

**AL-'URF' THEORY AND ITS RELEVANCE TO CONTEMPORARY
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©2021 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC-BY-SA) license (<https://creativecommons.org/licenses/by-sa/4.0/>)DOI: [10.30983/alhurriyah.v6i2.4784](https://doi.org/10.30983/alhurriyah.v6i2.4784)**Abstract**

One of the *syar'i* arguments in the study of *ushūl fiqh* is the *al-'urf* argument. In classical *ushūl fiqh* books, the argument of *al-'urf* tends not to be a special discussion chapter, but it is included in various studies of *ushūl fiqh* when a *mujtahid* performs legal *istinbāth*. It means that *al-'urf* becomes an external determining factor in the legal *istinbāth* process. Therefore a *mujtahid*, as required by Imam Syatibi, must master two sets of *ijtihad*; (1) Understanding and mastering the arguments (*fiqh al-nash*), and (2) Understanding the conditions under which the texts or propositions will be applied (*fiqh al-wāqi'*). The study of *al-'urf* is closely related to the second point: understanding the situation and conditions when doing legal *istinbāth*. It is where the urgency of the argument of *al-'urf* in the legal *istinbāth* process is seen. This study found that: (a) For the law to be established to find its purpose and benefit, a *mujtahid* must consider the *al-'urf* argument as a proposition from outside the existing text (*nash*) or as accompanying arguments for other arguments. (b) In subsequent developments (modern era), legal changes are not only determined by changes in conditions (*al-ahwāl*), times (*al-azminah*) and places (*al-amkinah*), but in subsequent developments also triggered by other changes, such as changes in the information, changes in the level of human need for certain objects, changes in the level of human abilities, changes in the matter of 'general *al-balwā* (inevitable needs). All of these are factors other than those that are generally recognized. (c) New (contemporary) problems that arise due to the development of science and technology (science) require a *mujtahid* to understand the various new problems that exist, especially in the fields of medical, economic and technological progress. By understanding the various changes and changes in the situation, condition, and place, it is hoped that the new laws are required to find their purpose (benefit) and wisdom. All of the problems in this research are examined with a library research approach while contextualizing new contemporary issues.

Keywords: *al-'urf*, *mashlahah*, changes in situations and conditions**Abstrak**

Salah satu dalil syar'i dalam kajian ushul fikih adalah dalil al-'urf. Dalam buku-buku ushul fikih klasik, dalil al-'urf cenderung tidak menjadi bab pembahasan khusus, namun ia masuk dalam berbagai kajian ushul fikih ketika seorang mujtahid melakukan istinbath hukum. Artinya al-'urf menjadi faktor eksternal penentu dalam proses istinbath hukum. Karena itu seorang mujtahid, sebagaimana disyaratkan Imam Syatibi, harus menguasai dua perangkat ijtihad; (1) Memahami dan menguasai dalil (fiqh al-nash), dan (2) Memahami situasi kondisi dimana nash atau dalil akan diterapkan (fiqh al-waqi'). Kajian al-'urf sangat berkaitan dengan poin kedua, yaitu memahami situasi dan kondisi ketika melakukan istinbath hukum. Disinilah, terlibat urgensi dalil al-'urf dalam proses istinbath hukum. Dari rumusan-rumusan masalah yang dikemukakan, maka ditemukan kesimpulan penelitian ini sebagai berikut: (a) Agar hukum yang ditetapkan menemukan tujuan dan kemashlahatannya, maka seorang mujtahid harus mempertimbangkan dalil al-'urf sebagai dalil dari luar teks (nash) yang ada atau sebagai dalil pendamping bagi dalil-dalil lainnya. (b) Dalam perkembangan selanjutnya (era modern) perubahan hukum tidak saja ditentukan oleh perubahan kondisi (al-ahwal), zaman (al-azminah) dan tempat (al-amkinah) saja, namun pada perkembangan selanjutnya juga dipicu oleh perubahan-perubahan lainnya seperti perubahan informasi, perubahan tingkat kebutuhan manusia terhadap objek tertentu, perubahan kadar kemampuan manusia, perubahan dalam soal 'umum al-balwa (kebutuhan yang tak terelakkan). Semua ini adalah faktor-faktor lain diluar faktor-faktor yang umumnya dikenal. (c) Persoalan-persoalan baru (kontemporer) yang muncul karena perkembangan sains dan teknologi (ilmu pengetahuan)

mengharuskan seorang mujtahid untuk memahami berbagai persoalan baru yang ada terutama dalam bidang kemajuan kedokteran, ekonomi dan teknologi. Dengan memahami berbagai perubahan, disamping perubahan situasi, kondisi dan tempat, maka diharapkan hukum-hukum baru yang diistinbâhkan menemukan tujuan (kemaslahatan) dan hikmahnya. Semua persoalan yang ada dalam penelitian ini dikaji dengan pendekatan kajian kepustakaan (library research) sembari melakukan kontekstual terhadap persoalan-persoalan baru kontemporer.

Kata Kunci: al-'urf, mashlahah, perubahan situasi dan kondisi.

