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Islamic Legal Analysis of Obligation for Swab Tests as a Requirement for Marriage in the Era of Covid-19 Pandemic in Indonesia

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Abstract:

The Covid-19 pandemic gives many impacts on various aspects, including marriage service requirement. During the pandemic, it is required to comply with government policies, namely submitting negative Covid-19 Swab test results for prospective brides, witnesses, and marriage guardians. Due to the high spending for taking the test, some prefer to unregister the marriage and delay the schedule. This research is a literature study with a normative type. The data was obtained qualitatively through observation and analysis of the policy of the Ministry of Religious Affair, its impact on Indonesian society, and how Islamic law perceives the policy. The results show that the policy of the Ministry of Religious Affair number: P-001/DJ.III/Hk.007/07/2021 aimed to cope with the spread of Covid-19 virus which is increasingly rampant. Meanwhile, according to the Islamic law, it is a temporary requirement formulated to prevent harm and therefore, it is not a part of marriage pillar. Islamic law furthermore puts it as an effort to maintain the soul's safety (*hifdun al-nafs*).

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Keywords:

Swab Test; Marriage; Covid-19 Pandemic

Abstract:

Pandemi Covid-19 memberi dampak pada berbagai macam aspek kehidupan, termasuk persyaratan layanan pernikahan. Selama pandemi, pasangan yang akan menikah, saksi, dan walinya diwajibkan menyerahkan hasil negatif test Swab sesuai kebijakan pemerintah. Karena mahalnya biaya test tersebut, ada beberapa pasangan yang memilih pernikahan sirri atau menunda pernikahannya. Penelitian ini adalah penelitian pustaka yang berjenis normatif. Data-data di dalamnya diperoleh secara melalui pengamatan dan analisis terhadap kebijakan Kementerian Agama nomor P-001/DJ.III/Hk.007/07/2021 yang bertujuan menanggulangi penyebaran virus Covid-19 yang sempat menggila. Sementara itu menurut hukum Islam, persyaratan tersebut sifatnya sementara dan bertujuan untuk mencegah munculnya hal-hal yang tidak diinginkan sehingga bukan merupakan rukun nikah. Hukum Islam melihat kebijakan tersebut sebagai salah satu upaya untuk menjaga keselamatan jiwa.

Keywords:

Tes Swab; Perkawinan; Pandemi Covid-19

Introduction

The Covid-19 pandemic has hit countries in the world, including Indonesia. The virus entered Indonesia in March 2020¹ and has reached its peak at the midst of 2021. Responding the situation, the government issued policies to prevent the spread of virus and protect the citizens from the contagion attack. These policies include large-scale social restrictions (PSBB; *Pembatasan Sosial Berskala Besar*) and implementation of micro community activities (PPKM; *Pemberlakuan Pembatasan – Kegiatan Masyarakat*). The policies prohibiting community activities indeed aims to suppress the high number of Covid-19 spread in Indonesia. Along with it, they also give

¹ Susan Olivia, John Gibson, and Rus'an Nasrudin, "Indonesia in the Time of Covid-19," *Bulletin of Indonesian Economic Studies* 56, no. 2 (2020): 143–74, <https://doi.org/10.1080/00074918.2020.1798581>.

impacts on various aspects, including the requirement of marriage² services during the pandemic.³

Marriage services in pandemic times are undoubtedly different from those held before the pandemic or in the normal era. The government restricts marriage with several policies such as suggesting a delay of marriage,⁴ prohibiting wedding reception (*walimatul ursy*) to avoid bad things happening,⁵ and requiring negative Covid-19 Swab tests result in submission for future brides-to-be, witnesses, and guardians.

Obligation to submit negative Swab test results is a newly set requirement for marriage settlement. In Islamic teaching, it is not included in the terms and requirements of marriage. However, practically today, the formal marriage settlement couldn't be organized unless there found the result. The high spending for taking the Swab test gives people only two choices, either delaying marriage or having unregistered marriage or so-called *nikah sirri*.⁶

Before the Covid-19 outbreak, two future brides have been obliged to submit negative results from narcotic tests through the Policy of the Ministry of Religious Affairs office aiming to prevent the negative impacts of the drugs.⁷ In addition, some local KUA (*Kantor*

² Muhammad Roy Purwanto Reza Maulida Anatasya, Fela Sufah Aidatul Izzah, Rizqah Nur Aini, "Impact of Covid 19 Pandemic on Increasing Number of Marriages (Case Study In Kua Jekulo Kudus Regency)," *At-Thullab Journal* 3, no. 1 (2021): 673–81.

³ Sitti Arafah, "'Understated' Marriage During the Covid-19 Pandemic in the Bugis Community of Palopo City," *Mimikri Journal of Religion and Culture* 6, no. 2 (2020): 171–88.

⁴ Widiyanto Day, "The Concept of Marriage in Islam (Phenomenological Study of Delays in Marriage In Pandemic Times)," *Journal of Islam Nusantara* 04, no. 01 (2020): 103–10, <https://doi.org/10.33852/jurnalin.v4i1.213>.

⁵ M. Nur Kholis Al Amin, "Assessing the Expediency Value of the Suspension of Walimat Al- 'Ursy In the COVID-19 Emergency Period Through Sadd Adz-Dzari'Ah," *Ulumuddin: Journal of Islamic Sciences* 10, no. 1 (2020): 27–38.

