

Analysis of 'Urf in Practices and Ethics in E-Commerce Transactions

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Abstract

Purpose and Methodology: This research examines the role of 'urf (social customs) in shaping e-commerce business practices, focusing on three dimensions: the marketplace contract of sale (ijab qobul), the cost of return shipping, and the practices of affiliates requesting product samples in affiliate marketing. The aim of the research is to investigate the role of 'urf in e-commerce business practices, using a qualitative method with a library research approach.

Results: In the dimension of the contract of sale (ijab qobul), 'urf plays an important role in describing the changing transaction patterns from offline to online. Although the contract of sale is often not expressed verbally or in writing, the 'urf remains the legitimate basis according to Sharia principles. In the dimension of return shipping costs, 'urf serves as the basis for fair business practices in accordance with Sharia principles. Sellers responsible for shipping errors bear the cost of return shipping, reflecting good 'urf and adherence to Islamic business ethics. Finally, in the practice of affiliates requesting product samples, 'urf as a common habit of affiliates poses challenges in terms of safety and fairness in marketing. This research highlights the importance of understanding 'urf and reaching early agreements between stakeholders to prevent unethical practices. In conclusion, 'urf not only reflects societal customs, but also becomes a critical point in formulating business practices that are in line with the ethics and principles of Islamic Shari'ah, providing guidance for e-commerce companies to adopt practices that are more ethical and fair.

Keywords: 'Urf, E-commerce Business Practices, Ijab Qobul Contracts, Return Shipping Costs, Affiliate Marketing

Introduction Section

The development of information technology, particularly in the field of e-commerce, has had a significant impact on the patterns of trade and business interactions in the modern era. This phenomenon has led to the emergence of various transactional practices and policies in digital platforms, including legal practices and business ethics. In this context, 'urf or social customs play a crucial role in shaping these practices.

As a form of adaptation to market dynamics, 'urf serves as a basis for determining business policies and practices, including those in e-commerce transactions. This study examines the influence of 'urf in three critical areas: the contract of sale (ijab qobul), the cost of return shipping, and the conditions for sending product samples in affiliate marketing practices.

The importance of 'urf as a basis for business practices is also linked to the implementation of Sharia values, which provide ethical guidelines for every transaction. In this context, the understanding of 'urf within society is relevant to the analysis in order to assess the extent to which business practices can comply with Sharia and applicable ethical standards.

Through a qualitative approach and literature review, this research aims to detail the impact and relevance of 'urf in e-commerce practices. This will be done by focusing on the contract of sale (ijab qobul) in marketplace transactions, policies on the cost of returns, and the practices of affiliates requesting product samples in affiliate marketing. An in-depth analysis of these practices is expected to provide a comprehensive overview of the implementation of URF in e-commerce transactions.

This research has significant relevance in the context of the development of legal and business ethics, particularly in dealing with the evolving dynamics of e-commerce. By understanding how URFs shape business practices, we can contribute to improving and optimising policy and regulation in the wider world of e-commerce.

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Literature Review

Moh Farih Fahmi's (2023) research entitled "Analysis of Society's Perception Regarding Administrative Costs in Conventional Banks with Al-Urf Approach and Its Relevance to Islamic Economics", published in the Journal of Economics and Policy Studies, examines the Indonesian public's perception of administrative costs in conventional banks. Using qualitative methods and a Maqashid Sharia approach, the results show that differences in perceptions are influenced by economic skills and understanding. The article concludes that al-urf remains relevant as a basis for administrative costs. From a maqashid sharia perspective, these costs are considered in line with kulliyat al khams. The main conclusion is that administrative costs are legitimate, but require restrictions that are justified only outside the needs of indebtedness. This article provides in-depth insights into public perceptions of administrative costs in conventional banks, combining Maqashid Sharia and common traditions within the context of Islamic principles.

