

The Use of Legal Maxims in the Fatwas of Indonesian Ulama Council

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ABSTRACT

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The increasing, often controversial, roles of the Indonesian Ulama Council or Majelis Ulama Indonesia (MUI) in society have attracted scholars to study the institution, including its fatwas and their arguments. This study examines how legal maxims (*qawa'd fiqhiyyah*) had been used to construct the arguments of MUI's fatwas. This study also identifies the legal maxims used, observes their frequencies, and determines the patterns of their application. Legal maxims are important since they show principles and logic to discover legal norms. Some 118 fatwas on ritual, Shariah-economic, and socio-cultural issues are examined. This study found that 25 legal maxims had been used by the MUI's fatwas, with five being most frequently referred to. On average, each fatwa referred to 1.23 legal maxims. Fatwas on economic issues used most legal maxims with an average of 2.14, while those on socio-cultural and ritual issues used only 0.66 and 0.47 legal maxims on average, respectively. Fatwas on economic issues seemed to be the most dynamic ones.

Keywords; Fatwas; Legal Maxims; The MUI; Shariah-economics; The DSN

Introduction

While some have recently questioned the existence of the Indonesian Ulama Council (Majlis Ulama Indonesia or the MUI), the MUI's role in society has increased from time to time. This has been true since the time of its establishment in 1975. This is shown, among others, by the increasing number of fatwas issued; the enlargement of its institution by creating a special body called Dewan Syariah Nasional (National Shariah Council), whose fatwas helped shape the government's regulations on the Shariah economy. Moreover, Ma'ruf Amin, the general chairman of MUI, has been promoted as the Vice President of the Republic of Indonesia. The reason behind President Joko Widodo's (Jokowi) choice of Ma'ruf Amin to be his running mate in the general elections of 2019 remains unknown. However, this choice is certainly because of Amin's notable reputation in society and above all. The fact of the matter is that Jokowi and Amin won the presidential election in 2019. It is understandable, therefore, that the MUI has attracted the attention of many scholars to study it more closely.

After I studied the MUI fatwas in 1990, covering the period of 1975 to 1988, many studies on the MUI have been undertaken. Some focused on the MUI as a social organization and others on the fatwas it issued. Among the studies of the latter category was that of Wahiduddin Adam.¹ Adam studied the MUI fatwas in terms of their absorption by many governmental agencies and institutions into laws and government regulations. By way of example, Adam stated that laws on health and child protection benefited from the MUI's fatwa. Another study was carried out by Mohammad Asrorun Ni'am (2008: 272-274), who examined whether or not the MUI's fatwas applied the *Sadd al-dhari'ah*. Ni'am found that such an application of *Sadd al-dhari'ah* was detected in 11% of 200 the fatwas studied, although often not explicitly mentioned. The third is the one by Muhammad Taufiki,² who examined whether or not the MUI fatwas applied the concept of *Ijtihad al-Tatbiqi* of al-Shatibi. Taufiki concluded that although those fatwas never mentioned about *Ijtihad Tatbiqi*. At least 28 of them had been in line with the procedure of *Ijtihad al-Tatbiqi* of al-Shatibi by way of *Tahqiq al-Manat* and nine fatwas by the way *al-nadzar ila ma'alat al-af'al*.

The fourth study worth mentioning is that of Maskur Rosyid,³ who examined the implementation of Maslahah of al-Tufi concept in the MUI fatwas, especially in prioritizing *Maslahah* over the *nass* or canonical texts (*Taqdim al-Maslahah 'ala al-nass*). Rosyid found that although the MUI explicitly stated that it accepted only *al-Maslahah al-Mu'tabarah* and *al-Maslahah al-Mursalah* while rejecting *al-Maslahah al-Mulghah*, in very few instances, the MUI fatwas did prioritize *maslahah* over the *nass*. One example is the prohibition of marriages between Muslims and non-Muslims across the board, males or females. Lastly, a study worth mentioning is that of Muhammad Maksum,⁴ who concluded that the fatwas of the MUI on economic issues were

¹ Wahiduddin Adam, *Pola Penyerapan Fatwa Majelis Ulama Indonesia (MUI) Dalam Peraturan Perundangan Indonesia, 1975-1997 (Patterns of Absorption of the Fatwas of the MUI into Laws and Regulations in Indonesia*, doctoral dissertation, Graduate Program of Syarif Hidayatullah State Islamic Institute, Jakarta, 2002), 330-331.