INTRODUCTION

Among the tools of extracting law in Islamic studies is the science of ushūl fiqh.¹ In the discipline of ushūl fiqh it is explained the sources of the arguments of Islamic law in general (global; *adillah ijmalīyah*). Then there are global postulates that are agreed upon (*muttafaq 'alaihi*) and there are also those that are debated and disputed (*mukhtalaf fihā*).² Furthermore, among the methods of extracting law in ushūl fiqh is al-'urf. For scholars of ushūl fiqh, al-'urf can be used as a basis (postal) to influence and establish certain laws. Imam Syatibi emphasized that one cannot escape from 'urf when understanding Islamic law.

أَنَّهُ لَا بُدَّ فِي فَهْمِ الشَّرِيعَةِ مِنْ اتِّبَاعِ مَعْهُودِ الْأُمِّيِّينَ،
وَهُمُ الْعَرَبُ الَّذِينَ نَزَلَ الْقُرْآنُ بِلِسَانِهِمْ، فَإِنْ كَانَ لِلْعَرَبِ
فِي لِسَانِهِمْ عُرْفٌ مُسْتَمَرٌّ، فَلَا يَصِحُّ الْعُدُولُ عَنْهُ فِي
فَهْمِ الشَّرِيعَةِ³

"Indeed, understanding the teachings of Islam cannot be separated from following the habits of the Arabs. Because the Qur'an was revealed in their language. If they are Arabs who have

habits that have existed for a long time, then it is not permissible to go out in understanding the Qur'an out of their 'urf'".

Although there are differences among scholars regarding their appropriateness as a legal argument, what is inevitable and cannot be denied is that situations and conditions play a crucial role and influence certain legal positions based on some instances, especially those related to customs and local wisdom. Al-'urf is also very influential on issues that have just emerged in the modern context. This means that the position of al-'urf cannot be denied when some new issues arise and in the end, become something that many people need and it occurs continuously, which is called *al-'urf* (custom).⁴

A new Mujtahid deserves to be seen as a mujtahid if he meets at least two main criteria, namely: *first*, Understanding the texts properly and correctly (*fiqh al-nash*), *second*, Able to derive and apply the results of the ijtihad into the real world according to the right situation and conditions (*fiqh al-wāqi*).⁵

This paper seeks to understand that changes in situations and conditions play a significant role and influence specific legal policies. Ahmad Raisuni, one of the contemporary maqāshid sharia scholars from Morocco, emphasized that one source of legal determination (*dalil al-tasyri*) in Islam is al-'urf.

¹ It is said so because qawaid fihiyyah and maqashid sharia can also be seen as other tools in the process of extracting Islamic law. Abdul Wahab Khalaf, *Ilmu Ushul Al-Fiqh* (Indonesia: al-Haramain, n.d.), 92.

² The arguments agreed upon among the majority of ushūl fiqh scholars are; Al-Quran, Sunnah, Ijmak and Qiyas. While the arguments being debated are al-istihsan, al-'urf, al-mashlahah al-mursalah, sad al-zari'ah, al-istishab, syar'u man qablana and others. Abdul Wahab Khallaf, *Ilmu Ushul Fiqh* (Jakarta: Dar al-Manar, 1973), 93.

³ Imam Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah*, ed. Abu 'Ubaidah Masyhur (Mesir: Dar ibn 'Affan, 1997), 131.

⁴ At this point we can understand that al-'urf in principle cannot stand alone. It must be unified and supported by other arguments such as istihsan and the principles of Islamic teachings such as the principle of "not complicating" (*raf'u al-harj*), benefit (*al-mashlahah*) and justice (*al-'adl*). Syatibi, 132.

⁵ Ibnu al-Qayyim Al-Jauziyah, *I'lam Al-Muwaqqi'in 'an Rabbil 'Alamin*, ed. Abu 'Ubaidah Masyhur ibn Hasan Ali Salman (Mesir: Dar ibn al-Jauziyah, 1423), 25.

Unfortunately, al-'urf has received very little attention among ushūl scholars, even though its influence and role in law-making is very strategic. If al-'urf is not seen as one of the strategic sources of syar'i arguments in establishing Islamic law, then indirectly it means that there has been an incomplete understanding of the teachings of Islam itself and is seen as an act of negligence and negligence. *al-taqshīr*) to the teachings of Islam itself, especially in its application in human life.⁶

When studying the sources of Islamic law (*mashādir al-abkām al-syar'iyyah*) in the science of ushūl fiqh, one of the sections is the chapter "al-'urf" (customs and habits of a community group). As long as the customs and habits in a society do not conflict with Islamic law, then the tradition is considered valid by Islamic law. So, it is clear that ushūl fiqh gives a high appreciation of the works and culture of the community, as long as the works and culture do not conflict with the corridors of Islam. So Ushūl fiqh is not a scientific discipline that floats away without coming into contact with the realities of people's lives.

Then, the argument of al-'urf has a strong connection with maqāshid sharia. This aspect is essential and must be considered in establishing certain laws. At least there are several reasons why the proposition of al-'urf occupies an essential position in the study of ushūl fiqh and maqāshid sharia⁷: *first*, Because al-'urf is indeed a custom and tradition of a certain society passed down from generation to generation. So the key to the survival of al-'urf (customs) for a long time is the benefit and benefit of al-'urf itself.⁸

⁶ Ahmad Al-Raisuni, "Makanah Al-'urf Wa Kaifiyah Al-Ta'amul Bihi," n.d.