Rizaludin's article (2022) entitled "Analysis of Urf Principles in DSN-MUI Fatwa No. 54 on Sharia Cards", published in Al-Kharaj, discusses the evolution of trade transactions from barter systems to the use of money, with a focus on innovation in the banking world, namely the emergence of Sharia credit cards. This product responds to the community's need for credit cards that adhere to Sharia principles. Fatwa No. 54 of the National Sharia Council (DSN) directs the development of Sharia credit cards by referring to the concept of urf (custom) in fiqh. This qualitative library research explores the relationship between the emergence of Sharia credit cards and the urf principles used in the DSN-MUI fatwa. The findings show that the needs of the community have not fully reached the level of urf, but only at the level of custom. Nevertheless, this fatwa is not automatically invalidated because the DSN-MUI includes other evidence and principles to strengthen Shariah principles in Shariah credit cards. This research contributes as an example of the analysis of the DSN-MUI fatwa and serves as a source of knowledge for those interested in studying related fatwas.

The difference between this research and previous studies lies in the focus and object of research. This study emphasises the role of the 'urf in the context of Islamic law, with a particular focus on sales contracts in the marketplace, the cost of returning goods, and the practices of affiliates requesting product samples. The aim of this research is to examine various aspects of the 'urf in society, particularly in the context of Sharia economic transactions.

Method

This research uses a qualitative research method. Qualitative research is a type of study used to examine the conditions of natural objects, where the researcher becomes a key instrument. Unlike quantitative research, this study focuses more on data and uses theory as a tool to explain and conclude with a theory (Nasution, A. F., 2023: 34).

The type of research used in this study is library research. Library research refers to a research process that involves the collection of information and data using various source materials available in the library or through relevant internet sources related to the research question. This activity is carried out in a structured and systematic manner with the aim of collecting, processing and summarising data using specific methods or techniques. This approach helps to find answers or solutions to the questions at hand and supports the credibility of the research through a comprehensive literature approach (Sari, M., 2020: 52). The information sources used in this research come from various sources, including books, scientific journals, published data, manuscripts and other sources.

Results and Discussion

The place of 'urf in Islamic law

The word 'urf comes from the Arabic root 'arafa, ya'rifu, 'irfan or 'urfan, which essentially means 'to know' or 'to recognise'. Among Muslims, 'urf has related terms such as ma'rifah (knowledge), ta'rif (understanding) and ma'ruf (something known to be good). Linguistically, 'urf refers to something that is considered good and acceptable by common sense (Haisy, Noorwahidah, 2021:160). Terminologically, 'urf is defined as "what is known by people and repeated in their words and actions until it becomes habitual and common" (Rohim, Mif, 2019:119-120).

According to Helim, Abdul (2023: 105), 'urf and custom are essentially the same because 'urf is a habit that is performed continuously or repeatedly, while custom comes from the Arabic word 'aada, ya'uudu, 'audan/'aadatan, which means "to return or repeat". In other words, 'urf and custom refer to actions that are repeated.

According to Wahbah Zuhaili in "Ushul Fiqh Al Islami", 'urf is something that becomes a habit in a society, referring to activities or actions that have become practices in that society, including customs or traditions in the form of actions and language. In this understanding, 'urf refers to traditions or customs that prevail in a particular region or community, including behaviours and expressions that have become common practices and are accepted by society. However, not all customs can be used as a legal basis, especially those that contradict Shari'ah (Rizaludin, R. 2023: 1904-1921).

The use of 'urf as legal evidence is based on the words of Allah in Surah Al-A'raf: 199:

حُذِيَ الْعَفْوَ وَأُمِرَ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ

Meaning: Take freely what is given, enjoin what is good, and turn away from the ignorant.

Allah instructs Muslims to follow the good customs of society ('urf). This perspective is based on the belief that it is recommended to follow good customs that benefit the community. This verse commands the implementation of what is considered good so that it becomes a tradition in a community. This call is based on the consideration of good habits and is considered useful for their well-being. Similarly, in the saying of Ibn Mas'ud narrated by Ahmad, it is stated:

مَا رَأَى الْمُسْلِمُونَ حَسَنًا فَهُوَ عِنْدَ اللَّهِ حَسَنٌ

Meaning: What Muslims consider good is also considered good by Allah. This saying of Ibn Mas'ud indicates that the good habits of the Muslim community on a particular issue can be the basis for the issue to have a positive value in the eyes of Allah (Fitriani, L. 2021: 249).

