

'Urf of Cyberspace: Solutions to the Problems of Islamic Law in the Digital Age

Ita Musarrofa,^{1*} Holilur Rohman¹

¹ Universitas Islam Negeri Sunan Ampel Surabaya, Surabaya – Indonesia

*Corresponding author. Email: itaisme@gmail.com

Abstract

Human interaction with information and communication technologies has created a new culture in the digital age. It impacts new legal issues that demand solutions based on Islamic law. A theory incorporating culture in law construction is termed 'urf in *uṣūl al-fiqh*. The purpose of this article is to investigate the role of 'urf in the establishment of law for cyberspace problems. As a data source, this article employs a virtual ethnographic method with cyberculture products. The application of 'urf in adapting culture in cyberspace is studied using Jasser Auda's *maqāṣid al-sharī'ah* theory. This study discovered that culture in cyberspace is generated by netizens' externalization, objectivation, and internalization processes. The 'urf that applies in cyberspace is included in the *'urf khāṣṣ*. Meanwhile, the stated legislation must allude to the realization of human advantage, which means that the six aspects of Jasser Auda's system must be considered when negotiating between revelation, fiqh, and 'urf in cyberspace. Thus, the 'urf of cyberspace can be employed as a legal element in digital-era situations.

Keywords: digital era; *maqāṣid al-sharī'ah*; 'urf in cyberspace

□

Interaksi manusia dengan teknologi informasi dan komunikasi di era digital telah menciptakan budaya baru. Ia berdampak pada kemunculan problem-problem hukum baru yang memerlukan jawabannya dari hukum Islam. dalam konsep *uṣūl al-fiqh*, teori yang mengakomodir budaya dalam pembentukan hukum dikenal dengan 'urf. Artikel ini bertujuan mengkaji peran 'urf dalam pembentukan hukum terhadap permasalahan hukum di dunia maya. Artikel ini menggunakan metode etnografi virtual dengan produk budaya dunia maya sebagai sumber data. Melalui teori *maqāṣid al-sharī'ah* dengan pendekatan sistem Jasser Auda, mekanisme penggunaan 'urf dalam mengakomodir budaya di dunia maya dianalisis. Penelitian ini menemukan bahwa budaya di ruang maya terbentuk melalui proses eksternalisasi, objektivasi, dan internalisasi yang dilakukan oleh netizen. Adapun 'urf yang berlaku di dunia maya masuk ke dalam jenis *'urf khāṣṣ*. Sementara itu, hukum yang ditetapkan, harus mengacu pada perwujudan kemaslahatan manusia, sehingga enam fitur sistemnya Jasser Auda, perlu dipertimbangkan untuk menegosiasikan antara wahyu, fikih, dan 'urf dunia maya. 'Urf dunia maya demikian dapat dijadikan sebagai pertimbangan hukum atas isu-isu yang muncul di era digital.

Kata Kunci: era digital; *maqāṣid al-sharī'ah*; 'urf dalam dunia maya

Introduction

Interaction in the digital realm creates a new culture, i.e., cyberculture. The internet has evolved from a computer network into a space for humans to communicate and act on subjective values that they believe can produce cultural practices and products.¹ The existence of this new society raises the reality of cyberspace, which introduces new problems in Islamic law. Among them is the law enforcement problem in the real world for cyberspace. The reason is that all activities in the real world can be done virtually.

In Islamic family law, several issues arise; online consent contracts, online dowry in virtual money, unlimited hosting, crypto assets, and even sexual relations between husband and wife are fulfilled virtually. In economic law, online transactions appear, goods sold in the form of soft files, and payments through the Pay Later scheme. Cybercrime is also a severe problem in the field of criminal law. It coexists with other crimes, such as cyber prostitution, data falsification, cyber espionage, cyber sabotage and extortion, infringement of intellectual property rights, and invasion of privacy.² At the same time, the problem concerning Islamic criminal law is the classification of cyber theft as *sariqah* or *hirābah*, hacking of information related to national defense as an act of *al-baghy* (rebellion), and intercourse on the internet with adultery in the real world. Some of these issues are developing due to the widespread use Internet.

The significant migration from the real world to cyberspace has raised the need for legal solutions. One that must be considered is *'urf* (culture) because the cultures in the two worlds are different. When traditions in the real world can be used as legal considerations, then do traditions in cyberspace also apply? Examining the problems of Islamic law that arise, formulating a negotiation mechanism for *'urf* in the digital age with text and *fiqh* is needed to answer and develop Islamic law in the digital age.

The study of the existence of *'urf* as a source of law in creating a uniquely Indonesian legal tradition can be seen in the research by Harisuddin.³

¹ Bayu Indra Pratama, *Etnografi Dunia Maya Internet* (Malang: UB Media, 2017), 21.

² Yuni Fitriani and Roida Pakpahan, "Analisa Penyalahgunaan Media Sosial untuk Penyebaran Cybercrime di Dunia Maya atau Cyberspace," *Cakrawala: Jurnal Humaniora Bina Sarana Informatika* 20, no. 1 (2020): 21–27, <https://doi.org/10.31294/jc.v20i1.6446>.

³ M. N. Harisudin, "'Urf sebagai Sumber Hukum Islam (Fiqh) Nusantara," *Jurnal Ushuluddin: Media Dialog Pemikiran Islam* 20, no. 1 (2016): 66–86, <https://doi.org/10.24252/jumdpi.v20i1.2311>.

Meanwhile, Aripin discussed the existence of 'urf in the Compilation of Islamic Law (KHI).⁴ In line with him, Syamsuddin's thesis not only focuses on *Book I on Marriage* but also looks at inheritance and *waqf* laws and the prospects for 'urf in updating Islamic law material in KHI (*Kompilasi Hukum Islam*) and outside KHI.⁵ Meanwhile, Sucipto explained the existence of 'urf as a method and theoretical discovery of Islamic law.⁶ Putri,⁷ Sarjana and Suratman,⁸ and Wandu⁹ did the same thing.

Meanwhile, Athief examines 'urf in consideration of fatwa determination.¹⁰ Mansur carried out the study of 'urf in the concept of al-Shāṭibī. He examines the customary theory explained by al-Shāṭibī and its implementation in the 'aqd al-salām and ta'liq al-talaq cases.¹¹ Amalia studied 'urf as a method of establishing economic law. She researched the laws governing online shopping, which do not require spoken contract statements (*sīghah al-'aqd*), but instead rely on symbols.¹² Another research that discussed how to strengthen the position of 'urf in the development of Islamic law was conducted by Maimun.¹³ He stressed the importance of strengthening the role of 'urf in the framework of legal development in Indonesia, which is very

⁴ Musa Aripin, "Eksistensi Urf dalam Kompilasi Hukum Islam," *al-Maqasid: Jurnal Ilmu Kesyarifan dan Keperdataan* 4, no. 2 (2018): 207–219, <https://doi.org/10.24952/almagasid.v4i2.1427>.

⁵ Syamsuddin, "Urf sebagai Sumber Pembaharuan Hukum dalam Kompilasi Hukum Islam," [Master Thesis] (IAIN Palopo, 2018), 101–265.

⁶ Sucipto Sucipto, "Urf sebagai Metode dan Sumber Penemuan Hukum Islam," *Asas: Jurnal Hukum Ekonomi Islam* 7, no. 1 (2015): 25–40, <https://doi.org/10.24042/asas.v7i1.1376>.

⁷ Dar Nela Putri, "Konsep Urf sebagai Sumber Hukum dalam Islam," *El-Mashlahah* 10, no. 2 (2020): 14–25, <https://doi.org/10.23971/maslahah.v10i2.1911>.

⁸ Sunan Autad Sarjana and Imam Kamaluddin Suratman, "Konsep 'Urf dalam Penetapan Hukum Islam," *Tsaqafah: Jurnal Peradaban Islam* 13, no. 2 (2017): 279–96, <https://doi.org/10.21111/tsaqafah.v13i2.1509>.

⁹ Sulfan Wandu, "Eksistensi 'Urf dan Adat Kebiasaan sebagai Dalil Fiqh," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 2, no. 1 (2018): 181–96, <https://doi.org/10.22373/sjhk.v2i1.3111>.

¹⁰ Fauzul Hanif Noor Athief, "Konsep 'Urf sebagai Variabel Produk Hukum," *Suhuf* 31, no. 1 (2019): 43–60, <https://doi.org/10.23917/suhuf.v31i1.9004>.

