

## The Impact of Custom on Hanafi Jurisprudence and Its Application in Contemporary Fatwas: A Focus on Modern Jurisprudential Perspectives

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### Article Info

#### Article history:

Received 28-01-2026

Revised 03-03-2026

Accepted 17-03-2026

#### Keyword:

Impact; Fatwas;  
Contemporary; Custom;  
Hanafi Jurisprudence;  
Applications; text

### ABSTRACT

Among the cosmic laws of Almighty Allah are the change of conditions, the alteration of circumstances and times, and the continuity of renewal. Each era has its own customs and characteristics, with modern times being defined by scientific development and technological progress. This research investigates how changes in customs impact the modification of fatwas, specifically focusing on the transformation of some contemporary fatwas compared to those in the past. The study aims to answer the question of why these changes occur by providing scientific foundations and contemporary jurisprudential applications. We analyze the extent of the impact of changing customs on fatwas and how this has influenced jurisprudence, particularly in recent times. The research uses a descriptive-analytical methodology, collecting data from authentic sources and the information network (Internet). The study reveals that custom plays a crucial role in shaping Islamic rulings, especially in areas not explicitly addressed in Islamic law. Custom is recognized as a legitimate source of law, as long as it does not contradict established legal texts. This finding underscores the significance of custom in Islamic jurisprudence and its evolving role in contemporary fatwas.



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## INTRODUCTION

Praise be to Allah, the Lord of the worlds; the ultimate outcome belongs to the righteous. May blessings and peace be upon the best of His creation, Muhammad, and upon his family and all his Companions. To proceed:

Custom (*urf*) is regarded as one of the important sources of Islamic jurisprudence. It contributes significantly to the development and application of juristic rulings in a manner that corresponds to the social and cultural realities of the Muslim community. When Islam emerged, it encountered many customs that were deeply rooted in people's lives. It therefore adopted an approach characterized by gradualism and profound treatment: it upheld those customs that were consistent with its teachings, and wisely and prudently denounced those that conflicted with the *Shari'ah*, until such practices were abandoned (Mukhlis, 2025a; Mukhlis & Saidah, 2025). Consequently, custom came to be recognized as a juristic source, for which principles, regulations, conditions, and classifications were established for its acceptance. These principles and regulations have received considerable attention from scholars in their works.

Imām al-Shāfi'ī stated: "Whatever is reported from the Messenger of Allah (peace and blessings be upon him) is, in fact, from Allah. If it is said that the forms of taking possession in sales, the manner of securing property in cases of theft, and the majority of contracts in transactions have no explicit basis in the Qur'an or the Sunnah, we respond: Allah the Exalted has said: 'Take what is given freely, enjoin what is customary, and turn away from the ignorant' (Qur'an 7:199). Custom is what people know and mutually recognize in their dealings with one another. Thus, custom regarding forms of possession, safeguarding property, and legal enforceability is recognized by the Book. Accordingly, we say: the Qur'an is the most exemplary of evidences; the Sunnah is derived from it; analogy (*qiyās*) is derived from the Qur'an and the Sunnah; and consensus (*ijmā'*) is derived from the Qur'an, the Sunnah, and analogy."

There are several major challenges facing the application of custom in contemporary legal opinions (fatwas), foremost among them the rapid social and cultural changes. Muslim societies are witnessing accelerated social and cultural transformations as a result of globalization and technological developments. These changes may lead to the modification and evolution of certain traditional customary practices, thereby posing a challenge to their application in contemporary fatwas (Mukhlis, Arifin, Ridwan, & Zulbaidah, 2025; Mukhlis, Arifin, Ridwan, Zulbaidah, et al., 2025). Given the virtue and noble standing of this topic, I wished to contribute, through this modest effort, in order to benefit myself and serve the Afghan community, by the permission of Allah, the Almighty. Allah is the One who grants success and guides to the straight path.

### **Reasons for Choosing the Topic**

The reasons for choosing this topic include the following points:

1. Custom ('urf) is one of the important sources of Islamic legislation.
2. Many Islamic legal rulings are based on custom.
3. Custom occupies a wide scope within the field of juristic (fiqh) rulings.
4. Custom has practical applications in contemporary fatwas.

### **Significance of the Topic**

The significance of this topic is evident in the following aspects:

- Custom holds great importance in our noble Islamic law, as it serves as a means of facilitation for people and the removal of hardship, in accordance with the principle of “removal of hardship in religion.”
- Preserving social order and stability through the regulation of relationships and transactions among people.
- Custom may lead to the specification of a general ruling or the restriction of an absolute ruling in certain juristic matters.
- Custom contributes to the interpretation and application of contemporary fatwas in a manner consistent with Islamic social and cultural realities.
- Custom may result in the modification of certain contemporary fatwas or the introduction of new rulings in accordance with prevailing customs.

### **Objectives of the Study**

The objectives of this study include the following points:

- To identify certain rulings and issues whose basis is custom within Hanafi jurisprudence and contemporary fatwas.
- To demonstrate how custom enhances stability in commercial transactions by providing clear expectations regarding the execution of contracts.
- To enrich the Islamic juristic library with focused academic contributions.
- To provide a general overview of juristic issues, particularly those related to Hanafi jurisprudence.

### **Research Questions**

This research seeks to address the following questions:

1. What types of sales transactions are influenced by custom in Hanafi jurisprudence?
2. Does the influence of custom differ in Hanafi jurisprudence compared to contemporary fatwas?
3. Does custom contribute to protecting the rights of contracting parties in sales contracts according to Hanafi jurisprudence and fatwas?
4. How can social and economic changes affect the role of custom in sales transactions?
5. How is custom used as legal evidence in commercial disputes according to Hanafi jurisprudence and contemporary fatwas?