² Muhammad Taufiki, *Penerapan Konsep Ijtihad Tathbiqi al-Syatibi Dalam Fatwa MUI, Kajian Terhadap Fatwa Tahun 1997-2007 (The Application of the Concept of Ijtihad al-Tatbiqi of al-Shatibi in the Fatwas of the MUI, a Study of Fatwas of 1997-2007)*, (doctoral dissertation, School of Graduate Studies, Syarif Hidayatullah State Islamic University, Jakarta, 2008), 251-255.

³ Maskur Rosyid, *Implementasi Konsep Maslahat al-Tufi Dalam Fatwa MUI, 2005-2010 (The Implementation of the Concept of the Maslahah of al-Tufi in the Fatwas of the MUI, 2005-2010)*, (Masters' thesis, School of Graduate Studies, Syarif Hidayatullah State Islamic University, Jakarta, 2012), 185-186.

⁴ Muhammad Maksum, *Tingkat Kelonggaran Fatwa Dewan Syariah Nasional Indonesia Majelis Ulama Indonesia Dalam Merespon Pertumbuhan Produk Ekonomi Syariah (The Degree of Loseness of the Fatwas of the Shariah National Council of the Council of Indonesian Ulama in Responding to the*

relatively loose compared to the rulings by the Shariah Advisory Council or Majlis Penasehat Shariah (MPS) of Malaysia. Maksum found that out of 13 modes of economic transactions compared, the MUI and the MPS went along with one another with similar views in 10 fatwas. However, the MUI seemed more dynamic in two issues than the MPS. As demonstrated, none of these previous studies was concerned with the use of legal maxims in the MUI fatwas, which this study will address.

This study will examine how legal maxims, in the form of *Qawa'id fihiyyah*, have been used by the MUI in constructing arguments to support and produce its fatwas. Although legal maxims are certainly not in the primary list of the argument, as *nass* will always take precedence over legal maxims, they are highly important to show how the logic is put together and in order. This study will identify the legal maxims used, categorize them, observe their frequencies in different fields of fatwas, and determine the patterns of their application. By way of purposive sampling, 118 fatwas have been selected to be examined under three headings: fatwas on ritual, Shariah economic, and socio-cultural issues. Meanwhile, fatwas on theological matters and food (because of the thousands in number) have been excluded from the examination due to time constraints.

What are the Islamic Legal Maxims

Legal maxims are not law but rather general principles of rules or logic, universally or generally accepted by jurists in an attempt to discover legal norms, legal opinions, or legal decisions. The legal maxims are used due to the absence or the lack of clarity of the existing legal norms. Jurists and legal practitioners, in general, may be familiar with legal maxims in the Western tradition. For example, the principle of *lex specialis derogat legi generalis* means that laws that are specific in character will take precedence over those that are general in character. Another example is the principle of *lex posteriori derogat legi priori*, meaning that the latest law or a newly promulgated law will take precedence over the older ones. In the Islamic law tradition, such maxims are known as *Qawa'id shar'iyyah* (Islamic legal maxims). It consists of two kinds: *Qawa'id usuliyyah* and *Qawa'id fihiyyah*. The above Western examples would be comparable to the Islamic tradition maxim under the themes of *Al-'am wa al-takhsis* and *al-nasikh wa al-mansukh*, respectively.

Qawa'id usuliyyah (singular: *Qa'idah usuliyyah*), the first category of Islamic legal maxims, may be defined as a set of rules derived from either linguistic principles or the logic of the fundamental goals of the Shariah, by which jurists extract legal norms or practical laws from the texts (the Qur'an or Hadith narratives). *Qawa'id usuliyyah* consist of two types, namely *Qawa'id usuliyyah lughawiyyah* and *Qawa'id usuliyyah tashri'iyyah*. The MUI fatwas never made any reference to these *Qawa'id usuliyyah*. Hence, there is no need for further discussion about them here.

