

THE SYSTEM OF AGREEMENTS FOR DISTRIBUTION OF GOODS WITH MANUFACTURING COMPANIES AND ITS IMPLEMENTATION ACCORDING TO THE CONCEPT OF *BAI ISTISNA'*

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Abstract

Contracts are fundamental in commercial activities, including cooperation between businesses and manufacturers in ordering goods. This study aims to examine the system of agreements for ordering goods between Distro Mens Surfing Banda Aceh and garment manufacturers, analyze the implementation of these agreements, and assess their compatibility with the concept of Bai Istisna' contracts according to commercial fiqh. This study uses a qualitative method with a normative empirical approach, through interviews and documentation as data collection techniques. The results show that goods ordering agreements are made verbally and digitally. Still, the production of goods often does not meet the agreed specifications regarding color, material, and stitching quality. Other findings indicate that this condition causes losses for the purchaser of the goods due to the absence of a return mechanism, which shows that the principle of khiyar' aibi, namely the buyer's right to cancel the contract or request compensation if the goods received are defective or do not meet the specifications, is not applied. The absence of the application of khiyar' aibi places the purchaser of the goods in a disadvantaged position and causes injustice in the transaction. Conceptually, this transaction has fulfilled the Bai Istisna' elements in ordering based on specifications and installment payments. Still, it does not fully reflect the principle of balance between rights and responsibilities in Islamic muamalah.

Keywords: Agreement System, Orders, Garment Manufacturing Companies, and *Bai Istisna'*

Abstrak

Akad merupakan unsur fundamental dalam kegiatan muamalah, termasuk dalam kerja sama pemesanan barang antara pelaku usaha dan produsen. Penelitian ini bertujuan untuk mengkaji sistem perjanjian pemesanan orderan barang antara Distro Mens Surfing Banda Aceh dengan perusahaan konveksi, menganalisis realisasi pelaksanaannya, serta menilai kesesuaiannya dengan konsep akad *Bai Istisna'* menurut fikih muamalah. Penelitian menggunakan metode kualitatif dengan pendekatan normatif empiris, melalui wawancara dan dokumentasi sebagai teknik pengumpulan data. Hasil penelitian menunjukkan bahwa perjanjian pemesanan barang dilakukan secara lisan dan digital, namun pelaksanaan produksi barang sering tidak sesuai spesifikasi yang disepakati, baik dari segi warna, bahan, maupun kualitas jahitan. Temuan lainnya menunjukkan bahwa kondisi ini menimbulkan kerugian bagi pemesan barang karena tidak adanya mekanisme retur barang, yang menunjukkan tidak diterapkannya prinsip *khiyar 'aibi*, yaitu hak pembeli untuk membatalkan akad atau meminta penggantian apabila barang yang diterima cacat atau tidak sesuai spesifikasi. Ketiadaan penerapan *khiyar 'aibi* ini menempatkan posisi pemesan barang pada situasi yang dirugikan dan menimbulkan ketidakadilan dalam transaksi. Secara konsep, transaksi ini telah memenuhi unsur *Bai Istisna'* pada aspek pemesanan berdasarkan spesifikasi dan pembayaran bertahap, tetapi belum sepenuhnya mencerminkan prinsip keseimbangan hak dan tanggung jawab dalam muamalah Islam.

Kata Kunci: Sistem Perjanjian, Orderan, Perusahaan Konveksi dan *Bai Istisna'*

INTRODUCTION

Sales transactions are the most commonly used contractual transactions among the public to fulfill various needs, both in the form of ready-to-consume goods and raw materials that must be processed before they can be used. This is what is done by clothing store owners with garment companies, which must be able to prepare raw materials into various *fashion* products.

The garment industry continues to grow with various scales of business, including small, medium, and large enterprises, to meet the market's demand for large quantities of *fashion* items, such as T-shirts, shirts, pants, jackets, alma mater suits, Muslim clothing, and so on, which are made according to the standard sizes ordered by the distributor. Normatively, this business activity has a legal basis in the form of *bai' salam* and *Bai Istisna'* contracts.¹

¹ Veithzal Rivai, *Islamic Financial Management* (Jakarta: PR. Grafindo Persada, 2008). hlm.

By using this *Bai Istisna'* contract, the parties can flexibly order the products they need for consumptive and productive purposes that are the object of their business. In the *Bai Istisna'* transaction mechanism, the parties can list and agree on the specifications of the desired product, such as the type of raw materials, design, size, and even specific motifs.² This can be seen in the mechanism for ordering clothing products needed by distributors and various clothing retailers. The order pays close attention to the type of material or fabric that will be used to sew the clothing order, including the design of the clothing, ranging from complex designs for women's needs to simple designs for men's needs, to various sizes from M, L, XL, to XXL, and various jumbo sizes for *plus-size* consumers.

