

## The Instrument of 'Urf in the Reform of Islamic Legal Rulings: An Analytical Study on Contemporary Fiqh

Syamsul Azizul Marinsah<sup>1</sup>, Mohd Nur Hidayat Hasbollah  
Hajimin<sup>2</sup>, Zaifuddin Md Rasip<sup>3</sup>, Amer Hudhaifah Hamzah<sup>4</sup>, Nur  
Faizatul Zehan Saari<sup>5</sup>

<sup>1</sup>Senior Lecturer, Faculty of Islamic Studies (FIS), University Malaysia Sabah, <sup>2,3 & 4</sup>Senior Lecturer Faculty of Islamic Studies (FIS), University Malaysia Sabah, <sup>5</sup>Lecturer Faculty of Islamic Studies (FIS), University Malaysia Sabah  
Corresponding Author Email: syamsulazizul@ums.edu.my

**DOI Link:** <http://dx.doi.org/10.6007/IJARBSS/v15-i10/25828>

**Published Date:** 17 October 2025

### Abstract

This article analyses the role of *'urf* (custom) as a pivotal instrument in the reform of Islamic legal rulings, particularly within the framework of contemporary *fiqh* and the consolidation of the Fiqh Sabahi discourse. Grounded in the methodology of *usul al-fiqh*, the study develops a conceptual framework of *'urf* encompassing its definitions, classifications, and criteria for admissibility as recognised by Islamic legal scholarship. The research further explores how *'urf* contributes to the formation of *manāt al-ḥukm* (effective legal causes), influencing legal change in response to evolving societal realities and local contexts. The article also examines the intersection between *'urf* and *fiqh al-wāqī'* (contextual jurisprudence), illustrating this through critical analyses of selected contemporary legal issues pertinent to Sabah's multicultural society. These include the usage of the term "astaga", halal food determination based on local taste (*istitābah al-maḥalliyyah*), Friday prayers with fewer than 40 congregants, the indigenous practice of *sogit* (customary compensation), the distribution of sacrificial meat to non-Muslims, and the management of non-Muslim deceased by Muslim relatives. The study finds that recognising valid *'urf ṣaḥīḥ* in alignment with the objectives of Islamic law (*maqāṣid al-sharī'ah*) can enhance context-sensitive legal formulations that are both relevant and responsive to local needs. It advocates for a broader integration of *'urf*-based *ijtihad* within fatwa institutions and Islamic legal systems, provided that such customs do not contradict definitive textual sources and serve the public interest (*maslaḥah*). In conclusion, *'urf* is affirmed as a critical element in Islamic legal renewal, harmonising the authority of scriptural texts with the dynamic realities of contemporary society.

**Keywords:** *'urf*, Contemporary Fiqh, Legal Reform, Fiqh al-Waqi', Fiqh Sabahi, Maqāṣid al-Sharī'ah

## Introduction

In the discipline of *Usul al-Fiqh*, *'urf* holds significant importance in the formulation of Islamic legal rulings. The consideration of *'urf* as an instrument in *istinbat al-hukm* (derivation of legal rulings) is essential, as it influences the development of Islamic laws based on local realities. The incorporation of *'urf* must be rooted in the worldview of a specific community, as failure to understand the *'urf* of a society can render a legal ruling or fatwa irrelevant for practical application within that society. As a comprehensive system of life, Islam acknowledges the impact of societal dynamics on the interpretation of shari'ah (Mahmood Zuhdi, 2010). This has led to the emergence of a methodological approach to integrating societal culture into Islamic legal sources, known as *al-'urf wa al-adah* (Subhi Mahmasani, 1971). This approach demonstrates that Islam's engagement with the cultural practices of a community is grounded in embracing these practices, provided they do not contravene the principles of shari'ah.

However, the continuous evolution of human societies has resulted in increasingly complex issues, highlighting the need for comprehensive reforms and the renewal of Islamic legal rulings to address the social changes within the Muslim community (Darnela, 2020; Syamsul Azizul et al., 2023). Within *Usul al-Fiqh*, *'urf* serves as a mechanism for assessing whether the social practices of a community align with shari'ah (*'urf sahih*) or should be disregarded as *'urf fasid*. The categorization of *'urf*, whether in accordance with shari'ah or otherwise, is closely tied to considerations of *maslahah* (benefit) and *mafsadah* (harm) (Fatimah, 2015).

