

Effects of Istisna Contract Legally and Illegally according to Islamic Banking View

Alireza Millanei^{1*}, Seyed Mohammad Hadi Ghabooli Dorafshan², Alireza Bayrami³

¹Department of Law, Islamshahr Branch, Islamic Azad University, Tehran, Iran.

²Ferdowsi University Of Mashhad (FUM), Mashhad, Iran.

³Department of Law, Electronic Branch, Islamic Azad University, Tehran, Iran

ARTICLE INFO

Article history:

Received 08 Dec 2015

Received in revised form 07 Jan 2016

Accepted 17 Jan 2016

Keywords:

Istisna.,

Legal aspects,

Non-legal aspects,

Islamic banking

ABSTRACT

Objective: Istisna contract includes customizing of manufacturing of anything with a fixed price made in accordance with agreed specifications. Istisna contract is as well as any other contract based on characteristics and nature of effects ranging from legal and non-legal services. **Methodology:** Istisna contract legally has three types of effects: Transfer of ownership of manufactured goods, commitment to product manufacturing, and a commitment to pay the price; an artefact waste products. Islamic banking, if there is a real intention partnership and direct investment transactions in which the Bank is carried out by banks are not handling money. **Results:** As a result of the actual banking transactions in Islamic banking, transaction, or obscured or unknown relationship between the bank and the client is invalid and this more than any other bank in Istisna contracts to be observed. Istisna run economic growth monetary and financial system is the optimal allocation of resources projects in non-banking facilities in specific cases and will not cost the national wealth to be driven by large projects. And thus have a greater economic efficiency. **Conclusion:** Istisna boost employment in the country's internal system because banks to implement projects and development projects, industrial, agricultural and requires a specific professionals in the field, and it requires banks to carry out these projects will benefit from this expertise.

1. Introduction

Istisna Contract or Order Making of contracts which, although in the distant past was used on a limited basis, but is now widely used. A simple example is that of individual negotiating with the contractor for the construction of his house and possibly long-term funds in cash or in the form of Czech first her to build the house. Then in proportion to the progress of work or independent of it, another part of the money to pay him the remainder upon completion of its work and ensure certainty to contractors and thus ends Istisna. Since the need is the mother of invention; the marriage from the beginning to its natural need people there. Because the needs and desires of all people are not equal in quality to. For example, a shoe that a person with large feet, which require shoes with the average person is different and required a shoemaker also to facilitate the sale, the average size is generated. The ring, clothes, houses, shops, and workshops where the people due to differences in size, taste and demand situation, is different than others.

To meet this requirement, sometimes applying raw materials to the manufacturer puts up the goods produced. This contract is a lease contract is signed. But in many cases, the manufacturer of the material in its possession or because knowing the quality of the raw materials and how to work with it, the parties they so desired, raw materials, and provide his. In this case, the manufacturer of your raw materials, work begins and at the end, once the amount is received or that in the first part as deposit and part of the job in proportion to the progress of work and in part after the end of certainty and ensure you get the job done or they basically agreed with each other after making the product, in installments identical or non-identical, the price paid to the manufacturer (Gohari et al., 2015).

* Corresponding author: Alireza.Millanei@gmail.com

DOI: <https://doi.org/10.24200/jsshr.vol4iss01pp29-32>

1.1 Effects of Istisna

Istisna as well as any other contract according to the characteristics and nature of effects ranging from legal and non-legal services.

1.2 The legal effect Istisna

Istisna legally has three types of effects: the transfer of ownership of manufactured goods, commitment to product manufacturing, and a commitment to pay the price; an artifact waste products.

2. Materials and methods

2.1 Transfer of ownership of manufactured goods

Istisna contract there are three ways to transfer ownership of the goods after construction is as following:

1. Commitment to ownership in the form of general sales per innocence.
2. The obligation in pending home sales.
3. According to the covenant and the uncertainty contract is covered by Article 10 of the Civil Code.

What is remarkable is that this analysis it is possible that the subject property Istisna generally assumed that in the case of acquisition, the effect is but the beginning of the marriage contract is the obligation of acquiring the commodity play and run it made leads. In Iran's rights against the idea that the majority of useful data and that the issue only belong to oblige are religious and therefore no right to object to the transaction will be committed. It is said that in its letter of promise what are the benefits crush proved to be a pure religious right is not a right that is linked to certain property and related rights to certain property, a right which the concrete can be crushed committed to sell the property pledged to require. Also pursuant to Articles 219 and 220 BC and analysis of the case warrant the entry into force of the contract, such that cannot be committed with legal action, but specific commitments to impossible. The effect of the entry into force of the contract and liability for physical exercise leads to deterioration of the subject property was not authorized, and also to discredit the obligation to apply the law that is incompatible with the obligation (Shahidi, 2001). Since Istisna contracts as what actually achieved covenant commitment to build and deliver the goods because commitment can be fulfilled only with consent and agreement and the transfer of property at the time of the conclusion of the transfer but there Istisna when possible that the goods are ordered and delivered. The Client will be transferred to the property (Katuzian, N. 2001).

