

TELECONFERENCE MARRIAGE CONTRACTS AND THE DEVELOPMENT OF INDONESIAN MARRIAGE LAW

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Abstract: In the current era of technology, it is possible to carry out a marriage contract with the help of technology that can facilitate the parties who will carry out the marriage contract. In the study of Islamic law, there is no definite law regarding this long-distance marriage. Because this is a case of *ijtihadiah* which is not mentioned in the texts of the Qur'an or Sunnah. In Indonesia, there is also no legal certainty regarding long-distance marriage contracts. This study uses library research method where literature is the main data source. This study aims to determine the views of an Islamic figure regarding the marriage contract carried out by teleconference, as well as to find out the prospects for this view in the development of Islamic family law in Indonesia. The results of this study indicate that the marriage contract through teleconferencing is factually not yet regulated in marriage law. However, according to Wahbah Az-Zuhaili's opinion, marriage via teleconference is a marriage that is allowed and can be considered valid. However, it is still necessary to regulate and amend the law regarding teleconferencing marriage contracts in order to protect the law, as well as to fulfill the legal aspect for the parties concerned.

Keywords: marriage contract, consent and acceptance, teleconference.

Abstrak: Pada era teknologi seperti saat ini, tidak menutup kemungkinan untuk melaksanakan akad nikah dengan bantuan teknologi yang dapat memudahkan pihak-pihak yang akan

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melangsungkan akad nikah. Dalam kajian hukum Islam tidak ditemukan secara pasti hukum tentang pernikahan jarak jauh ini. Karena hal ini merupakan kasus ijtihadiyah yang tidak disebutkan dalam nash alquran maupun sunnah. Di Indonesia sendiri juga belum ada kepastian hukum tentang akad nikah jarak jauh. Penelitian ini menggunakan metode library research dimana literatur menjadi sumber data utama. Penelitian ini bertujuan untuk mengetahui pandangan seorang tokoh Islam tentang akad nikah yang dilaksanakan melalui telekonferensi, serta untuk mengetahui prospek pandangan tersebut dalam perkembangan hukum keluarga Islam yang ada di Indonesia. Hasil penelitian ini menunjukkan bahwa akad nikah melalui telekonferensi walaupun secara faktual belum diatur dalam hukum pernikahan. Akan tetapi menurut pendapat Wahbah Az-Zuhaili, pernikahan melalui telekonferensi ini merupakan suatu pernikahan yang diperbolehkan dan dapat dianggap sah. Walaupun demikian, masih diperlukan adanya pengaturan maupun perubahan undang-undang mengenai akad nikah telekonferensi guna untuk perlindungan hukum dan sebagai aspek legalitas bagi para pihak yang bersangkutan.

Kata Kunci: akad nikah, ijab dan kabul, telekonferensi.

Introduction

Marriage is one of the sunnatullah and has become a natural law that cannot be avoided. Even the union of two creatures of the opposite sex is carried out not only by humans but also animals and plants.¹ One of the signs of Allah's power is to create everything in pairs, including humans. Allah created humans with male and female sexes. In accordance with the words of Allah SWT.

¹ As-Sayyid Sabiq, *Fiqh as-Sunnah* Juz 2, (Kairo: al-Fathu al-'lami al-Arabi), 5.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً
وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

"And among the signs of His power is that He created for you wives of your own kind, that you may tend to them and feel secure in them, and that He may establish between you love and affection. Indeed, in such things there are signs for the thinking people" (Q.S. Ar Ruum: 21).²

The purpose of Allah SWT to create creatures in pairs is so that the couple can complement and complement each other, love and care for each other. So as to create peace and tranquility in the human heart. Therefore, Allah SWT prescribed the union of two people of different sexes in a bond called marriage, which is a contract stipulated by shara' to allow and legalize the pleasure of a man with a woman.³ In Islamic law, marriage is regulated specifically and in detail in a branch of science called Munakahat Jurisprudence. This science discusses the laws of worship including the definition, legal basis, and procedures, which in this case involves marriage.

² Department o Religious Affair of Republic of Indonesia, *Alquran dan Terjemahan*, (Semarang: Toha Putra, 1989), 644.

³ Wahbah az-Zuhaili, *Al-Fiqhul Islami wa Adillatuh*, (Beirut, Dar al-Fikr, 1984), 29.

Marriage is also regulated in detail in civil and administrative law in each country. Indonesia as a State of law regulates marriage, constitutionally explained that the right of every person to marry must be based on a legal marriage. This is regulated in Article 28B paragraph 1 of the 1945 Constitution, which states that "*every person has the right to form a family and continue their descendants through a legal marriage.*" Furthermore, Article 28B paragraph 2 explains that what is meant by a legal marriage is a marriage in accordance with religious and State law.⁴

The Compilation of Islamic Law (KHI) clearly discusses the pillars of marriage as contained in Article 14, all of which follow the Shafi'i fiqh, namely that to carry out a marriage contract there must be: 1) prospective husband, 2) prospective wife, 3) marriage guardian, 4) two witnesses, and 5) Ijab and Kabul.⁵ In addition, KHI also emphasizes in the fifth section of the marriage contract in Article 27 which reads: "*Ijab and Kabul between the guardian and the bride-to-be must be clear, consecutive and not intermittent*".

