**Muhasabatuna:**
Jurnal Akuntansi dan Keuangan Islam
E-ISSN: 2774-8855, P-ISSN: 2774-4388
Volume 4 Issue 1, Juni 2022 | Page: 027-040

# Risk Of Istishna Contracts In Sharia Commercial Banks

**Indra Hidayatullah[1], Maulana Ainul Yaqin[2]**

[1]Institut Agama Islam Syarifuddin, Jl. Pondok Pesantren Kiai Syarifuddin Lumajang, 67358, Indonesia
[2]Institut Agama Islam Syarifuddin, Jl. Pondok Pesantren Kiai Syarifuddin Lumajang, 67358, Indonesia

E-mail: [1]indrahidayatullah@yahoo.com[2]maulana4inul@gmail.com

***Abstract:****The Indonesian banking crisis in 2007 made the economic turmoil in Indonesia unstable. In situations and circumstances like this, financing risk is needed which is an important factor in realizing a sound banking system. However, the regulations, especially regarding the risk of banking financing, are in fact not sufficient to guarantee the banking system is free from all problems, especially in istisna financing.*

***Keywords:****Financing Risk, Istisna, Islamic Bank.*

## Introduction

The activities of a business entity or company basically cannot be separated from managing risk. Islamic banks are one of the business units that will also experience risk. Where in activities in the form of raising funds and financing the community, it is always filled with uncertainty. To be able to manage the risks faced in an effort to minimize losses in business activities that may occur. This risk arises considering the uncertainty in the collectability of financing and the settlement of obligations from the debtor. If the debtor is unable to pay off his obligations to the bank, then the funds from the saving community, which are expected to make a profit, are in application forfeited in non-performing financing. So it is very important for banks to manage their financing portfolio properly, to reduce the probability of non-performing financing.

The Islamic banking industry has financing risk characteristics in terms of default that are different from conventional banks. The difference in risk lies in the characteristics of the product pattern in distributing financing which only exists in Islamic banks. The distribution of these funds consists of various forms of contracts, such as a profit-sharing system and buying and selling using an istishna contract. Thus, it requires special treatment in carrying out risk control (avoiding risk, separation and diversification, protection and risk reduction, transfer of non-insurance) and risk management (a systematic way of looking at a risk and determining the proper handling of these risks, especially in selling contracts). buy/istishna).

Islamic banks use a lot of products in One of the financing distributions is the istisna contract which has a fairly high average risk, which has caused the decline in the level of financing by 528 in 2013 as of October. In contrast to the existing financing at the Islamic People's Financing Bank of (18,371 in 2013 as of October). This is because Islamic banks do not apply the risk of financing (risk control and risk management) which causes default in financing istisna.

The application of financing risk in an istisna contract is one way to create a sound banking system, which in turn will have a positive impact on the customer's economy on a macro and micro basis or negatively if the application of risk control and risk management is misused. Especially the financing risk that exists in most Islamic banks, most of which abuse the financing risk, especially in the provision of funds

financing to istishna customers (financing risk that occurs due to the bank's desire to expand, which causes reduced peer control over customers.

This situation will trigger the emergence of moral hazard so as to increase the potential for irregularities in the use of financing which in turn increases the risk of financing, and the difficulty of customers in paying for goods purchased when the goods have been made and do not meet the criteria. In fact, if an investor establishes a bank, he must also have the courage to bear the risk of financing. This is because the risk of financing will hinder the return of funds to other debtors who need them to develop their business operations.

Therefore, it is necessary to apply istishna financing risk in which there is risk identification (compiling a risk list, analyzing risk characteristics, describing the process of risk occurrence, making a list of sources of risk occurrence and determining the right approach or instrument for risk identification), risk analysis, and evaluating the risks owned by each bank in handling the risk of non-payment financing in a professional manner, and preventing it from happening again. This is what is interesting to study, in order to know the concept of financing risk in reducing defaults in istishna financing.

