

ANALYSIS OF MARRIAGE LAW THROUGH MOBILE TELEPHONE COMMUNICATION DEVICES FROM THE PERSPECTIVE OF ISLAMIC LAW

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ABSTRACT

Marriage from an Islamic legal perspective through mobile phone communication is a new issue, as there is no standard fiqh book on this matter. The validity of marriage through telecommunications does not yet have its own legal status because the Marriage Law 1 of 1974 does not regulate the law of prenuptial agreements. Legal analysis of the Islamic legal concept of marriage through telecommunications requires a search for law (*rechtsvinding*) by judges as conservative parties. Even in lawless environments, there are attempts to violate or break well-enforced rules and regulations. Efforts to interpret existing law properly can be applied in all future cases, because the law is sometimes unclear, incomplete, or not up-to-date (*rechtsvinding*). In other words, judges must adapt the law to more serious cases, because existing law cannot cover all social phenomena.

Keywords: Legal Analysis, Marriage, Mobile Phones, Islamic Law .

A. INTRODUCTION

Many marriages are conducted through mobile devices. The emergence of marriage through mobile devices has brought about rapid technological advancements. This development provides satisfaction in personal relationships. In the mutually beneficial world of Islamic law, the relevant laws must also evolve according to the needs of society, ensuring they align with the law and usul fiqh (Islamic jurisprudence) itself, allowing the law to keep pace with changing societal needs.

Based on the understanding that the *ijab* is pronounced by the guard, the *qabul* is pronounced by the groom. If the witnesses (in particular) and those present at the marriage contract hear the *ijab qabul*, then it is considered to have fulfilled the requirements. This means that the marriage is considered valid. This is the opinion of Islamic jurisprudence scholars. However, they have different opinions regarding the interpretation of the word "majelis." Either meaning physical, then the two people making the contract must be in a room that is not separated by a partition. Other meanings are not physical, so faith and *qabl* must be recited in a ritual that does not end with a ritual that eliminates the meaning of "ritual." Therefore,

the *ijab* and acceptance must continue and should not be confused with other activities that are not in accordance with the marriage contract.

Imam Shafi'i prefers to view the ceremony from a physical perspective. Therefore, the celebrant and groom should be in the same room to see each other. This allows both parties (the celebrant and the couple) to better hear and understand each other.

A marriage contract conducted in a room is closely related to the role of one of the two witnesses who are essential to the marriage. Both witnesses must know exactly what they heard and saw at the wedding. This is the opinion of Imam Shafi'i. According to him, the testimony of a blind person is unacceptable because he cannot see. This means that a marriage contract conducted over the phone is considered invalid because it does not meet the above requirements. Imam Ahmad ibn Hanbali spoke of "blind" in the non-physical sense (not being in the room). The *ijab* and *qabul* can be combined or in one live program and must not be interrupted by other programs. Imam Abu Hanifah and the fuqaha and scholars of Kufa agree with Imam Ahmad ibn Hanbali. However, Imam Ahmad

ibn Hanbali insisted that both witnesses must hear and understand the words *ijab* and *qabul*.

According to the above interpretation (Imam Hambali's opinion), telephone marriage is considered valid as long as it is confirmed, because listening to the *ijab* and *qabul* is obligatory.

B. LITERATURE REVIEW

1. Marriage

The provisions of Article 1 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage read: "Marriage is a physical and spiritual relationship between a man and a woman as husband and wife with the aim of building a family, happiness and eternal dependence on God Almighty."

2. Bond

An agreement or invitation to make a contract according to Article 1313 of the Civil Code states: "An assignment that binds one or more people to one or more people ." This agreement results in an agreement between the two parties to it. Basically, a contract is a group of statements containing verbal or written promises or promises.

3. Communication tool

The definition of communication media is all channels used to send or transmit information to one or more people. (Hasanah et al., 2018) . This social network not only provides information but also publishes information.

C. RESEARCH METHODS

This research uses normative research (Muhammad Syahrums, 2022) . In discussing this thesis, a definition of descriptive research is needed to conduct the research. The type of data used is textual research, in this study the data sources are taken from secondary literature. The type of data analysis used in this study is qualitative analysis in accordance with the nature and objectives of the research .

