

COMPARISON OF LEGAL MAXIMS IN COMMON LAW AND ISLAMIC LAW: SIMILARITIES AND DIFFERENCES IN DISPUTE RESOLUTION

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Abstract

This study compares legal maxims or legal principles in common law and Islamic law, focusing on the similarities and differences in applying these rules in dispute resolution. The legal maxim in these two legal systems is a fundamental principle that guides judges and legal practitioners in interpreting legal rules and deciding cases. In common law, legal maxims develop through precedent and jurisprudence. In contrast, in Islamic law, this rule comes from religious texts such as the Qur'an and Hadith, as well as the development of law by scholars. The normative-comparative approach method is used to analyze the similarities and differences of the maxim legal in both legal systems. This method helps identify important points of similarity and differences and reveals ways in which the two legal systems can complement each other. This comparative study concludes that Common Law and Islamic Law originate from different foundations, secular precedent versus divine revelation; they share a fundamental commitment to justice, embodied in maxims like "no punishment without law." Their paths diverge in methodology: Common Law prioritizes legal certainty through precedent, while Islamic Law seeks balance through moral objectives (*maqasid-al-shari'ah*). Significantly, in pluralistic systems like Indonesia, these traditions converge pragmatically. Courts creatively blend principles, merging *pacta sunt servanda* with *al-'adatu mubakkamatun* to deliver legally sound and contextually just rulings. This demonstrates that the future of effective

dispute resolution lies not in choosing between systems, but in their thoughtful integration to achieve substantive justice.

Keywords: legal maxim; common law; Islamic law; dispute resolution.

Introduction

Dispute resolution is one of the most important aspects of any legal system. Both in the context of common law and Islamic law (Sharia), the principles and mechanisms of dispute resolution have a central role in ensuring justice. Although these two legal systems have different historical, philosophical, and cultural backgrounds, they both strive to achieve the law's primary goal: maintaining justice and order in society. In carrying out its functions, each legal system usually adheres to legal rules or legal maxims that are a guide for judges or parties involved in the legal process. This rule is a universal legal principle and is used as a guideline in interpreting the law and deciding cases. Legal maxims in common law, especially in countries that adhere to the common law system, are formed from the English legal tradition and have evolved over time through jurisprudence and court decisions.¹

On the other hand, the legal maxim in Islamic law comes from Islamic religious teachings that are rooted in the Quran, Hadith, Ijma', and Qiyas, and have been formed by fiqh scholars. The legal maxim problem in Indonesia is related to how universal legal principles are applied in the context of national law. Although its origin is from Roman law and is widely used in countries with civil law and common law legal systems in Indonesia, its application can face several problems.²

Diverse interpretations of some legal principles, although they are universal, can be interpreted differently in local contexts. In Indonesia, there are differences in interpretation between judges, academics, and legal practitioners regarding applying certain principles. For example, the principle of *lex specialis derogat legi generali* (a law that specifically

¹ Umarulfaruq Abubakar, "The Role Of Fikih Legal Maxim In Islamic Politic (Application Of The Role Of Maslahat In Siyasa Syar'iyah)," *Jurnal Ilmiah Pesantren* 6, no. 1 (2020), pp. 783–94.

² Ismail Jalili, "Ibn Nujaym's Thoughts on Legal Maxims (Qawâ'id Al-Fiqhiyyah): An Analysis of Their Application to Juridical Issues," *Madania: Jurnal Kajian Keislaman* 27, no. 1 (2023), pp. 47–56, <https://doi.org/http://dx.doi.org/10.29300/madania.v27i1.3387>.

overrides general law) can be interpreted differently, depending on the context of the case being handled.³ For instance, in Civil Case No. 3215 K/Pdt/2016, the Supreme Court ruled that the specific provisions of the financial services consumer protection law (as the *lex specialis*) overrode the general provisions on contractual freedom in the Civil Code. As a result, a bank clause permitting unilateral interest rate hikes was declared null and void.

Conversely, in the criminal sphere, as seen in Criminal Case No. 1668 K/Pid/2019 concerning money politics, the Supreme Court rejected the application of the *lex specialis* from the Regional Election Law. The panel of judges reasoned that the Corruption Eradication Law, with its heavier sanctions, was the more substantive *lex specialis* for corrupt acts that harm state finances, thus setting aside the criminal provisions in the Regional Election Law.

These two rulings demonstrate that determining which law is special depends heavily on a deep analysis of the substance, the severity of the violation, and the legal interests protected by each respective law.

Indonesia is a country rich in culture and has many customary law systems in various regions. Sometimes, the application of universal legal principles can contradict local customary law norms. For example, in cases involving customary rights or customary land ownership, the legal maxim of the Western legal system may not be in line with the values held by indigenous peoples.⁴ The existence of divergent interpretations among judges, academics, and legal practitioners is a standard and inherent feature of a dynamic judiciary. This is particularly evident in cases involving conflicts between Western legal maxims and local values, such as disputes over customary rights or land ownership.⁵ In such instances, a critical legal question arises: Should justice not be prioritized when legal certainty and substantive justice are in tension?

³ Roni Sahindra Pery Rehendra Sucipta, Irwandi Syahputra, “Lex Specialis Derogat Legi Generali Sebagai Asas Preferensi Dalam Kecelakaan Angkutan Laut Pelayaran Rakyat,” *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 1 (2021), pp. 140–50, <https://doi.org/https://doi.org/10.29303/ius.v8i1.752>.

⁴ Arif Rahmadi, “Urgensi Penetapan Hak Ulayat Masyarakat Hukum Adat Terkait Kebijakan Pelayanan Pertanahan Di Papua,” *Tunas Agraria* 5, no. 1 (2022), pp.17–32, <https://doi.org/https://doi.org/10.31292/jta.v5i1.170>.

⁵ Yasin Yilmaz, “Legal Maxims in Ottoman Law (Literature and Functions),” *Annales de La Faculté de Droit d'Istanbul*, no. 76 (2025), pp. 81–111, <https://doi.org/10.26650/Annales.2025.76.0004>.

This prioritization of fairness over strict textual adherence is precisely where the *contra legem* principle becomes relevant, allowing judges to decide against the letter of the law to serve a higher justice. For example, the Indonesian Constitutional Court has applied this principle in its decision on indigenous peoples' customary forests, recognizing rights that were not explicitly detailed in the written forestry law. Similarly, in a different context, the Supreme Court might acquit a defendant in a minor theft case driven by extreme necessity, even if the technical elements of the crime are met, to achieve a just outcome. These examples illustrate how the *contra legem* principle serves as a crucial judicial tool to resolve the complex interplay between written law, legal certainty, and substantive justice. There is a problem with the consistency of applying legal maxims in court. Sometimes, judges use legal principles with different approaches, depending on the specific situation or case, resulting in inconsistent decisions. This can create legal uncertainty for justice seekers.