⁶ Mohd Rafi Riwayi, "Penundaan Perkawinan Di Masa Pandemi Covid-19 Prespektif Teori Masalahah," *Legitima: Jurnal Hukum Keluarga Islam* 3, no. 2 (2021): 160–76, <https://doi.org/https://doi.org/10.33367/legitima.v3i1>.

⁷ Gusmat, "Surat Keterangan Bebas Narkoba Sebagai Syarat Nikah Perspektif Saad Adz-Dzari'ah Berdasarkan Surat Edaran Kemenag RI NO.B-7030/KW.13.6.1/PW.01/12/2019," *Sakina: Journal of Family Studies* 5, no. 3 (2021): 1–15.

Urusan Agama; Religious Affair Office) organize pre-marital medical tests such as KUA Jatirejo, Mojokerto, for the sake of maintaining offspring.⁸ Generally speaking, all obligations, both narcotics and medical tests before marriage settlement have the same goal, namely to prevent any damage or unexpected situation.

Unlike the wedding service before the pandemic, the future bride and groom, witnesses, and guardians are required to submit the negative Swab test result beforehand. It is based on the instruction of the Director-General of the Islamic Society number: P-001/DJ. III/Hk.007/07/2021 on implementing marriage services at the religious affairs office sub-district during the PPKM levels 4 and 3. This is one of the most obvious impacts of the COVID-19 pandemic in the Indonesian marriage service.

Meanwhile, according to the four main schools of Islamic jurisprudence, the terms and pillars of marriage must be fully fulfilled so that the settlement can be considered legal. They only consist of the bride, the groom, the guardian, two witnesses of marriage, and marriage settlement (*akad*).⁹ The existence of additional administrative requirements to submit the negative results of the Swab test has just existed since the hit of the current pandemic and is required for the sake of marriage settlement validity.¹⁰

Interestingly, although the whole tests respectively aim to prevent any unexpected consequences of infectious diseases before the marriage takes place, they are different in fees. The fee for taking both drug and medical tests is relatively lower than that of the Swab test. Furthermore, those who are declared positive as drug users deserve free rehabilitation. This is different from the requirement for taking the Swab test which is not facilitated by the government and thus burdens people.

Based on the above problems, the focused issues in this study are

⁸ Hana Ayu Aprilia, "Tes Kesehatan Pra Nikah Bagi Calon Mempelai Laki-Laki Di Kantor Urusan Agama (Kua) Jatirejo Mojokerto," *Al-Hukama* ' 7, no. 2 (2018): 333–58, <https://doi.org/10.15642/alhukama.2017.7.2.333-358>.

⁹ Abdurrahman Al-Jazairi, *Kitaabul Fiqhi 'Alal Mazaahib Al-Arba'Ah*, Beirut (Beirut: Darul Kutub al-Ilmiah, 2010). 712

¹⁰ Sudirman Hasan Shofiatul Jannah, Nur Syam, "Urgensi Pencatatan Pernikahan Dalam Prespektif Hukum Islam Dan Hukum Positif Di Indonesia," *Al-Ulum* 8, no. 2 (2021): 190–99.

marriage service during the Covid-19 pandemic, the impact of new policy of negative Swab test result submission, and overview of the policy according to the Islamic law. It wishes to give contribution to the government in policy making process as well as raising legal awareness among Indonesian people so that they can know the purpose of new marriage service policy during the Covid-19 pandemic.

Research Methods

This library research¹¹ examines various data related to the research topic. It ranges from the policy of the Ministry of Religious Affair regarding marriage services during the pandemic as the primary data to supporting one such as online news, magazines, newspapers, and other relevant data. Furthermore, this is normative research that observes the rule of law, legal principles, and legal doctrines to answer any relevant legal issue.¹² It also portrays living phenomena among society in responding to the policy.

The compilation data method of this study is qualitative which seeks a deep understanding of any symptom, problem, fact, or reality that includes actions and their consequences in the relationship of community life.¹³ The data will be further reduced, displayed, and analyzed for making the conclusion or verification.¹⁴ The unit of analysis of this research is Islamic law which is used to analyze the mandatory Swab test as a condition of marriage during the covid-19 pandemic. In this context, the research observes the policy, its impact on the wedding among Indonesian people during the pandemic, and how Islamic law perceives it.

¹¹ Noeng Muhajir, *Qualitative Research Method* (Yogyakarta: Rakesarasia, 1996), 157.

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada, 2010), 35.

¹³ J.R Raco, *Qualitative Research Methods of Types, Characters and Advantages* (Jakarta: PT Gramedia Widiasarana Indonesia, 2010), 9.

¹⁴ I Lexy Moleng, *Qualitative Research Methodology, I* (Bandung: Adolescent Rosda Karya, 1995), 178.

Discussion and Result

Policy of the Ministry of Religious

Affairs on Marriage Services during the Covid-19 Pandemic

The government's policy on marriage services during the pandemic to comply with health protocols is stated in the instruction of the Director-General of Muslims number: P-001/DJ.III/Hk.007/07/2021 in the PPKM period. This policy was set in Jakarta on July 26, 2021, by Director-General Kamaruddin Amin, as an effort to prevent further contagion by providing protection to employees of KUA and the public from the transmission of the COVID-19 virus. The implementation of this policy does not only cover obligation to wash hands, wear masks and maintain distance, but also take the Swab tests. In addition to the future couple, marriage guardian, and witnesses are also obliged to take the test before the marriage settlement occurs. This policy is typically conveyed by the officer of KUA in the process of marriage registration. As a new policy, it is certainly not immediately accepted by Indonesians. On the contrary, it caused a lot of controversies.¹⁵

