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THE POTENTIAL OF DIGITIZING THE *ISTISHNA* CONTRACT DURING A PANDEMIC COVID-19 IN INDONESIA

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HIGHLIGHT

- *The impact of using istishna contracts that use information technology on the community's economy.*
- *Education to the public regarding the permissibility of using technology to implement istishna contracts.*
- *The role of technological developments in istishna contracts.*

ABSTRACT

The current istishna contract has experienced an event of digitization and adaptation to the buying and selling activities of the public, especially in Indonesia, namely by utilizing an online or network-based system. During the Covid-19 pandemic, it was not uncommon to find several businesses implementing the istishna contract as a manifestation of the digitization of buying and selling contracts. However, it is still not known for sure whether the istishna contract has the potential to be adequately implemented by the teachings of Islamic law or not, especially in the digitalization era, which adapts the istishna contract into an Islamic-based transaction activity that uses various information technology facilities. This research is qualitative research with the retrieval method of information utilizing a literature study. Thus, in finding conclusions on the problems discussed, the author uses a normative approach that examines the issue according to the views of norms, one of which is religious norms related to the

permissibility and opportunities of digitizing the istishna contract in Indonesia. In addition, the author analyzes the impact of the pandemic on the economy, which is, of course, related to the potential for the istishna contract. This study aimed to determine the potential for digitizing the istishna contract, especially during the Covid-19 pandemic. From this research, the conclusion is that the istishna contract has the potential to be quite good in the community's economic activities during the Covid-19 pandemic, even though it is in the form of digitalization.

KEYWORD

Digitization, Istishna, Islamic View, Pandemic.

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A. INTRODUCTION

At this time, the concept of digitization has become an inseparable part of the various fields of business activities that exist in the surrounding community. The concept of digitization is a manifestation of the rapid development of information technology which is increasingly widespread and used by all levels of society. It is also inevitable that the development of digitalization greatly facilitates and positively impacts the smoothness and comfort of business actors, consumers, and stakeholders involved in the bond of business cooperation. The concept of digitization certainly does not follow the existing teachings of the Shari'a. The number of business actors who in their business activities tend to deviate from the teachings of Islam has become a particular problem that deserves attention. The teachings of Islamic law have been explained in detail regarding the guidelines and prohibitions which are the primary basis for business activities. It has been explained a lot in the holy book Al-Qur'an. Understanding the Digital Economy focuses more on transactions and markets that occur in the internet world. The development and progress of information and communication technology (ICT) lately can be felt in almost every aspect of people's lives. Like every other advancement in communication technology, the internet has entered various forms of people's lives. It is because communication is one of the basic needs of society. Internet technology develops and is integrated into a 'world' or 'virtual space,' often called cyber-space, a world or place where people can communicate, 'meet,' and carry out various economic/business activities. A new society is called the information or knowledge society/knowledge-based society. At first, the old fundamental economic theory focused on the optimization/maximization of the factors of production, namely: physical, labor, and capital (land, money capital, and human). In its current development, economics realizes the importance of incorporating intellectual factors in science and technology, creativity, and various forms of innovative capital called science and technology (science and technology).

The Definition of the Istishna Contract

Etymologically, the word Istishna' is taken from the word *Sana'a* which means having the letters' *alif*, *sin*, and *ta'* added up to make *istashna*, which means asking to be done. The term of Istishna' contract is a transaction of goods carried out by a dependent who must do so (Mughni 2019). The object of the transaction is the item to be made and the work of making the item. The Sharia Economic Law Compilation (KHES) also calls it Ba'i Istishna' (Istishna buying and selling) (Nafisah and Adinugraha 2022, 57). According to the Compilation of Sharia Economic Law, istishna is the sale and purchase of goods or services in the form of an order with specific criteria and conditions agreed upon between the ordering party and the seller (Mardani 2012). Al-Istishna' is an exchange contract with deferred delivery applied to certain ordered goods. General agreement on the principles of practice is difficult to define. However, the nature and quality of the goods to be delivered must be unique in the contract.

In fiqh muamalah, the concept of buying and selling that aligns with e-commerce apart from the Istishna' contract, there is also another contract which is almost similar, namely the as-Salam contract, characterized by payment in advance and delivery of goods at a later date, the salam transactions, which involve goods in the form of non-digital orders, and general buyu' for digital goods. Istishna', refers to a contract that the payment either accelerated or postponed based on the agreement, with delivery corresponding to the deferred products. whereas in As-salam, the transaction method involving immediate cash payment and delayed delivery of goods. (Masnita, Rasyawal, & Yusran, 2021).

