

A Respective Review of Preferred Islamic Legal Maxims Performed in Malaysia with Spectrum to The Pronouncement of Talak Outside of Court

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Abstract

This article examines how Islamic legal principles are used in Malaysia to declare talak outside of court. This article's goal is to outline the Islamic legal principles that judges find most persuasive when deciding divorce cases. In order to analyse the role of preferred Islamic legal maxims as an argument in Islamic law and to investigate the position of the writing of judgement in Islam, the notion of divorce was investigated to see preferred Islamic legal maxims as an essential part in the submission of each case. The two main procedures used in this study, data collecting and data analysis, were based on a qualitative approach. In the Malaysian states of Kedah and Kelantan, information was obtained over the course of four months in 2017 through document analysis and interviews. In order to learn more about the use of preferred Islamic legal maxims in judgements and the practise of judgement writing in divorce cases in Malaysia, two academicians and four legal practitioners were interviewed for this study. This study also looked at the position and significance of judgement writing in Islamic law. The content analysis method was used to analyse the data. The respondents' documents were analysed using this technique in order to gather specific data on how to apply the desired Islamic legal maxims in divorce cases. The study's findings imply that when dealing with Shariah cases, decisions and supporting arguments often rely heavily on legal maxims. Al-Qur'an and al-Sunnah must be paralleled by the preferred Islamic legal maxims, which contain the Maqasid al-Shariah values. It is hoped that society may entrust Maqasid al-Shariah with handling divorce cases given the frequency of family issues today. Collaboration between Shariah judges and solicitors' aids in creating novel elements incorporating both religious and legal considerations. Islamic legal principles will increasingly be used, and this will have a significant impact on institutional and religious courts, particularly Shariah Courts at the national level. The purpose of this application is to clear up any misunderstandings between the parties concerned and the Muslim community as a whole.

Keywords: Islamic Legal Maxims, Maqasid Al-Shariah, Talaq Outside of Court, Islamic Family Law in Malaysia.

Introduction

In the context of Malaysia, this study aims to establish the legislative provisions pertaining to the talak application process. An analysis is also done on the effects of granting a divorce outside of court as well as the variables that influence these phenomena. Therefore, the focus of this study is on how preferred Islamic legal principles are applied in decisions about talak pronouncements outside of court. The idea of favoured Islamic legal maxims and their function in submissions in Islamic law are explained in this paper. The study's findings indicate that when dealing with Shariah cases, decisions and supporting arguments are often based on favoured Islamic legal maxims.

Literature Review

Al-Qawa'id al-Fiqhiyyah (Islamic legal maxims) is a list of the ideas that Islamic law has deemed to be acceptable. It was created by scholars to make the process of referring a fiqh issue to Shariah guidelines easier. Additionally, legislation connected to Islamic law may legalise Islamic legal maxims.

As a result, Islamic legal principles are crucial in helping judges resolve matters brought before Shariah Courts in a fair and equitable manner. Islamic legal maxims assist judges in resolving Shariah cases by offering arguments in support of the judge's conclusions, assisting the judge in identifying disputed issues, facilitating the judge's decision on issues to ensure that the judgement is fair, acting as an *istinbat* method of law for issues without obvious legal resources, assisting in handling the demand for jointly acquired property or matrimonial assets and assisting the judge in identifying the parties to be held accountable.

Furthermore, knowing Islamic legal principles makes it easier for one to memorize, analyze, and manage excessive fiqh jurisprudence. *Murūnah* (flexibility), which refers to its adaptability for people of any age as every stage of life is susceptible to numerous changes in many life areas, is a distinctive element of Islamic Shariah. It also alludes to its application at all periods notwithstanding changes that may occur in any era.

Islamic law, however, must be in accordance with Islamic principles and legal maxims in order to address issues facing the ummah and change with the times. It is not required to follow texts literally and explicitly. The Qur'anic verses and Hadiths are therefore not intended to be disregarded in the application of Islamic legal principles. The *Maqasid al-Shariah* (objectives of the Shariah) are instead accomplished by managing and directing religious and human issues to suit the particular context and time.

