Marriage Aqd Validity Through Electronic Media Based on Positive Law and Islamic Law

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Abstrak: Keberadaan teknologi telekomunikasi saat ini berpengaruh besar terhadap perubahan interaksi manusia dalam kehidupannya yang salah satunya adalah melalui media elektronik, Kehadiran sarana telekomunikasi yang demikian pesat, juga jelas berpengaruh dalam pelaksanaan Perkawinan dimasyarakat Indonesia sendiri, yaitu dengan akad nikah jarak jauh melalui media elektronik. Sehingga hal tersebut menimbulkan pro dan kontra tentang keabsahannya di tengah-tengah masyarakat. Fenomena tersebut menimbulkan persoalan tentang keabsahanya dalam hukum positif dan fiqih islam. Melalui penelitian ini diharapkan menjadi kontribusi pemikiran yang kondusif mengenai ketentuan aqad nikah melalui media elektronik dan keabsahanya dalam hukum positif dan fiqih islam. Dampak dari hal tersebut adalah, kedudukan aqad nikah melalui media elektronik belum diketahui tentang keabsahanya. Menggunakan penelitian hukum normative dengan pendekatan konseptual, undang-undang dan kasus. Hasil penelitian ini menunjukan bahwa Perkawinan jarak jauh dengan akad nikah melalui media elektronik adalah tetap sah karena jelas memenuhi syarat dan rukunnya suatu pelaksanaan, baik menurut Hukum Fiqh Islam Maupun menurut Undang Undang Nomor 16 Tahun 2019 atas perubahan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan adalah sah hukumnya dan melihat juga pada Undang-Undang Nomor 19
Abstract: Telecommunications technology currently has a major effect on changes in human interaction throughout their lives, including electronic media. This rapid presence of telecommunications facilities clearly affects marriage implementation in Indonesia, namely with a long-distance marriage contract (aqd) through electronic media. Thus, this raises the pros and cons about its validity in the community. This phenomenon raises issues about its validity in positive law and Islamic fiqh. The objective of this research was to contribute conducive thoughts regarding aqad nikah via electronic media and its validity in positive law and Islamic fiqh. Due to the impact of this matter, the position of marriage aqd through electronic media has not been known about its validity. Using normative legal research with conceptual, statutory and case approaches. The results of this study showed that long-distance marriage with a marriage aqd by electronic media was still valid because it clearly fulfilled an implementation's terms and conditions, both according to Islamic Fiqh Law and according to Law Number 16 of 2019 on the amendment of Law Number 1 of 1974 concerning Marriage was legal and also looked at Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

Keywords: Marriage; Marriage Aqd; Electronic Media.

INTRODUCTION

God created mankind for two sexes, male and female. It became his belief that between two people, there is a desire to live together in marriage. In social relations in Indonesia, marriage is an objective phenomenon that brings some sociological consequences, such as helping with energy, the moral obligation to give goods or money, and the two families that originally had no bond, until the loss of the ban on the candidate husband and wife to make intimate relationships with the future wife and husband. [1]
In the provisions of Islamic law in the Compilation of Islamic Law, there are no special provisions governing marriage using electronic media. However, in the Compilation of Islamic Law, a marriage is valid if it is carried out according to Islamic law; besides that, the marriage must fulfill all the pillars of marriage regulated in Article 14 KHI, such as the presence of a prospective husband and prospective wife, a marriage guardian, two witnesses, and agreement granted. While the validity of the marriage itself depends on whether or not it is in accordance with the legal basis contained in the guidance of the Qur'an and Hadith, which is then translated into a more detailed and practical basis for fiqh law, especially in the face of changing times. In contrast to the provisions of the compilation of Islamic law, on March 19, 2020, the Directorate General of Islamic Community Guidance issued Circular Number 2 of 2020 concerning Appeal and implementation of the COVID-19 Handling Protocol in Public Areas within the Directorate General of Islamic Community Guidance, Ministry of Religion. In the provisions of letter E number 1 letter d, it is stated: “Postponing mass gathering activities such as wedding receptions and religious events to avoid crowds”. Then, on April 2, 2020, the Directorate General of Islamic Community Guidance of the Ministry of Religion again issued Circular Letter number 3 of 2020 concerning amendments to the Director General's Circular Letter number 2 of 2020. In the provisions section of letter 1 point a number 7 it states: "Implementation of a marriage contract (aqd) online, either by telephone, video call, or using other web-based applications, is not permitted".[2]

