

Istisna'a Contract as a Financing Tool for Industrial Clusters

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Abstract:

The main objective of this study is to explore how the Istisna' contract is used as a financing tool for industrial clusters, and how Istisna' contracts are being used to overcome their problems to increase their effectiveness in the national economy. The study used the descriptive analytical approach to review the scientific literature of industrial clusters and the jurisprudential references to describe the Istisna' contract and identify its role as a financing tool. As a conclusion, it was being found that Istisna' contract is a flexible and effective financing tool that could be employed in financing and developing industrial clusters. Also it was recommended that, Islamic Banks adopt financing all components of the industrial clusters through Istisna contract.

Key words: Istisna', Industrial clusters.

(JEL) Classification: G00.

1.1 Introduction:

Economic studies paid great attention to industrial clusters, and many scholars put a lot of effort to adapt industrial clusters, such as Alfred Weber (1909) at the beginning of the last century, who called for industrial concentration in a specific place, in which he considered that to be a part of industrial cluster or industrial complex areas are one of the main factors in choosing the ideal location for a single factory. On the other hand, Marshall was supported the idea of industrial assembly and considered it as one of the important elements in creating economic savings, which he called "location savings" or "external savings". From that beginning, the interest in industrial clusters becomes as important and its results was reflected in supporting the countries national development through the industrial development. Porter is considered among the first scientists whom studied cluster frameworks, and from Porter point of view, the success is not to the quality of the industry but being part of a cluster characterized by horizontal and vertical links (Porter 1991).

Through the above, the industrial cluster reflects the concentration of a number of factories in a specific place, while the cluster framework means the gathering of "a group of industrial companies, suppliers, scientific research centers, and official institutions that are interconnected and integrated together for a joint industrial or service production. Industrial clusters often settle in distinct locations (3, Ketels. 2003). As for the advantages of this grouping (economic cluster), they are formed on the same geographical proximity in terms of location, activity, and the possibility of benefiting from specialized manpower, suppliers and the prevailing knowledge in the site. This means that its location remains within what is known as the functional territory.

Based on that, the industrial cluster is being formed on the basis of creating the industrial development for an economic establishment, and this development is the ignition point of microeconomic development not macroeconomic. Also considering the industrial cluster as "Cluster development model" is the main role of the cluster (Blien and Maier, 2008, p8). It can be understood that, despite considering the cluster

industrial assembly is formed from a single economic establishment but it aims to build and develop the capabilities of industrial establishments with horizontal and vertical interconnection and enable them to compete collectively.

Creating industrial clusters can be one of the important tools in creating a learning environment and transferring knowledge that contributes to creating successive and renewable innovations and will be reflected in the industrial clusters competition with other industries, and enable access to a common formula that contributes to increasing sustainable economic growth at the national level, and this empowerment can transform to a "national development strategy" that pushes and stimulates the creation and development of more businesses in the same way.

1.2 Research problem:

The new modern economic trend in the field of industry starts to adapt the transition from the idea of an individual factory to industrial clusters that is connected with achieving economies benefits as the external savings pointed by Marshall (Industrial Economics, 1892) through the establishment of industrial cities and the provision of joint services to a large number of factories in the form of incentives. Creating clusters can lead into enabling a number of factories to have a deeper knowledge and experience among the clustering partners, increasing integration among them, expanding the circle of knowledge and reducing the cost of dealing. Thus, joint benefits can be achieved such as "economy of scale" and increase the confidence of suppliers, financiers, and even those who provide requirements Infrastructure by industrial clustering (Rosenfeld, S.A., 2002). From that point, the problem of this study focuses in answering the main question: "What is the role of the Istisna' contract in financing industrial clusters?" This question is divided into the following sub-questions:

- a. What are industrial clusters and what are their characteristics and components?
- b. What is the Istisna' contract and its basis from the Sharia point of view?
- c. To what extent is the Istisna' contract used to finance industrial clusters?

1.3 Research objectives:

- a. Understand the concept of industrial clusters, their origins and advantages.
- b. A statement of the concept of the Istisna' contract, its legality, its ruling and the scope of its application.
- c. Studying the possibility of using the Istisna' contract to finance industrial clusters.

1.4 Research Methodology:

The study follows the descriptive analytical approach by reviewing previous studies and reports issued by official (governmental) institutions or the Jordan Industrial Estates Company interested in the field of industrial clusters, and also references to legal and jurisprudential references and sources related to the Istisna' contract.

