# A Study on Marriage Ceremony through Video Call Software: Modernity and Islamic Law Perspective

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Abstract:

On 28 April 2018 the Indonesian people were struck by the viral news about marriage of a pair of policemen (briptu Nova di Cikeas and Briptu Andik in Pontianak) via video call, marriage in Islam is a sacred contract (mistaqon Ghalizha), akad is a series of consent expressed by the guardian and Kabul spoken by the groom or his representative witnessed by both witnesses, both witnessed also by the prospective bride women or not. Ijab and Kabul are one of the pillars in marriage, and, the salary between the guardian and the prospective groom should be clear and not time-lapse, both witnesses must attend and witness firsthand the contract of marriage and sign marriage certificate at the time and place of marriage ceremony take place, akad nikah through video call that is Ijab and Kabul conducted by guardians and prospective grooms who are in place different but can hear each other and see either of them through a telecommunication media both string (smart phone), computer, laptop, infocus connected with internet network in real time. Ijab and Kabul can be done and valid if the telecommunication connection is seamlessly connected, but if any disturbance causes Ijab and Kabul to break down within a time long ago the marriage contract does not occur and is not valid.

#### 1 INTRODUCTION

Common wedding rituals performed by Muslims in general are the gathering of the family of the bride and groom accompanied by the presence of both brides and grooms in a specified place, then the bridegroom and the guardian of the bride holding a marriage contract (Ijab That is the guardian of the bride or the representative submits a statement marrying off the bridegroom with the certificate and Qabul, namely the acceptance of the bridegroom for the statement of the guardian of the bride or his deputy) witnessed by two witnesses from the bride and groom and the State marriage registrar and subsequent file registration and signing - file of marriage by both brides and witnesses. Usually, the process begins with gathering both families in the same place, where groom, bride and her representative to sign papers of marriage contract (book) issued by Indonesian government. On 28 April 2018, local Indonesian news broadcast a viral

and unique marriage process (Ijab-Qabul) which through a video call software. That unique is when bride unable to present in the sacral marriage process, hence, she still saw the process trough video call although the distance is separating her. On the other hand, on Islamic law, this method has been argued with Muslim scholars. In their perspective, this method is not contrary with Islamic marriage rules which both side had to see all process (from beginning to the end). In this papers I would like to discuss Islamic Law perspective related to the modernity on marriage law.

### 2 ISLAM AND MARRIAGE

In theory Islam has given a general concept of marriage both; harmonious and the conditions that must be fulfilled with groom and bride. The harmony is the existence of something will not exist except with the existence of something and something that is part of it, and the condition is the existence of a law determined by the existence of these conditions, and and if the condition is not there then there is no law, and something that is not included from it and there is no need for something to be something. The pillars and terms of marriage are:

- 1. Both brides who have reached the age allowed to marry legally, can listen to each other in essence / legally and or understand each other, the prospective bridegroom must be truly a man and also the bride is truly a woman and not included in the class of women who are forbidden to marry prospective grooms.
- The guardian / representative of the guardian of the bride is the guardian of close or distant relatives.
- 3. Witnesses totalling men or one man and women who can hear in essence / legally and understand what is said by the two parties in agreement (the guardian / representative who does the consent and Kabul from the prospective groom).
- 4. Shighat contract / ijab and Kabul.

The marriage contract is a series of consent and Kabul. Ijab is a statement that shows the desire to hold a marriage bond pronounced by a guardian or his representative as a first party, and qabul is a statement that shows the willingness to marry from a husband or a second party. The agreed statement of Kabul Ijab was to use a lafazh which has a connotation of marriage and marriage, valid from then on and until the death of the bride and groom. Ijab and Qabul have to clearly stated (can be heard intrinsically and legally and or understood) in one council if the two brides are present (listening and seeing each other), or not in one place together (supernatural). Majlis ijab and Kabul are not the majlis of the two brides, because what is required is one time, then the word majlis includes all to facilitate the bride and groom. Complies, streaks (according to habits) without being interspersed with anything that is not related to consent and kabul, and is not withdrawn by both parties. In Islamic fiqh literature there are media used in expressing the ijab and Kabul, namely:

1. Using oral media for both parties who can speak3, namely the statement submitted by the guardian / representative of the bride to the groom who is somewhere and can meet face to face in the

majlis akad, because speaking through verbal is the most basic medium of wish statement, the marriage contract is not valid for those who can speak using media other than that. It was said that one council on this media began when the second party (the prospective groom) heard the statement of permission in the Majlis contract and ended with the end of the Majlis or with an agreement or with a clear or hidden Election.