2.2 Commitment to making the product and the obligation to pay the price

Mansouri jurisprudence is said that since the conclusion of the contract Istisna before the construction contract is revocable and product makers and have the right to terminate the contract. After making the product well before it is visible by but after the completion of the ordered item and is visible in the Mansouri several theories, arguing that the contract with respect to both it is permissible to see but the present goods to your cucumber has been overthrown. The satisfaction that the product is owned by the client and the client and buys an item that is not subject Istisna the same time that it is visible, then cucumber is visible (Mansouri, 2010).

2.3 The risk of product waste artifact

Istisna contract analysis indicated that the covenant is a contract where the manufacturer on the basis agreed in the contract and are committed to making the acquisition of goods in accordance yet it is also required to client and client pays the agreed or are agreed to pay the manufacturer. So before making the ownership of the goods to the customer, raw material and finished goods remains the property of the manufacturer and its waste pre-acquisition requires the manufacturer's guarantee. This is the inheritance of the property should not be deployed to guarantee the order will not be responsible for injury in this case. For this reason, some lawyers believe that if you build the product manufacturer and the opportunity to build long remains before it and re-sell the product on the market before the expiry time to build it in the conclusion of ordered item accordance thus this act he does not hurt to enter Istisna. So if it's Istisna also assume certain after acquiring it, Phi principles intended to govern and guarantee losses after the submission of the order passed under the rule of per innocence Istisna issue and assume that the analysis after determining the obligation to faced, ownership and right of the client to be deployed objective and risk transfer after determining submit the case. Country to the deal-in-law so, if you as are continuous owned sales contract of sale is transferred to the buyer but the seller is wasting up to the date of submission. However, with regard to crush Istisna analysis as an independent contract, transfer the product to the customer after the submission of the Exchange Guarantee (Al-Deehani et al., 1999).

2.4 Economic and political effects Istisna

New papers published regularly turn Istisna can leave yourself the following positive economic effects. Funding for economic projects, providing budget deficit, raise capital for small and wandering, diversifying the capital market, stock market boom a tool for the central bank's monetary policy.

3. Discussion and results

3.1 Funding for economic projects

Due to the ban and the prohibition of lucre in Islamic economic system and then change the law on banking operations in Iran and the lack of resources needed to use bonds to finance ministries and state-owned companies and non-government and the municipalities and public entities and institutions and public institutions and affiliated companies, securities Istisna can be somewhat vacuum of bonds to finance economic projects fill a new way to finance the cause (Kettell, 2011).

3.2 Second paragraph: providing government deficit

Government budget deficits are various reasons as bonds among practices financed through borrowing from the central bank or selling foreign currency to the central bank's outstanding features, among other practices provide securities Istisna financial priority. Because the financing of government deficits through the issuance of Istisna of the central bank, the monetary base and consequently liquidity will not increase. As you know sell the currency to finance the government deficit by the way, from a monetary expansion leads to unwanted side and on the other hand due to practical constant exchange rates and the impossibility of reducing this rate, it eliminates the possibility of applying a restrictive policy and thus greatly increase the amount of money on the strength of that inflation is causing. But if financing through the issuance of Istisna will not increase the money supply (Jiang, 1996).

3.3 Raise capital to small and wander

It can be said with certainty at the disposal of surplus capital and a lot of small and large people that if appropriate management and accurate, efficient, and appropriate public confidence in the reinstatement of Article capital, and profits economic, it can be to the capital, and production and thus led economic growth. Such conditions will provide little incentive to hold capital or enter into supply shopping and wandering in the durable goods ranging from land, housing, Coins and intermediation undesirable's taste people's society stripping select the type of modified maintenance savings and the available resources will lead fruitful and productive and development activities through investments in micro and macro levels of public participation to be added (Esty, 2000).

3.4 Section IV: diversification of capital market

Open capital markets, inclusive of comprehensive information and transparency, and facilitate the purchase of securities and diversification of securities to fit the mood of risk aversion and risk appetite could cause favorable conditions on the capital market in any country (Habachy, 1962).

Login Istisna securities unmistakable physical volume increase and a broad selection of securities will be added. Moreover, since the bonds have a maturity Istisna specific example, 2-year, 5-year or 10-year-old, who it buys securities with fixed price in the securities market knows that, at maturity, the amount of capital specified that the nominal amount of bonds Istisna (which is indicated by the publisher) gain and the time of purchase can be no risk to the amount of risk on their plan. The price before maturity will be affected by the recession and economic prosperity along with other securities if the securities Istisna for continuous and varied widely by state institutions and NGOs to be published, according to their characteristics can supply and demand certain to attract visitors and to diversify the capital market and the stock exchange and the richness it adds. And this process can be primary and secondary market securities lead to more competition and greater efficiency. And the realization of perfect competition market is expected to return on these securities (the difference of the purchase price and selling price) will lead to the return of capital in the real economy (Jones, 1987).

