ANALYSIS OF THE ISTISNA CONTRACT IN DIGITAL FREELANCE TRANSACTIONS BASED ON A COMPARATIVE FIQH STUDY BETWEEN THE SHAFI'I AND HANAFI SCHOOLS

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Abstract

The transformation of the digital economy has reshaped global transaction patterns and work relations, particularly within project-based freelance marketplaces that rely on digital outputs. This study analyzes the application of the Istisna contract in digital freelance transactions through a comparative fiqh (fiqh muqaran) approach between the Shafi'i and Hanafi schools. Using a qualitative–normative methodology, this research employs thematic analysis of classical fiqh sources and contemporary literature. The findings show that while both schools acknowledge the validity of the Istisna contract, they differ in formal requirements and flexibility. The Shafi'i school emphasizes legal certainty and clarity of the contractual object, whereas the Hanafi school allows greater adaptability based on social customs and considerations of public interest (istihsan wa al-'urf). Within the digital context, these differences may be synthesized into a hybrid contract model that upholds principles of justice, transparency, and technological efficiency. This study contributes theoretically to the development of digital fiqh muamalah and adaptive sharia-compliant contract models, offering practical implications for regulatory design and contract systems in global freelance marketplaces. Overall, the findings affirm the evolutionary capacity of Islamic law to address digital economic challenges while preserving moral values and the principles of maqasid al-shariah.

Keywords: Istishna Contract; Comparative Fiqh; Digital Economy; Sharia Freelancing; Hanafi and Shafi'i Schools of Thought

INTRODUCTION

The development of the global digital economy has triggered a major transformation in transaction patterns and work relations, widely known as the gig economy or project-based economy. This economic model relies on online platforms that serve as intermediaries between service providers and clients, enabling cross- border transactions with high efficiency (Kässi & Lehdonvirta, 2018). The number of digital freelance workers in Indonesia has grown significantly in line with the expansion of technology adoption and internet penetration. A World Bank (2024) report shows that the number of digital freelancers in Indonesia reached approximately
7.4 million people, with an average annual growth rate of 12.1% during the 2019–2024 period. About 64% of their income originates from global platforms such as Upwork, Fiverr, and Freelancer. However, these activities are not yet fully recorded in the national monetary system as contributors to foreign exchange earnings. This condition results in suboptimal monitoring of foreign currency flows and reduces the effectiveness of monetary policy. According to an IMF (2023) report, economic digitalization without proper legal regulation may create imbalances in the financial system, including within the sharia context, where contractual clarity and transactional justice are fundamental components of economic stability.

Within the framework of Islamic law, fiqh muamalah provides normative guidance for economic activities, emphasizing principles of justice (adl), clarity (bayyinah), and the prohibition of uncertainty (gharar). According to Kamali (2019, p. 224), Islamic economic transactions are inherently dynamic and may adapt to social transformations as long as the objectives of maqasid al-shariah are preserved. One contract relevant to digital order-based activities is *Istisna*, a contractual agreement between a buyer (mustasni') and a manufacturer (sani') to produce a specific item or service according to agreed specifications (Al-Zuhayli, 2017, p. 370). In classical practice, Istisna was applied to manufacturing and construction industries, while in modern digital contexts, the concept may be expanded to include digital

products such as design, software, and creative content (Obaidullah, 2020). Thus, the Istisna contract has strong potential as the sharia legal basis for work contracts in the digital freelance sector.

The application of Istisna in digital contexts introduces several new legal questions, such as the legal status of non-physical products, electronic payment mechanisms, and the validity of online *ijab-qabul* (offer and acceptance). According to El-Gamal (2022, p. 137), Islamic contractual systems must be reconstructed to accommodate electronic transactions provided that they do not contradict sharia principles. The Shafi'i school requires contractual objects to be clear, specific, and deliverable, while the Hanafi school allows more flexible contractual forms as long as they uphold fairness and mutual consent (Ibn Abidin, 1992, p. 252). These differences offer an analytical entry point for exploring how both schools provide legal solutions to modern digital transaction challenges.

