

Legal Discovery Through the Study of the Place Where the Law Occurs (Al-'urf and Al-'Adah al-Muhakkamah)

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Abstract: This study analyzes the methodology of Islamic legal discovery (*istinbāt al-ḥukm*) through the concept of *manāṭ al-ḥukm al-makānī* by emphasizing the role of *al-'urf* and *al-'ādah al-muhakkamah* as indicators of the social space in which law operates. Islamic law is not merely derived from normative textual sources such as the Qur'an, Sunnah, *ijmā'*, and *qiyās*, but also develops through continuous interaction with social customs that shape patterns of economic and family relations. This interaction becomes increasingly relevant in contemporary contexts marked by rapid technological change and the expansion of digital economic practices. Methodologically, this research employs a qualitative descriptive-analytical approach within a normative-juridical framework of *uṣūl al-fiqh*. Data were collected through library research on classical and contemporary *uṣūl al-fiqh* works, *fiqh* maxims, Islamic economic law literature, and relevant legal documents, and were analyzed using thematic content analysis with deductive-inductive reasoning patterns. The study identifies that *'urf* functions as an implicit determinant of contractual intent and as an operational explanation of general normative principles, particularly in *mu'āmalāt* transactions conducted in Islamic banking institutions, Baitul Maal wat Tamwil (BMT), and digital marketplaces. However, the accommodation of custom as a legal basis is not unconditional. Only valid (*ṣaḥīḥ*) *'urf* that does not contradict *Sharī'a* principles, is widely recognized, consistently practiced, and relevant to the contractual context may be accepted. The findings further demonstrate that the legitimacy of *'urf* must be evaluated through linguistic accuracy, *tasyrī'iyah* control mechanisms, and alignment with *maqāṣid al-sharī'ah*, particularly in preserving wealth, ensuring legal certainty, and preventing harm in transactions. This study concludes that contextual legal discovery grounded in the place where law occurs is essential for maintaining the relevance and applicability of Islamic law, while a strict methodological framework is required to ensure that legal adaptation to social change does not compromise normative integrity and the objectives of *Sharī'a*.

Keywords: Al-Urf; Al-'ādah Al-muhakkamah; *Manāṭ al-ḥukm al-makānī*; *Istinbāt al-ḥukm*; Islamic Economic Law; *Maqāṣid al-sharī'ah*

Introduction

One of the most important disciplines in Ushul Fiqh is the discussion of the methodology of legal discovery (*istinbāt al-ḥukm*), in which scholars for centuries have not only relied on texts such as the Qur'an, Sunnah, *ijma'*, and *qiyas*, but have also taken into account the social reality in which the law is applied. This approach is known as *manāṭ al-ḥukm al-makānī*, which emphasises that Islamic law does not exist in a vacuum, but always interacts with the customs, culture, way of life, and social dynamics of society. It is within this framework that the concepts of *al-'urf* and *al-'ādah al-muhakkamah* gain strong relevance, as scholars agree that social customs can be used as a basis for determining law when no explicit texts are found, as long as these customs do not contradict the principles of Sharia (Zahrah, 2010). In *muamalah* practice, particularly in the field of Islamic economics, many legal provisions are actually built upon *'urf* that is alive and developing within society. Imam Malik even made *'amal ahl al-Madinah* a source of law that has high authority and can rival *ahad hadith* (Zahrah, 2010).

The relevance of *'urf* has grown stronger in the present day, when social and technological changes are occurring at a rapid pace, giving rise to various new legal issues that are not recognised in classical literature. In this context, *'urf mu'āṣir* becomes an important key in the process of legal discovery, especially in the field of Islamic Economic

Law, where transactions are no longer limited to physical meetings but also take place digitally (Zahrah, 2010). However, despite the increasingly dominant role of 'urf in modern economic practice, its use in the field of Islamic family law still faces methodological problems, particularly in determining the extent to which contemporary customs can be recognised as a legal basis without shifting the normative principles of Sharia.

