

‘Urf: Medinan’s Tradition as a Shari’a Business Law

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Abstract

This paper aims to define 'urf and its foundations in the Qur'an and Hadith as well as the implementation of the 'urf method in Islamic business. The research method used in this paper is qualitative with a normative juridical approach. The findings in this paper are that the Qur'an and hadith underlie the use of 'urf as a Islamic business solution which certainly does not conflict with existing texts. 'Urf is often applied in sharia business through aspects of business transactions, profit taking from sellers of goods and services, and determination of wages. 'Urf can be applied in sharia business with several conditions, namely: 1) The business tradition does not conflict with the texts, (2) the business tradition is long-term, (3) the business tradition is known to the general public, (4) the business tradition is innovative according to space and time.
Keywords: Tradition; ‘Urf; Business; Islamic Business.

Abstrak

Paper ini bertujuan untuk mendefinisikan ‘urf dan landasannya dalam Qur’an dan Hadits serta implementasi metode ‘urf dalam bisnis syari’ah. Metode penelitian yang digunakan dalam paper ini adalah kualitatif dengan pendekatan yuridis normative. Temuan dalam paper ini adalah Qur’an dan hadits melandasi penggunaan ‘urf sebagai solusi bisnis syariah yang tentunya tidak bertentangan dengan nash yang ada. ‘Urf seringkali diterapkan dalam bisnis syariah melalui aspek transaksi bisnis, pengambilan laba penjual barang dan jasa, dan penentuan upah. ‘Urf dapat diterapkan dalam bisnis syariah dengan beberapa syarat, yaitu: 1) Tradisi bisnis tidak bertentangan dengan nash, (2) tradisi bisnis bersifat jangka panjang, (3) tradisi bisnis diketahui masyarakat umum, (4) tradisi bisnis bersifat inovatif menyesuaikan ruang dan waktu.

Kata kunci: Tradisi; ‘Urf; Bisnis; Bisnis Syari’ah.

Introduction

Islam is a religion of *rahmatan lil' alamin* nature with tolerance and flexibility in looking at the traditions of the surrounding community. The teachings of¹ Islam are universal (*shaamil*). The flexibility of² Islamic Law makes its teachings relevant at

¹ Agung Setiawan, “Local Culture in Religious Perspective: The Legality of Customary Law (‘Urf) in Islam,” *Journal of Essence* XIII, no. 2 (2012): 203–23.

² Sunan Autad et.al Sarjana, “The Concept of ‘Urf in Islamic Law,” *Tsaqafah: Journal of Islamic Civilization* XIII, no. 2 (2017): 279–96.

different places and times, since it is not limited to a group of societies with a certain time limit. Islam views³ tradition ('urf) and custom as a method of law-making as long as it does not conflict with *nash*. In the fiqh rule, *al 'adah muhakamah* becomes the *ushulyyin* rule in determining the customs and customs of the community to be an optional reference if a case is not yet contained in the Qur'an or hadith. Community traditions greatly influence the laws that will be imposed on an area. The determination of the law based on tradition is heeded in Islam as long as it does not contradict the Qur'an and Sunnah.⁴

Islam is a samawai religion derived from Qu'an and Sunnah. *Jumhuru-l- Scholars* agree that the source of islamic law consists of four sources, namely; *Qur'an, As-Sunnah, Al-Ijma' and Al-Qiyash*.⁵ However, some scholars are still contradictory in other sources of postulate, such as; *Istihsan, Istishab, Qoulu Shahabah, 'Urf, Maslahah Mursalah* and others. Mu'tazilah scholar Al-Qhadhi Abdul Jabbar ibn Ahmad explained that the main source in islamic law is Reason before the Qur'an and As-Sunnah because *Ma'rifat-Ullah* (Understanding the essence of God) cannot be obtained except by the reasoning of human reason itself. The author looks at⁶ several legal sources such as; *ijma', qiyash, istihsan, and istishab* are *istikhrajul hukm* processes of human reason led by God's revelation. However, some scholars argue that *istikhrajul ahkam* above can be done if no clarity can be found sourced from the Qur'an and as-Sunnah. The flexibility of the⁷ law and the ability of Islam to adapt to the traditions of the local community, make it easier for Islam to spread to the lowest levels of society. at the time of its spread. Islam is very closely related to the acculturation of peasant traditions in the archipelago, so there is a difference between Islamic traditions in Java and outside Java. The uniqueness of the spread of⁸ Islamic law in Indonesia has a different pattern from other countries, stemming from the pattern and geogarpical location of Indonesia and the *Arabian Peninsula* as the beginning of the spread of Islam.

