



## Analysis of The Legal Arguments in The Fatwa of The National Sharia Council of The Indonesian Ulema Council Number 22 Of 2002 Concerning Parallel Istishna

Parman Komarudin<sup>1\*</sup>, Muhammad Rifqi<sup>2</sup>, Muhammad Hendri Yanova<sup>3</sup>, Rahmatul Huda<sup>4</sup>  
<sup>1,3,4</sup> Faculty of Islamic Studies, Universitas Islam Kalimantan Muhammad Arsyad Al Banjari  
 Banjarmasin, Indonesia

<sup>2</sup> Universitas Islam Negeri Antasari Banjarmasin, Indonesia

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### Abstract

This research aims to analyze the relevance and accuracy of the legal arguments in the National Sharia Council Fatwa No. 22/2002 on Parallel Istishna. With a qualitative research method and normative legal approach, the analysis in this study adapts the method used by Haisy (2019). The results show that the arguments of parallel istishna, which consist of hadith, fiqh rules, and aqliyah rules, are relevant to the content of the fatwa, especially in the fiqh rules section. However, to improve the accuracy and applicability of the evidence, it can be supplemented with other sharing evidence that is closer to the study of parallel istishna, including Surah Al-Kahf Verse 94, hadith related to the making of rings and pulpits, ijma' amaly, and istihsan. This research contributes to the study of parallel istishna, namely in terms of helping to identify and summarise the shar'i arguments as the legal basis for parallel istishna.

**Keywords:** *National Sharia Council; Fatwa; Istishna Parallel*

### INTRODUCTION

The arguments that form the basis of parallel istishna in the DSN fatwa are also very general, because they only contain general muamalat arguments and do not directly lead to istishna contracts. For example, the hadith that states that peace or agreement is permissible as long as it does not legalize the forbidden or vice versa, as well as the fiqh rule that the original law of muamalat is permissible that DSN uses in this fatwa, is the general muamalat arguments that do not specifically talk about istishna (Faizin et al., 2021; Kolistiawan, 2016).

Based on the above facts, the author is interested in examining the accuracy of the arguments used by DSN in the fatwa on parallel istishna, along with tracing the arguments relevant to the fatwa's contents. The results of this research will be useful in strengthening the arguments that DSN has put forward so that people, especially those often involved in the LKS environment, become more confident in complying with the provisions of the fatwa.

Parallel istishna itself has been studied by several studies in various aspects. Dewi (2018) quantitatively examined the effect of revenue from parallel istishna contracts and promotional expenses on operating profit at Bank Muamalat during the 2015-2017 period. She found that both independent variables that became the object of the study, including income from parallel istishna contracts, had a positive and significant influence on the operating profit of Bank Muamalat. In terms of compliance, Buhari (2021) tested the compliance of parallel istishna products run by a company with sharia provisions. He concluded that the company had fulfilled Sharia principles, especially regarding the separation between the first istishna contract and second istishna contracts. Likewise, the company fulfilled the pillars and conditions that must exist in the istishna contract. Unfortunately, this developer only cooperates with conventional banks, due to the

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Corresponding author's email: [parmankomarudinfsi79@gmail.com](mailto:parmankomarudinfsi79@gmail.com)

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difficulty of access to Islamic banks in the area.

Furthermore, [Afandi and Mukti \(2016\)](#) offered an idea to apply this parallel istishna contract to the maritime sector, especially in terms of the production of large boats for fishing groups. They created an istishna financing scheme in which fishermen groups act as buyers, Islamic banks act as financing service providers as well as sellers, and boat manufacturers as suppliers. Through this scheme, Afandi & Mukti believe that there will be a significant increase in fishermen's income due to the larger capacity of the boats, thus advancing Indonesia's maritime sector. Although these three studies discuss parallel istishna, in terms of sharing arguments or legal references, parallel istishna has not been explored much.

Apart from these three studies, [Haisyi \(2019\)](#) examines the legal arguments in DSN Fatwa No. 6 of 2000 concerning Istishna. He argued that the legal arguments in the fatwa are general, but provide legality for all models of muamalat transactions, so they can still be the basis for istishna contracts. He then suggested that further research should be conducted, especially to examine DSN Fatwa No. 22 of 2002 on Parallel Istishna, which is indeed a derivative of the fatwa on istishna that he discussed. So the author here offers to continue Haisyi's research, to complete the study of the strength of the arguments that DSN uses in its istishna fatwas. The purpose of this study is to analyze the Legal Argumentation in the Fatwa of the National Sharia Council of the Indonesian Ulema Council Number 22 of 2002 concerning Parallel Istishna'.