Building upon this foundation, this article focuses on the role of *'urf* in reforming Islamic legal rulings by analysing contemporary fiqh laws and selected fatwas that utilize *'urf* as a specific tool for legal reasoning (*istidlal*), particularly within the context of strengthening the concept of *'fiqh Sabahi*'.

## Conceptual Framework of 'Urf

Etymologically, the term *'urf* is derived from the Arabic root word *عرف – يعرف – معرفة*, which encompasses meanings such as to know, to be known, to understand, or to have knowledge of something considered good (Ibn Manzur, 1990; Mohd Salleh, 1999; Mohd Anuar, 2006; Wahbah Zuhaily, 2008; Lailita et al., 2021; Afidah & Harisah, 2023). Terminologically, *'urf* has been defined by various Islamic jurists (*fuqaha*) as follows:

- a. Abd Karim Zaidan (1998) defines *'urf* as anything that has become customary within a society, consistently followed as a habit or tradition, whether through words or actions.
- b. Al-Jurjaniy (1983) describes *'urf* as words or actions accepted by human nature and aligned with logical reasoning, providing a sense of peace when practiced.
- c. Abdul Wahab Khallaf (1978) interprets *'urf* as something known and practiced by humans, encompassing words, actions, and omissions.
- d. Wahbah al-Zuhaily (2008) defines *'urf* as all matters that have become customary and recognized by many people, whether in the form of actions or terms that convey specific meanings distinct from their linguistic connotations.

From these definitions, it can be concluded that *'urf* refers to repeated and consistent actions or practices performed by people until they form habits widely accepted by society, provided they do not contradict Islamic law (shari'ah) (Paiz & Mohd Anuar, 2020). However,

not all forms of 'urf are in harmony with shari'ah. Thus, 'urf can be categorized into three key aspects for identification: content, scope, and conformity with shari'ah, as outlined below:

#### *Content Aspect*

- a. **'Urf Lafzi**: Refers to societal habits of using specific words or terms in daily conversation, where these words become widely understood and evoke a common meaning in people's minds (Afidah & Harisah, 2023)
- b. **'Urf Amali**: Relates to social customs involving actions, such as common practices in trade and commerce (Darnela, 2020).

#### *Scope Aspect*

- a. **'Urf Am**: Denotes customs practiced universally by the wider Muslim community, encompassing multiple Islamic countries, such as the use of *istisna* contracts in trade (Mushaddad et al., 2018).
- b. **'Urf Khas**: Refers to customs specific to certain groups or communities that vary according to their needs. For example, determining warranty periods for specific goods (Afidah & Harisah, 2023).

#### *Shari'ah Validity Aspect*

- a. **'Urf Sahih**: Customs or practices that do not conflict with Quranic and Hadith texts, preserve public welfare (*maslahah*), and avoid harm (*mafsadah*) (Lailita et al., 2021).
- b. **'Urf Fasid**: Customs that contradict Islamic law. This type of 'urf is not recognized as a legal basis by Islamic jurists (*fuqaha*), muftis, or judges (Paiz & Mohd Anuar, 2020).

#### *The Instrument of 'Urf and Its Relationship with Fiqh al-Waqi' (Fiqh of Reality)*

In general, *Fiqh al-Waqi'* (فقه الواقع), or fiqh of reality, is a concept in Islamic jurisprudence that emphasizes the importance of understanding and considering contemporary realities and the context or situations in which fatwas or legal rulings are issued. Its primary aim is to ensure that Islamic laws remain relevant and applicable to current circumstances without compromising the fundamental principles of Islamic sharia. Based on this concept, while *Fiqh al-Waqi'* does not necessarily depend on 'urf, it does not dismiss the role of 'urf as a variable in the process of legal reasoning (*istinbat hukum*) (Safwan, 2020). Both concepts work to ensure that Islamic law remains connected to the realities of society and the dynamics of change over time. The relationship between 'urf and *Fiqh al-Waqi'* can be elaborated as follows:

#### *Recognition of Contemporary Realities*

*Fiqh al-Waqi'* underscores the necessity of understanding contemporary realities in issuing fatwas. The instrument of 'urf represents a critical element of social reality, playing a significant role in the *istinbat* process by providing insights into the social phenomena within a community. For instance, this can be observed in the issue of men covering their heads. According to al-Shatibi (2003), in some countries, not covering the head may affect the credibility of a devout and trustworthy Muslim, whereas in other regions, this is not considered significant.

