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## LEGAL PROVISIONS FOR ONLINE MARRY LEGALIZATION IN INDONESIA

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### Abstract:

The validity of marriages is restored to the terms of their respective religions and beliefs (Article 2 (1) of the Act No. 1 of 1974 on Marriages (UUP)), while the state only registers for administrative purposes. Marriage according to Islam must comply with the rule of law, namely: prospective husband, prosecuting wife, marriage guardian, two witnesses, and *ijab kabul* (Article 14 of Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (KHI)). The appointment and admission shall be subject to the condition that the person entitled to pronounce admission is the prospective groom personally; however, in certain cases, the admission may be represented to another man, provided that the prospect gives express authority in writing that the acceptance of the representative of the appointment is for the groom (Article 29 (1) and (2) of the Code). At the time of the COVID-19 pandemic, there was a practice of marriage in which *ijab* and *kabul* were not carried out in one place and one assembly physically, but online. This can be done because of the advancement of technology, which allows people to interact directly in one place and one time virtually. What's interesting is how the government's policy responds to this by taking into account the religious provisions of marriage terms and conditions. The writing of this article uses a method of normative jurisprudence research with secondary data from primary and secondary legal materials. The results of the research show that the decision of the Indonesian Fatwa Commission of the Seventh General Assembly of Indonesia in 2021 authorizes online marriages. The decision must be followed by a change in the provisions of marriage at the time, so that materially will have a binding legal force.

### Keywords:

Legal Provisions, Online Marry, Legalization, Indonesia

## Introduction

Marriage, according to the provisions of Article 1 UUP, reads: "Marriage is the bond of birth between a man and a woman as a husband and wife for the purpose of forming a happy and eternal family based on the One God." But according to the provisions of Article 2 KHI, it reads: "A marriage according to the law of Islam is a marriage, which is a strong mandate or *missaqan ghalidzan* to obey the command of Allah, and to do so is worship." Regarding the validity of marriage, it is restored to the terms of religion and beliefs of each other, as the provisions of Article 2 paragraph (1) UUP state: "Marriage is lawful if it is done according to the law of each religion and belief." Meanwhile, Article 2, Paragraph 2, of the UUP states: "Every marriage is recorded according to the law." Thus, what determines the legality and non-legality of marriage are the provisions of religious law, while the duty of the state is only to register marriages for administrative purposes.

A marriage, according to Islam, must comply with the law of marriage, which includes the prospective husband, the prosecuting wife, the marriage guardian, two witnesses, *ijab* and *kabul*. The law is laid down in the provisions of Article 14 KHI. With regard to the *ijab* and *kabul*, it must be conditioned that the person entitled to pronounce admission is the prospective husband personally; however, in certain cases, the admission may be represented to another man with the condition that the prosecuted husband authorizes expressly in writing that the acceptance of the representative on the marriage certificate is for the husband (Article 29 paragraphs (1) and (2) KHI). The validity of a marriage depends on the terms and conditions set forth in the rules of religion. In general, the terms of marriage in the various religions are almost the same: in essence, marriage is the union of a man and a woman into a couple of husbands and wives (Hartanto, 2019).

At the time of the Corona virus disease 2019 (COVID-19) pandemic, the state of Indonesia can be said to be worrying and depressing. The whole sector of the world is paralyzed by the sudden outbreak of COVID-19, which has caused nations around the world to be unprepared for this outbreak. The impact of the COVID-19 pandemic has not only been on the stability of the economic, social, cultural, educational, health, legal, and industrial sectors but on the entire sector, including the legal policy in Indonesia (Danurahman & Kusdarini, 2021). In the time of COVID-19, there was a practice of marriage in which *ijab* and admission were not carried out in one place and one assembly physically, but online. An example of this is the marriage process of a couple of brides in Kolaka district, Southern Sulawesi, named Kardiman bin Haeruddin and Febrianti bin Hasanuddin, who were forced to make admission by video phone calls. Febrianti is a citizen of the village of Lamokato, Kolaka district of Kolaka, while Kardiman is a Bajoe of the province of South Sulawesi who complained about fate in Surabaya, East Java. Three days before the wedding, Kardiman returned to Kolaka. However, he was blocked in Makassar and Bajoe because the crossing line was temporarily closed due to the COVID-19 pandemic. Because there was no crossing, the groom was forced to return to Surabaya because the company only gave him three days off. Meanwhile, there is an option that the prospective male groom may enter Kolaka to conduct a marriage and meet face-to-face with the prospective female groom on the condition of having to undergo isolation for 14 (fourteen) days, but the male groom is not affordable due to the permission given by the company where he works for only three days. Seeing these conditions, the execution of *Kabul*'s idolatry in marriage is done through video calls (CNN Indonesia, 2020).

