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Implementation of *Salam* and *Istishna'* Contracts in Islamic Financial Institutions

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ABSTRACT

Islamic financial institutions are continually innovating in the field of financing, one of which is through *salam* and *istishna'* contracts. The implementation of these contracts holds significant potential to benefit society, particularly in agriculture and housing sectors. However, obstacles persist in the regulations and policies supporting the implementation of these contracts, alongside a lack of understanding and awareness among the public regarding the concepts and advantages of *salam* and *istishna'* contracts. This research utilizes a literature study method by gathering data from academic sources and journals that delve into the concepts of buying and selling within Islamic finance, specifically *salam* and *istishna'* contracts. The research aims not only to identify the potential of *salam* and *istishna'* contracts in facilitating the agricultural and housing sectors but also to analyze the barriers hindering the implementation of these contracts. The findings demonstrate that *salam* and *istishna'* contracts hold significant potential in facilitating financing and investment in agricultural and housing sectors. The implementation of *salam* contracts can provide easier and more affordable access to financing for farmers, while *istishna'* contracts can serve as housing financing instruments in line with Sharia principles. However, hurdles remain in the implementation of *salam* and *istishna'* contracts, such as a lack of public understanding and supportive regulations. Therefore, efforts are necessary to enhance public understanding of the concepts and benefits of *salam* and *istishna'* contracts, along with clear regulations to support the implementation of these contracts within Islamic financial institutions.

Keywords: *Implementation, Salam and Istishna', Islamic Financial Institutions.*

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INTRODUCTION

Islamic financial institutions have experienced rapid growth within the global financial industry due to the foundational principles of Sharia guiding their operations. These principles offer diverse solutions for financing and investments, rooted in pillars of fairness, sustainability, and adherence to Islamic law. The implementation of Sharia contracts serves as the backbone of all financial transactions within these institutions.

Salam contracts, also known as deferred delivery sales, involve financing an item through ordering and paying its price upfront with specific agreed-upon conditions. Salam contracts are often linked to agricultural transactions. Salam sale occurs because the goods to be sold are not yet available at the time of the transaction; therefore, they need to be produced beforehand, such as agricultural products and other fungible goods (items that can be estimated and replaced based on weight, size, and quantity) (Aziz & Rosdaniah, 2022).

The definition of salam is a transaction or sales contract where the goods being sold do not exist at the time of the transaction, and the buyer makes an upfront payment while the delivery of the goods is done at a later date (Qusthoniah, 2016). Various studies have delved into salam contracts, such as Roziq, Hisamudin, Wahyuni & Purnawati's research titled "Salam Financing Model for Cassava Farmers and Small Businesses Using Cassava in Jember Regency," which highlighted the absence of salam financing for cassava farmers in Islamic financial institutions like Bank Syariah Mandiri, Bank Muamalat, BPR Syariah ASRI Madani Nusantara, and BMT Sidogiri. Qusthoniah (2016) critically analyzed "Salam Contracts in Islamic Banking," emphasizing that salam contracts involve the sale of specific goods with upfront payment. Clearly defining the criteria for the ordered goods aims to avoid disputes upon delivery, ensuring mutual agreement between parties (Muslimin dkk., 2021).

On the other hand, Istishna' contracts involve customized product orders between the producer/craftsman/receiver of the order (shani') and the buyer (mustashni') for a specific product (mashnu') where raw materials and production costs are the producer's responsibility, with payments made upfront, partially, or upon completion (Widiana & Annisa, 2018). The Istishna' contract is a financing agreement for goods in the form of a specific order for the manufacturing of certain items based on particular criteria and requirements. The Sharia provisions for Istishna' transactions are regulated in the DSN fatwa number 06/DSN-MUI/IV/2000 regarding Istishna' sales, which cover aspects such as payment terms and the specifications of the goods (Khotimah & Farid, 2021).

Istishna' transactions offer several advantages. For instance, in an Istishna' agreement, the ordered goods can be tailored to the buyer's preferences, facilitating the buyer in engaging in buying and selling transactions, particularly in manufacturing, which often involves substantial costs while the buyer has limited resources.

