

Al-Dzari'ah Analysis of the Circular Letter of the Directorate General of Islamic Community Guidance Number 06 of 2020 concerning COVID-Safe Marriage Services

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Abstract

The emergence of the coronavirus outbreak impacts the changes in life order in Indonesia, not least on the implementation of marriage contracts. The government changed the marriage procedure as regulated in the Circular Letter of the Directorate General of Islamic Community Guidance No. 06 of 2020 on Marriage Services Towards a COVID-Safe Productive Society. The purpose of this Circular is to reduce the risk of coronavirus transmission. However, the regulation is considered not optimal in minimizing the occurrence of crowds and still causes many transmissions from marriage clusters. This research is library research using two approaches, namely the statute approach and the conceptual approach. The author analyses the regulations in the Circular using the al-dzariah concept to find out whether the circular letter has closed the COVID-19 transmission path or not. The result of this study suggests that the circular letter still opens up opportunities for the spread of the COVID-19 virus and has a mafsadah (harmful) impact on the community, so it is included in the category of sadd al-dzariah. Articles 5 and 6 states that a maximum of 10 people may attend if the marriage is held inside the KUA (Religious Affair Office) and 30 people outside the KUA. The number can be minimized to 6 people without hindering the validity of the marriage, either according to Islamic law or positive law.

Keywords: marriage; COVID-19; circular of the directorate general; al-Dzariah.

Abstrak

Munculnya wabah virus corona memberikan dampak perubahan dalam tatanan kehidupan di Indonesia, tak terkecuali pada pelaksanaan akad nikah. Pemerintah membuat perubahan regulasi perkawinan yang diatur dalam Surat Edaran Ditjen Bimas Islam Nomor 06 Tahun 2020 tentang Pelayanan Nikah Menuju Masyarakat Produktif Aman COVID. Tujuan dikeluarkannya surat edaran ini adalah untuk mengurangi resiko penularan virus corona. Akan tetapi regulasi tersebut dianggap belum maksimal dalam meminimalisir terjadinya kerumunan dan masih menyebabkan terjadinya banyak penularan dari kluster perkawinan. Penelitian ini termasuk dalam kategori library research dengan menggunakan dua pendekatan, yaitu statute approach dan conceptual approach, penulis akan

menganalisis regulasi dalam surat edaran tersebut menggunakan konsep *al-dzariah* sehingga akan diketahui apakah surat edaran tersebut telah menutup jalan penularan COVID atau belum. Hasil dari penelitian ini adalah surat edaran tersebut masih membuka peluang terjadinya penyebaran virus COVID-19 dan memberikan dampak mafsadah bagi masyarakat, sehingga masuk dalam kategori *sadd al-dzariah*. Pada pasal 5 dan 6 disebutkan jumlah peserta yang boleh hadir jika perkawinan di dalam kantor KUA maksimal 10 orang dan jika di luar KUA maksimal 30 orang, padahal jumlah tersebut dapat diminimalisir lagi menjadi 6 orang tanpa menghalangi sahnya perkawinan baik menurut hukum Islam ataupun hukum negara.

Kata Kunci: perkawinan; COVID-19; Surat Edaran Ditjen; *al-Dzariah*.

INTRODUCTION

In the early trimester of 2020, around mid-March, Indonesia was shocked by a pandemic outbreak known as COVID-19. The virus attacks the respiratory tract and has a fast transmission rate through the mouth, nose, eyes, and ears. This virus has caused many deaths in just a short time (PCC, 2021). In Indonesia, the spread of this virus is swift. Data of the COVID-19 Task Force states that the number of people who are confirmed positive for COVID-19 continues to increase every day, reaching hundreds of thousands of people. Those who get tested positive started from the beginning of March to August 2020 and continued to grow until the beginning of 2021 (Mukaromah, 2021).

To cope with the spread of COVID-19, the government has created several programs such as PSBB (Large-Scale Social Restrictions) and PPKM (Enforcement of Community Activity Restrictions), both micro PPKM or emergency PPKM. The government launched this program with the consideration of the Ministry of Health and suggestions from several regions. The program aims to break the chain of transmission of the COVID-19 virus. With the implementation of these programs, people are not allowed to leave their homes without any urgent need and are encouraged to stay at home. If people violate the rules of programs that the government has made, they will be subject to sanctions, ranging from social sanctions, light sentences to criminal penalties (Wijayanti, 2021).

The implementation of PSBB during this pandemic also affects the community's worship practice. The government regulates activities in houses of worship in adapting to changes in religious activities to create a COVID-safe community. The government stated that activities in places of worship may still be implemented to improve religious spirituality. However, the activities must still pay attention to health protocols, be carried out in a conducive manner, and do not crowd in one location to provide security in carrying out worship and stopping the spread of the COVID-19 virus so that it does not worsen. (Sirandang:: Regulation No. 15 of 2020 Circular Letter of the Minister of Religion Number 15 of 2020 concerning Guidelines for the Implementation of Religious Activities in Houses of Worship in Realizing a Productive and Safe Society for COVID in the Pandemic Period, 2021). One type of worship that gets attention from the government is marriage.

During the COVID-19 pandemic, the Directorate General of Islamic Community Guidance (Ditjen Bimas Islam) issued Circular Letter No. 06 of 2020, which explained the guidelines for implementing marriage services with the new normal order during the COVID-19 pandemic. The purpose of issuing this Circular is to reduce the risk of transmission of COVID-19 and to protect Sub-district KUA employees in carrying out wedding services (Fitri, 2021). Even though it has a good purpose, the Circular still has several problems that make the public worried and cause crowds to exceed the minimum limit. In the Circular of No. 06 of 2020, Article 5 explains about the participants of the marriage contract procession carried out at the KUA or home as many as ten people, in Article 6 explains about the participants of the marriage contracts procession held in the mosque or meeting building attended by as many as possible 30% of the room capacity and no more than 30 people.

The two articles raise problems that have the potential for COVID-19 transmission from the marriage cluster because it allows the marriage contract to be attended by participants who exceed the minimum limit. In this pandemic emergency, the government should take the minimum limit for participants who attend the event to prevent and cope with the broader spread of COVID-19. The government must be more assertive by only permitting the minimum limit for implementing the wedding ceremony with only parties included in the pillars of marriage according to Islamic law, namely the prospective groom, prospective bride, guardian, *penghulu* (wedding officiant), and two witnesses. While Article 5 explains that the maximum number of wedding participants who may attend is ten people, this condition can still potentially spread COVID-19 during a pandemic like today.