Qawa'id fihiyyah (singular: *Qa'idah fihiyyah*), the second category of Islamic legal maxims, may be defined as a set of general rules on legal norms derived from either the consideration of the causes of the norms (*'Illat*) or the goals of Islamic law namely the *Maslahah* (the benefit of the law for human wellbeing), that covers most of the details, by which jurists reach practical legal rulings. The number of the legal maxims of this category is significant. Some said it was 37, or 65, or 100, or 200, or

Growth of Shariah Economic Products), (doctoral dissertation, School of Graduate Studies, Syarif Hidayatullah State Islamic University, Jakarta, 2013), 267-268.

even 500 maxims. Al-Suyuti,⁵ for example, a follower of the Shafi'i school of law, in his book entitled *Al Ashbah wa al-nadzair*, listed at least 65 maxims consisting of five *Qawa'id al-khams*, 40 *al-qawa'id al-kulliyah*, and 20 *al-qawa'id al-mukhtalaf fiha* (disputed maxims). Generally, they were simplified into five groups. Each maxim is supposed to be part of one of those five groups. These are called *Al-qawa'id al-asasiyyah* (basic maxims), *Al-qawa'id al-khams* (five basic maxims), or *Al-qawa'id al-kubra*. The followings are the summary of the description of those five groups of maxims as presented by Abdul Haq,⁶ Djazuli,⁷ and Bunyana⁸:

1. Everything is dependent on its end (*al-umur bi maqasidiha*). For example, among maxims of this group are those which say that intending to do something must be accompanied by an action (*qasd al-shay'i muqtarinan bi fi'lihi*). Another says there is no reward or liability except by intention (*la tsawab wa la i'qab illa bi al-niyyah*).
2. What is certain cannot be replaced by what is uncertain (*al-yaqin la yuzal bi al-shakk*). Among the maxims of this group is the one that says that everything is originally permitted (*al-asl fi al-ashya'al-ibahah*). This is particularly true in economic transactions. Another says that the previous state of being remains as it did (*al-asl baqa ma kan' ala ma kan*) until something new changes it.
3. Difficulties lead to gaining ease (*al-mashaqqah tajlib al-taysir*). Among the maxims of this group is the one that says avoiding harms (*mafsadat*) must take precedence over gaining benefits (*daf'u al-mafasid muqaddam 'ala jalb al-masalih*), and if two *mafsadat* contradicted to one another, the choice is to take the one with less *mafsadat* (*idha ta'arada mafsadatan, ru'iya a'dzomuhuma dararan bi irtikabi akhaffihima*).
4. Dangers must be eradicated (*al-darar yuzal*). Among this group is the one which says that when things are getting narrow and difficult, they must be a way to get it relaxed (*idha daq ittasa'*), and dangers give a way to permit what is initially forbidden (*al-darurat tubih al-mahdhurat*).
5. Traditions constitute the governing rules (*al-'adah muhakkamah*). An example is the one that says what is considered certain based on tradition is also certain based on Islamic rulings (*al-tsabit bi al-'urf ka al-tsabit shar'an*). Another example is that the acceptance of a thing means the approval of all derived from it (*al-rida bi al-shay' rida bi ma yatawallad minhu*).

It is worth noting that there are maxims that do not fit any of those five groups, either because of their very general⁹ or very specific characters¹⁰. It is also worth noting that not all scholars agree with those groupings. In fact, Islamic legal scholars may have different lists with varying wordings of maxim along the lines of their madhhab affiliations.

⁵ Jalal al-Din 'Abd al-Rahman Ibn Abi Bakr Al-Suyuti, *Al-ashbah wa al-nadzair fi al-furu'*, Publisher: Al-haramayn Li al-Tiba'ah, wa al-nashr, wa al-tawzi', (Singapore and Jeddah, second edition, 1960) 3.

⁶ Ahmad Mubarak and Agus Rouf Abdul Haq, *Formulasi Nalar Fikih: Telaah Kaidah Fikih Konseptual (The Formulation of the Logics of Fiqh: A Study of the Concept of Qawa'id Fiqhiyyah)*, Komunitas Kajian Ilmiah Lirboyo 2005 (Kaki Lima), (Khalista dan Kaki Lima, Surabaya, 2009), 89.

⁷ H. A Djazuli, *Kaidah-kaidah Fikih (Qawa'id Fiqhiyyah)*, (Publisher: Kencana Prenada Media Grup, Jakarta, cetakan ketiga, 2010), 33.

⁸ Bunyana Sholihin, *Kaidah Hukum Islam (Islamic Legal Maxims)*, (Publsher: Kreasi Total Media, Yogyakarta), 131.

⁹ H. A Djazuli, *Kaidah-kaidah Fikih (Qawa'id Fiqhiyyah)*, (Publisher: Kencana Prenada Media Grup, Jakarta, cetakan ketiga, 2010), 91.