1.5 Previous studies:

- A study by (Naseem Fares Barham, 2015, the problem of building industrial clusters in Jordan) Journal of Human and Social Sciences Studies, Volume 42, Supplement No. 2. It aimed to discuss the possibility of building industrial clusters by studying the existing engineering industries in the city of King Abdullah II, where The study showed that the structure of engineering industries and social institutionalization prevent the construction of industrial clusters. The study recommended to restructure the industrial cities

to match the policy of industrial clusters, in order to increase competitiveness and increase the volume of exports of these clusters.

- A study by (Zuhair Zawash, 2014, the industrial clusters as a guiding model for improving the competitiveness of small and medium enterprises - the case of Algeria), *Journal of Human Sciences*, No. 42. The study aimed to know the nature of the work of industrial clusters and the extent of their application in small and medium enterprises. The study showed that the industrial cluster method is considered as one of the most effective means of modern development, as it works to strengthen the relationship between small enterprises and the environment in which they operate. The study recommended not to isolate small and medium enterprises from their industrial and global environment, in order to overcome the problems these enterprises faces.
- A study (Aziza Nada Ali Nada, 2019, Quality Standards in the Istisna' Contract, Issue 34, Part 4 (2/1) *Journal of the Faculty of Sharia and Law - Tanta*). It aimed to show the extent to which the quality standards were achieved in the Istisna' contract, and several results was generated, the most important of which was that the Istisna' contract has high quality if it is a stand-alone contract and is not attached to other contracts. The study recommended expanding the Istisna'a contract and opening the way for all private and public authorities to deal with it because of its impact on raising embarrassment.
- A study (Al-Washeel, Saleh bin Ahmed bin Abdulaziz, 2018, Istisna' and its contemporary applications in Islamic jurisprudence, *Journal of the Saudi Jurisprudence Society*, Imam Muhammad bin Saud University, No. 34). It aimed to review Istisna' and its contemporary applications in Islamic jurisprudence. It concluded with a number of results, including that the Istisna' contract is an independent contract that has great significance for the manufacturer, the product and the whole society, as it facilitates people's life matters. The study recommended more applied banking studies on the calamities of financial products. As for this study, it was distinguished from other previous studies by linking industrial clusters with the Istisna' contract as a financing tool for them on the one hand, and a tool for developing their work on the other.

2. Industrial clusters (its origin, definition, components, importance, success factors)

2.1 The origin and creation of industrial clusters:

Based on different scholars (Krugman 1991) industrial enterprises tend to concentrate on the same particular geographical location especially if these enterprises are suffering from high fixed costs, where these enterprises are following the "Economic of scale" concept that large enterprises follow. In other words, and in order to have an economically feasible, you would need to reduce the cost of production by increasing the total volume and concentrating the production in one location can lead to this fact. Other scholars believe that economic facilities tend to be concentrated in one location when they are linked to fixed sites, such as being linked to natural resources. As for Weber (1909), economic establishments are more liked to be concentrated when transportation costs are lower. Also, Storper (1997) thinks that economic clusters are being combined and formed as a result of interaction between businessmen and their institutions that consist from formal and informal side. Stroper defines the formal side as the laws and legislation that controls the relation of the enterprise work, while the informal is the customs and traditions that are recognized and previously identified in the society.

In order to understand the development and the origin of industrial clusters, we must study the theory that presence in the last twenty years after the end of the Fordism system in industrial production (mass production and application of specialized production, work dividing and parts unification to goods manufacturing) where a new system came to the floor that was built based on flexibility, specialization, integration and interaction between small and medium enterprises horizontally. This is forming the concentrated economic assembly based on a geographical location. From that single point, the industrial accumulation become necessity to give the enterprise the possibility to adopt the method of economies of scale in production and lower the risk made by businessmen on their small capital, This is defined as the “Industrial District”. Others explain the development of industrial clusters to the economic transformations that leave behind a number of alternatives, of which remain the most suitable and sustainable and forces businessmen to adjust their plans and production methods to matches the requirements of the new path. Thus, have a major role in creating clusters, and this is not done in isolation from other factors that help the development of industrial clusters, such as the presence of entrepreneurial companies that others imitate and concentrate around (Schammp, 2002).

