

The Law of the Marriage Contract for the Visually Impaired in the Perspective of Islamic Law and Madzhab Shafi'i

Incoming Manuscript: 15-01-2024 Manuscript Edited: 22-03-2024 Accepted Manuscript: 24-04-2024

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Abstract

This research explores the legal aspects of non-verbal marriage contracts (akad nikah tunawicara) from the perspectives of Islamic law and the Shafi'i school of thought. The marriage contract is an agreement between two parties who enter into matrimony through the process of ijab (proposal) and qabul (acceptance). Generally, a marriage contract is deemed valid if it meets the necessary conditions and pillars. However, for individuals with special needs, particularly those who are non-verbal, there are specific methods for conducting the marriage contract. The objectives of this research are: 1. To understand the procedures of a non-verbal marriage contract according to Islamic law. 2. To determine the legal aspects of a non-verbal marriage contract according to the Shafi'i school of thought. This research adopts the library research method, involving the examination of relevant books and literature related to the discussed issues. The findings of this study indicate that: 1. Non-verbal marriage contracts, from an Islamic legal perspective, must adhere to the pillars and conditions of marriage, similar to marriages involving individuals who can communicate verbally. Non-verbal communication can be through understandable gestures, writing, or representation by a proxy. If the individual can write, the marriage contract is valid using that written form, just as it is valid using gestures. This opinion has been agreed upon by scholars. 2. Imam Shafi'i asserts that a marriage contract in written form is valid, provided there is someone who reads it on behalf of the party involved. If no one reads it on their behalf, the contract is considered invalid. Additionally, Imam Shafi'i deems a marriage contract valid through gestures for those unable to write, although he suggests combining gestures with written representation if possible.

Keywords: *Marriage Contract, Marriage, Non-verbal, Islamic Law, Shafi'i School*

How to Cite: Diah Fidyani (2024). The Law of the Marriage Contract for the Visually Impaired in the Perspective of Islamic Law and Madzhab Shafi'i. *Journal of Family Law and Islamic Court*, 2(3), 143-.

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Introduction

Marriage is a bond between a man and a woman with the aim of forming a family that is *sakinah*, *mawaddah*, *warahmah*. Marriage is a *sunnatullah* that applies to all creatures. Marriage is a way determined by Allah SWT, as a way to determine offspring.¹

In Law No. 1 of 1974, it is stated that marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead.²

The above definition provides an understanding that marriage is a bond or agreement that legalizes the relationship between a man and a woman. Besides that, marriage has a noble purpose, namely to pass on the offspring, so as to form a happy family. This is confirmed in the words of Allah Q.S ar-Rum (30):21;

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا
أَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ
يَتَفَكَّرُونَ

Translation:

"And among the signs (greatness) is that he created for you spouses of your own kind, that you may be inclined and feel at peace with him, and he makes among you a sense of love and affection. Indeed, in such things there

are indeed signs (of Allah's greatness) for those who think."³

From the words of Allah, it can be concluded that in a marriage there is an element of peace in the household as a source of happiness and to peace that is lived with a sense of *mawaddah*, which is a sense of affection between husband and wife. Some interpret *mawaddah* as lust which is complemented by *rahmah*, which is affection that binds both husband and wife. In order to achieve *sakinah*, it must be accompanied by love and affection.⁴

According to the Tafsir Jalalain it is explained that (And among the signs of her power is that He created for you wives of your own kind) Siti Eve was created from the ribs of the Prophet Adam while the rest of humanity was created from the semen of men and women (so that you may be inclined and feel at peace with her) so that you may feel at home with her (and made her among you) all (affection. Indeed, in such a thing) the thing that has been mentioned (there is indeed a sign for the thinker) is that they are the ones who think about the creation of Allah swt.⁵

Allah created for you women who will be your wives of your own kind, among His mercy to man is to make their spouses of their own kind and to create a feeling of love and affection between them. Where a man binds a woman sometimes because of

¹ Slamet Abidin and Aminuddin, *Fiqh Munakahat 1* (Bandung: Pustaka Setia, 1999), p. 9.

² Nuansa Aulia Editorial Team, *Compilation of Islamic Law* (Marriage, Inheritance, and Waqf Law), Article 1 (Bandung: Nuansa Aulia, 2015), p. 73.

³ Ministry of Religious Affairs of the Republic of Indonesia, *Al-Qur'an and Translation of the 2019 Improvement Edition*,

(Cet. 1; Jakarta: Lajnah Pantashihan Mushaf Al-Quran, 2019), p. 406.

⁴ Idhamy Dahlan, Azas Fiqh Munakahat (Surabaya: Al Ikhlas, 1984), p. hlm 11.

⁵ As-Sayuti Jalal-ud-Din & Jalal-ud-Din Muhammad Abno Ahmad al-Mahali, *Tafsir Jalalin*, h. 257.

love or affection with the birth of a child, mutual need for sustenance and affection between the two.⁶

The feelings of love and affection created by a valid marriage can prevent a person from disobedience from adultery. Therefore, the Prophet Rasulullah SAW said:

عَنْ ابْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضُ لِلْبَصْرِ وَ أَحْصَنُ لِلْفَرْجِ. وَ مَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءٌ⁷

Means:

O young men! Whoever among you is capable of marrying, then marry, for marriage is more subdued than the gaze, and more fortified than the farji. And whoever is unable to do so, let him fast (fast), for it can fortify him. H.R. Bukhori.

