

al-Qawa'id al-Fiqhiyyah

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IBN NUJAYM'S THOUGHTS ON LEGAL MAXIMS (QAWÂ'ID AL-FIQHIYYAH): An Analysis of Their Application to Juridical Issues

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Abstract: Legal maxims possess a unique place in jurisprudence, and jurists of all schools recognize it as a basis for forming sharia opinions, particularly if they are based on the holy Quran and prophetic traditions. Ibn Nujaym al-Hanafi was a prominent jurist from the Hanafi school who paid special attention to legal maxims (*qawâ'id al-fiqhiyyah*) and compiled them in his books *al-Ashbah wa al-Nazhâ'ir* and *al-Fawâ'id al-Zainiyyah*, etc. He also wrote commentaries on various subjects in his other books. He became one of the most distinguished jurists in this discipline and the Hanafi school. The purpose of this article was to examine the accuracy of Ibn Nujaym's perspectives on the Islamic legal maxim, the explanation of the most significant five maxims, and how they can be applied to some juridical issues. This study employed a qualitative method and a content analysis approach. The data was obtained through a search of books, journals, and other sources of information. The collected data were analyzed qualitatively and deliberated. The findings of study show that Ibn Nujaym al-Hanafi's masterpiece *al-Ashbah wa al-Nazhâ'ir* became the leading work on legal maxims and was acknowledged as authoritative by Hanafi jurists.

Keywords: Ibn Nujaym; legal maxim; juridical issues

Abstrak: *Qawâ'id al-fiqhiyyah* memiliki kedudukan yang istimewa dalam eksistensi hukum Islam, dan para ulama dari berbagai mazhab fikih pun mengakui keistimewaan tersebut sebab ia dapat digunakan untuk menghasilkan fatwa (pandangan hukum syariah), terutama jika ia dibentuk berdasarkan Alquran dan Hadis. Ibn Nujaym al-Hanafi adalah seorang ahli hukum terkemuka dari kalangan mazhab Hanafi yang telah mencurahkan perhatian dan pemikirannya terhadap eksistensi *qawâ'id al-fiqhiyyah*. Pemikiran sejau tentang tema ini tertuang dalam buku beliau yang berjudul *al-Ashbah wa al-Nazhâ'ir*, *al-Fawâ'id al-Zainiyyah*, dan lain-lain. Bahkan, buku *al-Ashbah wa al-Nazhâ'ir*, menjadi salah satu rujukan terkemuka dalam kajian tema *qawâ'id al-fiqhiyyah*, mewakili pandangan ulama mazhab Hanafi. Tujuan artikel ini adalah untuk mengkaji pemikiran Ibnu Nujaym tentang *qawâ'id al-fiqhiyyah*, dan penjelasan tentang lima macam *qawâ'id al-fiqhiyyah* yang utama, serta bagaimana *qawâ'id al-fiqhiyyah* dapat digunakan untuk menjawab beberapa permasalahan fikih. Penelitian ini menggunakan metode kualitatif dengan pendekatan analisis konten. Data diperoleh melalui pencarian buku, jurnal, dan sumber informasi lainnya. Data yang terkumpul dianalisis secara kualitatif dan ditampilkan secara menyeluruh. Penelitian ini mendapatkan bahwa karya agung Ibnu Nujaym, yaitu *al-Ashbah wa al-Nazhâ'ir*, menjadi karya terkemuka yang membahas tentang *qawâ'id al-fiqhiyyah* dan telah diakui sebagai pandangan ilmiah yang terpercaya dalam mazhab Hanafi.

Kata kunci: Ibn Nujaym; *qawâ'id al-fiqhiyyah*; permasalahan fikih

Introduction

In general, Islamic law is made up of basic concepts and smaller rules. The basic concepts are further broken down into two groups. First, there is what is called *ushul al-fiqh*. This is a set of rules and laws that are based on Arabic words and their relationships, such as *nâsikh*, *mansûkh*, *ta'ârudh*, *tarijih*, etc. Second, it does a great job of spreading universal law maxims, of which there

are many. This includes the logic and wisdom of Islamic rulings and edicts. So, understanding Islamic legal maxims (*qawâ'id al-fiqhiyyah*) is important and adds to the comprehension of Islamic legal principles (*ushul al-fiqh*) and Islamic legal objectives (*maqâshid al-syarî'ah*).¹

¹ Mohammad Hashim Kamali, "Legal Maxims and Other Genres of Literature in Islamic Jurisprudence," *Arab Law Quarterly*, vol. 20, no. 1 (2006), pp. 77-101.

