

## Islamic Legal Analysis Of Istishn'a Contract Transactions In Buying And Selling Practices

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| <p><b>Article History</b><br/>           Received : 2021-07-08<br/>           Revised: 2021-07-14<br/>           Published: 2021-07-30</p> <p><b>Keywords:</b><br/> <i>Transaction, Istishna Contract, Buying and Selling</i></p> | <p>This study aims to describe and analyze the Istishna Agreement, a sales transaction carried out in the form of ordering the manufacture of goods or goods with certain specifications and standards to the buyer or ordering party. In Istishna, payment can be made in advance, paid in installments until completion, or postponed until a mutually agreed date. And Istishna is usually applied to products and industrial products. The type of research used is descriptive. Data sources in this study are library research and observation. The results of this study are Istishna sale and purchase transactions that are not widely known. However, without them realizing it, this agreement has been widely realized in their lives such as pre-orders in all online shops with technological media, where they order with the criteria they agree on and then pay according to the time agreed. This sale and purchase is included in the sale and purchase that is permitted in Islam. With Fatwa Fatwa Sharia Council No: 06 / DSN-MUI / IV / 2000.</p> |

### I. INTRODUCTION

All human activities can be linked to the jurisprudence of muamalah. Muamalah can be interpreted linguistically as any form of action, mutual action, and mutual practice. Terminologically, Al Dimiyati argues that muamalah is something that produces worldly benefits, as a form of success in the hereafter. Thus, muamalah can be defined as the rules established by Allah SWT to regulate relationships between humans. Muamalah encompasses various activities, such as buying and selling, renting, lending and borrowing, and other activities. (Susanto, 1994)

In Islam, a sale and purchase between a buyer and seller is permissible as long as both parties have the same consent and sincerity, the goods being traded are not haram (forbidden), and there is an agreement (ijab and qabul). Furthermore, with the majority of Indonesia's population being Muslim, we are required to conduct everything in accordance with Islamic principles, including in buying and selling. It is still rare for sellers or buyers to record transactions using sharia principles. Therefore, sellers and buyers need to understand how to record online sales contracts in accordance with Islamic principles, including the Salam and Istishna contracts.

Buying and selling is a business activity that has existed in society for a long time. There is no record of when this business activity first began.

What is clear is that buying and selling has evolved from traditional to modern patterns. In ancient times, people traded goods for each other. The word "buy" consists of two syllables: "sell" and "beli," which have opposite meanings. The word "sell" indicates the act of selling, and "beli" indicates the act of buying. The act of buying and selling indicates an event in which one party sells and the other party buys, thus establishing the law of buying and selling. Buying and selling, according to Islamic law (fiqh), is known as albai'. Meanwhile, according to etymology, al-bai' is: exchanging something for something else. According to al-Sayyid Sabiq, buying and selling in the lughawiyah sense is mutual exchange.

And the words al-bai' (selling) and al-syira' (buying) are often used interchangeably. Advances in information technology have also led to advances in trade. Furthermore, developments in global economic activity have brought about significant changes in various aspects.

There are several buying and selling activities that differ from the usual. In this case, buying and selling can take place when the desired goods are not yet available, so the producer offers services by creating an ordering system. In muamalah, buying and selling with an ordering system is called istishna'. Istishna' is a sale and purchase between the ordering party (mustashni) and the receiving party (shaannit). (Mardani, 2019)

The continuity of buying and selling using

this order system has existed since ancient times. The *istishna'* contract used in it is justified and applies to goods that can be ordered by the buyer based on the *istishna'* contract. In implementing the order system, both parties provide the ability to produce goods and pay for them according to the agreement. In buying and selling using the order system, there are advantages and disadvantages for both consumers and producers in carrying out the transaction. This is to avoid usury-based transactions. As in the hadith narrated by Ibn Majah: (Wasis Gunandi, 2021) Therefore, it is crucial for all parties involved to agree to the terms and conditions before placing an order. This is to avoid any potential losses for either party. In a sales transaction, there is a clear link between the seller and the buyer regarding a price agreement. Bargaining at the Aji Jati furniture store occurs through mutual agreement; the seller first determines the price, followed by the buyer's approval. From an *istishna'* perspective, prices must be negotiated and then reached into a mutual agreement, with a single price being set for the selected offer. The agreed-upon price can be paid with a down payment, with the final payment due on the day the item is finished. (Taufiqur Rahman, 2021)