*Adapting Legal Rulings to Current Conditions*

The instrument of *'urf* aids scholars in understanding the cultural and social contexts of a community, facilitating the adaptation of legal rulings to current conditions without disregarding the foundational principles of shari'ah. For example, in the Malay Archipelago, Syekh Daud Fatani issued a fatwa regarding (jointly acquired property), a concept absent from classical Islamic texts. This practice, rooted in local customs, recognizes that spouses jointly cultivate agricultural land, and upon divorce, the property is divided between them (Miszairi & Akmal Hidayah, 2010). This differs from the *'urf* in the Arab world at that time, where the husband was typically the sole provider.

*Ensuring Unity and Harmony*

By recognizing and integrating *'urf* into *Fiqh al-Waqi'*, Islamic law becomes more readily accepted and practiced by the community, as it aligns with local customs and traditions. This principle can be seen in the cultural adaptation process during the Prophet Muhammad's (PBUH) era. The Prophet did not abolish all pre-Islamic Arab traditions but harmonized and modified them in accordance with divine guidance. For instance, elements of pre-Islamic rituals, such as talbiyah, tawaf, and wuquf, were preserved in the rites of Hajj and Umrah but reformed to align with Islamic teachings. Similarly, practices like diyat (blood money compensation) and al-salam (advance payment sales contracts) were traditional Arab customs that were assimilated into Islamic law (Khallaf, 1978).

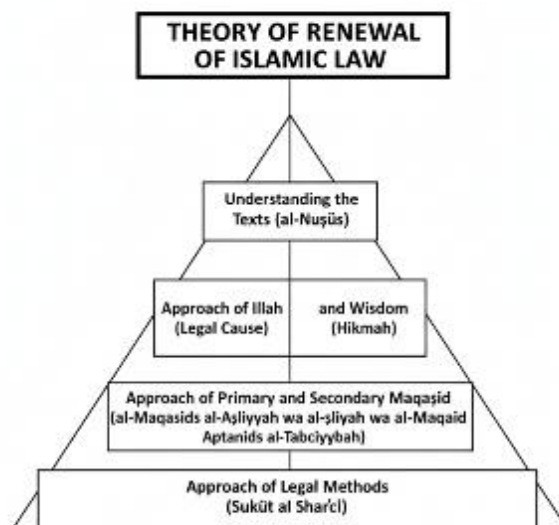
*Balancing Tradition and Renewal*

*Fiqh al-Waqi'* ensures that Islamic law evolves with societal changes while maintaining its foundational principles. For example, clothing customs change over time and across regions. *Fiqh al-Waqi'* accommodates these shifts by issuing fatwas on modest clothing that adheres to Islamic guidelines without being tied to the Arab *'urf* of dressing. Another example of balancing tradition and renewal is seen in the discussion of water types suitable for purification (taharah). Classical fiqh texts list seven types of water for purification, such as rainwater and spring water, which were based on the realities of Baghdad or Basrah during their time. Modern forms of water, such as treated wastewater and tap water, did not exist in the *'urf* of Arab society when these texts were written (Mahmood Zuhdi, 2010 & 2018).

**Theoretical Framework of Shariah Legal Reform**

In general, the theory of Shariah legal reform does not imply contradicting or departing from the practices established by earlier generations, particularly the jurists of Islamic jurisprudence (*fuqaha'*). Instead, it represents a process of revitalization and restoring religion to its foundational principles while accommodating local contexts, time, and circumstances, as well as customs that do not conflict with Shariah. In other words, it embodies the concept of *tajdid* (renewal) in fatwas or Shariah rulings, which necessitates careful consideration and thorough evaluation of Islamic legal sources, particularly those with speculative (*zanni*) evidence. The author aligns with the theory of Shariah legal reform proposed by Ahmad Misbah (2019), which is illustrated in the diagram below.

## Theoretical Framework for the Renewal of Islamic Law



Analysis by the author and modifications from Ahmad Misbah (2019) & (2021)

The approach to reforming Shariah law begins with a comprehensive understanding of *al-nusus* (texts), including the Qur'an and the Sunnah. In this regard, scholars must clearly grasp two key concepts. The first is *Maqasid al-Khitab*, which refers to the objectives and purposes behind the communication and delivery of Allah's revelations (the Qur'an and Hadith), whether explicit or implicit. The second is *Maqasid al-Ahkam*, which focuses on the objectives to be achieved through the application of Shariah rulings. The primary aim of Maqasid al-Ahkam is to promote public welfare (*maslahah*) and prevent harm (*mafsadah*).

