

## **Marriage Contract Through Teleconference During the Covid-19 Pandemic: An Overview of *Maqashid Syariah***

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### **Abstract**

Rapid technological developments have affected all aspects of people's social life, including in the field of marriage. One indication is the use of teleconference developments as a medium for conducting marriage contracts, but the problem is, Islamic law has not specifically regulated the rules or laws of marriage contracts through teleconference technology or other online media, while the development of information technology is faster and faster when compared to development of legal substance. The issue of the marriage contract via teleconference caused controversy because of differences in interpretation of the concept of the unity of the assembly. This research is a type of normative legal research. Normative legal research that focuses on legal principles related to the implementation of the marriage contract. This study is descriptive in nature, collecting information about a teleconference marriage contract phenomenon. The approach used is a normative theological approach, phenomenology and philosophy. The analytical knife uses the *maqashid syariah* theory in observing the marriage contract by teleconference. The research findings show that the marriage contract through teleconference which was carried out during the Covid-19 pandemic was reviewed according to *maqashid syariah* is a legal event that is allowed, and this will be an alternative to avoid harm as a goal to maintain the human soul.

Perkembangan teknologi sangat cepat dan pesat, perkembangan ini telah mempengaruhi segala aspek kehidupan sosial masyarakat, termasuk dalam bidang perkawinan. Salah satu indikasinya adalah adanya penggunaan perkembangan *teleconference* sebagai media untuk melakukan akad perkawinan, namun masalahnya adalah, hukum Islam belum mengatur secara spesifik tentang kaidah atau hukum akad nikah melalui teknologi *teleconference* atau media *online* lainnya, sementara perkembangan teknologi informasi lebih cepat dan pesat jika dibandingkan dengan perkembangan substansi hukum. Masalah akad nikah melalui *teleconference*, ini menimbulkan kontroversi karena Perbedaan pendapat penafsiran tentang konsep kesatuan majelis. Penelitian ini merupakan jenis penelitian hukum normatif. Penelitian hukum normatif yang

terfokus pada asas-asas hukum yang berkaitan dengan pelaksanaan akad nikah. Kajian ini sifatnya *deskriptif*, mengumpulkan informasi mengenai suatu gejala akad nikah *teleconference*. Pendekatan yang digunakan yakni; pendekatan teologis normatif, fenomenologi dan filsafat. Pisau analisisnya dengan menggunakan teori *maqashid syariah* dalam meneropong akad nikah dengan *teleconference*. Hasil temuan penelitian menunjukkan bahwa akad nikah melalui *teleconference* yang dilaksanakan di masa Pandemi Covid-19 ditinjau menurut *maqashid syariah* adalah suatu peristiwa hukum yang dibolehkan dan hal ini akan menjadi suatu alternatif untuk menghindari mudharat sebagai tujuan untuk memelihara jiwa manusia.

**Key words:** *Marriage contract; teleconference; covid-19 pandemic; maqashid syariah.*

## Introduction

One of the goals of Islamic law requires the realization of the welfare of the people, both individually and in society, happy in this world and in the hereafter. Community welfare will be achieved if the family as the smallest institution in a prosperous society. Likewise, individual welfare is strongly influenced by the welfare of his family life. Islam has regulated various things, including family life. The family is formed through marriage, so marriage is highly recommended in Islam for those who already have the ability to marry.

The issue of marriage, Islam has talked a lot, starting from how to find the criteria for a prospective life partner to how to treat it when it officially becomes the conditioning of the heart. Islam has guidelines, as well as Islam teaches how to create a festive wedding party (*walimah*),<sup>1</sup> but still get blessings and do not violate the guidance of the Prophet Muhammad (pbuh) as is the case with marriages that are simple but still full of charm.

Marriage is one of the *sunnah*tullah, living in pairs, living in matchmaking, and constitutes all creatures, especially humans. Marriage for humans is a *misaqangalizhahn* which aims to foster a physical and spiritual bond between a man and a woman as husband and wife with a happy family. Marriage makes humans get offspring and can preserve their lives.

