

The Concept Of 'Urf And Its Application In Sharia Economic Law (Mu'âmalah Mâliyyah)

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ABSTRACT

The aim of this research is to explain the concept of 'urf and its position in legal discovery methods and its application in the field of sharia economic law. The method in this research uses a normative juridical approach and data collection techniques through literature study and descriptive analysis. The research results show that 'urf has a position in legal discovery because it is agreed by experts as a legal proposition in Islam. The application of 'urf in the field of mu'âmalah mâliyyah consists of the ability to buy and sell mu'âthah, buy and sell istishna, profits in pawn contracts, buy and sell goods that do not yet exist and productive waqf and rent agreement for service.

Keywords: Urf, Customs, Sharia Economic Law

A. INTRODUCTION

Not all legal issues in Islam are explained in detail by the Qur'an and the hadith of the Prophet (peace be upon him), while Muslims must live their lives according to the rules, norms outlined by the sharia. Law is very important in regulating community behavior so that it is organized in accordance with sharia and directed (Wahyu Syarvina, Sudirman Suparmin, 2022). In order to answer these problems, experts try to exert all their reasoning abilities to get the right solution to every existing problem. This concept is commonly referred to as *ijtihad* (Darnela Putri, 2020). One form of *ijtihad* used by scholars in the process of discovery and formation of law is through *'urf/habit*. These habits can be used as argument During Category Masked *'urf shahih* (Jaya Miharja, 2011).

Al-'urf, according to Abdul 'Aziz al-Khayyat, is something that people have utilized and experienced in a variety of spheres of life, including the field of Islamic education. The numerous obstacles that Islamic education must overcome threaten the principles of Islam that have up until now been upheld. Globalization, on the other hand, creates fresh chances for Islamic education to advance. In what ways does the 'urf idea genuinely help to strengthen Islamic education (Tolchah & Mu'ammam, 2019).

Al-'urf is defined as custom or habit in Indonesian, according to Jaih Mubarak. The behavior may also have an impact on Islamic education, which develops Islamic character. Islamic education conveys the idea that learning activities have a spiritual foundation and are recognized with the Arabic words *adab* and *ta'dib*. Both of these concepts are sometimes misunderstood as coercive terms that exclude questioning the teacher's ideological grasp of the material. A possible explanation for the poor quality of religious and Islamic education could be the absence of a strong cultural basis from the start. Students in Islamic nations or civilizations are faced with the moral conundrum of adhering to western moral standards from birth (Alamsyah, Abdussalam, & Rahmat, 2022)

Islam is believed to be a cooperative religion in addressing various things, including in addressing social and cultural phenomena which are dialectical-social processes and natural human creativity that do not need to be eliminated at all (Ramdan Fawzi, 2018). The interaction of Islam and local culture is an effort to see the dynamic relationship between Islam and various values and concepts of life that are maintained and inherited and seen as a guideline for life by the relevant community. The life guidelines in question also include traditions inherited from generation to generation which until now the phenomenon is still visible. In this case, jurisprudence scholars have their own views in treating it as a source of law or as a methodology in making law (Iim Fahimah, 2018).

Muamalah is a part of Islamic law that has a lot of contact with cultural elements or customs. These customs can be taken into consideration when establishing Islamic law in economic transactions that are growing, especially regarding issues that do not have firmness *Nash Shara'* (Khikmatun Amalia, 2020). Therefore, *'urf* has a very important position in the process of finding law, one of which is in the issue of sharia economic law (Ahmad Lukman Nugraha, Rachmat Syafe'i, 2021). Thus, it is necessary to conduct research on the concept *'urf* and its application in transactions *Mu'âmalah Mâliyyah*.

B. LITERATURE REVIEW

The concept of 'Urf in Islamic Law

In the study of jurisprudence, there are 2 (two) terms commonly used by experts to identify habits that are always practiced by the community, namely the terms *adat* and *'urf*. Both terms are used by some scholars to express the same meaning/synonym, that is, a habit that is repeatedly practiced by society and can be accepted by righteous habits. But there are also scholars who distinguish between the two terms.

Etymologically, the word *'urf* is the language of 'Aran derived from the word *'Arafa* which has the meaning of knowing. According to Ibn Faris in *Maqâyis al-Lughah* word *'Arafa* Semaha language refers to 2 (two) things, namely: (1) the continuity of something (*muttashil*) ; and (2) tranquility towards something (*Al-Sukûn wa Tumanînah*) (Ibn Faris, 1979). According to Ibn Mandzur in *Lisân al-'Arab*, *'urf* has the meaning of all good habits that are known, followed and favored by man (Ibn Mandzur, 2013).

