

Legal Strength of Speech-Impaired Marriages in Makassar City from the Syafi'i School and KHI Perspectives

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Abstract: This article discusses the legal strength of speech-impaired marriages in Makassar City from the perspective of the Syafi'i schools and KHI. This article is a Field research using qualitative and descriptive research methods. The source of data in this research is field data in the form of interviews with instructors, those in charge of administration, the celebrant, the speech-impaired bride and the speech-impaired bride's family. The data collection methods used were observation, interviews and documentation. Then, data processing and analysis techniques are carried out through three stages, namely: data reduction, data presentation, and drawing conclusions. The research results show that the legal force for speech-impaired marriages in Makassar City is based on Law Number 1 of 1974 concerning Marriage which regulates marriage provisions. As for marriages with speech impairments, it has been determined in KHI Book I concerning Marriage in Article 17 paragraph (3) and this has compatible with Shafi'i madhhab. Implementation of marriage requirements in Makassar City based on PMA Number 20 of 2019 Article 10 paragraph (2) explains that marriage pillars that have been approved for implementation include the prospective husband, prospective wife, guardian, two witnesses and the consent. This requirement is also stated in KHI book I concerning Marriage Law, Chapter IV concerning the pillars and conditions of marriage, article 14, and then explained in the following articles regarding the requirements and detailed legal explanations. Based on this research, it was found that the terms and conditions were in line with The pillars and conditions that put forward by the Syafi'i school of thought. The practice of marriage contracts taking place in Makassar City refers to the Compilation of Islamic Law article 27 as well as the Regulation of the Minister of Religion of the Republic of Indonesia Number 20 of 2019 article 15. These regulations implemented are in line with several requirements for marriage contracts explained in the Shafi'i school of thought.

Keywords: Marriage Law for the Speech Impaired; Shafi'i School; KHI

INTRODUCTION

Humans are the most honorable of God's creatures since they possess reason and thought, despite the fact that some people are born with physical defects. Certain bodily functions can be diminished or lost at birth or as a result of other, more gradual causes. A child with speech difficulties is one of the special needs kids who gets called an extraordinary kid. A disruption or anomaly in voice, speech sound articulation, and/or difficulties in speaking fluently are all considered forms of speech impairment.¹

People with speech impairments are just like everyone else. They have needs and rights including starting a family and getting married. The foundation of civilization is based on interpersonal ties between people who appreciate each other's existence as fellow creatures with social and biological demands like procreation. People with disabilities, such as the deaf, experience similar emotions. The nation has also controlled several laws pertaining to marriage and the rights of individuals with disabilities, including speech impairments, under the Republic of Indonesia Law and the Compilation of Islamic Law. These laws serve as a safe haven for them.

Islam views marriage as something noble and sacred, meaning worship of Allah SWT, following the Sunnah of the Prophet and is recommended for the sake of preserving prescribed purity. Indonesia is a country built on the belief in the Almighty God and a population whose majority is Muslim, so marriage and spirituality have a very close relationship because marriage is not simply element birth course, but The inner/spiritual element is also very important in a marriage.² Islamic Sharia has one goal, namely maintaining the continuity of offspring through legal marriages based on religion. Apart from that, marriage is also recognized by Republic of Indonesia Law Number 1 of 1974 concerning marriage which explains that marriage is not only a legal act that can result in legal consequences, but is also part of the religious side, so that a marriage is considered valid and can be seen according to each religion and belief of the person who performs the wedding. Article 1 Law no. 1 of 1974 of the Republic of Indonesia concerning marriage emphasizes that marriage is an inner and outer relationship that takes place between a man and a woman as a husband and wife couple with the aim of building a happy family or household based on the belief in the Almighty God.³

In Indonesia, marriage contracts are generally carried out in a mosque or at home, even at the KUA (Religious Affairs Office). The prospective groom and guardian are in one assembly. For the speech impaired who are unable to say consent and consent, Islam provides a solution by; first, replacing or deputizing with someone who is considered to be trusted. Second, using writing.