## II. RESEARCH METHODS

This study uses a qualitative method with a normative juridical approach, namely examining the *istishna'* contract based on Islamic law. The data used are secondary data obtained from the Qur'an, hadith, books, and relevant scientific journals. Data collection techniques were carried out through library research, while data analysis used a descriptive-analytical method by explaining the concept of the *istishna'* contract and then analyzing its application in buying and selling practices in accordance with Islamic law principles.

## III. RESULTS AND DISCUSSION

### A. Research result

The research results show that the *istishna'* contract in the practice of buying and selling is a valid form of transaction according to Islamic law, as it falls into the category of contracts permitted in the *fiqh muamalah*. In practice, the *istishna'* contract is used when ordering goods that are not yet available and must

be made in advance according to the agreement between the seller and buyer, both in terms of specifications, price, and delivery time.

Based on the analysis, the application of the *istishna'* contract in buying and selling practices generally complies with the principles of Islamic law, particularly in terms of mutual agreement (*ridha*), clarity of the object of the order, and determination of the price at the outset of the contract. However, several practices were found that were not fully compliant, such as unclear delivery times or changes to the specifications of goods without re-agreement, which can give rise to an element of uncertainty (*gharar*).

Thus, it can be concluded that the *istishna'* contract is permitted in Islamic law and is relevant for use in modern buying and selling practices, as long as it fulfills the established pillars and conditions and avoids prohibited elements in *muamalah*.

### B. Discussion

#### 1. Definition of *Istishna'*

In terms of language, *istishna'* comes from the word *sana'a* plus *alif*, *sin*, and *ta'* to become *istishna'* which can be interpreted as *talab al-sun'ah* asking for goods to be made or "asking for something to be made" (Muslich, 2010). *Istishna'* is a form of *ghairu musamma* contract which is similar to *salam*. Because both are orders for sale and purchase where the delivery of goods is postponed and delivered later (*az-zuhailay*, 2006). According to scholars, *bay' istishna'* (sale and purchase with orders) is a special type of *bay' as-salam* contract (buying and selling shares).

This type of buying and selling is used in the manufacturing sector. The definition of *bay' istishna'* is a sale contract for ordered goods between two parties with certain specifications and payment. The ordered goods have not been produced or are not available in the market. Payment can be in cash or in installments depending on the agreement of both parties (Mujiatun, 2013). According to DSN fatwa No. 06/DSN MUI/IV/2000 concerning *istishna'*'s buying and selling, *bai' istishna'* is a sales contract between *mustashni'* (buyer) and *sani'* (supplier) where the supplier receives orders from buyers for both temporary and special purposes that must not be separated from the core ideal goal which is always in line with faith and good deeds

as eternal values that are fundamental goals in Islamic education.

Make goods and deliver them to customers. Payment can be made in advance, in installments or deferred until a certain time (Gunawan, 2007). According to the majority of scholars, the law of *istishna'* transactions is permissible, as is the opinion of Hanafiyah fiqh experts, buying and selling *istishna'* is permissible because it has long been a habit (*'urf*) which contains an element of goodness (*istihsan*). So the wisdom in allowing buying and selling *istishna'* is because its existence has become a human necessity.

According to Sayyid Sabiq in his book *Fiqh Sunnah*, Sabiq, *fiqh sunnah*, juz 4, (2009) Basically, *bai' istishna'* is an installment sale and purchase transaction just like the *murabahah muajjal* transaction. However, unlike *murabahah* sale and purchase where the goods are delivered in advance, while the money is paid in installments, in *istishna'* sale and purchase the goods are delivered later, even though the money is also paid in installments (Karim, 2007)

The *istishna'* contract is a form of *ghairu musamma* contract (ashshiddieqy, 1999), so there is no explicit evidence in either the Qur'an or the Hadith regarding its implementation. It is known that *istishna'* is a contract of order similar to the *salam* contract. The only difference is in the payment system. While the *salam* contract requires payment in advance, the *istishna'* contract can be paid in advance, in installments, or in arrears. Therefore, the legal basis for the *salam* contract can also be applied to the *istishna'* contract (al-Zarqa, 1967-1968).