The *al-Darurah* method, one of the Islamic legal maxims, was investigated in Rohani binti Desa's earlier (2012) study as it applied to Malaysian health care. This approach relates to the ideas of *Daf'ul al-Madarrah* and *Jalb al-Maslahah*. The study examined the use of *al-Darurah* principles in medical practises, legal frameworks, and Ministry of Health Malaysia (MoH) policies. The researcher evaluated the MoH's laws and practises against the *al-Darurah*, an Islamic legal principle that incorporates the techniques of *al-Masyaqqah Tajlib al-Taysir* and *al-Darar Yuzal*. To accomplish the study's goal, the researcher used both library research and field investigation. The findings indicate that the *al-Darurah* method-compliant laws and policies developed by the MoH serve as the foundation for the majority of Malaysia's health

service practises. However, the study only addressed the laws and policies openly enacted by the MoH and kept its attention on the Islamic legal principle of al-Darurah.

The study by Zubir (2008) then looked at fiqh techniques and Islamic legal resources, as well as how they relate to resolving contemporary concerns. The research looked at the origins of fiqh and how Islamic legal precepts are used to address contemporary problems. The investigation was carried out by looking over many researchers' earlier works. The study's findings demonstrate that, despite the fact that al-Quran and Hadith cannot be derived from Islamic legal maxims, these maxims are essential for directing mujtahids and ensuring that the evolution of fiqh does not stray from the core principles of Islamic law. The study included Islamic legal principles in the present and throughout history, including the evolution of 'urf and its advantages.

By concentrating on the Pahang Islamic Family Law Enactment 1987, the study by Ghazali (2004) examined the implementation of various fiqh approaches in Malaysia's Islamic family law. The goal of the study was to determine how well the enactment adheres to the present fiqh in defining any requirements, guidelines, or practises. The study, which employed the library method, discovered that the enactment's content is consistent with Islamic legal principles like al-Umūr bi Maqāsidihā, al-`ādah of the Court, al-Darar Yuzāl, al-Darar Yuzāl bi Qadr al-Imkān, and Tasarruf allmām `ala al-Ra`iyah Manūt bi al-Maslahah. However, the theoretical analysis of the application of Islamic legal principles was restricted to the Islamic Family Law of Pahang.

A study on the use of the Fiqh Mā Lā Yudrak Kulluh Lā Yutrak Julluh approach for categorizing Shariah-compliant stocks on Bursa Malaysia was done by Ab Rahman Bin Ismail in 2007. The study provided information on how the Islamic legal principle "what cannot be done entirely should not be abandoned entirely" was applied to Shariah-compliant equities. It also looked at the inputs the Securities Commission's Shariah Supervisory Council used to determine whether each listed security complied with Shariah law or not. The study also covered the topic of share company transactions from an Islamic viewpoint. The findings of that study indicate that mixed firms must adhere to the standards. If mixed firms satisfy the Shariah standards, the Islamic legal principle "what cannot be done is not necessarily abandoned" can be used to categorize the halal and unlawful components. Additionally, the study discovered that not every share transaction on Bursa Malaysia adhered to Islamic law. The study, however, solely addressed the Islamic legal maxim Mā Lā Yudrak Kulluh Lā Yutrak Julluh, which is used to identify equities that adhere to Shariah.

The *fiqhiyyah* technique and its connection to contemporary fiqh concerns were the main subjects of Anwar Fakhri Omar's 1999 paper. The study examined the extent of the connection between Islamic legal principles and the present issues encountered by Muslims using the literary technique. The findings show that an Islamic legal maxim can only be utilized as a direct source or a replacement for a fiqh issue if it is derived from legal or Islamic sources that scholars have recognised as being in line with the Quran, Hadīs, Ijmā, and al-Qiyās, or from the sources of jurisprudence prevailing among the ulama, such as al-Istihsān, al-Masālih al-Mursalah, al-'Urf, Madhhab al-sahābi, al-Istishāb, and Sadd al-Dharā'. The five Islamic legal tenets were also explored by the researcher, but the analysis's main concerns were the present fiqh issues of smoking, blood donating, surrogate mothers, and limb transplants.

Yaacob (2013) looked at the relationship between the concept of Ihtiyat and the Fiqh Idhā Dāqa al-Amr Ittassa method from the perspective of the Syafie school of thought in the problem of worship. The study also identified the application of the Ihtiyat concept and Fiqh Idhā Dāqa al-Amr Ittassa' method in religious matters based on the Syafie school of thought. The researcher used the library method to collect data for the study, and the results demonstrated a correlation between the Ihtiyat concept and the Fiqh Idhā Dāqa al-Amr Ittassa method as applied by the Shafie school of thought which is related to the legal determination, objective, and purpose aspects. However, this study did not discuss the concept of Islamic legal maxim as a whole but focused on one method only, namely Fiqh Idhā Dāqa al-Amr Ittassa' method, and the discussion was confined to the act of worship.

