



Small Claim Court in Sharia Economic Dispute Settlement: Overview of Sharia Economic Principles

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Abstract

The Supreme Court as the highest judicial body has issued special regulations related to sharia economic disputes settlement. This study aimed at, first, analyzing the implementation of sharia economic disputes based on small claim court in terms of sharia economic principles; second, discovering the relevance of small claim court in sharia economic disputes settlement with Islamic judicial system. This study uses normative juridical approach with library study as data collection technique and descriptive method. The results show that, first, the implementation of small claim court in sharia economic dispute settlement in Religious Courts still has a contrary process to sharia economic principles, namely the principle of justice and the principle of responsibility; second, there is relevance between the concept of small claim court in sharia economic dispute settlement and the jurisdiction of Islamic judicial system from the aspect of authority, nominal number of cases, and philosophical legal formation.

Keywords: Small Claim Court; Sharia Economic Dispute; Sharia Principles

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Introduction

Various sharia economic institutions have developed in Indonesia for a long time, both bank and non-bank financial institutions (Neni Sri Imaniyati dan Panji Adam 2017). Along with the growth and development of sharia economic activities, the chances for disputes between sharia economic actors are also getting bigger. This means that the more and wider the business activities, the higher the frequency (probability) of disputes. It can be interpreted that there are more disputes that must be resolved (Pramudya 2018).

A sharia economic dispute is a dispute or conflict between two or more parties as legal subjects of economic actors whose business activities are carried out according to sharia principles and sharia economic law principle. It is caused by differences of opinion or interpretation of an interest or property right that may have legal implications for both and can be given legal sanctions or cause harm to one of those two (Zaidah Nur Rosidah dan Layyin Mahfiana 2020).

Law Number 3 Year 2006 as amended by Law Number 50 Year 2009 Number 7 Year 1989 concerning Religious Courts is a

product of legislation that first provided competence to the Religious Courts in the settlement of sharia economic cases. The implementation, socio-juridically, represents the good will of the government in responding to the development of national law and accommodating the needs of Indonesian people, especially Muslim community, as well as reflecting the direction of government's legal political policy in expanding the competence of Religious Courts in sharia economic cases (Hasbi Hasan 2010).

The Religious Courts as one of the judicial institutions whose existence is recognized in Law Number 48 Year 2009 concerning Judicial Power is an institution that has the authority and duty to receive, examine, decide, and settle certain civil cases between people who embrace Islam (Lisa Aminatul Mukaromah 2018).

The decision of the Constitutional Court Number 93/PUU-X/2012 gave absolute authority to the Religious Courts to resolve sharia economic disputes in general and sharia banking in particular (Renny Supriyatni dan Andi Fariana 2017).

In 2016, the Supreme Court issued Supreme Court Regulation Number 14 Year 2016 concerning Procedures for Settlement of Sharia Economic Disputes. The regulation is an answer to the absence of civil procedural law in the field of sharia economics (Hasanuddin Muhammad 2020).

The Supreme Court has issued Supreme Court Regulation Number 2 Year 2015 concerning Procedures for Settlement of Small Claim Court, which was amended by Supreme Court Regulation Number 4 Year 2019. In addition, the Supreme Court issued Supreme Court Regulation Number 14 Year 2016 concerning Procedures for Settlement of Sharia Economic Disputes, in which Article 3 Paragraph (2) explains that in this settlement, it can use a small claim court. The regulation was resulted in meeting the needs of a fast dispute resolution and providing a sense of justice to the disputing parties.

The sharia economic system has several principles in its implementation, including the principle of justice (mabda al-'is); the principle of goodness (mabda al-ihsan); the principle of responsibility (mabda al-masuliyah); the principle of honesty and truth (mabda al-shidq); and the principle of benefit (mabda al-manafi'). These five principles are guidelines in the implementation of sharia economics, including sharia economic disputes settlement (Erfaniah Zuhriah dan Miftahuddin Azmi. 2019; Lisa Aminatul Mukaromah. 2018;).

In the study of Islamic law, its implementation (including sharia economics) cannot be separated from the judiciary, which can be referred to as qadha in fiqh. It is a religious court decision, which is more specific than the fiqh itself. It tends to be dynamic because it only covers certain aspects in accordance with the issues faced by society. In terms of legal force, it is more binding especially for litigants (Sa'di Abu Jaib, 1988). The judicial system in Islam has jurisdiction and the area of qadha's power.