¹¹ Mansur Mansur, "Urf dan Pembentukan Hukum Islam menurut al-Shāṭibī," *Lisan al-Hal: Jurnal Pengembangan Pemikiran dan Kebudayaan* 9, no. 2 (2015): 349–78, <https://doi.org/10.35316/lisanalhal.v9i2.94>.

¹² Khikmatun Amalia, "Urf sebagai Metode Penetapan Hukum Ekonomi Islam," *As-Salam: Jurnal Studi Hukum Islam & Pendidikan* 9, no. 1 (2020): 75–90, <https://doi.org/10.51226/assalam.v9i1.187>.

¹³ Ach Maimun, "Memperkuat 'Urf dalam Pengembangan Hukum Islam," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 12, no. 1 (2017): 22–41, <https://doi.org/10.19105/al-ihkam.v12i1.1188>.

diverse in terms of customs and culture, and to stem movements that are anti-local traditions.¹⁴

As far as the author's search for studies that have been conducted around *'urf* as a method and legal discovery, there has been no study that has focused on the potential for *'urf* as a method and legal discovery for cases of the Islamic law that have emerged in the digital age. Most of the studies focus on how *'urf* is the basis for establishing law in the KHI as well as a method of *ijtihad* in dealing with cultural diversity in the real world in Indonesia.

Meanwhile, studies on cyber legal issues are more dominated by crimes that occur in cyberspace (cybercrime). For example, Anugerah and Tantimin's work examines the application of laws against personal data theft on the internet.¹⁵ Likewise, Marita's work on eradicating cybercrime in Indonesian cyberlaw.¹⁶ Fitriani and Pakpahan also studied the same theme regarding the misuse of social media to spread cybercrime.¹⁷ Research on the legal aspects of personal data protection in cyberspace was raised by Ratumahina, who focused on studying the protection of personal data in cyberspace in several legal systems and further examining the existing provisions in Indonesia.¹⁸ Meanwhile, research on the theme of cyberporn or pornography in cyberspace was researched by Nurcholis, who discussed cyberporn from the perspective of Islamic law and positive law.¹⁹ While Warsiman researched prostitution in cyberspace using Law No. 11 of 2008 concerning Information and Electronic Transactions (UU-ITE).²⁰ Other research on cyberspace talks about cyberspace

¹⁴ Maimun.

¹⁵ Fiqqih Anugerah and Tantimin Tantimin, "Pencurian Data Pribadi di Internet dalam Perspektif Kriminologi," *Jurnal Komunikasi Hukum (JKH)* 8, no. 1 (2022): 419-35, <https://doi.org/10.23887/jkh.v8i1.45434>.

¹⁶ Lita Sari Marita, "Cyber Crime dan Penerapan Cyber Law dalam Pemberantasan Cyber Law [Cyber Crime] di Indonesia," *Cakrawala: Jurnal Humaniora Bina Sarana Informatika* 15, no. 2 (2015): 1-15, <https://doi.org/10.31294/jc.v15i2.4901>.

¹⁷ Fitriani and Pakpahan, "Analisa Penyalahgunaan Media Sosial untuk Penyebaran Cybercrime di Dunia Maya atau Cyberspace."

¹⁸ Rosalinda Elsina Latumahina, "Aspek Hukum Perlindungan Data Pribadi di Dunia Maya," *Gema Aktualita* 3, no. 1 (2014): 14-25.

¹⁹ Nurcholis, "Cyberpornography (Pornografi di Dunia Maya) dalam Perspektif Hukum Positif dan Hukum Islam," [Undergraduate Thesis] (UIN Syarif Hidayatullah Jakarta, 2015).

²⁰ Warsiman Warsiman, "Tinjauan Hukum terhadap Pelacuran dalam Dunia Maya (Cyber Prostitution) menurut Undang-Undang No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik," *Wahana Inovasi* 3, no. 1 (2017): 200-214.

governance problems, as written by Nursita,²¹ and how is the effect of cyber governance on national sovereignty, written by Cahyadi,²² and how the role of the National Cyber and Crypto Agency (*Badan Siber dan Sandi Negara - BSSN*) in cyber governance in Indonesia was studied by Chotimah.²³ Studies on politics in cyberspace have also been carried out; for example, this can be seen in Indrawan's work which discusses cyberpolitics as a way of political campaigning in the future and its influence on the sustainability of democracy.²⁴ Studies in the field of Islamic law about the reality of cyberspace have also been carried out; for example, it can be seen in the work of Musarrofa on the trend of dowry in the digital age as one of the problems of Islamic family law that appears in cyberspace²⁵ as well as about joint assets of husband and wife in the digital age.²⁶

From literature searching on the theme of 'urf and cyberspace, no writers focus their research on the position of 'urf as a legal basis in answering the problems of the Islamic law developing in the digital age. This research intends to fill the void and develop studies on strengthening the use of the 'urf method to extract law in providing answers to issues of Islamic law in the digital age.

This research is included in the library research and not included in field research even though the research subject is in the form of community culture because the community culture studied is the culture in cyberspace in the form

²¹ Rizki Dian Nursita, "Cyberspace: Perdebatan, Problematika, serta Pendekatan Baru dalam Tata Kelola Global," *Dauliyah: Journal of Islamic and International Affairs* 4, no. 1 (2019): 80–99, <https://doi.org/10.21111/dauliyah.v4i1.2934>.

²² Indra Cahyadi, "Tata Kelola Dunia Maya dan Ancaman Kedaulatan Nasional," *Jurnal Politika Dinamika Masalah Politik dalam Negeri dan Hubungan Internasional* 7, no. 2 (2016): 210–32, <https://doi.org/10.22212/jp.v7i2.1134>.

²³ Hidayat Chusnul Chotimah, "Tata Kelola Keamanan Siber dan Diplomasi Siber Indonesia di Bawah Kelembagaan Badan Siber dan Sandi Negara [Cyber Security Governance and Indonesian Cyber Diplomacy by National Cyber and Encryption Agency]," *Jurnal Politika Dinamika Masalah Politik dalam Negeri dan Hubungan Internasional* 10, no. 2 (2019): 113–28, <https://doi.org/10.22212/jp.v10i2.1447>.

²⁴ Jerry Indrawan, "Cyberpolitics sebagai Perspektif Baru Memahami Politik di Era Siber [Cyberpolitics as a New Perspective in Understanding Politics in the Cyber Era]," *Jurnal Politika Dinamika Masalah Politik dalam Negeri dan Hubungan Internasional* 10, no. 1 (2019): 1–16, <https://doi.org/10.22212/jp.v10i1.1315>.

²⁵ Ita Musarrofa, "Dowry Trends in the Digital Age (Sociology of Law Review of the Use of Digital Dowry in the Cyber World Community)," *Jurnal Hukum Islam* 19, no. 1 (2021): 151–74, <https://doi.org/10.28918/jhi.v19i1.3754>.

²⁶ Ita Musarrofa et al., "Sociological-Normative Analysis of the Provision of Joint Property in the Cyber Era," *Indonesian Journal of Interdisciplinary Islamic Studies* 5, no. 2 (2022): 44–64, <https://doi.org/10.20885/ijis.vol5.iss2.art3>.

of writing, audio, video, and unwritten norms that govern social interactions in the cyber era. In cultural research, this research can be called 'netnography', virtual ethnography, or internet cyberspace ethnography.²⁷ The data of this research is the society's culture that arises from interaction with the internet world. Life with this new culture then gave rise to new problems in Islamic law.

The application of 'urf in adapting culture in cyberspace is studied using Jasser Auda's *maqāṣid al-sharī'ah* theory.²⁸ According to Jasser Audah, *maqāṣid* is the plural of *maqṣad* which means purpose, objective, principle, intent and goal.²⁹ This study discovered that culture in cyberspace is generated by netizens' externalization, objectivation, and internalization processes. Data on the theory of 'urf were obtained through a study of the concept of 'urf from three books of *uṣūl al-fiqh*, namely: *al-Wajīz fī Uṣūl al-Fiqh* by Waḥbah al-Zuhaylī, *al-Muhadhdhab fī 'Ilm Uṣūl al-Fiqh al-Muqāran* by 'Abd al-Karīm ibn 'Alī ibn Muḥammad al-Namlah, and *Asbāb Ikhtilāf al-Fuqahā' fī al-Aḥkām al-Shar'īyyah* by Muṣṭafā Ibrāhīm al-Zalamī. Data is collected using documentation techniques, namely collecting documents that explain community activities in cyberspace to form a virtual world culture. Analysis of the data was carried out using content analysis. Through this analysis, qualitatively, the contents of the text will appear. These symbols are interpreted to understand the culture of society in cyberspace. The steps of this analysis technique begin with coding the terms or the use of relevant words and sentences, which most often appear in the text of documents that are cultural products of the virtual world community. In terms of coding, it is also noted in what context the term appears. Then classify the coding that has been done.³⁰

²⁷ Netnography is a form of adjustment of ethnographic methods with developments in technology and society. If ethnography aims to describe the culture of people in the real world, then netnography is here to continue the spirit of ethnography but is done to see life in the virtual world of the internet. Many terms refer to research on culture resulting from human interaction in this virtual world, for example, virtual ethnography, webnography, and digital ethnography. See Pratama, *Etnografi Dunia Maya Internet*; Robert V Kozinets, *Netnography: The Essential Guide to Qualitative Social Media Research*, 3rd ed. (Los Angeles: SAGE Publications Ltd, 2019).

