

The Role and Application of 'Urf as a Source of Islamic Law: A Historical Review and Fiqhiyah Rules

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Abstract

Urf or community customs have an important role in the development of Islamic law. As one of the sources of law, 'urf is recognized in fiqhiyah rules as long as it does not contradict the shar'i nash. This research aims to analyze the role and application of 'urf in Islamic law with a historical approach and examine the fiqhiyah rules related to its use. This research uses a qualitative approach with a literature study method. Data were collected from primary and secondary sources, such as classical fiqh books, academic journals, and Islamic legal literature. The analysis is done descriptively-critically to understand the historical development of 'urf and its relevance in fiqhiyah rules. The results show that 'urf has a significant role in the development of Islamic law, especially in the context of legal adaptation to social and cultural changes. Historically, 'urf has been used by scholars as a basis in determining laws that are relevant to the context of society, as long as they do not conflict with the principles of sharia. Fiqhiyah rules such as al-'ādah muhakkamah (customs can be made into law) and Al-maslahah al-mursalah (interests that are not mentioned by the nash) become the main basis for applying 'urf. This finding confirms that 'urf can be a valid source of Islamic law as long as it meets certain criteria, such as not contradicting shar'i arguments and being common in society. Understanding 'urf is also important in the context of fatwa and contemporary Islamic legal policy. 'Urf acts as a dynamic instrument in Islamic law that allows flexibility in the application of sharia in accordance with social reality. This study contributes to understanding how Islamic law can remain relevant by considering the customs of society that do not contradict the principles of sharia.

Keywords: *Urf; Source of Islamic Law; Historical Review; Fiqh Rules; Islamic Law.*

Abstrak

Urf atau kebiasaan masyarakat memiliki peran penting dalam pengembangan hukum Islam. Sebagai salah satu sumber hukum, 'urf diakui dalam kaidah fiqhiyah selama tidak bertentangan dengan nash syar'i. Penelitian ini bertujuan untuk menganalisis peran dan penerapan 'urf dalam hukum Islam dengan pendekatan historis serta mengkaji kaidah fiqhiyah yang berkaitan dengan penggunaannya. Penelitian ini menggunakan pendekatan kualitatif dengan metode studi literatur. Data dikumpulkan dari sumber primer dan sekunder, seperti kitab fiqh klasik, jurnal akademik, dan literatur hukum Islam. Analisis dilakukan secara deskriptif-kritis untuk memahami perkembangan historis 'urf dan relevansinya dalam kaidah fiqhiyah. Hasil penelitian menunjukkan bahwa 'urf memiliki peran signifikan dalam pengembangan hukum Islam, terutama dalam konteks adaptasi hukum terhadap perubahan sosial dan budaya. Secara historis, 'urf telah digunakan oleh para ulama sebagai dasar dalam menetapkan hukum yang relevan dengan konteks masyarakat, selama tidak bertentangan dengan prinsip-prinsip syariah. Kaidah-kaidah fiqhiyah seperti al-'ādah muhakkamah (adat kebiasaan dapat dijadikan hukum) dan Al-maslahah al-mursalah (kepentingan yang tidak disebutkan oleh nash) menjadi landasan utama dalam penerapan 'urf. Temuan ini menegaskan bahwa 'urf dapat menjadi sumber hukum Islam yang sah selama memenuhi kriteria tertentu, seperti tidak bertentangan dengan dalil syar'i dan bersifat umum dalam masyarakat. Pemahaman terhadap 'urf juga



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penting dalam konteks fatwa dan kebijakan hukum Islam kontemporer. 'Urf berperan sebagai instrumen dinamis dalam hukum Islam yang memungkinkan fleksibilitas dalam penerapan syariat sesuai dengan realitas sosial. Studi ini memberikan kontribusi dalam memahami bagaimana hukum Islam dapat tetap relevan dengan mempertimbangkan kebiasaan masyarakat yang tidak bertentangan dengan prinsip syariah.

Kata Kunci: Urf; Sumber Hukum Islam; Tinjauan Historis; Kaidah Fiqhiyah; Hukum Islam.

INTRODUCTION

In the study of Islamic law, legal sources have a crucial role in determining the validity and legitimacy of a provision taken to be applied in society. The Qur'an and Sunnah are the main sources of law in Islam, while Ijma' and Qiyas are complementary in the determination of law.¹ However, in addition to these four sources, there is the concept of 'urf which also has a significant role in the formation of Islamic law, especially in the social and cultural aspects that continue to develop.² 'Urf or the custom of society is an aspect that has been known since the classical era in Islamic fiqh and is recognized as one of the secondary sources of law that can be used in determining the law as long as it does not contradict the principles of sharia.³

Along with the times, Muslim society faces various social and cultural changes that give rise to new legal problems. In this case, the application of 'urf becomes relevant in providing solutions that suit the needs of society without overriding the basic principles of Islamic law.⁴ Therefore, understanding the role and application of 'urf as a source of Islamic law is very important in bridging the gap between the provisions of Islamic law and the changing reality of life.

The concept of 'urf has received attention from classical to contemporary scholars. Fiqh scholars from various schools recognize the existence of 'urf as the basis of law, albeit with various limitations and certain conditions.⁵ In general, 'urf is categorized into 'urf sahih (customs that are not contrary to the Shari'a) and 'urf fasid (customs that are contrary to the Shari'a). Only 'urf saheeh can be accepted as a source of law, while 'urf fasid must be rejected. In practice, 'urf is often used in determining laws in the field of

¹ Muannif Ridwan, M. Hasbi Umar, and Abdul Ghafar, "SUMBER-SUMBER HUKUM ISLAM DAN IMPLEMENTASINYA," *Borneo : Journal of Islamic Studies* 1, no. 2 (April 16, 2021): 28–41, <https://doi.org/10.37567/borneo.v1i2.404>.

² A Wahyudin and D Fithoroini, "KONSEP ISLAM TENTANG ADAT: TELA'AH 'URF SEBAGAI SUMBER HUKUM ISLAM DI INDONESIA," *Justicia Religia*, 2023; Faiz Zainuddin, "KONSEP ISLAM TENTANG ADAT: Telaah Adat Dan 'Urf Sebagai Sumber Hukum Islam," *LISAN AL-HAL: Jurnal Pengembangan Pemikiran Dan Kebudayaan* 9, no. 2 (December 9, 2015): 379–96, <https://doi.org/10.35316/lisanalhal.v9i2.93>; Dar Nela Putri, "Konsep Urf Sebagai Sumber Hukum Dalam Islam," *El-Mashlahah* 10, no. 2 (December 30, 2020): 14–25, <https://doi.org/10.23971/maslahah.v10i2.1911>.

³ Sulfan Wandu, "Eksistensi 'Urf Dan Adat Kebiasaan Sebagai Dalil Fiqh," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 1 (2018).