F, Rizal (2019: 159-160) explains that 'urf should not be opposed or eliminated, but can be used as a basis for the design of legal products because the general view does not essentially contradict Allah's will. Basically, 'urf does not hinder life, but greatly helps in organising community life and managing the life of each member of society. According to Imam al-Syatibi and Ibn Qayyim al-Jauziyah, 'urf can be accepted as evidence for the establishment of Islamic law. However, they both point out that this is the case when there is no evidence to explain the law related to the issue.

Azhari, Fathurrahman (2019: 148) explains that many scholars generally use 'urf shahih as a basis for argumentation as long as it does not contradict the Shariah. For example, Imam Malik often establishes laws based on the practices of the people of Medina. Imam Abu Hanifah and his followers, on the other hand, tend to rely on 'Urf, the customs of the people of Kufah. The same applies to Imam Shafi'i, where he acknowledges the relevance of 'Urf. Thus, his views in Egypt changed significantly from those he held in Baghdad, known as "qawl qadim and qawl jadid".

Different types of 'urf

In the context of actions, 'urf can be divided into two types. First, 'Urf Lafdzi / Qauli refers to the community's habit of using certain words or expressions to describe something. For example, the term "soto kudu" commonly refers to soto with beef when we order beef soto. However, if we visit a soto kudu stall or buy soto in kudu, we won't find beef anywhere, but rather buffalo meat. This is because in the past the people of Kudus did not slaughter and eat beef, so they replaced it with buffalo meat. This habit has been maintained until today, making it a characteristic of "soto kudu", indicating that the soto is made with buffalo meat, not beef (Rosyid, M., etc., 2021: 24).

Second, 'Urf Fi'li / 'Amali refers to community habits related to actions, such as buying food at a food stall. For example, when we order food, we consume it immediately without knowing the price. Only after we have finished eating do we pay the total cost of the food and drink we have consumed. The practice of eating before paying has become a common habit in society (Iqsan, M. A., 2023: 7).

In the context of validity, 'urf is divided into two types. First, 'Urf Shahih refers to good community habits that do not contradict Sharia, such as the tradition of providing food after Friday prayers, known as Friday charity. Currently, Friday charity is better organised, where worshippers do not have to compete for food after prayers, but the mosque committee manages the charity money from Muslims who want to provide food on Fridays. Then, after the prayers, the whole community can enjoy lunch together in the mosque (Sugiarto, F., etc., 2023: 172-174).

Second, 'Urf Fasid refers to bad community habits that are unacceptable because they contradict the Shari'a, such as the behaviour of people who, out of fanaticism, participated in riots against their chosen presidential candidate. This bad habit, which continues to this day, is a fanaticism that causes tension in society. While it is normal to have different levels of support for a presidential candidate, there is no need to engage in riots just because of differences in support.

In terms of scope, 'urf can be divided into two types. First, 'Urf 'Am refers to habits that are general and apply to most of society without being bound by state, nation and religion. Second, 'Urf Khas refers to customs that are common in a particular community or region and are not universal, such as the custom in Minangkabau society of tracing lineage through the mother's line (matrilinal) rather than the father's line (Ramli, 2021: 88-89). Thus, the understanding and use of 'urf in society can be analysed through these different perspectives.

Conditions for considering 'urf as law

According to Haisy, Noorwahidah (2021: 162), scholars of *usul al-fiqh* state that 'urf can be considered as one of the arguments in determining Sharia law if it meets the following conditions:

First, the prevailing 'urf must not contradict the Qur'an and the Hadith. The existing 'urf must be consistent with the provisions of the Qur'an and Hadith to ensure that it does not contradict the teachings of Islam. Secondly, the customary practice is generally valid in a particular place, and if there are those who do not follow it, their number is small. Urf must be based on the general judgement of society, and if many people practice it, it is considered Urf. Thirdly, the practice must be beneficial and acceptable to common sense. H, Darmawati (2019: 79) emphasises that the fourth condition for 'urf is that it does not apply in the context of mahdhoh worship, but only in muamalah matters.