Marriage is a common sunnatullah and applies to all creatures, both humans, animals and plants. It is a way chosen by Allah swt as a way for His creatures to reproduce, and preserve their lives.⁸

A statement (lafazh) that becomes a medium to carry out the contract and shows the willingness of both parties to the object of the agreement is hereinafter called *ijab-qabul* (handover). And both according to the agreement of the scholars are two pillars (base) of the contract.⁹

Ijab is a statement issued by one of the parties (the first party) to express his desire to build a husband-wife relationship. This implies that he has a dependency to carry out what is the consequence of the statement on him. While *qabul* is a statement issued by the other party (the second party) to express willingness and approval of what is contracted (the material of the agreement). In the context of marriage, *ijab qabul* must be sourced from the legal party to carry out the marriage contract, namely two couples who are already engaged (proposed) if each is qualified to hold a marriage contract. However, as is the case with other contracts, marriage can also be represented, in other words it can be signed by the representative of the husband or wife. For Muslims, it is certain and there is no testimony that marriage is a sharia agreement (*sharia contract*) that is valid or invalid solely determined by Divine law. To hold a wedding, the following five factors have been determined according to the number of scholars as a must: 1) Akad (*ijab qabul*) 2) wali 3) Witness 4) Prospective husband 5) Prospective wife.¹⁰

The feeling of pleasure and agreement is psychological in nature that cannot be seen clearly. Therefore, there must be a firm symbol to show the willingness to hold a husband and wife bond. The symbolism is expressed in words by both parties

⁶ Abd al-Ghaffar, *Translation of Tafsir Abno Khotseer*, Vol. 6 (Bogor: Pistak Imam Asi-Sayafi, y. 2004), h. 364.

⁷ Abu Abdillah Muhammad bin Ismail, *Shohih Bukhori*, (cet:5; Damaskus, Daru Ibni Kasir, Daru al-Yamamah, 1993),h.1950.

⁸ Slamet Abidin and Aminuddin, *Fiqhi Munakahat 1*, (Bandung: Pustaka Setia, 1999), p.9.

⁹ Ibn Kudamah, *al-Mughni*, (Book Ajjam: 6,532)

¹⁰ Muhammad Syafi'i Antonio, *School, Sex, and Politics: A Study on the Dynamics of Gender Fiqh*, (Jakarta: Mizan, 2015)

who carry out the contract. This is what constitutes shighat in marriage. The first statement to show the willingness to form a conjugal relationship from the woman's side is called *ijab*. Meanwhile, the second statement spoken by the party holding the next contract to express pleasure and agreement is called *qabul*. These two statements of *ijab* and *qabul* are called contracts in marriage.

Ibn Rushd said that a group of jurists, namely the majority of scholars, argue that marriage is a sunnah law. The Zhahiriyah group is of the opinion that marriage is mandatory. The Malikiyah scholars mutaakhhirin are of the opinion that nikah is obligatory for some people, sunnah for others and mubah for others.¹¹ Thus, it can be seen according to them based on their worries (distress). As explained in the words of Allah SWT in Q.S an-Nur; 32 reviews:

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ
وَإِمَائِكُمْ ۚ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ
وَاسِعٌ عَلِيمٌ

Translation;

"And marry those who are alone among you and those who are worthy (to marry) of your male servant and your female servant. If they are poor, God will make it possible for them with His bounty. And Allah is Vast and Knowing."¹²

The most important thing in marriage for the bride and groom who

will carry out a marriage bond is the willingness and consent to the bond, this is abstract and psychological so it is difficult to measure. Therefore, in reaching agreement, it must be with words, actions, or gestures that can be understood.¹³

Human beings as God's most noble creatures because they are endowed with reason and mind, sometimes they are born physically imperfect. Reduction or loss of some physical functions can be experienced from birth or other causes. Every child born in the world is the most beautiful gift from God Almighty to every parent. As for every child born perfectly or specially born, it requires special attention and service from parents and the surrounding environment. One of the extraordinary or special children is a child who is speechless. Speech impairment is a damage or interference from voice, articulation of speech sounds, and/or fluency in speech.¹⁴

Article 29 paragraph (2) is the concept of representative in fiqh in general. According to madhhab Syafi'iyah, one of the conditions for the case to be represented, one of them is that the case can be replaced by someone else. In this case, all contracts are valid to be represented except for worship such as prayer. Meanwhile, the stipulation that the power of attorney must be given in writing, basically not stipulated in fiqh. In fact, comparative fiqh

¹¹ Ibnu Rusyd, *Bidayah Al-Mujtahid Wa Nihayatul Al-Muqtasid*, (Beirut: Dar al Fikr t.th), juz 2, h, 2.

¹² Ministry of Religious Affairs of the Republic of Indonesia, *Al-Qur'an and Translation of the 2019 Improvement Edition*,

(Cet. 1; Jakarta: Lajnah Pantashihan Mushaf Al-Quran, 2019), p. 354.

¹³ Yusuf al-Qaradawi, *Women's Fiqh*, (Jakarta: Erlangga, 2005)

¹⁴ Brent D. Ruben and Lea P. Stewart, *Communication and Human Behavior* (Depok: PT Rajagrafindo Persada, 2013), 65

expressly stipulates that it can be in the form of words (عبارة) or in the form of writing. It is also not stipulated that there must be witnesses (in the process of representing).¹⁵

Based on the background explanation above, the formulation of the problem to be solved in this study can be described as follows: What is the procedure for the marriage contract for the speechless according to Islamic law?, What is the law of the marriage contract for the speechless according to Madzhab Syafi'I?

Methods

This research is a qualitative study in which the author conducts research using a library approach, which involves a series of activities related to data collection methods from library sources. Therefore, to achieve the goal of writing more effectively, researchers will focus on literature review and evaluate pre-existing data. This research approach is carried out by reading books and literature that are relevant to the problem to be discussed. Furthermore, the results of the study aim to provide a comprehensive and systematic picture and provide the most comprehensive data possible.

The sources used are primary sources and secondary sources, primary sources refer to sources that provide information directly from the original source, such as Islamic fiqh law books, comparative fiqh, maqashid shari'ah, arbau' mazahib, and Fiqhi Islam wa Adillatuhu. While

the number of secondary sources refers to information that can be found easily, secondary data comes from literature, journals, official documents, scientific books, as well as research results and scientific works related to the research topic.

Results and Discussion

Procedures for Marriage Contracts for the Speechless According to Islamic Law

Definition of Marriage Contract Procedures

A marriage contract is an agreement that takes place between two parties that carry out marriage in the form of *ijab* and *qabul*. *Ijab* is a statement that comes out of one of the parties who holds a contract or transaction, either in the form of words, writings, or gestures that express the occurrence of a contract, either from the husband or from the wife's side. While *qabul* is a statement that comes from a second party, either in the form of words, writings, or gestures that express their approval.¹⁶

A marriage agreement is a formal agreement between the prospective husband and the prospective wife which is carried out in the presence of two male witnesses using the words *ijab-kabul*. *Ijab* is generally pronounced by the woman, often by her guardian or deputy, while *qabul* is a statement of acceptance from the male side. In addition, the marriage contract also mentions a dowry (*dowry*) which should have been agreed beforehand.¹⁷

¹⁵ Muhammad Ali Al-Hashimi, *Encyclopedia of Fiqh in Islam*, (Yogyakarta: Pustaka Siswa, 2012)

¹⁶<https://www.liputan6.com/hot/read/5193446/akad-nikah-dalam-islam-pahami> the provisions-and-process-

implementation, (accessed on January 17, 2024)

¹⁷ Wahba az-Zoheli, *Fiqh Islam wa Adeellatuhu*, Jakarta: Gemma Human, 2011, Vol. 9, Hallam, 46.