Since the pandemic hit Indonesia, there are several relevant policies from the government, including delays in marriage in the Ministry of Religious Affairs of the Republic of Indonesia Number: P-004/DJ.III/Hk.00.7/04/2020 concerning controlling the marriage services in the emergency period of the disease outbreak due to Covid-19. Delaying marriage is not a good choice, but pandemic makes it an available choice to protect Indonesian people.¹⁶ Another policy is about the marriage service policy in the PPKM period that requires Swab tests before the wedding. In general, the function of the Swab test is to ensure either existence or absence of viral infections for protecting people and reducing the spread of the Covid-19 virus.¹⁷

¹⁵ Amin Kamaruddin, "Instruksi Direktur Jenderal Bimbingan Masyarakat Islam Nomor P-001/DJ.III/Hk.007/07/2021 Tentang Pelaksanaan Layanan Nikah Pada Kantor Urusan Agama (KUA) Kecamatan Masa Pemberlakuan Pembatasan Kegiatan Masyarakat (PPKM) Level 4 Dan Level 3" (2021).

¹⁶ Shofiatul Jannah, "Penundaan Perkawinan Ditengah Wabah Covid-19," *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)* 2, no. 1 (2020): 41, <https://doi.org/10.33474/jas.v2i1.6840>.

¹⁷ Via Anjalina Tambunan Nurhidayanti, Enderia Sari, "Penyuluhan Masyarakat Mengenai Efektivitas Pemeriksaan Rapid Test Antibodi Dan Antigen

The benefits of the mandatory Swab test are to support the government's effort in reducing the spread of the Covid-19 virus or, in other words, avoiding harm while creating benefits (*maslahah*).¹⁸

Both the policy on delaying marriage and the Swab test obligations have a positive and negative impact on Indonesian people, especially the Islamic community. The positive impact is to assist the government in preventing the spread of the covid-19 virus. In contrast, the negative is the psychological impact on those who plan to get married during the pandemic. They need to comply with various new rules following the government's policy, including taking the Swab test with a self-funded scheme.¹⁹

Some people, particularly those who come from the lower-middle economic class, typically feel strongly objected to the policy. Therefore, they will likely protest against the local KUA as the institution which implements the policy and this often leads to conflict between people and KUA officers. Unfortunately, the new policy has not been well disseminated so that people tend to misunderstand the policy and have no idea about the importance of the Swab test before the marriage process.

This happened in some areas. In Bojonegoro district, East Java, Mitroatin as the deputy chairman of People's Representative Council (DPRD; *Dewan Perwakilan Rakyat Daerah*), admitted that he often received complaints from prospective brides because of the policy to take the Swab test. Therefore, he suggested that the government give concessions to low-income families who are going to get married.²⁰ The same happened in Purworejo, Central Java. Several assistants of marriage registrar officers (P3N; *Pembantu Pegawai Pencatata Nikah*)

Dalam Mendeteksi Covid-19," *Khidmah: Jurnal Pengabmas IKesT Muhammadiyah Palembang* 3, no. 1 (2021): 294–300, <https://doi.org/10.52523/khidmah.v3il.346>.

¹⁸ Riwayi, "Penundaan Perkawinan Di Masa Pandemi Covid-19 Presfektif Teori Masalah."

¹⁹ Muhammad Zulfa Alfaruqy, Finda Kalina Putri, and Sara Imanuel Soediby, "Dinamika Psikologis Menikah Pada Masa Pandemi COVID-19," *Jurnal Psikologi TALENTA* 6, no. 2 (2021): 55, <https://doi.org/10.26858/talenta.v6i2.19695>.

²⁰ Tulus Addarma, "Dinilai Memberatkan, DPRD Bojonegoro Minta Pemkab Bisa Fasilitasi Swab Antigen Bagi Calon Pengantin," *beritajatim.com*, 2021, <https://beritajatim.com/pendidikan-kesehatan/dinilai-memberatkan-dprd-bojonegoro-minta-pemkab-bisa-fasilitasi-swab-antigen-bagi-calon-pengantin/>, diakses pada tanggal 15 Desember 2021.

came to the Purworejo DPRD office. They asked to loosen marriage requirements during PPKM level 4 in the area because the existing requirements are considered burdensome that some marriages are planned for cancellation.²¹ Meanwhile, in Indramayu, the local KUA proposed to the local government to free the cost of Swab tests taking for future brides, especially from low-income families.²²

All the cases show that this sort of dissemination is really helpful to increase people's understanding of government policies. In nowadays era, it can also be done either *online* using social media or *offline*. The government should be fully responsible for the dissemination of the policy so that they can monitor and analyze the effectiveness of the policy in determining future policies. At least, people need to know the consideration beyond the policy, namely the increasing number of marriages during the pandemic, along with domestic and sexual violence²³ as well as mortality and pregnancy rates²⁴ that makes complying with health protocols becomes a must in everyday life, such as washing hands and keeping your distance.²⁵ In addition to avoid misunderstanding on the policy or any protest on it so that people can be more cooperative in its implementation, the dissemination also works to reduce public anxiety in facing Covid-19 pandemic. More importantly, people need to understand that the

²¹ Muhammad Ansori, "Pembantu Pegawai Pencatat Nikah, Datangi Dewan Minta Kelonggaran Aturan Nikah," <https://purworejo.sorot.co/>, 2021, <https://purworejo.sorot.co/berita-11213-pembantu-pegawai-pencatat-nikah-datangi-dewan-minta-kelonggaran-aturan-nikah.html>, diakses pada tanggal 15 Desember 2021.