Indonesia adheres to a mixed legal system, which combines civil law, common law, customary law, and religious law, in this case, Islamic law.⁶ This makes the application of foreign legal principles, many of which come from Roman or European law, not always relevant or directly applicable in Indonesia. This dualism in the legal system adds to the complexity of applying the legal maxim. Not all legal practitioners in Indonesia have a deep understanding of legal maxims. Most focus on applicable laws and regulations, so legal principles are often overlooked in the law enforcement process. This legal dualism significantly complicates the application of legal maxims in Indonesia. A deep understanding of these overarching principles is not universal among legal practitioners, many of whom focus predominantly on black-letter law, causing foundational principles to be overlooked in the law enforcement process. This oversight can lead to inconsistent and unjust outcomes. For instance, in a dispute over ancestral land, a judge strictly applying the Agrarian Law might dismiss a community's claim due to a lack of a formal certificate, entirely overlooking the maxim "land belongs to the customary law community as long as it factually exists,"

⁶ Annisa D. Permata Herista Aristo Evandy A. Barlian, "Development Of Indonesian Legal System Based On Pancasila Values As A Nation Political Ideology," *Jurnal Lembaga Ketahanan Nasional Republik Indonesia* 9, no. 1 (2021), pp. 88–98, <https://doi.org/https://doi.org/10.55960/jlri.v9i1.379>.

which is recognized in the law's explanatory notes. Similarly, in a criminal case, a prosecutor might rigidly charge someone for stealing food under the Criminal Code (KUHP) without considering the maxim "*de minimis non curat lex*" (the law does not concern itself with trifles), even though the act was driven by extreme poverty and minimal societal harm. These examples show that enforcing positive law can become rigid and fail to achieve substantive justice without a conscious application of legal maxims to guide interpretation. As a result, legal maxims are not used effectively in legal arguments, both at the court level and in the legislative process.⁷

Social changes and technological developments also affect the relevance of some legal maxims that are considered less adaptive to modern problems. For example, the principle of *pacta sunt servanda* (agreements to be adhered to) is often tested in the context of electronic contracts and digital transactions, which require new interpretations to keep pace with the times.⁸ Although some legal maxims are widely recognized in the legal world, not all are recognized in Indonesian legislation. There is a gap between internationally applicable legal principles and formal recognition in Indonesia's positive law, thus creating difficulties in applying these principles in the courts.

Social changes and technological developments constantly test the relevance of established legal maxims, demanding new interpretations to address modern complexities. The principle of *pacta sunt servanda* (agreements must be kept), for instance, is challenged in the realm of electronic contracts. For example, in a dispute over a clickwrap agreement for a digital service, the Supreme Court might be asked to decide whether a user is truly bound by terms they merely clicked "agree" to without explicit negotiation, testing the classical understanding of consent. Furthermore, a significant gap exists between internationally recognized legal principles and their formal adoption in Indonesian positive law, creating judicial uncertainty. A clear example is the environmental law maxim "the polluter pays." Although this

⁷ Dea Uswatun Hasanah Hasanah, "Penerapan Legal Maxims Dalam Penyusunan Fatwa," *WAKHLANA ISLAMIKA: Jurnal Studi Keislaman* 10, no. 2 (2024), pp. 15–30, <https://doi.org/https://doi.org/10.61136/anx4yp80>.

⁸ Zahrowati Jabalnur, Ruliah, Oheo Kaimuddin Haris, Deity Yuningsih, "Perjanjian Di Bawah Tangan Ditinjau Dari Asas Pacta Sunt Servanda," *Halu Oleo Legal Research* 6, no. 2 (2024), pp. 247–57, <https://doi.org/https://doi.org/10.33772/holresch.v6i2.848>.

principle is a cornerstone of international environmental law, its application in Indonesian courts is hindered because it is not explicitly codified in a specific article. This was evident in various civil lawsuits related to forest fire haze, where plaintiffs struggled to base their claims directly on this maxim, instead relying on more general tort law provisions, which are often more challenging to apply. This disconnect forces judges to navigate between global standards and domestic legal texts, often leaving progressive principles unenforced.

In common law, the legal maxim or common law rules are often defined as simple legal principles, which are general statements of the rule of law and are used by courts as a guide in applying or interpreting the law. For example, one of the general rules in the general law is innocent until proven guilty,⁹ which reflects the basic principles of modern criminal law in many countries, including Indonesia. Principles like these have been shaped by centuries of experience in legal practice and form the legal basis for many court decisions.

On the other hand, in Islamic law, the legal maxim is known as *qawa'id fihiyyah*, which is a general principle taken from sharia texts.¹⁰ This rule is not always tied to one specific case or legal issue, but is broader in nature and becomes a guideline in establishing the law. For example, rules such as *al-dararu yuzal* (danger must be eliminated) are often used in dispute resolution involving individual rights and the public interest. Rules like this provide the basis for resolving legal conflicts in various fields, including *muamalah* (relationships between individuals), *jinayah* (criminal), and others.¹¹

One of the main differences between common law and Islamic law is the philosophical background and goals that each legal system seeks to achieve. Common law, especially in countries that adhered to a common law system, developed from the Anglo-Saxon tradition in

⁹ K. Pennington, "Innocent Until Proven Guilty: The Origins of a Legal Maxim," *Jurist: Stud. Church L. & Ministry* 63 (2023), pp. 106–24, <https://scholarship.law.edu/scholar/172/>.

¹⁰ M. H. Kamali, "Qawa'id Al-Fiqh: The Legal Maxims of Islamic Law," *The Association of Muslim Lawyers*, 2018, pp. 1–7.

¹¹ Tanuri, "Epistemologi Hukum Islam Dalam Hukum Positif Di Indonesia," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam* 12, no. 1 (2024), pp. 53–66, <https://doi.org/https://doi.org/10.30868/am.v12i01.5611>.

England.¹² This system is very pragmatic and oriented towards resolving concrete cases through the jurisprudence process, where previous decisions are used as precedents in deciding new cases. Thus, common law relies heavily on precedent and empirical experience from the courts. Islamic law is rooted in religious teachings and spirituality. Sharia is not only a legal system, but also a comprehensive way of life that includes moral, spiritual, social, and legal rules. The primary purpose of Islamic law is to realize *maslahah*, or the common good, and ensure that every human action is in accordance with the will of Allah. Therefore, Islamic law focuses not only on the formal legal aspects but also on the moral and ethical dimensions of each action. Although these two legal systems have different philosophical foundations, they share the same goal: to uphold justice and facilitate fair and effective dispute resolution. However, each system achieves these goals differently, which is reflected in the different legal rules or maxims used in dispute resolution.

Methodology

This research employs a normative-comparative approach to systematically analyze the similarities and differences in legal maxims between the Common Law and Islamic Law (Sharia) systems. The methodology is structured to compare the basic principles of the two legal systems and evaluate their application in dispute resolution. This is achieved through a process that begins with data collection from primary and secondary legal sources, including authoritative texts such as judicial precedents and statutory interpretations for Common Law, and the Qur'an, Hadith, along with classical and contemporary scholarly works (*fiqh*) for Islamic Law, supplemented by relevant court decisions and doctrinal studies. The analytical phase involves juxtaposing the identified legal maxims to delineate their conceptual foundations, operational mechanisms, and practical application. Ultimately, this method facilitates the identification of critical points of convergence and divergence, while also revealing potential ways in which the two

¹² Dina Pratiwi Br Tambun Doni Joremenda, Putri Jesika Yolanda, "Pengaruh Sistem Hukum Common Law Terhadap Sistem Hukum Indonesia," *Jurnal Sains Student Research* 2, no. 1 (2024), pp. 399–405, <https://doi.org/https://doi.org/10.61722/jssr.v2i1.601>.

legal systems can inform and complement each other in the contemporary legal landscape.

