



Differences and Similarities of Classical Muamalah Fiqh and Contemporary Muamalah Fiqh in the Istishna Contract

Yuliana Dewi Hasibuan

Universitas Islam Negeri Syekh Ali Hasan Ahmad Addary Padangsidempuan

email: Yuliana1.hsb@gmail.com

Abstract

Akad istishna' is a form of contract in muamalah fiqh that is used in the transaction of ordering goods that must be produced first, such as building houses, building ships, or manufacturing certain goods. This study aims to analyze the differences and similarities between classical and contemporary muamalah fiqh views on the istishna' contract. The approach used in this study is qualitative-descriptive with a literature study method. The results of the study show that both classical and contemporary jurisprudence agree in establishing the legal foundations and pillars of the istishna' contract, as well as emphasizing the principles of justice, clarity, and willingness in transactions. However, differences arise in terms of the flexibility of their implementation and application in the modern financial system. Contemporary jurisprudence is more adaptive in responding to the needs of the times through the development of Islamic financial products, such as istishna' financing in Islamic banking, as well as the existence of fatwas from authoritative institutions such as DSN-MUI. Thus, this study recommends a harmonization between classical values and contemporary needs so that the istishna' contract remains relevant and applicable in modern life.

Keywords: Istishna', Classical Muamalah Fiqh, Contemporary Muamalah Fiqh, Akad, Sharia Financing.

INTRODUCTION

Fiqh muamalah is one of the important branches in the study of Islamic law that discusses the procedures of interaction and relationships between humans in economic, social, and financial transaction aspects, all of which are based on sharia principles. Fiqh muamalah not only regulates buying and selling activities, but also includes various forms of cooperation, loans, investments, and other business contracts. The goal is to create an economic system that is fair, transparent, and based on the values of honesty and social responsibility. In this context, one of the forms of contract that is known and widely used in Islamic economic practice is the *istishna'* contract.

An *istishna'* contract is a contract for ordering goods or services, in which the ordering party (*mustashni'*) asks another party (*shani'*) to make or produce an item according to certain specifications, with an agreement on the completion time and payment method. This contract is different from ordinary buying and selling because the transaction object does not exist when the contract is made, but will be produced first. Payment in the *istishna'* contract has flexibility, it can be made in advance, in stages, or after the goods are completed. Because of these characteristics, the *istishna'* contract is very relevant in various development, manufacturing, construction, and other production projects that are medium to long-term.

In its history, classical scholars have

formulated the basic concept of the *istishna'* contract based on the needs and socio-economic conditions of their time. This concept is widely explained in fiqh books from various schools, especially the Hanafiyah school which pays more attention to the legality and structure of the *istishna'* contract. The scholars detailed the conditions for the validity of this contract, such as the clarity of the specifications of the goods, the deadline for processing, and a fair price agreement. This classical thought became an important foundation in the development of muamalah fiqh and continues to be a reference to this day.

However, along with the development of the times and the emergence of complexity in the global economic system, contemporary scholars began to re-examine the concept of the *istishna'* contract. This is mainly triggered by the emergence of modern financial institutions such as Islamic banking, Islamic finance institutions, and cooperation contracts between countries that require a more dynamic and contextual approach to Islamic law. Contemporary jurisprudence experts have tried to adapt the structure of *istishna'* contracts so that they can be legally applied in modern contract systems, such as project financing, construction contracts with multinationals, and sustainable development programs that use sharia principles.

This adjustment certainly causes differences in technical and implementive aspects between the concept of classical fiqh and contemporary fiqh. For example, in the case of contract recording, the use of digital technology

in transactions, or the involvement of third parties such as insurance institutions and consultants in istishna' projects. Nevertheless, the essence of the istishna' contract as an order contract is maintained, namely the existence of agreement, clarity, and justice for both parties, and does not contradict the basic principles of sharia.

These differences in historical, social, and societal needs are the basis for the need for a comparative study between classical and contemporary muamalah fiqh. By understanding the similarities and differences between the two in looking at the istishna' contract, Muslims, especially practitioners of sharia economics, will be able to formulate a form of transaction that is not only legal under Islamic law, but also relevant and effective in facing today's economic challenges. This study also helps to avoid practices that are speculative, gharar (ambiguous), and riba, which are prohibited in Islam, so that the transaction system can run with blessing and justice.

Thus, a deep understanding of the istishna' contract from these two perspectives is very important. Not only as a form of Islamic intellectual development, but also as a real contribution in building an applicable and highly competitive Islamic economic system in the midst of a modern world that continues to develop.

