

'Urf as a Method of Istinbath Islamic Law (Thoughts of Hasbi Ash-Shiddieqy with his Indonesian Fiqh)

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Abstract

The article examines the relation Tengku Muhammad Hasbi Ash-Shiddieqyis one of the most influential scholars in Islamic law reform in Indonesia, he brings local traditions ('urf/adat) as the construction of Islamic Indonesian characteristic law. To construct Indonesian personality fiqh, Hasbi set off with 'urf/ traditions living in Indonesian society, he argued that every 'urf/ customary law can be used as the postulate provided that not conflict with the Shariah. It is not only 'urf/customs of the Arabs, but also those who follow principles of egalitarian Islam, so that besides 'urf/Arab customs can be used as the foundation of law istinbat.

Keywords

Local traditions; Islamic law reform; hasbi ash-shiddieqy



I. Introduction

Islamic law is believed by Muslims to be law originating from God's revelation (divine law). This belief is based on the fact that the source of law in Islam is the Qur'an and al-Sunnah, Allah and His Messenger are commonly called the Shari' (law giver). However, it must be admitted that the Qur'an and al-Sunnah are limited, both in terms of events and in the timing of the determination of the law. Meanwhile, the number of events is increasing day by day with a variety of problems. In dealing with this problem, interpretation, reasoning and efforts to find law from Islamic jurists are highly demanded. Al-Quran is a revelation by Allah to the Prophet Muhammad through the Angel Jibreel, to be conveyed to Muslims, and the Al-Qur'an is as a guide and rule of life for Muslims that are historical and normative. (Hasbullah, et al. 2019). Al-Qur'an is believed to be a holy book that holds a lot of knowledge in various fields. All existing knowledge comes from the Qur'an and will lead back to the Qur'an. Among these sciences is the science of man himself, which is the main object of the message of the Qur'an and the main subject for carrying out the content and message of the Qur'an. In the Qur'an, humans are described as creatures that are superior to other creations, even human positions can be more noble than angels. This is clearly illustrated in QS. Al-Isra' verse 70 in which Allah explains the position and glory of man. (Nuraini, et al. 2022)

The scientific paradigm in the Islamic world generally uses two references, namely normative references (al-naql) and reasoned references (al-aql). Based on that choice, knowledge in Islam is an instrument for understanding and explaining God's laws that contain fundamental values for human life, which stem from belief. Meanwhile, the Islamic legal system is deduced from commands (al-awāmir) and prohibitions (al-nawāhi) Allah and His Messenger, as lawmakers (al-syari'/al-hakim) are then understood and socialized by experts, namely the fuqaha. Thus, law is a product of the authority of Allah, His Messenger, then the jurists Al-Qur'ān, al-Sunnah and fiqh, become sources and references for the development of the legal system in the Islamic world. In other words, the law was developed primarily to refer to the qawl of Allah, the qawl of the Messenger,

The main function of the Qur'an is to be a guide or guide to life for all mankind. The function of the Qur'an is to guide humans so that they remain in their human nature and are able to obtain benefit and prosperity, both for the life of this world and also for the life in the hereafter. Understanding and interpretation of the sources of Islamic law requires systematic and logical reasoning. Understanding it in the form of vocabulary and sentences written in the Qur'an or al-Ḥadith can also be an effort to contextualize the values contained in the two sources of law.

What is stated above is an axiom of opinion which is used as a basic guideline as a starting point for understanding the epistemology of fiqh, which was built and developed by the fuqaha, especially by the founders of the fiqh schools. Therefore, fiqh as a product of understanding the text messages of the Qur'an and al-Sunnah is always developing and cannot be separated from the conditions and guidance of society which is full of the development of science. The product of this understanding can be obtained directly, either based on the law contained in a verse of the Qur'an or al-Sunnah, or by taking the meaning contained in a verse of the Qur'an or al-Sunnah with a systematic effort. One of them is by way of 'urf as an effort to preserve dynamic fiqh.