One of the sources of Islamic law is 'Urf or Adat customs of a society. In the discussion of Fiqh, 'Urf is something that is done or said over and over again, so it is considered good and acceptable to all circles. However,⁹ in the study of akidah and ibdah, 'Urf cannot be a foundation if there is no source from the Qur'an and As-Sunnah as the practice of the Messenger of Allah. The¹⁰ 'urf method itself has become a method of proselytizing the spread of Islam to the archipelago, so that it

³ Adil bin 'Abd al-Qadir bin Muhammad Waliy Qutah, *Al-'Urf: Hujjiyyatuhi Wa Atsaruhu Fi Fiqh Al-Mu'amalât Al-Mâliyah 'Inda Al-Hanâbilah* (Mecca: al-Maktabah al-Makkiyyah, 1997).

⁴ Musa Aripin, "The Existence of 'Urf in the Compilation of Islamic Law," *Al-Maqasid Journal* 2, no. 1 (2016): 207–20.

⁵ I. Nurol Aen Djazuli, H.A, *Ushul Fiqh: Methodology of Islamic Law* (Bandung: Rajawali Press, 2000), 11.

⁶ Al-Qhadi Abdul Jabbar ibn Ahmad, *Syarhu Ushuli-L-Khomsah* (Qahirah: Maktabah Wahbah, 1996), 88.

⁷ Al-Syathibi, *Al-Muwafaqat Fi Ushul Al-Shari'ah* (Beirut: Dar al-Ma'rifah, 1994), 345.

⁸ Muhammad Harfin Zuhdi, "Da'wah and the Dialectic of Cultural Acculturation," *Religion : Journal of Islamic Studies* XV, no. 1 (2012): 46–64.

⁹ Amir Syarifuddin, *Ushul Fiqh Volume 2* (Jakarta: Logos, 2001), 345.

¹⁰ Sarjana, "The Concept of 'Urf in Islamic Law," 279–296.

is able to accommodate religious dogma with local traditions. The process of ¹¹ Islamization in Indonesia is inseparable from how Islamic teachings enter nusantara which has the characteristics of multicultural and cultural plurality. The uniqueness of Islamic teachings makes the indigenous archipelago interested in its teachings. One of the methods of ¹² determining the law of the time was the merger of religion and tradition ('urf). ¹³ Today, contemporary Islamic thinkers often encourage the deconstruction of Islamic law by conforming human rights principles.¹⁴

Mu'amalah is a derivative of Sharia studies. Etymologically, the word "¹⁵mu'amalah" has its roots in the word '*aamala-yu'aamilu-mu'aamalatan* which means to do each other, act on each other, and practice each other. ¹⁶ In terminology, Dimiyati defines muamalah as an activity that is regrettable in the mundane aspect to be a bridge to the afterlife. Meanwhile, Suhendi¹⁷ defines muamalah as a series of rules created by God to regulate the relationship between people in the world in achieving the success of the afterlife. Hudhari in Suhendri narrowed the definition of muamalah as any form of contractual activity in which benefit exchange activities occur. Rasyid Ridha in Suhendri narrows the meaning of muamalah as an exchange activity for useful goods in a predetermined way¹⁸¹⁹. From some of the ²⁰ definitions above, the author concludes that muamalah is an exchange activity for goods with benefits desired by both parties in accordance with the specified rules. Business is the activity of individuals or groups of people in producing or selling goods needed in society. Kismono added business as an activity of a group of ²¹ people in the exchange and value addition of a good in the form of services, or buying and selling goods. The author sees that there are similarities between the ²² definition of muamalah which is interpreted as an exchange activity with a business that focuses on the exchange of goods and services. However, sharia business is more inclined to muamalah activities that have a series of regulations that have been set out in the Qur'an and Sunnah. Shidhiqy grouped the muamalah into two namely; Al Madiyah (materil) and al-Adhabiyah (Ethic). ²³ Modernly, traditional business has transformed into a digital business, so of course there are many shifts in norms in

¹¹ Zuhdi, "Da'wah and the Dialectic of Cultural Acculturation," 46–64.

¹² Hanum Jazimah Puji Astuti, "Islam Nusantara: An Argument in Binkai Kultura," *INJECT: Interdisciplinary Journal of Comunication* II, no. 1 (2017): 27–52.

¹³ Mujamil Qamar, "No Title," *El-Harakah Journal* XVII, no. 2 (2015): 198–218.

