



***'Urf* and Its Role in The Development of Fiqh: Comparative Study of Family Law Between Egypt and Indonesia**

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Abstract

This research discusses the dynamics of changes in Islamic family law which is strongly influenced by *'urf* as a dynamic and elastic enrichment. The research question is how is the absorption of *'urf* in Egypt and Indonesia in fiqh, what are the rules for its application and contextualization in the development of Fiqh in Indonesia. Methodologically, this type of research is qualitative with documentation, interviews and observation as technical data collection. The data will be analyzed using the ushul fiqh and Sociological approaches. The results of the research are first, the absorption of *'urf* in Egypt and Indonesia is very strong, especially in the field of Islamic Family Law. In determining the dowry, each region has different customs and considerations, both in Indonesia and Egypt. The difference is in terms of joint assets, the wife in Egyptian *'urf* is guaranteed to have assets from three sources; grants, gifts from parents and husbands. Meanwhile in Indonesia, joint assets are considered based on their contribution to the family business after marriage, which varies greatly according to prevailing customs. This difference is considered absorbing *'urf* in Fiqh as one of the interpreters of *nass* are in the form of; *'urf* is dependent, dynamic, accommodates values and norms, contributes to the development of Fiqh and fulfills the elements of *maqasid sharia*. As a finding, in the Contextualization in the Development of Fiqh, *'urf* contributes to *tajdid* (renewal) which places more emphasis on *mutaghayyirat* of the family law. There is no change in Fiqh without a change in *'urf*.

Keywords: *'Urf*, role, development, fiqh, Egypt, Indonesia

Abstrak

Penelitian ini membahas tentang dinamika perubahan hukum keluarga dalam Islam yang sangat dipengaruhi oleh 'urf sebagai pengayaan yang dinamis dan elastis. Pertanyaan penelitiannya adalah bagaimana serapan 'urf di Mesir dan Indonesia dalam Fiqh, bagaimana kaidah penerapan dan kontekstualisasinya dalam pengembangan Fiqih di Indonesia. Secara metodologis, jenis penelitian ini adalah kualitatif dengan dokumentasi, wawancara dan observasi sebagai teknis pengumpulan datanya. Data tersebut akan dianalisis dengan menggunakan pendekatan Ushul Fiqh dan Sosiologis. Hasil penelitiannya adalah pertama, serapan 'urf di Mesir dan Indonesia sangat kuat khususnya dalam bidang Hukum Keluarga Islam. Dalam menentukan mahar, setiap daerah mempunyai adat dan pertimbangan yang berbeda-beda, baik di Indonesia maupun di Mesir. Sedamglam dalam hal harta bersama, istri dalam 'urf Mesir memperoleh hak harta dari tiga sumber; hibah, hadiah dari orang tua dan suami. Sedangkan di Indonesia, harta bersama dihitung berdasarkan kontribusinya terhadap usaha keluarga setelah menikah, yang sangat bervariasi menurut adat istiadat yang berlaku. Perbedaan ini dianggap menyerap 'urf dalam Fiqh sebagai salah satu penafsir nass berupa; 'urf bersifat dependen, dinamis, mengakomodasi nilai dan norma, berkontribusi terhadap pengembangan Fiqih dan memenuhi unsur *maqasid syariah*. Temuannya, dalam Kontekstualisasi Perkembangan Fiqih, 'urf berkontribusi pada tajdid (pembaruan) yang lebih menekankan pada mutaghayyirat hukum keluarga. Tidak ada perubahan fiqh tanpa adanya perubahan 'urf.

Kata Kunci: *Urf*, peran, perkembangan, fiqh, Mesir, Indonesia

Introduction

The dynamics of changes in Islamic law are greatly influenced by changes in time, place, circumstances and intentions¹. Local wisdom (read: 'urf is one of the important elements in determining this change. However, in fact, the wisdom that lives in Indonesian society has not been fully accommodated in Fiqh as a dynamic and elastic enrichment. Efforts in this direction are felt to be very urgent to place local wisdom as 'urf which is taken into consideration in al-fiqh al-Islāmi both theoretically and practically.

¹Azhar Azhar, "Islamic Law Reform in Indonesia from the Perspective of Maqāsid Al-Sharī'ah: Kerinci's Intellectual Views," *Samarah* 8, No. 2 (2024). Arif Sugitanata, "Product Renewal in the Field of Family Law in Indonesia," *Law and Justice* 6, No. 1 (2021).

References to 'urf have existed since the time of the Prophet when the level of Hindun livelihood is based on 'urf². In the traditions that live in Indonesia, such as in Aceh, a number of customs carried out by the community, related to worship, *muamalah* (interaction each other), *munakahat* (marrying) and *faraid* (dividing the wealth of the death for his/her descendant), have been practiced from generation to generation. These *adat*³ and *adat istiadat*⁴ mores accompany sharia activities that are not explicitly mentioned in classical books. If explored further, this custom becomes a guide so that the practice of jurisprudence can be carried out well. As a rule, *li al-wasail hukm al-maqasid*⁵ which can be freely interpreted means that *wasilah*⁶ (media) is part of a substantive element. Therefore, the role of the Traditional Council in Aceh occupies an urgent position in fostering and preserving good habits in society, as well as helping to instill Islamic values through socialization of customs⁷

In the researchers' initial study, some parts of 'urf in Indonesia and Egypt have become positive law and others are still practiced by society, but have not yet become binding law.⁸ *Harta bersama* (a term can be translated as joint property between husband and wife) is the result of joint efforts between husband and wife after the marriage contract, regardless of who works. If the husband works and the wife takes care of the children, then the assets obtained are considered joint assets. In Javanese society it is known as *harta gono gini*⁹, in Lampung it is called *massou jejomu*, in South Sulawesi it is known as *akkaresong*¹⁰, in Aceh it is called *harta sihareukat*¹¹. The issue of joint property is then regulated in Law Number 1 of 1974 article 35 (1) which states that property acquired during marriage becomes joint

² Fauziah, "Konsep 'urf dalam Pandangan Ulama Ushul Fiqh (Tela'ah Historis)", *Nurani* 14, No. 2 (2014), p.18

³ Qanun Number 9 of 2008. Article 1 point 11

⁴ Qanun Number 9 of 2008. Article 1 points 12 and 13

⁵ Salih ibn Muhammad ibn Hasan Alu 'Umayr al-Asmari al-Qahtani, *Majmu'ah al-Fawa'id al-Bahiyah 'ala Manzhumat al-Qawa'id al-Fiqhiyyah*, (Saudi: Dar al-Sumay'i, 2000), p. 80

⁶ Fithrotin, Khusnul Muttaqin, & Najihah Abd Wahid, The Concept of Wasilah In The Qur'an: Analysis Of Tafsir Maqāsidi's of Qs. Al-Mā'idah [5]: 35 And Qs. Al-Isrā' [17]: 57, *Mushaf: Jurnal Tafsir Berwawasan Keindonesiaan*, 4(1).

⁷ Syaibatul Hamdi, "Eksistensi Peran Majelis Adat Aceh dalam Mensosialisasikan Nilai-nilai Pendidikan Islam di Wilayah Barat-Selatan Aceh," *Ar-Raniry*, 5, No. 1 (2018).

⁸ Muhammad Mutawali, "The Dialectics of Customary Law and Islamic Law: An Experience from Dou Donggo Customs of Bima, Indonesia," *AHKAM* 21, No. 1, (2021), p. 56.