According to Article 1 of Act No. 16 of 2019, amending Law No. 1 of 1974 on marriage. The validity of a marriage is basic, because it is closely related to its consequences. Therefore, before marriage takes place, the prospective bridegroom should know the conditions for marriage to recognize its absence. If any of the conditions or provisions are insufficient or not fulfilled, the marriage shall be considered invalid.[3]

In this era of globalization, where technological developments are increasing, there are many means to communicate, for example, via cell phones, the internet, telegram, WhatsApp, Facebook, etc.[4] His communication media can be used for various purposes as a supporting tool for human communication. This is both for sharing information with friends, work partners, and business, and for communicating with a husband or wife.[5] With increasingly advanced technological developments, the expressions of Ijab and Qabul that are made by prospective husbands to prospective wives are not only with words, but there is a new phenomenon that occurs in society, namely marriage aqd through electronic media, where this incident raises new phenomena that bring problems about the validity of marriage aqd through electronic media in terms of positive law and Islamic fiqh.
In the case of marriage through electronic media, the question is whether the execution of sigât akad, either ijab or qabul, complied with thereby's abstinence requirements. Then the focus of this article is how the assumption of aqad marriage via electronic media is based on the positive law and the law of fiqh Islam.

RESEARCH METHOD

This research was normative juridical research using a statutory approach (statute approach) and a case approach (conceptual approach)[6] with sources and types of legal materials in the form of primary, secondary, and tertiary legal materials, obtained through document studies both through the library and through electronic media (internet), which were qualitative in nature[7] or data collection, the author used the documentary method. In order to analyze the data, the author used a deductive thinking method, namely analyzing from general to specific rules. This conclusions can be drawn about the provisions of marriage aqd through electronic media and their validity in positive law and Islamic fiqh

RESULT AND DISCUSSION

1.1. Marriage through electronic media in Islamic law

There are a number of requirements that must be met for the validity of an akad in marriage. Wahbah Az-Zuhaili in his book Fiqh Islam Wa-Adillatuhu explains that according to the agreement of the worshippers, in the shigat Ta’liq aqd (ijab and qabul) it is required four things:[8]

1. The compatibility and accuracy of the marriage proposal and acceptance statement.
2. The person who utters the marriage proposal statement should not retract their statement.
3. Settled at the time of the marriage contract (aqd) (aqd).

The differing views of scholars from different Muslim jurisprudents madhhab of thought regarding the validity of marriage contract (aqd) is open our minds to the fact that Islam is a dynamic religion that adapts to changing times. In the customary practice of society, marriage is often perceived as requiring a single gathering (a single venue), which supports the continuity of the timing of the
declaration of agreement (ijab) and acceptance (qabul), which determine the validity of a marriage. To avoid any doubts about the validity of a marriage contract (aqd) through electronic media, some people believe that it must be performed in a single gathering. However, the issue of a single gathering is not a pillar or a necessary condition for the validity of a marriage; it is merely a procedural formality and/or a long-standing tradition.[9]

