

## RECONSTRUCTING THE VALIDITY OF MARRIAGE CONTRACTS IN THE DIGITAL ERA: Jasser Auda's *Maqâshid al-Syarî'ah* Perspective

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**Abstract:** The development of digital technology has influenced the practice of Islamic family law, including the emergence of marriage contracts through digital media which have caused debates about its validity because classical *munakahat* jurisprudence requires the contract to take place in a physical assembly with the fulfillment of the marriage principles and conditions. This research aims to reconstruct the concept of the validity of marriage contracts in the digital era using the perspective of Jasser Auda's *maqâshid al-syarî'ah*, which emphasizes a systematic, multidimensional, and goal-oriented approach to sharia. The method used is normative legal research with a conceptual and philosophical approach through qualitative analysis of primary, secondary, and tertiary sources related to *munakahat* jurisprudence and the theory of *maqâshid* Jasser Auda. The results of the study show that the validity of digital marriage contracts cannot be assessed textually-formally alone, but must be seen from the fulfillment of the purpose of sharia, so that the concept of *ittihâd al-majlis* can be reconstructed as a unity of time and purpose, not just a unity of physical places. A digital marriage contract can be considered valid as long as it fulfills the principles and conditions of marriage, guarantees the clarity of the *qabul ijab*, and protects the main *maqâshid* such as *hifzh al-dîn* and *hifzh al-nasl*.

**Keywords:** digital marriage agreement; validity of marriage; *maqâshid al-syarî'ah*; Jasser Auda; Islamic family law.

**Abstrak:** Perkembangan teknologi digital telah memengaruhi praktik hukum keluarga Islam, termasuk munculnya akad nikah melalui media digital yang menimbulkan perdebatan mengenai keabsahannya karena fikih munakahat klasik mensyaratkan akad berlangsung dalam satu majelis fisik dengan terpenuhinya rukun dan syarat nikah. Penelitian ini bertujuan merekonstruksi konsep keabsahan akad nikah di era digital menggunakan perspektif *Maqâshid al-syarî'ah* Jasser Auda yang menekankan pendekatan sistem, multidimensional, dan berorientasi pada tujuan syariat. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan konseptual dan filosofis melalui analisis kualitatif terhadap sumber primer, sekunder, dan tersier terkait fikih munakahat serta teori *maqâshid* Jasser Auda. Hasil penelitian menunjukkan bahwa keabsahan akad nikah digital tidak dapat dinilai secara tekstual-formal semata, melainkan harus dilihat dari terpenuhinya tujuan syariat, sehingga konsep *ittihâd al-majlis* dapat direkonstruksi sebagai kesatuan waktu dan tujuan, bukan semata kesatuan tempat fisik. Akad nikah digital dapat dinilai sah sepanjang memenuhi rukun dan syarat nikah, menjamin kejelasan ijab kabul, serta melindungi *maqâshid* utama seperti *hifzh al-dîn* dan *hifzh al-nasl*.

**Kata kunci:** akad nikah digital; keabsahan nikah; *maqâshid al-syarî'ah*; Jasser Auda; hukum keluarga Islam.

## Introduction

The rapid development of information technology has brought significant changes in various aspects of human life, including in the implementation of marriage contracts. The presence of digital technology allows various activities to be carried out online, even in sacred matters such as marriage. This phenomenon is known as online marriage, which is a marriage contract that is carried out through remote communication media, such as video calls or online conferences.<sup>1</sup>

Along with the development of this practice, various views and debates have emerged in the community. Some people consider that online marriage can be declared valid as long as the harmony and conditions of marriage are met, while others argue that the contract is invalid because it does not meet the provisions of *fiqh* which require the physical presence of guardians, prospective brides, and witnesses in one assembly. This difference of views is an important issue to be studied further, especially in the context of Islamic family law which is sourced from *fiqh munakahat* and positive Indonesian law.<sup>2</sup>

In jurisprudence, marriage is seen as a contract that has a worship and social dimension. Therefore, the validity of marriage is not only determined by the agreement of the parties, but must also meet the principles and conditions set by the sharia, such as the presence of a prospective husband, a future wife, a guardian, two witnesses, as well as *ijab* and *qabul* that are clear and take place in one assembly (*ittihâd al-majlis*). This view is affirmed by scholars, such as Sayyid Sabiq, Wahbah al-Zuhaili, and Abdurrahman Ghazali, who emphasize the importance of clarity of the contract and the connection between time and situation between *ijab* and *qabul*.<sup>3</sup>

<sup>1</sup> Raffles Abdi Kusuma, 'The Impact of Information and Communication Technology Development on Intolerance and Antisocial Behavior in Indonesia', *Mawaizh: Journal of Da'wah and Social Development of Humanity* 10, no. 2 (2019): 273–90.

<sup>2</sup> Sururiyah Wasiatun Nisa, 'Online Marriage Contract Islamic Law Perspective', *Islamic Law* 21, no. 2 (2021): 302–19. <http://dx.doi.org/10.24014/jhi.v21i2.11734>

<sup>3</sup> Hendra Karunia Agustine and Yadi Supriyadi, 'A Review of

Meanwhile, Indonesia's positive law through Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) emphasizes that marriage is declared valid if it is carried out according to the laws of their respective religions and recorded by the authorized officials. Although these provisions do not explicitly regulate the implementation of marriage contracts digitally, the room for interpretation remains open, especially if it is associated with the purpose of Islamic law that emphasizes the benefits and protection of the rights and position of husband and wife.<sup>4</sup>