⁴ Sucipto, "'Urf Sebagai Metode Dan Sumber Penemuan Hukum Islam," *Asas: Jurnal Hukum Dan Ekonomi Syariah* 7, no. 1 (2015).

⁵ Wahyudin and Fithoroini, "KONSEP ISLAM TENTANG ADAT: TELA'AH 'URF SEBAGAI SUMBER HUKUM ISLAM DI INDONESIA"; Fauzul Hanif Noor Athief, "Konsep 'Urf Sebagai Variabel Produk Hukum," *Suhuf* 31, no. 1 (2019); Galuh Nashrullah Kartika Mayangsari Rofam, "PENERAPAN KONSEP 'URF DALAM KITAB SABILAL MUHTADIN (Kajian Terhadap Pemikiran Muhammad Arsyad Al-Banjari)," *AL IQTISHADIIYAH JURNAL EKONOMI SYARIAH DAN HUKUM EKONOMI SYARIAH* 4, no. 1 (December 7, 2018): 1, <https://doi.org/10.31602/iqt.v4i1.1594>; Zainuddin, "KONSEP ISLAM TENTANG ADAT: Telaah Adat Dan 'Urf Sebagai Sumber Hukum Islam"; Putri, "Konsep Urf Sebagai Sumber Hukum Dalam Islam."

muamalah, such as buying and selling, marriage, and other transactions that do not have explicit provisions in the nash.⁶

History shows that 'urf has an important role in the development of Islamic law. In the time of the Prophet, the law that was applied often took into account the customs of the Arab people as long as it did not contradict the Islamic law. After Islam expanded to various regions with different cultures, scholars became increasingly aware of the importance of considering 'urf in setting laws to be more in accordance with local conditions.⁷ This can be seen in the development of different schools of fiqh in various regions, where differences in 'urf are one of the factors that affect the diversity of opinions among scholars.

Fiqhiyah rules have an important role in determining the extent to which 'urf can be applied as a source of Islamic law. One of the rules that is closely related to the concept of 'urf is the rule of "*al-'adah muhakkamah*" which means that habits can be made into laws.⁸ This rule emphasizes that as long as a custom has been widely accepted and does not contradict the basic principles of Islam, it can be used as a basis for legal decision-making.

Despite its important role in Islamic law, the application of 'urf still faces various challenges, especially in an increasingly complex modern context. One of the main challenges is to determine clear limits in the application of 'urf so as not to contradict the nash that has been established in the Qur'an and the Sunnah. In addition, globalization and modernization have led to cultural mixing that can affect the applicability of 'urf in a society. In this situation, a deep understanding of the rules of fiqhiyah and a careful approach are needed in determining which customs are acceptable as a source of law.

By understanding how 'urf has played a role in the history of Islamic law and how the rules of fiqhiyah support its application, it is hoped that a more comprehensive insight can be obtained regarding the position of 'urf as one of the instruments of Islamic law. This will also help in answering various legal issues that arise in the midst of modern society that continues to undergo changes. Therefore, further study of the concept of 'urf from a historical perspective and the rules of fiqhiyah is a necessity that cannot be ignored

⁶ Athief, "Konsep 'Urf Sebagai Variabel Produk Hukum"; Fitra Rizal, "Penerapan 'Urf Sebagai Metode Dan Sumber Hukum Ekonomi Islam," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 1, no. 2 (December 16, 2019): 155–76, <https://doi.org/10.37680/almanhaj.v1i2.167>; Candra Ulfatun Nisa, Hari Sutra Disemadi, and Ani Purwanti, "Adat Kejawen Ngalor-Ngetan Sebagai Alasan Adhalnya Wali Ditinjau Dari Perspektif 'Urf Dalam Hukum Islam," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 1 (2020), <https://doi.org/10.24843/jmhu.2020.v09.i01.p11>; Sri Mawiyah and Afrian Raus, "TRADISI 'UANG SIRIAH' DALAM TIMBANG TANDO DI NAGARI LANGSAT KADAP KECAMATAN RAO SELATAN KABUPATEN PASAMAN DITINJAU DARI 'URF," *JISRAH: Jurnal Integrasi Ilmu Syariah* 1, no. 1 (January 7, 2021): 45, <https://doi.org/10.31958/jisrah.v1i1.2697>; Muh Fudhail Rahman, "Praktek Al-'Urf: Istinbat Hukum Dalam Transaksi Ekonomi Kontemporer," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 6, no. 4 (November 24, 2021): 416–32, <https://doi.org/10.15408/sjsbs.v5i4.23289>.

⁷ Abdur Rafik et al., "Ijtihad Sebagai Usaha Kontruksi Hukum Islam," *Jurnal Islamic Education* 1, no. 1 (2023); Wandī, "Eksistensi 'Urf Dan Adat Kebiasaan Sebagai Dalil Fiqh"; Muhammad Furqan and Syahrīal Syahrīal, "Kedudukan 'Urf Sebagai Sumber Hukum Dalam Mazhab Syāfi'ī," *Jurnal Al-Nadhair* 1, no. 2 (December 30, 2022): 68–118, <https://doi.org/10.61433/alnadhair.v1i2.9>.

⁸ Saiful Jazil, "Al-'Adah Muhakkamah: 'Adah Dan 'Uruf Sebagai Metode Istinbat Hukum Islam," *Prosiding Halaqah Nasional & Seminar Internaasional Pendidikan Islam Fakultas Tarbiyah Dan Keguruan UIN Sunan Ampel Surabaya*, 2018; Syafira Syafira and Ahyat Habibi, "The Inheritance of Property and the Position of Sons in Accordance with the Matrilineal System in the Minangkabau Indigenous People and Its Relationship with the Rules of Al-Adah Muhakkamah," *MANAZHIM* 5, no. 2 (August 1, 2023): 853–66, <https://doi.org/10.36088/manazhim.v5i2.3492>.

in the development of Islamic law that is adaptive and responsive to the social dynamics that occur.

RESEARCH METHODS

This study uses a descriptive qualitative approach⁹ with a library *research method*,¹⁰ with a type of historical normative research. A normative approach is used to analyze the concept of 'urf in the perspective of Islamic law based on primary sources such as the Qur'an, Hadith, Ijma', and Qiyas, as well as relevant fiqhiyah rules. Meanwhile, a historical approach is used to trace the application of 'urf in the development of Islamic law from the classical period to the contemporary era. The primary sources are obtained from classical and contemporary fiqh books that discuss 'urf and related fiqhiyah rules, such as Al-Muwafaqat by Ash-Syatibi, Al-Ihkam fi Tamyiz al-Fatawa 'an al-Ahkam by Ibn Daqiq al-'Id, as well as books from the Hanafi, Maliki, Shafi'i, and Hanbali schools. Meanwhile, secondary data is obtained from books, scientific journals, and research that discusses the role and application of 'urf in Islamic law, both in historical contexts and in the dynamics of contemporary law. In collecting data through several stages, including literature identification, data classification and finally critical analysis. After the data is collected and collected, data analysis is carried out using an analytical descriptive method with the stages of normative analysis, historical analysis and comparative analysis.