⁹ Hanifah Salma Muhammad: Analisis Yuridis Pembagian Harta Gono Gini Berdasarkan Kontribusi Suami Istri Selama Perkawinan, *Jurnal Restorasi Hukum* 5, No. 2 (2022).

¹⁰ Musa Aripin, "Eksistensi 'urf Dalam Kompilasi Hukum Islam", *Al-Maqasid*. 2, No. 1 (2016), p. 216.

¹¹ Ahmad Yani and Safriadi, "Konsep Harta Seuharekat (Suatu Kajian Normatif Antara Hukum Islam dan Undang-undang)," *Jurnal Syarah*, 8(1) 2019.

property and is regulated in Chapter VII which includes 3 articles.¹² Other customs related to economics that are practiced in Aceh include patah titi and local wisdom in resolving this problem¹³, *ḥaḍānah* and child care when husband and wife separate either due to divorce or death¹⁴, gala and local wisdom in the words of pawnshops¹⁵ and how people determine the dowry in local language is called *jeuname*¹⁶

If explored more deeply, the development of 'urf in Egypt and Indonesia is very dynamic. Because of this, the Islamic law practiced in these two countries incorporates much of the existing 'urf. Such developments are very significant in relation to family law.¹⁷ According to the researcher, this is a resources of fiqh that is worth researching and studying. This is because Urf is one of the most important fiqh considerations.¹⁸ This is a very strong reason for researcher to conduct research in these two countries; Egypt and Indonesia.

The absorption of 'urf in *muamalah* activities was specifically researched by Jaya Miharja with the title *Al- 'Urf rules in the Field of Muamalah*. 'Urf is an important reference element in 'reading' the dynamics of contemporary intercation. He stated that the fulfillment of the 'urf requirements, including that this typology of practices is already known among traders, applies as a condition between them, another note that the 'urf requirements apply if there is no text that explicitly explains this issue¹⁹.

Meanwhile, 'urf has not yet become a positive law, but is practiced in people's lives very differently both in Indonesia and in Egypt. In the Indonesian context, researchers provide several sampling practices in Aceh. In the field of worship, *hame* (a term in Acehnese society) means people walk at dusk when the call to prayer is performed except for doing the maghrib prayer²⁰. This then means

¹² Musa Aripin, "Eksistensi 'urf, p. 216

¹³Fauzi, "The Concept of Patah Titi: the Problem of Inheritance and Its Solution in Aceh Tengah," *Studia Islamika*, 26, No. 1 (2019).

¹⁴ Fauzi, "Shuwar al-Hadhānah ba 'da al-Thalāq fi Aceh al-Wusthā," *Studia Islamika*, 24(1). 2017.

¹⁵ Fauzi Saleh, "The Convergence of 'Ādat And Islamic Law: The Practice of Gala in Aceh," *Jurnal Miqot* 1, No. 44 (2020).

¹⁶ T. Hidayat, "Jeulame in Marriage in Banda Aceh: Looking for a Common Thread between Culture and Sharia," *Al-Risalah*, 20, No. 1 (2020), p. 115.

¹⁷ Akhmad Kamil Rizani and Ahmad Dakhoir, "Musyawarah Sebagai Alternatif Penyelesaian Sengketa Waris Beda Agama: Evidence Based Solution From Indonesia," *El-Mashlahah* 10, No. 2 (2020), p. 54.

¹⁸ Ibnu Elmi Achmad Slamet Pelu and Jefry Tarantang, "Fatwa Majelis Ulama Indonesia Sebagai Solusi Permasalahan Umat Islam di Indonesia," *Al-Manāhij: Jurnal Kajian Hukum Islam*, 14 No. 2 (2020), p. 310.

¹⁹ Jaya Miharja, "Kaidah-Kaidah Al-'urf Dalam Bidang Muamalah," *El-Hikam*, 4 (1), 2011, 103.

²⁰ Observation in Aceh Jaya society, 12-22 October 2023.

that this time is free for visiting or other activities. This initial survey was performed from research observers in the community to encourage the younger generation to deepen their knowledge of Islamic sciences, especially before and after sunset. In the field of *munakahah*, the practice of *cah rot uh*, *jak ba tanda* and the *meulake*²¹ event have become media for marriage stages. In it, *Adat* determines fines if a party breaks appointment that has been previously established. The seriousness of the marriage can be seen from the beginning of the process to further steps to support *mitsaqan ghalidha* (a strong bond)²².

The effort that must be undertaken in the future is to carry out a serious analysis of local wisdom to then see whether there is a possibility of enriching *sub-fiqh* in the fields of *muamalah*²³ (interaction each other), *iqtisadiyyah* (economy)²⁴, *munakahah* (marrying), *faraid* (distributing the death wealth to his/her descendant) and so on. The effort is expected to be able to construct Indonesian Fiqh that is relevant to legal principles, one of the supports of which is 'urf which lives in society. This analysis then allows for the absorption of 'urf *salih* into part of Fiqh. This is considered as one of the answers to society's problems which are increasingly being discussed in line with the passage of time, changing times and developments in knowledge and technology. This remembers that texts are limited while events are never limited. Indonesian Fiqh, which is encouraged by Hasbi As-Shiddiqie and Hazairin²⁵, is expected to be a role model in the development of fiqh globally. Far from that, al-Syafi'i shows that there is a change in Fiqh in the course of *ijtihadiyyah*, from *qawl qadim* to *qawl jadid*.²⁶

Among the expected results is to find *qawaid al-'ammah* (general rules) in analyzing the existing 'urf and modifying the rules to perfect aspects of *ushul fiqh* that have not been accommodated. Of course, the development of Usul cannot be separated from epistemological questions.²⁷ At this level, efforts towards using a more critical approach in discussing Islamic sciences²⁸ become a necessity, which

²¹ Observation in Aceh Jaya society, 12-22 October 2023.

²² Ali ibn Nayif al-Syahud, "al-Khulasah fi fiqh al-Aqalliyat", *Maktabah al-Syamilah*, Juz 9, 29.

²³ Suarni Suarni, "Muamalah dalam Islam: Memahami Konsep 'Ariyah dan Aplikasinya. *SINTHOP: Media Kajian Pendidikan, Agama, Sosial Dan Budaya* 2, No. 2 (2023), p. 135-145.

²⁴ Laily Nur Aini, et.al., "Economic valuation of Kampung Rawa tourism development by CVM approach in Bejalen Village, Semarang Regency," *Indonesian Journal of Islamic Economics Research* 4, No. 1 (2022).

²⁵ Ahmad Edwar, "Indonesian Jurisprudence: Islamic Law Transformation In Law System Of Indonesia", *Jurnal Kordinat*, 19, No. 2 (2020), p. 303.

²⁶ Khoirul Ahyar, *Qaulul Qadim wa Qaul Jadid Imam Syafi'I (Kemunculan dan Refleksinya di Indonesia)*, *Nizham* 4, No. 1 (2015), p. 122.

²⁷ Muhyar Fanani, *Ilmu Ushul Fiqh di Mata Filsafat Ilmu*, (Semarang: Walisongo Press, 2009), p. 21.

²⁸ M. Amin Abdullah, *Islamic Studiess di Perguruan Tinggi: Pendekatan Integratif Interkoneksi*, (Yogyakarta: Pustaka Pelajar, 2012), p. 27.

is supported by the existing environment.²⁹ This leads to the discovery of new theories or concepts. This endeavor is in accordance with the spirit of science: *al-muhafazat 'ala al-qadim al-salih wa al-akhzu bi al-jadid al-aslah*. In other words, existing rules can be used as a barometer to measure the relevance of 'urf as part of fiqh. Meanwhile, the new 'urf is present as a result of cultural assimilation, developments in knowledge and technology and there is no measuring tool. Here there needs to be an effort not only on how to analyze 'urf with existing barometer (read: *Usul Fiqh*), but also how to produce a relevant method for assessing new cases in people's lives.