At the beginning of 2020, an outbreak phenomenon appeared in Indonesia called the COVID-19 pandemic, this disease originated from Wuhan, China, and was reported to have spread to almost all parts of the world. This affects the way of life of the community both in terms of religion and social. The phenomenon of the

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<sup>1</sup>Hamzah Latif. "Interkoneksi Konsep Walimah Perkawinan dalam Hukum Islam dan Hukum Adat Bugis Bone." *Al-Bayyinah* 3.1 (2019), p. 83

COVID-19 outbreak has forced humans to carry out social restrictions aimed at preventing the spread of the Covid-19 virus.<sup>2</sup>

The Covid-19 outbreak has made everything change routine, for example the implementation of education, economic mobility and including in terms of marriage. In the past, marriages were held in a lively assembly (gathering) and were never even limited in their festivities. However, after the emergence of the Covid-19 outbreak, wedding receptions and the implementation of the marriage contract must be carried out with strict health protocols.

Technological developments are very rapid, and these developments have affected all aspects of people's social life, including in the field of marriage. One of them is the use of teleconference as a medium to perform the marriage contract. The problem is, Islamic law and positive law have not specifically regulated the rules or laws of marriage through teleconference technology. So the development of technology is faster than the development of legal substance.

In connection with the conditions during the COVID-19 pandemic, legal reform is needed through legal reform or the interpretation of Islamic law in order to provide social benefits or benefits for the community. This legal reform is carried out to fill the legal vacuum, especially related to the marriage contract using technology. So that the issue of marriage contracts via teleconference needs to get serious attention and needs a more in-depth study using the *maqashid syariah* approach. It is urgent to get a solution to Islamic law, renewal of Islamic law in the field of marriage contracts that is able to contextualize with current conditions.

## Methodology

Methodology is a way to pass something by using the thought carefully to achieve a goal.<sup>3</sup> While research is an activity to search, record, formulate, and analyze to report.<sup>4</sup> This research is a type of normative legal research. Normative legal research is oriented to the analysis of applicable legal documents or materials<sup>5</sup> related to the law of marriage which is done virtually.

This research is classified as a normative study, according to Soejono Soekanto, normative legal research is carried out by examining literature or secondary data. The normative legal research or literature includes (a) Research on

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<sup>2</sup>H. Baharuddin, "Parenting Styles During the Covid-19 Pandemic: A Conception of Islamic Family Law." *Al-Bayyinah* 5.1 (2021), p. 14.

<sup>3</sup>Cholid Narbuko and Abu Ahmadi, *Metodologi Penelitian* (Second Print; Jakarta: Bumi Aksara Pustaka, 1997), p. 1

<sup>4</sup>Cholid Narbuko and Abu Ahmadi, *Metodologi Penelitian*, p. 1

<sup>5</sup>Soejono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1988), p. 42

legal principles; (b) Research on legal systematics; (c) Research on the level of vertical and horizontal synchronization; (d) Comparative law; (e) Legal history.<sup>6</sup>

This study is descriptive in nature, which is intended to collect information about an existing phenomenon, namely the situation according to what it was at the time the research was conducted.<sup>7</sup> The approach used is; Theological-Normative approach, Phenomenology and Philosophical Approach. Data processing using deductive thinking, which starts from a general proposition (major premise) whose truth is known (minor premise) and ends at a specific conclusion.

## Discussion

### Overview of the Marriage Contract

#### 1. Marriage Contract

The marriage contract or *ijab* and *qabul* is one of the pillars or something that must be fulfilled in marriage. According to the view of *anafī* scholars, the pillars of marriage are only *ijab* and *qabul*, while in the *jumhur* view, the pillars of marriage consist of; (a) the groom and the bride; (b) Marriage guardian; (c) Two witnesses; (d) As well as *ijab* and *qabul* (marriage contract).<sup>8</sup> Meanwhile, Malikiyah stipulates the dowry as a pillar of marriage.<sup>9</sup>