According to the Maliki, Shafi'i, and Hanabilah scholars, the *istishna'* contract is valid on the basis of the permissibility of the *salam* contract. They compare *bai' istishna'* with *bai' salam* because both of the ordered goods are not yet in the hands of the seller when the contract is signed. In addition, *bai' istishna'* has become a human custom in transactions (*'urf*). Therefore, in *bai' istishna'* the conditions as stated in *bai' salam* apply (Djuwaini, 2008). According to the Hanafi school, the sale and purchase of *istishna'* is a prohibited contract because it contradicts the spirit of *ba'i* by analogy. They base their argument on the fact that the principal of the sales contract must exist and be owned by the seller.

Meanwhile, in *istishna'*, the principal contract is not yet in existence or in the possession of the seller (Wahab, 2018). Some contemporary jurists argue that *istishna'* is valid based on analogy and general rules. This is because the buyer will receive the goods after ordering them from the manufacturer. The manufacturer must procure the goods upon delivery. Consumers may dispute with the manufacturer if the ordered goods do not meet their expectations, either due to the quality of the goods or the materials used to produce them (Wahab, 2018).

## 2. Pillars and Conditions of *Istishna'*

In the *istishna'* sale and purchase, there are several pillars that must be fulfilled, namely the buyer (*mustasni'*), seller or maker (*shani'*), goods or objects (*mashnu'*) and *sighat* (*ijab qabul*). The conditions for *istishna'* are as follows:

The party is sane and legally competent. In order to be able to carry out the contract, both the seller and the buyer in the *istishna'* sale and purchase must be physically and mentally healthy, not insane or severely senile, and not under guardianship so that they are able to carry out legal acts.

Clarity Regarding the Criteria for the Object of the Contract: The buyer must provide detailed criteria regarding the shape, size, color, and function of the ordered item. This way, the seller has a clear picture when making the purchase.

There is freedom in buying and selling. There should be no pressure or coercion when executing the contract. Therefore, both parties have the freedom to determine the order criteria and negotiate the price.

Mutual Consent and No Breaking of Promises: Both parties must be willing to carry out the *istishna'* until its completion. Furthermore, both the buyer and seller in the *istishna'* contract are obligated to keep their promises as originally agreed.

This is according to Hanafiyah, whereas according to *Jumhur Ulama*, the *salam'* and *istishna'* contracts are both *luzum* (binding on both parties). *Ra'sul Mal* (main price) in the *salam* contract must be paid in cash at the contract assembly, which is not required in *istishna'*. This is according to Hanafiyah, while according to *Jumhur Ulama*, the price of a contract must be paid in cash when the contract takes place. *Ulama* who allow *istishna'* transactions are of the opinion that

istishna' is prescribed based on the sunnah of the Prophet Muhammad. that he once asked for a ring to be made as narrated by Imam Bukhari as follows: (Al-Nadwy, Ahmad,, 2000)

### 3. **Buying and Selling Istishna'**

Literally, buying and selling means exchanging something for something, while according to Islamic law, it means exchanging property for property in certain ways. Buying and selling is also approved by Allah and His Messenger. This is because buying and selling differs from usury, and Allah permits buying and selling and prohibits usury. In classical Islamic jurisprudence (fiqh) literature, the issue of istishna' began to emerge after being discussed by the Hanafi school of thought, as presented in Majallat al Ahkakh al Adliya.