However, in practice, implementing salam and istishna' contracts-two commonly used contracts in Islamic financial institutions-poses its own set of challenges. Salam contracts involve transactions where the goods do not exist yet, while istishna' entails specific purchases with deferred delivery. Managing aspects related to non-existent or incomplete goods or projects can be challenging in determining a fair price and ensuring specification compliance with client needs.

These challenges escalate when applied in agricultural financing, a vital sector in many economies, especially those reliant on robust agricultural sectors. Challenges such as unpredictable climate risks, commodity price fluctuations, and limited access to capital are significant hurdles in providing stable and sustainable financing for agricultural entrepreneurs. While salam and istishna' contracts may offer solutions, risk management concerning agricultural uncertainties becomes a primary concern.

Furthermore, the housing sector requires substantial Sharia-compliant financing to meet the needs of numerous individuals and families. Salam and istishna' contracts can serve as financing instruments for homeownership in line with Islamic principles. Yet, challenges in comprehensive adoption of this financing system in the housing sector need addressing, including providing broader access for communities to benefit from such contracts.

RESEARCH METHODOLOGY

The research method used in this research is descriptive method. Descriptive methods are used to describe and explain existing phenomena or circumstances by collecting data, analyzing data, and presenting data systematically.

In this research, the descriptive method is used to describe the basic concepts of salam and istishna' sale and purchase, as well as to describe the implementation of the two types of sale and purchase within the scope of Islamic Financial Institutions. Researchers collect data from various sources, such as literature and related documents, to explain the basic concepts of salam and istishna' sale and purchase, and describe how salam and istishna' contracts are implemented in Islamic Financial Institutions.

In addition, this research also uses the comparative method. The comparative method is used to compare two or more phenomena or circumstances to see the differences, similarities, or advantages between them. In this research, the comparative method is used to compare the operations of salam and istishna' financing products in Islamic Banks. Researchers can compare the characteristics, advantages, and disadvantages of the two types of financing to see the differences and similarities between them.

By using descriptive and comparative methods, this research can provide a clear picture of the basic concepts of salam and istishna' sale and purchase, as well as their implementation in Islamic Financial Institutions. This research can also provide a better understanding of the differences and similarities between salam and istishna' financing in the context of agriculture.

RESULT AND DISCUSSION

Sale and Purchase of *Salam*

The term fiqh also refers to *salam as Salaf*. Linguistically, both have the same meaning, namely the beginning of payment and the end of goods. The word *salam* is often used by the Hijaz people, while *salaf* is for the Iraqis. In terms, *salam* is the sale of an item with the delivery of goods that are delayed, buying and selling goods whose specifications have been mentioned with the delivery of capital in advance, while the goods will be delivered at a later date. Sayyid Sabiq gives the definition of *salam* as the sale of something with certain specifications in consideration with immediate payment. The scholars of fiqh also named *salam* with the term *al-Mahawi'ij* which means something urgent, because the goods are not in place, so the buyer is in a state of urgency.

Imam Maliki defines *salam* as a deferred sale and purchase and prioritizes the agreement of the selling price (Umah dkk., 2018). Shafi'iyah and Hambali also gave the definition of *salam* sale and purchase as follows: (Siregar & Khoerudin, 2019) “A contract that is agreed upon by specifying certain characteristics by paying the price in advance while the goods are delivered in the course of the contract.”

Salam is the sale and purchase of ordered goods between the parties, namely the buyer and the seller. The terms of the *salam* object goods have been agreed upon at the beginning of the contract and total cash payment at the beginning of the contract is made (Saprida, 2018).

For example, *Salam* is not practiced as a mode of finance in Malaysia. But the practice of *salam* in Malaysia needs to be initiated to reduce the pressure on farmers and mini traders. *Salam* can also be used to provide upfront working capital to artisans who need money to do business regularly (Muneeza dkk., 2011). Among the purposes of *salam* sale and purchase is to relieve farmers who need money to farm until harvest.

