

Religious Tradition and Technology: Debate among *Penghulus* about Online Marriage Law in Banjarmasin

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Abstract

This article explores the perspectives of *penghulus* (marriage functionaries) in Banjarmasin regarding online marriage contracts, navigating the interplay between religious tradition and technological. Drawing upon differences in interpretation among Islamic jurists, the article elucidates varying views on the validation of marriage contracts, focusing on the concept of *ittihād al-majlis* (unity of session). This concept significantly shapes *penghulus*' opinions on the legitimacy of online marriage contracts. Against this backdrop, the article analyses the factors driving discourse among *penghulus* regarding online marriage contracts and their implications within Banjarese community. Conducting interviews with 12 *penghulus* in Banjarmasin over a three-month period from September to November 2023, the study underscores the importance of religious tradition in Banjarmasin society and its adaptation to technological progress in interpreting Islamic law. The study finds that while the majority of *penghulus* oppose online marriage contracts, a minority endorse them under specific conditions. Those against them argue that *ittihād al-majlis* necessitates the physical presence of all parties in one location during the marriage contract process, whereas proponents contend that the virtual realm fulfills this criterion. These findings reflect the ongoing societal dialogue regarding the interpretation of religious doctrines and technological innovations, offering valuable insights into the intersection of religious tradition and technology in contemporary Islamic jurisprudence.

[Studi ini menginvestigasi perspektif para penghulu di Kota Banjarmasin terkait hukum akad nikah secara online, yang mencerminkan pergumulan antara tradisi keagamaan dan kemajuan teknologi. Dengan mengacu pada perbedaan pendapat para ulama fikih tradisional, artikel ini mengidentifikasi perbedaan dalam penafsiran terhadap *ittihād al-majlis* sebagai salah satu syarat ijab dan kabul dalam perkawinan, yang mempengaruhi pendapat para penghulu tentang sah tidaknya akad nikah secara online. Di tengah kompleksitas ini, artikel bertujuan untuk menganalisis faktor-faktor yang membentuk perdebatan para penghulu terkait hukum akad nikah secara online serta implikasinya dalam konteks masyarakat Banjar. Dengan mewawancarai 12 penghulu di Kota Banjarmasin selama tiga bulan, dari September sampai November 2023, studi ini menyoroti pentingnya tradisi keagamaan dalam masyarakat Banjar dan adaptasi terhadap perkembangan teknologi dalam penafsiran terhadap hukum Islam. Kajian ini menunjukkan bahwa mayoritas penghulu menolak akad nikah secara online, sementara sebagian kecil membolehkannya dengan syarat tertentu. Mayoritas penghulu yang menolak menginterpretasikan *ittihād al-majlis* dengan keharusan kehadiran para pihak secara fisik dalam satu tempat dalam prosesi akad nikah, sedangkan sebagian kecil yang membolehkan memandang bahwa ruang virtual telah memenuhi kriteria *ittihād al-majlis*

tersebut. Temuan ini mencerminkan perdebatan yang sedang berlangsung dalam masyarakat terkait penafsiran terhadap ajaran agama dan perkembangan teknologi, memberikan wawasan yang berharga tentang dinamika tradisi keagamaan dan teknologi dalam pemikiran hukum Islam kontemporer.]

Keywords: Banjarese Community, *Ittibād al-Majlis*, Marriage Contracts, Online Marriage, *Penghulu*.

Introduction

International scholars debate the compatibility of science with Islam, despite the historical harmony between them in classical and mediaeval times.¹ This debate is influenced by the stereotype of science as inherently secular.² The relationship between Islam and science has shaped the acceptance or rejection of scientific principles in Muslim societies.³ Science provides empirical evidence for Islamic jurisprudence (*fiqh*)⁴ and is intertwined with Islam to prevent misuse.⁵ A less explored aspect is how science catalyses innovation within Islam.⁶ However, this exploration is hindered by the perception that the door to independent legal reasoning (*ijtihad*) in Islam has been closed, limiting dialogue between science and Islam.⁷

¹ See: Ted Peters, Muzaffar Iqbal, and Syed Nomanul Haq, eds., *God, Life, and the Cosmos: Christian and Islamic Perspectives* (London: Routledge, 2002).

² Ausaf Ali, "Islam, Science, and Islamic Social Ethics," *Islamic Studies* 35, no. 4 (1996): 373.

³ *Maqāsid shari'ah* is often used as a benchmark in biotechnology, such as human cloning and genetically modified foods. See: Shaikh Mohd Saifuddeen et al., "Maqasid al-Shariah as a Complementary Framework to Conventional Bioethics," *Science and Engineering Ethics* 20, no. 2 (June 1, 2014): 317; Anke Iman Bouzenita, "Change of Creation or Harnessing Nature? The Reception of Biotechnology in the Islamic World," *Islamic Studies* 48, no. 4 (2009): 499.

⁴ The Malaysian Sharia Court uses scientific evidence such as DNA test results in deciding cases of rape resulting in the born of children out of wedlock. See: Muhammad Hazim Ahmad et al., "Rejuvenating Human Capital in Syariah Legal Institutions Through Fiqh Forensics Fundamental Module: A Preliminary Review," *Malaysian Journal of Syariah and Law* 8, no. 1 (June 1, 2020): 11. In Indonesia, DNA testing is a way to prove the existence of a civil relationship between children born out of wedlock and their biological father. See: Euis Nurlaelawati and Stijn Cornelis van Huis, "The Status of Children Born Out of Wedlock and Adopted Children in Indonesia: Interactions between Islamic, Adat and Human Rights Norms," *Journal of Law and Religion* 34, no. 3 (2019): 356.

⁵ Ulama of *pesantren* (Islamic boarding school) propose environmental theology which includes a thesis statement that protecting the environment is not seen as a profane activity, but rather a form of worship to God. Therefore, actions that destroy nature are a major sin. See: Mohamad Sobirin and Karimatul Khasanah, "The Pesantren Scholars' Fatwa on Global Warming and Climate Change: An Integrative Analysis of Islamic Law, Theology, and Environmental Sciences on the Practice of Multidisciplinary Ijtihad," *Cogent Arts & Humanities* 10, no. 1 (December 31, 2023): 1.

⁶ This typically occurs when calculating the Hijriyah calendar using the Hisab method. See: Maskufa, "Global Hijriyah Calendar as Challenges Fiqh Astronomy," in *Proceedings of 1st International Conference of Law and Justice - Good Governance and Human Rights in Muslim Countries: Experiences and Challenges (ICLJ 2017)* (1st International Conference of Law and Justice - Good Governance and Human Rights in Muslim Countries: Experiences and Challenges (ICLJ 2017), Serpong, Indonesia: Atlantis Press, 2018), 188.