²² Handhika Rahman, "Aturan Swab Antigen Beratkan Calon Pengantin, Kemenag Indramayu Akan Usulkan Swab Antigen Gratis," 2021, n.d., <https://jabar.tribunnews.com/2021/07/26/aturan-swab-antigen-beratkan-calon-pengantin-kemenag-indramayu-akan-usulkan-swab-antigen-gratis>, diakses pada tanggal 15 Desember 2021.

²³ Komnas Perempuan National Commission Against Violence Against Women, "Women In Pandemic Violence: Spike in Sexual Violence, Cyber Violence, Child Marriage And Limited Handling Amid the Covid-19 Pandemic."

²⁴ Tuti Marjan Fuadi and Irdalisa, "Covid 19: Between Mortality And Birth Rate," *Journal of Sociology of Indonesian Religion (JSAI)* 1, no. 3 (2020): 199–211, <https://doi.org/10.22373/jsai.v1i3.767>.

²⁵ Reza Maulida Anatasya, Fela Sufah Aidatul Izzah, Rizqah Nur Aini, "Dampak Pandemi Covid 19 Terhadap Peningkatan Jumlah Pernikahan (Studi Kasus Di KUA Jekulo Kabupaten Kudus)."

policy aims to protect KUA officers and Indonesian people in general from the spread of the Covid-19 virus. Dissemination of the mandatory Swab test policy before marriage can furthermore lead people to be more aware and obedient to the obligation because knowing the purpose beyond.²⁶

Swab Test: Between Marriage Pillars and Administrative Terms

Taking Swab tests before marriage during the current pandemic has become an obligation for Indonesian society. It applies through the decision of The Ministry, The Body of Islamic society guidance, following the PPKM. As a consequence, the officer does not legalize the marriage and go through a marriage settlement or registration process unless this requirement is fulfilled.

The obligation to take any test before marriage is not a new thing. Before the obligation for taking the Swab test, a previous policy required drug testing as one of the marriage requirements. The later mentioned policy is a result of the memorandum of understanding between the National Narcotics Agency (BNN; *Badan Narkotika Nasional*) and some local governments. They consist of several regions in Indonesia, such as North Kalimantan,²⁷ East Java, Binjai, and other areas.²⁸ The policy aims to overcome the use of drugs among Indonesian society, especially the youth.

This sort of innovation on the additional requirements for marriage is an effort to make it contextual and fit with people's needs. What was mentioned in Law No. 1 of 1974 concerning marriage mainly requires registration of marriages as one of the legal conditions of marriage formally. Consequently, unregistered

²⁶ Ririn Noviyanti Putri, "Indonesia Dalam Menghadapi Pandemi Covid-19," *Jurnal Ilmiah Universitas Batanghari Jambi* 20, no. 2 (2020): 705–9, <https://doi.org/10.33087/jiubj.v20i2.1010>.

²⁷ Fatma Amilia and Faiq Tobroni, "Surat Keterangan Pemeriksaan Narkoba Sebagai Syarat Permohonan Kehendak Nikah Inovasi Penataan Administrasi Perkawinan Di KUA Kecamatan Nunukan Kalimantan Utara," *Al-Ahwal* 12, no. 2 (2019): 117–29.

²⁸ M P Aprian, "Eksistensi Tes Narkoba Pranikah Dalam Peraturan Walikota Binjai Nomor 39 Tahun 2017 Ditinjau Dari Maqasid Asyasyari'ah," 2020, <http://repository.uinsu.ac.id/9973/>.

marriages are not considered valid.²⁹ This dynamic implies that the development of marriage law follows the dynamics of the times along with each situation and place, such as the fast development of information technology which also affects the law of marriage.³⁰

The new policies of marriage in Indonesia seem to be temporary following the current situation. Obligation for taking the drug test, for instance, has just been replaced by the Swab test following the hit of the Covid-19 attack. Drug tests for future brides are very beneficial in helping the government's effort to handle drug abuse among young people. Likewise, the Swab test requirement seems to be valid only in a short period so that as soon as the pandemic is over, it will not be applied anymore. Moreover, the policy on the Swab tests during the pandemic does not have any binding power for the community as there is no punishment for violators except unavailability to register the marriage formally. Because of the temporariness, the Swab test result can't be included in the category of marriage pillar. Furthermore, recently, it is required to submit another document, namely vaccine certification.³¹

Practically, wedding practice and marriage service in the pandemic period are quite diverse from one area and another. In Purbalingga, especially at Bojongsari sub-district and Rembang sub-district, weddings are still carried out following the situation and conditions of the local community. Local people are also obedient in submitting the negative Swab test results of Covid-19.³² Meanwhile, the new marriage services during the pandemic also occurred in the city of Medan Marelan. Research results from Alfi Syahri showed that the change in Medan KUA offices applies to marriage registration

²⁹ Government Regulation of the Republic of Indonesia, "PP No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 on Marriage" (1975), Chapter 1 verse 2.

³⁰ Mahardika Putera Emas, "Problem of Marriage Agreement Via Online and Maintenance of Walimah During the Covid-19 Pandemic," *Batulis Civil Law Review* 1, no. 1 (2020): 68, <https://doi.org/10.47268/ballrev.v1i1.387>.

³¹ Zulham Wahyudani, "Sertifikat Vaksin Covid 19 Sebagai Syarat Permohonan Kehendak Nikah Dalam Perspektif Maqāsid Syari ' Ah," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial* 9, no. 02 (2021): 319–32, <https://doi.org/10.30868/am.v9i0>.

