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The Concept of *Khiar Rukyat* According to Imam Abu Hanifah: An Analysis of the Concept, Legal Evidence, and Implementation

Enang Hidayat
STIS Nahdatul Ulama Cianjur
Email: enanghidayat17@gmail.com

ABSTRACT

The validity of *khiar rukyat* (inspection option) according to Imam Abu Hanifah is considered absolute. However, the *khiar rukyat* he proposed is similar to bai al-gharar. The purpose of this research is to understand *khiar rukyat* according to Imam Abu Hanifah, the legal evidence, and its implementation in contemporary commercial contracts. This research falls under the category of normative Islamic legal research within the realm of doctrine (thought) using a conceptual approach. The data collection technique involves document analysis. The analysis utilizes prescriptive analysis of primary sources from the Hanafi school of thought, such as "Al-Mabsut" by al-Sarkhasi, "Tuhfat al-Fuqaha" by Alaudin al-Samarqandi, "Badai al-Sanai fi Tartib al-Sanai" by Alaudin al-Kasani, and others. This is supplemented by a review of previous research. The research findings indicate that the concept of *khiar rukyat* according to Imam Abu Hanifah is flexible because the connotation of rukyat is not only interpreted by observing the object of goods but also connotes that the object of goods can be touched and smelled. The evidence used by Imam Abu Hanifah regarding *khiar rukyat* includes hadith narrations from al-Baihaki from Makhul and from al-Daruqutni from Abu Hurairah. Additionally, there is a hadith narration from al-Baihaki from Abu Mulaikah concerning the right of *khiar rukyat* for the buyer only. Furthermore, the implementation of *khiar rukyat* in contemporary commercial contracts, such as online buying and selling, is difficult to execute due to customary practices (*urf*)
Keywords: *Khiar rukyat,* Imam Abu Hanifah, Legal Evidence, Implementation.

ABSTRAK

Keabsahan khiar rukyat menurut Imam Abu Hanifah bersifat absolut. Namun. khiar rukyat yang dikemukakannya serupa dengan bai al-gharar. Tujuan penelitian untuk mengetahui khiar rukyat menurut Imam Abu Hanifah, dalil hukum dan implementasinya dalam akad muamalah kontemporer. Penelitian ini termasuk ke dalam jenis penelitian hukum Islam normatif kategori ranah doktrin (pemikiran) dengan menggunakan pendekatan konseptual. Teknik pengumpulan data penelitian ini adalah studi dokumen. Analisisnya mengggunakan analisis preskriptif terhadap sumber primer kitab mazhab Hanafi, seperti "Al-Mabsut" karya al-Sarkhasi ; "Tuhfat al-Fuqaha" karya Alaudin al-Samarqandi ; "Badai al-Sanai fi Tartib al-Sanai" karya Alaudin al-Kasani, dan yang lainnya. Ditambah dengan review terhadap penelitian terdahulu. Penelitian ini menghasilkan temuan bahwa konsep khiar rukyat menurut Imam Abu Hanifah bersifat fleksibel, karena konotasi rukyat tidak hanya dimaknai dengan melihat objek barang, tapi berkonotasi juga objek barang itu dapat diraba, dan dicium. Dalil yang digunakan oleh Imam Abu Hanifah tentang khiar rukyat, yakni hadis riwayat al-Baihaki dari Makhul dan riwayat al-Daruqutni dari Abu Hurairah. Ditambah dengan hadis riwayat al-Baihaki dari Abu Mulaikah yang berkaitan dengan hak khiar rukyat bagi pembeli saja. Selanjutnya implementasi khiar rukyat dalam akad muamalah kontemporer seperti jual beli online sulit untuk dilaksanakan, karena berkaitan dengan urf.
Kata Kunci: *Khiar rukyat, Imam Abu Hanifah, Dalil Hukum, Implementasi.*

Introduction

Imam Abu Hanifah, in his opinion, allows flexibility regarding the permissibility of *khiar rukyat* (inspection option). This differs from other scholars such as Imam Shafi'i who initially (in the *qaul qadim*) agreed with Imam Abu Hanifah, but later changed his stance in the *qaul jadid.* Imam Malik indeed opined that *khiar rukyat* is permissible, but with the condition that the object of the transaction is not too far away. This is because if it is too distant, the object may change before its delivery time. Similarly, Imam Ahmad bin Hanbal firmly stated that *khiar rukyat* is not valid. However, there are differences of opinion within his stance as well. According to another narration, Imam Ahmad agreed with Imam Shafi'i. The flexibility of Imam Abu Hanifah's opinion on *khiar rukyat* has an impact on the issue of *bai al-gharar*, as argued by Imam Shafi'i in his *qaul jadid*. This creates an impression that there is confusion and similarity between the concept of *khiar rukyat* and *bai al-gharar*. Similarly, there is a potential risk of *khiar rukyat* in its implementation, especially concerning contemporary commercial transactions.