As has been described above, that fiqh is a science that is amaliah obtained from detailed arguments. The proposition (al-dalil), which literally means guidance, is textually a general statement that is prescriptive (al-number al-insya'iyah) or descriptive (al-number al-khabariyyah) which is used as a reference in establishing the law. The provisions in fiqh are derived and extracted from authentic and reliable sources (al-mashdar, plural: al-mashādir), obtained through work procedures using various methods, namely linguistic rules (al-qawā'id al-lughawiyah) and - legal rules (al-qawā'id al-tasyri'iyah), which in various cases use logical methods (al-qawā'id al-mantiqiyyah).

In ushul fiqh literature there is a discussion of Islamic "sources of law" (al-mashādir al-ahkām al-syar'iyah) and "syar'iyah propositions" (al-adilah al-syar'iyah) guidance as a reason for establishing shari'a law, which is termed justice al-ahkām, ushul al-ahkām, al-tasyri' principle and justice al-syari'ah. In this context, besides being a source, al-Qur'ān and al-Sunnah are also referred to as legal arguments, because apart from them (al-Qur'ān and al-Sunnah) such as al-'urf are called legal arguments. Thus, legal arguments include the Qur'an and al-Sunnah as well as arguments other than the two, whereas if it is called a source of law, then what is meant is only the Qur'an and al-Sunnah, while the others cannot be referred to as sources of law source of law.

'Urf itself in the Islamic jurisprudence system, occupies an important position in the construction of law. As a set of legal arguments, the existence of 'urf is not as strong as the sources that have been mutually agreed upon, namely, al-Qur'ān, al-Sunnah, Ijma', Qiyas. In this case the source of 'urf only occupies as an additional argument. KHanafi and Maliki schools view it as a source of law, but other schools (Shafi'i, Hambali, Zahiri, and Shi'i) do not view it as a source of law. Although the Shafi'i school does not view 'urf as a source of law, in reality Imam Shafi'i uses the socio-cultural culture ('urf) of society in establishing a law, this can be seen by the existence of qawl qadim and qawl Jadid. Meanwhile, Ibn Jauzi (w.741 H) explained that 'urf as a good deed which is part of the prevailing customs in society.

In the context of Indonesia itself, at the beginning of the twentieth century, a reformist figure who in his life was known to be very productive who tried to develop Indonesian fiqh based on the development of several theories from the schools that developed in the discourse of ushul fiqh, he was TM Hasbi Ash Shiddieqi. One of the factors that support the renewal of Hasbi's thinking is the attitude of openness to accepting the methodology of Islamic law from all schools of thought. This is due to his attitude that

is not tied to any one school of thought, where we must study fiqh in a muqaranah (comparative) manner, not limited to certain schools of thought. .

Hasbi explained that 'urf is a habit that is considered good by reason and accepted by human nature. Hasbi is also of the opinion that he should consider local traditions ('urf) as a reference for the formation of a new format of Islamic legal thought. A nation has 'urf, customs that vary from country to country. The difference in 'adat' is the most important element and can provide the characteristics and identity of the nation concerned.

According to Hasbi, Indonesian fiqh is fiqh that is determined according to the Indonesian personality, according to the nature and character of Indonesia. As far as Hasbi observes, the fiqh that is developing in today's society is partly Hijaz fiqh, fiqh formed on the basis of customs and 'urf prevailing in the Hijaz, or Misri fiqh, namely fiqh formed on the basis of Egyptian customs and 'urf, and Hindi fiqh, namely fiqh formed on the 'urf and customs prevailing in India.

From some of the arguments put forward above, it is enough to be the basis for acceptance'urf as a set of laws. However, it becomes a difficulty in explaining how to identify fiqh with an Indonesian personality. This is not without obstacles and difficulties. For this endeavor, Hasbi in addition to supporting Fardi's ijthad also advocated the need for collective ijthad. Collective ijthad can be reached through the Ahl al-Hal wa al-Aqd institution. Through this institution, it is considered that the provisions of 'urf or adat which are considered good become sources of law which of course can overcome the possibility of causing damage and polytheism.