The connection between the continuity of time and one assembly is very close, which is precisely the reason there are several views of the Muslim jurisprudents madhhab who interpret the meaning of this connection, as follows:[10]

a) Imam Shafi’i tends to interpret it in a physical sense. Thus, the guardian and the prospective groom must be in the same room so that they can see each other. This is intended so that both parties (the guardian and the prospective husband) can hear and clearly understand the marriage proposal (ijab) and acceptance (qabul) they utter. Additionally, the marriage contract (aqd) taking place in the same room is closely related to the duty of the two witnesses to know exactly what they heard and saw in the marriage ceremony. This is the affirmation of Imam Shafi’i. According to him, the testimony of a blind person is not acceptable because they cannot see. From the above explanation, it is understood that a marriage contract (aqd) conducted via telephone or other forms is considered invalid because it does not fulfill the above requirements.[11]

b) Imam Ahmad bin Hanbal interprets "one gathering" in a non-physical sense (not necessarily in the same room). The marriage proposal (ijab) and acceptance (qabul) can be stated at the same time or directly in one ceremony without being interrupted by other activities.

c) Imam Abu Hanifah, as well as the scholars of Ahl al-Ra’i and Kufah, share the same view as Imam Ahmad bin Hanbal. However, Imam Ahmad bin Hanbal emphasizes that the two witnesses must hear and fully understand the utterances of the marriage proposal and acceptance. This means that seeing the parties involved in the contract is not obligatory, but the two witnesses must hear the marriage proposal and acceptance perfectly.
The marriage procedure in Islam is not complete without the signing of a marriage contract (aqd). It serves as a binding contract (aqd) between the bride and groom, describing the roles each will play in the marriage. It's crucial to keep in mind, too, that different scholars and the Muslim jurisprudents madhhab of thought may have different interpretations of Islam with regard to online marriage contracts. The following information offers general knowledge, but for detailed advice, it is best to seek the advice of a qualified Islamic scholar. The bride and groom, as well as their respective guardians and witnesses, normally sign the marriage contract (aqd) in person according to traditional Islamic law. Typically, a contract is finalised through a combination of oral agreements and written documentation.

Then the marriage carried out through electronic media is considered valid if referring to the opinion of Imam Ahmad bin Hambali because marriage is considered to be implemented by one assembly originally only noticed Internet connectivity facilities so that in carrying out ijab and qabul there is no interruption of the signal and given the computer facilities or other media connected with the screen projector and given voice speaker, because seeing and hearing ijab and qabul is a must and considered as one assembly.[12]

Some academics contend that the physical presence of the bride and groom, as well as the witnesses and guardians, is a prerequisite for the validity of marriage contracts entered into online. Direct communication, consent, and appropriate documentation are all stressed. Other academics, however, contend that an online marriage contract (aqd) may be regarded as legal in some situations where distance or other restrictions hinder the physical attendance of all parties. They advocate using technology, such as video conferencing, to ensure consent and establish direct communication. These academics contend that an online marriage contract (aqd) can be regarded as legitimate as long as the prerequisites, such as the agreement of both parties and the presence of witnesses, are satisfied.

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Online marriage is a form of marriage where the marriage contract (aqd) (ijab qabul) is conducted through connectivity or activities connected to a network or internet system (online). In this case, the male and female partners, the guardian, and the witnesses do not meet and gather in one place. What exists and is displayed is only a visualization of both parties through electronic devices such as teleconferencing, webcams, or others related to the internet. Online media itself is a telecommunications and multimedia-based medium (computer and internet), which includes portals, websites, online radios, online TVs, online newspapers, online mail, and others, each with their respective characteristics according to the facilities users can utilize, sourced from cache servers and the internet network.[13]

Online marriage itself, when compared to marriage without technological media, can be concluded, based on the explanation above, it can be concluded that there is no substantial difference in the wedding ritual between an online wedding and a conventional wedding. The difference between online marriage and regular marriage lies in the essence of ittihād al-majelis, which is closely related to the location (venue) during the implementation or execution of the ceremony, but otherwise, everything is the same. The implementation or execution of this online marriage utilizes the power of technological advancements to assist in the realization of marriage, enabling the transmission of real-time images of individuals interacting (via teleconference) as it should be. Video teleconferencing
technology is more advanced than a telephone because, in addition to transmitting sound, it can display images or visuals in real-time through an internet connection.[12]