⁴ Anwar Rachman, Prawitra Thalib dan Saepudin Muhtar, *Hukum Perkawinan Indonesia*, 87

⁵ *Kompilasi Hukum Islam*, (Permata Press), 5

Hence, it is not only in Islamic law that *Ittihadul majelis* is required for the bride and groom but also according to State law *Ittihadul majelis*. It is very necessary (if adjusted to the interpretation of some ulama' who interpret *Ittihadul majelis* as one time). However, the problem in this research is that there are many separate interpretations of *Ittihadul majelis* according to several scholars'.

As seen in the developments of technology in the field of telecommunications, it is also found in the implementation of increasingly innovative marriage contracts. A few years ago there was a horrendous event, namely the implementation of a marriage contract conducted by telephone. Then the status of the marriage was requested for legalization through the South Jakarta Religious Court.

Whereas, by the South Jakarta Religious Court, his legal status was confirmed by the issuance of Decision No. 1751/P/1989.⁶ Although the South Jakarta Religious Court legalized this practice, the decision was reportedly considered risky. The judge who heard the case was reprimanded by the Supreme Court for setting a bad precedent.

⁶ Satria Efendi M. Zein, *Problematika Hukum Keluarga Islam Kontemporer*, (Jakarta: Kencana, 2004), 2

In addition, another similar yet more updated event, namely the practice of marriage through video teleconference performed by Syarif Abdurrahman Acmad and his wife Dewi Tarumawati on December 4, 2006. They did the marriage because at that time the groom was in the city of Pittsburgh, United States. Meanwhile, the guardian and the bride were in Bandung, Indonesia. Both parties held their weddings using teleconference services using the Indosat network. Likewise, the teleconference marriage practiced by Sirojuddin Arif and Halimatus Sa'diyah on March 12, 2007, at that time the groom was at Oxford University in England, while the bride's guardian was in Cirebon, Indonesia at the time of the contract.⁷

Regarding the relationship between the marriage contract via video teleconference and Ittihadul majelis, basically the Ulama agree that the marriage contract is considered valid if it is carried out in one assembly, whether the guardian, the two witnesses, the prospective husband or his representative and can be involved in the implementation of the *ijab kabul*.⁸ If we look at the legal

⁷ Muhajir. Studi Analisis Putusan Pengadilan Agama Jakarta Selatan NO 1751/P/1989 on Marriage through Telephone. *Al-Qadha*. Vol. 5 (1). 2018. 10

⁸ Al-Maliki, M. A., & Jahar, A. S. (2020). Dinamika Hukum Akad Nikah Via Teleconference di Indonesia. *Jurnal Indo-Islamika*. Vol. 10(2), 142.

protection of the implementation of a teleconference marriage contract or the like, it requires a legal framework in proving its implementation so that it can still carry out a marriage contract in accordance with the valid requirements of marriage.

Thus, the problem should be solved based on the views of a contemporary Muslim figure and scholar, Wahbah Zuhaili. In his book, *Al Fiqhu Al Islam wa Adillatuhu*, Wahbah Zuhaili clearly writes his thoughts on family law. One of them is about the *ijab qobul* requirement that requires *ittihadul majelis*. Although he did not explicitly mention the law of marriage contracts through modern technological media such as teleconferencing.

Research Methods

The research deployed a qualitative approach. Researchers performed not only as data collectors in terms of quantity but researchers want to gain a deeper understanding of the prospects for Wahbah Zuhaili's views on marriage contracts through teleconferences in the development of Islamic family law in Indonesia.

Whereas, This study is a library research approach in which a series of activities related to library data collection methods, reading and recording and

processing research materials.⁹ So that books and literature related to marriage in Islam as well as other supporting materials, become the main reference in this research. The data analysis technique used in this research is descriptive method, which means that researchers will try to describe and interpret what exists, growing opinions, ongoing processes, consequences or effects that occur or trends that develop.¹⁰

Discussion

1. Utilization of Teleconferencing in Indonesia in the Conduct of Marriage Agreements

Teleconferencing, in telecommunications, is a live electronic-based meeting between two or more human or machine participants connected by a telecommunications system, usually a telephone line. Teleconferencing can take the form of audio conferencing or video conferencing. Audio-conferencing is a type of teleconferencing where one can have an interactive conversation within it. With audio-conferencing, one can talk to more than one

⁹ Mestika Zed, *Metode Penelitian Kepustakaan* (Jakarta: Yayasan Pustaka Obor Indonesia, 2014), 1.

¹⁰ Sumanto, *Teori dan Metode Penelitian*, CAPS (Yogyakarta: Center of Academic Publishing Service, 2014.), 179

person through speakers. In video conferencing, the participants can see each other's images (video) and hear each other, through their respective camera equipment, monitors, or speakers.

Currently, information and telecommunications technology in Indonesia is inseparable from everyday life and has become a necessity to fulfill and support various kinds of activities, both individuals and organizations.¹¹

With technology, everyone can access and obtain information quickly, without recognizing regional boundaries and time limits. This causes information to become something valuable and very much needed to make decisions, especially in business activities. Initially, information or data passed through information technology tools, the internet, was still limited to text characters represented through ASCII code and images consisting of images. Meanwhile, voice was initially passed through telephone cable networks or cellular signals.¹² This keeps the voice and character data separate.

¹¹ Tedja Purnama, *Teknologi Perkantoran*, (Jakarta: Karya Gemini Puteri Utama, 1989), 12.

