3-031-87998-2\\_9](https://doi.org/https://doi.org/10.1007/978-3-031-87998-2_9).

Costache, Mirela. 'The Analysis of the Functions of Civil Liability. Constants and New Valences'. EIRP Proceedings 11, no. 1 (2016). <https://proceedings.univ-danubius.ro/index.php/eirp/article/view/1767>.

Da, Conca S. 'Bridging the Liability Gap Using Human-Centered Legal Design: Three Scenarios to Apply the Liability from Social Contact.Pap'. Research and Innovation, Er presented at the 2020 WeRobot conference, 2020.  
<https://www.uottawa.ca/research-innovation/centre-law-technology-society/werobot/papers>.

Darmawan, Joko Budi, Fendy Suhariadi, Suparto Widjojo, Mia Amiati, and Amjad Hamad Abdullah. 'Incorporating Islah Principles into Restorative Justice: Bridging Contemporary Legal Practice and Islamic Values'. MILRev: Metro Islamic Law Review 4, no. 1 (2025): 269-294. <https://doi.org/10.32332/milrev.v4i1.10435>.

Dawood, Ibrahim Abdul Aziz. 'The Danger of Legal Insecurity and the Necessity of Activating the Legislative Role: A Comparative Analytical Study'. Special Issue for the Conference 'Law in the Face of Global Crises - Means and Challenges,' College of Law, Qatar University 10, no. 3 (2021).  
<https://doi.org/10.29117/irl.2021.0188>.

Dillbary, J. Shahar, Cherie Metcalf, and Brock Stoddard. Incentivized Torts: An Empirical Analysis. n.d. Accessed 18 February 2026.  
<https://scholarlycommons.law.northwestern.edu/nulr/vol115/iss5/2>.

El Babidi, Siham. 'The Precautionary Principle in Civil Liability: A Contribution to the Development of Traditional Rules'. *FUTURE GLOBALIST*. Accessed 18 February 2026. <https://www.future-globalist.org/siham-el-babidi>.

Fernando, Zico Junius, Annisa Sabilla Sueni, Firdaus Arifin, Susi Ramadhani, and Almira Novia Zulaika. 'Reconstructing Environmental Criminal Law in Indonesia Through a Comparative Zemiological Legal Study'. *Trunojoyo Law Review* 8, no. 1 (2026): 95-126. <https://doi.org/10.21107/tlr.v8i1.31912>.

Fernando, Zico Junius, Annisa Sabilla Sueni, Firdaus Arifin, Susi Ramadhani, and Almira Novia Zulaika. 'Reconstructing Environmental Criminal Law in Indonesia Through a Comparative Zemiological Legal Study'. *Trunojoyo Law Review* 8, no. 1 (2026): 95-126. <https://doi.org/10.21107/tlr.v8i1.31912>.

Flume, Johannes W. 'Strict Liability in Austrian and German Law'. *Journal of European Tort Law*, 2021. <https://www.semanticscholar.org/paper/Strict-Liability-in-Austrian-and-German-Law-Flume/d28ed143b67e4900e8ddfc720bc21ff75f161b8e>.

François, Terré, Simler Philippe, Lequette Yves, and Chénéde François. *Les obligations*. 12e éd., 2019. Précis. Dalloz, 2018.

G. Viney, *La responsabilité conditions*,. 1982. [https://www.persee.fr/doc/ridc\\_0035-3337\\_1982\\_num\\_34\\_4\\_4019](https://www.persee.fr/doc/ridc_0035-3337_1982_num_34_4_4019).

Giliker, Paula. 'Is There a Duty to Prevent Harm in Tort? A Common Law Perspective'. *Journal of European Tort Law* 12, no. 1 (2021): 116-145. <https://doi.org/10.1515/jetl-2021-0007>.

'Hadith 32, 40 Hadith an-Nawawi - Forty Hadith of an-Nawawi - Sunnah.' Accessed 20 February 2026. <https://sunnah.com/nawawi40:32>.

