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## **The Use of Maxims (*al-Qawā'id al-Uṣūliyyah wa al-Fiqhiyyah*) in Legal Argumentation of Sharia Economic Court Decisions in Indonesia**

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### **Abstract:**

All sharia economic court decisions in Indonesia are supposed to include sharia principles as the basis for adjudicating the case. Therefore, the judges must be able to understand the legal norms of sharia economics. This study aimed to explore how fundamentalistic maxims (*al-qawā'id al-uṣūliyyah*) and jurisprudential maxims (*al-qawā'id al-fiqhiyyah*) as parts of sharia economic legal norms or sharia principles were used by judges as legal argumentation in court decisions. We analyzed 384 court decisions categorized as sharia economic cases on the Indonesian Supreme Court website from April 20, 2016, to April 20, 2020, and set them as a universe of cases. Each decision that contained the maxim (*qā'idah*) in its legal consideration was selected as relevant case sample and was then analyzed to find how the maxim was used as legal argumentation to respond to a petition and/or demurrer. Then, we found 15 legal maxims from 28 legal argumentations of 14

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decisions (3.65% of the universe of cases). In general, the use of those maxims as legal argumentation has already conformed to their conventional usage with a few notes related to specific legal findings (*rechtsvinding*) in sharia economic cases.

**Keywords:**

Court Decision; Sharia Economic; Legal Maxim;  
Al-Qawā'id al-fiqhiyyah; Al-Qawā'id al-Uṣūliyyah

**Abstrak:**

Putusan ekonomi syariah di Indonesia diharuskan memuat prinsip-prinsip syariah sebagai dasar mengadili kasus. Karena itu, para hakim diharuskan mampu memahami norma-norma hukum ekonomi syariah. Penelitian ini bertujuan menjelaskan bagaimana kaidah usul dan kaidah fikih sebagai bagian dari norma-norma hukum ekonomi syariah atau prinsip syariah digunakan hakim sebagai argumentasi hukum dalam berbagai putusan ekonomi syariah di Indonesia. Kami meneliti 384 putusan dengan klasifikasi kasus ekonomi syariah periode 20 April 2016 (terregistrasi) - 20 April 2020 (unggahan terakhir) di laman resmi Mahkamah Agung RI sebagai semesta kasus. Putusan yang memuat kaidah usul dan atau kaidah fikih dalam pertimbangan hukum menjadi sampel kasus relevan untuk dianalisis bagaimana penggunaannya sebagai argumentasi hukum oleh hakim dalam menjawab petitum dan atau eksepsi. Ditemukan 15 kaidah dari 28 argumentasi hukum dalam 14 putusan (3,65% dari semesta kasus). Umumnya, penggunaan kaidah-kaidah tersebut sebagai argumentasi hukum telah sesuai dengan sesuai kelaziman peruntukan dengan sejumlah catatan terkait penemuan hukum khas perkara ekonomi syariah.

**Kata Kunci:**

Putusan Pengadilan; Ekonomi Syariah; Kaidah Hukum;  
Al-Qawā'id al-Fiqhiyyah; Al-Qawā'id al-Uṣūliyyah

**Introduction**

Islamic economics or sharia economics is the knowledge and application of prescriptive and prohibitive injunctions of the Qur'ān, the Sunnah, and rules of shariah (Islamic law) regarding the acquisition and disposal of any available resources. It aims to provide

satisfaction to individuals to enable them to perform their obligations to Allah and society. The rules of the shariah signify the set of principles determined with precision and their subordinate legal maxims.<sup>1</sup> Islamic law, like other laws, has its own “sources” (*maṣādir*). It also has its “guiding principles” (*uṣūl*) that dictate the nature of its “evidence or clues” (*adilla* (pl), *dalil* (sing)). Likely, it equally employs “legal maxims” (*al-qawā'id*) and utilizes several underlying “objectives” (*maqāṣid*) to underpin the structure of its legal theory.

In this context, Islamic legal maxims or *al-qawā'id al-fiqhiyyah* and fundamentalistic maxims or *al-qawā'id al-uṣūliyyah* play a vital role in the process of legal judgment.<sup>2</sup> Islamic scholars (*ulama'*) consider that the difference between both types of maxims was shown first by Shihāb al-Dīn al-Qarāfi (d. 682/1281) in his book “al-Furūq”.<sup>3</sup> He argues that a court decision can be reversed if it contains a violation of any generally accepted maxim. Moreover, without having a command over legal maxims, one cannot be a good jurist<sup>4</sup> and law expert.<sup>5</sup>

On the website of The Indonesia Supreme Court, meanwhile, as of April 12, 2021, there were 1,882 decisions classified as sharia economic cases originating from the area of religious courts at levels of the district court (first level); appeal; cassation; and judicial review.<sup>6</sup> Each decision came from legal argumentation which was based on general practical argumentation for special cases but within the limits of a legal order. It is elaborated from an institutionalized form as a

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<sup>1</sup>Hasanzaman, *The Economic Relevance Of The Sharia Maxims (Al Qawaid Al Fiqhiyyah)* (Jeddah: Scientific Publishing Centre, King Abdulaziz University., 1997).

<sup>2</sup> Mohamed Elewa Badar, “Islamic Law (Shari'a) and the Jurisdiction of the International Criminal Court,” *Leiden Journal of International Law* p 431. 24 (2): 43 (n.d.), <https://doi.org/https://doi.org/10.1017/S0922156511000082>.

<sup>3</sup> Muḥammad al- Zuhaylī, *Al-Qawā'id Al-Fiqhiyyah Wa Tatbīqātuhā Fī Al-Madhāhib Al-Arba'ah* (Damaskus: Dār al-Fikr, 2006), <https://al-maktaba.org/book/21786>.

<sup>4</sup> Sg: *faqīh*, Pl: *fuqahā*

<sup>5</sup>Hafiz Abdul Ghani, “A Study of The History of Legal Maxis of Islamic Law,” *International Journal of Arts and Commerce* 1 (2): 98 (2012).

<sup>6</sup>Mahkamah Agung RI, Putusan Ekonomi Syariah 2021. <https://putusan3.mahkamahagung.go.id/direktori/index/kategori/ekonomi-syari-ah-1.html>.

part of the procedure: a discussion concerning the correctness of a normative statement has an institutional and authoritative character.<sup>7</sup> Chapter 5 of Indonesia Supreme Court Regulation No. 14 of 2016 regarding Procedure in Resolving Sharia Economic Cases<sup>8</sup> orders that “all court decisions and determinations in the field of sharia economics shall contain the reasons and basis for the decision and sharia principles that are used as the basis for adjudicating”.