In the same context, “Karlsson” addressed the role of entrepreneurs in building the cluster because of their high ability to change production and consumption conditions and build informal institutional systems capable of forming the entrepreneurial climate, and the best example expressed this is what happened in Silicon Valley in America by the entrepreneurs in the field of information technology (Karlsson, *ibid*,13). Krugman also emphasized that the cluster that is formed by entrepreneurs is a unique case in the history of the region and is difficult to stimulate (Krugman 1991). As for the pioneering work carried out by the entrepreneurs, opinions are varied, where some opinions consider it a harmful work that affect the interests of the mother company and must be prevented and avoided, while others consider it a positive work, compare it to the relationship between parents and children that must be encouraged and urged (Ferreiran et al 2009).

2.2 The definition of industrial clusters:

Before we get close the clusters definition, we must first clarify the basis from which cluster studies are based, as for Sternberg (2004) the cluster formation is linked to the principle of rationality. On the other hand, (Krugman, 1991) linked the cluster formation to the theory of self-growth, and based on that Porter – the father of industrial cluster idea – defined an industrial cluster is the “ concentration of similar production economic facilities that are linked to a specific value-added chain and a specific geographic location, all these facilities are interacting with establishments similar in production and linked to specialized suppliers and related institutions such as universities, **unions, and specialized services such as banks, accountants and consultants**” (Porter 1990). **In which the industrial clusters are based on a set of principles as follows:**

The first principle “Geographical proximity (concentration)”: It is intended that the economic establishments in a specific geographical area are close together in which the elements of the formation and success of the cluster meet.

The second principle “Specialization”: All economic establishments have the same value-added chain, which means that all economic establishments are integrated in production, which gives each establishment the possibility of achieving higher added value.

The third principle “innovation”: The presence of similar facilities in production, in a horizontal or vertical way, interconnected with each other and in one place helps to increase the level of vitality of the cluster and the response of its different parties to new innovations.

The fourth principle “Cooperation”: the possibility of linking with scientific institutions such as universities and technological institutes or economic and logistical institutions for cooperation

Porter (M. 2001, 253 ff) also sees that the success of industrial clusters depends on the surrounding environment and the cooperation, integration and support of the official and supportive institutions. This means that success does not only depend on gathering in a geographical area, but on the networking system with relevant institutions such as scientific research (universities and research centers), unions and associations. Also success depends on the innovation and continues improvement processes that take place in the cluster as a result of the existing cooperation between the establishments, in addition to the learning process that the worker acquires in these establishments through interaction. In this regard, (Ketels, 2008) sees that modernization requires an organized and strong process by the partners, not a self-actualization by any establishment in the economic grouping. There is a need for global partnership and not only at the local level.

2.3 “The importance and advantages of industrial clusters”: From the beginning of the last century, researchers put a huge efforts to provide a clear vision about the advantages of economic clustering, especially external savings, (Krugman 1991) summarized these benefits by the possibility of availability of a specialized labour force collected in one location and the possibility of availability of the intermediate materials in the same location between the parts of the cluster. Also, Krugman highlighted the positive impact of technology adaptation through the cluster. From that particular point, the importance of establishing industrial clusters within industrial cities or private places comes from the fact increasing the opportunities for specialization and division of labor, achieving external savings (marketing agents or specialized suppliers), reducing production costs, increasing external export opportunities and focusing on technical, technological and human expertise. It can also increase opportunities to attract foreign investments, stimulate local investments, and raise the productive and competitive capabilities of the industrial cluster parties, in addition to increasing the ability to explore new investment opportunities that strengthen the structure of clusters and enhance the principle of integration and inclusiveness. (Jordan Chamber of Industry, 2012)

Also, clusters policies are focusing on specific or particular industry, for example, focusing on food industries with tightening the linkages between agricultural industries and manufacturing industries can build a well standing and accumulated system that helps to identify the needs and obstacles that such particular industry may face.

2.4 “The components of the industrial cluster and its success factors”: In most cases, the industrial cluster consists of the following components (Zuhair Zawash, 2014):

Companies: Companies are the main drivers of the cluster and the element that is responsible of the production processes, activates innovations, creates job opportunities, attracts investments, increases the value added of the product and increases exports.

