

**CLASSICAL FIQH ON ISTISHNA' SALE AND ITS APPLICATION IN THE SHARIA
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12, 2025**Abstract**

This study examines classical Islamic jurisprudence (fiqh) on istisna' (contractual sale) and its application in the Islamic property industry. The istisna' contract is a form of commissioned sale in which the buyer requests the seller to construct goods or buildings with specific specifications and an agreed-upon completion time. In classical Islamic jurisprudence literature, this contract is permissible because it fulfills the principle of public interest and the need for halal production transactions. The purpose of this study is to examine the legal basis, characteristics, and relevance of the istisna' contract in the modern Islamic economic system, particularly in the Islamic property sector. This study uses a qualitative method with a library research approach sourced from classical Islamic jurisprudence books, fatwas of the National Sharia Council, and contemporary research. The results show that the istisna' contract has a strong legal basis based on analogy with the salam contract and the istihsan principle, and has developed into a financing instrument for construction projects that complies with Islamic principles. The application of this contract has proven effective in Islamic housing and infrastructure projects because it emphasizes fairness, transparency, and contractual responsibility. Thus, istisna' is real evidence of the adaptability of classical fiqh in responding to the needs of modern industry and plays an important role in strengthening a sustainable Islamic economy.

Keywords: Classical Fiqh, Construction Financing, Islamic Economics, Istishna' Sale and Purchase, Sharia Property

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INTRODUCTION

Fiqh is a key pillar in regulating the economic and social activities of Muslims, including buying and selling transactions. In the context of Islamic law, fiqh serves not only as a normative guideline but also as a practical guide for Muslims to conduct economic activities in accordance with sharia principles (Al-Ghazali, *Al-Mustashfa min 'Ilm al-Usul*, Juz 1). Through fiqh, all forms of transactions are regulated to avoid elements of usury, gharar, and maysir, which can harm one party (Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, Juz 2).

The importance of fiqh in buying and selling transactions lies in its ability to balance justice, public interest, and legal certainty. From an Islamic economic perspective, every transaction must be based on the principle of *an-taradhin minkum* (mutual consent), as stated by Allah in the Qur'an. *An-Nisa'* [4]: 29, which emphasizes that buying and selling must be carried out voluntarily without any element of deception (Al-Razi, *Tafsir al-Kabir*, Juz 10). Therefore, fiqh serves as both a moral system and a legal framework to ensure that economic activities operate within the framework of sharia (Nasution, 2024).

In the development of the global economy, the public's need for sharia-compliant products and services is increasing. One sector experiencing rapid growth is the sharia-compliant property industry, which requires legal and financial instruments that comply with Islamic principles (Rahim, 2024). In this context, the *istishna'* contract is a highly relevant form of transaction because it provides a halal and efficient solution for financing construction projects (Aziz, 2025).

The *istishna'* contract has characteristics that distinguish it from other sales contracts. This contract allows the buyer (*mustasni'*) to order goods or buildings that do not yet exist with certain specifications, which are then constructed by the manufacturer (*sani'*) within an agreed timeframe (Al-Kasani, *Bada'i' al-Sana'i'*, Juz 5). This mechanism is well-suited to the needs of the modern property sector, where development projects are often carried out based on orders or construction contracts.

Therefore, studying the classical jurisprudence of *istishna'* and its application in the Islamic property industry is crucial. This study is not only theoretically relevant for strengthening the legal basis of Islamic economics but also practically for supporting the sustainable development of the Islamic finance and property industry (Ridha, 2025). Through an integrative approach between classical fiqh and modern practice, it is hoped that the *istishna'* contract can continue to be a financing solution that aligns with Islamic values and the needs of today's society (Hassan, 2025).

RESEARCH METHOD

This study uses a qualitative approach with library research. The focus of the research lies in the conceptual and normative study of the *istishna'* contract in classical Islamic jurisprudence and its application in the modern Islamic property industry. The data for this study was obtained through a review of various literature, both primary and secondary. The data collection method was carried out through documentation and text analysis, namely by reading, identifying, and classifying data from various relevant references. The collected data were then analyzed using descriptive-comparative analysis, namely by describing the classical Islamic jurisprudence concept of *istishna'* and comparing it with the application of the contract

in the context of the modern Islamic property industry. This analysis aims to find the relevance and continuity of the values of Islamic muamalah in addressing the needs of the contemporary Islamic economy.

