

Strengthening Legal Certainty of Marriage Contract (Ijab Kabul) via Telecommunications in the Digital Era and Its Alignment with Sustainable Development Goal: Case of Indonesia

Muhyidin^{a✉}, Budi Setyawan^b, Mas nooraini hj mohiddin^c, Ro'fah Setyowati^a, Aisyah Ayu Musyafah^a, Agus Saron^a, Islamiyati^a

^a Faculty of Law Universitas Diponegoro

^b Postgraduate School Universitas Diponegoro

^c Faculty of Law Universiti Islam Sharif Ali Brunei Darussalam

✉ Corresponding email: muhyidin@lecturer.undip.ac.id

Abstract

This research investigates the legal implications and challenges of adapting ijab kabul (Islamic marriage contract) to the digital era in Indonesia. The rise of telecommunications technologies—especially video calls—has enabled remote marriages during the COVID-19 pandemic and in geographically separated contexts. While digital ijab kabul offers efficiency



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and broader access, questions persist regarding its legal validity, potential for fraud, and regulatory ambiguity. Currently, Indonesia's Marriage Law No. 1 of 1974 requires physical presence for marriage to be legally valid. However, the Indonesian Ulema Council (MUI) has issued a fatwa allowing digital ijab kabul under specific conditions: real-time audiovisual communication, verified identities, and a shared session (ittihad al-majlis). These criteria demonstrate partial acceptance of digital presence under Islamic law, yet lack binding legal force. Using a normative juridical approach, this study analyzes statutory law, Islamic legal doctrines, and international comparisons with countries like Malaysia, Saudi Arabia, and the UAE. These nations have developed legal frameworks for digital marriage by enforcing identity verification (biometrics, e-signatures) and procedural integrity. The study proposes that Indonesia revise Article 26 of the Compilation of Islamic Law (KHI) to explicitly recognize digital ijab kabul, harmonizing it with Law No. 11/2008 on Electronic Information and Transactions (ITE Law). By formally acknowledging digital presence within ittihad al-majlis, Indonesia can ensure greater legal certainty and protect vulnerable parties. This legal reform supports Sustainable Development Goal (SDG) 16 by promoting access to justice, enhancing legal institutions, and fostering trust in digital innovations within religious and civil legal systems.

KEYWORDS *Digital Ijab Kabul, Islamic Marriage Law, Legal Reform, SDG 16*

I. Introduction

Islamic family law in Indonesia is governed by Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (Kompilasi Hukum Islam -

KHI). This codification process serves as a crucial foundation in the legal reform process in Indonesia, demonstrating the ability of Islamic law to adapt to a pluralistic national legal system¹. This flexibility is also evidence that Islamic law adheres to the principle of *lex semper dabit remedium* (the law always provides a remedy). This phenomenon illustrates the commitment of the Muslim community to the state², while simultaneously reinforcing the moral and spiritual foundations of family life³. However, as time progresses and social dynamics evolve, there will always be a need to update existing laws. Family issues that were never encountered in previous eras often cannot be fully accommodated by the prevailing legal framework. At this point, a legal reference risks failing to achieve substantive justice (*substantia legis*) due to the lack of legal certainty or protection⁴.

In this context, legal reform becomes essential to ensure that the justice anticipated by society can be realized in practice⁵. The background to this study lies in the growing phenomenon of marriage contracts conducted via telecommunications—particularly video calls—among geographically separated couples, both within Indonesia and transnationally. Although religious principles in *fiqh* may accommodate this practice under certain inter-pretations, current Indonesian marriage law does not formally recognize such contracts. This disconnect creates a

¹ Islamiyati, A. Rofiq, R. Setyowati, and A. A. Budiman, "PENEGAKAN HUKUM PERKAWINAN ISLAM MELALUI YURISPRUDENSI MAHKAMAH AGUNG," Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, vol. Vol. 48 No. 2 (2018), 2018, [Online]. Available: <http://mhn.bphn.go.id/index.php/MHN/article/view/104/37>

² D. P. Sulaiman, "Pembangunan Hukum Indonesia Dalam Konsep Hukum Progresif," *Hermeneutika: Jurnal Ilmu Hukum*, vol. 2, no. 1, 2018, [Online]. Available: <https://doi.org/10.33603/hermeneutika.v2i1.1124>

³ Sarifudin, "Hukum Islam Progresif: Tawaran Teori Maslahat At-Thufi Sebagai Epistemologi Untuk Pembangunan Hukum Nasional Di Indonesia," *Jurnal Wawasan Yuridika*, 2019, [Online]. Available: <https://doi.org/10.25072/jwy.v3i2.269>

⁴ A. Islamy, "Eksistensi Hukum Keluarga Islam Di Indonesia Dalam Kontestasi Politik Hukum Dan Liberalisme Pemikiran Islam," *Al-Istinbath: Jurnal Hukum Islam*, vol. 4, no. 2, 2019, [Online]. Available: <https://doi.org/10.29240/jhi.v4i2.1059>

⁵ E. Hidayat, "Kontribusi Politik Hukum Dalam Pembangunan Hukum Progresif Di Indonesia," *ASAS*, 2019, [Online]. Available: <https://doi.org/10.24042/asas.v10i02.4536>

legal uncertainty that affects the validity of marriages, the status of children, inheritance rights, and access to public services. Therefore, this issue presents a legal gap that urgently needs to be addressed in both doctrinal and administrative dimensions. The emergence of the concept of progressive law, adopted in the discourse of Islamic law, is a response to the stagnation in legal thought that often hinders adaptation to social change⁶. Progressive law, introduced by Satjipto Rahardjo, offers a more dynamic approach where the law is seen not merely as a collection of written rules (*jus scriptum*), but as an instrument that must continually evolve and be oriented towards substantive justice⁷.

In this context, *fiqh* as a source for formulating Islamic family law should not be viewed as something static, textual, and immutable, but rather as the result of scholars' interpretations that are contextual and dynamic^{1, 8}, which must continually be evaluated and adjusted to keep pace with the changing times⁹. The implementation of progressive law in the realm of Islamic family law in Indonesia faces significant challenges, especially in addressing the phenomenon of marriage in the digital era. The reality of cyberspace, with all its interactive conveniences, presents new challenges for Islamic family law, particularly regarding the marriage contract (*akad nikah*) that requires the unity of assembly (*ittihad al-majlis*)

⁶ Z. Zuhrah, I. G. A. K. R. Handayani, and B. Harahap, "Check for Updates The Opportunities and Challenges of Reforming the Surrogate Heir Provisions in the Islamic Law Compilation," in *Proceedings of the International Conference on Law, Economic & Good Governance (IC-LAW 2023)*, Springer Nature, 2024, p. 148

⁷ S. Rahardjo, "Reformasi Menuju Hukum Progresif Sebaiknya Pikiran Untuk Merekonstruksi," 2004

⁸ S. K. Katyal, "Lex Reformatica: Five Principles of Policy Reform for the Technological Age," *Berkeley Tech. LJ*, vol. 36, 2021, [Online]. Available: <https://doi.org/10.15779/Z38HD7NT5B>