Some facts in the field show that there are a lot of COVID-19 victims from marriage clusters. For example, the incident in Sragen in October 2020 killed the bride and her parents. The local health officials explained that although the wedding ran according to the maximum limit in the circular, which was 30 people, the facts on the ground showed that guests continued to make physical contact at the event because it was difficult to avoid physical contact, especially at events that were fun (CNN, nd) Then there was a case in Bintan district, Riau Islands, in June 2021, where there were 11 COVID-19 patients who came from the marriage cluster. Further tracking is still ongoing to detect in detail who came into contact with the 11 people (Republika, nd). Even worse, what happened in the Mamasa area, West Sulawesi, since July 2021, the Marriage cluster occupies the highest number of contributors to COVID-19 patients (Regional Kompas, nd) and many other similar incidents in other areas.

With these problems, researchers will explore regulations related to government circulars or other legal products related to marriage provisions during pandemics and analyze these rules using the theory of *al-dzari'ah*. The theory of *al-dzari'ah* was chosen as the analytical instrument since mujtahids usually use it in establishing a law by looking at the consequences caused by the object of the law, whether it has blocked (*sadd*) the means (*al-dzari'ah*) or even opened (*fath*) (Muaidi, 2016). *Al-Dzari'ah* itself is a *wasilah* or a way to arrive at a goal, be it a lawful goal or an unlawful one. If the purpose of something is haram, then the intermediary or *wasilah* is also haram, and vice versa if it is halal, then the intermediary law is also halal. If

something leads to an obligatory case, then the law is obligatory such as ablution, which is a condition for valid prayer (Djazuli, 2006).

The author has explored several writings related to marriage during the pandemic. The first is an article titled Marriage Implementation in the COVID-19 Pandemic Period in Purbalingga, written by Teguh Anindito. In this article, the author explains that the implementation of marriage during the pandemic in the Purbalingga area has implemented health protocols and followed applicable regulations (Anindito, 2021). The second is an article titled Psychological Dynamics of Marriage in the Time of the COVID-19 Pandemic, written by Muhammad Zulfa Alfaruqy. This paper focuses more on discussing the psychological conditions of couples who get married during the pandemic. Researchers made a questionnaire for several couples that contained the positive and negative impacts of marriage during the pandemic (Alfaruqy et al., 2021).

The third is an article written by Sitti Arafah titled Simple Marriage in the Time of the COVID-19 Pandemic in the Bugis Community of Palopo City. The article describes the marriage process from the contract to the Bugis tradition carried out during the COVID-19 pandemic. Although the tradition usually carried out by the Bugis community cannot be carried out during the COVID-19 pandemic, this does not reduce the sacredness of marriage itself. The sacredness of marriage lies in the intentions of each bride and groom, not in other things that only add to the sacredness (Arafah, 2020). Judging from the articles above, several writers have discussed the theme of marriage during a pandemic. However, no one has researched and analyzed the Director General's Circular on Marriage during a Pandemic.

Therefore, the author is interested in researching the circular letter of the Directorate General of Islamic Guidance regarding marriage during this pandemic, whether it corresponds to its goal, namely to create a COVID-safe society, or is it still causing unrest for the community because there is no guarantee of being safe from COVID. The data obtained by the author will be analyzed using the *al-dzari'ah* theory. In this study, the Circular of the Directorate General of Islamic Community Guidance served as *wasilah* or intermediary. The goals to be achieved are to create a COVID-safe community and protect the community from the potential transmission of the COVID-19 virus from the marriage cluster. Suppose the circular letter can close the transmission and create security for the community. In that case, it is categorized as *fath al-dzariah*. However, suppose the Circular still cannot create a COVID-safe community, especially from the marriage cluster. In that case, it is still considered to be *sadd al-dzariah*, which must be closed or revised again.

DISCUSSION

Implementation of the Marriage Agreement according to the Circular of the Directorate General of Islamic Community Guidance (Ditjen Bimas) No. 06 of 2020 on Marriage Services Towards a COVID-Safe Productive Society

The pandemic has changed the whole life order in Indonesia and even in the world. The government has reorganized various ways to reduce community mobility to minimize the transmission of the COVID-19 virus. It starts from economic, social, and religious activities. One aspect of worship that the government technically reorganizes is marriage. Marriage is synonymous with pleasure, joy, and expressions of gratitude, which can cause crowds. Nevertheless, marriage cannot be prohibited by the government because it is one of the human rights that the state cannot prevent (Iskandar, 2017). Even Islam stipulates marriage as sunnah worship and can become mandatory under certain conditions.

At the beginning of the pandemic, around mid-March 2020, the government recommended suspending marriage contracts. The event was only permitted for the prospective bride and groom who registered until April 23, 2020, and the application registered after the date cannot be implemented until May 29, 2020 (Widiyanto, 2020). With this regulation, many couples who have prepared marriages have been forced to postpone its implementation. However, on the other hand, not a few prospective brides and grooms ignore the government's rules by continuing to carry out *sirri* (secret) marriages that are not registered by the state (Jannah, 2020).

After the first Circular was in effect for about a month, this regulation was deemed less effective for the community. It could potentially harm couples planning to marry without the knowledge of the KUA or unregistered marriage. In Islamic law itself, delaying marriage is not recommended as it will have a dangerous impact, namely adultery. It is permissible to postpone marriages if there is a truly emergency excuse (Riyawi, 2021). Therefore, the government issued a new policy on June 10, 2020, allowing the implementation of marriage during the pandemic. The regulation issued stipulates that marriage during the pandemic is still allowed with various procedures and health protocols. This new provision is made with due regard to the pillars and conditions of marriage according to positive law to maintain the validity of the marriage contracts.

The Circular of the Directorate General of Islamic Community Guidance No. 06 of 2020 explained that the government had allowed marriage services during the pandemic while still providing a sense of security and paying attention to health protocols that must be adhered to maintain and protect the KUA officials and the community from the spread of the COVID-19 virus. The issuance of the Circular on the Permissibility of Conducting Marriage Contracts during this pandemic is based on the Minister of Religion Regulation Number 20 of 2019 concerning Marriage Registration and Circular Letter No. 15 of 2020 concerning Guidelines for the Implementation of Religious Activities in Houses of Worship in Realizing a Productive and Safe Society for COVID during a Pandemic.