Legal maxims are theoretical abstractions in the form of typically brief epithetical statements that express the aims and objectives of sharia in a few words. They primarily consist of opinions of principles derived from a thorough perusal of the rules of *fiqh* on a variety of topics. Throughout history, individual jurists have typically developed *fiqh* in relation to particular themes and issues. In this regard, it differs from modern rules of statutory law, which are concise and lack specificity.

In turn, the comprehensive explanations of *fiqh* allowed later jurists to reduce them to abstract statements of principles. In many ways, legal maxims represent the culmination of cumulative progress that could not have been anticipated during the *fiqh*'s formative stages. The actual content of the maxims is sometimes derived from the Quran or hadith. Nonetheless, it is typically the work of eminent jurists that has been refined by other authors over time. The terminology of certain maxims has frequently been refined and perfected as a result of usage and popularity. Legal maxims as such do not bind the judge and jurist unless they affirm and reiterate a ruling of the Quran or Sunna. Nonetheless, they serve as a persuasive source of influence when forming judicial decisions and *ijtihad*.

In the majority of legal systems, perhaps more often than any other method, it is necessary to refer to first principles and maxims. Even though the Quran and Sunna are the primary sources of law in Islamic law, maxims are also indispensable. These legal maxims derive primarily from Quranic verses or the words of the Islamic prophet. These norms and regulations for deriving injunctions from these sources were established by Islamic jurisprudence experts.

There are some previous studies regarding Islamic legal maxims, and they may contribute significantly to making this study valuable. According to Mohamad Ismail bin Mohamad Yunus, legal maxims developed as a result of specifics because they are integrators of disparate details and their meanings. On the other hand, the principle must exist prior to its elements, as it will serve as the premise for the jurist to

establish the rules. Its position is comparable to the section of the holy Quran that discusses the Sunnah, and the holy Quran is more substantive than its manifestation.²

Accordingly, Muhammad Farooq asserts that Pakistani Supreme Court judges cite Islamic legal maxims to support their positions. After performing *ijtihad* and relying on the Quran, the Sunna, and the opinions of jurists, they supported their interpretation of the sources of Islamic law by referring to the legal maxim.³

Regarding the benefits of studying the Islamic legal maxims, Nur Musfirah Mohamad et al. explain that by applying one of the Islamic legal maxims, such as (*lâ dharâra wa la dhirâr*) "no harm to oneself and not harmful to others", the community in Malaysia can identify the law and its solution based on Islamic law, giving them peace of mind and confidence because they will know they are acting in accordance with the fundamental principles of Islamic law. This legal maxim concludes that Islam prohibits actions that injure the individual's family, community, or society.⁴

In another matter concerning the *gharar* in contracts, Nadhirah Nordin et al. argue that there is an Islamic legal maxim regarding the difficulties and hardships that will result in a change in the law. The original law that caused societal problems can be loosened in order to defend the public interest. This method incorporates all exigencies that necessitate a deviation from the regulation so that the obligation can be fulfilled by a normal person. As a result, the difficult to avoid element is included in the *gharar* that has no

² Mohamad Ismail Bin Mohamad Yunus, "The Position and Application of Islamic Legal Maxims (Qawaaid Al-Fiqhiyyah) in the Law of Evidence (Turuq Al-Hukmiyyah)," *Fiat Justitia: Jurnal Ilmu Hukum*, vol. 13, no. 1 (2019), p. 43.

³ Muhammad Farooq, "Neo-Ijtihad: A Hierarchical Process Adopted by Pakistani Judiciary in the Context of Muslim Family Laws," *SSRN Electronic Journal*, no. October (2021).

⁴ Nor Musfirah Mohamad and AzhanTaqiyaddin Arizan, "[Application of the Fiqh Method 'No Harm To Oneself and Not Harmful To Others' (La Darar Wa La Dirar) in Dealing With the Pandemic Issue of Covid-19 in Malaysia] Aplikasi Kaedah Fiqh 'Tiada Mudarat Dan Tidak Boleh Memberi Mudarat' (La Darar Wa La Dirar) D," *Malaysian Journal for Islamic Studies*, vol. 5, no. 1 (2021), pp. 153-166, <http://dx.doi.org/>

effect, as the sharia has granted leniency for the difficulty humans experience in averting gharar elements. If the gharar factor is readily avoidable, but the contracting parties fail to do so, it is not subject to the leniency and exemptions granted by sharia.⁵

Accordingly, Amin al-Astewan asserts that Islamic legal maxims only had a persuasive influence on the judge and jurist in adjudication and legal interpretation and could never have a binding effect, despite the fact that their actual wording was typically based on a verse of the Quran or a prophetic saying recorded in the Sunnah. One of these five legal maxims was explicitly relevant to the Covid 19 discourses in the United Kingdom, specifically (*al-dharâr yuzal*) "harm must be removed". This is also conveyed in legal maxim literature from a communitarian perspective as the removal of public harms takes precedence over the acquisition of public benefits, highlighting Islamic law's fundamental concern with preserving the welfare of a community.

