

The Usage of ICT in Shariah: Online Marriage

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Abstract

Information and Communication Technology (ICT) has witnessed a rapid development and made a significant impact on human relationship, particularly in developing new means of communication. This new means of technology provides a system for its users to communicate with each other regardless of time, place and distance. This development has also affected the way Muslim practices Islam, such as the aqd of marriage which is now being conducted through the internet via video conferencing. However, there is no special provision in the Islamic Family Law in any states in Malaysia. Since Islam is a complete yet simple religion that has always encouraged Muslims to perform good deeds and prevent them from any hardship in life, Muslims are permitted to do things that can bring benefit (maslahat) to them. Hence, this paper discusses how an online marriage can be an alternative to the Muslim communities in general, and Malaysia in particular.

Keywords: Information and communication technology (ICT), ICT and Shariah, The usage of ICT, Marriage through online, Islam and ICT

1- Introduction

Information and Communication Technology (ICT) has made an impact and changed the way people communicate with each other. ICT which began with a telephone voice contact has now produced a direct two-way relationship, a combination of sound and pictures known as "video conferencing. Today, ICT has made it possible to connect more than two parties in separate places at the same time. ICT facilities are used widely in people's daily lives, whether for personal, family, society and business purposes. This technology provides a system for users to communicate with each other regardless of the time, place and distance. Indeed ICT use can strengthen the relationship among people and most importantly, it saves time and reduces expenses (Shaharom Sulaiman 2001).

We have to recognize that information technology has given new meaning to human life. It has compelled us to redefine our work and leisure activities as well. This is true when two large areas that previously are separated, now become a small global nation. In other words, the spread of ICT globally, could lead us to an electronic civilization. The development of ICT has also affected the way Muslim practices Islam. Interestingly, nowadays, the aqd of marriage has also been held online through the internet using video conferencing. Therefore, this paper investigates the possibility of online marriage in accordance to Islamic law.

2- The Shariah of Islam

The Shariah of Islam which is established by Allah is complete and appropriate, without limitation of time and place. Allah says: "... *This day I have perfected your Religion for you and have completed My favor upon you, and have chosen for you Islam as your Religion* "... (al-Qur'an, al-Maidah5:3)

It has been acknowledged by Muslim scholars that all the rules set by Allah have their own goals or objectives. This is because the Islamic *Shariah* aims to realize the overall level of *maslahah* (good), either by means of the *maslahah* or abstain from *mafsadah* (Abd al-Salam 2010). Therefore, the decree of the law can be changed by certain factors such as changes in time, customs and norms of human beings. In general, the law to receive such wide ranging changes often occurs in the *muamalat*. This is because the law relating to *muamalat* is based on the principles of *maqasid al-shariah*, which is to obtain the betterment and avoid harm (al-Zuhayli 1997). Thus, one of the legal maxim states "No doubt there are changes in *hukm* because of changes of times." (Azzam 2005).

The legal maxim mentioned above certainly gives space to people to take advantage of all available technological facilities as long as it does not conflict with the laws of Allah. This is precisely the main characteristics of Islamic *Shariah* in the form of fixed in the fundamental aspects, and flexible policies in its branch (al-Qaradawi 1985). Hence, it has given the Islamic jurisprudence strength to face challenges and problems in the human life successfully. Each new problem can be given appropriate solution based on the Qur'an, Hadith, or taken into account the spirit of Islamic law and *maqasid al-shariah* (Zaharudin 2011: ح).

The question whether *fiqh* has the ability to adapt to social reality or not, should not arise. Disciplines of *fiqh* can be mobilized to adapt social realities and changes in society.

Before reviewing the validity of online marriage through the internet, it is very important for us to first, examine and understand the meaning of marriage in Islam in brief.

3- Meaning of Marriage

According to *al-Shafi'iyah*, marriage is a contract that would legalize sexual intercourse between husband and wife with the manner permitted by Islamic law. It is called marriage because it gathers and unites two people (al-Khin et al 2003).

Among the benefits of marriage is to protect the person from committing the forbidden. At the same time, it aims to safeguard the human lineage from extinction. Furthermore, a marriage enables the setting up of a family, as well as a complete and strong community (al-Zuhayli 1997).

4- Pillars of Marriage

Al-Zuhayli (1997), mentions that the majority of scholars revealed that there are four pillars of marriage; *Sighah* (consent & *qabul*), future wife, future husband, and guardian. Meanwhile, scholars from the *hanafi* school, accept the final offer (bid) and *qabul* (reception) only as the pillar of marriage.

Each of these pillars has certain conditions such as the pronouncement of consent and *qabul* should be clearly mentioned. The prospective wife and husband also must be determined. Guardian and witness must be Muslims, man and in *ahliyyah* (sane) and other conditions.

Through the current ICT facilities, all the pillars and conditions of the marriage can be realized at the same time. But the different is only with regard to the place that the marriage or *aqad* will be held in. For example; a guardian can be in Malaysia, while the two witnesses are in Morocco.

