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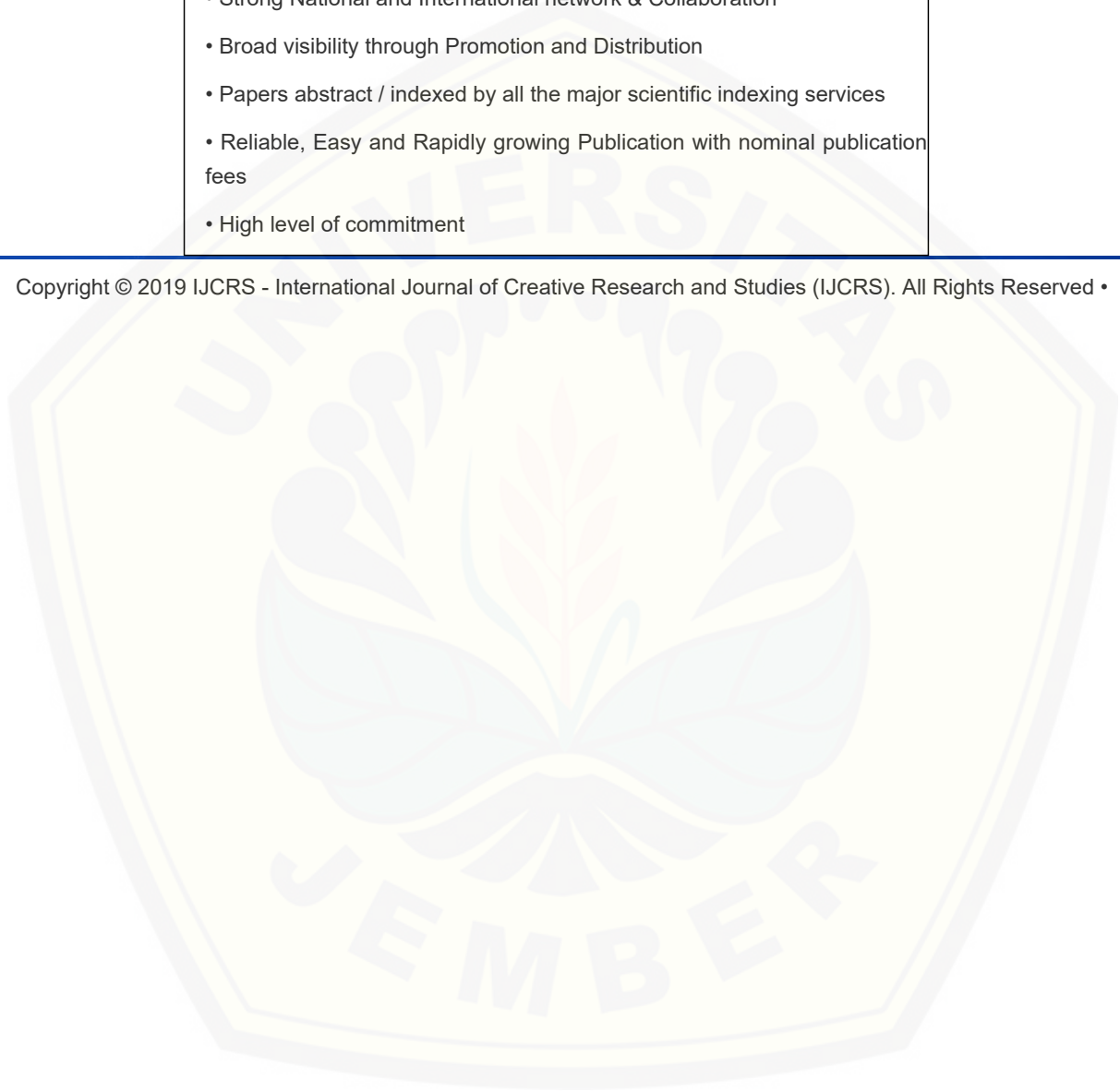
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**Author:** Dyah Ochterina Susanti, A'an Efendi & Nuzulia Kumala Sari