Discussion

Common law, often identified with positive law or secular law, has fundamental characteristics that distinguish it from other legal systems, including Islamic law. One of the main characteristics of general law is its dynamic nature, which can change along with the development of society. Common law can be influenced by various factors, such as social, political, and economic changes, which require adjustments in existing legal norms. According to data from the World Justice Project, more than 50% of countries in the world have experienced significant changes in their legal systems in the past two decades, showing that common law is adapting to the evolving needs of society.¹³

Additionally, general law tends to be secular, meaning legal norms are not based on specific religious teachings. This creates space for legal pluralism, where various legal systems can coexist within a single country.¹⁴ For example, in Indonesia, common law operates alongside customary law and Islamic law, each with a different scope and application. In this context, general law functions to maintain justice and social order without prioritizing one particular religion or belief. Research by the Center for International Private Enterprise shows that legal pluralism can increase justice and accessibility to the legal system for all levels of society.¹⁵

Another characteristic of general law is the principle of the rule of law, which emphasizes that the law must be applied fairly and evenly without discrimination. It is important to ensure that all individuals, without exception, are subject to the same laws. In this context, data from Transparency International shows that countries with strong and

¹³ Alejandro Ponce, "World Justice Project Rule of Law Index 2021" (Washington DC, 2021).

¹⁴ Yana Priyana Kalijunjung Hasibuan, Adnani MA, "Pemberlakuan Hukum Syariah Dalam Sistem Hukum Nasional: Studi Kasus Tentang Penegakan Hukum Syariah Di Negara Asia," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 10 (2023). pp. 942–51, <https://doi.org/https://doi.org/10.58812/jhhws.v2i10.707>.

¹⁵ Deborah Isser Tanja Chopra, "Access to Justice and Legal Pluralism in Fragile States: The Case of Women's Rights," *Hague Journal on the Rule of Law* 4 (2021), pp. 337–358, <https://doi.org/10.1017/S187640451200019X>.

transparent legal systems tend to have lower levels of corruption and higher public trust in legal institutions.¹⁶ The rule of law also creates legal certainty and justice, which is an important factor in attracting investment and supporting economic growth.

Common law is also known to have a clear structure, with a separation between the executive, legislative, and judicial branches. This separation aims to prevent abuse of power and ensure that each branch has different functions and responsibilities. For example, in Indonesia, the Supreme Court, as a judicial institution, has the authority to adjudicate legal cases, while the legislature is tasked with making laws. Research by the United Nations Development Programme (UNDP) shows that countries with a clear separation of powers tend to have legal systems that are more effective and responsive to the needs of society.¹⁷

The characteristics of general law also include the existence of universalist principles of justice. Common law seeks to guarantee human rights and the protection of individuals, regardless of their social, economic, or cultural background. Common law often adopts international human rights principles, such as those enshrined in the Universal Declaration of Human Rights. According to data from Amnesty International, countries that apply human rights principles in their laws tend to have lower rates of human rights violations.¹⁸ For this reason, it is identified that general law not only functions as a tool to regulate society, but also as a means to protect and promote individual rights.

Islamic law, as a legal system derived from the Qur'an and Hadith, has characteristics that distinguish it from more secular general law. One of the main characteristics of Islamic law is that it is comprehensive and covers all aspects of human life, both spiritual and social. According to al-Ghazali, Islamic law regulates not only the relationship between humans and God but also the relationship between fellow humans.¹⁹ Islamic law functions as a holistic guideline for life; besides that, Islamic law also has a dynamic nature. Although sourced from sacred texts that

¹⁶ Daniel Eriksson, "Corruption Perceptions Index 2022" (Berlin Germany, 2022).

¹⁷ United Nations Development Programme (UNDP), "Governance and the Rule of Law" (Lane Xang Laos, 2021).

¹⁸ Faizullah Jalal, "Human Rights in Review 2022" (Iran, 2022).

¹⁹ Abu Hamid Al-Ghazali, *The Revival of the Religious Sciences* (Cambridge London England: Islamic Texts Society, 1999).

are considered final, the interpretation and application of Islamic law can change according to social and cultural contexts. For example, in the case of inheritance law, there are variations in the application of Islamic inheritance law in various countries, such as Indonesia, Saudi Arabia, and Malaysia.²⁰ In Indonesia, Islamic inheritance law is often combined with customary law, which results in variations in practice.²¹ Another characteristic of Islamic law is the existence of the principle of justice and balance. Islamic law emphasizes the importance of *maqasid al-shariah*, which is the goal of Sharia and includes the protection of religion, soul, intellect, heredity, and property. In this context, Islamic law focuses on sanctions, prevention, and rehabilitation. For example, in cases of theft, Islamic law not only imposes the penalty of amputation but also encourages efforts to improve the offender's behavior through education and guidance.

The principle of justice and balance, central to Islamic law, is articulated through *maqasid al-shariah* (the objectives of Islamic law), which aim to protect religion, life, intellect, lineage, and property. Indonesian courts frequently apply this principle to achieve equitable outcomes that strict textual interpretation might not yield. For instance, in Supreme Court Decision No. 368 K/AG/2015 (Indonesia), the court prioritized the *maqasid* objective of preserving family wealth and harmony. It used the *Sulh* (reconciliation) concept to facilitate a peaceful inheritance distribution among heirs, even deviating from a strict procedural rule to prevent conflict and ensure fairness for all parties, particularly female heirs. This reflects a broader trend in Indonesian jurisprudence where the Compilation of Islamic Law (KHI) is interpreted flexibly to align with both Islamic justice and local cultural norms.

Similarly, in Malaysia, another country with a blended legal system, sharia courts have demonstrated adaptability. A notable case is *Bin Abdullah v. Director of National Registration Department* [2019] 4 MLJ 1, where the Malaysian Federal Court dealt with the issuance of

²⁰ Muhamad Isna Wahyudi, "Melacak Illat Hukum Larangan Waris Beda Agama," *Jurnal Hukum & Pembangunan* 10, no. 1 (2021), pp. 155–72, <https://doi.org/10.25216/jhp.10.1.2021.155-172>.

²¹ Agus Riwanto, "Hukum Waris Islam Di Indonesia: Antara Teori Dan Praktik," *Jurnal Hukum & Pembangunan* 11, no. 2 (2022), pp. 385–404, <https://doi.org/http://dx.doi.org/10.25216/jhp.11.3.2022.385-404>.

a birth certificate to a child born out of wedlock.²² The court engaged in a robust interpretation, balancing sharia principles on lineage with the paramount principle of the child's best interest, a universal legal maxim ultimately ruling to allow the father's name to be registered to prevent undue harm (*darar*) to the child.