**Previous Studies**

After extensive research and investigation—within the limits of our efforts—we have not found any academic scientific study that specifically addresses this topic in accordance with established standards and principles of scholarly research. What we did find were either lengthy studies that are difficult to read or excessively brief works that lack sufficient clarity and depth. Therefore, we deemed it appropriate to present the essence and foundations of this topic in concise pages that are easy to access and beneficial, hoping that Allah will accept this effort and make it beneficial.

It is worth noting that there are some writings related to this topic; however, they are not specialized in the specific field addressed here. These include:

- Islamic Jurisprudence and Its Evidences by Dr. Wahbah al-Zuhayli.
- An Introduction to Islamic Jurisprudence by Dr. Abdul Karim Zaidan.
- Juristic Maxims by Dr. Muhammad ‘Ajil Jasim.
- The Impact of Custom in Islamic Jurisprudence by Dr. Abdullah bin Sulaiman al-Manba‘.
- Custom in Islamic Law by Dr. Ahmad al-Raysuni.
- Custom and Its Impact on Juristic Application in Hanafi Jurisprudence by Bassem Hussein ‘Itani.

The aforementioned studies do not represent specialized works in the precise areas indicated earlier. Accordingly, I have exerted my utmost effort to maintain academic specialization in this research, as well as to address the application of custom in contemporary fatwas. I ask Allah for success and correctness in both word and deed.

**Research Plan:**

In writing this research, we have adopted the descriptive–analytical method, bearing in mind that we collected the scholarly material from authoritative primary sources and recent academic references, particularly books of Hanafi jurisprudence, works on Islamic legal theory (uṣūl al-fiqh), and collections of fatwas. We also benefited from online resources (the Internet). The research consists of an introduction, three chapters, and a conclusion.

**Chapter One:** Definition of custom (‘urf) and its classifications.

**Chapter Two:** The consideration of custom in legal rulings and its legal authority.

**Chapter Three:** The conditions for recognizing custom, its effects, and its applications in contemporary fatwas.

**Chapter One: Definition of Custom (‘Urf) and Its Classifications****Section One: Definition of Custom****First: Custom in linguistic usage:**

Custom (‘urf) linguistically refers to what is known and recognized, as opposed to what is unfamiliar, and to what people have become accustomed to in their habits and transactions.

**Second: Custom in technical terminology:**

Custom, in technical terms, refers to what people recognize and mutually practice among themselves in their dealings. It is also defined as that which minds have come to accept, as affirmed by sound reasoning, and which upright natural dispositions receive with approval.

**Section Two: Classifications of Custom According to Expression**

Custom, in terms of expression, is divided into two types: verbal (lexical) custom and practical custom.

**First: Verbal Custom:**

Verbal custom occurs when a group of people agree to use a particular term to denote a specific meaning, such that no other meaning comes to mind upon hearing it, such as the word dirham referring

to the prevalent currency. Thus, the meaning of verbal custom is that the usage of a word is transferred and employed in a particular meaning until it becomes the commonly understood meaning upon usage. An example of this is the use of the word *dābbah* (beast) to refer specifically to four-legged animals, even though linguistically it refers to everything that moves.

Just as custom can transfer the meaning of a single word, it can also transfer compound expressions. Verbal custom exists only when words are transferred from their original linguistic meanings or restricted to certain of their referents. However, if the linguistic meaning remains commonly used, it is not termed verbal custom or customary reality; rather, it remains a widely known linguistic reality.

Jurists have recognized verbal custom and have interpreted transactional expressions accordingly. They have taken it into consideration in judicial rulings and fatwas, stating that the words of every speaker are interpreted according to their customary usage. If the speaker is the Lawgiver, the words are understood according to their legal meaning; if the speaker is a linguist, the words are interpreted according to linguistic convention; and the expressions used by people in contracts and transactions are interpreted according to their customary usage in communication. Consequently, the obligations arising from such expressions are determined in accordance with the meanings established by custom.

### **Secondly: Practical Custom (al-‘Urf al-‘Amalī)**

It refers to what people commonly practice and are accustomed to in their dealings and conduct, such as their customary practice of sale by mutual exchange (*bay‘ bi al-ta‘āfī*) and manufacturing contracts (*istisnā‘*). Ibn ‘Abidīn states that custom is of two types: practical and verbal. The former includes, for example, a group of people being accustomed to eating wheat and mutton. Thus, if someone says, “Buy me food” or “Buy me meat,” it is understood as wheat and mutton, in accordance with practical custom.

Customs and practices prevailing among people in their transactions take the place of explicit verbal expressions. ‘Izz al-Dīn ibn ‘Abd al-Salām states, in a section on equating the indication of customs and contextual circumstances with explicit statements in specifying general terms, restricting absolute expressions, and the like, that among the examples of this is an unrestricted authorization to sell, which is constrained by the prevailing market price and the commonly used currency of the country. This is based on treating established commercial custom as equivalent to an explicit statement. Likewise, permission in marriage is understood to imply suitability (*kafā’ah*) and a customary dowry (*mahr al-mithl*), since this is what naturally comes to mind when someone authorizes another to marry off his daughter.

Ibn al-Qayyim, clarifying the authoritative status of custom and acting upon it, stated that such instances are too numerous to be enumerated. From this perspective is understood the hadith of ‘Urwah ibn al-Ja‘d al-Bāriqī (may Allah be pleased with him), in which the Prophet (peace be upon him) gave him one dinar to purchase a sheep. He purchased two sheep for one dinar, sold one of them for a dinar, and returned with the dinar and the other sheep. He thus sold, delivered, and received payment without explicit verbal authorization, relying instead on customary authorization, which in many situations is stronger than verbal authorization.