Istishna' contract on financing is a product of sharia financial institutions in terms of buying and selling. In Islamic banking institutions, the financing that can be submitted for istishna' contract transactions are manufactured goods such as construction or construction projects, and goods in process such as the construction of shop houses, buildings and factories.Istishna Definition discussion

Istishna is a sale and purchase contract where the producer is assigned to make an ordered item from the customer. Istishna is a sale and purchase contract based on orders between customers and banks with certain specifications requested by customers. The bank will ask the manufacturer to make the ordered goods according to the customer's request. After completion, the customer will buy the goods from the bank at a mutually agreed price. Al-Istishna' is an order sale and purchase contract between the producer / craftsman / order recipient (shani') and the customer (musashni') to make a product with certain specifications (mashnu') where raw materials and production costs are the responsibility of the producer while payment system can be done in advance, middle or end.

In general, the sharia basis that applies to bai' as-salam also applies to bai' al-istishna'. According to Hanafi, bai' al-istishna' is a prohibited contract because they are based on the argument that the principal of the sales contract must exist and be owned by the seller, while in istishna', the principal of the contract does not exist or is not owned by the seller. However, the Hanafi school accepts the istisna contract on the basis of istisnha.

**Discussion Of The Meaning Of Istisnha**

Al-Istishna is 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 a price and payment agreed upon in advance. Istina is a sales contract between al-Mustashni (buyer) and as-Shani (manufacturer who also acts as seller). Based on the Istishna contract, the buyer assigns the producer to make or procure al-Mashni (ordered goods) according to the required specifications and sell them at the agreed price.

In the DSN MUI fatwa, an istishna contract is a sale and purchase contract in the form of an order for the manufacture of certain goods with certain criteria and conditions agreed upon between the buyer (buyer, mustashni‟) and seller (maker, shani‟).

Istishna financing is the provision of funds or invoices for buying and selling transactions through orders for the manufacture of goods (to producer customers), which are paid by the bank based on an agreement or agreement with the financing customer who must pay off his debts / obligations in accordance with the contract. So I can conclude that istishna‟ can be called a contract that exists between the buyer as the 1st party and a producer of an item or something similar as the 2nd party, so that the 2nd party makes an item as desired by the 1st party at an agreed price. between the two, namely financing characterized by advance payment and delivery of goods on a firm basis.

The Istishna' contract in Islamic banking is clearly halal and the argument is clear that it is permissible, however, according to most financial report data, it shows that the istishna' contract is the second most disliked product after the salam contract.

Seeing the explanation of the meaning of the Istishna' contract, it must be easy to carry out because it only prepares the goods ordered by the buyer and the producer does not need to spend funds to prepare the finished goods directly. However, if applied in sharia banking, where the bank as an intermediary institution between the buyer (customer) and producer (manufacturer of goods) has a big risk.

**The pillars and terms of the istishna contract**

According to the opinion of Gita Danupranata, the pillars of istishna are there are producers/producers, there are buyers/buyers, there are goods or projects ordered, there is an agreement on selling prices and there is binding. While the conditions for istishna are that the contracting party must understand the law, the producer is able to fulfill the ordering requirements, the object ordered has clear specifications, the selling price is the order price plus profit, the price is fixed during the order period and the manufacturing period is mutually agreed upon.

Meanwhile, according to Ascarya's opinion, the pillars of the istishna contract that must be fulfilled in the transaction are, First, the contract actor, namely mustashni' (buyer) is the party who needs and orders goods and shani' (seller) is the party who produces the ordered goods. The second object of the contract is goods or services (mashnu') with its specifications and price (tsaman), and Third, Shigha, namely consent and qobul. In the opinion of Imam Syafii Antonio Rukun istishna" are as follows:

●Al-mustashni (buyer/customer)

Should specify the type, shape and nature ordered

Can't sell the item before receiving it

In the event that there are defects or the goods are not in accordance with the agreement, the buyer has the right of the voter to continue or cancel the contract

●As-shani (seller)

May sell goods made by other people that have the quality and quantity desired by the customer.

