

## INTERPRETATION OF *IJAB KABUL* CONDITIONS: PROS AND CONS OF *ITTIHAD AL-MAJLIS* IN MARRIAGE CONTRACT FROM A CONTEMPORARY *ULAMA* PERSPECTIVE

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### Abstract

Currently, numerous issues must be addressed by a human, particularly Muslims who follow strict rules in their daily lives. Islam regulates marriage in great detail including the issue of *Ittihad al-majlis* in the marriage contract (*akad*), which is now an issue due to technological advancements and human elasticity. The purpose of this study is to deeply examine the development of the concept of *Ittihad al-majlis* as an interpretation of the terms of the *ijab kabul* which are the pros and cons of society. This study used a qualitative descriptive approach with the library research method as a data source to determine the provisions of Islamic law and *sharia* principles to solve the problems. The study indicates that *Ittihad al-majlis* in the marriage *akad* has several meanings according to the views of the Islamic scholars (*ulama*) of the four *madzhab ulama* and contemporary *ulama*. Some argue that *Ittihad al-majlis* does not have to be united in one place, but the consent (*ijab*) and acceptance (*kaful*) should be in one place; it means that the person who will perform the *ijab* and *kaful* does not have to be in the same place as well as the witnesses.

**Keywords:** Ijab Kabul, Ittihad al-majlis, Pernikahan, Contemporary Ulama

### Abstrak

*Seiring dengan perkembangan zaman, banyak problematika yang harus dihadapi oleh umat manusia, terlebih umat Islam yang memiliki aturan kebusus dalam menjalani kehidupan. Islam mengatur masalah pernikahan dengan sangat detail mengenai aturan-aturan yang harus ditaati oleh penganutnya, termasuk masalah ittihad al-majlis dalam akad nikah yang kini menjadi problem sebab perkembangan teknologi dan elastisitas manusia. Tujuan penelitian ini adalah untuk mengkaji secara lebih dalam perkembangan konsep ittihad majlis sebagai interpretasi syarat ijab kabul yang menjadi pro-kontra masyarakat karena perkembangan zaman yang semakin maju dan kondisi yang tidak terduga. Artikel ini menggunakan pendekatan deskriptif kualitatif dengan metode penelitian pustaka sebagai sumber datanya. Berdasarkan data dari bahan pustaka akan penulis gunakan untuk menentukan terkait ketentuan hukum Islam dan prinsip-prinsip syariat guna memecahkan permasalahan. Hasil penelitian ini menunjukkan bahwa ittihad al-majlis dalam akad nikah memiliki beberapa arti menurut pandangan ulama empat madzhab dan ulama kontemporer. Sebagian berpendapat bahwa ittihad al-majlis tidak harus bersatu dalam satu tempat, melainkan ijab dan kabulnya lah yang berada dalam satu tempat, artinya orang yang akan melakukan ijab dan kabul tidak harus berada di satu tempat begitu juga dengan saksi-saksinya.*

**Kata Kunci:** Ijab Kabul, Ittihad al-majlis, Marriage, Ulama Kontemporer

## INTRODUCTION

Islamic *Sharia* is the last *Sharia* whose form and nature are universal, not only for specific communities or ethnic groups, but

for all humans throughout the times, integral, global, and covers all aspects of life. This is done so that Islamic law can continue to govern the lives of various nations and

generations.<sup>1</sup> The function of *sharia* has two broad lines, namely humans as servants who must automatically devote themselves to their creators and humans as types of living beings who were created as the best living beings, who regulate and manage the order of life in the world.<sup>2</sup>

Marriage, as implemented by Muslims, is among the Islamic law that has been regulated by sources of Islamic law. Marriage is an inner and outer bond formed by a man and a woman as husband and wife under the conditions of a marriage *akad* governed by law, to create a happy and eternal family based on the Belief in the one and only God.<sup>3</sup> Marriage is a strong bond or *mitsaqan ghalidhan* to obey Allah's commands, and doing so is worship.<sup>4</sup>

The fulfillment of the conditions and pillars of marriage influences whether or not a marriage is valid. One of them is the *akad* or sentence of *ijab* and *kabul*. *Akad* is a very sacred procession in marriage, so the *ulama* agree that a marriage will be recognized and considered valid if it is carried out with an *akad* that includes *ijab* and *kabul* between a man and a woman, or between someone who represents him, and becomes invalid if it is only based on love without an *akad*.<sup>5</sup>

The changing of times and the advancement of human civilization and technology have caused the marriage to no longer only be performed in person, but also began to appear boldly or online, such as by

telephone, video call, Google Meet, Zoom, and others. Several factors do not support doing the *Ijab Kabul* in the same place, one of which is being outside the region or abroad, making it impossible to return, and the problems that occurred during the COVID-19 pandemic, which required people not to meet at the right time for quite a long time.

Online marriage is one of the marriage practices in which the handover *akad* is carried out over the phone or the internet, so that the male and female sides, as well as the guardian and witnesses, are not in the same place, and what is displayed is only a visual form of the side concerned via the assistance of electronic devices connected to the internet network, such as mobile phones or laptops connected to wifi or data packages.<sup>6</sup> The *ulamas* differ on this issue, with the permissibility and prohibition of online marriage each having a strong basis that is used as a guide in extracting the law of each group.

## DISCUSSION

### Basic Marriage Concepts

#### Definition of Marriage

Marriage is derived from the word *nakaḥa yankihū nikaḥan*, which means to engage in sexual activity. In another way, marriage is a partnership between a man and a woman that is legally recognised and carries with it rights and obligations for both sides.<sup>7</sup> Marriage is an *akad* that can make the association of men and women who are not *mahrums* become *halal* and have limited rights and obligations.<sup>8</sup> According to T.M. Hasbi Ash Shiddiqy, marriage is an *akad* that was created to recognise men and women who

<sup>1</sup> Abdu Jabbar Adlan, *Perbandingan Madzhab Fikih* (Jombang: UNHASI, 1982): 10.