³² Teguh Anindito, "Pelaksanaan Perkawinan Di Masa Pandemi Covid-19 Di Purbalingga," *Cakrawala Hukum* 12, no. 1 (2016): 95–110.

which can be done both offline and online. This aims to anticipate the lack of skill and facilities of accessing online service in one hand and the physical crowd in another. All in all, it aims to make it easier for people in organizing marriage during the pandemic.³³ In both ways, people are told about the newest policy regarding negative Swab test Covid-19 results submission as a requirement for settling the marriage.³⁴

Marriage services at the Banjarmasin KUA are still carried out by complying with government policies to carry out wedding activities by following the health protocols that have been determined by the government, including complying with the mandatory Swab test policy. However, in holding a wedding ceremony, the people of Banjarmasin had lack of discipline. Unmasked people were still found while most of them likely gathered without keeping their distance each others.³⁵ Organizing wedding services during the Covid-19 pandemic therefore needs cooperation with *stakeholder*, particularly KUA, considering that they have significant influence among society like what occurred in Jambi.

Implementing marriage policies during the pandemic in Jambi province has been going well with strict control from the Jambi provincial and Religious Affairs Offices. Still, there are obstacles both from the negligence of the bride and groom and the local culture which usually facilitates people to make a crowd. In fact, at the era of pandemicall should take precautions independently so that efforts are made respectively to stop the spread of COVID-19.

Meanwhile, in Sumbawa, local people keep assuming that although in the pandemic, they still need to maintain marriage customs. Therefore, the local government is supposed to tell them that

³³ Alfi Syahri et al., "Layanan Pelaksanaan Akad Nikah Di Kantor Urusan Agama Medan Marelan (Studi Efektivitas Dan Hambatannya Pada Masa Pandemi Covid-19)," *Al-Fikru: Jurnal Ilmiah* 15, no. 1 (2021): 1–13, <https://doi.org/10.51672/alfikru.v15i1.47>.

³⁴ Syahri et al.

³⁵ Muhammad Jamili, "Dampak Pandemi Covid-19 Terhadap Pelayanan Pernikahan Dan Permohonan Pernikahan Di Kantor Urusan Agama (KUA) Banjarmasin Tengah Kota Banjarmasin," *Jurnal Al 'Idara Balad* 2, no. 2 (2020): 36, <http://ojs-al-iidara-balad.web.id/index.php/ANE2018/article/view/79/76>.

traditional custom is not a part of mandatory Islamic obligation and therefore can be skipped for the sake of people's safety.³⁶

The same thing happened to the Lombok Montong Bongor Sasak community which led the local government to issue the circular letter number 338/18/HUMAS prohibiting people to organize any crowded activities, including the "nyongkolan" in the marriage custom. "Nyongkolan" involves all members of the groom's family and the community to give a visit to the bride's residence. It aims to show off the groom in front of her parents and family, even to the whole community, while apologizing and paying respects to the bride's parents. The bride and the groom dressed like kings and queens by wearing luxurious outfits according to customary provisions. The activity is usually accompanied by various traditional arts, such as *gamelan*, *klentang*, and other traditional Lombok arts.

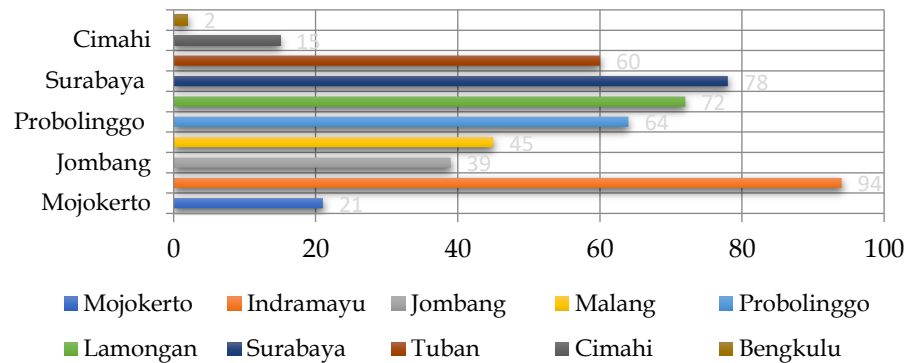
However, the issuance of the letter is even considered reducing local custom ranging from a decrease of cultural touch of Sasak tribe, eliminating once in a life opportunity for the couple to be one day king and queen, to lessen people's income.³⁷

The mandatory of Swab test policy before marriage impacts not only on the wedding or marriage customs, but also causes marriage delay in several regions in Indonesia as clear from the following diagram:

³⁶ Afnan Riani Cahya Ananda Fatihatul Anhar Azzulfa, "Dilema Perkawinan Adat Sumbawa Di Masa Pandemi Covid-19," *Al-Hukama* 10, no. 02 (2020): 372–98.

³⁷ H Azhari and A Sugitanata, "Dampak Larangan Adat Nyongkolan Bagi Masyarakat Sasak Montong Bongor Pada Masa Pandemi Covid-19," *Sosial Budaya* 18, no. 1 (2021): 1–11, <http://ejournal.uin-suska.ac.id/index.php/SosialBudaya/article/view/12396>.

