



Analysis of Sharia Economic Law on Buying and Selling Transactions in The Social Context (The Implementation of The Istishna Contract)

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Received: 3 January 2024 | Accepted: 11 February 2024 | Published: 30 June 2024

Abstract

Buying and selling is one of the forms of *mumalah* allowed based on the *Qu'ran*, *Al-Hadith*, and *Ijma* of the Ulama. To obtain goods and simultaneously sell them, it is necessary to have an *Akad*, this study aims to analyze the perspective of sharia economic law on buying and selling transactions in the social context through the implementation of the *Istishna* contract. Within the framework of Islamic law, buying and selling transactions have an important social dimension to note. *Akad Istishna'* is a form of transaction that can be used in a social context, where buyers and sellers interact with each other with the aim of achieving welfare and social justice. This study uses an analytical approach of Islamic economic law to understand the legal basis, legal requirements, and social implications of buying and selling transactions through the *Istishna* contract. The results showed that the implementation of the *Istishna* contract in buying and selling transactions can make a positive contribution in achieving socio-economic goals in Islam, such as wealth redistribution and community empowerment. However, it is important to ensure that the execution of the *Istishna'* contract is carried out in compliance with the provisions of Islamic law and the principles of social justice. This research provides valuable insights for practitioners and academics in understanding the relevance and social implications of buying and selling transactions using *Istishna'* contracts in the context of Islamic economic law.

Keywords: Shari'ah Economics, Buying And Selling, Social, Istishna Contract

1. INTRODUCTION

An alliance or agreement in the context of *muamalah* jurisprudence is often referred to as a contract. The word contract comes from the Arabic *al-'aqd* plural form *al-'uqud* which means binding, jointing, and promise (Qamarul Huda 2011).



Agreements (contracts) have significance in people's lives. Akad is the basis of many of our daily activities. Through a contract a man is united with a woman in a common life, and through a contract also our various trade and business activities can be carried out. Buying and selling is a Muslim activity that is allowed by Allah SWT, and is a sunatullah that has been running for generations. Buying and selling has various forms, usually seen from the method of payment, contract, delivery of goods and goods traded. Islam pays great attention to this element in buying and selling transactions. (Ahmad Abu Fath 1947).

Buying and selling or often we call it Business, and in society is a routine activity carried out at all times by all humans. But buying and selling that is correct according to Islamic law is not necessarily carried out by all Muslims. There are even those who do not know at all about the provisions stipulated by Islamic law in terms of buying and selling or business. (Syaripudin and Izzan Ahmad 2022).

Buying and selling is one of the forms of mumalah that is allowed based on the Qur'an, Sunnah, and Ijma of the Ulama. Akad as one of the ways to obtain wealth in Islamic law which is widely used in everyday life is a way that Allah SWT recognizes. One of the contracts in muamalah jurisprudence is the istishna contract, which is an agreement between two parties where the first party (buyer / consumer) asks the second party (producer) to make an item that is in accordance with the wishes of the consumer. This istishna agreement is similar to a greeting agreement in which the form makes goods that do not yet exist and goods are in the responsibility of producers as sellers.

The forms and types of buying and selling contracts that have been described by scholars in muamalah fiqh are very numerous, if we examine it can reach dozens or even dozens. To meet the needs of human life, humans always interact with each other to carry out various business transactions in economic activities. One of them is buying and selling involving two actors, where there is a seller and a buyer. Usually the seller is at the same time as a producer while the buyer is a consumer. In fact, consumers sometimes need goods that are not or have not been produced by producers so that consumers make buying and selling transactions with producers through order methods (Istishna'). (Syaripudin and Izzan Ahmad 2022).

2. METHOD

The research method used in this study is the library research method or book survey. The library research method is a research method whose data collection techniques are carried out in the field (library) based on readings of several literature that have information and have relevance to the research topic (Syaripudin and Putri 2022).

A literature study method is employed in the analysis of Islamic economic law on sale and purchase transactions in a social context, with a specific focus on the implementation of the Istishna' contract. This method entails the collection and review of relevant literature, with the objective of gaining insight into the principles and applications of the aforementioned contract. The Istishna' contract represents a sale and purchase agreement based on an order, whereby the goods being traded do not yet exist at the time of the contract. It has a robust legal and ethical foundation in Islamic economics. A literature study enables the identification of a variety of sources, including classical fiqh books, scholarly journals, textbooks, and other publications, which elucidate the practical application of this contract. Furthermore, this study elucidates the social impacts of implementing the Istishna' contract, including enhanced trust between producers and consumers and job creation. By synthesizing disparate literatures, we can gain a comprehensive understanding of the role the Istishna' contract plays in upholding the principles of Islamic economics and its contribution to social welfare.