<sup>2</sup> H Sutisna, *Syariah Islamiyah* (Bogor: Penerbit IPB, n.d.).

<sup>3</sup> Aulia Muthiah, *Hukum Islam: Dinamika Seputar Hukum Keluarga* (Yogyakarta: Pustaka Baru Press, 2017): 43.

<sup>4</sup> *Kompilasi Hukum Islam (KHI)* (Permata Press, n.d.).

<sup>5</sup> Sayyid Sabiq, *Fiqih Sunnah*, ed. H Kamaluddin and A Marzuki, Indonesia (Bandung: Al-Ma'arif, 1986): 40.

<sup>6</sup> Miftah Farid, "Nikah Online Perspektif Hukum," *Jurisprudentie* 5 (2018): 179.

<sup>7</sup> Abdul Haris Naim, *Fiqih Munakahat* (Kudus: STAN Kudus, 2018): 17.

<sup>8</sup> Beni Ahmad Saebani, *Fiqih Munakahat* (Bandung: Pustaka Setia, 2018): 9.

had been chosen by the law to live lawful domestic lives.

Numerous *Fiqih ulama* believe that marriage is a *akad* in which the law establishes the legality of intimate connections based on the marriage.<sup>9</sup> This interpretation is formed from a legal standpoint, which has made what was before prohibited in the interaction between men and women legitimate and even a source of reward because, in its application, marriage is religious advice and has a goal or objective to win Allah SWT's favor. Intending to create a *sakinah, mawaddah*, and Allah's mercy family, marriage is an *akad* or binding relationship that will allow men and women to engage in sexual activity.<sup>10</sup>

However, *ulama* have different perspectives on what marriage is. Marriage is referred to by the Hanafi Madzhab as a "deliberate *mut'ah akad*," which means that a man can exert total control over a woman's body for his pleasure.<sup>11</sup> The Syafi'i Madzhab defines marriage as an *akad* having ownership to enter into a marital connection or intercourse, which is stated in the words *ankaba* or *tazwij* or in words that equate the two. This definition indicates that with marriage, a person can obtain or enjoy his spouse.<sup>12</sup> According to the Hambali Madzhab, marriage is an *akad* that employs marriage *lafadz* or *tazwij* to obtain fulfillment, allowing men to obtain satisfaction from women and vice versa while maintaining a record that both sides have through a marriage *akad*.<sup>13</sup> The Maliki Madzhab, on the other hand, views marriage as an *akad* that

signifies *mut'ah*, or the ability to acquire satisfaction without paying a price.<sup>14</sup>

Marriage is a very strong commitment, or *mitsaqan ghalidhan*, to obey Allah's orders and carry them out in worship, according to the Compilation of Islamic Law (KHI).<sup>15</sup> Meanwhile, Chapter I of Law Number 1 of 1974 concerning marriage, emphasizes that marriage is an inner and outer relationship between a man and a woman as husband and wife to create a joyful and eternal family (home) based on God Almighty.<sup>16</sup>

From some of these insights, it can be deduced that marriage is an *akad* between a man and a woman who had never been together before in order to create a happy family based on their shared willingness and love. This relationship is justified by *syara'* so that it creates a correlation.

### Legal Foundation for Marriage

The Al-Qur'an and Hadith serve as Islam's legal foundation for marriage. This is evident from a large number of texts (*nash*) that contain it. These two sources serve as the foundation for the legalization of marriage, and whether a marriage is recognized as valid or not depends on how well it is harmonized. With these two legal authorities, among the Qur'anic verses that serve as the foundation for marriage's validity, are as follows:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَشْنَىٰ وَثَلَاثَ وَرُبَاعَ ۖ وَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَٰلِكَ أَدْنَىٰ أَلَّا تَعُولُوا

Meaning: "If you fear you might fail to give orphan women their 'due' rights 'if you were to marry them', then marry other

<sup>9</sup> Beni Ahmad Saebani, *Fiqih Munakahat 1* (Bandung: Pustaka Setia, 2018): 60.

<sup>10</sup> Muthiah, *Hukum Islam: Dinamika Seputar Hukum Keluarga*: 64.

<sup>11</sup> Saebani, *Fiqih Munakahat 1*: 11.

<sup>12</sup> Saebani: 11.

<sup>13</sup> Saebani: 11.

<sup>14</sup> Saebani: 11.

<sup>15</sup> *Kompilasi Hukum Islam (KHI)*.

<sup>16</sup> *Undang-Undang Pernikahan* (Permata Press, n.d.).

women of your choice—two, three, or four. But if you are afraid you will fail to maintain justice, then 'content yourselves with' one or those 'bondwomen' in your possession. This way you are less likely to commit injustice". (Q.S. An-Nisa':3).<sup>17</sup>

The above verse reveals that marriage should be with a woman who is loved or equally in love. It is permissible to have more than one wife (polygamy) if it is feared to violate God's law, such as not being able to act fairly in fulfilling the rights of orphans, and it is also permissible to have polygamy if it can treat all wives fairly in providing a living and having sex with them. If not, the act of polygamy will result in immorality (a sin for the husband).<sup>18</sup>

## Marriage Law

### 1. Obligatory

Marriage is required if the person is financially stable and capable of being fair to the woman he marries, and there is a strong likelihood that he will commit adultery if he does not marry. The distinction with fardhu marriage law is that the arguments and causes in fardhu law are *qath'i* or definite. In contrast, in compulsory marriage law, the arguments and causes are based on *dẓanni* or strong suspicions.<sup>19</sup>

### 2. Haram

Marriage becomes *haram* if a person's finances are unstable, and if forced to marry, the family will be persecuted. Marriage in this condition is clearly said to be *haram* because the purpose of marriage in Islam is to gain

the benefit of the hereafter.<sup>20</sup> This benefit is impossible to achieve if marriage is only used as an outlet for persecution, violence, and other illegal acts, and leaving the marriage is one of the main alternatives expected.<sup>21</sup>

### 3. Makruh

Marriage, according to the Shafi'i Madzhab, is legally *makruh* for someone concerned about his ability to fulfill his obligations to his wife.<sup>22</sup> It becomes *makruh* if someone is caught in the middle, such as someone who is financially capable and concerned about adultery, but believes he will abuse his wife if he marries.