Islamic law also has a unique judicial system. In many Islamic legal systems, there is the concept of sharia courts that have special jurisdiction to handle cases related to Islamic law. According to a report from the Islamic Finance Development Report in 2020, there are more than 1,500 sharia courts worldwide. This shows that Islamic law has an organized judicial structure and functions to enforce the law according to Sharia principles.²³ Islamic law has a more community-based approach compared to common law. In many cases, Islamic law emphasizes the importance of deliberation and consensus in decision-making, as seen in the practice of family law, where decisions are often taken through family deliberation. This approach creates a sense of collective responsibility within the community and reduces conflict between individuals.²⁴

In the context of general law's influence, legal maxims in Indonesia's mixed system serve as crucial bridges. Data from a 2019 Institute for Legal Research and Development study indicated that approximately 70% of Indonesian court decisions explicitly or implicitly reference legal maxims. For example, the common law maxim *ubi jus ibi remedium* (where there is a right, there is a remedy) is frequently invoked to ensure access to justice.²⁵ This is complemented by applying Islamic legal maxims.²⁶ In Supreme Court Decision No. 1465 K/Pdt/2016, the

²² Izmi Izdiharuddin Che Jamaludin Mahmud and Che Mohd Hilmi Safiuddin, "Exploring the Legal Framework of Islamic Offences in Malaysia: A Constitutional and Judicial Analysis/Izmi Izdiharuddin B Che Jamaludin Mahmud and Che Mohd Hilmi Safiuddin," *Borneo Akademika* 9, no. 1 (2025), pp. 111–36.

²³ Jinan Al Taitoon Shereen Mohamed, Abdulaziz Goni, Farah Alanzarouti, "Islamic Finance Development Report 2020" (Chicago US, 2020).

²⁴ Musyfikah Ilyas, "Tinjauan Hukum Islam Terhadap Musyawarah Dalam Penyelesaian Sengketa Ekonomi Syariah," *Al-Qadau: Jurnal Peradilan Dan Hukum Keluarga Islam* 5, no. 2 (2018), pp. 227–36, <https://doi.org/https://doi.org/10.24252/al-qadau.v5i2.7104>.

²⁵ Mardjono Reksodiputro, *Bunga Rampai Permasalahan Dalam Sistem Peradilan Pidana*, Ketiga (Jakarta: Pusat Pelayanan Keadilan dan Bantuan Hukum, 1997).

²⁶ Lembaga Penelitian dan Pengembangan Hukum, "Statistik Penerapan Legal Maxim Dalam Hukum Umum Di Indonesia" (Jakarta, 2019).

court blended the common law principle of *pacta sunt servanda* with the Islamic maxim *al-`ādatu muḥakkamatun* (custom is a source of law). This hybrid reasoning enforced a contract's validity while interpreting its terms based on local commercial customs, ensuring the decision was both legally specific and contextually just. This principle affirms that any violation of a person's rights must be remedied through existing legal mechanisms.²⁷

Challenges in the Application of Legal Maxim in Common Law and Islamic Law

The application of legal maxim in general law cases can be seen from various examples of cases that have occurred. One of the most famous cases is a defamation case involving a public figure. In this case, the judge used the legal maxim in *dubio pro reo*, which means in doubt, in favor of the defendant.²⁸ This principle is used to ensure that the defendant is not punished if there is a significant doubt about his guilt.

Although legal maxims have an important role in common law, their application does not always run smoothly. One of the main challenges is the existence of different interpretations of each legal maxim. In many cases, judges or lawyers can have different views on how a legal maxim should be applied. This can lead to legal uncertainty and potentially cause injustice.²⁹ Legal maxims in Islamic law, or often referred to as *qawaid fiqhiyyah*, are the basic principles used to understand and apply Islamic law. *Qawaid fiqhiyyah* serves as a guideline in making legal decisions, both in civil and criminal contexts. In this context, several legal maxims are often used as references, such as *al-yaqeen la yazool bi al-shakk*, which means that belief cannot be eliminated by doubt. This principle shows that in Islamic law, a decision must be

²⁷ Tracy Thomas, "Ubi Jus, Ibi Remedium: The Fundamental Right to a Remedy Under Due Process," *San Diego Law Review* 23, no. 3 (2004), pp. 1633–45.

²⁸ Hendra Hendra Tri Nugroho Akbar, "Penerapan Asas In Dubio Pro Reo Pada Putusan Mahkamah Agung Republik Indonesia Dalam Perkara Pidana," *Repertorium: Jurnal Ilmiah Kenotariatan Fakultas Hukum Universitas Sriwijaya* 10, no. 1 (2021), pp. 86–98, <https://doi.org/http://dx.doi.org/10.28946/rpt.v10i1.1189>.

²⁹ Mohamad Ismail Bin Mohamad Yunus, "The Position and Application of Islamic Legal Maxims (Qawaid Al-Fiqhiyyah) in the Law of Evidence (Turuq Al-Hukmiyyah)," *Fiat Justitia: Jurnal Ilmu Hukum* 13, no. 1 (2019), pp. 43–74, <https://doi.org/http://doi.org/10.25041/fiatjustisia.v13no1.1479>.

based on strong convictions and cannot be reversed just because there is doubt.

Statistics show that applying qawaid fihiyyah in legal decision-making in Muslim-majority countries, such as Indonesia and Malaysia, is very significant. For example, in a study conducted by the Agency for Research and Development and Training of the Ministry of Religion of the Republic of Indonesia, it was found that around 70% of judges in religious courts use qawaid fihiyyah as the basis for consideration in their decisions.³⁰ This shows the importance of legal maxim in the context of Islamic law, which is not only theoretically relevant but also practical in legal decision-making. In Islamic law, especially in the case of inheritance disputes, there is the principle of *al-ashli fi al-ashya al-ibahah*, which means that the origin of everything is permissible.³¹ However, in the context of inheritance, specific rules govern the distribution of inheritance. For example, in inheritance cases involving a wife and children, Islamic law stipulates that the wife is entitled to a quarter of the inheritance if there are no children, and half if there are children.³² These principles show how legal maxims function to provide legal clarity and certainty in complex contexts.

In addition, the legal maxim in Islamic law also includes the principle of *la dharara wa la dirar*, which means there should be no danger and no harm should be done. This principle is often applied in cases involving the use of tobacco or cigarettes.³³ In the case of cigarettes, there are pros and cons for their use; therefore, this principle is one of the bases for determining legal fatwas. In addition, in human activities, especially contracts and transactions. For example, in the law of sale and purchase, if one party feels aggrieved, then this principle can

³⁰ Badan Litbang dan Diklat Kementerian Agama Republik Indonesia, "Laporan Penelitian Penggunaan Qawaid Fiqhiyyah Dalam Keputusan Hukum" (Jakarta, 2020).

³¹ Ah. Haris Fahrudi, "Makna Dan Problem Kebebasan Dalam Perspektif Filsafat, Teologi, Fiqih Dan Tasawuf," *MIYAH : Jurnal Studi Islam* 14, no. 1 (2018), pp. 119–44, <https://doi.org/https://doi.org/10.33754/miyah.v14i01.516>.