3.5 Stock market boom

Istisna securities and real economic force entering the secondary market depends on a thriving and somewhat inclusive. Fortunately, in recent years the development of the stock market in the provincial capitals of the country, the situation is somewhat secondary securities market provides the same time it is necessary to ensure proper operation of the features that have their work. The first feature, making those markets, namely the return of capital assets should be proportional to the market value of the assets, deemed to be efficient. Second, power is soliciting funds so that small and large investors able to provide investments in the country. The third feature, however if this information is one of the most important features in this market will provide competitive market conditions, and in this case, largely reduced risk transactions. Fourth, reduce costs and ease the exchanges. It must be in a manner that minimized transaction costs and capital transfer. Reduce costs and eventually lead to more efficient markets fifth feature, the interaction of financial markets with money markets. Creation of appropriate interaction between the two side of each of them with innovation, quality improvement, and better efficiency could improve relations in the economic system of the country is worth noting that the purpose of the different discount rate of return on the securities Istisna the buyer buys it and took another with a lower rate on another leaves or that it buys at a particular time and waits until it comes due and the release of the nominal amount received it is in this case, the discount rate is the rate of return on the securities purchase transaction will be counted.

It is noteworthy that these bonds yield more than the rate of inflation in the country's economic program or more than the official forecast rate of inflation. Otherwise, there will be little incentive to entry into this market, although it does not Istisna that should be public securities in any particular economic returns on bank deposits and bonds should be considered (Nazarpour, 2011).

3.6 A tool for the central bank's monetary policy

Central banks can license money and Credit Council, through open market operations in a recession by buying securities from banks within the buy Istisna true religion monetary policy action to maintain and increase high-powered money and consequently on total spending. Credit and monetary institutions and increase prosperity in terms of stocks at lower prices in the stock market supply and reduce the money supply by buying and selling these securities in total and monetary policy in accordance with the economic situation, things like employment more, fixing the general level of prices, balance of payments and ultimately the economic growth targets (Ayub, 2002).

4. Conclusion

Islamic banking, if there is a real intention partnership and direct investment transactions in which the Bank is carried out by banks are not handling money. As a result of the actual banking transactions in Islamic banking, transaction, or obscured or unknown relationship between the bank and the client is invalid. And this more than any other bank in Istisna contracts to be observed.

Istisna run economic growth monetary and financial system is the optimal allocation of resources projects in non-banking facilities in specific cases and will not cost the national wealth to be guided by great designs and thus have more economic efficiency.

Istisna boost employment in the country's internal system because banks to implement projects and development projects, industrial, agricultural and requires a specific professionals in the field, and it requires banks to carry out these projects will benefit from this expertise.

REFERENCES

- Al-Deehani, T., Karim, R. A. A., & Murinde, V. 1999. The capital structure of Islamic banks under the contractual obligation of profit sharing. *International Journal of Theoretical and Applied Finance*, 2(3), 243-283.
- Ayub, M. 2002. *Islamic banking and finance: theory and practice*. State Bank of Pakistan.
- Esty, B. C. 2000. The equate project: An introduction to Islamic project finance. *Journal of Structured Finance*, 5(4), 7.
- Gohari, H., Saidi, F., & Mousavi Hashemi, S. H. 2015. Considering Fundamentals of Judicial Adjustment of Contract in Iran's Law. *European Online Journal of Natural and Social Sciences: Proceedings*, 4(1), 1139.
- Habachy, S. 1962. Property, Right, and Contract is Muslim Law. *Colum. L. Rev.*, 62, 450.
- Jiang, P. 1996. Drafting the uniform contract law in China. *Colum. J. Asian L.*, 10, 245.
- Jones, W. C. 1987. Some questions regarding the significance of the general provisions of civil law of the People's Republic of China. *Harv. Int'l. LJ*, 28, 309.
- Katuzian, N. 2001. *The Civil Rights: general rules of contracts*. Tehran: corporation Publication, 1, 88-91.
- Kettell, B. 2011. *Islamic finance in a nutshell: a guide for non-specialists*. John Wiley & Sons.
- Nazarpour, M. N. 2011. Accuracy or Corruption Istisna Viewpoint Shiite and Four Sunni Schools of Law. *Islamic Law Quarterly*, Issue Twenty Eighth, 41-44.
- Mansouri, S. 2010. The nature of the contract Istisna'a the rights of Iran. 68-72, 134-138. Tehran.
- Shahidi, M. 2001. The agreements and commitments. 84-88. Tehran: Majd.

How to Cite this Article:

Millanei A., Ghabooli Dorafshan S M H., Bayrami A., Effects of Istisna Contract Legally and Illegally according to Islamic Banking View, *UCT Journal of Social Sciences and Humanities Research* 4(1) (2016) 29–32.