Muhammad Syarif Hidayatullah emphasized the importance of efforts towards legal discovery. He is of the view that it is produced when there is 'illat as a link between the law for which the law has not been explicitly determined ('illat) and the law for which the law is directly stated (ashl). In the stage of application, there is a process of searching for *illat* called *masâlik al-'illat*. This is because there are *illat* mentioned in the text which are called '*illat mansusah* and there are also things which are not mentioned in the text which are called '*illat mustanbatah*.³⁰

How the process of strengthening and improving the status of 'urf is carried out by looking at ontological, epistemological and axiological aspects. Researcher will try to see how the 'urf then becomes part of fiqh law, while the epistemological aspect of researcher will emphasize the methodological aspect of how 'urf is one of the sources of law in fiqh with the elements it contains.³¹ Meanwhile, the axiological aspect sees the benefits of the process of strengthening local wisdom towards the needs of society which are increasingly dynamic in axiological terms to wrap this concept in a radiance of factuality³². It is hoped that this study will be useful for the development of fiqh in the future, especially in relation to the dynamics of social development, advances in science and technology. The developing cultural atmosphere and dynamics are then responded to with relevant fiqh because it is impossible for there to be a vacuum in the laws of *taklifi* and *wadh'i* in responding the problem of people's lives. This is in accordance with the definition of fiqh itself which touches on the practical aspects of human life.

²⁹ M. Ibnu Rochman, *Hukum Islam dalam Persepektif Filsafat*, (Yogyakarta: Philosophy Press, 2001), p. 61.

³⁰ Muhammad Syarif Hidayatullah, "Formulasi Rechtsvinding Dengan Penalaran Analogis Dalam Epistemologi Hukum Islam (Telaah Metodologis Qiyas Sebagai Ra'y Terhadap Mashâdir Al-Ahkâm Asy-Syar'iyah)", *Juris: Jurnal Ilmiah Syari'ah* 19, No. 2 (2020), p. 177

³¹ Elfia, et, al, "Distribution of Heritage Association of Harta Pusaka Tinggi And Harta Pusaka Rendahin Padang Pariaman," *Al-Ahkam: Jurnal Pemikiran Hukum Islam* 30, No. 1 (2020) p. 57.

³² Abd. Aziz Faiz, *Dasar-dasar dan Pokok Pikiran Sosiologi Agama*, (Yogyakarta: SUKA Press, 2021), p. 32.

Methodologically, this type of research is qualitative with documentation, interviews and observation as technical data collection. After reducing and grouping the data, the researcher interpreted and analyzed it using a *'urf* and sociological theory approach.

'Urf and its Application in Family Law in Egypt and Indonesia

Based on the available research that traced by the researcher, there has not been a specific study on the comparative development of Islamic law between Egypt and Indonesia which is based on local wisdom called *'urf*. In fact, it is important for jurisprudence experts in these two countries to complement each other to continue to explore the treasures of *'urf* in order to enrich the content and discourse of jurisprudence for now and in the future.

In relation to the relevance of the development of Islamic Family law, researcher will focus on the intersection of *'urf* with existing universal values and sharia principles. Some points in fiqh are interpreted according to the *'urf* at that time and will then change according to the changing times.³³ There are several examples in Fiqh where *'urf* has an influence on its practice; First, pre-marriage. In the field of *munakahah* (marrying, the *punjungan* tradition is a symbol of *walimatul 'urs* activities, as well as an invitation and prayer of blessing to the invited parties on the specified day and date³⁴ and researcher focus on the wealth they got after marrying. Sacred activities such as wedding parties usually have *muqaddimah* (preamble) activities. It describes the essence of an activity to be carried out. Some *'urf* such as *al-hinna*, relations the day before the contract. And several other negative *'urf* s. Including the *mughalla al-mahr* (the expensive dowry), there is *tawaqun* (cooperation) between two families to prepare for the marriage, including the implementation of *walimah* as sunnah³⁵.

According to Dr. Mursyid, research on *'urf* actually looks at the uniqueness of what is practiced in Indonesian and Egyptian society. This particularity becomes a distinction in a study. In relation to fiqh ahwal syakhsyiah, he said that Aceh gave birth to a number of customs which were practiced continuously. According to him, the easiest thing to see is in the practice of marriage. If it is referred to Fiqh, marriage is very simple. However, in community practice, the relationship between activities is modest from pre-wedding to the peak of activities, even after the *walimatul urs*. Even though the

³³ Zainal Azwar, et, al. Child Filiation and Its Implications on Maintenance and Inheritance Rights: A Comparative Study of Regulations and Judicial Practices in Indonesia, Malaysia, and Turkey, *Journal of Islamic Law* 5, No. 1 (2024), p. 67.

³⁴ Sri Wahyuningsih, Tradisi Punjungan Walimatul 'Urs Perspektif Hukum Islam (Studi Kasus Di Desa Sirau Kecamatan Kemranjen), *al-Wasith* 6, No. 1 (2021), p. 16.

³⁵ Interview with Dr. Ramadhan Sawi, Dean of Shariah and Qanun of Univesity Azhar in Egypt, December 13, 2023

hadits mentioned *awlim walaw bi al-syah* (make a kind of party event though slaughtering a lamb), it is possible to understand how simple a marriage ceremony is. However, in Acehese society, it is formulated in such a way that it is practical. The marriage is reflected as a meeting of two large families, the families of the future husband and the wife. So, *Al-'Adat muhakamah* according to him is one of the rules for describing the integration between Fiqh and custom. This very strong proof can be seen in the marriage process which does not only mean a limited relationship between two prospective husband and wife but is the interaction of two large families³⁶.

Second, the level, conditions and payment of the dowry. The amount of the dowry is according to the both parties' agreement. The dowry can be cash assets, it can also be *'aradhan* (goods). The man prepares some and the wife prepares others. It's possible to pay some and postpone others. There are also *'urf*, some paid in cash and some *ardh. Muqaddaman* (preliminary payment) can also be *ardhan* and some forms of *malan* (money), some are also gold. The person who divorces his wife before *dukhul* (sexual intercourse) pays ½ of the dowry³⁷. The case is if someone cancels the marriage, who owns the dowry? This means that the dowry must be paid when it's *dukhul* happened or *khalwah* occurs. *Dukhul* does not only mean biological relationship but includes closing the door together between husband and wife³⁸.

The level of dowry in prosperous areas is different from that in less prosperous ones. Dowry in that area is considered normal, maybe it is considered heavy in other. It's permissible based on the *'urf*. Likewise, if the society according to *'urf* listened the Qur'an before praying, then it is not called bid'ah. In this context, Zainal Abidin wrote about a book entitled *Nasyr 'urf fi na ba'dh ahkam fi fiqh al-Islam*. Including *'urf*, in a number of places, the husband leaves the wife's house, not vice versa. In Egypt, husband and wife collaborate to prepare a house together. The wife prepares electrical equipment, for example, while the husband prepares other essential things needed.³⁹

'Egyptian *'urf* and its practice in social interactions can be exemplified that *atsas al-manzil* (the interior of the house) in the life of a couple is considered the pure property of the wife according to the customs that have been in effect since the marriage activity was carried out. This *'urf* is considered as *al-'urf al-mukammil li al-tasyri'*. This category means that when a judge decides a case and

³⁶Interview with Prof. Dr. Mursyid Djawas, Academic, UIN Ar-Raniry Banda Aceh, October 26, 2023.