Marriage is a contract of civilization that has no formalization in it. Meanwhile, the contract is a binding part of behavior, namely *ijab* and *qabul* according to sharia. What is meant by the contract here is the meaning of the *masdhar*, namely *al-irtibaath* (attachment). Sharia punishes that *ijab* and *qabul* are born, and legally bind each other.¹⁸

The marriage contract procedure referred to in this article is a marriage process in Islam that involves an agreement between a man and a woman to become husband and wife. The procedure for the marriage contract follows the rules that have been set out in Islamic teachings.

Marriage Contract Procedures

The procession of the marriage contract is the main and most sacred stage in a Muslim marriage. According to a hadith narrated by Al Baihaqi in *Shu'abul Iman*, it is stated that a person is considered to have perfected half of his religion by getting married. The procedures for marriage contracts, namely *ijab* and *qabul*:

Definition of *Ijab* and *Qabul*

The word *ijab qabul* consists of two sentences that are separated and have different meanings, *ijab* comes from *wazan* while *ايجابا* the sentence *qabul* is taken from *wazan* *يقبل*, in Indonesian is interpreted as accepting something that is handed over.¹⁹

The sentence of *ijab qabul* is also a mandatory legal condition in a marriage contract. *Ijab* in Arabic means 'pronunciation', or a request conveyed by the bride's guardian to the groom-to-be, while *qabul* means a receipt recited by the groom to the bride's guardian. So, it can be concluded that *ijab qabul* is a symbol of the handover of marriage from the female guardian which is then accepted by the groom.²⁰

The meaning of *ijab qabul* according to the term *fiqh* will be expressed by several opinions of *fiqh* experts, namely:

Imam Abu Hanifah

الإيجاب هو ما يدل أولاً من أحد المتعاقدين كأنَّ بَانِعًا يَقُولُ بِعْتِكَ كَذَا أو مُشْتَرِيًا كَانَ يَقُولُ اشْتَرَيْتُ مِنْكَ كَذَا بِأَلْفٍ فَيَقُولُ بِعْتِكَ إِيَّاهُ

Means:

"*Ijab* is the first word that arises from the person who performs the contract, such as the seller says: I sell this item to you, and the buyer says: I buy from you thousands of thousands, then he says: I buy from you at such a price".²¹

What is meant by *qabul* is "something that arises from the buyer or from a second party".²²

¹⁸ Wahba az-Zoheli, *Fiqh Islam wa Adeellatuho*, Jakarta: Gemma Human, 2011, Vol. 9, Hallam, 46.

¹⁹ Louis Ma'luf, *Kamus Munjid*, (Dar al Masyruq, Beirut, 1986), hlm. 607

²⁰ <https://www.bridestory.com/id/blog/10-susunan-acara-akad-nikah-dalam-islam>, (accessed on January 17, 2024).

²¹ Al-Jarizi, *Book of Fiqih Ala Al-Arba'ah*, Dar Ihya-Atturas ala Ala ala A'ala, Bierut, 1869, Jilid A, hlm. 156.

²² Al-Jarizi, *Book of Fiqih Ala Al-Arba'ah*, Dar Ihya-Atturas ala Ala ala A'ala, Bierut, 1869, Jilid A, hlm. 156.

Imam Syafi'i

الإيجاب هو ما يدلُّ على التملك دلالاً له ظاهرةً وقَبُولِ

هُوَ مَا دَلَّ عَلَى التَّمْلِكِ كَدَلِّكَ كَأَشْتَرَيْتَ كَذَا بِكَذَا

Means :

"Ijab is words that clearly state ownership and qabul are words that clearly state acceptance of ownership such as: I bought from you at such a price".²³

Sayid Sabiq

الإيجاب هو ما صدر أولاً من أحد الطرفين والقَبُولُ مَا

صدر ثانياً وَلَا فَرْقَ بَيْنَ أَنْ يَكُونَ الْمَوْجِبَ وَهُوَ الْبَائِعُ

وَالْقَابِلُ وَهُوَ الْمُشْتَرِي أَنْ يَكُونَ الْأَمْرُ بِالْعَكْسِ فَيَكُونُ

الْمُحِبِّبُ وَهُوَ الْمُشْتَرِي وَالْقَابِلُ وَهُوَ الْبَائِعُ

Means :

"Ijab is words that express expressions that come out first from one of the two parties and qabul is the second word and there is no difference between the one who is the seller and the one who grants is the buyer or vice versa where the one who gives is the buyer and the giver is the seller".²⁴

Based on some of the definitions above, related to ijab is the handover of the prospective bride carried out by the guardian as a whole to the prospective groom, while qabul is the acceptance made by the groom to accept the prospective bride as a whole to become his wife, so that it has

legal consequences that bind the married couple in the responsibility is in the hands of the husband.

Various types of *Shighat Ijab Qabul*

There are several types of *shighat* in Ijab Qabul, namely:

Shighat Munajjaz

Shighat munajjaz is an absolute shighat, in the sense that this shighat is not hung or relied on in *the age of mustaqbal* (the future) and is also not limited by the existence of a condition.²⁵

The shighat that was backed up in the time of *mustaqbal*

That is a shighat of a marriage contract that is based on the future Such as the saying that it will happen from a man to a woman "I will marry you after this month, or in the coming year" As for the law of ijab kabul that uses this shighat is invalid.²⁶

Shighat conditional contract

It is a shighat that is dependent on a condition, namely a person who has a contract depends on the achievement or success of the marriage contract if something else happens. In general, this suspension uses the words if, if, if and others. Like a man's saying to a woman "I marry you if I succeed in the bid at the end of this year".²⁷

The law of the marriage contract that uses *this shighat* is detailed as follows:

First: If *the shighat* of the contract is dependent on conditions that do not

²³ Ali As'ad, *Fathul Mu'in*, (Menara Kudus, 1979), hlm, 158.