RESULTS AND DISCUSSION

A. Classical and Contemporary Fiqh

1. Definition of Istishna'

Istishna' is etymologically derived from the word *ṣana'a*, which means to make or produce something. In fiqh terminology, istishna' is defined as a sale and purchase contract in which the buyer orders an item from the seller to be manufactured according to certain specifications, with delivery taking place at an agreed time. Therefore, this contract is a form of commissioned sale involving the manufacturing process (Al-Kasani, *Bada'i' al-Sana'i'*, Juz 5).

Imam Abu Hanifah permitted the istishna' contract as a form of *bai' al-ma'dum* (sale of goods that do not yet exist) due to a public need, as long as the goods and their specifications can be described in detail (Al-Sarakhsi, *Al-Mabsuth*, Juz 13). In the Shafi'i and Maliki schools of thought, istishna' is considered the same as the salam contract, but there are fundamental differences in terms of payment time and type of goods (Al-Nawawi, *Al-Majmu'*, Juz 9). In general, classical Islamic jurisprudence scholars state that istishna' is a valid contract if it meets the following main elements: two contracting parties (*al-'aqidan*), the ordered goods (*al-ma'qud 'alayh*), an agreed-upon price (*tsaman*), and a clear consent and acceptance (Ibn Qudamah, *Al-Mughni*, Juz 6).

2. Legal Basis for Istishna' in Classical Islamic Jurisprudence

The legal basis for the istishna' contract is derived from analogy with the salam contract and *istihsan* (legal preference), as accepted in the Hanafi school of thought. This contract is not explicitly mentioned in the Qur'an or Hadith, but it is permitted because it fulfills the principle of public interest and needs (Al-Marghinani, *Al-Hidayah*, Juz 3). Some jurists consider the permissibility of istishna' based on the principle "*al-ashlu fi al-mu'amalah al-ibahah*" (the basic principle of transactions is permissible) as long as there is no evidence to prohibit it (Ibn Abidin, *Radd al-Muhtar*, Juz 4). This is also reinforced by the practice of the Companions and Tabi'in, who permitted orders for the manufacture of certain goods, such as household appliances and weapons. The istishna' contract is also regulated in Articles 390–397 of the *Majallah al-Ahkam al-'Adliyyah* during the Ottoman Caliphate, which affirms the legality of the custom-made contract, provided that the goods are made to order and the price is agreed upon in advance (Al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu*, Juz 4). Conceptually, the legal basis for istishna' in classical fiqh emphasizes three main pillars: a valid custom-made contract, clear specifications for the goods, and agreement on price and delivery time. These elements form the foundation for the application of istishna' in the contemporary economic sector (Nuriyah, 2025).

3. Contemporary Fiqh

Developments in the modern economy and technology have led to the emergence of new forms of transactions that require a reinterpretation of the principles of classical muamalah fiqh. The istishna' contract, which is essentially a custom-made contract for the sale of goods, shares similar principles with contemporary sales, particularly in terms of clarity of the contract, honesty of information, and moral responsibility of the transacting parties (Syahrizal & Zen, 2024).

In contemporary muamalah jurisprudence, the validity of a contract emphasizes the element of mutual consent (*an-tarāḍin minkum*), as affirmed in the words of Allah SWT:

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

(QS. An-Nisā' [4]: 29)

It means:

"O you who believe, do not consume each other's wealth in a false (unrighteous) manner, except by means of commerce which is carried out on the basis of mutual consent between you. And do not kill yourselves; indeed Allah is Most Merciful towards you."

This verse is an important basis for every form of transaction, including *istisna'* contracts, so that it does not contain elements of *gharar* (obscurity) and *tadlīs* (deception). This principle also emphasizes the importance of clarity in product specifications, completion time and agreed prices from the start. This provision is in line with DSN-MUI fatwa no. 06/DSN-MUI/IV/2000 concerning the *Istisna'* Agreement, which states that a transaction is valid if it meets the pillars and requirements of sharia including transparency and mutual agreement.

Thus, the discussion of contemporary Islamic jurisprudence (*fiqh*) in *muamalah* (Islamic transactions), as presented by Syahrizal & Zen (2024), reinforces the notion that the *istisna'* contract is a modern form of sale and purchase that remains within the framework of Sharia law, as long as the principles of mutual consent, honesty, and clarity of the object of the transaction are maintained. This contract can even be adapted to the context of digital industries such as Sharia marketplaces or online property projects, while upholding the values of fairness and the blessings of transactions as mandated by Islam.

4. Evolution of *Istishna'* in a Modern Context

Istishna' has undergone significant development in the context of modern Islamic jurisprudence and economics. Islamic economists view this contract as an important instrument for financing manufacturing and construction projects without violating Sharia principles (Khan, 2023). In practice, *istisna'* is used by Islamic financial institutions to finance large projects such as the construction of buildings, factories, housing, and infrastructure. This is due to the flexibility of the *istisna'* contract, which allows payments to be made in installments according to the progress of the work (Rahman, 2024).