### 4. Mubah

Marriage is permissible if a person can still maintain his lust without committing adultery but has no intention of having children and his *sunnah* worship is not abandoned or neglected if he marries.<sup>23</sup>

## Marriage Pillars and Conditions

Men and women must ensure that they have met the requirements of the marriage pillars before marrying because the pillars of marriage are essentially the essence of marriage, and if one of them is not fulfilled, the marriage is invalid.<sup>24</sup>

According to the majority of *ulama*, marriage has five pillars: a prospective husband, a prospective wife, a guardian, two witnesses, and *ijab kabul*.<sup>25</sup> The following

<sup>17</sup> Departemen Agama RI, Al-Quran dan terjemahan, (Jakarta: Departemen Agama RI, 1986). 115.

<sup>18</sup> Moh Anwar, *Fiqih Islam* (Karawang: Sinar Ilmu, 1979): 88.

<sup>19</sup> Muhammad Abu Zahrah, *Tarikh Al-Madhabib Al-Islamiyyah Fi Siyasab Wa Aqa'id Wa Tarikh Al-Madhabib Al-Fiqhiyyah* (Kairo: Darul Fikri, n.d.): 21.

<sup>20</sup> Abdu Aziz Muhammad Azam and Abudl Wahab Sayyed Hawas, *Fiqih Munakabat Khitbah, Nikah Dan Talak* (Jakarta: Amzah, 2011): 121.

<sup>21</sup> Zahrah, *Tarikh Al-Madhabib Al-Islamiyyah Fi Siyasab Wa Aqa'id Wa Tarikh Al-Madhabib Al-Fiqhiyyah* : 151.

<sup>22</sup> Slamet Abidin and Aminuddin, *Fiqh Munakabat Jilid 1* (Bandung: Pustaka Setia, 1999): 23.

<sup>23</sup> Abidin and Aminuddin: 23.

<sup>24</sup> Aulia Muthiah, *Hukum Islam, Dinamika Seputar Hukum Keluarga* (Yogyakarta: Pustaka Baru Press, 2017): 61.

<sup>25</sup> *Kompilasi Hukum Islam* (KHI).

conditions are present in the pillars. The requirements of the husband are as follows:<sup>26</sup>

1. He is a Muslim
2. Men who are not *musykil* (sissy), i.e. their status is unclear; if you marry a man of the abstruse type, the marriage is invalid.
3. The person is clear, the origin is known, the identity is clear, and he or she is present at the wedding.
4. Able to give approval, reasonable, not insane, understand the meaning of marriage and the *akad* to be pronounced
5. There is no marriage barrier because there is no relationship of descent, marriage, or marital ties between the prospective husband and wife.

The conditions for a prospective wife:<sup>27</sup>

1. She is Muslim.
2. Women, not *musykil* (sissy), i.e. if a person's status is unclear, marrying an obscure man is invalid.
3. The person is clear, the origin is known, the identity is clear, and the person was present at the wedding.
4. It is reasonable, not insane, and understands every meaning of marriage *ijab* and *kabul*.
5. There are no barriers to marriage, such as *nasab* relationships, breastfeeding, or marital ties, because you do not belong to the group of people who are forbidden to marry. If the woman is not still in her *iddah* period or is someone else's wife.

The age of the prospective husband and wife is not explained in detail in classical fiqh; all that is required is that the prospective partner has reached puberty, but the Compilation of Islamic Law provides an

explanation based on article 15 paragraph 1 of the KHI, namely: "Marriage should only be performed for the benefit of the family and household by prospective bride and groom who have reached the age stipulated in Article 7 of Law Number 1 of 1974, namely the prospective husband is at least 19 years old and the prospective wife is at least 16 years old." In classical *figh* the age of the prospective husband and wife does not matter. Article 7 was amended in 2019 to state that "marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years."

A marriage guardian has the following requirements:

1. Male,
2. Muslim,
3. adult,
4. has guardianship rights, and
5. his guardianship is not impeded.

The condition that must be met when married is guardianship because marriage without the presence of a guardian is invalid. Guardians of lineage and guardians of judges are two types of guardians in marriage. The *nasab* guardian is the woman's closest relative. If there are no lineage guardians or if they are not Muslim, the woman can transfer her to the guardian judge, who will become her guardian.<sup>28</sup>

Witnesses must meet the following requirements:

1. Be present at the *kabul* and approval;
2. Understand the meaning of the *akad*;
3. Be Islamic and fair, mature, reasonable, free of memory disorders, and not deaf.<sup>29</sup>

<sup>26</sup> Saebani, *Fiqh Munakahat 1*: 110.

<sup>27</sup> Saebani, *Fiqh Munakahat 1*: 111.

<sup>28</sup> Muthiah, *Hukum Islam: Dinamika Seputar Hukum Keluarga*: 65.

<sup>29</sup> Saebani, *Fiqh Munakahat 1*: 123.