This research uses a qualitative-descriptive approach with a library research method. This approach was chosen because the main focus of the research is to explore, understand, and analyze the concept of istishna' contract from two perspectives, namely classical and contemporary muamalah jurisprudence. The main purpose is to present a deep understanding of the similarities and differences between the thinking of the previous scholars and the thoughts of today's scholars in the context of the application of the istishna' contract in the field of modern Islamic economics and finance.

The data sources in this study consist of primary and secondary sources. Primary sources include classical fiqh books from various schools, especially Hanafiyah schools such as *Al-Marghinani's Al-Hidayah*, Al-Kasani's *Badai' As-Shanai'*, and other similar works that discuss the istishna' contract. Meanwhile, contemporary primary sources include fatwas from institutions such as DSN-MUI, AAOIFI (Accounting and Auditing Organization for Islamic Financial Institutions), as well as books and scientific journals from contemporary muamalah jurisprudence. Secondary sources include a variety of supporting literature such as articles, Islamic encyclopedias, and academic papers.

The data collection technique is carried out by means of documentation, namely collecting various relevant literature, both print and digital. After that, the data is analyzed in depth using the content analysis method, which is to examine the content of texts from various literature to identify concepts, principles, as well as differences and

similarities in the *istishna'* contract between classical and contemporary thought. The researcher also interprets the historical and social context behind the formulation of laws in each period.

In addition, to strengthen the results of the analysis, the researcher also used a comparative method, namely by systematically comparing the opinions of classical and contemporary scholars in various aspects of the *istishna'* contract, such as the harmony and conditions of the contract, the object of the transaction, the payment method, and the application in Islamic financial institutions. This comparison is important to show the extent of the flexibility of Islamic law in responding to the changing times, without abandoning the fundamental principles of sharia.

The results of the analysis in this study will be presented narratively and systematically, starting from the presentation of the concept of *istishna'* in classical jurisprudence, then continued with a contemporary perspective, as well as a discussion of its comparison and relevance in the context of modern Islamic economics. It is hoped that this method can produce a comprehensive, objective, and useful study in the development of muamalah fiqh literature and its application in current Islamic finance practices.

RESULTS AND DISCUSSION

Akad *istishna* is a form of purchase and sale contract in the sharia economy that is carried out based on orders for the manufacture of goods with certain specifications that have been agreed

between the orderer (*mustashni'*) and the maker (*shani'*). In this contract, the ordered goods did not exist at the time the contract was agreed, so the manufacturer or seller is responsible for producing the goods according to the buyer's request. This concept is widely applied in the manufacturing, construction, and project financing sectors by Islamic financial institutions, such as Islamic banks. In terminology, akad *istishna* comes from Arabic which means a request to do something. In fiqh muamalah, an *istishna* contract is defined as an agreement between two parties, where the buyer orders goods to the producer with mutually agreed specifications, prices, and delivery times. DSN-MUI Fatwa Number 06/DSN-MUI/IV/2000 emphasizes that *istishna* is a purchase and sale transaction based on orders, with certain conditions related to goods and payments that must be fulfilled by both parties. The basic concept of the *istishna* contract emphasizes the existence of an agreement (*ijab qabul*) between the buyer and the seller, as well as the clarity of the specifications of the goods ordered. These specifications include the type, size, material, quality, and other features that must be explained in detail so as not to cause disputes in the future. In addition, the time and place of delivery of goods must also be clearly specified in the contract, so that both parties have legal certainty and protection of rights.

One of the advantages of the *istishna* contract is flexibility in payment. Payment can be made in stages according to the agreement, either at the beginning, during the production process,

or after the goods are finished and handed over to the orderer. This distinguishes the istishna contract from the salam contract, where the payment must be made in advance. This flexibility is very helpful in financing large projects that require a lot of production time and capital. The istishna contract is also recognized for its validity in Islamic law, as affirmed by scholars and fatwas of DSN-MUI. The Hanafi school, for example, allows this contract because of the urgent needs of the community, and has been a common practice in trade since the early days of Islam. In addition, the istishna contract is also regulated in sharia accounting standards such as PSAK 104 and the international guidelines AAOIFI, which emphasize the importance of the principles of justice, transparency, and the prohibition of usury, gharar, and maysir in its implementation.

Overall, the istishna contract is an innovative sharia solution to meet the needs of modern business transactions that involve the manufacture of goods based on orders. With the principles of clarity of specifications, voluntary agreements, and payment flexibility, the istishna contract is able to encourage sustainable economic growth and in accordance with Islamic values, as well as provide legal protection for the parties involved in the transaction. Classical muamalah fiqh in istishna contract refers to the understanding and practice of buying and selling transactions that have developed since the early days of Islam based on primary sources such as the Qur'an, Hadith, and the opinions of classical scholars. In the context of the istishna contract,

classical fiqh emphasizes that this contract is an agreement between the orderer (mustashni') and the maker (shani') to make or produce certain goods that do not exist at the time the contract is agreed. The goods must be made according to mutually agreed specifications, both in terms of type, quality, and delivery time.