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DISTRIBUTION ERA (Perspective of Islamic Law)**

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**Abstract**

*This research is motivated by the implementation of consent and qabul in marriage, which is usually carried out directly but can now be done via video call. This study aims to analyze the validity of marital consent given through video calls according to Islamic law. The results of this normative legal study, which uses statute and conceptual approaches, is that according to Islamic law, consent given through video calls is legal and permissible provided that the bride and groom know each other and there is no pause in pronouncing consent and qabul. At the end of this study, the researcher provides suggestions to the government regarding regulating marriage implementation (ijab qabul) through video calls (internet) as a form of legal protection for the bride and groom.*

**Keywords:** *Ijab Qabul, Marriage, Video Call, Distribution, Islamic Law*

**Introduction**

In terms of language, "marriage" is derived from "to marry," defined as an arrangement for men and women to become husband and wife.<sup>1</sup> Law No. 1 of 1974 concerning Marriage (from now on referred to as Marriage Law) defines marriage is an emotional bond between a man and a woman to form a happy and eternal family (household) based on God Almighty.<sup>2</sup> In connection with this definition, according to Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI), according to Islamic law, marriage is matrimony, or a firm contract (mitsaaqanghaliizhan) to obey God's commands. Marriage,

<sup>1</sup> Indonesian Language Drafting Team. *Kamus Besar Bahasa Indonesia* (Jakarta: Language Center of the Ministry of Education, 2008), p. 653.

<sup>2</sup> Law No. 1 of 1974 about Marriage Acts.



therefore, is worship.<sup>3</sup> Marriage, according to Islam, is also a sacred agreement between a man and a woman to live together legally, forming a family that is eternal, polite, loving, secure, constant, and happy.<sup>4</sup>

According to the above definitions of marriage, Islamic law regulates the legal agreement between the concerned parties in the presence of two witnesses. As stated by Soedharyo Soimin, marriage is an agreement entered into by two people; a contract between a man and a woman with a material purpose; forming a happy and eternal family (household); and based on the God, as the first principle in Pancasila.<sup>5</sup>

In recent years, the implementation of consent (*ijab qabul*) in marriage has shifted. The shift refers to the way of holding a marriage agreement. In the last few years, the consent *qabul* was granted through telecommunications media without meeting or gathering in one place (*majelis*). The first consent *qabul* in Indonesia carried out with telecommunications media occurred in 1989, between Dra. Nurdiani and Drs. Ario Sutarto.<sup>6</sup> In that case, the bride was in Jakarta, and the bridegroom was in the United States studying, requiring marriage consent to be obtained by telephone.

Consent *qabul* is not only granted by telephone. In 2018, it was reported that the consent *qabul* is also granted via video call. Amurwa Pradnya Sang Indraswari, the daughter of Indonesian romance writer Langit Kresna Hariyadi, held a marriage on Sunday March 25, 2018, using the WhatsApp video call service.<sup>7</sup> At the time, Amurwa was in Dublin, Ireland. Irfan Hafidin, Amurwa's husband to-be, provided his consent in front of Langit and his parents, while Amurwa witnessed the sacred procession directly through the WhatsApp application's video call function. A second case took place between a couple residents of Kampung Baru, Banten, named Tomi and Maryani, who shocked the virtual world upon uploading their wedding photos which were carried out via video call. During the procession, Tomi was unable to attend because he was still in Saudi Arabia for work.<sup>8</sup>

The consent *qabul* granted by the parties above signifies that the era of disruption has already begun in Indonesia. The disruption period is a process of change, which does not occur instantaneously. Starting from the idea, research or experimentation, the process of making and developing.<sup>9</sup> Disruption is closely related to innovation, and is sometimes even known as disruptive innovation. Disruptive innovation, in Indonesian, means disruptive or disturbing innovations. The word disturbing, in this case, cannot be understood generally; in this context, disturbing means that the emergence of new technological innovations will disrupt the existence of the old technology.<sup>10</sup>

In connection with the explanation above, the implementation of marriage through video calls is an innovation that utilizes technology, disrupting the meaning of marriage, which is carried out by both parties, man and woman, in the same place. In this regard, the central theme of this study is, "*does the marriage consent letter made through a video call meet the legal requirements of marriage in Islamic law?*"

<sup>3</sup>See article 2 of Intruction of President of Republic Indonesia No. 1 of 1991 about Dissemination of Islamic Law Compilation.