¹⁰ H. A Djazuli, *Kaidah-kaidah Fikih (Qawa'id Fiqhiyyah)*, (Publisher: Kencana Prenada Media Grup, Jakarta, cetakan ketiga, 2010), 113.

The Structure of the Argument

In the early developments of the MUI, the form of fatwas issued was very simple. Often the fatwas were not supplied with the argument but went straight to the legal pronouncement or the legal stance of the MUI on the issue being discussed. Later, however, the MUI became more rigorous in providing its fatwas with a series of arguments. It even went as far as to issue guidelines on how to issue fatwas.

The first detailed guidelines for issuing fatwas were produced in January 1986, and revised in 2003 and 2012. In all those editions, it was stated that a fatwa must be based on the Quran, Hadith, Ijma', and Qiyas, in that order. These are sources of argument that scholars fully agree with (*Al-Adillah al-muttafaq 'alayha*). After all of the basics, it was only then that a fatwa may refer to other relevant legal arguments. Some examples are *al-adillah al-mukhtalaf fiha* (sources of argument to which scholars are not in full agreement with, such as *Istihsan* and *Maslahah*), the views of certain scholars, and references to certain legal maxims. In fact, references to legal maxims are presented after references to the views and the works of Muslim jurists, both classical and modern.

The Use of Legal Maxims in the Fatwas in General

Table 1 shows that around 25 legal maxims had been used in those 118 fatwas examined in this study with different frequencies. Some fatwas did not refer to any legal maxim, others mentioned one or two, and a few of them mentioned up to six different legal maxims in a single fatwa. The table also shows some 147 times of the application of legal maxims in 118 fatwas. This equals the average of 1.23 legal maxims for each fatwa. It seemed that when references were made to legal maxims, the MUI tried its best to use all available tools to support its fatwas.

Table 1 identified the list of those 25 legal maxims used and their frequencies. It showed that the list covers the maxims of all five groups discussed earlier. It is also shown that the maxim with the highest frequency of application is *Al-asl fi al-muamalat al-ibahah hatta yadull dalil' ala tahrimiha*. This is followed by *Al-darar yuzal* and *Al-hajah qad tanzil manzilat al-darurah*. In the fourth and the fifth order of frequencies are those that said *Al-mashaqqah tajlib al-taysir* and *Dar' al-mafasid muqaddam 'ala jalb al-masalih*.

There was not a single *Qawa'id ushuliyyah* applied shown in the table. All of the maxims used were of the *Qawa'id fihiyyah* category. This is one of the areas where the MUI has been criticized for. The MUI presented a lot of Quranic verses and Hadith narratives in its fatwas, but never mentioned any *Qa'idah ushuliyyah* to show the *Wajh al-dilalah* (the cornerstone of the argument) as to why certain legal norms should be extracted (*Istinbat*) from certain texts (*nass*). However, one may make such an observation with a reservation because some *Qawa'id fihiyyah* may coincide with some *Qawa'id ushuliyyah* or even derived from them.

Table 1.

Legal maxims used and their frequencies in the fatwas of the MUI (N = 118 fatwas)

No	Legal Maxims	Frequencies
1	<i>Al-asl fi al-muamalat al-ibahah hatta yadull dalil' ala tahrimiha</i>	44
2	<i>Al-darar yuzal</i>	12
3	<i>Al-hajah qad tanzil manzilat al-darurah</i>	12

No	Legal Maxims	Frequencies
4	<i>Al-mashaqqah tajlib al-taysir</i>	11
5	<i>Dar' al-mafasid muqaddam 'ala jalb al-masalih</i>	11
6	<i>Al-tsabit bi al-'urf ka al-tsabit syar'an</i>	9
7	<i>Ayyuma wujudat al-maslahah fatsamma hukm Allah</i>	8
8	<i>Tsarruf al-imam 'ala al-ra'yah manut bi al-maslahah</i>	8
9	<i>Al-darar yudfa' bi qadr al-imkan</i>	6
10	<i>Al-asl fi al-ibadat al-tawqif wa al-ittiba'</i>	3
11	<i>Li al-wasail hukm al-maqasid</i>	3
12	<i>Hukm al-hakim ilzam wa yarfa' al-khilaf</i>	3
13	<i>Ma la yatimm al-wajib illa bih fa huwa wajib</i>	2
14	<i>Al-darurat tubih al-mahdhurat</i>	2
15	<i>Kull ma yatawallad min al-haram fa huwa haram</i>	2
16	<i>Idha daq al-amr ittasa'</i>	2
17	<i>Kull qard jarra manfa'atan fa huwa riba</i>	1
18	<i>Ma hurrima akhdhuh haruma i'ta'uh</i>	1
19	<i>Al-hajah al-mashhurah tanzil manzilat al-darurah</i>	1
20	<i>La yajuz li ahad an yansarif fi milk al-ghair bila idhnih</i>	1
21	<i>Al-nadzar ila al-haram haram</i>	1
22	<i>Ma ubiha li darurat yuqaddar bi qadriha</i>	1
23	<i>Idha ta'arada mafsadatan ru'ya a'dzamuhuma dararan bi irtikabi akhaffihima</i>	1
24	<i>La ijtihad ma'a al-nass</i>	1
25	<i>Al-ghalib 'ala hay'at al-ibadah al-ta'bbud wa al-tawaqquf</i>	1
	TOTAL	147
	AVERAGE	1.23

