



Economic Analysis of the Transaction Costs of *Istisna* and Critique of the Banking *Istisna* Instruction of the Money and Credit Council

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Abstract

Banks emerged in the modern world and the financial economy sector, and their most important function is to attract deposits from people (customers) and provide facilities to applicants (borrowers). Banks reduce transaction costs in the money market and play an intermediary role in money market transactions. In Iran, in the Islamic banking system, which is nothing more than the participation of depositors in the profits and losses resulting from investments, there has been an attempt to abandon the pure money market and artificially use legal forms that are for the indirect money market, i.e. granting credit in the sale of advance or credit by the seller or buyer. While the pure money market is relevant in the modern financial economy, to avoid interest, there has been an attempt to use contracts related to the real economy and the indirect money market, such as the sale and purchase on credit by the seller or the buyer, especially contracts such as Murabaha or *istisna*, which cause the bank deviating from its function and leads to fruitless and costly appearances. Recourse to these types of contracts, which are specific to the real economy, brings commercial banks into the category of entrepreneurship and investment, which is usually prohibited in many countries. In other words, if a bank enters the real economy sector using a contract such as *Istisna*, it has entered entrepreneurship, which conflicts with the main function of the bank. This type of Islamic contract, including the *Istisna* contract, carries the risk of the bank entering entrepreneurship. The *Istisna* contract has existed among people and in traditional societies for real economic activities since the past, and Sunni and Shiite jurists have expressed different opinions about its validity and nature, in these two respects, even in the real economy, there has been no consensus among jurists. Regardless of the nature of *Istisna*, the supplementary (default) rules of this contract must first be determined by the legislator because the mandatory or supplementary rules of this contract have not been specified in the Civil Code. On the other hand, the *Istisna* banking contract has entered Islamic contracts in Islamic banking according to the instructions of the Money and Credit Council. In this article, after examining the nature and economic analysis of the *Istisna* contract outside the banking system, we criticize the *Istisna* directive of the Council for Money and Credit, and by analyzing the economy of this contract in the banking system, we discuss its disadvantages and its



conflicts with the existential philosophy of banks. In this article, using an analytical and descriptive method as well as a library method, we will conclude that the costs incurred from the Istisnacontract and similar contracts lead to economic inefficiency, and due to the increase in transaction costs, information asymmetry, and lack of cost-benefit, the banking system should avoid entering this field. The use of the Istisnacontract to evade the prohibition of interest and to comply with religious regulations can be criticized from two perspectives. First, it ignores the importance and function of the pure money market from a theoretical perspective, and even if this contract is implemented genuinely, it imposes a lot of costs on the money market, leading to an increase in the cost of money and even greatly restricting and narrowing the money market. Secondly, and for the same practical reasons, these types of contracts are carried out in a formal and unreal manner through false documentation. In other words, this approach of using exchange (sale) contracts, both from a theoretical and practical perspective, has numerous drawbacks that their designers have introduced and imposed on the banking system without paying attention to these drawbacks. Finally, while they have not achieved the lofty goals of prohibiting usury and interest due to their formality and appearance, in practice they have also imposed numerous costs on the bank and the customer, including unnecessary documentation and control and supervision by the bank over commercial contracts. Now, given this proven situation, the negative consequences of using these contracts in the money market, which have become evident in terms of practical experience and theoretical reasoning, it is time to provide dynamic and original legal solutions for the money market without transaction costs, otherwise, and if these formal and unrealistic methods continue in the money market, banks will be exposed to various risks and the spread of corruption in the banking system. While the use of Istisna'a contracts to provide facilities and avoid the prohibition of usury is a matter of great doubt, the attempt to expand the use of this type of legal framework for opening documentary credits and other banking services is an overuse of these contracts unrelated to banking activities. Therefore, this type of effort to avoid usury has failed to achieve its goal, while it has opened the way for all kinds of costs and even corruption in bank-customer relations and the provision of fake invoices and has ultimately caused the cost of money to become expensive and the production to become more expensive in Iran.

Keywords: Economic analysis of law, Istisna contract, banking law, efficiency, transaction costs, real economy and financial economy, bank functioning, Islamic banking, indirect and direct money market, primary and secondary money market.



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