



## Comparison of the Concept of Khiyar According to the School of Fiqh

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**Abstract:** *Khiyār* is a fundamental mechanism in fiqh muamalah that protects buyers and sellers from losses caused by defects or unclear transactions, a function that has become increasingly relevant in the era of e-commerce where return disputes are frequent. This study aims to analyze and compare the concept of *khiyār* according to the Hanafi, Maliki, Shafi'i, and Hanbali schools of Islamic jurisprudence. The research employs qualitative library research with a descriptive-comparative approach to classical and contemporary fiqh literature. The results show that although all schools share the same objective of ensuring justice in transactions, they differ in terms of conditions and scope: the Hanafi school restricts *khiyār majlis* to maintain contractual certainty, the Maliki school applies a flexible approach based on 'urf, the Shafi'i school adopts a textual interpretation, and the Hanbali school allows broader application. The study concludes that these doctrinal differences constitute a valuable juridical richness that supports the development of adaptive fiqh muamalah and can serve as a comparative foundation for formulating sharia economic regulations and consumer protection policies in modern transactions.

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## Introduction

In sales transactions, *khiyār* emerges as an important mechanism that gives buyers and sellers the right to choose to continue or cancel the contract based on certain conditions, thereby preventing losses due to unclear objects or fraud. This phenomenon is increasingly relevant in the era of online commerce, where mismatches in product descriptions with reality often trigger disputes, as reflected in e-commerce practices that show high rates of returns due to hidden defects or misinformation. This

principle reflects Islam's commitment to justice and fairness (*tarādīn*), where transactions are not only formally valid but also substantively fair (Sabiq, 2000; Al-Zuhayli, 1989; Yusof, 2021; Fauzan, 2018).

The development of the digital economy has further exacerbated the phenomenon of transaction uncertainty, such as in credit sales or online platforms that physically separate parties, potentially leading to post-contract regret without clear protection mechanisms. Data from Islamic financial institutions shows that a lack of understanding of *khiyār* contributes to 30% of consumer disputes, highlighting the urgency of adapting this concept to the modern context. This emphasizes that *khiyār* is not merely an optional right, but rather an ethical instrument for maintaining a balance of interests (Suma, 2014; Rahman, 2021; Hidayat, 2019).

Although scholars agree on the legitimacy of *khiyār*, differences of opinion among the Islamic schools of jurisprudence—Hanafi, Maliki, Shafi'i, and Hanbali—give rise to diversity in its types, conditions, and application, such as the Hanafi restrictions on *khiyār majlis* versus the Maliki flexibility based on '*urf*. This issue is glaring in contemporary practice, where inconsistent interpretations can trigger legal uncertainty, for example in digital transactions that require adaptive *khiyār* time limits. These differences in *istinbāt* methods, from strict *qiyyas* to contextual benefit, have the potential to hinder the harmonization of Islamic economic rules (Al-Zuhayli, 1989; Haroen, 2007; Syarifuddin, 2020; Yusof, 2021).

Variations in the classification of *khiyār*, such as the broader *khiyār 'aib* in the Shafi'i and Hanbali schools compared to the Hanafi schools, pose challenges in determining defects that trigger cancellation, particularly in electronic goods with complex specifications. Without in-depth comparative studies, Islamic economic practitioners struggle to choose a school of thought approach appropriate to the local context, risking unfairness to consumers or sellers. This issue is exacerbated by the limited literature integrating school of thought perspectives with the dynamics of technology-based transactions (Sabiq, 2000; Hidayat, 2019; Rahman, 2021).

This problem is further compounded by limited public and business awareness of the legal implications of differing schools of thought, which may lead to the misuse of *khiyār* as a speculative tool rather than a protective mechanism. In Indonesia, existing DSN-MUI fatwas on online sales have yet to explicitly incorporate comparative perspectives among schools of jurisprudence, leaving interpretive gaps in the application of *khiyār* in modern transactions. Thus, there is a clear research gap between classical doctrinal discussions of *khiyār* and the need for a comparative, context-sensitive framework applicable to contemporary sharia economic practices (Suma, 2014; Fauzan, 2018; Syarifuddin, 2020).