Supporting bodies and institutions: Represented by the scientific research and development centers, vocational and technical training institutions, and financial institutions, where their role varies, each according to its competence, whether it is providing technology, making innovations, providing financing,

or training, research and development, and these institutions form a linkages between cluster working companies.

Business services bodies and institutions: The main role of these bodies is to encourage cooperation between cluster operating companies and to increase the dynamism of the cluster through creating alliances and joint ventures and promoting products.

The Government: The government's role is to set industrial specifications and standards for the product and contribute to the development of the necessary plans and policies. It also facilitates and builds cluster relationships with various governmental and private agencies that can contribute to supporting the cluster's development, in addition to providing material support and filling any gaps that may arise.

The researcher believes that these components which build up the industrial cluster must coordinate and communicate with each other through front and back linkages in an efficient way to support increasing both the cluster efficiency and effectiveness. Also supporting these linkages can affect businessmen and their institutions, especially as they belong to the same social and cultural background. Torre sees that industrial clusters can provide a common infrastructure of language, institutional culture, customs, traditions and values. This will be reflected positively on the interaction between cluster parties and will reduce the risks to which they may be exposed. As for the main core reasons that support the cluster assembly idea succession, it can be traced back to four reasons (Torre, 2008, 32), and are summarized as follows:

- 1- Its dependence on the idea of the knowledge economy.
- 2- It follows the existing networking system in the industrial clusters at different levels.
- 3- Enhancing vertical integration.
- 4- Harmony with the globalization process and enhancing the idea of competitiveness.

2.5 “The role of industrial clusters in creating economic development”: Scientists were divided in two different positions on the role of the industrial clusters in creating development where the first part sees that industrial clusters have a positive role in local or regional development through their ability to create innovation in all production stages, increase the production capacity and improve the business environment for establishing new businesses. In all means, this will have a positive impact in finding new job opportunities with relatively high salaries. From this particular point, we can find a linkage between clusters and economic development (1, 2008, Maier and Blien). There are real examples of industrial clusters and their prominent role in creating development in Europe and America (Rosenfeld, 2002).

As for the other scientists, creating sustainable development through industrial clusters is under huge doubts and cluster gatherings may decline. This is refer to the product cycle in the clustering assembly or on the state of stagnation experienced by the cluster itself that is connected to the economic situation or to the technological situation (Karlsson, *ibid*, 13).

The Italian experience in industrial clusters can be considered a success story in which they initiate total of 800 industrial clusters. The impact of creating these clusters were reflected in both the exports and employment where the clusters contributed on increasing total exports reached to 57% of the country total industrial exports, and employed approximately 65% of workers in the field of industry. Studies have also reported that the impact of industrial clusters is reflected in maximizing the use of raw material to the high limit as a result of specialization and concentration of efforts in activities with high added value instead of distributing them to different economic activities (Linde Fariha and Khadija Azouzi, 2013). On

the other hand, in the field of development, clusters support the economies of the site, as industrial concentration leads to significant savings in the costs for the companies located within the cluster. In cost, these savings are referred as “the economies of the site”. The sources of these savings are connected to the presence of large variety of specialized companies whom provide production input materials, beside the presence of supportive business services and specialized trainees interacts together on the same cluster association and companies. This cooperation will also give the possibility of finding dedicated labor, in addition to dissemination of information between financial markets and cluster institutions.

The application of industrial clusters works to reform the industry and works to move from large institutions that work in the field of mass production to small ones. Also, industrial clusters helps in production specialization, and industrial transformation. This will increases competition and the creation of new production technology, for example, computerized manufacturing and product specialization.

3. Istisna' as a financing tool for industrial clusters:

3.1 Istisnaa' Definition:

(Ibn Manzour 711) derived the word Istisna' from sana'a, it means making, manufacturing something, Istisna' happens when someone requested for something to be manufactured for him.