⁷ During the first six hundred years of Islam, Muslims made notable achievements in various fields of knowledge, contributing significantly to the intellectual advancements that eventually led to the European Renaissance. However, this progress was disrupted by the invasion of the Tatars in the 13th century, which completely devastated Baghdad. Subsequently, the Crusades, ongoing tensions between the East and the West, and Western colonialism targeting Islamic nations further exacerbated the situation. As a result, there emerged a general mistrust towards scientific contributions from Western countries. Unfortunately, this mistrust has hindered the practice of *ijtihad* ('close the door' of *ijtihad*), a dynamic method within Islamic

The discourse on the relationship between science and Islam has been revived among Muslim scholars due to the rise of online marriage practices within Muslim communities during the COVID-19 pandemic.⁸ Notable examples include Hafiyah Prafianto in Japan and Anya Aghnia in Bandung,⁹ Max Walden in Sydney and Shaffira Gayatri in Surabaya,¹⁰ Kadirman bin Haeruddin in Surabaya and Febrianti bin Hasanuddin in Kolaka.¹¹ In response to this phenomenon, the Council of Indonesian Ulama (Majelis Ulama Indonesia, MUI) held its 7th Ijtima' Ulama' Fatwa Commission in Jakarta from November 9–11, 2021. During this gathering, the MUI discussed and subsequently ruled that online marriage contracts could be considered permissible under certain conditions.¹² The Tarjih and Tajdid Council of Muhammadiyah also took a similar stance, affirming the validity of online marriage contracts.¹³ On the other hand, the Baḥth al-Masā'il of the East Java Regional Board of Nahdlatul Ulama (Pimpinan Wilayah Nahdlatul Ulama/PWNU Jawa Timur) had prohibited the use of online marriage contracts in 2009.¹⁴ This position was reaffirmed a year later by the Baḥth al-Masā'il of the PWNU of Makassar, stating that marriage contracts cannot be conducted through teleconferences due to their distinct nature compared to other contractual agreements, such as those related to buying and selling.¹⁵ However, until the end of the COVID-19 pandemic, Nahdlatul Ulama (NU) maintained both fatwas, thereby considering online marriage contracts invalid according to their interpretation.

jurisprudence that encourages adaptation to change, emerging demands, and new knowledge. It is important to note that the Qur'an itself encourages Muslims to engage in critical thinking, reflection, comprehension, and examination of their surroundings. Islam is a religion that prioritises facilitating ease (*yusr*) rather than imposing hardship (*usr*). Furthermore, the creation of the world was intended for the benefit and utilization of humankind. Therefore, innovation for positive and practical purposes is imperative. See: Fatima Agha al-Hayani, "Islam and Science: Contradiction or Concordance," *Zygon® Journal of Religion and Science* 40, no. 3 (2005): 565.

⁸ Abdurrahman Dahlan et al., "Al-Buti's Thoughts on Maslāhah and Its Application in the Fatwa of World Fatwa Institutions," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (June 18, 2023): 1150.

⁹ Gresnia Arela Febriani, "Kisah Pasangan Taaruf Gelar Akad Nikah Online karena Mempelai Pria di Jepang," wolipop, accessed September 30, 2023, <https://wolipop.detik.com/wedding-news/d-5760634/kisah-pasangan-taaruf-gelar-akad-nikah-online-karena-mempelai-pria-di-jepang>.

¹⁰ A. B. C. Australia, "'Ijab Kabul yang Menegangkan', Pasangan Indonesia-Australia Nikah Lewat Zoom," detiknews, accessed September 30, 2023, <https://news.detik.com/abc-australia/d-5075557/ijab-kabul-yang-menegangkan-pasangan-indonesia-australia-nikah-lewat-zoom>.

¹¹ C. N. N. Indonesia, "Warga Kolaka Menikah Lewat Video Call Gara-gara Corona," nasional, accessed September 30, 2023, <https://www.cnnindonesia.com/nasional/20200326134552-20-487071/warga-kolaka-menikah-lewat-video-call-gara-gara-corona>.

¹² Results of Commission B-1 Session on Contemporary Fiqh Issues (*Masā'il Fiqhiyyah Mu'āshirah*): II. Online Marriage. Majelis Ulama Indonesia MUI, "Keputusan Ijtima' Ulama Komisi Fatwa Se-Indonesia VII" (Sekretariat Komisi Fatwa Majelis Ulama Indonesia, 2021), https://muijatim.or.id/wp-content/uploads/2022/09/HASIL-IJTIMA_ULAMA-KOMISI-FATWA-SE-INDONESIA-VII-TAHUN-2021.pdf.

¹³ The request for a fatwa regarding marriage contracts via video call was heard by the Fatwa Team of the Tarjih and Tajdid Council on Friday, 16 Jumadats-Tsaniyah 1429 H / 20 June 2008. Tim Fatwa Majelis Tarjih and Tajdid, "Akad Nikah via Video Call," accessed September 30, 2023, <http://tarjihmuhammadiyah.blogspot.com/2011/06/akad-nikah-via-vidieo-call.html>.

¹⁴ Tim LBM PWNU Jawa Timur, *NU Menjawab Problematika Umat: Keputusan Babsul Masail PWNU Jawa Timur Jilid 1 1979-2009*, ed. Ahmad Muntaha AM, vol. 1 (Surabaya: LBM PWNU Jawa Timur, 2015), 898–904.

¹⁵ See: Abdul Mun'im DZ, ed., *Hasil-Hasil Muktamar 32 Nahdlatul Ulama* (Jakarta: Sekretariat Jendral PBNU, 2010), 220–23; Muhammad Alwi al-Maliki and Asep Saepudin Jahar, "Dinamika Hukum Akad Nikah via Teleconference di Indonesia," *Jurnal Indo-Islamika* 10, no. 2 (2020): 140.

The different opinions (fatwa) on the legal status of online marriage contracts issued by the three organisations have sparked various reactions from the Muslim community,¹⁶ including the *penghulus* (marriage functionaries) in Banjarmasin City. A *penghulu*, who is a civil servant (Pengawai Negeri Sipil/PNS), has the responsibility, authority, and rights to oversee service activities, provide guidance on marriage proceedings, leadership development, and provide Islamic community counsel.¹⁷ The disagreement among the *penghulus* of Banjarmasin City has consequences for the non-implementation of online marriage contracts facilitated by the Office of Religious Affairs (Kantor Urusan Agama/KUA).¹⁸ They opt for prudence (*ihtiyāt*) by advocating for consolidating marriage contracts in a single gathering. In cases where a prospective groom or marriage guardian cannot attend, they suggest using a *tawkīl* (power of attorney) instead.¹⁹ The decision made by Banjarmasin City *penghulus* is not arbitrary but influenced by various factors within the Banjar community. Additionally, they argue that the absence of official regulations from the Ministry of Religious Affairs justifies their decision to abstain from facilitating the adoption of online marriage contracts so far.²⁰

Several scholars have examined online marriage contracts from different perspectives. Normatively, Harahap et. al.²¹ found that Islamic jurists have different opinions on the interpretation of *ittiḥād al-majlis* in a marriage contract. The validity of online marriage contracts is debated, with Hakim et. al.²² and Taufiq et. al.²³ arguing that they may hinder the purpose of marriage, despite Faisal et. al.²⁴ asserting that all necessary conditions are met.