Therefore, in the context of finding the law, it is very important to discuss the position of 'urf to find out the side of the shift in legal istinbath. This is what underlies this research to provide the main place of attention, and is seen as something that is very urgent so as not to become ambiguous when dealing with issues that will be determined by law.

II. Review of Literature

2.1 Sources, Evidence and Manhaj

Islamic law is law that originates and becomes part of the Islamic religion. As a legal system, Islamic law has several key terms that need to be explained in advance so that the exact meaning is known, so that it does not become multi-interpreted and confusing, even far from the desired goal these terms are: (1) source, (2) dalil and (3) manhaj, as well as several other words related to these terms.

In the study of ushul fiqh, it is often distinguished between the content of the meaning of the word "source" and the word "proof", in the discussion of "legal sources" and "legal arguments". The word "source" in Arabic, is an understanding of the word "mashdar", plural "mashādir", meaning the origin of everything, or a place to refer to everything. So if you say mashdar al-hukmi, or mashdar al-ahkām, it means origin or legal reference.

In General Indonesian Dictionary, source is the origin of something. The source of Islamic law is the origin (place of retrieval) of Islamic law which is used as a guide. In the Islamic law literature in Indonesia, the sources of Islamic law are sometimes called the postulates of Islamic law or the subject of Islamic law or the basis of Islamic law.

Material legal sources or sources of legal content, are sources that determine the nature of legal content, or something that is reflected in the content of the law. Sources of material law, determine where the law comes from, determine the size, what content must be fulfilled so that something can be called law, so that it has binding power, namely as a

norm that must be obeyed as law. In the perspective of legal science, the source of material law is one of the fields of study in the philosophy of law.

Formal sources of law are discussions of legal science, not discussions of legal philosophy. Formal sources of law or forms where one can find or know the law that applies as positive law in a country. Formal sources of law in legal science are: 1) Legislation; 2) habits (common law); 3) Judge's decision/jurisprudence (judge made law); 4) Agreement/treaty (*pacta servanda sunt*); 5) Legal science (doctrine).

The use of the terms "source of law" (*mashādir al-ahkām*) and "legal proposition" (*adillah al-ahkām*), by some scholars, is sometimes interpreted to mean the same thing. So usually the term justice *al-ahkām* is used to designate *mashādir al-ahkām* and vice versa. However, some other scholars distinguish the two terms. According to the latter opinion, that "source of law" (*mashādir al-ahkām*) is the origin law or legal reference, while the "legal proposition" (*adillah al-ahkām*) is a place to be found or something that points to the existence of law.

Thus, when referring back to the study of "sources of Islamic law", the meaning of the term "source of law" (*mashādir al-ahkām*) is the same as the content of understanding "source of material law" (source of content) in legal science. While the notion of "legal proposition" (*adillah al-ahkām*), is the same as the content of understanding the meaning of "formal legal sources" (known sources) in legal science.

Based on the above understanding, when viewed from a methodological perspective, Islamic law can be understood as law originating from the Qur'an and the Sunnah of the Prophet through a process of reasoning or *ijtihād*. So that Islamic law is believed to be a law that covers all aspects of human life and is universal. The methodological space between revelation as a source of law that contains global instructions and the position of *ijtihād* as its development function, allows Islamic law to have an elastic and accommodative nature. The characteristics of Islamic law that are based on revelation and are based on reason, according to Anderson, are the characteristics that distinguish Islamic law from other legal systems.

2.2 Definition of 'Urf and Islamic Law Legislation Through 'urf

In general, the scholars equate the term 'urf with 'adat. However, this does not mean that there is no group that specifically distinguishes the two. Ahmad Fahmi Abu Sinah, for example, is one of the scholars who distinguishes the two terms. According to him, semantically, the word has different meanings. 'Urf is something that is known while 'custom is habit.ⁱ

DnaturallanguageArabic-'urf (الرف) has various purposes, namely knowledge or *al-ma'rifah* which is a published word (*mUSdar*) for the words 'arafa (فرع).ⁱⁱSeOn the other hand, *al-'urf* as defined by Ibn Manzur, gives the meaning of something known (*al-ma'ruf*) which is also used as something good.ⁱⁱⁱ