The definition of *'urf* is terminologically put forward by experts as follows:

According to Abd al-Karim Zaidah, *'urf* is:

ما لفه المجتمع واعتاده وسار عليه في حياته من قول او فعل

“*Something that is considered familiar in a society because it has become a habit and integrated with their lives both in the form of deeds and words*”. (Abd al-Karim Zaidan, 2015)

According to Muhammad Abu Zahrah what is meant by *'urf* is:

ما اعتاده الناس من معاملات واستقامت عليه امورهم

“*Anything that man is accustomed to in his association and has settled in their affairs*”. (Muhammad Abu Zahrah, n.d.)

According to Abd al-Wahab Khalaf, *'urf* is:

ما تعارفه الناس وساروا عليه، من قول، أو فعل، أو ترك

“*Something that most people have known and has become a tradition for them, whether it be a word, a deed or a state of leaving*”. (Abd al-Wahab Khalaf, 2008)

According to Muhammad al-Zuhaili, *'urf* is:

العادة والعرف ما استقر في النفوس من جهة العقول وتلقته الطباع السليمة بالقبول

“*Something that dwells in the soul from aspect and reason, and is accepted (in general) by human nature*”(Muhammad Musthafa al-Zuhaili, 2006)

Based on the definition put forward by the experts above, it can be concluded that what is meant by *'urf* is something that has been known by the community and has become a tradition for them either to carry it out or leave it either in the form of deeds or words. It can also be said that *'urf* is something that is repeatedly done by certain societies, and continuously lived by them, whether it happens all the time or at a certain time.

With regard to *'urf*, among scholars there is a discussion as to whether *'urf* is a synonym of the word *al-'âdah* (read: *adat*) or the two are different things. In this case there are two opinions, namely: *first*, *'urf* and *adat* have the same meaning, meaning they are synonyms. In other words, *'urf* and *adat* are synonyms of two different words *lafaz* but have the same meaning. This opinion was held by Ibn 'Abidin (d. 1252 AH) and Ali Haidar who were scholars from the Hanafi circle. This can be seen in Ibn 'Abidin's statement as follows:

العادة مأخوذة من المعاودة فهر بتكررها ومعاودتها مرة بعد اخرى صارت معروفا مستقرة في النفوس والعقول ملتقاة بالقبول من غير علاقة ولا قرينة حتي صارت حقيقة عرفية فالعادة والعرف بمعني واحد.

“Adat is taken from the word *mu'âwadat* (habit), which along with continuous repetition and habituation becomes known, imprinted in the soul and reason, and accepted (in general), not based on rational considerations and instructions (directions) first so that it becomes 'urf. Custom and 'urf one meaning”. (Ibn 'Abidin, n.d.)

The *second* opinion, states that 'urf and adat are two different things. In this respect, 'urf is general and has a much broader meaning than custom, because adat is part of 'urf, i.e. 'urf which is practical. This opinion was held by Ibn Humam (d. 861 AH) who was a scholar from among the Hanafites as well.

If we look closely, the difference between the two terms above lies in the nature and scope that adat is more common when compared to 'urf. In this case, customs include individual habits and community habits. While 'urf covers only the customs of society, it does not include individuals. Therefore, there is no term *'personal urf* that exists is a personal custom. Thus, the relationship between 'urf and adat *can be described as a general-specific relationship, where adat is more general because it includes individual customs and general customs, while 'urf includes only the general customs of the people*. So, it can be said that every 'urf *is definitely customary, but not every adaptation is 'urf*.

Thus, a habit can be said to be 'urf if it meets 3 (three) of the following: *first* the habit should be liked by many; *second*, The habit must be done repeatedly. *Third* The custom must be popular and known by many communities. Ahmad Azhar Basyir mentioned three requirements 'urf others, namely: *first* adnaya steadiness of soul; *second*, in line with common sense considerations; and *third* acceptable to man's disposition and character. Therefore, habits that do not meet these requirements cannot be said to be 'urf.(Ahmad Azhar Basyir, 1983)

According to Abd al-Wahab Khalaf there are 3 (three) differences between 'urf With ijmak including:(Abd Al-Wahab Khalaf, 2014)

- 1) 'Urf is formed based on the agreement of the community community, both in the form of 'urf words and deeds. Those involved in the agreement include special circles and laymen, in addition to illiterate people, literate people or mujtahids. Ijmak, on the other hand, cannot be established unless it is done only by mujtahids, especially in matters of amaly sharia laws. In this case, there is no community intervention or involvement other than the mujtahids.
- 2) 'Urf or adat can be realized only with the agreement of the whole community in the majority. Then, regarding some individuals who deviate from customary provisions, it does not imply the legitimacy and existence of 'urf. While ijmak cannot be realized except by the agreement of the Muslim mujtahid kamun at one time, and the agreement is formed when facing a legal problem. If there are some or one mujtahid who opposes the majority opinion, it can damage the validity of ijmak.
- 3) The law based on ijmak *sharîh* is the same as the law based on *nash*. In response to the problem that already exists ijmak, ijtiḥad is not allowed. This is the same as not being allowed ijtiḥad because there is already *nash*. The law that rests on 'urf *can be changed according to the change of 'urf* itself. He does not have authority as strong as sanad *nash* or ijmak.

