

The Phenomenon Of Online Marriage During The Covid-19 pandemic, Is it lawful?

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ABSTRACT

The Covid-19 pandemic that has hit the world has created many problems. Starting from health issues, economic issues and including marital issues. Several weddings have been held online during this pandemic. With the development of time or the sophistication of technology, it has led people to get married through an online system either by conference call, video call, skype, etc. for which there are no rules, neither written nor unwritten rules, whether or not, marriage is legal through the online system. Therefore, this research is expected to provide the public with an insight into online marriage law. The aim is to find out how positive law and Islamic law are adapting to social conditions in today's modern age. This research uses normative legal research methods, namely research that establishes the law as a system of norms using secondary legal materials (Study Pustaka) or documents, through tracing, investigating, verifying secondary data such as statutes and others. The results of this study are intended to provide the public with a rationale for the need for rules for online marriage, whether legal or not.

Keywords: Online marriage, Covid-19

A. Introduction

Marriage is one of the dimensions of life that is very important in human life in every world. Once the importance of marriage, it is not surprising that the world religions regulate marriage issues, even the traditions or customs of the community and even state institutions are not lagging behind in regulating the marriage that prevails among men. In order to preserve and protect the family, and to increase family well-being and happiness, laws regulating marriage and the family were drawn up. Law No. 1 of 1974 on Marriage (UUP) is a law that has privileges, it regulates all members of the community who have reached adulthood who enter into marriages. The prevailing laws and regulations in Indonesia in this regard are the Law of the Republic of Indonesia No. 1 of 1974 on Marriage and the Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law, which states: "Marriage is an internal and a outward bond between a man and a woman, women as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty. Today's technological developments with the existence of conference calls, Skype, Zoom, video calls, etc. are causing problems that arise in connection with marriage. Speaking of getting married, nowadays many people use technology to celebrate a wedding namely through conference calls, video calls etc. The appearance of online marriages is part of the rapid technological advancement. These advances offer a person comfort in their individual relationship with others. Online marriage is a same-day marriage contract, but the guardian pronounces the

consent in one place and the husband announces the Kabul from another, far away place. In Indonesia there was a distance marriage contract, this marriage contract was practiced by the Mardiani couple with Aryo Sutarto, which took place on May 13, 1989, at that time when the wedding took place, the groom-to-be was in the United States while the bride-to-be was in Kebayoran New South Jakarta.¹ There are still many differing opinions as to the validity of the practice of this type of marriage, since in practice the bride and groom do not stand in a majlis and no one is in charge of the marriage contract.² Indeed, a statement can be made by hearing alone, but the level of confidence is not as strong as seeing with your own eyes. Ijab is pronounced by the guardian, Qabul is pronounced by the groom-to-be when consent and Qabul can be heard and seen by witnesses (especially) and persons present at the marriage ceremony have been deemed legitimate. This means that the marriage is considered valid. This is the opinion of fiqh scholars. However, they differ in their interpretation of the term "an assembly". Physically, it means that two people who have a contract must be in a space that is not delimited by a barrier. Another meaning is non-physical, so the ijab must be pronounced in a ceremony unconstrained by activities that remove the meaning of "a gathering." Consent must therefore be continuous and not interrupted by other activities unrelated to the marriage contract. Imam Shaf'i is more inclined to see it in the physical sense. Therefore, the guardian and the groom-to-be must be in one room so that they can see each other. This is intentional so that both parties (guardian and future husband) clearly hear and understand each other's approval and say it to Kabul.³ The practice of marriage contracts via telecommunications media is conceptually equated with a single marriage contract, because between male candidates and female guardians when announcing consent and Kabul, these can be answered directly, but as a result of the equality online marriage contracts with contracts in one Majlis are prone to fraud as the two parties are not opposed to each other. The author raises this issue because it affects the implementation and application of the UUUP in relation to marriage to the conditions of people currently living and growing in the era of advancement in information and communication technology, which requires that the community the growth follows from the times to solve the obstacles as in the reality of the implementation of the contract. get married online.

Umbrella Law, regulations that firmly and straightforwardly regulate marriage in Indonesia, viz. (1). Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019 (hereinafter referred to as the Marriage Law); (2). Government Decree No. 9 of 1975 Implementing the Marriage Act.