Accordingly, practical custom, or habitual practice in action, is the decisive authority in people’s transactions regarding what is obligatory and what is not, in accordance with the prevailing custom among them, as well as what is implicitly included in contracts and what is not. Jurists have stated that a customary condition is equivalent to an explicit condition. Among the relevant legal maxims are: “What is commonly known is like what is stipulated,” and “What is commonly known among merchants is like what is stipulated between them.” Al-Sarakhsī stated: “What is established by custom is like what is stipulated,” and likewise: “What is established by custom is like what is established by textual evidence.”

### **Third Section: Types of Custom According to Generality and Specificity**

From this perspective, custom is divided into general custom and specific custom:

### **First: General Custom**

This is what is commonly recognized by the general public. For example, if a person swears not to set foot in someone's house, then according to general custom this means entering the house, whether on foot or riding.

### **Second: Specific Custom**

This is what is not commonly recognized by the general public, but only by some groups, such as technical terms established in legal usage, linguistic convention, or the custom of a particular group. An example is the technical meaning of *rafʿ* among grammarians. The Ḥanafīs stipulated, with regard to general custom, the continuity of its practice among people.

### **Fourth Section: Types of Custom According to Validity and Invalidity**

From this perspective, custom is divided into valid and invalid:

#### **First: Valid Custom**

This is what people commonly practice without contradicting any textual evidence of Islamic law, without neglecting a legitimate interest, and without bringing about harm. An example is the custom of offering gifts from an engaged man to his fiancée without considering them part of the dowry.

#### **Second: Invalid Custom**

This is what contradicts some evidences or principles of Islamic law, such as the custom of engaging in certain usurious contracts.

### **Fifth Section: Types of Custom According to Its Stability or Change**

From this perspective, custom is divided into fixed custom and changeable custom:

#### **First: Fixed Custom**

This is the custom that does not change with differences in time, place, persons, or circumstances, because it is rooted in human nature and innate disposition, such as the desire for food and drink, and feelings of sorrow and joy. Included in fixed custom is legal custom, which refers to what the Islamic law has obligated, commanded, prohibited, or permitted.

#### **Second: Changeable Custom**

This is the custom that varies with changes in time, environment, and circumstances. It has various forms, including customs related to the perception of places and environments as good or bad. Thus, an act may be considered good in one place and reprehensible in another. An example is uncovering the head: it is considered improper for people of dignity in Eastern countries, but not improper in Western countries.

### **Section Two: The Consideration of Custom (ʿUrf) in Legal Rulings and Its Evidentiary Authority**

#### **First Requirement: Custom from This Perspective Is Divided into Three Categories:**

**First:** That for which there is a *sharīʿah*-based proof affirming its consideration, such as taking compatibility (*kafāʿah*) into account in marriage, or placing the payment of blood money (*diyāh*) upon the *ʿāqilah*. Such customs must be recognized and acted upon.

**Second:** That for which there is a *sharīʿah*-based proof negating its consideration, such as the practices of the people of pre-Islamic ignorance in public display (*tabarruj*), their circumambulation of the House while naked, combining two sisters in marriage, and other customs that the Lawgiver has prohibited. These customs are not to be considered.

**Third:** That for which there is no *sharīʿah*-based proof either affirming or negating its consideration. This is the area of juristic inquiry. The jurists have held that such custom is to be recognized and taken into account, and they have built many legal rulings upon it, without any of them denying this. Evidence from the Qurʿān, the Sunnah, and scholarly consensus establishes the validity of considering custom.

From the Qur'an is the statement of Allah the Exalted:

“Let a man of wealth spend from his wealth, and he whose provision is restricted—let him spend from what Allah has given him. Allah does not burden any soul except with what He has given it. Allah will bring about ease after hardship.”

In *Aḥkām al-Qur'ān*, al-Jaṣṣāṣ explains that expenditure has no fixed legal determination; rather, Allah the Exalted has referred it to customary practice. Custom is thus a foundational legal proof upon which Allah has based rulings and by which He has linked what is lawful and unlawful.

Ibn Qudāmah stated: “The correct view is that absolute rights mentioned in the Sharī'ah are to be referred back to custom as practiced among people with regard to their expenditures—whether for the wealthy, the poor, or those of moderate means—just as we have referred the matter of clothing to custom.”

From the Sunnah is the ḥadīth of 'Ā'ishah (may Allah be pleased with her), who reported that Hind bint 'Utbah (may Allah be pleased with her) said: “O Messenger of Allah, Abu Sufyān is a miserly man and does not give me and my child sufficient maintenance unless I take from him without his knowledge.” He replied: “Take what suffices you and your child, according to what is customary.”

Ibn Ḥajar commented: “This ḥadīth indicates reliance upon custom in matters for which the Lawgiver has provided no specific determination.”

### **The Second Requirement: The Legal Authority of Custom ('Urf)**

It has previously been mentioned here that custom ('urf) is regarded as authoritative by the majority of scholars, that it constitutes a legal proof, and that it is a foundational principle upon which many legal rulings are built. They have supported this view with evidence from the Noble Qur'an, the honorable Sunnah, and practical consensus (*ijmā' 'amalī*).

#### **First: Evidence from the Noble Qur'an**

Allah the Exalted says:

“Take what is given freely, enjoin what is customary (al-'urf), and turn away from the ignorant.”