Fiqh Ijtihad Products in Shariah Economics Based on 'Urf

At the level of ijtihad products, three examples of fiqh forms are presented below, namely the contract of ijab qobul in marketplace transactions, the policy of return shipping costs in buying and selling transactions, and the practice of affiliates requesting product samples:

Contract of Ijab Qobul in Marketplace Transactions

The concept of contract in Islamic law, known as akad, derives from the Arabic word "al-aqd", which can be interpreted literally as a contractual agreement, consensus and transaction (Ertanti, I., 2022: 360). Akad, also known as a bond, decision or reinforcement, can be understood as a commitment manifested through adherence to Sharia values. Etymologically, akad refers to the connection between two matters, both concrete and conceptual, from one or two perspectives. According to the definition of fiqh scholars, akad is a commitment that is established through the process of ijab qabul, according to the provisions of Sharia, and has a significant impact on its object (Amalia, F. A., 2022: 69-70).

The pronunciation of ijab qabul in akad is one of the pillars in buying and selling and is one of the ways that can be used to execute the contract. However, there are various other ways that can reflect the intention to enter into a contract, whether through oral or written communication or through the use of gestures (Lesstari, S. A., 2019: 6).

Thus, ijab qobul can be interpreted as a statement of agreement that results in the transfer of property rights from one party to another in a transaction. In this context, ijab qobul is a process carried out by parties who wish to transact. Ijab is an act that reflects an intention to do or not to do something, while qabul is a statement of acceptance and approval of the intention expressed by the first party. The consequence of this ijab and qabul is the creation of rights and obligations for each party to the contract.

If we look at the evolution of buying and selling transactions over time, there have been significant changes. In the past, sellers and buyers interacted directly (offline) and the process of ijab-qobul was done orally. However, over time, buying and selling transactions no longer required direct meetings, but could be done online through platforms such as Facebook and Instagram, where ijab qobul was communicated in writing. Today, with the passage of time, people tend to conduct transactions through marketplaces. In the marketplace, the process of ijab qobul is not expressed orally or in writing. The question is, how does ijab qobul actually occur in this context, considering that ijab qobul is one of the pillars of buying and selling.

The ijab-qobul contract in marketplace transactions can be understood as follows: the seller performs the ijab by displaying the products in their store showcase on the marketplace, while the buyer performs the qobul by adding the product to the shopping cart (if it matches the product) and then making payment according to the desired method. After the payment is completed, the seller is obliged to send the product as ordered and the buyer has the right to receive the product as ordered. This type of buying and selling is known as bai' mu'athah, where both parties transact without uttering ijab qobul, but there is an agreement or consent regarding the price and goods. According to Indrawati, T. (2021: 120), bai' mu'athah is considered valid when it has become a customary practice that shows agreement and willingness, reflecting the perfection of the will and desires of each party.

Thus, the use of 'urf in the contract of purchase and sale in the marketplace remains in accordance with Sharia, even if it is not expressed orally or in writing. The DSN MUI has clarified the concept of buying and selling in the marketplace through Fatwa No: 144/DSN-MUI/XII/2021 on the marketplace based on Sharia principles, which states that buying and selling in the marketplace is considered valid, as explained above.

Returns policy for buying and selling transactions

Buying products online has become an essential part of our daily lives. However, there are situations where the product we receive does not meet our expectations, perhaps because it is faulty or does not match the description given by the seller. Sometimes, the item received may be less than the quantity expected. In such circumstances, most sellers are willing to replace it or send additional products according to the transaction agreement. However, it is important to consider who is responsible for the cost of resending the item.

In some cases, the responsible seller will bear the cost of reshipping defective or insufficient items. This has become a common practice among sellers who want to maintain the trust of their customers. However, there are situations where the buyer may have to bear the cost of reshipping the item, especially if the error is not the seller's fault but the buyer's fault in ordering the item (Anditya, R., 2019: 121).

The return costs charged to the seller are also regulated in Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Electronic Information and Transactions. According to this law, if the order does not match and the error lies with the seller, then the return shipping costs are the responsibility of the seller. Furthermore, in Fatwa DSN MUI No: 05/DSN-MUI/IV/2000 regarding Salam Sale, the fourth point states that if the item does not match the order and the buyer is dissatisfied, the transaction can be cancelled and the buyer is entitled to a refund.