³⁷ Interview with Dr. Ramadhan Sawi, Dean of syariah and qanun of Univesity Azhar in Egypt, December 13, 2023.

³⁸ Interview with Syeikh Dr. Abdullah ibn Najjar, in Egypt, December 11, 2023.

³⁹ Interview with Dr Muhammad Izzuddin, in Egypt, December 17, 2023.

no nas can be referred explicitly, he refers to 'urf in the condition of *al-faragh al-tasyri'i*. The second category, *al-'urf al-mu'awin li al-tasyri'*.

The function of 'urf here is as *tahdid* (defining), *tafsil* (explaining) and *tafsir* (interpreting) problems that are continuously practiced in society. For example, statutory regulations are called customary to define the concept of attachment to goods sold, as the Civil Code states that "delivery includes equipment for the goods sold and everything that has been permanently prepared for the use of the goods, in accordance with what is required by the nature of the goods, the habits of the parties, and the intentions of the parties in the agreement. It also includes a provision that the tenant consisting rental repairs, namely simple repairs required by custom, such as possible defects in water and electricity connections and whitewashing work inside the apartment.⁴⁰

In Egypt, men pay a large amount of dowry in *sa'id* areas (in the highlands). For example, he pays 100 grams of gold, whatever the price. It is also required that a husband own a house, whether he builds it with a family friend or buys land outside and then builds a house there. While in the *wajhul bahri* (lowland) area, he paid a low amount, for example the payment was 100,000 LE, regardless of how much gold he got. They do not have to own their husband's house, even if he lives in a rented house, that is sufficient. There may also be violations of the 'urf in conditions, for example some families pay a loan. For example, if dowry amounted 100 grams, he can pay 10 grams of gold in advance, then if his wife dies or is divorced, he will pay the rest. It is like a debt and is taken from the family. If there is none, the heirs pay according to the share of the inheritance obtained.⁴¹

Third, the contract is canceled with serious consequences. The male (a candidate of husband) who gives the *muqaddam mahar* (preamble dowry), what are the consequences if he cancels the contact of marrying. If after getting married and canceling it, she is given a *mahar mitsil* (a dowry that is comparable to other women of her level) and is given as a *tamlik* after the contract. If there is no contract yet, the man cancels the marriage, so the woman cannot take anything from the dowry. According to Malikkiyyah, any gift given to the woman before the contract takes place is considered *hadayah* (a gift). In Egyptian 'urf, it is called *shabkah*. If a marriage occurs then it is considered a dowry. If a marriage has not yet been divorced, then the payment is half the dowry, whereas after *dhukhul* or *khalwah*, the dowry is paid in full. As for the position of the gift, it can be taken back if the wife cancels it. The dowry must be returned, while the *musthalikat*

⁴⁰<https://www.mohamah.net/law/%D8%A7%D9%84%D9%85%D8%B5%D8%B1%D9%8A/> diakses tanggal 11 Februari 2022.

⁴¹ Interview with Dr Muhammad Izzuddin, member of Darul Dar Ifta al-Misriyyah, December 17, 2023.

cannot be taken back. In Egypt, *syabakat lil makhthubat* (the gift belongs to the person being proposed to, woman) with several explanations.⁴²

In the Maliki school of thought, if something is given from the dowry, then nothing that has been given is taken away on the condition that the prospective husband's wife causes the cancellation. Regarding the cause of the cancellation, *tahqiq* (ascertaining the reasons) is required, this is how the judge decides. If *ghurri* occurs, the candidate for the women party tries to cover up the shortcomings of the candidate, so that the man cancels, then the *hadayah* becomes a feeling of being hurt for the condition.⁴³

Hanafiyah in matters of *zawaj* is like grant in the Hanafi school of thought. *Hadaya* and dowry are different. According to Malikiyah, what *hadaya* is *mustakhlik* (consumptive) and cannot be taken back, and here it will be observed who cancel the contract. If it is *rajul* (the man's side), then the *hadaya* is taken by the woman. If the woman does, she does not get the *hadaya* (the gift). Again, the loses will be measured based on *qimah* (price or value). This *hadaya* is relevant with the process of whether a contract occurs or not, when the contract does not occur, they take their rights. According to Hanbali, this matter is returned to the 'urf and observed who cancels it. Hanbali corresponds to Maliki. The dowry was returned to each of them.

In Egypt, the marriage process usually does not involve a direct contract, but only a sermon in the form of an agreement. The dowry is also returned to 'urf. All forms, that change is 'urf. For example, the call to prayer is *muthawwi'* (a kind of pure worship, not paid). That doesn't happen now, the muazzin decides and the incentives are paid. In this connection there is *tsawabit* (the something that does not change and there is *mutaghayyirat*, always changing. *Qabdh* (handover) in *muamalah*, used to be *yadan bi yadin*, now in a different way. For example, if a woman's father is a farmer, this woman later becomes a lecturer, is it appropriate to be given a *mahar mitsil* (dowry measured with the same level with her) as the standard for a farmer's child due to the economic, social and educational changes she has experienced⁴⁴ Another issue is women's rights after divorce. They need to get protection by paying attention to the dynamics of the life in which they live. This study was carried out in depth by Fadil et al. so that they get the rights they deserve⁴⁵.

⁴² Interview with Dr Muhammad Izzuddin, member of Darul Dar Ifta al-Misriyyah, December 17, 2023.

⁴³ Interview with Dr. Muhammad Izzuddin, member of Darul Dar Ifta al-Misriyyah, December 17, 2023.

⁴⁴ Interview with Syeikh Dr Mahmud Abdul Adhim, Dar Ifta al-Misriyyah, Egypt, 17 December 17, 2023.

⁴⁵ Fadil Fadil, et.al., "Fulfillment of Women's Rights After Divorce: Dynamics and Transformation in the Legal Journey," *De Jure* 16, No. 1 (2024), p. 3.

In Turkey, it is better known as legal reform with a tendency to apply European law and seal the system of secularism in its government system, especially in the era of Kemal Attaturk or known as Kemalism, although in the *tanzimat* era it was able to carry out canunization (*taqnîn*) in the form of promulgating the *majallât al-Ahkâm al-'Adliyyah* with specifications for the formalization of family law (*al-ahwâl al-syakhsiyyah*) which sociologically was a form of support from Turkish society at that time. Meanwhile, in Egypt it has more of a character, namely with a sharia reform agenda. However, there is quite a complicated struggle between secularism, religion and feminism, but Egypt is able to combine Western-secular law with Islamic law, especially in the field of family law⁴⁶. The practice of 'urf in marriage is the payment of the *muqaddam mahar* (pre-contract dowry). So, it is actually no problem, the most important thing is that there is *tauthiq* (written proof). But the problem now is that dowries are excessive when most people are in a middle-class condition.