From the explanation above, it can be concluded that there is a difference regarding the essence of ittihād al-majelis or a cultural shift in performing the marriage contract (aqd). In a regular marriage, the contract is performed with muwājahah bil ma'rūf (direct face-to-face interaction) in one place.[14] However, in online marriage, muwājahah bil ma'rūf is still performed, but not in terms of physical location. In online marriage, there is a physical separation between the parties involved in the contract. To determine whether someone can perform a marriage contract (aqd) online, the following criteria are established: 1) The man and woman who want to perform the marriage contract (aqd) must be physically separated by a significant distance. 2) They cannot be physically present due to distance and circumstances that prevent them from being together to perform the contract as required. The establishment of such criteria aims to ensure that those who perform online marriage contract (aqd)s are those who are unable to perform the contract in a conventional way. Therefore, online marriage is deemed appropriate as an alternative or viable solution for those who cannot perform the marriage contract (aqd) due to distance and time constraints.[15]

In Islamic law as well as in positive law, there is no recognition of marriage through electronic media, which means there is a legal vacuum in this regard. Therefore, according to the author, legal reconstruction is greatly needed to address the legal vacuum by using the method of argumentum per analogiam.[16] In this regard, the Act No. 11 of 2008 on Electronic Information and Transactions is the basis of the Law on Proof of Marriage through Electronic Media.

Regarding the proof of online marriage implementation related to the technological devices used, in this case, we can refer to the legal umbrella under Law No. 11 of 2008 concerning Electronic Information and Transactions, Article 2, Article 3, Article 4 point (e), and Article 5 points (1) and (2), Article 18 (2), Article 27 (1), Article 38 (1), Article 40 (1) and (2), as well as
Article 45 (criminal), and other relevant articles, according to our needs regarding the issues at hand. Thus, the concerns of some individuals regarding online marriages, especially from the perspective that they may be susceptible to fraud, can be regulated or protected under Law No. 11 of 2008 concerning Electronic Information and Transactions. Consequently, any detrimental elements to the parties involved can be immediately reported and subsequently prosecuted. This is in accordance with the provisions of Article 27 (1) and Article 45 point (1), which state that: 

"Every person who intentionally and without right distributes, transmits, and/or makes accessible electronic information and/or electronic documents that contain content that violates decency." Article 45 Clause (1) states: "Any person who fulfils the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 years and/or a fine of up to Rp. 1,000,000,000.00 (one billion Indonesian Rupiah)."

In terms of evidence or implementation, online marriage is more acceptable and recognised compared to marriage through telephone media. If marriage through telephone media is allowed only by a panel of judges, who only hear the voices of the parties without seeing the physical condition of the individuals involved, then what about online marriage, which is far more advanced in its implementation than marriage through telephone media? In an online marriage, not only can the voices be heard, but also the images of the parties speaking can be seen.

1.2. Marriage Aqd validity through electronic media in positive law

The laws outlined in Law No. 1/1974 and the Compilation of Islamic Law (KHI) apply to and are binding on the implementation of marriage in Indonesia. Regarding the interpretation of marriage in Law No. 1/1974 Article 1, it only provides the definition of marriage as a physical and spiritual bond between a man and a woman as husband and wife, with the aim of forming a happy and lasting family (household) based on the belief in the Almighty God. Moremore, in KHI Article 2, it is stated that marriage according to Islamic law is a marriage contract (aqd),
which is a strong covenant, or miaqan ghalian, to obey the commandments of Allah and to carry them out as an act of worship. Hence, a grammatical approach to Article 1 and Article 2 is not highly relevant to be applied, so an extensive approach can be implemented to broaden the scope of these articles.