In terminology, Al-Jurjanidefine'*urf*is something that has been fixed (constant) in the soul, recognized and accepted by the mind, is a proof and easy to understand. Likewise, the notion of custom is a continuous habit that is carried out by humans based on the laws of reason and humans continue to repeat it.^{iv}

Ahmad Fahmi Abu Sunnah has also picked the same definition as Ibn 'Abidin, namely, from the book *al-Mustasyfa fi al-Fiqh* by Imam Hafiz al-Din al-Nasafi, as something that has underpinned the soul through thoughts that are accepted by sacred instincts. .Modern scholars such as 'Abd al-Wahhab Khallaf provide a rather detailed definition regarding 'urf, which is something that is known by the people and they apply it in speech or action.^{vi}Mustafa Ahmad al-Zarqa' chose his own definition which is concise and clear, namely, a habit of a society in saying

and 'practicing'. According to him, the definition is more effective and covers all situations.^{vii}

After examining the definitions stated above, it can be concluded that although the definitions described by the scholars differ in pronunciation, in theory all these definitions lead to the same legal implications. In this study, the authors tend to define the definition described by Mustafa Ahmad al-Zarqa, because the implications are clearer in the legal aspect.

The Messenger of Allah first conveyed his revelations and teachings in the Arab community of Mecca, for 13 years and after that in the Medina community for ten years, thus the 'urf or 'custom (culture) that first came into contact with Islamic teachings was 'urf or 'Arabic custom. , Mecca and Medina.^{viii}

In this case, many scholars agree and accept *'urf* as a proof in enforcing the law, as long as it is 'urf valid and does not conflict with the qath'i texts. Al-Qarafi in his book *al-Furuq* is of the view that the existence of 'urf is one of the arguments in Islamic law whose legitimacy is based on the al-Qur'an surah al-A'raf verse 199 customs that apply in human mu'amalat.^{ix} Like Al-Qarafi, al-Qurtubi (w.671 H) stated 'urf is a good habit, accepted by the mind and the soul becomes calm about it.^x Meanwhile, Ibn Jauzi (w.741 H) explained that 'urf as a good deed which is part of the prevailing customs in society. Human benefit changes according to the development of society. This benefit is the concern of the Shari'ah. So that Islamic law should change according to the changing times and circumstances.^{xi}

Justification for use *'urf* as the argument for establishing law in the view of scholars, it is supported by strong texts. Among the texts is the hadith of the Prophet Muhammad as follows:

من اسلف في تمر فليسلف في كيل معلوم ووزن معلوم الى اجل معلوم^{xii}

Meaning: "Whoever trades greetings on dates, then let him determine the amount, the dose and the grace period. (HR Bukhari).

This hadith was revealed by the Prophet SAW when he witnessed the practice of buying and selling greetings carried out by the people of Medina. Strictly speaking, this hadith strengthens and legitimizes 'urf buying and selling greetings that has been going on for a long time among the people of Medina.^{xiii}

Regarding the position *'urf* In this case, there is an expression conveyed by Ibn Mas'ud that is relevant to the 'urf that develops in society. That is:

ما رآه المسلمون حسنا فهو عند الله حسنا^{xiv}

Meaning: "Everything that is considered good by Muslims, then it is also good with Allah".

A small number of scholars view Ibn Mas'ud's statement as a hadith. However, many scholars agree that Ibn Mas'ud's statement does not include the hadith of the Prophet. Al-'Ala'i stated that after conducting in-depth research on various books of hadith, he concluded that Ibn Mas'ud's statement was not a hadith, even though it had a weak chain. Nevertheless, Ibn Mas'ud's remarks have been acknowledged and accepted by scholars, including Imam Ahmad, who directly stated it in his Musnad.^{xv} The acceptance of the scholars of 'urf as a proposition in establishing the law aims to realize the benefit and meet human needs. In other words, it is not accepted that 'urf causes trouble to humans.