The Islamic Jurisprudence Academy has also made this contract a special study because the provisions of this contract, pioneered by Hanafi jurisprudence, have impacted the development of contracts continued by contemporary jurists. The istishna' contract makes it easier for people to meet their needs. (Afif) For example, istishna' is used for the procurement of electrical installations, the aircraft industry, ships, and the like. The istishna contract is widely used today. It is widespread, not only in light industry, but also in household equipment companies (furniture for living rooms and bedrooms). (Patel, 2019)

This includes the istishna' sale and purchase of electricity to meet the needs of the state, industry, or factories, through a deferred sale and purchase followed by the delivery of the goods. With the agreement to produce, this contract constitutes a contract for an object that did not previously exist. (Mujahidin, 2019)

### **Legal Provisions of Istihna'**

If the customer does not require the bank to fulfill the order itself, the bank can use parallel istishna, which involves asking another party to fulfill it. If the order has been fulfilled according to the agreement, it is legally binding. All provisions of the salam sale not mentioned above also apply to the sale. If one party fails to fulfill its obligations or if a dispute arises between the two parties, the settlement will be conducted through the Sharia Arbitration Board after no agreement is reached through deliberation.

Istishna revenue recognition can be done using the percentage-of-completion method and the completed contract method. If the estimated completion of the contract and the costs for its completion cannot be reasonably determined at the end of the financial reporting period, the completed contract method is used. In istishna financing, the bank orders goods from the supplier based on customer orders. The customer can pay a down payment for the ordered goods to the bank before the goods are delivered to the customer, and the bank can also pay a down payment for the ordered goods to the supplier. (Khairul Jauhari, 2022)

The bank can bill the customer for the goods ordered that have been delivered and the supplier can bill the bank for the goods ordered that have been delivered. As long as the goods ordered are still being manufactured, the bank will use the Istishna Assets in Progress account when making payments to suppliers and use the Istishna Termin account when billing customers. Revenue recognition for istishna transactions uses the same method as revenue recognition in murabahah transactions. If the customer experiences arrears in installment payments, the bank is required to create an Asset Write-Off Allowance for istishna receivables in accordance with applicable provisions regarding asset quality. (Munir Fuadi, 2019)

### **1. Things that invalidate Istishna'**

The Istishna' contract in a buying and selling practice has many unexpected or unpredictable circumstances for the parties fulfilling the contract. One such unexpected event is the decision to cancel a mutually agreed-upon order, whether the cancellation originates from the seller or the buyer. This cancellation will certainly result in losses. If the cancellation originates from the buyer, the seller will suffer material losses, namely the seller cannot directly profit because the seeds are still being held and cannot be sold directly after the seeds are ready to be transplanted. (Afif, 2016)

If no one buys the seeds and the seeds die, the seller's profit or turnover will be reduced. The seller also suffers immaterial losses, namely wasted time processing seed orders, which can lead to the seller simultaneously rejecting other orders because they have already completed the canceled order. Essentially, an istishna contract

cannot be canceled unless the following conditions are met: (Mukarromah, 2016)

#### IV. CONCLUSION AND SUGGESTIONS

##### A. Conclusion

The conclusion of this study indicates that the *istishna'* contract is a form of transaction permitted under Islamic law and has a clear basis in Islamic jurisprudence. This contract is used in buying and selling practices to fulfill the need to order goods that are not yet in stock. The goods will be manufactured according to the agreement between the seller and buyer, including specifications, price, and delivery time.

In practice, the implementation of the *istishna'* contract generally complies with Islamic legal principles, particularly in terms of mutual consent (*ridha*), clarity of the object of the contract, and the initial agreed-upon price. However, several issues remain in its implementation, such as unclear delivery times or changes to specifications without further agreement, which can potentially create an element of uncertainty (*gharar*).

Therefore, it can be emphasized that the *istishna'* contract remains relevant and can be applied in modern buying and selling practices, as long as its implementation fulfills the pillars and conditions stipulated in Islamic law and avoids things that could harm one of the parties.

##### B. Suggestion

Based on the research results, it is recommended that those involved in sales transactions using the *istishna'* contract pay more attention to fulfilling the pillars and conditions of the contract in accordance with Islamic law, particularly regarding clarity regarding the specifications of the goods, price, and delivery time. This is crucial to avoid uncertainty (*gharar*) that could harm one of the parties.