Circular No. 06 of 2020 discusses the rules and procedures for marriage registration services at the Office of Religious Affairs related to the marriage registration process, marriage examination, and marriage contract implementation. The entire series of activities must be carried out following health protocols and as much as possible avoiding physical contact with the Office of Religious Affairs officials. If the implementation of the marriage contract is not

following the health protocols and regulations contained in the Circular, the Office of Religious Affairs may refuse to continue services, be it registration, examination, or contract implementation. The refusal is made in writing on the form attached to the Circular by stating the reasons for the refusal and recommendations from the local security forces.

Circular of the Directorate General of Islamic Community Guidance No. 06 of 2020 states that marriage registration can be done online or offline by coming directly to the District KUA. Online marriage registration can be accessed through the website simkah.kemenag.go.id or by telephone or sending e-mail. The District KUA serves the registration of marriages every day on a working day according to the schedule.

After completing the marriage registration process online or directly at the District KUA, the bride and groom conduct a marriage examination carried out at the District KUA according to the summons from the KUA. Marriage examination commonly referred to as *rafa'*, is a meeting between the head of the KUA with the prospective groom, bride and guardian. The purpose is to check the marriage administrative documents, whether they are following the administrative requirements or there are still deficiencies and ensure that the two prospective brides are really going to get married (Faizah, 2019). If the documents examined are in accordance with the administrative provisions, then the two parties of the bride and groom can carry out the marriage contract no later than two weeks after registration.

Candidates have two options in carrying out the marriage contract, namely inside the KUA or outside the KUA. Implementing the marriage contract held in the KUA must comply with the health protocol directives by applying three rules; wear a mask, maintain a distance of at least 1 meter, and wash hands with soap. The schedule for implementing the marriage contract in the KUA must be determined according to the rules contained in the circular, namely one contract at a time. In other words, it is not allowed to perform two contracts simultaneously at one time or only make one contract, but the duration of the travel time is quite long due to various technical and non-technical constraints (Article 7). As for the implementation of the marriage contract which is carried out outside the KUA, the KUA can cooperate with the relevant local security forces or the COVID-19 Task Force in regulating the implementation of the marriage contract in order to strictly observe health protocols (SE Directorate General of Islamic Guidance No. 2020 About Marriage Services Towards a Safe Productive Community COVID, nd).

Circular of the Directorate General No. 06 of 2020 has been a marriage guideline at KUA for almost a year since its publication. At the time the author compiled this article, namely, in June 2021, the government, through the Ministry of Religion, had issued several Circular Letters in early 2021. However, no one has focused on discussing marriage guidelines, for example, Minister of Religion Circular No. 03-07 of 2021, which regulates the provisions of worship in the month of Ramadan and the celebration of Eid al-Fitr. Likewise, Minister of Religion Circular No. 17 of 2021 regulates the implementation of worship in general during

the Eid al-Adha holiday. Of the several policies above, the government has not reissued provisions specifically regulating marriage guidelines during the pandemic.

From several explanations regarding the regulations for implementing the marriage contract during the COVID-19 pandemic, there are many differences from marriages carried out in normal times before the COVID-19 pandemic. During the pandemic, the implementation of the marriage contract must be carried out with several health protocols such as wearing masks, no crowds, and maintaining cleanliness by always keeping hands clean with soap (Surabaya, 2021).

The advantages and disadvantages of implementing a marriage contract during the pandemic compared to normal times before the pandemic can be seen from various aspects. In terms of costs, marriage contracts during the pandemic period relatively do not cost so much because the marriage ceremony is carried out by not presenting many guests. This must be done because of the implementation of Large-Scale Social Restrictions (PSBB). So that parties who are present in the implementation of the marriage contract are limited according to the provisions made by the government. Whereas in normal times before the pandemic, the implementation of the marriage contract was relatively expensive because there were quite a lot of guests. so that more people participated in the implementation of the marriage contract.

Table 1. Comparison between marriage during the pandemic and normal times

No.	Reviewed aspect	During Pandemic	Normal Times
1.	Cost and efficiency of funds	The costs incurred are relatively less because the event is shorter and concise.	More costs are incurred because the ceremonial event is more complete.
2.	Attendees	The number of participants is limited but still maintains the validity and sacredness of the marriage contract.	There is no invitation limit, only the need to adjust the room or building occupied capacity.
3.	Technical implementation	It is vital to pay attention to health protocols and avoid crowds	The implementation is free as long as it maintains the religious and social norms of the community

Implementing marriage contracts during the pandemic can also use various other alternatives, such as weddings and receptions using an online system. Although some *fiqh* experts are still debating the legal validity of the contract using an online system, this system is considered a solution if the bride and groom have found their wedding day but are constrained by the pandemic to carry out the contract in person. The bride and groom can

also do the option of marriage by using a representative. The male party who cannot enter into the contract directly to meet the female guardian can represent himself to a trusted person to perform the marriage contract. Meanwhile, receptions or meals and celebrations can be carried out in their respective homes by enjoying the dishes that have been distributed by the bride and groom door to door (Emas, 2020).

The Circular of the Directorate General explains that participants who participate in the marriage contract are a maximum of 10 people if it is done inside the KUA or at home (Article 5). Meanwhile, participants who participate in the marriage contract implementation held at the mosque or building outside the KUA can be attended by a maximum of 30 people or 20% of the capacity of the place used. The two articles (articles 5 and 6) are considered too loose to limit the number of attendees. During a pandemic like this, the marriage contract should only be attended by parties interested and included in the pillars of marriage.

The parties who must be present when the marriage contract has been regulated in the pillars of marriage are regulated in the Marriage Law and the Compilation of Islamic Law (KHI), namely the prospective groom, prospective bride, guardian, and two witnesses. In addition to the parties listed in the pillars, there is only one other party who is interested in the contract, namely the penghulu. So, the total number of participants who attended the marriage contract procession according to the pillars regulated in the Marriage Law and KHI was six people. Apart from being regulated in positive law, the rules regarding the pillars of marriage have also been explained by the imam (scholars) of the madhhab (school). The Imams of the madhhab have varied opinions in determining the pillars and conditions of marriage.

Hanafiyyah scholars agree that there are only three pillars in marriage: *ijab qabul* (marriage contract), two people who have a contract, and the last is a witness. In Hanafiyyah school, dowry and a guardian are not pillars and a condition that must exist in marriage. According to the Malikiyyah school, the pillars of marriage consist of 5 pillars, namely: the guardian of the woman, the dowry, the husband is not in ihram, the wife is not in ihram or is not in a state of iddah, and the last is the marriage contract. The Syafi'iyah school, as a school followed by the majority of Muslims in Indonesia, argues that there are five pillars in marriage: prospective husband, prospective wife, guardian, two witnesses, and *ijab qabul*. At the same time, the pillars that must exist in marriage according to the Hanabilah school consist of four: the presence of husband and wife, willingly and of their own accord, then the presence of guardians and witnesses (Al-Jaziri, 2010). Only one guardian of marriage becomes harmonious in marriage, whether it is a lineage guardian, a substitute guardian (*tawkil wali*), or a judge guardian (Devy & Zahari, 2020).

