

# Implementation of Istishna Contract in Sharia Developer (Case Study on Lukasya Land Property)

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**Abstract:** *Sharia property developers attend to see the high demand for home ownership that uses the principles of sharia. The number of occurrences of these developers depart from a paradigm in the transaction in accordance with Islamic principles set out in the Qur'an and hadith. Istishna contract is one of the media contract of sale and purchase in home ownership. This research is a qualitative research with case study approach. Data collection is done by interview and documentation. Methods of data analysis using Miles and Huberman. The result of this research is the difference of business scheme that is run compared to that done by conventional developer and also istishna contract cycle applied by banking*

**Keywords:** sharia property developers, istishna contract, sharia bank, sharia property

## 1. Introduction

Home is one of the primary needs for humans other than clothing and food. Every individual human will prioritize the fulfillment of basic needs rather than other needs. Similarly, the need for a home, everyone will try to meet the needs of the house in every level of community life with attention to taste and ability that exists

People in owning a home can have it by buying cash or installments. For some people who have more ability then this feels easy, but not a few also from some people feel heavy if they have to buy in cash, so they choose to buy in installments or commonly known as credit terms. In this case necessary parties as an intermediary who can provide such means (Rivai and Veithzal, 2011)

Currently sharia property developers are booming that indicates public awareness of his religion is getting better that is related to criteria or akad that really in accordance with the principles of sharia. Religion that has been touching aspects of worship, has begun to infiltrate the business world, especially property business. This is also reinforced by Hanjaeli (2016), that recent developments show that more and more consumers are demanding sharia schemes in the process of purchasing their properties as the society reduces by the pattern of sharia business

Businesses that run this sharia property developers do not use banking at all both conventional and sharia though. In sharia property developers, the contract is direct between the consumer and the developer without any involvement from a third party. So this transaction is purely buying and selling between the consumer with the developer, either in cash or in installments based on sharia principles. Although sharia banks provide products that are in line with Islamic teachings, some Muslims are still hesitant about the compliance of sharia bank products because banks according to Bank Indonesia regulations can not be as sellers of any product, meaning only as financiers. Thus sharia contracts in sharia banking are considered contractual defects (Firmansyah and Gunardi, 2018). Lathif (2012) also said that in principle, sharia banking is the same as conventional banking, ie as an instrument or intermediary institution that

acts as a provider of funds so that sharia banking is not as an agent of buying and selling. In addition, some scholars say that the contract in sharia banking is not a sale but buy hilah (engineering) to get riba (Imama, 2014). Whereas Islam strictly prohibits the practice of usury as contained in Surah Al-Baqarah verse 275. This becomes a new paradigm in the transaction of home purchase

Sharia property developers use social media such as facebook, WhatsApp, websites and e-commerce as a means to market their products. The tagline is No Bank Mortgage, No Interest, No Fines, No Insurance and No Problem Deal. This statement is understood as a more Islamic approach in owning a house. Riba is strictly prohibited in Islam, while foreclosures and fines are considered somewhat contrary to the good value in Islamic transactions (Firmansyah, 2016). Currently this practice has mushroomed in various cities and districts, both large and small cities

## 2. Literature Review

### Developer Property

Understanding property developers or housing development companies according to Permendagri No. 5 Year 1974 Article 5, namely:

*"The Housing Development Company is a company that endeavors in the construction of housing of various types in large quantities over a land area which shall constitute a unified housing environment equipped with environmental infrastructures and social facilities required by the residents"*

### Legality of Sharia Property Developer

The practice of sharia property developers is still no standard rules. The perpetrators of this transaction rests on Islamic law that muamalah transaction that can be executed with likes both and do not violate the rules that have been established sharia. This refers to the Word of God in Sura An-Nisa verse 59:

*"who believe, obey Allah and obey the Messenger (His), and ulil amri among you"* and the hadith of Prophet Muhammad

SAW (HR al-Baihaqi and Ibn Majah, and judged saheih by Ibn Hibban):