<sup>4</sup>Idris Ramulyo. *Hukum Perkawinan Islam : Suatu Analisis dari Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam*. (Jakarta: Bumi Aksara, 1996), p. 1-2.

<sup>5</sup>Soedharyo Soimin. *Hukum Orang dan Keluarga*. ( Jakarta, Sinar Grafika, 2004). p. 3

<sup>6</sup>See Verdict of South Jakarta Religious Court No. 1751/P/1989

<sup>7</sup><http://entertainment.solopos.com/read/20180410/482/909397/langit-kresna-hariadi-nikahkan-anak-secara-virtual>, diakses pada tanggal 10 April 2018

<sup>8</sup><http://www.surat kabar.id/83066/gaya-hidup/solusi-cinta-jarak-jauh-seorang-pria-langsungkan-akad-lewat-video-call-sahkah>, accessed at 10 April 2018.

<sup>9</sup>Mustoha Iskandar. *Disruption Era: Opportunity or Threat bagi Institusi Universitas?*. Delivered at a Public Seminar academic year 2017/2018, Graduate Program of the University of Lampung Mangkurat.

<sup>10</sup><https://law.uii.ac.id/wp-content/uploads/2017/07/2017-07-27-fh-iii-semnas-disruptive-innovation-manfaat-dan-kekurangan-dalam-konteks-pembangunan-ekonomi-Edy-Suandi-Hamid.pdf>. Edy Suandi Hamid. *Disruptive Innovation: Manfaat dan Kekurangan dalam Konteks Pembangunan Ekonomi*, accessed at 10 April 2018.



## Materials and Methods

The research method used in this scientific paper is normative legal research, which explains and describes in detail related to the validity of marriage consent through a video call as the implementation of the era of disruption (perspective of Islamic law). Normative legal research generally called with the term library research, which focuses on primary and secondary material analysis.<sup>11</sup> Soejono and Abdurrahman refer to normative legal research as doctrinal research, namely: research whose object of study consists of statutory documents and library materials.<sup>12</sup> This research is also systematic about the rule of law regulate specific areas of law, analyze the relationship between one rule of law with the other ones, describes the parts that are difficult to understand from a rule specific laws, maybe even including predictions of the development of the rule of law certain future.<sup>13</sup> Regarding the writing of this article, the rule of law is used by contain provisions about the conditions of marriage so that it can be analyzed and found the validity of marriage consent through a video call.

In practice, some approaches are adopted, namely legislative and conceptual approaches. The legal approach is made by reviewing all the laws and regulations about the issue of law presented.<sup>14</sup> The results of the case were later used as arguments to resolve the legal issues encountered. Accordingly, in the writing of this scholarly paper, a legal approach is used to review the laws relating to the legality of marriage, as well as matters pertaining to the legalization of marriage through video calls, and the rules used by Al - The Qur'an and Hadith as the basis for Shari'ah, whereas for Indonesia's positive law is No. 1 of 1974 on Marriage and Instructions of President No. 1 of 1991 on Islamic Law Compilation (KHI). The conceptual approach is the approach taken by reference to the principles of law that can be found in the view of the scholars or the doctrines of law.<sup>15</sup> In this article, there is also a conceptual approach used to elaborate the law in Indonesia in accommodating the practice of marriage through video calls and in explaining the legitimacy of the practice of marriage through video calls (perspective of Islamic law).

## The Discussion

The disruption phenomenon has recently become a byword among the community, both teenagers and parents. Disruption is a condition where fundamental changes occur, typically the evolution of technology that targets a gap in human life,<sup>16</sup> which is characterized by four indicators: (1) accessibility, (2) affordability, (3) convenience, and (4) relative speed.<sup>17</sup> The development and use of technology affects all aspects of human social life. Moreover, technology grows in the world of communication based on convenience, speed, and efficiency in conducting personal relationships. The ease of communications technology affects not only economic and business fields, but also the private aspects of human life, including marriage. This is evidenced by the emergence of marriage officiation through video calls.