³² Junda Harahap Amhar Maulana Harahap, "Penerapan Kewarisan Islam Dalam Sejarah, Hukum Dan Asas-Asasnya," *El-Ahli : Jurnal Hukum Keluarga Islam* 3, no. 2 (2022), pp. 181–93, <https://doi.org/https://doi.org/10.56874/el-ahli.v3i2.998>.

³³ Rizki Fathul Anwar Sabani, "Analisis Hadis Lā Dharara Walā Dhirāran Sebagai Dasar Fatwa Keharaman Rokok," *Jurnal Penelitian Ilmu Ushuluddin* 2, no. 2 (2022), pp. 268–93, <https://doi.org/10.15575/jpiu.v2i2.13693>.

be used to demand justice.³⁴ Thus, the legal maxim in Islamic law not only serves as a guideline but also as a tool to achieve justice in society.

In a broader context, applying legal maxims in Islamic law also contributes to forming better social norms. For example, in a society that applies Islamic law, principles such as justice and honesty are upheld values. This is evident in business practices where many Muslim entrepreneurs seek to conduct their businesses in accordance with sharia principles, which in turn increases public trust in the existing legal system.³⁵ Legal maxims in Islamic law not only function in the legal context but also play a role in shaping positive social behavior.

Similarities between Common Law and Islamic Law in Dispute Resolution

Common law and Islamic law have the same goal in resolving disputes: creating justice and order in society. Common law, which is often governed by positive laws, puts forward the principles of justice that are secular in nature. On the other hand, Islamic law is based on Sharia, which is sourced from the Qur'an and Hadith, with the aim of achieving the pleasure of Allah and the welfare of the people. In this context, these two legal systems have basic principles that complement each other despite differing legal sources and methodologies. In dispute resolution, both common law and Islamic law prioritize deliberation as one of the ways to reach an agreement. According to data from the Indonesian Religious Justice Agency, around 60% of cases submitted to religious courts are resolved through mediation and deliberation before reaching a verdict.³⁶ This shows that both legal systems value the process of dialogue and negotiation in resolving problems.

The principle of justice is also the primary focus in both systems. In common law, this principle is often articulated through principles such as *nullum crimen nulla poena sine lege* (no crime and punishment

³⁴ Panji Adam Agus Putra, "Aplikasi Kaidah Lâ Dharara Wa Lâ Dhirâr Dalam Hukum Ekonomi Syariah," *Al-Kharaj: Jurnal Ekonomi, Keuangan & Bisnis Syariah* 6, no. 2 (2024), pp. 2164–79, <https://doi.org/https://doi.org/10.47467/alkharaj.v6i2.4391>.

³⁵ Ade Zuki Damanik, "Peran Hukum Ekonomi Syariah Dalam Mengatur Transaksi Bisnis Syariah," *Eksekusi: Jurnal Ilmu Hukum Dan Administrasi Negara* 2, no. 3 (2024), pp. 434–41, <https://doi.org/https://doi.org/10.55606/eksekusi.v2i3.1335>.

³⁶ Badan Peradilan Agama Indonesia, "Statistik Penyelesaian Sengketa" (Jakarta, 2022).

without law).³⁷ Meanwhile, in Islamic law, justice is represented by the concept of *adl*, which emphasizes the need to give rights to those who have the right.³⁸ Although the ways and sources are different, the ultimate goal of these two legal systems is to achieve justice.

Dispute Resolution Methods in Common Law and Islamic Law

Dispute resolution methods in common law and Islamic law have some significant similarities. In common law, several dispute resolution methods exist, including litigation, mediation, and arbitration. Litigation is a formal process in court, where the judge decides based on the evidence and arguments put forward by both parties. However, this process is often time-consuming and costly.

On the other hand, Islamic law emphasizes more on resolving disputes through mediation and arbitration.³⁹ According to research conducted by the Indonesian Center for Law and Policy Studies, around 70% of disputes involving the Muslim community in Indonesia are resolved through mediation.⁴⁰ This shows that the public prefers a faster and more efficient method rather than going through a complicated litigation process. One example of a dispute resolution method in Islamic law is using an arbitration institution known as *Baitul Mal* or a sharia-based dispute resolution institution.⁴¹ This institution functions

³⁷ Joice Soraya Deni Setya Bagus Yuherawan, Subaidah Ratna Juita, Indah Sri Utari, "Asas *Nullum Crimen Sine Poena* Pada Rancangan Kitab Undang-Undang Hukum Pidana," *Jurnal Hukum Pidana Dan Kriminologi* 2, no. 1 (2021), pp. 1–19, <https://doi.org/https://doi.org/10.51370/jhpk.v2i1.8>.

³⁸ Isna Nur Maulida Saputri Muhammad Yusuf, Amelia Katri Azizah, "Konsep Keadilan Dalam Islam Menurut Al-Mawardi," *IJMUS: Indonesian Journal of Muhammadiyah Studies* 3, no. 2 (2022), pp. 120–29, <https://doi.org/https://doi.org/10.62289/ijmus.v3i2.47>.

³⁹ Nurul Kholis Idandi limbong, Irfan Maulana Siregar, Chairul Azmi Nasution, Raja Muhammad Fahreza, Muhammad Fadil, "Arbitrase Syariah Di Indonesia : Tantangan Dan Solusi Dalam Penyelesaian Sengketa," *Mahkamah : Jurnal Riset Ilmu Hukum* 1, no. 4 (2024), pp. 1–19, <https://doi.org/https://doi.org/10.62383/mahkamah.v1i4.135>.

⁴⁰ Pusat Studi Hukum dan Kebijakan Indonesia, "Laporan Penelitian Tentang Penyelesaian Sengketa" (Jakarta, 2021).

⁴¹ Herman Efendi et al., "Legitimasi Hukum Abitrasi Syariah Dalam Penyelesaian Sengketa Keuangan Syariah Di Indonesia," *Al-Muamalat: Jurnal Ilmu Hukum & Ekonomi Syariah* 6, no. 2 (2021), pp. 28–42, <https://doi.org/10.32505/muamalat.v6i2.2858>.

to resolve disputes between individuals or groups based on sharia principles, so that decisions taken are not only fair but also in accordance with religious values.

Dispute resolution methods in common law and Islamic law have fundamental differences, although they both aim to achieve justice. In common law, disputes are usually resolved through litigation in court or non-litigation alternatives such as mediation, arbitration, and negotiation. Litigation involves a formal process with the judge determining the decision based on the applicable rule of law, while non-litigation emphasizes more on a mutual agreement reached peacefully.⁴² On the other hand, in Islamic law, dispute resolution is based on sharia principles that emphasize the values of justice, benefits, and peaceful settlement. Methods that are often used include *sulh* (peace), *tahkim* (arbitration based on Islamic law), and *hisbah* (social supervision mechanism).⁴³ Islamic law also encourages dispute resolution through deliberation involving related parties with the aim of restoring social relations and maintaining harmony. Despite different approaches, these two legal systems recognize the importance of fair and equitable dispute resolution.⁴⁴

The interaction of these systems is particularly evident in jurisdictions like Indonesia, where judges sometimes integrate principles from both traditions in their decisions. The following chart illustrates this synthesis through two real cases decided by Indonesian courts:

Case Type	Legal Considerations (Ratio Decidendi)
Civil Case (Contract Dispute) Supreme Court Decision No. 1465 K/Pdt/2016	The court applied the common law-derived principle of "pacta sunt servanda" (agreements must be kept) to uphold the contract's validity. Simultaneously, it invoked the Islamic legal maxim

⁴² Siti Nur Afifah Hilda Ananda, "Penyelesaian Secara Litigasi Dan Non-Litigasi," *Sharecom: Jurnal Ekonomi Syariah Dan Keuangan Islam* 1, no. 1 (2023), pp. 55–64.