Al-Dzariah Theory as a Method of Ijtihad

Al-dzari'ah, etymologically is the means which lead to a particular end. In contrast, the definition of *dzari'ah*, in general, is everything that can be the means leading to certain results either *mafsadat* (harmful) or *maslahat* (beneficial) (Al-Jauziyah, n.d.). Al-Dzariah is included in

the category of legal determination tool even though there are still disputes. This can be seen from its intermediary regarding an act that is clearly prohibited but still implemented, namely the intermediary in explaining the main action as *syara'* law. So that Imam Malik and Imam Ahmad consider this *dzari'ah* to be included in one of the fiqh arguments (Musolin, 2019).

The law in preventing a case that gives rise to *mafsadat* is not seen from the case alone but from the intermediary in delivering the *mafsadat* even though indirectly. Therefore, religion blocks the way to bring *mafsadat* even though the act is permissible (Shiddieqy, 2001). According to Hasbi, the benchmark for the existence of *mafsadat* is to look at the customary law that applies in the community, where in terms of the law that applies in Indonesia, what is used is the customs of the people in Indonesia (Nadhiran, 2012).

In terms of ushul fiqh, *al-dzari'ah* is a medium to get to something related to *syara'* law towards obedience or disobedience, *halal* (lawful) and *haram* (unlawful). Therefore, this *dzari'ah* has two general meanings, namely *sadd al-dzari'ah* as something that is prohibited and *fath ad-dzari'ah* as something that is required to be implemented, namely (Dr. H. Abd. Rahman Dahlan, 2016). The definition of *sadd al-dzari'ah* is etymologically a combination of two words *mudhaf-mudhaf ilaih* which consists of the word *sadd*. It comes from the word *sadda-yasaddu* which means to close, intending to block the way of damage and the word *al-dzari'ah* denotes means, *wasilah* and a way to convey a goal (Baroroh, 2018).

Sad Al-Dzari'ah is a prevention method by preventing bad possibilities from happening and preventing something that can have a negative impact. According to Islamic law, this method is a form of rule for humans to do something that has not happened to avoid falling into bad things when doing it (Baroroh, 2018). The basis for not using these facilities is that they can cause damage. If the results of these means produce damage, then *dzari'ah* is not allowed, which is called *Sadd al-dzari'ah*.

The definition of *fath ad-dzari'ah* in the language comes from the arrangement of words in the form of *mudhaf* and *mudhaf ilaih*. The word *fath* means opening, victory, and water flowing at its source. Moreover, the word *adz-dzaria* means an intermediary or a way of conveying certain goals and directions (Hilmi, 2018). In Islamic law, *fath ad-dzari'ah* aims to avoid damage or bring benefit. This includes a case that is the means or way of doing the act. If an action is strongly believed to lead to something good and bring benefit, then the way to achieve this is allowed. Therefore, this method is called *fath ad-dzari'ah* (Baroroh, 2018).

The basis for using *sadd* and *fath al-dzariah* as a method of *ijtihad* is derived from the story of Prophet Musa and Prophet Khidir in Surat al-Kahf about destroying boats, killing children, and rebuilding fallen walls. In verse 79, it is stated that the Prophet Khidir damaged the boats of the innocent poor people to save his boat from the tyranny of the leader who always robbed boats that passed in his territory. Prophet Khidir deliberately damaged the boat so that the tyrannical king would not rob it.

Muhammad Hasyim Al-Burhani defines the pillars of *dzari'ah* into three kinds (Munawaroh, 2018). First, the case (as an intermediary, way, or *wasilah*) is not prohibited. This case is divided into three circumstances: the act is intended for another act, for example, *bai'ul*

death, the act is intended for the act itself, for example insulting the worship of others, the act is used as an intermediary for washing, for example stamping the feet of a woman who can show jewellery she wears.

The second is the strength of an allegation of the act. This is a link between *wasilah* and prohibited things (*al-mutawashil ilaih*), namely accusations and strong allegations that these actions will lead to *mafsadah* or damage. The third is a prohibited act (the result and or the resulting goal). Sheikh Muhammad Hasyim said that this third pillar is prohibited (*al-mamnu'*). So, if the act is permissible or not prohibited, then the intermediary *dzari'ah* is not prohibited.

Referring to the level of damage caused, al-Syatibi divides *al-dzari'ah* into four types. First, the act brings definite evil, such as digging a hole in front of someone's house at night, which will cause many people to fall when passing through the hole. Actually, it is permissible to dig a hole in the road, but it is carried out in the right conditions and does not bring harm. Second is the actions rarely lead to damage. This means that if this is done, it will not cause damage, such as buying and selling halal food (contain no harm).

Third, the act that is committed is most likely to bring about evil, such as selling a knife to an assassin that is most likely to be used to kill someone. Fourth, actions that are basically allowed to be done because they contain benefits but allow for harm, such as buying and selling credit. Because buying and selling credit mostly leads to the path to usury (Zuhaili, 2016).

In determining the law regarding the *dzari'ah* or path, it can be seen and measured from the goals, motives (intentions), and the resulting consequences. If the purpose of a case is prohibited, then the path to the intermediary is also prohibited. If the purpose of a case is obligatory, the path to the intermediary is also obligatory.

If the intention is to obtain something lawful, then the legal means are also lawful, and if the intention is to obtain something unlawful, then the legal means are also unlawful. If the act's impact makes a case good, then the legal intermediary may be done. However, if the act's impact makes a case terrible even though the purpose is good, then it is not allowed (Syukur, 1993).

Circular of the Directorate General of Islamic Community Guidance No. 06 of 2020 concerning Marriage Services Towards a COVID-Safe Productive Society from the Perspective of *al-Dzari'ah*

Universally, Islamic law is not included in the law used in Indonesia. However, in terms of values, several positive laws that apply in Indonesia are based on existing rules in Islamic law, for example, marriage law, the economic system, and the education system (Habibi, 2021). One of the legal products taken from Islamic teachings' values is the rules regarding marriage and the technical implementation. The Ministry of Religion issued Circular of the Directorate General of Islamic Community Guidance No. 06 of 2020 generally aims to provide a sense of security in implementing the marriage contract in the new normal period. This Circular is

addressed explicitly to the KUA as the marriage organizer. It is generally addressed to the public to minimize crowds to prevent the increasingly widespread of COVID-19. In addition, this Circular aims that marriage registration services in the state administration which are recorded through the District KUA, can still be carried out even in a pandemic condition.