According to recent research, *istisna'* is a legitimate alternative to conventional contracts in development projects because it does not contain elements of interest (*riba*) and speculation (*gharar*) (Hassan, 2023). The parallel concept of *istisna'* was also introduced to simplify contract implementation, where financial institutions act as intermediaries between the buyer and the producer (Ahmad, 2024). The following is a comparison table.

Table 1. Comparison of Classical *Fiqh* and Contemporary *Fiqh*

Study Aspects	Classical <i>Fiqh</i>	Contemporary <i>Fiqh</i>
Definition	<i>Istisna'</i> is a sales contract where the buyer asks the seller to make goods according to certain specifications, and delivery is made at an agreed time (Al-Kasani, <i>Bada'i' al-Sana'i'</i> , Juz 5).	<i>Istisna'</i> is understood as a production contract (manufacturing contract) in a modern financing system that enables financial institutions to finance construction projects without usury (Ismail, 2024).
Legal basis	Determined through <i>qiyas</i> on the <i>salam</i> contract and the principle of <i>istihsan</i> in the Hanafi school of thought (Al-Marghinani, <i>Al-Hidayah</i> , Volume 3).	Strengthened through DSN-MUI Fatwa No. 06/DSN-MUI/IV/2000 and OJK regulations as a sharia financing instrument (Hidayat, 2024).
Contract Object	The goods ordered are not yet available at the time of the contract; they must be made according to specifications (Ibn Qudamah, <i>Al-Mughni</i> , Juz 6).	Including buildings, infrastructure projects, and manufactured products through the parallel <i>istisna'</i> system (Rahman & Karim, 2024).

Payment Time	It can be done at the beginning, gradually, or after the goods are finished (Al-Nawawi, Al-Majmu', Juz 9).	Based on the project payment progress according to the terms (Hassan, 2023).
Position of the Parties	Direct interaction between the maker (sani') and the customer (mustashni').	Involving Islamic financial institutions as intermediaries (parallel istisna').
Main Principles	Based on the interests and needs of society (Al-Zuhayli, 2004).	Focus on transparency and sharia compliance (Hassan, 2025).
Economic Orientation	Normative fiqh, emphasizes the legal validity of contracts.	Applicative fiqh, emphasizing economic effectiveness and maqāṣid al-syarī'ah.
Application Examples	Production of household tools and weapons in the classical period.	Financing property projects such as Green Islamic Residence Bekasi and Harmony Land West Java.

B. Istishna' in Sale and Purchase Transactions

1. Characteristics of Istishna'

The istisna' contract is a form of sale and purchase in Islamic jurisprudence (fiqh muamalah) that has unique characteristics compared to other sale and purchase contracts. Conceptually, istisna' is a transaction involving the manufacture of a specific item with agreed specifications and a price, where the item does not yet exist at the time of the contract (Al-Kasani, Bada'i' al-Sana'i', Juz 5). In other words, istisna' contains an element of takhliq (creation) because the item being sold must first be manufactured according to the buyer's request.

The main characteristic of this contract is the involvement of a production element, rather than simply the transfer of ownership of an existing item as in a bai' musawamah (regular sale and purchase) or bai' murabahah (sale with margin) contract (Al-Sarakhsi, Al-Mabsuth, Juz 13). Therefore, istisna' is considered a contract that combines two elements: a sale and purchase agreement and a work contract (ijarah), because in its implementation, the seller also acts as the manufacturer of the goods.

Furthermore, the istisna' contract is flexible in terms of payment timing. Payment can be made in full upfront, in installments, or even after the goods are completed, depending on the agreement of both parties (Ibn Qudamah, Al-Mughni, Juz 6). This flexibility distinguishes istisna' from salam, where payment must be made in full upfront (Al-Nawawi, Al-Majmu', Juz 9).

Legally, the istisna' contract is permissible because it fulfills the principle of al-maslahah al-mursalah, namely the public need for transactions to order goods that are not yet available on the market (Al-Zuhayli, Al-Fiqh al-Islami wa Adillatuhu, Juz 4). The Hanafi school of thought has elaborated the concept of istisna' the most extensively, followed by the Maliki and Hanbali schools, which later expanded its practice to include trade and development (Al-Marghinani, Al-Hidayah, Juz 3).

