Kontagora International Journal of Educational Research (KIJER) ISSN: 3027-0618
Volume 2, Issue 2, March 2025
https://fuekjournals.org/index.php/kijer

Positioning Islamic Legal Maxims in the Development of Nigerian Economic Activities

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DOI: https://doi.org/10.5281/zenodo.15165479

To cite:
Abubakar, A. J., & Zubairu, A. D. (2025). Positioning Islamic legal maxims in the development of Nigerian economic activities. *Kontagora International Journal of Educational Research (KIJER), 2*(2), 276-288.

Abstract

Islamic Legal Maxims (al-Qawa'id al-Fiqhiyyah) are established principles of law which jurists appeal when confronting new legal cases. Majority of these Legal Maxims are derived from the Qur'an and Sunnah and are capable in helping Muslims in arriving at the appropriate rulings where there was no explicit law exists. Therefore, using of these available treasures in the development of Nigerian economy should be welcome for the jurists, judges, lawyer, legists, Muftis, business owners, economists, bankers among others, who are to take a useful part in the practical application of Islamic financial law system, it is of the greatest importance, this study is an attempt to highlight the position of certain Islamic legal maxims to the economic development in the study area. The study also aims to conduct an applied study using the descriptive and analytical methods to capture these selected legal maxims that are relevant to the subject matter in the area. At the end of this research, it was recommended that all the Islamic financial institutions in the study area should include Legal maxims as one of the main components of their activities.

Keywords: *Positioning, Islamic Legal Maxims, Development, Nigerian Economic Activities*

Introduction

Islamic Legal Maxims are all-inclusive rules based on legal evidence written accurately in comprehensive words, that includes all or most particles cases that will come under Islamic jurisprudence (Fiqh), and these Legal Maxims go hand in hand with the objectives of Islamic law (Maqasid al-Shari'ah) which preserve a person's religion, life, intellect, procreation (family) and property. Islamic Legal Maxims also, deal with the principles through which the rulings of new occurrences are identified in the absence of a clear statement in the Qur'an, Sunnah, or Ijma'. Roles of the Islamic legal maxims in the development of economy are significant in the situations and cases of the financial activities that there are no legal rules present to provide solutions for them. The discipline of Fiqh that deals with such cases having no precedent is called jurisprudence of the new occurrences (Fiqh al-Nawazil) which makes use of intellectual efforts to find out the legal rules to new issues from the different sources of Fiqh. Fiqh al-Nawazil deals only with finding out the rules for cases having no solutions in Fiqh literature. It is important to mention here that there are few conditions to be met for identifying the cases as per Fiqh al-Nawazil. First, the issues are new and have never been discussed before, like the issue of crypto currency and coin mining. Second, the issues must not be speculative or hypothetical, rather they must be real, like the issue of insurance and re-insurance, and the letter of guarantee. Third, Issues that there is an urgent need to address them for Islamic solutions like the ruling of an emerging product. In the present era there are numerous Nawazil featuring problems from all aspects of Muslim life and much research have been conducted in this regard employing legal maxims in finding out the solutions to them. These issues are in the areas of medicine, finance, education, and culture, such as Islamic rulings on test-tube babies, milk banks, among others. The legal maxims have helped jurists to extract legal rulings for Nawazil by means of their analogical nature as well as their applicability on several contemporary issues simultaneously.

The jurists have contributed immensely to the development of the Islamic legal maxims in their juristic works and almost every segment of their works has backing from one maxim or more, though understanding this is difficult because of their silent application method. Therefore, the researchers observed that, positioning legal maxims in the development of Nigerian economic is very essential, and that requires intensive research to extract the areas where these Islamic legal maxims can be applied to improve the commercial activities of the area in many ways.

Research Objectives

The objectives of this study were designed to:

Analyze the position of legal maxims in the development of Nigerian economy.

Identify areas where legal maxims can be applied to improve the commercial activities in the area.

Assess how the application of legal maxims to contemporary financial activities touches the economic life of individuals and the Nigeria societies at large.

Significance of Research

Legal maxims play a remarkable role in the construction of Islamic legal thought as a whole. They enable Islamic Jurisprudence (Fiqh) to actively survive and help to continuously provide it with proper solutions for novel contemporary issues. They reflect settled principles of law to which jurists use when extracting legal rulings from the sources of the law. Therefore, the researchers applied them in this research to bring out their relevance in developing the Northwestern economic activities.