¹ Sadiani, *Nikah Via Telepon, Menggagas Pembahasan Hukum Perkawinan di Indoneisa*, Palangkaraya, Intimedia dan STAIN, 2008, hal. 3. (Skripsi Akad Nikah Melalui Video Call Dalam Tinjauan Undang-Undang Perkawinan dan Hukum Islam di Indonesia, Oleh: Mufliha Burhanuddin , Fakultas Syariah dan Hukum UIN Alauddin Makassar)

² Beni Ahmad Saebani. (2001). *Fiqh Munakahat*. Bandung: CV. Pustaka Setia, hal. 10

³ *Ibid*

The author tries to summarize the legal requirements for marriage under the Marriage Act, especially for those who are old enough as regulated in the Marriage Act (if a man and a woman have reached the age of 19 - read Article 7 paragraph (1) of the Marriage Act 2019, namely:⁴

1. It is obligatory for a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the One Deity (legal basis: Article 1 of the Marriage Law). If you want to marry the same sex, it is not possible in the unitary state of the Republic of Indonesia.
2. 2. carried out in accordance with the laws of the respective religion and belief [legal basis: Section 2(1) of the Marriage Act] and registered in accordance with the applicable laws and regulations (legal basis: Section 2(2) of the Marriage Act). A short interpretation, so if you are still confused about dating between different religions but dreaming of getting married, then make the right decision, move or find something else! And secondly, marriages must be recorded in such a way that, despite up to 1 billion receptions, they are not recorded by the population and registry office or by the Office for Muslim Religious Affairs. If not recorded, what are the consequences? They are considered never married until the apocalypse is so. If there is a man/woman who is inviting marriage but does not want to be accepted, then the right step is to find a new partner
3. The marriage takes place on the basis of the consent of the two prospective brides (legal basis: § 6 Para. 1 EheG). This short interpretation means that there should be no trickery, hypnosis, pellets in famous shamans, let alone - forbidden.

A marriage contract when it has fully complied with all the pillars and conditions according to what has been established, such as under Islamic law or legislation, then such a marriage contract is said to be a valid marriage contract and has legal implications.⁵ In addition, there is an agreement that marriage is considered a contract. The contract (contract) in the content of Act No. 1/1974 and KHI is actually the meaning prescribed by law. It is often said that marriage is "a marriage in Islam is a purely civil contract" (marriage is a mere agreement). Meaning that the point of interest or urgency of a marriage is a contract or agreement.⁶ Based on the above framework, scholars agree that a marriage can be validated if it is entered into with a contract, consent and qabul between a

⁴ Disadur dari website *kumparan.com./risky-karo-karo/nikah dengan cara online sah atau tidak*

⁵ Abd. Shomad, *Hukum Islam: Penormaan Prinsip Syariah Dalam Hukum Indonesia* (Jakarta: Kencana, 2010), hal. 280. Implikasi hukum yang muncul diantaranya adalah: 1). Kehalalan hubungan biologis antara suami isteri. 2). Tetapnya hak mahar bagi isteri menurut prosedur yang telah ditetapkan. 3). Timbulnya hak dan juga kewajiban yang berlaku bagi kedua belah pihak. 4). Tetapnya garis nasab anak yang terlahir dari pasangan suami isteri. 5). Garis batas kebebasan isteri. 6). Timbulnya larangan nikah bagi isteri yang terjerat tali pernikahan atau sebelum mempunyai iddah setelah bercerai atau ditinggal mati sang suami,dll.

⁶ Amir Nuruddin, Azhari Akmal Tarigan, *Hukum Perdata Islam Di Indonesia (Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No. 1/1974 Sampai KHI)* (Jakarta: Kencana Prenada Media Group, 2004), hal. 47.

woman who is proposing and the man who is proposing to her makes, or between parties replacing them, includes B. an agent or legal guardian, and shall be deemed void where only eyes are based on mutual consent without a contract.⁷ Thus it can be understood that Ishaab and Qabul are land which are unnamed agreements appearing as a form of developing agreements in society. A fundamental element and integral part of the validity of a marriage contract.⁸ For with ishab and qabul it means that someone says ishab and someone says qabul, and the existence of the two linked and related requires an object where the implications of the bond arise.⁹ If a marriage contract lacks one or more pillars and conditions, the marriage is considered invalid. The invalidity of a marriage contract can occur due to failure to fulfill one of the pillars, which is classified as a void marriage contract (neiting), it can also occur due to failure to fulfill one of the requirements, namely classified as a fasid marriage contract (verniettigbaar).