2. Differences from Other Sale and Purchase Contracts

To understand the characteristics of istisna' more deeply, it is important to compare it with other sale and purchase contracts such as bai' musawamah, salam, and ijarah.

a) Compared with bai' musawamah, istisna' does not immediately involve the goods; instead, they await the manufacturing process. Therefore, the object of the sale and purchase is readily available and can be handed over immediately (Ibn Abidin, Radd al-Muhtar, Juz 4).

b) Compared with bai' salam, the main difference lies in the timing of payment. Salam requires full payment upfront, while istisna' allows the parties to determine the agreed-upon payment method (Al-Sarakhsi, Al-Mabsuth, Juz 13).

c) Compared to ijarah, both involve services or work, but ijarah only sells services without transferring ownership of the goods, while istisna' sells the goods produced (Al-Nawawi, Al-Majmu', Juz 9).

3. Stages in the Istishna' Contract

The process of implementing the istisna' contract generally consists of several important stages.

a) The order stage, where the ordering party (mustasni') submits a request for the manufacture of goods according to certain specifications to the manufacturer (sani') (Al-Kasani, Bada'i' al-Sana'i', Juz 5).

b) The price and timeframe agreement stage. At this stage, the payment amount, payment method (cash, installments, or installments), and completion timeframe are agreed upon. All these elements must be clearly written to avoid gharar (Al-Sarakhsi, Al-Mabsuth, Juz 13).

c) The manufacturing stage, where the manufacturer begins working on the product according to specifications. If a financial institution acts as an intermediary, a parallel istisna' system is used, where the first contract is executed with the buyer and the second with the contractor (Ismail, 2024).

d) The delivery stage, which occurs after the product is completed. If the product meets specifications, the contract is considered complete and valid. If it does not, the buyer has the right to reject it or request corrections (Ibn Qudamah, Al-Mughni, Juz 6).

e) The final payment and document handover stage, which is the final stage of completing the contract. In modern practice, this stage is usually accompanied by a project or house handover report (Nathan, 2025).

C. Application of Istishna' in the Sharia Property Industry

1. Projects Using the Istishna' Contract

In modern Islamic economic practice, the istisna' contract is one of the main instruments in financing construction and property projects. This scheme is used by various Islamic financial institutions to finance the construction of houses, apartments, and public facilities such as mosques and schools. The istisna' contract allows the buyer (mustasni') to commission a building with specific specifications from the contractor (sani'), with a clearly agreed price and completion time (Al-Qarafi, Al-Furuq, Juz 3).

One example of the implementation of istisna' in Indonesia is the Green Islamic Residence project in Bekasi, a concrete example of the application of the istisna' contract in the modern Sharia property industry in Indonesia. This housing concept was developed based on the principles of halal property and eco-Islamic living, where every transaction process, from construction to handover, is carried out in accordance with the principles of Islamic jurisprudence (fiqh mu'amalat). In its implementation, this project adapts the parallel istisna' model through collaboration between developers, Islamic financial institutions, and consumers.

a. Initial Stage: Ordering and Contract Agreement

In the initial stage, prospective buyers (mustashni') place an order for a housing unit with the developer (sani') by agreeing to the building's technical specifications, such as type, land area, building materials, and construction period. Both parties then sign an istisna' contract, which includes: a fixed price agreed upon in advance, a completion time, and a payment mechanism. The contract is executed in writing and accompanied by a valid ijab qabul (consent) in accordance with the principle of ridha bi al-'aqd (the consent of both parties) (Nasution, 2024).

b. Financing Stage: Involvement of Islamic Banks

To facilitate project financing, the developer collaborates with Bank Syariah Indonesia (BSI) using a parallel *istisna'* mechanism. The first contract is executed between the bank and the buyer, where the bank sells the house to the buyer at a specified price and time. The second contract is executed between the bank and the developer, where the developer acts as the *sani'* (the mortgagee) who builds the house according to the bank's order.

This scheme prevents usury because the price and profit margin are agreed upon at the outset of the contract. The bank only profits from the *istisna'* margin, not interest, in accordance with the principle of "*al-ghunmu bi al-ghurmi*" (profit must be commensurate with the risk) (Ismail, 2024).

c. Stages and Development

After the *istisna'* funds are disbursed, the developer begins the construction process. Construction is carried out in stages and is supervised by a technical team and the Islamic bank.

Payments to the developer are made in installments based on construction progress:

- 1) 30% for the foundation and basic structure stage,
- 2) 40% for the main construction stage,
- 3) 30% for the finishing and handover stage.