⁹ M. Ita, H. Muttaqin, and R. Amaliyah, "The Problems of Islamic Family Law in the Digital Era and Its Relevance to Renewal of the Compilation of Islamic Law," *Jurnal Hukum Islam*, vol. 22, no. 1, pp. 89–124, 2024, [Online]. Available: <https://e-journal.uingusdur.ac.id/jhi/article/view/8717>

and the physical presence of the involved parties^{9, 10, 11}. The development of legal contexts arises due to technological advancements that allow marriage contracts to be conducted virtually, such as through telecommunications devices like video calls, posing new challenges in accommodating these changes within the traditional Islamic legal framework. As a basic illustration of confronting this cyber reality, the perceptions and testimonies of eight judges in the Religious Courts of the Special Region of Yogyakarta reveal that the Compilation of Islamic Law is still relevant as the primary reference in adjudicating cases, considering the KHI is regarded as a manifestation of the consensus gentium (general agreement) of Indonesian scholars and as a reflection of the law that lives in society^{9, 12}. However, this view will soon confront legal gaps brought about by the phenomenon of virtual marriage contracts.

Tracing back, classical fiqh literature may no longer suffice to address the continually evolving contemporary issues¹. From the perspective of *maqāṣid al-sharī'ah*, according to the teachings of Imam Ghazali, the objective of Islamic law is for the general welfare (*bonum commune* in Western legal terms). From this perspective, marriage contracts conducted through information technology can be considered valid as long as the established pillars and conditions are met. However, the legitimacy of a marriage contract under Sharia does not automatically eliminate the administrative and legal issues faced in Indonesia, particularly because the Marriage Law (Law No. 1/1974) and its derivative

¹⁰ R. Harwoto, "MEMBANGUN KONSEP REGULASI PERNIKAHAN ONLINE DI INDONESIA DALAM MASA PANDEMI DAN ERA DIGITAL," *Jurnal Hukum Progresif*, vol. 11, no. 2, pp. 145–158, Oct. 2023, doi: 10.14710/jhp.11.2.145-158

¹¹ A. I. H. Isman and A. B. Eldeen, "Transcendental Law and Legal Reform in the Digital Era," in *AI in Business: Opportunities and Limitations: Volume 2*, Springer, 2024, pp. 485–493. [Online]. Available: https://doi.org/10.1007/978-3-031-49544-1_44

¹² Y. Harahap and A. Omara, "Kompilasi Hukum Islam Dalam Perspektif Hukum Perundang-Undangan," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, vol. 22, no. 3, pp. 625–644, 2010, [Online]. Available: <https://doi.org/10.22146/jmh.16245>

regulations have not yet accommodated the process of online marriage contracts^{10, 13}.

The basic principle in the Marriage Law, such as *lex scripta est* (written law), emphasizes the importance of the principle of registration, where the validity of a marriage is determined not only by fulfilling the religious pillars and conditions but also by the authenticity of registration conducted in accordance with state procedures. Marriage officials (Penghulu), as functional state civil servants tasked with registering marriages, are required to comply with this rule, even though they may understand and agree with the concept of online marriage from a *fiqh* perspective^{14, 15}. Administrative obstacles such as distance or difficulties in presenting the guardian or the groom are not considered strong enough reasons to opt for an online marriage, as *fiqh* has long provided solutions such as *tawkil bil kitabah* (representation by letter). The validity of a marriage certificate from the perspective of positive law requires that the marriage contract document (which can be viewed as a contract) must be signed directly at the location of the marriage ceremony, to ensure authenticity and prevent error in forma (formal errors) that may affect the validity of the document.

The change in the marriage certificate format since Perdirjen Bimas Islam 19/2018, which requires the signing of the certificate at the marriage location, shows a commitment to this registration authenticity. The inability to sign directly due to time and place discrepancies, as occurs in online marriages, has the potential to cause formal validity issues that

¹³ Z. Nasohah, "Dynamics of Islamic Family Law in Facing Current Challenges in Southeast Asia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, vol. 8, no. 1, p. 1, Jan. 2024, doi: 10.22373/sjhk.v8i1.16553

¹⁴ Nur Sultan Al Khuluqi Sirait and Akmaluddin Syahputra, "Akad Nikah Online dalam Perspektif Keputusan Ijtima' Ulama Komisi Fatwa MUI Se-Indonesia VII Tahun 2021 dan Peraturan menteri agama No 20 Tahun 2019 tentang Pencatatan Pernikahan," *Jurnal Ilmu Hukum, Humaniora dan Politik*, vol. 4, no. 4, pp. 657–666, May 2024, doi: 10.38035/jihhp.v4i4.2043

¹⁵ S. M. Hayati, H. Khitam, Z. Erfan, and A. Amini, "Religious Tradition and Technology: Debate among Penghulus about Online Marriage Law in Banjarmasin," *Journal of Islamic Law*, vol. 5, no. 1, pp. 105–124, 2024, [Online]. Available: <https://doi.org/10.24260/jil.v5i1.2187>

could affect the legal status of the marriage. In this context, the urgency of updating the Compilation of Islamic Law becomes increasingly clear. With technological developments that allow marriages to be conducted online, more flexible and adaptive legal interpretations are needed to accommodate the changing realities. This will confront the rigid criteria found in PP 9/1975 and all Ministerial Decrees of the Minister of Religion (KMA) related to marriage registration, such as PMA No. 437/2004, PMA No. 11/2007, PMA No. 19/2018, and PMA No. 20/2019, none of which explicitly accommodate online marriages. The legal reforms discussed in this research include clear provisions regarding online marriage contracts and provide comprehensive guidance on other legal issues that may arise, to ensure that Islamic family law remains relevant and capable of addressing contemporary challenges. This reform is crucial not only from the perspective of Islamic law but also from the standpoint of national law⁹, where the integration between Islamic law and Indonesian positive law must be continually strengthened to create a holistic and responsive legal system that meets the needs of society

This study employs a normative juridical approach, where the analysis is conducted based on the perspective of legal renewal theory concerning the adaptation of Islamic family law to the phenomena of the digital era. This approach aims to explore how Islamic law, particularly family law, can be renewed to address the emerging challenges within the context of modern technology. The normative juridical approach is essential in understanding the doctrinal aspects of Islamic law and its ability to adapt to new circumstances. By examining legal texts, including the Compilation of Islamic Law (KHI) and other relevant statutory laws such as Law No. 1 of 1974 on Marriage, the study seeks to identify areas where current regulations may fall short in accommodating the realities of digital interactions, particularly in relation to marriage contracts. This method also involves the exploration of legal principles and jurisprudential interpretations that have traditionally guided Islamic family law. By doing

so, the research investigates the extent to which these principles can be flexibly applied or need to be reinterpreted to remain relevant in the digital age^{8, 11, 16}. This includes the examination of classical fiqh literature and contemporary legal opinions (fatwas) that may offer new insights or solutions.