D. RESULTS AND DISCUSSION

1. Basis of Marriage from an Islamic Law Perspective Through Mobile Phone Communication Tools

The process of reforming Islamic society has had a significant impact on the development of Islamic law. At the very least, Islamic law has become an integral part of modern civil law and a part of the civil legal system. Thus, issues that influenced the development of Islamic law in the 19th century were applied to Muslim societies, particularly in family law. The various implementations of Islamic law in various fields are most evident in family law.

While a typical marriage or wedding ceremony takes place face-to-face in one location, in a telemarriage, the ceremony takes place in a different location. The design can also be unique, with some having the bride and groom separate, while others have the bride and groom separated. Generally, in this case, one or more of the parties' interests are not placed in the same place.

With advances in technology, talking on the phone has become increasingly difficult. In the past, people only heard each other's voices, but today, cell phones have video and display devices that allow users to see faces and images. In its development, mobile weddings were not a matter of necessity, but rather because they were considered more practical and efficient than having to combine all wedding resources in one location.

Similarly, telecommunications in the field of language, namely communication conducted via voice or telephone, are important. Generally, a telephone marriage is a marriage conducted by several people who allow it to occur, and in a long-distance situation, where certain conditions and pillars of marriage are often not met. This is issued in accordance with applicable laws and regulations. Therefore, it is important to have

a marriage system or a system for obtaining acceptance through long-distance communication.

In classical fiqh texts, marital issues generally concern premarital matters (muqaddimat al-nikah) in household affairs. The opinions of religious leaders in fiqh can be seen here, although marital issues cannot be separated from disputes or disagreements. If the conditions and pillars are met, the marriage is considered valid. According to the majority, there are four pillars of marriage: the consent (ijab qabul) or consent (sigat), the bridegroom, the groom, and the guardian. While the Hanafiyah believe that the pillars of marriage are only faith and consent (ijab).

Therefore, although marriage by telephone is not mentioned by classical fiqh scholars, many aspects can be identified from a fiqh perspective, namely the issue of ijab (consent) and the presence of witnesses. Thus, the issues of consent and acceptance include:

- a. Both parties are mumayyiz.
- b. Cooperation between the Ijab and Kabul Councils.
- c. The views of Ijab and Kabul are not mutually exclusive.
- d. The use of lafaz in ijab and kabul is a valid word that must use madi ladoz, lawaz refers to marriage terms such as al-tazwij or al-nikah, and the language used by both parties is alive.
- e. Sigat was heard by both parties.

The qualifications for prospective partners to know about prospective partners are:

- a. The groom-to-be
 - 1) that he is a man (obviously / obviously)
 - 2) The prospective husband is a Muslim
 - 3) Puberty and Mukallaf
 - 4) A known and safe groom
 - 5) It is legal for the bride to marry the groom

- 6) The candidate sees and knows his future wife and knows for sure that his future wife is legally married.
- 7) The prospective husband is ready to get married
- 8) Not in Ihram, Hajj or Umrah
- 9) Not having a wife is prohibited from joining the prospective wife
- 10) The prospective wife is not married yet.

Specifically, the goal is to clarify the concept of Muslim marriage, which is a serious and reasonable marriage. Furthermore, it should be understood that the couple must be of legal age and possess good physical and mental health. This is crucial because the prospective couple will bear the consequences of marriage, including their responsibilities as head of the household and breadwinner. The law stipulates that the bride must be at least 21 years old. Law No. 1 of 1974 stipulates that if the minimum age is not met, marriage is permitted if the man reaches 19 years of age. If the groom is under 19, those wishing to marry before the age of 19 must apply for a marriage certificate. This is an application to the court or another official appointed by the prospective couple's parents.

- b. The bride-to-be
 - 1) Muslim
 - 2) puberty
 - 3) She is (obviously) a woman in the sense that she is not a khunsa.
 - 4) It is valid if the prospective groom is married.
 - 5) Future partner is not part of the marriage bond
 - 6) The prospective partner is not present during the iddah period
 - 7) No pressure
 - 8) Not in Ihram, Hajj, or Umrah. Like the groom, the bride must be 21 years old.