According to classical schools, such as Hanafi, Maliki, Shafi'i, and Hambali, the istishna contract is distinguished from the salam contract even though both are related to the transaction of goods that do not yet exist. Classical fiqh places istishna as buying and selling by making goods (bai' bi al-sinah), where the seller is responsible for producing the goods, while salam places more emphasis on upfront payment and the specifications of the goods which must be very detailed. This emphasizes that the istishna contract in classical fiqh is characterized by flexibility in payment and delivery of goods. The pillars of the istishna contract include the existence of the orderer and the maker, the object of the contract in the form of goods that must be made, and the existence of a clear ijab and qabul. Meanwhile, the conditions include clarity of the specifications of the goods, price agreements, and delivery times that must be met so that the contract does not contain elements of gharar which is prohibited in Islam. This principle is the main foundation in maintaining justice and legal certainty in transactions.

Contemporary fiqh muamalah in the istishna contract is the development of Islamic law that adapts classical principles to modern economic and technological dynamics. Akad

istishna in the contemporary context not only functions as a contract for ordering goods that do not yet exist, but also as a financing instrument that is flexible and adaptive to current market needs. This approach uses a more contextual ijthad method, accommodating product developments, payment systems, and delivery mechanisms that are more complex than in the classical period. One of its main features is flexibility in payments. Unlike the salam contract which requires payment in advance, the istishna contract allows payments to be made gradually, in advance, or deferred according to the agreement of the parties. This flexibility provides easy financing, especially in the industrial and construction sectors, where capital and production time are important factors.

The similarity between classical and contemporary muamalah fiqh in the istishna contract lies in the sources of law used, namely the Qur'an, Hadith, ijma', and qiyas. Both also have similarities in the definition and basic concept of contracts, namely purchase and sale contracts based on orders for goods that do not yet exist. Harmony and conditions such as clarity of goods specifications, prices, delivery times, as well as ijab and qabul remain mandatory elements that must be met. Both classical and contemporary approaches also emphasize the importance of the principle of justice, the prohibition of haram elements such as riba, gharar, and maysir, as well as the main purpose of the contract, which is to create a legitimate, transparent, and beneficial transaction for both parties. This similarity shows that although

classical and contemporary fiqh approaches differ in methodology, they still adhere to the same sharia principles in the implementation of the istishna contract.

CONCLUSION

Based on the discussion above, the main difference between classical and contemporary muamalah jurisprudence in the *istishna' contract* lies in the methodological approach, the level of flexibility, and the ability to adapt to the dynamics of the times. Classical muamalah jurisprudence is more oriented towards legal certainty with a strong emphasis on the clarity of the specification of goods, the fulfillment of the pillars and conditions of the contract, as well as the conformity with the main sources such as the Qur'an, hadith, ijma', and qiyas processed through the ijthad of the previous scholars. In practice, *the classic istishna' contract* usually involves only two parties, namely the orderer (*mustashni'*) and the maker of the goods (*shani'*), with payments that can be made in cash at the beginning, gradually, or after the goods are completed. Principles such as the prohibition of gharar (ambiguity), riba (interest), and maysir (speculation) remain important foundations for maintaining the fairness and integrity of transactions from a sharia perspective.

Meanwhile, contemporary muamalah jurisprudence comes with a more contextual and adaptive approach to social, economic, and technological changes. Contemporary scholars developed the *istishna' contract* to answer the needs of the business world and modern Islamic

financial institutions, especially in the financing of the construction, manufacturing, and infrastructure projects sectors. One notable innovation is the use of *parallel istishna'* schemes, where institutions such as Islamic banks act as intermediaries between the orderer and the producer, allowing transactions to take place more efficiently and securely. In addition, the flexibility in terms of payments, the integration of digital systems, and the use of *istishna'* contracts in large-scale transactions show that contemporary muamalah fiqh not only maintains the basic principles of sharia, but is also able to accommodate the development of the times.

Thus, although contemporary muamalah jurisprudence remains rooted in classical values, it is able to provide innovative, applicative, and relevant legal solutions in the face of the challenges and complexities of the modern economy. This difference shows the dynamics of Islamic law that is responsive and solutive, while emphasizing the role of *ijtihad* in bridging tradition and modernity in the realm of muamalah.

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