Furthermore, the study draws on the theory of legal renewal to propose potential reforms or adjustments to existing laws. The legal renewal theory suggests that law should not be static but must evolve in response to societal changes, technological advancements⁸, and new forms of social interaction. In the context of Islamic family law, this theory supports the idea that legal provisions should be periodically revisited and revised to ensure they continue to serve justice and meet the needs of the community. The research also considers the practical implications of these legal reforms, particularly how they would be implemented within the framework of Indonesia's legal system. This involves analyzing the administrative and procedural aspects of marriage registration and the role of religious courts in adjudicating cases related to online marriages. The study aims to provide a comprehensive framework for integrating new legal interpretations into the existing system, ensuring both compliance with Islamic principles and adherence to national legal standards.

II. The Phenomenon of Online Ijab Qabul

The phenomenon of online ijab qabul in Indonesia has emerged in tandem with the rapid development of communication technology and the internet. It has become increasingly relevant in the context of the COVID-

¹⁶ F. D. Hardini, R. I. Faudina, and A. Salsabila, "Tantangan Implementasi Hukum Islam Di Era Digital," *Tashdiq: Jurnal Kajian Agama Dan Dakwah*, vol. 4, no. 3, pp. 51–60, 2024, [Online]. Available: <https://doi.org/10.4236/tashdiq.v4i3.3727>

19 pandemic, which has limited face-to-face meetings^{9, 10, 14, 17}. Ijab qabul is the core of the marriage process in Islamic law, where the groom expresses his consent to marry the bride. Traditionally, this is done directly in the presence of an officiant (often a religious official) and witnessed by others physically present. However, due to physical and mobility restrictions during the pandemic, many couples began to consider conducting the ijab qabul online through video conferencing platforms such as Zoom, Google Meet, or similar applications. In the context of Islamic law, online marriages are fundamentally no different in essence from conventional marriages. Linguistically, an online marriage is one in which the marriage contract (akad nikah) is conducted through telecommunications media, using either voice or video. The primary characteristic of an online marriage is the use of technology to bridge the physical distance between the groom and bride, who may be located in different geographical locations¹⁷. This is made possible because communication is conducted through audio or video media, allowing both parties to connect virtually even though they are physically far apart.

Technically, the main difference between an online marriage and a traditional marriage lies in the conduct of the marriage contract. In a traditional marriage, the parties involved in the marriage contract are usually in the same place. However, in an online marriage, these parties are not physically located in the same place. This creates a new dynamic in the implementation of ijab qabul, where the physical separation between the groom, bride, marriage guardian (wali), and witnesses becomes an element accommodated by technology. This practice can vary; for example, in some cases, the wali and the bride may be in different locations, and in other cases, the groom and bride may be in vastly

¹⁷ F. Bachrong, F. Marzuki, and H. S. Bakhtiar, "Praktik Pencatatan Ijab Qabul Via Online dalam Proses Akad Nikah Di Makassar," PUSAKA, vol. 7, no. 1, pp. 49–62, Jun. 2019, doi: 10.31969/pusaka.v7i1.241

different locations¹⁸. Nonetheless, the practice of online marriage still requires the fulfillment of the essential conditions and pillars of marriage as stipulated in Islamic law. This includes the consent of both parties, the presence of witnesses, and a legitimate marriage guardian (wali). Although physical presence in one assembly (ittihad al-majlis) is considered important in Islamic legal tradition, modern communication technology offers an alternative that allows ijab qabul to be conducted validly even when the parties are not in the same place^{10, 14, 17, 18}.

The juridical implications of online ijab qabul can be illustrated through the case of a virtual marriage ceremony held during the COVID-19 pandemic involving a bride, Nuraini Umima (25), and a groom, Pringgo Aditya (26), as reported by *Republika* on January 3, 2021. The bride, who was undergoing treatment at Wisma Atlet Emergency Hospital in Jakarta, participated in the akad nikah via video conferencing from the 7th floor of Tower 7, while the groom was physically present at the KUA (Office of Religious Affairs) Mampang Prapatan, South Jakarta. The ijab qabul was solemnized under the supervision of the marriage registrar (Penghulu) in accordance with administrative procedures, albeit with the physical presence of the parties distributed across separate locations.

This case reflects the emergence of a legal and social adaptation to extraordinary circumstances, wherein the substantive pillars of marriage in Islamic law—such as the offer and acceptance (sighat ijab qabul), presence of the wali, and witnesses—were fulfilled through telecommunication means. However, despite procedural compliance in terms of religious doctrine, such practices raise questions regarding the formal validity of marriage registration under Indonesian positive law, particularly with respect to Perdirjen Bimas Islam No. 19/2018, which mandates on-site signing of marriage documents. The absence of explicit regulatory

¹⁸ M. Taufiq, I. Madura, and A. S. Ahmed, "Online Marriage in the Perspective of Fiqh Nawazil," *Jurnal Hukum Islam*, vol. 21, no. 1, pp. 29–54, 2023, [Online]. Available: https://doi.org/10.28918/jhi_v21i1_02

accommodation for online akad nikah reveals a normative gap that necessitates legal reform to ensure both the legitimacy and legal certainty of such marriages. This phenomenon also bears an analogy to the concept of consensus ad idem (agreement on the same thing) in civil contracts. In contract law, the agreement of the parties is essential to validate an agreement. However, with the advancement of technology, contracts no longer need to be agreed upon in the same place. Contracts conducted electronically or through modern communication media are still considered valid as long as the parties reach a clear agreement and fulfill other legal requirements.

III. The Phenomenon of Online Ijab Qabul in The Perspective of Fiqh

In fiqh literature, marriage is often referred to as nikah or zawaj, terms frequently used in Arabic and found in several verses of the Qur'an, such as Surah an-Nisa [4]: 3 and 22, and Surah al-Ahzab [33]: 37. Linguistically, nikah means gathering and sexual intercourse [18]. However, according to Sharia, the scholars of the various Islamic schools of thought (madhahib) define marriage as a contract that renders sexual relations between a man and a woman lawful. In other words, marriage is a contract that permits enjoyment between a man and a woman, such as touching, kissing, hugging, and engaging in intimate relations, provided that the woman is not forbidden (mahram) due to kinship, marriage, or family ties. Additionally, marriage in Sharia is also understood as a contract that provides a legal framework for forming a family relationship between a man and a woman, promoting mutual assistance, and defining the rights and obligations of each party. In the context of Islamic law, marriage is

not merely a social contract but is also regarded as a sacred institution carrying both spiritual and social responsibilities.

In fiqh, *ijab qabul* is the core of the marriage contract (*akad nikah*), where *ijab* is the offer from the guardian (*wali*) or his representative to marry off the bride, and *qabul* is the acceptance from the prospective husband. The validity of *ijab qabul* requires several conditions, including the physical presence of both parties, the presence of the guardian and witnesses, and clear and unequivocal articulation of the contract¹⁸. This underscores the importance of physical presence in the *ijab qabul* process, as in fiqh tradition, this presence is considered an inseparable part of the validity of the marriage contract. However, advancements in communication technology have made it possible to conduct *ijab qabul* online, where the prospective spouses, guardian, and witnesses can connect through video conferencing. Although this technology can facilitate the conduct of the marriage contract under certain circumstances, such as during a pandemic, the fundamental principles of Islamic law still emphasize that the fiqh requirements must be fulfilled, including clarity in communication and the legitimate presence of witnesses, even if virtually^{9, 16}.