¹⁶ For example, Muhammadiyah and Nahdlatul Ulama issued different fatwas regarding its validity. See: Farid Wajidi and Fuad Mustafid, “Marriage in the Age of Advancement of Digital Technology: Study of Nahdlatul Ulama and Muhammadiyah Fatwa on the Legality of Marriage via Online,” *Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam* 14, no. 2 (December 11, 2023): 234.

¹⁷ “Regulation of the Minister of Religion of the Republic of Indonesia No. 16 of 2021 on Technical Instructions for the Functional Position of Penghulu,” Article 1 Paragraph (3).

¹⁸ ZE, *Penghulu* of KUA Subdistrict East Banjarmasin, September 30, 2023.

¹⁹ The term “*tawkīl*” represents a verbal noun derived from the triliteral root “*wakala-yuwakkilu-taukīlan*”, denoting the concept of “handover” or “delegation”. Conversely, the terms “*al-wakālah*” or “*al-wikālah*” encompass various connotations, notably encompassing “*al-hifẓ*” (guarding or protection) and “*al-tafwīd*” (handing over affairs). Etymologically, there exists no distinction between “*tawkīl*” and “*wakālah*”, as both stem from the same linguistic root, “*wakala*”. In Sharia term, “*tawkīl*” pertains to the act of entrusting another individual to assume one’s position, whether in its entirety or within specified parameters. See: Ida Iftidah, “Pandangan Masyarakat tentang Taukil Wali: Studi di Desa Dempet Kabupaten Demak,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 1 (March 1, 2017): 91. In essence, the appointment of a marriage guardian, known as *tawkīl*, can be conducted verbally. However, to mitigate potential complications in the future, it is advisable to formalise the *tawkīl* in writing and ensure it is witnessed by others. Oktaviani and Arif Sugitanata, “Memberikan Hak Wali Nikah kepada Kyai: Praktik Taukil Wali Nikah pada Masyarakat Adat Sasak Sade,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 12, no. 2 (September 22, 2020): 167.

²⁰ See: KH, *Penghulu* of KUA Subdistrict South Banjarmasin, October 15, 2023; AA, *Penghulu* of KUA Subdistrict South Banjarmasin, October 15, 2023.

²¹ Khairuddin Soleh Harahap, Ahmad Qorib, and Imam Yazid, “Ittiḥād al-Majlis on Marriage Contract According to Hanafiyah and Syafi’iyah (The Study of Online Marriage During Covid-19): Nikah Online,” *Jurnal Mabkamah: Kajian Ilmu Hukum dan Hukum Islam* 7, no. 1 (June 11, 2022): 31–42.

²² Abdul Hakim and Bagus Haziratul Qodsiyah, “Online Marriage During the Covid-19 Pandemic: A Study of the Fatwas in Egypt, Iraq, Syria, and Saudi Arabia,” *Al-Adalah* 19, no. 1 (June 20, 2022): 141.

²³ Muhammad Taufiq et al., “Online Marriage in the Perspective of Fiqh Nawazil,” *Jurnal Hukum Islam* 21, no. 1 (June 9, 2023): 29.

²⁴ F. Faisal et al., “Marriage Contract Through Visualization of Online Video Call Communication Media According to Marriage Law and Islamic Law in Indonesia,” *SMART: Journal of Sharia, Traditon, and Modernity* 1, no. 1 (August 28, 2021): 95.

Opponents of online marriage contracts argue that they can lead to various problems, while Al-Hatem²⁵ suggests the concept should be clarified. On the other hand, Trifonova²⁶ and Qodril et. al.²⁷ argue that any technological innovation that benefits society should be legally recognised, even if Indonesian law does not explicitly address online marriage contracts. These differing views result in different approaches to regulating online marriage contracts. This article focuses on the perspectives of the *penghulus* in Banjarmasin City regarding the legal framework of online marriage contracts and argues that conflicting interpretations of *ittihād al-majlis* give rise to two seemingly contradictory viewpoints.

This article presents findings from field research conducted in Banjarmasin City, South Kalimantan, using a socio-legal approach. The research spanned three months, from September to November 2023. The primary method of data collection involved interviewing 12 *penghulus* from various districts in Banjarmasin City. Specifically, there were three *penghulus* from the KUA of East Banjarmasin District, two from the KUA of Central Banjarmasin District, three from the KUA of South Banjarmasin District, two from the KUA of West Banjarmasin District, one from the KUA of North Banjarmasin District and the KUA of Martapura Kota District. For the sake of confidentiality, the names of all *penghulus* in this study have been anonymised. The collected data was then analysed using Clyde Kluckhohn's theory of cultural anthropology.²⁸ This theoretical framework was used to delve into the cultural foundations of Banjar society and shed light on the differing perspectives among the headmen of Banjarmasin City regarding the legality of online marriage contracts.

Fiqh and State Law Perspectives Regarding Online Marriage Contracts

In *fiqh*, marriage is structured around five essential pillars: the prospective husband, the prospective wife, the guardian of the prospective wife, two witnesses, and the contractual agreement known as the offer (*ijāb*) and the acceptance of marriage (*qabūl*).²⁹ The *ijāb* and *qabūl* play a pivotal role in the execution of the marriage contract by serving as evidence of the groom's acceptance of the responsibilities bestowed by the bride's guardian. Moreover, the *ijāb* and *qabūl* constitute a fundamental element necessary for fulfilling the core prerequisites and pillars needed to validate the marriage contract. The *ijāb* signifies the acknowledgement of Allah's decree, which is symbolised by the woman through her declaration, binding her to her prospective husband. On the other hand, *qabūl* denotes a statement that demonstrates the prospective husband's readiness and willingness to uphold

²⁵ Nadia Khair al-Din al-Hatem and Najwa Muhammad Salem Muhammad, "The Provisions of the Marriage Contract Using Modern Means of Communication - a Comparative Study -," *Tikrit University Journal for Rights* 7, no. 3/1 (2023): 259.

²⁶ Inna Trifonova, "Development Trends of the Marriage Contract Institution in the Digital Age," in *Digital Future Economic Growth, Social Adaptation, and Technological Perspectives*, ed. Tatiana Kolmykova and Ekaterina V. Kharchenko, Lecture Notes in Networks and Systems (Cham: Springer International Publishing, 2020), 427.

²⁷ Miftahul Qodril R, Ishaq Ishaq, and Pujiono Pujiono, "Teleconference Marriage Contracts and the Development of Indonesian Marriage Law," *Indonesian Journal of Law and Islamic Law (IJLIL)* 4, no. 2 (December 12, 2022): 240.

²⁸ Clyde Kluckhohn, *Universal Categories of Culture* (Illinois: University of Chicago, 1953), 23.

²⁹ Amiur Nuruddin and Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia: Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No. 1/1974, sampai KHI* (Jakarta: Kencana, 2006), 62.