The theoretical significance of this study lies in two dimensions. First, normatively, it expands the scope of fiqh muqaran (comparative Islamic jurisprudence) by introducing a new context beyond classical physical-based practices. Second, empirically, it offers a conceptual foundation for developing sharia-compliant contract models suitable for project-based digital work (Auda, 2022, p. 144). By examining the views of the two major schools Shafi'i and Hanafi this study seeks to demonstrate how Islamic legal principles can be applied adaptively without compromising sharia integrity. This is particularly relevant for the development of Indonesia's sharia economic law as the country transitions toward an integrated digital system.

Previous studies reveal that most research on the Istisna contract remains limited to physical goods financing and the construction sector (Ayub, 2016; Obaidullah, 2018). Only a few studies examine Istisna within the digital economy, especially from a comparative school perspective. This research attempts to fill that gap by integrating maqasid al-shariah theory and Islamic contract theory into the context of digital freelancing. Such an approach is expected to bridge the gap between classical Islamic law and the realities of contemporary digital economic transactions (Hossain, 2021).

Based on the above background, this study focuses on analyzing the Istisna contract within digital freelance transactions using a comparative fiqh approach between the Shafi'i and Hanafi schools. The central research question is: how do the two schools view the validity and application of the Istisna contract in digital service-based transactions, and to what extent can Islamic legal principles ensure justice and transparency within the digital freelance ecosystem? This research aims to contribute theoretically to the development of digital fiqh muamalah and provide practical recommendations for the formulation of sharia-compliant contracts in the Islamic digital economy.

THEORETICAL FRAMEWORK

The theoretical foundation of this study is built upon three major frameworks in contemporary Islamic law: *maqasid al-shariah*, *fiqh muqaran* (comparative jurisprudence), and Islamic contract theory. These three frameworks complement one another in explaining how Islamic contractual law can adapt to the rapid expansion of digital technology. *Maqasid al-shariah* emphasizes the objectives of Islamic law in preserving public interest and preventing harm (*jalb al-maslahah wa dar' al-mafsadah*), as articulated by Al-Ghazali (1997, p. 102). This principle functions as a reference for evaluating the validity of contracts within new contexts, including digital order-based transactions. According to Auda (2022, p. 148), modern maqasid methodology does not solely focus on textual legal rulings but also considers the social and technological contexts that shape human interactions. Therefore, applying the Istisna contract to digital freelance transactions may be understood as a form of *ijtihad maqasidi* an effort to align Islamic legal rulings with the objectives of sharia in contemporary settings.

The term *akad* derives from the Arabic *al-'aqd*, meaning bond or agreement. Linguistically, its root form *'aqada*, with the plural *al-'uqud*, refers to written or recorded contracts. In Islamic jurisprudence, a contract is formed through an offer (*ijab*) and acceptance (*qabul*) that is recognized by sharia and generates legal obligations based on mutual consent. The legal implications of Islamic contracts consist of primary legal effects, which derive from essential contractual terms, and secondary legal effects, which consist of additional terms agreed upon by the parties to support the main objectives of the contract. Linguistically, *istisna'* originates from the verb *ṣana'a* (to make) and becomes *istisna'* meaning "to request something to be made." Terminologically, Istisna refers to a sale contract in which a buyer requests a producer or craftsman to manufacture a product or deliver a service according to agreed

specifications. The object of the sale is thus the product to be manufactured, and it is obligatory for the producer (*sani'*) to complete the task as agreed.

Fiqh muqaran, the second theoretical framework, is used to analyze methodological differences between the Shafi'i and Hanafi schools with regard to the Istisna contract. The Shafi'i school is known for its textual and strict approach to legal certainty, whereas the Hanafi school is more flexible and allows the use of *istihsan* (juristic preference) and *'urf* (custom) in deriving legal rulings (Ibn Abidin, 1992, p. 252). Kamali (2019, p. 230) notes that comparative jurisprudence is critical for understanding the flexibility of Islamic law and its potential to respond to contemporary socio-economic challenges. Within this research, *fiqh muqaran* enables the integration of the Shafi'i insistence on contractual clarity with the Hanafi pragmatic openness to custom and social benefit, producing an understanding of Istisna that remains legally sound while accommodating digital, outcome-based transactions.