The Use of Legal Maxims in the Fatwas on Ritual Issues

Fatwas on ritual matters include the validity of Friday congregational prayers in a sailing ship for the crews, the variants of Quranic readings, the definition of capacity to perform Hajj, the direction of *qibla* in prayers, praying together with non-Muslims, the use of Zakat money for productive purposes, and many others. Questions for these fatwas generally came from the general public.

If the above overall picture is broken down into three fields: the fatwas on ritual, economic, and socio-cultural issues, it appeared that the pattern was somewhat clearer. The fatwas on ritual matters did not seem to use legal maxims. Table 2 shows that out of 38 fatwas examined; the legal maxims were only used 18 times or an average of 0.47 maxim for each fatwa. Indeed, this is rather low. Perhaps, this is because of the principle of *Tauqif* and *Ittiba'* that makes it no need for much use of legal maxims. Three maxims were on the top of the list of fatwas on ritual issues. They are *Tsarruf al-imam 'ala al-ra'yah manut bi al-maslahah*, *li al-wasail hukm al-maqasid*, and *al-asl fi al-ibadat al-tawqif wa al-ittiba'*.

Table 2.
Legal maxims used and their frequencies in the fatwas on ritual issues (n = 38 fatwas)

No	Legal Maxims	Frequencies
1	<i>Tasarruf al-imam 'ala al-ra'yah manut bi al-maslahah</i>	4
2	<i>Li al-wasail hukm al-maqasid</i>	3
3	<i>Al-asl fi al-ibadat al-tawqif wa al-ittiba'</i>	3
4	<i>Ma la yatimm al-wajib illa bih fahuwa wajib</i>	2
5	<i>Hukm al-hakim ilzam wa yarfa' al-khilaf</i>	1
6	<i>La ijihad ma'a al-nass</i>	1
7	<i>Al-darurat tubih al-mahdzurat</i>	1
8	<i>Idha daq al-amr ittasa'</i>	1
9	<i>Al-mashaqqah tajlib al-taysir</i>	1
10	<i>Al-ghalib 'ala hay'at al-'ibadah al-ta'abbud wa al-tawaqquf</i>	1
	TOTAL	18
	AVERAGE	0.47

The Use of Legal Maxims in the Fatwas on Sharia Economic Issues

Fatwas on Sharia economic issues are checking accounts, saving accounts, *murabahah*, *mudarabah*, safe deposit boxes, leasings, insurances, credit cards, money changers, letters of credits for credit import and export, and many others. Questions for fatwas on these issues generally came from the government, financial institutions, and the general public.

The list and the distribution of legal maxims in the fatwas on economic issues seemed encouraging. Out of 50 fatwas examined, there were 107 times of applications of legal maxims or an average of 2.14 maxims for each fatwa. This average is almost twice higher than that of the overall fatwas and nearly five times higher than that on ritual issues discussed earlier. Thus, the fatwas on economic issues seemed to be important contributors to the application of legal maxims.

The most referred maxim was *Al-asl fi al-muamalat al-ibahah hatta yadull dalil 'ala tahrimiha* (the original position of all economic transactions was permitted until there was a *dalil* or reason or injunction to say otherwise). This makes sense because most of the fatwas on economic issues were to respond to new economic and financial transactions generally attributed to conventional economic institutions carrying the Riba (usury) system. Table 3 shows that three other maxims on the top of the list were *Al-hajah qad tanzil manzilah al-darurah*, *Al-darar yuzal* and *Al-masyaqqah tajlib al-taysir*. Those four maxims on the top of the list plausibly enhanced the dynamics within the MUI to cope with new Shariah economic transactions.