Allah's decree within the marriage contract on behalf of the bride.³⁰ Through the pronouncement of *ijāb* and *qabūl*, a previously invalid relationship between a woman and a man gains legitimacy. Therefore, the implementation of *ijāb* and *qabūl* are indispensable for upholding the validity of marriage.³¹

One of the prerequisites of *ijāb* and *qabūl* are that these decrees are articulated in a unified assembly (*ittiḥād al-majlis*).³² While all Islamic jurists agree on the necessity of *ittiḥād al-majlis*, they differ in their interpretations of its significance.³³ Some argue that *ittiḥād al-majlis* requires both the guardian and the groom-to-be to be physically present in the same location during the marriage contract. However, others believe that *ittiḥād al-majlis* does not necessarily require physical proximity.³⁴ Shāfi'iyah scholars maintain that *ittiḥād al-majlis* is crucial not only for ensuring the continuity (*ittiṣāl*) between *ijāb* and *qabūl* but also for the responsibilities of the two witnesses in a marriage contract.³⁵ According to *fiqh*, the testimony in a marriage contract must be based on both hearing and sight. Therefore, the testimony of a blind person or someone in darkness is deemed unacceptable, as they cannot visually confirm the identities of the parties involved in the contract. Even if the two witnesses hear the *ijāb* and *qabūl* but do not witness the individuals speaking, the marriage contract is considered invalid because it lacks visual confirmation (*mu'āyana*).³⁶ This interpretation emphasises the importance of both unity of place (*ittiḥād makān*) and unity of time (*ittiḥād al-ḡamān*) in the marriage contract. Some Mālikiyyah scholars believe that there may be a brief interval between the *ijāb* and *qabūl*, while others insist that the *qabūl* must be pronounced immediately after the *ijāb*. However, there are exceptions where a longer interval between the *ijāb* and *qabūl* is permissible. For instance, in cases of marriage by will, the guardian may state, "If I pass away, I give my daughter in marriage to *Fulan* (someone)". In such instances, *Fulan* is not required to immediately respond with the *qabūl*; instead, it may be articulated after the guardian's demise, regardless of the duration between the proposal and the guardian's passing.³⁷

Meanwhile, the Ḥanafiyah scholars interpret the concept of *ittiḥād al-majlis* as the unity of assembly in a marriage contract, emphasising the continuity of time between *ijāb* and *qabūl*. According to their perspective, the necessary connection between *ijāb* and *qabūl* depends on temporal unity (*ittiḥād al-ḡamān*).³⁸ Essentially, the *ijāb* is performed within a

³⁰ Satria Effendi, *Problematika Hukum Keluarga Islam Kontemporer, Analisis Yurisprudensi Pendekatan Ushuliyah* (Jakarta: Kencana, 2010), 3.

³¹ Umi Salamah and Tirmidzi Tirmidzi, "Akad Nikah Virtual dalam Tinjauan Hukum Islam," *Ushab: Jurnal Hukum Keluarga Islam* 2, no. 2 (2021): 2.

³² Wahbah al-Zuhailī, *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 9 (Damascus: Dār al-Fikr, n.d.), 6535.

³³ 'Abdurrahmān al-Jazīrī, *Al-Fiqh 'alā al-Madhābīb al-Arba'a*, vol. 4 (Beirut: Dār al-Kutub al-Ilmiyya, 2002), 17–25.

³⁴ Muhammad Habibi Miftakhul Marwa and Norma Sari, "Akad Nikah Virtual Perawat Saat Covid-19: Tinjauan Hukum Perkawinan Islam dan Hukum Kesehatan," *Jurnal Hukum Ius Quia Iustum* 29, no. 3 (September 2, 2022): 680.

³⁵ Effendi, *Problematika Hukum Keluarga Islam Kontempore*, 6.

³⁶ 'Abd al-Ḥamid al-Makki al-Sharwānī and Aḥmad ibn Qāsim al-'Ibādī, *Ḥawāshī al-Sharwānī wa al-'Ibādī 'alā Tuḥfah al-Muḥtāj fī Sharḥ al-Minhāj*, vol. 7 (Beirut: Dār Iḥyā al-Turāth al-'Arabī, n.d.), 228.

³⁷ Al-Jazīrī, *Al-Fiqh 'alā al-Madhābīb al-Arba'a*, 4:25.

³⁸ Muḥammad Amīn ibn 'Ābidīn, *Radd al-Muḥtār 'alā al-Dar al-Mukhtār Sharḥ Tamwīr al-Abṣār*, vol. 4 (Riyāḍ: Dār 'Ālam al-Kutub, 2003), 76.

single contractual ritual, and following its completion, the *qabūl* must be expressed within the same ritual. Even if the location remains unchanged (within a single assembly), if the *ijāb* and *qabūl* occur at different intervals, separately, or on two distinct occasions, the marriage contract is considered invalid due to the lack of continuity between the *ijāb* and *qabūl*.³⁹ On the other hand, the Ḥanābilah scholars argue that a temporal gap between the *ijāb* and *qabūl* does not invalidate the marriage contract as long as both parties remain committed to the contract and refrain from actions that could be interpreted as terminating the ongoing agreement. This perspective is influenced by principles such as the transfer of ownership (*al-qabd*) in contracts that require such a transfer and the right of rescission (*al-kehīyār*) in reciprocal contracts (*al-mu'āwada*), which adjusts the ruling of the assembly to the conditions prevailing at the time of the contract.⁴⁰

These *fiqh* stipulations align with state law in Indonesia, as outlined in Presidential Instruction No. 1 of 1991 regarding the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI). Articles 27–29 specify that the *ijāb* and *qabūl* between the guardian of the prospective bride and the prospective groom must occur consecutively without interruption and may be conducted personally or through representation. The guardian has the authority to pronounce the *ijāb* himself or designate another eligible guardian to do so on his behalf. Similarly, the prospective groom may express the *qabūl* personally or authorise another man to do so by providing a written power of attorney. If the guardian or groom-to-be is unable to be present, they are permitted to delegate (*tawkeīl*) their authority to another party in accordance with the prescribed procedures.⁴¹

Although none of the scholars from various *fiqh* schools or the KHI explicitly delineate the laws governing online marriage contracts, the viewpoints of Ḥanafīyah and Ḥanābilah scholars, who permit marriage contracts via mail, can serve as a foundational basis for determining legal principles. In response to the emergence of online marriage contracts, several prominent religious organisations in Indonesia have adopted distinct positions. In 2021, during the 7th Ijtima' Ulamā' of the Fatwa Commission of the MUI in Jakarta, a fatwa was issued stipulating that a marriage contract is essentially valid if it satisfies the conditions of *ijāb* and *qabūl*, namely being conducted within *ittiḥād al-majlis* (in one place), employing *ṣariḥ lafaẓ* (clear statement), and ensuring *ittiṣāl* (direct connection between *ijāb* and *qabūl*). In situations where the prospective parties are unable to physically convene or delegate, online marriage can be conducted under specific conditions: the marriage guardian, groom-to-be, and two witnesses must be linked through a virtual network, encompassing both audio and visual elements, in real time; there must be assurance regarding the true identity of the parties, verifiable technically; and recognition from the government must be guaranteed. Failure to meet these conditions renders online marriage illegal.⁴²

Previously, the Tarjih and Tajdid Council of Muhammadiyah stated that the validity of contractual proceedings depends on the coherence and immediacy between *ijāb* and *qabūl*

³⁹ Effendi, *Problematika Hukum Keluarga Islam Kontempore*, 3.