From the aforementioned studies, the researcher wants to highlight that this study will provide an introduction to the fundamental concept and scope of Islamic legal maxims according to Ibn Nujaym al-Hanafi. Following this is a more in-depth discussion of the most significant five maxims, which jurists consider to be representative of the entire discipline. In spite of this, the research will only touch on the explanation of their applicability in resolving certain legal issues.

Method

In this study, narrative research with a qualitative method was carried out. An individual's life was the subject of investigation in narrative analysis, which centered on that topic. Reviewing the books, journals, and other publications on Ibn Nujaym's thoughts and works was the method

⁵ Nadhirah Nordin et al., "Contracting with Gharar (Uncertainty) in Forward Contract: What Does Islam Says?," *Asian Social Science*, vol. 10, no. 15 (2014), pp. 37-47.

⁶ Amin Al-Astewani, "To Open or Close? Covid-19, Mosques and the Role of Religious Authority within the British Muslim Community: A Socio-Legal Analysis," *Religions*, vol. 12, no. 1 (2021), pp. 1-26.

used to obtain the necessary material for this study. The researcher analyzes, contrasts, and draws conclusions from various facts during the literature review process. The method of data analysis was utilized to analyze data about the biography, works, and thoughts of Ibn Nujaym al-Hanafi regarding *qawâ'id al-fiqhiyyah*, as well as to analyze the results of other researchers studying Ibn Nujaym's ideas in various matters and fields.

Biography of Ibn Nujaym al-Hanafi and His Works

Zayn al-Dîn Ibrahim b. Muhammad b. Muhammad Ibn Nujaym (926-970H) was a prominent Hanafi jurist from Egypt. He was born in Cairo soon after the Ottoman invasion in 923/1517. Sharaf al-Din al-Balqini, Shihab al-Din ibn al-Shalabi (d. 947/1540), Amin al-Din Ibn Abd al-il (d. 971/1563), and Abu al-Fayd al-Salami were the teachers he received in Egypt. During his teachers' lifetimes, he began to teach and issue legal rulings (fatwas). He also studied Arabic language and logic under Nur al-Din al-Daylami al-Maliki and Shuqayr al-Maghribi. Ibn Nujaym was a teacher at the madrasa founded by the Mamluk Amir al-Sayfi Sarghitmish (d. 758/1358) in Cairo. Additionally, he studied with the Sufi mystic Sulayman al-Khudayri, who initiated him into the Sufi path. In 953/1547, he made the pilgrimage to Mecca and Medina with the renowned Egyptian Sufi and scholar Abd al-Wahhab al-Sha'rani (d. 973/1565), with whom he was close. Numerous students were his. Ibn Nujaym died in 969 or 970/1563.

Although he was regarded as an eminent jurist during his lifetime in Egypt and the Ottoman Empire, he held no official position in the Ottoman legal administration. Ibn Nujaym's legal opinion was sought by Ottoman officials and judges in Egypt, as evidenced by a number of his rulings and treatises. In some instances, Ibn Nujaym legitimized Ottoman administrative practices, such as the sultan's examination of the

⁷ Daud A. Mustafa, Hashir A. Abdulsalam, and Jibrail B. Yusuf, "Islamic Economics and the Relevance of Al-Qawa'id Al-Fiqhiyyah," *SAGE Open*, vol. 6, no. 4 (2016), doi: 10.1177/2158244016671374.

qualifications of muftis and the approval, without witnesses, of the authenticity of appointment documents. However, he had some reservations about Ottoman administrative practices, such as designating judges prior to their arrival in the area where they were to serve.⁸