In this context, the approach of *maqâshid al-syarî'ah* becomes relevant as a methodological framework for bridging the gap between legal texts and social realities. Jasser Auda's thought offers a *maqâshid* paradigm that is systemic, multidimensional, and adaptive to the changing times, emphasizing that the main goal of the sharia is to realize benefits and prevent harm. This approach opens up space for the reconstruction of classical *fiqh* concepts, including the validity of the marriage contract, without ignoring the basic principles of sharia.<sup>5</sup>

This research builds on relevant prior scholarship. King Faisal and Isroqunnajah<sup>6</sup> (2025) find that online marriage contracts fail to meet essential Shafi'i requirements, particularly the clarity of *shighat* (*ijab* and *qabul*) and *ittihâd al-majlis*, understood as the physical unity of time and place. The absence of guardians, witnesses, and contracting parties in a single physical assembly renders such contracts invalid, while *ijab* and *qabul* delivered through online media

Munakahat Fiqh on Generation Z's View of Kafa'ah in Marriage', *Al Mashalih-Journal of Islamic Law* 4, no. 1 (2023): 45–57. <https://doi.org/10.59270/mashalih.v4i1.173>

<sup>4</sup> Abdul Munib, 'A Compilation of the Purpose of Marriage in Positive Law, Customary Law, and Islamic Law', *VOICE JUSTISIA: Journal of Law and Justice* 6, no. 2 (2022): 36–48.

<sup>5</sup> Arina Haqan, 'Reconstruction of Maqasid Al-Syari'ah Jasser Auda', *Journal of Islamic Thought and Science* 1, no. 1 (2018): 135–52.

<sup>6</sup> Raja Faisal and Isroqunnajah Isroqunnajah, 'The Legal Status of Online Marriage Contracts in the Eyes of Madzhab Shafi'i: In the Eyes of Madzhab Shafi'i', *Indonesian Journal of Sharia and Law* 2, no. 2 (2025): 110–23. <https://doi.org/10.54622/ijsl.v2i2.522>

are treated as *kinâyah* and therefore insufficient under Shafi'i jurisprudence, notwithstanding limited administrative accommodation in emergency situations.

Amrin<sup>7</sup> (2022) discusses online marriage contracts in Islamic law and Indonesian positive law and shows that scholars hold different views. The Hanafi and Hanbali schools consider such contracts valid when the legal requirements are fulfilled, while the Shafi'i school regards them as invalid due to the absence of *ittihâd al-majlis*. The study also notes the use of *ijtihad* methods such as *al-jam'u*, *takhyir*, and *tarjih*. In Indonesian law, neither Law No. 1 of 1974 nor the Compilation of Islamic Law explicitly regulates online marriage contracts, so their validity depends on compliance with general legal requirements.

Ramadhani and Sayuti<sup>8</sup> (2025) note that online marriage practices, especially serial online marriages, often do not comply with legal requirements, resulting in problems related to the rights and obligations of spouses. Their study also points to social stigma and psychological effects on married couples and stresses the need for clearer regulation and public education to ensure legal certainty

The three studies address online marriage contracts and stress the fulfillment of essential marital requirements, such as the presence of guardians and witnesses, the contracting parties, and the clarity of *ijab* and *qabul*, while noting differing scholarly opinions and legal implications in Indonesia. Their differences lie in focus and approach: Faisal and Isroqunnajah (2025) examine the issue from the Shafi'i perspective, Amrin (2022) compares several schools of law with positive law, and Ramadhani and Sayuti (2025) focus on practice and its social and psychological impacts. By contrast, this study offers a different contribution by applying

Jasser Auda's *maqâshid al-syarî'ah* framework to reconstruct digital marriage contracts, reconsider *ittihâd al-majlis* in the digital context, and propose a more contextual and flexible approach suited to contemporary conditions.

Based on the description above, this research is important to reconstruct the validity of marriage contracts in the digital era through the perspective of *maqâshid al-syarî'ah* Jasser Auda, by re-examining the concept of *ittihâd al-majlis* as well as the principles and conditions of the marriage contract comprehensively. This research is expected to make a theoretical contribution to the development of Islamic family law that is responsive to technological developments, while enriching the understanding of the flexibility of Islamic law in the face of changing times without neglecting the underlying sharia values.

## Method

The research method used is normative legal research with a conceptual, philosophical, and comparative approach through qualitative analysis of primary, secondary, and tertiary sources that are relevant to the *fiqh munakahat* and the theory of *maqâshid al-syarî'ah* Jasser Auda.<sup>9</sup> This research is a library research, so data is obtained from literature and legal documents, without collecting field data.<sup>10</sup> The normative approach is used to examine the harmony and conditions of marriage based on the sources of Islamic law, namely the Quran, hadith, and the opinions of scholars in *munakahat fiqh* books.<sup>11</sup> The main literature used as a reference includes the works of Abdurrahman Ghazali (*Fiqh*

<sup>9</sup> Sovia Mas Ayu et al., 'Strengthening Aswaja An-Nahdliyah Values in the Family: A Strategic Effort to Counter Radicalism', *Madania: Jurnal Kajian Keislaman* 29, no. 1 (2025): 175–86. <http://dx.doi.org/10.29300/madania.v29i1.7767>

<sup>10</sup> Rapia Arcanita et al., 'Hadith Tarbawi Learning Model in Forming Students' Pancasila Character', *Madania: Jurnal Kajian Keislaman* 29, no. 1 (2025): 151–62. <http://dx.doi.org/10.29300/madania.v29i1.5744>

<sup>11</sup> Jamal Jamal et al., 'Integrating Kafaah Nasabiyah in Islamic Family Education: Lessons from Ibn Qudamah and Ibn Hazm in the Indonesian Context', *Madania: Jurnal Kajian Keislaman* 29, no. 1 (2025). <http://dx.doi.org/10.29300/madania.v29i1.7624>

<sup>7</sup> Amrin Amrin, 'A Review of Marriage Contracts Via the Internet in the Perspective of Islamic Law and Positive Law', *El-Ussrah: Journal of Family Law* 5, no. 2 (2022): 279–94. <https://doi.org/10.22373/ujhk.v5i2.12275>

<sup>8</sup> M Ridho Ramadhani and Hendri Sayuti, 'Online Marriage and Problems', *Journal of Syaikh Mudo Madlawan: A Study of Islamic Sciences* 2, no. 1 (2025): 143–53.