The discovery of law through the study of where law occurs is becoming increasingly important in the context of family law, because customs that exist within society not only function as social practices, but also shape patterns of husband-wife relationships, the division of domestic and public roles, and decision-making mechanisms within the family, which ultimately have an impact on the determination of legal rights and obligations. The transformation of 'urf from its traditional form to digital 'urf shows that the space where law occurs is no longer limited to local communities but is also formed in technology-based social interactions, which also influence the structure and dynamics of Muslim families, thus requiring a contextual reading within the framework of uṣūl al-fiqh (Zulbaidah et al., 2025a). This condition raises serious issues when new practices that have been socially accepted do not yet have a clear normative basis in classical fiqh, while on the other hand, the need for legal certainty in the family is increasingly urgent, thus creating tension between the demands of legal contextualisation and the obligation to maintain the purity of sharia principles.

This 'urf-based approach then found its relevance in the practice of harmonising family law in Indonesia, where taklīfī and waḍ'ī laws were integrated into the national marriage law system to ensure legal certainty while accommodating the social realities of Muslim communities (Zulbaidah et al., 2025b). This harmonisation shows that the place where law occurs is not only in the normative-theological realm, but also in the social and institutional structures of the state, so that legal discovery must consider sociological and juridical dimensions simultaneously. However, in a multicultural and constantly changing society, accommodation of 'urf also has the potential to be problematic if it is not accompanied by a strong normative framework, because changes in Islamic law can be influenced by civilisational values and cultural diversity that are not always in line with the objectives of sharia. so that reconstruction of law based on tawḥīd remains necessary so that adaptation to local customs does not obscure the fundamental principles of sharia (Zulbaidah, 2024). This is where the methodological issue that needs to be studied more deeply lies, namely how to ensure that the 'urf that is accommodated is truly 'urf ṣāḥīḥ and not merely a social practice that is legitimised without adequate normative testing.

Methodologically, the validity of using 'urf and al-'ādah al-muḥakkamah in legal discovery requires mastery of linguistic rules to ensure the accuracy of interpretation of normative texts, given the rich meaning of the Arabic language and its different legal implications depending on the linguistic context (Zulbaidah, 2025a). In addition, the tasyrī'iyah rules serve as a control instrument to ensure that the accommodated customs are truly in line with maqāṣid al-sharī'ah and do not conflict with the principles of justice and benefit in family law (Zulbaidah, 2025b). Thus, although 'urf and al-'ādah al-muḥakkamah have a strategic position in the methodology of istinbāṭ, their use cannot be done simplistically, but must go through a strict and integrated methodological framework. Therefore, this study is important to systematically examine how the concept of studying the place where law occurs through the 'urf approach can be operationally applied methodologically in the context of contemporary Islamic family law, so that the resulting law remains responsive to social changes without losing its normative legitimacy and orientation towards maqāṣid al-sharī'ah as the main objective of the Sharia.

This study aims to explain the basic concepts of al-'urf and al-'ādah as formulated by classical scholars, while also describing the position of 'urf in the methodology of Islamic legal discovery. In addition, this study analyses the application of 'urf in the context of

modern Islamic economics and presents concrete examples of the application of 'urf in the banking sector, Baitul Maal wat Tamwil (BMT), and digital economic practices that are developing in society. The theoretical benefit of this study is that it is expected to provide a deeper understanding of the non-textual approach in the process of *istinbāṭḥukum* and strengthen contemporary *ushul fiqh* studies, particularly those related to the concept of *manāṭ al-ḥukm al-makānī* (consideration of the place where the law occurs). Practically, the results of this research are expected to provide an applicable legal analysis model for judges, academics, and Islamic economics practitioners, while also assisting in the resolution of economic disputes by considering relevant market customs that exist in society.