Regarding the works, Ibn Nujaym authored a number of important texts in *ushul al-fiqh* (legal theory) and *furu' al-fiqh* (positive law). He desired to use his writings to investigate the conceptual structure of the Hanafi discourse on *fiqh* (jurisprudence). He composed two collections of *ushul al-fiqh*: a commentary on Abu Barakat Abdallah b. Ahmad al-Nasafi's (d. 710/1310) *Manar al-Anwar* and an abridgement (*al-mukhtashar*) titled *Lubb al-Ushûl of al-Tahrîr fî Ushûl al-Fiqh* by the Egyptian jurist Ibn al-Humam (d. Ibn Nujaym began a commentary on *al-Nasafi's Furu'* compilation *Kanz al-Daqâ'iq*, titled *al-Bahr al-Raiq bi Sharh Kanz al-Daqâ'iq*, but did not finish it.⁹

Ibn Nujaym also authored *al-Fawâ'id al-Zayniyyah*, in which he examines and analyzes over one thousand legal maxims and principles (*qawa'id*). He also issued fatwas, which were collected in *al-Fatawa al-Zayniyyah* (the collection exists in multiple manuscripts but has not been published). He composed numerous treatises (*rasâ'il*) on a variety of topics, including land tenure, divorce, and endowment deeds. Ahmad, his son, compiled forty of these texts into *al-Rasâ'il al-Zayniyyah fî Madhhab al-Hanafiyah*.¹⁰

The most significant compilation by Ibn Nujaym is his most famous work, *al-Ashbah wa al-Nazhâ'ir* (The similarities and counterparts), concluded in 969/1561. Ibn Nujaym compiled his *Ashbah* while composing his commentary on the

Kanz and after completing the *Fawâ'id*, in response to *al-Ashbah wa al-Nazhâ'ir* by the Shafi'i jurist Taqi al-Din al-Subki (d. 756/ 1355). This study examines the similarities and differences between cases that appear to be similar.¹¹

In later centuries, Hanafi jurists regarded Ibn Nujaym as an important figure in the late Hanafi tradition and relied extensively on his rulings. The compilers of the *Majallah al-Ahkam al-Adliyah*, the Ottoman legal code of the nineteenth century, argued in the introduction that Ibn Nujaym's *al-Ashbah wa al-Nazhâ'ir* was an attempt to systematize and codify the Hanafi tradition from before the nineteenth century. In the nineteenth century, a number of Ibn Nujaym's works were printed on the Indian subcontinent, where they became prominent. Umar Ibn al-Nujaym (d. 1005/1596), Ibn Nujaym's younger brother, was also a Hanafi jurist and is best known for his *al-Nahr al-Fâ'iq*, a commentary on *al-Nasafi's Kanz al-Daqâ'iq*.¹²

Legal Maxims (*Qawâ'id al-Fiqhiyyah*) Defined

The word *qawâ'id* is the plural of *qa'idah* and is derived from the verb "*qa'a-da*". Its literal meaning is foundation, base, essence; it refers to the foundation of a home, the pillars of a house, the essences of bases, and the fundamentals of bases. In two verses of the Quran, the words *qa'idah* or *qawa'id* are used to describe a house's foundations. Existing in the linguistic usage of the term are the concepts of stability and permanence. Thus, the term *qa'idah* is also applied to postmenopausal women and elderly women who are beyond the average age for marriage.¹³

⁸ Shihab al-Din Abi al-Falah Abd aajl-Hayy b. Ahmad Ibn Imad, *Shadzarat Al-Dzahab Fi Akhbar Man Dzahab*, ed. Mahmud Al-Arnauth and Abd al-Qadir Al-Arnauth, 1st ed, (Damascus: Daar Ibn Katsir, 1993), vol. 10, p. 523.

⁹ Ahmad bin Muhammad al-Hanafi Al-Hamawi, *Ghamzu 'Uyunil Basha'ir Syarh Kitab Al-Asybah Wan Nazha'ir Li Ibn Nujaim Al-Hanafi*, 1st ed, (Beirut: Daar al-Kutub al-Ilmiyyah, 1985), p. 1-2, <https://ia801609.us.archive.org/22/items/FPghoybsghoybs/ghoybs1p.pdf>.

¹⁰ Muhammad Ahmad Siraj and Ali Jum'ah Muhammad, *Rasa'il Ibn Nujaym Al-Iqtishadiyyah - Al-Rasa'il Al-Zainiyyah Fi Madhhab Al-Hanafiyah*, 1st ed, (al-Qahirah: Daar al-Salam, 1999), p. 7.

¹¹ Necmettin Kizilkaya, "An Outline of the Historical Evolution of Qawa'id Literature in Islamic Law," *American Journal of Islamic Social Sciences*, vol. 28, no. 1 (2011), pp. 76-105.