*Munakahat*), Wahbah al-Dzuhaili (*Islamic Fiqh wa Adillatuhu*), and Sayyid Sabiq (*Fiqh Sunnah*), which discusses in depth the validity of the marriage contract and its conditions according to the perspective of *fiqh*.<sup>12</sup> A comparative approach is applied to compare Islamic law with positive Indonesian law, especially the provisions in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) which regulates the harmony, conditions, and validity of marriage contracts.<sup>13</sup> This analysis is also reinforced by the views of Islamic family law experts, such as Akmal Azhari Tarigan and M. Zein Satria Efendi, regarding the relationship between *fiqh* and national law in the modern context.<sup>14</sup> Research data sources are divided into primary data—including the Quran, hadith, *fiqh* books, and laws and regulations—as well as secondary data, in the form of scientific books, journals, and previous research on the implementation of digital marriage contracts.<sup>15</sup> The data was analyzed in a descriptive-comparative manner, by describing the views of scholars and the applicable legal provisions, then comparing them to find the conformity and difference between Islamic law and positive Indonesian law.<sup>16</sup> This analysis is directed to gain a comprehensive understanding

of the validity of digital marriage contracts and the extent to which Islamic law can adapt to technological developments without ignoring the principles of sharia, according to the perspective of *maqâshid al-syarî'ah* Jasser Auda.<sup>17</sup>

## Result and Discussions

### The Basic Concept of Marriage Contract in *Fiqh Munakahat*

The marriage contract consists of two words, namely the contract and the marriage. The word *akad* means a promise, agreement, or contract, while marriage refers to a marriage bond that is carried out in accordance with the provisions of the law and religious teachings, or simply can be interpreted as marriage and arranged marriage. A marriage contract is an agreement that occurs between two parties that will carry out marriage, manifested through the process of *ijab* and *qabul*. According to the Compilation of Islamic Law (KHI) Chapter I Article 1(c), a marriage contract is a series of *ijabs* pronounced by the *wali* and *qabul* pronounced by the prospective husband or his representative, witnessed by two witnesses.<sup>18</sup>

A marriage contract is a statement of agreement between the prospective husband and the wife-to-be to bind themselves in a marriage bond. With this statement, both parties show their agreement and willingness to carry out the marriage and are willing to comply with the religious provisions that govern domestic life. The marriage contract is a tangible form of bond between husband and wife, which is carried out in the presence of at least two witnesses, through *sighat ijab* and *qabul*. Thus, a marriage contract can be understood as an agreement in the context of marriage carried out by the groom or his representative with the

<sup>12</sup> Abd Kadir Ahmad et al., 'Bunting Lolo: The Dialectics of State, Islamic Law, and Culture in Marriage Practice among Island Communities in South Sulawesi', *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 2 (2023): 443–66. <https://doi.org/10.19105/al-lhkam.v18i2.10399>

<sup>13</sup> Abdul Halim and Erian Putri Pratiwi, 'Online Ta'aruf as a Medium for Islamic Matchmaking: A Socio-Religious Construction of Muslim Young People in the Digital Era', *QIJS (Qudus International Journal of Islamic Studies)* 13, no. 1 (2025): 117–58. <http://dx.doi.org/10.21043/qijis.v13i1.14333>

<sup>14</sup> Agus Moh Najib, Ahmad Bahiej, and Mohammad Bachrul Falah, 'Toward Interfaith Equality in Islamic Inheritance Law: Discourse and Renewal of Judicial Practice in Indonesia.', *Al-Manahij: Jurnal Kajian Hukum Islam* 19, no. 1 (2025). [Doi:10.24090/mnh.v19i1.10762](https://doi.org/10.24090/mnh.v19i1.10762)

<sup>15</sup> Adi Prihasmoro et al., 'Sharia Economic Bankruptcy Law (al-Tafsis) and the Dualism of Court Competency in Indonesia', *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (2024): 227–39. <https://doi.org/10.31958/juris.v23i2.11045>

<sup>16</sup> Sri Yunarti and Syarial Dedi, 'A Reconstruction Of Women's Fiqih On Tawaf For Menstruating Women (Exploring Ibn Qayyim Al-Zawjiyah's Theory of *Ijtihād*)', *Al-Istinbath: Jurnal Hukum Islam* 11, no. 1 (2026). <https://doi.org/10.29240/jhi.v11i1.12677>

<sup>17</sup> I Gusti Ayu Ketut Rachmi Handayani and Lego Karjoko, 'Reconstructing Wage Law in the Contemporary Era: A Pancasila Justice and Maqâshid al-Sharî'ah Perspective', *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 1051–73. <https://doi.org/10.32332/milrev.v4i2.11293>

<sup>18</sup> Fina Ma, *Husband and Wife Relations Related to Sexuality in the Concept of Fiqh Munakahat*, Nahdlatul Ulama Islamic Religious Institute (IAINU) Kebumen, 2025.

guardian of the woman's side or his representative, using the words *ijab* and *qabul* as a symbol of a valid agreement.<sup>19</sup>