This verse has been cited as evidence in cases where spouses dispute over household property. It is said: “We rely on the statement of Allah the Exalted: ‘Take what is given freely and enjoin what is customary...’; thus, whatever is affirmed by custom is to be adjudicated accordingly, based on the apparent meaning of this verse, unless there is contrary evidence.”

The term 'urf here may refer either to what is well-known and recognized as good—namely virtuous actions—or to the prevailing custom among people. The Mālikī jurists relied on this verse as evidence for judging according to the customs commonly practiced among people.

#### **The aspect of inference:**

Allah commanded His Prophet (peace and blessings be upon him) to act in accordance with custom, that is, what people have come to recognize and what their customary practices have established in their dealings. Since Allah, the Mighty and Majestic, commanded His Prophet to enjoin it, this indicates its consideration in Islamic law; otherwise, the command would have no meaningful purpose.

#### **Second: Evidence from the Sunnah**

1. It is narrated that the Prophet (peace and blessings be upon him) said:

*“Whatever the Muslims deem good is good in the sight of Allah, and whatever they deem bad is bad in the sight of Allah.”*

Many jurists cite this hadith when applying custom in particular legal issues, just as legal theorists cite it as evidence for the authority of consensus (*ijmā'*) and juristic preference (*istiḥsān*). It is also mentioned in the book *al-Ashbāh wa al-Nazā'ir* under the sixth legal maxim: “Custom is authoritative.”

**The aspect of inference from the hadith:**

What Muslims habitually practice, recognize, and deem good what their minds approve of and their souls accept—is considered good. If that is the case, then it is good in the sight of Allah, meaning that it is acceptable and legally recognized. This hadith is rarely found to have been cited by scholars, past or present, specifically in discussions of custom and as evidence for it.

However, some scholars have challenged the probative value of this hadith and invalidated its use as evidence. They criticized both its attribution (raf') to the Prophet and its indication (dalālah).

**As for the criticism regarding its attribution:**

Al-'Alā'ī stated: "I did not find it attributed to the Prophet in any of the books of hadith at all, not even with a weak chain, despite extensive research and inquiry. Rather, it is a statement of 'Abdullāh ibn Mas'ūd (may Allah be pleased with him), reported as a mawqūf narration."

The author of Naṣb al-Rāyah also mentioned that it has three chains of transmission, all of which are mawqūf upon Ibn Mas'ūd.

This objection has been answered in two ways:

1. Even if it is mawqūf upon Ibn Mas'ūd, it carries the ruling of marfū', because it pertains to matters in which personal opinion has no scope.
2. At the very least, it is a statement of a Companion, and the statement of a Companion is authoritative.

**As for the criticism regarding its indication:**

The argument is that what is meant by "the Muslims" in the hadith is the mujtahids (qualified jurists), not the general public, as indicated by the phrase "whatever they deem", since "deeming" (ra'y) refers to reasoned judgment after reflection and consideration. Ibn al-Qayyim stated that opinion is "that which the heart concludes after thought and deliberation," and that correctness in such matters arises where indicators conflict. Moreover, the word "the Muslims" is a general expression, and the definite article implies comprehensiveness in the absence of a contextual qualifier. Thus, the meaning would be: what all the mujtahids deem good, in which case the hadith refers to the consensus of those qualified to decide (ahl al-hall wa al-'aqd).

In summary, the hadith either refers to consensus or specifically to the Companions, and in either case it does not constitute decisive evidence for the authority of custom.

**Response to this objection:**

1. Even if the hadith indicates the authority of consensus, this does not preclude its indication of the اعتبار (consideration) of custom, particularly where it amounts to practical consensus. Whatever the people of consensus consider good from among customs is good in the sight of Allah, and whatever they consider bad is bad in the sight of Allah. Thus, the hadith's indication of the authority of custom remains possible, and this does not mean that custom is not legally considered.
2. The hadith of Hind bint 'Utbah, as narrated by 'Ā'ishah (may Allah be pleased with her): Hind bint 'Utbah said, "O Messenger of Allah, Abu Sufyān is a miserly man and does not give me enough for myself and my children unless I take from him without his knowledge." He replied: "Take what suffices you and your children, according to what is customary."

**The aspect of inference:**

The Messenger of Allah (peace and blessings be upon him) referred her to what is customary—namely, what is customarily known to suffice her in terms of food and other needs. This wording clearly indicates the consideration of custom in legislation regarding matters for which no specific details have been provided. It is as though he said: the husband is obligated to provide marital maintenance, but the determination of its amount is left to what custom dictates among you, according to circumstances, persons, places, and times.

Al-Nawawī stated that this hadith contains several benefits, among them reliance on custom in matters for which no specific legal limit has been prescribed.

### **The Third Section: Conditions for the Consideration of Custom, Its Effects, and Its Applications in Contemporary Fatwas**

#### **The First Requirement: Conditions for the Consideration of Custom**

There are five conditions for the consideration of custom.

##### **First: That the custom be consistent or predominant**

Consistency (*iṭṭirād*) means that the custom is continuous and does not fail in all cases, while predominance (*ghalabah*) means that acting upon the custom is widespread and that deviation from it is rare. Consistency or predominance renders the existence of the custom certain.

Some scholars have stated that custom is only considered if it is consistent; if it is inconsistent, then it is not considered. Others have stated that custom is considered if it is either consistent or predominant (Mukhlis, 2025b; Mukhlis, Suradi, et al., 2023). Hence they said: if a person sells for dirhams or dinars in a locality where different currencies are in circulation with varying value and acceptance, the sale is interpreted according to what is predominant. Al-Shāṭibī stated: “If customs are legally معتبر (recognized), then occasional deviation does not undermine their consideration so long as they remain customs in general.”