B. Focus Of Problem

This research would certainly like to contribute ideas on social issues occurring in society related to online marriage. Of course, during a pandemic like this and the many social restrictions being imposed by the government, various types of community activities are somewhat curtailed, one of which is marriage. Weddings during the pandemic cannot be carried out as usual. If business continues as usual, there will be a rush that is said to be able to increase the number of Covid-19 victims. This is certainly not what the government and the people of Indonesia want. Therefore, there are some people who are getting married online.

Online marriages can be done with the development of technology such as conference calls, Skype, Zoom, video calls, etc. With the online marriage event creating a new legal dynamic, the community needs a little enlightenment on this, particularly those experiencing or performing online marriages during this pandemic. So in this case the servant makes a problem statement consisting of:

1. What is the legal basis for online marriage?
2. What is the legality/legitimacy of online marriage?

⁷ Muhammad Jawad Mughniyah, *Fiqih lima mazhab: Ja'fari, Hanafi, Maliki, Syafi'I, Hambali*, penerjemah, Masykur A.B, Afif Muhammad, dkk (Jakarta: Lentera, 2010), hal. 309.

⁸ Wahbah Az-Zuhaili, *Fiqih Islam Wa Adilatuhu*, Terjm. Abdul Hayyie al-Kattani, dkk (Jakarta: Gema Insani, 2011), hal. 45. Para ulama bersepakat bahwa ijab dan qabul adalah rukun, karena dengan keduanya salah satu dari kedua mempelai mengikat diri dengan yang lain, sedangkan keridhaan adalah syarat.

⁹ Abdul Karim Zaidan, *Pengantar Studi Syari'at, judul asli Al-Madkhal li DirasatisySyari'atil-Islamiyyati*, penj. M. Misbah, Jakarta: Robbani Press, hal. 2

C. Research Methodology

The type of research chosen is the use of normative legal research, it is a research that considers law as a system of norms. Normative legal research or study can be provided with new knowledge both in the form of conceptual knowledge and knowledge of legal theory.

Peter Mahmud Marzuki explains about normative legal research: “Normative legal research is a process to find a rule of law, legal principles and legal doctrines in order to answer legal problems faced with them. This normative legal research is conducted in order to produce arguments, theories or new concepts as prescriptions to solve pending problems, as well as to explain the difficult-to-understand parts of a legal norm and also to include predictions about the development of a particular law in the future.

The data gathering method used in this research is through the use of library or document studies, namely by tracing, investigating, checking secondary data such as laws and others. In addition, data is collected in this way as material for this legal research, using data and data sources that can be trusted. This data collection is carried out by means of literature research of legal primary and secondary materials, by researching and collecting legal regulations and legal opinions from books, research results, legal documents, internet media, scientific journals.

The data source in this study uses secondary data, namely data obtained indirectly from the source by being obtained from a literature review related to the subject of research referred to.

The method of data analysis in the drafting of this law is library research, it is a research conducted by collecting data and other information using various sources such as books, magazines and others.

D. Finding And Discussion

Marriage over the internet, namely via phone conferencing applications, video calls, zoom, skype etc. already exists and some people do, but there is no formal law governing whether marriage is legal or not through filing. The legitimacy of online marriage can be legally accepted as long as it conforms to the requirements and pillars of marriage in general. Prenuptial agreements concluded online have a great impact on the legal consequences and are very interesting to study as they are new things that have emerged along with technological advances in the community. For this reason, it is necessary to know marriage over the internet so that the reader is not misunderstood about marriage over the internet. Article 27 of the Compilation of Islamic Law (KHI) states: Ijab and Qabul between the guardian and the future groom must be clear, consecutive and not elapsed in time. Online marriage where the groom is in one place while the wife's guardian