According to the Shafi'i school of thought, *Bai Istisna'* is a sale and purchase transaction modifying the *salam* contract. In this contract, the buyer and seller must fulfill various requirements in the *salam* contract. If they do not satisfy the *salam* requirements, then the *Bai Istisna'* transaction is legally void because it does not meet the principle of legality of the *bai salam* contract. However, the two contracts tend to differ at the conceptual and implementation levels. Among the differences is the payment mechanism, which can be made in cash at the time of ordering, while *Bai Istisna'* can be made in installments or by using a down payment.³

The use of *Bai Istisna'* transactions has been widely practiced in society to fulfill the practicality of specific orders so that the parties' needs can be met. Typically, *Bai Istisna'* transactions are used today because producers as suppliers of goods needed by consumers tend to consider the ordering aspect rather than providing goods in advance, mainly due to certain factors such as model, shape, size, design, and others.⁴ For this reason, it is more practical for producers to wait for orders rather than prepare the goods needed by consumers in advance. In transactions such as this, orders are generally for clothing, *furniture*, property, and other items.⁵

Fashion orders are made for personal and business needs, evident in the need to modify specific designs, including the size of the clothes to be sewn and the materials used. Clothing manufacturers, whether in the form of businesses, garment factories, or distributors, tend to consider orders from consumers rather

² Syamsuddin Asy-Syarkhasi, Al-Mabsuth (Beirut: Dar Al-Ma'rifah, 1989). hlm. 96

³ Wahbah Az-Zuhaili, Al-Fiqh al-Islami Wa Adillatuhu, Jilid 4 (Lebanon: Dar al-Fikri, 1984). hlm. 269

⁴ Abdurrohman As-Suyuti, Al-Asybaah Wan Nazhaair (Makkah: Makthabah Nazzar al-Baz, 1997). hlm. 89

⁵ Abu Abdullah Muhammad Al-Hatthab, Mawahibul Jalil (Beirut: Dar Al-Kutub Al-Ilmiyyah, 1995). hlm. 514

than sewing or providing them in advance.

Based on preliminary data obtained by the author, several clothing stores in Banda Aceh that sell *fashion* items for children, teenagers, and adults typically order the products they sell from garment manufacturers or clothing companies to meet the needs of their stores. Orders are generally placed in large quantities to meet consumer *size* requirements. For example, pants are ordered in teen and adult sizes ranging from 28 to 38, while regular-sized shirts range from M to XXL. Similarly, *slim-fit* shirts typically use the exact *size* numbers from M to XXL, even though the measurements differ from *regular* sizes. However, there are often problems with the quality of the fabric, which usually does not match what was agreed upon at the time of ordering. For example, this frequently occurs with T-shirts and collared shirts that use *combed cotton* fabric, and there are also frequent errors with colors, which do not match what was ordered when the goods arrive at the store. These goods cannot be returned to the manufacturer because the initial agreement stipulates that the specifications of the items cannot be returned.

Observing the phenomenon in ordering goods in the fashion industry, the author focuses this study on one of the distribution stores in Banda Aceh, Mens Surfing. This store routinely places large orders for fashion products with garment manufacturers to meet the needs of its varied stock, in terms of design, size, and type of material. In practice, problems are often found related to discrepancies between the specifications agreed upon at the outset and the products received, such as in the quality of the fabric and color. Based on these conditions, the author is interested in further researching the implementation of the *Bai Istisna'* contract in the practice of goods ordering agreements at the Mens Surfing Distro in Banda Aceh, to review its compliance with the principles of muamalah fiqh contracts.

RESEARCH METHOD

This study uses a qualitative method with a normative empirical approach to examine the legal sources related to *Bai Istisna'* and explore the facts regarding the practice of ordering goods by Distro Mens Surfing Banda Aceh from several garment companies. This study aims to describe how the concept of *Bai Istisna'* is applied in the practice of large-scale fashion goods ordering, as well as to assess the extent to which the agreement system reflects the principles of Islamic economic law, such as fairness, transparency, and protection of the parties. The data sources in this study consist of primary and secondary data. Primary data were obtained through direct interviews with the owner of the Distro Mens Surfing Banda Aceh store and garment manufacturers, as well as documentation of goods ordering agreements. Meanwhile, secondary data was obtained through literature studies

covering books on muamalah fiqh, scientific journals, laws and regulations, and religious fatwas related to *Bai Istisna'* contracts.⁶

RESULTS AND DISCUSSION

A. The concept of *Bai Istisna'*

Istiṣnā' comes from the Arabic word *istathnā-yastasnī-istisnā'an*, which means to request something to be made or to place an order for something. In a linguistic context, *istiṣnā'* means a request to manufacture goods that do not yet exist or are not available, with specific specifications requested by the ordering party. This term reflects a contractual relationship between two parties, in which one party is asked to produce something at the other party's request.

Terminologically, *Bai Istisna'* is a sale and purchase agreement based on ordering certain goods to be made or produced by the seller per the buyer's requests and specifications. In this contract, the goods that are the object of the transaction are not yet available when the contract is made, but will be produced later in accordance with the agreement between the two parties. This contract is not included in conventional sales and purchases that require the goods to be available at the time of the transaction.⁷

The main characteristics of *Bai Istisna'* are the element of *manufacture on demand* and an agreement between the seller and buyer that covers time, quality, quantity, and price. The seller must provide goods per the agreement and deliver them to the buyer within a specified period. The buyer has the right to reject goods that do not meet the agreed specifications.⁸

The ulama differ on the validity of *Bai Istisna'* contracts, especially among the four schools of thought. Some ulama from the Hanafi and Hanbali schools allow this contract, with certain conditions, while the Shafi'i and Maliki schools are more cautious and associate it with salam contracts. In the view of the Hanafi school of thought, *Bai Istisna'* is considered valid due to the urgent need in society for this type of transaction, especially in the construction, carpentry, and industrial sectors.⁹

According to the Hanafi school of thought, *Bai Istisna'* is permissible even if the goods ordered do not exist when the contract is made. This is because they

⁶ Syafrida Hafni Sahir, *Metodologi Penelitian* (Yogyakarta: Penerbit KBM Indonesia, 2021). hlm. 3-6