A marriage contract is a statement of agreement between a prospective husband and wife-to-be to carry out a marriage and be willing to follow the religious provisions that govern domestic life. The marriage contract is a tangible manifestation of the bond between a man as a husband and a woman as a wife, which is carried out in the presence of at least two witnesses using *sighat ijab* and *qabul*. In other words, a marriage contract is an agreement in a marriage bond that is carried out by the groom or his representative, together with the guardian of the woman or her representative, through the pronouncement of *ijab* and *qabul*. In a marriage contract, *ijab* is a statement of the party that shows the willingness to form a husband and wife relationship, generally spoken by the bride's guardian or her representative. Meanwhile, *qabul* is a statement by the other party who declares pleasure and accepts the *ijab*, usually said by the groom or his representative. *Ijab* is an initial statement that indicates a definite desire to bind oneself, while *qabul* is acceptance of the statement. *Qabul* should be pronounced with words that show willingness and agreement firmly, so that the marriage contract becomes valid and valid according to the sharia.<sup>20</sup>

In a marriage, a marriage contract is an element that must exist, because it is one of the pillars of marriage. The legal basis of the obligation of a marriage contract is stated in the Quran, namely the words of Allah SWT:

وَكَيْفَ تَأْخُذُوهَا وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

<sup>19</sup> Ahyana Nasution and Nurul Huda Prasetya, 'Analysis of the Marere Tradition After the Marriage Contract in Sihare-Hare Village from the Perspective of Fiqh Munakahat and 'Urf', *Maqasid: Journal of Islamic Law Studies* 14, no. 3 (2025): 395–408. <https://doi.org/10.30651/mqsd.v14i3.29091>

<sup>20</sup> M by Mukhsin, 'Fair Witnesses in the Marriage Contract According to the Imam', *Al-Fikra: Islamic Scientific Journal* 18, no. 1 (2019): 92–105. <http://dx.doi.org/10.24014/af.v18i1.7303>

"How will you take it back, when some of you have mingled with others as husband and wife, and they have taken from you a strong covenant." (Q.S. An-Nisa [4]:21)

This verse affirms that there must be an agreement in marriage as a binding bond between the bridegroom and the bride. This agreement is called a marriage contract. In addition, the hadith of the Prophet Muhammad PBUH also emphasizes the importance of the marriage contract. In one of his sermons it was said: "Fear Allah in the affairs of women, indeed you take them with the belief of Allah, and you justify their honour with the word of Allah." (HR. Muslim). The phrase "Allah's word" in this hadith refers to the Quran, and in the context of the marriage contract, the term used is *nikah* or *tazwij* and its translation. This shows that in the implementation of the marriage contract, a clear statement is required spoken by the groom and the bride's guardian, as a form of legal marriage bond according to Islamic law.

A marriage contract is a valid agreement between the prospective husband and the wife-to-be through *ijab* and *qabul*, which has legal consequences if the conditions are met. First, both parties or their representatives must be mature and sensible (*tamyiz*), because if one of the parties is still a child or has a mental disorder, the marriage is considered invalid. Second, *ijab* and *qabul* must be performed in one assembly in order, without being interspersed with words or other actions that separate the two statements. Third, the utterance of *qabul* must be in accordance with or better than *ijab*, so that the purpose and purpose of the contract remain clear. Fourth, *ijab* and *qabul* must be spoken orally and heard by all parties, including the guardian, the bride, and at least two witnesses, with a focus on the intention and intention, not just word for word.<sup>21</sup>

In addition, a marriage contract can be accompanied by additional conditions that are

<sup>21</sup> Mahardika Putera Emas, 'The Problem of Online Marriage Contracts and the Implementation of Walimah During the Covid-19 Pandemic', *Batulis Civil Law Review* 1, no. 1 (2020): 68–78. DOI:10.47268/ballrev.v1i1.387

differentiated into three types. First, conditions that are contrary to the purpose of the marriage contract, such as the prohibition of having sex or the obligation to provide support for the wife, are null and void because they damage the basic rights given by the contract. Second, conditions that do not conflict with the purpose of the marriage contract, such as requests to be given support, treated well, or maintain family honor, are valid and must be fulfilled. Third, conditions that are detrimental to third parties or contrary to religion are considered invalid, for example, the requirement that the husband divorce another wife. Thus, these conditions are designed to protect the interests of each party and uphold the purpose of marriage according to sharia principles.

A marriage contract is a legal agreement between a prospective husband and a wife-to-be through *ijab* and *qabul*, which has legal consequences if the conditions are met. First, both parties or their representatives must be mature and sensible (*tamyiz*), because if one of the parties is still a child or has a mental disorder, the marriage contract is considered invalid. Second, *ijab* and *qabul* must be performed in one assembly in order, without being interspersed with words or other actions that separate the two statements. Third, the utterance of *qabul* must be in accordance with or better than *ijab*, so that the purpose and purpose of the contract remain clear. Fourth, *ijab* and *qabul* must be pronounced directly and heard by all parties, including the guardian, the bride, and at least two witnesses, focusing on the intent and intent of the statement.<sup>22</sup>

In addition to the above principles, a marriage contract can be accompanied by additional conditions that are differentiated into three types. First, conditions that are contrary to the purpose of the contract, such as the prohibition of having sex or the obligation to provide maintenance, are

<sup>22</sup> Norcahyono Norcahyono, 'The Construction of the Marriage Contract (Ijab and Kabul) in the Book of al-Nikah by Muhammad Arsyad al-Banjari', *Al-Ahwal: Journal of Islamic Family Law* 14, no. 2 (2021): 214–27. <https://doi.org/10.14421/ahwal.2021.14208>

null and void because they damage the basic rights granted by the contract. Second, conditions that do not harm third parties and are in line with the purpose of the contract, such as requests to be given alimony or treated well, are legal and must be fulfilled. Third, conditions that are detrimental to a third party or contrary to the sharia, such as the condition that a husband divorce his other wife, are considered invalid. Thus, these conditions ensure the protection of the rights and interests of both parties while upholding the purpose of marriage according to sharia principles.<sup>23</sup>