Since 2014, The Directorate General of the Religious Courts of the Indonesia Supreme Court has enforced the Standard Format of the Religious Courts Minutes of Hearing and Decision of 2014 (*Standar Format BAS – Berita Acara Sidang – 2014*) which stipulates that *al-qawā'id al-fiqhiyyah* together with al-Qur'ān and ḥadīth should be considered as part of legal argumentation in the legal consideration of Religious Court's decision.<sup>9</sup> One of the goals is to facilitate and accelerate the completion of work and minimize disparities in decisions that occur between one religious court and another.<sup>10</sup> Through the search, among others, we found a Religious Court Decision in Banjarnegara<sup>11</sup> in which its legal consideration contained a jurisprudential maxim, *al-ḍararu yuzālu* (harm must be eliminated), as legal argumentation. What is interesting is that the judges in their decision mentioned *al-ḍararu yuzālu* maxim as *al-qawā'id al-fiqhiyyah* which is supposed to be *al-qawā'id al-uṣūliyyah*. This was explained by Masyhudi Muqorobin<sup>12</sup> in his research which discussed

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<sup>7</sup> Eveline T Feteris, “Fundamentals of Legal Argumentation,” *Springer* 2nd ed. Vo (2017), <https://doi.org/https://doi.org/10.1007/978-94-024-1129-4>.

<sup>8</sup> PERMA No. 14 of 2016

<sup>9</sup> Standar Format BAS., “Standar Format BAS Dan Format Putusan Pengadilan Agama/Mahkamah Syar'iyah,” Badan Peradilan Agama Mahkamah Agung RI, 2014, <https://badilag.mahkamahagung.go.id/pengumuman-elektronik/pengumuman-elektronik/standar-format-bas-dan-putusan>.

<sup>10</sup> A Zahri, “Mencermati Template Putusan Badilag,” Badan Peradilan Agama Mahkamah Agung RI, 2017, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/mencermati-template-putusan-badilag-oleh-h-a-zahri-s-h-m-hi-19-1>.

<sup>11</sup> Banjarnegara Religious Court Decision No. 354 of 2016

<sup>12</sup> Masyhudi Muqorobin, “Qawaid Fiqhiyyah Sebagai Landasan Perilaku Ekonomi Umat Islam: Suatu Kajian Teoritik,” *Jurnal Ekonomi Dan Studi Pembangunan*, Vol. 8, No (2007): 198–214, <https://journal.umy.ac.id/index.php/esp/article/view/152>.

*qawa'id fiqhiyyah* and its implication on economic behavior and idea in public, especially among Moslems. His research focused on 99 (ninety-nine) *qawa'id* compiled by Moslem scholars at Dynasties of Turki Usmani through *al-majallah al-Ahkaam al-Adliyyah* about the early century of thirteenth Hijriyah or precisely around the year of 1286 H. Also, Irwan Maulana analyzed the implementation of *qawa'id fiqhiyyah* in Islamic economics and finance.<sup>13</sup> The purpose of his paper is to find out how the implementation of *qawaid fiqhiyyah* in the sharia economy and financial industry is.

After reviewing the above literature, the significance of the current study exists because it aims to empirically portray the practices of judges when using Islamic legal maxims in formulating their *ijtihad* (diligence in formulating the law) result while considering sharia principles (*ahkām*), particularly command law (*ḥukm taklīfī*) by using affixation (*ilhāq*) as a part of applying the law (*taṭbiq al-ahkām*). Considering the issue in the legal argumentation of Banjarnegara Religious Court Decision Number 354 of 2016, we prefer to acquire more court decisions on sharia economic cases as a sample of the population to answer the questions we posed earlier. Of course, concluding qualitative facts prior to cases by pointing to only two or three cases as evidence may help foresee what courts are likely to do in future cases. However, it may impede future legal analysis and allow for either conscious or unconscious bias.<sup>14</sup> Moreover, although many studies on Islamic legal maxims have been conducted, no research has been found on how judges use jurisprudential and fundamentalist maxims as legal argumentation, particularly in adjudicating sharia economic cases in Indonesia. For that reason, the purpose of this study is to understand how judges use maxims as legal argumentation in sharia economic cases in Indonesia.

## Method

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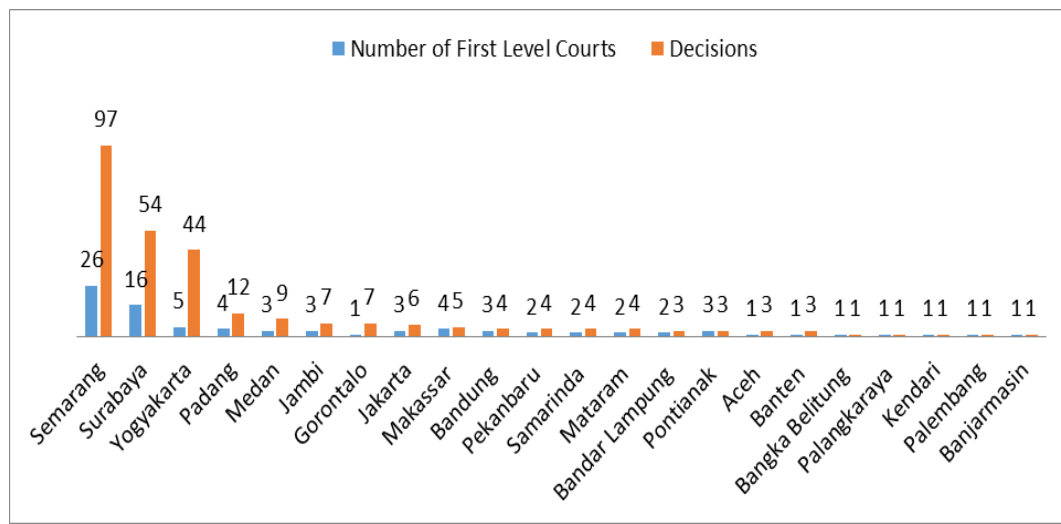
<sup>13</sup> Irwan Maulana, "Implementasi Qawaid Fiqhiyyah Dalam Ekonomi Dan Industri Keuangan Syariah," *Jurnal Asy-Syukriyyah* Vol. 19, N (2018), <https://doi.org/https://doi.org/10.36769/asy.v19i2.34>.

<sup>14</sup>and Anup Malani Baude, William, Adam S Chilton, "Making Doctrinal Work More Rigorous: Lessons from Systematic Reviews," *The University of Chicago Law* 84 (1) (2017).