Arab society long before the arrival of Islam, had known various kinds of 'urf.' Urf or 'customs they considered good and in line with Islamic teachings continued to be maintained. Islam improved the good 'urf so that it was in line with true Islam principles of Islamic law, maintain good 'urf and establish it as a rule by determining each part of it. The Islamic response to this 'urf can be observed in the word of Allah sura al-Baqarah, 2:233

Meaning: "And it is the duty of the father to feed and clothe the mothers in an acceptable manner."

In this verse there is the word *ma'ruf* which has the same root as the word '*urf*.' *Urf* referred to in this verse is '*urf*' which is generally known and becomes a stipulation in terms of providing a living (shopping) to a wife and property for a divorced woman.

Making '*urf*' as the basis for establishing law or '*urf*' itself which is stipulated as law aims to realize the benefit and convenience of human life. A society that is very difficult to leave because it is related to the various interests of their life. Even so, not all people's habits are recognized and accepted on the grounds that they are needed by the community. A new custom is accepted when it does not conflict with the texts or *ijma'* which clearly occurs among scholars.

It should be underlined that, the laws established by '*urf*' will change along with changes in time and place. Yusuf Qardhawi, taking Syatibi's opinion, gives an example of '*urf*' which changes due to changes in place and time. A change in '*urf*' due to a change of place can be observed in the problem of unscrewing the headgear. According to Syatibi, Qardhawi said further, there are differences in the problem of covering the head for men in each region. For people in the East, removing the headgear is considered a bad deed. While in Western countries, removing the headgear is something that is common. In this case, there are differences in customs between the East and West regarding the issue of headgear.^{xvi}

The scholars who accept '*urf*' as a proof in establishing the law, set a number of conditions for the '*urf*' to be accepted. According to Amir Syarifuddin, the conditions are:^{xvii}

1. '*Urf*' contains benefits and is logical.

This condition is something that absolutely exists in a valid '*urf*' so that it can be accepted by the general public. On the other hand, if '*urf*' brings harm and cannot be accepted by logic, then such '*urf*' cannot be justified in Islam.

2. '*Urf*' This generally applies to people who are associated with the '*URF*' environment, or at least among the majority of people. This requirement becomes clearer by looking at the examples that develop in society. For example, in general, people in Indonesia in conducting transactions always use the official medium of exchange, namely the rupiah currency. Therefore, in the transaction it is okay not to clearly state the type of currency. Because everyone knows and there is no other possibility of using the applicable rupiah currency, except in certain cases.
3. '*Urf*' which does not conflict with the *syara'* argument or contradict a definite principle. This requirement actually strengthens the realization of '*urf*' that is authentic, because if '*urf*' contradicts the texts or contradicts the principles of *syara'* which is clear and definite, it is included in '*urf*' which is *fasid* and cannot be accepted as a proposition for establishing law.

III. Result and Discussion

3.1 The position of '*Urf*' as an Indonesian Fiqh Construction

Islamic Shari'ah develops according to the development of the times that is the factor that causes Shari'ah to be eternal and able to answer the challenges of the times. This can be seen in the development of Islamic law in the time of Khulafa al-Rashidin, if we can observe that Islamic law is not frozen and does not become an antique which is only for display, but continues to grow, able to follow the times and circumstances various kinds, customs, traditions and rules of life and the mixing of cultures between one group and

another, and the events that arise, all of these are factors that led to the development of Islamic fiqh.

The approach used by Hasbi in establishing the law is a textual and contextual approach according to their respective problem areas. In matters of faith and worship, he strictly adheres to valid textual arguments.^{xviii} Meanwhile, in the field of mu'amalat, he uses a contextual approach or what is now also known as a socio-historical approach. Hasbi is of the opinion that law can change according to changes in time and place. Law is always related to 'illat.^{xix}

Comparative/muqarran studies are recommended to be broader, not only between fiqh, but also between fiqh and 'customary law and positive law in Indonesia, as well as with the shari'ahs of other religions, such as Judaism and also with Roman (Western) law. (felt qanuniah muqaranah). Therefore, someone who conducts comparative studies (muqaran) must have a broad overview of fiqh issues, have a trustworthy nature in describing something, and have a deep awareness.^{xx}