Concept of Legal Maxims

Many Jurists have defined the concept legal maxims with different definitions and below are some of these definitions:

Al-Kurdi, (1986:11) defined a legal maxim as, a general rule that groups the particulars of different chapters of Fiqh or a general rule that is applicable to all chapters which constitutes the source for deducing their rulings. And according to Zarqa (1998), Legal Maxims refer to general principles of Fiqh presented in precise texts which comprise of general rulings of Shari'ah on issues covered by them. While Ibn Subki (1991) defined legal maxims as: Those juristic principles which are under a precise and concise legal language that touches upon or leads to the ruling for particulars that falls under them.

In short, Islamic Legal Maxims are principles derived by the jurists. In conducting the research related to the application of Islamic Legal Maxims, one is required to have an acceptable level of knowledge of the Shari'ah. Specifically, one should have a good grasp of the meaning and implications of a legal maxim that can enable him to verify the accuracy of his interpretation in the light of contexts. In general, a contemporary scholar Zarabozo (2012:3) submitted that, Muslim jurists defined the term legal maxim with different definitions, but the best definition to him is that of Ibn al-Subki (1991) which considered a legal maxim as: a general truth, fundamental principle, or rule of conduct, or a general rule which applies to all its particulars. It is a general principle in Islamic jurisprudence contains general rules of Islamic Law which can be applied to cases or situations that fall under its rule.

Importance of Legal Maxims

Islamic Legal Maxims is important knowledge that helps the jurists in many phases of Fiqh, Ghazali (2020) stated some of these importance of Islamic legal maxims thus:

Create a talent in understanding of Fiqh, hence an ability to know the rules of particulars and apply them accordingly.

Open the conception of Islamic legalism and legal mind.

Identify new issue or question and apply it accordingly.

Help the students, lawyers, judges, and jurists to reach appropriate decisions.

Understand the principles of Islamic Legal Maxims, appreciate the wisdom and beauty of the teachings of these maxims, some of them which are universal and in conformity with natural law or eternal law.

Methodology

Content analysis will be used by the researchers to show the applicability of applying legal maxims to develop the Nigerian economic activities through consulting the views of the Islamic jurists and interview with the prominent scholars, judges, lawyers, lawmakers on how the legal maxims can be used to solve the contemporary economic issues in the area. A descriptive analysis will be employed in handling the data. For printed data such as textbooks, academic journals, articles, content analysis had been intensively used to make inferences from the text and context of the document under study. Information obtained in the content analysis and the interview will help in analyzing the nature and the character of legal maxims in understanding the verdicts of the Nigerian economic and financial activities by explaining them with the divergent views of the jurists and the scholars.

Literature Review

During this research, various written materials both published and unpublished that are found relevant to the research work will be consulted. The literature which will be reviewed in this research are previous studies on the conceptual frame work on legal maxims, its origin and development, also how legal maxims can be used to develop the Nigerian financial activities; and that to re-examine some Islamic law doctrines in the light of present economical discoveries which show that all the legal maxims that had been used in the classical books of jurisprudence (Fiqh) analogically can be also applied in many financial activities in our present situation.

The best literature reviewed by the researchers on applying legal maxim to develop the economic activities in the study area is that of Hasanuzzaman, (2007:12), according to him, the basis of every order is the intention thereof a judgement based on an order should follow the intention and purpose of that order". The rule embodied in this maxim has been applied by early jurists mostly on acts of rituals, but it is just as equally applicable to other spheres of activity. Zarqa, (1998:54) added that, the liability of a person who finds somebody's goods lying in the way and picks it up will be contingent upon the intention with which he has picked it up. If he intends to hand it over to the owner and has made it known to others he will be treated as a trustee and will not be required to indemnify the owner in case the property is destroyed while in his possession. But if he has kept it as owner he would be treated as a usurper, (Ghasib), and will be required to indemnify the owner in case the property is destroyed. The maxim is also amenable to performance of visibly different acts leading to the achievement of the same object. Therefore, from the above ruling, another example can be given from the nationalization of financial institutions in some countries like Nigeria, this may be the result of political ambitions while in some others it may aim at correcting mismanagement and regulating credit; and yet in some other countries it may be aimed at preventing foreign domination. Nationalization in socialist countries has a deep-rooted philosophical basis and underlying rationale quite different from the one which prompts nationalization of key industries in non-socialist countries.