⁷ 'Abd al-'Aziz ibn 'Abd al-Rahman ibn 'Ali ibn Khalifah, *Ilmu Maqāshid Al-Syari* (Mesir: Maktabah al-'Abikan, n.d.), 243–44.

⁸ From this it can be understood the urgency and position of the fiqh rules which read that customs

Second, several pre-Islamic traditions (*'Adātu wa A'rāfu al-Jābilyyah*) among the Arab community were derived and finally recognized as part of Islamic teachings (Islamic law). In other words, after the Islamization of some of these traditions and customs. Among the examples are the tradition of bleeding the baby's head with the blood of the slaughtered lamb in the wedding ceremony, glorifying the forbidden months (Muharram, Zulqaidah, Zuhijjah and Rajab). The prohibition of marrying a mother and daughter, bathing junub, guarding gargle and throwing water in the mouth (*madhmadhab wa istinsyaq*) and throwing it away, siwak and istinja', circumcision, cutting off hands for thieves and some series of hajj practices, all of these were traditions before Islam came and eventually became part of Islamic teachings. Furthermore, there are also some things (morals) from the habits of the ignorant society. It became the nature of the Arabs before the arrival of Islam. The basic nature is; honest in speaking, honoring guests, keeping promises, honoring guests, patient and brave in bearing any burden.

Third, the acceptance of al-'urf or 'customs in a community group, that means, it is strongly suspected that it is in line with the main goals of Islamic teachings. If an al-'urf is in line with what the shari'ah wants (*maqāshid al-syari'*), then automatically of course the al-'urf must meet the conditions for the acceptance of an al-'urf. In other words, al-'urf cannot be accepted if it contradicts and annulles (*ta'thīl al-nushūsh*) nash-nash syara' (nash al-Quran al-Karim and Sunnah of the Prophet) and the general principles of Islamic teachings (*ushūl qath'iyyah*).⁹

can be considered and benchmarks in determining certain laws. Khalifah, 243.

⁹ The principle of facilitating, in line with human nature, justice, in line with al-kulliyat al-khams; preserving religion, soul, mind, lineage and property, all

Based on what has been stated above, the problem of this paper is to try to explain and analyze the theory of al-'urf as one of the legal arguments (legal theory): To what extent is the urgency of al-'urf in the context of the study of Islamic legal methodology (*ushūl fiqh*), what are the factors that influence the occurrence of legal changes and what is the relevance of al-'urf to various contemporary issues. This study is based on the study of the normative method by presenting various opinions of scholars related to al-'urf and its urgency for istinbāth Islamic law. The data in this paper were obtained through library research.

DISCUSSION

The Urgency of Al-'urf, Ulama's View and Legality

Al-'urf and al-'ādah mean something already known or something that has become customs. Even the term al-'ādah has become an absorption word from Arabic into Indonesian. However, al-'urf in terms is:

عادة جمهور قوم في قول أو عمل¹⁰

"The customs of the majority of certain people (nations) in speech or deed".

The definition above explains that there are two customs:

1. Customs in the form of speech by certain groups of people (country/country), such as the use of al-walad for boys only (*al-walad*), the use of meat (*al-lahm*) by not putting fish in it, and the word animal creeping (*al-dabbab*) with the meaning 'urf is a horse.

2. Customs in the form of deeds, such as buying and selling al-ta'athiy without mentioning the contract shighat, the form of dowry during the marriage contract and the type of food eaten by someone in the area.¹¹

Although the definition of al-'urf differs among scholars, in principle, the difference in the expression of the definition does not eliminate the essence of al-'urf itself, as stated by Sheikh al-Zarqa above. Then, one of the triggers for changes in the fatwa from time to time is largely determined by the sociological factors in which the fatwa will be applied (tanfidz). It is what underlies the emergence of several important rules regarding the al-'urf.

The application of al-'urf was very much practice by Imam Abu Hanifah when applying law through qiyas was not possible. For example, once, Imam Abu Hanifah decided a case using a witness who did not need to be presented, but his honesty and reliability were recognized based on the custom at the time (witness *mashūr al-hāl*). However, the testimony of someone who was not present in the case during the time of his companions Abu Yusuf and Muhammad can no longer be enforced because the situation and conditions have begun to change where there are possibilities for lies to appear in the testimony or in simpler language the declining level of public trust in the testimony somebody.¹²

Therefore, Imam Abu Hanifah said when there was a difference between two friends and students with the phrase: هو اختلاف عصر وزمان لا اختلاف حجة وبرهان, It means that the difference does not occur because of differences in the arguments and arguments due to situational and conditional factors.

of that is *ushūl qath'iyah* or *al-kulliyat al-khams*. Khalifah, 244.

¹⁰ Mustafa Ahmad Zarqa, *Al-Madkhal Al-Fiqh Al-'Am* (Damaskus: Dar al-Qalam, n.d.), 141.

¹¹ Wahbah Al-Zuhailiy, *Al-Wajiz Fi Ushūl Al-Fiqh* (Damaskus: Dar al-Fikr, 1999), 97.

¹² Ali Hasballah, *Ushūl Al-Tayyri' Al-Islamiy* (Beirut: Dar al-Kutub al-'Ilmiyyah, n.d.), 84–85.