¹² Tedja Purnama, *Teknologi Perkantoran*, 17-18

Hence, the concept emerged that images and sounds could be delivered to represent the source of the sound that could be seen remotely and was more dynamic and real time when used. This concept was the forerunner to the birth of video phone which became known in the community as teleconferencing. Teleconferencing is a service for voice communication where both parties can see each other's faces. Teleconferencing has started to attract customers in recent years. The development of this increasingly sophisticated communication technology makes long distances seem very close with devices that are also capable. Teleconferencing services can allow users to meet face-to-face and communicate through a computer screen or even through a cell phone screen.

Initially, teleconferencing took the physical form of a computer monitor integrated with a wired telephone, so that calls and long-distance communication would require a large number of devices that were inflexible. Along with the development of technology, especially internet technology, sound and image, which is called video, can be transmitted through the internet network, making it cheaper. This is the concept that the

internet can be used to communicate in two directions and present images and sound simultaneously. The devices required have also become more practical. Now, people just need to connect a computer that has video input facilities such as a webcam, monitor, audio input (microphone) and loudspeaker with an internet network or WAN to be able to communicate directly and in real time, and face to face even though it is far away.

Communication via teleconferencing built over the internet network utilizes the internet or IP. In addition, the components needed to build communication via teleconferencing consist of the internet and application layers as well as the user interface. At the application and user interface layers, there are cameras and microphones as image and sound input devices. These inputs will be transmitted over the internet network by previously encoding them into binary bits that can be passed on the network and regulated by the protocol standards used.

Communication through the internet certainly requires applications that can be a user interface with computers such as web browsers, or applications that

provide teleconferencing features, such as WhatsApp, Zoom, Messenger, and so on. These applications can be downloaded for free or paid on the internet and their use is currently very broad from personal to business interests.

With teleconferencing technology, people can communicate face-to-face. Nowadays, the use of teleconferencing is not only for personal use. Various things can be supported by teleconferencing as a very helpful means of real time communication. The existence of teleconferencing technology, such as the use between students or teachers, is used as a medium for discussing education, experimenting and exploring both at home and abroad without any restrictions on place and time.

a. Utilization of Teleconferencing in Marriage

Nowadays, humans are facilitated to communicate with others. The potential development of information and communication technology continues to change so that it is motivated to evaluate and study this technology as a provision for the progress of the times and as a means to facilitate interaction between people. The rapid advancement of

communication technology can facilitate communication between one place and another.

Especially after the existence of teleconferencing services that have been enjoyed through various applications that are already available. The existence of this face-to-face communication service is welcomed positively by the wider community. Teleconferencing services are considered to have many benefits for the community in communicating. In Indonesia, teleconferencing services are provided by various mobile phone operators. Teleconferencing services can be used for marriage contracts, an event that has occurred within the community. The process of marriage contract using teleconferencing media will be more efficient and faster and its accuracy is not in doubt.

The use of teleconferencing in marriage contracts is very easy and the sound and picture quality is very clear. A teleconference marriage ceremony is a more economical global and local communication through voice or video

conferencing.¹³ The utilization of teleconference marriage contracts is very beneficial because people who perform marriages no longer have to spend their energy, time and money, because the marriage contract process can be carried out in their own homes, making it more effective and efficient.

The procedure for conducting a marriage contract using teleconference is a statement or *sughat* uttered by the female party which is then uttered by the male party to express his pleasure and agree to the continuation of the marriage. This marriage contract is carried out through teleconference (a meeting conducted by two or more people through a network connection using voice (audio conference) or using audio-video (video conference) which allows conference participants to see and hear what is being discussed, as in a normal meeting).

The marriage ceremony via teleconference has actually long been a matter of serious

¹³ Eka Risyana Pribadi, *Keuntungan dan Kerugian dalam Penggunaan Teknologi Informasi dan Komunikasi*, dalam <http://risyana.wordpress.com/2009/04/13/keuntungan-dan-kerugian-dalam-penggunaan-teknologi-informasi-dan-komunikasi-tik/>, accessed on December 26, 2015.

discussion, some say it is permissible, some say it is not permissible (invalid marriage). Teleconference marriage contracts in practice are rarely carried out, although there are also those who carry out such marriages, this is solely due to circumstances that are forced to be carried out in this way. Although the law does not prohibit teleconference marriage contracts, the reasons for conducting teleconference marriage contracts include;

- 1) The potential development of information and communication technology that continues to change so that it is motivated to evaluate and study this technology as a provision for the progress of the times and as a means to facilitate interaction between people. The rapid advancement of communication technology can facilitate communication between one place and another. So that people who do marriage no longer have to spend their energy, time and property, because the marriage contract procession can be carried out in their own home / residence so that it is more efficient.

- 2) Teleconferencing is a more economical global and local communication through voice or video conferencing. The marriage contract process with this media will be more efficient and faster and its accuracy is not in doubt, the use of this teleconference application is very easy and with better sound quality.
 - 3) A marriage ceremony conducted using this medium can be exactly the same as one conducted face to face.
- Teleconference marriage is carried out due to the groom and bride's long-distance whereabouts, with various condition

In terms of the sociology of law, there are many factors that cause the practice of teleconference marriage to occur. As in the case of the Ario-Nurdiana marriage couple, they were forced to hold their wedding via teleconference because of economic factors, more precisely the groom did not have enough money to buy a ticket from the United States to Indonesia.