In the digital context, the unity of assembly (*ittihad al-majlis*), which in Islamic legal tradition is an essential condition for the validity of *ijab qabul*, has now undergone a new interpretation adjusted to the developments in communication technology. Traditionally, the unity of assembly is understood as the physical presence in the same place and time, but in a digital format, it is represented by the focused interaction of all parties within the same online forum or communication network. When *ijab qabul* is conducted online, the unity of assembly can be represented through the virtual presence of all involved parties—the prospective spouses, guardian, and witnesses—who are simultaneously connected and interacting on a single video conferencing platform like Zoom or Google Meet.

In this context, the screen displaying all parties simultaneously, with clear audio and video enabling smooth and clear communication, can be considered a virtual substitute for the traditional physical assembly. This unity encompasses technical aspects such as network stability, communication integrity, and continuity of interaction throughout the ijab qabul process, all of which must be maintained to ensure that the principle of unity of assembly remains intact, albeit in a different form from the conventional physical format¹⁰. Thus, although the assembly is no longer a tangible physical space, it can be understood that the unity of assembly remains preserved through the presence of all parties within a unified communication system that allows the marriage contract to be conducted validly and in accordance with Sharia principles.

IV. Normative Juridical Context of Online Ijab Qabul in Indonesia

In the normative juridical context, marriage in Indonesia is governed by various regulations that explicitly outline the requirements and procedures for conducting ijab qabul. The Compilation of Islamic Law (Kompilasi Hukum Islam - KHI) serves as the codification of Islamic law applicable in Indonesia and is used as a guideline in religious courts¹². KHI regulates the conduct of the marriage contract (akad nikah), including the essential requirements and pillars that must be fulfilled for a marriage to be considered valid under Islamic law. One of the conditions emphasized in KHI is the physical presence of the parties involved in the marriage contract, namely the groom, the guardian (wali), and the witnesses, which is considered crucial to ensure the validity of the marriage contract⁴. Law No. 1 of 1974 on Marriage stipulates that a marriage is deemed valid if conducted in accordance with the religious laws of the respective parties and is registered according to the applicable regulations. In practice, ijab

qabul must be performed directly in the presence of an officiant from the Office of Religious Affairs (Kantor Urusan Agama - KUA) or another authorized official, and witnessed by at least two witnesses¹⁶. However, in the context of technological advancements and the COVID-19 pandemic, which has limited physical gatherings, the phenomenon of online ijab qabul has emerged as an alternative solution.

Although the practice of online ijab qabul can be understood as an adaptive response to specific circumstances, such as mobility restrictions during the pandemic, legal uncertainty arises because there is no official regulation that governs or legitimizes online ijab qabul within the framework of KHI. KHI itself emphasizes that the marriage contract must be conducted in the presence of an authorized KUA official and witnessed by legitimate witnesses, and this physical presence is one of the critical elements in determining the validity of the marriage. From the perspective of positive law in Indonesia, as outlined in Law No. 1 of 1974 on Marriage, both material and formal aspects of marriage are emphasized, such as the consent of both parties and the age limits of the bride and groom, as stated in Chapter II, Articles 6 and 7. However, this law does not explicitly discuss the implementation of ijab qabul or the presence of witnesses in marriage, except in the context of annulment, where a marriage may be considered null and void if conducted without the presence of two legitimate witnesses¹⁹. Furthermore, marriages conducted in Indonesia must be registered in accordance with the applicable laws and regulations. Before the marriage contract is performed, all relevant data concerning the marriage process must be legally recorded by a marriage registrar at the location where the marriage takes place or at the bride's domicile. If this registration is not completed, the legal status of the marriage may be questioned, as it would lack a strong legal foundation.

¹⁹ S. Mudawam, "Syari'ah - Fiqih - Hukum Islam: Studi tentang Konstruksi Pemikiran Kontemporer," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, vol. 46, no. 2, 2012, [Online]. Available: <https://doi.org/10.14421/ajish.2012.46.2.%p>

KHI provides a more detailed explanation of the requirements and pillars of marriage, following a structure similar to classical fiqh books. Articles 27, 28, and 29 of KHI elaborate on the process of ijab and qabul, which must be performed clearly, sequentially, and without time gaps. Additionally, KHI discusses the permissibility of delegating guardianship rights to another party if the marriage guardian cannot be physically present. However, KHI does not provide clear and detailed provisions regarding the conduct of ijab qabul from different locations through digital media, such as the internet^{9, 10, 16}. In the context of Indonesian law, the implementation of online ijab qabul raises legal uncertainties. While modern information and communication technology allows the marriage contract to be conducted online, the validity of marriages conducted using this method remains questionable from both Islamic and state law perspectives.

There is Law No. 11 of 2008 on Information and Electronic Transactions (ITE), which can be referenced to legitimize electronic transactions, including marriage contracts conducted via the internet. However, its application in the context of marriage still requires adjustments and more specific regulations within the framework of Islamic law and positive law in Indonesia. In KHI, the presence of legitimate witnesses is deemed important and must be done by directly observing the ijab and qabul process. However, in this era of digitalization, the presence of witnesses must also consider the validity of virtual presence. In the execution of a marriage contract via the internet, the unity of assembly (*ittihad al-majlis*) can be interpreted through the unity of interaction within a focused communication network, where all involved parties are simultaneously connected through a video conferencing platform. A screen that displays all parties simultaneously, with clear audio and video, can be regarded as a representation of the unity of assembly in a digital format.

V. Disparities Among Scholars (Ikhtilaful Ulama) in Indonesia

In the digital era, the practice of marriage, particularly in the form of online *ijab qabul*, has become a topic that has sparked differing views among scholars and religious organizations²⁰. These differences in opinion are deeply rooted in the methodological approaches used in formulating legal rulings, as well as varying interpretations of fundamental concepts in Islamic law, such as *ittihad al-majlis* or the unity of assembly. In this context, major organizations such as Muhammadiyah and Nahdlatul Ulama (NU) present different approaches in determining the validity of marriages conducted online. Muhammadiyah, through its Majelis Tarjih dan Tajdid, considers that online marriage can be deemed valid as long as all the conditions and pillars of marriage are met. In its fatwa issued on June 20, 2008, the Majelis Tarjih explained that the concept of *ittihad al-majlis* in the context of online marriage is interpreted as unity of time, not unity of place. In other words, as long as the *ijab* and *qabul* are conducted within a continuous time frame without long interruptions, the marriage can be considered valid, even if the parties involved are in different locations. This approach is based on the understanding that the essential aspect of conducting *ijab qabul* is the continuity between the *ijab* declaration by the guardian and the *qabul* declaration by the groom, rather than their physical presence in the same place²⁰.