RESULTS AND DISCUSSION

The Basic Concept of 'Urf in Islamic Law

'Urf etymologically means "the good",¹¹ it also means repetition or repetition.¹² Custom is taken from *al-mua'awadah* which means to repeat.¹³ Meanwhile, in terms of terms, some ushul scholars give definitions of 'urf and adat with the same understanding, namely "something that has been known by the people and has become their tradition, either in the form of words, deeds or circumstances of abandonment" which is deeds, such as human mutual understanding in buying and selling without any *lafdhiah singat*.¹⁴

The same is true of the definitions formulated by Abi Hamid Muhammad ibn Muhammad al-Ghazali, Al-Jurjani, and 'Ali Haidar.¹⁵ Hasbi Ash-Shiddiqi, he also considers that 'urf and adat are the same, he defines it as adat (habit) which is a habit that has been known throughout society or is equally known by people and has become a habit that is favored by them, and applies in their lives, further according to him 'urf and adat are the same meaning even though they are different *mahfum*.¹⁶ And according to

⁹ Fauzi Fauzi, "Interpretive Research and Qualitative Approaches," *TAFSE: Journal of Qur'anic Studies* 4, no. 2 (April 29, 2022): 125, <https://doi.org/10.22373/tafse.v4i2.12483>; Stambol A Mappasere and Naila Suyuti, "Definition of Qualitative Approach Research," *Social Research Methods* 33 (2019).

¹⁰ Yusuf Abdhul, "Literature Studies: Definition, Purpose and Methods - Deepublish Store," *Deepublish*, 2021; Poppy Yaniawati, "Literature Studies Research," *Liberary Research*, no. April (2020).

¹¹ Nasrun Haroen, *Ushul Fiqh I*, Cet. II, (Jakarta: Logos Discourse of Science, 1997), p. 137.

¹² Mustafa az-Zarqa, *Al-Madkhal'ala al-Fiqh al-'Am*, Juz II, (Damsyik: Dar alFikr, 1968), hal. 833.

¹³ Teungku Muhammad Hasbi Ash Shidieqy, *Introduction to Islamic Law*, Cet. II, (Semarang: PT. Pustaka Rizki Putra, 2001), p. 226.

¹⁴ Abdul Wahhab Khallaf, *Ushul Fiqh Science*, Terj. Moh. Zuhri and Ahmad Qarib, (Semarang: Toha Putra Group, 1994), p. 123. See also Abdul Mujib, *Qaidah of Fiqh (al-Qowa'idul Fiqhiyyah)*, cet. I, (Jakarta: Kalam Mulia, 2001), p. 45.

¹⁵ Jaih Mubarak, *Rules of Fiqh; History and Basic Principles*, (Jakarta: PT. RajaGrafindo Persada, 2002), p. 153.

¹⁶ Teungku Muhammad Hasbi Ash Shidieqy, *Philosophy of Islamic Law*, Cet. II, (Semarang: PT. Pustaka Rizki Putra, 2001), p. 464. See also Teungku Muhammad Hasbi Ash Shidieqy, *Introduction to Law ...*, p. 226-227. See also Nourouzzaman Shiddiqie, *Indonesian Fiqh; The Initiator and Its Idea*, Cet. I, (Yogyakarta: Pustaka Siswa, 1997), p. 122.

Mukhtar Yahya and Fatchurrahman 'urf and customs, customs are things that have been habituated by the community and are carried out continuously both in the form of words and deeds.¹⁷

From the meaning described above, it can be concluded that 'urf is a habit or practice that has become part of people's lives and is considered reasonable and generally accepted. In addition, 'urf as something that has been known by society and is carried out consistently, either in the form of words, deeds, or actions, so that it becomes a kind of binding norm. 'Urf not only encompasses customs that are local in nature, but can also refer to a wider practice, as long as it meets certain conditions.

In Islamic law, 'urf is classified into three types, namely 'urf in terms of its object, 'urf in terms of its scope, and 'urf in terms of its validity from the view of sharia'. In terms of its object, 'urf is divided into two main categories, namely *al-'urf al-lafzhi* (customs related to expressions or use of words) and *al-'urf al-'amali* (customs related to the actions or practices of society).¹⁸ *Al-'urf al-lafzhi* refers to the habit of people in using a certain word or expression that is generally understood with a specific meaning in daily life, although linguistically the word has a broader meaning. For example, in some societies, the term "meat" is automatically understood as beef, even though linguistically the word "meat" includes all types of meat, including chicken, goat, or fish. If someone comes to the meat seller and only mentions that they want to buy "meat" without further specifications, then the seller will immediately give the beef, because the custom of the local people has specialized the use of the word "meat" for that type of meat.

Meanwhile, *al-'urf al-'amali* is a custom related to the actions or practices of the community in social life and in the aspect of muamalah (civil relations).¹⁹ In the context of social life, this 'urf includes daily habits that are not directly related to the rights of others, such as people's habits in setting certain working holidays, consuming special foods on special occasions, bathing the bride, sungkeman, muploadan, bowing down when passing in front of parents or young or wearing certain clothes in traditional and religious celebrations. As for the context of civil muamalah, this 'urf reflects the habit of the community in making contracts or transactions in a certain way that has become a general agreement and is accepted without the need for an explicit agreement. For example, in the practice of buying and selling, there is a custom that if a buyer buys a large and heavy item, such as a refrigerator or other household furniture, then the seller will deliver the item to the buyer's home without incurring additional charges. This habit is part of the transaction system that is understood by the local community, so it is considered part of an agreement that is not written in the sale and purchase contract.

In terms of scope, 'urf is divided into two main categories, namely *al-'urf al-'am* (general customs) and *al-'urf al-khash* (special customs). *Al-'urf al-'am* is a custom that applies widely throughout society and in various regions without being limited to a particular group.²⁰ Examples such as in customs in Indonesia or even in the Islamic world. For example, the habit of buying and selling in a *ta'ati* manner (giving to each other without reciting *ijab* and *qabul*), transactions by indent (*salam*), Eid homecoming, *halal*

¹⁷ Mukhtar Yahya and Fatchurrahman, *Fundamentals of Islamic Fiqh Law Development*, Cet. I, (Bandung: Al-Ma'arfi, 1986), p. 109.

¹⁸ Dedi Syarial and Hardivizon, "IMPLEMENTASI 'URF PADA KASUS CASH WAQF (Kajian Metodologi Hukum Islam)," *Al-Awqaf: Jurnal Wakaf Dan Ekonomi Islam* 11, no. 1 (2018).

¹⁹ Syarial and Hardivizon.