Video call is a service on a cellphone using a video screen. It is able to capture video and transmit sound, functioning as a communication tool between two or more people in real-time.<sup>18</sup> Video calls are also interpreted as a service for voice communication, where both parties can see the face of the other person, as though they are actually together. The two communicating parties can also be deaf or mute, using sign

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<sup>11</sup> Dyah Ochterina Susanti dan A'an Efendi. *Penelitian Hukum (Legal Research)*. (Jakarta: Sinar Grafika, 2014), p. 52. Primary legal materials are binding legal materials, for example laws and regulations. Related to secondary legal materials include law books, legal dictionaries, journals, dissertations, and so forth.

<sup>12</sup> Soejono dan Abdurrahman. *Metode Penelitian Hukum*. (Jakarta: Rineka Cipta, 2003), p. 56

<sup>13</sup> Dyah Ochterina Susanti dan A'an Efendi. *Op. Cit.*, p. 11

<sup>14</sup> Peter Mahmud Marzuki. *Penelitian Hukum*. (Jakarta: Prenada Media, 2005), p. 93

<sup>15</sup> Dyah Ochterina Susanti dan A'an Efendi. *Op. Cit.*, p. 115.

<sup>16</sup> <https://www.kabar-banten.com/generasi-era-disrupsi/>, accessed 11 Oktober 2019.

<sup>17</sup> <http://jogja.tribunnews.com/2018/02/24/rektor-uny-ingatkan-lulusan-untuk-siap-di-era-disrupsi>. Nto. Artikel berjudul *Rektor UNY Ingatkan Lulusan untuk Siap di Era Disrupsi*, accessed 11 Oktober 2019.

<sup>18</sup> Thabratas Tharom dan Onno W. Purbo. *Teknologi VoIP*. (Jakarta: PT. Elex Media Komputindo, 2001).

language through the video service. So, too, can people who are out of town or overseas use video call.<sup>19</sup> This explanation shows that there is convenience in the video call service, innovating the institution of marriage, where a prospective husband and wife in different places across vast distance can still marry through video call services.

Marriage is defined as the inner bond between a man and a woman as husband and wife forming a happy and eternal family (household) based on the God Almighty.<sup>20</sup> The definition shows that marriage is a noble institute for ties that are woven by a man and a woman in building a household. Marriage also has the birth bond value and is connected to God as a means of achieving Muslim values known as *sakinahmawahdah* and *warahmah*. In this regard, the marriage bond in Islamic law is called *miitsaaqanghaliizhan*, which is a strong bond in the form of an agreement (contract).<sup>21</sup> The arrangement, according to the language, is binding (*rabat*), which is collecting two ropes and binding one of them with the other until joined together as one object.<sup>22</sup> Sayuti Thalib argues that a marriage contract is an agreement binding a man and woman.<sup>23</sup> Mohammad Asmawi defines marriage as a commitment of consent from the woman's guardian or representative and the pronouncement of *qabul* from the prospective husband or his representative.<sup>24</sup> In line with the opinion of Mohammad Asmawi, Soemiyati also argues that the marriage contract is a statement of agreement made by the potential husband and future wife to bind themselves in the marriage rope, using the words of *ijab* and *qabul*.<sup>25</sup>

It is necessary to understand that the contract in question is not a transaction in the sense of buying and selling. The meaning of the contract in the context of marriage is sacred, possessing a holy purpose because it is related to the offspring and regeneration of the future husband and wife.

A marriage contract is based on love from both potential partners. Willingness to be equal is something abstract or intangible. As a manifestation of the same voluntary feeling's existence, willingness to be equal is then manifested in the form of consent and *qabul*. *Ijab* and *qabul* have essential meaning for a marriage contract's validity.