Dahlal (2014) evaluated the management and administration of *waqf* property by Kedah Islamic Religious Council (MAIK) based on the Tasarruf al-Imām `Ala al-Ra`iyyah Manūt Bi al-Maslahah method. Problems were found in the management and development of *waqf* property by MAIK, and solutions were suggested based on the Tasarruf al-Imām `ala al-Ra`iyyah Manūt bi al-Maslahah method. The researcher used the library method and incorporated observations and interviews to collect the data needed for the study. The results of the study show that the appointment of MAIK as a trustee is consistent with the Tasarruf al-Imām `ala al-Ra`iyyah Manūt bi al-Maslahah method within the framework of maintaining the benefits of the Muslim community. Besides, the study provided a detailed discussion of the maxim of Tasarruf al-Imām `ala al-Ra`iyyah Manūt bi al-Maslahah, including examining the accuracy of the application of this maxim in the case of a *waqf* trustee.

Apart from the above theses, several books have been authored on Islamic legal maxims, such as *Qawā'id al-Ahkām fī Masālih al-Anām* by Muhammad 'Izz al-Dīn' Abd al-Salam (660H), *al-Furūq* by Shīhab al-Dīn Abi al-'Abbās Ibn Idrīs Al-Qarāfī, *al-Asybah wa al-Nazā'ir* by Ibn Nujaym and Tāj al-Dīn al-Subkī, and *Majallah al-Ahkām al-'Adliyyah* by al-Suyūti. These books focused on the sources and detailed elaboration of each Islamic legal maxim. In addition, examples of the application of the rules in various aspects such as *ibadat*, *munākahāt*, *mua'malāt*, and *jināyāt* were also provided. However, the observations of Islamic legal maxims, especially in judgment were not lucid and only done on the surface.

Besides the above theses and books, several articles have discussed Islamic legal maxims such as the article written by Ellias (2010) on the critical thinking aspects in al-Qawā'id al-Fiqhiyyah. The article addressed several elements of critical thinking such as analytical and assessment skills, objective thinking, pragmatism, consistency, and ethics, as well as other features of the five main Islamic legal maxims. The application of critical thinking to the legal maxims has helped many Muslims resolve the legal issues that arose in Muslim societies throughout the years. Hence, it is acceptable for Muslims to accept some critical thinking ideas as advocated by western scholars as long as these ideas do not contradict the philosophy of Islamic teachings. The authors stipulated the benefits of Islamic legal maxims, which are known to be effective in encouraging Muslims to think critically in addressing life problems.

Bahari (2008) examined the application of the al-Darar Yuzāl concept in Islamic family law. The study discussed the maxim of al-Darar Yuzāl in terms of service to the wife in a polygamous marriage, *nusyuz* or irresponsibility, *talak* or divorce by *tafsir* or other similar means, *khuluk* or divorce by compensation, and *fasakh* or the dissolution of marriage through judicial means and the maintenance of a diary. According to the study, this adage applies to

all facets of family law, including those that arise before, during, and after marriage. Additionally, this idea serves as the original legislation in an *al-darurah* scenario to approve the proposal and to address issues pertaining to the original law, such as a widow's living allowance. The discussion above demonstrates how Islamic legal principles have been the subject of several studies. The earlier investigations, however, were too superficial and encompassed areas of study unrelated to the current study's emphasis. Consequently, this book examines Islamic legal principles, focusing on the idea of judgement in particular, and conducts a thorough examination of earlier work in the area. Consequently, this research is a pioneer in this field.

Research Methodology

The socio-legal form, a research methodology that combines the two important fields of social science and law, was used in this study. The relationship between the law and the community is tight and difficult since the law is designed as a tool for handling the affairs and conflicts that develop in society (Rohani, 2002). Incorporating the process of stating, interpreting, and explaining existing laws (clearing existing laws) in the legal field, this study also involved systematic research of new and contemporary legal issues that required authenticity and high creativity (Mahdi, 1998).

