



REVIEW OF SHARIA ECONOMIC LAW ON THE PRACTICE OF BUYING AND SELLING ISTISHNA' IN THE HN'S CAKE HOME INDUSTRY BUSINESS IN MEUREUBO DISTRICT, WEST ACEH REGENCY

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Abstract

Istishna is a trading contract with an order system carried out by the seller and buyer with certain specifications and according to the agreement, payment can be made in advance or at the end. This research aims to expose the practice of trading istishna' in the HN's Cake home industry business located in Ujong Tanjong Village, Meureubo District, West Aceh and analyze it according to the views of sharia economic law. This research is qualitative research that uses a combination of two methods, namely library research and field research. Field research uses observation, interview and documentation data collection techniques. Meanwhile, for the library method, researchers carry out literature studies according to the study. The results of the research show that the practice of trading with an order system in the HN Cake business meets the elements of istishna' trading, where every cake produced is in accordance with the buyer's request and according to sharia economic law analysis, it meets the criteria for buying and selling halal food because the HN Cake home industry already has a certificate. halal from the Indonesian Ulema Council. The process carried out meets sharia standards, namely clean, produced with halal materials and does not contain prohibited elements (khamar and khinzir).

Keywords: istishna', sharia economic law

INTRODUCTION

Islam is a divine religion that is very comprehensive in giving guidance in various aspects. Aspects of worship, muamalah, jinayah and munakahat are all summarized in Islamic teachings. Muslims believe that there is no other religion more perfect than Islam. The complexity of Islamic teachings is also covered in the field of economics which is summarized in the study of muamalah fiqh. The Sharia of Allah in this field aims to regulate all muamalah transactions to remain within the corridors of the Shari'a because muamalah is not only completed among humans, but will be held accountable in the Hereafter

Sharia economics regulates the relationship between transacting parties by establishing regulations contained in the Quran and hadith. In the naqli postulates, Allah and the Prophet SAW laid down the basic principles of Islamic economics, namely the principles of exploration, investment, distribution, production and consumption based on the Shari'a. These principles are the testament to Muslims in transacting according to the guidance of the Shari'a. (Aini, 2020)

In the fiqh of muamalah, there is a system of buying and selling *by order* where buyers *indent* (order) the desired goods according to certain specifications called *Bai' al-Istishna'*. Orders are made because the desired commodity is not available in the storefront/factory. Therefore, if the buyer wants the item, a pre-order is first made (order is made in advance). The product of interest will be created during a certain

time limit with payment terms as well as the nominal price set during the contract. But usually sellers first set the price of the previous transaction so that buyers have a shadow of the price so that they can prepare the budget early. This agreement is also categorized as an *ijarah* contract because it covers the production process and materials. (Hulwati, 2009).

Scholars (*jumhur*) argue that *istishna'* is part of *buying and selling Salam* because the system is somewhat similar (both *indent* contracts) but the payment process in *istishna* contracts can be done in installments while in *salam* contracts payments are made in cash during the contract. (Heri Sudarsono, 2008). However, the contract of *istishna* is not the same as the contract of greetings, in the contract of *istishna'*, the desired product will go through the production stage because the seller makes it first. While in the greeting contract, the product is already available (not through the production process anymore).

According to Adiwarman A Karim, the determination of certain specifications and conditions in the *istishna* contract by *the shani'* (party that produces goods) and *mustashni'* (orderers) is an important component in the realization of this *istihna* contract. *Shani'* can produce the goods themselves or can use a third party (second producer) or also called *istishna' parallel*. (Adiwarman A. Karim, 2016)

The *istishna' payment method* is quite flexible because it can be done at the beginning, installments, or at the end depending on the agreement agreed by both parties. If there is a default on the part of the seller, in the sense that the goods produced are defective or damaged, then the buyer can return the goods and the seller is obliged to replace or return the money that has been paid so that no party is affected.