Fundamentally, both al-Istishna and as-Salam transactions involve orders with deferred delivery of goods and cash payments. While payments in al-salam transactions were traditionally made in cash directly, in line with historical circumstances, e-commerce payments utilize email and online credit card platforms. The utilization of as-Salam within Islamic economics is permissible provided it adheres to the principles and regulations, and avoids detrimental elements like usury, injustice, and fraud. It is essential to ensure transparency in product details, including price, item condition, and delivery methods, before engaging in transactions. The adoption of e-commerce via startups yields positive outcomes for companies, such as expanding customer base, boosting sales and revenue, generating employment opportunities, and fostering business prospects by offering additional services like application development, website creation, and even establishing programming schools. (Siswadi & Soemitra, 2022)

Whereas, in Istishna' transactions, the manufacturer must commit to producing the goods as described. The delivery date is also not fixed: the item can be shipped upon completion by the manufacturer. Another opinion says, istishna means asking someone to make a certain item with certain specifications. Istishna is also a contract to buy goods someone

will make. So in istishna, the object that is the object is manufactured goods or works. As for the basic materials used to make the item, it is the maker's property. If the basic ingredients are from the person who ordered it, the contract is not istishna' but an ijarah contract (Imam Mustofa 2016). Istishna is also a contract that demands a craftsman/expert (shani') to make an order with unique characteristics, then istishna' is a sale and purchase between the buyer and the recipient of the order, where the agreed specifications and price of the goods upon in advance. In contrast, the buyer pays according to the agreement. Furthermore, the contract cannot be canceled after the start of manufacture unless the goods delivered do not meet the terms of the contract. In addition, payments can be made at once or in installments and at any time until or after delivery. Finally, the producer is responsible for the source of the inputs for the production process. Experts have put forward several definitions, so the conclusion is that istishna is a sale and purchase contract in order in the form of goods with certain specifications according to what is requested by the buyer (consumer). The goods used to make them are the maker's (producer's personal property. The customers can pay in stages. They can pay upfront when the goods are in the production process. However, they can also pay at the end when the goods are on their way to the customer. (Sutan Remi Sjahdeini, 2014).

The Istishna Contract Terms

According to Hanafi scholars, the pillars of istishna' are consent and qabul. While the number of scholars stipulates the pillars of istishna' there are three, as follows: (Ahmad Wardi Muslich, 2013)

- a. 'Aqid, namely shani' (people who make) or sellers, and mustashni' (people who order) or buyers.
- b. Ma'qud 'alaih, charity (work), the goods ordered, and the price or means of payment.
- c. Shighat, or consent and qabul.

The conditions for istishna' are as follows.

1. Explaining the types of goods made, types, levels, and characteristics because these goods are goods sold (object of contract).
2. The goods must be in the form of goods that are muamalah among humans, such as vessels, cupboards, and others.
3. There is no provision regarding the delivery time of the ordered goods. If the time is determined, according to Imam Abu Hanifah, the contract changes to Salam, and the conditions of Salam apply, such as delivery/payment when the contract takes place. According to Imam Abu Yusuf and Muhammad, this condition is not necessary. Thus, istishna' is legally valid, whether the delivery time is determined or not, because according to custom, the customer and seller can determine the time in an istishna' contract.

The Legal Basis of the Istishna Contract

Textually there is no legal basis for istishna'. Even logically, istishna 'is not allowed because the contract object does not exist or the sale and purchase of *ma'dum*. However, according to the Hanafiah scholars, this contract is permissible based on istishan because the community has long carried it out without anyone denying it, so the law of permissibility is known as *ijma'*. According to Malikiyah, Shafi'iyah, and Hanabilah, istishna contracts are allowed based on salam contracts and human habits. The conditions that apply to greetings also apply to istishna contracts. Among these conditions is the submission of all prices in the contract. As in the salam contract, according to Syafi'iyah, istishna' is legal, whether the delivery period for the ordered goods is determined or not, including if it is delivered in cash (Ahmad Wardi Muslich 2013). The basis for the scholars allowing istishna transactions is according to the Prophet Muhammad that he once asked for a ring as narrated by Imam Bukhari, which means:

"From Ibn Umar r.a that the Messenger of Allah asked to make a ring of gold. He put it on and put a ring eye stone on the inside of his palm. People also make rings. Then he sat on the pulpit, took off his ring, and said, "Indeed, I was wearing this ring, and I put the gemstone on the inside of my palm. Then he threw away his ring and said, "By Allah, I will not wear it forever. Then people throw away their rings." (H.R. Bukhari)

Based on the hadith, istishna is permissible in Islamic law.