In line with this, Islamic law still uses the same regulation as general law regarding economic issues. Whereas in the fiqh literature, there is much discussion about the status of economic issues. Thus, this study focuses on the analysis of the implementation of sharia economic dispute settlement through a small claim court examined from sharia economic principles and Islamic judicial system.

Research Method

This study used a normative juridical approach that was carried out through a philosophical, systematic, and critical analysis approach. Hence, the technical data collection was through a library study, namely examining and reviewing primary and secondary legal materials (Ratna Januarita 2021). Its primary source was Supreme Court Regulation Number 4 Year 2019 concerning Amendments to Supreme Court Regulation Number 2 Year 2015 concerning Procedures for Small Claim Settlement and Supreme Court Regulation Number 14 Year 2016. The secondary source was literature having relevance to the study focus. This study was descriptive because it was conducted to find data as accurate and complete as possible about the characteristics of situations or symptoms that can help strengthen the old theory to build a new theory regarding sharia economic disputes settlement.

Results and Discussion

Small Claim Court in Sharia Economic Dispute Settlement in terms of Sharia Economic Principles

Terminologically, Supreme Court Regulation Number 2 Year 2015 states that Small Claim Court is a procedure for examining a civil lawsuit in court with a material claim value of at most Rp. 200,000,000.00 (two hundred million rupiahs). It is settled with small claim procedures and proofs (Article 1 point 1 of Supreme Court Regulation Number 2 Year 2015 concerning Procedures for

Settlement of Small Claim Court Jo. Supreme Court Regulation Number 14 Year 2016 concerning Procedures for Settlement of Sharia Economic Cases) (Mukhlis 2019).

The doctrinal definition states that a small claim court is a small claim judicial process that has characteristics such as dispute resolution. This judicial process is carried out quickly and efficiently, and whose form of compensation claim is in a specific number of calculations (Erfaniah Zuhriah dan Miftahuddin Azmi 2019).

There are at least five rationales for the formation of this Supreme Court Regulation. First, related to the application of the principles of judicial system in Indonesia, the administration of justice is carried out on the principle of small claim, fast, and low cost to open wide access for the public in obtaining justice. Second, based on the development of law in society, especially in the field of business and economic law, the development of legal relations in the economic and other civil fields in the community requires smaller, faster, and less costly dispute resolution procedures, especially in small claim legal relationships. Third, in terms of the aforementioned rules, the settlement of civil cases as regulated in the updated Reglemen Indonesia (HIR) Staatblaad Number 44 Year 1941, Reglemen of the Procedural Law for Regions outside Java and Madura (RBg), Staatblaad 227 Year 1927, and other regulations regarding law, civil proceedings are carried out by examination without further distinguishing the value of the object and the lawsuit as well as the simplicity of the evidence, so that a quick and small claim trial is needed. Fourth, related to the National Medium-Term Development Plan (RPJMN/ Rencana Pembangunan Jangka Menengah Nasional) 2015-2019, which mandates reform of easy and fast civil law system to regulate problems related to the economy through small claim court settlement. Fifth, this authority is given to the Supreme Court to regulate the matters referred to in point d for the smooth running of the judiciary if there are matters that have not been sufficiently regulated in the law to fill legal deficiencies and vacancies (Martha Eri Safira 2017).

According to the substance of small claim court contained in Supreme Court Regulation Number 2 Year 2015 as amended by Supreme Court Regulation Number 4 Year 2019, it was initially enacted specifically for general courts, not for religious courts. Only a year later the Supreme Court issued Supreme Court Regulation Number 14 Year 2016 stating that sharia economic disputes can use a small claim court by referring to Supreme Court Regulation Number 2 Year 2015 as amended by Supreme Court Regulation Number 4 Year 2019.

Supreme Court through Supreme Court Regulation Number 2 Year 2015 issued Supreme Court Regulation Number 14 Year 2016 concerning Procedures for Sharia Economic Dispute Settlement in which it can be done simply. In 2019, the Supreme Court issued Regulation Number 4 Year 2019 concerning amendments to Supreme Court Regulation Number 2 Year 2015.