The marriage contract consists of two words, namely the word contract and the word marriage. The word *akad* means promise, agreement; contract. While marriage is a marriage contract that is carried out in accordance with *shariah* provisions or simply means marriage, matchmaking.<sup>10</sup> The marriage contract is an agreement that takes place between two parties who get married in the form of *ijab* and *qabul*.<sup>11</sup>

The marriage contract is a statement of agreement on the part of the prospective bride and groom to bind themselves in a marriage bond. This statement

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<sup>6</sup>Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Second Print; Jakarta: PT Raja Grafindo Persada, 2004),h.120

<sup>7</sup>Suharsimi Arikunto, *Manajemen Penelitian* (Jakarta: PT Adi Mahasatya, 2005), p. 234

<sup>8</sup>Sayyid Sābiq, *Fiqh al-Sunnah* Vol. 2 (Beirut: Dār al-Fikr, 2008), 458-9. See also Wahbah al-Zuhāilī, *al-Fiqh al-Islāmī wa Adillatuh* Vol. 9 (Damaskus: Dār al-Fikr, 2004), p. 6516-6518

<sup>9</sup> Wahbah al-Zuhāilī, *al-Fiqh al-Islāmī wa Adillatuh* Vol. 9 (Damaskus: Dār al-Fikr, 2004), p. 6521.

<sup>10</sup>Achmad Kuzari, *Nikah sebagai Perikatan* (First Print, Jakarta: Raja Grafindo Persada, 1995) p. 34

<sup>11</sup>Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia* (Second Print, Jakarta: Prenada Media), p.61.

means that both parties are willing and agreed to enter into marriage and are willing to follow the provisions of *shariah* related to household rules.<sup>12</sup>

The marriage contract is a tangible manifestation of a bond between a man who becomes a husband and a woman as a wife, which is carried out in front of two witnesses and a female guardian, using *sighat ijab* and *qabul*. So, the marriage contract is an agreement in a marriage bond that is carried out by the groom or his representative, with the guardian of the bride-to-be or her representative, using *sighat ijab* and *qabul*.

A statement that shows the willingness to form a husband and wife relationship on the part of the bride is called *ijab*. While the statement uttered by the groom to express his pleasure and agreement is called *qabul*. These two statements between *ijab* and *qabul* are called marriage contracts.<sup>13</sup>

#### a. Legal Basis of Marriage in Islam

In a marriage, the marriage contract is something that is obligatory or includes the pillars as the word of Allah in QS Al-Nisa'/4:21

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

The translation:

And how could you take it while you have gone in unto each other and they have taken from you a solemn covenant!<sup>14</sup>

The verse above shows that there must be an agreement made in a marriage as a bond in marriage between the bride and groom. This agreement is known as the marriage contract.

#### b. Conditions for *Ijab Qabul*

A marriage contract which is declared with a statement of *ijab* and *qabul*, is only considered valid and has legal consequences for husband and wife if the following conditions have been met:

- 1) Both parties who carry out the marriage contract, both the guardian and the prospective groom, or who represent one or both of them, are adults and are

<sup>12</sup>Kamal Muchtar, *Asas-Asas Hukum Islam Tentang Perkawinan* (First Print, Jakarta: Bulan Bintang, 1974) p. 73.

<sup>13</sup>Tihami and Sohari Sahrani, *Fikih Munakahat: Kajian Fikih Nikah Lengkap* (Third Print, Jakarta: Rajawali Pers, 2013) p. 79.

<sup>14</sup>Al-Mehri, A. B. (Ed.). *The Qur'ān: With Sūrah Introductions and Appendices: Saheeh International Translation* (Maktabah Booksellers and Publishers, 2010)

spiritually healthy (*tamyiz*). If one of the parties is still immature or someone is crazy, then the marriage is invalid.