Syahrizal said he analyzed several customary cases that were accommodated in Islamic law. He said that explaining that the principle of inheritance as a case raised in Islamic law and customary law as practiced in Aceh society proves that legal values and customary values play a very important role in their lives. The integration of customary law and Islamic law in Aceh is due to internal and external factors. Internal are factors inherent in the substance and material of customary inheritance law and Islamic law. Meanwhile, external factors are influenced by aspects of education, delivery of religious teachings and family relationships.⁴⁷

In relation to Urf, some people use it to legitimize this practice which is not relevant to sharia rules. The rule identifies which urfs are applied and which are not applied. This is termed Urf sahih and urf fasid. One of the studies that applied these two theories was carried out by Ali Abubakar et al by adding the theory of legal pluralism in the case of inheritance distribution in the Seunuddon Community of North Aceh.⁴⁸ The Urf study was also carried out by Misran Ramli et al in relation to minor dispute resolution. In their research, these researchers stated that urf (custom) is in line with Islamic legal values which encourage peace.⁴⁹

⁴⁶ Ahmad Zayyadi, "Reformasi Hukum di Turki dan Mesir: Tinjaun Historis Sosiologis", *Al-Mazahib*, 2(1), 2014, 172.

⁴⁷ Syahrizal, *Hukum Adat dan Hukum Islam di Indonesia: Refleksi terhadap Beberapa Integrasi Hukum dalam bidang Kewarisan di Aceh*, (Lhokseumawe: Nadia Foundation, 2004), p. 339-340.

⁴⁸ Ali Abubakar, et.al., "The Postponement of the Implementation of Inheritance Distribution in The Seunuddon Community, North Aceh in The Lens of 'Urf Theory and Legal Pluralism," *El Usrah* 6, No. 2 (2023), p. 7.

⁴⁹ Misran Ramli, et.al., "State, Custom, and Islamic Law in Aceh: Minor Dispute Resolution in the Perspective of Legal Pluralism, *Samarah* 8, No. 2 (2024).

The *Qaidah 'urf* in the Absorption of Fiqh in Egypt and Indonesia

When discussing this sub, the word "*Qaidah 'urf*" must be seen as a compound noun consisting of the words "*Qaidah*" and "*'urf*". *Qaidah* can be understood as a universal norm that can be applied to partial elements, or a universal rule to be addressed for the rules below it⁵⁰. In this sub-discussion, the researcher will explain how to conclude normative values regarding a *'urf* that is practiced in a society.

First, *'urf* is not independent, but integral to Islamic law and positive law. Prof. Nawir said that customs could be accommodated into positive law, *Qanun*, binding, *qadha al-qadhi*. Regarding joint assets in a marriage, whether it can be categorized as a *syirkah* such as *Syarikat al-Abdan* for example. The professor said that in a household, there is a male portion and a female portion which are naturally divided when a marriage contract is carried out. Some of these shares cannot be transferred to other parties. According to him, the concept of a household cannot be equated with company management. Therefore, the husband-and-wife package is one model that cannot be exchanged for one another at certain points.⁵¹

Bukhari, an academic at the Sharia Faculty of UIN Ar-Raniry, said that customary cases in Egypt certainly cannot be directly practiced and applied in Indonesia. This research should focus on relevant rules and indicators to measure what, where, when and how something can be implemented.⁵² Custom alone cannot be used as a basis unless it has received sharia legitimacy. Legitimacy is meant through the rules of fiqh and Ushul fiqh which make it possible to absorb existing habits in society.

Second, *'urf* is always dynamic. According to Prof. Salman Abdulmuthalib, dean of the Faculty of Ushuluddin and Philosophy at UIN Ar-Raniry, said that the rules for absorbing *'urf* are important considering that traditional cases that exist in one place may not necessarily be practiced in another place. However, the focus is more on considerations and relevant rules for whether a *'urf* practice is suitable or not. For example, women get a bigger share than men in cases of inheritance distribution. It is possible that the reason is that women are more active in work activities and take care of parental care. So, women can get houses and land, this is one form of implementation in society.⁵³

⁵⁰<https://www.alukah.net/sharia/0/141811>, Accessed, November 4, 2023.

⁵¹Interview with Prof. Dr. Nawir Yuslem, a Lecturer of State of Islamic University North Sumatera, October 30, 2023.

⁵² Interview with Dr. Bukhari Ali, a Lecturer of State of Islamic University Ar-Raniry, October 26, 2023.

⁵³Interview with Prof. Dr. Salman Abdul Muthalib, Dean of Ushuluddin and Philosophy Faculty State of Islamic University Ar-Raniry Banda Aceh, October 26, 2023.

'Urf in each region has traditions and customs that vary according to region and place.⁵⁴ Because the majority of society is Muslim, this tradition is given an Islamic nuance.⁵⁵ In Java, for example, the 4-month event (pregnancy age where the fetus is breathed by the soul), the descending from the ground event and so on. This kind of ceremonial custom is held as if it were a teaching that must be followed. In fact, according to Prof. Hamdani, there are efforts to seek justification from the Koran, hadith, ulama fatwas and so on. To see the context of *'urf* in a society, there needs to be information to see what practices the society implements, whether they are appropriated to gain legitimacy or not.⁵⁶ Therefore, to get answers in the context of activities in Egypt, for example, this research needs to have interviews with Darul Ifta, Majmu Fatawa Sharia lecturers and also students who are currently undertaking doctoral programs to strengthen understanding of *'urf* as practiced in Egyptian society.⁵⁷

Custom is an abundance of fiqh colors. Therefore, customs will be considered as local wealth and wisdom that needs to be maintained. In the context of Usul Fiqh (Islamic legal method), custom or *'urf* is a source of law or the study of custom is very important in order to enrich the legal dynamics that live in society. More than that, customs describe habits that are attached to social activities and interactions. Therefore, maintaining customs that meet the criteria illustrates that it is an effort to revive fiqh in society.

On the other hand, a *fatwa* then makes efforts to make it happen in society with several adjustments. There are also *nass* that inspire a custom. For example, a wedding party inspired by hadith; *awlim walaw bi syat* (do *walimah* even if it is a goat to be slaughtered). This minimum standard can be met by lower class people. This certainly does not prohibit *walimah* activities which may be a bit lively as long as they do not violate the universality of sharia values; *tabzir* (wasteful) and boast. This means that there are essential things that constitute the pillars of marriage, the rest are aspects of additional things that are adjusted to Sharia values. In fact, the dowry as one of the pillars of marriage is not recommended to be too large so that it burdens the prospective husband.⁵⁸

⁵⁴ Jumarim, et al, "The Interplay of Fiqh, Adat, and State Marriage Law: Shaping Legal Consciousness of Sasak Women," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial*, 19, No. 1 (2024), p. 29.

⁵⁵ Muflikhatul Khoiroh and Abd Syakur, "The flexibility of Islamic law in the Ganjur tradition in Lamongan, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, No. 2 (2023), p. 145.

⁵⁶ Interview with Prof. Dr. Hamdani Anwar, a Lecturer of State of Islamic University Syarif Hidayatullah Jakarta, October 30, 2023.

⁵⁷ Interview with Prof. Salman Abdul Muthalib, Dean of Ushuluddin and Philosophy Faculty State of Islamic University Ar-Raniry Banda Aceh, October 26, 2023.

⁵⁸ Interview with Prof. Hamdani Anwar, a Lecturer of State of Islamic University Syarif Hidayatullah Jakarta, October 30, 2023.