⁴⁰ Muwaffaq al-Dīn Abū Muḥammad 'Abdullah ibn Aḥmad ibn Muḥammad ibn Qudāmah, *Al-Mughnī*, 3rd ed., vol. 9 (Riyāḍ: Dār 'Ālam al-Kutub, 1997), 463–64.

⁴¹ "Presidential Instruction No. 1 of 1991 on the the Compilation of Islamic Law," Articles 27-29.

⁴² MUI, "Keputusan Ijtima' Ulama Komisi Fatwa Se-Indonesia VII."

rather than the physical unity of the execution site. They believe that *ittihād al-majlis* refers to the simultaneous performance of *ijāb* and *qabūl*, regardless of location. They compare online marriage contracts to contractual arrangements made through letters or messengers. In cases where *ijāb* and *qabūl* are communicated through a letter, the marriage contract is considered to have taken place when the prospective husband reads the letter containing *ijāb* in the presence of witnesses. If the prospective husband promptly responds with *qabūl* after reading the letter, then the marriage contract is considered to have been executed in accordance with *ittihād al-majlis*. Similarly, when *ijāb* and *qabūl* are conveyed through a messenger, the marriage contract is seen as occurring when the messenger delivers *ijāb* from the guardian to the prospective husband in the presence of witnesses. If the prospective husband promptly accepts *qabūl* upon receiving the messenger's communication, then the marriage contract is deemed to have been executed in accordance with *ittihād al-majlis*. Because marriage contracts can be facilitated through letters or messengers, online marriage contracts through video calls are seen as a plausible option.⁴³ Furthermore, the COVID-19 pandemic has forced individuals to reconsider certain social and religious practices, making online marriage contracts an increasingly viable choice for the future.⁴⁴

Contrary to the stances of MUI and Muhammadiyah, NU contends that *ittihād al-majlis* must be understood as *ittihād al-zamān wa al-makān* (unity of time and place) among the guardian, groom-to-be, and witnesses, and cannot be interpreted otherwise. In 2009, the Baḥth al-Masā'il of PWNNU East Java issued a fatwa declaring online marriage contracts invalid. They cited reasons such as the witnesses not directly witnessing and hearing the parties' language, their absence from the contract assembly, and the classification of online marriage contracts as *kināyah* (unclear), while marriage contracts must be formulated with *ṣarih lafaẓ* (clear).⁴⁵ This fatwa was reaffirmed in 2010. At the 32nd NU Congress in Makassar, the *Baḥth al-Masā'il al-Dīniyyah wa al-Maudū'iyah* Commission deliberated on *ittihād al-majlis* and its implications for buying and selling contracts as well as marriage contracts. It was argued that *ittihād al-majlis* can include *ittihād al-zamān* (one time), *ittihād al-makān* (one location), and *ittihād al-hai'ah* (one position). The convergence of places facilitated by modern communication media allows geographically distant locations to be considered as one (*ta'addud al-makān fī manẓilah ittihād al-makān*). Therefore, a sale and purchase contract conducted online is considered to meet the criteria of *ittihād al-majlis*, making the contract valid. However, these principles do not apply to marriage contracts.⁴⁶ NU refers to various *fiqh* texts, such as *Ḥāshiyah al-Bujairamī 'alā al-Khaṭīb*,⁴⁷ *al-Fawā'id al-Mukhtāra li Sālik Ṭarīq al-*

⁴³ Tim Fatwa Majelis Tarjih dan Tajdid, "Akad Nikah via Video Call."

⁴⁴ Afandi, "Jika Pandemi Berlanjut, Nikah Virtual Bisa Menjadi Tren Baru," *Muhammadiyah* (blog), July 25, 2021, <https://muhammadiyah.or.id/2021/07/jika-pandemi-berlanjut-nikah-virtual-bisa-menjadi-tren-baru/>.

⁴⁵ Tim LBM PWNNU Jawa Timur, *NU Menjawab Problematika Umat*, 1:898.

⁴⁶ See: Mun'im DZ, *Hasil-Hasil Mukhtamar 32 Nahdlatul Ulama*, 221; Al-Maliki and Jahar, "Dinamika Hukum Akad Nikah via Teleconference di Indonesia," 140.

⁴⁷ Sulaymān ibn Muḥammad ibn 'Umar al-Bujairamī, *Ḥāshiyah al-Bujairamī 'alā al-Khaṭīb*, vol. 3 (Damascus: Dār al-Fikr, 1995), 387.

Ākhirab,⁴⁸ *Ḥawāshī al-Sharwānī wa al-'Ibādī 'alā Tuḥfah al-Muḥtāj fī Sharḥ al-Minhāj*,⁴⁹ *Rawḍat al-Ṭālibīn wa 'Umdat al-Muḥtāj*,⁵⁰ *Badā' al-Ṣanā'ī fī Tartīb al-Sharā'ī*,⁵¹ *Al-Fiqh 'alā al-Madhāhib al-Arba'ah*,⁵² and *al-Fiqh al-Islāmī wa Adillatuhu*,⁵³ to support the prohibition of online marriage contracts.

While the MUI and Muhammadiyah may endorse online marriage contracts, their practical implementation in Indonesia faces several challenges. These challenges primarily arise from discrepancies among the *penghulus* regarding their response to the law. Additionally, despite the absence of specific regulations regarding online marriage contracts in the KHI and Law No. 1/1974 on Marriage, the Ministry of Religious Affairs has not formally addressed this issue. Moreover, the divergent viewpoints among the *penghulus*⁵⁴ further complicate the execution of online marriage contracts. Therefore, it is crucial to examine the perspectives of the *penghulus* in Banjarmasin City in this study.

Banjarmasin City *Penghulus*' Perspective

In Indonesia, several couples have engaged in online marriage contracts⁵⁵ because of the restrictions imposed by the COVID-19 pandemic, which prevent them from conducting in-person meetings. Prominent examples include Hafiyana Prafianto and Anya Aghnia,⁵⁶ as well as Max Walden and Shaffira Gayatri.⁵⁷ However, the practice of online marriage contracts has yet to be observed in Banjarmasin City. A significant contributing factor to this absence is the divergence of opinions among the *penghulu* in Banjarmasin City regarding the validity of such contracts. While the majority argue that online marriage contracts lack validity due to non-compliance with the requirement of *ittihād al-majlis*, a minority contend that they are valid as they fulfil the necessary conditions simultaneously.