5. Examples of Marriage through the Internet

In Indonesia, the internet's first marriage took place on Wednesday, December 11, 2005 in which the bride was in Bandung, while the groom was in California, USA. Through video conference and speakers provided by PT Telkom Bandung, the bride and groom expressed their consent and *qabul*. The marriage is considered valid by religious leaders in Bandung. This wedding last for 25 minutes at a cost of Rp100 thousand (14 Jan 2006, Utusan Malaysia, Kuala Lumpur). In India, an online marriage took place in Lucknow in 2005, in which the bride was in India, while the groom was in Dubai, and certified by the local scholars. In Pakistan, an online marriage took place in 2003, where the bride was in Karachi while the groom was in Virginia.

6. The Views of Scholars in Malaysia

The mufti of Perak agreed that marriage can be done through video conference with condition that it fulfills all pillars and conditions (Berita Harian 17th July 2007). The same view was shared by the Mufti of Perlis, in which an online marriage can be accepted if all conditions have been fulfilled (Berita Harian 17th July 2007).

7-The Benefits of Online Marriage

i. The bride and groom are separated and in such circumstance, it would be difficult for both parties to be in one place at the same time. Therefore, the use of ICT will ease them help to overcome the hardship. In relation to this, the legal maxim says: "The difficulty was the cause to the facility".

ii. To speed up the marriage and prevent the forbidden or loss of fiancée. Given the current situation where both sides could be exposed to the elements of wrongdoing or an attempt where the fiancée could be loved by others. Then, the *aqd* should be carried out as soon as possible. Once again, technology can play an important role to achieve this noble purpose. In this regard, the legal maxim that can be attributed here is "Adversity needs to be removed".

iii. It also involves low expenditure. Online marriage can save a lot of expenses. Imagine the usual expenses incurred in the event of both parties and a party delegation to attend the wedding place. On the other hand, ICT facilities are easily available and could cut a lot of cost.

8. Validity of Online Marriage

Table 1.0

Common Marriage		Online Marriage	
Guardian (<i>Wali</i>)	✓	Guardian (<i>Wali</i>)	✓
Future Husband and Wife	✓	Future Husband and Wife	✓
Witness	✓	Witness	✓
<i>Ijab</i> and <i>Qabul</i> (<i>Aqd</i>)	✓	<i>Ijab</i> and <i>Qabul</i> (<i>Aqd</i>)	✓

Table 1.0 shows the existence or presence of the conditions required in the two types of marriage. The only difference is the final offer and *qabul*. The common marriage occurs in one place while the online marriage occurs in two separate places. However, the latter will take place simultaneously because they are linked by the advanced technology of telecommunications. Moreover, this technology can display the images of the separate places, and is interactive. This means that both parties are able to fulfill all conditions of the pillars of a marriage, and witness the ceremony together. Besides that, online marriage can also be recorded and documented in a digital form as evidence.

9. Provision of the law

There is no special provision in respect of the online marriage mentioned in any enactment or act of Islamic Family Law in any State or Federal Territory in Malaysia. However, there are provisions that deal with places. The Islamic Law (Federal Territories) Act 1984 (Act 303), Rule 20 states: -No marriage shall be solemnized in the parish except the *qaryah* of mosque in which the woman resides, but the Registrar or Judge who give permission to marry under section 17 or 18 may give permission for the marriage to be solemnized elsewhere, whether in Federal Territory or in any states in Malaysia.

Permission must be obtained before the marriage solemnization is referred to in Regulation 19, namely; "No marriage shall be solemnized unless given permission to marry: -

(A) by the Registrar under section 17 or by the Judge under section 18, if the marriage involves a woman resident in the Federal Territory; or

(B) by the authority of a State, if the marriage involves a woman resident in that State" (The Islamic family law (Federal Territories) Act 1984. 18).

In general, the law has already stipulated that all intentions for marriage must first obtain permission from the authorities. So far there is no legal provision that outlines the rules for online marriage in Malaysia.

10. Suggestions

- i. There should be clear procedures explaining the needs and the things that must be available prior to solemnizing a marriage online.
- ii. It is important to ensure that the marriage will be conducted smoothly, without any interference due to ICT problem.

- iii. The correct information about the concept of online marriages should be delivered to the public so as not to create any confusion or awkwardness in the community.
- iv. There is also a need for the development of ICT so that Muslims will benefit from it as long as it does not conflict with Islam.
- v. Religious officers and offices should be equipped with ICT knowledge and infrastructure, so that online marriage can be arranged and organized by the authorities.

11. Conclusion

Islam as a complete religion has always encouraged Muslims to do good deeds and prevent them from any hardship in life. Therefore, Muslims are permitted to do things that can bring benefit or *maslahat* for them. In view of the rapid development of ICT, and the busy life that many lead today, an online marriage can be an alternative to Muslim communities in general, and Malaysia in particular. Through the use of ICT, some of the goals and human needs can be met.

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