²⁸ Jasser Auda, *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law: A Systems Approach* (Herndon: The International Institute of Islamic Thought, 2010); Jasser Auda, *Maqāṣid al-Sharī'ah ka Falsafah li al-Tashrī' al-Isāmī* (Virginia: al-Ma'had al-'Alamī li al-Fikr al-Islāmī, 2012).

²⁹ Anthin Lathifah et al., "The Construction of Religious Freedom in Indonesian Legislation: A Perspective of Maqāṣid Ḥifz al-Dīn," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 1 (2022): 369–90, <https://doi.org/10.22373/sjhk.v6i1.10957>.

³⁰ Pratama, *Etnografi Dunia Maya Internet*, 85–88.

'Urf and Its *Hujjah* as Legal Reasoning Method

'Urf etymologically means goodness that has been known for a long time and is accepted.³¹ Meanwhile, in terms of terminology, it has become a human habit. It has been going on for a long time, both in the form of widely known actions and words that will be immediately understood without thinking long and hard.³²

There are three points of view to see the division of 'urf. First, in terms of its reach, 'urf is divided into three types, 'urf 'ām -the habits of the majority of the population of various countries that have been running from time to time-, 'urf khāṣṣ -the habits of the majority of the population of a particular country, region or group-, and 'urf shar'ī -certain pronunciations used by shara' for specific purposes-.³³ Second, from the point of view of conformity with the shar'ī'a, 'urf is divided into two; 'urf ṣaḥīḥ -people's habits that are not against Islamic law- and 'urf fāsid -people's habits that are contrary to Islamic law-.³⁴ Third, in terms of shape, 'urf is divided into two; al-'urf al-qawli -customs in the form of sayings- and al-'urf al-fi'li -customs in the form of deeds-.

'Abd al-Karīm ibn 'Alī explained that 'urf can be used as *hujjah shar'ī* if it fulfills six conditions. First, it is a common practice. Second, in the form of habits that always or often occur. Third, in the form of customs that existed when the legal action (*taṣarruf*) occurred. Fourth, in the form of customs that the community must carry out. Fifth, no other indicators change the intent of the habit. Sixth, it does not conflict with the *mu'tamad shar'ī* argument (which scholars agree on).³⁵

According to al-Zuhaylī, 'urf is not an independent proposition. In practice, 'urf is the application of *al-maṣlaḥah al-mursalāh*, and also a process of interpreting the texts of the Qur'an and Sunnah, specializing in general texts, giving boundaries (*taqyīd*) texts that are without boundaries (*muṭlaq*), and sometimes also as an application of leaving *qi'yās*. Therefore, the scholars

³¹ 'Abdul Karīm bin 'Alī bin Muḥammad al-Namlah, *al-Muḥadhdhab fi 'Ilm Uṣūl al-Fiqh al-Muqāran* (Riyāḍ: Maktabah al-Rushd, 1999), 1020.

³² Waḥbah al-Zuhaylī, *al-Wajīz fi Uṣūl al-Fiqh* (Damascus: Dār al-Fikr, 1999), 97.

³³ al-Zuhaylī, 97-98; Namlah, *al-Muḥadhdhab fi 'Ilm Uṣūl Fiqh al-Muqāran*, 1021.

³⁴ al-Zuhaylī, *al-Wajīz fi Uṣūl al-Fiqh*, 98.

³⁵ Namlah, *al-Muḥadhdhab fi 'Ilm Uṣūl Fiqh al-Muqāran*, 1022.

believe that every text that is handed down without any restrictions and no specific ties in language, its understanding can be established by *'urf*.³⁶

In several main books from the scholars of the four schools of thought, there is almost no specific, systematic, and detailed discussion of *'urf*, for example in *al-Risālah* by al-Shāfi'ī, *al-Burhān* by al-Juwaynī, *al-Mustasfā* by al-Ghazzālī, *Uṣūl al-Sarakhsī* by al-Sarakhsī al-Ḥanafī, and *al-Furūq* by al-Qarafī al-Mālikī. Even so, it cannot be concluded that all scholars reject *'urf* as an argument for establishing law. According to al-Zalamī, almost all *fiqh* experts agree that *'urf* is the basis for establishing law and is applied in the *fiqh* of the scholars. However, if it is related to the study of *uṣūl al-fiqh*, some scholars agree with *'urf* as a legal argument; some also disagree but include it in other arguments.³⁷

Based on a study concerning the sources and methods for establishing Islamic law according to the four schools of thought, it can be concluded that only the Ḥanafī and al-Shāfi'ī schools include *'urf* as a specific argument for establishing Islamic law. At the same time, the Mālikī and Ḥanbalī schools do not specifically mention it. For scholars who do not make *'urf* as an independent argument, they include it in other arguments such as *ijmā'*, *al-maṣlaḥah al-mursalāh*, and *sadd al-dharī'ah*.³⁸

Apart from the above differences, customs deeply rooted in society, as long as they do not conflict with Islamic law, can be considered in Islamic law, categorized as independent *'urf* arguments, or included in other arguments. Scholars have also practiced it in *fiqh* provisions.

Islamic Law Problems in the Societal Culture in the Digital Age

With the breadth of discussion in Islamic law, the problems related to advances in information and communication technology are focused on three areas of Islamic law: Islamic family law, Islamic economic law, and Islamic criminal law. Each of them will identify what legal problems arise in each field of law about culture in cyberspace.

³⁶ al-Zuhaylī, *al-Wajīz fi Uṣūl al-Fiqh*, 99.

³⁷ Muṣṭafa Ibrāhīm al-Zalamī, "Asbāb Ikhtilāf al-Fuqahā' fī al-Aḥkām al-Shar'īyyah" (Dār al-'Arabīyyah li al-Tibā'ah, 1976), 507.

³⁸ Wahbah Zuhaili and Abdul Wahab Khallaf are among the scholars' who included *'urf* in the proposition of *al-maṣlaḥah al-mursalāh*. See Wandī, "Eksistensi 'Urf dan Adat Kebiasaan sebagai Dalil Fiqh," 190.

Problems of Islamic Family Law in the Digital Age

Economic activity in the digital age gave rise to using digital currency as a marriage dowry. This idea was realized by the couple Widi and Mustika, who married in 2017 with a dowry of 1 bitcoin worth 90 million.³⁹ Another couple who used Bitcoin as a marriage dowry was Raja Muhammad Hasbi, who proposed to Bau Tenri Abeng, a woman from Bulukumba, South Sulawesi, with two bitcoins worth 1.6 billion. At that time, in 2021, one bitcoin was worth 800 million.⁴⁰ The value of Bitcoin itself continues to change every second according to the level of world trust in the use of this currency as a means of transaction and commodity. In addition, in Indonesia, bitcoin as a medium of exchange is not recognized by any financial institution authority; bitcoin is only recognized as a commodity that can be traded but not a medium of exchange like currency.

The reality of bitcoin, which has yet to receive state recognition as a medium of exchange and its value is very volatile, raises legal issues when used as a dowry. While in *fiqh*, it is stated that dowry has three conditions. Namely, it must be something that can be owned and sold as something known and free from deception.⁴¹

Apart from Bitcoin, some couples get married using the GoPay balance dowry, namely Insan Syamsuddin and Linda Noviati, who got married in 2020.⁴² The GoPay balance paid is 10 million. In contrast to Bitcoin, whose value fluctuates and no financial services authority guarantees it, the GoPay balance is money belonging to the application owner, which is then transferred through the bank to the application to facilitate transactions. So there is no legal problem with the status of the money; it is just that the delivery method, both GoPay, and Bitcoin, must be through an internet connection. Defining the word cash in giving dowry thus requires expansion. Cash delivery is not only

³⁹ Redaksi Kumparan, "Anti-Mainstream, Pasangan Ini Menikah dengan Mahar Bitcoin," Kumparan Style, December 1, 2017, <https://kumparan.com/kumparanstyle/anti-mainstream-pasangan-ini-menikah-dengan-mahar-bitcoin>.