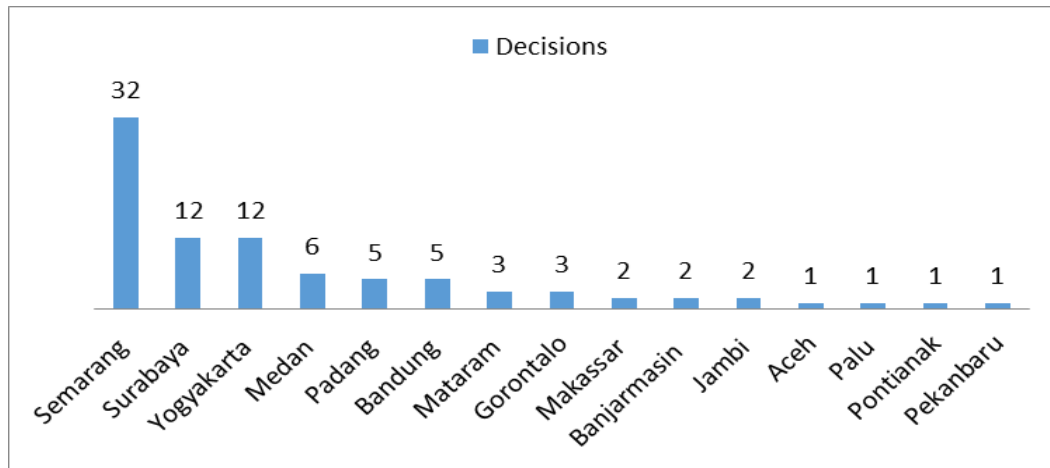
We attempted to identify all court decisions classified as sharia economic cases that were publicly available on the Indonesian Supreme Court website as of April 12, 2021. Because PERMA No. 5 of 2016 was issued in 2016, we considered limiting the scope of the study to decisions made after the regulation was issued, particularly cases that were officially uploaded with case registration information from April 20 2016 until April 20, 2020. From the sampling, we obtained 384 decisions and used these as the universe of case. Further, we examined the contents of those 384 decisions to see whether the keywords "fikih," "ushul," "fiqh," "kaidah," "qaidah," or a combination of these key phrases are explicitly mentioned in the legal arguments by judges so that at the next level, they could be analyzed quantitatively. We also identified which court and at what level those decisions were issued in a systematic review for quantitative analysis.<sup>15</sup> We then established that the relevant case samples are decisions that contain the legal maxim in its legal considerations and identified the following aspects: the names of the judges who used the maxim, the types of cases, as well as the contracts and objects in dispute. Legal maxims were then analyzed using systematic identification on whether there is justification from scholars about either those maxims are jurisprudential or fundamentalist; whether the mention of those maxims is textually written by the judge in the decision; how the usage of those maxims in legal argumentation is, whether those maxims were used to deduce legal rulings from the source of law and whether the evidence (*dālil*) was used to adjudicate the acts of *mukallaf* (obligated people). Finally, we conducted a qualitative analysis by contrasting scholars' perspectives on each maxim that appeared while demonstrating empirical evidence on how such maxims are used by judges as legal argumentation in adjudicating a petition or a demurrer in the case.

## Discussion and Result

The universe of cases for this study consists of 362 sharia



economic case decisions, including 274 decisions from the first-level religious courts and 88 decisions from the appeals level. Those data can be seen in Chart 1 and Chart 2 below:



**Chart 1.** First level court decisions of the high religious court (n=274)

**Chart 2.** Appeal level court of the high religious court (n = 88)

Based on the chart 1 dan chart 2 above, we found that there were 14 decisions (3.87% of 362 decisions/universe of cases) which consist of:

- a. Eight decisions from the first-level court:
  - 1) Gorontalo Religious Court Decision No. 599/Pdt.G/2018/PA.Gtlo, judges: Tomi Asram; Iskandar; Mohammad H. Daud;
  - 2) Gorontalo Religious Court Decision No. 0293/Pdt.G/2017/PA.Gtlo, judges: Tomi Asram; Suyuti; Khairah Ahmad;
  - 3) Banjarnegara Religious Court Decision No. 0354/Pdt.G/2016/PA.Ba, judges: Mugni Labib; Rohmat; Muridi;
  - 4) Sintang Religious Court Decision No.

- 0132/Pdt.G/2016/PA.St, judges: Abdul Aziz; Yusri; Muhammad Rais;
- 5) Karanganyar Religious Court Decision No. 1217/Pdt.G/2017/PA.Kra, judges: Hadi Suyoto; M. Muslih; Muhamad Imron;
  - 6) Banda Aceh Syar'iyah Court Decision No. 319/Pdt.G/2017/MS.Bna, judges: Mazharuddin; ANB. Muthmainah; Ahmad Sobardi;
  - 7) Gorontalo Religious Court Decision No. 0241/Pdt.G/2018/PA.Gtlo, judges: Iskandar; Tomi Asram; Mohammad H. Daud;
  - 8) Banda Aceh Syar'iyah Court Decision No. 319/Pdt.G/2018/MS.Bna, judges: Mazharuddin; ANB. Muthmainah; Ahmad Sobardi; and
- b. Six decisions from the appeal level:
- 1) Semarang Religious High Court Decision No. 264/Pdt.G/2016/PTA.Smg, judges: Jaliensyah; Helmy Thohir; Cholidul Azhar;
  - 2) Banjarmasin Religious High Court Decision No. 43/Pdt.G/2016/PTA.Bjm, judges: Syamsuddin Ahmad; Shaleh; Aridi;
  - 3) Surabaya Religious High Court Decision No. 08/Pdt.G/2017/PTA.Sby, judges: Achmad Hanifah; Agus Dimyathi Hamid; Abdullah Cholil;
  - 4) Surabaya Religious High Court Decision No. 406/Pdt.G/2018/PTA.Sby, judges: Achmad Hanifah; Humam Iskandar; Masruri Syuhadak;
  - 5) Surabaya Religious High Court Decision No. 138/Pdt.G/2017/PTA.Sby, judges: Achmad Hanifah; Agus Dimyathi Hamid; Humam Iskandar;
  - 6) Surabaya Religious High Court Decision No. 338/Pdt.G/2017/PTA.Sby, judges: Achmad Hanifah; Agus Dimyathi Hamid; Humam Iskandar.

Those relevant samples consist of 7 disputes of selling plus (*murābahah*) contracts (50% of 14 cases); 3 disputes of selling plus by delegation (*murābahah bi l-wakālah*) contracts (21.4% of 14 cases); 3 disputes of cooperation (*mushārahah*) contracts (21.4% of 14 cases); and 1 dispute of trustee finance (*muḍārahah*) contract. For further detailed



information, among those 14 cases, we detailed the information can be seen in table 1 below, as the type of cases in court decisions.