This installment system ensures transparency and avoids *gharar* (uncertainty). The developer is required to provide monthly project progress reports to the financing institution (Hassan, 2023).

d. Handover Stage

After the house is completed according to the agreed specifications, a handover process takes place between the developer and the bank, then between the bank and the buyer. This process is accompanied by a report stating that the construction has been completed according to the contract terms. If construction defects are found, the developer is obliged to correct them before the contract is declared complete (Rahman & Karim, 2024).

e. Final Payment and Settlement Stage

The buyer makes the final payment to the bank according to the installment schedule agreed upon in the initial contract. Because the financing is conducted using the *istisna'* system, there are no late fees in the form of interest (*riba nasi'ah*), but only real administrative fees if there is a delay in payment (Hidayat, 2024). Settlement is made after the house is handed over and all obligations are fulfilled. With this system, all parties receive certainty of their rights and obligations in a fair manner.

The application of the *istisna'* contract in the Green Islamic Residence project demonstrates how classical Islamic jurisprudence remains relevant in a modern economic system. This contract fulfills the principles of fairness and clarity of contract as required by Hanafi and Maliki jurisprudence. According to Al-Kasani (1997), the *istisna'* contract is permissible because it is a non-binding contract before production begins, which provides flexibility for both parties. However, once the construction process begins, the contract becomes binding (*lazim*), so that each party is bound by its sharia obligations.

Table 2. Implementation of the *istisna'* contract in the Green Islamic Residence project in Bekasi

Transaction Components	Value / Description	Explanation of Fiqh Muamalah
Cost of Construction (Sani Capital)	Rp350.000.000	Cost of building a house by the developer (<i>sani'</i>).
Bank Profit Margin (Istisna' Profit)	10% = Rp35.000.000	Margin is agreed upon at the beginning, not interest (<i>riba</i>).
Istisna' Selling Price (First Contract SPT)	Rp385.000.000	The contract between Bank Syariah Indonesia and the buyer (<i>mustashni'</i>).

Down Payment	10% = Rp38.500.000	It is permissible according to urf mu'amalah as a sign of seriousness.
Bank Financing (Parallel Agreement)	Rp346.500.000	The second contract is between the bank and the developer.
Payment Terms	1. 30% (foundation) = Rp104,000,000 2. 40% (structure) = Rp138,600,000 3. 30% (finishing) = Rp103,900,000	Based on work progress (progress payment).
Development Timeframe	8 months	The agreed-upon time is a prerequisite for a valid contract.
Repayment Period	3 years (36 months)	No late interest; only actual administration fees.
Repayment Method	Fixed installment of Rp10,694,000/month	The selling price is minus the down payment, divided by the installment period.
Transaction Agreement Document	Signed between the buyer and Bank Syariah Indonesia	Includes specifications, margins, terms, and delivery time.

Furthermore, the implementation of this project has also attracted attention because it presents a halal financing model without the involvement of bank interest. The buyer makes installment payments according to construction progress, while the contractor receives funds based on the project's terms. This concept reflects the principle of *adl wa ihsan* (justice and benefit) emphasized in Islamic jurisprudence (Al-Syatibi, *Al-Muwafaqat fi Usul al-Syari'ah*, Juz 2).

2. The Relationship between the Istisna' Contract and the Al-Amwal Theory in Islamic Jurisprudence

The istisna' contract in Islamic jurisprudence is closely related to the theory of *al-amwal* (property), a key pillar of the Islamic economic system. According to classical and contemporary jurists, *al-amwal* encompasses not only tangible material goods but also benefits and products that can provide economic value to humans (Robaiyadi & Zen, 2025). This aligns with the characteristics of istisna', which produces new goods or buildings through a custom-made production process. Therefore, the results can be categorized as visible assets (*al-amwal al-zahiriyyah*) because they have a physical form and clear utility value.

Furthermore, the theory of *al-amwal* also distinguishes between public assets (*al-amwal al-'am*) and private assets (*al-amwal al-khas*). In the context of the istisna' contract, the ordered construction product initially belongs to the individual (*amwal khas*), but socially provides broad economic benefits to the community (*amwal 'am*). This aligns with the word of Allah SWT in QS. Al-Hashr [59]: 7, which emphasizes that assets should not circulate only among the wealthy. Thus, the istisna' contract is not only a commercial means, but also an instrument for the fair distribution of wealth in line with the *maqāṣid al-syarī'ah* (Islamic principles), particularly in safeguarding wealth (*ḥifz al-māl*) and creating social welfare (Robaiyadi & Zen, 2025).

Therefore, the integration of the concept of *al-amwal* and the istisna' contract demonstrates that Islamic jurisprudence (*fiqh muamalah*) not only regulates transactions based on formal legal aspects but also considers the social and moral functions of Islamic economics. This principle ensures that every form of ownership and production within the istisna' contract

remains within the lawful (halal) framework, beneficial, and provides beneficial value to the wider community.