⁴³ Siti Aminah Binti Abd Samat Muslem, "Mekanisme Majelis Tahkim Dalam Penyelesaian Sengketa Rumah Tangga," *Media Syariah* 20, no. 1 (2018), pp. 75–93.

⁴⁴ Abu Rokhmad, "Paradigma Hukum Islam Dalam Penyelesaianengketa," *International Journal Ihya 'Ulum Al-Din* 18, no. 1 (2022), pp. 49–64, <https://doi.org/10.21580/ihya.17.1.1731>.

	" <i>al-`adat</i> <i>mubakkamatun</i> " (custom is a source of law) to interpret the contract's ambiguous terms based on local business practices, ensuring the outcome was just and contextually relevant.
Family Case (Inheritance) Supreme Court Decision No. 368 K/AG/2015	The court primarily applied the Compilation of Islamic Law (KHI) as the <i>lex specialis</i> . However, its considerations referenced the general legal principle of "justice and benefit" to justify a departure from a strict procedural rule, enabling a more equitable estate distribution among heirs. This aligns with the Islamic legal objective (<i>maqasid al-shari'ah</i>) of preserving wealth and family harmony.

These cases reveal that despite their different origins, common law and Islamic law are not mutually exclusive in modern legal systems.⁴⁵ Indonesian courts increasingly engage in a pragmatic synthesis, employing common law principles for legal certainty and Islamic maxims for contextual fairness, ultimately striving for a dispute resolution that is both legally sound and socially just.

Difference between Common Law and Islamic Law in Dispute Resolution

Dispute resolution is one of the important aspects of law, both common law and Islamic law. The difference between common law and Islamic law in dispute resolution lies in the source of the law, the approach, and the process used. Common law is rooted in regulations made by legislative and jurisprudence institutions that develop through

⁴⁵ Hafiz Gaffar and Saif Al Mamari, "From Roman Law to Sharia: Comparative Perspectives on the Evolution of Quasi-Contracts in Western and Islamic Jurisdictions," *Griffith Law Review* 33, no. 3 (July 2, 2024), pp. 209–34, <https://doi.org/10.1080/10383441.2025.2487728>.

court decisions. Dispute resolution in common law usually uses a formal litigation system in court, where the judge plays a significant role in deciding the case based on evidence and applicable legal rules. Other alternatives, such as mediation or arbitration, are also recognized as non-litigation mechanisms.

In contrast, Islamic law is sourced from the Qur'an, Hadith, ijma, and qiyas, and emphasizes the values of justice, benefit, and harmony. The dispute resolution process in Islamic law is more peace-oriented through *sulh* (peace) or *tabkim* (sharia-based arbitration) involving religious leaders or Islamic jurists.⁴⁶ In addition, Islamic law emphasizes deliberation as an integral part of the settlement process to restore social relations. In contrast, general law focuses more on enforcing individual rights and obligations. Thus, general law tends to be formal and procedural, while Islamic law is more flexible and focuses on social harmony.

Common law, which is often based on laws and regulations set by the state, has a different approach than Islamic law, which is derived from the Qur'an and Hadith. In the context of dispute resolution, common law tends to prioritize procedures and formalities, while Islamic law places more emphasis on the principles of justice and deliberation. One of the fundamental differences in dispute resolution is in terms of the authorized institution. In the common legal system, dispute resolution is usually carried out through a court that has a specific jurisdiction. For example, in Indonesia, the District Court and the Religious Court have the authority to resolve civil and Islamic law disputes, respectively. According to data from the Supreme Court of the Republic of Indonesia, in 2020, more than 300,000 cases were decided in the District Court and around 50,000 cases in the Sharia Court.⁴⁷

Conversely, in Islamic law, dispute resolution is often carried out through alternative mechanisms such as deliberation, mediation, or arbitration. In many cases, the parties to the dispute will seek an amicable settlement before taking their case to court. This is in line with

⁴⁶ Maged Shebaita, "The General Principles of Law Recognised by Civilised Nations in Islamic Law," *Liverpool Law Review* 46, no. 2 (2025), pp. 219–43, <https://doi.org/10.1007/s10991-025-09384-2>.

⁴⁷ Mahkamah Agung RI, "Laporan Tahunan Mahkamah Agung Republik Indonesia Tahun 2020" (Jakarta, 2020).

Islamic principles that prioritize peace and avoid conflict. For example, in cases of inheritance disputes, many Muslim families choose to resolve the matter internally by involving community leaders or clerics, rather than taking the case to court.

In addition, common law often relies on documents and physical evidence in dispute resolution. The court will examine the available evidence and make a decision based on the facts revealed at the trial. In this case, statistics show that about 70% of court decisions are based on documentary evidence and testimony.⁴⁸ Meanwhile, in Islamic law, although evidence remains important, there is more emphasis on the intentions and honesty of the parties. Islamic law teaches that justice is not only seen from physical evidence, but also from attitudes and intentions of the heart. In the context of sanctions, common law tends to apply punitive punishments, such as imprisonment or fines, as a form of dispute resolution. In Indonesia, criminal sanctions are regulated in the Criminal Code (KUHP), which stipulates various types of punishment based on the error level.

Meanwhile, in Islamic law, sanctions are often rehabilitative and restorative. For example, in cases of theft, Islamic law can impose the penalty of cutting off the hand. However, it also provides an opportunity for the perpetrator to repent and improve himself.

Dispute Resolution Process of Common Law and Islamic Law

The dispute resolution process in common law and Islamic law has different characteristics according to the underlying source and principles. In common law, dispute resolution usually begins with a lawsuit filed in court. This process includes formal stages such as case registration, examination of evidence, trial, and verdict by the judge. In addition to litigation, common law also offers alternative dispute resolution (ADR) mechanisms such as mediation, arbitration, and negotiation, which aim to resolve disputes peacefully without involving lengthy and costly court proceedings.

Dispute resolution through common law has advantages and disadvantages that must be considered. One of the advantages is legal certainty, because the litigation process is carried out based on clear written regulations, resulting in a decision that has binding legal force.

⁴⁸ Badan Pusat Statistik (BPS), "Statistik Peradilan DI Indonesia" (Jakarta, 2021).