It is not permissible to exchange goods except with similar goods in accordance with the agreement on the goods ordered.

●Al-mashu (goods for sale)

The characteristics must be clear

Items that are dMessages should be goods that are usually bought and sold by order by many people.

Must be able to explain the specifications

The handover is done later

The time and place of delivery of the goods must be determined by agreement

Materials to make goods should be from the seller

●Price

The price of the goods ordered can be paid all at the time of the contract

The price of the goods ordered can be paid all at the time of delivery of the goods

In installments according to the agreement

Payment may not be in the form of debt relief

●Sighat or greeting / consent acceptance.

Meanwhile, the terms of istishna 'according to Syafii Antonio are as follows:

1. Al-istishna transaction capital[٤٤]

●Capital must be known

●Receipt of payment greetings

2. Al-mashu (goods)

●Must be specific and can be recognized as debt

●Must be clearly identifiable

●Delivery of goods is carried out in the future

●Most scholars require the delivery of goods to be postponed at a later time, but the Shafi'i school allows immediate delivery.

●Can specify a future date for delivery of goods

Place of delivery

●Replacement of Muslim fiihi with other goods.

**The various risks of the isthisna contract**

The risk of payment in istishna' contracts often occurs, but as an intermediary institution for Islamic banking, it is not only focused on payment risk, but there are many other risks in istishna' financing, including;

●Ownership of materials Istishna' contract is an order sale and purchase contract, meaning that the goods are ordered first and then the manufacturing process. The sharia banking party is not the owner of the material in the istishna' contract, the ownership of the material is the manufacturer in order to produce the asset.

●Delivery Risk The banking sector is certainly not able to complete the goods manufacturing process as scheduled due to delays in the delivery of finished goods by sub-contractors in parallel istishna'.

●Buying and selling is not allowed before delivery. Buying and selling of istishna' goods is not allowed before taking physical ownership. This can lead to asset, price, and marketing risks.

●Quality risk Banks get goods delivered from the producer with inferior quality, so that it can affect the initial contract (contract).

**Istishna' Contract Financing Solution**

●Risks are often found, then what is the solution for sharia banking to overcome these problems but still in accordance with the Islamic creed. The solution so that the risk of paying istishna' contract can be reduced by means of;

Material ownership

The banking party must have a guarantee for the istishna' contract both to the producer (order maker) and also the customer (customer) regarding the ordered goods. Collateral can be in the form of down payment or securities such as a stamped agreement agreement.

●Delivery risk

In parallel Istishna', the banking sector cannot determine for sure the delivery of the ordered goods, because during the time of making the order there will be other unexpected obstacles. Thus, banks can add other options or alternatives to reduce the istishna' price in case of delay into the istishna agreement.

●Buying and selling is not allowed before delivery

Because it uses an istishna' contract that serves orders, the goods are ordered first and then made until the goods have not been completed, the sale and purchase contract is not allowed. Therefore, the banking sector must implement a collateral system as a tool to strengthen the istishna' contract as a customer guarantee for the goods ordered until the ordered goods are delivered.

●Quality Risk

Before entering into the contract, the bank must explain in detail and detail the specifications of the goods ordered by the customer before ordering to the manufacturer. To reduce the risk, the Bank can obtain quality assurance from the initial supplier.

●Risk Process in Istishna Financing

Before explaining the risk poses in istishna financing, the author will first explain the financing process in the concept of Islamic economics. The basic process of financing includes application, analysis of financing applications, preparation of financing structures and preparation of financing documents, realization of financing, guidance and supervision and completion of financing.

Financing that has the potential to be unable to be repaid in accordance with the conditions that have been determined and mutually agreed upon, the bank is required to provide an assessment of the quality of the financing. In general, the assessment of the quality of financing must comply with the provisions of the collectability assessment set by the central bank.

The assessment of the quality of financing carried out based on the ability to pay refers to

determination of payment of principal installments and or achievement of the ratio between

Realized Income (RP) and Projected Income (PP). PP is calculated based on the analysis of the business feasibility and cash flow of the customer during the financing period. For example, a two-year term financing, the schedule for payment of profit sharing is fixedFor 6 months, PP is set every 6 months.