Istisna' as defined as to “someone sings a contract with skilled worker to manufacture something” (Majalat AL Ahkam AL-Adliyyah text 124). The person who manufactured it is called sani', while the commodity which is manufactured called (masnu), and the person who requested commodity to be manufactured called (mustasni). AL Kasami (Hanafi jurist) defines istisna' as a contract on a commodity on liability with the provision of work" or "to order a manufacturer to produce a specific commodity in a specific way as agreed in the contract". Regarding to the opinion of Maliki, Shafi'a and Hanbali, they believe that the ististan' is a part of Salam Sale and they do not mention it independently, and they call it Salam sale in industries.(Al Khattab 954) (AL Mawardi 858) (AL Shirazi 476). Researcher selected the AL Kasami definition for the following reasons:

- a. It is a contract on a commodity on liability with the provision of work.
- b. This contact could be used by industrial clusters in order to finance the raw materials, semi-finished materials and finished materials.
- c. Industrial cluster can use this contact to market and sell their products in future effectively.
- d. The buyer can make sure that the products will be received as agreed in the istisna' contract

3.2 The legality of Istisna:

Islamic Sharia is concerned with directing people to industries of all kinds, and in the Holy Qur'an there are verses urging believers to engage in industries and extract the bounties of the earth. God SWT says “And We taught him the fashioning of coats of armor to protect you from your [enemy in] battle. So will you then be grateful? (Al-Anbiya: 80). And God SWT says also “And take for yourselves constructions [i.e., palaces and fortresses] that you might abide eternally? (Ash-Shu'ara:129). Due to Sunnah, Prophet Mohammad asked to make a gold ring” (Al- Bukhari 256). The Muslims people have unanimously agreed to deal with Istisna' based on what is mentioned in the Qur'an and Sunnah. Al-Kasani says that the Istisna' has two permissible contracts (salam sale and lease), so Salam is a contract on a sale that is in the hands of the seller, and the hire of craftsmen requires work, and what included the meaning of two permissible contracts was permissible. As for the people's need for Istisna'a, it is a necessary matter, as people cannot

obtain their needs without the assistance of others, and a person may need a commodity that is not available in the market with the required specifications, so the matter calls for its manufacture (AL Sa'ed 2011). The Hanafi School holds that istisna' is permissible in contrast to analogy, because it is a non-existent sale due to people's need for it.

3.3 The legal ruling for Istisna' contract:

The needs of people usually are linked to what is available in the hands of the other people, any person can satisfy his needs by buying, renting, or lending, but what is in the market may not meet his needs and do not satisfy their desires, so the jurists agreed on the legality of istisna' and its permissibility, but they differed in its terms and conditions are as follows:

The first opinion: The majority of Islamic scientists are agreed on permissibility of Istisna' contract, but they disagree on its nature and conditions because sometime it is picture refers to Salam sale and sometimes it refers or leasing contract. Due to these reasons the majority of jurists from Malikiyah and Shafi'i And the Hanbali does not consider this contract independent, they classify it under the Salam Sale and call it as Salam in industry (AL-Dardeer 1230). For example Hanabli scientists does not put Istisna' in separate section, they mentioned three conditions for anything to be classified under Istisna contract such as (weight, scale, and has clear specifications), this lead to accurate value for manufactured commodity. For example, Ibn Qudama mentioned six specifications that should be considered for manufacturing clothes "Type, Width, long, accuracy, thickness, and degree of fineness or coarseness" (Ibn Qudama 620). Shafi' scientists consider the Istisna' contract is a Salam Sale if the raw materials of commodity from the manufacture, but if the material from the person who asked for manufacturing, it leasing not Istisna'. Al-Nawawi also considers that the Salam Sale is permissible in glass, clay, plaster, buildings and utensils, so he mentions their type, length, width and thickness (AL-Nawawi, 676).

The second opinion: The Hanafi school considers and emphasizes on the permissibility and legitimacy of the Istisna contract, and they refers its permissibility to the texts available in holy Quran and Sunnah, in addition to that they consider the needs of people for Istisna' is very important for permissibility.

Before start talking about the use of the Istisna' contract as a financing too for industrial clusters, it is necessary to clarify some provisions of the Istisna' contract that regulate the relationship between the parties of the contract, which are as follows:

1- The right of the contract parties: The Istisna' contract consist of two parties, first part is the manufacture, and the second part is the person who is asking for industry (client). This contract leave a qualitative or substantial impact, which is the confirmation of ownership of the client in the asset made in the liability, and the proof of ownership of the first part "manufacture) in the agreed (price). On the other hand this contract reduces the risks that the second part may be exposed to as a result of non-compliance or non-fulfillment of the first part. It with mentioning that this contract confirm the right of the two parties, price, delivery date and the specifications of the commodity manufactured, God SWT says " O you who have believed, fulfill [all] contracts") Al-Mā'idah:1).