²⁰ Syarial and Hardivizon.

bi halal, and so on.²¹ This 'urf can be found in buying and selling transactions, such as in car trading, where all standard equipment such as keys, pliers, jacks, and spare tires are included in the selling price without the need for a separate contract or additional fees. Another commonly known example is the custom in the aviation industry, where the weight of luggage allowed for each airplane passenger is generally limited to twenty kilograms.

On the other hand, *al-'urf al-khash* is a custom that only applies in certain environments or in certain groups of people. This custom is not universal, but is only accepted by certain communities or regions as part of a common practice.²² For example, in the environment of merchants, there is a custom that allows consumers to return goods that have certain defects, but not for other defects. Another example of this 'urf is the determination of the warranty period on an item, which can differ from one region to another depending on the agreement that has become customary in that place.

In terms of its validity from the view of sharia, namely *al-'urf al-sahih* (lawful habits) and *al-'urf al-fasid* (corrupt habits). *Al-'urf al-sahih* is a habit that develops in society that does not contradict the provisions of the Shari'a, does not eliminate benefits, and does not bring harm to individuals or society. In other words, this custom cannot change the laws that have been set, such as legalizing what is haram or banning what is halal. An example of *al-'urf al-sahih* is the tradition during the engagement period where the man gives gifts to his future wife. This custom is accepted in Islam as long as it is not considered as a dowry that must be paid in marriage, but only as a form of respect and affection.²³

On the other hand, *al-'urf al-fasid* is a custom that is contrary to the shari'i postulates and basic principles in Islam. This custom contains prohibited elements, such as legalizing something haram or vice versa. One example of *al-'urf al-fasid* is the practice of usury in financial transactions, which is often found among merchants.²⁴ For example, a trader borrows ten million rupiah with the agreement that within one month, he must return eleven million rupiah, with a calculation of 10% interest. Although economically the additional 10% may be considered light by the borrower, but from an Islamic perspective, this transaction is still categorized as prohibited usury. In Islam, the exchange of goods or money of the same kind must be carried out in the same amount without any additional elements, except in a legal system of buying and selling. This practice is similar to that which occurred during the period of jahiliyah, known as *riba al-nasi'ah*, which is *riba* that arises due to the delay in debt payments with additional interest. Therefore, the scholars of ushul fiqh stipulate that this kind of practice falls under the category of *al-'urf al-fasid* and cannot be used as a valid legal basis in Islam.

²¹ H. Abdul Helim, *Fiqh Rules: History, Concepts, and Implementation* (Yogyakarta: Pustaka Siswa, 2024), 161.

²² Syarial and Hardivizon, "IMPLEMENTATION OF 'URF IN THE CASE OF CASH WAQF (Study of Islamic Law Methodology)."

²³ Wahyudin and Fithoroini, "ISLAMIC CONCEPT OF CUSTOMS: TELAAH'URF AS A SOURCE OF ISLAMIC LAW IN INDONESIA"; Putri, "The Concept of Urf as a Source of Law in Islam"; Agus Moh Najib, "Reestablishing Indonesian Madhhab: 'Urf and the Contribution of Intellectualism," *Al-Jami'ah: Journal of Islamic Studies* 58, no. 1 (July 31, 2020): 171–208, <https://doi.org/10.14421/ajis.2020.581.171-208>.

²⁴ Wahyudin and Fithoroini, "ISLAMIC CONCEPT OF CUSTOMS: TELAAH'URF AS A SOURCE OF ISLAMIC LAW IN INDONESIA"; Putri, "The Concept of Urf as a Source of Law in Islam"; Najib, "Reestablishing Indonesian Madhhab: 'Urf and the Contribution of Intellectualism."

In addition, it is necessary to distinguish between 'urf and 'adat and tradition. Although the three often overlap, there are fundamental differences between them. 'Adat refers to customs that are more local and specific, while tradition usually includes practices that are passed down from generation to generation. 'Urf, on the other hand, places more emphasis on the aspect of general acceptance and recognition in society, as well as its relevance to the principles of sharia. In other words, not all 'adat or tradition can be considered 'urf, unless it meets certain criteria that are in accordance with Islamic law.²⁵

In order for an 'urf to be accepted in Islamic law, there are several criteria that must be met. First, the 'urf must be general and accepted by the majority of society, not just by a small group of people. Second, 'urf must not contradict the narration of the Qur'an or Hadith, as well as the basic principles of sharia such as justice, benefit, and avoidance of damage (*mafsadah*). Third, 'urf must be consistent and have lasted for a long time, so that it can be considered a binding norm. Fourth, 'urf must not contain harmful or destructive elements, either individually or socially.²⁶

In practice, 'urf is often used as a basis for establishing laws in cases that are not explicitly regulated by nash. For example, in matters of muamalah such as sale and purchase transactions, leases, or employment agreements, scholars often refer to the 'urf that applies in society to determine fair and appropriate provisions. This shows the flexibility of Islamic law in responding to social and cultural dynamics, without sacrificing the basic principles of sharia.

A Historical Review of 'Urf as the Source of Islamic Law

In the time of the Prophet, as the leader who established and fostered the laws, local traditions and customs ('urf) remained part of the life of the people and were not completely eliminated. On the contrary, many of these customs are adopted and maintained as long as they do not conflict with the basic principles of Islam. In Al-Dahlawi's view, Islam does not exist by carrying out a complete revolution against the 'urf that has taken root in the culture of the Arab society, but rather by selecting and harmonizing it with the teachings of Islam. Rejection of 'urf only occurs when a custom is contrary to the fundamental values that have been established in the shari'a.²⁷

²⁵ Wahyudin and Fithoroini, "ISLAMIC CONCEPT OF CUSTOMS: TELAAH'URF AS A SOURCE OF ISLAMIC LAW IN INDONESIA"; Muhammad Mahmud Nasution, "The Existence of 'Urf and Customs as a Evidence of Islamic Law Methods H. Muhammad Mahmud Nasution, Lc, MA," *Al-Mau'izhah* 8, no. 2 (2022); Lailita Fitriani et al., "The Existence and Blasphemy of Urf as a Source of Legal Istimbath," *Al-Hikmah* 7, no. 2 (January 4, 2022): 246, <https://doi.org/10.30651/ah.v7i2.8088>; Wand, "The Existence of 'Urf and Customs as a Proof of Fiqh"; Sucipto, "'Urf as a Method and Source of the Discovery of Islamic Law"; Ach Maimun, "Strengthening 'Urf in the Development of Islamic Law," *AL-IHKAM: Journal of Law & Social Institutions* 12, no. 1 (August 6, 2017): 22–41, <https://doi.org/10.19105/al-lhkam.v12i1.1188>; Furqan and Syahril, "The Position of 'Urf as a Source of Law in the Shafi'i School."