There are other factors, such as technological advances that make everything

fast and affordable. So without us realizing it, marriage in this way has a positive side for people who are constrained by their circumstances. Talking about the sociological aspect as well, considering that such practices have not received special regulations that regulate them, an in-depth study is needed as well as the wisdom of the perpetrators of this legal action so that they continue to carry out in accordance with the values contained in the Compilation of Islamic Law, especially in the Marriage section.

2. Comparison of Wahbah Zuhaili's Views in the Context of Teleconference Marriage Agreements with the Views of Other Scholars

general, if it is related to the discourse on marriage by teleconference, Wahbah Az-Zuhaili¹⁴ explains in the book *Fiqh Islam Wa-Adillatuhu*¹⁵ that the majority of major scholars agree that the

¹⁴Wahbah az-Zuhaili was born in Dair 'Athiyah, Damascus in 1932. Since 1956, he has completed his studies in Al-Azhar University, Faculty of Islamic Law (Shari'a). He obtained his postgraduate degree in 1959 majoring Islamic Law (Shari'a) Al-Azhar University, Cairo. He got his doctorate degree in 1959 majoring Islamic bidah Law (Shari'a) in the same university. Then, in 1963, he taught in University of Damaskus where studied fiqh and ushul fiqh.

¹⁵ See Wahbah Az-Zuhaili, *Fiqh Islam Wa Adilatuhu*, Translated by Abdul Hayyie al-Kattani, dkk, (Jakarta: Gema Insani, 2011). 117

shigat of the contract¹⁶ (ijab and qabul) has four requirements:

- a. The suitability and accuracy of the ijab and qabul sentences. This suitability can be achieved if there is agreement between the ijab and qabul at the place of the contract and the size of the dowry. If the ijab and qabul are not the same, and it is at the place of the contract, for example, the woman's father says: "I give you in marriage to Khadijah," and the man says: "I accept the marriage of Fatimah," then the marriage is not valid. That is because the content of the qabul is different from what is mentioned in the ijab.
- b. The one who says the ijab must not take it back. In a contract, it is stipulated that the person who says the ijab must not withdraw his words before the other party says the qabul. If he retracts his words, his ijab will be invalidated.
- c. Completed at the time of the marriage contract. In general, according to the four

¹⁶ Sighat akad is a sharia component in a marriage relying on two agents on tie-the-knot. It shows both's intention about the occasion of "tie the knot" perceived through speech, actions, and written proposition. Sighat also popular as ijab and qabul.

madhhabs of fiqh, it is not permissible to do a marriage contract for a future marriage, for example by saying "I will marry you tomorrow, or the day after tomorrow".

- d. Conducted in one assembly (ittihād al-majlis). It is done in one gathering (ittihād al-majlis) if both parties are present. If the woman says: "I give you in marriage to myself", and then the other party stands up before saying the qabul, or is preoccupied with something that indicates turning away from the table, and then says: "I accept", then the contract is not valid.

Marriage in Wahbah Az-Zuhaili's view is a civilization contract in which there is no formalization. As for the contract itself as a binding part of behavior, namely ijab and qabul. The meaning of the contract here is sure of its maṣḥdar meaning, al-irtibāth (attachment). And Shari'ah rules that Ijab and Qabul are outward, and give each other a legal bond. Both ijab and qabul are often verbal, and sometimes written or signaled.

Regarding the legal validity of marriage by teleconference if it is related to Wahbah Az-

Zuhaili's view, it is absolutely related to the pillars and conditions of marriage, and is closely related to the substance of *ittihād al-majelis* (one assembly) in the requirements of the marriage contract. Of course, it is very complex because there are many different perspectives from the scholars of the *madhhab* regarding this matter. Some interpret the substance of *ittihād al-majelis* as involving the necessity of continuity of time (era) between *Ijab* and *Kabul*, rather than unity of place (meal).

Hence, Wahbah Az-Zuhaili's view must be understood that marriage through teleconference is related to the interpretation of *ittihād al-majelis*. That way, we can explore the law and determine the law correctly. In order to avoid the possibility of determining the law unobjectively. Because the problem is indeed very complex.

Referring to Wahbah Az-Zuhaili's opinion above, then, marriage by teleconference is a marriage in which the *ijab kabul* transaction is carried out through the existence of a connection or activity connected in an internet network. Between the groom and the bride, the guardian

and the witness do not meet each other and gather in one place.

They are indicated in the form of visualizations of both parties through electronic means in the form of teleconferencing with webcams or others connected to the internet. In other words, teleconference marriage 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 uses online media as a tool. Online media itself is a media based on telecommunications and multimedia (computers and the internet).

Teleconference marriage itself when compared to conventional marriage, based on Wahbah Az-Zuhaili's explanation above, it can be concluded that there is no substantial difference between the ritual of marriage via teleconference and the ritual of conventional marriage. The difference lies in the essence of ittihād al-majelis which is closely related to the place in the implementation or execution of the contract, but the rest is all the same. If in conventional marriage the man and woman can meet, meet face-to-face

and talk directly, so is the case with teleconference marriage.

According to the Shaafa'is and Hanbalis, the marriage contract is restricted in its validity if the two contracting parties are not present in the same room, then the contract is done in writing or by treatise. However, if both parties are present then there is no need for writing because the contractor is able to speak, so the contract is not valid in any other way.