B. METHOD

In this study, the author uses a qualitative type of research method with a normative approach, which is an approach that examines issues based on the provisions of religious norms that aim to assess the truth of the issues studied. The information collection techniques in this research use literature studies from previous studies and library research. Namely, the study searches literature (library) in the form of books, notes, journals, the web (internet), and other information related to the theme of this research. Sources of data in this study are secondary data in the form of notes, documents, journals, books, and letters related to this research. In writing this article, the analysis of the research results chosen by the author is inductive or qualitative, namely by choosing the formulation of the problem to be studied, collecting secondary information and data, developing theoretical ideas, and analyzing the implementation of the formulation of the problem.

C. RESULT AND DISCUSSION

1. The Effect of the Pandemic on the Economy Fields

The World Bank projects that Indonesia's economic growth this year will be depressed at 2.1 percent due to the continued spread of Covid-19 domestically and abroad. Bank Indonesia (BI) has also revised the projection of Indonesia's economic growth to below 5 percent or only around 2.5 percent, usually growing to 5.02 percent (Bisnis.com 2020). Due

to the economy's vital aspects being disrupted, the impact of the crisis will be felt equally at all levels due to the resilience of each layer or group being different. The lower middle class, especially micro and informal, with daily income, is the group most vulnerable to its effects. It will spread to the distressed financial industry because many investees will have difficulty paying their investors.

Meanwhile, in terms of tourism and commodity export revenues estimated that there will be a decline which will cause the current account deficit to reach 2.9 percent of Gross Domestic Product (GDP) in 2020. The World Bank report entitled East Asia and The Pacific in The Time of COVID-19 on Tuesday, March 31, 2020, stated that despite being depressed this year, Indonesia's economic growth will rebound in the range of 5.4 percent in 2021. According to the World Bank in its report. Furthermore, World Bank said the various efforts to prevent the spread of the virus globally and domestically would reduce pressure on global demand, commodity prices, international trade to tourism, global business sentiment, and investment growth (Bisnis.com 2020). They assess that investment growth will slow down due to fluctuations in trade which causes lower investor confidence. However, hopes that cheaper credit costs and proposed economic reforms will support the recovery process shortly. Meanwhile, government spending growth is projected to strengthen, with a significant fiscal stimulus package launched to reduce the impact of the coronavirus. "Amid a sharp decline in global growth and trade, Indonesia's exports and imports are expected to contract for the second time this year." (Fageh 2020, 65).

The current account deficit (CAD) is also projected to widen from 2.7 percent of GDP to 2.8 percent of GDP due to sharp declines in tourism income and commodity prices that continue to be depressed, explained the World Bank. According to BI Governor Perry Warjiyo, Indonesia's economic recovery next year will be influenced by the government's efforts to improve the investment climate through the Omnibus Law on Job Creation and Taxation. Previously, Perry explained that the Covid-19 condition on the global economy caused very high uncertainty and reduced the performance of global financial markets, suppressed many world currencies, and triggered a reversal of capital to financial assets that are considered safe. The prospect of world economic growth has also declined due to disruption in global supply chains, declining world demand, and weakening confidence in economic actors. February 2020 data shows that various early global indicators such as confidence in economic players, the Purchasing Manager Index (PMI), and electricity consumption and production declined sharply. Perry also emphasized that with low risks that remain large, Bank Indonesia predicts 2020 global economic growth to decline to 2.5 percent, lower than 2019's economic growth of 2.9 percent and the previous projection of 3.0 percent. After the Covid-19 outbreak, the global economy predicts to pick up again in 2021 to 3.7 percent, higher than the previous forecast of 3.4 percent. In Perry's view, Bank Indonesia continues to strengthen coordination with the government and OJK to closely monitor the spread of Covid-19 and its impact on Indonesia from time to time (Republika 2022).