In addition, it is necessary to increase public understanding regarding the *istishna'* contract through education and outreach, both by academics and sharia economic practitioners, so that the transaction practices carried out are truly in accordance with the principles of *muamalah fiqh*.

For future researchers, it is recommended to conduct more in-depth research using an empirical approach or field research, so that it can provide a more realistic picture of the application

of the *istishna'* contract in people's lives and the various obstacles faced in practice.

#### REFERENCE LISTAN

- Abd. Rahman Dahlan. (2005). *Ushul Fiqih*. Jakarta: Amzah
- Ad-da'asi, Azat ubaid. (1989), *al-Qawaid al-Fiqhiyyah ma'a syarhi al-Mujaz*, cet. 3, Damaskus: dar at-Tarmizi
- Afif, M. (2020). *Peningkatan Literasi Fiqih Muamalah Maaliyah Pedagang Pasar Subuh Dadung, Mantingan: Upaya Mencegah Dosa Maisir, Gharar, Riba, dan Tadlis*. Khadimul Ummah, 3(2).
- Aini, Y. N. (2021). *Transaksi Akad Istishna'dalam Praktek Jual Beli Online*. Ambawani, T., &
- Al-Nadwy, Ahmad. (2000). *Jamharah al-Qawaid al-Fiqhiyyah*, Damakus: Dar al-kalam,
- Al-Sayid, Muhammad Ali. (1996). *Tafsir ayat al-Ahkam*, Bayrut: Dar al-Fikr
- Al-Zarqa, Musthafa Ahmad. (1983). *al-Madkhal al-Fiqh al-'Amm*, Damakus: Mathba'ah jami'ah
- Anugrah, Y. D. Y., & Laila, M. (2020). *Analisis Konsep Penerapan Pembiayaan Murabahah pada Perbankan Syariah*. *Muhasabatuna: Jurnal Akuntansi Syariah*, 2(2), 1-12.
- Arief, Y. S. (2015). *Analisa Kepuasan Konsumen dan Loyalitas Konsumen terhadap Penjualan (Study Kasus Jenang Beras Ketan sebagai Produk Unggulan di Jenang Mirah Bersertifikat Halal Periode 2014- 2015)*. *Analisa Kepuasan Konsumen dan Loyalitas Konsumen terhadap Penjualan (Study Kasus Jenang Beras Ketan sebagai Produk Unggulan di Jenang Mirah Bersertifikat Halal Periode 2014-2015)*, 1(02), 151-170.
- A'yun, Q. A. N., Chusma, N. M., Putri, C. N. A., & Latifah, F. N. (2021). *Implementasi Etika Bisnis Islam Dalam Transaksi Jual Beli*

- 
- Online Pada E- Commerce Popular Di Indonesia. *JPSDa: Jurnal Perbankan Syariah Darussalam*, 1(2), 166-181.
- Departemen Agama RI, Al-Qur'an dan Terjemahannya, Jakarta: Sari Agung
- Fadhila, N. (2015). Analisis pembiayaan mudharabah dan murabahah terhadap laba bank syariah mandiri. *Jurnal Riset Akuntansi dan Bisnis*, 15(1).
- Fitria, T. N. (2017). Bisnis jual beli online (online shop) dalam Hukum Islam dan Hukum Negara. *Jurnal Ilmiah Ekonomi Islam*, 3(01), 52-62.
- Hadi, R. (2019). Analisis Praktek Jual Beli Dropshipping Dalam Perspektif Ekonomi Islam Latar Belakang Masalah. *AT-TAWASSUTH: Jurnal Ekonomi Islam*, 4(2), 231-251.
- Inayah, S. A. N. (2022). Transaksi Akad Istishna'dalam Praktek Jual Beli Online.OSF Preprints. October, 10.
- Mukarromah, S. (2020). Praktik Jual Beli Online dengan Sistem Pre-order pada Online Shop dalam Tinjauan Hukum Islam. *Alhamra: Jurnal Studi Islam*, 35- 46.