The third theoretical foundation is Islamic contract theory, which views *akad* as a moral, social, and legal agreement rooted in justice, clarity, and mutual consent (Usmani, 2022, p. 78). In this theory, contracts are not merely economic exchanges but manifestations of Islamic ethical values. Nyazee (2020, p. 91) argues that the essence of a contract is the moral commitment expressed explicitly through offer and acceptance, whether orally or electronically. Therefore, digital contracts within freelance contexts are considered valid if they fulfill the elements of mutual consent, clarity of the contractual object, and avoidance of *gharar* (uncertainty) or deception. This framework provides legal justification for digital transactions within a sharia perspective and reinforces the argument that the Istisna contract can be adapted for modern contexts without losing its normative grounding.

Integrating these three frameworks *maqasid al-shariah*, *fiqh muqaran*, and Islamic contract theory provides a strong conceptual basis for the present analysis. *Maqasid al-shariah* ensures alignment with the fundamental objectives of Islamic law, comparative jurisprudence offers a contextual understanding of classical legal diversity, and Islamic contract theory provides the normative rules for validating contracts in digital systems. Together, these frameworks highlight how Islamic law can remain relevant, dynamic, and responsive to global technological and economic changes. They also serve as the methodological basis for producing balanced and context-sensitive findings that uphold normative Islamic values while addressing practical needs of modern digital transactions.

PREVIOUS STUDIES

Studies on the Istisna contract and its application in modern contexts have attracted the attention of Islamic law scholars over the past two decades, particularly in the fields of Islamic finance and the digital economy. Early research by Ayub (2016) in *Understanding Islamic Finance* discusses the foundational principles of the Istisna contract as a model for project financing and manufacturing within Islamic financial institutions. Ayub emphasizes that Istisna offers a high degree of flexibility because it does not require full upfront payment unlike the *salam* contract making it suitable for long-term projects. However, the study does not yet relate these principles to the context of the digital economy, which requires legally valid electronic contract mechanisms.

Subsequent research by Obaidullah (2018) explores the social dimension of Istisna within the framework of sustainable development. He highlights that Istisna reflects Islamic principles of partnership and mutual assistance (*ta'awun*), whereby makers and buyers work collaboratively toward mutual benefit. This study underlines the potential of Istisna for ethical global supply-chain networks but does not address its integration with digital technologies. Similar findings are discussed by Dusuki and Abdullah (2021), who examine the validity of Istisna contracts in contemporary Islamic finance. They argue that Istisna may be adapted for modern financing products such as project financing and halal manufacturing, provided that payment structures comply with sharia principles and avoid *gharar* (excessive uncertainty).

More specifically, Hossain (2021) investigates the application of Istisna within digital economic ecosystems through the lens of smart contracts. His study shows that with blockchain technology, Istisna can be implemented in outcome-based digital transactions on platforms, as long as contractual specifications and clarity are maintained. However, he also notes that scholars have not yet reached consensus regarding the validity of digital *ijab-qabul* or the use of cryptocurrency as a medium of payment highlighting a key challenge in applying sharia contracts in digital environments.

Auda (2022, p. 151) introduces the concept of systemic fiqh reconstruction in modern Islamic legal theory. He stresses the importance of reinterpreting classical fiqh texts to align with rapidly changing social realities without compromising *maqasid al-shariah*. This approach is particularly relevant for this study, as it supports the integration of traditional legal values with technological innovations such as freelance platforms, smart contracts, and cross-border digital transactions. Recent research by El-Gamal (2023, p. 130) reinforces this argument, urging the development of Islamic legal structures that can accommodate digitalization without sacrificing foundational ethical principles. He emphasizes that technology-based contracts must still uphold trust (*amanah*), consent (*ridha*), and justice.

A more recent study by Rahman (2024) analyzes the challenges of implementing sharia-compliant contracts in the digital economy of Southeast Asia. His findings show that most digital platforms do not yet meet fiqh standards regarding contractual clarity, transaction documentation, and the protection of both parties' rights. Rahman argues that new contract models are necessary to integrate modern economic flexibility with classical fiqh principles. This empirical insight forms the basis for the present study, which seeks to fill this research gap by examining the Istisna contract in digital freelance transactions using a comparative analysis of Shafi'i and Hanafi jurisprudence.