3. The Role of Istishna' in Sharia Economic Development

The istishna' contract has made a significant contribution to the growth of the sharia economy, particularly in the property sector. Through a system of ordering goods or buildings before they are built, this contract can stimulate the real sector and create jobs in the construction, building materials, and design services sectors (Ibn Taymiyyah, Majmu' al-Fatawa, Juz 29).

From an Islamic economic perspective, istishna' is a form of productive investment that aligns with the principle of al-tanmiyah al-iqtishadiyah al-mustadamah (sustainable economic growth). This contract creates a healthy economic cycle because it directly involves producers, workers, and buyers without usurious intermediaries (Chapra, 2024).

Table 3. Implementation of the Istishna' Agreement in the Harmony Land Project in West Java

Transaction Components	Value / Description	Explanation of Fiqh Muamalah
Construction Cost (Sani' Capital)	Rp400.000.000	The cost of building a housing unit by the developer (sani').
Bank Profit Margin (Istishna' Profit)	12% = Rp48.000.000	The legitimate profit agreed upon in the sale and purchase agreement (murabahah al-istishna').
Istishna' Selling Price (First Contract SPT)	Rp448.000.000	The agreement is between the bank and the buyer (mustashni').
Down Payment	15% = Rp67.200.000	Agreed upon at the outset as a commitment to the transaction.
Bank Financing (Parallel Contract)	Rp380.800.000	The second agreement is between the bank and the developer.
Payment Term	1. 30% (foundation) = Rp14,000,000 2. 30% (structure) = Rp14,000,000 3. 40% (finishing) = Rp152,800,000	Payment is based on project progress.
Construction Period	10 months	A clear time (ta'yīn al-ajal) for the validity of the agreement.
Repayment Period	5 years (60 months)	No interest; only real administrative fees.
Repayment Method	Fixed installments of Rp8,466,000/month	Avoids fluctuations, maintains contract fairness.
Transaction Agreement Document	Signed between the buyer and Bank Syariah Indonesia	Evidence of the agreement and certainty of Sharia law.

In modern Islamic property industry practices, such as those implemented in the Harmony Land project in West Java, the istishna' contract serves as the transaction model between buyers, developers, and Islamic financing institutions. This contract is an order-based contract, where the buyer (mustashni') orders a house with specific specifications from the developer (sani'), and construction is carried out in stages according to the agreement (Rahman & Karim, 2024).

In general, the *istisna'* contract process in the Islamic property project at Harmony Land in West Java includes several important stages:

a. Ordering and Initial Agreement Stage.

The prospective buyer selects a house type and agrees on the design, building area, construction materials, and total project price. The developer then prepares an *istisna'* contract, which outlines the technical specifications, payment amount, construction schedule, and handover date. At this stage, a written acceptance of the contract (*ijab qabul*) is made to demonstrate clarity and agreement (Hassan, 2023).

b. Financing Stage by Islamic Financial Institutions.

In projects like Harmony Land, the developer collaborates with Bank Syariah Indonesia (BSI) using a parallel *istishna'* (contract) mechanism. Two separate contracts are involved: the first contract is between the bank and the buyer, in which the bank sells the custom-built house to the buyer at an agreed price and timeframe. The second contract is between the bank and the developer, in which the developer acts as the *sani'* (contractor) to build the house according to the bank's specifications (Ismail, 2024). This scheme ensures transparency and avoids interest (*riba*), as all payments and profits are determined upfront according to the principle of contractual justice (*al-'adl fi al-'uqūd*).

c. Construction (Production) Stage.

After the contract is agreed upon, the developer proceeds with the house construction according to the contract schedule and specifications. Payments are made in stages based on construction progress, for example, 30% for the foundation stage, 30% for the structure, and 40% for finishing (Setiawan, 2024). Transparency and documentation of progress are crucial to prevent the element of *gharar* (uncertainty), which is prohibited by Sharia.

d. Delivery Stage.

Once the house is completed and meets specifications, the handover takes place between the developer and the bank, then between the bank and the buyer. This process is accompanied by a document marking the transfer of ownership. If defects or discrepancies are found, the buyer has the right to request repairs before the contract is declared complete (Ahmad & Yusuf, 2024).

e. Payment and Settlement Stage.

The final payment is made after the house is handed over. In the parallel practice of *istishna'*, the buyer can pay in installments to the Islamic bank according to the contract without interest and without late fees (*gharamah*), except for the agreed-upon real administration fees (Hidayat, 2024).