Juridical Foundation of 'Urf

Validity 'urf there is a juridical basis both in the Qur'an and the hadith of the Prophet Muhammad, including the following:

خُذِ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ (199)

"Be forgiving and tell people to do what is accrued, and turn away from foolish people". (Q.S al-'Araf: 199).

Based on this verse, Allah (swt) commanded the Holy Prophetsa to take 'urf, that is, everything that has been known in general by humans, or something that has become a habit applied in their interactions with each other. The commandment in this verse indicates that 'urf recognized for its existence as a legal reference in Islamic law. If this is not the case, then this command has no manka. (Artiyanto, 2017)

According to the interpretation of Ibn 'Abbas r.a that the word *Al-'urf* In this verse it means *al-ma'rûf wa al-ihsân*, that is, benevolence and kindness. (al-Fairuzabadi, n.d.) So, meaning *Al-'urf* In this verse is the linguistic meaning, that is, the things that are considered good that are well known in general, not like 'urf in the terms of jurists. However, linguistically it can be used to support the existence of 'urf in a terminological sense, because linguistic meaning is more general than meaning in terms.

Through Surah al-'Araf verse 199 above, Allah Almighty commands Muslims to do things that are accrued. What is meant by makruf is what is considered by Muslims as good, done repeatedly and not contrary to the true character and character of man, which is guided by the general principles of Islamic teachings.

The juridical basis of 'urf is also found in several hadiths of the Prophet Muhammad (peace be upon him) including:

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا: قَالَتْ هُنْدُ أُمُّ مُعَاوِيَةَ لِرَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: إِنَّ أَبَا سُفْيَانَ رَجُلٌ شَحِيحٌ، فَهَلْ عَلَيَّ جُنَاحٌ أَنْ أَخَذَ مِنْ مَالِهِ سِرًّا؟ قَالَ: «خُذِي أَنْتِ وَبَنُوكَ مَا يَكْفِيكَ بِالْمَعْرُوفِ» (رواه البخاري)

"From 'Aisha (r.a): Hindun his mother Muawiyah said to the Holy Prophet (peace be upon him): Surely Abu Sufyan was a stingy man, am I sinning if I take (bread) from his property secretly? The Prophet Sasw replied: Take for you and your son a sufficient amount of income in an accrued manner." (H.R Bukhari). (al-Bukhari, 2008)

This hadith explicitly indicates that a wife is allowed to take her husband's property for the benefit of herself and her children if he is miserly. Regarding the rate of the amount that can be taken from the husband's property is returned to the custom that prevails in the midst of society. This shows that 'urf is a legal reference in the determination of a decent amount, which is not stipulated precisely in the Shari'a, as in the kasus of this wife's bread.

Imam al-Nawawi (d. 676 AH) when giving an explanation of this hadith argues that this hadith has many benefits, including:

اعْتِمَادُ الْعُرْفِ فِي الْأُمُورِ الَّتِي لَيْسَ فِيهَا تَحْدِيدٌ شَرْعِيٌّ وَمِنْهَا

"Guided by 'urf in matters not stipulated in Islamic law". (al-Nawawi, n.d.)

The next hadith which is the juridical foundation of 'urf is as follows:

عَنْ ابْنِ عُمَرَ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «الْوَزْنُ وَزْنُ أَهْلِ مَكَّةَ، وَالْمِكْيَالُ مِكْيَالُ أَهْلِ الْمَدِينَةِ» (رواه ابي داود)

"From Ibn 'Umar (r.a) he said; The Holy Prophet(saw) said: The measure of weight (weigh) used is the measure of the weight of the population of Mecca, while the measure

(measure of content) used is the measure of the population of Medina.". (H.R Abu Dawud). (Abu Dawud, 2007)

This hadith shows that the scales (measures of weight) used at the time of the Holy Prophetsa were the scales of the people of Mecca because the custom of the people of Mecca was trading. Therefore, if there is a dispute with the scales, what is used as a reference / standard is the scale of the population of Mecca. Meanwhile, in the issue of the dose (size of content) that is used as a standard is the dose of Madinagm residents because the majority of them are engaged in agriculture. Therefore, if there is a dispute in terms of dosage, it is returned to the dose of the residents of Medina. This is a form of 'urf which occurred during the time of the Holy Prophetsa which applied to the inhabitants of Mecca and Medina. Because 'urf And the habits of each society are different, of course 'urf This cannot be applied to people who have different scales and sizes, it is returned to 'urf They themselves are forced 'urf Certain to other societies is something that is unacceptable to common sense.(Artiyanto, 2017).

Another hadith that is often used as the juridical basis of 'urf is the following narration:
وَقَدْ رُوِيَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ: «مَا رَأَى الْمُؤْمِنُونَ حَسَنًا فَهُوَ عِنْدَ اللَّهِ حَسَنٌ، وَمَا رَأَى الْمُسْلِمُونَ قَبِيحًا فَهُوَ عِنْدَ اللَّهِ قَبِيحٌ» (رواه مالك)

"It is narrated from the Prophet (peace be upon him): he said: What is considered good by believers will also be considered good by Allah, and what is considered bad by Muslims will also be considered bad by Allah Almighty". (H.R Malik). (Malik Ibn Anas, n.d.)