Data on Marriage Delays in the Pandemic Period



The data above shows a delay in marriage caused by the mandatory Swab test as a condition of formal marriage settlement. In the city of Mojokerto, from 535 prospective couple who have registered, 21 candidates decided to delay the marriage.³⁸ The same thing happened in several areas in Indonesia, namely Indramayu West Java with 94 couples,³⁹ Jombang with 39 couples,⁴⁰ Malang with 45 couples,⁴¹ Probolinggo 64 couples,⁴² Lamongan⁴³

³⁸ Sayma Aslah, “Gara Gara PPKM Darurat, 21 Calon Pengantin Di Mojokerto Ini Tunda Nikah,” suaramojokerto.com, 2021, <https://suaramojokerto.com/2021/07/14/gara-gara-ppkm-darurat-21-calon-pengantin-di-mojokerto-ini-tunda-nikah/>, diakses pada tanggal 17 Desember 2021.

³⁹ Ciremaytoday, “94 Calon Pengantin Di Indramayu Tunda Nikah Gara-Gara Tak Sanggup Bayar Tes Swab,” <https://kumparan.com/>, 2021, <https://kumparan.com/ciremaytoday/94-calon-pengantin-di-indramayu-tunda-nikah-gara-gara-tak-sanggup-bayar-tes-swab-1wDQgrb0iFv/full>, diakses pada tanggal 17 Desember 2021

⁴⁰ Zain Arifin, “Imbas PPKM Darurat Di Jombang, Pernikahan 39 Calon Pengantin Ditunda,” <https://www.idntimes.com/>, 2021, <https://www.idntimes.com/news/indonesia/zain-arifin/imbasp-ppkm-darurat-di-jombang-pernikahan-39-calon-pengantin-ditunda>, diakses pada tanggal 17 Desember 2021.

⁴¹ Muhammad Aminudin, “PPKM Darurat Bikin 45 Calon Pengantin Di Kota Malang Tunda Pernikahan,” <https://news.detik.com/>, 2021, <https://news.detik.com/berita-jawa-timur/d-5648857/ppkm-darurat-bikin-45-calon->

Surabaya 78 couples,⁴⁴ Tuban 60 couples,⁴⁵ Cimahi 15 couples,⁴⁶ and Bangalore 2 couples.⁴⁷ Further data implies that marriage delays during the pandemic are mainly caused by very strict marriage policies, such as mandatory Swab tests before marriage, bans on holding wedding receptions, fear of taking the Swab tests, and high cost of the Swab test taking that the couple cannot afford it.

However, in a larger scale, the policy does not influence much on the marriage number during the pandemic. Most of prospective couple keep organizing the wedding by making a small change and relevant adjustment. This is clear from the following diagram;

pengantin-di-kota-malang-tunda-pernikahan, diakses pada tanggal 17 Desember 2021.

⁴² Choirul Arifin, "PPKM Darurat Bikin 64 Calon Pasangan Di Probolinggo Tunda Nikah, Takut Swab Test," *Tribunnews.com*, 2021, <https://www.tribunnews.com/regional/2021/07/21/ppkm-darurat-bikin-64-calon-pasangan-di-probolinggo-tunda-nikah-takut-swab-test.%0A%0A>, diakses pada tanggal 17 Desember 2021.

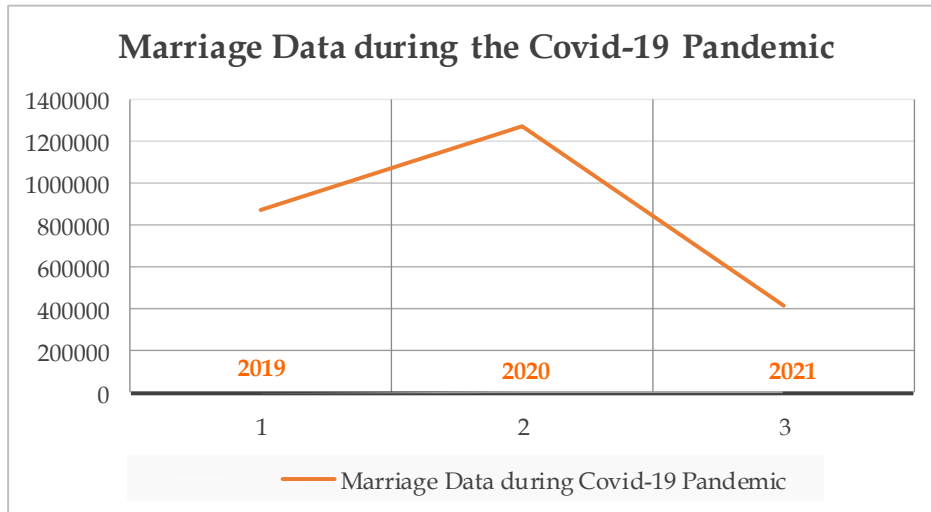
⁴³ M. Naufal Hafizh, "Sebelum Nikah Wajib Tes Antigen, 72 Calon Pengantin Di Lamongan Tunda Pernikahan," <https://surabaya.ayoindonesia.com/>, 2021, <https://surabaya.ayoindonesia.com/regional/pr-78842505/Sebelum-Nikah-Wajib-Tes-Antigen-72-Calon-Pengantin-di-Lamongan-Tunda-Pernikahan?page=all>, diakses pada tanggal 17 Desember 2021.

⁴⁴ Dwi Lindawati, "Selama PPKM Level 4, Sebanyak 78 Catin Di Surabaya Tunda Pernikahan," <https://tugujatim.id/>, 2021, <https://tugujatim.id/selama-ppkm-level-4-sebanyak-78-catin-di-surabaya-tunda-pernikahan/>, diakses pada tanggal 17 Desember 2021.