¹² Ibn Nujaym, *Al-Ashbah Wa Al-Nazha'ir 'ala Madhhab Abi Hanifa Al-Nu'man*, 1st ed, (Beirut: Daar al-Kutub al-Ilmiyyah, 1999), pp. 3-4. <https://ia800301.us.archive.org/4/items/FP75620/75620.pdf>.

¹³ Muhammad Taufiki, Rokani Darsyah, and Mahmud Ridha, "The Use of Maxims (Al-Qawâ'id Al-Ushuliyyah Wa Al-Fiqhiyyah) in Legal Argumentation of Sharia Economic Court Decisions in Indonesia," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial*, vol. 17, no. 1 (2022), pp. 165-188.

Al-Hamawi (d. 1098/1687), the commentator of Ibn Nujaym's (d.970/1562) *Al-Ashbah wa al-Nazhâ'ir*, defines it as: "qa'idah, among jurists, is a predominantly, not a general, valid legal determination (hukm) that applies to most of its particular cases (*juz'iyat*) so that their legal decisions will be known from it." In addition, he emphasizes the broad scope of qa'idah as a significant characteristic.¹⁴

According to Ya'qûb al-Bahusayn, who provided a slightly different definition, "qa'idah *fiqhiyyah* is a comprehensive juristic proposition whose particulars are also comprehensive juristic theorems."¹⁵

The contemporary Syrian scholar Mushthafa Ahmad al-Zarqa' (d. 1420/1999), who gave *qawâ'id al-fiqhiyyah* a significant amount of attention and commented on them in his book *al-Madkhal*, defines *qawâ'id* as "universal legal principles which are formulated in regulative and concise expressions that contain general normative legal determinations about the cases of their subject."¹⁶

Kizilkaya states that in Islamic sources and lexicons, *qa'idah al-fiqhiyyah* has the same technical meaning as in legal texts. Its stability and foundational role as a principle underlying legal determinations in Islamic law are derived from its literal meaning.

According to Sayyed Mohamed Muhsin et al., there is widespread scholarly consensus on the universality and broad applicability of maxims. Although jurists generally agree on the validity of legal maxims, they often dispute on whether their applicability is exhaustive (*kulliy*) or preeminent (*aghlab*). In its original form, the legal adage was both all-encompassing and preponderant.¹⁸ Legal

maxims are the focus of *qawâ'id al-fiqhiyyah*, which is an integral part of *fiqh* as a disciplined study of the sharia. These maxims are a condensed version of a larger body of laws that are interconnected and have their justifications in the Quran and the Sunna.¹⁹

Meanwhile, Hashim Kamali argues that the formulation of legal maxims with justifications from the Quran, the Sunna, and for that matter, the Islamic or inherited legitimate legal folklore, helps to facilitate the understanding of social problems and to appreciate the relevance of the basic principles (ethical codes) underlying social behavior. Taking a cue from Abdullah ibn Mas'ud, who argued that "what the Muslims deem to be good is good in the eyes of God," jurists have pushed the dictum "custom is the basis of judgment."²⁰

Since several of these legal principles predate Islam and existed only as customary rules, it is impossible to pinpoint when or how they first appeared in Islamic legal literature. However, because these legal maxims were founded on natural or universal principles of justice that do not vary much from one civilization to the next, they were sanctioned for full implementation in Muslim life by the Muslim jurists. Values such as generosity, compassion, altruism, forgiveness, cooperation, equity, and a host of others are essentially universal values that every society would uphold and promote, despite their possible differences in expression across cultures. As so, they provide the foundation upon which specific shari'ah principles can be established.²¹

Therefore, we can say that legal maxims are the general *fiqh* principles presented in a simple

¹⁴ Ahmad bin Muhammad al-Hanafi Al-Hamawi, *Ghamzu 'Uyunil Basha'ir Syarh Kitab Al-Asybah Wan Nazha'ir Li Ibn Nujaim Al-Hanafi*, 1st ed, (Beirut: Daar al-Kutub al-Ilmiyyah, 1985), vol. 2, p. 5.

¹⁵ Ya'qub b. Abd al-Wahhab Al-Bahusayn, *Al-Qawa'id Al-Fiqhiyyah*, (Al-Riyadh: Maktabah al-Rasasyad, 1998).

¹⁶ Mushthafa Ahmad Al-Zarqa, *Al-Madkhal Al-Fiqhi Al-Amm*, (Damascus: Daar al-Qalam, 1998), p. 54.