The implementation of marriage contracts carried out during the COVID-19 pandemic is very different from those carried out in normal times before the COVID-19 pandemic. Implementing marriages during the COVID-19 pandemic has many additional regulations, such as implementing health protocols and limiting the number of guests. In addition, every invited participant must wear a mask when attending the invitation. Guests should also avoid unnecessary interactions and communications due to social distancing. Whereas in normal times the implementation of the marriage contract can be held by presenting many parties or guests without having to pay attention to health protocols and limitations on interaction and communication as in the current pandemic.

The existence of differences in the implementation of marriage during this pandemic is stated in the Circular of the Directorate General of Islamic Guidance No. 06 of 2020. If the circular letter is not issued, it will be feared that there will be crowds in every marriage, whether in the registration, examination, or implementation stages of the marriage contract. People who congregate at weddings are not entirely to blame because most people have a general understanding of the pandemic. So to avoid and prevent things that can damage the validity and sacredness of marriages, the government must issue an appeal regarding the implementation of marriage contract services that are safe from the transmission of the COVID-19 virus.

Although this Circular has a good purpose and benefits the community in reducing the potential for COVID-19 transmission, there are still several articles that are considered less efficient and effective in preventing crowds. Some articles are considered too excessive in setting limits and less strict in preventing the transmission of the COVID-19 virus. This can be seen in Article 5 and Article 6 of the Circular of the Directorate General of Islamic Guidance No. 06 of 2020, which regulates the limits and percentage of participants who may attend the marriage contract. Imam al-Syatibi explained that in every legal product in Islam (the results of *ijtihad*), there must be a benefit and cover harm by using the barometer of the Qur'an and Hadith (Sabil et al., 2020).

In article 5, it is stated that the participants of the marriage contract who are present to take part in the implementation of the marriage, which is carried out in the KUA building or the house of the bride and groom, are a maximum of ten people. Furthermore, Article 6 states that the participants of the marriage contract who are allowed to attend the mosque or marriage building are a maximum of 30 people or 20% of the room capacity.

The policies mentioned in the two articles are considered inefficient in responding to the prevention of the spread of COVID-19. The government still opens opportunities for the community to hold meetings beyond the minimum limit in the wedding ceremony. The government must be more assertive in formulating policies in times of emergency, such as

during this pandemic. This is for the good of the community itself, especially the people who will hold the wedding ceremony. Although everyone doesn't know when this emergency will end, at least implementing a firmer policy by the government will help the community get out of the pandemic emergency more quickly.

The government's indecision can be seen more clearly from the contents of Article 6, which states that it is permissible to attend a marriage contract with a maximum limit of 30 participants. This provision also adjusts to the total capacity of the building or room where the wedding ceremony is held, which is 20% of the total capacity of the room. This limitation certainly opens up opportunities for people to congregate. Even though the organizers have implemented health protocols, the risk posed by a crowd of up to 30 people is vulnerable to the emergence of new transmissions from the marriage cluster. If this happens, it is undoubtedly very ironic considering that marriage that should make people happy has turned into a transmission source of the COVID-19.

In Islam, a product of law or regulation issued by policy makers must positively impact every human being. Allah SWT made Islamic law. It aims to regulate the goodness and welfare of humankind both in this world and in the hereafter. *Shari'a* or Islamic law is closely related to the elements of justice, wisdom, kindness and compassion. So if the regulation is changed from justice to injustice, wisdom becomes bullshit, kindness becomes evil, and compassion becomes hate, then it cannot be said to be part of sharia (Auda, 2015).

Therefore, an act with a positive impact is allowed, and a negative impact on human life is not allowed. Likewise, an act that becomes an intermediary for something positive is legal, and then the law is prohibited for something negative. In the study of Islamic law, this discussion is included in the discussion of *al-dzari'ah*.

According to Ibnul Qayyim al-Jauzy, a scholar of *ushul fiqh* from the Hanbali school (Jamhuri & Zuhra, 2020), *al-Dzari'ah* literally means a path that leads to something good or something bad or it can also mean something that is an intermediary or a way to something (Muaidi, 2016). According to some opinions of *Ushul Fiqh* experts, *al-dzari'ah* has the meaning as an intermediary or a way in delivering something, both lawful and unlawful. In other words, if the way or method of delivery is directed to something unlawful, then the law becomes unlawful. If the way or method of delivery is aimed at something lawful, then the law is also lawful. Moreover, if the way or method of delivery is directed to something obligatory, then the law becomes obligatory as well. (Djazuli, 2006).

According to the Encyclopedia of Islamic law, *al-dzari'ah* as part of the science of *Usul Fiqh* has two branches of discussion, namely *saddu al-dzari'ah* which means closing the way to damage and *fath al-dzari'ah*, which means opening the way to goodness (Rafiqi et al., 2019). According to Ibnul Qayyim and Imam Al-Qarafi, sometimes *al-dzari'ah* or a legal intermediary way becomes recommended and even becomes mandatory. It is called *fath al-dzari'ah* and can also be something that is prohibited, namely *sadd al-dzari'ah* (Syafei, 2010).

In general, the government issued the Circular of the Directorate General of Islamic Guidance No. 06 of 2020 with a good goal to protect the community and the KUA from the transmission of the COVID-19 virus, especially when carrying out marriage services. However, according to the author, the Circular has not fully closed the transmission route optimally. The government is considered not firm in issuing regulations and is still giving leeway in the provisions of the Circular. So that the good goals that the government wants to achieve will be difficult to realize because they still open up opportunities for transmission. If the rules and policies taken are already loose, then the implementers of these policies have the potential to provide concessions. Therefore, the author will analyze the Circular with a legal study of *Sadd al-dzari'ah* because the regulation is still considered to open the way to a bad thing that can harm society.

In the study of *Sadd al-dzari'ah* three pillars must be fulfilled. First, a case located as an intermediary for something is not prohibited by itself or is not clearly stated in the text of the prohibition on the case. In this case, marriage is an act that is allowed and not prohibited. Because according to Imam Shafi'i, the legal origin of marriage itself is permissible. It can even be sunnah and obligatory if under certain circumstances.