In addition, Shariah reform requires the implementation of another critical approach, namely the process of identifying the 'illah (effective cause) of rulings. This process, often referred to as *masalik al-'illah* (methods for identifying the 'illah), is closely tied to the principles of *tanqih al-manat* (refining the effective cause), *takhrij al-manat* (deriving the effective cause), and *tahqiq al-manat* (validating the effective cause) (Mahmud Syaltut, 1977). Within the framework of 'urf (custom), the author highlights that 'urf can be considered a foundational element (manat) in the formulation of rulings. For example, this is evident in issues such as 'urf *hizr* (wealth savings), menstrual duration, clear and ambiguous expressions (lafaz sorih and kinayah), and the time for separation in *khiyar majlis* (option of withdrawal) (al-Qaradawi, 1992; al-Zuhaili, 1986).

Changes in 'urf strongly influence shifts in legal rulings because 'urf serves as the manat or effective basis for those rulings. This aligns with the legal maxim *al-hukm yaduru ma'a 'illatihi wujudan wa 'adaman* ("A ruling revolves around its effective cause, whether it exists or ceases to exist") (al-Zuhaili, 1986). Consequently, the reform of Shariah law in this context emphasizes that changes in rulings due to shifts in 'urf are limited to instances where 'urf serves as the manat hukm. The adaptation of Islamic legal rulings in response to changes in 'urf as a *manat hukm* is a well-established principle among scholars (al-Zarqa', 2004).

Meanwhile, the analytical approach to *al-maqasid al-asli* and *al-maqasid al-tabi* also plays a crucial role within this theoretical framework. *Al-Maqasid al-Asli* refers to the primary objectives behind a particular legal ruling, while *al-maqasid al-tabi* denotes secondary or consequential objectives, which take into account the pleasure and benefits experienced by the *mukallaf* (legally responsible individual) when striving to fulfill the core purposes of the Shariah (Asmadi, 2016). For example, the *maqasid al-asli* behind the prohibition of pork is *ta'abbudiyah* (a form of pure submission to Allah), whereas the presence of harmful bacteria, viruses, and other health concerns associated with pork represents the *maqasid al-tabi*. Similarly, the primary purpose (*maqasid al-asli*) of fasting is to achieve *taqwa* (piety and mindfulness of Allah), while the health benefits of fasting fall under the category of *maqasid al-tabi* (Jasser Auda, 2015).

The same principle applies to *'urf* (custom), which is a focal point of this discussion. Any *'urf* that is to be considered a mechanism for Shariah evaluation must be clearly identified as either within the framework of *maqasid al-asliyah* or *maqasid al-tabi*. This distinction is necessary because attaining benefit (*maslahah*) and preventing harm (*mafsadah*) within the broader framework of preserving Shariah objectives is the ultimate aim of institutionalizing *'urf* in Islamic jurisprudence.

Another approach to understanding the theoretical framework for reforming Shariah law involves the concept of *ijtihad* in matters that the Shariah is silent about (*maskut 'anhu*). According to al-Syatibi (2003), the silence of the Shariah (*sukut al-syari* or *al-maskut 'anhu*) is influenced by two factors. The first is that the Shariah remains silent about certain rulings because it deliberately does not clarify the status of those matters. The second is that the issue or event requiring a ruling may not have existed during the time of revelation.

In summary, all matters related to muamalah discussions that fall under *maskut 'anhu* are included in this category. The silence of the Shariah on issues of muamalah serves as an indication that such matters are permissible based on the principle of *al-bara'ah al-asliyyah* (original permissibility). However, this permissibility is subject to specific conditions (*dhawabit*) and *ijtihad* that align with the principles of Islamic Shariah (Ahmad Misbah et al., 2021).

