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THE PRINCIPLES OF 'URF IN ISLAMIC CONSTITUTIONAL LAW

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ABSTRACT

This study aims to examine the conceptual and normative roles of 'urf (customary law) in Islamic constitutional law. This study employs the library research method, collecting and analyzing data from relevant journals and legal articles. The results of the study show that 'urf serves as a supplement when there are no specific provisions in the Qur'an or nash. 'Urf bridges Islamic law and customs, enabling the application of Sharia law in accordance with social realities. This discussion helps to provide an understanding of Islamic legal sources that adapt to cultural diversity.

Keyword: 'Urf, Islamic constitutional law, nash.

1. INTRODUCTION

'Urf is a method of establishing Islamic law based on customs, traditions, and social practices, as long as they do not contradict Islamic principles. It functions to adapt Islamic law to local cultures while maintaining harmony with Sharia principles. In Islam, there are three ways to incorporate community traditions: tahmil, tabrim, and taghyir. [1]

Community culture can also serve as a legitimate social norm when guided by the principle of 'urf. The application of Islamic law in this context is crucial from a socio-cultural standpoint, as it enables community behavior to align with Shariah principles. The concept of 'urf should be positioned not only as a legal foundation but also as a cultural basis, acknowledging the strong interconnection between culture and Islamic values. Islamic law can coexist harmoniously with community traditions as long as both adhere to the objectives of maqasid al-shariah.[2]

Can the principle of 'urf strengthen the connection between Islamic constitutional law and the socio-cultural context, to reinforce the application of 'urf in the Islamic constitutional law system that is relevant and appropriate to the local culture? The scope of this study focuses only on the concepts and norms of the principle of 'urf in Islamic constitutional law, discussing the functions and limitations of the application of 'urf in the basic concepts of maqasid sharia. This

[1] Zulkifli Zulkifli et al., "Revitalizing 'Urf in State Legal Development: The Case of Minangkabaunese Marriage Traditions," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (November 20, 2024): 841–62, https://doi.org/10.29240/jhi.v9i2.11034.

[2] Rusyaida Darlis, "Local Wisdom as Halal Tourism Model in West Sumatera: An `Urf Perspective," *Indonesian Journal of Islam and Muslim Societies* 14, no. 2 (January 11, 2025): 259–87, https://doi.org/10.18326/ijims.v14i2.259-287.

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research does not focus on specific regions, but may mention several regions as specific examples. The main focus is on the role of 'urf in Islamic constitutional law or Islamic law and its application in several regions.

'Urf (customs/traditions of society) is recognized as an additional source of Islamic law, especially when the Qur'an and Hadith do not provide explicit provisions. The application of 'urf in Islamic constitutional law is subject to the following conditions: (1) 'urf does not contradict the nash (text of the Qur'an and Hadith), (2) it is recognized and consistently applied in society, and (3) it brings maslahah (benefit) to society.[3]

'Urf is not just an alternative, but also a normative basis that maintains the relevance between Islamic law and the socio-cultural aspects of society. This study provides a theoretical explanation for expanding the scope of Islamic legal sources to adapt to social changes without abandoning Sharia law. Simply put, this discussion can serve as a reference for legal policies based on local values in line with the maqasid of Sharia.

2. METHODS

This study employs a library research method with a descriptive qualitative approach, focusing on a literature review to obtain data without conducting field research. The data were collected from scientific journals, books, and other academic sources. The analysis stage involves examining and interpreting the data both literally and textually. All sources are cited in accordance with academic ethical standards to avoid plagiarism. The findings of this study are descriptive in nature and do not involve statistical analysis.