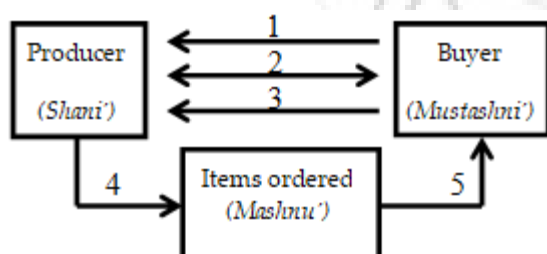
*"Truly the buying and selling must be done likes likes".*

On the basis of that, the practice of sharia developers mushroomed in several cities in Indonesia although there is no standard rules governing it. However, the involvement of a third party, notary in transactions, becomes very important and this is considered to be sufficient in the aspect of legality in transaction activity

In addition, trust and commitment among actors become the key for the passage of this transaction. That is, the developer does not break the promise and submit the house along with his letters when the installment has been repaid the buyer. So even with the buyer determined to keep the house and trying to pay off the debt until the end of the period

**Istishna contract**

Etymologically istishna comes from the word shana'a which means asking for something. The term istishna by Antonio (2001) is a contract purchase agreement between the producers / craftsmen / recipients (shani ') and the buyer (mustashni') to make a product with certain specifications (mashnu ') in which raw materials and production costs are the responsibility replied the producer while the payment system can be done in advance, middle or end. Hadi (2010) defines istishna as a contract of sale and purchase of goods between two other parties, and the ordered goods will be produced according to agreed specifications and sell them at the agreed price and payment. Fatwa DSN MUI No. 06 / DSN-MUI / IV / 2000, explains that istishna is a contract of sale and purchase in the form of ordering of certain goods with certain criteria and requirements agreed between the buyer (buyer, mustshni ') and the seller (maker, shani'). From the above definition can be concluded that istishna is a contract of sale and purchase of goods orders between the buyer and the manufacturer in accordance with the specifications, prices and payment methods that have been agreed previously. Istishna contract can be illustrated as follows (Arifin, 2005):



Information

- 1) Order the goods
- 2) Ordering and manufacturer of istishna contract
- 3) Pay the money according to the contract
- 4) Producing goods , order send goods and pay according to the contract

**Image 1. Image of Istishna Contract Channel**

**Rukun and Terms of Sale and Purchase**

According to jumhur clergy rukun and terms of sale there are four (Shaykh Abi Zakaria in Shobirin, 2015), namely:

**a) Akad (ijab kabul)**

Akad is a bond between bai '(seller) and mustari (buyer). Sale and purchase has not been declared legitimate before the consent and kabul is done because the consent of kabul shows willingness (pleasure) and may be done orally or in writing

**b) The person who is devoted (subject)**

Two parties consist of bai '(seller) and mustari (buyer), on condition

- 1) Be Muslim
- 2) Rule, can choose and distinguish which is best for him
- 3) With his will without any coercion
- 4) Baligh (adults)
- 5) Both are not redundant, namely the parties that bind themselves in the sale and purchase agreement is not a wasteful man

**c) Ma'kud 'alaih (object) ie the goods become the object of sale and purchase or the cause of the sale and purchase agreement, provided that:**

- 1) Clean the goods not including the forbidden stems
  - 2) Can be utilized
  - 3) Belong to the person who committed the contract
  - 4) Knowing, the point is that goods traded can be known by the seller and buyer clearly, both the substance, its shape, its nature and the price
  - 5) Goods in akadkan hands (in the power of the seller)
- d) There is a substitute exchange value of goods, that is, something that fulfills three conditions; can store the value (store of value), can assess or prize a good (unit of account) and can be used as a medium of exchange (medium of exchange)

**Research Method**

This research is a qualitative research with case study approach. This is in order to understand and provide real conditions of sharia property developers in carrying out their business practices. The study of this phenomenon seeks to provide an explanation related murabahah contract committed by sharia property developers. The unit of analysis is Lukasya Land Property, with research subject is Mr. Lukman as the owner. Data collection techniques by conducting interviews and documentation. Data analysis techniques using Miles and Huberman.