#### *The Application of 'Urf in Contemporary Fiqh: Towards the Development of the Fiqh Sabahi Framework*

*'Urf* is a recognized source of legislation in Islamic jurisprudence. For instance, the Hanafi school heavily relies on the traditions of Kufa as the basis for their jurisprudence (*Fiqh Kufah*) (Khallaf, 1978). The Maliki school, meanwhile, emphasizes the practices of the people of Medina (*'Amal Ahl al-Madinah*) (al-Qurtubi, 2002). Imam al-Shafi'i is known for his *Qawl Qadim* (opinions while in Iraq) and *Qawl Jadid* (opinions while in Egypt) (Khallaf, n.d.). Similarly, the Hanbali school, particularly through Ibn Qudamah, acknowledges *'Urf* in the establishment of certain rulings, even though Imam Ahmad himself rejected *'Urf* as a source of Islamic law (Ibn Qudamah, 1997).

This discussion aims to analyze selected contemporary fiqh issues where the instrument of *'Urf* is utilized as a mechanism for *istinbat al-ahkam* (deriving legal rulings),

especially in the formation of a Sabahan Fiqh framework. A detailed analysis of these issues is as follows:

### *The Expression Astaga*

The term *astaga* is a commonly used expression among various ethnic groups in Sabah, regardless of race or religion (Muslim or non-Muslim). It is perceived as derived from the Arabic phrase *astaghfirullah*, which means "I seek forgiveness from Allah," based on the grammatical structure (wazan) of *istaf'ala*. Some within the Muslim community have questioned the use of *astaga*, believing that an incomplete recitation of *astaghfirullah* might distort its original meaning and, therefore, affect faith (aqidah) (Asiah & Noor Fadilah, 2021).

However, research by Asiah and Noor Fadilah (2021) demonstrates a rejection of the connection between *astaga* and *astaghfirullah* for the following reasons:

### *Arabic Grammar and Linguistics*

There is no record in Arabic linguistics of a term resembling *astaga*. Its structure, when transliterated into Arabic as *alif-sin-ta-ghain* (ألف-سين-تة-غين), does not represent any root word or derivation in Arabic. Instead, it exists merely as a morpheme with no semantic value.

### *Pronunciation Variations*

The original Arabic pronunciation, as found in the Quran and Hadith (with a sukoon on the letter ghain), differs significantly from how it is pronounced by Sabahans (fathah on the letter ghain). Thus, the linguistic and semantic distinction means that its usage poses no harm to Islamic aqidah or interpretations of the faith (Noor Aina et al., 2011).

### *A Colloquial Variation*

The expression *astaga* is a colloquial term widely accepted as part of Sabah's informal linguistic repertoire. It serves as a medium for expressing emotions and articulating thoughts in everyday discourse. Furthermore, the study also reveals that the issue of *astaga* is not unique to Sabah but is also prevalent in countries like Indonesia (Asiah & Noor Fadilah, 2021).

### *From the Perspective of 'Urf*

Based on the principles of 'Urf, the expression *astaga* can be classified as 'Urf Qawli (linguistic custom) of the Sabahan community. As such, it may be recognized as a legitimate source in Islamic jurisprudence, provided its usage does not compromise aqidah or alter the meaning of sacred phrases. Several qawa'id fiqhiyyah (Islamic legal maxims) underpin this view, including:

- a. الحقيقة تترك بدلالة العادة
- b. كل ما ورد به الشرع مطلقا ولا ضابط له فيه ولا في اللغة يرجع فيه إلى العرف

By applying these maxims, the term *astaga* can be accepted as a cultural expression without adverse religious implications, particularly when contextualized within the Sabahan linguistic environment.

### *Determination of Halal Food Based on Arab Taste (Istitobah al-'Arab)*

The determination of halal or haram food must generally be based on the Quran and the Sunnah. However, for foods that are not explicitly mentioned in these sources, they fall within the domain of *ijtihad*, depending on whether the food is classified as good (*al-toyyibat*) or harmful (*al-istikhabath*). In this context, there is a scholarly debate regarding whether *istitobah*

al-'Arab (Arab taste) should be used as a criterion for determining halal and haram in the context of food culture (Aizat & Anuar, 2011).

Generally, the criteria for determining halal or haram food must be based on the Quran and the Sunnah. However, for foods not specifically mentioned in these sources, the matter falls within the scope of *ijtihad*, depending on whether the food is classified as good (al-toyyibat) or harmful (al-istikhbath). A more detailed discussion reveals a debate among Islamic legal scholars regarding whether *istitobah al-'Arab* (Arab taste) should serve as a criterion for determining halal and haram in food culture (Aizat & Anuar, 2011).