- 2) *Ijab and qabul* are carried out in one assembly. That is, when saying *ijab-qabul*, it should not be interspersed with other words or actions that can be said to separate *sighat ijab* and *sighat qabul* and hinder the *ijab qabul* event.
- 3) The words of *qabul* should not violate the words of *ijab*. That is, the intent and purpose is the same, except if the *qabul* is better than the proper *ijab*, and shows a more assertive statement of approval. For example, if the guardian says: "I will marry you to my daughter fulanah with a dowry of one hundred thousand rupiah". then the groom replied: "I accept the marriage with a dowry of two hundred thousand rupiah". So the marriage is still valid, because the *qabul* that is spoken is better, and has been sufficient than it should be.<sup>15</sup>
- 4) *Ijab* and *qabul* must be done verbally and heard by each party, both the guardian, the bride and the witness. The statement of both parties must be in a sentence which means to state the implementation of the marriage contract, even though some of the words cannot be understood. Because what is considered here is the intention, not understanding every word stated in the *ijab* and *qabul*.<sup>16</sup>

### c. One Assembly at the time of *Ijab Qabul* according to the Scholars' View

The marriage contract is basically carried out on the basis of the willingness between the two prospective partners, which is stated through the *qabul ijab* contract. Therefore, the *qabul ijab* is the most basic thing for the validity of marriage. *Ijab* is pronounced by a guardian, as a condition of being willing to give up his daughter to a prospective husband, and *qabul* is pronounced by a prospective husband, as a statement that he is willing to marry his future wife.

Abdurrahman al-Jaziri explained that the scholars agreed to require one assembly to carry out the *qabul ijab*. Thus, if the *qabul ijab* is not carried out in one assembly, then the marriage contract is considered invalid. The scholars are divided into two groups in interpreting the *ittihad majlis* (one assembly).<sup>17</sup>

The first opinion that is meant by *ittihad al-majlis* is that the *ijab qabul* must be done in one time the marriage contract ceremony, not carried out in a separate time. the latter, although two consecutive events separately may be carried out in

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<sup>15</sup>Tihami and Sohari Sahrani, *Fikih Munakahat: Kajian Fikih Nikah Lengkap*, (Third Print, Jakarta: Rajawali Pers, 2013) p. 87

<sup>16</sup>Tihami and Sohari Sahrani, *Fikih Munakahat: Kajian Fikih Nikah Lengkap*, p. 88

<sup>17</sup>Satria Efendi M. Zain, *Priblematika Hukum Keluarga* (Jakarta: Prenada Media, 2004), p. 4.

the same place, but if there is continuity between the *ijab* and *qabul*, or the *ijab* and *qabul* are interrupted, then the law of the marriage contract is invalid according to Islamic marriage law. Thus, the requirement for one assembly relates to the necessity of continuity of time between *ijab* and *qabul*, not concerning the unity of the place. Even though the place is in one assembly, but if it is done in two separate times or in two separate events, then the continuity between *ijab* and *qabul* has not materialized, so the marriage contract is considered invalid.

Sayid Sabiq in his book *Fiqh al-Sunnah* explained the meaning of one assembly in carrying out the marriage contract, emphasizing the notion of not breaking between *ijab* and *qabul*. Al-Jaziri clarified the meaning of one assembly in the Hanafi school of thought, in the case of a man sending a marriage contract to the woman he wants. After the letter arrived, the contents of the letter were read out in front of the female guardian and witnesses, and in the same assembly after the letter was read, the female guardian immediately said the acceptance of his *qabul*.<sup>18</sup> The marriage contract among the Hanafi School is considered valid, on the grounds that the conversation of *ijab* contained in the letter of the prospective husband, and the pronouncement of *qabul* from the female guardian, were both heard by two witnesses in the same assembly, not in two consecutive ceremonies, separated in terms of time. From the example of the marriage contract, the prospective husband will say it first, and then pronounce the marriage contract on the part of the guardians. This practice is considered permissible according to the Hanafi school.

The lesson that can be drawn from the requirements of one assembly is regarding the necessity of continuity between *ijab* and *qabul*. The existence of a requirement that there should be no meaningful boundary between *ijab* and *qabul*, is intended as a support for the certainty that the *ijab qabul* really is a manifestation of the willingness of both parties to enter into a marriage contract. *Qabul*, which is said after the *ijab*, is among the things that show the willingness of the prospective husband. On the other hand, there is a time gap that decides *ijab* and *qabul*, indicating that the prospective husband no longer fully has to say *qabul*, and the guardian of marriage within that time is considered no longer in its original position, or has withdrawn from his certainty.