When viewed from the previous statement, a marriage that is not carried out in one assembly, in this case using teleconference media in conducting a marriage contract and reciting the contract by speaking between the two parties to the contract, then it can be considered valid. Thus, the definition of one contract assembly according to Wahbah Zuhaili is a situation where the two parties to the contract conduct a negotiation process in forming a contract. It can be seen in the quotation of the verse in Wahbah Az-Zuhaili's Book entitled *Fiqh Islam Volume 4* below:

التعاقد بالهاتف والمراسلة :

ليس المراد من اتحاد المجلس كون المتعاقدين في مكان واحد؛ لأنه قد يكون مكان أحدهما غير مكان الآخر، إذا وجد بينها واسطة اتصال؛ كالتعاقد بالهاتف، أو المراسلة. وإنما المراد باتحاد المجلس اتحاد الزمن أو الوقت الذي يكون المتعاقدان مشتغلين فيه بالتعاقد. فجلس العقد: هو الحال التي يكون فيها المتعاقدان مقبلين على التفاوض في العقد⁽¹⁾ وعن هذا قال الفقهاء: «إن المجلس يجمع المترقات»⁽²⁾.

وعلى هذا يكون مجلس العقد في المكالمات الهاتفية: هو زمن الاتصال ما دام الكلام في شأن العقد، فإن انتقل المتحدثان إلى حديث آخر انتهى المجلس.

ومجلس التعاقد بإرسال رسول، أو بتوجيه خطاب هو مجلس تبليغ الرسالة، أو وصول الخطاب، كما بينا سابقاً؛ لأن الرسول سفير ومعبر عن كلام المرسل، فكأنه حضر بنفسه وخطوب بالإيجاب فقبل، فينعقد العقد. وفي مكاتبه الغائب بخطاب يجعله كأنه حضر بنفسه، وخطوب بالإيجاب، فقبل في المجلس. فإن تأخر القبول إلى مجلس ثان لم ينعقد العقد. وبه يتبين أن مجلس التعاقد بين حاضرين: هو محل صدور الإيجاب، ومجلس التعاقد بين غائبين: هو محل وصول الكتاب أو تبليغ الرسالة، أو المحادثة الهاتفية.

لكن للمرسل أو للكاتب أن يرجع عن إيجابه أمام شهود بشرط أن يكون قبل قبول الآخر ووصول الرسالة أو الخطاب. ويرى جمهور المالكية أنه ليس للموجب الرجوع قبل أن يترك فرصة للقابل يقرر العرف مداها، كما سنبين.

The text also states that in conducting a teleconference marriage contract or other modern means such as sending a letter by telegram, telefax or the like is an assembly, where the message reaches the medium used as a messenger or spokesperson for the sender. It can be described as if the parties are directly present and directed to say qabul in the assembly. However, it is important that the qabul should not be delayed

until the next session. If this happens, the contract will be invalid.

The implementation of teleconference marriage uses the power of technology that facilitates the organization of the wedding so that it can convey images in the situation of individuals who are carrying out the interaction (teleconference) as it should. Video teleconferencing technology is more sophisticated than telephones, because in addition to conveying sound, it can convey moving images or realtime images through the internet network.

A teleconference marriage can use a projector onto a large screen in order to show each party and other elements that wish to conduct the marriage contract. This is for the sake of proof so that everyone can see the contract as if they were meeting, seeing, and meeting face to face in person and especially so that it is as it should be.

Based on the explanation above, it can be concluded that there is a difference in the essence of ittihād al-majelis in terms of carrying out the contract. In conventional marriage, it is done by muwājahah bil ma'rūf (face-to-face) in one place. However, for teleconference marriage,

muwājahah bil ma'rūf is equally carried out, but not with the place, where, teleconference marriage is carried out with a distance between those who hold the contract.

According to Wahbah Az-Zuhaili's explanation above, it can be determined that a person can carry out a teleconference marriage contract, based on the following criteria:

- a. The man and woman performing the marriage contract must be separated by a great distance.
- b. The man and woman doing the marriage contract are unable to attend because of distance or other circumstances that make it impossible for the two parties to come together to do the marriage contract properly.

By determining these two criteria, it can be ascertained that those who organize teleconference marriages are indeed people who cannot carry out the contract properly. So that teleconference marriage is worth organizing as an alternative or a bright way because it cannot hold a marriage contract for reasons of distance and time.

In addition, this teleconference marriage from Wahbah Az-Zuhaili's perspective, when viewed from the *maṣhlāhah*, then, both parties if organizing a marriage can bring benefits to them, namely, avoiding adultery which is prohibited by Islam. Meanwhile, if they do not carry out marriage, they will fall into actions that their families do not want.

Understanding *ittihād al-majelis* is at the level of a period of time (*zaman*), not a period of place (*makan*), because the context of the contract is contiguous between *ijab* and *qabul*. Likewise, if we examine and analyze the practice of teleconference marriage so far, then the person on the other side is a person who is known and indeed the person he is going to marry. In addition, in the context of teleconference marriage, the parties can directly see the physical form on a glass screen or wide projector or webcam. This can be said to be more convincing than just listening to his voice without seeing his form.

Referring to this pattern of thought, then, the author concludes that marriage by teleconference is permissible and can be carried out for those who are constrained by distance and time in terms of

marriage contracts. And of course this can only be done if it is due to a long distance that cannot be reached by a trip. And the unreachable distance is the distance of a year's journey of a camel. It can also be associated with rukṣāh (leniency), against travelers' trips, where when a traveler travels a long distance, then there Allah provides relief in terms of worship, then if the traveler stays in a place for a long period of time then the traveler does not know and has not determined whether to stay there to stay or just a few days, then there Allah SWT also provides relief in terms of worship.