⁷ Abu Al-Hasan Ali bin Sulaiman, *Al-Inshaf Fi Ma'rifah Ar-Rajih Min Al-Khilaf* (Beirut: Daar Al-Kutub Al-Ilmiyah, 1997). hlm. 300

⁸ Mardani, *Fiqh ekonomi Syariah* (Jakarta: Prenadamedia Group, 2013). Hlm. 125

⁹ Muhammad Ardi, "Asas Asas Perjanjian (Akad), Hukum Kontrak Syariah dalam Penerapan Salam dan Istisna," *DIKTUM: Jurnal Syariah dan Hukum* 14, no. 2 (2016): 265-79, <https://doi.org/10.35905/diktum.v14i2.237>.

consider *Bai Istisna'* to be not a normal sale and purchase, but a form of work agreement based on an order. The Hanafi ulama also emphasize the importance of clarity regarding the goods' specifications, the completion time, and the agreed price so that there is no *gharar* (uncertainty).

The Shafi'i school of thought considers that a *Bai Istisna'* contract must fulfill the requirements of a salam contract to be valid. If it does not satisfy the requirements of a salam contract, such as full payment in advance and precise specifications, then the *Bai Istisna'* contract is considered invalid. This is because the Shafi'i school of thought strongly emphasizes certainty in every transaction and rejects the sale and purchase of something that does not yet exist, except in the form of a salam contract whose conditions have been determined.¹⁰

Contemporary, the ulama such as Wahbah az-Zuhaili and Yusuf al-Qardhawi tend to permit *Bai Istisna'* on the grounds of public interest and flexibility in modern life. In *al-Fiqh al-Islami wa Adillatuh*, Wahbah az-Zuhaili explains that *bai istiṣnā'* is a form of contract that is recognized in contemporary fiqh muamalah because it can meet the complex and ever-evolving needs of society.

The *Bai Istisna'* contract in muamalah jurisprudence is categorized as a special type of sale and purchase contract because the goods being traded are not yet available at the time of the contract. This contract is classified as a *maushuf fi al-dzimmah* contract, a contract for goods with specific specifications that are the seller's responsibility. *Bai Istisna'* is a dynamic form of sale and purchase because it involves elements of production and waiting time, unlike ordinary sale and purchase contracts, which are immediate.¹¹

This concept is permitted in Islam because there is a real need in society for a sales system based on an ordering model. In many cases, buyers want specific items that cannot be obtained directly on the market. Therefore, Islam allows for *Bai Istisna'* contracts as long as they fulfill the principles of fairness and transparency, including clarity on price, delivery time, and item specifications.¹²

In practice, *Bai Istisna'* is widely used in project procurement, infrastructure development, institutional uniform procurement, and large-scale fashion product

¹⁰ H. A. Luthfi, Irma Suryani dan H. Abd. Jalil, "Penerapan Akad Istisna Pada Transaksi Bisnis Furniture Di Indonesia," *Al Mizan: Jurnal Ekonomi Syariah* 4, no. 2 (2021): 60–89, <https://doi.org/10.54459/almizan.v4i1.307>.

¹¹ Muh. Khoiruddin dan Dimas Alfayit, "Implementasi Akad Istisna' dalam Usaha Konveksi pada DR Konveksi Desa Sragi Kecamatan Songgon," *Maslahah: Jurnal Manajemen dan Ekonomi Syariah* 1, no. 4 (2023): 262–75, <https://doi.org/10.59059/maslahah.v1i4.405>.

¹² Husnul Khotimah dan Muhammad Farid, "Analisis Implementasi Akad Istishna' dalam Perbankan Syariah pada Bank Syariah Indonesia (BSI) Lumajang," *Muhasabatuna: Jurnal Akuntansi Syariah* 1, no. 2 (2021): 43–50, <https://doi.org/10.54471/muhasabatuna.v1i2.1264>.

orders. This proves that *Bai Istisna'* suits B2B (business-to-business) business models and creative industries based on market demand.

Several verses in the Qur'an form the basis for the permissibility of this type of contract. One of the verses that is often referred to is:

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

"O you who believe, do not consume one another's wealth unjustly, except in a manner that is mutually agreed upon. Do not kill yourselves. Indeed, Allah is Most Merciful to you" (Q.S. An-Nisa: 29).

This verse provides a general basis for the principles of valid sales in Islam, which involve transactions carried out based on mutual consent between both parties. *Bai Istisna'*, as a form of sales based on orders, still fulfills the elements of consent and agreement, as long as the conditions and pillars are met.¹³ In addition, other relevant verses are:

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ

"Those who consume (transact with) usury cannot stand, except like one who stands staggering because of a demonic possession. This is because they say that buying and selling is the same as usury. Yet, Allah has made buying and selling lawful and has made usury unlawful. Whoever receives a warning from his Lord (regarding usury) and then stops, what he has already earned is his, and his case is with Allah. But whoever returns to it – those are the inhabitants of the Fire; they will abide therein forever". (Q.S. Al-Baqarah: 275).