⁴⁰ Galuh Putri Riyanto, "Kupinang Engkau dengan Bitcoin, Cerita Wanita Sulsel Dilamar Pakai Bitcoin Rp 1,6 Miliar Halaman All," Kompas.com, April 14, 2021, <https://tekno.kompas.com/read/2021/04/14/09360067/kupinang-engkau-dengan-bitcoin-cerita-wanita-sulsel-dilamar-pakai-bitcoin-rp-1>.

⁴¹ Wahbah al-Zuhayli, *al-Fiqh al-Islām wa 'Adillatuhu*, vol. 6 (Damascus: Dār al-Fikr, 1989).

⁴² Camelia, "Viral Pasangan yang Menikah dengan Mahar Saldo Gopay Rp 10 Juta," liputan6.com, October 13, 2020, <https://www.liputan6.com/citizen6/read/4380986/viral-pasangan-yang-menikah-dengan-mahar-saldo-gopay-rp-10-juta>.

physical but also through the application. Can a surrender like this be said to be a surrender in cash and legal in Islamic law?

Other forms of dowry that take advantage of the economic value of activities in cyberspace, for example, are Google AdSense and unlimited hosting used by Candra Bi and Mufida.⁴³ Both Google AdSense and unlimited hosting are very valuable, especially for bloggers who need hosting to store the files displayed on their blogs. Likewise, google adsense can be cashed out when it reaches the minimum threshold. However, once again, although both can be very valuable as dowry, their value will apply when certain conditions are reached and can be used by certain people who can use and manage them.

The COVID pandemic that has spread since the beginning of 2020 has made people isolated at home and unable to leave due to the government's lockdown policy to contain its spread. This fact has made many couples during the pandemic choose to continue getting married, even though they are far away, using various applications, such as video calls, zoom, and Skype. For example, marriages like this were carried out by Diya Putri Yunita and Wibisono Pengstu, who were married online in 2021. Their wedding was carried out online because the groom was in self-isolation due to exposure to the COVID-19 virus before the ceremony.⁴⁴ Marriage via Zoom was also carried out by Max Walden and Saffira Gayatri, who married in 2020. The Surabaya-Sydney couple married online because of the pandemic, which did not allow Max's family to be present in Indonesia.⁴⁵

Online marriage is problematic in terms of its validity under Islamic law because, in Islamic law, most scholars require *ittihād al-zamān wa al-makān* (one space and one time) in the consent process.⁴⁶ The requirement for a

⁴³ Reza Gunadha and Farah Nabilla, "Jatuh Cinta pada Blogging, Pasangan Ini Menikah dengan Mahar Google Adsense," *Suara.Com*, August 7, 2020, <https://www.suara.com/news/2020/08/07/125217/jatuh-cinta-pada-blogging-pasangan-ini-menikah-dengan-mahar-google-adsense>.

⁴⁴ Gresnia Arela Febriani, "Viral Pengantin Sendirian di Pelaminan, Nikah Online karena Suami Corona," *wolipop*, October 11, 2021, <https://wolipop.detik.com/wedding-news/d-5761583/viral-pengantin-sendirian-di-pelaminan-nikah-online-karena-suami-corona>.

⁴⁵ Hellena Souisa, "Terpisah Ribuan Kilometer karena Pandemi Corona, Pasangan Indonesia Australia Tetap Menikah Lewat Zoom," *abc.net.au*, July 1, 2020, <https://www.abc.net.au/indonesian/2020-07-01/pasangan-indonesia-dan-australia-menggelar-akad-nikah-lewat-zoom/12407008>.

⁴⁶ al-Zuhaylī, *al-Fiqh al-Islām wa 'Adillatuhu*.

marriage contract to be carried out by one assembly is to ensure the continuity of the consent and its consent, bearing in mind the importance and sacredness of the marriage contract. Apart from that, the words the guardian and groom speak must also be *ṣarīḥ* or clear. Because of this, it is feared that marriages carried out online will not fulfill the provisions of one assembly and clarity of word meaning, affecting the validity of the marriage contract carried out.

In the digital world, humans can interact over long distances, including sexual interactions. This phenomenon of fulfilling the sexual needs of long-distance husband and wife can be seen, for example, from the many sites asking doctors that discuss tips on meeting long-distance sexual needs for LDR (Long Distance Relationship) couples, for example, the doktersehat.com site,⁴⁷ parentalk.id,⁴⁸ good doctor.co.id,⁴⁹ and so forth. The many discussions on the theme of fulfilling long-distance sexual needs, of course, depart from the many cases experienced by long-distance couples who can only have sex online.

In addition, the development of IoT (Internet of Things) technology and the sexual needs of long-distance partners brought up the idea of creating remote sexual aids that couples can use when making love online.⁵⁰ Many tools for building long-distance intimacy have been created in this digital age to build a 'real' touch sensation in the real world.⁵¹

In Islamic family law, the culture of building long-distance intimacy using the aforementioned sexual aids and applications leaves legal problems. Marriage in Islam has always been defined by the ulama' with a contract that justifies sexual relations between a man and a woman who are not *maḥram*.⁵² Marriage is a way out prescribed by Islam because Islam strongly denounces the practice of adultery. Therefore, fulfilling sexual needs in the family is the

⁴⁷ Redaksi Dokter Sehat, "7 Cara Menjalani Seks kalau Menjalani LDR," Dokter Sehat, March 30, 2019, <https://doktersehat.com/gaya-hidup/seksual/seks-pada-hubungan-jarak-jauh/>.

⁴⁸ Parentalk, "Tips Memuaskan Hasrat Seks untuk Hubungan Jarak Jauh," Parentalk.id, October 15, 2021, <https://parentalk.id/memuaskan-hasrat-seks-untuk-hubungan-jarak-jauh/>.

⁴⁹ Good Doctor, "Tips agar Kehidupan Seksual Pasangan yang Menikah Jarak Jauh Tetap Mesra," GoodDoctor.com, October 23, 2020, <https://www.gooddoctor.co.id/hidup-sehat/seks/7-tips-agar-kehidupan-seksual-pasangan-yang-menikah-jarak-jauh-tetap-mesra/>.

⁵⁰ D. Dini, "Pakaian dalam dengan Vibrator dari Durex," Kompas.com, May 2, 2013.

⁵¹ M. Tarmizi Murdianto, "Cocok Buat Kamu yang LDR-an, 7 Teknologi Ini Bisa Bantu Melepas Rindu!," IDN Times, February 18, 2019, <https://www.idntimes.com/tech/trend/m-tarmizi-murdianto/kumpulan-teknologi-yang-memfasilitasi-hubungan-jarak-jauh-ldr/>.

⁵² al-Zuhaylī, *al-Fiqh al-Islām wa 'Adillatuhu*.

right and obligation of each partner. When this obligation can only be carried out remotely using the tools and applications above, can it then be said that each partner has carried out the obligation to fulfill the sexual needs of their partner? Or should it be considered non-existent and can be used as a reason for divorce?

Problems of Islamic Economic Law in the Digital Age

Another form of interaction carried out in cyberspace is interaction in the economic field. Economic transactions in cyberspace provide convenience to producers of goods or services, sellers, and consumers.⁵³ Sellers and buyers no longer need to meet physically because applications or social media mediate sales. The seller uploads a photo or video and a description of the item to be sold, and the buyer is free to choose by clicking on the item to be purchased. When the buyer has pressed the click button to buy the item, moreover has paid, he is deemed to have agreed with the price, shipping costs, and the item to be purchased. The seller will then send the goods using freight forwarding and courier services to the buyer's place.⁵⁴

From the point of view of Islamic economic law, this online transaction method has the potential to harm the buyer, both in terms of the possibility of defects in the goods sent and when the goods arrive in the hands of the buyer. Because transactions are only made through an application where it is possible, photos or videos are edited in such a way as to attract buyers; the quality of the goods may be different from that in the photos or videos uploaded by the seller. In the process of transactions and delivery of goods, there are also legal problems that can harm the buyer; for example, a buyer who has paid does not immediately receive a response from the seller. Because the response was slow, the delivery was slow to the hands of the buyer.