Assuming that, Abdul Rahman Ghozali said that consent via video call was legal, if working (in Islam "working" can be interpreted as a prayer) fulfills the pillars and conditions.<sup>26</sup> Related to this, the requirements in marriage consist of:<sup>27</sup>

1. The existence candidate of a husband and wife who will get married.
2. A guardian on the part of women.
3. Two witnesses.
4. Shigat marriage contract that has consent and *qabul*.

In addition, al-Jazairi concluded that there are two pillars of marriage: *ijab* and *qabul*.<sup>28</sup> *Ijab* is the beginning of an explanation said by one of the parties to the contract, to illustrate the *iradhat* in holding the contract, while *qabul* is an agreement that is delivered by the other party after the consent.<sup>29</sup>

<sup>19</sup> Mukhlis Hadi Lubis dan Arman Sani. *Analisis Kualitas Video Call Menggunakan Perangkat Nsn Flexi Packet Radio*. Jurnal Singuda Ensikom, Vol. 6 No. 2, February 2014, p. 76.

<sup>20</sup> Article No. 1 of 1974 about Marriage Acts.

<sup>21</sup> See article 2 Intruction of President No. 1 of 1991 Dissemination of Islamic Law Compilation.

<sup>22</sup> T.M. Hasbi AshSiddieqiy. *Pengantar Fiqh Muamalah*. (Jakarta: Bulan Bintang, 1974), p. 21

<sup>23</sup> Sayuti Thalib. *Hukum Kekeluargaan dan Bisnis Indonesia*. (Jakarta: UI Press, 1986), p. 63.

<sup>24</sup> Mohammad Asmawi. *Nikah*. (Yogyakarta: Darussalam, 2004), p. 17.

<sup>25</sup> Soemiyati. *Hukum Perkawinan Islam dan Undang-undang Perkawinan*. (Yogyakarta: Liberty, 1999), p. 53.

<sup>26</sup> Abdul Rahman Ghozali. *Fiqh Munakahat*. (Jakarta: Prenada Media Group, 2003), p.45

<sup>27</sup> *Ibid.*, hlm. 46.

<sup>28</sup> Abdul Rahman al-Jaziri. *Al-Fiqh 'Ala Mazahib Al-'Arba'ah, juz VI*. (Beirut: Dar Al-Fikr, 1986), p. 12.

<sup>29</sup> T.M. Hasbi AshSiddieqiy. *Op. Cit.*, p. 22.

Legal requirements of marriage in Indonesia are not explicitly specified; however, in Article 2 paragraph (1) of the Marriage Law, it is declared that marriage is legitimate when it is carried out according to the parties' respective religions and beliefs. The same thing is also emphasized in Article 4 KHI, which states that marriage is legal if it is carried out according to Islamic law and Article 2 paragraph (1) of the Marriage Law. These provisions show that the legality of a marriage is limited only by the implementation that is carried out according to their respective religions, meaning that if the marriage is carried out under national guidelines and religious law, then the marriage is legitimate.

In the implementation of consent and *qabul* in marriage there are five requirements that must be fulfilled:<sup>30</sup>

1. *Ijab* and *qabul* must be spoken verbally, except for those who cannot pronounce them verbally, wherein they may be pronounced in writing or using certain signs.

Supposing that, a contract in a marriage can be spoken in any language as long as it can evidence the will of the marriage in question and can be understood by both parties and witnesses.<sup>31</sup> The pronouncement of a contract in marriage can be held privately, as stated in Article 28 KHI, which reads:

*"The marriage contract is personally carried out by the marriage guardian concerned. A marriage guardian can represent someone else."*

The above provisions mean that as long as the marriage guardian of each party is not absent, then consent can be granted privately. Similarly, the right to be a guardian for a woman belongs to the biological father. When the biological father is unable or deceased, then the sibling or biological brother is obliged to serve as the bride's guardian, known in Islam as the guardian *nasab*.<sup>32</sup>

Based on this, in the implementation of the marriage through video calls, the woman's guardian can directly permit the bridegroom, which is then directly accepted through a statement of *qabul* from the man. At this moment, the bride is allowed not to be in the same *majelis*, or place, in the consent form, because the woman has a guardian who grants consent on her behalf.