Literature Review

The study of 'urf and al-'ādah as a basis for consideration in determining law has long been a major concern in the realm of *fiqh* and *usul fiqh*, both in classical and contemporary literature. In the works of classical scholars, the role of custom as a source of legal reasoning is discussed systematically, as stated by Ibn Nujaym in *al-Ashbāh wa al-Nazā'ir* through the affirmation of the principle of al-'ādah muḥakkamah as a fundamental principle in determining laws based on prevailing social practices. While al-Qaraḥi in *al-Furūq* emphasises the importance of differentiating laws based on changes in the social context and customs of society so that the law is not understood rigidly and detached from reality, and al-Suyuthi affirming the legitimacy of 'urf in the construction of *fiqh* rules by placing customs as one of the considerations in determining the law as long as it does not conflict with the *nash syar'i* (Ibn Nujaym, 2009; al-Qaraḥi, 2018; al-Suyuthi, 2005).

In contemporary thought, the concept of 'urf continues to be upheld as an important instrument in the methodology of *istinbāṭ* law, as emphasised by Wahbah al-Zuhaili, who places 'urf as a complementary argument in the realm of *mu'āmalāt* when no explicit provisions are found in the *nash*, and Muhammad Abu Zahrah, who assesses that prevailing and widely accepted customs can serve as indicators for determining law, particularly in dynamic socio-economic matters, so that 'urf is not understood merely as a factual custom, but as part of a normative mechanism that allows for the contextualisation of law in accordance with developments in society (al-Zuhaili, 2011; Abu Zahrah, 2010).

In the realm of Islamic economics, 'urf is positioned as an important basis in the design of modern contracts and financial products, where Ascarya shows that many Islamic banking practices adopt transaction structures based on market customs which are then harmonised with Islamic principles, in line with Muhammad Syafi'i Antonio's view that the application of contracts in Islamic banking cannot be separated from business practices that exist in society as long as they do not conflict with Islamic provisions, Adiwarman A. Karim also emphasised that adapting to modern economic realities through the 'urf approach is key to ensuring that Islamic economics remains relevant, applicable, and responsive to the challenges of the contemporary financial system (Ascarya, 2013; Antonio, 2001; Karim, 2014). However, in the context of Indonesian legal literature, studies that specifically link 'urf with digital economic practices and modern Islamic economic institutions are still relatively limited, so this research has significant room for contribution in expanding the application of the 'urf concept in an ever-evolving socio-economic context.

Methods

This study uses a qualitative approach with descriptive-analytical methods and a normative juridical approach within the framework of *usul fiqh* to examine the mechanism of legal discovery through the study of the place where the law occurs (*manāṭ al-ḥukm al-makānī*), particularly through the concepts of al-'urf and al-'ādah al-muḥakkamah. Data was obtained through library research on *usul al-fiqh* books, *fiqh* rules, as well as sharia economics literature and relevant legal documents (Novianti, 2023; Novianti, 2024). Data

analysis was conducted through qualitative documentary analysis and thematic content analysis to identify patterns of interrelationships between local customs, market practices, and the construction of Islamic legal norms in specific socio-economic contexts.

The analysis process uses deductive-inductive reasoning patterns, namely deriving general rules such as the principle of al-'ādah muḥakkamah into assessments of economic practices that develop in certain social spaces, then drawing generalisations from contemporary cases in the Islamic banking sector, BMTs, and the digital economy as new forms of 'urf that influence the establishment of law (Novianti, 2020). A socio-economic approach is used to examine the characteristics of the place where legal practices occur, while a normative approach ensures that these practices have shar'i legitimacy. In addition, this study also refers to a study on the shift of 'urf from traditional forms to digital 'urf, which emphasises the importance of adapting the methodology of legal discovery to the changing social context of the younger generation (Zulbaidah et al., 2025).