¹⁷ Kizilkaya, "An Outline of the Historical Evolution of Qawâ'id Literature in Islamic Law."

¹⁸ Sayyed Mohamed Muhsin, Muhammad Amanullah,

and Luqman Zakariyah, "Framework for Harm Elimination in Light of the Islamic Legal Maxims," *Islamic Quarterly*, vol. 63, no. 2 (2019), pp. 233-272.

¹⁹ Hafiz Abdul Ghani, "A Study Of The History of Legal Maxims of Islamic Law," *International Journal of Arts and Commerce*, vol. 1, no. 2 (n.d.), pp. 90-99, http://cekinfo.org.uk/images/frontImages/Vol_1_No_2_July_2012/7.pdf.

²⁰ Mohammad Hashim Kamali, "In Focus Maqasid Al-Shari'ah and Ijtihad as Instruments of Civilisational Renewal: A Methodological Perspective" (n.d.).

²¹ Umeed Maalik Goraya, "Shari'ah Maxims (Islamic Legal Maxims) and Their Significance," *International Journal of Scientific Research*, vol. 12, no. 6 (2021), pp. 255-256.

format comprised of the general rules of shari'a pertaining to a particular field. These maxims are employed to generate new legal opinions. So, legal maxims have remained very important for Muslim jurists across cultures till today. This is because the Islamic religious rules cast across time and space. As we indicated earlier, the issue of how this category of law developed is unclear in the Islamic sources.

Legal Status of Legal Maxims (*Qawâ'id al-Fiqhiyyah*)

The vast majority of *qawâ'id al-fiqhiyyah* have already been identified; the maxims are frequently pertinent to their constituents or parts. Therefore, it must be understood that these maxims are not permanent confirmations of divine law; they cannot ever be considered sources of sharia. The holy Quran, Sunna, consensus, independent reasoning, and analogy are the sources of sharia law, and they recognize sources of law in light of the first two sources (the Quran and Sunna).²²

The legal maxims (*qawâ'id al-fiqhiyyah*) elaborate on Islamic beliefs and legal philosophy. Additionally, they provide clarity on a topic and explain Islam's position on it. The holy Quran and the Sunna are the sources of many of the tenets of Islamic jurisprudence. The principles of jurisprudence can be traced back to the holy Quran and the Sunna. Any aphorism that contradicts a divine precept is not to be taken seriously.²³

In addition, Mohamad Atho Mudzhar explains that legal maxims are not law, but rather general principles of rules or logic, universally or generally recognized by jurists to determine legal norms, legal opinions, or legal decisions. The use of legal maxims is a result of the absence or obscurity of existing legal norms. In general, jurists and legal practitioners may be conversant with legal

maxims from the Western tradition. For instance, according to the *lex specialis derogate legibus generalis* principle, specific laws will take precedence over general ones.²⁴

Therefore, contemporary legal scholars do not consider the maxims to represent an overarching legal system. They argue that the maxims can only serve as a source of inspiration and a general guideline in the processes of *ijtihad* and adjudication, as they are only epistemologically probable or predominantly valid, and thus do not bind the jurist and may not serve as a basis for legal determination in new cases. However, numerous ancient legal authorities argued that a competent jurist might use the maxims as a foundation for legal judgments.²⁵

In the words of Mustaf Ahmad al-Zarq, these maxims are for establishing *fiqh* rules and gaining a deeper understanding of Islamic law. Their significance is unaffected by the fact that they are not the basis for judicial decisions.²⁶

Nonetheless, a particular circumstance develops, and a particular maxim can be applied. However, only a genius with extensive knowledge will recognize that another maxim is the true solution to the problem.

Ibn Nujaym on Legal Maxims (*Qawâ'id al-Fiqhiyyah*) and Their Application to Some Juridical Issues

Indeed, we will not have a comprehensive understanding of Ibn Nujaym's views on *qawâ'id al-fiqhiyyah* unless we examine a number of his works, such as *al-Ashbah wa al-Nazhâ'ir*, *al-Fawa'id al-Zainiyyah*, etc.

The first *Al-Ashbah wa al-Nazhâ'ir* texts were composed by the Shafii scholars Tajj al-Din b. al-Subki and Jalal al-Din al-Suyûti. Ibn Nujaym states at the outset of his book that he was inspired to write it by a Shafi'i text.²⁷

²² Shaham, "Legal Maxims (Qawa'id Fiqhiyya) in Yusuf Al-Qaradawi's Jurisprudence and Fatwas," *Journal of the American Oriental Society*, vol. 140, no. 2 (2020), p. 435.