According to Article 6 of Law No. 1 of 1974, if the age is not reached, a

woman is allowed to marry at the age of 16. Of course, if the groom is under 16, the bride who wishes to marry under 16 must apply for a marriage certificate. This application is made to the court or an agency designated by the parents of the prospective couple.

In the case of a telephone marriage, the situation in question is the union of the *ijab* and *qabul*. This unity implies that faith and the wall are not separated or separated by external sanctions or other external acts of the marriage contract. Hanafiyah and Hanabilah argue that even if the *qabul* is contradictory, for example, if the groom is silent long before the *qabul* is pronounced, the marriage contract is still valid as long as the affair and other activities are not destroyed.

Syafi'iyah and Malikiyah say that *la fa z kabul* must be said immediately after the *ijab* sentence. (Sabir, 2021). This means that there is no delay between these two statements, indicating that the couple has not accepted the contract. The Malikis argue that if the gap between faith and certainty is not too great, then the creation is still valid, while the Shafi'is are more certain not to tolerate such a long gap.

For example, the groom remains silent for a long time after saying the *ijab*, which may indicate that he is not happy. Based on these factors, the conditions of *ijab qabul* and *qabul* emphasize the grace period between *ijab* and *qabul* so that both parties can show their readiness and obedience to the marriage contract. Therefore, although telecommunication marriage does not bring the parties together in one place, it is still considered valid if it meets the conditions of the continuation of the *ijab* and *qabul* period. If there is a problem at the *ijab* and *qabul* level, such as the telephone operator canceling the *ijab* and *qabul* or canceling it suddenly, then the contract must be renegotiated. according to the Shafi'i view to be more careful.

During the Prophet's time, there were also marriages that did not unite the parties to the marriage contract in the same place. The difference was that marriages at that time used a written speech or a message carried by a messenger (*al-mukatabah*). In such cases, one party wrote the agreement clause in a note and then handed it to the messenger, who then delivered the letter to the woman. The woman or her guardian then signed the consent form before the messenger returned the letter.

Islamic jurisprudence scholars differ on the issue of witnesses in marriage. A witness is someone called to witness a marriage. The importance of giving a sermon at a wedding is to ensure there is no doubt about the marriage. When you give testimony, it demonstrates the importance of the marriage. The presence of witnesses is only for the benefit of the husband and wife in case anyone else questions the marriage. Evidence is one form of proof that can dispel doubts from third parties, society, or the government/certain institutions.

Therefore, witnesses are required in a marriage, as an annulment can be filed if two witnesses are not present. This aligns with the professional worldview of witnesses in marriage. The jury consists of two people who must meet certain requirements to serve as jurors. These requirements include:

- a. At least two people
- b. Islamic
- c. intelligent
- d. puberty
- e. Not disturbed by memory and not deaf
- f. To understand the contents of the *lawadz ijab* and *qabul* to understand the purpose of the marriage contract.
- g. Hearing, seeing and speaking
- h. Fair.
- i. Independent .

Witnessing is one of the pillars of marriage, so a marriage without witnesses is legally void. Scholars, including Shafi'i, Hanafi, and Slavic scholars, agree on this.

They also add that the two witnesses requested to meet must meet after the marriage contract is complete. Imam Abu Hanifah and Ahmad bin Hanbal included witnesses as a condition for marriage, while Imam Syafi'i included it as one of the pillars of marriage. Imam Malik considers it sunnah to present witnesses at the time of the contract.

2. Validity of Marriage Through Mobile Phone Communication Tools

A valid marriage is a fundamental issue because it is closely related to the results of the marriage, both in terms of children and inheritance. Article 2 paragraphs (1) and (2) determine the validity of each marriage according to Marriage Law Number 1 of 1974.

Article 2 of Marriage Law Number 1 of 1974 requires people to register their marriages. Paragraph (1) clearly states that a marriage is valid if it is conducted according to the religious requirements of the people entering into the marriage. What we mean by the law of a religion and belief is the legal structure of that religion and belief, as long as it does not conflict with or determine the law of marriage, that is all.

Article 2 paragraph (2) Marriage Registration In this article, marriages must be registered according to applicable laws and regulations. These are Muslim citizens registered at the KUA and non-Muslims registered at the official registration office . whether the marriage is valid or not. However, due to administrative procedures, marriage registration is mandatory .