By this condition, shared or equivocal custom where acting upon it and abandoning it are equal is excluded from consideration, as it is not suitable to serve as a basis or proof for determining absolute rights and obligations.

##### **Second: That the custom be general**

This condition is subject to scholarly disagreement. The majority of the Ḥanafī and Shāfi‘ī jurists (may Allah have mercy upon them) held that, in deriving legal rulings, consideration is given to general custom rather than specific custom.

##### **Third: That Custom Must Not Contradict the Sharī‘ah Text**

One of the conditions for a custom to be legally معتبر (recognized) in Islamic law is that it must not contradict the Sharī‘ah texts. This means that what people customarily practice must not conflict with established Sharī‘ah rulings derived from explicit texts; otherwise, such a custom holds no legal weight. Examples include people becoming accustomed to drinking alcohol, women’s public immodesty, engaging in usurious contracts, and similar practices.

Furthermore, the contradiction between custom and textual evidence occurs in two forms. If custom contradicts the Sharī‘ah text in every respect, the text must be upheld and the custom disregarded, because textual evidence is stronger than custom, and a stronger proof is not abandoned for a weaker one, whether the custom is general or specific.

If, however, custom contradicts the text only in certain aspects, the majority of jurists (may Allah have mercy upon them) hold that custom cannot function as a qualifier or a restrictor of the text. In contrast, the Ḥanafī jurists (may Allah have mercy upon them) maintain that custom may specify and restrict the textual ruling.

##### **Fourth: That Custom Must Not Be Explicitly Contradicted**

Another condition for recognizing custom is that there must be no explicit statement contradicting it. If, for example, the contracting parties explicitly stipulate something contrary to customary practice, then the custom is disregarded. This is based on the juristic maxim: “No consideration is given to implication in the presence of explicit stipulation.”

‘Izz al-Dīn ibn ‘Abd al-Salām stated that whatever is established by custom, if the contracting parties explicitly agree to the contrary—provided that it aligns with the purpose of the contract and can be fulfilled—then it is valid. For instance, if a tenant stipulates that a hired worker must work throughout the entire day without eating, such that it does not nullify the benefit, this condition becomes binding.

Similarly, if the worker is required not to perform supererogatory prayers and to limit obligatory prayers to their essential pillars, this condition is valid and must be fulfilled. This is because those times were excluded from entitlement only by custom, which serves as a substitute for an implied condition. Once the parties explicitly stipulate otherwise—so long as it is permissible under Sharī'ah and feasible—it is valid.

#### **Fifth: That Custom Must Exist at the Time the Transaction Is Concluded**

For a custom to be legally considered, it must be in existence at the time the transaction is initiated, whether prior to or concurrent with the act. This is because any legal act—verbal or practical—is performed according to prevailing custom, allowing interpretation based on the existing custom. A custom that arises after the transaction carries no legal consideration.

Al-Qarāfī stated that customs arising after a verbal declaration do not override that declaration, as the declaration is free from opposition and therefore interpreted according to linguistic meaning. Analogously, when a sales contract is concluded, the price is interpreted according to the prevailing currency custom at that time; any subsequent changes in monetary custom are irrelevant to the prior transaction (Mukhlis, Janwari, et al., 2023; Mukhlis & Abdullah, 2025). The same applies to vows, acknowledgments, and wills later customs do not affect them; only contemporaneous customs are considered.

Al-Suyūfī stated that the custom upon which words are interpreted is only the prior or concurrent custom, not the later one. Ibn Nujaym, after citing al-Suyūfī, added: “Therefore, they said: no consideration is given to newly emerging customs.”

#### **Section Two: The Effect of Custom in Ḥanafī Jurisprudence**

There are numerous examples of the influence of custom in sales transactions within Ḥanafī jurisprudence, including the following:

1. Determining customary and commonly accepted wages in the sale of certain goods, such as vegetables and fruits.
2. Determining customary methods of delivery and receipt in sales, such as delivery at a specific place or time.
3. Determining customary warranties for sold goods, including warranty periods and conditions
4. Determining the grace period granted to buyers for payment in deferred sales.
5. Price determination in markets, where the customary market price serves as a primary reference when concluding sales contracts. For example, if a product has a known market price, that price is binding even if not explicitly stated in the contract.
6. Delivery conditions, where custom may specify the place of delivery, such as the market or the buyer's address, and such a condition becomes part of the contract.
7. Deferred payment practices, where some societies require immediate payment upon delivery, while others allow a grace period; such customs affect contract formulation and are binding.
8. Warranties, where a prevailing custom granting the seller a warranty obligation for a certain period becomes an implicit contractual condition.
9. Sale of used goods, where customary standards for assessing quality affect price and sales conditions and serve as a reference for valuation.
10. Installment sales, where prevailing customs regulate the determination of installments or charges, influencing and binding the contract.
11. Goods with special characteristics, such as livestock or agricultural products, which have specific customary sales methods (e.g., by weight or number), adherence to which is legally binding.

#### **Section Three: Applications in Contemporary Fatwas**

There are several significant examples of the application of custom in contemporary Ḥanafī fatwas, including:

### **First: Parallel Istisnā' (Manufacturing Contracts)**

One of the most important conditions of an istisnā' contract is that it involves goods commonly transacted among people in any era. Accordingly, if people in any period become accustomed to dealing in items unknown in previous times, there is no objection to recognizing such practices as valid custom and incorporating them under istisnā', rather than restricting istisnā' to limited cases mentioned by early jurists.