The theory of rukyat, or inspecting goods before purchase, is generally conducted at the beginning before the contract is concluded, while the concept of *khiar rukyat* is related to inspecting goods at the end after the contract has been made. Therefore, the research aim can be formulated as understanding Imam Abu Hanifah's opinion on *khiar rukyat*. Additionally, it aims to analyze the Islamic legal evidence regarding *khiar rukyat* used by Imam Abu Hanifah and its implementation in contemporary commercial contracts, such as online buying and selling.

There are several previous studies related to this topic. One of them is Ahmad Afah's research, which explains various opinions of scholars regarding the validity of *khiar rukyat*. Hanafi scholars argue that it is valid, regardless of whether the buyer chooses to continue or annul the contract upon inspecting the goods. Shafi'i scholars, including Imam al-Shafi'i, hold in the *qaul qadim* that it is valid if the type or characteristics of the goods are mentioned. The buyer has the right to khiar if the goods are visible but not as expected. However, in the *qaul jadid,* it is deemed invalid if the buyer does not see the goods, even if they are present during the contract. Hanbali scholars agree that *khiar rukyat* is invalid because it falls under *jahalah fahisyah.* However, if only the type is mentioned but not the characteristics, there are two opinions. Maliki scholars agree that *khiar rukyat (bai al-ghaib)* is valid. However, there is a difference regarding whether its validity is absolute or subject to other conditions (Afah, 1983). Ahmad Afah's study is comparative regarding the validity of *khiar rukyat* and *khiar aibi.* Furthermore, his research did not analyze the legal evidence and implementation of *khiar rukyat.*

Al-Halbusi's writing, similar to Ahmad Afah's, addresses the controversy among scholars regarding *khiar rukyat* (Al-Halbusi, 2021). Ali Ahmad Saleh al-Mahdawi discusses *khiar rukyat* in the context of Qanun al-Ittihadi Number 1 of 2006 concerning Electronic Transactions and Trade and Qanun al-Ittihadi Number 24 of 2006 concerning Consumer Protection, both in Saudi Arabia (Al-Mahdawi, 2010). Although his research does not analyze the legal evidence used, it is noteworthy because of its association with the implementation of those laws. Mohd Afandi Awang Hamat and Syakirah binti Abdul Halim highlight the differences in opinions among scholars regarding *khiar rukyat*. However, they prefer the opinions of Maliki and Hanbali scholars, which allow *khiar rukyat* as long as the object of sale is specified accurately during the contract session (Halim, 2014). Then the writings of Rabahi Ahmad and Amari Ibrahim, as well as the research of Ahmad Afah and Al-Halbusi, discuss the controversy among ulama regarding the existence of khiar rukyat and its valid arguments. Their research did not analyze its implementation (Ibrahim, 2016).

Ummu Kulsum Sabih Muhammad, Ismail Mahmud al-Jaburi, and Asyraf Ismail al-Udwan discuss laws in Iraq and Jordan. Although they mention the opinions of scholars regarding *khiar rukyat*, they also touch upon the views of Shia Imamiyah and Ibadiah scholars. However, their research does not attempt to draw conclusions between Sunni and Shia versions of *khiar rukyat* thinking (Umu Kulsum, 2020).

Abdullah Taguj explains the position in electronic contracts where sometimes one acts as a consumer (*mustahlik*) and other times as a trader (*tajir*). In Law No. 7 of 2017 concerning consumer protection, Article 2 explicitly states that this protection covers electronic consumers and electronic buyers (electronic traders). Taguj's research examines the validity period of *khiar rukyat* according to Jordanian law (Article 5) and Islamic jurisprudence. According to this article, it applies for no more than a week from the date of the contract. However, his research does not focus on analyzing which opinion of the scholars is suitable to be used regarding the validity period of *khiar rukyat*, particularly concerning its implementation, especially in relation to that law (*qanun*).

Ahmad Saichoni & Didik Setiawan's article concludes that *khiar rukyat* can be applied in online transactions as a form of consumer protection. By using *khiar rukyat*, consumers can cancel online transactions and request a refund from the seller. However, their research does not address the risks of implementing *khiar rukyat*, nor does it mention the opinions of the scholars who permit *khiar rukyat*. Then Abdul Ghofur & A. Munif (2017) mention that conditions, *khiar rukyat*, and *khiar aib* can be applied in e-commerce online trading. However, *khiar majelis* cannot be applied in such trading (Ghofur, Abdul & Munif, 2017).

Muhammad Hafiz and Markom explain that *khiar rukyat* receives recognition in Malaysia due to the harmony between Islamic law proposed by Maliki and Hanbali scholars and the Qanun enforced in Malaysia, such as through the Sale of Goods Act 1957 and the Consumer Protection Act 1999 (Hafiz, Muhammad & Markom, 2013)

Nusia specifically explains *khiar rukyat*, in addition to other types of khiar such as *khiar majelis, khiar syarat, khiar aib*, and *khiar takyin*. However, Musa's analysis is less sharp regarding which khiar is more dominant and applicable in online buying and selling. Their research only focuses on comparing the connection between the role of khiar in Islamic law and Law No. 8 of 1999 concerning the Protection of Consumer Rights (Nusia, 2015).