The implementation of this contract demonstrates the relevance of the *istishna'* concept to the contemporary Islamic property industry, as it balances the principles of justice, welfare, and social responsibility. This model also reflects the *maqāsid al-syarī'ah* values of safeguarding wealth (*hifz al-māl*) and fairness in contracts. Thus, the practice of *istishna'* contracts in projects like Harmony Land not only strengthens the Islamic financial system but also supports the mission of Islamic economic *da'wah* through the application of the principle of *rahmatan lil-'ālamīn* in the real sector (Nuriyah, 2025; Chapra, 2024).

Furthermore, *istisna'*-based financing supports the concept of inclusive growth, namely economic development that prioritizes the social welfare of the wider community. Because it is interest-free, this contract enables more people from lower to middle income backgrounds to own homes through a fair and transparent payment system (Karim, 2025).

From a policy perspective, the government can also utilize *istisna'* as a strategic instrument for financing public infrastructure such as schools, hospitals, and social facilities. Several countries, such as Malaysia and Saudi Arabia, have used *istisna'*-based Islamic Project Bonds for national development (Zain, 2024). Thus, *istisna'* serves not only as a transaction tool but also as an instrument for sustainable, equitable, and Islamic economic development in accordance with Islamic values (Mahfud, 2025).

4. Successes and Challenges Faced

Although *istisna'* has demonstrated significant success, there are a number of challenges that require attention in its implementation. The success of the *istisna'* contract is primarily due to contract clarity, trust between the parties, and a professional project management system (Ridwan, 2025). Its primary advantage is its ability to finance long-term projects without violating Sharia principles. In the context of the property industry, *istisna'* provides a more inclusive financing alternative than conventional credit-based systems (Ahmad & Yusuf, 2024).

However, challenges often arise from construction risks and project delays, particularly when contractors are unable to meet deadlines. Another common risk is differing interpretations of Islamic jurisprudence (*fiqh*) regarding fixed price provisions and changes in specifications during the project (Al-Dusuqi, Hasyiyah al-Dusuqi 'ala al-Sharh al-Kabir, Juz 4). To address these challenges, robust Sharia regulation and oversight are necessary. The Indonesian National Sharia Council has emphasized that every institution using the *istisna'* contract must have a Sharia Compliance Unit to ensure that all contracts and project progress remain in accordance with Sharia principles (DSN-MUI, 2022).

Furthermore, transparency and openness of information are crucial factors in maintaining consumer trust. Institutions such as Bank Muamalat Indonesia and BPRS Amanah Ummah have implemented digital reporting systems that allow consumers to directly monitor the progress of their project construction (Hidayat, 2024). Thus, while *istisna'* faces administrative and technical challenges, its success demonstrates its relevance and significant potential for developing a sustainable Islamic property financing system (Mubarak, 2025).

D. Legal Issues in *Istishna'* Contracts

1. Legal Challenges

In the practice of implementing *istishna'* contracts, legal challenges often arise from inconsistencies between sharia principles and prevailing positive law. One of the main issues is project delays and the resulting legal consequences for the parties. In *istishna'* contracts, the goods or projects ordered require time to be produced or constructed, making delays a significant risk (Rahmawati, 2022: 45).

The Quran provides a strong legal basis for the obligation to fulfill promises and contracts. Allah SWT says:

وَإِذْ أَخَذْنَا مِنَ الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

"O you who believe! Fulfill your contracts."

(Quran, Al-Ma'idah [5]: 1)

This verse is a key principle in Islamic jurisprudence (*fiqh*) regarding transactions, including the *istishna'* contract. Every agreed-upon contract must be implemented according to the applicable provisions. Violations of the contract, such as delays or reneging on them, are categorized as *gharar*, or uncertainty, which is prohibited in Islamic transactions (Al-Sarakhsi, Al-Mabsuth, Juz XIII: 208).

In Islamic jurisprudence, scholars emphasize that in an *istishna'* contract, the producer (*shani'*) is obligated to deliver the ordered product according to time and specifications. If a delay occurs without a valid Islamic reason, the buyer (*mustashni'*) has the right to cancel the contract or grant an additional grace period as mutually agreed upon (Al-Kasani, Bada'i' al-Sana'i', Juz 5: 73). This principle is also in line with the word of Allah SWT. In QS. Al-Isra' [17]: 34:

وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا

"And fulfill your promises, for surely every promise will be questioned."

This verse emphasizes the moral and legal responsibility in carrying out contracts, including in *istishna'* projects.

However, in Indonesian positive law practice, the mechanism for resolving project delays still refers to Law Number 2 of 2017 concerning Construction Services, which emphasizes aspects of default and compensation, without considering the values of *ta'awun* (cooperation) and *'adl* (justice) in Sharia (Hafid, 2021: 89).

