

Analysis of Marriage through Video Conference in Indonesia

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ABSTRACT

Every human being is created in pairs, male and female who live together bound by a relationship called marriage. Marriage according to Islamic law is a very strong covenant to obey the commandments of Allah and performing them is worship. Whether a marriage is valid or not depends on the contract (akad) pledged by each party. With the current developments in the world of technology, the marriage contract can be done without presenting the prospective husband and wife's guardian in one place or remotely or via teleconference.

This study aims to find out how the dynamics of marriage through teleconferences and to analyze marriages through teleconferences. This research is a literature research with descriptive method.

The results of the study obtained that the implementation of marriage via teleconference is basically the same as the implementation of a marriage contract in general, but what differences in countries that do not allow direct marriage contracts to be carried out.

1. Introduction

Every human being wants to marry and have children. This is because marriage is a legal way and is recognized by both the State and religion to obtain offspring. Marriage is sacred in society, and in general marriage is only done once in a lifetime. Marriage is a very important act in human life. For through legal marriage, the association of man and woman is established honorably in accordance with humans position as a noble and honorable being. All religions also recognize that marriage is a sacred act, therefore each religion regulates and upholds the institution of marriage.

In general, the wedding procession takes place in one place that has been agreed in advance by both parties and the family by consensus, so that usually the wedding is attended directly by the bride and groom at one time and place. There is also a place recommended by the Government, namely the Office of Religious Affairs (KUA) to carry out the marriage contract so that the costs incurred by the prospective bride and groom are somewhat lighter. However, over time, where modernization and globalization occur, many changes occur, including in the field of informatics and telecommunication facilities.

The development of informatics technology is running very rapidly, and has been widely felt lately when the world is being hit by the global Covid 19 pandemic outbreak. Where direct interactive activities between human beings are limited. This also has an impact on aspects of people's lives, including marriage problems.

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Marriages that are usually carried out by many people, at this time where the era and technology are developing very rapidly, many also take advantage of technological developments in carrying out marriages, such as through video teleconferences. This marriage was carried out by a handful of people, most of whom were located at a great distance and neither of them was possible to meet in person. Long-distance marriage has a foundation that has caught the attention of previous scholars. Around 1989 there was a marriage over the phone. The concern at that time was that because the means and procedures used were unusual, many even argued that the marriage was invalid and others declared it valid. Marriage via video teleconference is more or less the same as marriage conducted by telephone. It's just that if through video teleconference is much more sophisticated because with the help of image visualization that looks better and the face of the interlocutor is known.

In general, the wisdom of marriage through video teleconference is the same as the wisdom of marriage that uses ordinary or conventional channels. In Islamic law, there is no specific provision governing marriage using the medium of teleconference. However, the problems of life will continue to change according to the challenges of the times. Marriage, which is a very sacred thing, will certainly raise the question of how valid or valid a marriage is if done through teleconference. Where as we all know that one of the legal requirements for a marriage is a marriage contract (akad) that is carried out in the same place and directly face to face or face to face.

Seeing the point of view above, the author is interested in writing this article, which aims to discuss how the legal status of marriage through video conferencing in Indonesia.

2. Literature Review

2.1 Definition of Video Teleconference

The development of technology and science from day to day is increasingly rapid and encouraging. Lots of new inventions in the field of communication, such as the internet, telephone, teleconference, telegram and so on. Technology has influenced humans in everyday life. Video teleconference is one of the conveniences of a technological system that allows humans to communicate even though long distances and different locations without meeting face-to-face, they will be able to make meetings.

Teleconference term comes from the English. "A teleconference is a telephone meeting among two or more participants involving technology more sophisticated than a simple two way phone connection", which means a telephone meeting between two or more participants using high technology for the convenience of people related person. (Wardah Nuroniayah, 2017: 134). Frastian provides a definition of teleconference by highlighting its similarities to vodeo streaming. According to him, teleconference is a form of video streaming innovation in which sending electronic signals in the form of moving images (video) can be linked directly (live) so that several related parties can be visually displayed at the same time from different places. (Nahot Frastian, 2010: 12)

Teleconference or known as video conference is a facility that allows a number of people to chat and meet face to face through a computer. By utilizing internet technology, video conferencing is very easy to implement. Each party who wants to communicate simply sits facing a computer that has been equipped with a camera called a webcam. (Abdul Kadir, Terra CH. Triwahyuni, 2005 : 2)

3. Methodology

This research uses literary research, which is a method by collecting data by understanding and studying theories from various literature related to this research. There are four stages of literature study in this study, namely preparing the necessary tools, preparing a working bibliography, organizing time and reading or recording research.