The second opinion, says that one assembly is required not only to ensure continuity between *ijab* and *qabul*, but is closely related to the duties of two

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<sup>18</sup>Habib Shulton Asnawi, *Pernikahan Melalui Telepon dan Reformasi Hukum Islam di Indonesia* (Al-Mazaahib, Jurnal Perbandingan Hukum. UIN Sunan Kalijaga Yogyakarta Vol 1, No. 1, 2012), p. 5. See also Abdurrahman Al Jaziri, *Al-Fiqh ala Mazhabibil Arba'ah* (Libanon Beirut: Darul Fikri, 1990), p. 243.

witnesses. The witness must see with his own eyes that the *ijab* and *qabul* were really spoken by the two people who made the contract. This second opinion is more assertive in stating that the validity of the *ijab* and *qabul*, both from the in terms of certainty, is actually spoken by both parties to the contract. The opinion is held by the Shafi'iyah scholars. They strengthen their opinion by stating that the testimony of a blind person is not accepted for the marriage contract. This was reinforced by Ibn Hajar al-Haitami who rejected the testimony of blind people on the grounds that marriage testimony was based on sight and hearing. According to this second group, that the testimony of a blind person is equated with the testimony of a person who is in complete darkness, so that a person who is in complete darkness is the same as a blind person who cannot see the person performing the marriage contract. Therefore, he cannot be sure with certainty that the *ijab* and *qabul* were actually pronounced by both parties to the contract.<sup>19</sup>

### **The Covid-19 Pandemic Phenomenon in Indonesia**

According to Novia Nur Kharisma et al in the *Jurnal Pendidikan Non Formal 2020* with the title “*Gambaran Kebutuhan Pembelajaran Daring PKBM Budi Utama Surabaya Pada Masa Pandemi Covid-19*”, quoted by Jagad Aditya Dewantara and T Heru Nurgiansah explaining that the national ideals of the Indonesian state are contained in the preamble of the 1945 Constitution, namely educating the nation's life, especially our country has a vision of a golden generation in 2045 as a celebration of 100 years of Indonesian independence. But over time, at the end of 2019 originating from Wuhan, China, a virus called corona or covid-19 emerged which finally spread throughout the world uncontrollably which made it difficult for all countries, both developed and developing countries, including Indonesia. Finally, COVID-19 was declared a pandemic by the World Health Organization (WHO) on March 12, 2020.<sup>20</sup>

Corona viruses are a large family of viruses that cause illness ranging from mild to severe symptoms. There are at least two types of coronavirus that are known

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<sup>19</sup>Habib Shulton Asnawi, *Pernikahan Melalui Telepon Dan Reformasi Hukum Islam di Indonesia* (Al-Mazaahib, Jurnal Perbandingan Hukum. UIN Sunan Kalijaga Yogyakarta Vol 1, No. 1, 2012) p. 7. See also Sadiani, *Nikah Via Telpon: Menggagas Pembaharuan Hukum Perkawinan di Indonesia* (First Print Kalimantan INTIMEDIA, 2008), p. 24.

<sup>20</sup>See Jagad Aditya Dewantara and T Heru Nurgiansah, *Efektivitas Pembelajaran Daring di Masa Pandemi Covid 19 Bagi Mahasiswa Universitas PGRI Yogyakarta* (Jurnal Basicedu Vol. 5 Number 1: 2021) p.367-375. See also, Novia Nur Kharisma et al., *Gambaran Kebutuhan Pembelajaran Daring PKBM Budi Utama Surabaya Pada Masa Pandemi Covid-19* (Jurnal Pendidikan Non Formal, 2020). p.38-44

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to cause diseases that can cause severe symptoms such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS).<sup>21</sup>