Collectively, prior studies indicate that research on Istisna has predominantly focused on physical goods financing and conventional Islamic finance. There remains a significant gap in literature addressing the application of Istisna in digital economies based on services and non-physical products. Moreover, few studies have employed a comparative jurisprudence approach to explore how differences between Islamic schools of thought can inform the development of digital sharia-compliant contract models. Hence, this study provides a new contribution by analyzing Istisna in the context of digital freelancing through an integration of *maqasid* theory, Islamic contract law, and classical jurisprudential comparison offering a relevant and applicable contract model for the digital era.

RESEARCH METHOD

This study employs a qualitative–normative approach using comparative analysis (*fiqh muqaran*). This approach is selected to examine the concept and application of the Istisna contract according to the Shafi'i and Hanafi schools and its relevance to digital freelance transactions. The data are textual in nature and collected through library research, which includes primary sources such as classical fiqh texts *Al-Umm* by Imam al- Shafi'i, *Al-Majmu'* by al-Nawawi, and *Radd al-Muhtar* by Ibn Abidin. Secondary sources consist of international journals, contemporary books on Islamic economic law, and official reports from institutions such as the World Bank, ILO, and IMF (2023–2024 editions).

Data analysis is conducted using thematic and interpretative techniques to identify the differences and points of convergence between the two schools in the context of the digital economy. The results of this analysis are then used to formulate a synthesized model of a digital Istisna contract aligned with the principles of *maqasid al-shariah*, particularly the values of justice, trust (*amanah*), and public benefit (*maslahah*) within modern technology-based transactions.

RESULTS AND DISCUSSION

The findings of this study indicate that applying the Istisna contract to digital freelance transactions requires a reinterpretation of Islamic legal principles that accounts for technological dimensions and ethical considerations in Islamic business. Classical fiqh texts show that Istisna was originally designed for ordering physical goods such as construction or manufactured items, where product specifications are concrete and measurable (Al-Zuhayli, 2017, p. 370). In the digital era, however, the nature of deliverables has shifted toward non-physical products such as software, design, and creative services necessitating a more flexible legal approach. According to Kamali (2019, p. 228), the principle of justice in Islamic economic transactions can be applied to digital exchanges as long as contractual clarity and mutual consent are preserved. This aligns with the framework of *maqasid al-shariah*, whereby Islamic law should ensure economic benefit without neglecting moral values.

The results also demonstrate that methodological differences between the Shafi'i and Hanafi schools have direct implications for digital legal interpretations. The Shafi'i school upholds strict formal clarity of contracts, whereas the Hanafi school permits contractual flexibility based on custom and social welfare considerations (*istihsan wa al-'urf*). In digital freelance environments, such flexibility becomes

important because transactions are often conducted online with varying forms of non-verbal agreements. According to Auda (2022, p. 150), systemic ijtihad is necessary to reinterpret classical legal principles so they remain relevant amid rapid social and technological change. This ensures that Islamic law can be applied contextually without compromising sharia principles.

Validity of the Istisna Contract in Digital Transactions

Analysis of classical fiqh literature shows that the Istisna contract is valid (*ja'iz*) as long as it meets key requirements: clear product specifications, delivery timelines, and agreed-upon pricing. According to Al- Zuhayli (2017, p. 371), the validity of Istisna is grounded in *bayyinah* (clarity) and *ridha* (mutual consent), and any form of uncertainty (*gharar*) has the potential to nullify the contract. In digital economic contexts, these principles translate into contractual parameters such as project descriptions, deadlines, and service fees, all of which must be stated clearly within digital work platforms. This is particularly vital because online transactions typically occur without face-to-face interactions, making legal certainty a crucial foundation for ensuring contractual fairness (Kamali, 2019, p. 229).