Haider, Aftab, Naim Mathlouthi, Mahmud Zuhdi Mohd Nor, Musda Asmara, Asif Khan, and Ramadhita. 'From Stewardship to Sustainability: A Comparative Analysis of Islamic Ecological Jurisprudence and Western Anthropocentric Regimes'. *JURIS*

<https://doi.org/10.31958/juris.v25i1.16040>.

Hariyanto, Hariyanto, Muhammad Saleh Tajuddin, Zulhilmi Bin Paidi, Hajar Salamah Salsabila Hariz, and Mamluatur Rahmah. 'Eco-Governance Fiqh and Urban Waste Management: A Critical Study of Environmental Policy in Yogyakarta'. *Journal of Islamic Law* 7, no. 1 (2026): 247-274. <https://doi.org/10.24260/jil.v7i1.5167>.

Hasan, Fenk. 'National Belonging and Its Relationship with Psychological Security Among University Students'. *Al-Biruni Journal of Humanities and Social Sciences*, 15 January 2026, 1. <https://doi.org/10.64440/BIRUNI/BIR0012>.

Hidayati, Nunuk, Rusli Rusli, Moh Khusen, Asmawi Asmawi, and Sofyan Effendi. 'Beyond Religious Bureaucracy: Sapta Darma's Marriage Registration Struggle in Post-Constitutional Reform Indonesia'. *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 25, no. 2 (2025): 305-334. <https://doi.org/10.18326/ijtihad.v25i2.305-334>.

Ibrahim, Mohamed Tarek. 'Civil Liability Insurance for the Risks of Artificial Intelligence: A Comparative Study'. Part 2. *Damietta Journal of Legal and Economic Studies* 12, no. 12 (2025): 743-787. <https://doi.org/10.21608/mhdl.2025.375577.1169>.

Khamim, Khamim, Moch Choirul Rizal, and Andi Ardiyan Mustakim. 'Convergence of Restorative Justice and Al-'Afwu: Reforming Criminal Procedure Law in Indonesia'. *Justicia Islamica* 22, no. 2 (2025): 277-302. <https://doi.org/10.21154/justicia.v22i2.9807>.

'Kitāb Al-Ashbāh Wa-al-Nazā'ir : Manuscript, [1675], by Zayn al-Dīn Ibn Ibrāhīm Ibn Nujaym et al. | The Online Books Page'. Accessed 20 February 2026. <https://onlinebooks.library.upenn.edu/webbin/book/lookupid?key=ha002641714>.

L, Tichý. 'Preventive Liability and System of Sanctions in Tort Law'. In *Law of Remedies: A European Perspective*. Intersentia, 2019. <https://doi.org/10.1017/9781780689449.009>.