3. RESULTS

Function of 'Urf on Islamic Constitutional Law

'Urf serves as a supplement to the Qur'an or Hadith in cases where there is no explicit text. It also serves as a legal process capable of accommodating community customs and traditions without disregarding Sharia principles. The implementation of Islamic law, such as in the management of waqf, is often based on long-established social practices. The function of 'urf is used to connect Islamic values with society's demands in this context.[4]

'Urf bridges state law with local customs. In Islamic constitutional law, 'urf is a law that adapts Sharia principles to the social realities of society. Its application in inheritance or land ownership shows that 'urf is a legal basis that the state has recognized. Customary law is used first to resolve a case; if it cannot, state law is used.[5]

'Urf exists to bridge the gap between religious norms and social norms, ensuring that its application remains rooted in community values, so that it can be realized as a living law within the community. 'Urf is also an approach that prioritizes deliberation, peace, and justice. Dispute

[3] Ilyas Ilyas et al., "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (May 28, 2023): 897, https://doi.org/10.22373/sjhk.v7i2.15650.

[4] Ani Yumarni et al., "The Implementation of Waqf as Â€˜Urf in Indonesia," *Sriwijaya Law Review*, July 31, 2021, 287–99, https://doi.org/10.28946/slrev.Vol5.Iss2.1126.pp287-299.

[5] Misran Ramli et al., "State, Custom, and Islamic Law in Aceh: Minor Dispute Resolution in the Perspective of Legal Pluralism," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (May 21, 2024): 872, https://doi.org/10.22373/sjhk.v8i2.15924.

resolution using 'Urf is more acceptable to the community because it prioritizes the common good and avoids hostility.[6]

Application of 'Urf Restrictions '

'Urf can only be used as a legal basis if it complies with the principle of urf shahih, which does not contradict the Qur'an and hadith. However, if a custom contains elements that can be harmful and contradict Sharia law, then it is considered 'Urf fasid and cannot be used as a legal basis.[7]

Limitations on the application of 'urf so that its use remains based on valid Islamic law and is in accordance with local culture. Although 'urf provides adaptation to culture, its application must take into account legal and social aspects that must not be violated.[8]

4. DISCUSSION

'Urf refers to customary practices that flourish within a society and are socially acknowledged, functioning as one of the unwritten sources of law, as long as such customs do not contradict the textual sources (the Qur'an or Hadith).[9]

Although there are differences of opinion among the fuqaha regarding the validity of 'urf, classical Islamic jurists (such as those from the Hanafi, Maliki, Hanbali, and Shafi'i schools) generally agreed that 'urf is legitimate and may serve as a basis for legal rulings in cases where the nass (textual sources) do not provide explicit provisions.[10]

The conditions for 'urf to be recognized as a legitimate source of law are as follows: 1. There must be a collective agreement within the society, not merely among a small group or a specific community. 2. It must not contradict the nash (the Qur'an and Hadith). .3. It must not contain any element of harm (mafsadah) or violate the principles of law and the fundamental values of sharia. 4. Consistent 5. Generally, Habits.

Several types of 'urf can be identified. First, based on its validity, namely: 1. 'Urf shahih refers to customs or socio-cultural values that may serve as a legal basis, provided they do not contradict the nash (Qur'an or Hadith). 2. 'Urf fasid refers to invalid or corrupted customs practices that are intended to serve as legal grounds but contradict the nash.

Next, 'urf can be classified based on the nature of its practice: 1. 'Urf qawli refers to verbal customs or expressions commonly understood by society. For example, when people mention "meat," it is generally understood to mean beef. 2. 'Urf 'amali refers to actions or behaviors that

[6] Fajri M. Kasim and Abidin Nurdin, "Study of Sociological Law on Conflict Resolution Through Adat in Aceh Community According to Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (December 28, 2020): 375, https://doi.org/10.22373/sjhk.v4i2.8231.

[7] Zulkifli et al., "Revitalizing 'Urf in State Legal Development: The Case of Minangkabaunese Marriage Traditions."

[8] Yusna Zaidah and Raihanah Abdullah, "The Relevance of Ihdad Regulations as a Sign of Mourning and Human Rights Restriction," *Journal of Human Rights, Culture and Legal System* 4, no. 2 (June 20, 2024): 422–48, https://doi.org/10.53955/jhcls.v4i2.229.