One example of the practice of buying and selling *istishna'* as a result of the author's observation is the buying and selling of cakes order system at the home business of the HN's Cake Industry which is located in Ujong Tanjung Village, Meureubo District, West Aceh Regency where the buying and selling system occurs based on incoming orders, then the owner of HN's Cake produces according to order and payment is made after the cake is received by the orderer without guidance. This research is very important to be narrated to explore further about the practices of buying and selling *ishtisna'* that occur in the community. So far the author has not found any writings that raise the views of Islamic law regarding the practice of *istishna'* in MSME businesses in West Aceh district. So that with this writing, it becomes a forum for information for sharia economic law activists. Furthermore, in general, many people do this practice but do not realize that what is done is a form of contract in *fiqh muamalat*. In addition to educating the public, the author would like to further examine the review of Islamic law on the practice of buying and selling cakes in this order system and raise it in an article entitled **"REVIEW OF SHARIA ECONOMIC LAW ON THE PRACTICE OF BUYING AND SELLING ISTISHNA' IN THE HN CAKE HOME INDUSTRY BUSINESS IN MEUREUBO DISTRICT, WEST ACEH REGENCY."**



METHOD

This research is qualitative research with descriptive method of analysis. The type of research used in the discussion of this article is field research (*Field Research*) and literature research (*Library Research*). For field research, the authors used observation, interview and documentation instruments. Meanwhile, to process *library research* data, the author uses literature studies by reviewing references related to the object studied. The author classifies references into three categories: primary, secondary and tertiary. For primary reference, the author refers to the book *Al-um* written by Muhammad bin Idris Ash-Syafi'i, for secondary reference, the author refers to Syafi'i Antonio's book entitled "*Bank Shari'ah: From Theory to Practice*" and tertiary references, the author uses several articles that the author got from the internet, including an article entitled "*Analysis of the Implementation of the Istishna Agreement on Home Financing (Case Study of Bogor Sharia Property Developer)*" written by Muhammad Rizki Hidayah, Kholil Nawawi, et al, *Akad Istishna' Transactions in Online Buying and Selling Practices* by Yuliati Nur Aini and several other articles.

FINDING

HN Cake Overview

HN Cake's culinary business started in early 2020 which was built by owner Husniar. HN Cake is located at Jalan Meulaboh-Tapak Tuan, Peunaga Rayeuk Village, Meureubo District, West Aceh Regency. Since the beginning of the production process until now, all cakes produced are made by *order* system (based on order). HN Cake is a home industry that uses simple household appliances such as standard mixers, tangkring ovens and gas stoves. As for raw materials, the owner chooses premium ingredients purchased directly at the cake ingredients provider store in the city of Meulaboh, West Aceh. Until now, the owner has produced hundreds of birthday cakes, banana sponges, marble cakes, bento cakes and blackforest. The owner markets the cake using social media, namely Facebook, Instagram and Whatsapp. For people who want to order, they can see @niar_zein Instagram account, @Niar Zein Facebook account and can also contact the Whatsapp number 0822 7320 9124. (Husniar, 2023)

HN Cake's has a halal certificate issued on July 12, 2023. Thus the community does not need to worry about its halal status so that all cakes marketed are guaranteed halal and thayyib. HN Cake can be a culinary reference in West Aceh if there are tourists who want to make souvenirs with cake notes on orders two days before. (Husniar, 2023)

Akad Istishna and Its Legal Basis

Buying and selling *istishna'* is a classic buying and selling system that still exists today. The transaction procedure occurs if the *mustashni'* (orderer) orders a certain amount of goods to *the shani'* (producer) then the producer produces the goods according to the customer's request. The *indent system* in buying and selling *istishna'* resembles buying and selling greeting systems because they are both order contracts. The difference between the two lies in the payment system where in *istishna'* payment has three ways, namely payment in advance, within the period of the production process or after the goods arrive, can be paid in cash or with a credit system

(installments). This means that the time and payment system in *istishna'* is quite flexible according to the spaciousness of the buyer's sustenance. However, in the greeting contract, payment must be made in cash and made during the contract process. (Sundari, S., & Zuana, 2018)

Islamic economist Shafi'i Antonio defines the *Istishna* contract as a business agreement between producers and product suppliers where producers receive orders and then produce themselves or can use third parties (partners) in the production process. The partner assists the manufacturer in making goods according to agreed specifications. Furthermore, the goods are sent to consumers and continued with the payment process. In this contract, producers and consumers have agreed on the nominal price and payment system (Syafi'i Antonio, 2001)