²⁶ Wahyudin and Fithoroini, "KONSEP ISLAM TENTANG ADAT: TELAAH'URF SEBAGAI SUMBER HUKUM ISLAM DI INDONESIA"; Nasution, "Eksistensi 'Urf Dan Adat Kebiasaan Sebagai Dalil Metode Hukum Islam H. Muhammad Mahmud Nasution, Lc, MA"; Fitriani et al., "Eksistensi Dan Kehujjahan Urf Sebagai Sumber Istimbath Hukum"; Wand, "Eksistensi 'Urf Dan Adat Kebiasaan Sebagai Dalil Fiqh"; Sucipto, "'Urf Sebagai Metode Dan Sumber Penemuan Hukum Islam"; Maimun, "Memperkuat 'Urf Dalam Pengembangan Hukum Islam"; Furqan and Syahril, "Kedudukan 'Urf Sebagai Sumber Hukum Dalam Mazhab Syāfi'i"; Sidanatul Janah, "Eksistensi 'Urf Sebagai Metode Dan Sumber Hukum Islam," *Al-Manar: Jurnal Agama Dan Pendidikan Islam* 1, no. 1 (2023); Rizal, "Penerapan 'Urf Sebagai Metode Dan Sumber Hukum Ekonomi Islam."

²⁷ Al Dhlawi, *Wali Allah, Hujjah al-Balighah*, Vol.1. Kairo: Dar al-Turas, 1185) hlm. 69-71.

For example, the qisas law that had been in effect in Arab society before the arrival of the Prophet emphasized more on the tribal factors and social status of the victim in its implementation. This practice of 'urf is substantially still accepted in Islam, but with modifications that emphasize the principles of balance and justice in its application.²⁸ Another example can be found in the tradition of dowry giving in marriage. Before Islam, this practice was based on the concept of buying and selling, in which the prospective husband acted as the "buyer" who gave a dowry as a form of payment to the father or male relative of the bride-to-be, who at the time was considered the owner of the rights to the woman to be married.

This concept implies that dowry is initially the right of the owner of the goods, not the right of the future wife. Nevertheless, the main essence of the 'urf tradition, namely the giving of dowry to the future wife, is still maintained as stipulated in the Qur'an. Islam then brought changes by affirming that dowry is fully the right of the future wife, thus giving greater recognition of the position of women in this aspect. This modification reflects how Islamic law perfects the 'urf tradition without eliminating its basic principles.²⁹

In addition to the endorsement of 'urf contained in the Qur'an, the Prophet Muhammad also played a role in legitimizing it through his authority as the bearer of Islamic treatises. One example that is often associated with the confirmation of 'urf by the Prophet is when he provided solutions to the problems faced by Hindus. In this event, the Prophet determined that the standard of proper and sufficient maintenance (*ma'ruf*) (*yakfi*)³⁰ could only be determined based on the prevailing customs in society at that time. This shows that 'urf is a reference in understanding and establishing a legal provision as long as it does not conflict with the principles of Islamic law.

The attitude of the Prophet in accommodating 'urf continued and was developed by the companions after his death. Along with the expansion of the area carried out by Khulafaur Rasyidin, interaction with various traditions and customs of the local community became a necessity. The caliphs did not rule out the possibility of accepting and adopting 'urf, as long as it did not contradict the provisions in the nash or the essence of Islamic teachings.³¹ One example is the implementation of the *diwan* system, a system of military administration and employees who came from the conquered territories and was later integrated into the Islamic system of government by Caliph Umar bin Khattab.³² In addition, the customs of pre-Islamic societies, such as the practice of renting and borrowing houses, land, and livestock, were also recognized and applied in Islamic law by Abu Bakr and Umar. Especially during the leadership of Umar bin Khattab, this custom was legalized as part of the legal system that applied to Muslims, especially the Arab community.³³

During the time of the Tabi'in generation, the expansion of Islamic territory had a significant influence on the acceptance of local customs or 'urf. They not only followed in the footsteps of the Companions and the Messenger of Allah in accommodating 'urf,

²⁸ Abd. Rauf, "Kedudukan Hukum Adat Dan Hukum Islam," *Tahkim* 9, no. 1 (2013).

²⁹ Fauziah, Konsep „Urf Pandangan Ulama Ushul Fiqh (Telaah Historis), *Jurnal Nurani* Volume 14 Nomor 2 Desember 2014, hlm. 15-26.

³⁰ Al-Bukhari, Abi Abdullah Muhammad Ibn Ismail, *Sahih al- Bukhari*, (t.k. : Dar al-Fikr, 1981) Jilid VII, hlm. 65.

³¹ Ahmad Hasan, *The Door of Ijtihad before it is closed*, ed., (Bandung: Pustaka, 1994), p. 199.

³² Ibn-Khaldun, *Muqaddimah*, (t.k.: Maktabah Tiajiyah, t.t.), p. 133.

³³ Al-Syaukani, Muhammad ibn Ali ibn Muhammad, *Nail alautar*, (Jakarta: Bumi AKSara, 1991), p. 35.

but also expanded the scope of its reception. This step was taken in response to the increasing diversity of customs encountered in various regions that have just entered the Islamic region.

In the era of the four Imams of the Sect, 'urf had a significant role in the formation of Islamic law, both for the founders of the sect and for its followers. The existence of 'urf in the process of legal legislation shows that Islamic law has a flexible nature in responding to various new problems (*nazilah*) that arise along with the development of society in areas that were previously not reached by the Companions. Therefore, further explanation is needed to adapt Islamic law to the ever-evolving social realities.³⁴

Like Al-Sarakhsi (d. 483 H), Abu Hanifah prioritized 'urf as the basis for determining the law rather than *qiyas*, if the prevailing customs in society can be used as a basis for legal *istinbat*. In fact, in the application of the concept of *istihsan*, Abu Hanifah uses 'urf as one of the main approaches in legal analysis.³⁵ One example is a policy that exempts farmers who experience crop failure. This legal decree was a form of adoption of the common practice of the Persian rulers in their tax system.³⁶

Al-Shaibani then formulated the concept of 'urf into five main principles in Islamic law, namely:³⁷ (a) The ruling of law based on 'urf has an equivalent position to the law derived from *nash*; (b) A custom can be used as a definite legal basis if there is no explicit provision in the *nash*; (c) The generality of meaning in *nash* can be limited by the 'urf that prevails in society; (d) 'Recognized *urf* (*adat muktabar*) has the authority to impose restrictions on general legal provisions; and (e) Knowledge acquired through 'urf has a level of validity equivalent to the conditions set forth in the *nash*.