- Lamia, Hamdado. 'The Precautionary Principle as a New Dimension of Civil Liability: From Compensation to Prevention'. *Al-Fikr Journal for Legal and Political Studies* 2, no. 1 (2019): 289–319.
- Landot, Eric. 'A Quelle Date Appréhende-t-on Le Principe de Précaution'. 13 January 2025. <https://blog.landot-avocats.net/2025/01/13/a-quelle-date-apprehende-t-on-le-principe-de-precaution-video-et-article/>.
- Leheza, Yevhen, Oleksandr Kurakin, Olha Shapovalova, Kateryna Sokh, and Artur Makarov. 'Interpretation of Regulatory and Legal Acts in Contemporary Contexts: Foreign Experience, Comparative Perspectives, and Pathways for Regulatory Reform'. *Nusantara: Journal of Law Studies* 5, no. 1 (2026): 102–122. <https://doi.org/10.5281/zenodo.18727992>.
- Li Shaohua and Xiao Peng. 'The Civil Code of the People's Republic of China: Major Features and Contributions to the World'. *US-China Law Review* 17, no. 8 (2020). <https://doi.org/10.17265/1548-6605/2020.08.001>.
- M. Lori, Kenneth, Melinda R. Jane, Andrew L. George, and Dennis H. Norts. 'Technological Advancement and the Decline of Religiosity: A Sociological Analysis of the History of Religions and Their Future in the Twenty-First Century'. *Al-Biruni Journal of Humanities and Social Sciences*, 21 April 2026, 44. <https://doi.org/10.64440/BIRUNI/BIR0023>.
- Marie-Anne Frison-Roche. 'Arrêt Du 13 Février 1930, Jand'heur'. Accessed 19 February 2026. <https://mafr.fr/fr/article/cour-de-cassation-chambres-reunies/>.
- Marnelly, T. Romi, Resdati Resdati, Dian Kurnia Anggreta, Defri Yoza, and Seger Sugiyanto. 'Customary Law as Living Law in Environmental Forest Governance: A Sociology of Law Perspective on Legal Pluralism'. *Jurnal Hukum* 42, no. 2 (2026): 333–360. <https://doi.org/10.26532/jh.v42i2.46995>.
- Moazzi, Jihad. 'The Functional Development of Tort Civil Liability: Toward Strengthening the Preventive Function in Light of New Approaches'. *Journal of Legal and Political Thought (Algeria)* 5, no. 3 (2021): 322–343.

- Murad, Dalal Tafkir, and Raghad Abd Muslim Ubaid. "The Role of Civil Liability in Limiting Cyberattacks: A Comparative Study,". *Al-Nahrain Journal of Legal Sciences* 27, no. 3 (2025): 338.
- N, Eskafi, Shahsavandi E, and Bozorgmehr A. A. 'Preventive Civil Liability in Administrative Actions, Comparative Study of Iranian and English Law'. *The Journal of Modern Research on Administrative Law*, 2024.
- Nikolinakos, Nikos Th. 'Reforming the EU Civil Liability Framework Applicable to Artificial Intelligence and Other Emerging Digital Technologies: The Proposed AI Liability Directive'. In *Adapting the EU Civil Liability Regime to the Digital Age: Artificial Intelligence, Robotics, and Other Emerging Technologies*. Springer, Cham, 2024. [https://doi.org/10.1007/978-3-031-67969-8\\_8](https://doi.org/10.1007/978-3-031-67969-8_8).
- Planiol, Marcel. *Traité Élémentaire de Droit Civil : Conforme Au Programme Officiel Des Facultés de Droit. Tome 2 / Par Marcel Planiol,...* 1931. <https://gallica.bnf.fr/ark:/12148/bpt6k1159982j>.
- P.M, Marzuki. *Pengantar Limu Hukum (Introduction to Jurisprudence*. Kencana, Jakarta, 2021.
- R, Cabrillac. *Droit Des Obligations (15e Édition)*. Dalloz, 2021. <https://www.librairie-aufildesmots.com/livre/9782247216499-droit-des-obligations-15e-edition-remy-cabrillac/>.
- Rakhmat, Muhamad. 'Construction of Law Enforcement Against Money Laundering Crime with Cyber Laundering Mode'. *Open Journal for Legal Studies* 3, no. 1 (2020): 1-86.
- Ramadan, Allam Khalifa. 'Obstacles to Civil Liability for Damage to Waqf Property in Islamic Jurisprudence'. *Damietta Journal of Legal and Economic Studies, Faculty of Law* 11, no. 11 (2025): [1555-1630](https://doi.org/10.21608/MHDL.2025.306495.1112).  
<https://doi.org/10.21608/MHDL.2025.306495.1112>.