⁴⁵ Hidayat, "PPKM Darurat Bikin 60 Calon Pengantin Di Tuban Tunda Pernikahan, Gegara Wajib Tes Antigen," <https://ronggo.id/>, 2021, <https://ronggo.id/ppkm-darurat-bikin-60-calon-pengantin-di-tuban-tunda-pernikahan-gegara-wajib-tes-antigen/>, diakses pada tanggal 17 Desember 2021.

⁴⁶ Adi Haryanto, "Patuhi PPKM, 15 Pasangan Calon Pengantin Di Cimahi Tunda Akad Nikah," <https://www.inews.id/>, 2021, <https://jabar.inews.id/berita/patuhi-ppkm-15-pasangan-calon-pengantin-di-cimahi-tunda-akad-nikah>, diakses pada tanggal 17 Desember 2021.

⁴⁷ *BengkuluToday.com*, "Dampak PPKM, 2 Pasang Catin Di Kota Bengkulu Tunda Akad Nikah," *BengkuluToday.com*, 2021, <https://www.bengkulutoday.com/dampak-ppkm-2-pasang-catin-di-kota-bengkulu-tunda-akad-nikah>, diakses pada tanggal 17 Desember 2021.



The number of marriage during the pandemic has fluctuated in the last three years. In 2019, marriages number in Indonesia reached 877,209, increased to 1,271,321 at 2020, then decreased to 416,545 in 2021.⁴⁸ This likely relates closely to various policies regarding marriage which regulate the wedding reception quite detail. It seems to be problematic for some people who plan to organize marriage settlement or wedding ceremony.

On the contrary, the mandatory Swab test policy does not seem to affect unregistered or so called *sirri* marriages. This is certainly because it has nothing to do with formal requirement. The number of this type of marriage even increase during the pandemic. It mostly occurs for the sake of avoiding adultery and targetting immature couple.⁴⁹

⁴⁸ SIK/E-Dupak Kementerian Agama Republik Indonesia, “Data Nikah,” <https://simbi.kemenag.go.id/>, 2021, <https://simbi.kemenag.go.id/simpenghulu/hasil-data-nikah>, diakses pada tanggal 17 Desember 2021.

⁴⁹ Wardatus Sholihah, “Maraknya Praktik Perkawinan Siri Pada Masa Pandemi,” [Kompasiana.com](https://www.kompasiana.com/wardatus1128/6167e1099dc02955ef380432/maraknya-prak), 2021, <https://www.kompasiana.com/wardatus1128/6167e1099dc02955ef380432/maraknya-prak>, diakses pada tanggal 17 Desember 2021.

Taking the Swab Tests before Marriage from the Perspective of Islamic Law

In the context of marriage, Islamic law sets the conditions (*syarat*) and pillars (*rukun*) to fulfill so that the settlement can be considered valid.⁵⁰ Meanwhile, the Indonesian government requires two things, namely material and formal requirements.⁵¹ The former covers marriage pillars according to Islamic jurisprudence, while the later includes conditions formally related to administrative documents that need to fulfill before the d-day of settlement, such as drug tests result, medical tests result, marriage registration administration, and most recently, Swab test result. The negative Swab test result does not only aim for marriage validity, but also for maintaining the safety of engaged staff in the process and related parties.

A Swab test is one of the methods used to take mucus in the nasopharynx (back wall of the nose) or oropharynx (back wall of the mouth) as a sample by inserting a special tool. The mucus will then be examined using special equipment. The test is believed to be able to detect whether a person is infected with the virus or not with a validity number of 97%.⁵² The essential benefit of doing a Swab test is to quickly find out whether or not the Covid-19 virus infects someone. Therefore, when the results of the test are known, the person can be either assigned for further process (like when submitting marriage registration or to go traveling) or not. Additionally, he/she can adjust the interaction and daily activities to maintain the family's safety and the surrounding environment.

Among others, the procedure to submit the negative results of the Covid-19 Swab test submission is an effort of the Ministry of Religious Affairs to prevent and reduce the high flow of the virus

⁵⁰ Ghufron Maksum, "Telaah Kritis Terhadap Praktik Di Bawah Tangan Di Indonesia," *Kordinat* xiv, no. 01 (2017): 63–86, <https://doi.org/10.15408/kordinat.v16i1.6455>.

⁵¹ R. Otje Salman Soemadiningrat, *Reconception of Contemporary Customary Law: Critical Review of Customary Law as a Living Law In Society* (Bandung: Alumni, 2002), 175.

⁵² Velika Devina, "What is the Definition of Antigen Swab Test?," *alodokter.com*, 2021, <https://www.alodokter.com/komunitas/topic/swab-tes-antigen>, accessed on September 16, 2021.

spread. Along with it, it is also required for citizens who want to organize a wedding reception to comply with health protocols strictly. It covers wearing a mask, keeping a physical distance, avoiding handshakes, and using hand sanitizer/doing hand washing regularly.

In the perspective of Islamic law, the Swab test policy is compatible with the concept of *maqasid al-shari'ah* because it aims to maintain the safety of both marriage officers and people from the virus. The concept itself requires the meanings intended by *shari'* (Allah and the Prophet) to be applied in the community through law codification (*tasyri'*).⁵³ The concept also obliges implementation not only based on a textual reading of the Qur'an and hadith, but also by paying attention to other related factors in the process of law formation. It further puts the benefit for humans as the summit of a purpose beyond the whole existing law.⁵⁴ Particularly to the obligation for taking Swab test, the policy also fits another principle in Islamic jurisprudence called *dar'u al-mafasid muqaddam ala jalb al-masalih* (avoiding harm is put first before getting the benefit) for both policymaker (KUA officers) and policy target (bride, groom, and related parties.)