Based on the case, it is known that ijab and admission cannot be done physically directly, but with the advancement of technology, it allows people to interact directly in one place and at one time virtually. The interesting thing is how the government policy responds to this by taking into account the religious provisions regarding the terms and conditions of marriage, because the provisions on the execution of marriages online in KHI are not regulated.

### Literature Review

Marriage is a basic human right for every human being with the aim of continuing heredity. The Universal Declaration of Human Rights states that every individual who marries must be based on freedom with full agreement and must be at full age (Nour, 2009). Marriage is a basic human right to preserve their descendants. Marriage in Indonesia is implemented differently due to cultural diversities (Hartanto, 2017). Marriage is a very important event in a human's life. It is a legal relationship between a man and a woman to live together as husband and wife. This bond is a formal relationship came from the fact, it is real both for themselves and for other people. Marriage is a right for every individual, it is guaranteed by Article 10 under Law Number 39 of 1999 concerning Human Rights, which states that every person has the right to create a family and continue their descend through a valid marriage (Judiasih et al., 2019).

The implementation of marriage in Indonesia in practice there are differences, which are caused by the diversity of cultures or cultures and religions that are embraced. The enactment of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as Marriage Law), indicates that there has been a legal unification in the field of marriage in Indonesia. The provisions of Article 1 of the Marriage Law states that "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the divinity of the Almighty". This provision describes a marriage aimed at forming a happy and eternal family (household). Eternal means forever, meaning that there is no divorce in marriage, except because of death. Marriage means: (1) marriage is by definition and tradition a union between a man and a woman; (2) marriage is designed as a framework for raising children (Jowett, 2014). The concept of marriage in ancient Roman law was a contract between two couples (husband and wife) who agreed. Christianity also bases the idea of a contract by requiring two dimensions: 1) the contract cannot be canceled, except with the death of one of its partners, and 2) sexual activity is only carried out for childbearing (Meyendorff, 1990). The concept of marriage is a contract of negotiation between two families. Potential partners (future husband and future wife) have the opportunity to get to know and understand each other, especially those who live in the same community in the same country (Timmerman et al., 2009).

### Research Methods

The research method used in the writing of this article is normative jurisprudence, that is, legal research based its analysis on the regulations of the laws in force and relevant to the legal issues that are the focus of the research (Benuf et al., 2019). Research methods of normative jurisprudence using secondary data of primary legal material and secondary legal materials. Secondary data is obtained through library research (Muhammad, 2004). The material of primary law is written rules enforced by the state, which can be found in judgments of courts of fixed law, laws laid down by parliament, and decisions of administrative agencies. Primary legal material consists of: basic norms of the Pancasila; basic regulations; legislation of the country of the Republic of Indonesia (UUD) 1945; legislation of the country of the Republic of Indonesia (TAP MPR); regulations of legislation; uncoded legal materials; jurisprudence;

and treaties. Secondary legal material is legal material that has no force and only serves as a clarification of primary legal material. Secondary law material consists of draft laws, the scientific work of scholars, and research results (Benuf et al., 2019).

### Analysis And Discussion

The Covid-19 pandemic has caused all kinds of activities to be carried out with the help of technology, electronics, and applications that all serve as solutions for humans in order to support everything that humans need. Every aspect of human life today is heavily dependent on the advancement and use of technology, let alone the policy of implementing social distancing, work from home, and at home alone, which has transformed everything toward digital. (Danurahman & Kusdarini, 2021). It affects all aspects of life, such as education, politics, social, economic, cultural, legal, and so on. The condition is also due to the existence of the execution of a marriage (*ijab* and *kabul*) in marriage according to Islam, which is done not in one place or assembly physically but through the facility of video calls at the time of the COVID-19 pandemic, which poses its own problems. This is because online marriage (*ijab* and *kabul*) is not specifically regulated according to Islam. These provisions can be seen in articles 27, 28, and 29 of the KHI that regulate marriage, which read:

Article 27 KHI:

"The appointment and agreement between the guardian and the prospective bridegroom must be clearly in order and not over time."

Article 28 KHI:

"The marriage shall be performed personally by the marriage guardian concerned. The marriage custodian shall represent the other person."