This verse confirms that Islam supports halal trading systems and opposes transactions that involve usury and injustice. *Bai Istisna'* contracts are considered part of halal trading if they do not include prohibited elements such as fraud, uncertainty (gharar), and injustice. From these verses, it can be understood that the Qur'an provides a flexible framework for developing economic contracts as long as they follow sharia principles. *Bai Istisna'* as a form of sale and purchase based on orders falls within this scope because it responds to the real needs of modern society without violating the fundamental values of sharia. The Qur'anic foundation shows

¹³ Abul Mawahib. R Wahib, Ippa Syahida ippa, dan Irwan Misbach Irwan, "Prinsip Etika Bisnis Islam dalam Menghadapi Persaingan Bisnis Berdasarkan Surah An-Nisa Ayat 29," *Jurnal Ruhul Islam* 2, no. 2 (2024): 45–59, <https://doi.org/10.33476/jri.v2i2.202>.

that Islam does not rigidly restrict the form of transactions, but emphasizes the principles of justice, clarity, and willingness in every contract.¹⁴

Large-scale goods ordering transactions in today's modern economy are inevitable, especially in the clothing and garment industry.¹⁵ Many businesses, such as distributors or fashion stores, order products from manufacturers based on market demand and desired specifications. This is where the *Bai Istisna'* contract finds its relevance as a form of transaction that regulates the legal relationship between the customer and the manufacturer.¹⁶

A common problem in ordering practices is the discrepancy between the goods received and the agreed specifications. A lack of understanding of the contract or the weak implementation of written agreements often causes this. Research on the practice of *Bai Istisna'* in business relationships between fashion stores and manufacturers is fundamental, given the increasing volume and complexity of ordering transactions in the business world.¹⁷ y understanding *Bai Istisna'* in theory and practice, business actors can avoid disputes, increase legal certainty, and uphold sharia values in economic activities.

¹⁴ Samsul Basri, Bunasor Samin, dan Irfan Syauqi Beik, "Metode pengajaran Ekonomi Syariah berdasarkan kandungan Surat al-Baqarah ayat 275-280," *Ta'dibuna: Jurnal Pendidikan Islam* 7, no. 2 (2018): 173-93, <https://doi.org/10.32832/tadibuna.v7i2.1367>.

¹⁵ Dina Mardiana, Rika Rosdiana, dan Ginan Wibawa, "Implementasi Akad Ijarah pada Pekerja Konveksi Ditinjau dari Pandangan Fiqh Muamalah," *Jurnal Ekonomi dan Bisnis* 2, no. 2 (2022): 15-21, <https://doi.org/10.56145/jurnalekonomidanbisnis.v2i2.156>.

¹⁶ Andi Asti Yuninsi, "Peran Kontrak Istishna dalam Mendorong Pertumbuhan Ekonomi Syariah: Tinjauan Teoritis dan Praktis," *E BISNIS: Jurnal Ilmiah Ekonomi dan Bisnis* 18, no. 1 (2025): 392-98, <https://doi.org/10.51903/e-bisnis.v18i1.2777>.

¹⁷ Ayuda Ayuda, Nurse Fatimah MZ, dan Ferdinan Ferdinan, "Penerapan Akad Istisna pada Jual Beli Sampan," *AL Muqayyad* 4, no. 2 (2021): 153-61, <https://doi.org/10.46963/jam.v4i2.479>.

B. Agreement System and Realization of Ordering Goods from Banda Aceh Mens Surfing Distro with Convection Companies

In Indonesian contract law practice, the legal relationship between the customer and the manufacturer of goods is regulated in Article 1313 of the Civil Code (KUHPdata), which states that a contract is an act of mutual agreement in which one or more persons bind themselves to one or more other persons. Article 1320 of the Civil Code regulates a contract's validity requirements, namely the parties' agreement, the capacity to enter into a contract, a specific object, and a lawful cause. These provisions are the basic reference in establishing a contractual relationship between business actors such as Mens Surfing and garment manufacturers.¹⁸

The Compilation of Sharia Economic Law (KHES) Article 1 Paragraph (10) explicitly defines *Bai Istisna'* as a contract of sale and purchase of goods or services in accordance with specific criteria. This is emphasized in Fatwa DSN MUI No. 06/DSN-MUI/IV/2000, which stipulates that payments in this contract can be made in advance, in installments, or deferred.¹⁹ Garment companies are legally categorized as business actors, namely any individual or business entity that is a legal entity or non-legal entity that is established and conducts business activities permanently. This is in accordance with Article 1, point 3 of Law No. 8 of 1999 concerning Consumer Protection. In this case, garment companies have a position as both producers and suppliers of goods based on consumer demand.

Based on Law Number 7 of 2014 concerning Trade, garment manufacturing companies are included in the industrial goods trade sector. These companies must fulfill basic trade obligations such as honesty in product specifications, responsibility for product defects, and timely delivery of goods. In practice, garment manufacturing is a business unit engaged in the mass production of clothing according to demand. In legal relationships with customers such as clothing stores, garment manufacturers must produce goods based on agreed specifications, including fabric type, size, color, and design. All of these can be categorized as objects of the agreement that garment manufacturers must fulfil as business actors.²⁰

¹⁸ Farhan Zamzamy, Kholil Nawawi, dan Sofian Muhlisin, "Analisis Praktik Akad Istishna' pada Jasa Konveksi dan Sablon di R. Industries Bogor," *Transformasi Manageria: Journal of Islamic Education Management* 3, no. 1 (2023): 258-74, <https://journal.laaroiba.com/index.php/manageria/article/download/2459/1816>.