Likewise, the author analogizes or makes an analogy to teleconference marriage, it should be considered a relief (rukṣāh) and is considered valid based on shar'i reasons. In the context of teleconference marriage, according to the author, it can be analogized as a representative of the progress of the times, and the progress of the times includes the development of civilization and science, and science in its implementation, namely technology, which is applied and becomes a habit. Based on the above explanation, it can be understood that teleconference marriage is legal. We can consider this teleconference marriage as a

representative of technological progress and scientific development.

Understanding this context, the requirement of unity of place (*ittihad al-majelis*) according to them is essentially a matter of continuity between *ijab* and *qabul*. To maintain that unity, it is then required to unite the assembly in carrying out the contract. And if the requirement of unity of assembly is intended only for continuity of time, then unity of place is not the only way to realize continuity of time.

Thus, through the application of teleconference marriage where the parties can carry out the contract by both seeing, then both hearing through the teleconferencing media or projector, and through the media speaker (microphone), then the contract can occur as it should and as desired, Because teleconference marriage can fulfill the pillars and conditions of marriage as the essence of their interpretation of the marriage contract, especially *ittihad al-majelis* (united *majelis*) where the teleconferenced media is the difference, even though they are separated by distance, the most important thing is that there is no separation of time and the pronunciation of

ijab and qabul, and the witnesses can see and hear and recognize the truth of the contract.

3. Implementation of Teleconference Marriage Agreements Against the Development of Family Law in Indonesia

The development of Islamic family law can be interpreted as efforts and actions through a certain process with full seriousness carried out by those who have the competence and authority in the development of Islamic family law in ways that have been determined based on the rules of legal *istimbat* correct so as to make Islamic family law can appear more actual, not outdated.¹⁷

Some factors to be considered for the development of Islamic family law include:

- a. To fill the legal vacuum because the existing norms in the Fiqh book do not regulate it, while the community's need for law on the newly occurring problem is very urgent to be applied.
- b. The influence of globalization and science and technology so that there needs to be

¹⁷ Abdul Manan, *Reformasi Hukum Islam Di Indonesia*, (Jakarta: PT Rajagrafindo Persada, 2006), 152-153.

legal rules governing it, especially issues that have no legal rules.

- c. The influence of reforms in various fields that provide opportunities for Islamic law to be used as reference material in making national laws.
- d. The influence of the renewal of Islamic family law thought carried out by mujtahids both nationally and internationally.

In relation to the previous description, there have been dynamics in the provisions of the marriage contract via teleconference with several cases and the views of scholars, scholars and religious organizations in Indonesia. Where, the Ulama differ in formulating the pillars and conditions of marriage. but they agree that the core of the marriage contract procession is at the time of the *ijab* and *kabul* pledge. At that sacred moment there is a voluntary transfer of rights between the guardian (according to the *Shāfi'i madhhab*) and the groom. According to the author, the teleconference marriage contract is considered to have fulfilled the pillars and conditions of marriage under Islamic law.

In Islamic law, benefit has its own space in the process of formulating Islamic law. Beneficence in Islamic law is called *maṣlaḥah*. The dimension of legal certainty is the most profound dimension of benefit. In Islam, legal certainty is in positive law, this legal certainty can be manifested in the applicable laws and regulations resulting from the agreement of the DPR as the legislative body with the President as the executive.¹⁸

In addition, several Presidential and Regional Head Regulations are also manifestations of the legal certainty dimension. In addition, the jurisprudence of judges as the judiciary is also a manifestation of the dimension of legal certainty. The dimension of legal certainty (juridical) in Islam is what has been used by the scholars as a guide in *ijtihad*, namely the two main sources, such as the Qur'an and Sunnah and *Ijtihad* itself, with which the Ulama can formulate laws on events where no legal rules are found.

The problem is that the procedure for marriage contracts through teleconferencing has

¹⁸ Al-Maliki, Muhammad Alwi, and Asep Saepudin Jahar. "Dinamika Hukum Akad Nikah Via Teleconference di Indonesia." *Jurnal Indo-Islamika* 10.2 (2020), 147

not been regulated by law, so it is left entirely to those who carry out the marriage. It is only for some people that the provisions of one assembly and continuous time can raise doubts about the validity of a marriage contract conducted via teleconference. The relationship between continuity of time and one assembly is very close, so there are two major groups of fiqh that interpret the meaning of this relationship:

- a. The first fiqh group, put forward by Shafi'i, interprets the connection between continuity of time and unity of assembly. According to this first group, the continuity of time means that the Ijab and Kabul are still intertwined and there is no distance separating them, therefore it is necessary to be witnessed directly by witnesses because their job is to confirm the validity of the Ijab and Kabul. It is clear that with the continuity of time between the Ijab and Kabul, the unity of the assembly is required.
- b. The second group of fuqaha', represented by Hanafi, Hambali and Maliki, interprets this continuity of time to mean that the ijab qabul is broken by a momentary break, such as a

sermon between the ijab and kabul. So in this case, the parties involved must be in the same room, which is not a requirement of marriage.