In a simple marriage system, witnesses are required. If there are questions about the validity of the marriage contract, as a form of *tausik* or *taid*, witnesses can provide the necessary information. If a telephone marriage does not unite the parties in the marriage contract, the presence of witnesses is certainly an additional tool in proving the validity of the marriage contract.

In the case of a telephone marriage, the separation of the parties will provide separate evidence. Some Islamic jurists, such as the Hanafis, argue that in a private marriage, such as a marriage by letter, the witness must know what is written in the deed and act as a second authorized witness. For such a marriage, the Hanafis do not require two witnesses to be present in two locations. For example, if the first party sends a representative to the second party in another location, the second party simply allows the witness to hear the representative's response. the woman to agree to it.

The conditions for a valid marriage, which require two witnesses, are based on the hadith which reads:

لا نكاح إلا بولي وشاهدي عدل...

The Shafi'iyah definition of "two witnesses" is that the presence of two witnesses is one of the conditions of the contract, so if these conditions are not met then the contract is void. The presence of two witnesses saw and heard the words spoken when the agreement and agreement were made, and did not even hear the number of girls concerned. In contrast to the Hanafiyyah, the Shafi'iyah even rejected witnesses who only heard the words and did not see them directly. Therefore, according to the Shafi'iyah, witnesses must witness the implementation of the contract, because it is not enough to hear the voice or words, they must prove it with direct testimony.

Thus, if the marriage is conducted over the phone, then the contract is valid unless the witness hears it through. If you follow the strict Hanafi school of thought, the witness who hears the *Ijab Kabul* aloud is considered valid, regardless of who said it. However, because most of the recognized schools of thought in Indonesia are Shafi'i, the author argues that Shafi'i is stronger in providing evidence. It is not enough for guards in Indonesia, for men in America, just hearing the *Kabul* voice over the loudspeaker,

fearing manipulation or fraud of the Indonesian jury's voice. To overcome this and reconcile disagreements, it is possible to add more than two witnesses. Two witnesses are presented in two different locations. According to Shafi'i, it is better to add witnesses from a group of scholars or reputable community leaders. Thus, telephone marriage is still considered valid even though the parties to the contract are not bound to each other.

Therefore, in addition to providing various information, another solution that can be taken to ensure the legality of the marriage contract is to provide a guardian and other marital rights, such as custody and adoptive father rights. If all parties refuse to establish trust, a solution is to use video teleconferencing. Through video, both parties and witnesses present can clearly see the approval process. The Egyptian Fatwa Department and the Muhammadiyah Fatwa Council in Indonesia have also regulated that video marriages via telephone are legal.

The validity of a telephone marriage depends on the fulfillment of the established requirements and pillars of marriage, particularly regarding the consent and presence of witnesses. Marriage, as a form of worship that unites two people into a sacred union, must adhere to the rules established by religion. This law not only guarantees the validity of the marriage contract but also the future of the marriage.

Regarding witnesses, the KHI tends to adhere to the Shafi'i school of thought, which requires the presence of witnesses and witnesses to the marriage contract and the direct signing of the marriage certificate. marriage contract. occurs. Therefore, if the marriage contract is conducted over the phone, the witnesses must meet with both parties to confirm the contract and confirm it. Here, there is a collection of Islamic law, interpretation and development of the Marriage Law, so that the difference between

the Marriage Law and its contents is seen as development. If the marriage bond is considered a valid bond, then the formulation of Islamic law is to fill the gap in the Marriage Law. If long-distance marriages are legally challenged in the future, state laws are urgently needed.

3. Legal Analysis of Islamic Law's Viewpoint on Marriage Through Mobile Phone Communication Tools

Differences in perception: This is due to differing understandings of the marriage arrangements broadcast on television. This difference arises because the technical form of the marriage contract is not properly regulated in practice. Mobile marriages are valid as long as they are witnessed. The contract process is reduced due to various circumstances, with two additional witnesses (a total of four witnesses). This is done to understand the nature of the church's needs. Furthermore, the legal principle used as the legal basis for the South Jakarta Religious Court's decision defines representation in the implementation of the marriage contract if the parties are not physically present in the same meeting but are directed by another person. Therefore, for telephone marriages, the voices of both bride and groom can be heard in the assembly and can communicate directly with the witnesses.