These amendments concerning Procedures for Small Claim Court Settlement stated that the small claim court settlement is a step or method for the judiciary to examine a case and its proof in a small claim court way provided that its material value is Rp. 500,000,000.00 (five hundred million rupiahs) maximum. These materially improve the previous rules. A small claim court is a simplification in resolving a dispute for the sake of creating a simple, fast, and low cost justice. Therefore, for sharia economic cases whose value is not too large or below can use a small claim court in its settlement (Yoghi Arief Susanto 2001).

Supreme Court Regulation Number 2 Year 2015 and Supreme Court Regulation Number 4 Year 2019 amendments to Supreme Court Regulation Number 5 Year 2015 concerning procedures for small claim court settlement requires a simplification of judicial process to make it easier for the public to access simple, fast and low-cost justice. This is due to the increasing legal relationship in the economic field with various transaction models that contain potential conflicts. The simplification of this procedure is a real effort made by the Supreme Court to create an effective and efficient judiciary, so that every case examined does not drag on and harm the interested parties, both material and immaterial losses.

Settlement of cases with small claim court can only be used for cases of breach of contract and/or unlawful acts (PMH/Perbuatan Melanggar Hukum). This can be big claim when the case does not involve large amounts of money. Cases of breach of promise (default) are cases that arise as a result of non-fulfillment of an agreement, both written and unwritten. The unlawful acts are cases arising as a result of harm to one party due to the actions of another party without any previous agreement (Willy Ignatius Montolalu 2001).

Furthermore, Supreme Court Regulation Number 2 Year 2015 states that in the preliminary examination process, the judge examines the feasibility of the filed small claim court, whether the lawsuit meets the provisions, namely the maximum value of the material being sued as much as Rp. 500,000,000.00 (five hundred million rupiahs). This case is not the authority of a special court, and

is not a dispute over land rights. Moreover, the judge examines based on the provisions in Article 4, namely the plaintiff and the defendant may not be more than one unless they have the same interests. The existence of defendant must be known. The plaintiff and the defendant must be domiciled in the same jurisdiction. Both of them are present without being accompanied by a legal representative. If the results of the examination state that the filed small claim court filed does not meet the provisions contained in Articles 3 and 4, the judge issues a ruling stating that the lawsuit is not a small claim court, and crosses it out from the case register book and orders the return of the case due. No legal action can be taken against this determination.

In the process of examining sharia economic disputes, judge must pay attention to the values of justice, so that judge’s decision can bring justice even though formal and material law is not intended to enforce Islamic law. In the relevance, the process of small claim court examination regulated in Supreme Court Regulation Number 4 Year 2019 and Supreme Court Regulation Number 14 Year 2016 with sharia economic principle is not contradicting. Sharia economic principle is a part of economic study, which is interdisciplinary and not able to be independent and needs to have good control for its supporting studies. The contradiction of this process is described in Table 1.

Table 1
The Relevance of Small Claim Court Examination Mechanism with Sharia Principles

Aspects/Types	Small Claim Court Provisions	Sharia Economic Principles
Registration Process	There are certain conditions that can be done with a small claim court, such as the value of the material object is not more than Rp. 500,000,000.00 (five hundred million rupiahs), must be domiciled in the same court area, not a case under the authority of a special court, and this is carried out by the clerk of the court.	This provision can be said to be a form of kindness (<i>Al-Ihsan</i>), so that in resolving disputes with a small claim court, there is an ease if certain limitations can make it easier. In addition, it can include the principle of responsibility (<i>mas’uliyah</i>) where the clerk of Religious Courts openly checks the completeness of the claim from the parties, as a form of service.
Peace Efforts	Provided advice by judges at the court	These efforts only provide advice, but do not make efforts such as mediation or other deliberation, so that this have no power of coercion on the parties to the dispute.
Preliminary Examination Process	In this process, before entering the court, the judge will examine the description of lawsuit with the available evidence whether it is in the small claim court category or not. Preliminary examination time is three days from the appointment of the examining judge.	This is a form of caution from the judge before examining a small claim court. This process is a form of implementing the principle of justice to achieve a benefit.
The Judge Stage	Sharia economic dispute settlement with a small claim court is limited to a maximum of 25 working days. The court process only claims, answers and issues decisions. Evidence is attached to the answer and the lawsuit directly.	In this process, there are several relevant principles, namely the principle of justice, the principle of responsibility (<i>mas’uliyah</i>), the principle of balance (<i>wasathaniyah</i>), and the principle of honesty/truth. However, the implementation of examination is more than 25 days, so that this is detrimental to the disputed parties.
Decisions	Decisions expressly imply that all court decisions and ruling must contain sharia principles as the basis for adjudicating.	This process is a form of implementing the principles of justice and responsibility (<i>mas’uliyah</i>) because the decision is the judge’s crown and line of thinking.