²⁴ Sayyid Sabiq, *Fiqh Sunnah, Translator Kamaludin A. Marzuki*, Volume 7, Al Maarif, Bandung, 1990, p. 48.

²⁵ Ahmad al-Ghondur, *al-ahwal al-syakhshiyah di at-Tasyri' al-Islami*, (Beirut: maktabah, 2006), 74-75.

²⁶ Ahmad al-Ghondur, *al-ahwal al-syakhshiyah di at-Tasyri' al-Islami*, (Beirut: maktabah, 2006), 74-75.

²⁷ Ahmad al-Ghondur, *al-ahwal al-syakhshiyah di at-Tasyri' al-Islami*, (Beirut: maktabah, 2006), 74-75.

exist at that time, but it can be ascertained that it is happening, such as the words of a man to a woman, "I will marry you when the summer comes, then such a contract is invalid.²⁸

Second: If the *shighat* of the contract is dependent on conditions that do not exist at that time, but it is still possible that it will happen, as a man says to a woman, "I marry you if your father comes, then the contract that uses this *shighat* is invalid.

Third: If the *shighat* of the contract is dependent on a condition that does not exist at that time and it can be ascertained that it will not happen, such as a man's saying to a woman "if there is no rain forever, then I will marry you". So a contract that uses *shighat* like this is invalid.

Fourth: If the contract is hung on a condition that at the time of the marriage contract its existence is ascertained, such as the words of a man to a woman if you are a student of the faculty of law then I will marry you" while the woman is studying at the faculty of law, then the law of this contract is considered valid.²⁹

Fifth: If the contract is hung on a condition that at the time of the marriage contract it is possible to exist, such as a man's attack on a woman "if you are willing to pay this dowry, then I will marry you" while at

that time his father was at the ceremony and it turned out that his father was willing, then such a contract is valid.

The shighat that is ringed with the condition

Sometimes the *shighat* is absolute, but it is ringed by the existence of a condition This requirement is carried out by the prospective husband or future wife with the aim of benefiting him. If these conditions are good, then the contract and the conditions are legally valid.³⁰

Akad (*Shighat*) *ijab* and *qabul*. The two became harmonious contracts. It depends on both that the essence of a thing and its existence are in sharia terms. There are several conditions for *ijab* and *qabul*, some settle on the *shighat* of the marriage contract and some settle on the pronunciation that determines the validity of the marriage contract.³¹ The following is an explanation of some of the conditions of the marriage contract:

First: *Shighat* of the marriage contract in the form of a verb *Latal*, which expresses *ijab-qabul* which shows the implementation of the marriage contract in the form of a verb (*fi'il*). Basically, the pronunciation used reveals the implementation of the contract in the condition that it should be *fi'il madhi* (past tense verb). Like *zawwajtu* or *tazawwajtu* (I marry you), this expression is then called *ijab*. Then he answered, *radhitu* (I am

²⁸ Ahmad al-Ghondur, *al-ahwal al-syakhshiyah di at-Tasyri' al-Islami*, (Beirut: maktabah, 2006), 74-75.

²⁹ Ahmad al-Ghondur, *al-ahwal al-syakhshiyah di at-Tasyri' al-Islami*, (Beirut: maktabah, 2006), 74-75.

³⁰ Ahmad al-Ghondur, *al-ahwal al-syakhshiyah di at-Tasyri' al-Islami*, (Beirut: maktabah, 2006), 74-75.

³¹ Abdul Aziz et al., *Fiqh Munakahat Khitbah, Marriage and talaq*, translated by Abdul Majid Khon, cet. 1, (Jakarta: Sinar Grafika Offset), p. 60.

pleased) and wafaqtu (I agree) and qabiltu (I accept), which is then called qabul.

Second: Pronunciation with a clear meaning The pronunciation used should show marriage both materially and substantively, either in the actual meaning (the true meaning) in the well-known figurative language (majas), or to the level of the actual meaning in the language or the figurative meaning accompanied by indicators. Thus, the meaning of the pronunciation becomes clear in the marriage contract.³²

Procedures for the Deaf Marriage Contract

A marriage contract is considered valid if it has fulfilled the principles and requirements of marriage for a normal person or for a hearing disability (Speech Impaired), but the marriage contract of a speechless person will be slightly different from the usual marriage contract. The procedure for the marriage contract for the speechless according to scholars is 3:

Marriage Contract with Writing

Writing is a graphic representation of language or thought expressed through letters, numbers, symbols, or other characters. This can be handwritten text, typed on a computer, or created in some other way. Writing allows us to share information, convey ideas, store

history, and communicate with others without having to meet face-to-face. From books, letters, to electronic messages, writing has become the main way for humans to convey ideas and information throughout the ages. The word "writing" in English can be translated as "writing" or "written text".³³

Marriage contracts are sometimes carried out in writing or with gestures, as detailed below:³⁴

First: The person who is able to speak and be present: if the two people who perform the contract are all present in the contract assembly and they are both able to speak, then the scholars agree that the marriage contract between the two is not valid to be carried out in writing or gestures, even if the writing is very weak and the gesture can show the desire to perform the marriage contract. That's because in such a situation it is enough to use oral media, also because pronunciation is the origin of the expression of a desire. Therefore, it is not allowed to use the written and gesture media except in an emergency. Meanwhile, in this situation there is nothing emergency. It is also because the witnesses will have difficulty hearing the words of the two parties who performed the contract when using written media.³⁵

Second: A person who is able to speak and is not present: if one of the two

³² Abdul Aziz et al., *Fiqh Munakahat Khitbah, Marriage and talaq*, translated by Abdul Majid Khon, cet. 1, (Jakarta: Sinar Grafika Offset), p. 60.

³³ <https://glosarium.org/arti-tulisan/>, (accessed on January 20, 2024)

³⁴ Wahbah al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu Juz 4 Terjemah Abdul*

Hayyie al-Kattani dkk, (Jakarta : Gema Insani, 2011), Jilid 9, Hlm, 483.