Islamic banks can change PP based on agreement

with customers as long as there are changes in macroeconomic, market and political conditions that affect the customer's business. Islamic banks are required to include PPs and amendments to PPs in the financing agreement between Islamic banks and customers, and must be fully documented, i.e. at least available financing documentation which includes applications, analysis, decisions and monitoring of financing as well as other files related to PPs and their amendments.

Financing is a bank's main activity, as an effort to earn a profit, but it is prone to risks which can not only harm the bank but also affect the depositors and users of funds. Therefore, a risk management process must be carried out, so as to minimize the occurrence of risks.

The risk management process in Islamic banks can be started by doing the stage of determining the context. At this stage all matters related to the details of risk management are clarified and defined. The context determination stage aims to obtain a comprehensive picture of the basic parameters, scope, and framework of risk management, identify the environment for risk management implementation, identify and define key stakeholders, and establish criteria for analyzing and evaluating risks. Therefore, the things that are done in the context determination stage must include (i) identification of risks that become the domain of interest, (ii) planning the next risk management process, (iii) mapping the social scope of risk management, identity and stakeholder objectives, (iv) criteria and basis for evaluating risks, (v) defining a framework for identification activities and agendas,

(vi) developing criteria for analyzing the risks involved in the process and (vii) risk mitigation and solutions using technology, human resources, and existing resources.

**Risk Management Process**

A process that links an activity with other activities in risk management as an action to control various risks that will occur. The series of activities are presented in the picture of the risk management process. Risk management can be in the form of actions to sacrifice a certain resource that is controlled. This is done for the sake of obtaining returns in the future, although it is still shrouded in uncertainty.

The risk management process above describes the flow of the completion of the occurrence of risks, the stages that are passed by analyzing each risk that will occur and have occurred. After analyzing the risk, it will describe the risk, so that the risk does not occur by means of mitigation, namely minimizing the risk. In istishna contract financing, the risk that often arises is default.

Mitigation of risk in banking, especially Islamic banking is a complicated process. Before risk mitigation is implemented, the bank must first identify the characteristics of each risk to be mitigated. Starting from the source of the cause, the mechanism of risk occurrence, and the impact of the resulting loss.

When a bank disburses loans to debtors, the source of financing risk is when the debtor loses the ability to pay his loan installments to the bank. So to anticipate the possibility of default by the debtor, the bank usually allocates a certain allowance for the case in case the debtor fails to pay. In addition, banks usually also ask debtors to provide collateral that can be liquidated when the debtor is unable to pay off the debt.

Financing risk is often associated with default risk. This risk refers to the potential loss faced by the bank when the financing it provides is stuck. The debtor experiences a condition where he is unable to fulfill the obligation to return the capital provided by the bank. In addition to the return on capital, this risk also includes the inability of the debtor to submit the portion of profits that should have been obtained by the bank and had been agreed in advance. The consequences of this financing risk only apply to debt-based contracts, namely buying and selling in istishna contracts.

Istishna contracts in buying and selling transactions occur before the goods are produced or built. Prices and specifications of goods must have been agreed upon at the time of the contract and not changed thereafter. After the seller and the buyer agree on an istishna contract, the seller has put forth energy and thought to design, calculate the composition and requirements of raw materials, find suppliers and so on. While the sale and purchase occurs when the delivery of goods and payment from the buyer. Payment of the price can be made when the goods are received from the seller or payment can be made in installments and can be continued even though the goods have been handed over.

PembServices performed on an istishna contract can pose several points of financing risk for Islamic banks, such as the failure of the contractor to deliver the house at the promised time, not fully specifying the house or the debtor's failure to pay during the contract period. The determinants of the risk of default in the istishna contract are as follows:

●The bank is not the owner of the material used by the developer (producer and subcontractor) to produce assets in parallel istishna cases, so the bank does not have a claim on the assets in the event of a default. The way to mitigate the risk is that banks need to tie up producers or subcontractors to force them to fulfill contracts.