Execution	Execution is regulated on the security time in the execution process.	This process is considered contrary to sharia principles, especially the principles of goodness, honesty or truth, and responsibility.
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Based on the table above, the execution is not in accordance with sharia principles. When the decision has been given by the judge, the party who is given the obligation to pay must carry out its obligations. If it is associated with sharia principles, it is part of morals-based honesty. One of the indicators is no coercion. If there is an execution, it will cause malice on both sides. The execution process is of course coercive, and its implementation involves the security apparatus for the sake of smoothness. Hence, it is feared that it will exacerbate the problem, not be a solution to the problem. Philosophically, dispute settlement must maintain brotherhood (Law Office of Remy & Darus 2002), because this is the foundation of social, legal, and behavioral building. Additionally, it is also contrary to the principle of justice where Justice in Islamic law shows security, strength and unity.

It is no longer a secret anymore that the execution of decisions in Indonesia often reaches a dead end. The examples are the issue no. 002/Pdt.G.S/2020/PA.Klt and 003/Pdt.G.S/2020/PA.Klt whose cases reached dead end, while the other 001/Pdt.G.S/2020/PA.Klt could be continued with some obstacles (Irwan Nugroho, 2021). External factors often heat up the process, as a result, the problem becomes increasingly sharp and has bad consequences for the parties. The party who is declared obliged to pay must consciously carry out his obligations to maintain security, unity and integrity, so that it is in accordance with the principle of justice.

The Relevance of Small Claim Court in Sharia Economic Dispute Settlement with Islamic Justice System

Islamic law cannot be separated from the reality of society. To be able to describe the provisions contained in Islamic law, a judicial institution is needed, which in Islam is called *al-Qadha'* (Muhammad Mutawali 2017). The term justice/qadha, etymologically in Arabic, has the meaning of determining and giving punishment. The term qadha in sharia terminology is to decide disputes that occur between two or more parties who are in conflict/dispute with the law of Allah SWT (Hendra Gunawan 2019).

The existence of law and judicial institutions cannot be separated from the association of human life in general and Muslims in particular. This is because a society lives by following the applicable legal norms. Therefore, the existence of legal norms can work effectively if the judicial institution plays an active role in it. Thus, it can be said that the existence of a judicial institution is a very substantial matter in the implementation and enforcement of legal rule (Marzuki 2020).

The activity of deciding matters between humans has occurred at the age of humans themselves. The Qur'an records how the prophets as messengers were the breaker of cases between them. As mentioned in Q.S Shad verse 26, Allah SWT ordered Prophet Daud A.S to be fair in deciding a case (Aden Rosadi 2018).

In Islamic history, in addition to carrying out the mission of prophetic treatises, the Prophet Muhammad SAW has also instilled and laid down basic principles in deciding cases, such as the principle of justice, the principle of equality before the law, and so on. This is certainly in order to realize order and benefit, which is a reflection of the supremacy of law in Islam. Therefore, it is necessary to participate in the existence of judicial institutions/qadha (Madzkur 1964). After Prophet Muhammad SAW delivered his treatise, he also acted as a judge. Thus, it can be said that the role of the first judge in Islamic justice system was the Prophet himself (Teungku Muhammad Hasbi Ash Shiddieqy 1997).

During the time of Khulafaur Rashidin, the judiciary was relatively small claim. The judge at that time did not have a clerk of the court and court decisions could not be recorded (codified). Every issued decision is directly implemented by the judge. Detailed rules, the way to submit complaints, and the division of labor to be carried out at a later date were not needed at that time. The judicial authority (competence) of judges during the Khulafaur Rasyidin period was generally limited to civil cases. While those relating to criminal cases (*hudūd* and *ta'zīr*) are carried out by the caliph or sultan (guardian of Allah) (Rosadi 2015).