¹⁹ Kompilasi Hukum Ekonomi Syariah Pasal 1 Ayat (10)

²⁰ Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan

Manufacturers who enter into a *Bai Istisna'* contract are responsible for completing orders in accordance with the initial agreement. Any deviation in quality, quantity, or delivery time may constitute a breach of contract. Manufacturers in the Indonesian and Sharia law system play a strategic role as business partners in the order-based production system.²¹

The goods ordering agreement system implemented by garment manufacturing companies is a *custom order system*, whereby the production process only begins after receiving an order from the customer, in this case, Men's Surfing. This agreement process usually starts with submitting product specifications, including the type of material (e.g., combed cotton, carded cotton, linen, or denim), design model, size, and color.

In practice, this agreement is generally conveyed through two methods, namely digital communication via WhatsApp or voice/video calls and direct visits to the garment factory. Both methods allow flexibility in establishing communication and negotiating prices and product specifications. Once the specifications have been agreed upon, the customer will usually make a down payment from the total order value, as a form of order guarantee. This system is in line with the *Bai Istisna'* contract, which allows payments to be made in installments, in stages, or in full at the end.

A critical aspect of this agreement system is the non-return clause. This means that once the goods have been shipped and received, the manufacturer is not willing to accept returns even if there are defects or differences from the initial specifications. This clause must be handled carefully as it can cause losses for the customer, especially if the defects are due to manufacturing errors.

Based on field data, the Mens Surfing Banda Aceh distribution outlet consistently and professionally operates a clothing ordering system involving several large garment manufacturers in Java and Medan. They order T-shirts and collared shirts from garment manufacturers such as RKonveksi Maju Bersama (Bogor) and shirts from Konveksi Yakin Kita (Bekasi). Meanwhile, for Picasso jeans, they source them from manufacturers in the city of Medan.

The ordering system is carried out in two ways: digital media and direct visits. Digitally, orders are made via WhatsApp with confirmation of item specifications and price agreements. To expand access and ensure quality, the owner of Mens Surfing regularly visits the garment factory every two months to see the latest models and designs. This shows that the realization of agreements is not

²¹ Zamzamy, Nawawi, dan Muhlisin, "Analisis Praktik Akad Istishna' pada Jasa Konveksi dan Sablon di R. Industries Bogor."

only based on documents, but also reinforced by direct communication and field observations.

Men's Surfing orders around 1,000 pieces of clothing in a single order, covering all sizes (M to XXL). The frequency of orders varies depending on the type of item; for example, T-shirts are ordered weekly, while shirts and pants are ordered monthly. For payment, Mens Surfing usually provides a 10% deposit of the total order value if the payment is made in installments.

During implementation, there are often problems with the fabric quality and colors that do not match the specifications ordered. For example, combed cotton material ordered with a specific thickness does not match, or the desired color changes when it arrives at the location. The goods that have arrived cannot be returned because the agreement states that there are no returns (*non-returnable*).²² This situation causes losses and inconvenience for the ordering party and shows a gap between the theory of contracts in muamalah fiqh and technical implementation in the business world, which needs to be corrected to comply with the principles of justice and benefit in sharia.²³

C. Analysis of Non-Return Issues in the Perspective of *Khiyar 'Aibi* in *Bai Istisna'* Transactions

The term non-return refers to a policy that does not give buyers the right to return goods after receipt, regardless of whether there are defects or discrepancies with the agreed specifications. This policy can be applied in writing through a contract or unwritten, based on business practices. Although often considered a form of protection for manufacturers from losses due to returned goods, the application of non-return without exception has the potential to ignore consumer rights, especially when the goods received do not comply with the agreement.²⁴

The non-return policy must be reviewed carefully, because Islam regulates the buyer's right to reject defective goods or goods that do not meet specifications through the *khiyar' aibi* mechanism. *Khiyar' aibi* is the right of the buyer to cancel the

²² Interview with Muzammil, Owner of Mens Surfing Distro, on June 16, 2025, in Lambhuk, Banda Aceh

²³ I. F. Ngazizah, L. Nurhisam, dan M. A. Mubaraq, "Tinjauan Hukum Islam terhadap Akad Istisna' (Studi pada Jual Beli dan Pemasaran Usaha Mebel CV Dua Putra Jati Jepara)," *Tawazun: Journal of Sharia Economic Law* 6, no. 1 (2023): 89-104, <http://dx.doi.org/10.21043/tawazun.v6i1.16394>.

²⁴ Enni Soerjati Priowirjanto, Ahmad Fikri Haykal, dan Carolina Renee Munaf, "Marketplace Self Regulation Mengenai Pengembalian Barang Melalui Metode Pembayaran CashOn Delivery," *ACTA DIURNAL* 6, no. 1 (Desember 2022): 113-14, <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/1132/598>.

contract or request a replacement if a defect is found that reduces the value or usefulness of the goods, whether the defect is obvious or hidden.²⁵

The application of *khiyar' aibi* has strong relevance in *Bai Istisna'* contracts, because these contracts are based on ordering goods according to specific specifications agreed upon from the outset. If the goods delivered deviate from the specifications, the deviation is categorized as a defect, so that the buyer has the right to use the *khiyar' aibi* right to refuse or request repair/replacement.²⁶

The study found that the cooperation agreement between Distro Mens Surfing Banda Aceh and the garment manufacturer did not include a return clause or a mechanism for replacing goods. The agreement, which was made verbally and digitally, only focused on the initial specifications, without including provisions for resolution in the event of discrepancies. As a result, when the production results differ from the agreement in terms of color, material, or stitching quality, the customer must still accept the goods without returning them, which eliminates the customer's right of *khiyar' aibi*. In fact, this right in muamalah fiqh is a fundamental instrument to protect consumers from losses due to defective goods and to maintain the balance of rights and responsibilities of the parties.