**3. Result and Discussion**

**Paradigm Developer Syariah**

The property business is in demand as it sees the needs of the people in the home is very high, as well as being a primary need can also be a means to invest very profitable. Property business is a very lucrative business to secure assets, so it will not hurt to buy property, the longer its value will grow. This is expressed by Mr. Lukman as follows: *"House in addition to the needs for themselves and their families, can also be a means for investment. Buying assets in the form of a house will not lose because its value will continue to rise "*

The emergence of sharia property developers is to bridge those who want a home purchase but with a halal and

blessing way of seeing many people who still use banking services. If using conventional banking then there is the element of usury that is forbidden by Islam because it embraces the system of interest. While in Islamic banking, its application is still not in accordance with what should be. In business they are not just looking at profit and loss, but business is seen as one way of worship, business is about sin and reward, and also further business is about heaven and hell. Shariah Islam is the perfect rule whereby everything is set in the Qur'an and Hadith, should be a guide of Muslims in everyday life in a kaffah (comprehensive). The Qur'an is a revelation of Allah SWT whereas Hadith is the actions and words of Prophet Muhammad SAW. Sharia transaction is not an option, but it becomes a necessity because it is related to faith, if believing that his religion is Islam, it must be bound and submissive with the rules of Islam itself, so that what is done will be a blessing and get blessings of Allah SWT. This is expressed by Mr. Lukman as follows:

*"I am interested in this business in addition to its business prospects, as well as preaching because the business does not see profit and loss alone, but also as a means of worship. Islam is a perfect and complete religion, certainly Islam is able to provide solutions to the problems of human life, including property ownership lawfully. For the people of Jember, sharia products are not an option, but a requirement because it relates faith, that when we believe that Islam is a religion, it must be bound by Islamic rules, including home ownership and land ownership. Should they be embarrassed if the transaction using a conventional bank and proud if the transaction according to sharia. Although now many Islamic banks, their transactions are still questionable because they are purely finance not as a seller of "*

Sharia property developer business schemes differ from conventional property developers. Sharia property developers have unique selling point ie without bank, without interest, without fines and without confiscation

#### **No mortgage Bank**

Sharia property developers do not use banking services at all either conventional or sharia banking. This is different from that of conventional developers whose business transactions are still using banking services. Should the conventional developers who are Muslim to run the Islamic Shariah in doing business. With the existence of without bank, then consumer or buyer transaction directly related to the developer. So the relationship is the seller and the buyer without any intermediary bank. This is expressed by Mr. Lukman as follows:

*"If they understand to start and run a property business has something to do with Islamic sharia, then it should be done. With the concept of sharia does not need banking services. Consumers directly related to the developer for the transaction"*

#### **No Interest and No Fines**

This is assured without interest (non-usury) because the concept is not home mortgage financing, but buying and selling the installment system that the buyer previously agreed on the selling price and then gave a number of DP

and the rest in installments in accordance with the agreement. Similarly, fines if there is a delay due to fines including usury ignorance. This is expressed by Mr. Lukman as follows:

*"Due to not using the banking system, then there is no interest in the element ribanya, especially if the customer's bank late fines imposed, it includes usury of ignorance prohibited by Islam"*

This is in accordance with the hadith of Prophet Muhammad SAW:

*"One dirham of usury which one eats, and he knows (that it is usury), then it is heavier than sixty times adultery" (Ahmad of Abdullah bin Hanzhalah) and "Riba has 73 doors, men who menzinai his mother, and razor-bad riba is disturbing the honor of a Muslim "(HR Ibn Majah)*

#### **Without Insurance**

In the perspective of sharia, insurance contains elements of gharar or vagueness that also includes the forbidden according to Islam. This is expressed by Mr. Lukman as follows:

*"We do not use insurance at all, even sharia insurance, because in our opinion still not in accordance with principles and akadnya sharia. Insurance contains gharar meaning obscurity and this is haram "*

This is in accordance with the hadith of Prophet Muhammad SAW:

*"The Messenger of Allah (peace and blessings of Allaah be upon him) forbade from buying and selling hashoh (the result of a pebble, that is bought) and forbidding from buying and selling gharar (containing unclear elements)". (HR Muslim No. 1513)*

#### **Without Confiscation**

Without confiscation the intention is that if the consumer in the middle of the journey of his mortgage is no longer able to continue, then the developer will not make the seizure of the house or land that has been purchased, because it includes a bath akad, the contract of lease and sale or 2 (two) 1 (one) transaction, pledged goods traded, conditional sale and purchase as did by banking

This is expressed by Mr. Lukman as follows:

*"We must not confiscate the objects for sale because it includes a false act"*

#### **Implementation of Istishna Contract On Sharia Property Developers**

Istishna contract is used for contract sale and purchase of manufactures in this case is the construction of houses in accordance with the specifications and prices that have been agreed together previously between the two sides. In accordance with the explanation from Mr. Lukman, the flow of istishna contract on Lukasya Land Property is as follows: *"Prospective buyers can get information from social media advertising, friends, relatives and also freelance marketing. If there is interest, buyers prepare data such as ID cards,*

KK, marriage certificate, NPWP if any, all of which are in the form of photocopy. If the employee added salary slip, while for the entrepreneur added SIUP if any and the last 3 months savings account mutation. After that it is submitted to us for further process. After receiving the data, we visit potential buyers to stay in touch. Gathering is to see personal prospective buyers, the ability to pay and at the same time da'wah. This da'wah concerns the transactions and obligations of each in accordance with the principles of sharia. The results of this gathering to determine whether or not a potential buyer. If it is feasible, then together discuss the istishna contract which includes the selling price of the agreement, the down payment or down payment (DP), the payment method of DP, the nominal of the installment, the term of payment, the specification of the building, the location to be built and the guarantee to be provided by buyer. If you have agreed, then the prospective buyer to pay booking fee and sign SPKB (Letter of Order of Plot and Building). After the DP is paid off, together with the notary to sign the PPJB (Sale and Purchase Agreement). The buyer makes installment payments according to an agreement that begins next month after the signature at the notary and we begin to build upon the buyer's order with a maximum of 12 months. If the goods have been made, then the delivery of goods to the buyer. If it is fully paid, the developers and buyers together to the notary to sign the Deed of Sale (AJB) and if the Certificate of Property (SHM) is completed, then SHM is given to the buyer "

From the statement of Mr. Lukman above, it can be taken a conclusion that the transaction is done without involving banking at all. This shows that sharia property developers position themselves as sellers as well as home makers who deal directly with buyers, including in it if the buyer wants a purchasing scheme with installment method with the term of installment and nominal mutually agreed

This is the difference between what conventional developers use both conventional and sharia banking services in their business schemes, where if there is a buyer, the developer will contact the bank related to the financing. Although sharia banking also has istishna financing products but the bank is positioned only as an intermediary just not as a seller

#### 4. Conclusion

Sharia property developers are bridging from the people especially sharia. Home can be the primary needs or the media to invest.

This sharia property developer paradigm is running according to the Qur'an, Hadith and Itjihad. All three are the norms in everyday life that must be thoroughly even though those related to muamalah

Istishna contract used by sharia property developers positions itself as a seller and also as a place for buyers who want a scheme with installment system, because it is basically istishna is trading contract. This is very different compared to developers in general who use banking services to support their business. Similarly, the existing practice in Islamic banking, which has murabahah financing products, but position itself as an intermediary not as a seller of goods

One of the legal conditions of trading contract is the existence of seller and buyer. With the banking positioning not as a seller, the contract is run potentially problematic in its shariah principle

Istishna contract on this sharia property developers can be an option for people who want property assets in accordance with the principles of sharia, so as to be lawful and blessing

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