Therefore, the Hanafī school of thought considers 'urf through rules that are well known among ushūl fiqh experts: العادة محكمة; "customs can be used as the basis for applying the law".¹³

Imam al-Qarāfī in his famous book *al-Ihkām fī Tamyīz al-Fatāwā al-Fatāwā 'an al-Abkām wa Tasharrufāt al-Qādhī wa al-Imām* explains dialectically (questioning and answering) regarding the legal position based on 'urf and adat. habit, where does the legal position change as the situation and conditions change? Whether the previous law no longer applies to those who have followed the law or vice versa where they remain obedient to the law or fatwa in the books of the previous school of thought, even though there have been changes in times (situation and conditions). Imam al-Qarāfī answered the above questions with a clear and firm statement:

إن إجراء الأحكام التي مدركها العوائد مع تغيير تلك العوائد خلاف الإجماع وجهالة في الدين، بل كل ما هو في الشريعة يتبع العوائد، يتغير الحكم فيه عند تغيير العادة إلى ما تقتضيه العادة المتجددة¹⁴

"Indeed, applying the law on which the basis is custom (al-'urf) which is no longer valid (in a place) is contrary to what was agreed upon by the scholars and that is an ignorant attitude (jablun) in religion. In fact (it is necessary to know) that all existing laws in Islamic law follow the prevailing customs. The law will change from following changes in old customs to the desired law based on new (now) customs.

¹³ Ibn Najim Al-Mishriy, *Al-Asbab Wa Al-Nazhāir 'Ala Mazhab Abi Hanifah Al-Nu'Man* (Beirut: Dar al-Kutub al-'Ilmiyyah, n.d.), 79.

¹⁴ Imam Syihab al-Din Al-Qarāfī, *Al-Ihkām Fi Tamyīz Al-Fatāwā Al-Fatāwā 'an Al-Abkām Wa Tasharrufāt Al-Qādhī Wa Al-Imām* (Lebanon: Dar al-Basyair al-Islamiyyah li al-Tiba'ah wa al-Nasyr, n.d.), 218.

Likewise, in his other books, such as *al-Furuq* by Imam al-Qarāfī, he asserts that the proposition of al-'urf must always accompany the steps of a mujtahid in exploring the law. Considering the argument of al-'urf means considering the possibility of a legal decision being applied based on the situation and conditions. The following is a statement from Imam al-Qarāfī:

فمهما تجدد من العرف اعتبره، ومهما سقط أسقطه، ولا تجمد على المسطور في الكتب طول عمرك، بل إذا جاءك رجل من غير إقليمك يستفتيك، لا تجره على عُرْف بلدك، واسأله عن عُرْف بلده، وأجره عليه، وأفته به، دون عُرْف بلدك، والمقرر في كتبك، فهذا هو الحق الواضح، والجمود على المنقولات أبدًا ضلال في الدين، وجهل بمقاصد علماء المسلمين، والسلف الماضين¹⁵

"So when there is a change in 'urf, then consider it and when 'urf is no longer valid then leave and do not be stubborn (taklid) on the fatwas in the books that exist throughout your life. Even if a foreigner who is not from your area comes asking for your fatwa, then do not force the 'urf in your country. Ask the 'urf of the country and apply and give fatwas according to the 'urf and not the 'urf and what is in your fiqh books. This is true and real. People who are stubborn by relying on existing books will be lost forever and will never understand the maqāshid of the fatwas of previous Muslim scholars."

What is explained by Imam al-Qarāfī above signals that al-'urf and customs are very influential on the practice of a text where the consideration of situations and conditions is very influential. Not the other way around, where nash has to set the existing 'urf.

Concerning the shari'a acknowledgment of al-'urf, as long as al-'urf is: (a) in line with

¹⁵ Imam Syihab al-Din Al-Qarāfī, *Al-Furuq* (Beirut: 'Alam al-Kutub, n.d.), 176.

the syar'i texts derived from the Qur'an and the hadiths of the Prophet, and (b) it is also in line with the principles of general principles (*kulliyāt al-syar'i'ah*) Islamic teachings such as making it easy (*al-taysir*) and not making it difficult (*raf'u al-harf*), fair (*al-'adl*) and egalitarian (*al-musāwāh*), in line with the basic nature of human instinct (*al-fitrah*), then during that time al-'urf's argument can be recognized as one of the syar'i arguments (*al-adillah al-syar'iyyah*). Although authoritatively, it must be admitted that al-'urf cannot be a stand-alone proposition (the *mustaqil* argument) like the Koran, sunnah, ijmak and qiyas.¹⁶ It relates to other arguments that are beneficial. Thus the argument of al-'urf is related to istihsan and mashlahah mursalah. Likewise, the argument of al-'urf is related to the existence of takhsish and taqyid to the 'am argument and the absolute proposition. Then, al-'urf's argument is very helpful in solving contemporary case problems.¹⁷

Furthermore, because al-'urf's position is very influential on existing issues of Islamic law, it is not surprising that Imam Malik has emphasized the importance of understanding al-'urf when considering Islamic law:

العرف عندنا أصل من أصول الملة و دليل من جملة

الأدلة

"al-'urf in our view is one of the principles in Islamic teachings and one of the arguments among other syar'i arguments".