Furthermore, according to Jasser Auda's view on *maqasid al-shari'ah*, to achieve the purpose of *shari'ah*, the classical theory of Islamic law needs expansion. In this context, the obligation to take a Swab test for the bride and groom and related parties does not only target a particular goal, namely maintaining the soul (*hifd an-nafs*), but also to protect human rights to be more flexible in responding to cases of *fiqh*, such as the obligation to take a Swab test as one of the conditions for having formal marriage settlement. *Maqasid's* goal, according to Auda's system theory, is to maintain openness, renewal, realism, and flexibility in the Islamic legal system.⁵⁵

⁵³ Jasser Auda, *Maqasid Al-Shari'ah as Philosophy of Islamic Law: A System Approach* (London & Washington: International Institute of Islamic Thought, 2008), 2.

⁵⁴ Holilur Rohman, "Batas Usia Ideal Pernikahan Perspektif Maqasid Shariah," *Journal of Islamic Studies and Humanities* 1, no. 1 (2017): 67, <https://doi.org/10.21580/jish.11.1374>.

⁵⁵ Retna Gumati, "Maqasid Al-Syari'ah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam)," *Jurnal Al-Himayah* 2, no. 1 (2018): 217–30, <https://www.journal.iaingorontalo.ac.id/index.php/ah/article/view/575/477>.

Likewise, Jasser Auda who makes *maqasid al-shari'ah* as a fundamental principle in Islamic law reform also believes that the effectiveness of a policy is clear from the achievement of its objectives. In other words, he stressed on whether the policy can solve the problems happening in the community. In one hand, the policy has helped the government to break the chain of the spread of Covid-19, minimize the possible cause of the transmission, and spend less on wedding expenses due to the absence of minimum package of *walimatul ursy* or wedding reception. On the other hand, the policy undoubtedly results in a new problem in society. Rich people can easily undergo the policy, but the poor one does differently. To organize a wedding party or marriage settlement, they are still obliged to seek additional money for taking the test that surely makes the policy burdensome.

Therefore, it makes sense to find some people who choose to delay the marriage or unregister it. The unregistered marriage, so-called *sirri*, might cause trouble in the next few days considering that the marriage is not formally recorded.⁵⁶ It is only by performing *isbat* marriage (marriage settlement) in the KUA that a marriage can have authentic evidence and the legal force.⁵⁷ This indicates that the policy leads to some further problems in people's households. The government, therefore, needs to reconsider the policy while taking the realm of Islamic family law into account.

This is mainly because from the perspective of Islamic law, marriage settlement can be carried out without any Swab test and involving KUA officers. Marriage will remain valid as long as it meets the conditions and pillars according to Islamic law although not formally registered and recorded at the KUA. Culturally, if the family of both parties agrees, unregistered marriage settlement can take place, particularly during the pandemic with the new requirements.

⁵⁶ M Yusuf, "Dampak Nikah Siri Terhadap Perilaku Keluarga," *Jurnal At-Taujih* 2, no. 2 (2019): 96–108, <https://doi.org/http://dx.doi.org/10.22373/taujih.v2i2.6530>.

⁵⁷ Ahmad Cholid Fauzi, "Kedudukan Hukum Itsbat Nikah Poligami Sirri," *Jurnal Usm Law Review* 1, no. 1 (2018): 94, <https://doi.org/10.26623/julr.v1i1.2234>.

Therefore, marriage settlement can still happen in economic hardship and new policy in Indonesia.⁵⁸

Policies related to the implementation of marriages during the pandemic significantly affect the community's economic activities, especially in the business field of wedding organizers and makeup or makeup artists. During the pandemic, government policy prohibits wedding receptions from preventing people from creating crowds. So that, wedding organizers and makeup artists are the economic actors who are most affected by the marriage policy, in addition, to the families of the bride and groom. The latter is affected by the Swab test policy as a condition of marriage.⁵⁹ Later after the pandemic ends, those choosing unregistered marriage can legalize their marriage by submitting a marriage certificate in the Religious Courts.

Conclusion

Marriage service during the current pandemic requires the future bride and groom, guardians, and witnesses to submit negative results of the Swab test as one of the mandatory requirements. However, the obligation seems to be temporarily valid unlike material law in Islamic *fiqh* law and formal legislation. It is only required during the Covid-19 pandemic. From the perspective of Islamic law, the policy aims to maintain the safety of the community's life (*hifdun an-nafs*) from the spread of the Covid-19 virus. However, the noble purpose turns out to be burdensome when it comes to policy. The government, therefore, needs to pay attention to the impact of the policy on society from various perspectives, such as sociology, economics, anthropology, and psychology.

⁵⁸ Sudirman et al., "The Family Corner for the Post-COVID 19 Revitalization of Family Function," *Samarah* 5, no. 1 (2021): 88–107, <https://doi.org/10.22373/sjkh.v5i1.9122>.

⁵⁹ Sitti Marwah, "Masalah Pembatasan Pernikahan Di Tengah Pandemi Covid-19 (Studi Di KUA Kec. Tiworo Tengah, Kab. Muna Barat)," *SAHAJA: Indonesian Journal of Sharia and Humanities* 1, no. 1 (2021): 1–16.

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