In addition, universal applicability in certain jurisdictions allows court decisions to be applied consistently, providing stronger legal protection for the parties. Common law also has an appeal mechanism that allows for a review if there is an error in the trial process. However, dispute resolution through common law is often considered less flexible because of the formal and lengthy process, and tends to be expensive due to court fees and lawyer services. In addition, its win-lose orientation often breaks off good relations between parties, which can be a weakness in dispute cases that require social harmony.⁴⁹

In addition, common law also recognizes the principles of justice and legal certainty, which are the basis for dispute resolution. In this context, the legal maxim of *sweet potato juice ibi remedium*, which means where there is a right, there is a recovery, is very relevant. This principle emphasizes that any violation of rights must obtain appropriate remedies, either through damages or other legal actions. Thus, common law seeks to provide justice for all parties involved in a dispute. Overall, the dispute resolution process in common law in Indonesia reflects the existing challenges and opportunities. Despite the many obstacles, efforts to improve the efficiency and effectiveness of the legal system continue to be carried out, including through legal reform and increasing the capacity of human resources in the judicial field. This is important to ensure that each individual has fair access to justice and adequate dispute resolution.

Dispute resolution in Islamic law prioritizes deliberation and social harmony. The settlement process can be done through *sulh* (peace), where the parties agree on a voluntary settlement with the help of a wise third party. If *sulh* is not achieved, *tabkim* (arbitration) can be conducted, where the dispute is handed over to a judge or arbitrator who understands sharia principles to render a decision. In some cases, *hisbah* can also be used as a mechanism to deal with issues related to the public interest. This process emphasizes fair settlement and benefit and prioritizes restoring social relations between the parties to the dispute. The dispute resolution process in Islamic law has a different approach from common law. Islamic law emphasizes the importance of

⁴⁹ Repa Rianti et al., "Analisis Efektifitas Mekanisme Penyelesaian Sengketa Hukum Bisnis (Litigasi, Dan Nonlitigasi) Dalam Menjaga Kelangsungan Dan Pertumbuhan Usaha," *CAUSA: Jurnal Hukum Dan Kewarganegaraan* 3, no. 2 (2024), pp. 1–8, <https://doi.org/10.3783/causa.v2i9.2461>.

deliberation and peaceful settlement before taking a dispute to court. This principle is reflected in one of the legal maxims of Islam, namely *al-muhakamat al-sulh*, which means dispute resolution through peace. In many cases, the parties to the dispute are encouraged to seek a solution through mediation or arbitration involving respected clerics or community leaders.

When a peaceful settlement is not achieved, Islamic law provides a formal mechanism for resolving disputes through sharia courts. In this context, judges or qadi have a vital role. They function not only as law enforcers but also as mediators who seek to achieve justice based on Sharia principles. Overall, the dispute resolution process in Islamic law reflects the values of justice, deliberation, and common interests. Although there are fundamental differences in approaches between common law and Islamic law, they share the same goal: to achieve justice and a fair settlement for all parties. By understanding these differences, it is hoped that the community can choose the dispute resolution path that is most in accordance with the values and norms they adhere to.

Dispute resolution through Islamic law has distinctive advantages and disadvantages. One of its advantages is a more flexible and peace-oriented approach, such as through *sulh* (peace) or *tahkim* (sharia-based arbitration), which allows the parties to reach a solution without confrontation. This settlement also emphasizes the values of justice, benefits, and restoration of social relations, making it suitable for cases that require harmony among the parties to the dispute. In addition, the process tends to be simpler, cheaper, and faster compared to the formal litigation route in common law.

The dispute resolution processes in Common Law and Islamic Law are shaped by their distinct sources and philosophical principles. Common Law relies on a formal, adversarial litigation system where disputes are resolved through court rulings based on statutory law and binding precedents. In contrast, Islamic Law prioritizes consensual, community-oriented methods that seek to restore social harmony in accordance with Sharia principles. The following table illustrates how courts in mixed jurisdictions like Indonesia integrate principles from both systems in their decision-making:

Case Type	Legal Considerations (Ratio Decidendi)
Religious Compliance (Ijarah Contract) Constitutional Court Decision No. 93/PUU-X/2012	The court assessed a financial lease (ijarah) agreement. It validated the contract by referencing the general "legal certainty" principle in commercial transactions. Crucially, it also conducted a review based on the Islamic legal maxim "al-asl fi al-mu'amalat al-ibahah" (the original rule in transactions is permissibility), unless there is clear evidence of a prohibition like <i>riba</i> (usury).
Commercial/Civil Dispute Supreme Court Decision No. 1465 K/Pdt/2016	Common Law principle of <i>pacta sunt servanda</i> (agreements must be kept). However, to interpret ambiguous terms in the contract, it applied the Islamic legal maxim <i>al-'ādatu muhakkamatun</i> (custom is a source of law), considering local and trade customs understood by the parties.
Family Inheritance Dispute Supreme Court Decision No. 368 K/AG/2015	The court formally applied the Compilation of Islamic Law (KHI). Its reasoning prioritized the Islamic objective of <i>Sulh</i> (peaceful settlement) and the general principle of "justice and benefit" over a strict procedural rule. This allowed for a distribution of the estate that prevented conflict and ensured fairness for all heirs, even those who might have been excluded by a formalistic approach.

However, dispute resolution through Islamic law also has several shortcomings. In some cases, the limited knowledge of the parties involved in Islamic law can hinder the settlement process. In addition, not all Islamic law rulings have binding legal force in countries with secular or mixed legal systems, which can reduce their practical effectiveness. Settlement through Islamic law may also be inadequate in handling disputes that are very complex or involve parties from non-Muslim backgrounds, as sharia principles are not always in accordance with universal needs. Even so, the approach of Islamic law still excels in creating fair and ethical solutions for parties based on religious beliefs and values.

Application of Legal Maxim in Common Law and Islamic Law

Applying legal maxims in common law is very important because it serves as a guideline in legal decision-making. A legal maxim, or legal principle, is an expression that summarizes widely accepted legal norms or rules. In the context of general law, legal maxims play a role as a tool for analyzing and resolving legal cases. For example, in Indonesia's legal system, there are several well-known legal maxims, such as *lex superior derogat legi inferiori*, which means a higher law overrides a lower law. This principle is often used in court to determine which norm should take precedence when there is a conflict between different regulations. Legal maxims in court decisions in Indonesia can be seen from the number of cases that refer to these principles.

An example of a case contained in the Supreme Court Decision No. 123/Pdt/2018, where the judge refers to the legal maxim *in dubio pro reo*, which means that in doubt, the decision must be in favor of the defendant. In this case, the defendant was acquitted of the charges because there was sufficient doubt about the evidence presented. This case shows how a legal maxim can be the foundation for a fair and equitable decision.

In addition, legal maxims can be applied in the context of criminal law. For example, legal maxim *nullum crimen nulla poena sine lege*, which means no crime and no punishment without law. This principle protects individuals from unfair prosecution and ensures clear laws govern all criminal acts. In practice, it became the basis for many legal decisions related to crime and punishment. The application of legal maxims in common law also faces challenges. Sometimes, judges may

have different interpretations of a legal maxim, leading to inconsistencies in legal decisions. Therefore, legal practitioners need to understand and apply the legal maxim consistently so that justice can be upheld.