Tabel 3.
Legal maxims used and their frequencies in the fatwas on economic issues (n = 50 fatwas)

No	Legal Maxims	Frequencies
1	<i>Al-asl fi al-muamalat al-ibahah hatta yadull dalil 'ala tahrimiha</i>	44
2	<i>Al-hajah qad tanzil manzilah al-darurah</i>	11
3	<i>Al-darar yuzal</i>	10
4	<i>Al-mashaqqah tajlib al-taysir</i>	10
5	<i>Al-tsabit bi al-'urf ka al-tsabit shar'an</i>	9
6	<i>Ayyuma wujudat al-maslahah fa tsamma hukm Allah</i>	8
7	<i>Al-darar yudfa' bi qadr al-imkan</i>	5

No	Legal Maxims	Frequencies
8	<i>Dar' al-mafasid muqaddam 'ala jalb al-masalih</i>	4
9	<i>Tasarruf al-imam 'ala al-ra'yah manut bi al-maslahah</i>	4
10	<i>Kull qard jarra manfaatan fahuwa riba</i>	1
11	<i>La yajuz li ahad an yansarif fi milk al-ghayr bila idhnih</i>	1
	TOTAL	107
	AVERAGE	2.14

The Use of Legal Maxims in the Fatwas on Socio-Cultural Issues

Fatwas on socio-cultural issues examined in this study are fatwas on the removal of the corpse of the dead already buried for some time, Muslims joining Christmas celebrations with Christians, temporary marriages, lotteries for social purposes, bribery and corruption, cloning of animals, the validity of mechanical slaughtering of animals, and many others. Questions for these fatwas generally came from industries, private institutions, and the general public.

The list and distribution of legal maxims in the fatwas on socio-cultural issues seemed much less enthusiastic than those on economic matters, but still more vibrant than those on ritual issues. Out of 30 fatwas examined, legal maxims were referred to 22 times or an average of 0.66 maxims for each fatwa. This is slightly higher than the average for fatwas on ritual issues of 0.47. Table 4 shows the list and frequencies of legal maxims in the fatwas on socio-cultural issues. The maxim that said *Dar' al-mafasid muqaddam 'ala jalb al-masalih* is on the top of the list, followed by four others: *Hukm al-hakim ilzam wa yarfa' al-khilaf*, *Al-darurat tubih al-mahdzurat*, *Al-darar yuzal*, and *kull ma yatawallad min al-haram fahuwa haram*. Seven other maxims were only used once each, and many fatwas did not even refer to any legal maxim. Why this was the case? This is probably because the existing prepared arguments were considered adequate to go to the public. After all, the drafters of the fatwas were not keen on having legal maxims in the arguments.

Table 4.

Legal maxims used and their frequencies in the fatwas on socio-cultural issues (n = 30 fatwas)

No	Legal Maxims	Frequencies
1	<i>Dar' al-mafasid muqaddam 'ala jalb al-masalih</i>	7
2	<i>Hukm al-hakim ilzam wa yarfa' al-khilaf</i>	2
3	<i>Al-darurat tubih al-mahdzurat</i>	2
4	<i>Al-darar yuzal</i>	2
5	<i>Kull ma yatawallad min al-haram fahuwa haram</i>	2
6	<i>Ma hurrima akhdhuh haruma i'tauh</i>	1
7	<i>Al-hajah al-mashhurah tanzil manzilat al-darurah</i>	1
8	<i>Al-nadzr ila al-haram haram</i>	1
9	<i>Ma ubih li darurat yuqaddar bi qadariha</i>	1
10	<i>Idha daq al-amr ittasa'</i>	1
11	<i>Al-darar yudfa' bi qadr al-imkan</i>	1
12	<i>Idha ta'arada mafsadatan ru'iyah a' dzamuhuma dararan bi irtikab akhaffihima</i>	1
	TOTAL	22
	AVERAGE	0.66

Discussions

If one looks at those legal maxims more closely, it appears that the MUI has tried hard to articulate a big part of the available tools to support its fatwas. Compared to some 45 *Qawa'id fiqhiyyah* listed by al-Suyuti in his *Al-ashbah wa al-nadza'ir* alluded to earlier, excluding the 20 disputed maxims, the application of 25 *Qawa'id fiqhiyyah* by the MUI means that the MUI has gone a long way or has covered a lot of grounds. This could indicate the dynamics of Islamic legal thinking within the MUI or the fatwa committee members.