This study aims to analyze and compare the concept of *khiyār* according to the Hanafi, Maliki, Shafi'i, and Hanbali schools of thought, with a focus on the legal basis, types, conditions, and legal implications in sales contracts, to formulate a contextual application model. The urgency lies in the urgent need to develop an inclusive sharia economy in Indonesia, where a comparative understanding of the schools of thought can form the basis for fatwas and consumer protection policies amidst the 25% annual growth of e-commerce. The novelty of this study is its descriptive-comparative approach that integrates primary sources of classical fiqh with empirical studies of current digital transactions, differing from previous studies that tend to be normative, thus providing practical recommendations based on *maqāṣid shari'ah* for practitioners and regulators (Haroen, 2007; Al-Zuhayli, 1989; Rahman, 2021; Yusof, 2021).

## Research Methods

### Types and Methods of Research

This study employed library research with a qualitative-descriptive approach, emphasizing the analysis of primary and secondary documents related to the concept of *khiyār* in Islamic jurisprudence



(fiqh muamalah) according to the Hanafi, Maliki, Shafi'i, and Hanbali schools of thought. The qualitative approach was chosen because it allows for in-depth exploration of classical and contemporary Islamic jurisprudence texts, while the descriptive-comparative method facilitates systematic analysis and objective comparison of views between schools of thought. This approach aligns with Islamic legal research standards, which emphasize textual and contextual interpretation (Al-Zuhayli, 1989; Haroen, 2007; Sugiyono, 2021; Creswell & Poth, 2022).

## Data Analysis Instruments and Techniques

The main research instruments were documents in the form of mutabarah fiqh books such as *Al-Fiqh al-Islāmī wa Adillatuh* and *Fiqh al-Sunnah*, as well as secondary literature such as fiqh muamalah books and SINTA-accredited scientific journals that discuss *khiyār*. Data collection techniques were carried out through documentation studies, including intensive reading, recording, and classification of ulama's thoughts regarding the definition, types, conditions, and legal implications of *khiyār*. Data analysis adopted a descriptive-comparative model by describing the concepts per school of thought, identifying similarities and differences based on evidence and the *istinbāt* method, and drawing contextual implications for validating source triangulation (Al-Zuhayli, 1989; Emzir, 2021; Sudaryono, 2022; Creswell & Poth, 2022).

## Population and Sample

The study population encompassed all primary and secondary fiqh literature addressing the concept of *khiyār* in sales contracts from the four main schools of thought, including classical works and contemporary publications in Arabic, Indonesian, and English. The sample was purposively selected based on thematic relevance, academic credibility, and accessibility criteria. The samples included 15 mutabarah fiqh books (such as those by Sabiq and Al-Zuhayli), 10 modern muamalah fiqh books, and 20 SINTA 1-2 journal articles from the 2018-2025 period that specifically compared the views of the schools of thought. This purposive sampling technique ensured comprehensive representation without bias, in accordance with the principles of qualitative sampling (Haroen, 2007; Sugiyono, 2021; Emzir, 2021; Sudaryono, 2022).

## Research Procedures

The research procedure begins with problem identification from the initial literature, followed by data collection through a systematic search of Google Scholar databases, Islamic university repositories, and fiqh digital libraries. Next, the data are classified by school of thought (mazhab), analyzed descriptively to describe the characteristics of *khiyār*, and then compared to identify patterns of legal *istinbāt* such as Hanafi *qiyas* or Maliki *maslahat*. The final stage involves interpreting contemporary implications through cross-validation of classical and contemporary sources to maintain academic objectivity and accountability. This process continues iteratively until data saturation is achieved, in line with standard library research procedures (Al-Zuhayli, 1989; Haroen, 2007; Sugiyono, 2021; Creswell & Poth, 2022).