This hadith explains that if Muslims consider good an act that has no rules in it *Nash*, and can show that the act does not contradict the *Nash Shara'* then the deed will be appreciated and considered good also by Allah Almighty, because it contains the absurdity and ease felt by the people. Therefore, if people are ordered to abandon or exchange customs and customs that they usually practice with new customs or customs that they are not familiar with, this will certainly cause difficulties that are not desired by the Shari'a.(Al Yasa' Abubakar, 2016)

Miscellaneous 'Urf

Classification of various kinds 'urf It can be seen in the following aspects:(Mohammad Mufid, 2016)

1. In terms of material that can be done. In this regard, 'urf is divided into 2 (two) kinds, namely:
 - a. 'urf *qauly*, which is a habit carried out by people who use certain habits to express something until the meaning of the expression is understood by the community. Cobtohnya is a word *waladun* linguistically the meaning is "child" for both boys and girls. The application of the word to women because it is not found specifically for women with female marks (*mu'annats*). The use of the word *walad* for sons and daughters (in the chapter on the law of inheritance and inheritance) applies also in the Qur'an, as in surah al-Nisa verses 11-12. All the words *walad* in the two verses mentioned repeatedly apply to both boys and girls.
 - b. 'urf *'amaly*, which is the custom of a society related to ordinary acts or civil muamalah . As for what is meant by ordinary actions here are the actions of the community in matters of their lives that are not related to the interests of others, such as the habit of certain people eating special foods or drinking certain drinks, or the habit of the general public in wearing certain clothes in a certain way.

The *'urf* related to civil muamalah is the habit of a community in carrying out contracts or transactions or others in a certain way. For example, people's habits in selling purchased goods are delivered to the buyer's home by the seller if the goods are heavy and large such as buying gallons of water and so on.

2. In terms of the scope of its use, *'urf* is divided into 2 (two), namely:
 - a. *'urf' âmm* (customs of a general nature), that is, certain customs that are widely accepted throughout society and throughout the region. For example, in a sale and purchase contract whose object is a car, all the tools needed to repair the car such as keys, pliers, jacks and spare tires, are included in the selling price without a separate contract.
 - b. *'urf khâsh* (custom of a special nature), that is, customs that prevail in a particular area and in a particular community of people. For example, the custom that prevails among traders if a defect / disgrace is found in the object of the goods they sell, then the consumer can return it, but in other areas of defects contained in the same item, the consumer cannot return the item.
3. In terms of good and bad judgments, *'urf* is divided into 2 (two), namely:
 - a. *'urf shahîh*, i.e. repeated habit, accepted by the masses, not contrary to the Shari'a, is polite, does not deprive of benefit and does not bring harm. For example, buying goods by delivering the goods to the buyer's destination. Another example is giving a gift as a reward for an achievement to others.
 - b. *'urf fâsid*, which is a habit that prevails in a society that is contrary to Shari'a, laws and manners. For example, people's habits in conducting transactions in which there is an element of usury. Another example is the habit of people who like to carry out prohibited transactions such as gambling (*maysir*), bribery (*risywah*), reducing scales (*tathfif*) and so on.

C. METHOD

The approach used in this study is a normative juridical approach. The normative juridical approach is carried out through philosophical, systematic, and critical analysis approaches. Because this research is based on a normative juridical approach, the technical data collection in this study is through literature study, namely examining and reviewing primary materials in the form of books on jurisprudence, especially those related to the concept of *'urf*. The secondary material in this study is books of jurisprudence that are relevant to the focus of research. This research is descriptive because this research was conducted to find as thorough and complete data as possible about the characteristics of a condition or symptoms that can help strengthen the old theory of *'urf* to build a new theory of its implementation in the field of *mu'âmalah mâliyyah* (sharia economic law).

D. RESULTS OF DISCUSSION

The terms of *'urf* can be used as the basis of sharia economic law

According to Abd al-Karim Zaidan, there are 4 (four) conditions for *'urf* In order to be used as a legal basis, namely:(Abd al-Karim Zaidan, 2015); *First, 'Urf* It is a classification *'urf shahîh*, so that it does not contradict the provisions of the Shari'a in either the Qur'an or the Sunnah. For example, it is customary in a society that it is lawful to return entrusted property

(*Wadi'ah*) to the wife or child of the owner of the goods. This habit can be used as a handle if there is a claim from the owner of the property; *Second, 'URF* It must be general, in the sense that *'urf* This has become a habit of the majority of the population of an area.