is in another place, both parties pronounce the consent and the qabul in different places and not in one assembly, there are several madzhab scholars, who interpret the union of marriage differently. Marriage contract assembly, which means literally: physical (place) or the meaning of the contract itself (continuation of Ijab and Kabul). The madzhab of Hanafi and Syafi'I defined that the Majlis contract contains two important elements that cannot be separated, namely the element of place and the element of the contract itself. Both parties to the contract must be in one place. Likewise, the contract between the two must be made, not broken or severed. The madzhab of Hanafi defines the unification of contract assembly in the contract elements themselves. This means that there must be continuity between Ijab and Kabul even if the two parties are not in the same room. It is the continuity between Iyab and Kabul that is more in line with the convenience and goals of Sharia. The continuity in question is that there are no other words or actions that limit it. The Malikiyah Madhhab in Ijab and Kabul speaks more about the continuity of the marriage contract and does not comment on whether the union of the marriage contract involves the physical or the marriage contract at once, or the physical or just the contract. But what is clear, agreement and Kabul should not take too long while it is still being done. According to the Syafiiyyah, which states that a majlis should gather at a specific place and time, a marriage can be valid if all parties involved in the procession of the marriage contract are required to physically gather in a gathering. The problem that arises is that between the husband-to-be and the wife-to-be's guardian are not in one place, then they conduct their marriage ceremony online.¹⁰ The problem now is what the law of online marriage is because there are no clear rules as to whether marriage over the internet is legal or not, and according to the author, online marriages are vulnerable to fraud because of the future groom not in marriage is same time and place of marriage.

There are several requirements that must be met for the validity of a contract in marriage. Wahbah Az-Zuhaili in his book *Islamic Fiqh WaAdillatuhu* explains that according to the agreement of the scholars, in the shigat contract (ijab and qabul) four things are required:¹¹

1. The suitability and accuracy of the ijab sentence with the qabul. This conformity can be realized by the compatibility of the consent and qabul in the place of the contract and the size of the dowry. If the consent and qabul are different, and the difference lies in the place of the contract, for example the woman's father says, "I married you to Khadijah," then the man replies, "I accept Fatimah's marriage," then the marriage is invalid. That's because the content of the qabul sentence is different from what is stated in the ijab sentence. If the difference lies in the size of the dowry, for example, the female guardian says, "I will marry

¹⁰ Irma Novayani. *Jurnal Pernikahan Melalui Video Comperence*

¹¹ Wahbah Az-Zuhaili, *Loc.Cit*

you to my daughter for a dowry of 1000 dirhams," then the man replies, "I accept the marriage with a dowry of 800 dirhams," then the marriage is invalid. The reason for the invalidity of the contract because there is a difference in the size of the dowry, even though the dowry is not a pillar of the contract is that in fact if the dowry is mentioned in the contract then it becomes part of the Ijab sentence.

2. The person who pronounces the sentence of consent may not take back his words. In the contract, it is required for the person who pronounces the sentence of consent not to take back his words before the other party pronounces the sentence qabul. If he retracts his words then his consent will be void. Thus, there are no sentences that match the qabul sentence. Because consent and qabul are one pillar. In other words, one of the two is only half of the harmony.
3. Completed at the time of the conclusion of the contract. In the four schools of law, it is not permissible to enter into a marriage contract for the future, for example by saying, "I will marry you tomorrow or the day after." It is also not permissible to provide a contract with terms that do not exist, such as "daughter when the sun has risen". Because the marriage contract contains a contract for the granting of property rights or assignment.¹² In addition, was It is explained in the KHI in Article 27, namely: "Ijab and Qabul between the guardian and the future groom must clearly follow one another and must not be in time lapse."¹³
4. Performed in a gathering (ittihad al-majlis). Performed in a meeting (ittihād al-majlis) when both parties are present. If the woman says, "I married you to myself," then the other party stands before saying the word Qabul, or engages in actions showing their turning away from the assembly, and after that just says: "I accept", then the contract is void.¹⁴ This shows that simply standing can transform montage. Likewise, if the first party leaves the assembly after speaking the consent phrase and the second party then utters the word qabul in the assembly when the first party is not present or upon their return, then this is also considered invalid¹⁵