The documentation approach, which involves looking through papers associated with the subject under study, was used to gather data (Abdul Halim bin Mat Diah, 1987). Photographs, portraits, outcomes from court proceedings, legislation, and regulations are among the documents included in this category (Barnadib, 1982). Autobiographies, private papers, diaries, and newspapers are all included in this category (Koentjaraningrat, 1986).

In this study, the fatwa research process for laws based on science and technology was also examined using content analysis. To ensure that the text analysis is error-free, this method necessitates a specific theme setting (Muhammad Haji Yusuf, 1993). The theme of this work is the fatwa research approach for contemporary legal challenges. The papers for content analysis were found based on the study's goal by choosing pertinent literature, like the preferred Islamic legal maxims that judges apply.

The five steps of the research technique were problem identification, sample selection, reading and recording of the content in accordance with the objective rules, and interpretation of the study's findings. Selected fatwas and pieces of law were included in the study's sample (Arabi, 1999).

Field study based on interviews is one type of social research (Yaqin, 2007). Interviews are social encounters with the goal of acquiring data for research. This study concentrated on obtaining data and looking into various types of evidence in light of the 2008 Kedah Islamic Family Law Enactment.

Both primary and secondary data were used in this investigation. Six experts, including two academics and four lawyers, were interviewed in both formal and unstructured fashion. To get the required data, the interviewees were chosen using the snowball sampling technique (Yaqin, 2007). They were chosen based on their level of experience, position within their industry, and area of expertise. The interviews took place in the states of Kedah and Kelantan

over the course of four months in 2017, from September to December. Kedah was chosen because it possesses the most recent Islamic family law legislation, which went into force in 2008. Kelantan was chosen because of its solid track record in governance and management-related areas. The questions in the interviews are unique and based on. The interview questions were created from scratch and were based on the study's goals. All of the responders' information is kept private. Interviews were taped, and transcripts were prepared. Furthermore, sources of information also included books and articles.

One strategy for gathering data is the observation method, which involves paying close attention to the thing under study (Samarudin & Nazri, 1982). The processes and realities of the execution going place on the topic matter determine observations. Direct observation can be used to construct the necessary formulations and draw the necessary conclusions. This entails facing the respondent or target object.

Islamic Family Law in Malaysia

A marriage agreement is honourable and remains in effect till death. It differs significantly from a civil contract, which is only valid once both contractual parties have fulfilled their respective obligations. However, if a marriage must end after all reasonable efforts have been made by both sides, then the pair must accept their fate by legally dissolving the marriage.

According to Section 47 of the Islamic Family Law Enactment, Kedah 2008, a married couple seeking a divorce must fill out the required form and submit it with an *iqrar* containing information about the divorce request, the court with jurisdiction, any prior divorce proceedings involving the couple, the efforts made to reconcile, and entitlements and benefits promised to the wife and child.

According to the provisions of this clause, it can be inferred that either spouse must request a divorce order from the court before the husband pronounces the *talak*. The second party will be summoned to court once the divorce application has been filed so that the court can determine whether the divorce request was mutually agreed upon by the parties. The court will advise the husband to declare the divorce in front of the court if the second party consents to the divorce and, after the investigation, the court is satisfied that the marriage has ended. This procedure is used to ensure that the *talak* will be delivered under control, under calm, and in a sane manner rather than while angry and chaos. The *talak* must then be approved by both parties, and the court or judge will serve as the most credible witness to the terms of the divorce agreement.

The provisions of this law are in parallel with verse 2, surah al-Talaq of the Qur'an:

فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوْيَ عَدْلٍ مِنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ

Meaning: "Therefore if they have reached the designated time, take them back well or divorce them in a good way. And witness to two sincere people among you and establish the testimony for God."

The divorce pronouncement using the word *talak* is as per the word of Allah in surah al-Baqarah, verse 229, which reads:

الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ وَلَا يَجِلُ لَكُمْ أَنْ تَأْخُذُوا بِمَا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

Meaning: “*Talak* (which can be referred back only) twice. After that he can (refer) and hold on (his wife) in a proper way or let him (divorce him) in a good way.”

The divorce pronouncement with *saraah* (last) is as per the word of Allah in verse 2, surah Al-Ahzab, which means: “...and release them in the best possible way.”