Article 29 KHI:

- (1) The person entitled to pronounce admission is the candidate bridegroom personally.
- (2) In certain cases, the pronouncement of admission may be made to another man, subject to the condition that the prospective husband authorizes expressly in writing that the admission of the representative of the marriage certificate is for the husband.
- (3) In the case of a candidate wife or a guardian objecting to the husband's representation, then the wedding certificate may not be held.

Based on the above provisions of KHI, it is clear that online marriage is not regulated in KHI. The government's policy to deal with the conditions of the COVID-19 pandemic is to issue a letter of notice from the Directorate General of Islamic Society Guidance of the Ministry of Religious Affairs of the Republic of Indonesia, Number: P-006/DJ.III/Hk.00.7/06/2020 On Marriage Services for a Safe and Productive Society. The letter does not regulate online marriage. The notice stipulates that the execution of the marriage certificate is carried out as usual (with face-to-face in one place and at one time), subject to the condition that the performance of the wedding certificate carries out with due regard to the health protocol and as much as possible to reduce physical contact with officials of the Office of Religious Affairs of the District. The process of marriage execution at the Office of Religious Affairs during the COVID-19 pandemic is as follows: 1) The marriage service remains as it should be; 2) the marriage mechanisms and requirements for the prospective bride remain unchanged; 3) the execution of the wedding certificate is limited to the number of participants and must also follow protocols such as wearing masks, washing hands, and not shaking hands; 4) the process of wedding execution in the era of the COVID-19 pandemic was considered unburdened and/or complicated for the future bride. (Jannah et al., 2020). 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 (Syatar & Bakry, 2021).

Although there is an Circular Letter of the Directorate-General of Islamic Society Guidance of the Ministry of Religious Affairs of the Republic of Indonesia Number: P-006/DJ.III/Hk.00.7/06/2020 On Marriage Service to the Productive Society Safe for COVID, but in practice there are examples of cases as described by the author in the introduction above, this is the process of the marriage of a couple in Kolaka district, South Sulawesi, named Kardiman bin Haeruddin and Febrianti bin Hasanuddin, who were forced to undertake admission through video phone calls. This is an interesting case. Although there is no legal basis in the legislation that explicitly permits it, marriages are still made via video calls. Addressing this issue, the Indonesian Parliament has granted a fatwa as stipulated in the Decision of the *Ijtima' Ulama* Commission of Fatwa in Indonesian VII of the Indonesian parliamentary assembly of 2021, the B-1 Commission, which supported the *Masail Fiqhiyyah Mu'ashirah* (Contemporary Fikih Issues) on the provisions of Chapter II on the Law of Online Marriage, establishing the following legal provisions:

- (1) In principle, the marriage is valid if it fulfills the conditions of *ijab kabul*, it is carried out in a manner identified (in one place), with a speech or a *lafadz* that is *sharih* (clear), and *ittishal* is connected between *ijab* and *kabul* directly.
- (2) If the prospective groom and guardian cannot be physically in the same place, then admission into marriage can be done by means of the groom's representation (*tawkil*)
- (3) In cases where the parties are not physically present and/or unable to represent (*tawkil*), the execution of the marriage certificate online can be carried out on the following conditions:
  - a. The marriage guardian, the prospective bridegroom, and two witnesses are certified connected through a virtual network, including audio and visual (audio-visual).
  - b. At the same time (real time).
  - c. There is a guarantee of the identity of the parties that can be technically proven.
  - d. There is a guarantee of recognition from the government.
- (4) Online marriages that are not eligible as referred to in paragraph 3 (three) of the law are invalid.

The Decision of the *Itima' Ulama* Commission of Fatwa in Indonesian VII of the General Assembly of Indonesia in 2021 provides a legal basis and an opportunity for legal arrangements concerning marriage (*ijab* and *kabul*) that can be made online in compliance with the terms and conditions that have been established at points up to four. It can be an input to include the terms of the execution of marriage online in the provisions of KHI. Although the results of the *ijtima'* allow the admission of online, the opinions of the scholars also differ in the judgment of the conditions. It is a duty, according to Imam Shafi'i, to pronounce the *ijab* and the *kabul* in one place and at the same time. Imam Malik and Imam Hambali are also in agreement with Imam Shafi'i's view that marriage must be united in one place or assembly, and the testimony should be based on hearing and vision. In the meantime, according to Imam Hanafi, *ittihad al-majelis* is one place or assembly on an obstacle in marriage concerning continuity of time (*zaman*) between *ijab* and *kabul*, not concerning unity of place (Arif et al., 2022).