A marriage contract can be said to be valid if *ijab* and *qabul* are pronounced in words that clearly show the meaning of marriage and can be understood by both parties. In other words, the words used in the implementation of *ijab-qabul* must give rise to the real will of both parties and must not use vague or misunderstood words. Ibn Taymiyyah emphasized that *ijab-qabul* can be done with any language, word, or deed that is generally understood by the community to indicate the occurrence of marriage. *Fiqh* scholars also agree that *qabul* can be said in any language, as long as it can be understood and shows the consent and willingness of the bride and groom. However, there are those who argue that it is more *afdhal* if *ijab-qabul* is pronounced in Arabic for those who understand the language.<sup>24</sup>

In the practice of *ijab*, the word used should be “nikah” or “tazwij”, or other forms that clearly indicate the meaning of nikah, such as *ankahtuka* or *zawwajtuka*. Differences of opinion arise regarding the use of words other than “nikah” and “tazwij”, for example: “I hand over”, “I belong”, or “I give alms”. The Hanafi madhhab, ats-Tsauri, Abu Ubaid, and Abu Dawud allow the use of these words

<sup>23</sup> Mohammad Rafli and A Zaeini Misbaahuddin Asyuari, 'Problematic Analysis of Virtual Marriage Contracts from the Perspective of Four Madhhabs', *Shariah: Journal of Fiqh Studies* 1, no. 2 (2023): 127–44. <https://doi.org/10.61570/syariah.v1i2.37>

<sup>24</sup> Indra Halim and Ikhsan Darwis, 'The Urgency of Determining a Marriage Guardian for Women Born Less Than 6 Months After the Marriage Contract from a Pregnant Marriage Perspective of Islamic Law', *Tana Mana Journal* 1, no. 1 (2020): 1–16. <https://doi.org/10.33648/jtm.v1i1.144>

as long as they are intended for the marriage contract, because the main thing is the intention and understanding of the meaning, not certain words. On the other hand, Imam Shafi'i, Said Musayyab, and Atha' argue that *ijab* is invalid except for the use of the word "nikah" or "tazwij", because other words are considered unclear to indicate the meaning of marriage. According to this opinion, the use of other words in *ijab* without referring to the meaning of marriage can make the contract invalid.

According to article 1 letter c of the Compilation of Islamic Law (KHI), a marriage contract is defined as a series of *ijab* pronounced by the *wali* and *qabul* pronounced by the prospective groom or his representative, witnessed by at least two witnesses. The implementation of the marriage contract is further regulated in Articles 27, 28, and 29 of the KHI. Article 27 emphasizes that *ijab* and *qabul* between the *wali* and the groom-to-be must be carried out clearly, sequentially, and not intermittently. Article 28 states that the marriage contract is executed personally by the guardian, but the guardian can represent it to another party. Meanwhile, Article 29 stipulates that *qabul* is pronounced directly by the groom-to-be, but under certain conditions it can be represented on the condition that there is a written express power of attorney. If the bride-to-be or guardian objects, the contract cannot be carried out.

The provision emphasizes that *ijab-qabul* should be carried out in one place, although it is possible to be represented by a party specifically authorized. Meanwhile, according to Article 10 of Government Regulation No. 9 of 1975, the marriage is carried out after the tenth day of the announcement of the marriage will, following local religious and customary laws, in the presence of marriage registrars, and witnessed by at least two witnesses. In Islamic law, the conditions for the validity of *ijab-qabul* include: the declaration of the *wali* to marry, the declaration of acceptance from the prospective groom, the use of the word "nikah" or "tazwij" or its translation, *ijab* and *qabul* must be connected, the meaning is clear, it is not in ihram hajj or umrah, and it is attended by at least four people (the prospective

groom or his deputy, the guardian of the bride's side or his deputy, and two witnesses).<sup>25</sup>

The custom of representing *ijab* by the bride's guardian has been commonly applied. Usually, the one who prays is the party who has religious knowledge and the ability to do so. When the *akad* assembly presents a kiai or ulama, they usually act as representatives. Otherwise, marriage registrars often act as representatives. This practice shows an increase in public awareness of marriage laws and regulations. In addition, in the series of marriage contracts, it is recommended to begin with a marriage sermon which aims to increase the solemnity of the event and provide an understanding of the wisdom of marriage. If the *ijab* is handed over to the representative, before the implementation of the *ijab*, a *wakalah* contract must be carried out, which is the transfer of power of attorney from the guardian to the appointed representative to marry the prospective bride.

After the guardian or deputy guardian pronounces the *ijab* or handover, the groom-to-be pronounces the *qabul* or acceptance of the *ijab* personally, as stipulated in Article 29 paragraph 1 of the KHI. This acceptance statement can be made in Arabic or Indonesian, as long as the person concerned understands the purpose and purpose. If for some reason the prospective groom is unable to attend in person, the *qabul* can be represented to another man on the condition that the prospective groom gives a written power of attorney, so that the acceptance of the representative is valid and valid for the groom concerned (Article 29 paragraph 2).<sup>26</sup>

The scholars of the four madhhabs agree that marriage is only valid if it is carried out by a marriage contract, which includes *ijab* and *qabul* between the guardian of the woman who is

<sup>25</sup> Luki Asep Arafat, *The Implementation of Article 10 of Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage in KUA Cicalengka District, Bandung Regency*, UIN Sunan Gunung Djati Bandung, 2007.