The data collection uses how to find sources and construct from various sources such as books, journals and research that has been done. Library materials obtained from various references are analyzed critically and must be in-depth in order to support ideas. This research is literature research using descriptive analysis methods, namely by collecting data, compiling and interpreting it. The descriptive method was chosen because the research carried out aims to describe clearly about the object under study naturally.

This research begins by formulating a problem, formulating the focus of the study and continuing with data collection.

4. Results and Discussion

4.1 Pillars and Terms of Marriage

In marriage, there are pillars and conditions that determine the law related to whether or not the act is valid in terms of law. Both words mean the same thing in that they are something that must be held. Pillar (*rukun*) is something that is in essence and is the part and element that embodies it. While the condition is something that is outside it and is not its element. There are conditions related to pillars in the sense of conditions that apply to each element that becomes pillars. There are also conditions that stand alone, in the sense that they are not pillar criteria and elements. (Amir Syarifuddin, 2007: 59). Pillars are elements inherent in legal events or deeds, both in terms of legal subjects and legal objects that are part of legal acts or legal events when legal events take place. The pillars determine the validity or invalidity of an act or legal event. If one of the pillars in the legal act or event is not fulfilled, the result is that the act or legal event is invalid or its status is null and void by law. (Abdul Aziz Dahlan, 2000: 15)

In Islam, marriage is not merely an ordinary civil relationship or contract, but has religious value as emphasized in KHI Article 2 that marriage is a very strong contract. This is done to obey Allah's commands, and by carrying it out it is a value of worship to Allah. The validity of a marriage requires 5 (five) harmony, which are as follows: (1) The bridegroom. The requirement for the bridegroom must be Muslim, it is clear the person, not forced of his own volition and there are no obstacles to marriage. (2) The bride-to-be. The requirements for the bride to be Muslim, it is clear from the person, are not forced of her own volition and there are no obstacles to marriage such as no husband, no *mah}ram* and not in a state of *'iddah* (3) Guardian. The guardian in marriage must be male, adult, have guardianship rights and there is no obstacle to guardianship. Guardian (*wali*) consists of 2 (two) kinds, First, *wali nasab* is a guardian whose guardianship rights are based on blood relations. For example, biological parents. Second, *wali hakim* is a guardian whose guardianship rights arise because the woman's parents refuse or do not exist, or for other reasons. . As for the *wali hakim*, he can only act if the *wali nasab* is absent or impossible to present, his place of residence is not known after the religious court's decision on the guardian. (4) Two witnesses. The requirements for witnesses in marriage are a minimum of two men, Muslim, adults, attending *ijab kabul* and can understand the purpose of the marriage contract. The presence of witnesses in a marriage contract has a required value in his testimony and determines the validity of the marriage contract. (5) *Ijab Kabul*. as for the conditions of *ijab kabul* are a statement of marriage from the guardian, a statement of acceptance from the prospective groom, using the words *nikah* or the like, between *ijab* and *kabul* is continuous and clear in meaning and held in an assembly.

There are 2 (two) conditions for the validity of a marriage, namely:

- 1) The woman to be married is lawful to be married by a man who wants to make her his wife. That is, the woman is not a woman who is illegitimate (*haram*) to marry, either because it is illegitimate for a while or illegitimate forever.

The marriage contract was attended by witnesses. According to the jury of scholars, marriages that are not attended by witnesses are invalid. If at the time of *ijab kabul* there is no witness, then the marriage is not valid, even though it has been announced to the public in another way. If the witnesses are present and ordered by the person holding the marriage ceremony to keep it secret and not to tell other people, then the marriage is still valid. (Djamaan Nur, 1993: 61)

4.2 Analysis of Marriage via Video Teleconference in Indonesia

During this time, marriages are usually held in one assembly or one place. However, with the development of the times and communication technology, there is a possibility that marriage is not held in one place, although this kind of marriage is still considered strange by most Indonesian people. It may even cause debate among experts or law enforcement in relation to determining the validity of the marriage.