The Fatwa Commission of the Indonesian Ulema Council (MUI) in East Java has issued a fatwa regarding the validity of marriage by telephone under certain conditions. The context used is the legendary hadith of Umm Habiba. Furthermore, another reason is the lack of a discussion of the katholic principles governing the technical aspects of the marriage contract; technical issues are a matter of *ijtihad* (consensus). The meaning of church is not a semantic gathering (place), but can also be interpreted as a permanent gathering (one-time).

On the other hand, telephone marriages also have mixed results. Some

experts say that telephone marriages are illegal. This was stated by Munavir Sadzali and the Chairman of the Central Indonesian Ulema Council (MUI). This view belongs to the Shafi'i school of thought, which requires the marriage contract to take place in a temple, meaning on land. Furthermore, the marriage contract is a religious matter, so it is haram if it is conducted over the phone. Besides Munawir Sadzali, H. Masikuri from Denanyar Jombang, East Java, stated that marriage contracts are prohibited over the phone. This is because there is no supporting documentation or evidence in the Quran or Hadith, let alone the validity of telephone contracts. People are not allowed to create something or apply their own laws to its use if there is no documentation or opinion to guide them.

Therefore, as part of the concept adopted by the Marriage Law, the concept of a marriage contract, which encompasses both extramarital and intramarital relationships, must be based on mutual consent. There should be no pressure from any party.

However, existing laws and regulations do not cover all crimes occurring locally, making it difficult for law enforcement to resolve them. The principle of legality, considered a principle that guarantees legal certainty, faces the impossibility of achieving a sense of social justice through this principle, which is related to the development and changes in society along with technological advancements. Sudden changes are the problem, related to events that cannot be controlled or controlled. It is impossible for the law to completely regulate everyone's lives. As a result, there are times when directives are unclear or incomplete, creating legal gaps in society.

A legal vacuum refers to a vacuum or absence of laws governing order (rules) in society. Therefore, a legal flaw in a good law is more accurately described as a legislative or legislative flaw. In terms of Marriage Law, the

default law is Law 1 of 1974. The Marriage Law does not stipulate requirements to guarantee the validity or legitimacy of a marriage via telephone or other means of communication. The lack of legal enforcement or technicalities regarding telephone marriages has created disputes among Muslims. Therefore, to fill this legal vacuum, the law needs to be amended through amendments or statutory interpretations. This must be done systematically and comprehensively, addressing non-statutory issues.

This legal structure is crucial, as good law does not necessarily regulate marriage through electronic means. However, the development of information technology is more rapid than the development of legal processes, particularly marriage. Another problem is that the previous constitution failed to meet all of society's legal requirements, which require a legal framework to provide these benefits.

The negative consequences of legal violence in the form of uncontrolled or uncontrolled events or situations are legal uncertainty (*rechtsonzekerheid*) or uncertainty of statutory regulations that lead to legal violence (*rechtsverwarring*). at the next stage. This causes confusion (chaos) among the community about the rules that must be applied or implemented. In humans There is no legal belief that is used to regulate existing things or situations. The law is intended as a guideline for behavior and behavior for members of society who can determine what may and may not be done. A stable state can be determined by law well in society, but the applicable law will become obsolete and will be left far behind the evolution of the Crowd. Therefore, strong and flexible laws are needed that can keep up with these developments.

Efforts to address regulatory gaps include:

First, the judge's identification of the law (*rechtsvinding*). Even when there are no exceptions to the rule, there are attempts to violate or break well-enforced rules and regulations. Efforts to interpret existing law properly can be applied in all circumstances, because laws are sometimes unclear, incomplete, or outdated. This is based on Article 14 of the Jurisdiction Law No. 48 of 2009. Judges cannot try or refuse to try a case because the law is incomplete or there is no law. If the law is incomplete or unclear, the judge must make a legal decision (*rechtsvinding*). Legal research is defined as the process of making legal decisions by judges or other institutionalized parties regarding a valid legal act. In other words, legal research is an effort to prove general and abstract legal principles based on facts. In other words, judges must adapt the law to more serious cases, because existing law cannot cover all social phenomena.