Online marriage is a form of marriage in which the consent transaction is carried out through a state of connectivity or activities connected to a network or internet system (via online), so between the groom and the bride, the guardian and the witness do not meet each other and gather in one place, what exists and is displayed is only a form of visualization from both parties through

¹² Abu Zahrah, *Al-Ahwal Al-Syakhshiyah (Qahirah: Dar al-Fikr al-'Arabi*, 1957. Pernikahan itu disyaratkan harus langsung (berlakunya) sebab ia merupakan akad, sedangkan akad tidak terpisah oleh sebab-sebab yang ada padanya, sehingga tidak mungkin dikaitkan dengan masa yang akan datang

¹³ *Kompilasi Hukum Islam*, Pasal 27.

¹⁴ Muhammad Jawad Mughniyah, *Op.Cit.*

¹⁵ Wahbah Az-Zuhaili, *Op.Cit.*

the help of electronic devices such as teleconferences, webcams or others that are still related to the internet. Online marriage in a general sense, is a marriage in which communication is carried out with the help of computers in both places, each of which can be connected to a file server or network and use online media as a tool. Online media itself is a media based on telecommunications and multimedia (computers and internet), in which there are portals, websites (websites), radio-online, TV-online, online press, mail-online, and others, with their respective characteristics. -each according to the facilities that allow the user to use it, which of course is sourced from the cache server and internet network. Online marriage itself, when compared to ordinary marriage, from the explanation above, it can be concluded that there is no substantial difference in marriage rituals between online wedding rituals and usual wedding rituals. The thing that distinguishes online marriage from ordinary marriage is in the essence of *ittihād al-majelis* which is closely related to the place (to eat) in the implementation or execution of the contract, but the rest is all the same. If in a normal marriage between the men and women can meet, face to face and talk directly, as well as with online marriage. In the implementation or implementation of this online marriage using the power of technological developments to assist in the implementation of marriage in order to convey a picture of the condition of the individual who is conducting the interaction (teleconference) as it should be. Video teleconferencing technology is more advanced than telephone, because in addition to conveying voice, this technology can display images or images in real time via the internet network.[7] This online marriage itself can be facilitated by using a projector (shooting device) onto a large screen to display each party and the elements who want to hold the marriage contract. This is to prove and make everyone able to see the contract as it is to meet, meet, meet face-to-face and especially so that it is appropriate, and loudspeakers are also included so that everyone can hear clearly as desired in marriage in general. The main element that supports and strengthens the implementation of this contract is that it uses an internet base or server as its working tool, which is assisted by a webcam, ICT applications, such as office automated applications, electronic mail, SMS, forums, knowledge, websites, through communication facilities. telephone, internet and global internet and so on in terms of its application.

It can thus be stated that in this case there is a legal vacuum that applies in Indonesia today, be it in Islamic law or in positive law in Indonesia. Basically, when applying for marriage for online marriages, this is closely related to the validity of an online marriage contract, which the author described in the previous discussion on the legality of online marriages and using these descriptions for the discussion of applying for marriage online -Marriages have developed synergistically and become a complex discussion. Applying for marriage registration for those who get married online is closely related to other important events, in this case ordinary marriages, which are generally

valid in Indonesia, namely related to legality and administrative recognition by the state for those who get married through online media. Where in Law No. 1/1974 Article 2(2) states that every marriage shall be recorded in accordance with applicable laws and regulations,¹⁴ and Article 5(1) of the KHI states that in order to ensure an orderly marriage for the Islamic community, each Marriage is required to be recorded.

E. Conclusion

As a society based on religious values, it would be nice to be able to exercise a legal act, to know what is being done and to find the legal basis. Because new problems that arise in society are increasing, especially in connection with technological developments. For this reason, an in-depth examination of Islamic law is necessary so that it is in line with the applicable positive legal norms and can be understood more clearly and in the context of today's society.

F. Recommendation

Call on the government to immediately post online a fatwa on marriage law regarding whether it is legal or not. And that the public better be careful not to get married online before legal clarity is in place.

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