Based on these considerations, it is important to conduct a study on the legal status of marriage practices for the speech impaired from an Islamic perspective. In particular, the Shafi'i school's viewpoint differs in an avow signal. Of course, the community needs to be

¹Brent D. Ruben and Lea P. Stewart, *Communication and Human Behavior* (Depok: Raja Grafindo Persada, 2013), 65.

²Djoko Prakoso and Ketut Mutrika, *Principles of Marriage Law in Indonesia* (Cet. I; Jakarta: Bina Aksara, 1987), p. 3.

³Indonesian Ulema Council Fatwa Commission, *Compilation of Islamic Law on Marriage, Inheritance and Endowments* (t. Cet; Jakarta: Permata Press, 2003 AD), p. 79

informed about the differences in scholarly viewpoints so that there is no misinterpretation of them.

THEORETICAL REVIEW

Marriage in Islam

Marriage comes from the word *nikah*. *Nikah*: is a marriage contract (contract) carried out based on legal provisions and religious teachings.⁴ The word *nikah* comes from Arabic which is synonymous with the words *al- ziwāj* or *al- zaw āj* or *al- Zijah*. Etymologically, the word marriage means *al- waṭ'u* or *al- ḍammu* and *al- Jam'u*. *Al- Waṭ'u* originate from the words *waṭi'a* – *yaṭa'u* – *waṭ'an* which means walking on, through, stepping on, trampling, entering, climbing, prostrating and having intercourse or sexual intercourse.⁵

According to jurists, the true meaning of marriage is a temporary contract meaning its *majāzī* is having sexual intercourse, because that is the meaning that is mostly found in the Qur'an and hadith. The Shafi'i and Maliki schools strengthen this second opinion with several arguments⁶, including from the Qur'an in QS al-Nūr/24: 32 Allah says:

"Marry off the 'free' singles among you, as well as the righteous of your bondmen and bondwomen ...".⁷

Rasulullah saw. also said:

"There is no marriage without a guardian and witnesses..."

"From Ali ra, Rasulullah said, 'I was born from marriage, not adultery, from Adam until my father and mother gave birth to me, there is no (tradition of) jahiliyah adultery that befell me."

The Word of God mentioned in verse QS al-Nur/24: 32 clearly shows that the word '*nikah*' has the meaning of 'akad' or contract and cannot be understood as *jima'* (coitus). The first hadith mentions the word marriage which is associated with the guardian and witness, thus showing that the meaning of marriage is *akad*, because *Jima'* not related with guardians and witnesses. This is different from an *akad* which requires witnesses and guardians.

Article 1 Republic of Indonesia Law no. 1 of 1974 concerning marriage explains that marriage is a physical and spiritual bond between the prospective groom and the prospective bride as husband and wife with the aim of creating a happy family built on

⁴Ministry of Education and Culture, "Nikah", <https://kbbi.kemdikbud.go.id/entri/nikah> (March 20, 2022).

⁵Majma 'al-Lughah al-' Arabiyah, *Mu'jam al- Wasīṭ* (Cet. V; Egypt: Maktabah al- Shurūq al Dauliyah, 2011 AD), p. 1084.

⁶Abd al- Raḥmān al- Jazīrī, *Kitāb al- Fikih ' alā al- Mazāhib al- Arba'ah*, vol. 4, (Beirut: Dār al- pole al-' Ilmiyah, 2011), p. 7.

⁷Ministry of Religion of the Republic of Indonesia, *Al-Qur'an and its Translations*, p. 356.

the belief in the Almighty God.⁸ This regulation is based on government regulations based on PMA No. 20 of 2019.

Speech-impaired

Speech-Impaired is the term for those who suffer from speech disorders so they cannot speak clearly. A person's inability to speak or be mute is caused by disorders of the organs related to him such as the throat, vocal cords, lungs, mouth, tongue, and so on. Muteness is generally associated with deafness, therefore the speech impaired in some conditions are called speech deaf. In his daily life a Deaf and speech impaired⁹ people communicate through certain symbols or signs which require expressing their thoughts through sign language based on the self-concept that they have trained within themselves to show the abilities they have.