In online sales and purchases, there is also a way to pay with a debit or what is known as pay later; pay means to pay, and it means later time. This method is the payment of purchases in installments without a credit card which digital companies or start-ups usually provide. This pay-later payment

⁵³ Rosyda Nur Fauziyah, "10 Tips dan Cara Jualan Online bagi Para Pemula," November 15, 2021, <https://www.gramedia.com/best-seller/tips-cara-jualan-online/>.

⁵⁴ Fauziyah.

system has positive and negative sides. The positive side is, of course, helping people get what they need right away without having to wait for the money to be collected. However, on the other hand, in addition to paying interest and additional fees, people can be fined when they are late in paying beyond the predetermined deadline. The spending limit will increase when people pay on time and do it often. It will trigger the emergence of a consumptive spirit in society to continue shopping for something that may not be a necessity. In addition, this pay-later facility could be more problematic regarding data security. User data is widely misused by third parties to break into accounts.⁵⁵

Sale and purchase transactions in the digital age have changed not only in terms of the transaction method but also in terms of the goods being traded. Goods that are traded online are not only in the form of physical goods for daily necessities but also in the form of applications. The sale and purchase of applications that have recently been rife is the sale and purchase of premium subscription accounts, such as Netflix, Spotify, and YouTube premium accounts. Buyers of these Android applications often want to avoid paying a fortune to get content from an application, so they buy from unofficial parties for lower prices.⁵⁶ The question then arises whether it is permissible to buy goods from the results of an application crack process or a process of breaking into paid software so that the registration process can be carried out without having to buy or pay for an official license from the software maker.

Besides applications sale and purchase as above, the results of playing certain games are also traded. Playing games nowadays, not only for fun or hobby but also to earn income. Sales from playing this game can be in the form of selling certain precious items obtained from playing games. For example, selling ethereal skin flames pink war dog Dota 2 was successfully obtained from playing games. When a gamer gets it, he can sell it to other players at a very high price.⁵⁷ Apart from buying and selling in-game items, a gamer can

⁵⁵ Venue, "Untung Rugi Gunakan Paylater," *VenueMagz.com*, July 23, 2021, <https://venuemagz.com/literasi-digital/untung-rugi-gunakan-paylater/>.

⁵⁶ Wahyunanda Kusuma Pertiwi, "Marak Jual Beli Akun Netflix, Spotify, dan YouTube Premium di Indonesia, Legalkah?," *Kompas.com*, June 26, 2020, <https://tekno.kompas.com/read/2020/06/26/13440677/marak-jual-beli-akun-netflix-spotify-dan-youtube-premium-di-indonesia-legalkah>.

⁵⁷ Admin Ada Kami, "Mendapatkan Penghasilan dari Game Online, Emang Bisa?," *Ada Kami*, December 28, 2020, <https://blog.adakami.id/mendapatkan-penghasilan-dari-game-online-emang-bisa>.

also sell game accounts that have reached a high level and are equipped with rare items. New players often need more time to reach a certain level or start playing from level zero; therefore, if he has much money, he is more interested in buying an account than starting from scratch.⁵⁸

In the case of the sale and purchase of game accounts or game items, the owner's side is ambiguous. The account owner is not a game player but belongs to the game master. The traded items can be deleted suddenly; even the game is not free from the possibility of being closed. Therefore, the sale and purchase of items and game accounts are very open to the possibility of causing losses to the buyer.

Problems of Islamic Criminal Law in the Digital Age

In addition to the various human interactions above, crimes also often occur in cyberspace or what is known as cybercrime. Cybercrime is defined as every activity of a person, group of people, or legal entity that uses a computer as a means or target of crime.⁵⁹ Forms of crime that occur in cyberspace include unauthorized access to computer systems or services, illegal content, data forgery, cyber espionage, sabotage, extortion (cyber sabotage and extortion), violation of Intellectual Property Rights, and invasion of privacy (infringement of privacy).⁶⁰ In addition to the forms of crime above, there are also sexual crimes in cyberspace or online prostitution which are carried out in various forms and ways.

According to Islamic criminal law, all forms of crime in cyberspace are also recognized as forms of crime, including *jarimah ta'zīr* and *ḥadd*. It is just that there are several concepts of *jarimah* in Islamic criminal law which need to be questioned about their suitability with the actions of *jarimah* carried out in cyberspace, such as theft, adultery, and rebellion in cyberspace.

Theft in cyberspace differs from the real world regarding how the theft is carried out and the objects or things stolen. If theft in the real world is done by breaking into the locks of the house to steal valuables in it secretly, theft in the

⁵⁸ Iwan Supriyatna, "Bisnis Jual Beli Akun Game Online Cukup Menjanjikan," suara.com, March 2, 2021, <https://www.suara.com/bisnis/2021/03/02/071821/bisnis-jual-beli-akun-game-online-cukup-menjanjikan>.

⁵⁹ Fitriani and Pakpahan, "Analisa Penyalahgunaan Media Sosial untuk Penyebaran Cybercrime di Dunia Maya atau Cyberspace."

⁶⁰ Fitriani and Pakpahan.

virtual world is done by breaking into someone's account, account, or password that is done online. The data obtained from the burglary process is then misused for profit. Things stolen in cyber theft crime activities include data and money, including digital money, which is done by hacking the victim's account.⁶¹

Closing several brothels in several big cities, such as Gang Dolly in Surabaya, did not necessarily stop the practice of prostitution. This practice continues and changes form. The support of increasingly sophisticated information technology makes this business grow by being run online through chat media, such as the Line or WhatsApp application. Through digital media, offers and orders are more accessible. The perpetrators do not need the services of pimps but can offer their own by uploading sexy photos and contact numbers.⁶²

The services provided can also be done virtually, such as chat sex, phone sex, or video call sex, depending on customer requests.⁶³ When viewed from the risks posed, online sex workers are less at risk than offline sex workers who have to meet customers physically. Online sex is safer from a health standpoint, the perpetrator is not at risk of contracting a disease, and there is no risk of pregnancy and abortion.⁶⁴

From the perspective of Islamic criminal law, online sex raises issues in establishing whether such an online method is said to have committed adultery. Whereas what is meant by adultery in Islamic criminal law is the insertion of the male genital into the female genital, which is forbidden.⁶⁵ Does someone who has committed adultery online have to be sentenced by *ḥadd zinā* or only *ta'zīr* punishment? Even though there was no meeting of the

⁶¹ Novina Putri Bestari, "Kisah Hacker Curi Uang Kripto Rp 8,8 T, Rekor Rampok Terbesar," CNBC Indonesia, August 12, 2021, <https://www.cnbcindonesia.com/tech/20210812160044-37-268040/kisah-hacker-curi-uang-kripto-rp-88-t-rekor-rampok-terbesar>.

⁶² Bagong Suyanto, "Prostitusi di Dunia Maya," JawaPos.com, December 23, 2016, <https://www.jawapos.com/opini/23/12/2016/prostitusi-di-dunia-maya/>.

⁶³ Yudo Dahono, "Inilah Pengakuan Mantan PSK Virtual," Berita Satu, October 8, 2013, <https://www.beritasatu.com/news/143216/inilah-pengakuan-mantan-psk-virtual>.

⁶⁴ Budi Irawanto, "Mereguk Kenikmatan di Dunia Maya: Virtualitas dan Penubuhan dalam Cybersex," *Jurnal Kawistara* 7, no. 1 (2017): 30, <https://doi.org/10.22146/kawistara.23728>.

⁶⁵ Awdah 'Abdul Qādir, *al-Tashrī al-Jinā'i al-Islāmī Muqāranan bi al-Qānūn al-Wadī* (Kairo: Maktabah Dār al-Turāth, 2003), 308.

genitals, the two perpetrators only felt the pleasure of masturbating by looking at each other's bodies. Nonetheless, online sex is currently not only possible through non-physical activities such as chat sex, phone sex, or video call sex as above but can also be equipped with sexual aids such as teledildonics or vibrating underwear that can be controlled remotely. With this remote sexual aid, online sex becomes non-physical and felt physical.

Due to unknown weak systems and applications, cyber-attack cases in Indonesia continue to increase daily. Government-owned institutions are not spared from this attack. The National Cyber and Crypto Agency (BSSN) 2021 recorded 741 million attacks.⁶⁶ Due to the many cyber-attacks, Indonesia was declared to be in the red alert category from the defense side of cyber security.⁶⁷

It was stated that there are three types of cyber-attacks that many government institutions experience: web defacement and replacing the website with a message from the hacker. Second, phishing attacks are carried out by luring the victim to do harmful things, such as downloading and running malware and opening fake sites. Third, malware is malicious software because it can damage it. This attack usually occurs due to pirated applications, not being equipped with anti-virus, and accessing sites with malvertising.⁶⁸

Threats to state security in Islamic criminal law are categorized into *jarīmah al-bahgy* or rebellion. It is just that rebellion in this digital age takes a different form from the real world. If, in the real world, an uprising can be said to be armed and organized resistance against a legitimate government,⁶⁹ then what happens in cyberspace may have a purpose to rebel. However, the weapon used is the ability to detect weaknesses in application systems which are then used to steal important data belonging to the state.