Third, the 'urf must have existed when an event occurred that would be based on the 'urf. For example, there is someone who entrusts the results of his garden to the ulama, while the so-called ulama at that time is only a person who has religious knowledge without any requirement to have a formal education diploma, then the word ulama in the waqf requirements must be interpreted with the familiar understanding, Not with the understanding that scholars who become popular later after the waqf pledge occurs, for example, must have a formal education diploma.

Fourth, there is no firmness from parties who are different from the will of the 'urf, because if both parties to the contract have agreed not to be bound by a generally accepted custom, then what is held is the firmness, not the 'urf. An example is between the buyer and seller when making a sale and purchase transaction has agreed that with a clear agreement that the goods purchased will be brought by the buyer himself to his home. In fact, the prevailing custom is that the goods purchased will be delivered by the seller to the buyer's home. Thus, there is a conflict between custom and that which is clearly expressed in the transaction by the contracting party. If so, then the customs prevailing in the community cannot be used as a basis for establishing laws in the sale and purchase contract.

The Position of 'Urf according to the Fukaha's View in Sharia Economic Law

Scholars have agreed that *'urf fâsid* (customs contrary to sharia) cannot be used as a legal basis. As for *'urf shahîh* In general, scholars of the school of jurisprudence have agreed to accept custom as a basis for the formation of law. According to Satria Effendi, the school is known to use a lot *'urf* As a legal basis are scholars from among Hanafiyah and Malikiyah, and subsequently scholars from among Hanabilan and Shafi'iyah. In principle, the major schools of jurisprudence agreed to accept *'urf* as a basis for the formation of law, although in number and rinic, there are differences between these schools, so that *'urf* included in the group of disputed postulates among scholars.(Satria Effendi M Zein, 2009)

According to Asmawi, differences of opinion among scholars regarding *'urf* lies in the limitations and scope of application of *'urf* itself. In this connection, it is necessary to state the following:(Asnawi, 2013); *first* Regarding Habits (*costum*) earlier Arab society which was later positively confirmed by the Shari'a so that it became law *Shara'*. On this subject, scholars agree that the custom is binding-binding. *Shar'i*-All Muslims. Such a habit remains firm and valid, unchanged as time and place change; *second* Regarding Habits (*costum*) the earlier Arab society which was then explicitly negated by the Shari'a until it became unlawful. In this regard, scholars agree that such a custom should be kept away by all Muslims. This is called *'urf fâsid*. In sharia economic law, *'urf* become the legal basis for a case where there is no Shari'a proposition that establishes or denies the case law.

Application of 'Urf in the Field of Mu'âmalah Mâliyyah (Sharia Economic Law)

Scholars agree that, *'urf* that *Shahîh* is a legal proposition that can be used in legal determinations. Transaction activities *Mu'âmalah Mâliyyah* is part of the discipline of Islamic law born from the *ijtihad* activities of scholars. Below will be outlined some forms of transactions *Mu'âmalah Mâliyyah* which is built differently to *'urf shahîh*.

1. Mu'âthah Sale and Purchase Agreement

In the book *al-Mausu'ah al-Fiqhiyyah al-Kuwaitiyah* Explained about the understanding *Bai' al-Mu'athah* as follows:(Anonymous, n.d.)

التَّعَاطِي لُغَةً: مَصْدَرٌ تَعَاطَى، بِمَعْنَى: تَنَاوَلَ الْإِنْسَانُ الشَّيْءَ بِيَدِهِ، مِنَ الْعَطْوِ، وَهُوَ بِمَعْنَى التَّنَازُلِ. قَالَ اللَّهُ تَعَالَى: {فَتَادُوا صَاحِبَهُمْ فَتَعَاطَى فَعَقَرَ} وَتَفْسِيرٌ هَا: أَنَّهُ تَنَاوَلَ أَلَّهُ الْعَقْرَ، وَجَاءَ فِي تَفْسِيرِهَا أَيْضًا: أَنَّهُ تَنَاوَلَ الْفِعْلَ بَعْدَ أَنْ أَعَدَّ لَهُ غَدَّتَهُ، بِأَنْ كَمَنَّ لِلنَّاقَةِ فَرَمَاهَا بِسَهْمِهِ، ثُمَّ ضَرَبَهَا بِسَيْفِهِ حَتَّى قَتَلَهَا.

وَاصْطِلَاحًا: التَّعَاطَى فِي الْبَيْعِ، وَيُقَالُ فِيهِ أَيْضًا الْمُعَاطَاةُ: أَنْ يَأْخُذَ الْمُشْتَرِي الْمَبِيعَ وَيَدْفَعُ لِلْبَائِعِ الثَّمَنَ، أَوْ يَدْفَعُ الْبَائِعُ الْمَبِيعَ فَيَدْفَعُ لَهُ الْأَخْرَ الثَّمَنَ، مِنْ غَيْرِ تَكَلُّمٍ وَلَا إِسَارَةٍ. وَيَكُونُ التَّعَاطَى فِي الْبَيْعِ وَغَيْرِهِ مِنَ الْمُعَاوَضَاتِ

"Al-Ta'âthi is etymologically a mashdar of the word ta'âthî which means a person reaches for something with his hands" Allah (swt) said: "So they called his friend, and his friend caught (the camel) and killed it". (Q.S al-Qamar: 29).