- 2. Using sign media, only intended for both parties who hold a contract or one of them has special needs such as mute and deaf who cannot write a letter that is in a place and can meet face to face, one board on this media is the same as a panel on the media oral..
- 3. Using letters. This media is used in two conditions, first: for both parties who are in a place to face to face but have special needs that can write letters. Second: the two parties who are in a place far apart that is not possible to meet face to face, namely a prospective bridegroom sends a letter to someone guardian to marry him to a child in a place far away from the groom. Majlis contract in the first state is the same as the contract through oral / signalling media. Whereas a single contract at the second stage begins when the letter arrives and is received by the female guardian, and lasts for a period that is generally agreed upon in the community, until it ends with legal approval or Election.
- 4. Using this media messenger media is used by both parties who are in a place far apart that is not possible to meet face to face, namely a prospective bridegroom sends someone to someone guardian to marry him to a child in a place far from the bridegroom. Whereas a single contract at the second stage begins when the letter arrives and is received by the female guardian, and lasts for a period that is generally agreed upon in the community, until it ends with legal approval or Election.

Communication technology is a hardware device in an organizational structure that contains social values that allow each individual to collect, process and exchange information with other individuals. The thing that underlies a thing can be categorized as communication technology is 1. Communication can be implemented on a tool, 2. Born by social, economic and political structures, 3. Bringing value from economic, social and political structures. 4. Can improve the ability of the human senses, especially the ability to hear and see. Some of the communication technologies used in modern times are printing machines (1455), analytic

machines (1830), telegraphs and Morse OS (1837), first films (1861), telephone maintenance and photography (1877), magnetic storage bands (1899), television tubes (1923), magnetic tape storage media (1940), hypertext (1945), digital computers (1946), transistors (1948), transistor Planner (1957), decentralization computer networks (1962),America's first computer network (1969), email program (1972),Internet (1973-1990). Communication technology has developed so that no modern society can survive without communication, this concept is based on the idea that humans have the need to interact socially, communication that intersects with cultural life in the broadest sense occurs in various forms and forms, this development also gives a very important meaning in social interaction can take place without the limitations of space and time, and act as a driver of social interaction in society can continue to develop in every aspect of community life that aims to meet the needs of individuals and groups.

One of the characteristics of Islamic Shari'a is the inherent nature (according to every time and place), including in the discussion is the nawazil case, which meets with developments and new things (mustajadat), in accordance with the basis and objectives of Islamic Shari'a which can provide humans, lifting difficulties and narrowness, although different times and Place.

## 3 MARRIAGE VIA VIDEO CALL

A video phone is a telephone with a video screen and is able to capture video (images) as well as the transmitted voice, which functions communication devices between one person or more with other people in real time. Initially video calls can only be used through computer devices that are combined with telephony cables so that long distance communication is done with many devices that are less flexible but then simplified to be more practical so that it only requires a camera, monitor, speaker and integrated one gadget namely a laptop, and simplified into a 3G mobile phone service and now 4G.

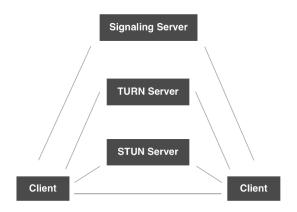


Figure 1: Video call scheme

Video call is a technology that only existed in the twentieth century, after the telephone, telex, and internet. Marriage through a video call can be carried out if both parties are in a place far apart and it is not possible to meet in one place. Marriage via video call is a marriage carried out by two parties who can talk to each other live, listen to each other, watch even though they are in different places, related to this the scholars disagree about the contract made by two parties who are in place different, but the fact that they make this contract the same as the contract that is done in a single contract but their dispute in terms of whether the marriage contract is included in this acquisition? If allowed, how can witness attend this marriage contract? How is the category of one contract?