²³ Halil Ibrahim Turhan, "The Theory of Contradictory Narrations in Hanafi Legal Theory in the First Five Centuries," *Cumhuriyet İlahiyat Dergisi*, vol. 21, no. 3 (2017), pp. 1825-1872.

²⁴ Mohamad Atho Mudzhar, "The Use of Legal Maxims in the Fatwas of Indonesian Ulama Council," *Jurnal Indo-Islamika*, vol. 12, no. 1 (2022), pp. 1-11.

²⁵ Shaham, "Legal Maxims (Qawa'id Fiqhiyya) in Yusuf Al-Qaradawi's Jurisprudence and Fatwas."

²⁶ Al-Zarqa, *Al-Madkhal Al-Fiqhi Al-Amm...*, p. 60.

²⁷ Nujaym, *Al-Ashbah Wa Al-Nazha'ir 'ala Madhhab Abi*

Concerning legal maxims (*qawâ'id al-fiqhiyyah*), there are five principal legal maxims and numerous others that pertain to one of these normative assertions in terms of principle but differ in expression only. These five significant maxims are the legal maxims that encompass a variety of issues. They are:

1. *Al-Umûr bi maqâshidiha* (matters are determined according to intention);
2. *Al-Yaqîn lâ yazulu bi shakk* (certainty cannot be removed by doubt);²⁸ Sp. ETS
3. *Al-Mashaqqah tajlib al-taysîr* (hardship begets facility); Sp. ETS
4. *Lâ dharâr wa lâ dhirar* (harm shall not be inflicted nor reciprocated); ETS
5. *Al-Âdah muhakkamah* (custom is a basis for judgment).²⁸ Sp. ETS

Ibn Nujaym added a sixth maxim to these five: (*la tsawâb illâ bi al-niyah*) "there is no reward unless the act is performed intentionally." And he included it in the initial tier of these maxims.²⁹ It is important to note that each of these five principles encompasses other qawâ'id that are categorized as falling under its authority.

The followings are another legal maxims and subsidiary maxims applied in juridical issues according to Ibn Nujaym al-Hanafi:

1. The maxim (*al-umûr bi-maqâsidiha*) "acts are judged by their goals and purposes". It is a reiteration of the famous hadith "*innamâ al-amâl bi al-niyat*", which states that actions are evaluated according to their underlying intentions (narrated by Imam al-Bukhari). This is a broad maxim with far-reaching implications that the ulama have discussed in a variety of contexts, including religious matters, business transactions, and offenses.

Hanifa Al-Nu'man..., p. 14.

²⁸ Taufiki, Darsyah, and Ridha, "The Use of Maxims (Al-Qawâ'id Al-Ushuliyyah Wa Al-Fiqhiyyah) in Legal Argumentation of Sharia Economic Court Decisions in Indonesia."

²⁹ Ibn Nujaym, *Al-Ashbah Wa Al-Nazha'ir 'ala Madhhab Abi Hanifa Al-Nu'man*, 1st edn (Beirut: Daar al-Kutub al-Ilmiyyah, 1999); p. 15. <<https://ia800301.us.archive.org/4/items/FP75620/75620.pdf>>.

Intention frequently plays a crucial role in distinguishing, for instance, a murder from a mistaken killing, theft from an inculpable appropriation of property, and the figurative words a spouse may utter to conclude the occurrence or non-occurrence of a divorce. By adding the principle "No reward unless (the act is carried out) with intent," Ibn Nujaym indicates that intent is a requirement for reward (*tsawab*) but not for validity for some acts.³⁰ Article B. Sp. ETS

2. The maxim (*al-Yaqîn lâ yazulu bi shakk*) (certainty cannot be removed by doubt). Sp. ETS
This maxim, according to Ibn Nujaym, can be exemplified in terms of ritual purity (*thahara*). If a person knows with surety that he has performed ablution (*wudhu'*) but later has doubts about the continuity of his *wudhu'*, his *wudhu'* is deemed to be intact.³¹
3. The subsidiary maxim (*al-ashlu bara'at al-dhimma*) "the norm (of sharia) is that of non-liability. Ibn Nujaym asserts that this maxim is equivalent to the concept of the presumption of innocence, albeit in a broader sense. The non-liability maxim of *fiqh* often applies to civil litigation and religious matters in addition to criminal procedure, although the former term suggests that it primarily relates to criminal procedure. It is generally accepted that attributing guilt to someone is speculative until definitive proof of guilt is produced; this is the normative state, or the state of certainty. In other words, confidence always wins against uncertainty.³²
4. The maxim (*al-ashlu fî al-Ashya' al-Ibâhah*) "The norm in regard to things is that of permissibility". In Ibn Nujaym's thought that permissibility is the natural state and will continue to be the case until there is proof to prove otherwise. This maxim is also based on how the important parts of the Quran and