## LITERATURE REVIEW

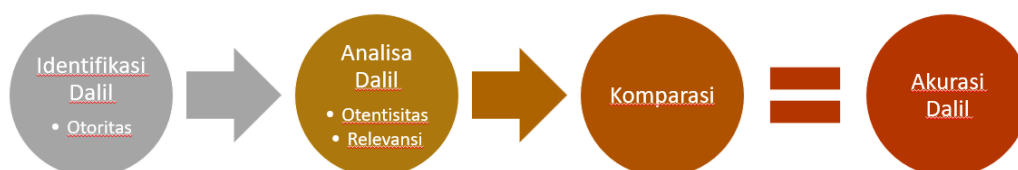
### Testing the Evidence of a Jurisprudential Opinion

Islamic jurisprudence, also known as fiqh, relies heavily on scholars' interpretation of nashas and other propositions, from which legal judgments or fatwas emerge. These fatwas guide Muslims in various aspects of their lives, ranging from daily rituals to complex moral matters. The dependence of fatwas on these propositions means that the accuracy of these propositions is an important part that needs to be assessed.

In terms of the relevance of the proposition, apart from dealing with the content of the proposition itself, contextual aspects such as time, place, and circumstances related to the proposition also need to be analyzed. While it is true that the majority of balil nash is not binding textually or contextually ([Padela, 2020](#)), a nash issued in one context may not always be accurately applied in another. Therefore, understanding the context can help determine whether the proposition is relevant and applicable in contemporary situations or needs re-evaluation if different circumstances are present.

Finally, Haisy compares the fatwa he researches with other opinions on the same issue. If the same proposition is used consistently across different fatwas on the same issue, then it will likely be accurate. However, if there is inconsistency in the use of the proposition, then it may indicate a lack of accuracy or a difference in interpretation. This comparison serves to identify similarities and differences in the interpretation and application of Islamic law and evaluate the consistency of the arguments used across different fatwas.

If illustrated in graphical form, the process of testing the accuracy of this argument is as follows:



**Figure 1.** Dalil Accuracy Testing Process (Processed by the author from [Haisyi \(2019\)](#))

The process shown in Figure 1 above will be the reference in this study. More broadly, the method can also be used in the largely unexplored study of the accuracy of the arguments in a fatwa, as part of further research in this area.

## RESEARCH METHOD

This research is included in the qualitative research category because it does not accommodate positivist values measured in numbers but leans toward normative meanings from social habits and routines (Firmansyah et al., 2021). The approach used in this research is a normative legal approach, which seeks to examine a legal problem based on written regulations in the form of laws and regulations or the like (Daniati et al., 2020; Supiyati, 2020).

By these methods and approaches, the data sources in this research also focus on the literature method, whose application in a study is carried out by tracing library sources such as regulations, books, journals, reports, and manuscript notes related to research problems (Rondiyah et al., 2017). In legal research, these literature sources can be categorized into three, namely primary legal materials sourced from written laws and regulations to jurisprudence and treaties, secondary legal materials sourced from draft laws and scientific publications of legal scholars, and tertiary legal materials sourced from biographies and legal dictionaries (Benuf & Azhar, 2020). Specifically for this research, the main legal material is DSN Fatwa No. 22 of 2002 concerning Parallel Istishna. The results of the review of the DSN fatwa will then be analyzed by adopting the method used by Haisyi (2019), to obtain conclusions regarding the level of accuracy of the legal arguments used by DSN in the fatwa on parallel istishna.

## FINDINGS AND DISCUSSION

### Identification of the Evidence in the DSN Fatwa on Parallel Istishna

A parallel istishna contract occurs if, in an istishna transaction, the buyer allows the seller to use the services of a third-party subcontractor. The contract between the seller and this third party is what is referred to in Islamic economics as a parallel istishna contract (Sudiarti, 2018). This parallel istishna practice in Indonesia has been legitimized by the DSN through Fatwa No. 22 of 2002 concerning Parallel Istishna. As stated in the fatwa, the DSN's legal basis for allowing the contract consists of two hadiths and four fiqh rules. The first part of the Hadīth (The first hadith is narrated by At-Tirmidzi (1968), which deals with reconciliation, is commonly used by classical scholars as the legal basis for reconciliation (shulh) between two or more people who conflict with each other, such as between Muslims and disbelievers, husbands and wives, disputes between groups, and disputes over rights including certain properties. Meanwhile, the second part of the hadith that Muslims are bound by the conditions they make is the basis for all sharia contracts in general, as long as the contract or agreement does not require the parties to do something that is prohibited by religion (Wicaksono, 2021). So the author can state that the substance of this hadith is not directly related to the parallel istishna contract, and applies only generally to all sharia contracts. Finally, the legal basis that the DSN refers to in the parallel istishna fatwa is:

الثابت بالعرف كالثابت بالشرع

The above rule means that if it does not contradict the Shari'ah, then the customs and habits agreed upon by the community can be the basis for ijtiḥad, and apply to the community as the Shari'ah law applies (Dedi & Hardivizon, 2018).

The six arguments above show the DSN's tendency in this fatwa, which seems to favor the general principles of Islamic law in the form of fiqh rules over the text of the Qur'an and hadith. This

may be due to the characteristics of the parallel istishna contract itself, which is historically quite new, so fiqh adaptive and flexible rules are easier to refer to.

### **Analysis of the Authenticity and Relevance of the Dalil in the DSN Fatwa on Parallel Istishna**

The first hadith in the DSN fatwa on Istishna Parallel that discusses peace above does not explicitly mention istishna sale and purchase. The content of the hadith relates to the possibility of peace among Muslims in situations that do not make unlawful or forbid lawful. It indicates that the hadith is general in the context of peace or agreement among Muslims in various situations.

Abu Isa and some other traditionists classify the tradition as Hasan Shahih. Therefore, from the perspective of using the hadith as a legal basis, it qualifies to be used as a reference.

In terms of content, the hadith illustrates the Islamic approach to transactions, that various forms of transactions, as long as they do not involve the unlawful or legalize the unlawful are permissible. More broadly, the hadith serves as a guideline for every Muslim in transactions, emphasizing the importance of halal transactions.

On the other hand, the content of the hadith also produces rules as legal principles for various economic transactions and social life. Among them are as-Shulh ma'a al-Iqrar (peace with acknowledgement) and as-Shulh ma'a al-Inkar (peace with denial).

Beyond these two rules, peace can also be applied in various aspects of muamalat, munakahat, and even jinayat. In khiyar 'aib, for example, the buyer has the right to cancel the transaction if there is a defect in the goods, and peace can be made. Suppose someone buys something for a certain price and then finds a defect in the item, and they want to return it to the seller. When returning the item, the seller suggests, 'What if you don't return this item, and I give you some money as compensation for the defect?' If the buyer agrees to this offer, it falls under the category of permissible peace.

### **Analysis of the Authenticity and Relevance of the Dalil in the DSN Fatwa on Parallel Istishna**

Parallel istishna or in Arabic terminology is known as 'istishna mawazi.' Istishna, as a concept in Islamic commercial jurisprudence, is a specific type of contract (agreement) that involves an agreement for the sale and purchase of goods that do not yet exist and will only be produced after ordering. In this regard, parallel istishna is an interesting topic, as it involves a similar contract with substantial technical differences.

The term istishna mawazi, as mentioned, is a contemporary term that is difficult to find in classical fiqh literature. Therefore, in this discussion we refer to contemporary writings that discuss the concept of istishna mawazi, to try to bridge the limitations in the classical literature with the contemporary understanding of parallel istishna.

In addition to the textual arguments, the DSN has also used fiqh rules as aqliyah arguments for the permissibility of istishna. However, mukhtalaf arguments such as ijma amaly and istihsan do not seem to have been explored when the fatwa was issued. It means there is still room to develop the arguments in the DSN fatwa on parallel istishna.

### **CONCLUSIONS**

The evidence for parallel istishna in the DSN fatwa, which consists of the hadith about sulh, the hadith about the prohibition of harming others, the fiqh rules about the basic laws of muamalat, the fiqh rules about realizing convenience in hardship, the fiqh rules about secondary needs that can become primary needs, and the fiqh rules about the strength of custom as a source of law, are generally relevant to the content of the DSN MUI fatwa, especially in the fiqh rules section.

## LIMITATION & FURTHER RESEARCH

This research only discusses the shar'i arguments about parallel istishna, and does not examine in depth the practical aspects or implementation of parallel istishna in modern business or muamalah. Therefore, there are still opportunities for further research to examine this matter. In addition, future studies can also conduct a comparative analysis of various schools of fiqh in analyzing parallel istishna, tracing its historical development, and exploring its theological and ethical aspects. This will add to the scientific dynamics related to the law and application of parallel istishna in various contexts, including the economic and moral implications in Islamic muamalah.