The Islamic legitimacy of the *salam* contract is based, initially, on its compatibility with the Qur'anic verse that prohibits usury but permits/enjoins trade in Surah Al-Baqarah 275 (Zaabi, 2010).

The pillars and conditions according to Sulaiman Rasjid in his book entitled *Fiqh Islam*, which are the pillars of buying and selling *salam*, namely: (Saprida, 2018)

1. *Muslim* (buyer) is the party who needs goods or who orders goods.
2. *Muslim alaih* (seller) is the party who supplies the ordered goods.
3. Capital or money, some call it *tsaman* (price).
4. *Muslan fiih* is the item being traded.
5. *Shighat* is either *ijab* or *qabul*.

The pillars and conditions of buying and selling according to the majority of scholars other than Hanafiyah, are as follows: (Siregar & Khoerudin, 2019)

1. Al-Aqid, the person who makes the contract.
2. The object of the *salam* sale.
3. *Shighat*, i.e. *ijab* and *kabul*.

The conditions of the sale and purchase of *salam* are as follows: (Syaikhu dkk., 2020)

1. The payment is made in cash either with gold, silver, metal or an agreed medium of exchange so as to avoid things that lead to ribawi.
2. The commodity must be in accordance with clear specifications, for example in terms of type and size.
3. The time of delivery of the commodity must be specified.
4. The money was handed over in one assembly.

The sale and purchase of *salam* has been regulated by Fatwa DSN MUI number 05/DSN- MUI/IV/2000 which contains 6 provisions, as follows:

1. Payment terms are as follows:
 - a. The means of payment must be known in amount and form, whether money, goods, or benefits.
 - b. Payment must be made at the time the contract is concluded.
 - c. Payment must not be in the form of debt relief.
2. The provisions regarding goods are as follows:
 - a. The characteristics must be clear.
 - b. The specifications must be explained.
 - c. Delivery is at a later date.
 - d. The time and place of delivery of the goods must be fixed by agreement.
 - e. The buyer may not sell the goods before receiving them.
 - f. It is not permissible to exchange goods, except for similar goods as agreed.
3. In terms of parallel salams, it is permissible to do parallel salams provided that the second contract is separate from, and not related to, the first contract.
4. The terms of delivery of goods before or on time are as follows:
 - a. The seller must deliver the goods on time in the agreed quality and quantity.
 - b. If the seller delivers goods of a higher quality, the seller may not ask for an additional price.
 - c. If the seller delivers goods of inferior quality, and the buyer is willing to accept this, then he may not demand a price reduction (discount).
 - d. The seller may deliver the goods ahead of the agreed time, provided that the quality and quantity of the goods are in accordance with the agreement, and he may not demand an additional price.
 - e. If all or part of the goods are not available at the time of delivery, or are of inferior quality and the buyer is not willing to accept this, then he has two options. First, cancel the contract and ask for the money back. Second, to wait until the goods are available
5. Terms of contract cancellation. Basically, the cancellation of *salam* can be done as long as it does not harm both parties.
6. Provisions on disputes. In the event of a dispute between the two parties, the matter shall be resolved through a sharia arbitration body after no agreement has been reached.

Istishna' Sale and Purchase

Istishna comes from the word *shana'a* which means to make something. According to the language istishna' means asking to be made, while in terms istishna' is a sale and purchase contract between the buyer and seller where the buyer orders goods with clear specifications and prices which are delivered in stages or paid in full immediately. In this istishna 'sale and purchase uses a payment system on the basis of an order and the goods or objects of sale do not yet exist (Siregar & Khoerudin, 2019). In the book *al-mishbaah al-Muniir, Mukhtaar ash-Shihaab* and *al-Muhiith* it is stated that *istishna'* means *thalabus shun'ah* or asking for goods to be made. The meaning is the making of goods that a person does in making goods or in his work (Syaikhu dkk., 2020). The term fuqaha *istishna'* is a contract asking someone to make an item with the requested criteria in a certain form. *Istishna'* is to make a contract with a skilled person to make something (Ali, 2016).