¹⁴ Harda Armayanto & Maria Ulfa, "Deconstruction of Sha Shari'a in Muslim and Non-Muslim Marriages," *Journal of Ijtihad* VII, no. 2 (2016): 169–82.

¹⁵ Rachmat Syafe'i, *Fiqh Muamalah* (Bandung: Pustaka Setia, 2001), 15.

¹⁶ Fathurrahman Azhari, *Qawaid Fiqhiyyah Muamalah* (Banjarmasin: Institute for The Empowerment of People's Quality, 2015), 131.

¹⁷ Ad-Dimyati, *Tanatu at-Thalibin* (Semarang: Toha Putra, 1995), 2.

¹⁸ Hendi Suhendi, *Fiqh Muamalah* (Jakarta: PT Raja Grafindo Persada, 2012), 2.

¹⁹ Ibid., 3.

²⁰ Ibid.

²¹ Ahmad Lukman Nugraha, "Islamic Business Ethic and Islamic Microfinance in Pesantren Gontor," *Shirkah: Journal of Economic and Business* 2, no. 1 (2017): 87–121.

²² Nervous Kismono, *Introduction to Business* (Yogyakarta: BPFE-UGM, 2001), 4.

²³ Hasbi As-Siddiqy, *Introduction to Muamalah Science* (Jakarta: Bulan Bintang, 1984), 140.

naming. The rule of "*al-ashlu fi al-muamalah al-ibahah*" became the fulcrum of contemporary *fuqaha* and practitioners in driving the wheels of business. The 'urf method can be a solution in this problem of muammalah or modern shari'a business. In this paper, the author tries to explain the definition of 'Urf and its foundation on the Qur'an and Hadith. The author seeks to describe 'Urf in the rules of fiqh and apply it to this modern sharia business practice.

Research Method

This research uses qualitative research methods with a normative juridical approach.^{24, 25} The normative juridical approach encourages researchers to study legal theories, concepts, or principles. The researcher's study relates to²⁶ the concept of 'urf and sharia business. Primary data sources used in the book of rules of jurisprudence and ushul fiqh. The secondary sources in this study are articles in journals, as well as reference books that are relevant and related to research. Data collection techniques are carried out by means of *a library* study or literature study. After the necessary data is collected, the next step is to process and analyze the data and draw legal conclusions.

Result and Discussion

Definition of 'Urf as a Community Tradition

Etymologically, The word 'urf derives from the word '*arafa-ya'rifu-urf*an with *mashdar ma'ruf* has the meaning of a known sesuatu, something known, something good.²⁷ In terminology, 'urf has the meaning of an action or deed that is familiar to a group of people because the action becomes a habit and merges in the life of that community, it can be an action or speech.²⁸ Abu Zahrah defined 'urf as a custom of the people in the act of *muamalat*.²⁹ While adat is an absorption word from the Arabic word 'adah with the origin of the word '*ada-ya'udu-'adatan* with *mashdar al-'adah*. Etymologically, this word has the meaning of something that is done back, over and over again, or a habit of society. Epistemologically,³⁰ *al-'adah* is an act or word that is familiar, ordinary, and attached to a certain society so that it becomes a custom and tradition. Traditions carried out by individuals and groups of people that can be derived from the surrounding nature or lust. From some of the³¹ definitions above, the author finds some similarities between 'urf and 'adah, which is an action or speech that is a habit of a group of people.

²⁴ Moh. Fauzan Januri, *Jurisprudence Analysis* (Bandung: Pustaka Setia, 2018), 15.

²⁵ Jonaedi & Johnny Ibrahim Efendi, *Legal Research Methods: Normative and Empirical* (Jakarta: Prenada Media, 2018), 39.

²⁶ Zulfi Diane Zaini, "Implementation of Normative Juridical Approaches and Sociological Normative Approaches in Legal Science Research," *Legal Institutions* 6, no. 2 (2011).

²⁷ Syarifuddin, *Ushul Fiqh Volume 2*, 363.

²⁸ Abd al-Karim Zaidan, *Al-Wajiz Fi Ushul Al-Fiqh* (Beirut: Ma'assasah al-Risalah, 1986), 252.

²⁹ Muhammad Abu Zahrah, *Ushul Al-Fiqh* (Dar al Fikr, 1958), 273.

³⁰ Ba'labaki Ruhi, *Al-Maurid Qamus 'Arabi Inggilizi* (Beirut: Dar al-'ilmi lilmalayin, 1993), 742.