According to the jumbur ulama (Malik bin Anas, Ash-Shafi'i and Ahmad bin Hanbal), the original law of *istishna'* is *mubah* as the contract of *greeting* is allowed. Likewise, with all the requirements in it, both *greetings* and *istishna'* follow the original law, which is permissible (*mubah*) and the legislation is valid whether the product handover time is determined or not and payment is considered valid even though it is paid in *cash* (Ahmad Wardi Muslich, 2017)

Shafi'i Antonio gives an overview of the differences between these two contracts as follows: (Shafi'i Antonio, 2001)

Tabel 1: Comparison Between *Ba'i as-Salam* and *Ba'i al-Istishna'*

| SUBJECT | GREETING | Istishana' | RULES AND DESCRIPTION |
|----------------|--|--|---|
| Thing | Muslam Fiihi (delivery of goods is made at a later date, and repayment of the money is handed over at the time of contract) | Mashnu' (delivery of the goods is made at a later date, and the payment can be suspended) | Products go through the production process with certain criteria according to buyer requests |
| Payment | Payment is made during the contract | Flexible, can be the upfront, middle or at the end | The payment system lies in the main difference between the contract of greetings and <i>istishna'</i> |



| | | | |
|----------------------------|---|--|--|
| Contract Properties | Binding | Non-binding | The greeting agreement protects both parties, both producers and consumers from the beginning |
| | (usually), i.e. the contract has been ratified or has been valid and cannot be canceled on When the contract has been agreed. | (<i>ghairu usually</i>), that contract is not binding between producers and consumers, both parties can cancel this contract if either party wants to cancel it. | While <i>istishna'</i> protects the producer so that the transaction is not unilaterally canceled by the consumer unilaterally by the consumer |
| Parallel Contracts | Salaam Parallel | Istishna' Parelel | Legal and carried out according to <i>their respective clusters</i> |

DISCUSSION

Islam as the most perfect religion does not only regulate matters of worship. Moreover, Islamic sharia also contains law. The laws contained in the teachings of Islam are perfect and comprehensive. One of the objects of study is fiqh muamalat which regulates the issue of business transactions among Muslims. In detail, the study of *istishna'* buying and selling transactions has been discourse among scholars since medieval times.

According to the Malikiyya, Shafi'iyah and Hanabilah schools, the law of *istishna'* is *mubah* as is the permissibility of the contract of greeting. The three schools stipulate *qiyas* for both contracts because the object ordered was not owned by the producer at the time of the contract. Furthermore, buying and selling *istishna'* is an '*urf sahih* (community custom) that does not contradict the Shari'a. Therefore, the conditions in buying and selling *greetings* also apply in *istihna'*. (Arcarya, 2007). Unlike the number of scholars, Imam Hanafi has his own views on the law of *istishna'*. According to him, *istishna'* is not legal and includes forbidden buying and selling because *qiyas*, it is not the same as '*illat* with buying and selling. He argued that the object (product) should be available and in the hands of the seller while in *istishna'*, the product is still abstract and still in the planning stage (not *real*). (Job, 2009). However, contemporary scholars argue that the buying and selling of *istishna'* is legal according to *qiyas* and the legal provisions of the origin of muamalah fiqh which says "*the law of origin of everything in muamalah fiqh is valid until there is evidence indicating its haram.*" Because the customer will definitely receive the product after the production stage is completed. In addition, the customer can complain if the product does not meet the desired criteria, then the manufacturer must be responsible for replacing or returning the money that has been paid. (M Nur Rianto Al Arif, 2012)

This responsibility on the part of the producer is a moral obligation that must be fulfilled so that no party feels disadvantaged. Because if the consumer loses, then the transaction is not in line with the will of the Shari'a which insists that in a

transaction there can be no one who *zhalimi* or *dizhalimi* (*la dharara wala dhirara*).