Terminologically *al-Ta'âthi Fî al-Bai'*, it is said that: When a buyer takes the goods (object to be purchased) then he hands over (the price) to the seller, or a seller delivers the goods and the buyer gives the price in the absence of speech (*ijab kabul*) and there is also no sign (in lieu of *ijab kabul* verbally), and the concept of *al-ta'âthi* occurs in commercial contracts such as buying and selling and so on".

Thus it can be said that *bai' al-Mu'athah* or *bai' al-murâwadhah* is when both parties agree on prices and goods. Both also gave their goods without *ijab* or *kabul*.

Among jurists there is a difference of opinion regarding the law *Bai' al-Mu'athah*. Scholars from among the madhhab Hanafiyah, Malikiyah and Hanabilah Considering that the law conducts buying and selling with schemes *Mu'athah* The law is permissible. The argument for the permissibility of the contract is based on '*urf*'. According to Muhammad Ibn Ibarahim, other than based '*urf* Ability *Bai Al-Mu'athah* is based on the generality of the Qur'anic verse surah al-Baqarah 275. Regarding the mechanism of *ijab-kabul* in the sale and purchase contract, it is returned to '*urf*' (custom) because there is no specific explanation from the Holy Prophetsa regarding the mechanism of *ijab-kabul*.(Muhammad Ibn Ibrahim, 2009)

For Shafi'iyya scholars,(Wahbah al-Zuhaili, 2012) Buying and selling transactions *Mu'athah* viewed as an unauthorized transaction. Their argument is that in the contract of sale and purchase requires the existence of elements *tarâdî* (voluntary/consensual) between the parties, and voluntary is something implicit, it is only known through the existence of *ijab* and *kabul* as indicators of willingness. This is in accordance with the word of Allah in the Qur'an surah al-Nisa verse 29.

2. Istishna' Sale Agreement

The word *istishna'* comes from the same word *shana'a* as the word *ja'ala* or *khalafa* which literally means to make or create. When the word becomes *istishna'* it literally means to ask for goods to be made. The terminology of *istishna'* in terms is:

طلب العمل من الصانع في شيء مخصوص على وجه مخصوص. أو هو عقد مع صانع على عمل شيء معين في الذمة

"An agreement that asks a person to make a certain item in a certain form or an agreement made with someone to make a certain item in dependents". (Wahbah al-Zuhaili, 2012)

Scholars of the madhhab Hanafiyah Argues that the contract of sale and purchase *istishna'* The law is permissible. Contract ability *istishna'* based on '*urf*' (*habit*). In addition to based on '*urf*contract *istishna'* allowed based on *istihsan* Because of the contract *istishna'* It is common for people to do it all the time without anyone reneging on it so that it becomes *ijmak* (agreement) without anyone rejecting it.(Hasanudin, 2017) In addition to based on '*urf*' and

istihsan, for scholars Hanafiyyah boredom of contract *istishna'* is based on analogy (*Qiyâs*) to *Bai' al-Salam*.(Adam, 2017)

While according to the views of Maliki scholars, Shafi'iyah and Hanabilah that the contract of sale and purchase *istishna'* illegitimate. They argue on the rule of law which reads: "It is not legal to buy and sell contracts for objects that do not exist".(Asnawi, 2013)

3. Advantages of Pawn Objects

The income or accretion of the pawn object, whether fused or separate from the pawn object, is the property of the *râhin* (the person who mortgages his goods) based on the agreement of the scholars. However, they differ as to whether the accretion is separate from the lien object, which is in the hands of the *murtahin* (the party receiving the lien) whether it is part of the lien object like its parent or not?

Scholars of the Shafi'iyah kalanga hold the view that a separate accretion from the pawn object does not include part of the pawn object, in addition to its parent object, but rather something separate from it, which stands alone so that it becomes property *râhin* (pawner). Their argument is that the lien is entitled (*murtahin*) attached to the parent object of the lien, not to the other; and whatever is born, apart from the object of the pawn parent is not that object, nor is the milk and fur of the animal; Thus, it is not attached to such an object of rights *murtahin* (pawnee).(Musthafa Dib al-Bugha, 2013)

The next opinion, which is according to scholars Hanafiyyah and Hanabilah has the view that the separate accretion of the lien object includes part of the lien object, in addition to its parent object. Their argument that the branch (*furû'*) it follows His point (*Ushûl*) so that it applies to him the law of origin; and increments separate from objects *Rahn* it is a branch, while the object itself is a tree; Consequently, it applies to a separate accretion that is the law of the lien object. The point is that in the pawn object there are 2 (two) elements, namely the ownership element and the pawn element, and these two elements enter into the separate accretion of the pawn object.(Musthafa Dib al-Bugha, 2013)

