

Al-Adatu al-Muhakkamah in The Traditional Menukur of Culture

Sudirman Suparmin

Universitas Islam Negeri Sumatera Utara Medan
sudirman.suparmin@uinsu.ac.id

ABSTRACT

The problem in social life is whether a custom is boeh done or not. This is certainly in line with Islamic studies which conceptualize Al-Adatu al-Muhakkamah, which is something that happens repeatedly that can be accepted by common sense and human nature which is used as a reference for law. So in this paper the author is interested in knowing the Concept of Culture in the Order of Life In Academic Studies and to know the Concept of Al-Adatu al-Muhakkamah in The Menukur of Cultural Customs. The method used in this study is a normative legal research method with an approach to cultural studies and the concept of A l-A datu al-Muhakkamah. The result of the analysis is that culture is a community habit that is carried out repeatedly which can become a habit of society. And in the concept of Al-Adatu al-Muhakkamah one of the customs that can be done must meet the elements that have been set by the scholars.

Keywords: Social Life; Human Nature; Culture; Scholar

A. INTRODUCTION

Indonesia is a compound country. This shows how rich Indonesia is. When viewed in historical studies, related to the development of law in Indonesia, as *a rule* in regulating the living system of the Indonesian people, of course, this is also inseparable in the study of Indonesian history itself. Before the enactment of modern law of the XVII century, Indonesia had known the law that lived in society (*The Lifting Law*), namely laws that originated in religion (Islam, Hinduism) and customs (customs).¹

This means that the existence of religion and customs of the Indonesian people is inseparable from the influence of law that was born since Indonesia became independent into a country. It can be recognized that the existence of modern law in the midst of society has been for centuries, which is approximately 3 centuries. The situation and conditions that make it all such a state if it is associated with the laying of the building system of human civilization, then there are approximately four generations. So that modern legal buildings taught both through formal and informal channels have taken root in the realm of Indonesian people's lives.

Of course, this condition greatly affects the legal products that are born based on historical facts that if studied in the books left by the previous kingdom to

the lives of the surrounding community. Such conditions are not easy to change the shackles of modern law in our legal professionals. As we all know that the science of modern law has entered into a formal form. For example, the requirements for judges, prosecutors, advocates must have a bachelor's degree in law.²

To achieve a just law as the purpose of the law itself is, it is better for legal professionals to have the courage to abandon the modern way of punishment and return to a way of punishing that is appropriate to the peculiar *form of social life*. If in the past the community knew the institution of peace in resolving problems or cases of disputes, knew the customary judiciary, then legal professionals could use that route and then take it as the basis for the court's decision.³

The above study is an illustration that there are many legal problems that need to be studied in a comprehensive manner, considering that Indonesia is a plural country, so in giving birth to legal products, various kinds of considerations must be taken. For example, in Indonesia itself, the majority of the population is Muslim, of course, Islam has its own law as a *rule* for the life of the human ummah. For example, The main purpose of shari'at Islam (including legal aspects) for the benefit of human beings – as stated by as-Syatibi– will be realized by the concept.

¹ C.F.G. Sunaryati Hartono Sunario, "Fostering National Law in the Atmosphere of Globalization of The World Community". Inaugural Speech of the position of Professor in Law, Faculty of Law, UNPAD, Bandung, 1991, p. 22

² Satjipto Rahardjo, *Let the Law Flow* Critical Notes on Human Struggle and Law, Jakarta: Kompas, 2007, p 13

³ Abdul Jamil, *The Right Way to Punish Legal Professionals (Ijtihad as a Progressive Legal Breakthrough)*, Lecturer at the Faculty of Law UII Yogyakarta, <file:///C:/Users/Acer/Downloads/68-Article%20Text-1801-1921-10-20110528.pdf> accessed on October 20, 2016

In turn Islamic shari'at (law) can be familiar, grounded, and accepted in the midst of a plural society, without having to abandon its basic principles. So that with this al-'urf method, it is hoped that various kinds of life problems can be solved by the ushul fiqh method, one of which is al-'urf, where 'urf can provide a more detailed explanation without violating the Quran and as-Sunnah.⁴

In this case, the law is present as answering the needs of people's lives so that people's lives can be directed as the purpose of the law itself, so in this context Islam has concepts that are all to answer legal problems in people's lives. All of which are found in nash, q-l-qur'an and as-sunah along with other sources of Islamic law that have been agreed upon by the ulama'. Looking at the problems above, of course, what is interesting to study is related to the concept of 'custom which is the source of law.

This concept when viewed from the needs of the community is in line with the needs of the community to answer the situation, conditions and circumstances of the community, so that people's actions in living are not contrary to Islamic law itself. Therefore, the author is interested in analyzing with the title "AL-"adatu Muhakkamah Di Menukur Adat Budaya".

B. RESEARCH METHODS

In this study using normative juridical types of research. It is said to be normative juridical because there is a problem of legal norms that need to be studied against the problem in the

concept of Al-Adatu al-Muhakkamah. So what is studied is related to the concept of custom which is the source of law in the study of Islamic law itself⁵.