The Concept of Divorce According to Islamic Law

Two viewpoints, namely Islamic law and Malaysian law, can be used to analyze the Islamic divorce law in Malaysia. While divorce is permitted in Islam, it is hated by Allah SWT, according to Islamic law. Therefore, although faith permits divorce, it is only used as a last resort if all other attempts to bring the married couple back together have failed. Therefore, a divorce must be finalized for the benefit of all parties. From a Shariah legal perspective, the divorce in this situation is generally referred to as *talak*.

This type of divorce is divided into two categories, namely *sorih* and *kinayah*. *Sorih* happens when the divorce is clearly described in the message uttered and there is no other underlying meaning behind it. The three commonly used terms in the divorce utterance are *talak* or divorce, free or past, and separate. In contrast, *kinayah* involves the use of various terms such as free, split, go back to your family, and you are haram to me. These words can be interpreted as *talak* or otherwise. If the husband deliberately pronounces such terms, then only the husband knows what he means, and he needs to be responsible for his utterance. If the husband pronounces it with any other intention apart from *talak* or does not intend anything, then the *talak* is not valid (Muhamad, 2003).

Besides *talak*, the wife can also seek to dissolve the marriage by applying for *fasakh* or *khuluk*. Other types of divorce include *taklik*, *li'an*, a spouse leaving Islam, and the assumption of death (Al-Khin, 2016.)

The Concept of Divorce According to Law

The Malacca Code of Law, which later impacted the rules in neighbouring states, marked the beginning of Islamic law in Malaya. Before the British arrived, Islamic law and customary law were combined to create the laws that were in place. Some civil court rulings rendered during British colonialism suggested that Islamic law is a local law rather than a foreign one.

When Malaya obtained independence from the British in 1957, the Reid Commission granted Islam a place and privilege under Article 3 of the Federal Constitution; nevertheless, Article 160 of the Federal Constitution revokes the Islamic law's status as a legal authority (Ahmad, 1997).

The Ninth Schedule, List II (State List) of the Federal Constitution specifies the Shariah Court's jurisdiction, and the Shariah Court (Criminal Jurisdiction) Act 1965 was created specifically for the Syariah Courts. Each state has its own Islamic Religious Administration Enactment for administering Islamic law. The Shariah Courts' administration, however, did not meet the

same standards as the Civil Courts'. In order to identify the role, authority, and standing of each Shariah Court as well as the Shariah Court judge, a committee was constituted (Ahmad, 1999).

The dissolution of a marriage affects the husband and wife, starting from the procedure to dissolve the marriage and specify the type of divorce up until the divorce registration is complete. Usually, the husband can apply for a divorce, while the wife can use the method of *khuluk*, *taklik* or *fasakh* to dissolve the marriage. All these methods of marriage dissolution have specific provisions in the Islamic Family Law Enactment of the States. To date, many divorce cases involved the dissolution of marriage. In a case where either party does not agree to dissolve the marriage, a judge may be appointed for the divorce application.

The problems that often arise in divorce cases include the husband ignoring the wife by abandoning her or failing to provide sustenance, the absence of either spouse during the trial, and torture or assault of the wife by the husband, which allows the wife to apply for divorce through *taklik* or *fasakh*. The wife can also apply for *fasakh* in certain circumstances such as the husband's inability to provide sustenance or shelter, insanity, harmful illnesses like leprosy, and obstruction of sexual intercourse due to disability such as genital mutilation or impotence. Apart from that, the wife can apply for *fasakh* if the husband has gone missing and cannot be contacted by any means.

Another problem that exists within the context of marriage dissolution is *li'an*, which refers to the loss of trust between the husband and wife. In this instance, either one of them is willing to swear *li'an* by giving a statement that one of the parties has been cheating, or the husband has rejected the sworn statement made by the wife. A marriage may also end if one partner converts to Islam or if the other leaves Islam. Regarding religious conversion, there are two key issues. First off, the Law Reform (Marriage and Divorce) Act of 1976 permits a spouse to seek for divorce when a non-Muslim spouse converts to Islam. The Muslim spouse cannot ask for his marriage in the Shariah Court as long as the non-Muslim spouse does not file for divorce.

Secondly, when either spouse leaves Islam, the application to dissolve the marriage must be made in accordance with the provisions of the Islamic family law of the state where the couple resides. However, the Shariah Court must first confirm that the spouse has denounced Islam. Whether a Shariah Court or a Civil Court has the jurisdiction to certify a person's decision to leave Islam has been answered in the result of the case of *Soon Sing vs Perim and another* [1999] 1 MLJ 489. In this case, the Federal Court considered the provisions of Article 121 (1A) of the Federal Constitution and ruled that only a Syariah Court has the jurisdiction to confirm the status of a person leaving Islam in order to embrace another religion.