¹⁸ العُرْفِ وَالْعَادَةِ الَّذِي هُوَ أَصْلٌ مِنْ أَصُولِ الشَّرِيعَةِ

"What is known to the general public (*al-'urf*) and what is usually done and said (*al-'ādah*) is one of the principles of Islamic teaching."

¹⁶ Khallaf, *Ilmu Ushul Fiqh*, 91.

¹⁷ Al-Zuhailiy, *Al-Wajiz Fi Ushul Al-Fiqh*, 99.

¹⁸ Ibnu Al-'Arabiyy, *Tafsir Abkam Al-Quran*, ed. Muhammad Abdul Qadir 'Atha, 3rd ed. (Beirut: Dar al-Kutub al-'Ilmiyyah, n.d.), 143.

Although what was expressed by Imam Ibn al-'Arabiyy was very brief, it contained a very clear and unequivocal affirmation that the position of the proposition al-'urf in the Maliki school of thought greatly influences the decision of a law.

قال الهلالي: "العرف عند المالكية هو أقوى المرجّحات

"Al-Hilaliyy argues that al-'urf according to the adherents of the Maliki school is one of the arguments to strengthen (*mentarjih*) various existing opinions".

The position of the importance of understanding the situation and the various factors that surround these conditions, was once explained by one of the contemporary clerics from Syria, namely Mustafa Zarqa'. He asserts:

وفي هذا يقول أستاذنا مصطفى الزرقا رحمه الله: "وقد

اتفقت كلمة فقهاء المذاهب على أن الأحكام التي تتبدّل بتبدّل الزمان وأخلاق الناس هي الأحكام الاجتهادية من قياسية ومصلحية... وهي المقصودة بالقاعدة الأنفة الذكر: "لا ينكر تغير الأحكام بتغير

الأزمان"¹⁹

"In this context, our teacher Mustafa Zarqa' rahimahullah argues: "All scholars of the madhhab agree that existing laws can change according to changing times and human morals where these laws are laws that are excavated by *ijtihad*, both through the theory of *qiyas* (*ijtihad ta'liliyy*) or by the theory of *mashlahah* (*ijtihad istishlahiyyah*) and that is what is meant by the rule that has been mentioned previously which reads "it is not permissible to deny the existence of changes in syar'i law due to changing times".

Furthermore, it is actually because of al-'urf's considerations that Allah swt establishes and lowers His laws gradually. Allah may have willed, when forbidding *khamr* and *usury*, He

¹⁹ Al-Jauziyyah, *Ilam Al-Munawqqi'in 'an Rabbil Al-'Alamin*, 49.

absolutely prohibited it at once without gradually lowering the previous verses. Allah SWT has the right to directly forbid alcohol and usury because Allah is a substance that is omniscient and wise. However, at his discretion, he certainly understands that liquor (khamr) and usury are two long-standing and traditional habits among Arab society. Therefore, Allah swt gradually (*al-tadarruj*) forbid liquor (*khamr*) and usury in several verses.²⁰

Regarding the verse of khamr, the order of the prohibition is known as follows:

1. Sociological description of uses and benefits at that time

وَمِن ثَمَرَاتِ النَّخِيلِ وَالْأَعْنَابِ تَتَّخِذُونَ مِنْهُ
سُكَّرًا وَرِزْقًا حَسَنًا إِنَّ فِي ذَلِكَ لَآيَةً لِّقَوْمٍ
يَعْقِلُونَ (النحل: 67)

"And from the fruit of dates and grapes, you make a minimum of intoxicating and good sustenance. Indeed, in that there is a sign (of Allah's greatness) for those who think." (Q.S. *al-Nahl*: 67)

2. The Prophet replied wisely (wisdom) and did not want and has not absolutely forbidden.

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ
لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَّفْعِهِمَا وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ
قُلِ الْعَفْوَ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ الْآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ
﴿البقرة: ٢١٩﴾

"They ask you about alcohol and gambling. Say: "In both of them there is a great sin and some benefit to mankind, but the sin of both is greater than its benefit." And they ask you what they earn. Say: "That is more than necessary". Thus Allah explains His verses to

you so that you may think." (Q.S. *al-Baqarah*: 219)

We can note at this stage, where Allah swt and His Messenger have not expected absolutely. This means that Allah swt and His Messenger still pay attention to the strong culture and customs (*al-'urf* and *al-'ādah*) in the Jahiliyah society.

3. It is forbidden to drink alcohol (alcohol) only at prayer times.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْرَبُوا الصَّلَاةَ وَأَنْتُمْ سُكَارَىٰ حَتَّىٰ
تَعْلَمُوا مَا تَقُولُونَ (النساء: 43)

"O you who believe, do not pray while you are drunk, so you understand what you are saying, (don't even go to the mosque) while you are in a state of *junub*, unless you just pass, until you take a bath. And if you are sick or on a journey or come from a toilet or you have touched a woman, then you do not find water, then do your *yammum* with good (boby) soil; wipe your face and your hands. Verily Allah is Forgiving, Most Forgiving." (Q.S. *al-Nisa*: 43)

4. The absolute prohibition of khamr (definitely; qath'iy)

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ
وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ
الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ
﴿المائدة: ٩٠﴾