Baiq Elbadriati highlights *khiar rukyat*, along with *khiar majelis* and *khiar aibi*, as part of *khiar* viewed from its foundation in syara. The motive behind khiar is to provide an opportunity for consideration on whether to proceed with the sale and purchase agreement after both parties have directly observed. It serves as a rational consideration before deciding to proceed with the transaction (Elbadriati, 2015).

The novelty of this research lies precisely in its specific focus on examining Imam Abu Hanifah's thoughts on khiar rukyat, a topic not extensively covered in previous studies. This research delves into the legal evidence supporting Imam Abu Hanifah's view, including relevant hadiths, and explores the application of khiar rukyat in modern commercial transactions, such as online buying and selling. By employing a normative-conceptual approach, this study offers a new understanding of the flexibility of khiar rukyat, encompassing not only visual inspection but also other senses like touch and smell. This unique perspective bridges classical Islamic legal concepts with practical applications in the digital age, highlighting the relevance and effectiveness of Imam Abu Hanifah's perspective in contemporary contexts.

Methods

This research falls under the category of normative Islamic legal research, specifically in the realm of doctrine (thought), utilizing a conceptual approach. The data collection technique employed in this study is document analysis, and the analysis method used is prescriptive analysis. Primary data sources for this research include various works by Hanafi scholars such as "Al-Jami al-Sagir" by Muhammad bin Hasan al-Shaybani (d. 189 H); "Al-Mabsut" by Shams

al-Din al-Sarakhsi (d. 490 H); "Tuhfat al-Fuqaha" by Alauddin al-Samarqandi (d. 539 H); "Badai al-Sanai fi Tartib al-Sanai" by Alauddin al-Kasani (d. 587 H); "Al-Hidayah" by al-Marghinani (d. 593 H); "Kanz al-Daqaiq" by Abi al-Barkat al-Nasafi (d. 710 H); "Radd al-Mukhtar ala al-Durr al-Mukhtar Sharh Tanwir al-Absar" by Ibn Abidin (d. 1252 H), among others. Additionally, a review of relevant previous research studies has been conducted

Definition Of Khiar According To Hanafi Scholars

Generally, there is no difference among scholars regarding the definition of khiar. As explained by Ibn Manzur, Al-Zubaidi, and other scholars, they agree that the word "khiar" (خيار) linguistically derives from the noun "ikhtiyar" (إختيار) or "ikhtara" (إختار), meaning to choose the best option from two things, whether to proceed with or cancel a sales contract (طلب خير الأمرين إما إمضاء البيع أو فسخه) (Manzur, n.d,), (Al-Zubaidi, n.d).

It can be concluded that scholars, including Imam Abu Hanifah and the scholars of the Hanafi school, define the word "khiar" linguistically as meaning to seek the best outcome in matters of sales contracts. This effort to achieve the best outcome is done by giving the parties the option to either proceed with or cancel the contract. Khiar serves to ensure that neither party feels financially disadvantaged. The linguistic definition of khiar also falls within its technical definition. The difference lies only in its categorization, as will be discussed subsequently.

In the related literature, there is an understanding that khiar is created to ensure fairness in transactions between sellers and buyers, so that no one is financially harmed (Nurjannah et al., 2023). Khiar is considered as a choice right agreed upon by both parties and does not affect the validity of the sales contract, as it is not a condition for its validity (Nubahai, 2023; Kharunnisak, 2022). However, the implementation of khiar in online buying and selling is still rare and difficult due to the minimal knowledge of the concept among the public (Apriliani et al., 2023).

If one wants to apply khiar, such as in e-commerce transactions, it can take the form of the consumer's ability to return goods, either by exchanging them for similar items or requesting a refund (Dwi Novita, Luthfi El-Falahi, 2022). Similarly, in the e-commerce business of Sale Stock Indonesia online store, there is an implementation of khiar, such as *khiar majelis, khiar aibi, khiar syarat, khiar sifat, khiar takyin, khiar rukyat,* and *khiar naqd* (Muhsin Hariyanto, 2023). In marketplaces, there are practices of *khiar aibi* and *khiar rukyat,* such as on Shopee, Tokopedia, and Bukalapak (Lorien et al., 2022). On the Shopee marketplace site, *khiar aibi, khiar syarat,* and *khiar rukyat* can be applied. *Khiar aibi* relates to the buyer's right to return defective goods. Khiar syarat pertains to the right to lodge complaints granted to buyers by Shopee. And *khiar rukyat* concerns the right to complain for buyers who cannot directly inspect the ordered goods at the time of the transaction (Sofyan & Teti, 2021). From the perspective of *maqasid al-shariah*, the right to khiar plays a strategic role in realizing the benefit of both parties, especially concerning efforts to preserve wealth (*hifz al-mal*) (Widjaja et al., 2023).

Classification of Khiar According to Imam Abu Hanifah

Classification of khiar according to Imam Abu Hanifah was articulated by his followers or known as the Hanafi scholars. One of the Hanafi scholars, like Alaudin Al-Kasani (d. 587 H) in "Badai al-Sanai," globally divided khiar into two categories. *First,* khiar that is determined by conditions. *Second,* khiar that is determined by Sharia but not by conditions. The first type of khiar is divided into two parts, namely *khiar takyin* and *khiar syarat* (Al-Kasani, 2003).