³⁰ Ibn Nujaym, *Al-Ashbah Wa Al-Nazha'ir 'ala Madhhab...*, pp. 17-18.

³¹ Ibn Nujaym, *Al-Ashbah Wa Al-Nazha'ir 'ala Madhhab...*, pp. 47-48.

³² Ibn Nujaym, *Al-Ashbah Wa Al-Nazha'ir 'ala Madhhab...*, p. 50

Sunna are read in general. So, when we read in the Quran that Allah: "Made everything on earth for your good," it makes sense. (2:29) and the hadith, which says, "Whatever God has made halal is halal, and whatever He has made haram is haram. Whatever He has said nothing about is forgiven." The conclusion is that we can use the earth's resources for our own good, and unless something is clearly said to be illegal, it is assumed to be good.³³

5. The maxim (*al-mashaqqatu tajlib al-taysir*) "hardship begets facility". This maxim, according to Ibn Nujaym, is a rehash of the Quran: "God intends for you to be at ease, and He does not intend to put you in hardship." (2: 185), as well as "God does not intend to inflict hardship on you" (5:6), an issue that appears in various hadiths. This evidence has been used by jurists to defend the numerous concessions made to the crippled and sick in the realms of religious responsibilities and civil transactions.³⁴
6. The maxim (*al-ijtihad la yunqad bi al-ijtihad*) "a ruling of ijthihad is not reversed by another ruling of ijthihad". In this situation, Ibn Nujaym refers to a statement made by Umar ibn al-Khattab, who was the caliph. The companions agree with this remark.³⁵ Supposedly a judge decided a disagreement based on his ijthihad, which means he didn't have a clear text to go by. Then he retires, and another judge, either at the same level or at the appellate level, looks into the case. That judge's ijthihad leads him to a different decision on the same problem. As long as the first decision doesn't break any of the rules about how ijthihad should be done, the new judge's different opinion or a different ijthihad he might have tried doesn't change the validity of the first ijthihad. This is because

³³ Ibn Nujaym, *Al-Ashbah Wa Al-Nazha'ir 'ala Madhhab...*, p. 56

³⁴ Ibn Nujaym, *Al-Ashbah Wa Al-Nazha'ir 'ala Madhhab...*, pp. 64-66.

³⁵ Ibn Nujaym, *Al-Ashbah Wa Al-Nazha'ir 'ala Madhhab...*, pp. 89-90.

one ijthihad decision can't be changed by another ijthihad decision.³⁶

Indeed we can say that Ibn Nujaym sets out a lot of legal and secondary maxims about social, economic, political, legal, etc. problems. Still, the researcher only collects a few of them here to fill in gaps in recent study.

Conclusion

Ibn Nujaym was a distinguished jurist in Hanafi school. He demonstrated a thorough understanding of both the practical and theoretical aspects of his school and the ability to defend its position in the face of opposition. In the domain of *qawâ'id al-fiqhiyyah*, he came with the sixth significant *qa'idah* to demonstrate his school's opinion, he did not maintain the same attitude with respect to other *qawâ'id al-fiqhiyyah*.

Ibn Nujaym employs very concise expressions when formulating legal and subsidiary maxims. The majority of his phrases require expansion and explanation in order to comprehend his argument in its entirety; he also uses technical terms without explanation, some of which are from the subject of *ushul al-fiqh*. Indeed Ibn Nujaym revived the genre of *qawâ'id al-fiqhiyyah* among Hanafis with his *al-Ashbah wa al-Nazhâ'ir*, arranging some sections in the conventional order of substantive law books and rendering the contents of the book into poetic verse. The primary objective was comprehending how these principles applied to contemporary Muslim worldviews.

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³⁶ Abdulrahman M.A. Albelahi et al., "The Theory of Interpretation in Solving Contemporary Legal Issues: With A Focus on the Instrument of Ijthihad," *MATEC Web of Conferences*, vol. 150 (2018), pp. 1-8.

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