The Shafi'i school asserts that all elements of the contract including product specifications, delivery schedules, and pricing must be explicitly stated to avoid *gharar*, disputes, and injustice. Al-Nawawi (1991, p. 110) emphasizes that uncertainty in any of these components may render the contract invalid, as it opens avenues for contractual injustice. This principle is highly relevant in digital freelance systems, where disagreements between clients and freelancers often arise due to differing interpretations of expected outcomes or delivery terms. Within Islamic legal frameworks, such emphasis on clarity reflects the core values of justice (*adl*) and trust (*amanah*). Thus, the Shafi'i perspective provides strong normative guidance for formulating digital contracts that ensure transparency and professional accountability (Auda, 2022, p. 152).

In contrast, the Hanafi school adopts a more flexible stance on Istisna. Ibn Abidin (1992, p. 252) states that a contract may still be considered valid even if not all details are explicitly recorded, as long as the contracting parties understand the substance and intent of the agreement. This flexibility is rooted in the principles of *istihsan* (juristic preference) and recognition of social customs (*'urf*) as legitimate determinants in economic transactions. In digital contexts, this flexibility can be reflected in standard terms of service or escrow mechanisms used by online freelance platforms, where a third party acts as a contractual guarantor. Such contractual structures allow parties to engage in secure transactions without violating sharia principles, provided that exploitation, deception, or substantial ambiguity are avoided (El-Gamal, 2022, p. 138).

Thus, the two schools complement one another in forming a comprehensive digital Istisna model. The Shafi'i school provides strict legal clarity, while the Hanafi school offers pragmatic adaptability to technological and social changes. This integrated approach aligns with the views of Usmani (2022, p. 82), who notes that Islamic law is inherently elastic and capable of accommodating new forms of transactions as long as justice, consent, and trust are maintained. Therefore, synthesizing Shafi'i formalism with Hanafi flexibility can establish a conceptual foundation for a digital Istisna contract that is fair, efficient, and guided by *maqasid al-shariah* within a technology-driven global economy.

Principles of Justice and Public Interest in Digital Contracts

The application of the Istisna contract in digital contexts is rooted in two fundamental Islamic legal principles: *adl* (justice) and *maslahah* (public interest). Justice ensures a balance of rights and obligations between parties, while public interest ensures that transactions generate individual and collective benefits. Al- Ghazali (1997, p. 102) argues that justice and public benefit are central components of *maqasid al-shariah*, which aims to promote moral and social stability in economic affairs. In digital economic systems, applying these principles entails establishing transparent, fair, and non-exploitative contracts, particularly in the freelance sector, which involves cross-border workers and platform-based payment systems (El-Gamal, 2022, p. 140).

In digital freelance contexts, justice is realized through equal access to information and balanced negotiation power between clients and freelancers. Kamali (2019, p. 231) highlights that contractual justice can only be achieved when both parties fully understand the terms of the agreement and have equal access to relevant information. Platform features such as job previews, escrow systems, and

feedback mechanisms essentially serve as modern forms of *hisbah* institutional structures designed to uphold moral and ethical standards in Islamic commerce. Thus, digital Istisna contracts function not merely as economic exchanges but as instruments for manifesting sharia ethical values (Usmani, 2022, p. 95).

The Hanafi school's emphasis on public interest (*maslahah*) supports legal flexibility by recognizing commercial customs (*'urf tijari*) as legitimate sources of law, provided they do not contradict scriptural texts. Nyazee (2020, p. 91) explains that commercial customs may serve as legal references when they represent widespread business norms. In practice, the use of platforms such as Upwork or Fiverr can be considered legally valid from a sharia perspective, as they represent globally accepted business customs. This flexibility aligns with the principle of *maslahah mursalah*, which allows for developing laws serving public benefit rather than rigid textual conformity (Kamali, 2019, p. 235).

Meanwhile, the Shafi'i school's insistence on clarity and detailed documentation ensures protection against contractual ambiguity and injustice. Al-Nawawi (1991, p. 110) maintains that any agreement lacking clarity in object, timeline, or pricing risks containing *gharar* and potentially harms one of the parties. In digital contracts, this principle manifests through the requirement that specifications, fees, and deadlines be explicitly stated. This insistence on clarity not only strengthens legal certainty but also safeguards the economic rights of both workers and clients. The Shafi'i approach therefore reinforces transparency and accountability essential components of an ethical digital economy (Auda, 2022, p. 149).