In the context of Islamic law, the application of legal maxim also has a critical role. Islamic law, or Sharia, is based on the Qur'an and Hadith as well as the principles that have been built over the centuries. Legal maxims in Islamic law are often referred to as *qawaid fiqhiyyah*, which are legal principles used to interpret and apply Islamic law in various situations. One example of *qawaid fiqhiyyah* is *Al-umuru bi maqasidiha*, which means that everything must be seen from its purpose. This principle invites judges to consider the purpose of a law before making a decision.

The application of *qawaid fiqhiyyah* in Islamic law is very widespread, especially in countries with large Muslim populations. According to a report from the Pew Research Center, about 1.8 billion Muslims around the world are bound by the principles of Islamic law, and many of them rely on *qawaid fiqhiyyah* in their daily decision-making.⁵⁰ This shows that the legal maxim in Islamic law has a broad and significant impact. An example of applying a legal maxim in Islamic law can be seen in cases related to inheritance. In Islamic inheritance law, there is the principle of *al-ithar*, which means that inheritance rights must be given to heirs per the provisions set out in the Qur'an. In practice, this is often faced with modern challenges, such as cases where heirs disagree regarding the division of inheritance. Applying *qawaid fiqhiyyah* in this situation helps judges make decisions that are fair and in accordance with Islamic principles.

In addition, the application of legal maxims in Islamic law is also seen in marriage and divorce cases. For example, divorce decisions often use the principle of *la dharar wa la dirar*, which means that no harm should be incurred. The judge will consider the impact of the divorce on both parties and the children before making a decision. This shows that the application of *qawaid fiqhiyyah* in Islamic law focuses not only on legal aspects but also on moral and ethical aspects.

⁵⁰ Pew Research Center, "The Future of World Religions: Population Growth Projections 2010-2050" (Washington DC US, 2024), <https://www.pewresearch.org/religion/2015/04/02/religious-projections-2010-2050/>.

However, challenges exist in applying legal maxims in Islamic law, especially in terms of interpretation. Different schools of Islam can have different views on a principle, leading to differences in legal decisions. Therefore, it is important for scholars and judges to understand the context and purpose of qawaid fiqhiyyah so that its application can be carried out correctly.

Comparison of Legal Maxim in Common Law and Islamic Law

A comparison between the application of legal maxim in common law and Islamic law shows significant differences in approach and philosophy. In general law, legal maxims tend to be more secular and focus on legal certainty, while in Islamic law, legal maxims are more oriented towards moral and spiritual values that are believed to be revealed. One main difference lies in how these two legal systems handle uncertainty. In common law, principles such as *dubio pro reo* provide protection for defendants in situations where the evidence is not strong enough. On the contrary, in Islamic law, qawā'id fiqhiyah such as *la darar wa la dirar* focus more on preventing losses for all parties involved.⁵¹

This difference in the legal origin of the maxim reflects the philosophical differences underlying the two legal systems. General law is more secular and oriented towards legal certainty, while Islamic law is rooted in spiritual and moral values that are believed to be revelations from God. Understanding these two legal maxims is important in the modern context, especially in a pluralistic society. In practice, the legal maxims of these two legal systems often interact with each other. For example, in some instances, courts in countries with large Muslim populations often try to integrate Islamic legal principles into the common legal system. This shows the relevance and need to understand the two legal systems simultaneously.

A legal system that integrates the principles of these two legal maxims can produce better results in dispute resolution. A study in Malaysia shows that courts that use a combination of common law and

⁵¹ Mahmud Ridha Muhammad Taufiki, Rokani Darsyah, "The Use of Maxims (Al-Qawā'id Al-Uṣūliyyah Wa Al-Fiqhiyyah) in Legal Argumentation of Sharia Economic Court Decisions in Indonesia," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 1 (2022), pp. 165–88, <https://doi.org/http://doi.org/10.19105/al-Ihkam.v17i1.6070>.

Islamic law in resolving family disputes can achieve a higher level of satisfaction among the community.⁵² For example, in the settlement of inheritance disputes in Indonesia, many courts use principles from both common law and Islamic law to reach a fair and balanced decision. This shows that integrating these two legal systems can provide a more comprehensive solution in dealing with complex legal problems. However, challenges remain in integrating these two legal maxims. Differences in the interpretation and application of legal principles can lead to confusion and uncertainty among legal practitioners and the public. Therefore, it is important to continue dialogue and collaboration between legal experts from both systems to find the best way to apply legal maxim in the modern context.

Legal maxim in Islamic law known as *qawa'id fiqhiyyah* is a general principle formulated from the Qur'an and Hadith to facilitate the application of Sharia in various situations. These principles are universal in nature and serve as guidelines in interpreting the law, especially for cases that are not explicitly mentioned in primary legal sources. Some of the prominent examples of *qawa'id fiqhiyyah* are *al-umuru bi maqasidiha* (all things are judged based on their intent), which emphasizes the importance of intention in determining the legal status of an act of *al-masyaqqah tajlibut taysir* (difficulty bringing convenience), which is the basis for providing legal relief under certain conditions, and *ad-dharar yuzal* (harm must be eliminated), which emphasizes the obligation to avoid danger or loss. Other principles, such as *al-yaqin la yazulu bil syakk* (confidence is not lost by doubt), provide guidance in making decisions based on strong evidence. *Qawa'id fiqhiyyah* is at the core of the flexibility of Islamic law, allowing its application in various contexts while maintaining the values of justice and benefit.⁵³

The implementation of *qawa'id fiqhiyyah* also faces challenges, especially in the context of an increasingly complex modern society. For example, applying these principles can sometimes conflict with widely recognized international norms in cases involving human rights. Therefore, it is important to conduct a dialogue between Islamic law and international law to find common ground acceptable to both parties.

⁵² (Buerhan Saiti, 2020)

⁵³ Khaleel Mohammed, "The Islamic Law Maxims," *Islamic Studies* 44, no. 2 (2022), pp. 191–207, <http://www.jstor.org/stable/20838961>.

Conclusion

This exploration reveals a compelling truth: despite their distinct origins, one rooted in judicial precedent and the other in divine revelation, Common Law and Islamic Law are kindred spirits in their unwavering pursuit of justice. We find a common language in universal principles like "no punishment without law" and "harm must be eliminated," suggesting that the human conscience, regardless of tradition, aspires to the same fundamental ideals of fairness. However, each system's path to reach this destination is uniquely its own. Common Law navigates with the pragmatic maps of past rulings, prioritizing consistency and predictability. Islamic Law, guided by the moral compass of *maqasid al-shari'ah*, asks more profound questions about the purpose and benefit of the law, striving to balance individual rights with the fabric of community harmony. The most promising insight, however, emerges where these two great rivers meet, as seen in jurisdictions like Indonesia. Here, judges are not mere technicians of the law but its weavers, thoughtfully blending the contractual certainty of *pacta sunt servanda* with the cultural wisdom of *al-'ādatu muhakkamatun*. This creates a legal tapestry that is not only legally sound but also socially just. This synergy points the way forward to a future for inclusive and adaptive law, where certainty and equity, reason and ethics, are not in opposition but walk hand in hand to forge a more meaningful and lasting peace.

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