Khiar takyin refers to the "right of choice for the buyer to determine their preference when the seller instructs them to choose among two or more items that they are going to sell." This opinion is also supported by the Maliki scholars. However, scholars of the Shafi'i, Hanbali, and Zahiri schools hold the opposite view, stating that it is not permissible.

Khiar syarat means "the right of choice given to each party whether to accept or reject the item to be sold or purchased within a period of three days." So, within that time frame, both parties must decide their intention to proceed with the contract. The majority of scholars,

including the Hanafi scholars, agree to permit this type of *khiar syarat.* Badr al-Din al-Ayni (d. 855 H) in "Al-Binayah Syarah al-Hidayah" mentioned that there are four types of khiar in buying and selling : *khiar syarat, khiar rukyat, khiar aib,* and *khiar takyin.*

Regarding *khiar rukyat,* Al-Marghinani (d. 593 H) in "Al-Hidayah" mentions that the meaning of *khiar rukyat* is "someone who buys something but does not see the item, then they are allowed khiar when they see the item. Whether they want to buy it or not" (Al-Aini, 2000).

Similarly, Al-Marghinani explains that the meaning of *khiar aib* is "the right of choice for a buyer who finds a defect in the item they purchased, whether they want to buy it or not. The main principle is that the contract demands the item to be free from defects, so it does not cause harm to them" (Al-Aini, 2000).

Khiar rukyat According to Imam Abu Hanifah

Imam Abu Hanifah did not personally write down his ideas or works through his own hands, but his ideas were recorded by his disciples, such as Abu Yusuf, Muhammad bin Hasan al-Shaybani, and others, including in the discussion regarding *khiar rukyat*, which is a part of the discussions in his jurisprudential work. The following presents an example of Imam Abu Hanifah's opinion regarding other forms of khiar as compiled by several Hanafi scholars (including his disciples) through their respective works.

Imam Abu Hanifah and other Hanafi scholars agree to define *khiar rukyat* as a form of sales contract wherein the buyer does not inspect the object being sold. Upon inspection and dissatisfaction with the item, the buyer has the right to either proceed with the contract or cancel it by returning the item to the seller. Muhammad bin Hasan al-Shaybani (d. 189 H) in "Al-Jami al-Sagir" mentions Imam Abu Hanifah "giving an example of *khiar rukyat*, such as someone buying food without inspecting it beforehand. And he said: 'I have approved it.' Then, upon inspection, if he does not approve it, he may return the food to the seller." (Al-Shaybani, 1990). Al-Aqdam al-Halabi (d. 447 H) in "Al-Kafi fi al-Fiqh" explains that a sale where the object is unseen or concealed by a container or otherwise is permissible as long as its characteristics are described by the seller (Al-Halabi, n.d.). Syamsudin al-Syarkhasi (d. 490 H) in "Al-Mabsut" quotes Imam Abu Hanifah's statement regarding *khiar rukyat* as referring to a situation where someone buys something without seeing it, but upon seeing it, they have the right to return it to the seller. (Al-Sarkhasi, n.d.).

Alaudin al-Samarqandi (d. 539 H) in "Tuhfat al-Fuqaha" explains that *khiar rukyat* relates to purchasing something that is unknown to the buyer, which is permissible. Similarly, if the seller sells something unknown to them, and it later becomes known to the buyer, it is permissible, but the buyer does not have the right of *khiar rukyat*. (Al-Samarqandi, 1984). The validity of *khiar rukyat* occurs when the buyer sees the item, not before. However, if the buyer allows the sale agreement before seeing the item, the right of khiar does not expire. The buyer has the right to khiar whether to cancel or proceed with the sale agreement when they see the object of the sale agreement (the item). (Al-Samarqandi, 1984).

Abi al-Muzaffar al-Naisaburi (d. 570 H) in "Al-Furuq fi al-Furu" mentions that if the buyer says "I have accepted" even without seeing the item, it is not valid. Because acceptance can only be considered if they have seen it, which affects the right to return the item. (Al-Naisaburi, 2005).

Alaudin al-Kasani (d. 587 H) in "Badai al-Kasani" explains that the existence of *khiar rukyat* is determined by Shariah, but its conditions are not. Its definition is the same as previously explained. The nature of *khiar rukyat* is that it does not bind both parties *(ghair*

lazim), because it relates to not seeing the item, which can prevent the perfection of the contract. Initially, Imam Abu Hanifah opined that a seller, like a buyer, is allowed to engage in a contract before seeing the item. In such a case, the contract's status is non-binding, so the seller has khiar rights upon seeing the item. Later, he withdrew his opinion, making its status binding, thus the seller does not have khiar rights. (Al-Kasani, 2003). The meaning of the statement implies that Imam Abu Hanifah believed that the seller must see the item to be sold if they want to have khiar rights.