In this context, the role of *al-urf* in determining halal and haram standards is widely accepted by most scholars. However, the issue arises when the *urf* of food is linked to the instincts of the Arab people, given that the Quran was revealed to them. As a result, a divergence arises concerning the determination of the criteria for good or bad food based on Arab taste, as these *urf* criteria are not explicitly mentioned in the Quran and Sunnah. In summary, this debate can be divided into two main viewpoints: first, the criteria are based on the taste preferences of the Arabs, and second, they are based on the healthy instincts of human beings in general.

In the Hanafi school, the criteria for assessing the quality of food are based on two views: the healthy instincts of humans and the taste preferences of the Arabs, particularly those of the Hijaz region. In the Maliki school, the criteria are based on human instincts, the enjoyment of the person consuming it, and whether it causes harm to the individual or religion. In the Shafi'i school, the criteria for evaluating food as good or bad are based on Arab taste. Similarly, in the Hanbali school, they also refer to the taste preferences of the Arabs. The Arabs are considered a prosperous and fertile people with healthy and normal instincts, whether residing in urban or rural areas. In other words, this excludes Arabs living in rural areas who are not in a state of distress or emergency (Salih, 1988).

Meanwhile, among contemporary scholars, al-Qaradawi, for example, argues that the criteria for *istitobah* should not be based on the taste preferences of the Arabs, but rather on a broader human perspective. On the other hand, Wahbah al-Zuhaili maintains that the assessment of the goodness or badness of a food (or animal) must be based on Arab taste. This view aligns with that expressed by Aizat and Anuar (2011), who emphasize that when determining the criteria for good and bad food, the opinion that *istitobah* should be based on general human preferences is more reliable and relevant to contemporary realities. This is supported by the fact that the diverse Islamic cultural zones undoubtedly lead to varying food preferences. It is, therefore, inappropriate to base the criteria solely on Arab taste. The author also argues that the concept of *istitobah al-mahaliyyah* (local taste) should be developed by scholars to ensure that the food culture existing in a given community aligns with Islamic law.

In the context of fatwas concerning animals in Malaysia, there have been several fatwas regarding certain animals that have been decided at the state or national level, such as the ruling on eating temilok (Sarawak State Fatwa Council, 2014), eating mulong worms / sago worms (Sarawak State Fatwa Council, 2014), and eating gecko for food and medicinal purposes (Selangor State Fatwa Committee, 4th session, 2011). The debate over whether

eating these animals is permitted under Islamic law often hinges on the consideration of illah (reason) that is viewed as impure based on local urf (Mahyeddin & Najib, 2021).

Regarding fatwas in Sabah, as of now, the author has not found any specific fatwa published concerning food. In this regard, the author attempts to introduce the idea of *istitobah al-mahaliyyah* (local taste) in determining the halal or haram status of several foods in Sabah, such as butod worms, bosou, hinava, nonsom, and others, which require research to determine whether the local community in Sabah considers these foods impure or not. This is because the prohibition of certain foods is based on local taste preferences. Comprehensive research using surveys should be conducted to ensure that local opinions influence the Islamic ruling. This can be seen in the Sarawak State Fatwa Council's decision, where eating temilok worms is deemed permissible, while eating sago worms is prohibited, based on the distinct local food urf in Sarawak, even though both worms belong to the same group.

The following are some of the fiqh principles relied upon by the author in this issue:

a. *انما تعتبر العادة إذا اطردت او غلبت*

Translation: Custom is only considered when it is practiced widely and consistently.

b. *العبرة للغالب الشائع لا للنادر*

Translation: The consideration is for the common and widespread practice, not the rare or seldom practiced one.

#### *The Law Regarding Friday Prayer with Less Than 40 Congregants*

In fiqh discussions, the ruling on the performance of Friday prayer with fewer than 40 congregants has been a subject of scholarly disagreement. According to the Hanafi school, the Friday prayer is valid with at least three people, excluding the imam, or twelve people, excluding the imam (Wahbah al-Zuhaily, 1989). This view is also present in the Shafi'i school under the *qawl qadim* (al-Shirazi, n.d.). In contrast, the Maliki school sets the minimum number of twelve men who are residents (al-Qarafi, 1994). Meanwhile, according to the Hanbali school, the minimum number of congregants for the Friday prayer is 40, in alignment with the Shafi'i school (al-Mawardi, 1994) in both the *qawl jadid* and *qawl mu'tamad*.