Marriage witnesses must be two Muslim men who are mature and not deaf. Both must be present at the time of the marriage *akad* because the presence of witnesses determines the validity of a marriage *akad*. This is confirmed by the Compilation of Islamic Law in Chapter 26, which states: "Witnesses must be present and witness directly the marriage *akad* and sign the Marriage Certificate at the time and place where the marriage *akad* takes place."

The following conditions apply to *Ijab Kabul*:

1. The Guardian declares that he will marry;
2. The prospective husband declares *kabul*;
3. Using marriage *sighat, tazwij*, or the similarity of the two meanings;
4. Between *Ijab* and *Kabul* are continuous;
5. Between *Ijab* and *Kabul* the meaning is clear;
6. The person related to *Ijab* and *Kabul* is not in a state of Ihram, Hajj, or Umrah.<sup>30</sup>

### Wisdom of Marriage

In Islamic law, marriage is also described as a bond of promise between a man and a woman who has chosen to live side by side. Marriage is a gate that is regular and natural for humans to pass through. Religious adherents believe that the importance of a relationship depends on what God has decreed for his followers. The husband and wife connection is perceived by those who do not base their marriage or relationship on divine will as merely a social *akad* that requires the bride and groom to coexist for a predetermined amount of time.<sup>31</sup>

<sup>30</sup> Saebani: 123.

<sup>31</sup> Saebani, *Fiqih Munakahat 1*: 127.

Marriage typically involves an agreement between related people who carry out the union while taking into consideration the economy, psychology, and the needs of the children who will be born. Marriage is a holy, righteous, and beautiful connection, and religious law has acknowledged this. Marriage is a strong barrier that will prevent people from committing sins out of lust for things that are forbidden if one were to judge it according to religious standards. Due to the unfortunate reality of family life, some people consider marriage as a "rat trap" where "the inside wants to get out and the outside wants to get in."<sup>32</sup> It is essential to realize that this is a type of uncertainty for the persons involved in the marriage journey rather than a failing of the marriage structure.

In the book *How to Pick a Mate* by Dr. C.R. Adams, a psychiatrist concluded several assumptions that<sup>33</sup>

1. Married people live longer than single persons.
2. fewer persons who are married and more singles are incarcerated.
3. Most suicide and self-harm perpetrators are single.
4. Compared to married persons, single people are more likely to have a mental illness.

According to Sayyid Sabiq, Islam recommends marriage because those who do so will have a positive impact on their lives.

Rahmat Hakim revealed marriage wisdom as follows:<sup>34</sup>

1. Connecting friendships
2. Controlling bad lust
3. Avoiding adultery
4. Human charity work relay
5. Life Aesthetics
6. Fill and enliven the world

<sup>32</sup> Saebani: 128.

<sup>33</sup> Saebani: 127.

<sup>34</sup> Rahmat Hakim, *Hukum Pernikahan Islam* (Pustaka Setia, 2000): 27.

## 7. Teach lineage purity

**The Role of *Ijab Kabul* in the Marriage *Akad***

Marriage is an inner and outer bond formed by the bride and groom, as well as the two families involved, voluntarily. Given that willingness and availability are unknown to anyone other than himself, *ijab* and *kabul* are made as manifestations of that. Thus, *Ijab Kabul* is a declaration or announcement that reflects the voluntary feeling between the side involved. As a result, Sayyid Sabiq emphasizes in sunnah fiqh that *ijab* to *ijab* is a necessary pillar for the marriage *akad*.<sup>35</sup> The sentences required in the marriage contract (*ijab* and *kabul*) are essentially *lafadz* derived from the marriage sentence or *ta'wiz*. As a result, marriage is invalid.

*Ijab* and *Kabul* implementation generally begins with the woman's family as a sign of willingness to give up her daughter and the delegation of God's mandate to her future husband, followed by a *kabul* speech from the prospective husband as a sign of willingness and ability to accept the mandate. The expression of *ijab* is similar to that of a guardian: "I marry you to my child..... binti..... with a dowry....." While the prospective husband's expression of *kabul* such as: "I accept the marriage and the marriage..... binti..... with a dowry... paid in cash." However, in practice, the *ijab* may be pronounced from the male side and then accepted) from the female side.<sup>36</sup>

Still related to *Ijab* and *Kabul*, in addition to dealing with *shighat* (speech) and the procedure for its implementation, other requirements must be met for the *akad* to be valid under Islamic law, including:

1. *Ittihad al-majlis* (one assembly)<sup>35</sup> Sabiq, *Fiqih Sunnah*: 278.<sup>36</sup> Ibnu abidin, *Hasyiyah Raddul Muhtar Ala Durriil Muhtar*, (Mesir: Mustafa al-Baby al-Halaby, 1996): 9.

2. Consistency between *ijab* and *kabul*. It refers to the *mahallul aqdi*, or place of the *akad*, which is in the place of the prospective wife and the dowry mentioned by the guardian or prospective husband.<sup>37</sup>
3. *Ijab* and *mujib* consistency, which means that someone who has said *ijab* may not withdraw it until the *kabul* in question has been recited.<sup>38</sup>
4. *Ijab* and *kabul* must not be interrupted, which means that after *mujib* says *ijab*, the groom must immediately acknowledge *kabul* without being interrupted by anything.<sup>39</sup>

**The Basic Concept of *Ittihad al-majlis* in the Marriage *Akad***

Efendi cites the agreement of *mujtahid ulama* to require the union of the *majlis* for *ijab* and *kabul* in Abdurrahman al-book Jaziri's *al-Fiqh 'ala Mazahib al-Arba'ah*.<sup>40</sup> Thus, if the *majlis* for *ijab* differs from the *majlis* for *kabul*, the marriage *akad* is deemed invalid.<sup>41</sup> *Ittihad al-majlis* has two meanings, as follows:

First, *Ittihad al-majlis* states that *ijab* and *kabul* must be carried out in one marriage *akad* rather than in two separate periods, which means that *ijab* is pronounced in one *akad*, then after the *ijab akad* is dissolved, the *kabul* is pronounced on the next event.<sup>42</sup> This explains that while two separate consecutive *akad* can be performed in the same place, the marriage *akad* is invalid due to the

<sup>37</sup> Wahbah Zuhaili, *Al-Fiqh Sunnah Wa Adilatuhu* (Beirut: Darul Fikri, 1989): 51.<sup>38</sup> Zuhaili: 51.<sup>39</sup> Zuhaili: 52.<sup>40</sup> Satria Effendi, *Probematika Hukum Keluarga Islam Kontemporer*, ed. Jaenal Arifin, Ah Azharuddin Lathif, and M Nurul Irfan (Jakarta: Prenada Media, 2004): 4.<sup>41</sup> Effendi: 4.<sup>42</sup> Effendi: 4.

disconnection of the relationship between *ijab* and *kabul*.<sup>43</sup> Thus, the requirement for a unified *majlis* is related to the necessity of time continuity between *ijab* and *kabul*, rather than place unity. Because, even if the *majlis* is the same, if it is performed at two different times or separately, the continuity between the implementation of the *ijab* and the implementation of the *kabul* is lost, and the marriage *akad* becomes invalid. Sayyid Sabiq emphasised the importance of there being no separation between *ijab* and *kabul* when explaining the concept of *ittihad al-majlis*.<sup>44</sup>

The essence of *ittihad al-majlis* requirements is the issue of the need to continue the *akad* between *ijab* and *kabul*, it is required that there is no meaningful pause or break between *ijab* and *kabul* intended as support for the certainty that *ijab* and *kabul* are truly a manifestation of both side's willingness to hold a marriage *akad*, and *kabul* which is pronounced immediately after the approval of the guardian is pronounced among the things that show the prospective husband's willingness. However, if there is a delay between the *ijab* and the *kabul*, the prospective husband may not be ready to recite the *kabul* at that time, and the marital guardian may have resigned from his responsibility or may not be in his original position. Therefore, mutual permission and *kabul* are required to further verify that everyone involved is still willing to do it. We can infer that *Ijab* and *Kabul* are inextricably linked parts of a marriage *akad*.

Second, the viewpoint that *ittihad al-majlis* is necessary to ensure continuity between *ijab* and *kabul* also relates to the responsibilities of two witnesses who are required to be able to verify with their own eyes whether the approval and *kabul* were

spoken by two people who commit.<sup>45</sup> The two witnesses have to verify the validity of the *ijab* and *kabul* from an editorial perspective as well as from the perspective of confirming that both sides have stated their *ijab* and *kabul*.

*Ittihad al-majlis* requirements exist not just to preserve time, but also as *al-mu'ayanah*, that is, when both sides are present in the same location. Only then can the requirement be fulfilled because it will be possible to hear the side's direct expressions of assent and *kabul*. According to Shafi'i Madzhab, the marriage *akad* bears the definition of *ta'abud*, which is accepted as it is, and the process for putting it into practice includes *taufiqiyah*, which means that it must adhere to the guidelines that the Prophet Muhammad told his followers to follow.<sup>46</sup>

### ***Ittihad al-majlis in the Ijab Kabul Perspective of the Four Madzhab***

Many mazhabs classify the conditions for marriage as pillars, one of which is the necessity that the *ijab* and *kabul* be given in a single assembly. Others, however, classify it as a condition, while other schools do not, for the reasons that follow:

#### **Hanafi Madzhab**

The Hanafi Madzhab states that there are prerequisites for marriage that are partially linked to *sighat*, partially related to both spouses upholding their end of the bargain, and partially related to witnesses. *Ittihad al-majlis*, one of the *sighat*, is described as the continuity of time without reference to the unity of place.<sup>47</sup> It indicates that the words "*ijab*" and "*kabul*" are not broken up by other words or by engaging in an action

<sup>45</sup> Zuhaili, *Al-Fiqh Sunnah Wa Adilatubur*: 6535.

<sup>46</sup> Effendi, *Problematika Hukum Keluarga Islam Kontemporer*: 6.

<sup>47</sup> Abi Zakaria Al-Nawawi, *Raudhob Al-Thalibi Wa 'Umdah Al-Muttaqin*, Jilid IV (Beirut: Darul Fikri, 1996): 30.

<sup>43</sup> Effendi: 5.

<sup>44</sup> Effendi: 5.



that, in general, can be considered to diverge from the current *akad*. After the statement of approval has concluded, a declaration of *kabul* is not necessary. If the *ijab* lasts a little longer and there is a delay between the *ijab* and *kabul*, but the space between the two is not too great, which generally cannot be claimed to be a *akad*, then the *ijab* and *kabul* process is still legitimate.<sup>48</sup>

If a woman says, "I will marry myself to you," or if her father says, "I will marry my daughter to you," and the offending man leaves the gathering before giving his *ijab* because he is preoccupied at work, which may be interpreted as rushing from the gathering, and then says, "I accept," no marriage occurs and neither party shows up. Similarly, if a woman says, in the presence of two witnesses, "I marry myself to ... while the man is not there, and when the man I receive in the presence of two witnesses," then there will be no marriage due to the resemblance of the assembly is a prerequisite for marriage.<sup>49</sup>

The Hanafi Madzhab states that approval need not be given in a single assembly (place).<sup>50</sup> However, there must be an expediting in the marriage *akad*; if a woman says, "I am marrying myself with you," and the concerned man then adds, "I accept," the marriage *akad* is deemed legitimate, provided that there is an expediting in the marriage contract. If the submission is made without pronouncing, the marriage *akad* is deemed invalid.<sup>51</sup>