Third, 'urf accommodates existing values, norms and regulations. According to Ali Abubakar, a law refers to abstract universal values. This value is translated into the norm. These norms are then translated into more practical regulations. The values in question are intersected with rules and *qiyam* (principles). According to him, the ability to understand the noble value of a text is very urgent in order to be able to produce accommodative laws that are in line with *maqasid al-syariah*. He added that the law departs from a framework of general values and principles towards *dhawabith* (indicators) and practical rules.⁵⁹

Fourth, 'urf contributes to the reconstruction of Fiqh. Understanding universal values produces new *fiqh* through a deconstruction and then reconstruction approach. For example, the terms *bulugh*, *rusyd* and *nikah* are very relevant to be reinterpreted according to the real conditions in which the fiqh society lives, economy, production and intelligence. In an economic context, the Koran mentions *anastum min hum rusyd* as a condition for handing over assets to orphans. This is intended so that the assets left by their parents are put to good use for the benefit. Defining *rusyd* is very much tied to emotional and intellectual maturity in using these assets. Therefore, at what age can be included in the *rusyd* category it is up to the mujtahid to do so and one of the considerations is the 'urf or environment in which they live. Ali once again emphasized what aspects are dominant in interpreting *bagligh*, *nikah*, *rusyd*; whether spiritual, emotional or other. Regarding the role of 'urf, Ali gave the example that *walad* in Arabic 'urf used to be understood by boys, even though there was no text that indicated that. This shift tends towards understanding the context of society at that time. *Walad* is naturally both a boy and a girl. This last meaning is used in the Compilation of Islamic Law.⁶⁰

The above understanding is included in the category of expansion of meaning which is one of the *bayani* approaches in Usul Fiqh. More than that, *lafazh* has also been used as a new shift in meaning following the development of the times, knowledge and technology. Linguistic studies with the above meanings take into account that several terms in *Fiqh* are no longer known or their indicators have changed. The level of maturity in transactions is to some extent influenced by access to knowledge and cultural development. This needs to be seen to what extent the age is considered mature for transactions.

Fifth, 'urf encourages achieving *maqasid al-syari'ah*. *Maqasid* which is the goal set by sharia' is the benefit of servants⁶¹ and eliminating harm. Therefore,

⁵⁹Interview with Prof. Ali Abubakar, a Lecturer of State of Islamic University Ar-Raniry, October 26, 2023.

⁶⁰Interview with Prof. Ali Abubakar, a Lecturer of State of Islamic University Ar-Raniry, October 26, 2023.

⁶¹Ahmad Raisuni, Nazariyah, *al-Maqasid 'inda al-Imam Al-Syatibi*, (Beirut: Muassasah al-Jamiah, 1992), p. 15

these two considerations are the basis and basis for considering an action to what extent it can achieve benefits and at the same time avoid things that are dangerous and destroy human life. This means that thanks must be seen from two sides, it is not enough if it only achieves benefits but does not negate harm. The balance between these two things is important in measuring habits that live in society.

According to Prof. Nawir, understanding 'urf must be considered with *maqasid: Maslahah mu'tabarah, mursalahah and mulghah. Maslahah mu'tabarah* is understood using the *bayani* and *taklifi* approaches. Meanwhile, the case of *maslahah mursalah* is explored through an *istislahi* (public interest) approach. *Maslahah mulgha* can be understood as a benefit that must be canceled because it is not relevant to Islamic law, which is known as a reference in contrario. This means that customary law is enforced if it is in accordance with Islamic law. In this context, the problem that needs to be analyzed is that *maslahah mulghah* cannot be further developed because it is not relevant with sharia values.⁶²

The *urf* that is applied is always based on the aspects of *jalb manfa'ah* and *daf' al-madharrat*. According to Mayadina R. Musfiroh, the process of transforming Islamic values in the 'urf of existing society requires the functionalization of *Ushul Fiqh* in problem solving for existing cases in society and helps to solve methodological problems in order to find legal construction for developing phenomena. That is the substance of his notes in the research entitled 'urf and its Function as a Media for Cultural Accommodation in the Development of Islamic Law.⁶³

To achieve *maqasid*, there are three layers, *dharuriyyah, hajiyyah* and *tahsiniyyah*. Meanwhile, 'urf is more about the *hajiyyah* and *tahsiniyyah* aspects. It is like the process of marriage; pre-wedding and post-wedding events. Pre-marriage such as proposals, wearing *hinna* (decorating the bride) and others. On the other hand, custom cannot penetrate the *dharuriyyah* aspect when talking about men as *qawwam* (protectors) for women. This means that there are parts that cannot be transferred, such as livelihood issues. If a woman does this, it is considered an act of helping her husband's obligations.⁶⁴

Based on the description carried out by researcher, this shows that 'urf has a strong role in the existence of Fiqh. This means that it cannot be denied that fiqh collaborates with the contribution of 'urf. This is a good moment when fiqh is capable of existing habits. This indirectly provides a space for practice that is more effective and powerful and reaches people's lives. So far, Fiqh has been understood

⁶²Interview with Prof Nawir Yuslem, a Lecturer of State of Islamic University North Sumatera, October 30, 2023.

⁶³ Mayadina R. Musfiroh, "'Urf Dan Fungsinya Sebagai Media Akomodasi budaya Dalam Pengembangan Hukum Islam", *Isti'dal* 3, No. 2 (2016), p. 198.

⁶⁴Interview with Porf Nawir Yuslem, a Lecturer of State of Islamic University North Sumatera, October 30, 2023.

at an exclusive level by academics, experts, scientists, observers and so on. Meanwhile, in grass root (undercurrent) communities, they don't understand much, especially about customs. They carry out activities in collaboration with traditional stakeholders. They will explain the strengthening aspects of fiqh which are strengthened by traditional elements.

Contextualization of 'Urf in Family Law in Indonesia

The study of the dynamics of community practice is a space into the importance of 'urf in Indonesia and its influence on Islamic Fiqh including the Family Law. Many people don't know what 'urf is in the country the rights of *hadanah*. Maybe *hadanah* is good model according to one community with the father, in other with the mother. It may be that in a area where women has no a good attitude, is the mother still important become a *hadin* (caretaker)? 'urf is always oriented towards *akhzuu maslahan* and *daf' al-mafsadah*. In principle, 'urf does not conflict with sharia rules⁶⁵. In the context of the development of thought, even Islamic jurisprudence according to al-Qaradawi was quoted by Muh. Nashiruddin needs to refer to; first, *al-zhahiriyyah al-judud* (neo-literalism), second, *al-mu'attilah al-judud* (neo-liberalism), and third, *al-wasatiyyah* (moderate)⁶⁶

It should be emphasized that 'urf is based on *fiqh*. *Al-adat Muhakkamah* means the custom as reference of law. Then, humans practice 'urf in various ways. In worship, the time between the call to prayer and the *iqamah*, sometimes in some places takes longer, because people come from far away. Or vice versa, the time for delivering the sermon. The practice of 'urf in Muslim society is important. Other example, *Suyuti* informed that; If someone swears not to eat meat, then he eats fish, is that a sin? He said that the Koran does mention *lahman thariyya* (a fesh meat) for fish. Likewise, 'urf has a position in Imam Syafii's fiqh between *qadim and Jadid* (the old and the new fatwa). What is in Iraq is different from what is in Egypt 'urf, does not contradict with *nass*. Also, *dhihar* has existed since before Islam, after that Islam defines it basedon the 'urf.

Fiqh al-Islami refers to *murunah* (flexibility) which is referred to him in resolving various cases with differences in time and geography. Fiqh al-Islami has two sides, first, the limited side, *tsawabit* and the broad side, *mutaghayyirat*. On the *tsawabit* side, Islam determines the permanent aspects, prayer regarding the pillars, fasting, zakat and so on, marriage related to anything that determines the validity of the marriage, inheritance, distribution of sons twice to daughters, in the case of *qisas*, the crime of murder, robbery. These all included in *tsawabit* side. People do

⁶⁵Interview with Dr Muhammad Izzuddin, member of Darul Dar Ifta al-Misriyyah, Cairo, December 17, 2023.