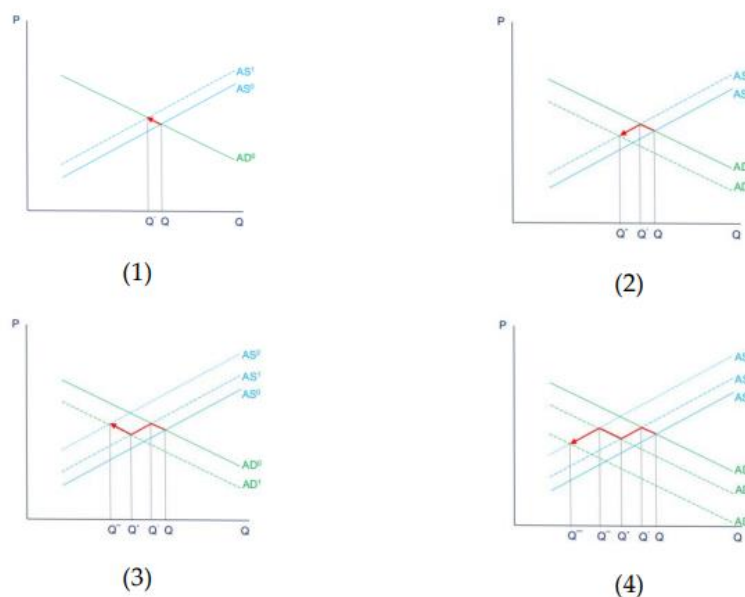


Figure 1. Shifting Supply and Demand Curve Due to Covid-19 (Surico and Galeotti 2020).

According to Surico and Galeotti 8 (see Figure 1), at the beginning of its appearance, with physical distancing or tightening and limiting activities of other communities, this pandemic shocked the economy's supply side. Hence, Aggregate Supply (AS) shifts from AS_0 to AS_1 , decreasing production from Q to Q' . Then with silence in the house, consumers will only make purchases of essential goods with a note that it will pass soon so that it has an impact on the demand side (demand), where Aggregate Demand (AD) shifts from AD_0 to AD_1 and production falls from Q' to Q'' is due to the uncertainty of continuity the outbreak. The economic policies can reduce the impact of the pandemic, but most workers will lose their income, especially in the industrial sector. Companies or business actors, mainly those dependent on cash flow (flow), have limited liquidity to fulfill their obligations to third parties. According to the law of supply and demand decrease in order due to the stay-at-home program, in turn, will trigger a reduction in the number of production by shifting AS_1 to AS_2 and from Q'' to be Q''' . And so on, there is a reaction to a decrease in demand so that the curve AD_1 shifts to AD_2 and production decreases back to Q'' .

2. Digitization in the View of *Fiqh Muamalah*

Digital technology is a transition from operation no longer using much human power. Nevertheless, it is more inclined to the fully automatic and sophisticated operating system with a computer system, in the form of binary numbers (zero and one) in a format that a computer can read. *Digital technology* is a fast computing system that processes all forms of information as numerical values. In analog technology, images and sound convert into radio waves, then digital technology converts images and sounds into digital data consisting of the numbers 1 and 0. With this digital technology, the displayed image has a more natural color quality, and better resolution does not break or lose quality if the image displays on a

large screen. Transitioning to digital operations entails engaging with businesses across the globe. Every action and regulation will impact the framework of the market and industry, potentially altering numerous conditions. To withstand economic disruptions, entities like Micro, Small, and Medium Enterprises (MSMEs) employing the Sharia system must adapt by comprehending the features of this novel concept, which undoubtedly diverges from classical economics. (Hayati, 2023)

The rapid development of digital technology is known for the presence of the latest communication tools, where everyone can process, produce, and send and receive all communication messages anywhere and anytime. As if without knowing the boundaries of space and time itself, it has spurred developments in the mass media sector, which is part of the communication component. As a result, the rush of information sourced from the mass media, both print and electronic, began to be felt. Whether we realize it or not, we are currently in a circle full of information. Of course, it will have particular impacts on society, both positive and negative. However, of course, the most important is the negative impact of this rapid development which indirectly begins to fill the twists and turns of people's lives. For the record, the development of mass media and the flow of information in Indonesia has been extraordinary in the last few decades (Ansori 2016, 2).

On the other hand, fiqh muamalah is a rule or law of God intended to regulate human life in worldly affairs or affairs related to worldly social affairs. In contrast, the narrow meaning of muamalah is the exchange of goods or valuables in predetermined ways. From the above understanding, muamalah, fiqh means everything where a person can exchange property as long as the property is valuable and based on Islamic legal principles. In Islamic terms, exchanging property is commonly known as buying and selling or al-bai'. To meet the principles of Islamic law, the principles of Islamic law cite in the Qur'an, Hadith, Ijma', and Qiyas. In Indonesia today, apart from the four sources of Islamic law, there is one other legal basis: the fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). In principle, all forms of buying and selling are allowed as long as no one forbids it. Referring to that rules, buying and selling online is buying and selling that does not, or no law prohibits it, both from Islamic law and the DSN fatwa. Buying and selling or al-bai' etymologically means exchanging something. Meanwhile, in terminology, bai' or buying and selling is an exchange transaction (mu'awadah) of material (maliyyah) which results in the permanent ownership of goods ('ain) or services (advantage). Online transactions are assisted based on technological developments, now called the 4.0 era (four blank dots) as the industrial revolution era (Abdurohman, Putra, and Nurdin 2020, 42–43).