The doctrine developed by Malik bin Anas (d. 179 H) emphasized the importance of the practice of the people of Medina as the basis of law.³⁸ This is supported by the scholars of Medina, who even made it a standard for accepting the Sunday *hadith*, thus showing the significant role of 'urf in Islamic law. In this context, al-Mahdi al-Wazani (d. 1342 H) explained that customs and 'urf are one of the main pillars in the sharia system according to Malik bin Anas and the majority of his followers.³⁹

This statement shows how important the role of 'urf is in the process of *istinbāt al-aḥkām* (the determination of law) when there is no legal provision of *qat'ī* in the *nash* or if it does not contradict the *shari'a* evidence. Both for Imam Mālik bin Anas personally and for the Mālikiyah school in general, 'urf has a significant position in the determination of the law. The existence of law is the main factor in determining the validity of an action or deed, so that the urgency of 'urf in solving legal problems can be equated with the importance of harmony in a practice. For example, Imam Mālik allowed Arab women of his time not to breastfeed their children, as a form of *takhsīṣ* (specialization) of the generality of the provisions contained in the Qur'an, precisely in Surah Al-Baqarah verse 233. In this case, the 'urf that developed in Arab society at that time was a factor that was

³⁴ Ibn-Khaldun, *Muqaddimah*, (t.k.: Maktabah Tijjiah, t.t.), p. 320.

³⁵ Al-Sarakhsyī, *Syām ad-Dīn, al-Mabsut*, (Cairo: Matba'ah al-Sa'adah, 1906-1912). p. 196.

³⁶ Al-Syalabi, Ahmad Mustofa, *Ushul Fiqh al-Islami*, (Beirut: dar an-Nahdah al-Misriyyah, 1986) p. 320.

³⁷ Fauziah, The Concept of "Urf the View of Ulama Ushul Fiqh (Historical Study), *Journal of Conscience* Volume 14 Number 2 December 2014, pp. 15-26.

³⁸ Mahmad Sani, Subhi, *Philosophy at-Tasyri al-Islam*, (Bairut: Dar al-Kassab li an-Nashyr wa al-Tiba'ah wa at-Tauzi, 1992) pp. 181-182.

³⁹ *Ibid*, p. 184.

taken into account in the practice, so that the applicable law followed the widely accepted custom in the community.⁴⁰

In the book *al-Risalah*, which is the main reference for the methodology of determining law in the Shafi'i madhhab, 'urf is not found as one of the postulates in the preparation of the law. However, the existence of the concepts of *qawl qadim* and *qawl jadid* shows that 'urf has an influence on the development of this school. In this regard, Ali Hasballah asserts that it is undeniable that the customs ('urf) and customs of the Egyptian people had a significant influence on the legal views of Imam al-Shafi'i.⁴¹

The existence of *qawl qadim* and *qawl jadid* in the Shafi'i school has an impact on the use of 'urf as a consideration in legal decision-making by Shafi'iyah scholars. Al-Mawardi (d. 450 AH) argues that in resolving a case,⁴² in addition to using ratio or reason, custom ('urf) must also be taken into account. Meanwhile, al-Suyuthi (d. 911 H) revealed that there are many problems in Islamic law that are solved by referring to 'urf, especially among the Shafi'iyah fuqaha. Some examples of the application of 'urf in Islamic law include those related to the early age of menstruation, the age limit of puberty, the minimum duration of menstruation, the postpartum period, and the holy period for women.⁴³ In this context, a person is categorized as a mukallaf, i.e. an individual who has been burdened with sharia law if he has experienced signs of maturity such as menstruation for women or ihtilam for men, which in most cases is determined based on local customs or 'urf that prevail in certain communities. Thus, 'urf acts as one of the foundations in determining whether a person already has a legal obligation in Islam or not.

In the Hanbali school, 'urf is also used as a reference in establishing the law. One of the leading scholars in this sect, Ibn Qudamah (d. 620 H), recognized 'urf as one of the foundations in making legal decisions. He argued that the standard of obligation to feed ten poor people should be adjusted to the 'urf that prevailed in the local community.⁴⁴ This approach is taken because the sharia does not explicitly determine the amount or quantity of food that must be given to the poor and needy. Therefore, the use of 'urf in this context aims to ensure that the provisions of the law remain relevant and can be applied in accordance with the social conditions of the local community.

Fiqhiyah Rules in the Application of 'Urf

'Urf and the rules of fiqhiyah have a close relationship because they both function to facilitate the application of Islamic law in daily life. 'Urf reflects the values, customs, and practices that have been accepted by society, while fiqhiyah rules provide a systematic framework for integrating 'urf into Islamic law.⁴⁵ Thus, 'urf becomes one of the elements considered in formulating the law, especially when the sacred texts (the Qur'an and Hadith) do not explicitly regulate a problem. The rules of fiqhiyah act as a bridge that connects the universal principles of Islam with diverse local realities.

⁴⁰ Al-Syalabi, Ahmad Mustofa, *Ushul Fiqh al-Islami*, (Beirut: dar an-Nahdah al-Misriyyah, 1986), p. 321.

⁴¹ Hasbullah, Ali, *UShul al-Tasyri'*, (Egypt: Dar al-Ma'arif, 1971), p. 312.

⁴² Mawardi, *Adab al-Qadai*, (Baghdad: Matba'ah al-Irsyad, 1971) volume I, pp. 135-136.

⁴³ Al-Suyuti, Jalal ad-Din Abd. Rahman ibn Abi Bakr, *al-Asbah wa an-Nazair fi al-Furu'*, (t.k.: Dar al-Firk, t.t.) hlm. 63-64.

⁴⁴ Ibn-AlQudama, Abu Muhammad Abd. Allah ibn-Ahmad ibnMuhammad (t.k.: Dar al- Manar, 1367) jilid VI, hlm. 133.

⁴⁵ Heri Mahfudhi and M. Kholis Arrosid, "TEORI ADAT DALAM QOWAID FIQHIYAH DAN PENERAPANYA DALAM HUKUM KELUARGA ISLAM," *Familia: Jurnal Hukum Keluarga* 2, no. 2 (December 31, 2021): 119–36, <https://doi.org/10.24239/familia.v2i2.28>.

There are several rules of *fiqhiyah* that are specifically related to 'urf. These rules are the basis for scholars in assessing and applying 'urf in Islamic law. But here the researcher only presents one rule.

Al-'Adah Muhakkamah" **الْعَادَةُ مُحَكَّمَةٌ** (Habits Can Become Law) This rule states that habits that have been widely accepted in society can be used as a legal basis. This principle recognizes that 'urf has the power to influence legal decisions, especially in matters that are not governed in detail by sacred texts.⁴⁶

The rules of *Al-'Adah Muhakkamah* are rules agreed upon by scholars in Islamic law. The following are some of the postulates or relations that are the basis for scholars in accepting the rules.

The Word of Allah in Surah An-Nisa" verse 19.

وَاعِشُوا لَهُنَّ بِالْمَعْرُوفِ

And associate with them (your wives) with ma'ruf.