2- The right of the second part (client) will be confirmed after the first part complete or finish the requested manufactured material, the first part as industry cluster can deal with more than one client in the same time taking into his consideration the delivery time, this will enable the manufacture to increase the turnover of the capital and maximize the profit.

3- One the main condition of Istisna' contract is to state clearly the specifications of the commodity that will be manufactured, such as the type, the level of quality, the quantity, the delivery date, and the price. The role of completed and detailed information in the said contract is to remove any conflict might be happened between the industry cluster and client.

3.4 The of Istisna' Contract in Financing Industry Clusters:

The Islamic financing tools came diversity and compatible to the field of finance, such as Murabaha Mode for Purchase – Order came to finance buying goods and service for consumers, it could be used also for financing the tools and equipment that required by companies or industries. Salam Sale can be used for financing agricultural sector; this type of sale facilitates the selling of agriculture products before the harvesting season. Leasing contract could be used also in financing durable assets for all production economic fields. In addition to that Mudarab and Musharkah can be used in a wide range in financing all economic activities and individuals. But if we compare Istisna contract with said tools, we find difference between them, Murabha for example is using as short term tool in financing raw materials and equipment of Industry Cluster, while the Ististna is using all requirement of industry cluster such as materials, equipment and salaries & wages, it means that this tool can finance the administrative expenders that required for production, financing the fixed capital and the short or long variable cost that required by industry clusters. The nature of this tool is elastic; the amount of the commodities that will be manufactured will be received in advance or as installment. And so this tool is more appropriate for industrial cluster for the flowing reasons:

- a. Financing the infrastructure of Industry clusters: The economic development showed the great development happened for industrial cluster activities, this development makes Istisnaa contract is a suitable financing tool for most of industrial cluster activities; such building, generator power, internal street, sewage and purification stations that required for Industry clusters. It worth mentioning that The BOT (Build, Operate and Transfer) system can be implemented, which means build, operate and transfer ownership.
- b. Financing industry clusters requirement: The elasticity of this tool give industry cluster good advantage, it can finance all the stages of production process, it can finance the fixed capital and working capital, this could be implement as short term, medium term and long term. In this case, the parallel Istisna contract could be implemented in cooperation with Islamic Banks to establish the infrastructure of industry clusters; in addition to that Istisna contract will cover the other requirement of industry cluster working capital. Islamic Banks prefers to us Istisna contract comparing with Mudaraba or Musharakah, because they find difficulties in supervising and controlling that projects financed by said tool. In addition to that Weak religious and moral scruples of the clients lead Islamic bank use Istisna contract. (Attyeh, 1986).

The implementation of the Istisna' contract in the field of industry create an industrial base consisting of a group of industrial clusters that achieve self-sufficiency for the community, and protect the new factories or workshop available in the cluster. The Istisna' contract guarantees that, all manufactures materials (raw materials, semi-manufactured materials or complete manufactured materials) will run out in favor of the (the trademark owner) according specification and in due time as agreed in the contract. Islamic banks can make tow contract first contract (parallel contract) with the trademark owner and the second contract with industry cluster; IB can finances the industry cluster to produce commodities similar to the

agreement with signed with the trademark owner, with the commodities completed, IB bank can sell it to (trademark owner) cash or in installments. This role will activate the work of industry cluster in order to achieve the optimum allocation of economic resources, this will also increase the amount of exports and achieve surplus in the Trade balance and balance of payments. The finance institutions (Islamic Banks) can apply two types of contracts for istisna' as indicated by the following:

- 1- Istisna contract: This contract consist of two parts; The first part is the Islamic bank (manufacturer), the second part is trader owner (Buyer), an agreement might be signed between the two parts taking into consideration the specifications of the commodity, date of delivery , the price and the method of payment. Islamic Bank calculated the price based on the cost and margin of profit. (Khoja, 1993). In this case Islamic bank is committed to produce and deliver the commodity as agreed; taking in his consideration the condition that will be signed with the concerned industry cluster.
- 2- Parallel Istisna Contract: This contract consist of the two parts; the first part is Islamic Bank, and the second part is Manufacturer (Industry Cluster), Islamic Bank agreed with the second part to buy a completed commodity, its specifications are similar to the specifications stated in (Istisna Contract) previous paragraph. Islamic Banks use this contract to finance industry cluster and pay for them the amount in advance to get a completed commodity in due date, by end this commodity will to be sent to the trademark owner stated before (Khoja, 1993).