Muhammadiyah's fatwa also draws an analogy with the practice of marriage by proxy or through written correspondence, which is recognized as valid by scholars from the Hanafi school of thought. Muhammadiyah emphasizes that marriage through video call is even more acceptable than

²⁰ M. F. Wajidi and F. Mustafid, "Marriage Practices in the Digital Age: A Comparative Analysis of Muhammadiyah and Nahdlatul Ulama's Fatwas on Online Marriage," *Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam*, vol. 14, no. 2, Dec. 2023, [Online]. Available: <https://journal.iainkudus.ac.id/index.php/Yudisia/index>

marriage by correspondence because video calls allow the guardian and the groom to see and hear each other directly, thus reducing the risk of forgery or ambiguity in the *ijab qabul* process. In this context, video calls are considered a more transparent and direct form of communication compared to written messages, thereby fulfilling the validity requirements of *ijab qabul* in the view of the Majelis Tarjih and Tajdid Muhammadiyah. On the other hand, Nahdlatul Ulama (NU), through its Lembaga Bahtsul Masail, rejects the validity of online marriage on the grounds that marriage requires the unity of place and time, which cannot be fulfilled in online marriage practices. In its fatwa issued at the NU XXXII Congress in Makassar in 2010, NU asserted that marriages conducted online are invalid because they do not meet the requirement of the physical presence of witnesses and the clear and direct articulation of *ijab qabul*. NU refers to the opinions of scholars from the Shafi'i school of thought, who emphasize the importance of unity of place in conducting *ijab qabul*, as marriage is considered part of worship that must be carried out in accordance with Sharia guidelines. This approach is based on the understanding that *ittihad al-majlis* encompasses not only unity of time but also unity of place, which is regarded as an essential condition to ensure the validity of marriage²⁰.

In addressing these differences, Islamic legal scholars have long utilized specific methodologies of *istinbat al-hukm* to navigate *ikhtilaf* (disagreement), especially in contemporary issues such as online marriage contracts. Among these methods are *al-jam'u*, *takhyir*, and *tarjih*, each of which provides structured mechanisms for reconciling or choosing between divergent legal opinions^{20, 21}. The *al-jam'u* method serves to harmonize apparently contradictory views. In the context of online *ijab qabul*, this approach reconciles the strict requirement of physical co-presence according to the Shafi'i school with the more flexible views of

²¹ T. Hidayat, "Family Law Reform in The Era of Society 5.0," in RADEN INTAN: Proceedings on Family and Humanity, 2024, pp. 374–384

Hanafi and Hanbali scholars, who define ittihad al-majlis as a unity of time rather than place, provided the transaction is continuous and uninterrupted¹⁸. Alternatively, the takhyir method allows jurists to select one opinion among multiple authoritative views, considering social relevance and contextual applicability. Thus, it legitimizes the selection of more permissive positions on online marriage when the necessary pillars—offer and acceptance, witnesses, and a wali—are fulfilled¹⁸.

The tarjih method involves analytical comparison to determine the most robust legal opinion, factoring in asbabul wurud (context of emergence), analogical reasoning (qiyas), and socio-technological developments^{21, 22, 23}. In doing so, scholars may conclude that the Hanafi and Hanbali interpretations are more suitable to current realities, especially when modern communication tools ensure continuity and clarity in the articulation of ijab qabul^{18, 19}. With this approach, Muhammadiyah views online marriage as an adaptation to technological advancements that can meet the needs of modern society, while NU maintains its stance on the traditional principles emphasizing the importance of unity of place in the conduct of ijab qabul. This difference illustrates the flexibility of Islamic law in facing the challenges of the times but also highlights the need for caution in implementing innovations in religious practices with significant legal implications^{9, 10, 16}. Furthermore, in understanding the differences in istinbath methods used by Muhammadiyah and NU, it can be observed that Muhammadiyah is more inclined to adopt a rational and contextual approach in legal determination. This approach is based on the principle that Islamic law must be able to address contemporary challenges and provide solutions that align with the conditions of the times. Therefore, Muhammadiyah

²² A. Azhar, "Islamic Law Reform in Indonesia from the Perspective of Maq Id Al-Shar 'ah: Kerinci's Intellectual Views," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, vol. 8, no. 2, pp. 750–769, 2024, doi: 10.22373/sjkh.v8i2.15051

²³ I. Idham, E. R. Nur, and A. Hermanto, "Dynamic Development of Family Law in Muslim Countries," *Al-'Adalah*, vol. 19, no. 1, pp. 161–178, Jun. 2022, doi: 10.24042/adalah.v19i1.12421

does not hesitate to use analogies with existing practices, such as marriage by correspondence, to legitimize online marriage. Conversely, NU is more likely to adhere to a literal and conservative interpretation of existing legal texts, requiring unity of assembly in its physical and traditional sense.

In contrast, NU's conservative approach focuses more on upholding traditional principles in marriage practices, where *ittihad al-majlis* is interpreted as physical and temporal unity that is non-negotiable. In NU's view, as stated in the fatwa issued at the XXXII Congress in Makassar in 2010, the physical presence of both parties, the guardian, and the witnesses in the same place during the articulation of *ijab qabul* is an absolute requirement that cannot be replaced by video conferencing technology. NU bases its fatwa on the opinions of scholars from the Shafi'i school of thought¹⁸, who clearly state that *ijab qabul* must be conducted in a single assembly that is both physical and continuous, where the witnesses can directly see and hear the articulation of *ijab qabul* without any disrupting pauses. According to this view, marriage is part of worship with spiritual and ritual dimensions, and thus its conduct must align with the procedures prescribed by Sharia. This underscores that marriage is not just a social contract but also a sacred agreement that requires strict adherence to physical conditions as set forth by tradition and Islamic teachings. NU's more conservative view is also supported by the decision of the Lembaga Bahtsul Masail PWNNU East Java, which emphasizes that the unity of assembly cannot be artificially constructed or replaced with digital media.

The unity of assembly, according to them, is not only about continuous time but also about the physical presence in the same place, which is regarded as part of the honor and sanctity of the marriage contract process. This view is rooted in the principle that marriage is not just a social transaction but also a sacred covenant that requires the fulfillment of strict physical conditions. The fundamental difference between Muhammadiyah and NU in this regard lies in the interpretation of the concept of *ittihad al-majlis*. Muhammadiyah, with its more progressive

approach, interprets ittihad al-majlis as the unity of time, where the continuity between the articulation of ijab and qabul is paramount, without emphasizing unity of place. In Muhammadiyah's view, as long as ijab qabul is conducted within a continuous time frame, the marriage is valid even if it is conducted through digital media¹⁸. Conversely, NU interprets ittihad al-majlis as the unity of place and time, requiring all parties involved in the marriage contract to be physically present in the same location. This view is based on the belief that the unity of assembly is an essential element in maintaining the validity and sanctity of marriage. In this regard, NU believes that physical presence provides assurance of the validity of the ijab qabul process, as well as ensuring that there is no element of doubt or ambiguity in the conduct of the marriage contract.