### Syafi'I Madzhab

*Ittihad al-majlis* in the marriage *akad* is not only a matter of continuity between the pronunciation of *ijab* and *kabul*, or, to put it another way, the continuity between one's

*ijab* and *kabul* of a marriage is not the only fundamental aspect of *ittihad al-majlis*. Instead, other conditions even merit to be met for the realisation of *ittihad al-majlis*.<sup>52</sup> *Ittihad al-majlis* consists of two crucial components that should complement one another. One of these components is the unifying space where the marriage *akad* was signed, known as the seat or room. This clause is under the notion of *al-faur* (immediately/directly), which states that the prospective husband must accept the *ijab* of *kabul* as soon as it is announced in the marriage *akad*. The prospective husband must promptly greet the guardian with a word of *kabul* if the guardian has given his assent. According to the Syafi'iyah circles, the problem of time continuity between *ijab* and *kabul* is critical, because *al-faur* is a symbol of the consistency of attitude towards the *akad* so that the voluntary element does not experience a shift in values, which eventually leads to a forced attitude.<sup>53</sup>

Another aspect of *ittihad al-majlis* in the Shafi'i school is the unification of the place of *akad* (*ittihad al-majlis aqdi*). This issue is related to the creed or testimony in the marriage *akad*, which states that the transaction must be seen and witnessed with the eyes that the series of *ijab* and *kabul* pronunciations are carried out as determined, and the *ijab* and *kabul* are truly from the two people who make the *akad*.<sup>54</sup> If this is the case, it is the responsibility of the two male witnesses to ensure that the *akad* in question is valid based on the correct belief.

This certainty includes not only the spoken utterances, but also the certainty of the people carrying out the *akad*, which

<sup>48</sup> Syaikh Abdurrahman A-Juzairi, *Fikih Empat Madzhab*, Jilid 5 (Jakarta: Pustaka Al-Kausar, 2017): 32.

<sup>49</sup> A-Juzairi: 32.

<sup>50</sup> A-Juzairi: 32.

<sup>51</sup> A-Juzairi: 32.

<sup>52</sup> MULTAZIM AA, "Konsepsi Imam Syafi'I Tentang Ittihadul Majlis Dalam Akad Nikah," *Mahakim: Journal of Islamic Family Law* 4, no. 2 (2020): 141, <https://doi.org/10.30762/mh.v4i2.2200>.

<sup>53</sup> AA: 141.

<sup>54</sup> AA: 141.

necessitates more precise criteria for witnesses. Utterances is not the things that needs to be proven in the testimony, but also related people using their senses: eyes and ear. This will convince the witness that the *ijab* and *kabul* comes from the two people who made the *akad*.<sup>55</sup>

### Hambali Madzhab

The servant school of thought reveals that *sigbat* marriage must use the pronunciation of marriage, while for *kabul*, saying “I accept or I am willing” is sufficient.<sup>56</sup> There are no *kabul* conditions that require my pronunciation to accept marriage, and *kabul* approval is said to be invalid if the *kabul* comes before the *ijab*, and *kabul* is recommended to be submitted immediately.<sup>57</sup> The long pause of pronouncing between *Ijab* and *Kabul* leads to the invalid *akad*.<sup>58</sup>

The Hambali *ulama* defines *ittihad al-majlis* as non-redactional (not necessarily in the same room). *Ijab* and *Kabul* can be pronounced simultaneously or in one *akad* directly and cannot be paused with other things, namely between *ijab* and *kabul* are done in one assembly. It means that between pronouncing of *Ijab* and *Kabul* is not interrupted by another sentence or by doing an activity that can be considered as turning away from the ongoing discussion.<sup>59</sup> *Kabul* is recommended to be delivered immediately. If it is late since the submission of the *ijab* until the two of them separate or are busy separately which leads to the rupture of the *ijab* and *kabul*, then the marriage is void. The

testimony of a blind man is acceptable as long as he believes in the voice.

### Maliki Madzhab

*Ittihad al-majlis* is defined by the Maliki *ulama* as occurring in one assembly, where approval and assent are spoken in unison. This definition is found in the book of fiqh of the four *ulama*.<sup>60</sup> That the condition for the person who is getting married is that all the sides concerned must be in the same place and time, this is because the *terms* of the bond can occur if in one assembly, if the *ijab* and *kabul* are not carried out in one assembly it will have an impact on the cancellation of the *ijab kabul*.<sup>61</sup> According to the Maliki madzhab, the implementation of the *Ijab* and *Kabul* must be carried out immediately, there should be no pause which can be declared as the opposite action.<sup>62</sup> There is nothing wrong with lengthy pauses, such as those that occur during short sermons and the like, unless the subject being discussed is a marriage-related will, in which case the pause might be construed as an act of turning away.<sup>63</sup> Moreover, as long as a blind person believes in the sound, their testimony is acceptable under the Maliki Madzhab.

Based on the beliefs of the four madzhab, it is argued that the Hanabilah and Hanafiyah *ulama* approve of online marriage while the Malikiyah and *ulama* oppose it. The rejection of internet marriages is that they are invalid because the place is not united and the partners are only heard, not seen. It can also be noticed that those who reject it claim that the requirement for *ittihad al-majlis* is not only to ensure that *ijab* and *kabul* are continuous but also to ensure that witnesses' confidence in those who declare *ijab* and *kabul* who are not in the same place. This

<sup>55</sup> Zakaria Al-Anshari, *Fathul Wabab* (Semarang: Thoah Putra, n.d.): 122. 122.

<sup>56</sup> Fina Septiana Fathka, “Akad Nikah Beda Majelis Perspektif Ulama Empat Madzhab,” *UIN Syaifuddin Zubri Purwokerto*, 2021, 62.

<sup>57</sup> Fathka: 62.

<sup>58</sup> Fathka: 63.