3. RESULT AND DISCUSSION

3.1 Definition of Buying and Selling

In buying and selling or called doing business in the community is a routine activity carried out at all times by all humans But buying and selling in accordance with Islamic law is not necessarily all Muslims carry it out. There are even those who do not know at all about the provisions stipulated by Islamic law in terms of buying and selling (business)(Sya'idun 2022).

In the Qur'an and Al-Hadith which are sources of Islamic law provide many examples that regulate business in accordance with Islamic Law(Iryani 2017). Not only for sellers but also for buyers. Today more sellers prefer individual profits without being guided by the provisions of Islamic law (Anita 2023). They only seek worldly benefits without expecting the welfare and blessings of work from what has been done. Every human being born in this world must need each other, and always carry out helping activities in facing various diverse needs, one of which is done by buying and selling or doing business. Buying and selling is a social interaction between humans based on the pillars and conditions that have been determined (Shobirin 2016).

Buying and selling in fiqh terms is called al-bai' which means selling, replacing, and exchanging something for something else. The Arabic pronunciation albai' is sometimes used to mean its opposite, the word ash-shira (buy). Thus, the word al-bai' means to sell, but at the same time it also means to buy (Syaifullah 2014).

Meanwhile, according to the term meant buying and selling or business is: Exchanging goods for goods or goods with money by releasing property rights from one to another on the basis of mutual relinquishment.

3.2 Defintion of Akad

Akad is the frame of transactions in the Islamic economy. because through Akad various business activities and businesses can be carried out. Akad facilitates everyone in meeting their needs and interests that cannot be fulfilled without the help and services of others. Therefore, it can be justified to say that contract is a social means found by human civilization to support its life as a social being. Roscoe Pound's statement in medieval times where most of people's wealth consisted of promises and profits that others promised against him.

In reference to Islamic Law that the term "Akad" to refer to agreements (overeenkomst) and even to refer to contracts (contract) The term contract is an old term that has been used since classical times so it is very standard. In the discussion of Fiqh Muamalah the contract or agreement is called aqad (Nazliya 2021).

3.3 Isthsna

a. Understanding Isthisna

The definition of Isthisna according to experts includes, according to Ichtiar Bara Van Hoeve, Istishna' is (requested/placed) a contract that contains the demand that Shani 'make an order with special characteristics and a certain price. According to Drs. Ghufroon A. Mas'adi, M.Ag, Istishna' is an agreement with the craftsman or worker to work on a certain product (order) where material and production costs are the responsibility of the craftsman (Nazliya 2021).

According to Muhammad Shafi'i Antonio, Istishna' is a transaction bai'Istishna' is a seller's contract between the purchase and the maker of goods, in this contract, the maker of goods receives orders from buyers. The maker of the goods then tries through others to make or buy goods according to agreed specifications and sell them to the final buyer. Both parties agree on the price and payment system, whether payments are made in advance through installments, or deferred until a time in the



future.

According to Zuhaily, bai'Istishna' is a contract with producers for a certain job or buying and selling an item that will be made by producers who also provide raw goods, while if the raw goods are from the orderer it will be an ijarah (rent) contract, the orderer only hires the services of producers to make goods. Furthermore, Zuhaily, suggests that Istishna' resembles a contract of greeting, because it includes bai' ma'dum (buying and selling goods does not exist), also because the goods made are attached at the time of the contract to the dependents of the maker (shani') or seller.

Made by producers who also provide raw goods, while if the raw goods are from the orderer it will be an ijarah (rent) contract, the orderer only hires the services of producers to make goods. Furthermore, Zuhaily, suggests that Istishna' resembles akad salam, because it includes bai' ma'dum (buying and selling goods does not exist), also because the goods made are attached at the time of the contract to the dependents of the maker (shani') or seller.

A contract for something that the insured on condition of doing it. So if someone says to someone else who has expertise in making something, "Make for me something for a certain amount of dirhams", and that person accepts it, then the contract of istishna' has taken place in the view of this school (Ahmad Azhar Basyir 2000).