On the other hand, Hasanuzzaman, (2007:13), added that, different actions by different countries by way of granting rebates on export, making available easy credit to exporters, fixation of import tariffs, laying down licensing procedures and quota restrictions in connection with imports and so on, may aim at achieving a common cause of improving the balance of payments position. The relationship between intention and act could further be elaborated by the following examples:

(A) A man makes an earning: (1) for the satisfaction of his selfish urges. (2) for personal consumption and demonstration effects (3) for complying with the divine command to earn for the sake of survival and spending on noble causes. In all above cases the act is the same, but the intention/object is different.

(B) A man may grow and sell grapes to the consumer or to the manufacturer of wine.

(C) A farmer may grow poppy for sale of seeds or to prepare opium or drugs. In all these cases it is the intention that determines the legality or illegality of the act of an individual is in accordance with his intention, which is in line the following Islamic Legal Maxim which says:

اَلأُمُورُ بِمَقَاصِدِهَا

Matters are determined according to intention.

The same is also true in the case of public policies. Inscription of sacred words on coins may intend to symbolize a distinctive feature or the inscription may be desecration of sacred words. The former may be acceptable, but the latter would be treated to be offensive. In short it is the intention of the government in carrying out an act or in making policy that matters.

Hasanuzzaman, (2007:14), is of the opinion that, the relationship between an act and intention could take the following forms.

(1) Acts/policies that are good in themselves and are actuated by good objectives/intentions. For example, a government might seek to promote public welfare through Zakat and charity funds, donations, government revenues and just and equitable taxes.

(2) Acts and policies that are not good in themselves but are resorted to for achieving commendable objectives. The instances that immediately come to mind are winking over smuggling to allow some people to earn their livelihood or mobilizing funds for charity by means of games of chance and by floating interest-bearing loans and bonds.

(3) Acts and policies that are actuated by objectionable intentions but lead to good results. An example is the nationalization of an industry or of an industrial unit with a view to harassing or black mailing one's political opponents, but the step might result in providing job security to workers, reduction in the prices of products, elimination of cut-throat competition and waste, and standardization of the products and avoidance of incongruent growth of industry.

(4) Objectionable intentions with objectionable policies. The example is conniving at smuggling of wine into the country for use by Muslims.

The above four policies are some of the examples given by Hasanuzzaman (2007), in his work titled: The Economic Relevance of The Sharia Maxims (Al-Qawa'id al- Fiqhiyyah), on how the above legal maxims, "Matters are determined according to intention" can be used to develop economic activities in the country.

The second important literature reviewed by the researchers is that of Shettima et…al (2016) titled: The Relevance of Islamic Legal Maxims in Determining some contemporary Legal Issues, which discussed on many Islamic Legal Maxims that deal with contemporary Legal Issues, and one example that is related to this study is, there are several things that were not recognized as properties in the past, but now recognized and dealt in due to need (Hajah). is based on the provision of the following Legal Maxim:

الضَّرُورَةِ مَنْزِلَةَ تُنَزَّلُ اَلْحَاجَةُ

Need, whether of a public or private nature, is treated as necessity.

Public need means the need that the entire people need it; and private need is where the need is for a peculiar town, group, or profession and not necessarily individuals except in very rare situations. These needs include certain laboratory mice, insects as well as certain poisons as valuable for their use in scientific and medical research are deemed lawful properties in contemporary legal opinions (Fatawa) due to the need in them in the development of Nigerian economic activities like pharmaceutical, chemical industries among others. In the same way, intellectual property right is one of the issues that have their root in contemporary customs whose justification is based on the need to protect them from infringement. Based on this conception therefore, intellectual property can be said to be a child of need necessitated by modern economic realities that heavily relied on scientific research which are jealously protected by its owners as they do exploit it as potential property. Countries the world over, have recognized the importance of protecting intellectual properties in all its forms and its effect on the world economy and that it is a pressing necessity to encourage scientific, literary, and artistic creations as well as industrial and scientific discoveries and innovation.