The *istishna'* contract is similar to the *salam* contract because it is a sale and purchase of goods that do not exist at the time of the contract. However, there are differences between *istishna'* and *salam* in terms of not being obliged to deliver capital in cash, information about the period of manufacture and delivery. Likewise, it is not required that the goods ordered be one of the goods on the market (Syaikhu dkk., 2020). Sale and purchase of *istishna'* payment is made in installments and the goods being traded do not yet exist or are still on a deferred basis (Bahri & Mulyana, 2021).

Akad istishna' is a sale and purchase of an order either to a producer, craftsman, or order recipient to make a certain ordered item with certain specifications as well. The costs of raw materials and production are the responsibility of the producers and payment can be made at the beginning, middle, or end (Muslimin dkk., 2021).

Istishna' in banking is an agreement where the customer requires goods, items, equipment, development projects, which are required to be built, produced, fabricated or assembled, in which case it usually asks the bank for financing (Ardi, 2016). *Istishna'* is also one of the popular contracts used in Islamic banking (Sundari & Zuana, 2018).

The pillars of *istishna'* sale and purchase are as follows:

1. The perpetrators of the contract, namely *mustashni'* (buyer) and *shani'* (seller).
2. The object of the contract, namely the goods (*mashnu'*) along with the clarity of its specifications and price.
3. *Shighat* is ijab and qabul.

As for some of the conditions given by the scholars in the permissibility of making order buying and selling transactions are as follows:(Siregar & Khoerudin, 2019)

1. There is clarity on the specifications of the contract object.
2. These goods are commonly transacted or applied in human relations.
3. It is not permissible to stipulate a time period; if a time period is stipulated for the delivery of the goods, the contract will turn into an *as-salam* contract, according to Abu Hanifah.

The provisions regarding the sale and purchase of *istishna'* are also explained in the DSN MUI Fatwa number 06/DSN-MUI/IV/2000 concerning the sale and purchase of *istishna'*, which is as follows:

1. The terms of payment are as follows:
 - a. The means of payment must be known in amount and form, whether money, goods, or benefits.
 - b. Payment must be made in accordance with the agreement.
 - c. The payment must not be in the form of a discharge of debt.
2. The provisions on goods are as follows:
 - a. It must have clear characteristics and be recognized as a debt.
 - b. The specifications must be explained.
 - c. The handover was done later.
 - d. The time and place of delivery of the goods must be fixed by agreement.
 - e. The buyer (*mustashni'*) may not sell the goods before receiving them.
 - f. It is not permissible to exchange goods, except for similar goods as agreed.
 - g. In the event that there is a defect or the goods are not in accordance with the agreement, the customer has the right to *khiyar* (the right to choose) to continue or cancel the contract.
3. Other conditions are as follows:
 - a. In the event that the order has been carried out in accordance with the agreement, the law is binding.
 - b. All the conditions of salam sale that are not mentioned above also apply to *istishna'* sale.
 - c. If one of the parties does not fulfill its obligations or if there is a dispute between the two parties, then the settlement is through the Sharia Arbitration Board after no agreement has been reached through deliberation.

Analysis of The Implementation *Salam* and *Istishna'* in Islamic Banking *Salam* Financing in Islamic Financial Institutions

There are several financing in Islamic banking, one of which is the *salam* sale and purchase contract (Afria, 2022). Salam buying and selling occurs because the goods being traded are not yet available at the time of the transaction (Aziz & Rosdaniah, 2022). Salam is an adaptive tool/product and can be used to support all levels of society farmers and craftsmen or traders, especially the poor or those with little or no capital (Muneeza & Mustapha, 2020). Salam contract financing is generally used in the field of agricultural transactions, so as to get a solution to obtain capital for farming (Widiana & Annisa, 2018). However, Islamic banks can expand the purpose of the salam contract to livestock and poultry farming (Emir & Haki, 2022).