Some contemporary jurists have therefore included garments under istisnā', whereas earlier jurists did not permit istisnā' for clothing because it was not customary in their time.

Some scholars state that whatever is customary may validly be subject to istisnā', such as footwear, utensils, household furniture, weapons, clothing, and similar items. The earlier Ḥanafī prohibition of istisnā' for clothing was based on the prevailing custom of their time; since such transactions were not common then, they were disallowed. Today, however, this practice has become widespread among merchants and manufacturers, provided that the custom is general.

It is well known that earlier jurists based their rulings on people's practices, and such rulings change with changes in practice. Legal rulings founded upon custom change with changes in custom, such as rules concerning safekeeping and maintenance (Mukhlis et al., 2024; Mukhlis, Maryam, et al., 2023). The items mentioned by jurists were illustrative, not exhaustive. Therefore, if new items become commonly manufactured such as garments today, as well as airplanes, cars, lighting equipment, laboratories, factories, ships, writing and imaging devices, space vessels, and satellites istisnā' is permissible, provided specifications are sufficiently precise to prevent dispute. Matters not explicitly defined by Sharī'ah or language are determined by custom, which evolves over time.

The istisnā' contract is flexible and facilitates Islamic banks' dealings with the public due to its allowance of advance, deferred, or installment payments. Banks may participate either as purchasers or as manufacturers.

- a. As Purchasers: The bank provides early or phased financing to manufacturers, enabling them to acquire raw materials, equipment, or spare parts, and solves marketing challenges by guaranteeing a committed buyer. Additionally, the delivery deadline in istisnā' need not be strictly defined, so long as it does not exceed the reasonable manufacturing period, making contract formulation more flexible than salam contracts. Banks may order goods with high demand at lower prices and sell them at spot, deferred, or installment prices, generating substantial profits.
- b. As Manufacturers: The bank may enter the fields of industry and construction such as shipbuilding, aircraft manufacturing, housing projects, infrastructure development, railways, and airports through administrative units independent of traditional banking departments, managing production or subcontracting accordingly.

### **Second: Parallel Istisnā' in Islamic Banking Practice**

- a. The party needing manufactured goods contracts with the bank under istisnā', making the bank the seller, with payment possibly deferred.
- b. The bank contracts with manufacturers to produce the goods according to the specifications of the first contract, with payment possibly made in advance.
- c. Upon completion, the bank delivers the goods to the original buyer.

Dr. Muḥammad al-Ashqar warns against several risks in parallel istisnā', including linking the two contracts, appointing the buyer as an agent in manufacturing or delivery, or reducing the bank's role in a manner that converts the transaction into an interest-bearing loan. He stresses that banks must initiate projects independently, establish dedicated istisnā' departments, and maintain direct contractual responsibility with manufacturers. Regulatory bodies must establish safeguards, detailed procedures, and staff training to prevent misuse.

**Third: Manufacturing Paper Currency**

If a central bank commissions the printing of ten million banknotes under an *istisnā'* contract, it is equivalent to manufacturing cards or similar items and is permissible. No usury is involved, as banknotes possess no monetary value prior to being officially received, recorded, and issued by the central bank. Only then do they acquire monetary value and become subject to rulings of usury.

**Fourth: Resolution of the Islamic Fiqh Academy No. 65/2/7 on *Istisnā'***

The Islamic Fiqh Academy discussed the *istisnā'* contract in its seventh session held in Jeddah, Saudi Arabia, from 7–12 Dhū al-Qa'dah 1412 AH (14–19 May 1992). After reviewing submitted research, deliberating discussions, and considering Sharī'ah objectives and legal principles—given the vital role of *istisnā'* in industrial development and Islamic finance—the Council resolved as follows:

1. The *istisnā'* contract, which applies to work and goods defined by liability, is binding upon both parties if its pillars and conditions are fulfilled.
2. The contract must specify the type, quantity, and characteristics of the manufactured item, and the delivery term must be defined.
3. The price may be deferred in full or paid in installments at specified times.
4. The contract may include a penalty clause as agreed by the parties, unless prevented by force majeure.

**Conclusion**

In conclusion, this study highlights the significance of *'urf* (custom) in Hanafi jurisprudence and its application in contemporary fatwas. The main findings indicate that *'urf* refers to the practices, traditions, and norms that are widely accepted within society, and it plays a crucial role in shaping Islamic legal rulings. Hanafi jurisprudence acknowledges the role of *'urf* in deriving legal rulings, reflecting the flexibility of this school of thought in adapting to changes in Islamic societies. Contemporary fatwas demonstrate how *'urf* is utilized in addressing new issues, thus reflecting a responsive approach to the evolving social and cultural contexts.

However, the application of *'urf* faces several challenges, particularly with the rapid transformation of customs, cultural diversity, and the increasing influence of mass media. This study emphasizes the importance of a deeper understanding of *'urf* and its impact on strengthening and developing Islamic jurisprudence in a way that effectively responds to contemporary challenges. While *'urf* is a vital tool in Hanafi jurisprudence, its implementation in modern fatwas requires a more nuanced understanding of the ongoing changes in customs and cultural practices.

Based on these findings, several recommendations are proposed to enhance the application of *'urf* in Islamic jurisprudence. First, focused academic research on the influence of *'urf* in Hanafi jurisprudence is needed to better understand how Islamic law evolves in response to societal changes. Additionally, there is a need to systematically review classical fatwas and reassess them in light of modern customs and social transformations to ensure their relevance to contemporary needs. This will help maintain the applicability and continuity of Islamic legal rulings.