Second, there is a strong suspicion that the case will lead to *mafsadah* or damage. In this study, the case is a circular regarding marriage. According to the circular, the issuance of the Circular Letter of the Directorate General of Islamic Guidance No. 06 of 2020 still spread the COVID-19 virus because there is a strong suspicion that the implementation of marriage will invite a crowd. The government has not used the minimum possible limit in setting these regulations. This minimum limit can be taken from the pillars of marriage or parties that must be in a series of contracts and representatives from the KUA who serve as marriage registrar.

Third, there is a goal that gives rise to *mafsadat* or something that is prohibited. In this case, if the marriage is carried out and causes a crowd during the COVID-19 pandemic, it will cause a group of COVID-19 transmission from the marriage cluster in which the party infected with the virus will be adversely affected, namely shortness of breath, fever, flu cough, even some people experience death. Therefore, because there are *mafsadat* arising from the existence of the circular letter, its position as an intermediary for the act, is also prohibited or revised.

To determine the law of an *al-dzari'ah* or a path to a goal, it must be determined whether the *al-dzari'ah* causes *mashlahah* or actually causes *mafsadah*. So in this case 3 instruments need to be considered (Syukur, 1993). If these three instruments meet the categories of benefit, then *al-dzari'ah* must be opened (*fath*), but if it does not meet these three categories then *al-dzari'ah* must be closed (*sadd*). The three instruments can be seen from the purpose of the case, the intention in carrying out the case, and the consequences arising from the case with an explanation of the analysis as follows:

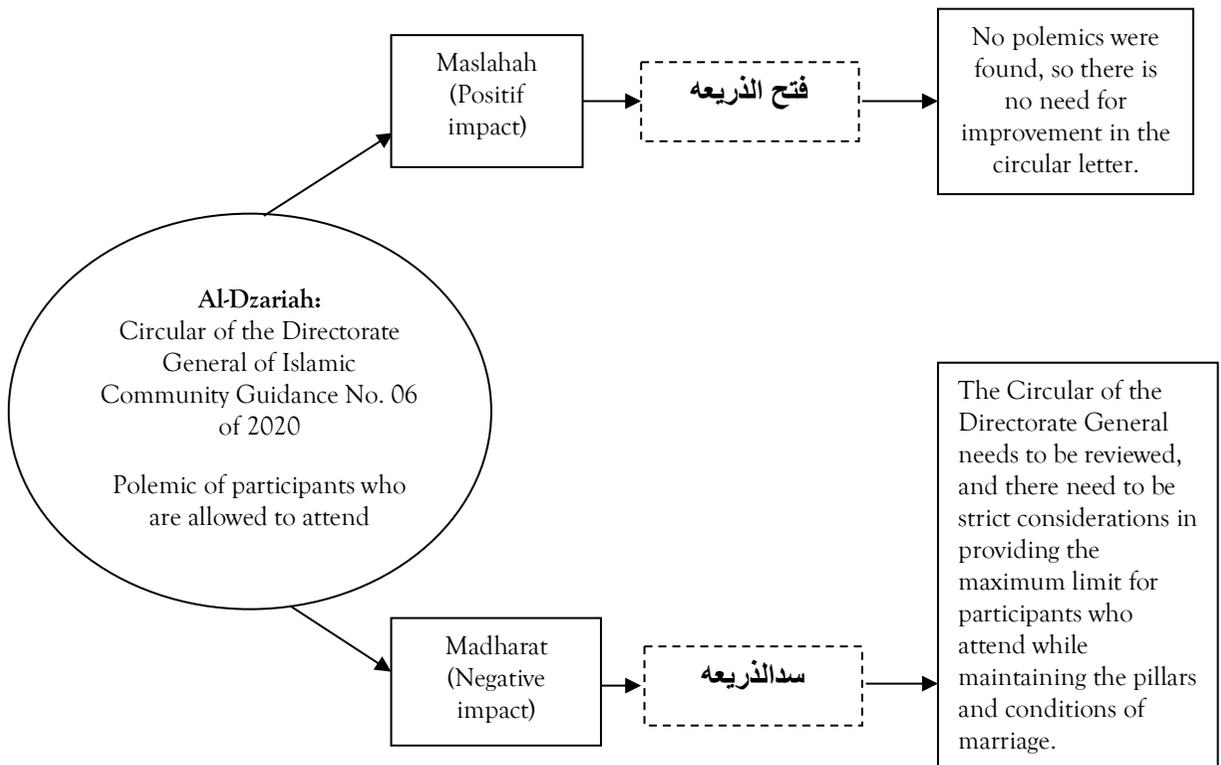
First, from the point of view of the goal, the Circular of the Directorate General of Islamic Community Guidance No. 06 year 2020 has a good purpose. This circular aims to prevent and reduce the risk of transmission of the COVID-19 virus to the community and the KUA in carrying out marriage services by implementing strict health protocols and avoiding

crowds. In addition, the Circular still guarantees the implementation of legal marriages according to religion and state, even in the emergency conditions of the COVID-19 pandemic.

Second, judging from the intention, the Circular of the Directorate General of Islamic Community Guidance No. 06 of 2020 has a good intention. The government intends to maintain and protect the community from the COVID-19 virus in carrying out marriages in new normal conditions. This letter also re-opened the marriage registration service, which had previously been stopped due to the coronavirus. Thus, marriages can be registered as legal in the eyes of Indonesian law and religion. The government must pay attention to public safety as a policymaker, especially safety during the marriage.

Third, due to this regulation, there is still the potential to spread the COVID-19 virus. Article 5 and article 6 of the Circular of the Directorate General of Islamic Community Guidance No. 06 of 2020 which explains about the participants of the marriage contract procession, does not provide a provision for the minimum number of guests. so that the Circular still has the potential to cause a crowd which opens up great opportunities for the transmission of the COVID-19 virus. Therefore, the government should take the minimum possible limit so that the intermediary from the emergence of a distress can be completely closed.

Figure 3: Adz-Dzari'ah Perspective Framework Chart



From several analyzes of the al-Dzariah instrument above, it can be seen that in this Circular, even though the purpose and intentions are good, the consequences are still considered to have the potential to cause something bad. So, this Circular still causes *mafsadah* or harm in the implementation of marriage during the pandemic. Arising from this Circular can be seen from the third instrument, namely the consequences. Articles 5 and 6 provide leeway on the limits of participants attending the marriage contract so that there is still the opportunity to cause crowds that can cause the transmission of the COVID-19 virus. Therefore, Circular No. 06 of 2020 is included in the *sadd al-dzariah* category, which must be closed or in the case of government policy, this product must be replaced and revised.