⁶⁶Muh. Nashiruddin, "Fikih Moderat dan Visi Keilmuan Syari'ah di Era Global: (Konsep dan Implementasinya pada Fakultas Syari'ah IAIN Surakarta)," *Jurnal Hukum Diktum*, 14, No. 1 (2016), p. 35.

not say that usury is haram only for the poor. The Koran clearly states that it is haram, it does not differentiate between *madin* (people in debt) being poor or not. *Mutaghayyirat* is a flexible side that can change according to needs in the context of time and place. In the rules mentioned.

لا ينكر يتغير الحكم بعير الزمان والمكان

It cannot be denied that legal changes occur due to changes in time and place."

Mutaghayyir is something that syar'i determines something changes which effecting law. For example, in Islamic Family Law, husbands are ordered to provide donations to husbands who have enough sustenance according to their level of wealth. Allah SWT remembers this obligation referred to *istitha'ah*. Laws change with changing times and places. This includes menstruation periods, *baligh* periods, working and non-working women's dowries. It is tied to 'urf. Again, there is also in Ushul Fqih which called *kuliyat kubra* in fiqh and ushul Fiqh terms: *al-'adat muhakkamah*. It should be seen when there is *ghayr mansus* (there is any explicit reference in Quran and Hadis) and when there is a *mansus*, but there is a reference to 'urf. The importance of 'urf here is mentioned in hadith "*almuslimun 'inda Syurutihim*" The Question forexample: how to hand over, when, wat the method. All these things are referred to 'urf.⁶⁷

In relation to family law, the practice in some places is that the wife prepares the house for the family. In general, the husband provides the necessary equipment. Sri Langka, the wife's father prepared it and even gave it as property to the husband. This is no problem, even though basically it is the husband's obligation. Substantial orders in the family are also *wa 'asyiruhunna bil ma'ruf*, the husband's obligation to interact with his wife in a wise manner. *Nass* let 'urf to translate the interaction models that apply in society. When fiqh al Islam gives space to 'urf, it seems to provide *tajaddud* (renewal) of fiqh.⁶⁸

Relating to dressing, sharia stipulates that *tsawabit* cover *aurat* (the private parts). In its development, there have been various clothing models. That is a normal thing and there is no problem if you cover your private parts. Islam does not stipulate certain clothing styles in Islam, but the substances are in accordance with the principles. Another example of dowry; *taysir* (easy) and prohibition *mughalat* (excessive). 'Urf is referred to when it does not conflict with the provisions of the Shari'a. *Taysir* was referred to the principle "indeed, every time there is difficulty there is ease". *Mughalat*, referred to the principle of *la dharara wa laa dirara*. Affluent areas may have higher dowries. On the other hand,

⁶⁷ Interview with Syeikh Dr Hasan Saghir, member of Majma' Buhuts, Cairo, December 14, 2023.

⁶⁸ Interview with Syeikh Dr Hasan Saghir, member of Majma' Buhuts, Cairo, December 14, 2023.

prosperous areas may have lower dowries. The principle refers to 'urf and is not in accordance with sharia.⁶⁹

Indonesia has a variety of 'urf and is practiced in various forms when associated with *furu' fihiyyah*. 'Urf with diverse perspectives when viewed, where and when it is implemented. It cannot be denied that Indonesia is a country owning variety of customs. Before the religion spreads in Indonesia, people had practiced a number of these habits, especially in the context of *muamalah*. Through the process of cultural assimilation and acculturation⁷⁰ with several existing rules in Islamic jurisprudence, the archipelago gave birth to customs that were modified with Islamic jurisprudence values in such a way that the two integrated things complemented each other. This is what the preachers did when Islam arrived in the archipelago. Fiqh did not come to carry out deconstruction but more on aspects of enrichment and modification, especially in the field of *muamalah*.

Professor Salman said that this 'urf research needs to see whether custom dominates Fiqh or not. According to him, up to now there have been fiqh activities that were considered simple, but then were considered hard to be implemented to customary rules. For example, the marriage carried out by *walimah al-urth* in Fiqh is sufficient with a goat as referenced in the hadith. However, in terms of custom, it is quite difficult to implement with various variations. Can this be used as a reference in developing Islamic law in Indonesia? According to him, there needs to be *maqayis* (considerations) to accept or not a customary law in society.⁷¹

Salman emphasizes the question of dominance in determining law; custom or Fiqh. In fact, Fiqh has a measurement in its standard methodology, *Ushul Fiqh*. This methodology emphasizes the rules of a habit that can be absorbed into Fiqh. This means that if customs existed before Fiqh existed, then this forms *rehtvinding* (discovery of law). These methodological measures lead 'urf somewhere to become Fiqh. The existence of 'urf *mu'tabar* becomes authoritative law as in the rule called *al-thabit bi al-'urf al-thabit al-nas aw bi al-syarat*.

Sulfan Wandu explained that most fuqaha use 'urf as a source of Fiqh if no other evidence is found in the Qur'an and Hadith, Ijma' and qiyas and Istihsan. The Malikiyah emphasizes 'urf in contrast to qiyas, enshrines the general and enshrines the absolute. 'urf according to Malikiyah can be divided into *urf* which is relevant to *nass*, secondly 'urf which is contrary to *sharia* and thirdly 'urf which is neutral, commanded or prohibited to be practiced. Shafi'i uses 'urf which is relevant with *nass*. Syafi'i's opinion is almost the same as the view of the Hanabilah ulama. Meanwhile, Shiite scholars accept 'urf and view it as a legal proposition

⁶⁹ Interview with Syeikh Dr Hasan Saghir, member of Majma' Buhuts, Cairo, December 14, 2023.

⁷⁰ www.ruangguru.com, Accessed on November 1, 2023.

⁷¹ Interview with Prof. Salman Abdul Muthalib, Dean of Ushuluddin and Philosophy Faculty State of Islamic University Ar-Raniry Banda Aceh, October 26, 2023.

that is not independent, but must be related to other propositions, namely the sunnah.⁷²

If we look at the relationship between customary law and Fiqh, there are at least three correlations; First, fiqh adopts its principles and operations in its entirety. Secondly, Fiqh adopt customs in terms of principles but the implementation is in accordance with the reality in society. and, thirdly, fiqh eliminates customs that occur in society.⁷³ These three models are applied in empowering traditional communities in Indonesia. According to researchers, the first and second aspects are more widely applied in the case of customary-fiqh interactions. However, custom and Fiqh are very integrative and mutually supportive. At a certain level, researcher cannot differentiate between what is called custom or fiqh itself. This means that the two often merge and become one component that complements one another.

Third, *'urf* is tied by sharia, *'Urf* is a customary practice in society passed over time and across generations. Because certain actions have become habits, their practice is considered something that is easy to carry out. In certain communities in Indonesia, customs and sharia are very strong. This is because when religion comes in an atmosphere of mutual support and encouragement with local customary practices. Even though there are modifications, the changes do not occur confrontationally but assimilatively.