³⁵ Wahbah al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu Juz 4 Terjemah Abdul Hayyie al-Kattani dkk*, (Jakarta : Gema Insani, 2011), Jilid 9, Hlm, 53.

parties who performs the contract is not present at the contract assembly: according to the Hanafiah scholars, the valid contract is carried out by using written media or sending a messenger, i.e. both witnesses are present in the contract assembly when the writing or messenger arrives at the assembly. Because the writing of a person who is not in the place is a substitute for his speech. The Hanafiah scholars said, "The writing of a person who is not in the place of the contract is equivalent to the speech of the person who is present."³⁶

Third: Speech-impaired (mute): if one of the people who performs the contract is mute or has difficulty speaking:

First: If he is able to write, then the marriage contract is valid using the writing, as it is valid by using signs. This opinion has been agreed upon by the scholars, even by the Shafi'iyah as well. Because this situation is an emergency. However, the opinion of the most prominent Hanafiah scholars says that in this situation the marriage contract is not valid to be carried out by signal, and it is only valid to be carried out using written media if it is able to do so. That's because writing is stronger in showing the intended intention and is far from various possibilities when compared to gestures. The most important thing is that according to the agreement of the scholars, writing is more important than gestures. Because the writing is

equivalent to a sharih (clear) statement in the matter of thalaa (divorce) and iqrar (statement).³⁷

Second: If a mute or similar person is unable to write: scholars agree that a valid marriage contract is carried out with gestures that can provide understanding and are easy to understand. Because in this situation, gestures are a special communication medium that is able to express their desires.³⁸

The marriage contract of a mute person is legally done by writing or gestures according to jurists. According to Hanafiah scholars, a marriage contract is only valid if it uses written media when it is able to do so.

Marriage Contract with Gesture

Sign language is a language that prioritizes manual communication, body language, and lip movements. Sign language is a language used by the Deaf community to communicate. Not only that, sign language is also a tool for its users to identify themselves and obtain information. The fundamental difference between sign language and spoken language lies in its mode or means of production and perception. Spoken language is produced through speech (oral) and perceived through hearing (auditory), while sign language is produced through hand gestures and perceived through sight (visual). Thus, spoken language is an oral-auditory language,

³⁶ Wahbah al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu Juz 4 Terjemah Abdul Hayyie al-Kattani dkk*, (Jakarta : Gema Insani, 2011), Jilid 9, Hlm, 52.

³⁷ Wahbah al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu Juz 4 Terjemah Abdul*

Hayyie al-Kattani dkk, (Jakarta : Gema Insani, 2011), Jilid 9, Hlm, 53.

³⁸ Wahbah al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu Juz 4 Terjemah Abdul Hayyie al-Kattani dkk*, (Jakarta : Gema Insani, 2011), Jilid 9, Hlm, 54.

while sign language is visual-gestural.³⁹

In this matter there is a difference of opinion among the Ulama, according to some Ulama the marriage contract is still valid because it is considered an exception from the invalidity of the marriage contract carried out with shighat kinayah, while according to some other Ulama the law is invalid because the marriage contract carried out with shighat kinayah is invalid, and according to them this also applies in this matter. So the marriage contract is only considered valid if it is carried out with a gesture that can be understood at least by the marriage guardian who performs it, whether it is his father, grandfather or guardian. Imam Shafi'i said, "The signs and writings are the same in various legal matters such as in terms of wills, marriages, talaq, buying and selling, qishas and so on.⁴⁰

Regarding the validity or not of a marriage contract with writing, Imam Shafi'i argued that it is valid or permissible with writing on the condition that there is a person who reads the writing as his representative, otherwise as his representative then the marriage contract is damaged or invalid. And also Imam Shafi'i is of the opinion that the marriage contract of a mute person (speechless) is valid with signs because he cannot write, but if he can

write, he should use a combination of signs and writing.⁴¹

Marriage Contract by being delegated

The word tawkil is taken from the word wakalah which means a representative who acts for and on behalf of the person he represents. Linguistically, the word wakalah means tafwidh (handover, delegation and giving of mandates).⁴² As Allah Subhanahu wa Ta'ala says:

وَأِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا
مِّنْ أَهْلِهَا^{٤٣} إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ
كَانَ عَلِيمًا حَكِيمًا

Translation:

"If you (the guardians) are worried that there will be a dispute between the two, send a peacemaker from the male family and a peacemaker from the female family. If both of them intend to do islah (peace), Allah will surely give taufik to both. Indeed, Allah is All-Knowing, All-Knowing, All-Knowing, All An-Nisā' [4]:35⁴³

The representative in the marriage contract is different from other contracts. In the vice marriage contract, the vice president is just a way opener. He has no power of contract, cannot ask for a dowry, cannot be forced by the prospective bride to obey him, the representative has exhausted his duties as a

³⁹

https://id.m.wikipedia.org/wiki/Bahasa_isyarat, (accessed on January 20, 2024)

⁴⁰ Sobirin, "Implementation of Marriage Contract with Writing or Gestures in the Review of Imam Shafi'i" *ISTI'DAL*; Journal of Islamic Law Studies, Vol. 7 No. 1 January-June 2020, 27.

⁴¹ Sobirin, "Implementation of Marriage Contract with Writing or Gestures in

the Review of Imam Shafi'i" *ISTI'DAL*; Journal of Islamic Law Studies, Vol. 7 No. 1 January-June 2020, 27.

⁴² Law No. 1 of 1974 concerning Marriage.

⁴³ Ministry of Religion of the Republic of Indonesia, *Al-Qur'an and Translation*, (Bandung: CV.Publisher Diponegoro, 2015), p. 113.

representative in a marriage after the marriage contract is completed. Fiqh scholars have agreed that every marriage contract that can be held by a human being personally, can be delegated to another person to hold it and do it. Such as buying and selling, renting, demanding rights, marriage, talaq and other contracts that can be represented. According to Imam Shafi'iyah, there should be no representation in general and this is a fraud, it is permissible among the representatives something that is mentioned, restricted and strengthened which in the first place is not allowed unless it is because of something that has been agreed.⁴⁴

So a prospective husband in representing him to another person to marry him without giving certain criteria or restrictions to the woman he wants, whether the woman is *sekufu* or not, defective or not.