The first perspective posits that online marriage contracts lack validity. This viewpoint is predominantly upheld by *penghulus* affiliated with the KUA of across various districts in Banjarmasin, including the Central, East, and South districts. Their primary rationale for deeming online marriage contracts invalid is the failure to meet the requirement of *ittihād al-majlis*.⁵⁸ This prerequisite, alongside other conditions such as the utilization of a clear statement (*ṣarīḥ*) and the continuity between *ijāb* and *qabūl (ittiṣāl)*,⁵⁹ is deemed essential for

⁴⁸ Al-Ḥabīb Zain ibn Ibrāhīm ibn Smit, *Al-Fawā'id al-Mukhtāra li Sālik Ṭarīq al-Ākhirā* (Ma'had Dār al-Lughā wa 'i-Da'wa, 2008), 246.

⁴⁹ 'Abd al-Ḥamīd al-Makki al-Sharwānī and Aḥmad ibn Qāsim al-'Ibādī, *Ḥawāshī al-Sharwānī wa al-'Ibādī 'alā Tuḥfah al-Muḥtāj fī Sharḥ al-Minhāj*, vol. 4 (Beirūt: Dār Iḥyā al-Turāth al-'Arabī, n.d.), 221.

⁵⁰ Abū Zakariyyā Muḥyi'd-Dīn ibn Sharf al-Nawawī, *Rawḍat al-Ṭālibīn wa 'Umdat al-Muḥtāj*, 3rd ed., vol. 7 (Beirūt: al-Maktab al-Islāmī, 1991), 381, 395.

⁵¹ 'Alā'ud-Dīn Abū Bakar ibn Mas'ūd al-Kāsānī, *Badā' al-Ṣanā'ī fī Tartīb al-Sharā'ī*, vol. 5 (Beirūt: Dār al-Kutub al-'Ilmiyya, 1986), 137.

⁵² Al-Jazirī, *Al-Fiqh 'alā al-Madhāhib al-Arba'a*, 4:19.

⁵³ See: Wahbah al-Zuhailī, *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 7 (Damascus: Dār al-Fikr, n.d.), 5174–75; Wahbah al-Zuhailī, *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 4 (Damascus: Dār al-Fikr, n.d.), 2945, 2950–51.

⁵⁴ "Minister of State Apparatus Empowerment Regulation No. PER/62/M.PAN/6/2005 on Functional Positions of Penghulu and Their Credit Scores," Article 1 Paragraph (1).

⁵⁵ Wajidi and Mustafid, "Marriage in the Age of Advancement of Digital Technology," 234.

⁵⁶ Febriani, "Kisah Pasangan Taaruf Gelar Akad Nikah Online karena Mempelai Pria di Jepang."

⁵⁷ Australia, "'Ijab Kabul yang Menegangkan', Pasangan Indonesia-Australia Nikah Lewat Zoom."

⁵⁸ HA, *Penghulu* of KUA Subdistrict Central Banjarmasin, November 4, 2023.

⁵⁹ AH, *Penghulu* of KUA Subdistrict East Banjarmasin, September 30, 2023.

the validation of a marriage contract. Consequently, online marriage contracts are considered invalid as they do not fulfil the criterion of physical presence in the same location.⁶⁰

Although online marriage contracts are prohibited, they provide an alternative for grooms and marriage guardians who are unable to fulfil the requirements of *ittihād al-majlis*. In Banjarmasin City, the *penghulu* suggest resorting to *tawkeil*, whereby the responsibility is delegated to another party capable of attending the ceremony. According to this viewpoint, the *tawkeil* process offers greater flexibility as it can be executed through various forms of communication such as letters, chat applications, or telephone. *Tawkeil* in the marriage contract aligns with the teachings of scholars and *kyai* (an Islamic traditional cleric) in Banjarmasin and is substantiated by clear legal foundations in both hadith and classical *fiqh* literature, ensuring its validity.⁶¹ Consequently, the majority of the headmen advocate for *tawkeil* in the marriage contract over the online alternative.⁶²

The prevailing inclination among the majority of *penghulus* is to prefer *tawkeil* in marriage contracts instead of online marriage contracts due to prudence (*ihtiyāt*).⁶³ The unique nature of the marriage contract, characterised as *mīthāqan ghalīẓan* (a solemn covenant), sets it apart from other commercial transactions in *mu'āmalah*, making its execution incomparable to online buying and selling. Also, the lack of historical precedence for online marriage contracts during the time of the Prophet and classical scholars complicates their acceptance in contemporary times.⁶⁴ Although the MUI and Muhammadiyah permitted online marriage contracts during the COVID-19 pandemic, the end of the pandemic removes the legal rationale (*illab*) for their allowance.⁶⁵ *Penghulus* remain concerned about the potential increase in *sirri* marriages if online marriage contracts are authorised.⁶⁶ They are also awaiting a fatwa from the MUI of Banjarmasin City and South Kalimantan.⁶⁷ In addition to theological considerations, most *penghulus* rely on juridical arguments to oppose the implementation of online marriage contracts, citing the lack of official regulation from the Ministry of Religious Affairs in the form of either a Minister of Religious Affairs Regulation or a Minister of Religious Affairs Decision (Keputusan Menteri Agama/KMA)⁶⁸ authorising their implementation.

The second perspective argues for the legitimacy of online marriage contracts and is primarily advocated by *penghulus* affiliated with the KUA in the Central and North districts of Banjarmasin. One supporting reference for this standpoint is the stance of the Ḥanafīyyah scholars regarding the concept of *ittihād al-majlis*.⁶⁹ Furthermore, the validity of online

⁶⁰ AA, *Penghulu* of KUA Subdistrict South Banjarmasin, October 15, 2023.

⁶¹ See: AA; AR, *Penghulu* of KUA Subdistrict South Banjarmasin, October 15, 2023; HA, *Penghulu* of KUA Subdistrict Central Banjarmasin.

⁶² See: SY, *Penghulu* of KUA Subdistrict East Banjarmasin, September 30, 2023; HA, *Penghulu* of KUA Subdistrict Central Banjarmasin.

⁶³ RA, *Penghulu* of KUA Subdistrict West Banjarmasin, October 20, 2023.

⁶⁴ MS, *Penghulu* of KUA Subdistrict West Banjarmasin, October 26, 2023.

⁶⁵ See: HA, *Penghulu* of KUA Subdistrict Central Banjarmasin; AB, *Penghulu* of KUA Subdistrict Martapura Kota, October 26, 2023.

⁶⁶ KH, *Penghulu* of KUA Subdistrict South Banjarmasin, October 15, 2023.

⁶⁷ JN, *Penghulu* of KUA Subdistrict North Banjarmasin, October 10, 2023.

⁶⁸ See: AA, *Penghulu* of KUA Subdistrict South Banjarmasin; KH, *Penghulu* of KUA Subdistrict South Banjarmasin.