The third important literature reviewed by the researchers in this study is the work of Sayyed, M. et al, titled: Framework for Harm Elimination considering the Islamic Legal Maxims, which discussed on the injurious materials and circumstances that should be removed if the harm originates out of them to bring back the pre-harm condition. And sometimes, harm is inflicted because of actions and at other times, inactions turn out to be the reasons of harm. Likewise, harm happens through articulations as well as conducts, as in the case of the wording of invalid transactions and the construction of buildings in public places respectively. An example of causing harm through inaction is hoarding, thus the hoarder is forced to sell his/her property with reasonable prices. In all these circumstances, harm elimination is done by removing the injurious material or situation. And all the above cases have been extracted based on the following legal maxim:

يُزَالُ الضَّرَرُ

Harm is to be eliminated.

The above maxim is one of the leading maxims in which agreed by the leaders of the Schools of Islamic law which shows the necessity of removal of harm and injury in Islam. It basically means elimination of harm in all our actions and dealings.

Positioning Islamic Legal Maxims in the Development of Nigerian Economic Activities

Islamic Legal Maxims are very important in developing the Nigerian economy in many ways because the Legal maxims group the particulars of different chapters of Fiqh that fall under them and link the past with the present which throws a challenge to contemporary Islamic jurists to rise to the situation of re-examining some Islamic law doctrines in the light of present scientific and technological discoveries. Therefore, all the legal maxims which had been used in the classical books of Fiqh analogically can be also applied in many commercial activities in the country, and the following will serve as examples there to:

Using Legal Maxims in the commercial and business activities

As it was discussed earlier, legal maxims can be applied to address many of the commercial and business activities, therefore, the following maxim can be applied to solve the cases of Conducts and Contracts:

العِبْرَةَ فِيُ الْعُقُودِ لِلْمَقَاصِدِ وَالْمَعَانِي لاَ لِلْأَلْفَاظِ وَالْمَبَانِي

The essence in contracts is their goals and meanings not their words or forms.

The legal injunction of the above legal maxim is depositing money in banks and saving funds under the nomenclature of deposit (wadi'ah) open to demand always is still that of credit (qarḍ). Just because it was called wadi'ah, an effects of deposit wadi'ah does not necessary apply to it and there is need for empirical cases in commercial and business activities in Nigeria. The reason is that if it were the real wadi'ah based on the Islamic law terminology, it would not have been permissible for the banks to invest those deposits nor exploit them as deposit (wadi'ah) must be kept and not to be disposed in.

Therefore, the conventional banking system in Nigeria is not in line with the Islamic injunctions, although there are some banks that run Islamic banking or opened a section for that in the country.

Using legal maxims in the case of validity of sales by instalment payment

Another example of using legal maxims in the emerging commercial activities is the validity of sales by instalment payment which has become a common form of contract in this era, contemporary ijtihad has stipulated certain limitations like the one contained in the maxim, that which is legalized due to necessity shall only be recognized to the extent of necessity and this because of the following maxim:

اَلْتَيْسِيرَ تَجْلِبُ اَلْمُشَقَّةُ

Hardship begets facility.

For the above maxim, if one has ability to pay at ones, it is preferable for him to pay and not engage the instalment payment model as its legality is exception from the usual and the normal form of contract is that it is either fully debt or fully paid. And according to the legal opinion (Fatwah) given by the Centre for Islamic Jurisprudence (Majma' al-Fighu Islami) Jedda, on payment by instalment that: it is not permissible in Islam to charge more for purchases by instalment when a person is paying in full at the time of purchase. It is also not permissible to name one price for cash sales and another for payment by instalment made within certain periods. This sale is not valid in Shariah even if both parties are certain about the either cash or instalments. Therefore, instalment selling is a debt, the value of the property being sold cannot be increased after auction. This means that the floating instalment selling rate is not consistent with the principles of Shariah. Because after a trade transaction, the buyer's accepting and approving the price of the goods, the transaction will be mandatory irrespective of any changes such as fall or increase in the monetary equivalent. And any price increment will fall under usury (Riba) which is prohibited in Islam. Nonetheless in the view of Nurlan, (2021: 53) instalment trading between individuals can be only allowed in the stage of hardship. And this view is going together with the teaching of the above maxim which says: Hardship begets facility.