Al-Marginani (d. 593 H) in "Al-Hidayah" explains that if someone buys something without seeing it, it is permissible. They have khiar rights when they see it, whether they want to continue the contract or cancel it by returning the item to the seller. The lack of clarity (*jahalah*) due to not seeing the item does not potentially lead to disputes in the future. Furthermore, if the buyer does not agree with the item, they can return it to the seller. Similarly, if the buyer approves it (before seeing the item), then sees it later, they can return it because the khiar depends on seeing it afterward. Approval of something before knowing its qualities cannot be considered. Whereas if the seller sells something they do not know, they do not have khiar rights. Initially, Imam Abu Hanifah opined that khiar was permissible, as it was equated with *khiar aib* and *khiar syarat.* Subsequently, al-Marginani explains that *khiar rukyat* is not time-bound until something cancels it. (Al-Marginani, 1417). In other words, similar to the information obtained from al-Kasani, Imam Abu Hanifah withdrew his opinion. This is also explained by Hisyamudin al-Razi in "Tabyin al-Haqaiq" (Al-Razi, 2007).

Abi al-Barkat al-Nasafi (d. 710 H) in "Kanz al-Daqaiq" explains that buying something unknown is permissible. The buyer can return it if they see it, even if they had previously approved it. However, the seller who has not seen the item they are selling does not have khiar rights. Furthermore, transactions conducted by blind individuals are legally valid. However, khiar rights are forfeited if they buy something by feeling, smelling, or tasting it. (A. B. Al-Nasafi, 2011).

Ibnu Abidin (d. 1252 H) in "Radd al-Mukhtar" explains that the permissibility of *khiar rukyat* applies not only to buyers but also to sellers. The object not seen by the buyer and seller may be hidden or covered by another object. Furthermore, Ibnu Abidin states that according to the most authentic opinion, the permissibility of khiar after seeing the item is not limited by time. (Abidin, 2003).

Ali Haidar (d. 1353 H) in "Durar al-Hukkam Syarh Majallah al-Ahkam al-Adliah" mentions that *khiar rukyat* exists in three forms. *Firstly*, someone buys an item without seeing it. *Secondly*, a buyer may see some parts of the item among various objects. *Thirdly*, a blind person buys an item without being able to determine its qualities. (Haidar, 2003). *Khiar rukyat* is not limited to sales contracts but also applies to any contract that may accept dissolution (*fasakh*), such as lease agreements, shares, and agency contracts, as all of these fall under *muawadah* contracts. *Khiar rukyat* does not apply to the buyer who has not seen the item because seeing the item is a condition for establishing khiar, nor does it apply to the seller. Similarly, *khiar rukyat* is established without any specific conditions and is not limited by time. (Haidar, 2003).

In the "Majallah al-Ahkam al-Adliah," *khiar rukyat* is explicitly mentioned in Article 320, which states: "Anyone who buys an item that they cannot see is allowed khiar until they see the item. After that, they have the right to either continue the contract or cancel it."

Furthermore, in Article 321 it is stated : "The option of *khiar rukyat* does not transfer to the heirs. If a buyer dies before purchasing the goods, then the contract becomes customary, and there is no option of khiar for their heirs." This provision is due to the fact that *khiar rukyat* is related to the expression of will, which cannot transfer to the heirs, and *khiar rukyat* only applies to the parties involved in the contract, while heirs are not considered parties to the contract. Therefore, if the buyer dies before seeing the goods, the sales contract becomes customary, and the buyer's heirs inherit the property without having the option of *khiar rukyat.* (Haidar, 2003).

Article 323 states: "The meaning of seeing the item in *khiar rukyat* is knowing the condition and location of the contract object, such as tasting the flavor of food and drink. If the buyer has known both (the condition and location), and then purchases it, then there is no *khiar rukyat* right for him." (Haidar, 2003).

Article 329 states: "Buying and selling done by a blind person is legally valid." In the case of a contract of sale performed by a blind person, its status is similar to a contract made by a person who can see, except in certain cases such as testimony *(syahadat)*, and others. This differs from Imam al-Shafi'i's opinion, who states that the contract of sale of something done by a blind person is not valid, unless before becoming blind, they had seen something that is not subject to change when they become blind, such as iron, and the like. (Haidar, 2003).

Article 331 states: "And the right to khiar for a blind person is nullified if they touch something, smell it, or taste it, but this does not diminish the validity of the contract of sale." (Haidar, 2003).

Contemporary scholars like Mustafa Ahmad al-Zarqa, in his work "Aqd al-Bai," clarify that the unseen object in *khiar rukyat* before the contract refers to situations where the object is not physically present in the contract session or is present but concealed by something, making its legal status equivalent to its absence. Additionally, al-Zarqa explains that the concept of "seeing" in this context is not limited to vision but can also include any other senses such as touch, smell, and taste, especially when it comes to food items. Therefore, a blind person can engage in a contract by touching the object. In such cases, their legal status is considered equivalent to that of a sighted person making a contract. Furthermore, *khiar rukyat* cannot be inherited, so if the buyer passes away before seeing the item, their heirs do not have the right to khiar when they see it. (Al-Zarqa, 2012).