"O you who believe, verily (drinking) alcohol, gambling, (sacrificing for) idols, drawing fate with arrows, are among the actions of the devil. So stay away from these actions so that you will get good luck. (Q.S. *al-Maidah*: 90)

Then, regarding the verses of usury, Allah SWT also explains the stages of prohibition and that is of course very closely related to the strong culture or tradition of usury among the Arab community and Allah swt and His Messenger understand this condition very, very well with wisdom and benefit. The following are the stages of the

²⁰ The study of *al-tadarruj* or Allah's gradual determination of certain laws, is well known in the 'ulum al-Qur'an. This study of *fiqh al-tadarruj* is very useful in a wider context and study, especially in the realm of *da'wah* and change in shaping an Islamic civilization. *Al-Jauziyah*, 144.

expectation of usury in the verses of the Qur'an:

1. Reject the assumption (assumption) that usury can grow and develop wealth while at the same time helping others for those in need

وَمَا آتَيْتُمْ مِّن رَّبًّا لَّيْرَبُو فِي أَمْوَالِ النَّاسِ فَلَا يَزِيدُو عِندَ اللَّهِ وَمَا آتَيْتُمْ مِّن زَكَاةٍ تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَٰئِكَ هُمُ الْمُضْغِفُونَ ﴿الروم: ٣٩﴾

"And something usury (extra) that you give so that it increases in human wealth, then usury does not add to the sight of Allah. And what you give in the form of zakat which you intend to achieve the pleasure of Allah, then (who do so) it is the people who multiply (the reward)". (Q.S. al-Rum: 39)

2. The description of usury that it is something bad and a recompense for the Jews who eat usury.

فَإِظْلَمَ مِّنَ الَّذِينَ هَادُوا حَرَّمْنَا عَلَيْهِمْ طَيِّبَاتٍ أُحِلَّتْ لَهُمْ وَبِصَدِّهِمْ عَنِ سَبِيلِ اللَّهِ كَثِيرًا ﴿النساء: ١٦٠﴾

"So because of the oppression of the Jews, We prohibited (eating) good things (which were previously) lawful for them, and because they hindered (humans) a lot from the path of Allah." (Q.S. al-Nisa: 160)

3. The prohibition of usury because it is associated with a double addition (usury character).

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُّضَاعَفَةً وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ ﴿آل عمران: ١٣٠﴾

"O you who believe, do not eat usury [multiplied] and fear Allah so that you may be successful." (Q.S. Ali Imran: 130)

4. The prohibition of usury strictly in any form

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنتُمْ مُّؤْمِنِينَ (278) فَإِن لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِّنَ اللَّهِ

وَرَسُولِهِ وَإِن تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ (البقرة) (279)

"O you who believe, fear Allah and leave the rest of usury (which has not been collected) if you are believers. So if you do not do (leaving the rest of usury), then know that Allah and His Messenger will fight you. And if you repent (from taking usury), then for you the principal of your property; you do not persecute and are not (also) persecuted." (al-Baqarah)

From the two groups of verses above, both the verses about liquor (khamr) or the verses about usury, at least there are some lessons that can be drawn:

1. In the context of al-'urf as one of the syar'i arguments, then it becomes one of the factors of consideration and determining factor in the determination of certain laws. It means that the determination of the law in black and white and enforcing it universally and without considering the situation and conditions, will result in legal imbalances where the law does not find wisdom and problems.
2. Because the proposition of al-'urf (customs and local wisdom) is closely related to the understanding of a faqih (ulama) of the situations and conditions under which certain laws will be applied or enforced, then al-'urf can be viewed as the basic principles and main pillars for a scholar (mujtahid) when going to dig and establish the law.²¹
3. A mujtahid must be a part of the life of the people of a country or local

²¹ In the language of Imam Ibn al-Qayyim al-Jauziyah that a mufti and a judge must master two forms of fiqh; namely fiqh al-waqi' and fiqh al-nash. Al-Jauziyah, 25.

area so that he fully understands the prevailing traditions and customs.

Factors Affecting Legal Changes

Although al-'urf's argument is the main factor affecting the legal position of certain issues, other factors are no less important, which also influence legal changes. Sheikh Yusuf al-Qaradhawi²² in his book *Mujibat Taghayyur al-Fatwā fi 'Asbrinā*²³ explained that there were several factors (causes) that had an effect on the change in the fatwa (mujibat wa musawighat taghayyur al-fatwa). Sheikh Yusuf al-Qardhawi explained that, in general, there are four (4) factors that cause changes in fatwa or ijtihad; namely due to (a) a change in place (*taghayyur al-makān*), (b) a change in time/period (*taghayyur al-ḡamān*), (c) a change in certain conditions (*taghayyur al-bāl*) and (d) due to a change in local traditions and customs. (*taghayyur al-'urf*). Here's the explanation:

1. Due to a change of place (*taghayyur al-makān*)

In this context, it seems that what Imam Shafi'i did is very interesting, where he no longer insisted on his opinion that he had fatwad in Iraq (*qaul qadim*). Imam Shafi'i changed his view when he was in Egypt (*qaul Jadid*). Simply, the progress and backwardness of one's knowledge influence certain legal positions. Therefore, a person

is not considered an infidel if he does not know and denies the importance of prayer, zakat, fasting, and the prohibition of drinking alcohol, gambling and adultery. In contrast to the case with people who know the law and then deny their legal position, he deserves and deserves to be categorized as a person who has disbelieved in Islam's principles and basic teachings. So, the laws of people in Islamic countries (*dar al-salām*) are different from people in non-Islamic countries (*dar al-kufr/dar al-barb*). It is simpler in the current context that the legal attitude towards urban communities is different from that of rural communities.²⁴

2. Due to the changing times (*taghayyur al-ḡamān*)

The vital thing to be considered in the decision and legal position in this second point is to consider the readiness of certain people to accept certain fatwas. Is the community categorized into a damaged or vice versa in the form of a society protected from good values? An example, in this case, is what was used by the Companions of the Prophet PBUH Umar bin Khatab r.a. where he stipulates a law that is different from what was applied at the time of the Prophet and the time of Abu Bakr r.a. Umar bin Khatab r.a. stipulates a penalty for drinking alcohol as much as 80 lashes. While at the time of the Prophet Muhammad and Abu Bakr, the lashes were different, some were 40 times and some were 60. However, it did not damage the community even more, so the punishment set by Umar bin Khatab r.a. getting tougher. Included in this second category is the issue of guaranteeing one's human rights and property, so it is officially

²² Sheikh Yusuf al-Qardhawi is a rabbinic scholar who has moderate views on various contemporary fiqh issues as seen in his works *Fatawa Mu'ashirah* and *al-Halal wa al-Haram*. In the context of changing the fatwa, he once changed his view of the Shia, which previously acknowledged diversity with the Shia (taqrib baina al-mazahib), but in the end his trust in the Shia disappeared after the Shia betrayed and no longer behaved well with the people. sunni when many sunni were killed. Sheikh al-Qardhawi is from Egypt and now domiciled in Qatar. Born on September 9, 1926 and is still healthy and fit. Yusuf Al-Qaradhawi, *Berinteraksi Dengan Al-Qur'an*, ed. Abdul Hayyi (Jakarta: Gema Insani Press, 1999), 15.

²⁴ Yusuf Al-Qardhawi, *Mujibat Taghayyur Al-Fatwa Fi 'Asbrina* (Kairo: Maktab al-Amanah al-'Ammah, n.d.), 41.

mentioned that one's marriage and ownership are.

3. Due to certain changes in conditions (*taghayyur al-hāl*)

While still in the Meccan period, the Holy Prophet strictly forbade his companions to take up arms against the unbelievers who oppressed the Muslims. Likewise, when a Bedouin Arab enters the mosque and urinates in one corner of the mosque without feeling guilty. The Holy Prophet just let it finish. In the case of the different fatwas about the law of kissing the wife while fasting. The fatwa of the Prophet is different when a young person (the newlywed) asks the Prophet, then the Prophet forbids (makruh it). However, the original law is that it is permissible. The same thing was also done by the companions of the Prophet such as Ibn Abbas r.a. where he differs in fatwas to two people in the same case. To one of them, Ibn Abbas explained that there is no repentance for the killer. But on another occasion Ibn Abbas argued that for a murderer, there is repentance for him.²⁵

4. Due to changes in local traditions and customs (*taghayyur al-'urf*)

This fourth point is essential in the study of al-'urf as determinants of a certain position. This point greatly influences the legal standing. Thus, the rule of al-'ādah Muhakkamah becomes the central rule in the study of the proposition of al-'urf. Likewise with the evidence or history, even though it is considered mauquf by some scholars, which reads: "What is considered good by the Muslims, then it is good in the sight of Allah...".

With the advancement of science, science and technology as well as human civilization today, there are very many legal

changes and if the previous people are resurrected from their graves, they will be very surprised to see the current situation which is far more advanced than when they were born. lived before. Thus Sheikh al-Qardhaqi presupposes that.²⁶ Changes in fatwas and laws are very much happening in the social, economic, medical and political fields. Today, it is no longer the time for legal questions to arise when women pray in mosques while they are already in college and studying in college, shopping at the market. It is no longer the case that eating in a food stall undermines a person's prestige as discussed among the fuqaha in the past, and even results in the rejection of that person's testimony.

5. Changes in One's Information and Knowledge (*Taghayyur al-Ma'lumāt*)

According to Sheikh Yusuf al-Qardhawi that Imam Syafii changed his opinion from qaul qadim to qaul Jadid not only because of changes in the environment, but what greatly influenced his opinion was because there was new information he got after being in Egypt, either through what he heard or through what he saw firsthand.

Personally, it is permissible for a woman to believe that if she embraces Islam and her husband remains in his religion, then they should divorce or separate. However, it turns out, scholars have different views on this matter.

6. Changes in Human Needs (*Taghayyur Hajāt al-Nas*)

It is simple in this case if previously it was seen that smartphones and vehicles were luxury goods that only certain people could own. However, there has been a change in things that were once considered luxuries and luxury nowadays but are now a necessity for many people. Including in

²⁵ Al-Qardhawi, 63.