The majority of scholars include Prof. Wahbah Zuhaili, Dr. Aqal, Dr. Abdurrazaq Sanhuri, Badran Abu al Ainain, Mustofa Al Zarqa, Mustafa Sabli, Abu Malik Kamal, Dr. Abdullah Muhammad Abdullah, Shaykh Ahmad Ibrahim, Ibrahim Fadhil Dabu, Dr. Ali Mahyudin al Quratu Daghi, Shaykh Muhammad al Haj an Nashir, Shaykh Ustadz Umar Jaa, Dr. Ibrahim Kafi Dawnmiz, Dr. Muhammad Nabil Ghunaim and the clerics who are members of majama fiqh argue that the contract through telephon communication equipment has the same law as a contract that is carried out orally in general in the same place, which distinguishes it only in different places but in the same time. With the condition that the marriage contract must meet the following conditions:

- 1. Both parties who are in agreement are in far apart places and it is not possible to meet during the marriage ceremony.
- 2. It is required that there be a guardian from the bride (his father) or his representative to carry

out the marriage ceremony ritual, and his guardian / deputy declares Kabul quickly / immediately upon receipt of the letter, and deserves to be said when Kabul is not enough to just write it down, and wish for muwalat (guideline) between the ijab and Kabul, namely in one majlis directly.

- 3. At the time of pronunciation Kabul must be witnessed by both Muslims, just, baligh, understanding after reading or listening to Ijab, the way of witnessing is that both witnesses were present during the conversation about the marriage contract through a telephone connection and it was perfect when the witness could hear the voice of another party via telephone line.
- 4. It is preferred to be able to see each other between the two parties.
- 5. To overcome fraud and fraud committed by one of the two parties who acted by revealing / showing official personal documents before witnesses
- 6. The ritual implementation of the marriage contract with the media of telephone communication equipment is required to be in a place supervised by Islamic institutions / foundations or official government institutions (syariyah court, or house of fatwa or similar).

The reasons are as follows:

## 1. Atsar Sahabat Umar RA

It was narrated by Ibn Umar that Umar bin Khatab sent an expedition of troops by appointing a commander named Sariyah (sariyah bin Zanim bin Abdullah ibn Jabir al Kanani Al Daili) when Umar was preaching he called O Sariyah mountainous ...! Hi Sairiyah Kegununglah! Then came the messenger from the army to Umar. Umar asked him about the state of the army and battle. The envoy replied: O Amir al-mu'minin, We attacked, during the attack we heard a voice calling "O Sariyah to Mount! 3 x. so we take refuge in the mountains and God attacks them. The conclusion is that Sariyah heard Umar Ra's call while Umar RA was in Medina and the distance between umar and Sariyah was 1 month.

#### 2. Logic

The oral contract implementation through the communication media has fulfilled the requirements

of the marriage contract, because it allows the implementation of consent and Kabul orally through this communication media, and both parties who are able to listen to each other, and consent and Kabul can be continuous and continuous as well as witnesses ca 3. The purpose to go from the contract is the appearance of willingness, so that it is possible for one of the parties to be submitted to him to control himself to accept (Kabul) or reject it. And this appearance of willingness can be seen verbally. And this is analogous to what is mentioned by Syafiiyah who is very close to a contract via telephone, namely a contract of sale and purchase conducted by both parties calling on one another, both parties who are in a distance from each other but can hear each other and can watch each other (see). "If both parties call each other when they sell and buy each other, the sale is legal without a dispute".

4. Prohibition of carrying out the ritual of marriage contract through modern communication tools that can transmit voice is based on the impossibility of witnessing and the possibility of falsification, which if the possibility can be overcome then the prohibition is lost, and this can occur during live video communication that is not will cause doubt. And this technology did not yet exist when Majama fiqh al Islami established its Decree in 1410 H.