Thus, determining the ruling on marriage contracts through teleconferencing will give rise to two legal opinions, namely:

- a. The marriage contract through teleconferencing is valid if it is because the marriage contract in the marriage in question fulfills the pillars and conditions of a valid marriage which explain the ijab and kabul that are not done in one assembly or non-physically according to Hambali.
- b. The teleconference marriage contract is invalid, based on the Shafi'i view of the contract, because it requires the bride and groom to be physically present and the witnesses to witness the marriage in person.

In fact, in the case of teleconference marriages, in the author's opinion, everything has been done in the manner of a normal marriage, namely:

- a. Prior notification of the will has been made to the registrar in accordance with the

provisions of Article 33 of Government Regulation No. 9/1975. 9/1975.

- b. The conditions in accordance with Articles 6 and 7 of Law No. 1/1974 jo. 1/1974 jo, PP NO. 9/1975 and there are no impediments to their marriage.
- c. Everything was done with the intention of ittihad baik (good intentions), and there was no intention to circumvent the provisions of the marriage law that applied to the parties by choosing to use a marriage law that did not apply to them or the parties. All actions with the intention of good ittihad can be seen from the fulfillment of everything required by the applicable regulations.

Although teleconference marriages in Indonesia have not yet been explicitly regulated, Article 10 paragraph 3 of Government Regulation No. 9 of 1975 on the implementation of Law No. 1 of 1974 on marriage¹⁹, still has the potential to be interpreted in different ways, such as if it is

¹⁹ Article 10 verse 3 The regulation of the Government of the Republic of Indonesia No 9, 1975 on Regulation Implementation No. 1, 1974 as reading: Through the control over marriage procedure complying each religious laws and beliefs, the marriage is carried out in the presence of a registrar with two witnesses.

performed in the presence of two people or two groups of witnesses but separately, in the sense that one group attends the *ijab* only and the other attends the *kabul* only.

The prospect of marriage contracts through teleconferencing, although factually not yet regulated in marriage law, but in response to changes and developments in technological progress, the government needs to immediately provide a legal solution through the revision of the old Marriage Law. Because the application of teleconference marriage is more acceptable and accurate than marriage via telephone media. We can compare it to the Decision of the South Jakarta Religious Court No. 1751/P/1989 concerning the Ratification of the Practice of marriage contract through the telephone media. If the panel of judges has determined that marriage via telephone media alone is considered valid, then that is the determination that we should hold regarding teleconference marriage.

Marriage in Indonesia can be referred to and bound by the regulations written in Law No. 1/1974, or also KHI [Compilation of Islamic Law]. It can be seen that Law No. 1/1974 and KHI only

explain marriage in general, not even mentioning the issue of teleconference marriage. However, if we can look closely at the wording of the article, there are words that we can interpret regarding this teleconference marriage, that the article states one of the purposes of marriage as a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy family (household), and aims to obey Allah's commands, which means that marriage is basically the meeting of a woman with a man whose purpose is based on forming a happy family, whether the context is through any marriage, the important thing is that it aims for a happy and eternal marriage based on the Almighty God.

Furthermore, if it is related to teleconference marriage, it means that it is also included in the category of marriage recognized by the State as long as it aims to obey Allah's commands and form a happy and eternal family based on God Almighty. Thus, if we reflect on the explanation above, we can understand that in this case teleconference marriage can be accepted as valid both in Islam and applicable legislation.

Marriage administration in this case marriage registration is also applied to teleconference marriage. This is because it is in accordance with the basic will as stated in KHI Article 5 and Article 6.

Article 5

- 1) In order to ensure the orderliness of marriage for the Muslim community, every marriage must be recorded.
- 2) The recording referred to in paragraph (1) shall be carried out by a Marriage Registration Officer as provided for in Law No. 22 of 1946 in conjunction with Law No. 32 of 1954.

Article 6

- 1) To fulfill the provisions of article 5, every marriage must be solemnized in the presence and under the supervision of a Marriage Registration Officer.
- 2) Marriages performed outside the supervision of a Marriage Registration Officer have no legal force.

With regard to the provisions for the implementation of teleconference marriage itself, especially for those who are separated by distance, who then carry out the marriage contract online, they can refer to Law No. 1/1974 Articles 17 and 56 concerning marriage outside Indonesia.

Article 17

A marriage prevention application is filed with the Court in the jurisdiction where the

marriage is to take place, notifying the marriage registrar.

Article 56

A marriage solemnized outside Indonesia between two Indonesian citizens or an Indonesian citizen and a foreign citizen is valid if it is conducted in accordance with the laws of the country where the marriage is solemnized and for Indonesian citizens does not violate the provisions of this Law.

Understanding the sound of this article can also be understood and related to teleconference marriage, where teleconference marriage can also be notified to the relevant agencies in the jurisdiction where the marriage will take place by notifying the marriage registration officer.

One noteworthy conclusion from the Compilation of Islamic Law is that registration is not part of the conditions for the validity of marriage. This can be seen from Article 5 paragraph (1) of the Compilation of Islamic Law, namely: "In order to ensure the orderliness of marriage for the Muslim community, every marriage must be recorded".²⁰

Although the clause "marriage must be recorded", it does not follow the clause on the

²⁰ Zainuddin Ali, *Hukum Perdata Islam*, 27.

validity of marriage, but is associated with another function, namely to ensure the orderliness of marriage for the Islamic community. This is also the case with the provision in Article 7 paragraph 1 of the Compilation of Islamic Law. This article emphasizes that marriage can only be proven by a marriage certificate made by a Marriage Registration Officer.