To facilitate the application of this method, Hasbi suggested the need to use a sociocultural-historical approach in all processes of study and discovery of Islamic law. The importance of this approach is to bring up Islamic legal thought that still exists today, not determined by a particular culture. Thus, it is necessary to establish Islamic law with an Indonesian character that can prosper the Indonesian people who have diverse cultures, without having to impose other laws with different characteristics from the Indonesian people.^{xxi}

According to Hasbi, there are several basic principles that allow Islamic law to evolve over time, namely: ijma', qiyas, maslahat mursalah, 'urf, and "law changes with changing times". 'Urf is one of the basic principles that influence the development of Islamic fiqh.^{xxii}

3.2 'Urf and the principle that the law changes with the changing times

'Urf arise from 'custom. It is something that happens repeatedly and can be accepted by reason and feeling. If what has been done repeatedly in one place or in several areas, then it becomes a ma'ruf and tradition. The community is very attached to its 'urf. The government is also bound to the traditions of its people, the government is not easy to change something that becomes a folk tradition.^{xxiii} This shows how great the influence of 'urf in the order of life, so that the Prophet stipulates the enactment of 'urf which is considered good and special in mu'amalah matters. For example, 'Abbas ibn Abdul Mutalib who once received a profit from his capital which was cultivated by someone else, the Messenger of Allah knew about it and kept silent.^{xxiv}

Hasbi said that there are two factors that cause legal changes, namely the moral crisis and changes in the way of life. These two factors require a change in fiqh law based on fuqaha' ijtihad, because existing laws, such as the ijtihad of scholars of the second century, are no longer in accordance with living conditions in the current era of globalization.^{xxv}

According to Hasbi, in the past, the women were only used by their husbands to sleep with them. The wives are not ordered to work together to accommodate the necessities of life. Thus, in the fiqh books we find a provision that the wife only gets an inheritance, as much as a quarter or one-eighth of the husband's inheritance. The other divisions no longer exist. If the wife helps her husband, then the assistance given is considered voluntary and has no legal consequences.^{xxvi}

In contrast to the socio-cultural culture that exists in Indonesia, especially in Java, the wives actively try to accommodate the needs of the household and family. In Yogyakarta, it is the wives who work in the market selling their wares, while the husbands stay at home

contemplating, unless the husband is an employee. In Aceh, the majority of wives work together to help their husbands in their struggle to earn a living. Therefore, naturally gono-gini assets in Java and *siharekati* assets in Aceh which are based on *adat* or '*urf*', are accommodated by laws that have been formulated by Indonesian ulemas for the Indonesian people.^{xxvii}

Thus the discussion of '*urf*' with the principle of changing law, due to changes in space and time, this confirms that Islamic law has vitality, is dynamic and accepts the development of the times, in line with the rules of *tagayyir al-ahkam bi tagayyir al-azman*, and *al-hukmu yadhuru ma' a 'illati* embodiment wa '*adaman*. This shows that the Islamic Shari'ah in establishing a law always maintains lightness, refuses to be petty and brings benefits and avoids poverty.

The characteristics of Indonesian *fiqh* are strongly colored by Arab personalities (Arab oriented). Many indigenous *fiqh* scholars have written various *fiqh* works, but during that time the "Arab personality" is still very strict. The intellectual network of the scholars also tends to be too Arab oriented, the network of Middle Eastern scholars. On this basis, the tradition of legal reform until the first half of the 20th century has not touched a substantial aspect, which is related to the formulation of the Indonesian *fiqh* methodology.^{xxviii}

This fact is shown in the scientific oration entitled '*Sjari'at Islam Responding to the Challenges of the Times*', which was uttered at the commemoration ceremony of the first anniversary in 1961, Hasbi explained:

The aim is to study Islamic sjari'at in Islamic universities today, so that Fiqh/Islamic Sjari'at can accommodate all the benefits of society and can become the main founders for the development of law in our beloved homeland. We mean that we can develop a fiqh with our own personality, just as Egyptian scholars are currently trying to purify it.^{xxix}

Indonesian fiqh, that is, fiqh determined according to the Indonesian personality, in accordance with Indonesian character and character. The fiqh that is developing in our society today is partly Hidjazi fiqh, fiqh formed on the basis of customs and 'urf prevailing in Hidjaz, or Misri fiqh, namely fiqh which was formed on the basis of Egyptian customs and habits, or Hindi fiqh, namely fiqh which was formed on the basis of 'urf and customs prevailing in India.