In this case, the absence of a return mechanism indicates a disregard for the principles of fairness and trust in transactions. Manufacturers who adhere to a non-return policy without exception neglect the protection of the rights of those who order goods as stipulated in muamalah fiqh. In fact, according to the principle of *al-kharaj bi al-dhaman*, every profit earned must be accompanied by responsibility for risks, including the risk of product non-conformity.

A strict non-return policy can lead to customer dissatisfaction and damage long-term business relationships. In the Islamic economy, trust is the main asset that maintains the sustainability of business relationships. Manufacturers who provide return or replacement options in case of defects demonstrate a commitment to quality and moral responsibility in business.

Classical fiqh literature, such as *Al-Majmu'* by Imam Nawawi and *Bidayat al-Mujtahid* by Ibn Rusyd, emphasizes that *khiyar' aibi* applies automatically without the need for explicit mention in the contract, as long as the defect affects the value

²⁵ Safera dan Nurul, "Implementasi Khiyar 'Aib Pada Transaksi Jual Beli Produk Fashion Muslim di Butik Inayah Menurut Hukum Islam," *Jurnal Hukum Ekonomi Syariah* 4, no. 1 (2025): 62-68.

²⁶ Alhamdani dkk., "Tinjauan Hukum Ekonomi Syariah Terhadap Implementasi Khiyar Dalam Jual Beli Online Pada Marketplace Shopee," *Iqtishad Sharia: Jurnal Hukum Ekonomi Syariah & Keuangan Islam* 1, no. 1 (2023): 14-31, <https://journal.albadar.ac.id/index.php/iqtishadsharia/article/view/114>.

or usefulness of the goods. In modern practice, affirmation of this clause in a written agreement is essential to avoid disputes over interpretation and to facilitate proof.²⁷

Concerning positive law in Indonesia, the principle of *khiyar' aibi* is in line with Law No. 8 of 1999 concerning Consumer Protection, which gives consumers the right to obtain goods in accordance with the agreement and to claim compensation if the goods are defective. Integrating this principle into the *Bai Istisna'* contract will provide double protection in terms of positive and Sharia law.

The absence of a return clause puts the customer in a weak position when there is a discrepancy with the goods. The manufacturer can argue that the risk is part of the production process, while the customer has no contractual basis for objecting. This situation could cause a chain of losses, ranging from financial losses and damage to the brand's reputation to the loss of customers.

One solution that can be implemented is to establish a joint quality inspection system before goods are delivered. This inspection can ensure compliance with specifications before the transaction is considered final, while reducing the potential for excessive use of *khiyar' aibi*, which can be detrimental to producers.

The application of a return mechanism in accordance with the principle of *khiyar' aibi* does not necessarily harm producers. On the contrary, this mechanism encourages producers to maintain quality and reduce the risk of customer complaints. In the long term, applying this principle can increase customer loyalty and expand business networks.

Applying *khiyar' aibi* from the perspective of *maqāṣid al-syarī'ah* aligns with the objectives of protecting property, maintaining justice, and preventing losses. Ignoring this mechanism is tantamount to ignoring the main objectives of Sharia, which are designed to protect the parties' rights in a transaction. In *Bai Istisna'* contracts, such as in the case of this study, it is advisable for the parties to include a clause that explicitly regulates the right of *khiyar' aibi*. This clause may contain criteria for defects, return procedures, and deadlines for filing claims. Affirming this clause will minimize the potential for conflict and clarify the rights and obligations of each party.

Implementing the *khiyar' aibi* principle in modern agreements can also be adapted through efficient administrative procedures, such as using claim forms, photo documentation of goods, and rapid verification systems. This allows for the application of fiqh principles while maintaining business efficiency. Overall, the

²⁷ Nurafida, M. Ali Rudi, dan Suarning, "Analisis Khiyar Syarat dan Khiyar Aib dalam Transaksi Jual Beli Pakaian di Pasar Tradisional Bungi Kab. Pinrang," *Sighat: Jurnal Hukum Ekonomi Syariah* 3, no. 1 (2024): 2-4, https://ejurnal.iainpare.ac.id/index.php/shighat_hes/article/download/10413/2477/.

non-return policy in this case is proven to be contrary to the consumer protection principles in fiqh muamalah. Consistent application of *khiyar' aibi* will ensure that *Bai Istisna'* transactions are more trustworthy, fair, and in accordance with sharia guidance.²⁸

Applying the *khiyar' aibi* principle in the garment sector can serve as a model for other businesses, especially those based on special orders. The issue of non-returns in *Bai Istisna'* transactions is not only a technical issue in trade, but also touches on legal, ethical, and rights protection aspects from a sharia perspective. Ignoring the return mechanism means ignoring the fundamental rights of buyers, which in the long run can be detrimental to both parties.

The non-return issue in this case of *Bai Istisna'* transactions emphasizes the importance of enforcing the right of *khiyar' aibi* as a sharia-based consumer protection instrument. The absence of a return mechanism and the lack of the right of *khiyar' aibi* not only cause injustice and loss to the purchaser of the goods, but also have the potential to damage trust and the sustainability of business relationships. The explicit and measured application of the right of *khiyar' aibi* in contracts will strengthen the guarantee of fairness, maintain the integrity of transactions, and be in line with *maqāṣid al-syarī'ah* in protecting property, preventing losses, and maintaining the common good.