**Table 1.** Type of Cases in Court Decisions

No	Decision No.	Type of case	Contract	Object of Dispute
1	0354/Pdt.G/2016/PA.Ba	Breach of Contract	<i>mushārahah</i>	mortgage and fiduciary guarantee
2	0132/Pdt.G/2016 PA.Stg	Breach of Contract with an accessory contract (insurance)	<i>murābahah</i>	mortgage guarantee
3	264/Pdt.G/2016/PTA.Smg	Tort	<i>murābahah</i>	fiduciary guarantee
4	0043/Pdt.G/2016/PTA.Bjm	Tort	<i>murābahah</i>	mortgage guarantee
5	08/Pdt.G/2017/PTA.Sby	Breach of Contract, stay of execution (perlawanan eksekusi), and absolute jurisdiction demurrer	<i>murābahah bi l-wakālah</i>	mortgage guarantee
6	138/Pdt.G/2017/PTA.Sby	Breach of Contract, stay of execution, and absolute jurisdiction demurrer	<i>mushārahah</i>	mortgage guarantee
7	0293/Pdt.G/2017/ PA.Gtlo	Breach of contract, stay of execution	<i>murābahah</i>	mortgage guarantee
8	319/Pdt.G/2017/ MS.Bna	Breach of Contract	<i>murābahah bi l-wakālah</i>	mortgage guarantee
9	1217/Pdt.G/2017/ PA.Kra	Breach of Contract with damages liability	<i>murābahah</i>	mortgage and fiduciary guarantee
10	0241/Pdt.G/2018/ PA.Gtlo	Breach of Contract	<i>murābahah</i>	mortgage guarantee
11	338/Pdt.G/2017/ PTA.Sby	Breach of Contract with the stay of execution, and absolute jurisdiction demurrer	<i>mushārahah</i>	mortgage guarantee
12	599/Pdt.G/2018/ PA.Gtlo	Breach of Contract with the stay of execution	<i>murābahah</i>	mortgage guarantee
13	406/Pdt.G/2018/ PTA.Sby	Breach of Contract with the stay of execution, and absolute jurisdiction demurrer	<i>muḍārahah</i>	mortgage guarantee
14	319/Pdt.G/2018/ MS.Bna	Tort	<i>murābahah bi l-wakālah</i>	mortgage guarantee

Based on the type of cases, in table 1 above, it is known that 78.6% or 11 decisions are cases of default or breach of contract (dutch: *wanprestatie*) and 21.4% are tort/unlawful act (*perbuatan melawan hukum*) cases. The majority of disputed objects (78.6%) are immovable objects bound by the mortgage. The rests were mortgage and fiduciary guarantees (movable objects).

Besides, among the 14 cases, we found 15 maxims in the sample of relevant decisions. This detailed information is represented in table 2 below.

**Table 2.** The Maxims Mentioned by the Judge in the Court Decision

No	Decision No.	Maxim	Textually mentioned by judges	Remarks	Usage & status (A/B)*	Sample of justification as	
						jurisprudential maxim	fundamentalistic maxim
01	0354/Pdt.G/2016/PA. Ba	<i>Al-ḍararu yuzālu</i>	qoidah ushulul-fiqhi	Arabic with translation	A	(al-Suyuti 1990:83; al-Subki 1991:41)	
02	0354/Pdt.G/2016/PA. Ba	<i>Lā ḍarar wa-lā ḍirār</i>	Hadis al-Mālik & ad-Dāraquṭnī	Arabic with translation	A	(al-Zarqa 1989:165; M. al-Zuhayli 2006:199)	
03	0132/Pdt.G/2016/PA.Stg	<i>Al-riḍā bi l-shay'ī riḍān bimā yatawalladu minhu</i>	kaidah fiqhiyah	Arabic with translation	A	(al-Suyuti 1990:141; M.al-Zuhayli 2006:727)	
04	264/Pdt.G/2016/PTA. Smg	<i>Al-riḍā bi l-shay'ī riḍān bimā yatawalladu minhu</i>	kaidah fiqhiyah	Arabic with translation	A	Same as above	
05	264/Pdt.G/2016/PTA. Smg	<i>Al-aṣlu fī l-mu'āmalāti al-ibāḥah 'illā 'anyadulla dalīl 'alā taḥrīmihā</i>	kaidah fiqih	Arabic with translation	A	(Fatwa No. 4 2000; Djazuli 2006:130; Azhari 2015:135)	
06	264/Pdt.G/2016/PTA. Smg	<i>Lā ḍarar wa-lā ḍirār</i>	Hadis (Ḥadīth)	Arabic with translation	A	Same as above	
07	0043/Pdt.G/2016/PTA. Bjm	<i>Lā ḍarar wa-lā ḍirār</i>	Hadis	Arabic with translation	A	Same as above	
08	08/Pdt.G/2017/PTA. Sby	<i>Al-riḍā bi l-shay'ī riḍān bimā yatawalladu minhu</i>	qoidah fiqhiyyah	Only Indonesian translation	B	Same as above	
09	138/Pdt.G/2017/PTA. Sby	<i>Al-riḍā bi l-shay'ī riḍān bimā yatawalladu minhu</i>	qoidah fiqhiyyah	Only Indonesian translation	B	Same as above	
10	0293/Pdt.G/2017/PA. Gtlo	<i>Mā lā yatimmu l-wājibu illā bihi fahuwa wājibu</i>	kaidah ushul fiqh	Arabic with translation	A	(al-Subki 1991:88; Hakim, n.d.:54)	(al-Burni 1996:393)
11	0293/Pdt.G/2017/PA. Gtlo	<i>Taşarruf l-imāmi 'alā al-ra'iyati manūṭun bi l-maṣlahah</i>	kaidah ushul fiqh	Arabic with translation	A	(al-Suyuti 1990:88; Hakim, n.d.:52)	
12	0293/Pdt.G/2017/PA.	<i>Al-ḥukmu yadūru ma'a 'illatihi wujūdan wa</i>	kaidah ushul fiqh	Arabic with translation	B	(Hakim, n.d.:64; Ibrahim 2019:149)	(al-Zamil 2001:281)