Thus Hasbi's discussion with his Indonesian *fiqh* idea which was pioneered in 1359/1940 which is based on the concept that the *fiqh* applied to Indonesian Muslims is a law that is appropriate and meets their needs, which in essence is customary law that has developed in Indonesian society and which does not conflict with *syara'* is accommodated within the framework of *fiqh* which is applied in Indonesia. There is also a selection of legal fatwas from the previous *madhhab* scholars, which one is more suitable to the situation and condition of the Indonesian nation. Thus, there will be no more clashes between *fiqh* and '*adat*, and the Muslim community will no longer be ambiguous between Islamic law and Islamic law. '*custom*.

IV. Conclusion

Hasbi gives a different understanding of '*urf*' and custom, '*urf*' is a condition that is fixed in the human soul, justified by reason and accepted by a prosperous character, while '*custom* (custom) is something that is well known throughout society or is equally known to humans and has become a common practice a habit that is liked by them, is still valid in

their life. Based on this definition, 'urf is part of adat, because adat is more general than 'urf.

Hasbi argues that 'urf can be a source of Islamic law if there are three conditions, namely "First, 'urf is not contrary to the texts that are shari'ah (firm). Second, if the 'custom has become 'custom that continues to apply and develop in society. Third, 'urf is a general 'urf, because general law cannot be determined by a special 'urf.' This urf is the basis for realizing insightful fiqh. Indonesia.

In his thoughts towards fostering fiqh with the personality of the Indonesian nation, Hasbi stated that Indonesian fiqh is fiqh that is determined according to the personality of the Indonesian nation, in accordance with the character and character of the Indonesian nation. The fiqh that is developing in our society today is partly Hijazi fiqh, fiqh formed on the basis of customs and 'urf prevailing in the Hijaz, or Mishri fiqh, namely fiqh formed on the basis of Egyptian customs and habits, or Hindi fiqh, namely fiqh formed on the 'urf and customs prevailing in India. He said that so far we have not been able to carry out ijtihad, to realize the law of fiqh that is in accordance with the personality of the Indonesian nation.