<sup>26</sup> Norwili Norwili, Maimunah Maimunah, and Kartika Sari, 'The Implementation of Wakalah in Sighat Qabul Marriage (Analysis of Article 29 of the Compilation of Islamic Law)', *Al-Iqtishadiyah* 4, no. 11 (2018): 175-84.

proposed to and the future husband, or through the representatives of each party. A marriage that is based solely on consensuality without a contract is considered invalid. In addition, scholars also agree that the marriage contract is valid if it uses certain redactions, namely *sawwaj* (سَوَّجَ) which means “I marry” or *ankaha* (أَنْكَحَ) which means “I marry” from the guardian or his representative, as well as the editorial *qabiltu* (“I accept”) or *radhitu* (“I agree”) from the groom or his representative.

Differences of opinion arise regarding the validity of marriage contracts that do not use *fi'il madhi* redaction or words that are not formed from the root of *nikah* and *zawaj*, such as the words *hibah* (giving), *bay'* (selling), *tamlík* (possession), and the like. The Hanafí madhab allows the marriage contract to use all redactions that show the meaning of marriage, including *tamlík*, *hibah*, *bay'*, *al-a'tha'*, *al-ibahah*, and *al-ihlal*, as long as there is a *qarinah* (clue) that shows the meaning of marriage. However, the contract is invalid if the words *al-ijarah* (rent) or *al-'ariyah* (loan) are used because these two words do not indicate the continuity of the marriage.

Madzhab Maliki and Hambali are of the opinion that a marriage contract is valid if it uses the redaction of *an-hikah*, *az-zawaj*, or the pronunciation of its formation, and is permissible with *al-hibah* as long as it is accompanied by the mention of dowry. Other words are considered invalid. Meanwhile, madhhab Shafi'i is of the opinion that the marriage contract is only valid with redaction which is the formation of *at-tazwij* or *an-nikah*, besides that it is considered invalid. In practice, *ijab* comes from the bride's guardian, while *qabul* comes from the groom. For example, the guardian says: “I married my daughter to you,” and the groom replies: “I accept marriage to your daughter.” If the *qabul* comes first, i.e. the groom says to the *wali*, “Marry me to him,” and the *wali* replies, “I marry you to him,” a difference of opinion arises: according to the Imamiyah and the other three madhhabs, the contract is still valid, while according to the Hambali madhhab, the contract is invalid.<sup>27</sup>

<sup>27</sup> Rizki Pangestu and Arif Sugitanata, ‘Reflection on the

## The Phenomenon of Digital Marriage Contracts in Indonesia

Linguistically, the term *nikah* comes from the word *nakaha* or *yankihu*, which means to gather or gather. According to some legal experts, marriage is a contract that contains legal provisions, which allow sexual relations between men and women through the words of marriage, *ziwaj*, or both. This understanding emphasizes the main aspect, namely the halalness of the relationship that was previously prohibited, as well as giving rise to rights and obligations for husband and wife. Marriage aims to build relationships that help each other and create a harmonious household. As part of worship, its implementation must also be accompanied by the intention to obtain the pleasure of Allah SWT, so that marriage can be understood as a legally and legally valid marriage bond.<sup>28</sup>

The development of digital technology has brought significant changes in various aspects of life, including Islamic family law. Digital transformation not only facilitates social and economic activities, but also penetrates into the realm of worship and *muamalah*, one of which is the practice of online marriage contracts. This phenomenon has become increasingly known since the COVID-19 pandemic, when in-person interaction was limited. However, there has been a debate among scholars and academics about the validity of digital marriage. Some scholars argue that an online contract is valid if all the pillars and conditions of marriage are met, while others emphasize that the contract must be carried out physically in one assembly (*ittihâd al-majlis*).<sup>29</sup>

In Islamic law, a marriage contract is a sacred agreement (*mitsaqan ghalizha*) that must meet

Validity of the Marriage Contract by Telephone: An Analysis of the Views of the Scholars of the Shafi'i and Hambali School', *Al-Astar* 2, no. 2 (2023): 18–31.

<sup>28</sup> Dwi Darsa Suryantoro and Ainur Rofiq, ‘Marriage in the View of Islamic Law’, *AHSANA MEDIA: Journal of Islamic Thought, Education and Research* 7, no. 02 (2021): 38–45. <https://doi.org/10.31102/ahsanamedia.7.02.2021.38-45>

<sup>29</sup> Faishal Agil Al Munawar, ‘A Study of the Fatwa on Marriage Siri’, *Istidlal: Journal of Islamic Economics and Law* 4, no. 1 (2020): 55–63.

certain pillars and conditions. The classical *fuqaha*, as in the Shafi'i and Hanafi schools, require *ijab* and *qabul* to be clear, continuous, and performed in a single assembly. In the modern era, communication through electronic media such as video calls or online applications has caused differences of opinion among contemporary scholars. According to Majma' al-Fiqh al-Islami (16th conference, Mecca, 2002), contracts through electronic media are allowed on the condition that the identity of the parties can be ascertained, and there is no element of fraud. However, Majma' emphasized that the presence of guardians and witnesses must remain guaranteed, both physically and through media that allows them to see and hear directly. A similar opinion was expressed by Yusuf al-Qaradhawi, who allowed online marriage contracts as long as the principles of jurisprudence were fulfilled, and the supervision of official religious authorities was maintained.<sup>30</sup>