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13	Gtlo 319/Pdt.G/ 2017/MS. Bna	'adamān Al-aṣlu fī l-'aqdi riḍā al- muta'āqidayn wanatijatum mā iltazamāh bi l- ta'āqud	kaidah ushul fiqh	Arabic with translation	A	(Djazuli 2006:130; Azhari 2015:177)	
14	1217/Pdt. G/ 2017/PA. Kra	Al-ḍararu yuzālu	kaidah fiqh	Only Indonesian translation	A	Same as above	
15	0241/Pdt. G/ 2018/PA. Gtlo	Al-aṣlu fī l-'aqdi riḍā al- muta'āqidayn wanatijatum mā iltazamāh bi l- ta'āqud	kaidah ushul fiqh	Arabic with translation	A	Same as above	
16	338/Pdt.G/ 2017/PTA. Sby	Al-riḍā bi l-shay'i riḍān bimā yatawalladu minhu	qoidah fiqhiyyah	Only Indonesian translation	B	Same as above	
17	599/Pdt.G/ 2018/PA. Gtlo	Al-bayyinatu 'alā l- mudda'ī wa l- yamīnu 'alā man ankar	risalatul qadha	Arabic with translation	A	(M. al-Zuhayli 2006:589; A. al- Zarqa 1989:369)	
18	599/Pdt.G/ 2018/PA. Gtlo	Al-'ibrah fī l-'uqūdi li l-maqāṣidi wa l- ma'ānī lā lil-alfāz wa l-mabānī	kaidah ushul fiqh	Arabic with Indonesia translation	A	(M. al-Zuhayli 2006:403; A. al- Zarqa 1989:55)	
19	599/Pdt.G/ 2018/PA. Gtlo	Al-ḥājatu tanzilu manzilāt al-ḍarūrah, 'amma kānat aw khāṣṣah	qaidah ushul fiqh	Arabic with translation	A	(al-Suyuti 1990:88; Ibn Nujaym 1999:91)	
20	599/Pdt.G/ 2018/PA. Gtlo	Mā lā yatimmu l- wājibu illā bihi fahuwa wājibu	kaidah ushul fiqh	Arabic with translation	A	Same as above	
21	599/Pdt.G/ 2018/PA. Gtlo	Taṣarruf l-imāmi 'alā al-ra'iyati manūṭun bi l- maṣlaḥah	kaidah ushul fiqh	Arabic with translation	A	Same as above	
22	599/Pdt.G/ 2018/PA. Gtlo	Al-wilāyatu l- khaṣṣah aqwā min al-wilāyati l- 'ammah	kaidah ushul fiqh	Arabic with translation	A	(al-Suyuti 1990:154; M. al- Zuhayli 2006:486)	
23	599/Pdt.G/ 2018/PA. Gtlo	Al-ḍararu yudfa'u biqadri l-imkān	kaidah ushul fiqh	Arabic with translation	A	(al-Burni 1996:256; M. al-Zuhayli 2006:208)	
24	599/Pdt.G/ 2018/PA. Gtlo	Al-tābi'u tābi'un	kaidah ushul fiqh	Arabic with translation	B	(al-Suyuti 1990:91; Ibn Nujaym 1999:120)	
25	599/Pdt.G/ 2018/PA. Gtlo	Al-tābi'u lā yufradu bi l-hukmi	kaidah fiqh	Arabic with translation	B	(al-Suyuti 1990:117; M. al- Zuhayli 2006:441)	
26	599/Pdt.G/ 2018/PA. Gtlo	al-hukmu yadūru ma'a 'illatihi wujūdan wa 'adaman	kaidah ushul fiqh	Arabic with translation	B	Same as above	Same as above

27	406/Pdt.G/ 2018/PTA. Sby	<i>Al-riḍā bi l-shay'i riḍān bimā yatawalladu minhu</i>	qoidah fiqhiyyah	Arabic with translation	B	Same as above.
28	319/Pdt.G/ 2018/MS. Bna	<i>Al-aṣlu fī l-'aḳḳi riḍā al- muta'āqidayn wanatijatuh mā iltazamāh bi l- ta'āqud</i>	kaidah ushul fiqh	Arabic with translation	A	Same as above

The 15 maxims, as listed in Table 2 above, appeared in 28 legal arguments. Specifically, each maxim is used as the rationale for the decision (*ratio decidendi*) by judges in response to one of numerous petitions or demurrers submitted by the plaintiff or defendant in their suit or reply. Textually, judges used several utterances to refer to the maxim, such as "*qoidah ushulul-fiqhi*", "*kaidah fiqhiyyah*", "*qoidah fiqhiyyah*", "*kaidah ushul fiqh*", "*kaidah fiqh*," and "*kaidah ushul fiqih*".

In 10 of 14 decisions (71%), the maxims were written in Arabic text and their meaning/translation, while the 29% were in translation only. Additionally, in 20 of 28 (71%) decisions, maxims were used as legal argumentation to adjudicate the acts of *mukallaf* or apply the law to *mukallaf's* actions as the facts (*taṭbīq al-aḥkām*) (\*A). For the rest (29%), meanwhile, judges used maxims to deduce rulings (*istinbāt al-aḥkām*) from the source of law (\*B).

Those 15 maxims are detailed below, arranged from the most frequently used ones.

The first of the maxims reads: *Al-riḍā bi l-shay'i riḍān bimā yatawalladu minhu* which means "accepting something implies acceptance of the consequences thereof". This jurisprudential maxim, according to al-Suyūṭī, is contained in the chapter on general and universal in nature, but is not applicable to all issues of Islamic jurisprudence.<sup>16</sup> It becomes the most frequently used jurisprudential maxim by judges in sharia economic cases (appeared in 6 of 14). The judges of the Surabaya Religious High Court frequently used this maxim, most, and it was found in four decisions with Achmad Hanifah as chairman of the judges in all four cases. The use of this

<sup>16</sup> Jalāl al-Dīn al- Suyūṭī, *Al-Ashbāh Wa Al-Naḳāir* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1990), <https://al-maktaba.org/book/21719>. Badru al-Dīn al- Zarkashī, *Al-Manthūr Fī Al-Qawā'id Al-Fiqhiyyah* (Madīnah al-Kuwayt: Wazārah al-awqāf al-Kuwaytīh, 1985), <https://shamela.ws/book/21592>.

maxim in those decisions seem to be compatible with how this maxim is conventionally applied as a jurisprudential maxim because judges utilized it to adjudicate the act of *mukallaḥ*.

However, we also found that judges used this maxim to deduce the law from a legal source: a contract agreed upon by the parties that contain an arbitration clause that the judge refused to examine the case due to the court's absolute competence. Although this usage is closer to the fundamentalistic maxims, it's still relevant as seen in cases No. 08/Pdt.G/2017/PTA.Sby; No. 138/Pdt.G/2017/PTA.Sby; No. 406/Pdt.G/2018/PTA.Sby; and No. 338/Pdt.G/2017/PTA.Sby which were indicated as specific legal findings.

The second is a maxim that reads: *lā ḍarar wa-lā ḍirār*, meaning “no harming and no reciprocating harm”. This maxim is adapted from a ḥadīth<sup>17</sup> and enables us to draw multiple interpretations with living relevance to modern times. Muṣṭafā al-Zuhaylī establishes this ḥadīth as the primary jurisprudential maxim with a derivative maxim that reads: “harm is to be removed.”<sup>18</sup> In the context of this research, we found that judges applied this maxim to several following situations.

*First*, to dismiss contract terms that obliged someone else to do something they were not necessarily capable of, as in decision No. 0354/Pdt.G/2016/PA.Ba. In the case, judges decided that burdening an advocate's services to an opponent, who has the weak economic condition, is unlawful because the opponent's harm is not allowed to be harmed anymore; It is like what happened in the Customary Court of Aceh in which the court gave the legal protection for disputing parties.<sup>19</sup>

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<sup>17</sup>Ibnu Majah, Muhammad Bin Yazid Al-Quzwini, *Sunan Ibnu Majah* (T: Abdul Baqi: Daar Ihya' al-Kutub al-arabiyyah, n.d.).