Coronavirus Disease 2019 (covid-19) is a new type of disease that has never been previously identified in humans. The virus that causes COVID-19 is called Sars-CoV-2. Corona virus is zoonotic (transmitted between animals and humans). Research says that SARS-CoV-2 was transmitted from civet cats to humans and MERS from camels to humans. Meanwhile, the animal that is the source of Covid-19 transmission is still unknown. Common signs and symptoms of COVID-19 infection include symptoms of acute respiratory distress such as fever, cough and shortness of breath. The average incubation period is 5-6 days with the longest incubation period being 14 days. In severe cases of COVID-19, it can cause pneumonia, acute respiratory syndrome, kidney failure, and even death. Clinical signs and symptoms reported in the majority of cases were fever, with some cases having difficulty breathing, and X-rays showing extensive pneumonia infiltrates in both lungs.<sup>22</sup>

Prior to COVID-19, the Indonesian government had made various efforts to handle or control infectious diseases or policies that regulate public behavior (Social Distancing), for example Law Number 4 of 1984 concerning Epidemic and Infectious Diseases, Law Number 24 of 2007 concerning Disaster Management, Law Number 6 of 2018 concerning Health Quarantine. Then after Covid-19 entered Indonesia, the Government implemented policies for prevention, for example, Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019, as well as regulations relating to the handling of Covid 19.

From the explanation above, it can be understood that the Covid-19 pandemic phenomenon is a deadly disease, the disease has even become an epidemic and has increased to a pandemic so that this condition affects the life of the community from various aspects, including the problem of marriage contracts in marriage.

Considering the Covid-19 pandemic is a deadly disease and the community is demanded by the government by implementing several policies such as social distancing, wearing masks, washing hands and not causing crowds in the

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<sup>21</sup>Shubhan Shodiq, "Penanganan Covid-19 Dalam Pendekatan Kaidah Fikih dan Ushul Fikih (Analisis Kebijakan Pembatasan Sosial Berskala Besar Dibidang Keagamaan)." *Al-Adalah: Jurnal Hukum dan Politik Islam* 5.2 (2020), p. 114.

<sup>22</sup>Kementerian Kesehatan Republik Indonesia, *Pedoman Pencegahan Dan Pengendalian Coronavirus Disease (Covid-19)* 4<sup>th</sup> Ed. (Direktorat Jenderal Pencegahan dan Pengendalian Penyakit: 2020) p.11

community and many people also use online media such as teleconferences in the community, online learning, office meetings through the zoom application, google meet and so on in order to break the chain of the spread of the Corona Virus.

### **Review of *Maqashid Shariah* on the Marriage Contract via Teleconference during the Covid-19 Pandemic**

Marriage via teleconference had already occurred before the COVID-19 pandemic. The implementation of the *qabul ijab* via online in the marriage contract process, namely the marriage of a member of the policewoman, namely Brigadier Nova, who is a member of the West Kalimantan Regional Police who held the *Ijab Qabul* Via Video Call. This became viral in April 2018, where the story was that Brigadier Nova was also undergoing a selection test to join the United Nation Police (UN police) at the Cikeas Police Multi-Function Center, West Java. His activities coincided with the process of the ceremony and his wedding reception which was beyond Nova's own predictions. Likewise in the case that has been decided by the South Jakarta Religious Court No. 1751/P/1989 concerning the ratification of the *Qabul Ijab* through online media.<sup>23</sup> From the case above, marriage using means via teleconference or online media is a contemporary issue that is still controversial, this is an unusual event or has never happened among Muslims.

Controversy or differences of opinion about the marriage contract through technology media occur because of different views on the terms and texts about marriage. This difference also occurs because the technical implementation of the marriage contract is not clearly regulated in the texts. Therefore, the author will conduct a review of the *maqashid shariah* of the marriage contract via teleconference in the midst of the covid-19 pandemic.