Furthermore, clear methodologies should be developed for interpreting and applying *'urf* within fatwas, considering the relevant cultural and social contexts. Fiqh councils should play a more active role in issuing fatwas that take contemporary customs into account, thus promoting balanced and contextually relevant legal solutions. Additionally, community awareness programs about the importance of *'urf* in Islamic jurisprudence should be strengthened, helping the public understand how *'urf* can be used to address modern issues.

Mass media and social media platforms should also be utilized to spread awareness about 'urf and its role in Hanafī jurisprudence, reaching a broader audience. Moreover, further studies should be conducted to assess the impact of applying 'urf in contemporary fatwas and evaluate how well these fatwas address the evolving needs of society. Such research will contribute significantly to ensuring that Islamic jurisprudence remains dynamic and responsive to contemporary challenges.

- In summary, the findings and recommendations of this study aim to provide new insights both for academic research and practical applications in Islamic jurisprudence, fostering further discussions on the role of 'urf in addressing contemporary challenges.

## REFERENCES

- ‘Abd Allāh ibn Aḥmad ibn Sa‘īd. *Manāhij al-Bāhithīn fī al-Iqtisād al-Islāmī*, 1st ed., Beirut: Mu‘assasat al-Risālah, 2009.
- ‘Abd Allāh ibn Muḥammad ibn Aḥmad al-Ṭayyār. *Al-‘Urf ka-Maṣdar min Maṣādir al-Tashrī‘*, 1st ed., Riyadh: Dār al-Buḥūth li al-Dirāsāt al-Islāmiyyah, 2005.
- ‘Alī Ḥaydar, Khawājah Amīn Afandī. *Durar al-Aḥkām Sharḥ Majallat al-Aḥkām*, 1st ed., Beirut: Dār al-Kutub al-‘Ilmiyyah, 1411 AH, 16 vols.
- ‘Izz al-Dīn ibn ‘Abd al-Salām. *Qawā‘id al-Aḥkām*, n.p., Cairo: Maktabat al-Kulliyāt al-Azhariyyah, n.d.
- Aḥmad ibn Ḥanbal. *Musnad Aḥmad ibn Ḥanbal*, n.p., Cairo: Mu‘assasat Qurtubah, 1421 AH, 6 vols.
- Al-‘Aṭṭār, Ḥasan ibn Muḥammad. *Ḥāshiyat al-‘Aṭṭār ‘alā Jam‘ al-Jawāmi‘*, n.p., Beirut: Dār al-‘Ilmiyyah, 1420 AH, 2 vols.
- Al-Bukhārī, Muḥammad ibn Ismā‘īl Abū ‘Abd Allāh al-Ju‘fī. *Ṣaḥīḥ al-Bukhārī*, 2nd ed., Beirut: Dār Ibn Kathīr, 1407 AH, 6 vols.
- Al-Ghazālī, Muḥammad ibn Muḥammad. *Al-Mustaṣfā fī ‘Ilm al-Uṣūl*, n.p., Beirut: Dār al-Kutub al-‘Ilmiyyah, 1413 AH.
- Al-Jurjānī, ‘Alī ibn Muḥammad ibn ‘Alī. *Al-Ta‘rīfāt*, 1st ed., Beirut: Dār al-Kitāb al-‘Arabī, 1405 AH, 1 vol.
- Al-Qarāfī, Aḥmad ibn Idrīs. *Anwār al-Furūq fī Anwār al-Furūq*, n.p., Beirut: Dār al-Kutub al-‘Ilmiyyah, 1418 AH / 1998, 4 vols.
- Al-Sarakhsī, Shams al-Dīn Muḥammad ibn Abī Sahl. *Al-Mabsūt*, n.p., Beirut: Dār al-Fikr, 1421 AH.
- Al-Sīwāsī, Kamāl al-Dīn ibn ‘Abd al-Wāḥid. *Sharḥ Faṭḥ al-Kabīr*, n.p., Beirut: Dār al-Fikr, n.d., 7 vols.
- Amīr Pādshāh, Muḥammad Amīn. *Taysīr al-Taḥrīr*, n.p., Beirut: Dār al-Fikr, n.d., 4 vols.
- Ibrāhīm Muṣṭafā; Aḥmad al-Zayyāt; Ḥāmid ‘Abd al-Qādir; Muḥammad al-Najjār. *Al-Mu‘jam al-Wasīṭ*, n.p., Dār al-Da‘wah, n.d., edited by the Arabic Language Academy, 2 vols.
- Ibn ‘Ābidīn, Muḥammad Amīn ibn ‘Umar ibn ‘Abd al-‘Azīz al-Dimashqī al-Ḥanafī. *Ḥāshiyat Radd al-Muḥtār ‘alā al-Durr al-Mukhtār*, 2nd ed., Beirut: Dār al-Fikr, 1421 AH, 8 vols.
- Ibn ‘Ajībāh, Aḥmad ibn Muḥammad. *Al-Baḥr al-Madīd fī Tafsīr al-Qur‘ān al-Majīd*, Beirut: Dār al-Kutub al-‘Ilmiyyah, 1419 AH.