An approach to Article 1 of Law No. 1/1074 can be done through an extensive approach [16], which expands the scope of the definition of marriage. It can be seen that in Law No. 1/1974 and also the Compilation of Islamic Law (KHI), marriage is only explained in general terms, and there is no mention of online marriage. However, if we carefully examine the wording of the article, there are words that can be interpreted in relation to online marriage.[20] The article mentions one of the purposes of marriage, which is the union of a man and a woman as husband and wife, with the aim of forming a happy family (household) and obeying the commandments of Allah. This means that marriage fundamentally involves a woman and a man coming together with the aim of forming a happy and lasting family, regardless of the context of the marriage, as long as it aims for a happy and lasting marriage based on belief in the Almighty God.[21]

Online marriage validation is not officially permitted in Indonesia. Marriages must be performed officially in the presence of a marriage registrar or other designated official, as per Indonesian law. In Indonesia, there are various steps in the marriage process, including performing the marriage ceremony (aqd), documenting the marriage at the local Religious Affairs Office (KUA), and registering the marriage at the KUA. If a couple opts for a civil union, the ceremony can also take place at the Civil Registry Office. However, the Indonesian government may have passed new rules or particular policies that permit online or distant marriage ceremonies owing to exceptional situations like the COVID-19 pandemic. It is advised to get in touch with the local Religious Affairs Office (KUA) or pertinent agencies, such as the Ministry of Religious Affairs, to get the most recent guidelines and instructions for online marriage certification in Indonesia.

In addition, if we relate this to online marriage, it means that it falls under the category of marriages recognized by the state as long as it aims to obey the commandments of Allah and form a
happy and lasting family based on the belief in the Almighty God. Thus, based on the explanation above, we can understand that in this case, online marriage can be considered valid both in Islam and according to applicable laws.[22]

Marriage registration provisions are regulated in Article 2 of the Marriage Law. This states: (1) Marriage is considered valid if conducted in accordance with the laws of each respective religion and belief. (2) Every marriage must be registered according to the applicable regulations. From the provisions of Article 2 of the Marriage Law, it is clear that every marriage must be accompanied by registration in order for it to be recognized as valid. If it is not registered, it does not have validity as a marriage according to the Marriage Law.[23]

The marriage registration implementation is an absolute right granted by the state to every individual. This can be seen in Article 28D of the 1945 Constitution of the Republic of Indonesia, which states, "Every person has the right to recognition, guarantees, fair legal protection, and equal treatment before the law." Furthermore, Article 29 paragraph (2) of the 1945 Constitution emphasizes that "the state guarantees the freedom of every citizen to embrace their respective religions and to worship according to their religion and beliefs."[24]

From these two articles, it can be understood that those who have conducted marriages according to their religion and beliefs have an absolute right to obtain legal certainty. This is in the form of equal treatment before the law. The same applies to the law regarding the implementation of marriage registration through electronic media, which must receive the same treatment before the law as marriages conducted face-to-face, provided they are declared valid and allowed to be performed according to the embraced religion. Therefore, it is imperative for the registering institution to record their marriage.[25]

However, in practice, marriages through electronic media are not accepted by registration officials. This is because they are susceptible to deception and fraud. The following is a case study example: First, a case that occurred in the Religious Affairs Office (KUA) of Sooko District, Ponorogo, East Java. In this case, the couple, Soni Ali Widayat and Endang Lestari, applied for marriage
via video conference a few days before the wedding. This was because the groom was undergoing treatment for COVID-19 and testing positive. However, the Religious Affairs Office (KUA) rejected their request and provided an alternative solution by appointing a representative. This decision was communicated by the Religious Affairs Office (KUA) representative, Meky Hasan, who referred to Minister of Religious Affairs Regulation No. 20 of 2019 regarding Marriage Registration, Article 11, which states: "In the event that the groom is not present at the time of the wedding ceremony, he can be represented by another person by creating a power of attorney document on stamped paper recognized by the Head of the District Religious Affairs Office (KUA) or the Head of the Indonesian Representative Office abroad." In this case, the groom, Soni, was represented by a relative of the bride during the recitation of the marriage vows (ijab) and acceptance (qabul).[26]