Then in this study, the next method is related to the approach used in this study, namely the cultural approach or habituality of people living in people's lives by analyzing related to data that has been researched by previous researchers. Then approach the concept. AL-"adatu Muhakkamah where this needs to be studied considering that it is in accordance with the needs of the community.

Then the source of legal material used in this study is the source of primary data legal material consisting of forms of concepts related to the methods of ushul fiqh as well as with cultural concepts based on academic studies.

C. RESULT AND DISCUSS

Definition of Custom or Culture

Indonesia has diverse customs because of its heterogeneous population. These heterogeneous societies have different cultures, traditions, and customs in each region. **Custom** is a cultural idea consisting of customary legal values^[1], norms, and customary laws that regulate human behavior towards each other that is commonly carried out in a group of indigenous peoples that are passed down from generations of historical provisions

⁴ Abdul Aziz Dahlan, et al. 2001. Encyclopaedia of Islamic Law. Jakarta: Ihtiar Baru van Hoeve. Volume 6 201

⁵ Rahardjo, M. 2010. Triangulation in qualitative research. Graduate School of Maulana Malik Ibrahim State Islamic University: Malang.

that are still ongoing maintained today by indigenous peoples who have the highest share in indigenous communities aforementioned.⁶

'Mandated custom', is a man-made law, a political product for organizing and controlling the development of human desires, actions, and behaviors in relation to others, with the concrete world, and with the metaphysics. Customs can be related to the norms and behavior of society. Norms become a habit and rules are binding. If it is violated, then individuals, groups, or societies are sanctioned.⁷

As a law, it exists in the form of a rule formulated by 'the top of the fish net', that is, the elites in a social group, such as the king, datuk-datuk and traditional shoots, etc. After Islam became a common link in the Malay realm, the rules were referred to shari'a: laws formulated from revelation, the application of which was exemplified by Muhammad Rasulullah sallahu 'alaihi wasallam. As a product of politics, the 'mandated custom' only gains legitimacy when it conforms to Islamic shari'a, as illustrated by the expression: adat bersendi syara', syara' bersendi kitabullah.⁸

Al-Adatu al-Muhakkamah

The Qur'an and Assunnah are the sources of Islamic law. One of the rules of fiqh is the rule of Al- adatu Muhakkamah (custom is law). Linguistically, Al-"Adah is taken from the word Al-aud (العود (or al-mu"awadah (المعاودة (which means to repeat (التكرار). Therefore, in language al-adah means deeds or sayings and others that are done over and over again so that it is easy to do because it has become a habit.⁹

The general description of the implementation of this marosok tradition is that when the buyer has found a suitable livestock to buy, a transaction occurs where to determine the price by marosok. The bargaining process to get the appropriate price of the farm animal to be purchased by fingering, feeling, and holding a hand covered with something that every finger has meaning. The fingers of the hand are used as a symbol to determine the price agreement. As for the livestock to be bought, it is only based on logic and feelings without weighing the weight of the farm animals except for farm animals that are estimated to be pregnant.¹⁰

The rules of jurisprudence are legal rules of comprehensive benefit that cover all its parts. There are five agreed upon rules of jurisprudence, one of which is *al-*

⁶ <https://id.wikipedia.org/wiki/Adat> retrieved 20 October 2016

⁷ This article has been published on Katadata.co.id with the title "Understanding Customs According to Experts and Examples in Indonesia", <https://katadata.co.id/agung/berita/624be727c1ac9/pengertian-adat-istiadat-menurut-para-ahli-dan-contohnya-di-indonesia> accessed on October 20, 2016

⁸ <https://kebudayaan.kemdikbud.go.id/bpnbkepri/ant-ara-adat-dan-kebudayaan/> retrieved on 20 October 2016

⁹ Fathurrahman Djamil, Islamic economic law, (Jakarta: Sinar Grafika, 2013), p. 118

¹⁰ SUSI SUSANTI, IMPLEMENTATION OF AL'ADATU MUHAKKAMAH RULES ON THE MAROSOK TRADITION IN THE CONTRACT OF BUYING AND SELLING AT THE NAGARI PALANGKI LIVESTOCK MARKET, DISTRICT IV NAGARI, SIJUNJUNG REGENCY, WEST SUMATRA PROVINCE, <https://repository.uin-suska.ac.id/26452/2/SUSI%20SUSANTI.pdf> accessed on October 20, 2016

'adat al-muhakkamah (that custom can be the basis for establishing a law) which is taken from good habits that grow and develop in society so that it can be used as a basis for establishing a law in accordance with the values that develop in society.

By mastering the rules of fiqh we will know the common thread that masters jurisprudence, hence it becomes the meeting point of the problems of jurisprudence, and more prudent in applying jurisprudence in different times and places to different cases, customs, circumstances. The fifth rule of jurisprudence is about customs or customs, in Arabic there are two terms related to customs, namely al-'adat and al-'urf. Custom is an act or word that is continuously performed by man.