The sale and purchase divide into three parts. The first is the activity of buying and selling something that the subject can see, the sale and purchase of which the goods appear, meaning that when a sale and purchase transaction occurs, the object of the sale and purchase is in a place that both parties can see. So that buyers can judge from the goods themselves whether they are suitable for their needs or not. This type of buying and selling is legal. Then the second type is buying and selling something accompanied by specific

characteristics or characteristics. Even though the object is not visible, the buyer provides the characteristics so that the seller prepares the goods according to the buyer's order. The second type of buying and selling is salam, and selling and buying greetings are allowed. Then the third is buying and selling activities, which do not exist, and both parties can not see the objects. The third sale and purchase law are invalid because the seller can not present the object of the sale and purchase so that both parties can not see it, even the seller sells goods that have no meaning, which the seller does not own (Abdurohman, Putra, and Nurdin 2020).

If viewed from the concept of buying and selling online, buying and selling online is broadly included in the third category of buying and selling, namely buying and selling something that does not exist, and both parties can not see that. Because in terms of goods, buying and selling online cannot show buyers realistically. It can only appear through pictures and data. Apart from being unable to be seen directly, the item does not exist. The picture may change when the item arrives after making a transaction. The possibility of a change between the image displayed should anticipate, so the seller must provide the option to return if the goods ordered do not match the order. With the return option, it will avoid fraud. This option in fiqh is known as khiyar. One of the khiyars in muamalah fiqh is khiyar disgrace (defective), i.e., if the goods purchased are damaged, the buyer has the right to return the goods to the seller. This khiyar disgrace is valid since the buyer discovers the defect after the contract. According to the fuqaha malikiyyah and syafi'iyah, the time limit for the validity of the khiyar disgrace is that it applies in a "faura", meaning that the injured party must use its khiyar right as soon as possible.

Fiqh muamalah law usually changes based on the conditions or developments of the times because the law of fiqh grows along with the development of Islam. The development of the times will bring legal changes in Islam through the science of fiqh, one of which is fiqh muamalah. Along with the development of technology, access to do muamalah through technology plays an essential role because it provides convenience for sellers and buyers without having to go around marketing their products. So fiqh must be able to respond to these changes. If viewed based on the data or specifications in the online shop, it will have a different law from the point of view of the object/goods they are selling. In buying and selling online, the seller always provides a detailed overview. The seller describes what can be distinguished, whether color, quality, the composition of goods, or even the goods' price. Or certain characteristics. In fiqh muamalah, there are various kinds of contracts, which divides into three contract categories used to search for profits. Namely buying and selling contracts, profit-sharing contracts, rental contracts, buying and selling contracts, including the Murabaha contract regards, and contract Istishna'. From the contracts, the thing to pay attention to is harmony, and the conditions must be complete.

Moreover, the salam contract is more suitable because the buyer places an order based on the specifications of the goods themselves so that when there are specifications that are not in line with expectations, the buyer does not continue the sale and purchase transaction.

Nevertheless, other contracts may have outstanding potential. One of them is the *istishna* contract.

3. The Potential of Digitizing Istishna Contracts during Pandemic Covid-19 in Indonesia

In terms, *istishna'* is a contract made by a producer with a customer to do something stated in the agreement. Namely, the buyer buys something made by a producer and goods and works from the producer (Sundari and Zuana 2018, 51). The *istishna'* sale and purchase transaction is a sales contract between *mustashni'* (buyer) and *shani'* (manufacturer of goods/seller). In this contract, the manufacturer accepts customer orders according to agreed specifications and sells them to customers. Both parties agree on the price and payment system (Hidayah, Nawawi, and Arif 2018, 4). The system is very relevant to the needs of today's society. It is because not everyone wants to buy goods already prepared by the seller and have the exact specifications as the wishes of other customers. However, under certain conditions, a person also needs an item with unique specifications, which is very different from other goods. One of them is at the time of commemoration of important events such as graduations, birthdays, wedding days, and the like. At these events, they usually need items that the buyers can custom according to the specific specifications, for example, by ordering a bouquet that reads the customer's full name, birthday, and special congratulations. It cannot obtain by buying and selling ordinary goods because, in ordinary buying and selling activities, the goods traded are not customizable according to the customer's wishes. Instead, the seller has already prepared the item with the specifications set. Therefore, the presence of an *istishna* contract can help overcome these problems because buyers can order unique specifications on the goods needed without the difficulty of making their own.