³¹ Syarifuddin, *Ushul Fiqh Volume 2*, 363.

Abdul Wahab said *'urf* is something that people know each other and they have become accustomed to it, both in speech and action, and it has been done continuously or by the majority of people. Ahmad Fahmi explains the ³² description of *Parashuliyyūn* in the distinction of *custom* with *'urf* in discussing its position as one of the postulates for establishing the law of shari'a'. Custom is defined as something that is worked on repeatedly in the absence of a rational relationship. The definition explains that custom is any ³³ act that is not done without going through the consideration of reason. In other words, if the deed is done with reason in mind, it is not called custom. In addition, customs also include customs carried out by individuals in society. So it can be said that customs have a wide scope, which includes the habits of individuals as individuals who live in the midst of society as well as habits carried out by a society. Whereas *'urf* according to the *ushuliyyūn* is the custom of the majority of the people either in word or deed. Based on this definition,³⁴ it can be seen that *'urf* is part of the custom.

Syarifuddin corroborates the difference between *'urf* and *'adah* in terms of the origin of the root of the word. The word *'adah* comes from a word that has the meaning of *tikrar* or repetition. An activity can be called customary if it is carried out repeatedly, but the measure of repetition has no provisions. The word *'urf* has a known meaning, or is known so it does not rely on the aspect of repetition, but the emphasis on the aspect is known or known to many people. Imam al-Syathibi grouped the customs³⁵ into two groups, namely *al-'adah asy-syar'iyah* and *al-'adah gha'oiri syar'iyah*. Syar'I customs have legitimation from syar'I postulates while non-syar'I customs are derived from human instincts, habits, and passions. According to al-Syatiby the ³⁶ notions of *'adah* and *'urf* have something in common as an act that is repeated so that it is known and recognized by the community. Djazuli and Nurol Aen³⁷ mention the conditions for *'custom* to be used as a legal method, namely; a). Not contrary to Nash, b). does not cause misfortune and does not eliminate the goodness, c). generally applicable, d). does not apply to *mahdhah* worship. From the above requirements, Djazuli divides *'adah* into two, namely; 1). *Al-'adah as-shahihah* qualified above and 2). *Al-'adah al-bathilah* is ineligible.

'Urf is divided into objects, scope and validity. In the aspect of objects, *'urf* can be divided on two kinds: (a) *Al-Urf al-Lafzhi* and (b). *Al-Urf al-Amali*. The coverage aspect, *'Urf* is divided into two parts; (a) *Al-'Urf al-'Am* and (b) *Al-'Urf al-Khash*. The validity aspect of *'urf* has two kinds, namely (a) *Al-'Urf al-Shahih* and (b) *Al-'Urf al-Fasid*. ³⁸ *'Urf* can be the basis of the mujtahids in determining the law of a case with several conditions, namely; (1) *'Urf* is not opposed to nash, (2) *'Urf* is general, (3) '

³² Qādihī 'Abd Al-Wahhāb Al-Mālikī, *Al-Isyrāf "Alā Masā'il Al-Khalaf* (Tunis: Mathba'ah al-Iradah, n.d.), 217.

³³ Ahmad Fahmi Abu Sunnah, *Al-'Urf Wa Al-Fuqahā'* (Egyptian: Dār al-Fikr, alArabī, n.d.), 8.

³⁴ Ibid.

³⁵ Syarifuddin, *Ushul Fiqh Volume 2*, 363.

³⁶ Abu Ishaq Al-Syatibi, *Al-Muwāfaqāt* (Cairo: al-Maktabah al-Taufiqiyyah, n.d.), 583.

³⁷ Al-Syathibi, *Al-Muwafaqat Fi Ushul Al-Shari'ah*, 363–364.

³⁸ Djazuli, H.A, *Ushul Fiqh: Methodology of Islamic Law*.

Urf is long-term, (4) there is no specific nash describing a particular case, (5) the use of 'urf does not shift the position of nash, (6) does not cause any impurity or narrowness.³⁹

Legal Foundations of 'Urf in the Qur'an, Hadith and Views of Scholars

The author finds approximately thirty verses that explain the word "u'rf" with various word forms, such as; urfun, arrifan, ma'rufun, yu'rafu and others. The author tries to review one or two of the above verses;

خُذِ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ

Be thou (Muhammad) forgiving and tell the people to do the makruf and turn away from the ignorant. (QS. Al-A'raf [7]: 199)

يُيَسِّرُ الْقِيَامَ الصَّلَاةَ وَالْمَعْرُوفَ وَيَنْهَى عَنِ الْمُنْكَرِ وَأَصْبِرْ عَلَى مَا أَصَابَكَ ۖ إِنَّ ذَلِكَ مِنْ عَزْمِ الْأُمُورِ

O my son, uphold the prayer and enjoin what is right and prevent them from evil, and be patient with what befalls you. Indeed, that includes matters that should be prioritised.