Assuming that, the implementation of the *qabul* carried out by men, KHI has also arranged it in Article 29, as follows:

- 1) The person who has the right to pronounce *qabul* is a prospective bridegroom.
- 2) In some instances, the *qabul* can be presented by other men on the condition that the prospective bridegroom gives explicit written mandate stating that the representative of the marriage contract is for the bridegroom.
- 3) If the bride or groom rejects the groom's representative, then the marriage contract may not be held.

In connection with the above provisions, Sayyid Sabiq explained that if one of the parties, bride or groom, are far away and want to enter into a marriage contract, then the bride must send her representative or write a letter to the other party requesting marriage. If the requested party accepts, then witnesses are presented and read the contents of a message made by the bridegroom. They may also appoint one among them to witness the marriage contract's submission by letter or by someone sent on behalf of the bridegroom. Based on this, the *qabul* is considered one assembly.<sup>33</sup>

The pronouncement of *qabul* in a video call can be directly spoken by the prospective bridegroom, even though the direct statement is made via video call. Still, in this case, the bridegroom has fulfilled the obligation and is therefore following what has been determined by law.

<sup>30</sup> Sadiani. *Nikah Via Telepon*. (Malang: Kerjasama Intimedia dan STAIN Palangkaraya, 2008), p. 18.

<sup>31</sup> Ahmad Azhar Basyir. *Hukum Perkawinan Islam*. (Yogyakarta: UII Press, 2000).

<sup>32</sup> The existence of guardians for women who will hold marriages until now is an absolute requirement. The type of guardian who can be a guardian in marriage is: guardian *nasab*, guardian judge, guardian *muhakam*. If the woman is a widow, all the *madhazab* priests agree to continue to use a guardian, except for the Imam Hanifa school.

<sup>33</sup> Sayyid Sabiq. *Fikih Sunnah, Juz II*. (Beirut: Darul Fikr, 1990), p. 59



2. *Ijab* and *qabul* must be done in the same place.

Related to this, there are two opinions on the notion of *ittihad* (united) *majelis*. First, *ittihad al-majlis* argues that the consent *qabul* must be done at once as a part of the marriage ceremony, not in a separate time after approval is complete. Although two separate events can be carried out separately in the same place, if there is no continuity between consent and *qabul*, or consent and *qabul* are interrupted, then the marriage contract is invalid according to Islamic marriage law.<sup>34</sup>

This shows that the existence of assembly requirements are related to time continuity between consent and *qabul*, not concerning the unity of place, as stated in Article 27 KHI:

“The consent and *qabul* between the guardian and the bridegroom must be one definite streak and not intermittent.”

When the bride-to-be's guardian finishes delivering her consent, at that time the *qabul* sentence is immediately continued by the groom. The consent and *qabul* process should not be interspersed with other activities, which can destroy the continuity of time and eliminate the meaning of one *majelis* in the consent and *qabul* process.

Al-Jaziri clarified the meaning of one *majelis* in the Hanafi school of Islamic law in the case of a man sending a marriage agreement to the woman he sought to marry. After the letter arrived, the contents of the message were read in front of female guardians and witnesses. In the same assembly, after the letter was read, the female guardian immediately read her acceptance of the *qabul*.<sup>35</sup> This case is considered legitimate because the prospective husbands consent and the pronouncement of *qabul* from the female guardian were both heard by two people in the same assembly. Despite the absence of the bride, the *ijab* is pronounced first by the prospective husband, after which the pronouncement of *qabul* from the female guardians followed. The above explanation shows the essence united assembly requirements, which are related to time continuity between consent and *qabul*. Related to this, the sustainability of the place is no longer the only factor in interpreting the meaning of one assembly.