However, at the beginning of 2020, there were rampant cases of the Covid-19 pandemic, which was quite worrying. The government also urges the public not to travel or carry out activities outside the home. Of course, the regulation of Large-Scale Social Restrictions has a very negative impact on people's daily economic activities. Not infrequently, many people have lost their jobs due to the pandemic. One of the sectors most affected by the pandemic is the trade sector. The majority of shops and companies had to close their business activities.

On the other hand, people are also confused about finding ways to fulfill their needs. However, along with the rapid development of technology, this is not a problem with no solution. As is well known, digitalization certainly plays a significant role in supporting the community's economic activities, especially during the Covid-19 pandemic, which requires face-to-face buying and selling activities. However, digitalization technology has developed quite adaptively among people who cannot leave their homes. Thus, all buying and selling transactions are using digital technology. One is buying and selling activities that apply to

the Istishna contract. Although the government urges the public not to engage in activities outside their homes during the pandemic, this does not prevent people from celebrating several important events in their lives, even inside the house. One example is a private birthday celebration at home with the nuclear family. In the celebration, of course, they need some items with unique specifications, such as birthday cakes with particular writings, gifts with unique specifications, flower bouquets with particular writings, and much more. So, of course, the pandemic condition does not entirely harm the potential development of digital istishna contracts.

In addition, one example of implementing an istishna contract during a pandemic is buying and selling craft crafts, for example, grain jewelry work, whose manufacturing process is not easy—generally done on a custom order. In addition, the quality must be the foremost priority in each work produced as a form of appreciation for the seeds strung together into natural jewelry. However, the outbreak of the Covid-19 pandemic had an impact on the work produced. The materials used for the work are very cheap, so selling them at a set price is difficult. Especially in a pandemic, consumers' purchasing power is low because many have lost their jobs, so many buyers turn to sellers to survive. In addition, many artisans collaborate, exchanging consumers to survive. Even though conditions are declining, Anthony as an owner and designer of Bumiputih Spiritual Jewelry, believes the craft industry can develop well during a pandemic for those who want to work creatively. (Susanti 2021, 385–86).

Meanwhile, those already running a creative economy business must continue to innovate in design, technique, and marketing to maintain their business. Innovations made by artisans and creative economy actors can increase competitiveness by strengthening entrepreneurship and increasing productivity supported by efforts to adapt to market needs, utilizing innovation results, and applying technology. The availability of the internet supports the development of marketing in the digital world. Social media, which is internet-based, can be used to market products, with good planning, especially in delivering messages in the form of images and text. Standie Nagadi, VP of Marketing of Mekari Company, stated that using technology can be the best solution in helping the SME economy keep running. In addition to capital assistance, marketing through social media will make it easier for SMEs to develop appropriate strategies for business continuity now and in the future. Marketing of craft products in Indonesia online is not without reason. It considers the advantages of digital marketing, namely a more extensive market reach and people's buying patterns since the pandemic began to shift towards digital. Many artisans choose this method. The development of social media, which was initially a communication medium to become a marketing medium for products produced or sold by the public, has become a very open opportunity to develop marketing. The potential of the digital market in Indonesia is enormous. Based on the number of users, Indonesia ranks second with the most Facebook users with 35.4 million users, exceeding the population of Canada, and the

fourth-largest number of Twitter users with 4.8 million users, equivalent to the population of Singapore (Susanti 2021, 385–86).

D. CONCLUSION

From the explanation previously stated regarding the istishna contract and the potential for digitizing the contract during the covid-19 pandemic in Indonesia and the examples of actual cases above, the conclusion is the transaction activities using istishna contracts have good potential among the public, even though the pandemic conditions hinder them. However, overcoming the pandemic condition can be done by utilizing the digitalization system for buying and selling activities to run well and remain by Islamic law. It is because the istishna contract is in great demand by some people. Moreover, with the existence of digitalization in various kinds of transaction activities in Indonesia. During the COVID-19 pandemic, online sales activities that use the digitalization system are in great demand and needed by most people, especially in Indonesia. It is due to a large-scale social restriction policy that requires all community activities indoors.

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