The process carried out is all in accordance with the understanding of *istishna'* itself, namely the contract of buying and selling ordered goods with the specifications of the goods needed must be determined at the beginning and the nominal price is also mentioned. In practice carried out by the owner of HN Cake, the buying and selling system occurs based on incoming orders, then the owner of HN Cake produces according to the order and payment is made after the cake is received by the customer without guidance. Payment is made in cash when the cake is received, buyers usually pay with cash or transfer according to the agreement.

The legal basis of *al-Istishna'* transactions is found in the Qur'an, Al-Hadith and Ijma'. In Surah Al-Baqarah verses 282 and 275 Allah Almighty says:

" O men of faith, if you do not give money for an indefinite time, let you write it down.... (al-Baqarah:282)

In accordance with the provisions of the aforementioned verse, the scholars explain that the law of origin of every transaction in the *muamalah fiqh* is permissible, until there is a proposition that forbids it. This provision is mentioned in the Shafi'i school and is followed by other schools. Transactions in *muamalah fiqh* are very diverse and new transactions continue to emerge in this modern era that have never happened before. The rules of *muamalah fiqh* are the basis for the permissibility of all *muamalah* transactions as long as there is no evidence either from the Quran, hadith or the opinion of scholars that declare it *haram*. Thus, Islamic economics is very flexible and relevant to the times so that it is able to answer the problems of the *ummah* that are quite complex.

As - Sunnah

In a hadith, Imam Muslim narrated:

"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). (Imam Muslim bin Al-Hajjaj, 2010)

The hadith explains that the Prophet ordered a stamp ring with silver material. The Prophet made an order transaction with special specifications, namely in the form of a stamp ring, there is a certain motif that shows the characteristics made of silver. This hadith is a strong *argument* that *istihna'* the law is changed so that it can be practiced by Muslims throughout the ages.

By *ijma'* (consensus), the scholars agree that the *istishna* contract is a valid contract and has become *urf* and no *salaf* scholar disputes its validity. (Ahmad Wardi Muslich, 2017). Thus, if anyone opposes *istishna'* then it is rejected because the opinion of the majority *ulama* is stronger and becomes an *argument* for Muslims.



Ijma'

Jual beli sistem *salam* dan *istishna* merupakan kebutuhan umat manusia sehingga syariat memberi jalan agar memudahkan umat. Tidak semua komoditi yang dibutuhkan oleh manusia tersedia di pasaran. Oleh karena itu, kebolehan transaksi dengan metode *salam* dan *istihnsna'* menjadi solusi atas kebutuhan manusia. Salah satu karakteristik hukum Islam adalah mudah dan tidak memberatkan umat serta selalu memiliki jalan keluar atas setiap permasalahan yang dihadapi umat. Ditambah lagi dengan pesatnya perkembangan zaman yang tidak lepas dari kebutuhan transaksi *salam* ini. Teori-teori tersebut memperkuat argumentasi tentang kebolehan *salam* dan *istihna'* sehingga umat Islam tidak perlu ragu untuk mengimplementasikan keduanya. (Abdul Hadi, 2010).

Dalam surat Al-Baqarah ayat 282 mengisyaratkan bahwa transaksi jual beli diperbolehkan baik secara tunai maupun non tunai. Dalam hal ini non tunai yang dimaksud adalah ketersediaan produk ketika akad dilaksanakan. Jika produk tidak ada maka transaksi ini termasuk pada jual beli *ma'dum*.

Lebih lanjut, dalam hadits disebutkan bahwa masyarakat Madinah pernah membeli kurma dengan cara memesan dan mereka menyepakati spesifikasi serta batas waktu pembayaran. (Ahmad Sarwat, 2007). Tidak ada riwayat yang menyebutkan larangan tentang transaksi tersebut baik dari kalangan sahabat maupun tabi'in. Hal ini menggambarkan bahwa transaksi *salam* dan *istishna* merupakan transaksi yang cukup populer masa tersebut dan diminati oleh masyarakat serta legal secara hukum.