The input from the author is toward Article 5, which states that the marriage ceremony procession, which is attended by a maximum of 10 people is considered too many. This is because the marriage procession carried out according to the pillars of marriage is sufficient and legal according to religion and state. In the opinion of the imam of the four most famous schools of thought, no opinion states that up to 10 people must attend the pillars of marriage. Then the KUA also provides education to the prospective bride and groom and their families not to shake hands during the contract process and reduce the duration of non-urgent matters such as marriage sermons, handover of dowries, and so on (Chairah, 2021).

It is the same as in Article 6, which explains the implementation of the marriage contract which may be attended by a maximum of 30. This number is considered excessive if carried out during a pandemic because it will have more potential to spread the COVID-19 virus due to a vast crowd. The number of participant limits mentioned in Articles 5 and 6 does not take the minimum possible limit in carrying out marriages amid a pandemic even though the community and government should be more assertive and concerned about public health and safety during this pandemic than just a ceremonial event that invites crowds.

CONCLUSION

Essentially, the implementation of the marriage contract during the COVID-19 pandemic is still the same as normal times. The difference that the government regulates is only in technical matters, such as online registration, which was previously only an option, has now become a recommendation that is highly emphasized. This was done as a measure to prevent the spread of the COVID-19 virus. The changes regulated in the Circular of the Directorate General also do not touch the main things in marriage, such as the pillars and conditions for a valid marriage. After being analyzed using *al-Dzariah* theory, the content of the Circular of the Directorate General is still considered not optimal in preventing the transmission of the COVID-19 virus and still has a *mafsadah* impact on the community. So that this Circular is included in the *sadd al-dzariah* category, which is a path or intermediary that must be closed. This can be seen in articles 5 and 6, which provide opportunities for the community to gather beyond the minimum required in a marriage contract. Hence, this condition is hazardous for the community who will hold the marriage.

BIBLIOGRAPHY

- Al-Jauziyah, I. Q. (n.d.). I'lam al Muwaqi'in 'An Rabb al'alamin. In 3. Dar al-Jail.
- Al-Jaziri, A. R. (2010). *Al-Fiqh 'ala al-Madzahib al-Arba'ah: Juz 2*. Dar al-kutub al-Ilmiyyah. <http://files/149/IOS5605.html>
- Alfaruqy, M. Z., Putri, F. K., & Soedibyo, S. I. (2021). Dinamika Psikologis Menikah pada Masa Pandemi COVID-19. *Jurnal Psikologi TALENTA*, 6(2), 55–67. <https://doi.org/10.26858/talenta.v6i2.19695>
- Anindito, T. (2021). Pelaksanaan Perkawinan Di Masa Pandemi Covid-19 Di Purbalingga. *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma*, 23(1), 82–90. <https://doi.org/10.51921/chk.v23i1.144>
- Arafah, S. (2020). Pernikahan “Bersahaja” Di Masa Pandemi Covid-19 Pada Masyarakat Bugis Kota Palopo. *MIMIKRI*, 6(2), 171–188. <https://blamakassar.ejournal.id/mimikri/article/view/431>
- Auda, J. (2015). *Membumikan Hukum Islam Melalui Maqasid Syariah* (Cet. 1.). Mizan Pustaka. <http://files/170/IOS1.html>
- Baroroh, N. (2018). Metamorfosis “Illat Hukum” Dalam Sad Adz-Dzariah Dan Fath Adz-Dzariah (Sebuah Kajian Perbandingan). *Al-Mazahib: Jurnal Pemikiran Hukum*, 5(2). <http://ejournal.uin-suka.ac.id/syariah/almazahib/article/view/1426>
- Chairah, D. (2021). Pelaksanaan Ijab Kabul Pernikahan di Masa Pandemi Covid-19 di KUA Kecamatan Sampang Madura. *Al-Hukama' : The Indonesian Journal of Islamic Family Law*, 11(01), 57–75. <https://doi.org/10.15642/ALHUKAMA.2021.11.01.57-75>
- CNN. (n.d.). *Klaster Covid Resepsi Pernikahan Sragen, Sekeluarga Meninggal*. Retrieved October 22, 2021, from <https://www.cnnindonesia.com/nasional/20201113150805-20-569478/klaster-covid-resepsi-pernikahan-sragen-sekeluarga-meninggal>
- Devy, S., & Zahari, M. S. Bin. (2020). Status Hukum Pernikahan Yang Dilaksanakan Oleh Wali Hakim Luar Negeri (Studi Kasus di Mahkamah Syariah Negeri Kelantan). *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial*, 20(1), 39–55. <https://doi.org/10.22373/JMS.V20I1.6500>
- Djazuli, H. A. (2006). *Ilmu Fiqih Islam: Penggalan, Perkembangan, dan Penerapan Hukum Islam*. Kencana. <http://files/128/IOS3774.html>
- Dr. H. Abd. Rahman Dahlan, M. A. (2016). *Ushul Fiqh*. Amzah. <http://files/157/IOS3776.html>
- Emas, M. P. (2020). Problematika Akad Nikah Via Daring dan Penyelenggaraan Walimah Selama Masa Pandemi Covid-19. *Batulis Civil Law Review*, 1(1), 68–78. <https://doi.org/10.47268/ballrev.v1i1.387>
- Faizah, A. (2019). Pencegahan Manipulasi Identitas dalam Perkawinan oleh Kantor Urusan Agama dalam Prespektif Sadd ad-Dzari'ah: Studi di Kantor Urusan Agama Kecamatan Balerejo, Kabupaten Madiun. *Sakina: Journal of Family Studies*, 3(2). <http://urj.uin-malang.ac.id/index.php/jfs/article/view/285>
- Fitri, A. B. M. (2021). PELAKSANAAN KMA RI NO. 298 TAHUN 2003 PASAL 2 TENTANG PENGAWASAN DAN PENCATATAN PERNIKAHAN PADA MUSIM PANDEMI COVID 19. *Tafâqquh: Jurnal Penelitian Dan Kajian Kelislaman*, 9(1), 17–40. <http://jurnal.iaibafa.ac.id/index.php/tafaqquh/article/view/351>