Regarding the telephone marriage case, which was recognized as valid by the South Jakarta Religious Court, following sound legal analysis, it is appropriate for the judge to make a decision based on his conscience, even though there is no valid law. This issue. This issue. The judge's task is not only to apply the law, or create law, but also to "find the rules" of law. Moreover, if the content of a law is ambiguous, the judge must interpret it to render a reasonable decision that aligns with the law's purpose, namely to achieve legal benefits and certainty.

Statutory interpretation, or statutory construction, is the process by which courts determine the meaning of a law enacted in statutory form. Statutory interpretation is a means of discovering the law within existing statutes, but its application in civil cases is unclear. On the other hand, statutory construction is a form of legal discovery, in which there are no specific rules for judicial review and litigation of substantive cases.

Legislative inquiry is the legislative process by judges or other elected officials to apply general legal principles to expressive legal action. It can also be said that legal research is a process of proving or establishing general legal principles (*das sollen*) by referring to specific serious cases (*das sein*).

The problem of finding rules is unique to the field of civil law. The civil law system is based on the work of Emperor Justinian, often called *the Corpus Iuris Civilis* . In Justinian's book, *Non preceden sed legibus iudicandum est* . Such a sentence clearly rejects the law as a source of law. On the other hand, for writers who love democracy, what should judges do? It should be noted that during absolutism, judges were viceroys or even the king himself was a judge. In democratic theory, judges are considered representatives of the people in implementing the law, which in turn is carried out by the representatives of the people. This can be concluded from Montesquieu's essay, "*The Spirit of the People* ." Montesquieu believed that a republic is democratic.

Thus, the legal construction stage is in *the legal framework* , also known as *legal building* . When the latter is carried out, new laws must be sought where the existing laws are unclear. Where there are no existing laws, legal construction is necessary. The jury must consider many factors, including the socio-cultural background of the local community. The judge's role is to identify the true values that exist and thrive in the community. In this case, involving a long-distance marriage that is not properly regulated by law, legal construction must be carried out to provide a legal umbrella for the benefit.

In the face of modern human civilization's increasing need to address needs, particularly in communication and interpersonal relationships, as in fiqh, the state of 'Islamic law governing the use of contemporary instruments', known as

muammalah, appears to be abandoned. With some steps in solving new problems. This is a plausible scenario, considering the emergence of law before the crisis. Regarding the current evolving muammalah arena, most of the rules used to establish rules are general rules. In a sense, they are still universal, but they must grow according to the needs and preferences of society based on the needs of changing situations and circumstances.

The process of Islamic Law reform is a process that allows for changes to existing laws. This is considered an approach to applying Islamic law to the needs of modern society, as well as to further develop Islamic law in the future. Jhon J. Donohue, in publishing Subhi Mahmashani's Writings, shows that Islamic law or Islamic jurisprudence includes all types of rules and features based on principles, from worship and legal practices (mamalat, relational law). According to Fiqh and Subhi Mahmashani, Islamic teachings are based on various sources of law and there are sources of law agreed upon by all scholars, the Qur'an and the hadith of the Prophet Muhammad SAW as the main sources of law. secondary support. sources of law such as ijma (consensus) and comparative qiyas. Support from legal sources, if analyzed well, will make a significant contribution to problems that are not controlled by previous legal sources, and can be used as a solution to avoid legal gaps in the legal flow.

Islamic legal reform can be implemented in many ways, namely:

a. Legal Reform Using the Qiyas Method

The use of Qiyas, is the practice of using analogy or ra'yu to find the rules of sharia when the basis of the Qur'an and the Hadith of the Prophet Muhammad SAW does not clearly define the rules. If it is considered that telephone marriage is invalid due to the separation of places, if there is no representation between the bride and her guardian and the groom and the consent of the couple via telephone, it

is not a wrong assumption. which is not true, if it is considered that the recognition made in the meeting was made when the consent and acceptance were affirmed, it would not be interrupted or considered prohibited or hindered by custom. whose purpose is to uphold and enforce the marriage contract the continuity of faith and ijab qabul. The theory asserts that the relationship in the marriage contract is different from the contract in physical (spatial) form, but the meaning of the relationship can be interpreted differently, namely the relationship refers to the same time, because the focus is on the marriage contract after the marriage contract. the end of the ijab sentence, in direct accordance with the qabul sentence.