From the explanation of the above verse, it can be understood that the ma'ruf commanded by Allah *Subhānahu wa Ta'āla* can be based on the customs or habits of the people in a certain era and environment. One of the evidences that supports this is the words of the Prophet *Ṣalla Allah 'Alayhi wa Sallam* to Hindun bint Utbah who complained about the lack of support from her husband:

Rasulullah *Ṣalla Allah 'Alayhi wa Sallam* Bersabda:

مَا رَأَى الْمُسْلِمُونَ حَسَنًا، فَهُوَ عِنْدَ اللَّهِ حَسَنٌ، وَمَا رَأَوْا سَيِّئًا فَهُوَ عِنْدَ اللَّهِ سَيِّئٌ

What is seen as good by Muslims is also good in the sight of Allah, and what is seen as bad by Muslims is also bad in the sight of Allah.⁴⁷

This hadith shows that something that is considered good by the Muslims and has become their custom, then it is in the sight of Allah *Subhānahu wa Ta'āla* is also good and can be practiced.

In addition, *Al-'Adah Muhakkamah* has its derivative branches of the *kidah*, one of which includes:⁴⁸

- a. The Rules of Habits of the General Public become an Argument

إِسْتِعْمَالُ النَّاسِ حُجَّةٌ يَجِبُ الْعَمَلُ بِهَا

"What people usually do is *hujjah* (reason/argument/postulate) that must be practiced".⁴⁹

⁴⁶ Saiful Jazil, "Al-'Adah Muhakkamah: 'Adah Dan 'Uruf Sebagai Metode Istinbat Hukum Islam"; Syaifira and Habibi, "The Inheritance of Property and the Position of Sons in Accordance with the Matrilineal System in the Minangkabau Indigenous People and Its Relationship with the Rules of Al-Adah Muhakkamah."

⁴⁷ Imam Ahmad and Ahmad bin Muhammad bin Hanbal Ash-Syaibani (2001) *AlMusnad*. Beirut: Muassasah Ar-Risalah, p. 84.

⁴⁸ H. Abdul Helim, *Fiqh Rules: History, Concepts, and Implementation* (Yogyakarta: Pustaka Siswa, 2024), 174.

⁴⁹ Ibrahim Muhammad Mahmud Al-Hariri, *Al-Madkhal Ila Al-Qawa'id Al-Fiqhiyah Al-Kulliyah* (Amman, Urdun, 1998), 111.

Examples of these rules are:⁵⁰

- 1) Tailors make clothes or other types of clothing. It is customary, 'urf or custom that threads, needles and others are provided by tailors.
 - 2) The custom in buying household furniture that the buyer's address is in the city is also the cost of transporting the furniture to the seller;
 - 3) There was a neighbor who gave food to the neighbor next door. The food is put in a container such as a plate or bowl or other container of value. Neighbors who receive the food are obliged to return the container because the community's habit is to only give food not with the container;
 - 4) What is the habit of the community in general can be used as a consideration and method to determine the legal status of a problem. This applies in general as long as it does not contradict syarak.
- b. The Customary Rules or 'Urf That Are Recognized Are Those That Are Continuously Carried Out

إِنَّمَا تُعْتَبَرُ الْعَادَةُ إِذَا اضْطَرَّتْ أَوْ غَلَبَتْ

"Customs that are considered (as legal considerations) are only customs that are continuously applicable or generally applicable"⁵¹

The meaning of this rule 'urf, custom or custom as a consideration in law enforcement must be 'urf that is consistent and commonly applied in society. 'The urf must have become an established and sustainable habit or have been widely recognized in society. Examples:⁵²

- 1) If there is a dispute between the parties involved in a business transaction, the court considers the common practices or customs in the industry. For example, if a consumer claim relates to the quality of a product, the court may be able to consider common practice in that industry to determine the expected quality standards.
- 2) In the case of divorce in a country, the court usually considers customs and customs common in society related to the division of common property, child custody, and other issues. For example, if a county has a custom of giving custody of children to a mother after a divorce, the court may consider that custom in deciding divorce cases.
- 3) In a criminal case, the court may consider common customs or practices in determining the punishment of the defendant. For example, if a criminal offense is related to an economic crime, the court may consider sanctions that are consistent with common practice in similar cases in the past.

⁵⁰ H. Abdul Helim, Kaidah-Kaidah Fiqh: Sejarah, Konsep, dan Implementasi (Yogyakarta: Pustaka Pelajar, 2024), 173.

⁵¹ Al-Hariri, 113.

⁵² H. Abdul Helim, Fiqh Rules: History, Concepts, and Implementation (Yogyakarta: Pustaka Siswa, 2024), 174.

c. The Customary Rules or 'Urf Recognized Are the Ones Well Known

الْعَبْرَةُ لِلْغَالِبِ الشَّائِعِ لَا لِلنَّادِرِ

"Recognized customs are those that generally occur that are known to humans, not those that are rare"⁵³

الْحُكْمُ إِنَّمَا يَجِبُ أَنْ يَكُونَ بِالْمُعْتَادِ لَا بِالنَّادِرِ

"The law should be based on what is common or what is common, not on what is rare"⁵⁴

The two rules above have the same intention that a habit must have been valid and known to the general public or most people already know about the habit. If it is only done occasionally or rarely in a society, it cannot be said to be a custom, 'urf or habit. Including habits in each household or carried out by individuals. This kind of thing is only known to them and does not apply to most of society. Thus customs within households or individuals do not include customs, 'urf or customs that can be used or generalized to the law in society in general, but it can be the law that applies to their household or also to their individual individual.

There are many things that can be used as examples for the above rules. For example, we can look back at the previous explanation of adat or 'urf seen from the object, especially in the discussion of customary or 'urf *fi'li*. One example is about reciting salawat together with a loud and rhythmic voice. Reading salawat with this version is well known by the public and even known by people who have different ideologies from it. Therefore, such a thing is nothing but called adat, 'urf or habit.

The Challenges and Relevance of 'Urf in the Modern Context

The social changes that have occurred in modern Muslim society have influenced the form and application of 'urf. 'Urf, which is traditionally understood as a widely accepted custom or custom in a society, is no longer static. Technological developments, urbanization, and changes in social structure have shifted values and practices that were previously considered 'urf. For example, in the context of the family, the 'urf that governs the relationship between husband and wife or parents and children has undergone a transformation as awareness of individual rights and gender equality has increased. These changes raise questions about the extent to which 'urf can remain relevant in regulating the increasingly complex lives of Muslim societies.⁵⁵

On the other hand, social dynamics also create new 'urf that needs to be accommodated within the framework of Islamic law. For example, modern economic practices such as digital transactions or Islamic investments have given rise to new 'urf

⁵³ Al-Hariri, 113.

⁵⁴ Muhammad bin Ahmad ibn Muhammad ibn Rusyd Al-Qurtubi, *Bidayah AlMujtahid Wa Nihayah Al-Muqtasid* (Amman, Jordan: Bait al-Afkar ad-Daulawiyah, 2007), 889.

⁵⁵ Darno Wijaya, Muhammad Irham, and Debi Setiawan, "Digital Book Kajian Ilmu Fiqh Al-'Adah Muhakkamah Berbasis Android," *JEKIN - Jurnal Teknik Informatika* 3, no. 1 (July 30, 2023): 8–24, <https://doi.org/10.58794/jekin.v3i1.484>.

that do not exist in the classical tradition.⁵⁶ This requires Islamic scholars and legal thinkers to reinterpret the concept of 'urf in order to respond to these changes without ignoring the basic principles of sharia.