During the Umayyad period, court decisions began to be recorded, so that they could be easily referenced in the event of an error. The conditions for becoming a judge and where the court was determined, and the justice for injustice (*qadha al-madzhlim*) was introduced. At that time, the

qadhi-qadhi was limited in authority, namely only deciding cases in specific matters. Meanwhile, those entitled to carry out the decision were the caliph or his representatives with instructions from the caliph. Qadhi decisions are not influenced by personal matters, so that their decisions are truly authoritative. The judiciary during the Umayyad period was independent. The rulers did not interfere in the affairs of the judiciary, and the judiciary was free to decide fairly. The caliph only oversaw the decisions they issued. In addition, there was a threat of dismissal for anyone who committed fraud (Djalil 2012)

During the Abbasid era, the form and process of justice, or judicial formal law began to be developed; as well as the types of justice. At this time, it was also known as the Supreme Judge (Qadhi al-Qudha) or Group Judge (Qadhi al-Jama'ah) who was relatively similar to the judicial power of the present. Another characteristic of this period was that the judges did not carry out much *ijtihad* and tended to follow the existing schools of *fiqh*. In this context, the courts in Iraq decided cases based on the Abu Hanifa school; Syria and Maghrib based on the Maliki school; and Egypt based on the Shafi'i school (Ibn Khaldun n.d.).

In the following period, the form of justice grew and varied. Ibn Hasan al-Nabahi described the form of justice in Andalusia in the eighth century Hijriah. He stated that the judges (*al-hukkam*) who decided cases consisted of *al-qudhat* (qadhi, judges), *al-syurthah al-wusta* (major police), *al-syurthah al-sughra* (minor police), *shahih al-mazhalim* (officials on injustice), *shahib al-radd* (offices of rebuttal, appeals), *shahih al-madinah* (city officials), and *shahih al-suq* (market officials, business transaction issues) (Aden Rosadi 2018).

Based on this information, a common thread can be drawn that Islamic law does not determine the organizational framework of the judiciary. It only lays down general rules, basic principles, and the pure purpose of justice. The issue of limiting authority, place, or time for the participation of other judges, besides the main judge and others, is left to the customs and needs of the community, provided that all of them must comply with the legal provisions of Islamic law.

Historically, Abdul Manan detailed the role and duties of judges (the area of qadha's power) in Islamic courts that having the following jurisdictions (Abdul Manan 2016): (1) *Al-ikhtishash al-Naw* (competence related to the type of case). Judges decide cases in accordance with certain competencies, for example special civil cases concerning family law, special civil laws concerning economic law, and so on; (2) *Al-Ikhtishash al-Miqdar al-Mu'ayyan* (competence of a certain size), for example, judges for cases of at least 200 dirhams and 20 dinars; (3) *Al-Ikhtishash bi al-Qadhiyyah al-Mu'ayyan* (competence with a certain case only); (4) *Al-Istitsna ba'da al-Waqi' wa al-Hawadits* (judges who adjudicate all types of cases other than the excluded ones); (5) *Al-Ikhtishash al-Makani* (judges with competence in certain places, for example in a certain city or area); (6) *Al-ikhtishash al-Qadhi bi al-Zaman al-Mu'ayyan* (judges with competence to judge in a certain day or month); (7) *Al-Ikhtishash al-Qudhat 'inda Ta'addudihim* (several judges are appointed in one place); (8) *Al-Ikhtishash al-Qadhi bi al-Mazahib al-Mu'ayyan* (judges who adjudicate cases based on certain schools of thought).

Based on the information above, it can be seen that there is relevance between a small claim court and the concept of justice in Islam. There are at least three relevancies between those two. First, based on the aspect of similarities in authority/competence. In a small claim court, according to Supreme Court Regulation Number 2 Year 2015, it is explained that the settlement of cases with a small claim court can only be used for cases of breach of contract and/or unlawful acts. This is within the scope of civil law. In the Islamic judicial system, there is the jurisdiction of *Al-ikhtishash al-Naw* (competence related to the type of case).