Another contemporary scholar, Wahbah al-Zuhaili, in his work "Al-Fiqh al-Hanafi al-Muyassar," explains that *khiar rukyat* does not require a judge's ruling or the seller's consent. The conditions regarding the validity of *khiar rukyat* are established by indication or something that points to the object or its location. If there is no indication, then according to the consensus of scholars, it is not valid. This is because it is not permissible to sell something whose type, characteristics, or indications are unknown. However, an indication pointing to the object or its location is not the sole condition; there are other conditions such as knowing its identity, which helps eliminate significant ambiguity *(jahalah fahisyah)*. The legal effect of *khiar rukyat* does not prevent ownership but can affect its normalcy. The determination of *khiar rukyat* applies to the exchange of one item for another or bartering (*muqayadah*) for both parties involved. However, *khiar rukyat* does not apply to exchanging debts with other debts (*al-sarf*). (Al-Zuhaili, 2010).

Sheikh As'ad al-Sagurji, in his work "Al-Fiqh al-Hanafi wa Adillatuhu," also explains that the permissibility of buying something unseen with an indication pointing to its location is

by consensus (*ijmak*). Similarly, the buyer is allowed to exercise khiar when they see the item, whether they see its characteristics or otherwise. However, anyone who sells something unseen to them has no right to khiar. This is because the condition is only directed towards the buyer concerning concerns about the item changing and rejecting deception. The nullification of *khiar rukyat* can also occur when observing part of something, such as seeing the yard of a house, the color of a garment, or smelling the scent of perfume. If the buyer sees part of the item during the contract, they are permitted to exercise khiar if they see part of it. (Al-Sagurji, 1999).

The Islamic Legal Evidence Regarding *Khiar rukyat* According to Imam Abu Hanifah is Based on

The validity of *khiar rukyat* according to Imam Abu Hanifah is based on the following hadith evidence:

من اشترى شيئا لم يره فهو بالخيار إذا رأه إن شاء أخذه وإن شاء تركه (رواه البيهقي عن مكحول).

"Whoever buys something unseen, then upon seeing it, he is allowed to exercise khiar. If he desires, he may take it, and if he wishes, he may leave it." (Reported by al-Baihaqi from Makhul) (Al-A'zami, n.d.).

من اشترى شيئا لم يره فهو بالخيار إذا رأه (رواه الدارقطني عن أبي هريرة).

"Whoever buys something unseen, then upon seeing it, he is allowed to exercise khiar." (Reported by al-Daruqutni from Abu Hurairah) (Al-Daruqutni, 2004).

Al-Sagurji posits that the status of the hadith regarding khiar is mursal. Mahmud al-Tahhan, in "Taisir Mustalah al-Hadis," explains that a mursal hadith is one whose chain is disconnected after the tabi'in, i.e., the companions of the companions. He elaborates that a tabi'in, whether major or minor, states, "The Messenger of Allah said such and such," or "did such and such." This, according to scholars of hadith, constitutes mursal. For example, the hadith concerning the prohibition of bai al-muzabanah reported by Muslim from Said bin al-Musayyab. Said was a major tabi'in who narrated the hadith from the Prophet Muhammad Saw without mentioning any intermediary between him and the Prophet Muhammad Saw. Consequently, in such cases, the end of the chain of transmission after the tabi'in is severed. However, according to scholars of jurisprudence and the principles of jurisprudence, mursal is more broadly defined as any hadith with a broken chain *(munqati')*, regardless of where the break occurs. The default ruling for a mursal hadith is that it is weak and rejected due to incomplete conditions for acceptance, namely the continuity of the chain and the presence of an unclear narrator due to omission. This is because the omitted narrator could potentially be other than a companion.

The scholars of Islamic jurisprudence have different opinions regarding the validity of the *mursal hadith*. These opinions can be summarized into three main views: *The first view* is that it is weak and rejected. This is the opinion held by the majority of scholars of hadith, jurisprudence, and the principles of jurisprudence. The rationale behind this is the ambiguity of the omitted narrator, who could potentially be someone other than a companion. *The second view* is that it is authentic and can be used as evidence. This opinion is held by Imam Abu Hanifah, Imam Malik, and Imam Ahmad, provided that the mursal hadith is narrated by a trustworthy (*siqah*) narrator. The rationale behind this is that a trustworthy tabi'in would not attribute a statement to the Prophet Muhammad Saw unless they heard it from another trustworthy source. *The third view*, according to Imam Shafi'i, is that it can be accepted under certain conditions: the mursal narrator must be a major tabi'in, trustworthy (*siqah*), reliable, and his statement must be in agreement with the opinions of other companions. (Al-Tahhan, 2010).

Al-Kasani (d. 587 H) explains that because the buyer does not see the item he intends to purchase, as understood from the hadith, this creates a potential lack of clarity regarding the nature of the item, thus affecting his satisfaction. However, with the right of khiar, if there is dissatisfaction, it can be resolved by canceling it. (Al-Kasani, 2003).