When synthesized, the Hanafi emphasis on social benefit and the Shafi'i insistence on clarity together produce a hybrid contract model suited for digital freelance environments. According to Auda (2022, p. 149), this reflects the systemic fiqh methodology integrating normative Islamic principles with contextual realities. The resulting digital Istisna model aligns with *maqasid al-shariah*, balancing legal certainty, ethical values, and digital economic efficiency.

Integration of Classical Fiqh and Digital Technology

Implementing the Istisna contract in digital freelance systems requires integrating classical fiqh principles with modern technology. Usmani (2022, p. 80) argues that Islamic law must accommodate contractual innovations as long as the values of consent (*ridha*), trust (*amanah*), and justice are maintained. In digital contexts, this integration can be achieved through smart contracts based on blockchain technology, which automate contractual executions without human interference. El-Gamal (2023, p. 135) notes that such systems are consistent with the Islamic concept of contractual conditions (*shurut al-'aqd*) because they ensure automatic fulfillment of obligations.

This study finds that digital technology can reinforce sharia principles by enhancing transparency and accountability. For example, escrow payment systems on freelance platforms function similarly to *wakalah bi al-ujrah* (agency for a fee), whereby a third party safeguards payment until the contracted work is delivered (Rahman, 2024). Thus, technological innovation acts as a complementary tool rather than a replacement for implementing Islamic legal principles in modern transactions.

The findings further reveal that Istisna's inherent legal flexibility makes it well-suited for digital project-based work. As noted by Al-Zuhayli (2017, p. 371), Istisna allows ordering products or services based on agreed specifications without requiring upfront payment aligning closely with the workflow of digital freelance projects. Consequently, Istisna can serve as a foundational sharia framework for digital transactions involving creative, software, or other non-physical deliverables.

Overall, the study highlights that Islamic law's adaptability enables it to address technological transformations without compromising its ethical foundations. A hybrid model that merges Shafi'i legal precision with Hanafi pragmatic flexibility can support a sharia-compliant digital economic ecosystem that is transparent, fair, and technologically efficient.

CONCLUSION

This study concludes that the Istisna contract is one of the most relevant and adaptive sharia-compliant contractual models for transactions in the digital economy, particularly within the freelance marketplace sector. Through a comparative fiqh approach between the Shafi'i and Hanafi schools, this research finds that the differences between the two traditions do not represent contradictions; instead,

they reflect two methodological orientations that complement one another. The Shafi'i school, with its formalistic character, stresses the importance of contractual clarity, while the Hanafi school provides legal flexibility by accommodating social customs and practical needs. Integrating these perspectives produces a digital Istisna model that upholds key sharia principles such as justice (*adl*), transparency (*bayyinah*), and public benefit (*maslahah*), without compromising technological efficiency.

Conceptually, this study contributes to the development of maqasid-oriented digital fiqh muamalah by demonstrating that Islamic law must remain dynamic and responsive to social and technological transformations. While Istisna was originally applied to physical manufacturing contexts, it can be reconstructed to suit digital project-based transactions, where final outputs take the form of non-physical services or deliverables. The application of *ridha* (mutual consent), *amanah* (trust), and contractual clarity becomes essential to ensure that digital contracts remain valid and just. This illustrates that technological innovations such as smart contracts and escrow systems can function as modern instruments that reinforce the foundational values of Islamic law, rather than replace them.

Practically, this study offers recommendations for stakeholders in the Islamic digital economy to adopt the Istisna model in developing sharia-compliant freelance platforms. Governments and Islamic financial institutions may use this model as the basis for formulating regulations and halal digital payment instruments that are secure and transparent. Educational and research institutions are also encouraged to expand the scope of Islamic legal studies into the digital realm to enrich contemporary fiqh literature. For future research, empirical studies are recommended to observe the actual implementation of Istisna in digital platforms, including technical testing of sharia-compliant smart contracts and legal protections for digital workers.

In summary, Islamic law possesses an evolutionary capacity to respond to modern challenges. The Istisna contract rooted in the Islamic values of cooperation and justice may serve as a normative foundation for developing an ethical, fair, and sustainable digital economy aligned with the *maqasid al-shariah* vision of achieving universal welfare for humanity

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