⁶⁹ Ibn 'Ābidīn, *Radd al-Muḥtār 'alā al-Dar al-Mukhtār*, 4:76.

marriage contracts is justified through *qiyās* (analogy), where an analogy is drawn to the legitimacy of marriages conducted via letter, as exemplified by al-Jazīrī. If a man sends a letter containing *ijāb* to a woman he intends to marry, and subsequently, the woman expresses her acceptance (*qabūl*) in the presence of witnesses, the marriage contract is considered valid.⁷⁰

The second perspective, advocating for the validity of online marriage contracts, aligns with the findings of the 7th Ijtima' Ulama' of the MUI Fatwa Commission in 2021.⁷¹ While a few *penghulus* expressed reservations, the collective ijtihad was the result of the participation of 700 individuals, including members of the governing council, fatwa commission members, representatives from MUI commissions, bodies, and institutions at central and regional levels, leaders of fatwa councils from various Islamic organisations, *kyai* of *pesantren* (Islamic boarding school), as well as scholars from Islamic universities in Indonesia.⁷² Moreover, proponents argue that online marriage contracts can be a feasible solution for geographically separated couples. Nevertheless, the permissibility of online marriage contracts requires strict measures to ensure that the parties involved in expressing *ijāb* and *qabūl* are genuine and present within the same virtual assembly.⁷³ Despite variations in fatwas issued by different Islamic organisations, they could potentially address gaps in Indonesian legislation.⁷⁴

Religious Tradition and Technology Innovation

The *penghulus* in Banjarmasin City are divided into two camps regarding online marriage contracts in Indonesia. The majority of them oppose online marriage contracts due to their divergence from the interpretations of *ittihād al-majlis* by Shāfi'iyah and Mālikiyyah scholars, who emphasise the literal requirement for the marriage contract to occur in a singular place and time.⁷⁵ This stipulates that unless *ijāb* and *qabūl* are executed by the marriage guardian and groom-to-be simultaneously and in the same location, the marriage contract is deemed invalid.⁷⁶ Conversely, a minority of *penghulus* permit online marriage contracts, drawing parallels with the permissibility of marriage contracts conducted via mail as endorsed by Hanafi and Hanbali scholars. The disparity in stance among these officials stems from their varying interpretations of the *ittihād al-majlis* requirement as articulated in the viewpoints of classical Islamic jurists.

The divergent perspectives among the *penghulus* in Banjarmasin City are influenced by various cultural elements inherent to the Banjar community. Within Banjar society, the ulama assume a pivotal role, serving as mentors and advisors across numerous facets of communal life.⁷⁷ Their influence is particularly evident in matters concerning the interpretation of

⁷⁰ Al-Jazīrī, *Al-Fiqh 'alā al-Madhāhib al-Arba'a*, 4:18–19.

⁷¹ MUI, "Keputusan Ijtima' Ulama Komisi Fatwa Se-Indonesia VII."

⁷² AN, *Penghulu* of KUA Subdistrict Central Banjarmasin, November 4, 2023.

⁷³ JN, *Penghulu* of KUA Subdistrict North Banjarmasin.

⁷⁴ Elsy Renie, "The Urgency of Fatwa in the Law of Sharia Economics in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 2 (December 15, 2021): 201.

⁷⁵ Muhammad Hamdani, Muhammad Riduwan Masykur, and Tutik Hamidah, "Akad Pernikahan melalui Zoom dalam Perspektif Fikih," *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (March 30, 2023): 428.

⁷⁶ Dea Salma Sallom, "Interpretasi terhadap Syarat Ijab Kabul Ittihad al-Majlis dalam Akad Nikah Perspektif Ulama Empat Madzhab," *Hukum Islam* 22, no. 2 (March 14, 2023): 173.

⁷⁷ Wardatun Nadhiroh, "Religious and Gender Issues in the Tradition of Basurung and the Polygamy of Banjar Tuan Guru in South Kalimantan," *Al-Albab* 6, no. 2 (December 1, 2017): 263–80.

religious doctrine.⁷⁸ Referencing the views of scholars from the Shāfi‘iyyah and Mālikiyyah schools, who stipulate *ittihād al-majlis*, requiring the marriage contract to be conducted in a singular place and time, reflects the entrenched knowledge system.⁷⁹ Those *penghulus* aligning with the perspective of the Shāfi‘iyyah scholars⁸⁰ often mirror the prevailing tendency among Tuan Guru in Martapura City to adhere to the Shāfi‘iyyah school. Conversely, a minority of village heads endorsing the validity of online marriage contracts appear to draw inspiration from the viewpoints espoused by scholars from the Ḥanafiyah and Ḥanābilah schools. These two madhhabs interpret *ittihād al-majlis* as necessitating temporal continuity (*zamān*) between *ijāb* and *qabūl*, rather than strict spatial unity.⁸¹ Consequently, online marriage contracts executed simultaneously and in real-time are construed as embodying the essence of *ittihād al-majlis*.

Within the religious framework, the Banjar community strongly integrates Islamic teachings into all aspects of their lives, including social and cultural domains.⁸² This integration has given rise to the development of “Islam Banjar”, where Islamic beliefs extend beyond mere creed and permeate daily practices and behaviours.⁸³ The *penghulus* who oppose online marriage contracts uphold and reinforce traditional religious customs originating from Banjar Sultanate Law⁸⁴ and manuscripts by Banjar scholars.⁸⁵ The marriage ritual holds great significance, and any deviation from established protocols is taken seriously, with potential consequences. Consequently, there is a preference for *tawkil* in marriage contracts, allowing for the delegation of authority to a proxy if the guardian or groom-to-be is unable to attend. The adherence to customary and social norms is further exemplified by the *barambangan* (separation period in marriage)⁸⁶ and *nikah sirri* (unregistered marriage) traditions observed within the Banjar community.⁸⁷ Additionally, religious court judges consider local customs

⁷⁸ Ahdi Makmur, “Peranan Ulama dalam Membina Masyarakat Banjar di Kalimantan Selatan,” *Miqot: Jurnal Ilmu-Ilmu Keislaman* 36, no. 1 (June 2, 2012): 181–82.

⁷⁹ Hamdani, Masykur, and Hamidah, “Akad Pernikahan melalui Zoom,” 428.

⁸⁰ Yasrul Huda, Jajat Burhanuddin, and Mahmood Kooria, “Strengthening the Shafi‘i Madhhab: Malay Kitab Jawi of Fiqh in the 19th Century,” *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (December 15, 2023): 259–73.

⁸¹ See: Effendi, *Problematisa Hukum Keluarga Islam Kontempore*, 4–6; Sallom, “Interpretasi terhadap Syarat Ijab Kabul,” 172.

⁸² Kamrani Buseri, “Spiritual Culture of Banjar Sultanate (Historical, Hermeneutic and Educational Approach),” *Jurnal Ilmiah Peuradeun* 5, no. 3 (September 28, 2017): 303–18.

⁸³ See: Wardatun Nadhiroh, “Nalar Keberagaman Masyarakat Banjar: Dari Mistis-Realis hingga Tradisionalis-Kritis,” *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 18, no. 2 (December 28, 2019): 257–58; Eka Suriansyah, “Perkawinan Adat Banjar dalam Perspektif Struktural Mitos Levi-Strauss,” *El-Mashlahab* 9, no. 1 (July 25, 2019): 87–100.