Secondly, the marriage case between Muhammad Amal Fikri and Debrah Nur Kumala took place between Jakarta, Indonesia, and Sydney, Australia. In this case, the prospective groom empowered his biological father to represent him in reciting the marriage vows (ijab and qabul) due to being unable to hold the marriage ceremony face-to-face directly due to the COVID-19 lockdown. Nevertheless, the prospective groom still attended the wedding ceremony virtually. In the marriage process, the prospective couple completes all the necessary requirements for marriage at the Civil Registration Office (Religious Affairs Office (KUA)) in Menteng District, just like any other marriage requirement. However, the Religious Affairs Office (KUA) head stated that online marriages are not allowed and are considered invalid. Long-distance marriages can only be carried out by appointing a representative using a power of attorney that has been legalized by the Indonesian Consulate General in Australia and sent to Indonesia. By doing so, the Religious Affairs Office (KUA) will be willing to record the marriage.[27]

As for the procedure of marriage registration through electronic media, it is the same as marriage in general. The marriage record is valid according to religious law. Accordingly, you have the right to register as stipulated in Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of
1974 on marriage. In the process of a marriage via electronic media, for the registration of their marriage, the spouse who wishes to enter into such a marriage is obliged to notify the registrar official of their wish to marry before marriage takes place.[28]

Nevertheless, from this problem, the existing or positive laws in Indonesia have never offended marriage through electronic media before. There are even no regulations that regulate it, while in practice many have been implemented. This can be seen from some cases received by the marriage registrar: Religious Affairs Office and Civil Records Office to record as marriage in general, and there are some that are not accepted on the basis of no legal basis but suggested represented as the case has been described earlier, so in Indonesia related marriage via electronic media there is still a legal void.[29]

Due to its clear compliance with the requirements and principles of its implementation, long-distance marriages conducted through communication media remain valid. However, it is advisable that long-distance marriage with a marriage contract (aqd) be considered a last resort if the implementation of the marriage in one assembly is no longer possible. As for suggestions, there is a need for amendments to the Marriage Law to add regulations regarding online-based marriages or marriages conducted through electronic media to avoid legal loopholes in the marriage law in Indonesia.[30] Although the validity of a marriage is entirely entrusted to each religion by the state, as stated in Article 2 Paragraph (1) of the Marriage Law, in terms of registration by marriage registrars, namely the Office of Religious Affairs and the Civil Registry Office, there are cases where some marriages are not accepted for registration due to a lack of a legal basis. For that reason, this regulation is highly necessary considering society’s advancements nowadays, while legal issues regarding online or electronic media-based marriages will continue to occur in the future.
CONCLUSION

The legal perspective on electronic marriage aqd in Indonesia and Islamic fiqh lacks specific regulations yet. There is only Circular Letter number 3 of 2020 regarding Amendments to the Director General's Circular Letter number 2 of 2020. This circular letter is voluntary in nature and does not bind Muslims and citizens. As a result, online marriage is not regulated in Law number 16 of 2019 amending Law number 1 of 1974 concerning marriage, creating a legal vacuum. Thus, the marriage legitimacy conducted online according to Law number 16 of 2019, amending Law number 1 of 1974 concerning Marriage, is valid if it is carried out in accordance with Article 2 paragraphs (1) and (2) of Law number 16 of 2019, amending Law number 1 of 1974 concerning Marriage, and by referring to Law number 19 of 2016 concerning Amendments to Law number 1 of 1974 concerning Marriage, is valid if it is carried out in accordance with Article 2 paragraphs (1) and (2) of Law number 1 of 1974 concerning Marriage, and by referring to Law number 11 of 2008 concerning Electronic Information and Transactions because online marriage utilizes electronic media regulated in that law, which explicitly mentions electronic signatures. Meanwhile, from the perspective of Islamic fiqh, the marriage aqd conducted through electronic media is similar to a written or documented marriage aqd, and it is considered valid. It is valid if it fulfills the following conditions: the compatibility and accuracy of the marriage proposal (ijab) and acceptance (qabul) statements, the person making the proposal (ijab) is not allowed to retract it, the contract is concluded at the time of the agreement, and it is carried out in one assembly (ittihad al-majlis). Therefore, an online marriage is considered valid if all the necessary conditions and requirements are fulfilled.
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