In the *salam* contract, the Islamic bank is the buyer and the seller is the customer. Islamic banks also use parallel *salam* contracts. Parallel *salam* implements a *salam* contract between the bank and the customer, and between the bank and the supplier or third party (Ningsih & Handayani, 2020). In this contract, the goods that have been delivered

The bank has the right to sell the commodity to the customer's partner in cash at the selling price set by the bank plus an agreed profit. In general, *salam* financing is implemented in the purchase of agricultural commodities by the bank, then the bank sells them back. Parallel *salam* is used by the bank because the goods purchased by the bank are a type of rice, so the bank must sell it back because it does not make it a deposit (Solihin dkk., 2022). The *salam* agreement used by Islamic banks is a parallel *salam* agreement where the bank already has a customer who aims to buy the crop (Widiana & Annisa, 2018). Farmers who are also customers come to Islamic financial institutions to conduct financing transactions with *salam* contracts will at the same time agree to the insurance agreement in the transaction.

In addition to agricultural insurance, the LKS must also establish relationships with various upstream and downstream products, for example with seed producers, fertilizer producers, agricultural equipment and so on. In addition, it must also have a network for marketing the agricultural harvest.

Salam schemes remain potential to be developed in Indonesia as the government pays increasing attention to developing the agricultural sector. This is because the *salam* contract brings positive impacts. However, in fact, the *salam contract* is still minimally carried out to act responsively to the needs of the community (Qusthoniah, 2016).

SEBI No. 10/14/DPbs regarding the provisions of *salam* contracts in financing products are as follows:

1. The bank acts both as a provider of funds and as a buyer of goods for *Salam* transaction activities with customers who act as sellers of goods.
2. Goods in *Salam* transactions are objects of sale and purchase with clear specifications, quality, quantity, period, place, and price, which are generally available regularly in the market, and are not objects of sale and purchase that are difficult to identify the characteristics of which, among others, the value changes depending on subjective assessment.
3. The Bank is obliged to explain to customers the characteristics of Financing products based on the *Salam Accad*, as well as the rights and obligations of customers as stipulated in Bank Indonesia's provisions regarding transparency of Bank product information and the use of customer personal data;
4. The bank must analyze the financing plan on the basis of *salam* to the customer.
5. The bank and the customer must put the agreement in the form of a written agreement.
6. Payments made by customers by the bank must be made in advance in full, namely immediate payment of financing on the basis of the contract.

The benefits obtained in using the *salam* scheme is as follows: (Widiana & Annisa, 2018)

1. For farmers, it provides capital and helps them in the farming process.
2. For the government, it helps accelerate the government's target of increasing agricultural production.
3. For entrepreneurs, increasing the efficiency and sales value of agricultural product entrepreneurs.
4. For Islamic banks, it is profitable for Islamic banks considering that the buyer has handed over the money in advance.

Several challenges associated with the implementation of Salam financing in Islamic banking include:

1. Risk Management: Risks related to Salam financing encompass the possibility of goods not meeting agreed specifications, delayed deliveries, or subpar quality. Diligent risk management is necessary to facilitate smooth Salam transactions and reduce potential losses for the bank.
2. Difficulty in Pricing Assessment: In Salam transactions, the ordered goods do not exist at the time of the transaction. Determining a fair price aligned with the real value of the future goods can be complex and requires meticulous assessment.
3. Limited Access to Information: At times, essential information about the goods to be purchased might not be fully available in Salam transactions. This limitation can impede the bank's ability to obtain adequate information to assess transaction risks effectively.
4. Managing Legal Interpretation Differences: Divergent interpretations of Sharia principles by financial authorities and supervisors can lead to legal complexity in Salam contract implementation. This can hinder transactional smoothness and generate legal uncertainties.
5. Prudence in Financing Vulnerable Sectors: Salam transactions in specific sectors, especially those vulnerable to price fluctuations or supply shortages, require extra caution to ensure transaction continuity and manage associated risks.

Efforts in risk management, clear interpretation of Sharia principles, and comprehensive understanding of market conditions and ordered goods are crucial in addressing the challenges in implementing Salam financing within Islamic banking.