## REFERENCES

- Afandi, M. A., & Mukti, R. A. (2016). *Akad Istishna Paralel Sebagai Alat Untuk Merealisasikan Misi Negara Kemaritiman Presiden Joko Widodo*. The 15th Second. Konferensi The 15th Sharia Economic Days, Depok
- Benuf, K., & Azhar, M. (2020). Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *Gema Keadilan*, 7(1), 20–33. <https://doi.org/10.14710/gk.2020.7504>
- Buhari, T. (2021). Praktik Akad Istishna' Paralel dalam Jual Beli Rumah di PT. Berkah Rangga Sakti Kecamatan Bangkalan Kabupaten Bangkalan. *Al-Insyiroh: Jurnal Studi Keislaman*, 7(1), Article 1. <https://doi.org/10.35309/alinsyiroh.v7i1.4220>
- Daniati, N. P. E., Mangku, D. G. S., & Yuliantini, N. P. R. (2020). Status Hukum Tentara Bayaran Dalam Sengketa Bersenjata Ditinjau Dari Hukum Humaniter Internasional. *Jurnal Komunitas Yustisia*, 3(3), Article 3. <https://doi.org/10.23887/jatayu.v3i3.32874>
- Dedi, S. & Hardivizon. (2018). Implementasi 'Urf pada Kasus Cash Waqf. *Al-Awqaf: Jurnal Wakaf Dan Ekonomi Islam*, 11(1), Article 1. <https://doi.org/10.47411/al-awqaf.v11i1.27>
- Dewi, D. M. (2018). *Pengaruh Pendapatan Istishna' Paralel dan Beban Promosi terhadap Laba Operasional PT. Bank Muamalat Indonesia Periode 2015-2017 [UIN Sunan Gunung Djati]*. <http://digilib.uinsgd.ac.id/9411/>
- Faizin, N., Basid, A., & Rofiq, M. (2021). Pembelajaran Ekonomi Syariah Melalui Klasifikasi Kaidah-Kaidah Fikih dalam Fatwa DSN-MUI. *MIYAH : Jurnal Studi Islam*, 17(01), Article 01.
- Firmansyah, M., Masrun, M., & S, I. D. K. Y. (2021). Esensi Perbedaan Metode Kualitatif dan Kuantitatif. *Elastisitas - Jurnal Ekonomi Pembangunan*, 3(2), Article 2. <https://doi.org/10.29303/e-jep.v3i2.46>
- Haisyi, N. (2019). Analisis Terhadap Dalil Hukum dalam Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Nomor 6 Tahun 2000 Tentang Istishna. *At-Taradhi: Jurnal Studi Ekonomi*, 10(1), 25–36. <https://doi.org/10.18592/at-taradhi.v10i1.3083>
- Kolistiawan, B. (2016). *Tinjauan Syariah Terhadap Transaksi Muamalat Asuransi Kesehatan Badan Penyelenggara Jaminan Sosial (Bpjs)*. State Islamic Institute of Tulungagung.
- Padela, A. I. (2020). Islamic Bioethical Positions on Organ Donation and Transplantation: Stressing Rigor and Caution in Fatwa Reviews. *Transplantation Direct*, 6(8), e586. <https://doi.org/10.1097/TXD.0000000000001023>
- Rondiyah, A. A., Wardani, N. E., & Saddhono, K. (2017). Pembelajaran Sastra Melalui Bahasa Dan Budaya Untuk Meningkatkan Pendidikan Karakter Kebangsaan Di Era MEA (Masyarakat Ekonomi Asean). *Proceedings Education and Language International Conference*, 1(1), Article 1. <http://jurnal.unissula.ac.id/index.php/ELIC/article/view/1230>
- Sudiarti, S. (2018). *Fiqh Muamalah Kontemporer*. FEBI UIN-SU Press. <http://repository.uinsu.ac.id/5517/1/FIQH%20MUAMALAH%20KONTEMPORER.pdf>
- Wicaksono, M. H. (2021). Analisis Terhadap Hadis Dasar Hukum Fatwa DSN No: 12/DSN-MUI/IV/2000. *Taraadin : Jurnal Ekonomi Dan Bisnis Islam*, 1(2), Article 2