D. Review of *Bai Istisna'* Regarding the System of Order Agreements for Distro Goods with Garment Manufacturing Companies and Its Implementation

Several key elements of a *Bai Istisna'* contract must be fulfilled to be considered valid according to Islamic law. These elements include two contracting parties (the seller and the buyer), the object of the order (*ma'qud' alayh*), *ijab qabul* or *shighah*, and a clear price (*tsaman*). In the practice of cooperation between Distro Mens Surfing Banda Aceh and the garment company, these elements have generally been fulfilled. Both parties agreed to the agreement based on trust and active communication, both through electronic media and direct visits.²⁹

Product specifications are also an essential aspect of *Bai Istisna'*, and in practice, Mens Surfing clearly lists the type of material, design, size, and color in each order. This is in accordance with the principle of *ma'lum al-ta'yin*, which states

²⁸ Holijah, "Konsep Khiyar 'Ayb Fikih Muamalah dan Relevansinya dalam Upaya Perlindungan Konsumen," *Al-Manahij* 9, no. 2 (Desember 2015): 348–49, <https://ejournal.uinsaizu.ac.id/index.php/almanahij/article/view/507/458>.

²⁹ Riana Raharti dkk., "Pengaruh Akad Istisnā terhadap Transaksi Jual Beli Aplikasi Lazada," *JIS: Journal Islamic Studies* 2, no. 2 (2024): 203–4, <https://yptb.org/index.php/jis/article/view/834>.

that the nature and characteristics of the contract object must be known. However, problems often arise in technical implementation, namely that the goods received do not match the initial specifications. This raises the question of whether the contract is actually carried out in accordance with the principle of *Bai Istisna'*, which requires clarity of product specifications and quality.³⁰

The product completion time must also be clarified. In Men's Surfing's practice, orders are placed periodically, and delivery times are adjusted according to the type of product.³¹ However, the written agreement regarding the delivery deadline is not explained in detail in the field data, so the potential for disputes remains open in the event of delays. This relates to the principle of *iltizam* or commitment to completion within a specific time as stipulated in *Bai Istisna'*, which has not been fully implemented optimally.³²

Payment in *Bai Istisna'* can be made using several methods: cash in advance, during production, or after receiving goods. The practice carried out by Distro Mens Surfing shows that payment is made using a deposit system (down payment) of around 10% of the total transaction value, then the balance is paid when the goods are received. This is in accordance with DSN-MUI fatwa No. 06/DSN-MUI/IV/2000, which allows flexibility in payment in *Bai Istisna'*.³³

One of the critical points of this agreement is the clause that goods cannot be returned even if they are unsuitable. From a fiqh muamalah perspective, this provision must be reviewed as it may cause disproportionate losses. One of the basic principles in *Bai Istisna'* is *al-ghurm bil ghunm* (risk is proportional to profit), which means that if the manufacturer receives a profit from the transaction, he must bear the risk if a production error occurs.

The purchaser can reject goods if they do not comply with the initial agreement. This is based on the principle of *al-muta'āqidān 'ala mā ittafaqā 'alayh*, which states that both parties are obliged to carry out the agreement as agreed. If

³⁰ Muh. Khoiruddin dan Dimas Alfayit, "Implementasi Akad Istisna' dalam Usaha Konveksi pada DR Konveksi Desa Sragi Kecamatan Songgon," *Maslahah: Jurnal Manajemen dan Ekonomi Syariah* 1, no. 4 (2023): 262-75, <https://doi.org/10.59059/maslahah.v1i4.405>.

³¹ Agus Prakarsa Yuristama, Nunung Nurhayati, dan Nandang Ihwanudin, "Perbandingan Tinjauan PSAK 104 dan Tinjauan Hukum Perdata dalam Implementasi Pengakuan Akad Istisna' yang mengalami kondisi Wan Prestasi," *Syntax Literate: Jurnal Ilmiah Indonesia* 7, no. 7 (2022): 76-77, <https://doi.org/10.36418/syntax-literate.v7i7.7563>.

³² Riana Raharti dkk., "Pengaruh Akad Istisna (Jual Beli) Terhadap Transaksi Jual Beli Aplikasi Lazada," *JIS: Journal Islamic Studies* 2, no. 2 (2024): 200-206, <https://yptb.org/index.php/jis/article/view/834>.

³³ Miming Utami dkk., "Implementasi Akad Istisna' dalam Industri Perbankan Syariah di Indonesia," *Syariat: Jurnal Studi Al Qur'an dan Hukum* 10, no. 1 (2024): 29-44, <https://doi.org/10.32699/syariat.v10i1.5415>.

the goods are defective or non-compliant, the purchaser may cancel the contract or request a replacement.³⁴ In this context, the non-return policy applied by the clothing manufacturer is contrary to the principle of fairness in *Bai Istisna'*. Men's Surfing, as the purchaser of the goods, should be more assertive in including a clause protecting against goods that do not meet the specifications.³⁵

One of the main problems in the relationship between Mens Surfing and the garment manufacturer is the discrepancy between the agreed specifications and the goods received. This discrepancy includes the quality of the fabric, the type of material (for example, combed cotton that is not of the agreed-upon thickness), and colors that differ from the original order. From the perspective of muamalah fiqh, this condition leads to an element of *gharar* (uncertainty), which is prohibited in transactions.