- Habibi, M. (2021). Legalitas Hukum Islam dalam Sistem Peradilan Indonesia. *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial*, 22(2), 128-149. <https://doi.org/10.22373/JMS.V22I2.8050>
- Hilmi, A. (2018). *Fath Adz-Dzariah Dan Aplikasinya Dalam Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia* [UIN Raden Intan Lampung]. <http://repository.radenintan.ac.id/4165/>
- Iskandar, M. (2017). HAM dalam Prespektif Islam. *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial*, 19(1), 111-126. <https://doi.org/10.22373/JMS.V19I1.2017>
- Jamhuri, J., & Zuhra, Z. (2020). Konsep Talak Menurut Ibnu Qayyim Al-Jauziyyah (Analisis Waktu Dan Jumlah Penjatuhan Talak). *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial*, 20(1), 95-122. <https://doi.org/10.22373/JMS.V20I1.6503>
- Jannah, S. (2020). Penundaan Perkawinan Ditengah Wabah Covid-19. *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)*, 2(1), 41-50. <https://doi.org/10.33474/jas.v2i1.6840>
- Muaidi, M. (2016). Saddu Al-Dzari'ah dalam Hukum Islam. *TAFALQUH: Jurnal Hukum Ekonomi Syariah Dan Ahwal Syahsiyah*, 1(2), 34-42. <http://ejournal.kopertais4.or.id/sasambo/index.php/tafaquh/article/view/3044>
- Mukaromah, V. F. (2021). *Melihat Peningkatan Kasus Covid-19 di Indonesia dari Bulan ke Bulan* Halaman all. *Kompas.com*. <https://www.kompas.com/tren/read/2020/09/01/200200165/melihat-peningkatan-kasus-covid-19-di-indonesia-dari-bulan-ke-bulan?page=all>
- Munawaroh, H. (2018). Sadd Al- Dzariat Dan Aplikasinya Pada Permasalahan Fiqih Kontemporer. *Ijtihad: Jurnal Hukum dan Ekonomi Islam*, 12(1), 63-84. <https://doi.org/10.21111/ijtihad.v12i1.2584>
- Musolin, M. (2019). Sadd Adz-Dzarai': Konsep dan Aplikasi Manajemen Pendidikan Islam. *MANAGERIA: Jurnal Manajemen Pendidikan Islam*, 4(1), 71-84. <https://doi.org/10.14421/manageria.2019.41-05>
- Nadhiran, H. (2012). Corak Pemikiran Hukum Islam Hasbi Ash-Shiddieqy antara Purifikasi dan Modernisasi. *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial*, 14(2), 251-260. <https://doi.org/10.22373/JMS.V14I2.1880>
- PCC, T. (2021). *Apa itu Coronavirus? Informasi Tentang Virus Corona* | *Stoppneumonia.id*. <https://stoppneumonia.id/informasi-tentang-virus-corona-novel-coronavirus/>
- Rafiqi, Y., Sukmawati, H., & Nasrulloh, A. A. (2019). Implementasi Sadd Dan Fath Al-Dzari'ah Dalam Strategi Pemasaran Produk Bordir Di Sentra Industri Bordir Kota Tasikmalaya. *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial*, 7(02), 149-160. <https://doi.org/10.30868/am.v7i02.591>
- Regional Kompas. (n.d.). *Kasus Covid-19 Mamasa Meningkat 250 Persen, Didominasi Kluster Pernikahan dan Upacara Kematian*. Retrieved October 22, 2021, from <https://regional.kompas.com/read/2021/07/30/160055478/kasus-covid-19-mamasa-meningkat-250-persen-didominasi-kluster-pernikahan>
- Republika. (n.d.). *Belasan Warga Tertular Covid-19 dalam Kluster Pernikahan* | *Republika Online*. Retrieved October 22, 2021, from <https://www.republika.co.id/berita/quzx9r425/belasan-warga-tertular-covid19-dalam-kluster-pernikahan>
- Riyawi, M. R. (2021). Penundaan Perkawinan Di Masa Pandemi Covid-19 Perspektif Teori Masalah. *Legitima: Jurnal Hukum Keluarga Islam*, 3(2), 160-176. <https://doi.org/10.33367/LEGITIMA.V3I2.1761>

- Sabil, J., Hasanah, R., & Abdullah, A. (2020). Pengawasan Internal Perspektif Maqāṣid Al-Syari'ah (Analisis Peraturan Pemerintah No. 60 Tahun 2008 tentang Sistem Pengendalian Intern Pemerintah). *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial*, 20(2), 262-274. <https://doi.org/10.22373/JMS.V20I2.6518>
- SE Ditjen Bimas Islam No. 06 Tahun 2020 tentang Pelayanan Nikah Menuju Masyarakat Produktif Aman Covid.
- Shiddieqy, M. H. A. (2001). *Falsafah Hukum Islam / M. Hasbi Ash Shiddieqy*. Pustaka Rizki Putra. <http://files/155/IOS3597.html>
- Sirandang :: Peraturan No. 15 Tahun 2020 Surat Edaran Menteri Agama Nomor 15 Tahun 2020 tentang Panduan Penyelenggaraan Kegiatan Keagamaan Di Rumah Ibadah Dalam Mewujudkan Masyarakat Produktif dan Aman COVID di Masa Pandemi. (2021). <http://itjen.kemenag.go.id/sirandang/peraturan/6158-15-surat-edaran-menteri-agama-nomor-15-tahun-2020-tentang-panduan-penyelenggaraan-kegiatan-keag>
- Surabaya, D. (2021). *Protokol Kesehatan Kini Menjadi 3M – Dinas Kesehatan Kota Surabaya*. <http://dinkes.surabaya.go.id/portalsv2/blog/2020/11/26/protokol-kesehatan-kini-menjadi-3m/>
- Syafei, R. (2010). *Ilmu Ushul Fiqih*. PUSTAKA SETIA. <http://files/176/IOS3744.html>
- Syukur, S. (1993). *Sumber-sumber hukum Islam : Syarmin Syukur*. Al Ikhlas. <http://files/168/IOS3597.html>
- Widiyanto, H. (2020). KONSEP PERNIKAHAN DALAM ISLAM (Studi Fenomenologis Penundaan Pernikahan Di Masa Pandemi). *JURNAL ISLAM NUSANTARA*, 4(1), 103-110. <https://doi.org/10.33852/JURNALIN.V4I1.213>
- Wijayanti, U. T. (2021). ANALISIS FAKTOR PENYEBAB PERCERAIAN PADA MASA PANDEMI COVID-19 DI KABUPATEN BANYUMAS. *Jurnal Ilmu Keluarga & Konsumen*, 14(1), 14-26. <https://doi.org/10.24156/JIKK.2021.14.1.14>
- Zuhaili, W. (2016). *Al-Wajiz Fi Ushul Fiqh*. Darul Fikr. <http://files/110/IOS13001.html>