Even this cannot be related to the validity or invalidity of marriage according to Islamic law, because this marriage registration is related to civil law. In Islamic law there is also no prohibition on the implementation of online marriage contracts, so if it is related to the existing mazhab and as long as the marriage fulfills the conditions of marriage in accordance with those listed in the KHI, the practice can be considered valid.

If marriage registration is viewed in terms of applicable law in Indonesia, there is no law that regulates precisely the marriage contract conducted via teleconference. The need for special regulations to regulate the validity of the practice of marriage by teleconference is intended so that the perpetrators of this legal act are guaranteed legality, besides that the legal regulation aims not to invite harm to each legal subject.

If it is based on the sound of Article 6 paragraph (1), there should be no reason to refuse the implementation of teleconference marriage and teleconference marriage registration, because the law itself to date does not explain and even prohibit the implementation of teleconference marriage. So that we can understand that there is

actually no reason for the KUA to refuse teleconference marriage, because there are no obstacles to marriage according to the law against teleconference marriage, as well as the meaning in terms of its application to the marriage registry. Thus, as long as no law explicitly states that teleconference marriage is not allowed to be carried out, then forever teleconference marriage is absolute and allowed and can be recognized by the State.

Hence, it is mandatory for all KUAs in Indonesia to accept and carry out marriage contracts through online media, because these KUAs are Government Agencies that must obey the laws and regulations in force in Indonesia. Thus, for those who refuse or insist on not implementing teleconference marriage, in this case including the application of its registration, then they can be considered people who violate the law as stipulated in the 1945 Government Regulation on the Implementation of Law No. 1/1974 concerning Marriage and Minister of Religion Regulation No. 11 of 2007 concerning Marriage Registration.

Furthermore, if the online marriage application is rejected or cannot be granted by the Religious Court, those who wish to carry out the marriage contract can make another effort, namely an appeal to the Religious High Court. Furthermore, if they are still rejected by the

Religious High Court, then the last resort they can take is cassation to the Supreme Court.

Therefore, regarding the prospects for the development of Islamic family law in Indonesia, when drawn to the discussion of marriage contracts via teleconference above, according to the author, there are three things that need to be considered by scholars and the government, including:

- a. Dimension of legal certainty (juridical). It has been previously mentioned that the dimension of legal certainty in the context of the benefits accommodated by Islamic law is divided into three forms. According to the author (with the preference for the validity of the marriage contract via teleconference), it is included in the category of *maṣlaḥah al-mursalah* where the text neither clearly accommodates nor clearly eliminates. Its legal certainty needs to be explored through *ijtihad*. And this has been done by the Ulama as previously stated.
- b. For the sake of justice. when referring to the epistemology of justice initiated by Majid Khadduri, the marriage contract via

teleconference has a status of justice that changes according to what a mujtahid or judge feels is justice. Therefore, the author cannot confirm this dimension completely. However, based on the way the teleconference media works and some of the descriptions presented by the main scholars of the four madhhabs about the pillars and conditions of the marriage contract, the author feels that the marriage contract has fulfilled the aspect of justice.

- c. Beneficence. The author has previously stated that the laws that have been standardized in the form of fatwas and legislation cannot necessarily be applied instantly. Another aspect that is no less important is the response and acceptance of the community both individually and communally, and both influence each other. In other words, the benefit of a fatwa or law for one person individually does not guarantee to be a benefit for others. Likewise, the benefit for a group of people in one place does not guarantee that it will also be a benefit for a group of people in another place.

Therefore, the sociological aspects of the provisions of the marriage contract via teleconference vary according to the needs of the community. As an illustration, some Ulama have allowed this model of marriage contract, but for some citizens, this permissibility is only accepted as a legal product because for them marriage via teleconference, although valid, is still not as sacred as a conventional marriage. In this focus, the level of need for teleconference marriage contracts is classified as *maṣṭalah taḥsīniyah* (tertiary need).

Based on some of the above analysis, although the author tends to agree with the validity of the marriage contract via teleconference, the author still believes that in the current condition of Indonesian society, this validity is still difficult to accept because the culture that is built in the midst of society is that a sacred marriage is as it is done conventionally. Unless there is an urgent matter, the person concerned may choose a teleconference marriage contract.

Conclusion

Wahbah Az-Zuhaili's view that marriage by teleconference is related to the interpretation of *ittihād al-majelis*. That way, we can explore the law and determine the law correctly. Referring to Wahbah Az-Zuhaili's opinion, then, marriage by teleconference is a marriage in which the *ijab kabul* transaction is carried out through a connection or activity connected in an internet network. Between the bridegroom and the bride, guardians and witnesses do not meet each other and gather in one place but they are shown in the form of visualization from both parties through teleconferencing tools with webcams or others connected to the internet.

The dynamics of teleconference marriage in Indonesia are greatly influenced by differences in the fatwa institutions of the major religious organizations NU and Muhammadiyah. Some of the problems that are debated, namely: 1) in terms of the validity of testimony in its task of confirming whether the two parties to the contract are the two parties who are entitled and equally intended by both parties from the beginning or not; 2) the controversy over the meaning of *ittihād al-majlis* as mentioned earlier, which in this case also concerns the pronunciation of *ijab* and *kabul*.

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