Implementation of *Istishna'* Financing in Islamic Financial Institutions

One of the financial instruments used in Islamic banking is *istishna'*. *Istishna'* is used to finance various projects that require the manufacture of specialized goods and require time for production. The Indonesian BPRS Sharia Banking Accounting Manual explains that *istishna'* is the provision of funds from banks to customers for the purchase of goods based on customer orders that confirm the purchase price to the buyer

(customer) and the buyer (customer) pays more as an agreed bank profit (Wijayanti dkk., 2021).

Istishna' in LKS practice can also take the form of parallel *istishna'*. In this case, the purchase is not made directly by delivering the goods, but the LKS will order the goods in advance to a third party or manufacturer. The practice of using *istishna' contracts* in Islamic banking is more likely to use parallel *istishna'* contracts.

Some of the factors that influence the low level of *istishna'* contracts in banks are as follows:

1. High payment risk
2. The existence of another contract
3. Developer failure
4. Islamic bank business strategy
5. Customer and developer capital standards

One of those who apply the *istishna'* contract in home financing is Alam Housing in Ketidur Mojokerto village. In the transaction, they use the *istishna' contract*. In the financing system, there is no interest rate or usury, fines, no confiscation and no guarantee of goods that do not belong to the buyer, besides that the price payment is determined by natural housing to be fixed and does not change after the contract and DP payment. Meanwhile, collateral in the form of valuables or securities, but if there is none, then the land and building documents that are being paid in installments are deposited with a notary as an anticipation when the customer makes problematic payments or fails to pay (Sundari & Zuana, 2018).

In its financing, Alam Housing divides into 3 categories of payment quality, namely:

1. Non-current financing.
2. Doubtful financing.
3. Bad debt financing

The process or steps of Natural Housing financing are as follows:

1. Buyer or client applies.
2. Alam Housing explains the contract, house specifications and price.
3. The buyer starts making payments until it is paid off.
4. Problematic financing resolution in natural housing.

In conclusion, Alam Housing is a developer based on sharia principles that applies the *istishna'* contract without usury, fines, no confiscation and does not guarantee goods that do not belong to the buyer.

Some challenges arising in the implementation of *Istishna'* financing in Islamic banking include:

1. Project Risk Management: *Istishna'* often involves specific order manufacturing, creating project-related risks like delivery delays, non-compliance with agreed specifications, or issues with the produced item's quality.
2. Difficulty in Project Valuation: Assessing project value in *Istishna'* requires estimating production costs and the future value of the produced goods. This

assessment can be complex due to involving yet-to-exist projects that need accurate estimation.

3. Legal Uncertainty: Clear and consistent law enforcement regarding Istishna' contracts is crucial. Legal uncertainties or differing interpretations of Sharia law by supervisory authorities can hinder transactional smoothness and reduce market participants' confidence.
4. Supply Risk Management: Concerning goods production, supply-related risks like raw material availability, price fluctuations, or resource availability for project execution can be challenging. Effective risk management is vital to ensure Istishna' project continuity.
5. Difficulty in Risk Identification: As Istishna' projects involve producing non-existing goods, identifying potential risks in the production process can be challenging. Thus, understanding potential risks early on is crucial for effective mitigation.

In addressing these challenges, Islamic banking needs to focus on effective risk management, establishing clear regulations, consistent interpretation of Sharia principles, and accurate evaluation of Istishna' projects to ensure successful and sustained Istishna' financing implementation.

CONCLUSION

Sale and purchase of *salam* is the sale of an item with delayed delivery of the barang, or selling goods whose specifications have been agreed upon in advance, while the goods are delivered at a later date. Meanwhile, *istishna' sale* and purchase is a sale and purchase contract between the buyer and seller where the buyer orders goods with certain clear specifications and the price is delivered in stages or paid immediately. The difference between *salam* and *istishna'* sale and purchase is that it lies in the goods where in the *salam contract* the goods do not need to be made but already exist, it's just not at the place of the contract, while *istishna'* is a contract to make goods. The difference in the contract is that the *salam* contract is binding while *istishna'* is binding when the goods are made. The next difference is in the payment where the *salam contract* is paid directly in cash at the contract meeting, while *istishna'* can be at the beginning, middle, or end.

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