Second, based on the aspect related to the nominal number of cases, according to Supreme Court Regulation Number 2 Year 2015 as amended to Supreme Court Regulation Number 4 Year 2019, it is explained that the material value of the lawsuit is a maximum of Rp. 500,000,000.00 (five hundred million rupiahs). In the Islamic justice system, there is the jurisdiction of *Al-Ikhtishash al-Miqdar al-Mu'ayyan* (competence of a certain size).

Third, based on the philosophical basis of regulation formation, it is to realize that the administration of justice is carried out on the principle of simple, fast, and low cost, to open wide access for the community in obtaining justice. This has relevance in the Islamic judicial system that one of the principles in the Islamic judicial system is the principle of justice (*al-mabda al-'adalah*).

The relevance of the concept of small claim court regulated in Supreme Court Regulation Number 4 Year 2019 with the Islamic judicial system is described in Table 2:

Table 2
The Relevance of Small Claim Court Concept in Supreme Court Regulation Number 4 Year 2019 with Islamic Justice System

Types/Aspects	Small Claim Court Concept	Islamic Justice System
Authority/Competence	In a small claim court based on Supreme Court Regulation Number 2 Year 2015, it is explained that the settlement of cases with a small claim court can only be used for cases of breach of court and/or unlawful acts. This is within the scope of civil law. Thus, a small claim court is only in the scope of a civil case.	In Islamic judicial system, there is a jurisdiction called <i>al-Iktishash al-Naw</i> . The meaning of this concept is that a judge/ <i>qadhi</i> is only allowed to settle and decide certain cases according to the type of case, for example special civil matters concerning family law, economic law, and so on. In such circumstances, a judge appointed to complete a predetermined field is not justified in deciding cases other than those that have been determined. This means that this jurisdiction is related to the area of competence/ authority.
Nominal Number of Cases	According to Supreme Court Regulation Number 4 Year 2019 concerning Amendments to Supreme Court Regulation Number 2 Year 2015 concerning Small Claim Court Settlement Procedures, it is stated that the small claim court settlement is a step or method for the judiciary to examine cases in a small claim way and prove it in a small claim way by the provision that the material value of the lawsuit is a maximum of Rp. 500,000,000.00 (five hundred million rupiahs).	In the Islamic justice system, there is a <i>qadha</i> jurisdiction called <i>al-Iktishash bi al-Miqdar al-Mu'ayyan</i> . The jurisdiction of this concept is that a judge/ <i>qadhi</i> is only allowed to examine and hear cases that have a value below 200 dirhams and 20 dinars or a predetermined nominal limit. If the judge decides on a case exceeding the predetermined level, the decision will be canceled automatically.
Philosophical Basis	The formation of Supreme Court Regulation is philosophically to realize that the administration of justice is carried out with the principle of small claim, fast, and low cost to open wide access for the public in obtaining justice.	One of the principles of law enforcement in Islamic justice system is the principle of justice or commonly referred to as <i>maba al-'adalah</i> . This principle is based on the <i>Qur'an</i> , including Q.S an-Nisa (4): 58; Q.S al-Maidah (5): 8, the hadith of the Prophet, and the <i>fi'iyah</i> (deeds) of Muhammad SAW who set the law fairly.

Based on Table 2 above, the provisions of a small claim court contained in the Supreme Court Regulation Number 4 Year 2019 concerning Amendments to Supreme Court Regulation Number 2 Year 2015 concerning Procedures for Small Claim Court Settlement with Islamic judicial system have relevance, in terms of aspects/types of competence, nominal value matters, and philosophical basis. Even though at the implementation level, the execution process is not in accordance with the principles of justice, honesty, and the time of examination, that is not in accordance with Supreme Court Regulation Number 4 Year 2016.

Conclusions

Based on the description and analysis above, the conclusion can be drawn in at least two points. First, the implementation of a small claim court in sharia economic dispute settlement in the Religious Courts still has processes that are contrary to sharia economic principles, including the execution process, which is still not in accordance with the principles of justice and honesty and the time for

examination exceeding 25 (twenty five) working days which is not in accordance with Supreme Court Regulation Number 4 Year 2016. Therefore, it is contrary to the principle of justice and the principle of responsibility. Second, in terms of conception, there seems to be relevance between the concept of a small claim court contained in Supreme Court Regulation Number 4 Year 2019 and Islamic judicial system, namely the similarities in the aspect of authority, the nominal aspect of cases, and the philosophical basis.

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