<sup>18</sup>Muhammad al-Zuhaylī., Al-Qawā'id Al-Fiqhiyyah Wa Tatbīqātuhā Fī Al-Madhāhib Al-Arba'ah (Damaskus: Dār al-Fikr, 2006), <https://almaktaba.org/book/21786>.

<sup>19</sup>Fitriah M Suud Dahlia Farida, Hamid Sarong, Darmawan, “Legal Protection for Disputing Parties through the Aceh Customary Court,” Al-Ihkam: Jurnal Hukum Dan Pranata Sosial Vol. 15, N (2020), <https://doi.org/https://doi.org/10.19105/al-lhkam.v15i1.2250>.

*Second*, to prohibit the use of any rights that harm others, as in decision No. 264/Pdt.G/2016/PTA.Smg. In the case, judges prohibited the execution of fiduciary objects by the bank without paying attention to social ethics;

*Third*, to prohibit anyone from using any rights that could cause harm to himself as indicated in decision No. 43/Pdt.G/2016/PTA.Bjm. In this case, people who purchase immovable goods and they are not immediately followed up with relevant administration of its legal documents are considered unlawful.

The third maxim reads *al-aşlu fı l-‘aqdi riđā al-muta‘āqidayn wanatiđatuh mā iltazamāh bi l-ta‘āqud* which means “the basic rule of the contract is the consent of the contracting parties, and its result is what they committed themselves to in the contract”. The fundamental principle of contracts or transactions, according to the maxim, is the consent of the two contractual parties. This is established with *dālıl* from both the Qur‘ān and the Sunnah. We found that this maxim was used to obligate the parties to be responsible for the terms of the agreed contract, including the consequences if they ignore the contract's articles as indicated in decision No. 319/Pdt.G/2017/MS.Bna; No. 0241/Pdt.G/2018/PA.Gtlo; and No. 319/Pdt.G/2018/MS.Bna.

The fourth maxim reads: *al-đararu yuzālu* or “harm must be eliminated”. This maxim is based on the maxim 2 above and sourced from a prophetic ḥadıth: “*lā đarar wa-lā đirār*”. Understanding of this maxim is based on explanation from many chapters of *fiqh* and al-Qāđi (judge) Ḥusayn al-Marrūzı is deemed as the first known person to formulate this maxim. The moral message in this maxim aims to teach and describe the principles of the ethical codes that exist in every Muslim in living life, namely not harming others.<sup>20</sup> This maxim was used as an excuse to eliminate the obligation to pay a late fee like

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<sup>20</sup> Mohd. Fazlul Karim. Ahmad, Abu Umar Faruq, Noor Mohammad Osmani, A.K.M. Shahed, “Shari‘ah Maxims and Their Implication on Modern Financial Transactions,” *Journal of Islamic Economics, Banking, and Finance* 6 (3) (2010): 75–104. See also Muhammad Al-Amin Deribe. Shettima, Muhammad, Hama Adam Biu, “The Relevance of Islamic Legal Maxims In Determining Some Contemporary Legal Issues,” *IJUM Law Journal* 24 (2) (2016): 415–451, <https://doi.org/https://doi.org/10.31436/iiumlj.v24i2.254>.

loaning (*qard al-ḥasan*) funds in Decision No. 0354/Pdt.G/2016/PA.Ba. It was also used as the basis for determining the appropriate amount of compensation to the entitled party without burdening another party, as in Decision No. 1217/Pdt.G/2017/PA.Kra.

The fifth maxim reads: *mā lā yatimmu l-wājibu illā bihi fahuwa wājibun* which means that what is necessary for the fulfillment of an obligation also becomes an obligation. According to Ṣidqī al-Būrnū, this is a fundamentalistic maxim instead of a jurisprudential one because it is a fore part of the obligation.<sup>21</sup> Regarding the use of this maxim among Indonesian judges to adjudicate petitions or demurrers in cases, we found that it is used to oblige the creditor to change the contract (addendum) so that the debtor who is in difficulty can be helped to fulfill his obligation to pay off the debt. This was mentioned in Decision No. 0293/Pdt.G/2017/PA.Gtlo and 599/Pdt.G/2018/PA.Gtlo. In those two cases, the judges substantially adjudicated the *mukallaf's* action by applying (*taṭbiq*) this maxim as law. Thus, this maxim was not used to deduce (*istinbāt*) law from existing legal sources as 'how to use a fundamentalistic maxim conventionally'. Instead, it was applied similarly to 'how jurisprudential maxims are applied'. For that reason, we contend that the manner of such usage is a form of specific legal finding on concrete facts in sharia economics cases.

The sixth maxim reads: *taṣarruf l-imāmi 'alā al-ra'iyati manūṭun bi l-maṣlahah* which means "the leader's policy towards the people must follow the benefit (*maṣlahah*) of the society". Some academics interpret "*maṣlahah*" in this jurisprudential maxim as public interest,<sup>22</sup> while *maṣlahah* can also mean interests recognized by the law.<sup>23</sup> This

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<sup>21</sup> Muḥammad Ṣidqī al-Būrnū., *Al-Wajīz Fī Idhāḥ Qawā'id Al-Fiqh Al-Kuliyyah* (Beirut: Muassasah al-Risālah, 1996), <https://shamela.ws/book/8379>.

<sup>22</sup> Luqman Zakariyah, *Islamic Legal Maxims (Al-Qawā'id Al-Fiqhiyya): Historical Development, Concepts, and Content*. (Brill: Nijhoff, 2015), [https://doi.org/https://doi.org/10.1163/9789004304871\\_003](https://doi.org/https://doi.org/10.1163/9789004304871_003).

Intisar A Rabb, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (Cambridge: Cambridge University Press, 2015), <https://doi.org/https://doi.org/10.1017/CBO9781139953054>.

<sup>23</sup> Ibrāhīm ibn Mūsā Abū Ishāq al-Shāṭibī., *The Reconciliation of The Fundamentals of Islamic Law (Al-Muwāfaqāt Fī Uṣūl Al-Sharī'a)*, ed. Edited by

maxim denotes that power must be exercised for the public benefit. We found that this maxim was used to compel an independent party to act in the best interests of the dependent one, as in Decision No. 0293/Pdt.G/2017/PA.Gtlo and No. 599/Pdt.G/2018/PA.Gtlo. In those cases, the creditor (bank) is the first independent party, while the debtor is the second party which is reliant on the first party to carry out a contract addendum. Without an addendum to the contract approved by the first party, the debtor will be unable to pay the debt and consequently, the collateral would be seized. In fact, prior to the dispute, the relationship between creditors and debtors was equal, unlike the relationship between the leader or government and the people.

