



وزارة التعليم العالي والبحث العلمي

جامعة الموصل

كلية التربية الأساسية

قسم التربية الإسلامية

الشواهد المقررة لقاعدة (العادة محكمة) وتطبيقاتها على

التنمية الاقتصادية الإسلامية

رحال عبد حسين معيد

رسالة ماجستير

في التربية الإسلامية

بإشراف

الاستاذ المساعد الدكتور

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١٤٤٤هـ

## المستخلص بلغة الرسالة

الشواهد المقررة لقاعدة ( العادة محكمة ) وتطبيقاتها على التنمية الاقتصادية الاسلامية

ياشرف

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هـ ١٤٤٤

تقوم هذه الرسالة التي تحت عنوان : (الشواهد المقررة لقاعدة (العادة محكمة) وتطبيقاتها على التنمية الاقتصادية الاسلامية) ببيان المعنى اللغوي والاصطلاحي للشواهد وقاعدة العادة محكمة، وبيان الضوابط بين العادة والعرف، ومقومات العادة(العرف) ،تعارض العرف مع غيره في الفقه الاسلامي ، القواعد المتعلقة بقاعدة (العادة محكمة).

واحتوت هذه الرسالة على مقدمة وثلاث فصول وخاتمة ثم قائمة المصادر والمراجع.

فتناولت في المقدمة أهمية الموضوع وأسباب اختياره ، وأهداف البحث ومشكلته والدراسات السابقة ، ومنهج البحث وأشكالية الدراسة وخطته .

وتناول الفصل الأول معنى القاعدة وصلة العرف بالعادة وتأسيس قاعدة (العادة محكمة) ، ثم تناول الفصل الثاني مقومات وتقسيمات قاعدة (العادة محكمة) والقواعد المتعلقة بها وتعارض العرف ، ثم تناول الفصل الثالث احكام البيوع وتطبيقات القاعدة والقرائن العرفية واختلاف الزمان وعلاقتهاما بالعرف ، ثم انتهت الرسالة بخاتمة، إذ جاءت مبنية لأهم النتائج والتوصيات التي برزت في الرسالة ، وبثبت للمصادر والمراجع المعتمدة.

توقيع مسؤول الدراسات العليا

م. د: أسامة محمد طاهر ويس

## **Abstract**

There is no doubt that the Islamic law relies on the Book and the Sunnah, and that they are the two main sources of Islamic legislation by consensus of scholars, and most scholars consider consensus and analogy as two main sources that follow the Book and the Sunnah, and each of the mujtahids has sub-sources that they have adopted as evidence for rulings such as approval and sent interests, the work of the people of Medina, companionship, original permissibility, and others. Al-'Urf is one of the dependent (sub) sources adopted by some scholars, but they differed in terms of its conditions between broad and narrow.

The street made custom a great importance in many jurisprudential issues, in order to raise embarrassment and hardship, and also, custom is one of the direct influences in the path of legislation, so its impact can be seen in many rulings, just as legislation has an impact on many social norms, which confirms the interaction and integration between legislation and the orientations of society Islamic.

The custom at the present time revolves around two cases: The first is that Muslims today have moved away from their Sharia a lot when they presented man-made laws, customs and customs that prevail in their societies over the Islamic Sharia.

This is a bad position, for the Islamic Sharia has come to rule and prevail and have the supremacy and dominance over all the laws, principles and laws, and it is not permissible under any circumstances to exclude Sharia from ruling, and confine it to a narrow scope. With this law, therefore, there is no consideration for custom if it contradicts the texts of the street.

In the second case, there are some scholars of jurisprudence who froze the fatwas and rulings they issued on

what their predecessors issued, despite the change in people's custom in issues based on custom.

It is well known that stagnation on the rulings and fatwas of the predecessors in matters based on custom caused people to be severely embarrassed and distressed, and at the same time, not observing people's customs and customs that their souls reassured and accepted by their good nature and manner leads to hardship and embarrassment.

In sum, the problem of custom at the present time is due to: that a group of people gave precedence to man-made laws, custom and customs over Sharia in some Islamic countries, just as another group relied on the fatwas of previous jurists in matters that were built on custom, which caused people to be embarrassed and hardship.

And the custom of the jurists is not considered except with certain conditions and precise restrictions, such as it is usually steady and does not contradict a text of the Sharia texts, in addition to other conditions and restrictions set by scholars as controls for knowledge of it.

The problem of custom is due to the rule of “the custom is courteous” in terms of how it is applied in Islamic jurisprudence, so that custom has a binding and appropriate force for the developed life and the renewable issues in the different places and crises.

**Republic of Iraq ministry of Higher  
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**The established evidences for the rule of  
habit are solid and their applications to  
Islamic economic development**

**Rahaal Abed Hussein Mueid**

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Islamic education**

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