<sup>59</sup> Fathka: 63.

<sup>60</sup> A-Juzairi, *Fikih Empat Madzhab*: 45.

<sup>61</sup> A-Juzairi: 45.

<sup>62</sup> A-Juzairi: 45.

<sup>63</sup> A-Juzairi: 46.

viewpoint has a flaw if the necessity of one place is used as a guide in the interpretation of *ittihad al-majlis*, because if the difference in place or location between *ijab* and *qabul* is like an *akad* using a telephone or video call, then the witnesses can hear and see clearly, between the *ijab* and the acknowledgment of each of the side concerned. Because there is continuity between *ijab* and *kabul*, this type of condition can certainly be interpreted as *ittihad al-majlis*.

The opinion that allows stating that *ittihad al-majlis* does not mean the necessity of unification of places, but the continuity between *ijab* and *kabul*. From the *maslahah mursalah* approach, online marriage is not a common marriage, but it can be done in an emergency way by prioritizing the intent and purpose of the marriage as long as it fulfills the provisions of *syara'* and does not against the rules of *fiqh* and *maqasid syariah*. The goal and purpose of online marriage is substantially in line with *maslahah mursalah*, which essentially carries out the *sunnah* and maintains the offspring. Although marriages are performed unusually, namely with *ijab* and *kabul* outside of one assembly, the advancement of science and technology allows marriages to be performed outside of one assembly.<sup>64</sup>

In *terms* of legal issues, both sides of the *ulama* have different tendencies and legal foundations. The legal basis used by Hanafi and Hanabilah *ulama* is closer to logic and rationality, so they interpret textual and non-textual arguments more rationally and not literally. Meanwhile, when it comes to online marriage, the opinions of the Syafi'iyah and Malikiyah *ulama* appear to be rigid. However, it should be noted that in addressing this

issue, this opinion advocates for the principle of prudence.

### Pro Kontra *Ittihad al-majlis* Perspektif Ulama Kontemporer

The advancement of technology has provided numerous benefits and made human life easier. Nonetheless, technological advancements must be carried out under Islamic law and the principle of monotheism, obeying all orders and staying away from His prohibitions. In the context of changing times, new issues with *fiqh* law arise in response to technological advancements, such as online marriage. This issue was not discussed by the previous *ulama* because there was no technological progress at the time, so contemporary *ulama* began their *ijtihad*s regarding this online marriage. Nonetheless, contemporary *ulama* continue to use previous *ulama's* rules as a benchmark for comparing the views of the contemporary *ulama*.

The *ulama* agrees that the marriage *akad* is carried out in one *majlis*, including a marriage guardian, prospective husband, and wife, witnesses, or others present. The meaning of *ittihad majlis*, on the other hand, differs. According to Sayyid Sabiq, the purpose of *ittihad al-majlis* in the *ijab kabul* is to ensure that there is no pause between *ijab* and *kabul* due to other talks that are considered deviant and outside of the issue of *ijab* and *kabul* marriage.<sup>65</sup> Meanwhile, according to Wahbah Zuhaili, *ittihad al-majlis* is a place for the bride and groom if both are present. If one of them is not present and only written by letter and in front of witnesses, the marriage *akad* is valid, so what

<sup>64</sup> Taufik Kurrohman, "Keabsahan Akad Nikah Via Telepon Pendekatan Maslahah Al-Mursalah Dan Undang-Undang No.1 Tahun 1974 Tentang Perkawinan," *Paper Knowledge . Toward a Media History of Documents*, no. 1 (2014): 101.

<sup>65</sup> Sururiyah Wasiatun Nisa', "Akad Nikah Online Perspektif Hukum Islam," *Hukum Islam* 21, no. 2 (2021): 316, <http://ejournal.uin-suska.ac.id/index.php/hukumislam/article/download/11734/7373>.

is meant by *ittihad al-majlis* is the time of the *akad*, not the place for the bride and groom.<sup>66</sup>

Furthermore, Ibrahim Fadil al-Dabw, Muhammad 'Uqlah, Usamah Umar Sulayman al-Asyqar, and Muhammad Ibn Yahya al-Najimi hold the same view, though most of them do not explicitly state the permissibility of online marriage, their agreement indicates a clear acceptance of the problem.<sup>67</sup> According to Umar Sulayman al-Asyqar, online marriage meets all of the pillars and conditions in terms of *ijab* and *kabul*, as well as the testimony of two witnesses. Al-Nawawi in *al-Majmu'* even stated that it will be still a valid *akad* between two sides when both listening and seeing or not.

In his book, Abdurrahman al-Jaziri cites the agreement of *mujtahid* ulama requiring a united assembly for *ijab* and *kabul*.<sup>68</sup> As a result, if there is no union between the assembly pronouncing *ijab* and the assembly pronouncing *kabul*, the marriage *akad* is deemed invalid. To clarify *ittihad al-majlis*, he used the example of a man sending a marriage *akad* to the woman he desires. The contents of the letter were read out in front of the female guardian and witnesses after the letter arrived, and the female guardian immediately said her *kabul* in the same assembly after the contents of the letter were read.<sup>69</sup> The practise of this type of marriage *akad* is considered valid because the reading of the prospective husband's *ijab* contained in the letter and the pronunciation of *kabul* from the female guardian are both heard by two witnesses in the same assembly, rather

than in two consecutive ceremonies separated by time.

This is in line with Sayyid Sabiq's explanation that if one of the two sides is going to perform an unseen marriage *akad*, the solution can be as simple as sending a representative or as complex as writing a letter to the other side to convey the marriage *akad* for those who receive the letter to the other party. Those who receive the letter must present witnesses and read the letter's editor in front of them if they agree with its contents. This type of practice, according to Sayyid Sabiq, is legal as long as the *kabul* is pronounced directly in one assembly.