In the context of the fatwa in Sabah, a conference of the Sabah State Fatwa Council was held from 21-23 February 2017, corresponding to 24-26 Jamadilawal 1438H, to discuss the "Ruling on Friday Prayer with Less Than 40 Congregants." Based on the conference, it was decided that (e-SMAF, 2017):

- a. The Qaul Mu'tamad view of the Shafi'i school holds that the number of Friday congregants must be 40.
- b. Friday prayer is permitted with fewer than 40 congregants based on the Qaul Qadim in the Shafi'i school, provided the permission of the authorities is obtained to preserve the welfare and interests of the Muslim community.

In the author's view, the decision made by the authorities regarding the minimum number of Friday congregants is well-founded and remains within the permissible scope of *ijtihad* according to Islamic law. In the case of Sabah, which is located in more rural areas, a congregation of fewer than 40 people is reasonable, considering the 'urf khas of the area, where the Muslim population is a minority compared to non-Muslims, especially in regions such as Keningau, Tenom, Tambunan, and Nabawan. 'Urf khas refers to local customs that have become a habitual practice within a specific community or region (Zahrah, 1958).

From the perspective of 'urf, when there is a conflict between 'urf khas and 'urf am, it is established that the law is based on 'urf am if the 'urf khas is in a small group. However, if 'urf khas is observed within a large group, the ruling is based on the 'urf khas for that particular group, as the general law does not apply to it. (Mohammad Zaini, 1999). This indicates that the permission for Friday prayer with fewer than 40 congregants in rural areas can be considered under 'urf khas, but specifically for the Muslim minority in those areas, and not applicable to other regions. In conclusion, the permission granted by the religious authorities of the state is in line with the principles of 'urf as a source of Islamic legislation.

#### *The Ruling on Giving Sacrifice Meat to Non-Muslims*

In general, scholars have differing opinions on the ruling of giving sacrifice meat to non-Muslims. For obligatory sacrifices, all scholars unanimously agree that it is prohibited to give the meat to non-Muslims (Muhammad al-Zuhaili, 2011). The disagreement arises only in the case of voluntary (non-obligatory) sacrifices. According to the Maliki school, it is disliked (makruh) to give sacrifice meat to non-Muslims. Meanwhile, the Hanbali school permits giving voluntary sacrifice meat as a form of gift. The Shafi'i school provides two opinions regarding the giving of voluntary sacrifice meat: the opinion of Imam Shafi'i, which prohibits it, and the opinion of al-Nawawi, which permits it (Sayyid Sabiq, 1993). The consensus of those who allow it is based on the following conditions (Mohd Lukman & Mohd Izhar Ariff, 2018): i. It only applies to voluntary sacrifices. ii. It should only be given to non-Muslim dhimmis. iii. It should only be given to non-Muslims who are poor or needy. iv. Priority should be given to Muslims. v. It can be given to those with familial, neighborly, or other close ties.

In the context of Sabah, the Muzakarah of the Sabah State Fatwa Council held on 23-24 May / 26-27 Sha'ban 1438H, discussed the issue of "The Ruling on Giving Sacrifice Meat to Non-Muslims" and decided that it is permissible to give, distribute, or present meat from voluntary sacrifices to non-Muslims, especially to family members, relatives, and the poor, for the sake of societal welfare in a plural society. However, it is prohibited to do so for obligatory sacrifices (e-SMAF, 2017).

From the author's perspective, the unique yet harmonious interaction among the diverse religions and ethnic groups in Sabah creates a distinctive 'urf khas. According to the study by Sarip Abdul (2015) concerning new Muslims (mualaf), various dimensions of fiqh need to be reconsidered due to the distinctive interfaith and inter-ethnic relations in Sabah, which do not mirror the local values reflected in traditional fiqh texts. His findings indicate that 14.7% of mualaf still live with their non-Muslim families, 16.8% visit their non-Muslim families daily, while 18.7% visit weekly, with the remaining visiting either monthly or annually. He asserts that fiqh norms should be developed for Muslim-non-Muslim interactions, given the close relationships, especially in the context of family ties. The author agrees with this view and emphasizes that both azimah (obligation) and rukhsah (concession) within the scope of ijtihad should be prioritized, considering that da'wah is part of the Maqasid al-Shari'ah, particularly hifz al-Din (Sarip, 2015).