Meanwhile, according to Fatwa DSN No. 06 / DSN MUI / IV / 2000 concerning the sale and purchase of Istishna', bai' Istishna' is a sales contract between mustasni' (buyer) and sani' (supplier) where the supplier receives orders from buyers according to certain specifications. The supplier tries through others to buy or make goods and convey them to the customer. Payment can be made in advance, installments or deferred until a certain time. In basic principle, bai' Istishna' is an installment buying and selling transaction such as murabahah muajjal transaction. However, in contrast to buying and selling murabahah where the goods are handed over in advance, while the money is paid in installments, in buying and selling Istishna' the goods are handed over in hindsight, although the money is also equally paid in installments.

b. The Pillars and Conditions of Istishna'

As for what is included in the pillars of the Istishna contract that must be fulfilled in the transaction, there are several things, namely: 1. The perpetrator of the contract, mustasni' (buyer) is the party who needs and orders the goods, and shani' (seller) is the party who produces the ordered goods. 2. The object of the contract, i.e. goods or services (mashnu') with their specifications and prices (tsaman), and 3. Shighah, i.e. ijab and qobul. In addition to all the pillars to be fulfilled, the ba'i Istishna' also requires the fulfillment of all the conditions for each pillar.

Below will be outlined between the two most important pillars, namely capital and goods. 1. Capital transaction ba'i Istishna' a) Capital must be known b) Receipt of greeting payment 2. Al-muslam fiihi (goods) a) Must be specific and can be recognized as a debt b) Must be clearly identifiable c) Delivery of goods must be done at a later date d) Most scholars require the delivery of goods to be postponed at a later time, but the Shafi'i madhhab e) May specify a date of time in the future for the delivery of goods f) Place of delivery of muslim fiihi with other goods (Mujiatun 2013).

c. Legal Basis of Istisha'

Akad Istishna' is a contract that is halal and is based on the guidance of the Qur'an, As-Sunnah and Al-Ijma' among Muslim economic scholars. Qs. Al Baqarah verse 275:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

"Allah has legalized buying and selling and forbade usury"

Based on these and other verses the 'ulama' declare that the original law of every business is lawful,



except that which is clearly forbidden in strong and shahih propositions.

عَنْ أَنَسٍ رَضِيَ اللَّهُ عَنْهُ أَنَّ نَبِيَّ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كَانَ أَرَادَ أَنْ يَكْتُبَ إِلَى الْعَجَمِ فَقِيلَ لَهُ إِنَّ الْعَجَمَ لَا يَقْبَلُونَ إِلَّا كِتَابًا عَلَيْهِ خَاتَمٌ. فَاصْطَنَعَ خَاتَمًا مِنْفُضَّةً. قَالَ: كَأَنِّي أَنْظُرُ إِلَى تَبَاضِهِ فِي يَدِهِ. رَوَاهُ مُسْلِمٌ

"It was from Anas (r) that the Prophet (peace be upon him) wanted to write a letter to a non-Arab king, and it was reported to him that non-Arab kings would not accept an unstamped letter. So he ordered that he be made a stamp ring from silver. Anas recounted: It is as if now I could see the white sheen in his hands." (HR. Muslim)

Likewise, he ordered someone to make a mosque pulpit, as in the hadith Sahal:

عَنْ سَهْلِ رَضِيَ اللَّهُ عَنْهُ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَرْسَلَ إِلَى امْرَأَةٍ مِنَ الْمُهَاجِرِينَ وَكَانَ لَهَا غُلَامٌ قَالَ لَهَا مُرِّي عَبْدَكَ فَلْيَعْمَلْ لَنَا أَغْوَادَ الْمِنْبَرِ فَأَمَرَتْ عَبْدَهَا فَذَهَبَ فَقَطَعَ مِنَ الطَّرْفَاءِ فَصَنَعَ لَهُ مَنْبَرًا

"It is from Sahal that the Prophet (peace and blessings of Allaah be upon him) ordered a Muhajirin woman who owned a carpenter slave. He said to him; "Command your slaves to make pulpits for us." So the woman ordered her slave. So the ghulam went to find wood in the forest and he made a pulpit for him." (HR. Bukhari)

Some scholars claim that basically Muslims have de facto agreed or knit a consensus (ijma') that the contract of Istishna' is a justified contract and has been carried out since time immemorial without any friend or scholar denying it. Thus, there is no reason to ban it. This reason is in line with one of the basic principles of Islam, namely taisir (facilitation):

إِنَّ الدِّينَ يُسْرٌ. رَوَاهُ الْبُخَارِيُّ

"Surely religion is easy." (Bukhari's Annals).