But the scholars who joined in Majama included Shaykh Hamd Adam Shaykh Abdulah Ali, Shaykh Harun Khalaf Jaily, Dr. Basyar Awad, Dr. Bakar Abu Zaid and Lajnah Daimah Shaykh Abdul Aziz bin Baz, Abdurrazaq Afifi, Abdullah bin Ghadyan, Abdullah bin Muni 'with the following considerations:

1. A marriage contract through telephone connection and the like that can send a voice is sometimes entered into by a counterfeit done by one of the parties to the other party, while the marriage contract must be carried out more carefully than other contracts to maintain genitals and honor. So that a marriage contract is invented through modern communication.

The fatwa of lajnah daimah concerning marriage contracts that are in harmony with the terms and conditions by telephone "by paying attention to many events in recent days in the form of counterfeiting, deception and intelligence in following human voices (dubbing) when speaking and telling stories with several voices so that one person can act like a group of men or women both small and mature, and telling them in different

voices and languages that gives listeners the understanding that those who are included are persons (persons) even though only one person (person). And by noting that the Islamic Shari'a is very concerned about all matters relating to the maintenance of genitals and honor and being very careful about the matter compared to other cases of various muamalah contracts, the lajnah daimah (permanent committee for research and fatwa) argues not to make Ijab and Kabul and representatives made n hear it.

- 2. The marriage contract must be witnessed, and this testimony cannot be carried out perfectly, namely during the execution of the Ijab and Kabul as well as the marriage agreement if both parties are in the same place (present). And most of the members collected in Majama Figh Islamy The Islamic congress institute argues that all forms of contract carried out by both parties that are not in the same place (unseen) through written media (letters) or Oral through modern legal communication tools may (jawaz) except marriage contract, with reason to be witnessed. So that the decision of majama number (6/3/54) regarding the law of carrying out several contracts using modern communication tools which punishes may be carried out in some muamalat contracts and prohibits the marriage from using modern means contract communication both written (oral) and oral media. With the following provisions:
  - 1. If both parties are not in one place (unseen), they cannot see each other, and cannot listen to each other, while the means of communication used by both are written or letters, or messengers, and the means can be applied to the letter lightning, facsimile, computer monitor, in this case the contract can be carried out and occurs when Ijab is sent and has arrived at the destination and received (Kabul).
  - 2. If a contract has been entered into between the two parties at one time but both parties are located far apart, and this is applied to the contract via cable telephone, the contract made by the two parties is as if (considered) as a contract carried out by both parties in the same place (present). Then the original law was adopted by the fuqoha.
  - 3. If there is a disruption to this communication device at the time of the Ijab in a certain period of time, then the

- permit must continue for the period of time and may not be withdrawn.
- 4. The above provisions do not include the marriage contract because there must be a witness, and the currency exchange contract (sharf / money change) karan is required to hold each other (taqabuth), and the indent contract (greeting) because it is desirable to pay the principal.
- 5. With regard to the existence of forgery (Tazyif / Tazwir), or negligence (ghalat) then return to the general rules of proof.

#### 4 DISCUSSION

Wedding video calls are Ijab and Kabul processions which are carried out using oral media which is connected through communication devices found on both sides so that they can hear and see each other during the contract. That is, a guardian of the bride / deputy in a place where the marriage contract is held, expresses a desire to marry (ijab) in front of a communication device connected communication device of the groom in a different place or vice versa, but both can also listen to each other and see the approval statement from the bridegroom, It is said that one council in this media begins when the second party (the prospective groom) hears the consent statement in the Majlis contract and ends with the end of the Majlis or with a statement agreeing or with a strict or hidden rejection.

The express rejection can be described by the groom doing an act that is not related to the contract witnessed by the guardian and several people who witnessed the marriage, or the groom turns off the communication device or disconnects the communication network one of the two parties.

The implementation of the marriage contract procession through a video call must be witnessed by two witnesses who both can hear, understand and witness the jurisprudence and Kabul which take place through this communication tool, because this marriage is like a marriage attended by both parties. Without this witness, this contract will be cancelled.

Marriage through video calls has a number of disadvantages compared to marriages that are carried out in the circumstances where both parties are in a certain place and among the weaknesses are:

1. That the video call depends on the existence of the telecommunications network of both parties, and also on some of the devices connected to it so that the network can be interrupted for several hours or even days, so that one of the parties withdraws the statement at the time without being noticed by the other party.