ۖ وَمَنْ كَانَ فَاقِرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ ۚ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ ۚ وَكَفَى بِاللَّهِ حَسِيبًا

And whoever is disobedient, he may eat it in a good way. Then, when you hand over the property to them, hold witnesses. God is sufficient as an overseer. (QS. An-Nisa [4]: 6)

In the three verses above, the word 'urf has different meanings. In the first verse the word 'urf is translated with good works, just as in the second verse. But in the third verse, *ma'ruf* is defined as something that is appropriate or agreed upon by the community. In the hadith, the author finds a mauquf hadith⁴⁰ that deals with the agreement of the Muslim community, namely:

إِنَّ اللَّهَ عَزَّ وَجَلَّ نَظَرَ فِي قُلُوبِ الْعِبَادِ بَعْدَ قَلْبِ مُحَمَّدٍ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَوَجَدَ قُلُوبَ أَصْحَابِهِ خَيْرَ قُلُوبِ الْعِبَادِ، فَجَعَلَهُمْ وَرَاءَهُ، يُقَاتِلُونَ عَلَى دِينِهِ، فَمَا رَأَى الْمُسْلِمُونَ حَسَنًا، فَهُوَ عِنْدَ اللَّهِ حَسَنٌ، وَمَا رَأَى الْمُسْلِمُونَ سَيِّئًا فَهُوَ عِنْدَ اللَّهِ سَيِّئٌ

From Abdullah ibn Mas'ud Radhiyallahu 'anhu said: "Verily Allah saw the hearts of His servants after the prophet Muhammad shalallahu 'alaihi wa salam then Allah found the hearts of the companions to be the best hearts and made them as companions of His prophet who fought over His religion. So what muslims see as good then on Allah's side as a good. And what muslims see as ugliness then it on Allah's side is as a ugliness".

³⁹ Ibid.

⁴⁰ Jalaluddin & Jalaluddin Al-Mahali As-Suyuthi, *Tafsir Jalalain* (Surabaya: Imaratullah, 2003).

مَا رَأَاهُ الْمُسْلِمُونَ حَسَنًا؛ فَهُوَ عِنْدَ اللَّهِ حَسَنٌ، وَمَا رَأَاهُ الْمُسْلِمُونَ سَيِّئًا؛ فَهُوَ عِنْدَ اللَّهِ سَيِّئٌ

"Whatever Muslims see as a virtue, then it is in the sight of Allah is also a goodness. And whatever the Muslims see is bad, then it in the sight of Allah is also a disadvantage" (HR Ahmad).

This hadith is widely used by *ushuliyyin* to strengthen the method of taking laws outside the main modes such as *istihsan*, *mashalihul mursalah*, *maqashid Sharia* and '*urf*'. It is narrated from *bukhari* and *muslims* from the hadith narrated 'Aisyah, that *Abi Sofwan*'s wife complained to the Messenger of Allah that she had not been given a living by her husband, so the Messenger of Allah advised her to take the property from her husband as appropriate and sufficient for her and for her sons.

From the verses of the *Qur'an* and the hadith above, the author takes the correlation of the meaning of '*urf*' is all things good deeds, which the general public agrees on and deserves to do. *Setiyawan* described '*urf*' can be used as a legal basis in *muamalah* while not contradicting in *nash*, this tradition is comprehensive and majority, and there are no deeds or utterances that are contrary to traditional values. The author⁴¹ sees '*urf*' as a legal basis in *Islam* if it is not opposed to *nash*, is majority not minority, and is sustainable. *Al-Hasyimy* describes the debate of the classical *fuqaha* in the determination of '*urf*' as the legal basis. *Abu Hanifah*⁴² and *Imam Malik* used '*urf*' as the legal basis of society, while *Imam Shafi'i* rejected '*urf*' as the legal basis because he used the method of taking law with *qiyash*. The author sees that some *madhabs* agree that '*urf*' as a legal basis in society, especially in the field of *mu'amalah* and activities that do not intersect with *mahdhah* worship, but *shafi'i* *madzhab* prioritizes the *qiyash* method as the basis of *mu'amalah* law rather than using the '*urf*' method.