⁶⁶ Tira Santia, "Indonesia Digempur 741 Serangan Siber, Pemerintah Siapkan Penangkalnya," *Liputan6.com*, November 24, 2021, <https://www.liputan6.com/bisnis/read/4719306/indonesia-digempur-741-serangan-siber-pemerintah-siapkan-penangkalnya>.

⁶⁷ Novina Putri Bestari, "Banyak Serangan Siber, Ahli Siber: RI Masuk Tahap Red Alert," *CNBC Indonesia*, January 24, 2022, <https://www.cnbcindonesia.com/tech/20220124144241-37-309936/banyak-serangan-siber-ahli-siber-ri-masuk-tahap-red-alert>.

⁶⁸ Administrator, "Serangan Siber yang Sering Menimpa Lembaga Pemerintahan Indonesia," *Lintas Arta*, March 11, 2021, <https://blog.lintasarta.net/article/solution/it-services/security-it-services//3-serangan-siber-yang-sering-menimpa-lembaga-pemerintahan-indonesia>.

⁶⁹ Qādir, *al-Tashrī al-Jinā'i al-Islāmī Muqāranan bi al-Qānūn al-Wad'i*, 598.

Cyberculture and Its Compatibility with the Theory of 'Urf

The argument of 'urf is one of the arguments in establishing the law from an event. The scholars did not specify in detail what customs and traditions could be used as 'urf, whether in the real world or the digital world, although the examples described discussed a lot about customs in the real world because cyberspace had not yet appeared at the time when the *fiqh* books were written.

To reinforce the position of 'urf in cyberspace as one of the bases for establishing law, the following describes several analyzes from various points of view. Regarding reach, 'urf is divided into three: 'urf 'ām, 'urf khāṣṣ, and 'urf al-shar'ī. If elaborated further, the use of cyberspaces' 'urf is more directed to 'urf khāṣ, namely the customs of most of the population of a country or a particular region or group.⁷⁰ In terms of whether it is against the Shari'a or not, 'urf is divided into two, 'urf ṣaḥīḥ and 'urf faṣīd. Concerning cyberspace, customs, and traditions in cyberspace can be classified under 'urf ṣaḥīḥ, namely community customs that do not conflict with *sharī'a*, do not justify what is unlawful, and do not forbid what is lawful,⁷¹ can also be classified as 'urf faced if elements violate Islamic law.

'Urf can be used as *ḥujjah shar'ī* if it fulfills several conditions, namely: in the form of general customs, or customs that most people do, in the form of customs that always occur or often occur, in the form of customs that exist when legal actions occur (*taṣarruf*), in the form of a custom that is certain to be carried out by the community, there are no other indicators that change the intention of the custom, and it does not conflict with the *mu'tamad shar'ī* proposition (agreed on by the scholars). If all of the above conditions are met, whether in the form of customs in the real world or cyberspace, then customs or 'urf can be used as *ḥujjah shar'ī*. However, if one of the conditions is not met, then 'urf cannot be used as *ḥujjah shar'ī*.⁷²

⁷⁰ al-Zuhaylī, *al-Wajiz fi Uṣūl al-Fiqh*, 97–98.

⁷¹ al-Zuhaylī, 98.

⁷² Namlah, *al-Muhadhdhab fi 'Ilm Uṣūl al-Fiqh al-Muqāran*, 1022.

The Legitimacy of *Maqāṣid Shari'ah* Theory with Systems Approach to Cyberculture as the Basis for Establishing Law

Human experience with the natural world will be even more intense in the future because technological developments will accelerate. The problem of space and time, which is very limited in the real world, is not a problem in cyberspace. Therefore, Islamic law must prepare itself to face the new challenges of cyber reality by accommodating this new reality into its legal provisions to adapt to the demands of information technology developments.

Some contracts in Islamic law interpret presence as still physical, while in the virtual reality world, which has the nature of telepresence, it is no longer physically present.⁷³ The nature of virtual world simulation through computer technology can represent someone's presence. Even though a person's presence in cyberspace is only a simulation or imitation of the natural world, he directly experiences the events he attends, sees, and feels the events taking place. This nature of virtual world immersion allows a person to be involved most simply, such as seeing a text in the form of a computer screen, to be involved physically and motorically, as in the case of sexual intercourse via teledildonics.⁷⁴

In addition to the problem of presence that is no longer physically mentioned above, Islamic law is also required to redefine the presence. For example, in the case of sex that can be done online without physical touch because it occurs between couples who are far apart, is this action considered to have existed so that it can be said that the partners have fulfilled their sexual obligations to each other? Or if one partner with another person commits it, can it be said that adultery has occurred?

Jasser Auda's revolutionary offer in the *uṣūl al-fiqh* with a systems approach is very important in responding to the challenges of Islamic law in the cyber era. The relevance of Auda's thoughts in answering the problems of Islamic law can be seen from the renewal vision in some of the system features it offers.⁷⁵

⁷³ Michael Heim identified seven characteristics of cyberspace: simulation, interaction, artificiality, immersion, telepresence, full-body immersion, and networked communication. See Michael Heim, *The Metaphysics of Virtual Reality* (Oxford: Oxford University Press, 1994), 110–16.

⁷⁴ Dini, "Pakaian dalam dengan Vibrator dari Durex."

⁷⁵ Jasser Auda, *Membumikan Hukum Islam melalui Maqasid Syariah*, trans. R. Rosidin and Ali `Abd El-Mun'im (Bandung: Mizan, 2015).

Cognitive features necessitate a shift in *faqīh* cognition from the notion that *fiqh* is a divine law to a law limited to the human *ijtihad* of a *faqīh*.⁷⁶ This feature greatly expands the resolution of problems in Islamic law that have arisen in the cyber era. Thus, the results of classical *fiqh* thinking in the field of Islamic law are not final and cannot be adapted to the times, but as a product of thought, they can change, increase and adapt to the needs of people's lives in the cyber era.⁷⁷

Establishing law in the new issues of the Islamic law that appear in the cyber era must be carried out holistically by considering all the texts of the Qur'an in establishing the law. The overall feature also necessitates the expansion of the reach of *maqāsid*, from what was initially individual to the social, nation-state, and even the development of human life.⁷⁸ The community life in question is limited to interactions in the real world and involves social interactions in cyberspace.

Openness, as another feature offered by Auda, is a requirement for Islamic law to renew itself to continue to live and become a guideline for people at all times. Problems of the Islamic law that arise in this cyber era can be answered when there is an openness to the world view of the *faqīh*. A *faqīh* must include the reality of cyberspace with the characteristics of its interactions as a consideration in establishing issues of Islamic law. In enacting laws, a jurist must involve other scientific systems as analysis tools from the social humanities and science and technology clusters. The '*urf*' that must be used as a legal basis, thus, is not only the '*urf*' of the natural world but also the '*urf*' of cyberspace.⁷⁹ Intellectual openness must also involve consideration of the logic of information technology, especially in interpreting the new 'existence,' namely 'existing' virtually.

In answering the problem of Islamic law, the multidimensionality feature necessitates seeing the issue of Islamic law from many dimensions; the supporting arguments must be seen as a whole and seen as one unit that supports each other so that there are no terms of conflict and contradiction between the arguments.⁸⁰

⁷⁶ Auda, 86.

⁷⁷ Auda, 254–55.

⁷⁸ Auda, 295.

⁷⁹ Auda, 263–65.

⁸⁰ Auda, 277–94.

Distinguishing between means and ends in every case of Islamic law is essential to see things that may change according to the development of the times with eternal goals to be achieved in each provision.⁸¹ This feature of meaning is the core of system theory in approaching the problem of Islamic law in the cyber era. Every case of Islamic law in the cyber age must be seen which *wasā'il* (means) and where is the *ahdāf* (objective) so that it can be recognized, which information technology sophistication is allowed to enter, which goals must be realized through the intermediary of the sophistication of digital technology.