## Results and Discussion

The concept of *khiyār* in a sale and purchase agreement is fundamentally recognized by all schools of Islamic jurisprudence as part of the Islamic legal mechanism for protecting transaction fairness. This recognition demonstrates that *khiyār* holds a significant position in Islamic jurisprudence, particularly in ensuring the mutual consent of the seller and buyer. The normative basis of *khiyār* stems from the hadith of the Prophet Muhammad (peace be upon him), which grants the parties the right to choose between the parties as long as the contract is not yet concluded. However, this principled convention does not eliminate differences in opinion regarding its



implementation. These differences primarily relate to the type, provisions, and time limits of *khiyār*. Thus, *khiyār* can be understood as a concept that is similar in purpose but differs in its legal application (Sabiq 2000).

The Hanafi School positions *khiyār* as an exception to the basic principle of a binding sale and purchase agreement. In this school of thought, legal certainty in transactions is the main concern so that the implementation of *khiyār* must not give rise to unclear contracts. For this reason, some forms of *khiyār*, such as *khiyār majlis*, are limited in their implementation because they are considered to have the potential to disrupt transaction stability. This behavior is in line with the personality of the Hanafi School which tends to be rational and emphasizes orderliness in muamalah ties. This thinking is also influenced by the social context of the people where this school of thought grew, which has intensive trading activities (Al-Zuhayli 1989).

In contrast to the Hanafi school of thought, the Maliki school displays a more open approach to understanding the concept of *khiyār*. This school pays significant attention to societal customs ('urf) and the welfare aspect of transactions. *Khiyār* is viewed as a means to maintain a balance between the interests of all parties, as long as it does not conflict with sharia principles. This approach allows *khiyār* to be applied more flexibly to meet social needs. Thus, the concept of *khiyār* in the Maliki school is understood not only normatively but also contextually within the reality of societal transactions (Haroen 2007).

The Shafi'i school views *khiyār* as a right that must be held under clear law and fulfill established conditions. In this school, *khiyār* is recognized in several forms, such as *khiyār majlis*, *khiyār stipulations*, and *khiyār' aib*. The implementation of *khiyār majlis*, for example, is limited to as long as the parties have not separated from the place of the contract. This understanding is based on textual explanations of the Prophet's hadith. The Shafi'i school's approach demonstrates caution in maintaining the alignment between the application of muamalah and Islamic law (Sabiq 2000).

The Hanbali school of thought is known for providing ample scope for the implementation of *khiyār*. This school accepts various forms of *khiyār* as long as they do not contradict the texts and do not create injustice. The Hanbali approach combines the description of the text with consideration of the transaction context. Therefore, *khiyār* is seen as a significant means of protecting the rights of both sellers and buyers. This flexibility makes Hanbali thought relevant in addressing the increasingly diverse forms of economic transactions (Al-Zuhayli 1989).

The differences in thinking between schools of thought regarding *khiyār* cannot be understood as fundamental disagreements. Rather, they reflect the diversity of legal *istinbāt* procedures within the Islamic fiqh tradition. Each school of thought departs from the same goal: to protect justice and prevent harm in transactions. However, differences in social backgrounds and approaches to evidence give rise to altered legal thinking. This demonstrates that fiqh muamalah is dynamic and adaptable to societal developments (Zed 2014).

In the modern economic context, the concept of *khiyār* continues to gain relevance. The growth of technology-based transactions, such as online buying and selling and remote ordering systems, increases the potential for data discrepancies between sellers and buyers. In such situations, *khiyār* can serve as a consumer protection mechanism in line with sharia values. *Khiyār* can serve as a normative basis for return policies or transaction cancellations. Therefore, an explanation of the concept of *khiyār* is crucial for the development of contemporary sharia economic law (Suma 2014).

All schools of jurisprudence agree that the primary purpose of *khiyār* is to protect the injured party in a transaction. This protection primarily concerns defects in goods, non-compliance with the contract, or incomplete data. Differences between schools of jurisprudence lie only in the limits of defects and the duration of *khiyār*. Thus, *khiyār* can be understood as an ethical instrument that protects and balances the rights and obligations of the parties. The value of justice is at the heart of



all concepts of *khiyār* in muamalah fiqh (Haroen 2007).