The difference in approach between Muhammadiyah and NU not only reflects a methodological divergence in legal determination but also illustrates the different visions and missions of the two organizations. Muhammadiyah, with its spirit of tajdid (renewal), tends to be more adaptive to social and technological changes, and more progressive in interpreting Islamic law to remain relevant in contemporary contexts. As a result, Muhammadiyah often emphasizes the use of reason and social context in legal determination while still referring to the Qur'an and Sunnah as primary sources. On the other hand, NU, known for its conservative approach and focus on preserving tradition, tends to be more cautious in accepting innovations that may alter or disrupt the established Sharia order. NU's approach aims to maintain the purity of Islamic teachings and ensure that every religious practice, including marriage, is carried out in accordance with the guidelines and traditions passed down by earlier scholars.

VI. Religious Decree issued by the Indonesian Ulema Council (MUI)

The divergence of opinions among scholars regarding the legal validity of online or remote marriage contracts (in-network) has become one of the complex and significant issues in the development of Islamic law in Indonesia. This *ikhtilaf*, or difference in views, has led to various interpretations attempting to reconcile the demands of Sharia with the realities of social life and the rapid advancement of technology. In this context, the Indonesian Ulama Council (MUI) has sought to provide clear and moderate guidance through a decree (fatwa) issued during the 7th Ijtima Ulama of the MUI Fatwa Commission, held on November 9-11, 2021, in Jakarta. The Ijtima Ulama is the largest consultative forum attended by more than 700 participants from various scholarly elements, including the leadership of Islamic boarding schools (*pondok pesantren*), faculties of Sharia, and leaders of Islamic mass organizations. This forum aims to discuss and issue fatwas on contemporary issues that require applicable Islamic legal guidance, including the matter of online marriage.

MUI's fatwa on online marriage establishes that a marriage contract conducted virtually is considered invalid if it does not fulfill the essential conditions of *ijab qabul* according to Islamic law. One of the most fundamental requirements is *ittihad al-majlis*, which mandates that the marriage contract must be performed within a single assembly, with the articulation of *ijab* (offer) and *qabul* (acceptance) being *sharih* (clear) and *ittishal* (directly connected without interruption between *ijab* and *qabul*)¹⁴,¹⁵. The Majelis Ulama Indonesia (MUI), in its official fatwa on online marriage, affirms this requirement by stating that an online *akad nikah* is invalid unless the conditions of *ittihad al-majlis*, *sharih* articulation, and *ittishal* are strictly met. MUI further elaborates that when the groom, wali,

and witnesses cannot be physically present in the same location, the ijab qabul may still be valid only if:

- a) all parties are connected through an audiovisual platform in real time;
- b) their presence and identities are verifiably authenticated; and
- c) the sequence of ijab and qabul occurs without delay or disruption.
- d) Should these conditions not be fulfilled, the marriage is deemed religiously invalid. Moreover, any marriage conducted in such a manner must still be registered with a state marriage registrar (KUA) to ensure administrative legitimacy.

However, the fatwa also provides a solution for couples who cannot be physically present in the same place. In such cases, ijab qabul can still be performed through the mechanism of tawkil (delegation), where the guardian (wali) of the bride can delegate the conduct of the marriage contract to a trusted individual, provided that all parties involved agree with this method. For situations where the parties cannot or do not wish to use the tawkil mechanism, the fatwa offers exceptions under strict conditions. An online marriage contract can be considered valid if the following specific requirements are met:

- a) Ittihad al-majlis must be maintained even in a virtual format, where the guardian, groom, and two witnesses must be connected in a virtual network that allows them to see and hear each other in real-time (audio-visual connection).
- b) The articulation of ijab and qabul must remain sharih and be conducted directly without any delay, ensuring the continuity and direct connection between the two parties involved in the contract.
- c) There must be guaranteed certainty regarding the validity of the identities and the presence of all parties involved in the marriage contract, ensuring that there is no doubt about who is articulating ijab and qabul.

The fatwa emphasizes that if any of these conditions are not met, the online marriage contract is considered invalid¹⁴. In addition, MUI also underscores the importance of officially registering the valid online marriage with the authorized marriage registrar (KUA) to ensure the legal validity of the marriage both in Sharia and under the positive law applicable in Indonesia. In an academic context, this fatwa can be viewed as a manifestation of *maqasid al-shariah*—the primary objectives of Sharia, which include the preservation of religion, life, lineage, intellect, and wealth. By accommodating the conduct of online marriage contracts, MUI strives to uphold the *maslahah* (public interest) of Muslims in Indonesia, particularly in situations where physical meetings are difficult, such as during a pandemic or in geographically separated locations.

VII. The Challenges of Legal Implications

Following the discussion on the religious decree (*fatwa*) and the validity of online marriage contracts, an essential issue that warrants deeper analysis is the aspect of marriage registration. Marriage registration not only relates to fulfilling the legal requirements of the contract according to Sharia but also has significant implications for legal certainty and the status of the married couple in the context of positive law^{13, 15, 21}. In Indonesia's legal system, marriage registration is an integral component that cannot be overlooked, as it serves as authentic evidence with legal force in the eyes of the state. One of the challenges faced in the implementation of online marriages is ensuring the validity of signing the marriage certificate. When the bride and groom, guardian, and witnesses are physically located in different places, the process of signing the marriage documents or the marriage book is hindered. This creates legal problems, particularly concerning legal certainty and the authenticity of the issued marriage certificate. Although, in a religious context, a marriage contract conducted online may be deemed valid, without the physical signatures of the

involved parties, the marriage certificate does not possess the full legal force required by the state²².

Signing the marriage certificate is an essential administrative process because the certificate serves as legally binding evidence that the marriage has been officially recognized. The existence of a marriage certificate also functions as legal protection for the married couple and any children born from the marriage, ensuring that their rights are recognized and protected by the state. Therefore, the signatures of the bride, groom, guardian, and witnesses on the marriage certificate are crucial for providing clear and robust legal recognition of the marriage status²³. However, in the legal context, the implementation of online marriages still faces significant obstacles, as current regulations have not yet fully accommodated the format of marriages conducted online. For example, Law No. 1 of 1974 on Marriage, which is the principal legal framework governing marriages, does not regulate the procedures for conducting marriages online. Article 2, paragraph 2 of the law emphasizes the principle of registration as a requirement for the legal validity of a marriage in the eyes of the state, but it does not mention or accommodate marriages conducted through digital media²⁴.

Additionally, various implementing regulations, such as Government Regulation No. 9 of 1975 and several Minister of Religious Affairs Decrees (KMA) on marriage registration, including KMA No. 437/2004, KMA No. 11/2007, KMA No. 19/2018, and KMA No. 20/2019, have yet to explicitly address online marriages. This indicates that the existing regulations are still focused on the conventional marriage format, which requires the physical presence of the parties in one place to conduct the marriage contract. This regulatory ambiguity poses challenges for marriage registrars at the Office of Religious Affairs (Kantor Urusan

²⁴ F. Fauzan, "Progressive Law Paradigm in Islamic Family Law Renewal in Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan*, vol. 7, no. 2, p. 208, Mar. 2024, doi: 10.29300/mzn.v7i2.2598

Agama - KUA), who are responsible for recording marriages. Without clear regulations regarding online marriages, KUA registrars are bound by existing rules that require the physical presence of the parties in a single physical assembly to conduct the *ijab qabul* (offer and acceptance). As a result, marriages conducted online cannot be officially registered, leaving the legal status of such marriages unclear in the eyes of the law.