Conclusion

Human interaction with information and communication technology has created a new cyberculture. The formation of a new culture mediated by technology has influenced many concepts in Islamic law. For Islamic family law, the concept of being present, which can be done virtually in cyberspace or telepresence, becomes a problem when online marriages begin to be practiced, the virtual implementation of sexual obligations, the use of digital dowry, and its delivery online. Likewise, in Islamic economic law, the character of telepresence and networked communication in cyberspace raises problems when many transactions begin to be carried out online. Cybercrime is also an issue in Islamic criminal law, especially about online theft, online adultery, and the hacking of critical state-owned data and secrets carried out as a form of treason. In responding to legal issues in cyberspace, it is necessary to negotiate between revelation on the one hand, *fiqh*, and *'urf* cyberspace on the other. The three of them can build a symmetrical-dialogical relationship in answering the problems that arise. *'Urf* that applies in cyberspace can be categorized into *'urf khāṣṣ* as opposed to *'urf`ām*.

The stipulated law must refer to the embodiment of benefits for humans and *maqāṣid al-sharī'ah*. In producing a law that focuses on benefit, six system features must be considered in negotiating between revelation on the one hand, *fiqh* as a product of Islamic thought, and *'urf* of cyberspace on the other. In establishing law, it is necessary to look at an issue from six system per

⁸¹ Auda, 294.

spectives: cognition, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness of *maqāṣid al-sharī'ah*.^[a]

BIBLIOGRAPHY

- Admin Ada Kami. "Mendapatkan Penghasilan dari Game Online, Emang Bisa?" Ada Kami, December 28, 2020. <https://blog.adakami.id/mendapatkan-penghasilan-dari-game-online-emang-bisa>.
- Administrator. "Serangan Siber yang Sering Menimpa Lembaga Pemerintahan Indonesia." *Lintas Arta*, March 11, 2021. <https://blog.lintasarta.net/article/solution/it-services/security-it-services//3-serangan-siber-yang-sering-menimpa-lembaga-pemerintahan-indonesia>.
- Amalia, Khikmatun. "'Urf sebagai Metode Penetapan Hukum Ekonomi Islam." *As-Salam: Jurnal Studi Hukum Islam & Pendidikan* 9, no. 1 (2020): 75–90. <https://doi.org/10.51226/assalam.v9i1.187>.
- Anugerah, Fiqqih, and Tantimin Tantimin. "Pencurian Data Pribadi di Internet dalam Perspektif Kriminologi." *Jurnal Komunikasi Hukum (JKH)* 8, no. 1 (2022): 419–35. <https://doi.org/10.23887/jkh.v8i1.45434>.
- Aripin, Musa. "Eksistensi Urf dalam Kompilasi Hukum Islam." *Al-Maqasid: Jurnal Ilmu Kesyarifan dan Keperdataan* 4, no. 2 (2018): 207–219. <https://doi.org/10.24952/almazasid.v4i2.1427>.
- Athief, Fauzul Hanif Noor. "Konsep 'Urf sebagai Variabel Produk Hukum." *Suhuf* 31, no. 1 (2019): 43–60. <https://doi.org/10.23917/suhuf.v31i1.9004>.
- Auda, Jasser. *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach*. Herndon: The International Institute of Islamic Thought, 2010.
- . *Maqāṣid al-Sharī'ah ka Falsafah li al-Tashrī' al-Isāmī*. Virginia: al-Ma'had al-'Alamī li al-Fikr al-Islāmī, 2012.
- . *Membumikan Hukum Islam Melalui Maqasid Syariah*. Translated by R. Rosidin and Ali 'Abd El-Mun'im. Bandung: Mizan, 2015.
- Bestari, Novina Putri. "Banyak Serangan Siber, Ahli Siber: RI Masuk Tahap Red Alert." CNBC Indonesia, January 24, 2022. <https://www.cnbcindonesia.com/tech/20220124144241-37-309936/banyak-serangan-siber-ahli-siber-ri-masuk-tahap-red-alert>.

- . “Kisah Hacker Curi Uang Kripto Rp 8,8 T, Rekor Rampok Terbesar.” *CNBC Indonesia*, August 12, 2021. <https://www.cnbcindonesia.com/tech/20210812160044-37-268040/kisah-hacker-curi-uang-kripto-rp-88-t-rekor-rampok-terbesar>.
- Cahyadi, Indra. “Tata Kelola Dunia Maya dan Ancaman Kedaulatan Nasional.” *Jurnal Politika Dinamika Masalah Politik dalam Negeri dan Hubungan Internasional* 7, no. 2 (2016): 210–32. <https://doi.org/10.22212/jp.v7i2.1134>.
- Camelia. “Viral Pasangan yang Menikah dengan Mahar Saldo Gopay Rp 10 Juta.” *liputan6.com*, October 13, 2020. <https://www.liputan6.com/citizen6/read/4380986/viral-pasangan-yang-menikah-dengan-mahar-saldo-gopay-rp-10-juta>.
- Chotimah, Hidayat Chusnul. “Tata Kelola Keamanan Siber dan Diplomasi Siber Indonesia di Bawah Kelembagaan Badan Siber dan Sandi Negara [Cyber Security Governance and Indonesian Cyber Diplomacy by National Cyber and Encryption Agency].” *Jurnal Politika Dinamika Masalah Politik dalam Negeri dan Hubungan Internasional* 10, no. 2 (2019): 113–28. <https://doi.org/10.22212/jp.v10i2.1447>.
- Dahono, Yudo. “Inilah Pengakuan Mantan PSK Virtual.” *Berita Satu*, October 8, 2013. <https://www.beritasatu.com/news/143216/inilah-pengakuan-mantan-psk-virtual>.
- Dini, D. “Pakaian dalam dengan Vibrator dari Durex.” *Kompas.com*, May 2, 2013.
- Fauziyah, Rosyda Nur. “10 Tips dan Cara Jualan Online Bagi Para Pemula,” November 15, 2021. <https://www.gramedia.com/best-seller/tips-cara-jualan-online/>.
- Febriani, Gresnia Arela. “Viral Pengantin Sendirian di Pelaminan, Nikah Online karena Suami Corona.” *wolipop*, October 11, 2021. <https://wolipop.detik.com/wedding-news/d-5761583/viral-pengantin-sendirian-di-pelaminan-nikah-online-karena-suami-corona>.
- Fitriani, Yuni, and Roida Pakpahan. “Analisa Penyalahgunaan Media Sosial Untuk Penyebaran Cybercrime di Dunia Maya atau Cyberspace.” *Cakrawala: Jurnal Humaniora Bina Sarana Informatika* 20, no. 1 (2020): 21–27. <https://doi.org/10.31294/jc.v20i1.6446>.
- Good Doctor. “Tips agar Kehidupan Seksual Pasangan yang Menikah Jarak Jauh Tetap Mesra.” *GoodDoctor.com*, October 23, 2020. <https://www.gooddoctor.co.id/hidup-sehat/seks/7-tips-agar-kehidupan-seksual-pasangan-yang-menikah-jarak-jauh-tetap-mesra/>.

- Gunadha, Reza, and Farah Nabilla. "Jatuh Cinta pada Blogging, Pasangan Ini Menikah dengan Mahar Google AdSense." *Suara.Com*, August 7, 2020. <https://www.suara.com/news/2020/08/07/125217/jatuh-cinta-pada-blogging-pasangan-ini-menikah-dengan-mahar-google-adsense>.
- Harisudin, M. N. "'Urf sebagai Sumber Hukum Islam (Fiqh) Nusantara." *Jurnal Ushuluddin: Media Dialog Pemikiran Islam* 20, no. 1 (2016): 66–86. <https://doi.org/10.24252/jumdpi.v20i1.2311>.
- Heim, Michael. *The Metaphysics of Virtual Reality*. Oxford: Oxford University Press, 1994.
- Indrawan, Jerry. "Cyberpolitics sebagai Perspektif Baru Memahami Politik di Era Siber [Cyberpolitics as A New Perspective in Understanding Politics in The Cyber Era]." *Jurnal Politika Dinamika Masalah Politik dalam Negeri dan Hubungan Internasional* 10, no. 1 (2019): 1–16. <https://doi.org/10.22212/jp.v10i1.1315>.
- Irawanto, Budi. "Mereguk Kenikmatan di Dunia Maya: Virtualitas dan Penubuhan dalam Cybersex." *Jurnal Kawistara* 7, no. 1 (2017): 30. <https://doi.org/10.22146/kawistara.23728>.
- Kozinets, Robert V. *Netnography: The Essential Guide to Qualitative Social Media Research*. 3rd ed. Los Angeles: SAGE Publications Ltd, 2019.
- Lathifah, Anthin, Abu Hapsin, Ahmad Rofiq, and M. Arief Hidayatullah. "The Construction of Religious Freedom in Indonesian Legislation: A Perspective of Maqāsid Ḥifẓ al-Dīn." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 1 (2022): 369–90. <https://doi.org/10.22373/sjhc.v6i1.10957>.
- Latumahina, Rosalinda Elsin. "Aspek Hukum Perlindungan Data Pribadi di Dunia Maya." *Gema Aktualita* 3, no. 1 (2014): 14–25.
- Maimun, Ach. "Memperkuat 'Urf dalam Pengembangan Hukum Islam." *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 12, no. 1 (2017): 22–41. <https://doi.org/10.19105/al-lhkam.v12i1.1188>.
- Mansur, Mansur. "Urf dan Pembentukan Hukum Islam menurut Al-Shâtibî." *Lisan al-Hal: Jurnal Pengembangan Pemikiran dan Kebudayaan* 9, no. 2 (2015): 349–78. <https://doi.org/10.35316/lisanalhal.v9i2.94>.
- Marita, Lita Sari. "Cyber Crime dan Penerapan Cyber Law dalam Pemberantasan Cyber Law [cybercrime] di Indonesia." *Cakrawala: Jurnal Humaniora Bina Sarana Informatika* 15, no. 2 (2015): 1–15. <https://doi.org/10.31294/jc.v15i2.4901>.
- Murdianto, M. Tarmizi. "Cocok Buat Kamu yang LDR-an, 7 Teknologi Ini Bisa Bantu Melepas Rindu!" *IDN Times*, February 18, 2019. <https://www.idntimes.com/tech/trend/m-tarmizi->