From the perspective of jurisprudence, a marriage contract is valid if the five main pillars are fulfilled: husband-to-be, wife-to-be, guardian, two witnesses, as well as *ijab* and *qabul*. Classical scholars emphasize *ittihâd al-majlis*, i.e. *ijab* and *qabul* are carried out in one assembly without a break. Contemporary scholars consider communication technology, with the principle that video calls or online conferences that allow the parties to see and hear in person can be considered to meet the elements of a single assembly, provided that their identities are verified. Juridically, Indonesian regulations such as Law No. 1 of 1974 concerning Marriage, Regulation of the Minister of Religion No. 20 of 2019, and the Compilation of Islamic Law (KHI) have not explicitly regulated digital marriage contracts. According to positive law, a contract is valid if it is carried out in the presence of the Marriage Registrar (PPN) in the presence of guardians, witnesses, and the bride and groom. Therefore, online contracts cannot be officially recorded even though they are considered valid

in sharia. During the pandemic, some KUA allowed contracts via video call with the permission of the local Religious Court, but the implementation was casuistic.<sup>31</sup>

The phenomenon of digital marriage presents opportunities and challenges. The opportunities include efficiency, ease of access, emergency solutions during disasters or pandemics, as well as legal administrative innovations that accelerate recording. The challenges include the risk of identity forgery, the difficulty of ensuring *ittihâd al-majlis*, the limitations of positive law, and the fear of diminishing the sacred value of marriage. Thus, the validity of digital marriage depends on the fulfillment of the principles and requirements of sharia, while in positive law it still requires a clear legal basis.<sup>32</sup>

Several real cases in Indonesia show the practice of digital marriage. In 2020 in Cianjur Regency, a groom was in Malaysia, while the bride was in Indonesia. The contract was carried out via WhatsApp, with the guardian and two witnesses present online and ratified by the local Office of Religious Affairs (KUA) with the permission of the Religious Court. According to sharia, the contract is considered valid, but the marriage registration is done manually after the documents are confirmed through the embassy.<sup>33</sup> Another case occurred in Makassar in 2021, when a bride was in Saudi Arabia, while the husband-to-be was in Indonesia. The contract is carried out via Zoom with guardians and witnesses verified by KUA. The Makassar Religious Court considers marriage to be religiously valid, but

<sup>31</sup> Khairani Khairani and Cut Nanda Maya Sari, 'Repetition of Marriage According to the Perspective of Islamic Law (Case Study at KUA Kecamatan Kota Kualasimpang)', *Samarah: Journal of Family Law and Islamic Law* 1, no. 2 (2017): 397–415. <https://doi.org/10.22373/sjkh.v1i2.2375>

<sup>32</sup> Amrin Amrin, 'A Review of Marriage Contracts Via the Internet in the Perspective of Islamic Law and Positive Law', *El-Ussrah: Journal of Family Law* 5, no. 2 (2022): 279–94. <https://doi.org/10.22373/ujhk.v5i2.12275>

<sup>33</sup> Nur Hidayat and Abdul Jalil, 'The Effectiveness Of Marriage Age Restriction (Case Study in Cianjur and Ngamprah West Java in 2019-2020)', *Al Hakam: The Indonesian Journal of Islamic Family Law and Gender Issues* 3, no. 1 (2023): 36–49. <https://doi.org/10.35896/alhakam.v3i1.220>

<sup>30</sup> Wardah Nuroniyah, 'Analysis of Marriage Contracts via Teleconference According to Fiqh Madhhab and Indonesian Positive Law', *Court: Journal of Islamic Law Studies* 2, no. 1 (2017).

it cannot be officially recorded because it does not meet the elements of physical presence.<sup>34</sup>

Based on this case, the digital marriage contract has double validity, namely sharia valid if the harmony and conditions are met, including continuous *ijab-qabul* and the presence of guardians and witnesses, although online, but juridically it is not legally valid according to state law without direct registration in the KUA. This difference highlights the gap between Islamic law and positive law. Therefore, it is necessary to update marriage law regulations to be more adaptive to digital technology, without reducing the sacred values and principles of Islamic law.

### Reconstruction of the Validity of the Digital Marriage Agreement based on *Maqâshid al-Syarî'ah* Jasser Auda

Jasser Auda is a contemporary Muslim scholar widely known as an expert on *maqâshid al-syarî'ah* (the purposes of Islamic law). Born in November 1966 in Cairo, Egypt, Auda received his traditional religious education at the al-Azhar Mosque, including *talaqqi* of the Quran, hadith, jurisprudence, and *usul fiqh*. He then obtained a bachelor's degree in engineering at Cairo University (1988), a master's degree in comparative studies in the United States, as well as a Ph.D. in Philosophy of Islamic Law at the University of Wales and a Ph.D. in Systems Analysis at the University of Waterloo, Canada. This cross-disciplinary background equips him with the ability to integrate Islamic legal approaches and systemic analysis. Professionally, Auda is active as a professor and researcher at various international universities, including the International Islamic University Malaysia, the University of Waterloo, Carleton University, Ryerson University, and the American University of Sharjah, as well as the founder of the Maqasid Global Institute, a think tank focused on Islamic law education and research based on *maqâshid al-syarî'ah*.<sup>35</sup>

<sup>34</sup> Ikhsan Ikhsan, *The Legality of the Submission of Marriage Guardianship via Telephone from the Perspective of Islamic Law in East Banggae District, Majene Regency, IAIN Parepare*, 2024.