The next opinion, namely scholars from the Malikiyya circle, is of the view that it is necessary to distinguish first in the form of the addition; if it is something physically-materially separate, it belongs to the object of a pawn; and if this is not so, then it does not include the object of the face except when *murtahin* require. The arguments used by Malikiyya scholars are based on *Qiyâs* (analogy) and '*urf* (habit). *First* analogy postulates, that is, they apply the analogy of a pawn case to a buying and selling case; As in buying and selling trees, the fruits of the tree do not follow automatically as part of the object of sale, if the buyer requires it. As for *second*, that is, postulates '*urf* They apply when they distinguish the form of accretion of pawn objects.(Musthafa Dib al-Bugha, 2013)

4. Unrealized Sale and Purchase Agreement

Scholars differ on the law of sale and purchase of objects that do not exist at the time of the contract. In this case, the opinion of Hanafi scholars that the contract of purchase of tangible goods (*bai' al-ghâib*) is valid either *muashûf* (specified specification) or *ghair maushûf* (unspecified unspecified), but the sale and purchase contract is not binding so that the buyer has the right of operation (*khiyâr*). In *Kitab al-Hidâyah* it is explained that:

ومن اشترى شيئاً لم يره فالبيع جائز، وله الخيار إذا رآه، إن شاء أخذه بجميع الثمن "وإن شاء رده"
"If a person has something that he has not seen, then the status of the sale and purchase contract is non-binding, for the buyer has the option right to continue or cancel the

contract if he has seen the item. if the buyer wishes he can take it and if he does not wish he has the right to return the bar." (Burhan al-Din, n.d.)

The view of the Hanafi school argues based on the postulate of the hadith of the Prophet (peace be upon him) narrated by al-Daruquthni in *his Sunan* which reads:

«مَنْ اشْتَرَى شَيْئًا لَمْ يَرَهُ فَهُوَ بِالْخِيَارِ إِذَا رَأَهُ إِنْ شَاءَ أَخَذَهُ وَإِنْ شَاءَ تَرَكَهُ»

"Whoever buys something he has not seen is entitled to khiyâr when he sees it, if he wants he can take it but if he does not want he can leave it". (H.R al-Daruquthni). (Al-Daruquthni, 2004)

According to the Hanafi scholar, namely Ibn Humam, this hadith is a *mursal hadith*, even though this hadith has *mursal* status, *it is used as a blajjah or legal argument according to the majority of scholars.*

The second opinion is the opinion of Maliki scholars that the sale and purchase contract is a valid contract if the object of the contract being traded is characterized/explained in specification and binds the buyer if the goods are in accordance with its specifications. In terms of the Maliki school it is called by the term *bai' 'alâ al-barnâmiij*. As for if the goods are not explained the specifications, the contract is invalid. (Musthafa Dib al-Bugha, 2013) The opinion of Malikiyya scholars is in line with the opinion of scholars Hanabilah. This can be seen from the statement of Ibn Qudamah, one of the scholars Hanabilah as follows:

وَفِي بَيْعِ الْغَائِبِ رَوَاتَانِ؛ أَظْهَرُهُمَا، أَنَّ الْغَائِبَ الَّذِي لَمْ يُوصَفْ، وَلَمْ تَتَقَدَّمْ رُؤْيُهُ لَا يَصِحُّ بَيْعُهُ.... وَإِذَا وَصَفَ الْمُبِيعُ لِلْمُسْتَشْتَرِي، فَذَكَرَ لَهُ مِنْ صِفَاتِهِ مَا يَكْفِي فِي صِحَّةِ السَّلْمِ، صَحَّ بَيْعُهُ فِي ظَاهِرِ الْمَذْهَبِ. وَهُوَ قَوْلُ أَكْثَرِ أَهْلِ الْعِلْمِ.

"In the contract of buying and selling goods that have not been realized there are 2 histories: untangible goods that are not explained in specification and have not been seen before, then the sale and purchase contract is invalid.... If the goods are specified to the buyer, and the properties of the goods are described as in the contract of sale and purchase of greetings, then the contract is valid according to the school Hanbali and this is the opinion of the majority of scholars". (Qudamah, 1968)

The legal basis used by the Malikiyya scholars in this matter is based on *'urf* as well as the customs of the inhabitants of Medina. As for the opinion of scholars Hanabilah based on *Qiyâs* (analogy) i.e. analogy to *Bai' al-Salam*. (Musthafa Dib al-Bugha, 2013)

The last opinion, which is according to Shafi'iyah scholars and is *Qaul Jadîd* (new opinion) and is the most *Shahîh* in the Shafi'i school the sale and purchase of goods that have not yet existed is absolutely invalid. The argument used by Shafi'iyah scholars is a hadith regarding the prohibition of buying and selling *Gharar*. (Musthafa Dib al-Bugha, 2013)

5. Productive Endowments

In this modern context, the rapid development of technology presents its own challenges to interpret the verses on *iqtishâd al-Islâmî* (Islamic economics) with contextual methods. For example, waqf management that is carried out productively becomes an alternative. Productive management of waqf becomes the task of the manager which in terms of waqf jurisprudence studies is called *istililah nazhir*. Regarding the rate or size of *ujrah* (wages) or rewards for services for managers of legal resources *'urf* is taken into consideration, so that productive waqf managers cannot violate the customs or customs that apply in the region as applicable.