There are differences of opinion about contemporary issues that exist, which is a reasonable thing given that such problems did not exist in the time of the Prophet Muhammad SAW, so the problems related to marriage or *ijab* and online admission have not yet been stipulated by law. At the time of the Prophet, the establishment of a law was based on the source of the law of Islam, which was the place of adoption of Islamic law. In the library of Islamic law, Islamic sources of law are often understood as Islamic laws or Islamic bases of law. In the time of the Prophet, the law of Islam was in the stage of establishment and laying the foundations, where the source of Islamic law was the Quran and Sunna. Besides, the Prophet (peace and blessings be upon him) is the source of the law, so far as there is no correction or revelation from God (Rohidin, 2016).

Regarding the law of *ijab* and *kabul* online, then it becomes the territory of *Ijtihad*. There is no provision in the Qur'an or in the Sunah. *Ijtihad* is basically a discharge of all abilities, to obtain the law of the Qur'an and the Sunah, which is not set forth in the Quran. *Ijtihad* is done by the way of *ijma*, *qiyas*, *mashlahah mursalah*, *istihsan*, *'urf*, *sadd adz-dzari'ah*, and *istishhab* (Rohidin, 2016). The decision of the *Ijtima' Ulama* Commission of Fatwa in Indonesia VII of the Indonesian Ulama Assembly in 2021 The B-1 Commission that endorses *Masail Fiqhiyyah Mu'ashirah* (Contemporary Fikih Issues) on the provisions of Chapter II on Online Marriage Law as described above is a form of implementation of the *ijtihad*, which essentially allows the academic marriage or *ijab* and *kabul* to be carried out online.

In the world today has witnessed various forms of marriage that existed that question arises whether a marriage recognized by Islam or not. This diversity exists because of advances in social media that makes a borderless world today where people from around the world can communicate without any restrictions of time and place (Dorloh et al., 2016). Regarding the role of Islamic law, we have to look at the legal system in Indonesia, namely the customary legal system that is the original law of the Indonesian nation, the Islamic legal system, and the Western legal system. These three legal systems have a similar position in the Indonesian legal system. In connection with the existence of Islamic law, Islamic law has a role in the development of national law in Indonesia. As to the role of Islamic law in the development of national law in Indonesia, there are several forms, namely: 1) exists in the sense of being an integral part of Indonesian national law; 2) exists in the meaning of being with the independence recognized existence and power and authority by the nation and given the status of the law of the nation; 3) exists within the national law within the sense the norms of Islamical law that serve as a filtering of the materials of the national laws of Indonesia; and 4) exists as the main material and main element of the laws of the country of Indonesia (Ja'far, 2012).

Based on the description of the role of Islamic law above, in order to provide legal certainty and avoid the absence of a legal vacuum, concrete measures are required from the state to make legal arrangements related to the execution of marriages or admissions online. Marriage through online media is a new phenomenon that is happening in society, although it only happens when there is an urgent need such as distance, so it can cut travel costs and time to good use and also become an alternative when there's something urgent like the COVID-19 pandemic that limits physical encounters between prospective brides (Hamdani et al., 2023). In the execution of a wedding ceremony or *Kabul* ceremony online using virtual media, there are a number of criteria set, namely: 1) The prospective bride and groom are separated very far away at the time of their wedding; 2) they cannot attend the ceremony in one place on the

grounds that it is not possible for both sides to gather together, as is generally the case. The existence of such criteria means that a couple of prospective brides who perform a wedding or a wedding ceremony online using virtual media must be brides who are not able to perform the wedding normally. Therefore, the wedding ceremony using virtual media for the prospective bride can still be done as another way to remain able to carry out the ceremony caused by distance and time (Salamah & Tirmidzi, 2022). Thus, it is necessary to establish the law with consideration because there is an urgent need for it. The provisions concerning the marriage certificate as laid down in the KHI may be added to the provisions on the execution of the wedding certificate online, i.e. in Article 29 KHI.

## Conclusion

The legal arrangements concerning the execution of online marriages in Indonesia are very likely to be made, provided that the marriage arrangements still comply with the terms of the marriage and the conditions of marriage offline. This arrangement can be included in the provisions of Article 29 KHI, which regulates wedding arrangements.