Results and Discussion

The Concept of Al-'urf and Al-'ādah from the Perspective of Ushul Fiqh

Al-'urf in the Study of Ushul Fiqh

Linguistically, al-'urf comes from the root word 'arafa, which means to know or recognise. In usul fiqh literature, 'urf is understood as everything that is widely known by society, socially accepted, and repeatedly practised to the extent that it becomes the standard of behaviour in their interactions. Scholars such as Ibn Nujaym, Al-Qarafi, and Al-Zuhaili emphasise that 'urf is not merely a custom, but a custom that is recognised and used as a general reference by society. Thus, 'urf contains elements of social acceptance, continuity, and customary behaviour, so that it can be used as a parameter in understanding legal actions and muamalah practices. This shows that Islamic law places social norms in an important position as part of the law-making process.

Al-'ādah al-Muḥakkamah

Al-'ādah means a habit that is done repeatedly. Unlike 'urf, which is predominantly based on social acceptance, 'ādah emphasises the aspect of repetition. However, scholars agree that when this repetition occurs widely and consistently, it can become 'urf. of usul fiqh formulated a well-known rule: الْعَادَةُ مَحْكَمَةٌ 'Custom can be used as law.' This rule indicates that stable customs that do not conflict with sharia have a binding legal position. Thus, both 'urf and 'ādah have the potential to become arguments for legal discovery, especially in the scope of muamalah and social interaction.

Conceptual Differences between Al-'urf and Al-'ādah

Although the two terms are often used interchangeably, al-'urf and Al-'ādah have conceptual differences. 'urf has a broader scope because it emphasises social acceptance. A practice is called 'urf when it becomes a general standard in society. In contrast, 'ādah can be personal or small group in nature and only has legal force when it is widely accepted. Therefore, the relationship between the two can be understood as follows: every 'urf is an 'ādah, but not every 'ādah automatically becomes an 'urf. In the context of legal discovery, scholars use 'urf more often as a basis because of its more socially representative nature.

Classification of Al-'urf in Ushul Fiqh and Examples

1. 'urf Qaulī (Verbal Custom)

'urf qaulī is the customary use of terms in a society. In the modern context, the development of digital language has given rise to various new terms that have become 'urf in transactions, such as: 'checkout', 'DP', "transfer", 'valid receipt', and 'shipping costs'. Judges

and mujtahids need to understand these terms so that there are no misunderstandings in the assessment of contracts.

2. 'Urf 'Amali (Customary Practice)

This custom relates to practices consistently carried out by society. In Islamic economics, examples include standard Islamic banking procedures for verifying murabahah purchase documents, the practice of marketplace traders photographing goods before shipment, or the practice of BMT members recording transactions via instant messaging applications.

3. 'urf 'Āmm (General)

'urf that applies to the entire community or most actors in a particular sector. For example, the custom of online sellers providing tracking numbers as proof of delivery.

4. 'urf Khāṣṣ (Specific)

'urf that only applies to certain groups. For example, the custom of BMTs reporting profits and losses in members' WhatsApp groups is a specific 'urf in the Islamic cooperative community.

5. 'urf Ṣaḥīḥ (Valid)

Customs that are in accordance with Sharia law, such as murabahah margins set based on market standards or the custom of paying a down payment ('urbun) in sales transactions.

6. 'urf Fāsid (Invalid)

Customs that contradict Sharia law, such as daily interest in modern loan sharking, multiple penalties, or manipulation of product quality. This type of 'urf cannot be used as a legal basis.

Requirements for 'Urf to be Valid as a Legal Argument

Scholars have established several requirements for 'urf to be used as a basis for determining the law:

1. It must not contradict the text of the Shariah. If it does, 'urf is automatically invalid.
2. It must be widespread and consistent. A sporadic custom cannot be used as a basis for law.
3. Known to the parties involved in the contract. The ignorance of one of the parties may result in jahālah, which invalidates the contract.
4. Applicable at the time of the contract. A new custom that emerges after the contract cannot be used to replace the previous meaning. This condition shows that Islam respects social norms, but still maintains the boundaries of sharia.