<sup>35</sup> S Shofaussamawati, Alfi Nikmah, and Muhammad Azka Azkiya, 'Reading of Jasser Auda's System Theory in the Law

Auda emphasized that *maqâshid al-syarî'ah* emphasizes the goals or benefits that Islamic law seeks to achieve in human life, not just formal obedience to rules. The understanding of sharia must be holistic, systemic, and adaptive, so that Islamic law can be applied contextually and relevant to modern challenges. He divides *maqâshid al-syarî'ah* into three levels: primary purpose (*al-daruriyyat al-khams*), which protects religion, soul, intellect, descent, and property; secondary purpose (*al-hajjiyyat*), which simplifies human life; and an additional goal (*al-tahsiniyyat*), which focuses on improving legal ethics and aesthetics for the creation of a harmonious society. This systemic approach allows for integration between classical jurisprudence and modern contexts, as well as giving priority to human welfare when there is a conflict of interest or emergency situation.<sup>36</sup>

The phenomenon of digital marriage contracts in Indonesia is an example of the application of the Auda principle in a contemporary context. During the COVID-19 pandemic, limited physical interaction forced people to look for alternatives to the implementation of marriage that is legal according to sharia. Based on data from the Ministry of Religion of the Republic of Indonesia, during 2020–2021 there was a significant increase in the use of online services for marriage administration, including pre-marriage consultation and coordination with the Office of Religious Affairs (KUA). The practice of online marriage contracts raises a dilemma between the validity of shari'i and juridical law: traditional Islamic law emphasizes the implementation of *ijab* and *qabul* in one assembly (*ittihâd al-majlîs*), while Indonesia's positive law requires physical presence in the presence of the Marriage Registrar (PPN).<sup>37</sup>

Verse on Women and Mosques', *QIST: Journal of Quran and Tafseer Studies* 4, no. 1 (2025): 91–108. <https://doi.org/10.23917/qist.v4i1.7954>

<sup>36</sup> Jasser Auda, 'Maqasid Methodology for Re-Envisioning Islamic Higher Education', *Journal of Contemporary Maqasid Studies* 1, no. 1 (2022): 31–58. <https://doi.org/10.47453/permata.v6i1.3114>

<sup>37</sup> Jasser Auda, *Reclaiming the Mosque: The Role of Women in Islam's House of Worship* (Claritas Books, 2017).

Based on the *maqâshid al-syarî'ah* approach, the validity of digital marriage contracts can be analyzed through holistic, systemic, and human-centered principles. As long as the online contract fulfills the substantial marital principles and requirements—husband-to-be, wife-to-be, guardian, two witnesses, as well as clear and continuous *ijab* and *qabul*—the purpose of sharia is still achieved, including the protection of the rights of related parties, even though it is implemented through electronic media. Auda's systemic approach emphasizes the priority of legal goals and sharia flexibility. In emergency conditions or physical limitations, a digital marriage contract can be justified because it still ensures that primary benefits are achieved. For example, online media allows couples to fulfill their marital obligations, avoid psychological and social losses due to procrastination, and protect the rights of the bride-to-be. Survey data from the Central Statistics Agency (BPS) recorded a 15% increase in remote marriages during the pandemic, confirming the need for legal adaptation to changing social needs.

Furthermore, the practice of digital contracts must ensure verification of the identity of the parties, communication of *ijab-qabul* that is heard and seen in real-time by guardians and witnesses, and ongoing supervision of religious authorities. This is in line with Auda's principle that sharia is adaptive, allowing for changes in implementation methods without compromising the main objectives, namely the protection of rights, legal certainty, and human welfare. Juridically, Indonesia does not yet have explicit regulations regarding digital marriage contracts, because Law No. 1 of 1974 and the Compilation of Islamic Law still presuppose physical presence. However, through contemporary *ijtihad*, positive law can be reconstructed to utilize technology, so that contracts are legally sharia, the rights of related parties are protected, and social and psychological risks are minimized.

Thus, the reconstruction of the validity of digital marriage contracts in Indonesia according to *maqâshid al-syarî'ah* Jasser Auda emphasizes three aspects: first, online contracts are valid according to shari'i as long as the harmony and conditions

are substantially met; Second, the principle of benefits and protection of the five main things is the benchmark of assessment; Third, positive legal regulations need to be updated to be in line with technological advances without reducing sacred values and sharia principles. This approach allows for harmonization between Islamic law and national law in the digital era, maintaining the validity of contracts from sharia and administrative perspectives, as well as being a guideline for contemporary *ijtihad* to face modern challenges, especially related to technological innovation and social dynamics.

## Conclusion

The phenomenon of digital marriage contracts in Indonesia reflects an adaptive response to advances in information technology as well as contemporary social needs, especially during the COVID-19 pandemic that limited physical interaction, where data from the Ministry of Religion of the Republic of Indonesia shows a significant increase in the use of online services for marriage administration in 2020–2021. Although it raises a dilemma between the validity of shari'i and juridical because traditional Islamic law emphasizes *ittihad al-majlis* and positive law requires the physical presence of this practice can be analyzed through the approach of *maqâshid al-syarî'ah* Jasser Auda, which emphasizes holistic, systemic, and benefit-based principles of human benefit. Based on this principle, digital marriage contracts are valid according to sharia as long as the harmony and substantial conditions are met, including the prospective husband, future wife, guardian, two witnesses, as well as clear and continuous *ijab* and *qabul*, while digital media functions as a means to achieve sharia goals without compromising the protection of rights, legal certainty, and human welfare. Juridically, although Indonesian regulations have not yet accommodated digital marriage contracts, contemporary *ijtihad* can utilize technology to ensure legal contracts, reduce social and psychological risks, and safeguard the rights of related parties. Thus, the reconstruction of the digital marriage contract according to *maqâshid al-syarî'ah* emphasizes that this practice is legal

according to shari'i, the principle of benefits and protection of the five main things is a benchmark, and positive legal regulations need to be updated to be in harmony with technological advances, so that harmonization between Islamic law and national law is achieved and online marriage contracts become a guideline for contemporary *ijtihad* to face modern challenges.

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