An important thing, both regarding worship and *muamalah*, when someone is going to carry out must meet several conditions. Including when someone is going to do *wakalah*, they must meet the requirements. The requirements for the person who represents are people who have the power or authority for something that is authorized and capable of carrying out legal actions, namely: a) men of reason; b) puberty; c) independence; d) Not *ihram*.

Because such a person is considered to be a person who is perfect in his ability, if the person who represents does not have the ability, then the person does not have the

right to delegate their affairs to others. And there must be approval from each party. The granting of power of attorney in this case is in relation to the authorized person (*muwakkil*), the authorized person (representative), and the authorized action.⁴⁵

The appointment of a deputy is considered valid for men who are healthy, mature and independent. This is because he is considered perfect in his abilities. Everyone who is perfect in his ability to marry himself into another person. And whoever can do so, he is considered to be lawful in appointing others to act on his behalf.

According to the imam Malikiyyah and Shafi'iyah, it is permissible to represent people who are present, healthy, and men, because the basic law is that representation is allowed in everything that has been agreed, but the person whose representative is disputed is not allowed to make representation.⁴⁶

The conditions for granting power of attorney are a person who is not prohibited by the sharia from taking action against something that is authorized to him. Therefore, according to Imam Malik, it is not lawful to give power of attorney to minors and insane people. And empowering women to perform the marriage contract according to the Malikiyyah and Shafi'iyah imams is also invalid. For Imam Shafi'iyah, the granting of power of attorney to a woman is invalid, whether she does it directly or through an intermediary, that is, the woman authorizes another

⁴⁴Ibn Rushd, *Bidayatul Mujtahid Volume 2* Translated by Abu Usamah Fakhtur Rohman (Jakarta: Pustaka Azzam, 2007), 597.

⁴⁵ Sayyid Sabik, *Fikh Sunha Juz 2* (Cairo: Dar al-Fath Lil i Lam, 1990), HLM, 151.

⁴⁶ Sayyid Sabiq, *Fikh Sunna Juz 2* (Cairo: Dar al-Fath Lil I Lam, 1990), HLM, 32.

person to perform the marriage contract. While for the Imam Malikiyyah it is permissible, if the intermediary (power of attorney) is a man.⁴⁷

The conditions for the object of authorization are acts that can be replaced by others, such as buying and selling, debt transfer, dependents, all forms of transactions, all cancellation of transactions, trade unions, granting of power, currency exchange, payment of salaries, talaq, marriage, khulu" and peace. But it is not allowed in worship that is property, such as almsgiving, zakat and hajj.⁴⁸ In addition to madhhab Hanafiyyah says that it is permissible to have tawkil in demanding hudud and qisas, whether the muwakkil is present or not, because there may be a need that wants it.⁴⁹

In the Compilation of Islamic Law in Indonesia itself there is article 29 which contains:

First: The one who has the right to say qabul is the prospective groom personally

Second: In certain cases, the qabul nikah speech can be delegated to another man provided that the prospective groom gives a firm power of attorney in writing that the acceptance of the representative of the marriage contract is for the groom.

Third: In the event that the bride-to-be or guardian objects to the groom-to-be being represented, the marriage contract may not be held.⁵⁰

In article 29 of the Compilation of Islamic Law of the KHI above, there is a provision that the prospective groom gives a firm power of attorney in writing that the acceptance of the representative of the marriage contract is for the groom. Thus, if the conditions and pillars of the marriage have been fulfilled, then the marriage is valid and the parties at that time change their status as husband and wife. They live in a unit called the family. Since then, rights and obligations as husband and wife have arisen. The law of wakalah in marriage must be bound by all the provisions stipulated by muwakkil as explained above, and he has no right to perform a contract that contains harm or loss to muwakkil. The jurists agree that if a person performs a contract for himself and his own benefit, the law and the rights of the contract return to him. But if there is a representative who is a mediator and spokesperson in carrying out the contract, then the right to the contract will return to muwakkil.⁵¹

The Law of the Marriage Contract for the Blind in the Perspective of Madzhab Shafi'i

Regarding the validity of the marriage contract with writing, Imam Shafi'i argued that the marriage

⁴⁷ Ibn Rushd, *Bidayatul Mujtahid Volume 2 Translated by Abu Usamah Fakhtur Rohman* (Jakarta: Pustaka Azzam, 2007), 595

⁴⁸ Ibn Rushd, *Bidayatul Mujtahid Volume 2 Translated by Abu Usamah Fakhtur Rohman* (Jakarta: Pustaka Azzam, 2007), 595

⁴⁹ Wahbah al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu Terjemah Abdul Hayyie*

alKattani dkk, (Jakarta : Gema Insani, 2011), Jilid 9, Hlm, 479.

⁵⁰ Permata Press Team, *Compilation of Islamic Law*, 9

⁵¹ Wahbah al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu Juz 4 Terjemah Abdul Hayyie al-Kattani dkk*, (Jakarta : Gema Insani, 2011), Jilid 9, Hlm, 483.

contract with writing is valid on the condition that there is a person who reads the writing as his representative, if not as his representative, the marriage contract is damaged or invalid. And also Imam Shafi'i thinks that the marriage contract is valid with gestures because it cannot be written, but if it can write, it should use a combination of gestures and writing. Imam Mughniyah in the book *Fiqh Lima Mazhab* argues that the information of the marriage contract through writing (letters and so on) according to the opinion of Imam Shafi'i is invalid, with a note that if he is present in the assembly and is able to pronounce the marriage contract, and if he is not present but does not represent him to read the writing and as his representative.⁵²

But on the other hand, it is not possible to attend it, and bring a letter to another fair person who is used as a representative of the qabul, then the marriage is valid with the conditions and harmony of the marriage fulfilled. As it has happened to the Prophet PBUH, namely when the Prophet PBUH married Um Habibah bint Abu Sufyan, the Prophet PBUH could not come and represent to the companions of Umar bin Umayyah Al-Damiriy for his qabul marriage. The way of Ijab Qabul for a mute person in a marriage contract can be done with a gesture, provided that if the signal is sharih (clear), if it is not sharih, in the

sense that the signal causes kinayah or he can write, then if he can still represent, he must represent and if he cannot represent, then the ijab qabul can be done with a gesture of kinayah or with writing because of an emergency.⁵³