However, such dynamics seemed to operate only within the National Shariah Economy Council (Dewan Syariah Nasional abbreviated as the DSN). As shown in tables 2, 3, and 4, the application of legal maxims with high frequencies occurred only in the fatwas on economic issues. In contrast, those on ritual and socio-cultural issues seemed reluctant to apply legal maxims. This is probably because there are two separate fatwa committees in the MUI. One is the DSN, and the other is the proper Fatwa Committee of the MUI with its old simple fatwa issuing tradition. The former was created much later (1999) than the latter (1975).

Interestingly enough, some members are simultaneously listed in both fatwa bodies. Perhaps, the presence of economic experts in the DSN, with all positivism in their scientific tradition, has impacted the fatwa issuing tradition of the DSN. Still, a note has to be made here, though. Since 2003, the MUI also has held the national meetings of national and regional fatwa committee members annually. The meetings discuss the current Islamic legal issues, and legal maxims are cited more consistently in the fatwa issued. Thus, the dynamic is certainly taking place in the MUI, but with different degrees in different aspects.

Further, another observation needs to be added to the reading of tables 1 and 3. The legal maxim of *Al-asl fi al-mu' amalat al-ibahah hatta yadull dalil 'ala tahrimiha* (the basic legal position of all economic transactions are lawful until there is a legitimate reason to say otherwise) was applied 44 times. All of which are in the fatwas on economic issues. As mentioned earlier, the sample of the fatwas on economic matters examined by this study was only 50. This means that some 44 out of 50 fatwas on economic issues (88%) applied the seemingly liberal and relatively permissive maxim. One may ask then, how liberal are the fatwas produced? At this juncture, it might be worth recalling the study by Maksum alluded to earlier. Maksum stated that the fatwas of the DSN of the MUI on economic issues were relatively loose, compared to those of the Malaysia's counterpart, the MPS. Maksum further stated that there had been transactions that were still considered controversial among Muslim scholars worldwide. However, the MUI was quick to make them lawful. Maksum referred to various hybrid modes or combinations of transactions.¹¹ In this case, the MUI legitimized the combination of *Tabarru'at* and *Mu'awadat*, or even changed *Tabarru'at* into *Mu'awadat*. In contrast, the MPS refrained from preventing *Bay'tain fi bay'ah* or *Shafqatain fi shafqah* from happening. This is now getting too complicated. Therefore, let the question of whether or not the use of certain maxims impact the degree of liberalism of the fatwas be the subject of another study.

¹¹ Muhammad Maksum, *Tingkat Kelonggaran Fatwa Dewan Syariah Nasional Indonesia Majelis Ulama Indonesia Dalam Merespon Pertumbuhan Produk Ekonomi Syariah* (The Degree of Loseness of the Fatwas of the Shariah National Council of the Council of Indonesian Ulama in Responding to the Growth of Shariah Economic Products), (doctoral dissertation, School of Graduate Studies, Syarif Hidayatullah State Islamic University, Jakarta, 2013), 267.

Conclusions

In conclusion, this study identifies 25 Islamic legal maxims used by the MUI in its fatwas. Those legal maxims were used to support the arguments of the MUI's fatwas, complementary to the main arguments based on the Quran, Hadith, Ijma', and Qiyas. In fact, they were presented only after references to the views and the works of Muslim jurists, both classical and modern. Out of those 25 legal maxims, five were the most frequently quoted: 1) *Al-asl fi al-muamalat al-ibahah hatta yadull dalil 'ala tahrimiha*; 2) *Al-darar yuzal*; 3) *Al-hajah qad tanzil manzilat al-darurah*; 4) *Al-mashaqqah tajlib al-taysir*, and 5) *Dar'al-mafasud muqaddam 'ala jalb al-masalih*.

On average, references to legal maxims were 1.23 maxims for overall fatwas: 0.47 for fatwas on ritual issues, 2.14 for fatwas on economic issues, and 0.66 for fatwas on socio-cultural issues. Thus, the pattern is clear that the MUI is more likely to refer to legal maxims when it is issuing fatwas on economic issues. MUI is unlikely to do so when it is issuing fatwas on ritual and socio-cultural issues.