Therefore, it can be understood that a seller who makes a mistake in shipping and then replaces the item with the return costs borne by the seller is good practice. Conversely, a seller who refuses to take responsibility for the shortage or defect of an item, and therefore refuses to accept returns and/or charges the buyer for shipping, renders such actions improper and contrary to Shariah principles.

Affiliate practice of requesting product samples

An affiliate is a system in an online shopping platform that offers products or services without specific requirements and its benefits are not as significant as becoming a reseller (Noersabila, E. L., 2023: 2). Meanwhile, affiliate marketing is a marketing practice where individuals, called affiliates, market products or services of a store or company on a specific platform. The main objective of affiliate marketing is to attract the attention of potential buyers to purchase the products or services marketed by the affiliate. The affiliate's profit, in the form of a commission on items sold, is determined by the agreement set by the store or company providing the products or services, and the commission percentage is usually stated in the product.

In practice, e-commerce affiliates are divided into several practices. There are affiliates who first ask the seller for permission to market their products (seller cooperation affiliates). On the other hand, there are sellers who look for affiliates to market their products (sellers seeking affiliate cooperation). However, there are also affiliates who market products without permission. In the context of this discussion, the focus is on affiliates who set conditions, namely sending product samples to be promoted during live sessions.

The practice of requiring affiliates to send samples first has now become commonplace. It is so common that affiliates may receive more than 100 different products from different sellers. Often sellers will send more than one sample product, especially if there are variations such as different colours and sizes. This allows affiliates to gain more significant benefits before receiving commissions from product sales. Unfortunately, not all affiliates are trustworthy, as there are cases where affiliates only promote products that offer high commissions, while products with lower profit commissions are ignored or not displayed during live sessions. This contradicts the initial agreement where the seller sends product samples and promises continuous promotion during live sessions.

The practice of setting conditions in the form of sending samples is actually reasonable, especially since not all affiliates have products that can be promoted to buyers. Sending samples can make it easier for affiliates to explain the benefits of products to buyers during live sessions. However, problems arise when affiliates, for various reasons, do not fulfil their obligation to promote the products they have received during live sessions. This condition is contrary to Sharia principles, which require consistency between words and actions. Therefore, affiliates should understand Sharia-compliant contracts to avoid falling into actions prohibited by the religion, such as deception and dishonesty.

Conclusion

In the era of digital transformation and the advancement of information technology, business practices in the field of e-commerce are becoming increasingly complex and dynamic. The involvement of 'urf, or social customs, in shaping policies and business practices is a fundamental aspect. This research highlights the role of 'urf in three critical dimensions of e-commerce business practices: the contract of sale (ijab qobul), the cost of returns, and the practices of affiliates requesting product samples in affiliate marketing.

First, in the dimension of the contract of sale (ijab qobul) in the marketplace, 'urf plays a crucial role in depicting the changing transaction patterns from offline to online. Although the contract of sale is not always expressed verbally or in writing in marketplace transactions, 'urf remains a legitimate and Shari'ah-compliant basis. In this context, understanding 'urf is critical to ensuring compliance with ethical and Shari'ah values in e-commerce business practices.

Second, in the context of return shipping costs, 'urf provides a basis for fair business practices in accordance with Sharia principles. Sellers who take responsibility for shipping errors and cover the cost of return shipping reflect good 'urf and adherence to Islamic business ethics. Conversely, sellers' refusal to cover return shipping costs, or the imposition of such costs on the buyer, may be considered contrary to Shari'ah values.

Finally, the practice of affiliates requesting product samples illustrates how 'urf influences marketing policy in affiliate marketing. The common practice of affiliates requesting product samples for promotion poses challenges in terms of safety and fairness. Understanding 'urf and establishing early agreements between affiliates and vendors is critical to preventing unethical practices such as insecurity and unfairness in product promotion.

Overall, this research shows that 'urf is not only a reflection of societal customs, but also a critical point in formulating business practices that are consistent with the ethics and principles of Islamic Sharia. An in-depth understanding of 'urf can serve as a guide for e-commerce companies to adopt practices that are better, fairer and in line with Shariah values, thereby providing maximum benefits to companies and consumers in the long run.

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