'Urf Resident of Medina

The city of Medina or full name *Medina al Munawwarah* is an ancient city that used to have the name of the city of *Yatsrib*. Medina City is a city in the northern part of the city of *Makkah al Mukarromah* with a distance of 450.4 km. The city of Medina is the second city in history as the path of proselytizing *Muhammad S.A.W.* Prophet *Muhammad S.A.W.* carried out the process of proselytizing the Islamic religion for 10 years until the end of the rest of His life. In terms of social life, the people of Medina are very close to the life of *Rosulullah*. The people of Medina base the determination of daily laws based on *naql* postulates in the form of words, deeds, decrees and even something that was granted by the Messenger of Allah. *Imam Malik* saw that the traditions of the Medina community could be used as a legal basis in determining Islamic law. *Imam Malik* grounded many laws through the '*urf*' of medina experts. '*urf*' the medina expert became the legal⁴³ foundation for *Maliki* because the customs

⁴¹ *Setiyawan*, "Local Culture in Religious Perspective: The Legality of Customary Law ('Urf) in Islam," 203–223.

⁴² *M Ma'shum Zainy Al-Hasyimiy*, *Introduction to Understanding Nadzom Al-Faraidu Al-Bahiyyah* (Jobang: Darul Hikmah, 1989), 185.

⁴³ *Djazuli, H.A, Ushul Fiqh: Methodology of Islamic Law*, 189.

of the Medina people were seen as close to the customs of the Messenger of Allah during His lifetime, so the 'urf of the Medina expert can be used as a legal basis.

According to Imam as-Syatibi, 'urf can be used as a legal basis for the agreement of the cleric ('Ijma) with the encouragement of the people. Djazuli said the knowledge of 'urf and ⁴⁴adat is an absolute requirement for a mujtahid to be able to determine the hokum syara' without causing mudharatan and kemafsadatan, thus maintaining the welfare of the community according to local conditions. The author asserts that 'urf can be used as a method of determining hokum if it does not conflict with nash and does not invite omnipresence. The highest level of 'urf is 'urf ahlu Medina because geographically the customs of the people of Medina are close to the sources of the Qur'an and Hadith. Anthropologically, the life of the people of Medina is colored by the lifetime of the Prophet and his companions, so that their habits are maintained and characterize the ahlul hadith although it is still a debate of scholars other than Imam Malik, this is due to differences in understanding of concepts.

'Urf the inhabitants of Medina are divided into two parts namely; First *Naql* of the words, actions, consent and omission of the Messenger of Allah. Secondly *ijtihad* the companions of Imam Malik. According to Imam Malik, 'urf the inhabitants of Medina have a great position because of the primacy of the city of Medina and its inhabitants compared to other regions based on some of the histories mentioned by the Messenger of Allah and His companions. Imam Malik has deduced the law from several issues based on the practice of the people of Medina. Imam Malik often referred to it in ⁴⁵ different terms in the book of *Al Muwatta* and has prioritized the practice of the people in Medina if it contradicts the opinion of the par-clerics of the madzhab. in contrast to Imam Malik, the Author reads that the majority of scholars do not consider the practice of the population of Medina as a postulate because the population of Medina is only a minority of the number of Muslims as a whole.

Implementation of '*Urfahlu-l-Madina* in Sharia Business

Naqfi mentioned the foundations in the syariah business initiated from the Quran and Hadith, namely (1) *at-Tawhid*, (2) *al-'adl*, (3) *Free will*, (4) *Responsibility*. Beekun⁴⁶ added that sharia business principles are based on (1) *at-Tawhid*, (2) *al-'adl*, (3) *Free will*, (4) *Responsibility* and (5) *al-Ihsan*. In contrast to Naqfi and Beekun, Zarkasy mentioned the pillars of sharia business on seven principles, namely; (1) ⁴⁷worship, (2) *caliphate*, (3) *'is*, (4) *shiddiq*, (5) *amanah*, (6) *taawun* and (7) *ihsan*. Nugraha ⁴⁸purses that sharia business principles are (1) *tawhid*, (2) *caliphate*, (3) *shiddiq*, (4) *'is* (5) *ta'awun*, (6) *ihsan*. At least sharia business is based on the six points above, namely ⁴⁹*tawhid*, *khilafah* *shiddiq*, *'is*, *ta'awun*, and *ihsan*

⁴⁴ Al-Syatibi, *Al-Muwāfaqāt*, 245–246.