Although 'urf is recognized as the source of Islamic law, its application has not gone unchallenged. One of the main criticisms is that 'urf is often considered too relative and subjective, thus potentially creating legal uncertainty. Critics argue that the 'urf that prevails in a society may not be in accordance with the values of the Shari'ah or even contrary to the universal principles of Islam. For example, in some societies, certain practices that are considered 'urf, such as gender discrimination or the practice of usury, are contrary to the teachings of Islam.⁵⁷

In addition, globalization has brought significant cultural influences on Muslim society, including in terms of 'urf. The increasingly intensive flow of information and intercultural interaction has shifted local values and introduced new practices that were previously unknown. This poses its own challenges for 'urf, as the values considered as local 'urf have to compete with global values that often come from Western culture.⁵⁸ For example, in the context of fashion and lifestyle, the local 'urf that governs how to dress or behave is often exposed to more liberal global cultural influences. On the one hand, this can be seen as a threat to Islamic cultural identity and values. However, on the other hand, globalization also opens up opportunities to create a new 'urf that is more inclusive and adaptive to the changing times. The challenge is how to ensure that the 'urf formed through the process of globalization remains in line with Islamic values.

Despite facing various challenges, 'urf has great potential in answering contemporary Islamic legal problems. The flexibility of 'urf allows it to respond to new issues that have not yet been explicitly addressed in nash. For example, in the context of bioethics, 'urf can be used to regulate medical practices such as organ transplantation or

⁵⁶ Noorwahidah Haisyi, "Examining the Application of Al-'Urf in Islamic Financial Contracts: Insights and Implications for Modern Banking Products," *At-Taradhi: Journal of Economic Studies* 14, no. 1 (July 21, 2023): 58, <https://doi.org/10.18592/at-taradhi.v14i1.10246>; Maim, "Strengthening 'Urf in the Development of Islamic Law"; Rauf, "The Position of Customary Law and Islamic Law."

⁵⁷ Hudzaifah Achmad et al., "Analisis Penjualan Dan Pembelian Emas Secara Kredit Berdasarkan Madzhab Islam Dan Pemikiran Islam Kontemporer: Studi Kasus Di Indonesia," *El-Iqtishod: Jurnal Ekonomi Syariah* 6, no. 2 (2022), <https://doi.org/10.70136/eliqtishod.v6i2.301>.

⁵⁸ NURDIN HIDAYAT, *UPAYA PELESTARIAN HUKUM ADAT (Al-Urf) DALAM PERDA NOMOR 03 TAHUN 2018 TENTANG PENGELOLAAN BUDAYA DAN KEARIFAN LOKAL MASYARAKAT KABUPATEN LAMPUNG UTARA, UPAYA PELESTARIAN HUKUM ADAT (Al-Urf) DALAM PERDA NOMOR 03 TAHUN 2018 TENTANG PENGELOLAAN BUDAYA DAN KEARIFAN LOKAL MASYARAKAT KABUPATEN LAMPUNG UTARA*, 2022; Muhamad Nurdin and Ratna Kusuma Dewi, "Islam Dan Tradisi Lokal Di Indonesia:," *ISLAMITSCH FAMILIERECHT JOURNAL* 4, no. 1 (2023), <https://doi.org/10.32923/ifj.v4i1.3955>; Santri Ayu, Materan Materan, and Muzayyin Ahyar, "Selimpat: Antara Tradisi Lokal Dan Normatifitas Islam Dalam Masyarakat Kutai," *PUSAKA* 10, no. 1 (July 5, 2022), <https://doi.org/10.31969/pusaka.v10i1.669>; Maimun, "Memperkuat 'Urf Dalam Pengembangan Hukum Islam"; Agung Setiawan, "Budaya Lokal Dalam Perspektif Agama: Legitimasi Hukum Adat ('Urf) Dalam Islam," *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin* 13, no. 2 (July 22, 2012): 203–22, <https://doi.org/10.14421/esensia.v13i2.738>; Syarial and Hardivizon, "IMPLEMENTASI 'URF PADA KASUS CASH WAQF (Kajian Metodologi Hukum Islam)"; Muhammad Azani, "The Development of Islamic Law in Indonesia Through Traditional Theory and Legal Changes," *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam* 6, no. 2 (December 30, 2021): 113–28, <https://doi.org/10.25217/jm.v6i2.1626>; La Jamaa, "Kontribusi Muhammadiyah Terhadap Dinamika Pemikiran Hukum Islam Kontemporer Di Indonesia," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 12, no. 1 (August 6, 2017): 127, <https://doi.org/10.19105/al-ihkam.v12i1.1215>; Maimun Maimun, "Islam Nusantara in Islamic Law Epistemology Perspective," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 11, no. 2 (January 2, 2017): 392, <https://doi.org/10.19105/al-ihkam.v11i2.779>.

IVF, which do not yet exist in the classical literature. By referring to the 'urf that is developing in contemporary medical and ethical societies, scholars can formulate relevant and contextual laws.

In addition, 'urf can also be a tool to reconcile Islamic law and pluralistic social realities. In Muslim societies living in Muslim minority countries, 'urf can be used to integrate Islamic values with local norms without creating conflict. For example, in the context of family law, 'urf can be used to accommodate local practices that do not conflict with Islamic principles, thus making it easier for Muslims to live in harmony in a pluralistic society. Overall, 'urf remains of strong relevance in the modern context, provided it is managed wisely and critically. By making optimal use of its potential, 'urf can be a bridge between tradition and modernity, as well as contribute to answering the increasingly complex problems of Islamic law.

CONCLUSION

The results of this study show that 'urf (customary customs) has an important role in Islamic law. 'Urf not only complements the main sources of law such as the Qur'an and Hadith, but also makes Islamic law more flexible and able to adapt to social and cultural changes. Historically, scholars have recognized that 'urf can be used as a legal basis as long as it does not contradict the principles of sharia. In the study of fiqhiyah rules, the concept of "*Al-'Adah Muhakkamah*" (customs can become laws) is the main foundation in the application of 'urf. In the modern context, 'Urf remains relevant as a tool for adapting Islamic law to social, economic, and cultural developments. For example, in the matter of muamalah (economic transactions), 'Urf is often used to determine practices that are fair and in accordance with the needs of the community. Although 'Urf is recognized, its application must meet certain criteria, such as not contradicting the nash (sacred text), being general (not only applicable to a small part of society), and not containing elements of disobedience or corruption. Overall, this study confirms that 'urf is an important part of Islamic law. By understanding and using 'urf wisely, Islamic law can remain alive, dynamic, and relevant in facing the challenges of the times. 'Urf ensures that sharia is not only a theory, but also an adaptive practice that is beneficial to society.

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