

Is It Possible to Perform Online Marriage during COVID-19 Outbreak?

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Abstract. This article aims to initiate on performing marriage contracts virtually during the co-19 pandemic in Indonesia. This article adopts normative and empirical facts that occur among Muslims in Indonesia. An interesting result of this study state the teachings of Islamic jurisprudence allows do a marriage contract via online as discussed by classical clerics across schools. The consideration for the government and legislative body in the future should be to look again at the views of classical and contemporary scholars. Muslims must accept the fact that marriage in Indonesia no longer refers to the books of the clergy, but to the marriage law. Therefore, the book of scholars is used as a source for updating the marriage law for the understanding and benefit of Muslims. Without banging on religious and state polemics but integrating them into marriage laws relevant to space and time

1. Introduction

Pandemic co-19 greatly influences many sectors including health, economy, social, religious, political and such (A. S. A. Syatar, Amiruddin, & Rahman, 2020). On the religious side, it was not only disrupting ritual worship perform, but also disrupting the aspect of carrying out the procession of the marriage contract. In fact, the implementation of the marriage contract was apparently postponed. There was no registration of marriage services after April 1, 2020 (RI, 2020). The policy lead to a new polemic in the community. Those who want to get married certainly ask for a solution to keep the marriage contract in order to fulfill religious teachings. The government responds to people's unrest by giving a little leeway from the previous policy. For the sake of co-19 prevention, Kantor Urusan Keagamaan (KUA) provides rules on social restrictions during marriage contracts and provides online registration services (Mubarak, 2020). The marriage procession process must hold at the KUA with very strict health protocols. The number of people in the room during the marriage process should not be more than 10 (ten) wearing covid-19 transmission prevention devices (RI, 2020).

Despite being so tightly regulated, seeds of problems can emerge. The gathering of people still believes the spread of the virus, not to mention the awareness of Indonesian people about the physical distance which is still low. This can be compounded by people who insist on attending a wedding even if they are not invited. Selecting 10 people as attendance is not an easy matter. Social jealousy between family, friends and colleagues will also be a case that should not be ignored. Therefore, marriage arrangements without inviting anyone can be an alternative.

The use of communication tools and social media is an urgent need in the midst of the co-19 pandemic such facebook, instagram, zoom, google meet, whatsapp, twitter, and so on. These media can overcome the problem faced in the time co-19 is still endemic. The bride and groom couple who want to carry out marriage contract procession can actually be held with these media. However, a polemic arises whether the marriage contract that is held with these media can be ascertained of his graciousness without reducing the solemnity and sanctity of the marriage (Salenda, 2016).

Such a marriage agreement is possible to be carried out without neglecting the pillars of marriage. It's just that the Islamic community in Indonesia is not accustomed to such implementation (Alam, 2019). In classical Jurisprudence, the school of Islamic scholars have discussed the marriage contract through written texts and the task of the marriage witnesses to ensure the validity of the marriage . Therefore, the marriage contract through communication media in the midst of the co-19 pandemic should receive special attention and in-depth study. Online Marriage could be one of the solution. This paper aims to initiate the possibilities to perform online marriage.

2. Methodology

This research is library research and uses analytical descriptive method by looking at legislative documents, government circulars through Islamic Community Guidance during the Covid-19 pandemic and using the normative-sociological approach. Primary data is obtained from a variety of credible and up-to-date literature, such as books/journals and reputable journals. Secondary data found from supporting information such as websites and the like. Then presented with a strong analytical instrument based on normative arguments.

3. Discussion

3.1. Marriage Covenant Due to Covid-19 in Indonesia; An Epistimology

Policy regarding the implementation of marriage contracts in Indonesia are well regulated. The marriage contract can be held at the KUA or at the place desired by the bride and groom. It can even be carried out abroad with a dispensation from the authority on behalf of the local government (RI, 2020). PMA (Peraturan Menteri Agama) it is still used as a guide and service related to the implementation of marriage during the co-19 pandemic. However, during the Covid-19 pandemic, the government gave other considerations to prevent and reduce the risk of spreading the corona virus and protect all elements of the community involved in the implementation of the marriage contract, both among KUA employees and interested parties.

Therefore, the government through the Directorate General of Islamic Community Guidance issued a marriage service circular during the pandemic (RI, 2020). In the circular the government continues to provide marriage services through online registration and strongly emphasizes the implementation of a marriage contract with consideration health protocols that apply during the pandemic. The number of participants who attend the marriage ceremony procession is also limited. If it is carried out at home or KUA, the maximum number is 10 people and if it is held in a mosque or building, it can be attended by 30 people. In fact, officials are obliged to refuse the implementation of the marriage contract and provide reasons for their refusal if the marriage contract process who neglect to health protocols. Thus, the government prioritizes the aspect of life safety (*hifzh al-nafs*) of Muslims.

The government does not allow the implementation of the marriage procession process through the network (online), whether by telephone, video call, or application that can support the implementation through the network.(RI, 2020) The policy certainly reaps the pros and cons in the community, more specifically for those who have an interest. The government in various policies during the 19th plague certainly prioritized the safety of citizens rather than personal interests.