⁴⁵ Ibid.

⁴⁶ Syed Haedar Naqfi, *Ethics and Economics: An Islamic Synthesis* (Bandung: Mizan, 1987), 17.

⁴⁷ Rafiq Ishaq Beekun, *Islamic Business Ethic* (Virginia: International Institute of Islamic Thought, 1997), 24.

⁴⁸ Abdullah Syukri Zarkasyi, *Islamic Business Ethics and Its Relevance in Business Activities: A Case Study of Pondok Modern Gontor* (Yogyakarta: UIN Sunan Kalijaga, 2003).

⁴⁹ Nugraha, "Islamic Business Ethic and Islamic Microfinance in Pesantren Gontor."

A rule that is often heard in business activities is "*al ashlu fil al- muamalah al-ibahah, illa an yadulla postulan 'ala tahrimiha*". Basically all business ⁵⁰ activities are allowed unless there are prohibitive arguments, such as business transactions that lean towards *maysir* (gambling), *gharar* (gambling) and *usury* (interest). ⁵¹ Sharia business activities also depend on three economic activities, namely the production process with goods, methods, and tools allowed in Shari'a (production), the distribution of goods hygienically and using halal accommodation (distribution), and the consumption process presented to consumers with honest marketing techniques, avoiding fraud, man funds for health (consumption). The development of this modern business enters the era of accelerating transparency in the digital aspect. People⁵² no longer need to go to the market to buy, and choose goods. People simply sit back and order goods through the application listed on their respective devices. This modern, retail salespeople do not need to lobby prices to the point of pricing, just look at the internet at market-determined prices. Sellers do not need to memorize the price and quantity of goods, they simply enter the data into the computer and detect the barcode when the buyer comes. The shift in the business traditions of the digital age has seen a high jump, making it difficult to find legal provisions through classical scholars. 'Urf is able to be a solution to the problems that exist in the⁵³ social case above. The rule of "*al'adah muhakkamah*" reflects the tradition. The custom of a society can be used as a legal foothold if it has not been found in *nash*. The foundation of this rule is the hadith narrated by Ibn Mas'ud that every action agreed upon is good by the people, then good according to Allah. This rule also refers to the Aisyah hadith above. Imam Nawawi mentioned that the customs that can be the basis of the law are customs that are in the same direction or do not contradict the law of Shari'a. Ibn Najar limited the problems that refer to this rule in the muamalah of society such as; eating, gifting, borrowing goods, and buying and selling behaviors that are accustomed to daily transactions. Today, the tradition⁵⁴ of buying and selling has different forms in urban and rural areas. If in the countryside, bargaining techniques are still commonly encountered, but if you have moved to the city area, it must be very rare to find. This can be returned to the customary traditions of the surrounding community.

The sale and purchase of "greetings" is not justified by Imam Shafi'I because according to him, buying and selling must have a rukuk such as; sellers, buyers, *ijab-qabul*, and goods. In the "⁵⁵greeting" transaction, the goods to be purchased are newly ordered and do not yet have a form. So this is referred to the tradition of

⁵⁰ Azhari, *Qawaid Fiqhiyyah Muamalah*, 138.

⁵¹ Rofik, "FORBIDDEN TRANSACTIONS IN ISLAM," *Ngabari: Journal of Islamic and Social Studies* 13, no. 1 (2020): 40–53.

⁵² Kustoro et.al Budiarta, *Digital Economy and Business* (Jakarta: Kita Tulis Foundation, 2020).

⁵³ Rifqy Tazkiyyaturrohman, "TRENDS IN COLLABORATION BUSINESS MODELS BETWEEN STARTUP COMPANIES ISLAMIC BUSINESS PERSPECTIVE," *Codification* 14, no. 2 (2020): 381–402.

⁵⁴ Muhammad Mushtafa Az-Zuhaily, *Al-Qawaid Al-Fiqhiyah Wa Tathbiqatiha Be Al Madzahib Al-Arba'ah* (Damaskus: But al-Fikr, 2009), 329.