3.5 The role of Istisna'a in the development of industrial clusters:

Industrial development is one of the basic aspects of the economic development process, and it is not possible to achieve economic development without developing the industrial sector (Al-Qurashi, Medhat Kazem, 2001). Therefore, Istisna contract can contribute in development of industrial clusters by encouraging demand for industrial products based on its flexibility, because to pay the amount of the commodity in advance is not condition, such flexibility encourages the demand for various manufactured goods and commodities, with the desire of consumers or producers for finished or semi-goods without the availability of the value of those goods. It means that the amount of commodity may be paid in advance, or installment or when the commodity completed, whether this is through a direct contractual relationship between the manufacturer and the customer, or by a financing party by using the parallel Istisna'a formula, this will remove the obstacle in the amount needed to in advance. However all banking facilities are given to SMEs not to industrial clusters because the industrial cluster is not mature in Jordanian context. Taking into consideration that the industrial sector is the leader sector in Jordan GDP in which it represents 21% of the country GDP made by 17000 industrial firms around the country and around 255'000 employees from the country working force. On the other hand, 98.5% of the industrial firms are considered SME's. Based on the Jordan Banks Association (JBA) the total financing for industry reached 3.5 Billion JOD in 2020, it means that 11.7% from the gross banking facilities. In addition to that the Central Bank of Jordan represents around 750 Million JOD for the industrial SME's on the same period. Based on the same report, still the SME's are facing difficulties in securing these loans against collaterals in which these collaterals requires 122% of the amount of the loans for small enterprises while it reaches to 144% for the medium enterprises; due to the said facts, it is crucially to encourage Jordanian Islamic banks to establish and finance the industrial clusters by using Istisna' contract.

Accordingly, istisna' contract provides advantages for the concerned parties: it secures for the trademark owner get the products he desires with the required specifications without having to pay their full price

when concluding the contract, and on the other hand, it secures to the manufacturer a stable and known demand for his products, and the positive economic effects resulting from Encouraging demand by raising the level of economic activity, employing the optimal use of resources and expanding markets (Dunia, Shawqi Ahmed, 1991).

By studying the relation between in Istisna'a contract that is signed between the owner trademark, and the owners of industrial clusters that manufacture goods or parts of the commodity and supply them to the owner of trademark, the following point will be explained for the development of industrial clusters:

- a. Project feasibility study: One of the requirements for asking for finance through the Istisna'a contract is to conduct a feasibility study in which the product/or goods produced that will be purchased, the expected demand and the possibility of marketing it during the coming period, in order to determine the appropriate amount from point of financier view to purchase the commodity, specifying the sales and marketing outlets that the owner of the industrial cluster will follow. It is also possible to study the costs of producing the goods to be purchased realistically and accurately in order to reaches the cost of each unit produced, and as a consequence the purchase price of the unit is determined under the Istisna contract, as well as the financier (trademark owner) or Islamic Banks determines the percentage of profit that will acceptable. In addition, the feasibility study includes an estimated cash flow budget for the industry cluster, which is based on the factory's estimated budget during a specific period of time, during which the factory's cash flow needs are determined. Based on the foregoing, the feasibility study can be considered as a road map showing the industrial cluster road during the Istisna period, which is positively reflected on it.
- b. Coping with development: The main objective of Istisna is to manufacture something need by people to facilitate their daily life, such as Iron tools, glass, sandals, knives and others (Kasamni, 587). As Ibn al-Humam says: "So we restricted the permissibility of istisna' to what is dealt with, and what is not dealt with, we returned to measurement, It is like making a tailor who sews a shirt for a certain person with yarn that he made himself. (Ibn Humam, 861).
At the present, people's financial transactions are rapidly developing from one day to another, and if istisna' is limited to the past, the wheel of industry stops at a certain point and does not develop and does not meet the increasing and renewable needs of people, but at the present time their needs for goods and services have become an urgent need. Researcher sees that, istisna contract is subjected to the community norms and custom, and it is different from place to place and from time to time. Accordingly, industrial clusters can work in different fields such as textile, solar energy, cars, furniture, or any type of industry, it expected that gathering all relative branches of industry in one or close area will leave positive impact on industry
- c. Time: Time is one of the important criteria for business or industry, it a tool activates industry cluster to provide the trademark owner with commodity in due time, otherwise any delay in time will leave negative impact on Istisna' contract parties. The Istisna' contract must specify the time, whether it is short or long, because the contracts for work must include the time. From an Islamic perspective, scientists differed on the issue; Abu Hanifa said "Time is not condition in in Istisna Contract", Al-Kasani, said "If the time mentioned in Istisna Contract, the contract will be changed into Salam Sale" (Al-Kasani, 587). On the other hand Abu Youssef and Mohammad ibn Hassan say that, the time is not condition but the contract is Istisna Contract. Researcher sees that the time