Because it is acceptable to reason and continuously man is willing to repeat it. Whereas 'Urf is an act or word in which the soul feels a tranquility in doing it because it is in line with logic and acceptable to the disposition of humanity in sharing habits including in making peace. However, the customs or customs that can be legitimized by sharia are those that are shahih, not the fasid ones.¹¹

Whereas scholars who tend to equate between 'Urf and 'A>dah argue that there is no difference in principle between 'Urf and 'A>dah, because the two words have the same meaning, namely: an act which has been repeatedly done becomes known and recognized by the multitude; on the contrary, because the deed is already

known and recognized by the crowd, it is done by the person repeatedly. Thus although the two words are distinguishable but the distinction is meaningless.¹²

Conditions Al-Adatu al-Muhakkamah Became a Foothold

In the taking of a law is inseparable in a method. Meotode ijthad derived from custom is a rule that famously reads "*al-adatu al-muhakkamah*". This means that customary customs can become laws. Although not every custom can be a source of law. In Islam, customs that can be used as a source of law in ijthad are customary customs that live in the social community and do not conflict with Islamic law. 'Urf is one of the sources of law from ushul fiqih taken from the quintessence of the Qur'an.

It means: "Be thou forgiving and tell the people to do the ma'ruf (Al-'Urfi), and turn away from the ignorant."
(QS. Al-A'raf: 199)

It is custom that can be used as a source of law to resolve disputes in the life of people in society. The rules of using customary law as a source of law are in line with the petiti mapta in minangkabau society, for example "Adat bersendi syara', Syara' bersendi kitabullah". Based on the sentence it is clear that custom and Islamic law at some point borrowing the term used by David Ali cannot be separated.³ That is to say, that Islam and custom at some point

¹¹ Ramdan Fawzi, APPLICATION OF THE RULES OF JURISPRUDENCE العادة محكمة IN THE FIELD OF MUAMALAH

Amwaluna: Journal of Islamic Economics and Finance Vol. 2 No. 1 January 2016 Page 147-154
Online ISSN : 2540

-8402 | Print ISSN : 2540-8399

¹² Amir Syaifuddin, Ushul Fiqh, vol. II (Jakarta: Kencana, 2011), 364.

go hand in hand together into law in the midst of society .¹³

According to the results of research from alTayyib Khudari al-Sayyid, who was a professor of Ushul Fiqh at Egypt's Al-Azhar University in his work *fi al-ijtihad ma la nassa fih*, that the school known to widely use "Urf as a legal basis is the Hanafiyah circle and the Malikiyyah circle, and subsequently by the Hanabilah circle and the Shafi'iyah circle. According to him, it was agreed to accept customs as the basis for the formation of the law, although in its numbers and details there were differences of opinion between the schools, so that "urf was included in the group of postulates.¹⁴

Not all AL-"adatu Muhakkamah can be educated on the basis for the determination or application of a provision of hukum, but there are provisions that must be fulfilled, namely:¹⁵

1. Urf it should be generally applicable.
2. Neither does it conflict with the syar'i nas nor does it conflict with the sickle nas (fixed)
3. Urf it has been in effect for a long time, not a "new urf

This means that the above findings are as Common knowledge, basically AL-"adatu Muhakkamah cannot be a source of law unless there are conditions that have been determined by the scholars, where it must not conflict with nash. Because nash is the primary (principal) source of law. This means that nash's existence is the

highest source of law that must be carried out and must not contradict it. Because he is the basic norm in social living.

D. CONCLUSION

In academic studies, custom is a habit that is carried out repeatedly. But there is the term 'Custom, which is mandated, is a man-made law, a political product for organizing and controlling the development of human desires, actions, and behaviors in relation to others, with the concrete world, and with the metaphysical. Customs can be related to the norms and behavior of society. Norms become a habit and rules are binding. If it is violated, then individuals, groups, or societies are sanctioned.

In the concept of Al-Adatu al-Muhakkamah a custom can be carried out if it must fulfill, Urf it must be generally applicable, Nor does it conflict with nas syar'i nor does it conflict with nas sickle (fixed), Urf it has been in force for a long time, not a "new urf. This means that not all customs can be a source of law and be carried out by the community if they do not meet the conditions that have been conceptualized by the scholars'.

¹³ Sajuti Talib, *Receptio A Contrario The Relationship of Customary Law with Islamic Law*, Ctk. Fourth, Jakarta: Bina Aksara, 1985, p. 61

¹⁴ Fatmah Taufik Hidayat, *MUHAKKAMAH TRADITIONAL METHOD IN*

ISLAMIC VIEW (A Review of Legal Sociology), USK Journal of Sociology, Volume 9, Number 1, June 2016

¹⁵ A. Dzajuli, *The Rules of Fiqih* (Jakarta: Kencana Prenada Media Group, 2010), 79.

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<20110528.pdf> diakses pada tanggal 20 oktober 2016

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Amwaluna: Jurnal Ekonomi dan Keuangan Syariah Vol. 2 No. 1 January 2016 Page 147-154 Online ISSN : 2540

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