- Riady, Roy, Febrian Febrian, Nashriana Nashriana, and M. Yusuf. 'Reformulating the Reversal of the Burden of Proof in Corruption Cases: Integrating Positive Law and Islamic Legal Principles'. *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 2 (2025): 514-528. <https://doi.org/10.19109/nurani.v25i2.30483>.
- Saadi, Mohamed. *Al-Nazariyah al-'Ammah Lil-Iltizamat: Dirasah Muqaranah [The General Theory of Obligations: A Comparative Study]*. Dar Al-Ma'arif, 2023.
- Shubayr, Muhammad 'Uthmān. *Al-Qawā'id al-Kullīyah wa-al-Ḍawābiṭ al-Fiqhīyah Fī al-Sharī'ah al-Islāmīyah [The Universal Principles and Jurisprudential Rules in Islamic Law]*. 2nd edn. Dār al-Nafā'is, 2007.
- Sifatufafwa. 'T'laam al-Mouwaqī'in 'an Rabb Il-'Alamin - Ibn Qayyim al-Jawziyah'. Accessed 20 February 2026. <https://www.sifatufafwa.com/en/usool-al-fiqh/i-lam-al-muwaqi-in-an-rabb-il-alam-in-ibn-qayyim-al-jawziyyah.html>.
- Sintez, Cyril. 'La Sanction Préventive En Droit de La Responsabilité Civile : Contribution à La Théorie de l'interprétation et de La Mise En Effet Des Normes.' Thesis, Orléans, 2009. <https://theses.fr/2009ORLE0002>.
- Sitairesmi, Adhistry, Mas Rahmah, Suparto Wijoyo, Adhitya Panji Anom, and Fatma Merve Prayogo. 'Legal Frameworks for Cybersecurity and Data Protection in Cloud-Based Notarial Systems in Indonesia: An Intersectional Analysis of Positive Law and Islamic Legal Principles'. *Al'Adalah* 22, no. 1 (2025): 29-62. <https://doi.org/10.24042/adalah.v22i1.26813>.
- Sugirman, Andi, Irfan Amir, Andri Sutrisno, Agnes Fitryantica, and Sholihin Bone. 'Balancing Individual Political Rights and Institutional Integrity in an Islamic Constitutional Perspective on Party Switching in Indonesia'. *El-Mashlahah* 15, no. 2 (2025): 369-392. <https://doi.org/10.23971/el-mashlahah.v15i2.9995>.
- Surono, Danang Rahmat, and Gunawan Widjaja. 'The Role Of Judicial Review In The Indonesian Legal System: A Literature Review On Constitutional Protection And Legal Accountability'. *International Journal Of Humanities, Social Sciences And Business (INJOSS)* 4, no. 3 (2025): 611-622.

Taufik, Muhammad, Alfian Miko, Indraddin, Bob Alfiandi, and Abdul Halim. 'Reassessing the Legitimacy of Civil Disobedience: A Maqasid al-Shari'ah and Sociological Analysis of Legal Authority and Public Rejection of Government Policy'. *Al-Istinbath: Jurnal Hukum Islam* 11, no. 1 (2026): 139-157. <https://doi.org/10.29240/jhi.v11i1.14452>.

Tymoshenko, Vira. 'Essence and Purpose of Preventive and Punitive Functions of Legal Liability'. *Ūridičnij Časopis Nacional'noī Akademii Vnutrišnih Sprav* 14, no. 4 (2024): 23-31. <https://doi.org/10.56215/naia-chasopis/4.2024.23>.

Widyawati, Fransiska, and Sumanto Al Qurtuby. 'Suicide in Manggarai, Eastern Indonesia: Comparative Perspectives from Islamic, Catholic, and Indigenous Law'. *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 20, no. 2 (2025): 393-422. <https://doi.org/10.19105/al-lhkam.v20i2.15959>.

Yassin, Mohamed. 'Al-Mas'ūliyyah al-Mawḍū'iyah 'an al-Makhāṭir al-Mustaḥdathah' [Objective Liability for Emerging Risks]. *Benha Journal of Human Sciences*, ahead of print, 1 January 2022. <https://doi.org/10.21608/BJHS.1999.269405>.