²⁶ Al-Qardhawi, 71.

terms of education, people did not study using the current era method with an education model starting from elementary school to university, and from bachelor to doctoral degree. All because of changing human needs. So, it is permissible for a woman to require her future husband to finish college if he wants to marry her and that is legal and a believer is measured by the promise he holds (*al-mukminun 'alā syurūtibim*). Likewise for a woman, under certain conditions, she may ask her future husband so that he can still work after the marriage contract.²⁷

The factors above are among the main factors that influence changes in Islamic law from time to time. Other changes that affect the existing position of Islamic Law (*al-fiqh al-Islami*), as explained by Sheikh al-Qardhawi are; (a) changes in human capacity that are increasingly advanced (*taghayyur qudrāt al-nas*), (b) changes in general terms *al-balwa*, (c) changes in social, political and economic situations (*taghayyur andhā' al-ijtimā'iyah wa al- iqtishādīyyah wa al-siyāsīyyah*), (d) changes in thought patterns and views (*taghayyur al-ra'yu wa al-fikr*).²⁸

Al-'urf's Relevance to Contemporary Problems

In this section, the author will describe some of the issues in which al'urf's argument determines a particular law's position. Among these examples are:

1. The Value of Assets (*al-Māliyah*) In Some Things That Wasn't Previously Assessed As Assets (*al-Tamawwul*).

Along with the advancement of science and technology, many new things beyond human expectations are found in this modern era. Some knowledge is considered

unnecessary but later becomes crucial, such as medicine, agriculture, and technology, things that were in the past that were seen as useless and valuable. However, the interests of science for the benefit of human life become valuable, sought after by many people and institutions, and interpreted at a high price. Among the examples of things previously seen as worthless and not traded, these objects become valuable for various purposes and research and scientific progress (*al-tamawwul*). Examples are various kinds of poisons, insects, scorpion poison, and other insect poisons. Certain types of mice for "guinea pigs", nest swallows are among the simplest examples of this matter. Likewise, people did not see land and sand being traded in ancient times. Likewise, people did not trade water in the past, but nowadays it has become al-'urf and water is usually traded, both for drinking and other purposes. Of course, we do not find the problems above in the classical literature and for that the scholars must consider the legal side of this issue.

2. Copyright and Works

Many new works and discoveries are among the positive effects of advances in science and science in the modern era. Likewise, human thinking patterns are also increasingly advanced. Various copyrighted works in various fields are usually referred to as trademarks or names for a particular product. The brand and name is what ultimately become the "branding" of a product or someone's work. In science and technology, we know various brands both on cars, cellphones, and tv. Likewise in science such as: "teacher room" and "prima gamma" and others. Likewise in other fields such as art, clothing and food.

All of the above problems in the previous era did not exist, and fiqh books

²⁷ Al-Qardhawi, 84–85.

²⁸ Al-Qardhawi, 109.

never viewed this as material value (*al-tamawwul*). In the current era because it has become a necessity for many people and it has become commonplace and common among scholars and academics, all of these things among scholars are seen as something of value and are seen as violations if there is a misuse of certain trademarks and copyrights. . In other words, if someone uses a certain trade name and brand then he must pay the agreed price.

3. Use of Technological Advances in Various Contracts

One of the positive effects of advances in science and technology is where humans in many moments no longer carry out various transactions directly or face to face (*yadan bi yadin, wajhan bi wajhin*). Transactions in this modern era can be done by telephone and online such as Email, Facebook, WhatsApp, Tokopedia, Gojek, Traveloka and others. All these modern facilities for various *adak* have become the needs and habits of everyone. It is not only in one country, it is also needed for various countries. More than that, in general, there are no scholars who object and deny it. Even online facilities and applications have become an urgent need (*hajiyat*) for everyone in this era of technological advancement stage 4.0.

Likewise, in terms of disseminating knowledge and the teaching and learning process, the use of various technological tools has become a must. One can no longer reason that if he should know through technology due to time and distance factors, then it is not the other party's fault, but his fault. It is where the broader meaning of "*al-'ādah muhakkamah*".²⁹

²⁹ Ahmad Dhuhaiwi, *Al-Nawāzil Al-Ushūliyyah Wa Manhaj Istinbāth Ahkam Al-Nawāzil Al-Mu'ashirah* (Beirut: Dar al-Fikr al-Ma'ashir, 1986).

CONCLUSION

From what has been described above there are several main conclusions from this discussion: *first*, The argument of *al-'urf* is one of the arguments, in fact almost the only argument, which is always involved in the process of extracting Islamic law in various *syar'i* arguments and various issues of *ushūl fiqh*. Thus, it is not enough for a *mujtahid* to just consider the existing *syar'i* texts, without considering *al-'urf* as a proposition outside the text itself. Thus, the established law finds its purpose and benefit. *Second*, Legal changes that have tended to be due to changes in conditions (*al-ahwāl*), times (*al-azminah*) and places (*al-amkinah*), but in subsequent developments are also triggered by other changes such as changes in the information, changes in the level of needs humans to certain objects, changes in the level of human abilities, changes in general matters of *al-balwa* (inevitable needs). All of these are factors other than those that are generally recognized. The relevance of *al-'urf* to several problems is clearly seen when faced with contemporary problems. Thus, if the existing contemporary issues and problems, as stated above, were solved using the classical *fiqh* model based solely on their *ijtihad*, then it is feared that they would not find a satisfactory answer and it would seem that *fiqh* is only running in place.

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