murdianto/kumpulan-teknologi-yang-memfasilitasi-hubungan-jarak-jauh-ldr.

- Musarrofa, Ita. "Dowry Trends in the Digital Age (Sociology of Law Review of the Use of Digital Dowry in the Cyber World Community)." *Jurnal Hukum Islam* 19, no. 1 (2021): 151-74. <https://doi.org/10.28918/jhi.v19i1.3754>.
- Musarrofa, Ita, Sofiatun Nisak, Mochammad Rofyal Muzakki, and Aulia Avan Rachman. "Sociological-Normative Analysis of the Provision of Joint Property in the Cyber Era." *Indonesian Journal of Interdisciplinary Islamic Studies* 5, no. 2 (2022): 44-64. <https://doi.org/10.20885/ijiis.vol.5.iss2.art3>.
- Namlah, 'Abdul Karīm bin 'Ali bin Muḥammad al-. *Al-Muhadhdhab Fī 'Ilm Uṣūl Al-Fiqh Al-Muqāran*. Riyāḍ: Maktabah al-Rushd, 1999.
- Nurcholis. "Cyberpornography (Pornografi di Dunia Maya) dalam Perspektif Hukum Positif dan Hukum Islam." [Undergraduate Thesis]. UIN Syarif Hidayatullah Jakarta, 2015.
- Nursita, Rizki Dian. "Cyberspace: Perdebatan, Problematika, Serta Pendekatan Baru dalam Tata Kelola Global." *Dauliyah: Journal of Islamic and International Affairs* 4, no. 1 (2019): 80-99. <https://doi.org/10.21111/dauliyah.v4i1.2934>.
- Parentalk. "Tips Memuaskan Hasrat Seks Untuk Hubungan Jarak Jauh." Parentalk.id, October 15, 2021. <https://parentalk.id/memuaskan-hasrat-seks-untuk-hubungan-jarak-jauh/>.
- Pertiwi, Wahyunanda Kusuma. "Marak Jual Beli Akun Netflix, Spotify, dan YouTube Premium di Indonesia, Legalkah?" Kompas.com, June 26, 2020. <https://tekno.kompas.com/read/2020/06/26/13440677/marak-jual-beli-akun-netflix-spotify-dan-youtube-premium-di-indonesia-legalkah>.
- Pratama, Bayu Indra. *Etnografi Dunia Maya Internet*. Malang: UB Media, 2017.
- Putri, Dar Nela. "Konsep Urf sebagai Sumber Hukum dalam Islam." *El-Mashlahah* 10, no. 2 (2020): 14-25. <https://doi.org/10.23971/maslahah.v10i2.1911>.
- Qādir, Awdah 'Abdul. *al-Tashrī al-Jinā'i Al-Islāmī Muqāranan bi al-Qānūn al-Wadī*. Kairo: Maktabah Dār al-Turāth, 2003.
- Redaksi Dokter Sehat. "7 Cara Menjalani Seks kalau Menjalani LDR." Dokter Sehat, March 30, 2019. <https://doktersehat.com/gaya-hidup/seksual/seks-pada-hubungan-jarak-jauh/>.

- Redaksi Kumparan. "Anti-Mainstream, Pasangan Ini Menikah dengan Mahar Bitcoin." Kumparan Style, December 1, 2017. <https://kumparan.com/kumparanstyle/anti-mainstream-pasangan-ini-menikah-dengan-mahar-bitcoin>.
- Riyanto, Galuh Putri. "Kupinang Engkau dengan Bitcoin, Cerita Wanita Sulsel Dilamar Pakai Bitcoin Rp 1,6 Miliar Halaman All." Kompas.com, April 14, 2021. <https://tekno.kompas.com/read/2021/04/14/09360067/kupinang-engkau-dengan-bitcoin-cerita-wanita-sulsel-dilamar-pakai-bitcoin-rp-1>.
- Santia, Tira. "Indonesia Digempur 741 Serangan Siber, Pemerintah Siapkan Penangkalnya." Liputan6.com, November 24, 2021. <https://www.liputan6.com/bisnis/read/4719306/indonesia-digempur-741-serangan-siber-pemerintah-siapkan-penangkalnya>.
- Sarjana, Sunan Autad, and Imam Kamaluddin Suratman. "Konsep 'Urf dalam Penetapan Hukum Islam." *Tsaqafah: Jurnal Peradaban Islam* 13, no. 2 (2017): 279. <https://doi.org/10.21111/tsaqafah.v13i2.1509>.
- Souisa, Hellena. "Terpisah Ribuan Kilometer karena Pandemi Corona, Pasangan Indonesia Australia Tetap Menikah Lewat Zoom." abc.net.au, July 1, 2020. <https://www.abc.net.au/indonesian/2020-07-01/pasangan-indonesia-dan-australia-menggelar-akad-nikah-lewat-zoom/12407008>.
- Sucipto, Sucipto. "'Urf sebagai Metode dan Sumber Penemuan Hukum Islam." *Asas: Jurnal Hukum Ekonomi Islam* 7, no. 1 (2015): 25-40. <https://doi.org/10.24042/asas.v7i1.1376>.
- Supriyatna, Iwan. "Bisnis Jual Beli Akun Game Online Cukup Menjanjikan." suara.com, March 2, 2021. <https://www.suara.com/bisnis/2021/03/02/071821/bisnis-jual-beli-akun-game-online-cukup-menjanjikan>.
- Suyanto, Bagong. "Prostitusi di Dunia Maya." JawaPos.com, December 23, 2016. <https://www.jawapos.com/opini/23/12/2016/prostitusi-di-dunia-maya/>.
- Syamsuddin. "Urf sebagai Sumber Pembaharuan Hukum dalam Kompilasi Hukum Islam." [Master Thesis]. IAIN Palopo, 2018.
- Venue. "Untung Rugi Gunakan Paylater." VenueMagz.com, July 23, 2021. <https://venuemagz.com/literasi-digital/untung-rugi-gunakan-paylater/>.
- Wandi, Sulfan. "Eksistensi 'Urf dan Adat Kebiasaan sebagai Dalil Fiqh." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 2, no. 1 (2018): 181-96. <https://doi.org/10.22373/sjhk.v2i1.3111>.

I. Musarrofa, H. Rohman

Warsiman, Warsiman. "Tinjauan Hukum terhadap Pelacuran dalam Dunia Maya (Cyber Prostitution) menurut Undang-Undang No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik." *Wahana Inovasi* 3, no. 1 (2017): 200–214.

al-Zalamī, Mustafa Ibrāhīm. "Asbāb Ikhtilāf al-Fuqahā' fī al-Aḥkām al-Shar'iyyah." Dār al-'Arabiyyah li al-Tibā'ah, 1976.

al-Zuhaylī, Wahbah. *al-Fiqh al-Islām wa 'Adillatuhu*. Vol. 6. Damascus: Dār al-Fikr, 1989.

———. *al-Wajīz fī Uṣūl al-Fiqh*. Damascus: Dār al-Fikr, 1999.