The term *maqashid shariah* was popularized by Abu Ishak Asy-Syatibi as stated in his work *Muwaffaqat*. Etymologically *maqashid al-syari`ah* consists of two words, namely *maqashid* and *al-syari`ah*. *Maqashid* is the plural form of *maqshad* which means purpose, intention or target. Meanwhile, according to terminology, *shariah* is a path that is determined by God which makes humans have to direct their lives to realize God's will so that their lives are happy in this world and the hereafter.

In terms of language *maqashid shariah* means the aims and objectives of Islamic law, because it becomes the main discussion in it is about the problem of wisdom and illat enactment of a law. Meanwhile, according to *shariah* terms,

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<sup>23</sup>Fathur Marzuki and Handar Subhandi Bakhtiar, *Praktik Pencatatan Ijab Qabul Via Online dalam Proses Akad Nikah Di Makassar* (Balai Penelitian dan Pengembangan Agama Makassar, Pusaka Jurnal, Vol. 7, No. 1, 2019), p. 51.

*maqashid shariah* is the benefit aimed at humans both in this world and in the hereafter by taking benefits and rejecting harm.<sup>24</sup>

The essence of *maqashid al-syariah* is stated by Ibn Assyria, as quoted by Hammadi, quoted by Moch. Nurcholis with the statement:

“It is the meaning and wisdom that *shariah* makers pay attention to and maintain in determining a rule. This does not only apply to certain types of law, so it includes all the characteristics, general objectives, and meanings of *shariah* contained in the law.”<sup>25</sup>

The statement above gives an understanding that the essence of *maqashid al-syariah* is the ultimate goal that must be realized by the application of *shariah* in every aspect. This goal, according to al-raysuni, entirely boils down to the good of mankind, both in this world and in the hereafter.<sup>26</sup>

As for what is used as the legal basis for *maqashid shariah* in the Qur'an, that Allah made Shari'a for humans to have certain legal purposes, not in vain, it has been determined by the arguments in the Qur'an for sure. As Allah says as follows:

وَمَا خَلَقْنَا السَّمَوَاتِ وَالْأَرْضَ وَمَا بَيْنَهُمَا لِعَيْنٍ

The translation:

And We did not create the heaven and earth and that between them in play.<sup>27</sup>

مَا خَلَقْنَاهُمْ إِلَّا بِالْحَقِّ وَلَكِنَّ أَكْثَرَهُمْ لَا يَعْلَمُونَ

The translation:

We did not create them except in truth, but most of them do not know.<sup>28</sup>

The verse can be understood that the Islamic Shari'a was revealed to provide benefits to humans both quickly and slowly at the same time, namely all problems and their consequences. Al-Syatibi stated in *maqashid shariah* that God's purpose in

<sup>24</sup>Agus Miswanto, *Ushul Fiqh: Metode Ijtihad Hukum Islam* (First Print, Yogyakarta: Magnum Pustaka Utama in co-operation with UNIMMA Press, 2019), p.149

<sup>25</sup>Moch. Nurcholis, *Usia Perkawinan Di Indonesia: Landasan Akademis dan Korelasinya dengan Maqashid Perkawinan dalam Hukum Islam* (First Print, Jombang: IAIBAF Press, 2019) p. 19. See also Hammadi al-Ubaydi, *Al-Syathibi wa Maqashid al-Syariah* (Beirut: Dar al-Qutaybah, 1992) p.119

<sup>26</sup>Moch. Nurcholis *Usia Perkawinan Di Indonesia: Landasan Akademis dan Korelasinya dengan Maqashid Perkawinan dalam Hukum Islam*, p.20. See also Ahmad al-Raysuni, *Madkhal ila Maqashid al-Shariah* (Kairo: Dar al-Kalimah, 2010) p.7.