- Ibn Amīr al-Ḥājj, Abū ‘Abd Allāh Shams al-Dīn Muḥammad ibn Muḥammad. *Al-Taqrīr wa al-Taḥrīr fī ‘Ilm al-Uṣūl*, 2nd ed., Beirut: Dār al-Fikr, 1417 AH, 3 vols.
- Ibn Nujaym, Zayn al-‘Ābidīn ibn Ibrāhīm. *Al-Ashbāh wa al-Nazā’ir*, n.p., Beirut: Dār al-Kutub al-‘Ilmiyyah, 1400 AH, 1 vol.
- Ibn Qayyim al-Jawziyyah, Muḥammad ibn Abī Bakr. *I‘lām al-Muwaqqi‘īn*, n.p., Beirut: Dār al-Jīl, 1973, 4 vols.
- Ibn Qudāmah, ‘Abd Allāh ibn Aḥmad. *Rawḍat al-Nāzir wa Jannat al-Manāzir*, 2nd ed., Riyadh: Imam Muḥammad ibn Saud University, 1399 AH.
- Ibn Taymiyyah, Taqī al-Dīn Abū al-‘Abbās Aḥmad ibn ‘Abd al-Ḥalīm. *Al-Fatāwā al-Kubrā*, n.p., Beirut: Dār al-Kutub al-‘Ilmiyyah, 1408 AH, 6 vols.
- Manṣūr ibn Muḥammad al-Sam‘ānī. *Qawāṭi‘ al-Adillah fī al-Uṣūl*, edited by Muḥammad Ḥasan Ismā‘īl al-Shāfi‘ī, 1st ed., Beirut: Dār al-Kutub al-‘Ilmiyyah, 1418 AH.
- Ministry of Awqaf and Islamic Affairs. *Kuwaiti Fiqh Encyclopedia*, 1st ed., Kuwait, 1404 AH.
- Muḥammad al-Ashqar. *‘Aqd al-Istiṣnā’*, 1st ed., Beirut: Mu’assasat al-Risālah, 2000.
- Muḥammad ibn Su‘ūd al-‘Uṣaymī. *Encyclopedia of Contemporary Financial Transactions*, n.p., Riyadh: Dār al-Maymān, 2018.
- Mukhlis, L. (2025a). A Phenomenological Study of Personal Spiritual Experiences in Navigating Religious Pluralism within Interfaith Communities. *Irfana: Journal of Religious Studies*, 1(6), 212–220.
- Mukhlis, L. (2025b). Spiritual Grounds for Economic Growth: A Qualitative Exploration of Rural Indonesian Women’s Transformative Journeys Through Mosque-Led Empowerment Programs. *Servina: Jurnal Pengabdian Kepada Masyarakat*, 1(8), 289–298.
- Mukhlis, L., & Abdullah, M. N. (2025). *Hukum Keluarga Islam di Indonesia* (1st ed.). Mukhlisina Revolution Center.
- Mukhlis, L., Arifin, T., Ridwan, A. H., & Zulbaidah. (2024). Integrating Artificial Intelligence and Maqāṣid al-Syarī‘ah: Revolutionizing Indonesia’s Sharia Online Trading System. *Computer Fraud and Security*, 2024(11), 301–309. <https://doi.org/10.52710/cfs.238>
- Mukhlis, L., Arifin, T., Ridwan, A. H., & Zulbaidah. (2025). Reorientation of Sharia Stock Regulations: Integrating Taṣarrufāt al-Rasūl and Maqāṣid al-Sharī‘ah for Justice and Sustainability. *Journal of Information Systems Engineering and Management*, 10(10s), 58–66. <https://doi.org/10.52783/jisem.v10i10s.1341>
- Mukhlis, L., Arifin, T., Ridwan, A. H., Zulbaidah, Rosadi, A., & Solehudin, E. (2025). Reformulation of Islamic Stock Law: The Application of Taṣarrufāt al-Rasūl and Maqāṣid al-Syarī‘ah to Develop a Dynamic and Sustainable Islamic Capital Market in Indonesia. *Journal of Posthumanism*, 5(3), 1–13. <https://doi.org/10.63332/joph.v5i3.913>
- Mukhlis, L., Januari, Y., & Syafe’i, R. (2023). INDONESIA STOCK EXCHANGE: THEORETICAL AND PHILOSOPHICAL ANALYSIS OF MUDHARABAH AND MUSYARAKAH CONTRACTS. *Yurisprudencia: Jurnal Hukum Ekonomi*, 9(2), 243–264. <https://doi.org/10.24952/yurisprudencia.v9i2.8466>
- Mukhlis, L., Maryam, S., & Sormin, S. A. (2023). Model Pembelajaran Living History Berbasis PjBL Untuk Meningkatkan Keterampilan Histografi Mahasiswa. *Jurnal Educatio FKIP UNMA*, 9(4), 1800–1809. <https://doi.org/10.31949/educatio.v9i4.5595>

- Mukhlis, L., & Saidah, Y. (2025). Dynamics of Nature-Based learning in Developing Children's Motoric Skills: Teacher and Parent Perspectives. *HUMANISMA: Journal of Gender Studies*, 9(1), 64–79. <http://dx.doi.org/10.30983/humanisme.v4i2.9366>
- Mukhlis, L., Suradi, Janwari, Y., & Syafe'i, R. (2023). Sosialisasi Saham Syariah sebagai Instrumen Pengembangan Ekonomi Masyarakat di Badan Kontak Majelis Taklim (BKMT) Kabupaten Mandailing Natal. *Jurnal Pengabdian Multidisiplin*, 3(2), 2–9. <https://doi.org/10.51214/japamul.v3i2.604>
- Muslim ibn al-Ḥajjāj al-Qushayrī. *Ṣaḥīḥ Muslim*, n.p., Beirut: Dār al-Jīl, n.d., 8 vols.
- Wahbah al-Zuḥaylī. *Islamic Jurisprudence and Its Evidences*, 1st ed., Damascus: Dār al-Fikr, 2005.