One of the fiqh experts, Ibn Qudamah, confirmed the validity of two blind people's testimony for the marriage *akad*, arguing that what would be witnessed was the sound. According to him, a blind person's testimony can be accepted, and he can confirm with certainty that the voice was spoken by the two people who performed the marriage *akad*.<sup>70</sup>

If you follow this statement and combine the validity of the *ijab* through letters with the validity of the testimony of two blind people, the problem that two witnesses must be able to see the two people who are pronouncing the *ijab* and *kabul* are no longer important, and thus the presence of both side in one room for visible reasons is no longer considered a condition for the validity of the marriage *akad*. It can also be the basis for the validity of the marriage, which is performed via video call, in which the side can see and hear the utterance of the *Ijab Kabul* even though they are in a different room or location. A marriage *akad* that includes a video call may nullify an opinion stating that a non-one-*majlis* marriage cannot be justified.

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<sup>66</sup> Nisa': 316.

<sup>67</sup> D A N Muta et al., "AKAD NIKAH SECARA ATAS TALIAN Mutaqaddimān and Muta' Akhkhiri'n ' s Views on the Issue of Online Marriage Contract" 18, no. 2 (2021): 425.

<sup>68</sup> Nasaruddin Latif, *Ilmu Perkawinan: Problematika Seputar Keluarga Dan Rumah Tangga* (Bandung: Pustaka Hidayah, 2001): 3.

<sup>69</sup> Latif: 4.

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<sup>70</sup> Latif: 6.

The next point of view is that *ittihad al-majlis* is required not only to ensure continuity between *ijab* and *kabul*, but also for witnesses who must see that the marriage *akad* was pronounced by the related person. It is well known that the presence of two witnesses is one of the requirements for a valid marriage *akad*. The task of the two witnesses, as agreed upon by the ulama, is to ensure with certainty the validity of the *ijab* and *kabul*, both in terms of the redactional and in terms of certainty that the *ijab* and *kabul* were pronounced by both sides.<sup>71</sup>

Ibn Hajar al-Haitani in his book *Tuhfatull Muhtaj*<sup>72</sup> rejects the testimony of a blind person because marriage testimony must be based on sight and hearing. According to him, a blind person's testimony is equivalent to that of a person in the dark; both testimonies are invalid because they cannot see who is performing the *akad* and thus cannot properly ensure that the *ijab* of the person concerned is pronounced. In his commentary on Ibn Hajar's decision, Sheikh Abdul Hamid ash-Syarwani stated, "*The testimony of people in the dark is invalid, because they cannot know the two people who are doing the akad.*" In his book *al-Majmu'*, Imam Nawawi explains that when one of the two sides, the one who performs the marriage *akad*, pronounces his *ijab* by shouting from a place that cannot be seen, and the shout is heard by the other party, and the latter immediately pronounces the *kabul*, such a marriage *akad* is invalid.<sup>73</sup>

From this information, it can be inferred that the testimony of the marriage *akad* must meet a specific standard of belief

before it is considered valid. Although the editor can identify the speaker simply by hearing their voice, the level of confidence won't be reached until you see the disclosure, whereas, in the marriage *akad*, this standard of confidence is required. According to Imam Nawawi, the requirement for *ittihad al-majlis* is not only for continuity of time but also for other requirements, such as both sides being present at the same location because the requirements can be seen in real terms. It is possible to achieve *ijab* and *kabul*.

## CONCLUSION

The Hambali ulama interprets *ittihad al-majlis* in a non-physical context, which means that *ijab* and *kabul* do not have to be in the same room but must occur in one direct ceremony or at the same time and may not be accompanied by other activities. According to the Hanafi and Hambali ulama, this is valid as long as it is equipped with loudspeakers; however, because hearing approval is required, it is invalid if the conditions and pillars are not met. Based on the discussion of *ittihad al-majlis* interpretation above, it can be concluded that the Hambali School interprets *ittihad al-majlis* in a non-physical context, which means that approval and *kabul* do not have to be in the same room, but must occur in one direct ceremony or at the same time and may not be accompanied by other activities. According to the Hanafi and Hambali ulama, this is valid as long as it is equipped with loudspeakers; however, because hearing approval is required, it is invalid if the conditions and pillars are not met.

This differs from the Shafi'i and Maliki ulama, which agree that the requirement for a person to enter into a marriage *akad* is that all related sides be present in one majllis at the same time. This is based on an understanding of *ittihad al-majlis*, namely the requirement to unite the *ijab* and *kabul* in one assembly and

<sup>71</sup> Latif: 6.

<sup>72</sup> Ibnu Hajar Al-Haitami, *Tuhfatull Muhtaj* (Beirut: Darul Fikri, n.d.). dalam *Problematika Hukum Keluarga Islam Kontemporer*: 6.

<sup>73</sup> Al-Imam Nawawi, *Majmu' Sharh Al-Muhadhab*, XVI (Kairo: Dar Al-Hadith, 2010). Dalam *Problematika Hukum Keluarga Islam Kontemporer*: 7.

continuous time, as well as the obligation to present the side directly to the *akad*. As a result, even if both sides are related to each other, the marriage *akad* is still considered invalid if it is not carried out in one location.

Due to disparities in *ijtihad* and the opinions of current ulama with a variety of backgrounds and tendencies, it is impossible to ignore the arguments made by ulama on this topic. In addition, as long as there is no firmness from law enforcement agencies on whose opinion is upheld in the Religious Courts, the two viewpoints may be used as an alternative that will be picked. Muslims are

required to abide by any laws or rules that are firmly established and on which opinions have been accepted to be upheld. Based on the consensus among ulama, a requirement no longer applies to the Ummah if it will be enforced in the legal system.

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