⁸⁴ Anis Masykhur, “Titik Singgung Hukum Islam dengan Hukum Adat pada Naskah Perundang-Undangan Kerajaan Islam di Nusantara,” *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (December 3, 2020): 295–306.

⁸⁵ Zein Firdaus, Muhammad Marbawi, and Muhammad Wildan Afif, “Banjar Cultural Marriage Taboos and Analysis of the Prohibition of Marriage in Kitabun Nikah by Sheikh Muhammad Arsyad al-Banjari,” *El-Usrah: Jurnal Hukum Keluarga* 6, no. 1 (July 1, 2023): 183–92.

⁸⁶ Munisah Munisah et al., “Barambangan: Dynamics and Challenges in Resolving Husband and Wife Disputes in the Banjar Community,” *Syariah: Jurnal Hukum dan Pemikiran* 23, no. 1 (July 17, 2023): 50–60.

⁸⁷ Anwar Hafidzi et al., “Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan,” *Al-Abkam* 32, no. 2 (October 30, 2022): 153–68.

during their legal deliberations.⁸⁸ However, tensions may arise between indigenous customary practices aimed at preserving communal identity⁸⁹ and the principles of Islamic law in certain marriage traditions.⁹⁰

The phenomenon of online marriage contracts has led to the issuance of fatwas by various Islamic community organisations.⁹¹ During the 7th Ijtima' Ulama' Fatwa Commission in Jakarta from November 9-11, 2021, MUI issued a fatwa affirming the legality of online marriage contracts. This decision is based on their interpretation of *ittihād al-majlis*, especially in situations where the parties involved are unable to be physically present or represented during the marriage contract. The process involves the marriage guardian, groom-to-be, and two witnesses connecting through a virtual network, incorporating audio and visual elements. This interaction must occur simultaneously in real-time, with an emphasis on verifying the existence and accurate identity of all parties involved. Prior to formalising the online marriage contract, MUI suggests that the prospective groom or marriage guardian who is unable to attend first delegate their authority through *tawkiil*. Additionally, MUI recommends that the prospective bride and groom register their marriage with a certified marriage official, typically at the local KUA.⁹²

Before MUI, Muhammadiyah pioneered the acceptance of online marriage contracts. In 2008, a decade prior to the onset of the COVID-19 pandemic, Muhammadiyah officially endorsed the legality of online marriage contracts. Muhammadiyah's interpretation of *ittihād al-majlis* suggests that *ijāb* and *qabūl* need only be pledged simultaneously and are not required to occur in the same physical location. The organisation draws an analogy between the validity of online marriage contracts and contracts made by distant parties through letters or messengers. In an era with limited communication tools, such contracts were deemed valid and fulfilled the criteria of *ittihād al-majlis*. In the technologically advanced age, the process of *ijāb* and *qabūl* via online platforms is considered more practical and justifiable.⁹³

Unlike MUI and Muhammadiyah, NU does not allow online marriage contracts. In 2009, the PWNU of East Java issued a fatwa declaring such contracts invalid during Baḥth al-Masā'il activities at the Ministry of Religious Affairs Training Office in Surabaya.⁹⁴ This position was strengthened by the *Baḥthu'l-Masā'il ad-Dīniyya wa al-Mawḍū'iyya* Commission during the 32nd NU Congress in Makassar in 2010. The commission discussed *ittihād al-majlis* and its implications for buying and selling contracts. While NU permits electronic transactions for buying and selling, the same standard cannot be applied to online marriage

⁸⁸ Yusna Zaidah, A. Fahmi Al-Amruzi, and A. Sukris Sarmadi, "Unveiling the Role of Local Cultural Considerations in Judicial Discretion: An Analysis of Inheritance Decisions in the Religious Courts of South Kalimantan," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 1 (June 24, 2023): 47–58.

⁸⁹ Zaenudin Mansyur, "Self-Esteem and Fixed Price in Islamic Law (A Critical Study of the Pesuke Tradition among the Nobles of the Sasak Tribe of Lombok)," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 27, 2021): 180–206.

⁹⁰ Usman Al Farisi et al., "Negotiation Between Customary Law and Islamic Law: The Practice of Palang Pintu in the Traditional Marriage in the Betawi Muslim Community," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 2 (December 31, 2023): 268–85.

⁹¹ Ansori Ansori, "Position of Fatwa in Islamic Law: The Effectiveness of MUI, NU, and Muhammadiyah Fatwas," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 1 (July 29, 2022): 53–72.

⁹² MUI, "Keputusan Ijtima' Ulama Komisi Fatwa se-Indonesia VII."

⁹³ Tim Fatwa Majelis Tarjih dan Tajdid, "Akad Nikah via Video Call."

⁹⁴ Tim LBM PWNU Jawa Timur, *NU Menjawab Problematika Umat*, 1:898.

contracts. Without witnesses present at the signing, it is impossible to directly observe and verify clear pronunciation, making the contract invalid. NU recommends that the prospective groom delegate authority through an electronic message (*tawkiil*) to someone present at the signing to fulfil the requirement of *qabūl*.⁹⁵ Therefore, NU's stance on online marriage contracts is more conservative compared to that of MUI and Muhammadiyah.

Conclusion

Based on the discussion and analysis, three main conclusions can be drawn. Firstly, the *penghulus* of Banjarmasin City are divided into two factions: those who approve of online marriage contracts and those who disapprove, considering them invalid. Secondly, this divergence in opinion stems from differing interpretations of the concept of *ittihād al-majlis*. The group advocating for the validity of online contracts argues that virtual spaces can fulfil the criteria of *ittihād al-majlis*, while the opposing group insists on physical presence in a singular location. Thirdly, this disparity in perspective is influenced by the cultural framework of the Banjar community, which encompasses religious, social, and knowledge systems. The faction advocating for online matrimonial contracts is supported by scholars who have a contemporary perspective and are receptive towards technological advancements. The faction that refrains from endorsing online matrimonial agreements is aligned with the doctrines propagated by Tuan Guru in Martapura City. His teachings are influenced by the perspectives of scholars associated with the Shāfi'ī school of jurisprudence, which is known for its conservative stance and dedication to preserving religious traditions.

This research has important implications for understanding the ongoing interaction between religious tradition and technological progress in the context of Islamic law in Banjarmasin. It also sheds light on the impact of this interaction on the local population. These findings can be valuable for policymakers and legal practitioners in developing regulations that effectively address the increasing prevalence of online marriages in the region. Furthermore, this study provides a foundation for future research, which could involve larger and more diverse sample sizes and explore online marriage contracts in different cultural contexts. It is important to acknowledge the limitations and potential biases of this study, as this can guide future research in refining methodologies and expanding the scope of data collection, ultimately leading to a more comprehensive understanding of this issue within Banjarmasin society.

⁹⁵ Mun'im DZ, *Hasil-Hasil Muktamar 32 Nahdlatul Ulama*, 196.

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