A similar principle applies to the practice of sacrifice. Distributing sacrifice meat only to Muslims, in the context of Sabah's 'urf, where families typically live together, may lead to greater harm (mafsadah) than benefit (maslahah). In this regard, the author prefers to use the term 'urf majmuk, which is highly relevant as a basis for determining Islamic rulings, even

though this term does not exist in classical fiqh texts. 'Urf majmuk refers to practices or actions that are repeatedly performed by a community, are positive in nature, and have become an accepted norm (Mohd Anuar & Mohammad Aizat, 2011). In the Malaysian context, particularly in Sabah, the practice of distributing sacrifice meat to non-Muslims, for the sake of community welfare and da'wah, is a good practice and does not contradict Islamic Shari'ah principles.

### Conclusion

The analysis indicates that 'urf plays a crucial role in the evolution of Islamic jurisprudence, particularly in adapting legal rulings to local contexts. The distinct 'urf practices between Peninsular Malaysia and Sabah contribute to the variations in the fatwas issued by the muftis, which guide the Muslim communities in both regions. The heterogeneous demographic of Sabah necessitates the development of a legal framework that is more suited to the local customs and socio-cultural dynamics. This has led to the emergence of Fiqh Sabahi, which prioritizes the protection of public benefit and the avoidance of harm in legal deliberations.

It is essential to clarify that the existence of Fiqh Sabahi does not constitute a new school of thought within Islamic jurisprudence but rather represents a conceptual approach that incorporates the unique realities of Sabah's society when formulating legal rulings. Therefore, Fiqh Sabahi offers a contextually relevant and pragmatic approach to addressing contemporary issues faced by Muslims in Sabah, aligning with the principles of Islamic law while being mindful of local customs and practices.

### Acknowledgement

The authors extend their sincere appreciation to Institute for Development Studies Sabah (IDS) for funding this research Project Code: LPK2517

### References

- Aminudin Basir @ Ahmad, & Mamat, A. (2012). Dakwah kepada masyarakat bukan Islam menerusi interaksi. *Jurnal Islam dan Masyarakat Kontemporari*, 5.
- Al-Jurjaniy, A. ibn M. (1983). *Kitab al-Ta'rifat*. Dar al-Kutub al-'Ilmiyyah.
- Al-Mawardi, A. bin M. bin H. (1994). *Al-Hawi al-Kabir*. Dar al-Fikr.
- Al-Qarafi, S. A. bin I. (1994). *Al-Zakhirah*. Dar al-Gharb al-Islami.
- Al-Shirazi. (n.d.). *Kitab al-Majmu'*. Dar Ihya' al-Thuras al-'Arabi.
- Al-Syatibi, I. bin M. (2003). *Al-Muwafaqat fi Usul al-Syariah*. Dar al-Kutub al-'Ilmiyyah.
- e-SMAF. (2017a). Hukum solat Jumaat yang kurang jemaahnya 40 orang. Retrieved from <http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/pr/15845>
- Hilmi, A. M. M. (2019). Faktor 'urf dalam pembaharuan hukum syara' berkaitan isu-isu muamalah. *International Journal of Islamic Economics and Finance Research*, 2(1).
- Hilmi, A. M. M., Ibrahim, M. R., Abdullah, M. I., & Ahmad, K. A. (2021). Resensi hukum syarak terhadap status harta syubhah menurut ulama Shafi'iyah. *Al-Basirah*, 11(2), 21–29.
- Khallaf, A. W. (1978). *Ilm al-Usul al-Fiqh*. Dar al-Qalam.
- Naim, A. M. (2016, September). *Memahami kerangka Maqasid al-Syariah dalam kewangan dan pelaburan* [Paper presentation]. Seminar "Pasaran Modal Islam Malaysia 2016", Institut Kefahaman Islam Malaysia (IKIM).
- Putri, D. (2020). Konsep 'urf sebagai sumber hukum dalam Islam. *eL-Mashlahah*, 10(2).

- Tamring, B. A. M., & Mahali, S. N. H. (2020). Toleransi etnik dalam kalangan pelajar Bumiputera sekolah menengah di Kota Kinabalu, Sabah. *E-Proceeding of the International Conference on Education, Social Sciences & Technology*.
- Wahyuni, A., & Harisah. (2023). Konsep al-'urf dalam perkembangan Society 5.0: Perspektif fikih kontemporer. *Ulumuna: Jurnal Studi Keislaman*.
- Zaidan, A. K. (1998). *Al-Wajiz fi Usul al-Fiqh*. Mu'assasah al-Risalah.