in Istisna contract is very essential for delivery and remove any conflict happened between industry cluster and trademark owner, from other side for the time is important, two main factors are not available at the beginning of the contract (commodity and work), and they are postponed.

- d. Priority of Investment: The implementation of Istisna'a as a financing tool for industrial clusters should committed to Islamic Sharia rules in producing goods and services within very clear priorities; the production in Islam is directed to cover three stages of need; essential things that very essential for the life of people, improvement things that improve and facilitate the life of people, and Luxury things that let the life is flexible and more welfare, with no exceeding the limit of profusion or luxury. (AL-Ghazali, 1989).
- e. Specifications Control: The manufacture should deliver the commodities due to the greed specifications as mentioned in Istisna contract, Abu Hanife and Mohammad Ibn AL Hassan said that the person who asking for manufacturing has the right of proofing or stopping the contract when the manufactured commodity is completed, because he did not see the product when the contract signed. While this right is not applicable for the manufacture, on the other hand Abu Yousef said the no right for him if the specifications of the manufactured commodities came as agreed in the contract. (Majalat AL Ahkam AL-Adliyyah text 392). Due to the above mentioned the researcher believes that Istisna Contract is similar to Salem sale because they are based on the same principal of uncertainty (Gharar), and the "Seeing Option" is legislated to avoid uncertainty. If the material made conforms to the agreed-upon specifications, the option of seeing is ignored. Implementation of this rule makes the industrial clusters more accurate and perfect in manufacturing, and the manufactured materials will not accepted or rejected to personal desires.
- f. Stability of Industrial Material Prices: Dealing with the Istisna contract in the field of industry will achieve relative stability in the prices of manufactured goods, because the price is agreed upon between the two parts of contract in advance, the two part of contract usually conduct a depth study for the market taking in its consideration the expected development in the market, manufacture determine his price according the cost and add suitable margin of profit (Ahmed Belkheir, 2008). On the other hand, the second part of Istisna Contract who is asking for manufacturing material due to his actual need and specifications. It is expected that this will achieve stability between the demand and supply in the market industry and by the end achieve economic stability. (Shraf Dewaba, 2004).
- g. Motivating Research and Development in Industry Cluster: Since the field of Istisna' financing in industrial clusters is the production of finished or semi-finished goods that are contracted before their production, which push trademark owner to pay great effort in selecting the manufacturer or supplier who is able to provide that commodity with the needed specifications and at the best prices, it leads to competition at the level of industry and pushes institutions to more specialization and focus on activities in which they have a competitive advantage, as well as spending on research and development, and there is no doubt that this trend is a factor of industrial and technological progress and development (Medhat Kazem Al-Qurashi, 2005). It is confirmed that the industrial sector is among the areas that use the most achievements of science and technology than other economic sectors, which lets the industry field plays an entrepreneur role in enhancing the technological capabilities, skills, technical and administrative expertise in national economies (Shawqi Ahmed Donia, 1991)

4. Conclusion:

4.1 Results:

1. The Istisna contract is a highly flexible financing tool that can be used to finance and develop all components of the industrial cluster, whether the cluster is in the field of industry, agriculture or tourism.
2. Employing the Istisna contract to financing industrial clusters will improve and control the quality of the good or service subjected to the contract.
3. Industrial Clusters have a positive role in local or regional development through their ability to bring about innovation in all stages of industry and raise production capacity.

4.2 Recommendations:

1. It is necessary to conduct more studies and research on industrial clusters in Jordan in order to determine the appropriate geographical locations for their establishment, due to their important role in bringing about sustainable development.
2. Regarding to Islamic banks and Islamic financial institutions, it is very necessary to adopt an industrial cluster and to finance all its components together through the Istisna' contract.

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