Talak Outside the Court

According to Section 125 of the 2008 Kedah State Islamic Family Law Enactment, it is unlawful to pronounce *talak* outside of court or without the permission of the judge. If found guilty, the individual who said the *talak* faces a maximum punishment of RM 1000, a maximum sentence of six months in prison, or both. Despite the low penalty amount, the impact on marital status is very severe, especially for the woman. As a result, this essay carefully examines and addresses the consequences of not taking this issue seriously, which will only make the wife and children's suffering worse. Therefore, in order to avoid such a circumstance

in their marriage, every married couple must be aware of and familiar with the needs. Therefore, each married pair must learn and become familiar with the legal laws in order for any action taken with the marriage to be in compliance with the law in order to prevent such an occurrence in a marriage.

By claiming that it does not follow the law of Allah as revealed in the Qur'an and the Sunnah, skeptic religionists and members of society have continued to cast doubt on the application to declare *talak* in court. The practise of divorcing someone outside of court also runs afoul of Malaysian law. Thus, this essay will focus on the issues that the general public should be aware of in order to lessen the negative effects of divorce and ensure that divorcees are treated fairly and equally when it comes to their rights.

Islamic Family Law Renewing at a Global Level

In the Philippines, the first Islamic law recognised in the Philippine legal system is the Code of Muslim Personal Law 1977, which deals with family law and inheritance law. This law came into effect in October 1985.

Some Islamic countries have reformed the Islamic family law to suit local circumstances through the modern legal process either by adopting other schools of thought or by administrative regulations. The Islamic countries that fall within this category are Turkey (from 1917), Egypt (1920–1946), Sudan, Jordan, Syria, Tunisia, Morocco, Algeria, Iraq, Iran, and Pakistan. The family law reforms are either 'substantive' or 'administrative' or both, by combining one or more opinions of the *fuqahak*.

In addition, Muslim countries in Southeast Asia such as Brunei, Malaysia, Indonesia, Singapore, and Ceylon also fall under this category. These countries have formulated a comprehensive Islamic Family Administration Enactment, including the regulation on polygamy and divorce.

Findings and Analysis

To gather information on respondents' preferred Islamic legal principles on divorce difficulties, this study employed the interview approach. Six people responded, two of whom were academics and four of whom were solicitors. However, only three of them—a scholar and two Shariah judges—responded to the interview questions about this matter. The respondents' used preferred Islamic legal maxims are R1, R2 and R3. R1 mentioned as follows:

"Al-Aslu Adam". Originally there was nothing, as long as one thing did not exist, so if it does not fit even "Yaridadalil'ala tayirih" until there is a proposition to change it. For example, he said these two, the origin of the husband and wife, there is no word for divorce, but there are other parties other than the husband, not the wife, this claims that the word divorce occurs. The nights he heard fights or quarrels, suddenly the word divorce, indeed he heard the word divorce, in the house, so he made an application to confirm. So, the burden of proof is that there are parties who claim to follow Section 72 of the Kelantan State Syariah Court evidence enactment. He in the case of MAL like this burden of proof to the level of "Gholabatuzzon". This "Gholabatuzzon" has reached a stage beyond doubt, not 100 percent sure. The burden of proof on those who claim, for example, in the

case of this application for confirmation of divorce, because it happened outside the court, the wife who claimed that the divorce was pronounced, so she has to prove it if this divorce is pronounced via WhatsApp or SMS, before, famous in 2005, he has to prove it. So, the husband also he has to defend. If he admits there is no problem. Because there are half of those who say divorce by SMS, he just wrote and sent. So, the word fall. This friend did not even read, he just wrote and wrote, he did not send, he did not even read, did not fall, he must "Attalafuss" he must say. If he reads it, reads it in his heart, he does not send it, he must say it orally. Because there is a saying said with this SMS, he said then it falls. He has to see who sent it. Like "At-tollak bil kitabah" means he wrote in writing and he sent to his wife, he had to say it too, he had to say it. This word, a word not a word with the lips of the mouth, he has to say it orally, in the least he hears with his own ears.