Gharar occurs if the contract object is unclear or neither party can predict the outcome. In a *Bai Istisna'* contract, clarity regarding the goods is an absolute requirement for the transaction to be valid. When the goods arrive in a condition that differs from the original order and cannot be returned, this violates the contract's clarity principle. In this context, the manufacturer, as the party that produces the goods based on the order, must take full responsibility for the results of their production.³⁶

Clarity regarding materials, design, and color is part of the agreement and a valid condition of the contract in Islamic jurisprudence. If the result is not as expected and the buyer is not given the right to return the product, then the contract can be categorized as containing elements of fraud, which is prohibited in Islam. Implementing the *Bai Istisna'* contract in Mens Surfing practice shows that clarity and transparency are still not fully upheld. To avoid elements of *gharar*, there needs to be a detailed written contract and a system for verifying the production results before delivery.

Business relationships in Islam are not only assessed from a technical perspective, but also from an ethical and moral standpoint. The akad *Bai Istisna'* embodies the spirit of fair, transparent, and mutually beneficial cooperation. In the

³⁴ Rohil Rofiqoh, Arsa, dan Firmansyah Noor, "Implementasi Akad Istishnā' dalam Meningkatkan Penjualan pada Surtiwi Pendawa Jati Furniture di Kota Jambi," *Jurnal Studi Multidisipliner* 8, no. 9 (2024): 143–45, <https://oaj.jurnalhst.com/index.php/jsm/article/view/4347>.

³⁵ Meyla Nur Vita Sari, "Implementasi Akad Istishna pada Perbankan Syariah Indonesia," *An Nisbah: Jurnal Perbankan Syariah* 4, no. 2 (Juli 2023): 240–54, <https://doi.org/10.51339/nisbah.v4i2.1142>.

³⁶ M. V. Sari, "Implementasi Akad Istishna pada Perbankan Syariah Indonesia," *An Nisbah: Jurnal Perbankan Syariah* 4, no. 2 (2023): 240–54, <https://pdfs.semanticscholar.org/dd0e/f9f74%E2%80%A6pdf>.

case of Men's Surfing, the store's position as the purchaser is often disadvantaged because the goods received are not as expected, but cannot be returned. This shows an imbalance in business relationships contrary to Sharia justice's values.

Sharia business ethics emphasize the importance of honesty and responsibility. Manufacturers who do not carry out production according to specifications have violated their mandate, and refusing to accept returns is a form of evading responsibility. In Islam, business people are required to provide satisfaction to customers, not just pursue profit.³⁷

Institutionally, both Men's Surfing and garment companies should have Sharia-based operational standards, including quality audit systems and mutually protective agreements. Without these mechanisms, the practice of *Bai Istisna'* will only be a formality of contract, not a true manifestation of ethical muamalah.³⁸

A review of the ordering practices carried out by Distro Mens Surfing shows that although there is good intention in establishing cooperation based on agreement, its implementation is still far from ideal when viewed from the perspective of the *Bai Istisna'* contract. Product inconsistencies, the absence of a return clause, and the lack of guarantees regarding product specifications cause losses for the customer.

The agreement system needs to be transformed between distributors and manufacturers to comply with Sharia principles. This adjustment can begin with creating a written contract, including detailed technical specifications, delivery times, payment methods, and quality guarantees. In addition, adding a dispute resolution clause (including compensation in the event of default) is crucial to prevent potential prolonged losses.

CONCLUSION

The study results show that the practice of *Bai Istisna'* contracts in goods ordering agreements between Distro Mens Surfing Banda Aceh and garment companies is still far from ideal when viewed from the perspective of sharia principles. The most important finding that is a critical point is the discrepancy between the specifications of the goods and the initial agreement, especially in terms of fabric quality, color, and stitching. This condition is exacerbated by the unilateral

³⁷ Yoppi Hendriyanto dan Laili Wahyunita, "Tinjauan Fikih Muamalah terhadap Praktik Akad Pemesanan Barang di Percetakan Digital Printing Lineza dan Dokter Printing," *Ghaly: Journal of Islamic Economic Law* 1, no. 1 (2025): 1-17, <https://doi.org/10.21093/ghaly.v1i1.5842>.

³⁸ AIS Wijayanti, Bambang Waluyo, dan D. Abdul Fatah, "Analisis Faktor Faktor yang Mempengaruhi Rendahnya Pembiayaan dengan Akad Istishna pada Perbankan Syariah," *SERAMBI: Jurnal Ekonomi Manajemen dan Bisnis Islam* 3, no. 3 (2022): 117-30, <https://doi.org/10.36407/serambi.v3i3.543>.

enforcement of a non-return clause, which negates the right of the purchaser to return the goods even if they are defective or unsuitable. This shows that the principle of *khiyar 'aibi*, which is the buyer's right to cancel the contract or request a replacement if the goods are found to be defective, is not applied in the agreement, thereby neglecting the purchaser's right to obtain goods as agreed. The absence of a detailed written contract, the lack of product quality guarantees, and the weak dispute resolution mechanism place the purchaser of the goods at a disadvantage. This phenomenon violates the principles of justice and trust in Islamic muamalah and ignores consumer protection rights as regulated in positive law. This study highlights that the practice of non-return without exception in *Bai Istisna'* contracts in the garment sector triggers business relationship imbalances, opens up opportunities for *gharar*, and has the potential to cause chain losses for the purchaser. This condition emphasizes the need to reform the agreement system to make it more transparent, fair, and able to protect the rights of both parties in a balanced manner. It is recommended that agreements be made in writing with detailed technical specifications and provide a fair dispute resolution mechanism so that transactions are conducted in a trustworthy and professional manner per Sharia principles.

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