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- ⁱAhmad Fahmi Abu Sunnah, *al-'Urf wa al-'Adah fi Ra'yi al-Fuqaha*, (Egypt: Dar al-Fikr, al-'Arabi, t, t.), p. 8.
- ⁱⁱJamalal-Din Muhammad bin Makram Ibn Manzur, *Lisanal-'Arab*. (Beirut: Dar al-Fikr, 1990), juz. 9, p. 239.
- ⁱⁱⁱJamalal-Din Muhammad bin Makram Ibn Manzur, *Lisanal-'Arabic ...*, p. 239.
- ^{iv}al-Jurjani, al-Sharif 'Ali Ibn Muhammad, *Kitabal-Ta'rifat*. (Jeddah: al-Haramain, dd), p. 149.
- ^vThe definition written by Ahmad Fahmi Abu Sunnah is actually the same definition as that of Ibn 'Abidin. However, he explained that al-Mustasyfa was the composition of al-Nasafi, in contrast to Ibn 'Abidin who did not mention who the author of the book of al-Mustasyfa was. See Ahmad Fahmi Abu Sunnah, *al-'Urf wa al-'Adah Fi Ra'y al-Fuqaha'* (Kaherah: Dar al-Basa'ir, 2004), p. 28.
- ^{vi}Abd Wahhab Khallaf, *The Science of Usul Fiqh*, (Medina Nasr: Dar al-Fikr al-'Arabi), p. 85.
- ^{vii}Mustafa Ahmad al-Zarqa'al-Madkhal..., p. 97.
- ^{viii}Syafruddin Syam, "Sociological Approach to Islamic Law", *At-Tafkir Journal*, Vol. III, Issue 2, July-December 2010, p. 61.
- ^{ix}Al-Qarafi, *Sihab al-Din, al-Furuq*, (ttp: Dar al-Ihya' al-Kutub al-'Arabiyah, 1344 H), p. 149.
- ^xAl-Qurtubi, *Abi 'Abdillah, al Jami' al-Ahkam al-Qur'an*, (Egypt: Dar al-Kutub, 1960), p. 346.
- ^{xi}Ibn Qayyim Al-Jauziah, *I'lam al-Mutawaqqi'in 'an Rabb al-'Alamin*, (Egypt: Dar al-Jalil, tt), p.346.
- ^{xii}Ibn Qayyim Al-Jauziah, *I'lam al-Mutawaqqi'in 'an Rabb al-'Alamin...*, p. 347.
- ^{xiii}Firdaus, *Usul Fiqh, Methods of Studying ...*, p. 103.
- ^{xiv}Firdaus, *Ushul Fiqh, Metode Mengkaji...*, hal. 104.
- ^{xv}Abi al-Fadl Jalal al-Din Abd al-Rahman al-Suyuthi, *Al-Asbah wa al-Nazhair fi Qawai'd wa Furu' Fiqh al-Syafi'iyah*, (Beirut: Dar al-Fikr, 1996), Cet, 2nd, p.119
- ^{xvi}Yusuf Qardhawi, *Awamilus Sa'ati wal murunati fi Shari'ah al-Islamiyah*, Alim Bazemool translation. (Jakarta: Pustaka Mantiq, 1993), Press III, p. 42.
- ^{xvii}Amir Syarifuddin, *UsulFiqh...*, p. 376-378.
- ^{xviii}Taking the law in matters of worship by using valid texts, this can be seen in several of his books, "al-Ahkaam", "Guidelines for Prayer", "Guidelines for Fasting", in matters of faith also seen in several of his books, "Leadjaran Tauhid". "History and Introduction to the Science of Tawhid/Kalam". "The Function of Faith in Human Life and Its Relationship with Religion". "The Joints of the Islamic Faith. The Nature of Islam and the Elements of Religion". See TM Hasbi Ash-Shiddieqy, *Al-Ahkaam* (Medan: Islamiyah, 1952), p. 246. Hasbi, *Guidelines for Hajj* (Semarang: Pustaka Rizqi Putra, 1999), p. 1. Hasbi, *Guidelines for Fasting* (Semarang: Rizqi Putra Library, 2007). Hasbi, *Prayer Guidelines* (Semarang: Rizqi Putra Pustaka, 2001). p. 22.
- ^{xix}This socio-historical discussion can be seen in, "A Collection of Questions and Answers in the Post Graduate Course of the Fiqh Department of IAIN Lecturers (Jakarta: Bulan Bintang, 1973).
- ^{xx}Nouruzzaman, *Indonesian Fiqh...*, p. 70.
- ^{xxi}Hasbi, *Islamic Fiqh Has Power...*, p. 159.
- ^{xxii}Hasbi, *Sjariat Islam...*, p. 30.
- ^{xxiii}In addition to the positive law that applies in the country, customs have also played an important role in regulating traffic, relations and social order among community members. their laws. Traditions that continue to run continuously have become traditions and are ingrained with people's lives. Things like this are difficult to change, even the government will not be able to change a custom that has been ingrained among the

people. See Nouruzzaman, Indonesian Fiqh..., p. 123.

^{xxiv}See Nouruzzaman, Indonesian Fiqh..., p. 123.

^{xxv}George Ritzer, Sociology..., p. 35.

^{xxvi}Hasbi, Islamic Fiqh has Elastic Power, Complete..., p. 132.

^{xxvii}Hasbi, Understanding Shari'ah, p. 157.

^{xxviii}Mukhsin Nyak Umar, Reconstruction of Islamic Legal Thought in Indonesia (Al-Maslahah Al-Mursalah Approach), (Banda Aceh: Pena Foundation Banda Aceh), 2006, p. 151.

^{xxix}Hasbi, Sjari'at Islam..., p. 42-43.