The second opinion argues that united assemblies are not only required to guarantee the continuity of consent and *qabul*, but also closely related to witnesses' duties. The witness must see with his own eyes that consent and *qabul* were spoken by both parties. According to Ibn Hajar al-Haitami in Sadiani, the testimony of a blind person could not be accepted for a marriage contract because a blind person is equated to someone who is in complete darkness, meaning they cannot be sure with certainty that both parties spoke the consent and *qabul*.<sup>36</sup>

The above opinion means that the marriage contract testimony's validity must be realized by witnesses in seeing the marriage contract, meaning that the speaker cannot know a party by listening to their voice alone. Still, the strength of their testimony's weight will not reach the demanded level of certainty unless the disclosure is seen with the eyes. In this regard, among Shafi'ites, the testimony must be based on hearing and sight. According to this perspective, consent and *qabul* delivered through letters without representation are also invalid.<sup>37</sup>

Based on the explanation that has been described above, the one assembly requirement not only maintains time continuity, but also contains other provisions, including the presence of witnesses to listen and watch the marriage contract process. The difference in place between consent and *qabul* made using a video call is that the witnesses can see the faces of the parties, even listen to his voice clearly between the consent said by the guardian and the *qabul* spoken by the prospective husband. This can be interpreted as one assembly because the continuity between the consent and the *qabul* is maintained. This can defend the validity of a marriage carried out using video calls.

<sup>34</sup> Sadiani. *Op. Cit.*, p. 20.

<sup>35</sup> Abdurrahman Al Jaziri. *Op. Cit.*, hlm. 243.

<sup>36</sup> Sadiani. *Op. Cit.*, p.25. See also Article 25 of Presidential Instruction No. 1 of 1991 concerning the Dissemination of Compilation of Islamic Law

<sup>37</sup> *Ibid.*, p. 26.

3. Consent and *qabul* may not be interspersed with words or other deeds that are deemed to have the intention of diverting what is being done.

This requirement is similar to the second requirement, as it is also related to the implementation of the contract, which must have continuity of time. It can be interpreted as stating that the process of consent and *qabul* must not be interspersed with other words and other activities interfering with or damaging the consent process, thereby causing the invalidity of a marriage.

When implementing consent and *qabul* using video calls, parties cannot allow interference that can damage the continuity of the contract—poor signal, unclear video display, poor audio, or any other technological or human interruption to consent and *qabul*. Parties should make sure the appearance of the screen and video during consent and *qabul* is stable.

4. Consent and *qabul* cannot be legitimate if there is only one condition, if the agreement is based on a future time, or if it is limited to a certain time period.

In this case, permission for *qabul* may not be made on one condition. For example, after the female guardian says the consent, the groom must immediately answer and must not continue with words or sayings other than that of the *qabul*.<sup>38</sup>

5. Each party must hear and understand the words or cues spoken by each other at the time of consent and *qabul*.

Additionally, the parties who will conduct the consent process must know each other and understand the signals or codes carried out by other parties. It should be understood that the conveniences in the era of disruption brought about changes and shifts in the field of marriage law. This was said long ago by Rasulullah: “*Wa Antum A'lamu biAmri Dunya-kum.*” meaning “you all know more about your worldly affairs.”

## Results

Based on the description above, it can be concluded that marriage consent done through video call is legal and permissible. A marriage may be considered legal when it is carried out according to the harmony and conditions contained in Islamic law, which in Indonesia is strengthened by the Marriage Law and regulated in Article 4 of Presidential Instruction No. 1 of 1991 concerning the Dissemination of Compilation of Islamic Law. The benchmarks via video call allowed are:

1. Couples who will get married must know each other first, including their families and witnesses, to avoid fraud.
2. There is no pause for the recitation of consent. Related to this, the signal in the video call must be ensured secure and transparent, so that it does not obstruct the implementation of consent and *qabul*.

## Suggestion

In this study, the author provides advice to the government to create regulations governing the implementation of marriage (*ijab* and *qabul*) through video calls (internet). Given the rapid pace of technological development, it is possible that methods or implementation of marriage through other internet media will be possible.

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<sup>38</sup> Concerning sayings of consent, the Maliki school of law allow a short amount of time between consent and *qabul*. See Muhammad Jawad Mugnyah. *Fiqh Lima Madzhab*. (Jakarta: Lentera, 1996), p. 311-312.

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