Ibnu al-Humam (d. 861 H) commented on the status of the mursal hadith related to this matter. According to his explanation, the *mursal hadith* can be considered as evidence according to the majority of scholars. The weakness lies in Ibn Abi Maryam due to the uncertainty regarding his reliability, but this does not negate the scholarship of scholars who do not consider it weak. The hadith is also narrated by Hasan al-Basri, Salamah bin al-Mahbiq, and Ibn Sirin. It is also considered as evidence by Imam Malik and Ahmad. The phrase "if he has seen it" as explained in the hadith means knowing the substance of the item to be sold. For example, if the item to be sold can be identified by its scent, such as oil, then that can also be considered as having seen it. (Ibnu al-Humam, 2003).

Similarly to Ibn al-Humam, Al-Marginani (d. 593 H) in "Al-Hidayah" mentions that it is not a prerequisite to physically see all the items to be sold as it poses difficulties. Therefore, it is sufficient to see something that indicates the substance of the item. (Al-Marginani, 1417, 5: 56).

Al-Zailai (d. 743 H) in "Tabyin al-Haqaiq Sharh Kanz al-Daqaiq" explains that the potential ambiguity arising from the buyer not seeing the goods, as understood from the hadith, does not necessarily lead to disputes or disagreements. This is because if the buyer does not approve of the item after seeing it, they can return or cancel it. (Al-Zailai, 1314, 4: 24)

Wahbah al-Zuhaili in "Al-Fiqh al-Hanafi al-Muyassar" explains that the hadith serves as an argument that something unseen by the buyer does not necessarily lead to disputes. This is because once the item to be purchased is seen, if the buyer is unwilling or decides not to proceed with the purchase, they can cancel it or return the item to the seller. This is because the status of the contract in the case of *khiar rukyat* is not yet binding. (Al-Zuhaili, 2010: 487). In another hadith, it is mentioned as follows :

عن أبي مليكة : أن عثمان إبتاع من طلحة بن عبيد الله أرضا بالمدينة ناقله بأرض له بالكوفة فلما تباينا ندم عثمان ثم قال : بايعتك ما لم أراه فقال طلحة : إنما النظر لي إنما إبتعت مغيبا وأما أنت فقد رأيت ما ابتعت فجعلا بينهما حكما فحكما جبير بن مطعم فقضي عثمان أن البيع جائز وأن النظر لطلحة أنه إبتاع مغيبا (رواه البيهقي).

"It is narrated from Abu Mulaikah: "Indeed, Usman exchanged his land in Madinah with someone else's land in Kufah, then he sold it to Talhah. When they had completed the transaction, Usman regretted it and said: 'I have sold my land without even seeing it.' Then Talhah also said: 'Indeed, I have not seen it either, while you had seen it before.' Then they both brought the matter to Jubair bin Mut'im. Jubair ruled that the sale was valid. And the right of khiar belonged to Talhah because he bought something he had never seen." (HR. al-Baihaqi).

Hisyamudin al-Razi (d. 598 H) in "Tabyin al-Haqaiq" (Al-Zailai, 1314) and Ibn Nujaim (d. 979 H) in "al-Bahr al-Raiq" (Al-Nasafi, 1997) mention that the mentioned hadith indicates that the right of *khiar rukyat* only belongs to the buyer, while the seller has no right of *khiar rukyat*. The action of Jubair bin Mut'im, as described in the hadith, was witnessed by the companions, and none of them objected to it. Thus, it became a consensus (*ijmak). Khiar rukyat* is established for the buyer based on the assumption that their judgment regarding the object is better when they see it, and they have the right to return it if they are disappointed. Similarly, the seller is obliged to replace the item with a better one.

The Implementation of *Khiar rukyat* According to Imam Abu Hanifah's Principles in Contemporary Muamalah Transactions

Imam Abu Hanifah's concept of *khiar rukyat* has implications for its implementation in contemporary contracts such as online purchases. The effectiveness of this concept is tested concerning its implementation in modern commercial transactions. While the concept of *khiar rukyat* can be practiced, the risks are significant as it relates to the potential financial loss for one party. In contemporary transactions like online purchases, buyers typically view the goods before making a purchase. The process involves adding the item to the cart, completing the payment, and receiving notifications from the online platform regarding the order status. Thus, the *khiar rukyat* concept does not fit well in contemporary transactions like online purchases,

as the essence of inspecting the goods is done at the beginning, whereas *khiar rukyat* is typically done afterward.

Imam Abu Hanifah's concept of *khiar rukyat*, as presented, is absolute and permissible, particularly concerning the buyer when they inspect the goods. However, the seller does not have the option of *khiar rukyat*, even if the sale is valid. This opinion is well-considered, especially in emphasizing the buyer's satisfaction upon inspecting the goods. In such circumstances, the buyer is allowed to proceed with the contract or cancel it if they are not satisfied with the purchased item. The status of the contract before *khiar rukyat* is conducted is considered non-binding because the buyer's satisfaction is not complete, making the contract incomplete as well.

Furthermore, if related to the conditions of sale, including that the object of the transaction must exist or be clear, Imam Abu Hanifah's concept of *khiar rukyat* does not contradict such conditions. This is because the goods do exist; they are just not visible or obstructed by something. They are simply not present during the contract negotiation. It appears that Imam Abu Hanifah is flexible in interpreting the condition of the goods. Likewise, in interpreting rukyat, it is not limited to vision but also extends to anything that can be touched, smelled, or tasted, especially if it involves food.