In Acehese society, for example, recognition of this custom is stronger. In fact, customary law and Islamic law are seen as two things that cannot be separated. This is what is then hinted at in the hadih maja message "adat ngon hukom lagee zat ngon sifeut". Thus, customary law is seen as two different entities but integrated in one noble message of creating an orderly and just society. In the context of Aceh, sometimes the existence of religion and custom support each other because the existing customary order is extracted from the teachings of Islam itself.⁷⁴

Each region in Indonesia has its own characteristics in the application of customary law. However, over time, these customs tend to change, shift and modify with developments in culture and knowledge. Traditional contributions are considered as wealth that has shaped the character of society with values believed to be good in society. Because custom is a habit, the things which done as custom will usually have more influence on individuals and communities in their lives. Preserving customs is a necessity to maintain the sustainability of existing benefits.

⁷² Sulfan Wandu, "Eksistensi '*urf* dan Adat Kebiasaan Sebagai Dalil Fiqh", *Samarah*, 2 (1), 2018

⁷³ Abd. Rauf, "Kedudukan Hukum Adat Dalam Hukum Islam", *Tahkim*, 9, No. 1 (2013), p. 29

⁷⁴ Interview with Prof. Dr. Lukman Hakim, a Lecturer of State of Islamic University Ar-Raniry, Banda Aceh, November 1, 2023.

'*urf* like this seems to be determined by the text for its validity based on considerations of the benefit of the people. This is expressed in the rules of *al-ma'lum bi al-'adat ka al-masyrut bi al-nass*.

In its application, customary law in Aceh has customary territories that are distributed regularly and each has customary leaders who have authority. In Aceh, Customs practiced in the mountain areas are headed by pawang uteun. In the valley chaired by ketua Seneubok. the rice fields were chaired by Keujrun Blang, in the market he was chaired by *Haria Peukan*, at sea he was led by Panglima Laot and others.⁷⁵ Fiqh emphasizes the need for benefit in developing society in a place.⁷⁶ Custom is given authority by sharia to find appropriate rules in society. This rule encourages peace in various kinds of social interactions. With the presence of customs, the community is expected to be able to carry out its muamalah activities well.

In fiqh, specifically *Siyasah al-Syar'iyah*, the role of leaders, *ulil amri* and figures including traditional figures is given great urgency to produce rules and policies in realizing public benefit.⁷⁷ This is in accordance with the *ta'rif* itself as an effort to create benefits by guiding humans to follow the right path to worldly-hereafter happiness. This was specifically carried out by the Prophets and leaders after them.

In social life, contact between one party and another party is something that cannot be avoided, even in a smaller environment, the family. The presence of customs and their figures makes a major contribution in constructing a better society. Custom here not only provides a solution (completion), but speed actually becomes urgent. In a family context, resolving disputes can avoid divorce, for example. Therefore, traditional institutions and their role as far as researchers observe need to continue to be empowered. In social life, interaction between one party and another party is something that cannot be avoided, even in a smaller environment, the family. The presence of customs and their figures makes a major contribution in constructing a better society. Custom here not only provides a solution (completion), but speed actually becomes urgent. In a family context, resolving disputes can avoid divorce, for example. Therefore, traditional institutions and their role as far as researchers observe need to continue to be empowered. Regarding solutions to family law issues, '*urf* in Acehese society was seen when the keuchik (village head)'s house was prepared to have two rooms.

⁷⁵Interview with Prof. Dr. Lukman Hakim, a Lecturer of State of Islamic University Ar-Raniry, Banda Aceh, November 1, 2023.

⁷⁶Sukarni And Hafini Bin Mahmud, Development And Concept Of Environmental Fiqh In The Works Of Banjar Scholars: Historical And Thought Analysis, *Syariah: Jurnal Hukum Dan Pemikiran* Volume 24, No.1, June 2024 P. 182

⁷⁷Khamami Zada, *Fiqih Siyasah Doktrin dan Pemikiran Politik Islam*, (Jakarta: Erlangga, 2008), 17.

That is essentially one of the solutions when a husband-and-wife quarrel occurs. They would complain to the village head and the two rooms became a shelter while I resolved their problems.⁷⁸

In the muamalah context, the issue of *wali tanah* is an example. This term occurs when someone wants to sell their land, the land owner in Aceh first offers their land to people who are adjacent to the land. According to Mursyid, the uniqueness of *'urf* is not found much in other places. Also, according to Mursyid, there is a marriage in South Aceh which is considered a model of traditional influence there. One custom state that the dowry cannot exceed 3 *mayam* (one mayam equal 1,5 grams of gold). This is so that all individuals can carry out this sacred activity without obstacles. So, *'urf* is very futuristic for developing family law in Aceh.⁷⁹ In the context of marriage, a man who wants to marry must prepare a certain amount of money or gold, known as *syabakah*. The practice of the contract pre-procession is similar to what is practiced in Indonesia.

Marriage is a social interaction that occurs across communities. It's just that each process has its own uniqueness and characteristics. Therefore, it cannot be seen as just a ceremonial implementation for the validity of the bond, but it is covered with a number of customs that echo its sacredness. Preparing for a wedding doesn't take just a few days, but it is a long process pre, on-going and post-contract. Fiqh in responding to customary practices does not limit customary activities which in the context of marriage are more *hajiyyah* or *tahsiniyyah* level activities. Therefore, Fiqh only provides general values, for example the level of waste, extravagance, popularity and so on. *Al-'Adat muhakkamah* is a rule of Fiqh which is used as a reference, making custom as a source as long as it is in line with the messages of Sharia'

In this case, the practices that apply in a place can be considered as requirements. The *qaidah* (postulate): *al-'urf ka al-syarth*. In implementing a *qaidah* mentioned in Fiqh, *'urf* is like a requirement. That an action cannot be carried out until the conditions are met. If there is no explicit statement about the conditions, then the habits prevailing in a society can be seen as conditions that need to be fulfilled. But can things that go beyond the ordinary capabilities of society be considered necessary requirements to be implemented? These are among the points that need to be discussed in applying the rules so that letters can be made part of the provisions in Fiqh.

⁷⁸Interview with Prof. Mursyid Djawas, a Lecturer of State of Islamic University Ar-Raniry, Banda Aceh, October 26, 2023.

⁷⁹Interview with Prof. Mursyid Djawas, a Lecturer of State of Islamic University Ar-Raniry, Banda Aceh, October 26, 2023.

Conclusion

Based on this research, researcher concludes the points as follows: firstly, the absorption of 'urf in the development of Fiqh in Egypt can be explained that Egyptian society still strongly adheres to the existing 'urf, except in urban areas and highly educated people. This shift often occurs relevant with developments in time and place. More specifically in family law, the application of 'urf is applied in marriage process including the dowry, the wealth after marrying and inheritance distribution. The absorption of 'urf in Indonesia seems to be a bit different such as in the case of distribution of asset between husband and wife after divorce, the way to decide the dowry, and also some point of similarity between these two countries. Second, the rules for absorbing 'urf in Fiqh in Egypt and Indonesia, among them, 'urf is part of *tajdid al-fiqh*, relevant with the context, 'urf indicate some change changes element occur to support solving community problems, following aspects of *tsawabit* and *mutaghayyirat*. Third, the contextualization of the development of Fiqh in answering contemporary problems is. 'Urf is part of *tajdid of Fiqh* due to the emergence of professionalism in work, living standards and increasing public education. The recommendation from this research is that 'urf must continue to be studied within the framework of *Usul Fiqh* as an embodiment of the development of Fiqh in the future, Fiqh research on local wisdom must be continued to be improved in order to accommodate the needs of society as well as provide an evaluation of its validity in Islamic law.

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Interviews

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