The seventh maxim reads: *al-ḥukmu yadūru ma'a 'illatihi wujūdan wa 'adamān* which means “the law can be changed when the reason behind it has changed”. It implies that the reason (*'illah*) is the *maṣlahah* (interest/benefit) or *mafsadah* (**injury/evil**) instead of the cause, whether it exists or disappears.<sup>24</sup> We found the above maxim was used as the principle of *'illah* to deduce a legal consequence of a *petitum/petite/petit* adjudicated in Decision No. 0293/Pdt.G/2017/PA.Gtlo and 599/Pdt.G/2018/PA.Gtlo. The case happened to a plaintiff (customer) who signed a *murabahah* financing agreement with the defendant I (bank), which has installments for 48 months and a plot of land and buildings as the object rights dependents. In the middle of the second year of the contract, the plaintiff became ill and was hospitalized. He had surgery because of bone loss and this situation enabled him to make the deposit.

Meanwhile, the defendant I considered the plaintiff to be in a default situation and therefore issued Warning Letters I, II, and III. The plaintiff, on the other hand, considered the illness he suffered hindering the fulfillment of achievements as a state of force majeure permitted by law so that he cannot be declared in a default situation. After the surgery, he was known to contact the defendant I to settle the installments and at the end of the second year of the contract, he paid it below the minimum deposit. However, the defendant I

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<sup>24</sup>Abd Allah Darrāz. Translated by Imran Ahsan Khan Nyazee (Reading: Garnet Publishing, 2012).

<sup>24</sup>Ibrāhīm ibn Mūsā Abū Ishāq al- Shātibī.



notified the plaintiff to do an auction of the object of the mortgage because the plaintiff was deemed in a normal situation. The auction was conducted by a defendant II (auctioneer) following regulations on the tender application submitted by defendant I. The tender was later won by defendant III as a buyer in good faith. The fourth defendant, namely the notary, committed the process of changing the name of the owner according to the regulations, while the execution of the emptying of the object was carried out by defendant V (District Court). Thus, the judge adjudicated one petition and the maxim was then applied as a legal argument to respond to the next petitions depending on the first petition.

The eighth maxim reads: *al-aṣlu fī l-mu'āmalāti al-ibāḥah 'illā 'an-yadulla dalīl 'alā taḥrīmihā* which means "the basic norm of transactions (*mu'āmalat*) is permissible unless there is a clue for the prohibition on it". This maxim is a derivative of the primary maxim which reads: *al-yaqīnu lā yuzālu bi l-syakki* "certainty is not overruled by doubt", and as a more specific one than another maxim which reads; *al-aṣlu fī l-'ashyā'i l-'ibāḥah ḥattā yadulla l-dalīlu a'lā l-taḥrīm* which means "the basic rule about things (in the scope of *mu'āmalāt*) are allowed until there is evidence indicating that they are forbidden."

The word *ibāḥah* means lawful and it denotes an action that is not rewardable for doing and not sinful for leaving. The principle of permissibility (*ibāḥah*) as the natural state in *mu'āmalāt* (lit. "transactions" or "dealings") also means that freedom (either to do or not to do) is the normative position of the shariah about foodstuffs; animals on land and in the sea; customary matters; commercial transactions and contracts. This is as indicated in Q.S, Al-Baqarah: 29 which means: "It is He (Allah) who created for you all of that which is on the earth..." unless there is a clue or legal evidence for the prohibition on it.<sup>25</sup> We found that the judge applies this jurisprudential maxim to state that something is permissible and valid if it is shown as not prohibited as in The Verdict No. 264/Pdt.G/2016/PTA.Smg.

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<sup>25</sup> Shahrul Hussain, *A Treasury of Sacred Maxims: A Commentary on Islamic Legal Principles (Treasury in Islamic Thought and Civilization)* (Markfield: Kube Publishing, 2016). See also H.A. Djazuli, *Kaidah-Kaidah Fikih* (Jakarta: Kencana, 2006).

The ninth maxim reads: *al-bayyinatū ‘alā l-mudda’ī wa’l-yamīnu ‘alā man ankar* “ which means that evidence is for him who claims, an oath is for him who denies”. This maxim has become a standard in the law of evidence, particularly in procedural law, because the maxim places the burden to provide proof on the petitioner to help judges for deciding cases. If any claim is made, it must be substantiated with evidence either circumstantial or conclusive.<sup>26</sup> After all, as in Decision No. 599/Pdt.G/2018/PA.gtlo, this study found that judges used this ninth jurisprudential maxim to complete their written legal argumentation in their decisions. This is because the proving process should, after all, be carried out in the court, and the judge added this maxim in the legal consideration to strengthen their legal argument in sharia principles regarding the burden of proof.

The tenth maxim reads: *al-‘ibrah fī l-‘uqūdi al-maqāṣidi wa l-ma‘ānī lā lil-alfāz wa l-mabānī* which means that "contracts are considered based on their meanings and goals not wordings and construction of sentences".<sup>27</sup> In Decision No. 599/Pdt.G/2018/PA.Gtlo in which the plaintiff is a debtor, the disputed contract did not mention any force majeure clause even though it is typically found in a *murabahah* contract. Consequently, this is disadvantageous to the plaintiff when facing a force majeure situation. This jurisprudential maxim was used as a legal argument to rule on the creditor's actions in order for the force majeure clause can be used even though it is not written in the contract. At last, the judges' use of this jurisprudential maxim was still in conventional usage.

The eleventh maxim reads: *al-ḥājatu tanzilu manzilat al-ḍarūrah, ‘amma kānat aw khāṣṣah* which means “humanly need, whether public or private in nature, are treated as exigency (*ḍarūrah*)”. This maxim emphasizes that easing is not only valid for exigency (*ḍarūrah*),

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<sup>26</sup> Shahrul Hussain, *A Treasury of Sacred Maxims: A Commentary on Islamic Legal Principles (Treasury in Islamic Thought and Civilization)*. See also Rabb, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law*.

<sup>27</sup> al-Majalla. Article 3, 1875. “Al-Majallah al-Ahkam al-Adaliyyah (The Ottoman Courts Manual (Hanafi)).” 3. [https://www.iium.edu.my/deed/lawbase/al\\_majalle/index.html](https://www.iium.edu.my/deed/lawbase/al_majalle/index.html).

but also common needs (*ḥājah*).<sup>28</sup> As contained in Decision no 599/Pdt.G/2018/PA.Gtlo, this maxim was used by the judges as a legal argument on the force majeure condition experienced by the plaintiff (the debtor) so that it must be alleviated by the defendant (the creditor).