Using legal maxims in the case of using personal property for the benefit of the public

Always the Islamic Shari'ah is reflects the concern for protection of the best interests of the public. Sayyed el…al (n.d), quoted al-Shaṭibi where he said: if the land of a person was taken over for the benefit of the public, such as being used to construct a mosque, road, school among other public institutions, then he/she must be compensated with another land or with an appropriate amount of money. Using his land without compensating him inflicts harms on him, which is prohibited, and this is based on the following legal maxim which says:

الْعَامِ الضَّرَرِ لِدَفْعِ الْخَاصُ الضَّرَرُ يُتَحَمَّلُ

Personal injury should be incurred to prevent general injury.

Means that inflicting private harms to prevent public harms is permitted, because if the personal interest was not taken over for the public benefits a lot of advantages will be lost, and that will halt many interests of the entire country.

Using legal maxims in the case of describing an object such as property or wealth during a business contract.

Practically, the description is of two kinds: genuine and occasional. The genuine one is the early description of the described object like the wealth of Al-Mudarabah. (Al-Mudarabah is a contract of co-partnership, of which the proprietor is entitled to a profit on account of the stock, and the other party which is manager is entitled to a profit on account of his labor, Therefore, in a contract of Al-Mudarabah cannot be established without participation in the profit.) before investing in Al-Mudarabah. An occasional description, on the other hand, is a late description of the described object such as the wealth of Al-Mudarabah after incurring profit or loss. Therefore, going by the opinion of Hasanuzzaman, (2007), when two people differ in an accidental description of something and one of them has negated that description, the negation has the priority over the other opinion if it is confirmed by an oath.

An example of that is, when one purchases a machine or a device with a certain basic description; then, he finds that the item does not fit that description; he has the right to be recompensed for the fault or to receive a refund, since the specification did not match with what was agreed on. Likewise, Zarqa, (1998:35) is of the opinion that: if a person claims that he owed another person some money or if there was evidence to confirm that; and if he then alleged that he had paid off the debt and if the creditor renounced that, the ruling here, is in favour of his rival after taking an oath. The debt is still incumbent on the debtor, and that is the principle. Therefore, he is required to either pay the debt or to present evidence. The above cases have their backing from the following legal maxim which says:

الْعَدَمُ الْعَارِضَةِ الْأُمُورِ أَوِ الصِّفَّاتِ فِي الْأَصْلُ

Occasional descriptions or matters are not reliable in principle.

Using legal maxims in the case of rare and far imagination in business contracts and agreements

The rulings in Shari'ah cannot be verified relying on far and rare imaginations, and consequently if something is decisively and surely proven to be true; it overrules what is imaginative and indecisive. Shahzadi, (2014:47) gave an applicable example for this is and said: if creditors prove their debts by witnesses, they should get paid regardless of any remote or imaginable possibility that might refute their claim, this case is based on the following maxim which says:

بِالتَّوَهُّمُ عِبْرَةَ لاَ

Rare and far imagination has no value in Shari'ah.

Findings

The outcome of the research indicated the importance of the knowledge of Legal Maxims in helping and guiding the jurists to understand the application of legal maxims in the economic activities. Making research on this area help the contemporary jurists to bring several financial perticulars together under one platform which develops their mental ability in understanding the basic of injunctions of Shariah on the commercial activities and how to make a glimpse at the essence and nature of the economic development in Nigeria within the Islamic rage.

Conclusion

Islamic Legal maxims have demonstrated the dynamism of Islamic law and relevance to the entire lives of human beings and their environment. As we have seen in some of the above application of maxims on the development of the economic activities in Nigeria suggesting importance of maxims for jurists, legists and students as a means and guide in understanding the objective and implications of the legal maxims on those financial issues which the Islamic Shari'ah has not specifically touched. The jurists have, in their classical books, identified several important elements that maxims possess. These include, bringing together several particulars under one platform, develops mental ability of a legist in understanding the basis of injunctions, embody objectives of the Shari'ah, teaches a learner how to avoid contradiction among several supporting injunctions, as well as helping lawyers, Muftis and judges take a sight at the essence and nature of the Islamic jurisprudence.

Recommendations

The researcher has the following recommendations:

This research recommends that academics, researchers, and students to give more time to investigating legal maxims and their applications to emerging financial issues.

Researchers should also take into cognizance the conditions for the applications of legal maxims to particulars so that one will not be taken by slippery slope and fall into unmistaken error.

Islamic Legal Institutions in Nigeria should encourage students in conducting research in Legal Maxims by applying or extracting them from the classical and contemporary books of Fiqh.

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