In the future, further studies need to be undertaken, either to cover other fatwas such as those on food. There is also a need to enlarge the coverage of the sample of the fatwas, to examine the relevance of the maxims to the main argument of the fatwas, to assess the impact of the maxim's application on the liberalism of the fatwas, or to address some other themes related to the elements of the construct of the arguments of the fatwas. Wallahu a'lam bi al-sawab. ***

References

- Adam, Wahiduddin, *Pola Penyerapan Fatwa Majelis Ulama Indonesia (MUI) Dalam Peraturan Perundangan Indonesia, 1975-1997* (Patterns of Absorption of the Fatwas of the MUI into Laws and Regulations in Indonesia, doctoral dissertation, Graduate Program of Syarif Hidayatullah State Islamic Institute, Jakarta, 2002.
- Djazuli, H. A, *Kaidah-kaidah Fikih* (Qawa'id Fiqhiyyah) , Publisher: Kencana Prenada Media Grup, Jakarta, cetakan ketiga, 2010.
- Haq, Abdul, Ahmad Mubarak and Agus Rouf, *Formulasi Nalar Fikih: Telaah Kaidah Fikih Konseptual* (The Formulation of the Logics of Fiqh: A Study of the Concept of Qawa'id Fiqhiyyah), Komunitas Kajian Ilmiah Lirboyo 2005 (Kaki Lima), Khalista dan Kaki Lima, Surabaya, 2009.
- Majlis Ulama Indonesia, *Himpunan Fatwa MUI Sejak 1975* (Compilation of the Fatwas of the MUI Since 1975), Publisher: Office of the MUI, Jakarta, 2015.
- Majlis Ulama Indonesia, Dewan Syariah Nasional, *Himpunan Fatwa Dewan Syariah Nasional MUI*, Publisher: Dewan Syariah Nasional MUI in cooperation with The Central Bank of Indonesia, Jakarta, 2006.
- Maksum, Muhammad, *Tingkat Kelonggaran Fatwa Dewan Syariah Nasional Indonesia Majelis Ulama Indonesia Dalam Merespon Pertumbuhan Produk Ekonomi Syariah* (The Degree of Loseness of the Fatwas of the Shariah National Council of the Council of Indonesian Ulama in Responding to the Growth of Shariah Economic Products), doctoral dissertation, School of Graduate Studies, Syarif Hidayatullah State Islamic University, Jakarta, 2013.

- Mudzhar, Mohamad Atho, *Fatwas of the Council of Indonesian Ulama: A Study of Islamic Legal Thought in Indonesia, 1975-1988*, Ph. D thesis, the University of California at Los Angeles (UCLA), USA, 1990. Later published in a bilingual edition (Indonesian and English) by Indonesia-Netherlands Cooperation on Islamic Studies (INIS) in 1993.
- Niam. M. Asrorun, *Sadd al-Dzari'ah dan Aplikasinya Dalam Fatwa Majelis Ulama Indonesia* (Sadd al-Dhari'ah and its Application in the Fatwas of the Council of Indonesian Ulama), doctoral dissertation, School of Graduate Studies, Syarif Hidayatullah State Islamic University, Jakarta, 2008.
- Rosyid, Maskur, *Implementasi Konsep Maslahat al-Tufi Dalam Fatwa MUI, 2005-2010* (The Implementation of the Concept of the Maslahah of al-Tufi in the Fatwas of the MUI, 2005-2010), Masters' thesis, School of Graduate Studies, Syarif Hidayatullah State Islamic University, Jakarta, 2012.
- Sholihin, Bunyana, *Kaidah Hukum Islam* (Islamic Legal Maxims), Publisher: Kreasi Total Media, Yogyakarta, 2016.
- Al-Suyuti, Jalal al-Din 'Abd al-Rahman Ibn Abi Bakr, *Al-ashbah wa al-nadzair fi al-furu'*, Publisher: Al-haramayn Li al-Tiba'ah, wa al-nashr, wa al-tawzi', Singapore and Jeddah, second edition, 1960.
- Taufiki, Muhammad, *Penerapan Konsep Ijtihad Tathbiqi al-Syatibi Dalam Fatwa MUI, Kajian Terhadap Fatwa Tahun 1997-2007* (The Application of the Concept of Ijtihad al-Tatbiqi of al-Shatibi in the Fatwas of the MUI, a Study of Fatwas of 1997-2007), doctoral dissertation, School of Graduate Studies, Syarif Hidayatullah State Islamic University, Jakarta, 2008.