●Delivery risk that occurs due to the bank not being able to complete the production of goods according to schedule due to delays in delivery of goods from subcontractors. The way to mitigate the risk is that banks need to carry out strict supervision so that there are no defaults or delays in the delivery of goods from subcontractors

●The Bank experiences quality risk on the delivery of inferior goods by subcontractors. The mitigation method is that the bank can ask for quality assurance from the subtractor.

**Criticism of the risk of istishna financing**

The risk of istishna financing is increasingly visible when the economy is hit by a crisis or recession. The decline in sales resulted in reduced company income, so the company had difficulty meeting its obligations to pay its debts. When the bank is about to execute its non-performing financing, the bank does not get adequate results, because the existing guarantees are not commensurate with the amount of financing it provides. And of course the bank will experience severe liquidity difficulties, if it has a large non-performing financing.

This risk can be minimized in several ways, including firstly providing a limit on the authority for financing decisions for each customer who submits, based on their capabilities (authorize limit) through:

●Charachter (character), which means that the bank must be able to assess the prospective debtor as having good disposition, character, and qualities in carrying out his obligations (the obligation to pay istishna financing)

●Capacity, which means that the bank must be able to assess the potential debtor as having the economic capabilities (currently and in the future) in making istishna financing payments.

●Capital (capital), which means the bank must be able to assess the prospective debtor as having economic assets that can be used as a means for the prospective debtor to carry out his obligations (making istishna financing payments)

●Collateral, which means that the bank must be able to assess the assets of the prospective debtor that are guaranteed to have an economic value that is proportional to the amount of the loan (financing) provided by the bank to prospective istishna financing.

●Economic conditions (condition of economy), which means that banks must be able to assess the stability of the economic and financial conditions of prospective debtors, at the time of borrowing and forecasts for the future.

●Constraints, namely obstacles such as social psychological factors that exist in an area that cause a project cannot be implemented.

Second, the limit on the amount (ceiling) of financing that can be given to certain businesses or companies that must be based on the istishna LLL (Maximum Lending Limit) in number 30 article 9 states:

●Provision of funds in the form of financing to 1 (one) unrelated party borrower is set at a maximum of 20% (twenty percent) of the BPR's capital

●Provision of funds in the form of financing to 1 (one) group of unrelated party borrowers is set at a maximum of 30% (thirty percent) of the BPR's capital.

Third, Islamic banks can reduce non-performing financing in istishna by asking for a down payment/DP to customers with the following conditions:

●Urbun is recognized as an advance for the purchase of the amount received

●If the transaction is executed, the urbun/advance is recognized as part of the settlement of receivables

●If the istishna transaction is not carried out, the urbun is returned to the customer after deducting the costs incurred by the bank

In understanding the concept of resolving the istishna financing risk from a financing scheme, and defining it more comprehensively, as well as being able to identify risk points at each stage of the risk process, this can ultimately be expected. The use of the risk mitigation system is becoming more focused, systematic and holistic.

With mitigation tools, banks can minimize the risk of moral hazard (a situation where a transacting party takes actions based on bad intentions that have the potential to cause losses), which may be carried out by debtors by providing incorrect financial statements..

**REFERENCES**

Abd. Hadi, Dasar-Dasar Hukum Ekonomi Islam, (Surabaya: Putra Media Nusantara, 2010)

Adiwarman A Karim, Bank Islam, Fiqh Analysis dan Keuangan, (Jakarta: PT Raja Grafindo Persada, 2010)

Al Mabsuth by As Sarakhsi volume 12

Anwar Nasution, Main Pokok-Pokok Pikiran Tentang Pembinaan dan pengawasan Perbankan dalam rangka Pemantapan Kepercayaan kepada masyarakat industry Perbankan

Ascarya, Akad dan Produk bank Syariah. (Jakarta: Pt Raja Grafindo Persada, 2007).