Meanwhile, R2 and R3 explained that

The method does exist. Therefore, there is a method of saying "tassoroful iman manuthun bil maslahah". It general meaning means, every government action must revolve around the welfare of the people. The meaning must be for the *maslahah* of the people. So, the aim is to take care of the welfare of the household. Husband and wife who have claimed to have divorced and so on. Make a confirmation. Perhaps, it can lead to evil. Maybe. The Religious Council will confirm the divorce without reference and may even deny the continued occurrence of talak right or finally talak divorce without alimony to everything. Then, will harm the couple, especially the woman. So, to avoid such harm that will probably happen after the unregistered divorce. Therefore, the court must take the responsibility to resolve or confirm and finally prove to confirm so that each of them gets the appropriate rights for the good of their spouses. Thus, the court's action revolves around actions, based on the welfare of the people. "Tassoroful iman manuthun bil maslahah." Because the court means to protect the welfare rights of the people. As for, regarding the method of divorce outside the court, it is not discussed specifically because for us, the court was created after looking at the benefits. Meaning the old days may have been a "personal" divorce. Just meet the priest and say the talak without referring back, without being documented, without being talked about. Use it, believe it. So, the existence of the court is also for *maslahah* as well. Discuss our divorce issues. Apart from "tassoroful iman manuthun bil maslahah", we also have a method that mentions that "al-aslu al-'adam". "Al-aslu al-'adam" means that the origin does not exist. Meaning, if there is a claim of talak, the meaning is something new with the original meaning that there is no talak. As long as there is no divorce in the household. When claiming a divorce, it means that the marriage has taken place. This is what we need to understand. When the allegation of divorce occurs, it means confident that there is a marriage. When claiming that the original does not exist, for proof, there must be a confession, witness and so on. In the context of the occurrence, the talak of witnessing is ok to convict the talak which originally did not exist. But, if the case does not have a witness, only a confession, the confession is "yes". Confession is also strong enough evidence for the occurrence of divorce. Even if the husband jokes, the divorce will fall. Moreover, the husband confessed. So, "al-aslu al-

'adam" the court must ask the husband to come to court to prove the validity of the talak because there was originally no talak. When lying and so on. "Al-aslu al-'adam". Basically, the origin of something does not exist.

The results of the interviews demonstrate that judges used and put into practise the preferred Islamic legal precepts in their rulings. The chosen Islamic legal maxims take into account al-Quran and al-Sunnah, as well as Maqasid Al-Shariah principles. "Tassoroful iman manuthun bil maslahah" and "al-aslu al-adam" are the two most frequently utilised Islamic legal maxims. Given the prevalence of family troubles in society today, this article therefore expresses hope that Maqasid Al-Shariah can be trusted.

Suggestions

First off, this article confirms that Maqasid Al-Shariah was utilized as a benchmark to ensure that the Islamic Family Law Enactment is in line with the Shariah. Therefore, there is no basis for religionists to claim that the legislation violates Islamic law and Shariah. Second, when deciding a matter, Shariah judges must adhere to at least two Islamic legal precepts, particularly when *talk* occurs outside of court. Guidelines must be created, distributed to all states, and applied by judges when making decisions. Third, this study argues that religious communities and groups should be more accepting of international reforms by taking into account the needs of society as a whole.

Fourth, Shariah judges and solicitors ought to support the creation of novel components that integrate the law and religion. The religious and institutional courts, particularly the Shariah Courts at the national level, would be significantly impacted by these applications and developments. These applications are meant to prevent misunderstandings between the parties, especially the Muslim community.

Conclusion

The function and application of selected Islamic legal maxims as a legal argument have been thoroughly explained in this paper. It is intended that this research will help the community better comprehend Islamic legal principles and the laws that apply to issues that the Qur'an and Hadith do not specifically address. Additionally, the research may give legal professionals, students, and the public insight into the functions of Islamic legal principles and their implementation in rulings.

Strong partnerships between religious organizations and legal professionals are inappropriate and should be prioritized. Through this cooperation, it will be possible to build innovative aspects that unite Islamic law and legislative power without creating any inconsistencies. This partnership is anticipated to have a significant impact on legislative institutions, particularly the Syariah Courts, which will avoid misconceptions and reduce confusion among the parties involved in particular and the Muslim community in general. To creatively respond to the changing times and situations, collaboration and empowerment are essential components.

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