Regarding the ambiguity *(jahalah)* concerning unseen goods, Imam Abu Hanifah firmly holds that it does not potentially lead to disputes or conflicts in the future. Moreover, if the buyer does not approve of the goods, they can return them to the seller. In such cases, the buyer needs the courage to decide whether to purchase the item upon seeing it. However, if they feel unsatisfied, this is the risk they face. Nevertheless, with the option of khiar, this can be overcome, but the potential for dissatisfaction remains high. If there's a potential for dissatisfaction, it exists. Even if the goods are visible and their specifications are specifically explained by the seller, there may still be potential dissatisfaction. Nevertheless, the best solution, if one wishes to practice *khiar rukyat*, is for the buyer not to pay upfront. This is to avoid deception by the seller. Payment should be made after the buyer has seen the item or exercised their *khiar rukyat* rights.

Regarding the legal evidence used to support *khiar rukyat*, Imam Abu Hanifah applied the mursal hadith narrated by al-Baihaqi from Makhul and the narration from al-Daruqtuni from Abu Hurairah, as mentioned earlier. Here, he sets a relatively simple criterion for accepting mursal hadith: as long as the mursal narrator is trustworthy *(siqah*). However, this evidence seems to contradict the hadith about ghair, which prohibits transactions involving uncertain items, as cited by Sayyid Mutrada al-Zubaidi in "Uqud al-Jawahir al-Munifah fi Adillati Mazhab al-Imam Abu Hanifah." Imam Abu Hanifah also did not deny the existence of this hadith. It seems that Imam Abu Hanifah's argument about *khiar rukyat* is specifically based on this hadith. Regardless, al-Baihaqi's explicit inclusion of evidence about *khiar rukyat* includes not only the hadith narrated by Makhul but also the hadith narrated by Abu Hurairah about the prohibition of ghair and the hadith narrated by Ibn Hizam about the prohibition of selling something not in the seller's possession. The second hadith (narrated by Abu Mulaikah) complements or strengthens the first hadith, specifically regarding the buyer's right to *khiar rukyat*. This indicates that the potential for loss is more significant for the buyer. Therefore, with the option of *khiar rukyat*, the buyer is genuinely given the right to decide whether to proceed with the contract or cancel it after inspecting the goods.

Subsequently, if the concept of *khiar rukyat* is to be implemented in contemporary times, it may only be applicable to face-to-face transactions. However, applying it to contemporary financial transactions like online purchases would be challenging. The implementation of *khiar rukyat* is difficult to practice in online sales contracts because, according to customary practices *(urf)*, the buyer typically views the item first. This contradicts the concept of *khiar rukyat.* In online buying and selling, the practice often involves using the *bai al-salam* contract, which means payment is made upfront and the delivery of the goods is deferred.

Despite significant differences between online sales and bai al-salam in terms of the existence of the item, with online sales, the item already exists but its delivery is postponed, whereas in *bai al-salam*, only the specifications exist, and the item needs to be produced. The practice of *khiar rukyat* is more suitable for offline transactions or face-to-face interactions between the buyer and seller in a physical setting where payment is made at the end, after the buyer feels satisfied with the existence of the item. It can be understood that the application of *khiar rukyat* in contemporary transactions like online sales could be considered based on the theory of *urf*, meaning that customary practices regarding upfront viewing in online sales transactions can be taken into account.

This study emphasizes new findings based on a review of previous research, which typically lacked in-depth analysis of the concept, legal evidence, and implementation of *khiar rukyat*. However, this study has many limitations in terms of analysis, theory, references, and other aspects. Therefore, it opens opportunities for further research on the same theme but with different approaches or analyses.

Conclusion

Imam Abu Hanifah's concept of *khiar rukyat* provides flexibility regarding its validity. However, he firmly adheres to the concept of viewing being done upfront, which affects the non-standard nature of the contract until the viewing occurs at the end, after the buyer has clearly seen the object. Then the buyer is given the right to either proceed with or cancel the contract. *Khiar rukyat*, according to Imam Abu Hanifah, does not apply to the seller because it is the seller's obligation to know the whereabouts of the item clearly. However, if it is necessary for the seller to do so, it does not diminish the validity of the sales contract, but the seller does not have the khiar right. The concept of rukyat according to Imam Abu Hanifah is flexible, as the essence of rukyat is broad, not only related to visual perception but also to touch or smell. Therefore, Imam Abu Hanifah opines that a blind person can engage in transactions because they can conduct rukyat by touching or smelling the object. The evidence used by Imam Abu Hanifah to support *khiar rukyat* is the hadith narrated by al-Baihaki from Makhul and the hadith narrated by al-Daruqutni from Abu Hurairah. Additionally, the hadith narrated by al-Baihaki from Abu Mulaikah specifically relates to the *khiar rukyat* right for the buyer only. Furthermore, implementing *khiar rukyat* in contemporary business contracts, such as online sales, is difficult because it involves customary practices (*urf*).

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