b. Legal Reform Using the Istihsan Method

Istihsan is a method of itjtihad that is debated by scholars. Generally, scholars use istihsan in the literal sense of "doing good." Communication in the case of marriage recognition by telephone, when the parties inform the KUA of their will regarding marriage registration and validate the marriage hotline and marriage conducted under the supervision of the KUA, but the KUA refuses to issue a marriage book due to lack of legal guidelines. obtain a decision that the marriage is valid, assuming that the contract is analogous to time, not place.

c. Legal Reform Using the Maslahat al-Mursalat Method.

Maslahat al-mursalat is a method of establishing Islamic law for matters that are not properly regulated by the Qur'an and Hadith. (Erfiana, 2021) . However, this approach places greater emphasis on matters of immediate concern without contradicting the sources of Islamic law. Al-Ghazali explained the value of upholding the objectives of law enforcement. At the same time, Al-Khwarizami defined it as upholding the

objectives of law enforcement by preventing human corruption. According to Al-Syatibi, the benefits of something that returns to a person's life, a perfect life, and the fulfillment of what is, are the natural desires of the mind.

Therefore, in addition to reforming religious laws, it is also necessary to review the positive regulations that govern them so that the legal system can be considered valid, that is, legally, juridically, socially, and philosophically valid. According to positivist legal theory, a valid marriage is one that meets legal requirements or can be recognized as having legal force as determined by the state.

The law in this case applies to various Muslims if there is a beneficial influence from the authorized official (state), namely the KUA. (Aisyah, 2018) . Therefore, regarding the technical implementation of telephone marriage, if it is deemed correct according to the law stipulated by the Religious Court, then the decision is binding, and its implementation is supervised by the Religious Court. The Office of Religious Affairs. followed by marriage administration, namely the issuance of a Marriage Book or Marriage Certificate.

The social norm associated with long distance marriage is the idea of someone getting what they want outside of existing rules and customs. (Manasikana & Noviani, 2021) . From a legal culture perspective, it is sometimes useless, non-existent, and even misused. Marriage law should not be static in its application but should be flexible, taking into account the terms and conditions of its application, so that it is not ignored or misused by society. The final draft of the Marriage Law needs to include various provisions for recognition and acknowledgment, as well as better understanding. Like the marriage contract or *ijab kabul*, it can be performed in emergencies, for example, if the couple is away, or one partner is temporarily unable to leave their home. In Indonesia, to perform the

ijab kabul, it is not possible to physically bind oneself to enter into a marriage. This can be done in person or over the phone with the consent of the couple, but it can be done subject to compliance with and adherence to all legally stipulated requirements for the couple.

E. CONCLUSION

1. The basis for marriage through telecommunications from an Islamic legal perspective is a new issue, as there are no classical fiqh books on the subject. However, the reality today is that technology has become more sophisticated, and such marriages continue. Therefore, there is disagreement among scholars today. Some say that marriage is null and void, while others support it. The view that considers marriage invalid is based on Imam Shafi'i's view that those who make the contract must be part of the assembly. Those who permit marriage follow the opinion of Imam Hanafiyya.
2. Marriage through telecommunication means does not have legal status because the marriage contract is not regulated in Law 1 of 1974. On the other hand, although following the classical fiqh approach, the issues of faith, *ijab*, and the presence of witnesses are discussed, these issues are not mentioned in the collection of Islamic law.
3. To legally analyze the Islamic legal concept of marriage via mobile devices, judges as law enforcement officers need to conduct a legal search (*rechtsvinding*). *Even when there are no exceptions to the rules, there are attempts to violate or break well-enforced rules and regulations. Efforts to interpret existing laws properly can be applied in all existing*

circumstances, because there are cases where the law is unclear, incomplete, or perhaps not adapted to the climate (*rechtsvinding*). In other words, judges must adapt the law to more serious cases, because existing laws cannot be applied to all social phenomena.

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