Scholars throughout the ages and in every school of fiqh that existed among Muslims have outlined methods in everything other than worship:

الأصل في الأشياء الإباحة حتى يدل على التحريمها

"The original law in all things is permissible, until there is evidence showing its illegitimacy". Logic People need items that are special and fit the shape and criteria they want. And goods with such provisions are not obtained in the market, so he feels the need to order them from producers.

Istishna' can bring many benefits and benefits, and does not contain elements of usury, or obscurity/high speculation (gharar). Thus every such thing is. Based on the brief explanation above, it can be concluded that the second and third opinions are stronger, thus it can be concluded that the contract of Istishna' is a contract that is justified in Islamic shari'a.

Muamalah jurisprudence is a good and bad basis as a reference or reference for individual decision making before making transactions. In Jurisprudence Muamalah also includes not only normative prohibitions, but also directs humans to behave honestly and trustfully as well as apply the principles of muamalah jurisprudence in making transactions. Muamalah jurisprudence generally regulates a person's civil relationship with others in economic matters that have been presented in the perspective of the Qur'an and Hadith which rests on 10 principles, namely, 1) the principle of tawhid 2) the principle of halal 3) the principle of maslahah 4) the principle of worship 5) the principle of freedom of transaction 6) the principle of cooperation 7) the principle of justice 8) the principle of trustworthiness 9) the principle of commitment to akhlaqul karimah 10) the principle of avoiding prohibited buying and selling. (Rusdan 2022) This principle is also in accordance with the word of Allah in Q.S An-Nisa verse 29:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبُطْلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O men of faith, do not eat one another's property in a false way, except by the way of consensual



business among you. And slay not yourselves; verily Allah is merciful to you.”(Tim Departemen Agama RI 2010)

So that the conclusion and analysis of researchers based on the above verse that the principles of muamalah jurisprudence according to the Qur'an are prohibiting transactions carried out in righteous ways, applying the principles in muamalah, there must be no gain or loss only to one party, doing justice and prohibited from committing tyranny or fraud both for himself and to consumers or other business people. Akad istishna is one of the scopes of muamalah jurisprudence, which regulates buying and selling in the order system. Where this contract is usually used in buying and selling goods that are not on the market and payment is made in accordance with the agreement between producers and consumers, payment can be made at the beginning, middle, or end of the contract, then this is the characteristic of the istishna contract. In this istishna contract, both producers and consumers must meet the pillars and conditions for this sale and purchase or transaction to be valid. In addition to fulfilling the pillars and requirements, in the contract istishna must also continue to apply the principles in muamalah jurisprudence, especially the principle of trust. The principle of trustworthiness is this principle of adhering to honesty, trust and responsibility that must be fulfilled by both parties. This is in accordance with the hadith of the Holy Prophetsa:

“It is from 'Abdullah bin 'Umar (may Allah be pleased with him) that the Prophet (peace and blessings of Allaah be upon him) said, "An honest and trustworthy Muslim merchant will be (gathered) with the martyrs – in another narration with the Prophet, the shiddiqs and those who were martyred on the Day of Judgment (later).” (H.R Ibnu Majah).

Based on the author's analysis of the concepts described above, istishna in muamalah jurisprudence refers to the application of the principles of muamalah jurisprudence in this istishna contract. The principles of muamalah jurisprudence are applied as an accompaniment to the pillars and conditions in the istishna contract, in order to avoid losses to one party. This can also be used as a reference for producers and consumers to continue to apply the principles of muamalah in addition to the fulfillment of pillars and conditions in buying and selling activities or any contract. So the researcher concludes that the istishna contract in muamalah jurisprudence thus still prioritizes the principles of muamalah jurisprudence in addition to the fulfillment of pillars and conditions. In business or buying and selling must also position as a human effort seeking the pleasure of Allah SWT and not solely seeking profit.

4. CONCLUSION

The conclusion of the analysis of Islamic economic law on buying and selling transactions in the social context through the implementation of the Istishna contract is that buying and selling transactions through the Istishna contract can make a positive contribution in achieving socio-economic goals in Islam. Through the Istishna' contract, buyers and sellers can interact with each other with the aim of achieving prosperity and social justice. This transaction can support wealth redistribution and community empowerment within the framework of the Islamic economy. However, it is important to ensure that the execution of the Istishna' contract is carried out in accordance with the provisions of Islamic law and the principles of social justice. In the event that there is evidence that shows haram in the transaction, it needs to be considered and considered. This analysis provides a better understanding of the relevance and social implications of buying and selling transactions through Istishna' contracts in the context of Islamic economic law, as well as the importance of maintaining conformity with Islamic principles in carrying out economic transactions..



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