The twelfth maxim reads: *al-wilāyatu l-khaṣṣah aqwā min al-wilāyati l-āmmah* which means that “special jurisdiction is more powerful than general jurisdiction”. This maxim means that the jurisdiction of an entrusted, commissioned or person in charge (*al-muwālī*) is stronger than the jurisdiction of a public figure, such as the *qāḍī* (judge).<sup>29</sup> As contained in Decision No. 599/Pdt.G/2018/PA.Gtlo., we found that the judge employed this jurisprudential maxim to compel the defendant (the creditor) to accept the plaintiff's (debtor in good faith) force majeure situation. The debtor must also be treated specifically outside the general provisions applicable in the contract between the parties.

The thirteenth maxim reads: *al-ḍararu yudfa'u biqadri l-imkān* which means “harm should be avoided as much as possible”. This principle largely applies to circumstances when the practice of a legally permissible action has the possibility of leading to an impermissible consequence.<sup>30</sup> In Decision No. 599/Pdt.G/2018/PA.Gtlo., we have found the plaintiff (a good faith debtor) attempted to pay back the obligations that he had previously postponed due to his illness (force majeure). However, even though he had paid back as much as he could until he got approved by the creditor's agent, the creditor as a corporation kept attempting to seize the guarantee. The judge considered that the creditor's actions did not

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<sup>28</sup>Suyūṭī, *Al-Ashbāh Wa Al-Nazā'ir*.

<sup>29</sup> Abdul Baki As-Safi, *Islamic Jurisprudential Maxims 114 Maxims Expounded and Rendered Into English* (Amman, Jordan: Amwaj for publication and distribution, 2012), [https://www.uop.edu.jo/download/Research/members/424\\_2062\\_A.B..pdf](https://www.uop.edu.jo/download/Research/members/424_2062_A.B..pdf). See also Muhammad al-Zuhayli, Al-Qawā'id Al-Fiqhiyyah Wa Tatbīqātuhā Fī Al-Madhāhib Al-Arba'ah.

<sup>30</sup>Sayyed Mohamed Muhsin, Muhammad Amanullah, and Luqman Zakariyah, “Framework for Harm Elimination in Light of the Islamic Legal Maxims,” *Islamic Quarterly* 63, no. 2 (2019): 233–72.

prevent losses, especially those related to the loss of public trust in creditors.

The fourteenth maxim reads: *al-tābi‘u tābi‘un* which means “the appurtenant is deemed appurtenant”. This jurisprudential maxim means that whatever belongs to a certain thing goes with it to which it belongs. The maxim is based on a Prophetic ḥadīth narrated by Jabir ibn Abdulla which tells: “The slaughter of embryo is included when its mother is slaughtered”.<sup>31</sup> This study found that maxim *al-tābi‘u tābi‘un* was used by judges to explain that a follower is something whose form cannot stand alone and its existence, therefore, must follow the principal thing as something to be followed. In Decision No. 599/Pdt.G /2018/PA.Gtlo, the jurisprudential maxim was used to change the legal status of three things which are deemed as accessories: Plaintiff was declared in default situation and the auction of his property (mortgage) was permitted by the General Court Judges under some provision; the mortgage auction was made by defendant II (auctioneer) along with the auction minutes; the auction winner (defendant III) as a buyer has completed the process of changing the name of the certificate on the mortgage based on the auction minutes. These three things were required to follow the Religious Court judge's decision on the case's subject matter which proclaimed that the plaintiff is not in a default situation but was experiencing force majeure necessitating the addendum of the contract between the plaintiff and defendant I. Therefore, we consider that the use of this maxim is to deduce (*istinbāt*) the legal status of the *accessoires*/accessories cases based on the judgement/judgment made in the principal case. It means that the judgement/judgment to the principal case becomes the source of law to deduce the legal ruling of the *accessoires*/accessories cases.

The last maxim reads *al-tābi‘u lā yufradu bi l-ḥukmi* which means “what follows shall not be judged separately”. This maxim, as a derivative of the fourteenth, is closely related to or even an explanation of *al-tābi‘u tābi‘un* which can be rephrased as: "judgment

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<sup>31</sup> Abū Dāwūd. n.d. “Partial Translation of Sunan Abu-Dawud.” Translated by Ahmad Hasan. IIUM. Accessed March 18, 2022. 9:2822. [https://www.iium.edu.my/deed/hadith/abudawood/009\\_sat.html](https://www.iium.edu.my/deed/hadith/abudawood/009_sat.html).

cannot be given separately for a thing that follows another".<sup>32</sup> We found that this maxim was used in the legal argument in Decision No. 599/Pdt.G/2018/PA.Gtlo to explain the fourteenth maxim above.

Hereinafter, the majority of the legal maxims above were used as legal arguments to answer the principal of the case, while the rest were used as a part of legal arguments to respond to demurrers or related to procedural law applicable to the case. Furthermore, in 68% of the 28 times use, legal maxims have been used as legal argumentation conventionally with no significant differences found with how each maxim should be used theoretically. The rest (32%), meanwhile, was used as specific legal findings on concrete facts of sharia economic cases. They consist of:

- a) The use of analogy (*qiyās*) to the substance of the maxim, as has been exemplified and explained in the sixth maxim;
- b) Interchange of the use of legal maxims from their conventional usage:
  - jurisprudential maxim was used as the conventional use of fundamentalistic maxim because it was used to deduce legal rulings from the source of law, such as the use of maxims *al-tābi 'u tābi 'un*, *al-tābi 'u lā yufradu bi l-ḥukmi*, and *al-riḍā bi l-shay 'i riḍān bimā yatawalladu minhu* as explained above; and
  - fundamentalistic maxim was used as the conventional use of jurisprudential maxim because it was used to judge the acts of *mukallaf*,

such as maxim reading *mā lā yatimmu l-wājibu illā bihi fahuwa wājibu* in Decision No. 0293/Pdt.G/2017/PA.Gtlo and 599/Pdt.G/2018/PA.Gtlo.

## **Conclusion**

As shown above, scholars have justified determining whether the 15 maxims listed above are jurisprudential or fundamentalistic. Of course, there seem to be more than 15 Islamic legal maxims that judges can use as legal argumentation in ruling a case. Although there are different opinions on whether certain maxims are jurisprudential

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<sup>32</sup>As-Safi, *Islamic Jurisprudential Maxims 114 Maxims Expounded and Rendered Into English*.

or fundamentalistic, the uses of legal maxims by the judges were already in conformity with their conventional use. This fact can be a precedent or one of the factors that influence judges in writing the type of maxims in the decision. At the same time, it will support the thesis that jurisprudential and fundamentalistic maxims can be mingled or interchanged in their use. We provide empirical evidence to support the claim of the possibility of interchange depending on the angle and use of maxims. Establishing more detailed differences between both helps provide the principles of distinction between both in the context of how to use them as legal argumentation in judicial decisions, especially in sharia economic cases of Indonesia. One of which, for instance, is that the object of fundamentalistic maxims is the clue of law while their use is to deduce legal rule from the source of laws while the object of jurisprudential maxims is the act of *mukallaf* and its use is to render judgement/judgment.

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