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## References

- Arif, A., Talli, A. H., & Ramli, A. R. (2022). Pelaksanaan Akad Nikah Secara Virtual pada Masa Pandemi; Analisis Empat Mazhab. *SHAUTUNA : Jurnal Ilmiah Mahasiswa Perbandingan Mazhab*, 3(1), 303–316. <https://doi.org/10.24252/shautuna.vi.23375>
- Benuf, K., Mahmudah, S., & Priyono, E. A. (2019). Metode penelitian Hukum sebagai Instrumen mengurai permasalahan kontemporer. *Refleksi Hukum: Jurnal Ilmu Hukum*, 3(2), 145–160.
- Danurahman, J., & Kusdarini, E. (2021). Dampak Pandemi Coronavirus Disease (Covid-19) Dalam Perspektif Hukum Di Era Digital. *Masalah-Masalah Hukum*, 50(2), 151–160. <https://doi.org/10.14710/mmh.50.2.2021.151-160>
- Dorloh, I., Azhar, A., & Universiti, P. N. (2016). *MARRIAGE MOVING THROUGH THE INTERMEDIATE*. 1–5.
- Hamdani, M., Masykur, M. R., & Hamidah, T. (2023). Akad Pernikahan Melalui Zoom dalam Perspektif Fikih. *AL-MANHAIJ: Jurnal Hukum Dan Pranata Sosial Islam*, 5(1), 423–432. <https://doi.org/10.37680/almanhaj.v5i1.2181>
- Hartanto, D. A. (2017). Local Wisdom of Sedulur Sikep (Samin) Society'S Marriage in Kudus: Perspective of Law Number 1 Year 1974 on Marriage. *Jurnal Dinamika Hukum*, 17(2), 132. <https://doi.org/10.20884/1.jdh.2017.17.2.723>
- Hartanto, D. A. (2019). Perkawinan Lintas Agama Perspektif Hukum Positif dan Hukum Agama di Indonesia. *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam*, 10(2), 137. <https://doi.org/10.21043/yudisia.v10i2.5877>
- Ja'far, K. (2012). Teori-teori Pemberlakuan Hukum Islam di Indonesia. *Asas*, 4(2), 102–110.
- Jannah, R., Talli, A. H., & Mapuna, H. D. (2020). Pelaksanaan Pernikahan Pada Masa Pandemi Covid-19. *Qadauna: Jurnal ...*, 1, 452–469. <https://journal3.uin-alauddin.ac.id/index.php/qadauna/article/view/23784%0Ahttps://journal3.uin-alauddin.ac.id/index.php/qadauna/article/view/23784/14830>

- Jowett, A. (2014). "But if you legalise same-sex marriage..": Arguments against marriage equality in the British press. *Feminism and Psychology*, 24(1), 37–55. <https://doi.org/10.1177/0959353513510655>
- Judiasih, S. D., Nugraha, N. A., & Sudini, L. P. (2019). Prohibition of Intera Religion Marriage in Indonesia. *Jurnal Dinamika Hukum*, 19(1), 186. <https://doi.org/10.20884/1.jdh.2019.19.1.2462>
- Meyendorff, J. (1990). Christian Marriage in Byzantium: The Canonical and Liturgical Tradition. *Dumbarton Oaks Papers*, 44(1990), 99. <https://doi.org/10.2307/1291620>
- Muhammad, A. (2004). *Hukum dan Penelitian Hukum*. 8(1), 15–35.
- Nour, N. M. (2009). Child marriage: a silent health and human rights issue. *Reviews in Obstetrics & Gynecology*, 2(1), 51–56. <http://www.ncbi.nlm.nih.gov/pubmed/19399295> <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=PMC2672998>
- Rohidin. (2016). Pengantar Hukum Islam. In *Journal of Chemical Information and Modeling* (Vol. 53, Issue 9).
- Salamah, U., & Tirmidzi, T. (2022). Akad Nikah Virtual Dalam Tinjauan Hukum Islam. *USRAH: Jurnal Hukum Keluarga Islam*, 2(2), 1–17. <https://doi.org/10.46773/usrah.v2i2.334>
- Syatar, A., & Bakry, M. (2021). Is It Possible to Perform Online Marriage during COVID-19 Outbreak? *Kresna Social Science and Humanities Research*, 1(January), 1–4. <https://doi.org/10.30874/ksshr.20>
- Timmerman, C., Lodewyckx, I., & Wets, J. (2009). Marriage at the intersection between tradition and globalization. Turkish marriage migration between Emirdag and Belgium from 1989 to present. *History of the Family*, 14(2), 232–244. <https://doi.org/10.1016/j.hisfam.2009.04.002>