⁵⁵ Siti Mujiatun, "Buying and Selling in an Islamic Perspective: Salam Dan Istisna'," *Journal of Accounting and Business Research* 13, no. 2 (2014).

masayarak customs around according to the rule of "al-aqdu al- 'urfy ka al-aqdi al-lafdz". This rule can be interpreted as a transaction that has become habitual, commensurate with the *ijab-qabul* spoken orally. This second rule is that a contract that is carried out habitually is as valid as a contract with words. The customary contract here is an absolute contract that is valid and common⁵⁶ among us. Everything in the form of a customary contract is the same as a *lafadz* contract like transactions in today's modern market, there is no use of *lafzat akad* only in the form of a cashier who checks the price of goods on the cashier's computer, then the buyer pays in cash or non-cash. Customary agreements also often occur in determining the cost of the services of patchwork and builders which are returned to the customs of the local community.

Nowadays, the author finds a variety of services that are very innovative, for example blogs, websites, graphic design services at different prices from the two builders above because they have different habits, levels of difficulty and implementation of knowledge. The determination of wages or profits has become a debate of the classic *Fuqaha*. Contemporary scholars emphasize tradition as an indicator of wage giving⁵⁷ on the basis of the rule "al-ma'ruf 'urfan, ka al-masyrut syartan". This rule can be interpreted with everything that has become known as a habit as well as something that is required.⁵⁸ The point of this rule is that a custom in *muammal* activities has certain conditions, for example in the determination of some of the services mentioned above. Rural communities carry out the process of building a house for one of the residents in a mutual cooperation, without any handyman costs that must be incurred.

The tradition of the villagers after working together is to eat together prepared by the host, so the provision of food as a customary requirement for the village community. Unlike urban communities, the process of making houses is⁵⁹ carried out by artisans by paying daily or wholesale wages, so the payment of wages is a condition in the habit of building houses in urban areas, even the size of wages is adjusted to the context of a particular area. The determination of wages nominally is not contained in *nash*, moreover, some hadiths only determine with dinars and dirhams which are not as a medium of exchange for society in Indonesia. The rule of "at-ta'yin bi al-'urf ka at-ta'yin bi an-nash" can be a solution to the demographic differences above. Determining a wage value on a customary basis is as strong as determining based on *nash* explains that the power of a good 'urf is proportional to the power of *nash* (normative). In the above rules, the author tries to express the differences in habits in villages and cities. In the hadith, the Prophet explained that wages must be given before mongering sweat, but it is not detailed how many dinars/dirhams/keeping gold/rupee must be paid. The case is returned to 'urf in a particular area and with various customs in their respective regions. Similarly to wages, the determination of rent and profit-taking of a county's trade is not specified

⁵⁶ Az-Zuhaily, *Al-Qawaid Al-Fiqhiyah Wa Tathbiqahtiha Be AlMadzahib Al-Arba'ah*, 318.

⁵⁷ Sri Dewi Yusuf, "The Concept of Wage Determination in Islamic Economics," *Al-Ulum* 10, no. 2 (2010).

⁵⁸ Az-Zuhaily, *Al-Qawaid Al-Fiqhiyah Wa Tathbiqahtiha Be AlMadzahib Al-Arba'ah*, 318.

⁵⁹ Devit Ethics Sari, "The Custom of Building a House in Java Anthropological Studies in Nganjuk, East Java," *Economic : Journal of Economic and Islamic Law* 8, no. 2 (2017).

in detail in *nash*, only it says "*tijaratan an taradhin*" which underlines the mutual cooperation between the seller and the buyer, between the tenant and the one who rents the goods. The above business transaction cases can be returned to the traditions of the surrounding community but of course they are global and comprehensive, not as minimum as the attention to the rule of "*al-'iratu li al-ghalibi as-Syai'I, La li an-nadhiri*". Sharia business problems can be returned to the traditions of the surrounding community on the condition that they are comprehensive (global) and known by all circles of society. The absolute requirement that '*urf*' can be used as a legal basis in the syaria business is (1) Business traditions do not conflict with *nash*, (2) business traditions are long-term, (3) business traditions are known to the general public, (4) business traditions are innovative according to time and space.

Closing

'*Urf*' is a series of cultural traditions of the community that are repeated and recognized by the public. Business is dynamic and will always evolve. The Qur'an and hadith underlie the use of '*urf*' as a sharia business solution which certainly does not conflict with the existing *nash*. The implementation of '*urf*' has been implemented since the beginning of the spread of Islam in Indonesia, so it is easy to adapt to modern business developments. '*Urf*' is often applied in sharia business through aspects of business transactions, profit-taking of sellers of goods and services, and determination of wages. '*Urf*' can be applied in sharia business with several conditions, namely; 1) Business traditions do not conflict with *nash*, (2) business traditions are long-term, (3) business traditions are known to the general public, (4) business traditions are innovative according to time and space.

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