VIII. Proposed Legal Reforms

Legal reform becomes essential when the existing legal system experiences dysfunction or ineffectiveness in addressing the growing complexities of society^{11, 21, 22}. This situation arises when the current laws can no longer provide adequate solutions to the evolving social dynamics, as we are witnessing in today's digital era. Developments in a digital society can no longer be explained by the outdated definitions found in the Compilation of Islamic Law (KHI), which was drafted long before Indonesia entered the digital age. The Compilation of Islamic Law, established through Presidential Instruction No. 1 of 1991, was crafted in the context of Indonesian society at that time, which was not yet familiar with the internet. Therefore, revising and updating Islamic law must be contextualized within Indonesia's unique societal framework, taking into account its distinct social and cultural characteristics.

Legal reform cannot be achieved simply by copying what has been done in other countries. Such an approach is often ineffective because the resulting regulations are typically closely tied to the specific culture and conditions of a particular society or country. For example, the Compilation of Islamic Law is a uniquely Indonesian product designed to govern the lives of Muslims in Indonesia with all its specificities. As a result, the legal provisions in the Compilation of Islamic Law often differ from those in other countries. The reform of Islamic law in response to the challenges of the digital age must be contextualized within Indonesia's

unique societal framework¹¹. In responding to the rapid development of information technology, legislation must not only provide normative definitions of existing realities but also anticipate potential changes that may occur in the future. This foresight is crucial because the legislative process is not easily amendable in a short time. Lack of foresight in formulating legislation can lead to laws becoming quickly outdated, unable to provide adequate legal protection in the face of society's real needs, which are driven by advances in information technology⁹.

In this context, Indonesia appears to be lagging behind several other countries that have adjusted their legal systems to accommodate the developments of the digital era. The advancements in information technology, which offer numerous conveniences and freedoms to society, should be accompanied by the development of legislation that can accommodate the various new needs arising from these developments. When legislation is unprepared to anticipate change, the public service function of state institutions, such as the courts or the Office of Religious Affairs (KUA), can be disrupted. Moreover, the absence of such legislation can even complicate the public's ability to leverage the conveniences and freedoms provided by information technology in managing daily affairs. Legal reform in the digital era must also prepare the necessary infrastructure as a supporting tool. The same principle applies to the reform of Islamic family law. Accommodating various societal needs in the field of Islamic family law services involves not only legislation but also the supporting mechanisms. Legislation serves as the legal framework for the execution of contracts and the resolution of disputes in Islamic family law, while supporting mechanisms are essential for the delivery of public services as mandated by legislation^{9, 11}. For example, to accommodate the conduct of remote marriage contracts, the Compilation of Islamic Law must also regulate the implementation of electronic signatures, which have been recognized as legally valid under Law No. 11 of 2008 on Information and Electronic Transactions (ITE). The validity of electronic signatures as

regulated by the ITE Law requires supporting mechanisms in the form of an Electronic System that allows digital signatures to be carried out securely and responsibly.

Several articles within the Compilation of Islamic Law require redefinition or revision, including the need to add new articles to accommodate developments in information technology. For instance, Article 24 Paragraph (2) of the Compilation of Islamic Law stipulates that every marriage must be witnessed by two witnesses, while Article 26 states that witnesses must be present and directly observe the marriage contract, and must sign the marriage book at the time and place of the marriage contract. Interpreting the requirement of witness presence in this context, when considering the ability of virtual simulations in cyberspace to bring people together virtually at the same time, marriage witnesses who are located in different places could be regarded as valid witnesses, fulfilling one of the essential elements of marriage. Consequently, marriages conducted with online witnesses could be considered valid. Previous research in various Muslim countries shows differences in the validity of online witnesses, with some considering them valid and others not.

The next question that arises is how witnesses attending from remote locations can sign the marriage certificate at the same time and place as mandated by the Compilation of Islamic Law. The answer to this question is certainly feasible, particularly with the recognition of the legality of electronic signatures in the ITE Law. Thus, revisions to Article 26 of the Compilation of Islamic Law are necessary to provide clarification and accommodate the mechanism of virtual witness presence and electronic signatures. For example, two additional paragraphs could be added to Article 26 to state that:

a) Proposed Amendment to Article 26(1):

Marriage witnesses must be physically present, directly observe the marriage contract, and sign the marriage certificate at the same time and place as the marriage contract is conducted.

b) Proposed Amendment to Article 26(2):

If witnesses cannot be physically present, their testimony and the signing of the marriage certificate may be conducted digitally/electronically under the following conditions:

- 1) The presence of the witnesses is facilitated through audio-visual communication media that allow direct and real-time communication between the parties involved in the marriage contract.
- 2) The witnesses' signatures on the marriage certificate are carried out using an Electronic Signature that meets the legal requirements under the ITE Law.

c) Proposed Amendment to Article 26(3):

The Electronic Signature as referred to in Article 26(2) letter b has legal force and is legally binding if it meets the following requirements, in accordance with Article 11 of the ITE Law:

- 1) The creation data of the Electronic Signature is exclusively linked to the Signer.
- 2) The creation data of the Electronic Signature remains under the control of the Signer during the signing process.
- 3) Any changes to the Electronic Signature after the time of signing can be detected.
- 4) Any changes to the Electronic Information linked to the Electronic Signature after the time of signing can be detected.
- 5) There is a specific method to identify the Signer.
- 6) There is a specific method to indicate that the Signer has given their consent to the Electronic Information linked to the Electronic Signature.

d) Proposed Amendment to Article 26(4):

The use of electronic systems for the conduct of marriage contracts conducted digitally must meet the security and reliability standards as stipulated in Article 15 of the ITE Law, which requires:

- 1) The operator of the Electronic System must operate the system reliably and securely and is responsible for the operation of the Electronic System in accordance with its functions and objectives.
- 2) The operator of the Electronic System must ensure that the system used has adequate security mechanisms to protect the data and information transmitted during the marriage contract process.

IX. Legal Certainty and Protection Following Legal Reforms

Law serves as a fundamental pillar in the life of a nation, and legal certainty is one of the most crucial aspects that ensure the law functions effectively. When discussing legal reforms, particularly in the context of Islamic law adapting to the developments in digital technology, legal certainty becomes extremely critical^{11, 24}. Without legal certainty, ambiguous legal interpretations can lead to uncertainty in society, ultimately resulting in social instability. Legal certainty is not only about the existence of laws but also about how these laws are applied and understood by society. In this regard, the revision of the Compilation of Islamic Law (KHI), including aspects such as the validity of digital witnesses and the use of electronic signatures in marriage contracts, is an essential step to ensure that Islamic law remains relevant and capable of providing legal certainty in the digital era. If these reforms are implemented, clear and unambiguous regulations will provide definite guidelines for the conduct of online marriage contracts. Legal certainty in this context ensures that marriages conducted

digitally still meet the requirements for validity according to both Islamic law and state law. With legal certainty, society will no longer have doubts about the legality of marriages conducted through modern means, preventing potential unrest or confusion among the public³.