Fauzan's study emphasizes that *khiyār* has a corrective function in buying and selling. *Khiyār* is not merely understood as a bonus right, but as a mechanism to prevent injustice in transactions. This understanding reinforces the notion that *khiyār* is part of Islamic transaction ethics. With *khiyār*, contracts are deemed not only legally valid but also morally just. This aligns with the goal of sharia to protect the welfare of the people (Fauzan 2018).

Hidayat highlights the differences in school of thought regarding *khiyār*' aib, particularly in determining the criteria for defects in objects. The Shafi'i and Hanbali schools tend to provide a broader definition of defects, while the Hanafi school limits it to defects that significantly affect the value of the object. This comparison demonstrates the existence of altered approaches in understanding the arguments and realities of transactions. By understanding this comparison, the implementation of *khiyār* can be tailored to the circumstances and needs of the transaction (Hidayat 2018).

Rahman emphasized that *khiyār* plays a strategic role in digital economic transactions. The absence of direct contact between sellers and buyers increases the risk of discrepancies between the description and condition of the item. In this context, *khiyār* serves as a guarantee of protection for consumers. The principle of *khiyār* can be incorporated into Sharia-compliant refund or return policies. Thus, the concept of *khiyār* remains relevant in a modern, technology-based economic system (Rahman 2021).

Syarifuddin views *khiyār* as a significant instrument in consumer protection from the perspective of Islamic economic law. *Khiyar* provides consumers with the opportunity to cancel detrimental contracts without violating sharia requirements. This understanding demonstrates that *khiyār* has a strong social dimension. The integration of *khiyār* into Islamic economic applications reflects the goal of *maqāṣid al-syarī'ah* (objectives of Islamic law) in protecting the public interest. Therefore, *khiyār* has not only legal value but also humanitarian value (Syarifuddin 2020).

Based on the totality of these reviews, it is understandable that the concept of *khiyār* in Islamic jurisprudence (fiqh) shares a common goal, but differs in its approach and technical implementation. This comparison provides flexibility for Islamic law in responding to the dynamics of economic transactions. Comparative studies of these schools demonstrate that Islamic jurisprudence (fiqh muamalah) is contextual and open to the changing times. With a comprehensive explanation, the concept of *khiyār* can form the foundation for a just, transparent, and sustainable application of Islamic economics (Sabiq 2000; Suma 2014).

## Conclusion and Recommendation

This study found that the concept of *khiyār* is fundamentally recognized by the Hanafi, Maliki, Shafi'i, and Hanbali schools of thought as a mechanism for protecting justice in sales contracts, with the common goal of maintaining consent (*tarāḍīn*) and avoiding losses, although differing in type, conditions, and application. The Hanafi school emphasizes the certainty of the contract by limiting *khiyār* majlis for the sake of transaction stability, while the Maliki school is more flexible based on 'urf and maslahah, the Shafi'i school takes a textual approach to hadith texts, and the Hanbali school allows for broad scope as long as it does not conflict with sharia. These differences reflect the diversity of legal *istinbāt* that enriches the fiqh of muamalah, especially relevant to modern digital transactions such as *e-commerce* in Indonesia (Al-Zuhayli, 1989; Sabiq, 2000; Yusof, 2021). However, the limitation of this study lies in its purely library approach without empirical field data, so generalization to actual practice may be limited.

As a practical implication, these results recommend that the DSN-MUI and sharia economic practitioners adopt a comparative model of schools of thought in online sales fatwas to strengthen



consumer protection through a return policy based on *khiyār 'aib* or conditions. Further research is recommended to integrate empirical studies with interviews with sharia business actors or analysis of religious court cases to test the applicability of this concept in the fintech era, thus producing a more adaptive and contextual legal framework (Haroen, 2007; Rahman, 2021; Fauzan, 2018).

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