The marriage contract via video conferencing is a procession of the marriage contract between the prospective groom and the prospective bride which is carried out using electronic media. The implementation is by *ijab kabul* carried out by the woman's side who is then answered by the man to express his pleasure and agree to the marriage. This marriage agreement is carried out via video conferencing which allows both parties to see and hear what is being discussed, just like a normal meeting. The implementation of a marriage contract through video conference is almost the same as a conventional marriage contract. The fundamental difference is the difference in position and place when the *ijab kabul* is carried out. With currently available video conferencing media such as skype, zoom meetings, whatsapp video calls, telegram video calls, and others not

only allow the parties to hear sounds like conversations that occur on the telephone. With current technological advancements, marriage contracts can be witnessed directly, even in a virtual dimension. (Muhammad Alwi al-Maliki, Asep Saepudin Jahar, 2020: 145)

Fiqh scholars have different opinions regarding the marriage contract through video conference, that is, the implementation must be in one assembly. The first opinion says that one assembly must be held at intervals that are contained in one marriage ceremony, and not held at two separate times. In other words, one assembly is interpreted as the necessity of continuity of time between *ijab kabul*, not regarding the unity of place. One assembly is concerned with the issue of the necessity of continuity between consents and grants, not the necessity of the presence of the prospective husband and prospective wife in the same place of contract. Meanwhile, the second opinion says that the united assembly is not only to ensure continuity between the *ijab kabul*, but also very closely related to the duties of two witnesses who in this opinion must see with their own eyes that the contract is really done by two people who perform the contract. (Sayyid Sabiq, tt : 45)

Marriage affairs in Indonesia are covered by the Marriage Law Number 1 of 1974 and regulated in the Compilation of Islamic Law. The rules contained are sourced from classical Islamic fiqh literature and various schools of thought that are summarized and adapted to the needs of the people in Indonesia. However, in the practice of implementing marriage that applies in society, there are new things that arise that are *ijtihad* in nature because there are no specifically stated rules governing this matter. This includes the practice of marriage via video conferencing.

There are scholars in Indonesia who consider that marriage via video teleconference is invalid, because they cannot do the *akad* directly, some consider that it is included in the category of *syubhat*, which is not safe so it is necessary to remarry before they have conjugal relations and some consider it valid because it is done at one time and the guardian can see and know directly the *ijab kabul* from the prospective husband. Every enactment of a legal regulation that has been formalized and related to the discussion of marriage through a video conference, there are 3 (three) dimensions that need to be considered.

- 1) Juridical dimension, namely the dimension of legal certainty. Where the validity of marriage through video conferencing is included in the *masalah mursalah* where there is no evidence that clearly states permissibility or prohibition, so that legal certainty requires *ijtihad*
- 2) The philosophical dimension, namely the dimension of justice. Marriage through video conferencing has a changing status of justice according to what the Judge feels is justice.
- 3) The sociological dimension, namely the dimension of expediency. The sociological aspect of marriage provisions through video conferencing varies according to the needs of society. As an illustration, some people consider marriage via video conferencing is only acceptable as a legal product which for them, even though the implementation is legal, is still not as sacred as a face-to-face or conventional marriage. (Muhammad Alwi al-Maliki, Asep Saepudin Jahar, 2020: 148-149)

In Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, marriage procedures are regulated in Articles 8, 10 and 11. Based on these Articles, marriage through video conference procedures must be in accordance with these articles and can be recorded by the Marriage Registration Officer at the time of the implementation of the *ijab kabil*, but in terms of signing the Marriage Certificate cannot be carried out perfectly. This will be able to be signed by the groom once in place, so that it can be used as valid evidence according to positive law.

Based on the explanation above, the author tends to agree with the legitimacy of marriage via video conference, by looking at the urgent conditions, although the author believes that the current condition of society in Indonesia is still difficult to accept this due to the culture of sacredness of a marriage that has been very awakened in the midst of society.

5. Conclusion

The implementation of marriage through video conference is basically the same as the implementation of marriage in general. The implementation of marriage through video conference can be done with complete facilities and must meet the requirements and pillars of marriage. This marriage can be considered valid because it can be categorized as being in one assembly and there is a continuity of time between *ijab* and *kabil*. Although maybe people in Indonesia in general are still difficult to accept it.

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