Furthermore, legal certainty also provides protection to the public from arbitrary actions that may be taken by law enforcement officials. With clear regulations, law enforcers will not have the space to interpret the law subjectively in ways that could harm the public^{21, 25}. For instance, in the conduct of online marriage contracts, if the rules regarding digital witnesses and electronic signatures are clearly regulated in the KHI, officials responsible for marriage registration cannot refuse or delay the registration of the marriage based on unfounded reasons. In relation to the theory of legal protection as proposed by Satjipto Rahardjo, these legal reforms will also provide both preventive and repressive legal protection. Preventive legal protection is realized in the form of regulations that prevent the emergence of disputes in the future, such as disputes related to the legality of online marriages. With clear and detailed regulations, society will be better protected from potential legal conflicts in the future. Repressive legal protection, on the other hand, will provide a strong legal framework for resolving disputes that may arise from the conduct of online marriage contracts. In this case, religious courts and related institutions will have a solid legal basis to uphold justice and provide legal certainty for the parties involved.

The importance of legal reform in the digital era lies not only in the technical adjustments to technological developments but also in the effort to keep the fundamental principles of Islamic law alive and relevant in a modern context¹⁰. This is also relevant to the achievement of the Sustainable Development Goals (SDGs), particularly SDG 16: Peace, Justice, and Strong Institutions. SDG 16 aims to promote peaceful and

²⁵ Maulidi, "Paradigma Progresif Dan Maqashid Syariah: Manhaj Baru Menemukan Hukum Responsif," *Jurnal Asy-Syir'ah*, vol. 49, no. 2, 2015.

inclusive societies, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels. In this context, legal reforms that ensure legal certainty and protection contribute directly to the achievement of SDG 16 by ensuring that the law is accessible and fairly applied to all levels of society, including in matters of marriage.

X. Comparative Legal Reforms in Muslim Countries

Various Muslim-majority countries have adopted different approaches to accommodate the developments in digital technology²³, particularly in the process of marriage. In Malaysia, digital marriages are permitted under strict regulations governed by the Jabatan Agama Islam Negeri (JAIS). Marriages conducted via video conferencing are deemed valid provided that all parties involved, including the guardian (wali) and witnesses, are present in real-time²⁶. The Islamic Family Law Enactment (State of Selangor) 2003 provides the legal framework for the implementation of digital marriages, which was adapted during the COVID-19 pandemic, with an emphasis on real-time connections and strict identity verification to maintain the integrity and validity of the marriage contract. In Brunei, digital marriages are also permitted, particularly during the COVID-19 pandemic. This process is regulated by the Department of Islamic Religious Affairs, with the requirement of real-time connections between the guardian, bride and groom, and witnesses. The regulations governing this process are outlined in the Islamic Marriage Act of Brunei Darussalam, which has been adjusted for emergency situations such as the pandemic to ensure that the essence and provisions of Shariah are upheld²⁶.

²⁶ M. Taufiq, M. B. Amin, A. S. Ahmed, and M. U. H. M. Idrees, "Online Marriage in the Perspective of Fiqh Nawazil," 2023. doi: 10.28918/jhi_v21i1_02

Saudi Arabia has introduced digital platforms for marriage processes, regulated by the Ministry of Justice. The legality of *ijab qabul* is guaranteed through real-time audio-visual connections and technology-based identity verification. The Saudi Family Law has accommodated these changes by introducing online mechanisms for marriage registration, albeit with stringent controls to ensure the validity of the marriage contract²⁷. In the United Arab Emirates (UAE), digital marriages have been widely adopted under regulations established by the Shariah Court Authority and local government. These regulations emphasize the importance of clear and real-time visual and audio connections to ensure the validity of the *ijab qabul*²⁷. The UAE Family Law includes provisions for the use of technology in the conduct of marriages, ensuring that every step in the marriage contract process can be verified and officially recorded. Turkey has integrated digital marriage services into its e-Government system. Although virtual marriage contracts are not yet fully common, the Turkish Civil Code allows for the adaptation of the concept of *ittihadul majlis* by ensuring real-time communication and visual documentation during the marriage contract. Turkey has also developed platforms that enable the digital management of marriage data, though these are still under further development.

XI. Conclusion

In the rapidly advancing digital era, the reform of Islamic law in Indonesia is an unavoidable necessity to maintain legal relevance and certainty in society. Adapting the law to digital technology, particularly in the conduct of marriage contracts, is an important step to accommodate contemporary needs without neglecting the fundamental principles of Shariah. The

²⁷ A. Hakim and B. H. Qodsiyah, "Online Marriage During the Covid-19 Pandemic: A Study of the Fatwas in Egypt, Iraq, Syria, and Saudi Arabia," *Al-'Adalah*, vol. 19, no. 1, pp. 141–160, Jun. 2022, doi: 10.24042/adalah.v19i1.10720

debate between Nahdlatul Ulama (NU) and Muhammadiyah regarding the validity of online marriage contracts reflects the existence of *ikhtilaful fuqaha* (differences of opinion among scholars) in the application of Islamic law. NU, with its *qauli* approach that refers to the opinions of earlier scholars, emphasizes the importance of physical presence in a single assembly (*ittihadul majlis*) and considers online marriage contracts invalid. Meanwhile, Muhammadiyah, with its more progressive *burhani* approach, views that presence in a single assembly can be realized virtually, as long as there is a real-time connection and no time gap separating the *ijab* and *qabul*.

The Indonesian Ulema Council (MUI), through its fatwa, seeks to take a middle ground by stipulating that online marriage contracts can be valid as long as they meet the requirements of *ittihadul majlis*, *sharih* utterance, and *ittishal*, ensuring that all parties are connected via real-time audio-visual communication. MUI also emphasizes the importance of marriage registration as a crucial administrative aspect, ensuring that the marriage has legal force in the eyes of the state. However, the challenges in online marriage registration remain significant. Currently, existing regulations, including Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), do not fully accommodate the conduct of marriage contracts digitally. The absence of clear legal grounds for online marriage registration could lead to *certitudo juris* (legal uncertainty) and potentially threaten *praesumptio iuris tantum* (presumption of legality) for couples married digitally.

In the context of legal reform, revising Article 26 of the KHI is necessary by including provisions governing the conduct of digital marriage contracts, including the validity of electronic signatures as regulated under Law No. 11 of 2008 on Information and Electronic Transactions (ITE Law). This is important to ensure that online marriage registration has the same legal force as conventional marriage registration. Ultimately, legal reforms that consider digital elements will not only

strengthen legal certainty but also support the objectives of maqashid al-shariah (the purposes of Shariah), which include the protection of religion, life, intellect, lineage, and wealth. Furthermore, these reforms align with Sustainable Development Goal (SDG) 16, which emphasizes the importance of peace, justice, and strong institutions. Therefore, the reform of Islamic law in Indonesia will become more responsive to changing times, provide better justice, and protect individual rights within a clear, consistent, and equitable legal framework.

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