[9] Anwar Sadat et al., "Determination of Auspicious Days in Wedding Traditions in Mandar, West Sulawesi: Perspective of Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (July 30, 2023): 1422, https://doi.org/10.22373/sjhk.v7i3.17864.

[10] Sulfan Wandi Sulfan Wandi, "Eksistensi Â€˜Urf Dan Adat Kebiasaan Sebagai Dalil Fiqh," *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 1 (May 5, 2018): 181, https://doi.org/10.22373/sjhk.v2i1.3111.

are performed repeatedly at specific times. For instance, certain traditional foods may only be prepared during cultural or ceremonial events.[11]

Furthermore, based on its scope within society, 1. 'Urf 'am (general) refers to customs that are widely practiced across society. 2. 'Urf khas (specific) refers to customs that are practiced only within certain communities or regions. For example, in Bulukumba, there is a special area inhabited by the Kajang tribe. Anyone who wishes to enter the area must wear black clothing and is not allowed to wear any footwear upon entering the location.[12]

Custom plays an important role in adapting state rules and policies to local social and cultural values. Through custom, Islamic law is not only implemented literally, but also contextually in accordance with the needs of the community. As in the Mandar custom that determines the best day for a wedding, customs can be a link in understanding long-established community practices. As long as these traditions do not deviate from the basic values of Sharia law, the state can accommodate them as components of legal policies based on Islamic values.[13] Customary law is also recognized in aspects of community life such as dispute resolution, inheritance distribution, marriage customs, and the management of waqf (endowments) in regions such as Aceh and Minangkabau.[14]

In Islamic constitutional law, the establishment of 'urf shahih is a manifestation of *mashlahah mursalah*, which refers to anything that aims to achieve the public interest, provided that it does not conflict with the values of Sharia. The state has the authority to regulate governance in a manner that accommodates the social and cultural values of society, as components of Islamic legal politics, which promote justice and welfare, and serve as a means of preserving the people's identity. 'Urf functions as a flexible instrument that enables Islamic law to adapt to the social and cultural dynamics of the community.[15]

As long as public policies do not contradict the nash (Qur'an and Hadith) and do not cause harm, they are deemed consistent with legal principles and are recognized within the framework of Islamic constitutional law. This reflects a balanced integration between Sharia law and public policies derived from local values.

5. CONCLUSION

This study explains that 'Urf has an important role in the law of the Islamic state as a means based on norms and can adapt as the times develop, which is the link between sharia and the socio-cultural reality of society. 'Urf becomes an additional source of law when nash does not provide specific provisions, and its use does not conflict with Islamic law and provides benefits to the community. This study provides a further explanation of the previous study, which places 'Urf as the realization of mashlahah mursalah, which ensures the adaptation of Islamic law to face the development of society. However, this study is limited in terms of ideas and has not examined the specific application of 'Urf in various regions. Therefore, in subsequent research, it is

[11] Wahyu Syarvina, Sudirman Suparmin, and Tuti Anggraini. *"'Urf Application in Islamic Economy'".* At-Tijarah: Jurnal Penelitian Keuangan dan Perbankan Syariah, vol. 4, no. 1 (2022), h. 6

[12] Sidanatul Janah, "Eksistensi 'Urf Sebagai Metode dan Sumber Hukum Islam". Journal Unusida (2023), h. 6

[13] Sadat et al., "Determination of Auspicious Days in Wedding Traditions in Mandar, West Sulawesi: Perspective of Islamic Law."

[14] Ilyas et al., "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives."

[15] Lailita Fitriani et al., "Eksistensi Dan Kehujjahan Urf Sebagai Sumber Istimbath Hukum," *Al-Hikmah* 7, no. 2 (January 4, 2022): 246, https://doi.org/10.30651/ah.v7i2.8088.

recommended that the next researcher examine the system of applying 'Urf on the integrity between Islamic law, customs, and public policy in greater depth. The entirety of this study only describes the basis of 'Urf as a link between Islamic law and diverse socio-cultural contexts in Islamic state law.

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