At a time when the management of productive waqf is increasingly diverse, even by investing in the form of sukuk, for example, the determination of law may and may not also

need to be considered other sources of law besides *'urf*, such as *Mashlahah Mursalah*, where the waqf given by the wakif (waqf giver) is managed proportionally as desired by the wakif. The terms and conditions given by the wakif must of course be more considered. (M. Pudjihardjo, et al, 2021)

6. Akad *Ijârah 'Alâ Ashkhâsh* (Rent-Services)

Related to the contract of lease for services or known as *ijârah 'alâ Ashkhâsh* or also known as *ijârah 'alâ'amâl* there are several provisions that are returned to *'urf*, including: *first*, reference to *Akadzn in the agreement in the lease of services*. This is as stipulated in *the Mi'yar Syar'iyah* (sharia standard) AAOIFI 330 as follows:

تتعد اجارة الاشخاص بكل ما يدل عليها عرفا, سواء كان لفظا ام كتابة ام بوسائل الاتصال الحديثة

"The service lease agreement takes place with every thing that indicates 'urf, whether carried out by lafadz, writing or using modern telecommunications media".

Similarly, the legal basis for determining the length of service rental time, if not agreed upon during the contract. This is as stipulated in AAOIFI sharia standard No. 331 as follows:

اما في الاجارة الواردة على الاجير المشترك فيتحقق العلم ببيان العمل, ونوعه, وصفته, ويجوز اضافة المدة اليه
وحيث يُلزم الاجير اكمال العمل فيها, وفي حال عدم ذكر المدة في الاجارة على العمل يرجع الى العرق.

"As for the lease-service contract that is musytarak, the realization that the object of service, the type and nature of the service must be clear. It may also be added the length of services provided, which must be fulfilled by the service provider. If the condition of the length of service is not stipulated in the contract, then it is returned to 'urf or custom".

7. Sharia Economic Law Education

The sharia economy in Indonesia continues to grow rapidly. This is evidenced by the emergence of various sharia business models, both in the form of the financial sector such as Islamic banking, Islamic capital markets, to the form of real sectors such as hotels and tourism that run based on sharia principles. In order to support the growth and development of the sharia business, in addition to regulations that regulate the need for qualified human resources.

Here the role of education is needed to support open sharia human resources. Various types of Islamic economic education, both at the level of education in Islamic boarding schools, universities ranging from undergraduate to doctoral, even certification institutions are facilities or media that can be used in terms of Islamic economic education.

The concept of Islamic economic education is based on *urf* or culture according to needs. In the Islamic financial industry, a sharia supervisory board (DPS) is required to oversee sharia financial products in accordance with sharia principles. Therefore, special education is needed to become a sharia supervisory board. In the context of Indonesia, the National Sharia Council-Indonesian Ulema Council (DSN-MUI) through the DSN-MUI Institute DPS candidates are given briefing and training in understanding the rules of Islamic finance. Similarly, judges in religious courts, after the expansion of the absolute authority of religious courts, even judges in religious courts need insight into sharia economics, certification of sharia economic judges is needed to resolve disputes in the field of sharia economics.

This sharia economic law education is a form of application of *urf* in *mu'amalah* activities so that thus a comprehensive pattern of integration of sharia economic law will be formed

E. CONCLUSION

'Urf' in the view of the fukaha can be used as a postulate or *argument* in the establishment of Islamic law including in matters of *mu'âmalah mâliyyah* (sharia economic law) if it is included in the form of *'urf shahîh*. The difference in the use of 'urf as a legal proposition among experts occurs only in the portion in its use itself. Thus, it can be said that the fukaha make 'urf a consideration in the process of determining law, especially in the field of Islamic economic law.

At least based on the author's research, there are five forms of application of transaction activities in the field of sharia economic law guided by 'urf including: (1) *mu'âthah sale and purchase contract*; (2) *Istishna Sale and Purchase Agreement*'; (3) the tungs of the pawn object; (4) an agreement to buy and sell goods that have not yet existed; (5) productive waqf, (6) akad *ijârah 'alâ asykhâsh* (rent-services), and (7) Islamic economic education.

F. SUGGESTIONS AND ACKNOWLEDGMENTS (if any)

The issue of *muamalah mâliyyah* is a legal case that continues to grow with the times. With the *ijtihad* method in the form of 'urf, it is expected to answer economic problems that continue to grow. Further research needs to be carried out on the application of 'urf in the activities of sharia economic law, both in the form of Islamic financial products and contemporary transactions.

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