<sup>27</sup>Al-Mehri, A. B. (Ed.). *The Qur'ān: With Sūrah Introductions and Appendices*

<sup>28</sup>Al-Mehri, A. B. (Ed.). *The Qur'ān: With Sūrah Introductions and Appendices*

establishing the law, with the explanation that the purpose of the law is one, namely for the good and welfare (*maslahah*) of mankind both fast and slow simultaneously. So, the purpose of *shariah* includes the benefit of the world and the hereafter.<sup>29</sup> Doing good deeds is a demand of the world and its benefit is the fruit of charity, the results of which will be obtained in the hereafter. As explained in the Qur'an:

مَنْ كَانَ يُرِيدُ الْعَاجِلَةَ عَجَّلْنَا لَهُ فِيهَا مَا نَشَاءُ لِمَنْ نُرِيدُ ثُمَّ جَعَلْنَا لَهُ جَهَنَّمَ يَصْلُهَا  
مَذْمُومًا مَدْحُورًا

The translation:

Whoever should desire the immediate - We hasten for him from it what We will to whom We intend. Then We have made for him Hell, which he will (enter to) burn, censured and banished.<sup>30</sup>

According to al-Syathibi, *maqashid al-shariah* consists of three types, namely *al-dharuriyat*, *al-hajiya*, *al-tahsiniyah*.

a. *Dharuriyat* Needs

*Dharuriyat* needs are the level of needs that must exist or are called primary needs. According to al-Syathibi there are five things that fall into this category, namely; (1) Protecting religion; (2) Nurturing the soul; (3) Intellect; (4) Honor; (5) Descendants and maintain property.

Preserving these five points so that the Shari'a was revealed, if one examines every legal verse in the Qur'an, it is found that the reason for the formation of the law is none other than to maintain the above points.<sup>31</sup>

b. *Hajiyah* Needs

The needs of *hajiyat* are secondary needs, if this need is not met, it does not threaten human safety but will experience difficulties. The existence of the law of *rukhsah* (Relief).

At this level it is not related to the basic needs of mankind, so as not to cause damage to the legal and social order. An example at this level is the existence of *ruskhsah* (relief) in carrying out religion, due to illness, travel, intentions, and so on.<sup>32</sup>

<sup>29</sup> Agus Miswanto, *Ushul Fiqh: Metode Ijtihad Hukum Islam*, p.152

<sup>30</sup> Al-Mehri, A. B. (Ed.). *The Qur'ān: With Sūrah Introductions and Appendices*

<sup>31</sup> Satria Effendi M.zein, *Ushul Fiqh* (Seventh Print, Jakarta: Kencana, 2017) p.212

<sup>32</sup> Moch. Nurcholis *Usia Perkawinan Di Indonesia: Landasan Akademis dan Korelasinya dengan Maqashid Perkawinan dalam Hukum Islam*, p. 22

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### c. Tahsiniyah Needs

*Al-Maqashid al-tahsiniyah* is a complement to the realization of the two *maqashid* above it. The direction of the imposition of *shariah* in this purpose is to realize good ethics and reason for mankind, such as teachings on the importance of cleanliness, decoration, alms, and so on.

Based on the explanation above, it can be concluded that the marriage contract using a teleconference device or the like which was carried out during the Covid-19 Pandemic in terms of *maqashid shariah* is a legal event that is allowed even this is an alternative to preserve the soul or avoid harm to prevent the spread of the corona virus.

## Conclusion

The Covid-19 pandemic which is a deadly disease, and transmission is very fast. Mass mobility allows for the rapid spread of Covid-19. But on the other hand, the problem of marriage is a *sunnatullah* that must be fulfilled when it meets the requirements for marriage. The form of legitimacy of the permissibility and recommendation of marriage is very clear in the Qur'an and hadith. Considering that Covid-19 has not shown any signs of ending, human needs, including marriage, must continue as a form of obedience to Allah and His Messenger. Thus, by taking the marriage contract using teleconference, it becomes a means to maintain the soul so that this becomes a *dhanuriyat* requirement (primary need) in *maqashid shariah*. Therefore, the implementation of the marriage contract using teleconference is allowed with the *maqashid shariah* approach in terms of maintaining offspring. A person who is eligible to marry, and avoids biological concentration in a lawful manner, takes a marriage contract by teleconference, this is to make it easier to carry out the call for marriage and at the same time fulfill the biological needs as soon as possible which is the nature of every human being.

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