The Position of Al-'urf in the Hierarchy of Ushul Fiqh Arguments

'Urf has an important position in the hierarchy of arguments, especially in the area of muamalah, where there is broad scope for ijtihad. Nash provides general principles, while 'urf provides contextual operational details according to the time and place. The verses 'wa 'āsyirūhunna bil-ma'rūf' (QS. An-Nisa: 19) and 'bi al-ma'rūf' found in many verses indicate the normative legitimacy that good customs have legal value. The scholars state that: al-ma'rūf 'urfan ka al-masyrūṭ syarṭan (something that is customary has the same status as a condition that is explicitly mentioned), which means that 'urf has legal force in interpreting the meaning of a contract. (Dzajuli, 2006)

The Relationship between Al-'urf and Maqāṣid al-Syarī'ah

The relationship between al-'urf and maqāṣid al-syarī'ah demonstrates the close connection between Sharia norms and social reality, as customs that exist within society generally arise from practical needs to maintain livelihoods and order in transactions. In an economic context, 'urf functions as an instrument that supports the realisation of maslahah, particularly in preserving wealth (ḥifẓ al-māl), preventing gharar due to unclear transactions,

maintaining the normality of muamalah practices, and protecting society from fraudulent practices (tadlīs). Thus, 'urf acts as a bridge connecting the normative values of Sharia with the ever-evolving socio-economic dynamics.

The Relevance of Al-'urf in Modern Sharia Economics

1. In Islamic Banking

The relevance of 'urf in Islamic banking is evident in the establishment of standard operating procedures (SOPs) that function as 'urf ṣaḥīḥ and are used as the basis for assessing the validity of transactions, especially in murabahah contracts. Administrative practices, including the use of electronic evidence such as digital invoices and transaction confirmations through banking systems, have been accepted as legitimising the purchase of goods and the conclusion of contracts, as long as they do not conflict with Sharia principles.

2. In BMTs and Sharia Cooperatives

In the practices of BMTs and sharia cooperatives, 'urf is reflected in the habit of member deliberations conducted through digital media, the recording of loans through electronic messages, and nisbah agreements that are often made informally but are mutually understood by the parties. These customs form a pattern of muamalah practices that exist in the environment of Islamic microfinance institutions and have legal implications for the validity of contracts and the responsibilities of the parties.

3. In Digital Transactions

In digital transactions and marketplaces, 'urf has developed in the form of consumer and business practices, such as the use of photographic evidence of goods, acceptance of digital delivery receipts, and the use of certain terms in the ordering and payment confirmation process. These practices have become indicators of mutual understanding and consent (tarāḍī) between the parties, thereby forming a digital 'urf that needs to be considered in the process of discovering Islamic law based on studies of the place where muamalah practices occur.

Conclusion

The results of the discussion show that al-'urf and al-'ādah play an important role in the discovery of Islamic law through the study of the place where muamalah practices occur. Al-'urf is understood as a custom that has been socially accepted and has been going on steadily, so that it can be used as a basis for understanding the intentions of the parties in contracts and legal practices, while al-'ādah emphasises the aspect of repetition which can develop into 'urf if it has been widely accepted. In a methodological context, 'urf is more representative as a basis for determining law because it reflects the social consensus that exists in society. Not all customs can be used as a legal basis, but only those customs that do not conflict with the principles of Sharia, are consistently applied, are known to the parties, and are relevant at the time of the contract. The position of customs in muamalah serves as an operational explanation of general principles of nash and can even be positioned as part of the implicit conditions in a contract. The connection between 'urf and maqāṣid al-sharī'ah confirms that social customs are fundamentally oriented towards public interest, particularly in preserving wealth, preventing transaction ambiguities, and protecting society from fraudulent practices. In modern Islamic economics, 'urf has developed in the form of institutional and digital practices, such as Islamic banking SOPs, operational customs of BMTs and Islamic cooperatives, and transaction practices in marketplaces. This emphasises that the discovery of Islamic law needs to consider the context of the place and social practices surrounding transactions so that the law remains relevant, applicable, and in line with the objectives of sharia.

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