Apart from the pros and cons, the authors consider that true marriage includes private law which is within the scope of Islamic law in the area of family law (Khallaf, 2002). However, marriage changes its status from private law to public law because the state provides provisions through applicable legislation. Therefore, to eliminate the pros and cons of the red thread drawn that Muslims should understand and explore government policies as long as they do not conflict and provide benefits to

citizens at large. Moderate attitude is very necessary to be cultivated again by all Muslims in national and state life during the covid-19 pandemic

3.2. *Measuring of Marriage Online Possibilities*

The policy certainly reaps the pros and cons in the community, more specifically for those who have an interest. The government in various policies during the 19th plague certainly prioritized the safety of citizens rather than personal interests. Descriptions of problems relating to the possibility of online marriage contracts are not specifically found in credible fiqh books (Kamaruddin, 2018). Problems to hold a marriage contract through communication tools (video call, zoom, google meet and so on) that display images and sounds at the same time are interesting to study and get more serious attention (Zein, 2004). The issue is more interesting because the need for the implementation of a marriage contract online is caused by the impact of co-19.

The validity of a marriage contract is determined in the implementation of the procession of consent between parties. One assembly (*ittihad al-majlis*) is a requirement that must be fulfilled in the procession of a marriage contract (Zahrah, n.d.). In fact, the Jurists agreed that *ittihad al-majlis* was a condition in the implementation of consent and qabul (Al-Jaziri, 2000). The procession of the marriage contract can be said to be invalid without it.

These provisions raise the questions, what is meant by *ittihad al-majlis* and why such marriage require *ittihad al-majlis*? There are several interpretations of Jurisprudence concerning the meaning of *ittihad al-majlis*.

The main reason of the online marriage prohibition is on consent between parties. It strongly relate to *ittihad al-majlis*. The Jurists agreed that *ittihad al-majlis* was a condition in the implementation of *ijab* and *qabul* (Al-Jaziri, 2000). The procession of the marriage contract can be said to be invalid without it. There are several interpretations of Jurisprudence concerning the meaning of *ittihad al-majlis*. The reason for the difference is whether what is meant by a *ittihad al-majlis* is an essential assembly or a *hukmi* assembly (Kamaruddin, 2018)

First, the purpose of an assembly is that the consent and kabul be carried out in a ceremony not in two separate distances and times (A. Syatar, 2012)

Second, understanding of *ittihad al-majlis* interpreted as the absence of interrupting and distraction between *ijab* and *qabul* procession (Sabiq, n.d.). The pronouncing of *Qabul* must come after *ijab* without any delay. The existence of the terms of *ittihad al-majlis* is related to the necessity of continuous time between the consent and the Kabul, not concerning one place. The Hanafi and Hambali schools held that although the assembly was long and postponed the recitation of the consent, there was nothing to show that the activity was diverting, still considered *ittihad al-majlis*. Among the Shafi'i schools there is a requirement that the said *qabul* be obliged to be hastened (*al-faur*).

Third, the interpretation of *ittihad al majlis* is related to the witness's duty. they must see with his eyes that the marriage ceremony procession is actually carried out by two parties who have the intention (A. Syatar, 2012). The witness's duty depends on the *ijab* and *qabul* whether carried out properly and correctly or not. Both in terms of speech and the certainty of the two parties in their faith.

Among the Syafi'iyah schools, the validity of the statement of *ijab* and *qabul* can be known by listening to the witness. The certainty of the parties to the determination can only be guaranteed by seeing directly with the eyes of the head (*al-mu'ayanah*). Consequently, blind people cannot be witnesses in marriage because they do not see the two parties in agreement (Lajnah Kulliyah al-Syari'ah Jami'ah al-Azhar, 2007). Ibn Qudamah's view that allows the testimony of the blind to the proposition witnessed with voice. The testimony of the blind can be accepted if it can be certain that both parties are intended (Lajnah Kulliyah al-Syari'ah Jami'ah al-Azhar, 2007).

The implementation of online marriage is possible if we are based on an interpretation that *ittihad majlis* is not based on a unified place. from various ulama's views, we find that the continuity of *ijab* and *qabul* as *ittihad majlis* is an interpretation worth putting forward. Continuity of the time to pronounce *ijab* and *qabul* can be implemented from two locations using online media such as zoom, google meet, and WhatsApp video calls. The two witnesses in the marriage contract with the online

media can be ascertained that the procession of *ijab* and *qabul* is directly pronounced by both parties in agreement. For example, the two parties are determined to separate distance and place. The groom is in Jakarta and the bride is in Makassar, as are the two formal witnesses in Makassar.

Muslims continue to realize the objectives of the Shari'a (*maqashid al-syari'ah*) in the form of maintaining the honor of future descendants (*hifzh al-nasal*) and protecting the person of both defending the party (*hifzh al-nafs*) so that it does not impress the Muslim to simplify and facilitate the teachings of religion that is very sacred. Although it looks stiff and static and does not even make the implementation of the marriage contract develops, the author still reinforces the view of the Shafi'i school of thoughtfulness

4. Conclusion

The implementation of the marriage contract which was only attended by a handful of people was considered not effective to minimize the possibility of spreading the COVID-19 virus. An innovation is needed so that marriage can take place with the lowest possible spread risk. One of them is by online marriage initiation. Online marriage is actually not permitted by regulations in Indonesia. The main issue in the ban lies in understanding the *Ittihad Majils* which is only interpreted as a unified place. If we look in the views of classical scholars, we find that the unity of place was not the only interpretation. Moreover, the purpose of unified place is to gain certainty in witnesses for the consent and agreement between *ijab* and *qabul*. Based on the understanding that majlis ittihad does not always mean a unity of place and with the consideration that technology is able to realize the the certainty between witnesses toward *ijab* dan *qabul*, online marriage is worth considering to policy maker

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