Transaksi *istishna'* dan *salam* merupakan bagian dari kearifan lokal masyarakat Madinah sejak dahulu. Setelah kedatangan Islam, transaksi ini diterima sebagai transaksi yang legal karena merupakan '*urf sahih* (kebiasaan yang tidak bertentangan dengan syariat. '*Urf* merupakan suatu harmoni yang menjadi pertimbangan para ulama dalam mengistinbathkan suatu hukum selama tidak ada unsur yang menghalalkan yang haram atau mengharamkan yang halal dan bertujuan untuk meraih keridhaan Allah serta mewujudkan kemaslahatan umat. (Ahmad Sarwat, 2007)

Istishna' Pillars and Conditions for the Sale and Purchase of Istishna'

According to ulama ushul fiqh, harmony is something that is attached to the object of law, the loss of one element of harmony then results in the cancellation of legal deeds. (Abd al-Wahhab Khallaf, 1978). The pillars of *istishna'* are:

1. The person or party who makes the contract, namely *mustashni'* (buyer / orderer) and *shani'* (seller / producer)
2. The object of the contract, namely the product (*mashnu'*) with certain criteria and nominal price (*tsaman*).
3. Shigat, namely lafadz ijab and kabul, in this kabul ijab there must be an element of '*an taradhin* (mutual willingness) meaning there is no coercion from any party. (M Nur Rianto Al Arif, 2012)

Syarat Istishna'

Unlike other schools, the Hanafi school stipulates three conditions for *istishna'*

to be considered valid. If one is not fulfilled, then the transaction is considered void.

1. The product must be clear, both types, types, levels and properties. If one of these elements is not clear, then the *contract istishna'* becomes *facidic*.
2. Products are goods that are commonly used for purposes and are commonly used such as daily necessities, in the form of clothing, food and shelter or secondary and tertiary needs. Products that are not commonly used are not included in this category, for example such as witchcraft dolls, jaelangkung toys, figurines and others.
3. Can not set and ensure a specific time to deliver the product order. When that happens, the card turns into an akad *greeting*. (Arcarya, 2007).

From all the data obtained by researchers both from interviews and literature studies, ordering steps that are in accordance with the *istishna* contract have been implemented at HN Cake and meet the standards of shari'ah economic law. The owner is also responsible for damage to the order and replacing it by producing another or making a new cake. When the cake reaches the consumer's hands, the consumer must pay in cash or cash.

After the researcher reviewed and analyzed, the procedure for buying and selling *istishna'* contract carried out by HN Cake has fulfilled the principles of sharia economics because there is no element of *riba* in the payment process and there is no element of *gharar* and default on the cooperation carried out by both parties while the contract is still ongoing. Further payments are made in cash to the owner himself without any third party. The agreement made does not deviate from the legal basis of *istishna* transactions contained in the Qur'an and Hadith. In addition, HN Cake also has a halal certificate from the Indonesian Ulema Council. Thus, the *istishna'* contract on the HN Cake home industry is in accordance with sharia economic law.

The similarity of this research with the previous research mentioned above is that both study the contract *istishna'* and use the same legal basis. However, there are differences from the technical side and the object of study. In Yulianti Nuraini's article, the object of study is goods that are traded online through e-commerce platforms both Shopee, Lazada and others, and there is no mention of specific types of goods. This means that all items sold online are both in the form of food and other items. In the article Sundari, S., & Zuana, M. M. M. And Muhammad Rizk Hidayah, both raised about the implementation of *the istishna* contract on mortgage financing which describes *the istishna* contract used by Bank BTN Syariah. While the *istishna contract* on HN Cake's applies a simpler pattern that is the same as the classic buying and selling system that occurred during the time of the Prophet SAW. The uniqueness of this article is that the impact is directly felt by the wider community, because *the istishna* pattern in buying and selling cakes is very much done by MSMEs in West Aceh and elsewhere. So this article helps people understand the law of buying and selling *istishna'* and implement it in everyday life.

CONCLUSSION

The practice of buying and selling the order system in the HN cake business has fulfilled the element of buying and selling *istishna'* where every cake produced in



accordance with buyer demand and according to the analysis of sharia economic law has met the criteria for buying and selling halal food because the HN Cake home industry already has a halal certificate from the Indonesian Ulema Council. The process carried out has met sharia standards, namely clean, produced with halal materials and does not contain prohibited elements (khamar and khinzir).

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