Furthermore, dispute resolution in *istishna'* contracts also raises its own legal issues. Many disputes are resolved through lengthy and costly litigation, even though Sharia principles recommend dispute resolution through deliberation or through a Sharia arbitration institution (*tahkim*) (Al-Kasani, *Bada'i' al-Sana'i'*, Juz V: 73). This is based on the word of Allah SWT in QS. An-Nisa' [4]: 35:

فَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا

"If you fear a dispute between the two, then appoint a hakam (arbitrator) from the man's side and another from the woman's side."

This verse forms the basis for the legitimacy of Sharia arbitration in dispute resolution, which was later developed by institutions such as BASYARNAS in Indonesia (Hidayat, 2023: 134).

Thus, the legal challenges in implementing *istishna'* concern not only contract certainty, but also the integration of the Sharia legal system and national law. A comprehensive legal interpretation is needed to maintain the principles of *maqasid al-Shari'ah* without neglecting the aspect of legal certainty for the parties.

2. Recommendations for Regulatory Improvement

To strengthen the implementation of *istishna'* contracts in the context of modern industry, particularly in the property and infrastructure sectors, policy reform and legal harmonization are necessary. One important step is the development of more specific regulations on *istishna'* financing that are integrated with Sharia financial institutions (Maulana, 2022: 211). Allah SWT. Says in QS. An-Nahl [16]: 90:

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ

"Indeed, Allah commands (you) to act justly and to do good..."

This verse serves as the normative basis for the formation of public policy, including Sharia contract law, to reflect substantive justice, not just procedural certainty. These regulations must take into account the uniqueness of the *istishna'* contract, namely its order-based manufacturing contract nature, which demands legal certainty and Sharia-compliant flexibility. Therefore, the following policies should be in place:

a. Policies supporting the implementation of *istishna'* need to emphasize the principles of transparency, fairness, and contractual responsibility. The government, together with financial authorities such as the Financial Services Authority (OJK) and Bank Indonesia, can issue standard *istishna'* contract guidelines to avoid disputes and strengthen Sharia financial practices (Susanto, 2024: 92).

b. Harmonization between Sharia law and positive law is necessary to avoid overlap. This harmonization can be achieved through the *fiqh al-mu'amalat al-mu'ashirah* approach, which combines classical principles with modern legal requirements. In Ibn 'Abidin's view, Islamic law is adaptive to changing times as long as it does not conflict with Islamic texts (Hasyiyah Ibn 'Abidin, Juz II: 175). This approach is relevant for integrating the perspectives of Islamic jurisprudence scholars and national regulators in building a comprehensive Islamic economic legal system.

c. Strengthening the role of Islamic arbitration institutions is also crucial. Dispute resolution through BASYARNAS must be legally supported by the judiciary so that its decisions have the same enforceable power as district courts. Furthermore, training for Islamic judges and arbitrators needs to be expanded to deepen their understanding of the *istishna'* contract and its derivatives (Yusuf, 2023: 56).

With these steps, it is hoped that the regulation of *istishna'* contracts will not only provide legal certainty but also ensure social justice and sustainability in the Islamic property sector. This is in line with the main objective of *fiqh muamalah*, namely to create benefits and avoid harm for all parties involved in the transaction.

CONCLUSION

This study confirms that the *istishna'* contract is a form of transaction firmly grounded in classical Islamic jurisprudence and remains relevant in the contemporary Islamic economic system. From an Islamic legal perspective, *istishna'* is permissible because it fulfills the principles of *maslahah mursalah* (the welfare of the poor), social needs, and clarity of the contract (*ta'yin al-ma'qud 'alayh* and *ta'yin al-tsaman*). By comparing the *salam* contract and applying the principle of *istihsan*, classical jurists established *istishna'* as a valid legal instrument for production and development activities.

In the modern context, the *istishna'* contract has developed into a strategic instrument in financing the construction and sharia-compliant property sectors. Its implementation through parallel *istishna'* involving Islamic financial institutions demonstrates the ability of classical Islamic jurisprudence to adapt to the modern economic system without compromising sharia principles. This model not only ensures contractual fairness and transparency but also supports real economic growth through job creation and productive asset turnover. Conceptually and practically, *istishna'* reflects the integration of the normative values of Islamic jurisprudence (*fiqh muamalah*) and the objectives of *maqāsid al-syarī'ah*, particularly in safeguarding wealth (*ḥifz al-māl*) and realizing justice and social welfare. Therefore, strengthening regulations and harmonizing sharia law and positive law is imperative to ensure the implementation of *istishna'* contracts in the sharia property industry is increasingly robust, just, and sustainable in supporting the vision of an Islamic economy that is *rahmatan lil-‘ālamīn*.

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