In marriage there are many wisdom and goals, and it is possible that all marriages are carried out perfectly from what has been described regarding the conditions and principles of marriage. Of course, in the problems of life there are things that make a marriage contract not in accordance with what is determined. With this, for example, a prospective groom who has been planned can attend the marriage ceremony, because there is something that cannot be attended. Likewise, speech-impaired people who cannot and cannot say ijab qabul sharih or clearly in front of the marriage guardian and the two male witnesses of the marriage. Of course, Islamic shari'a has a way out to respond to the above, and it has been Ijtihadi by the Mujtahid Imams. In this case, the author will describe the views of one school in particular, namely Imam Shafi'i, and add it to the views of some schools and the majority of scholars.⁵⁴

The marriage process in Islam has strict rules. A valid marriage contract must fulfill its harmony and conditions. The pillars include ijab and qabul, while the conditions include permission from the female guardian

⁵²Sobirin, " *Implementation of Marriage Contract with Writing or Gestures in the Review of Imam Shafi'I*" *ISTI'DAL*; Journal of Islamic Law Studies, Vol. 7 No. 1 January-June 2020, 26.

⁵³ Sobirin, " *Implementation of Marriage Contract with Writing or Gestures in the Review of Imam Shafi'I*" *ISTI'DAL*; Journal

of Islamic Law Studies, Vol. 7 No. 1 January-June 2020, 26.

⁵⁴ Sobirin, " *Implementation of Marriage Contract with Writing or Gestures in the Review of Imam Shafi'I*" *ISTI'DAL*; Journal of Islamic Law Studies, Vol. 7 No. 1 January-June 2020, 27.

and the presence of two witnesses. As the argument used by Imam Shafi'i in his book with a hadith from Ibn Abbas, the Prophet Rasulullah Saw said:

نِكَاحٌ إِلَّا بِوَلِيِّ، وَشَاهِدَيْ عَدْلٍ

Means:

"A marriage is not valid except with a guardian of the mursid and two fair male witnesses".⁵⁵

This must all be done clearly and transparently, so that there are no elements of fraud and deception. Therefore, the prospective husband or his deputy must be present at the venue, as well as the guardian of the woman or her deputy must be present at the venue, and the two witnesses must also be present at the venue to witness the marriage contract.⁵⁶

In this matter there is a difference of opinion among scholars, according to some scholars the marriage contract is still valid because it is considered an exception to the invalidity of the marriage contract carried out with shighat kinayah, while according to some other scholars the law is invalid because the marriage contract carried out with shighat kinayah is invalid, and according to them this also applies in this matter. So the marriage contract is only considered valid if it is carried out with a gesture that can be understood at least by the marriage guardian who performs it, whether it

is his father, grandfather or guardian. Imam Shafi'i said, "The signs and writings are the same in various legal matters such as in terms of wills, marriages, talaq, buying and selling, qishas and so on."⁵⁷

In terms of the above problems, it is necessary to elaborate in detail, that:

First: A marriage contract with a letter can be valid if the conditions are met and the principles of the marriage contract, according to Imam Shafi'i in general a marriage contract with a letter is invalid, but looking at the context of the problem, the prospective husband cannot come to the marriage contract, and there is a fair and trustworthy person who is the representative of the prospective husband accompanied by a qabul letter from the prospective husband, There was an agreement between the prospective husband, the prospective wife, and the marriage guardian and the two male witnesses, and the letter was read by the person representing the qabul at the time the marriage contract was valid, because there was an argument for the existence of a representative.⁵⁸

Second: Marriage contract with signs, in general, only certain people who are mute are not able to say qabul if it is done with gestures even though they can or are good at writing, then the

⁵⁵ Muhammad, Abu Abdillah. 1983. Mukhtasor Al-Umm, Juz VII, (Beirut :D aru alfik

⁵⁶ Sobirin, " *Implementation of Marriage Contract with Writing or Gestures in the Review of Imam Shafi'I*" *ISTI'DAL*; Journal of Islamic Law Studies, Vol. 7 No. 1 January-June 2020, 27.

⁵⁷ Sobirin, " *Implementation of Marriage Contract with Writing or Gestures in*

the Review of Imam Shafi'I" *ISTI'DAL*; Journal of Islamic Law Studies, Vol. 7 No. 1 January-June 2020, 27.

⁵⁸ Sobirin, " *Implementation of Marriage Contract with Writing or Gestures in the Review of Imam Shafi'I*" *ISTI'DAL*; Journal of Islamic Law Studies, Vol. 7 No. 1 January-June 2020, 27.

marriage is invalid. However, if you are good at writing, then the marriage contract uses both guidelines with writing and gestures, and if you really can't or are good at writing, then the marriage contract with signs is sufficient/valid.⁵⁹

In terms of *istinbat al-hukm*, Imam Shafi'I has a method in which he uses *Ushul Fiqh*, namely with the first source of the Qur'an and if there is no stipulation, he uses *as-Sunnah* and if not, then he uses the *ijmak* of the *Mujtahidin Ulama*. Imam Shafi'i also explored the law by considering the context of the problem and its legal consequences.⁶⁰

First: Regarding the validity or not of a marriage contract with writing, Imam Shafi'I is of the opinion that it is valid or permissible by writing on the condition that there is a person who reads the writing as his representative, if not as his representative, then the marriage contract is damaged or invalid. And also Imam Shafi'I is of the opinion that the marriage contract of a mute person (speechless) is valid with signs because he cannot write, but if he can write, he should use a combination of signs and writing. According to Imam Mughniyah in the book *Fiqh Lima Mazhab*, the description of the marriage contract through writing (letters and so on) in the opinion of Imam Shafi'i is invalid, with the note that if you are present in the assembly

and are able to say the marriage contract, and if you are not present but do not represent to read the writings/letters and as his representative, it is invalid. But on the other hand, it is not possible to attend it, and bring a letter to another fair person who is used as a representative of the *qabul*, then the marriage is valid with the conditions and harmony of the marriage fulfilled. As it has happened to the Prophet PBUH, namely when the Prophet PBUH married Um Habibah bint Abu Sufyan, the Prophet Rasulullah SAW could not come and represent to the companions of Umar bin Umayyah Al-Dlamiriy for his *qabul* marriage.