2. the second relates to the existence of voice falsification (dubbing) and images generated in both communication devices.

Because the contract through video calls is analogous to marriage carried out using oral media, where both parties are in the same place, one majlis (one time) then when a discontinuation occurs in a long period of time it can lead to no contract. Then the marriage contract through a video call can be repeated several times until the contract occurs.

In connection with overcoming the existence of sound falsification and others, then a person who is going to have a minimum marriage to meet face to face and hear voices and get to know each other with the family of the bride and groom, and can use the provisions as Indonesian government regulation number 9 year 1975 article 3 paragraph 1 and 2 which reads: Every person who is going to enter into a marriage notifies his intention to the registrar at the wedding place, and the notification is made at least 10 working days before the marriage takes place.

In the case of notification of marriage intention, Minister of Religion Regulation No. 11 of 2017 concerning marriage registration, article 5 paragraph 1 - 4 states:

- 1. Notification of marriage will be conveyed to the marriage registrar, in the sub-district where the prospective wife lives.
- 2. Notification of marriage will be made in writing by filling out a notification form and completed with the following requirements:
  - a. Certificate of marriage from the village head / lurah or other name
  - b. Excerpt of birth certificate or letter of birth, or certificate of origin of the prospective bride from the village head / lurah or other names.
  - c. Approval of the two brides
  - d. Certificate of parents (mother and father) from the village head / official at the same level.
  - e. Written permission of parents or guardians for prospective brides has not reached the age of 21 years.

- f. Permission from the court, in the event that the two guardian parents referred to in letter e above do not exist.
- g. Dispensation from the court for prospective husbands who have not reached the age of 19 years and for prospective wives who have not reached the age of 16 years.
- h. Permission from the superior / unity if the prospective bride is a member of the TNI / POLRI
- Court decisions are in the form of permits for husbands who want to have more than one wife.
- j. Excerpts of the book for registration of divorce / books for divorce registration for those whose divorce occurred before the enactment of Law No. 7 of 1989 concerning religious justice.
- Death certificate or death certificate of husband / wife is made by the village head / lurah or official level for widows / widowers.
- 1. Permission to marry from the embassy / State representative office for foreign nationals.
- 3. In the event that the book for registration of divorce / divorce registration book as referred to in paragraph 2 letter j is damaged, illegible or lost, then it must be replaced with a duplicate issued by the relevant KUA head.
- 4. In the case of a permit as referred to in paragraph 1 of a foreign language letter, it must be translated into Indonesian by an official translator.

And in the case of Marriage Examination mentioned in article 9 paragraph 1 which reads: Marriage examination is carried out by VAT or officers as referred to in article 3 paragraph 1 to prospective husbands and prospective marriage wives regarding the existence or absence of obstacles to marriage under Islamic law and the completeness of the requirements referred to in Article 5 paragraph 2.

and Article 10 paragraphs 1 and 2 which read:

1. If the prospective husband, prospective wife and guardian reside outside the sub-district where the marriage is held, the examination can be carried out by the

- marriage registration staff in the area concerned.
- 2. The marriage registration staff as referred to in paragraph 1 after conducting an examination of the prospective husband, and or the prospective wife and marriage guardian, must send the results of the examination to the district head of the place where the marriage is held.

## 5 CONCLUSIONS

- I agree more with the opinion that says the marriage contract through oral media is carried out through the connection of modern communication tools if it meets the principles and requirements of Islamic Shari'a and also the conditions set by those who allow it
- The concept of marriage in Islam is if the marriage principles and conditions have been fulfilled, as for the ceremony is adjusted to the prevailing conditions and customs.
- 3. Marriage through video calls is analogous to marriage through oral media in a place and contract assembly.
- 4. The occurrence of marriages through video calls is determined by the presence of telecommunication networks in both communication devices of both parties who hold a marriage contract.
- 5. One council in a marriage contract through a video call begins when the groom hears the statement (ijab) said by the guardian of the bride / deputy, and ends when the groom approves it (qabul) or rejects it explicitly or secretly.

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