Second: the way of *ijab qabul* for a mute person in a marriage contract can be done with a gesture, provided that if the signal is *sharih* (clear), if it is not *sharih*, in the sense that the signal causes *kinayah* or he can write, then if he can still represent he must represent and if he cannot represent then the *ijab qabul* can be done with a *kinayah* gesture or with writing because of an emergency.⁶¹

The procedure for a marriage contract for normal people is as usual that we all know, but the procedure for a marriage contract for the speechless (mute) is enough to use a sign is valid. The argument that explains this is that, "The marriage contract is judged to be valid by using a sign that understands the mute, it is

⁵⁹ Sobirin, " *Implementation of Marriage Contract with Writing or Gestures in the Review of Imam Shafi'I*" *ISTI'DAL*; Journal of Islamic Law Studies, Vol. 7 No. 1 January-June 2020, 28.

⁶⁰ Sobirin, " *Implementation of Marriage Contract with Writing or Gestures in the Review of Imam Shafi'I*" *ISTI'DAL*; Journal

of Islamic Law Studies, Vol. 7 No. 1 January-June 2020, 28.

⁶¹ Sobirin, " *Implementation of Marriage Contract with Writing or Gestures in the Review of Imam Shafi'I*" *ISTI'DAL*; Journal of Islamic Law Studies, Vol. 7 No. 1 January-June 2020, 28.

found in the book of Tuhfah. The marriage of a mute person is legally punished by using a sign that understands, not only the person who is good at understanding the signal. It is also valid for the marriage of a mute person with his writing, this opinion is not khilaf, (information from the book of Majmu'), but there are some groups who oppose this opinion because actually the sign in talaq is kinayah not sharih, the marriage contract is heavier than talaq, how is the marriage punished legally with a sign without any khilaf. By equating the opinion of kyai mushonnif when the mute person does not have an understandable sign and it is difficult to wali (dharurat), then the sign of the mute person is equated with his writing.⁶²

Furthermore, that a mute person is enough to give a clear signal (sharih) that shows the intention of marriage, when he is not good at writing. If he is good at writing, then it should be combined between the contract in the form of writing and gestures, this is according to all madzhab.⁶³

Silent marriage can be considered legal if it is done with clear and understandable writing or gestures. If the *ijab qabul* has been fulfilled, then the marriage becomes valid according to religion even if the person who says it is playful and does not intend to actually get married, as the Prophet said:

ثلاث جدهن جد وهزلهن جد : النكاح والطلاق
والرجعة

Means:

"There are three things that when playing around, it must really happen and when it is serious, it must also happen, namely talaq, nikah, and ruju' (HR. Tirmidhi)⁶⁴

Imam Ghazali in the book *Syarah Irsyad wa al-Minhaj* has a fatwa, "That the marriage contract of a mute person is considered valid with a clear signal (understanding the witnesses and guardians or those who represent him).⁶⁵

Imam Shafi'i said, "The signs and writings are the same in various legal matters such as in terms of wills, marriages, talaq, buying and selling, qishas and so on". In terms of the above problems, it is necessary to elaborate in detail, that: first, a marriage contract with a letter can be valid if the conditions are met and the pillars of the marriage contract, according to Imam Shafi'i in general a marriage contract with a letter is invalid, but looking at the context of the problem, the prospective husband cannot come to the marriage contract, and there is a fair and trustworthy person who is the representative of the prospective husband accompanied by a qabul letter from the prospective husband, There was an agreement between the prospective husband, the prospective wife, and the marriage guardian and the two male witnesses, and the letter was read by the person representing the qabul at the time the

⁶²Abi Baril Maseur, *I'Ontuth Thalibin*, (Lebanon: Byrot, 2005), Holm, 277.

⁶³Mughniyah Muhammad Jawwad, *Fiqh Lima Mazhab*, penerjemah Masykur A.B, Afif Muhammad, Idruss Al Kaff, (Lentera: Jakarta, 2003), hlm, 312.

⁶⁴ Saleh Al-Fauzan, *Fiqh Daily*, Cet.I, (Jakarta: Gema Insani, 2006), p. 650

⁶⁵ Maseur, Abi Barill, *I'Ontuth Thalibin*, (Lebanon: Byrot, 2005), Holm, 319.

marriage contract was valid, because there was an argument for the existence of a representative. Second, the marriage contract with a sign, in general, only certain in mute people who are unable to say qabul if it is done with gestures even though they can or are good at writing, then the marriage is invalid. However, if you are good at writing, then the marriage contract uses a combination of both, namely with writing and signs, and if you really can't or are good at writing, then the marriage contract is sufficient/valid with signs.⁶⁶

Conclusion

The marriage contract for the speechless in the review of Islamic law, must meet the principles and conditions of marriage as well as the marriage of a normal person, usually with the same shighat, the speechless can be with an understandable sign, or with writing, and can also be represented. If he is able to write, then the marriage contract is valid using the writing, as it is valid by using signs. This opinion has been agreed upon by scholars, even by the Shafi'iah as well. Because this situation is an emergency. However, the most prominent opinion of Hanafiah scholars says that in this situation the marriage contract is not valid to be carried out by sign, and it is only valid to be carried out using written media if it is able to do so. That's because writing is stronger in showing the intended intent and is far from various possibilities when compared to gestures. The most important thing is that according to the agreement of the

scholars, writing is more important than gestures. Because the writing is equivalent to a sharih (clear) statement in the matter of thalaaq (divorce) and iqrar (statement).

Regarding the validity of the marriage contract with writing, Imam Shafi'i argued that the marriage contract with writing is valid on the condition that there is a person who reads the writing as his representative, if not as his representative, the marriage contract is damaged or invalid. And also Imam Shafi'i thinks that the marriage contract is valid with gestures because it cannot be written, but if it can write, it should use a combination of gestures and writing. Imam Mughniyah in the book *Fiqh Five Mazhab* argues that the information of the marriage contract through writing (letters and so on) according to the opinion of Imam Shafi'i is invalid, with a note that if he is present in the assembly and is able to pronounce the marriage contract, and if he is not present but does not represent him to read the writing and as his representative.

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⁶⁶ Sobirin, " *Implementation of Marriage Contract with Writing or Gestures in the Review of Imam Syafi'i*" *ISTI'DAL*; Journal

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