Speech impaired can categorized as into the a number of characteristics, namely :

- a. Mild, speech impaired can communicate with good only in words or a few sentences.
- b. Medium, namely those who have difficulty understanding the words of people around them surrounding . This is due to decreased hearing ability. The sound that can be heard is sound at a high volume.
- c. Severe, namely a speech impediment who has difficulty following the conversations of people around him.¹⁰

People with speech impairments when conversing will utilize sign language to discuss nonverbal cues and express what they want or feel. For people with speech impairments Language Non-verbal is very effective because sign language does not require sound man in the pronunciation , however more many are expressed in writing in the signaling system.

This language will be expressed with facial expressions, hand movements, head, body and so on which are specifically made for people with special needs. Each country has a different sign language according to the cultural characteristics of each country. Sign language is a bridge for deaf and speech impaired people in connecting with their environment and the real world.

Cue based on its formation can grouped as follows:

- a. First, the main signal is a signal that describes a word or a signal formed by meaning components.
- b. Second, additional signals are signals that represent prefixes, suffixes and particles.
- c. Third, formed signals are signals that are created by combining basic signals with additional signals.
- d. Fourth, finger alphabet, namely signs made with the fingers of the hand.¹¹

⁸Indonesian Ulema Council Fatwa Commission , *Compilation of Islamic Law on Marriage , Inheritance and Endowments* (t. Cet ; Jakarta: Permata Press, 2003), p. 79.

⁹Bilqis, *Memahami Anak Tunawicara* (Yogyakarta: Familia, 2012), p. 11.

¹⁰Mauliawati Fatimah, "Kebahagiaan Ditinjau dari Status Pernikahan Kebersamaan Hidup", *Journal of Psychology*. Volume 14. No. 2 (2018): p. 148.

¹¹Muslih Aris Handayani. "Komunikasi Anak Tuna Rungu Dengan Bahasa Isyarat Di Slb B Yakut Purwokerto ", *Injct (Interdisciplinary Journal of Communication)*, 3, no. 2 (2018): pp. 213- 230

Sign language for the deaf and speech impaired is their natural and instinctive language, it can even be called a mother tongue, this is because the formation of signs is very similar to the formation of a mother tongue for people who are able to hear and speak.

Istinbāt Law of Madhhab Shafi'i

The Madhhab or traditional school of religious law was originally the main idea or basis used by the *mujtahid Imam* in seeking a solution problem or *istinbāt* of the Islamic law that is sourced from the Koran and hadith. Subsequently, the school of thought developed into a group of Muslims who followed its method *istinbāt* to a certain *mujtahid Imam* or following the opinion of a *mujtahid Imam* regarding a legal issue in Islam.

The Shafi'i School was founded by Abu Abdillāh Muḥammad bin Idrīs bin al-' Abbās bin ' Usmān bin Syafi'ī bin al- Sa'ib bin 'Ubaid bin 'Abd Yazīd bin Hāsyim bin Abdu al- Muṭṭalib bin 'Abd al- Manāf bin Quṣay al- Quraysyi al- Muṭṭalib or known as Imam Syafi'i, was born in Gaza Asqalan city in Palestine in 150 Hijriah. Viewed from Imam Shafi'i's lineage have a continuous lineage with the Messenger of Allah. Imam Syafi'i, great *mujtahid*, hadith expert, Arabic linguist, exegete and jurisprudence expert. In the field of famous Shafi'i hadith with title *Nāṣir al-Sunnah* (defender Sunnah Rasulullah saw.), in the field of *ulus fiqh* and Shafi'i jurisprudence, he is famous as the first compiler of the book of *ulus fiqh* and the founder of the Syafi'i School.

Like the other madhhabs, madhhab Shafi'i Of course doesn't discuss all the problems, but only establishes the law regarding what events occurred according to the time it appears. Sometimes, in the Shafi'i Madhhab it is also found a number of different opinions. It is known that all students and followers of Imam Syafi'i always carry out *ijtihad* with stick to the *ushul* School of thought Shafi'i. *Ijtihad* must be carried out with freedom to do *Istinbāt* (taking law). Some Shafi'iyah scholars also do this *tarjih* to a number of opinion Imam Shafi'i and his students.¹² The guidelines of the Shafi'i School in establishing law are the Qur'an, Sunnah, Ijmak and Kias.

Compilation of Islamic Law (KHI)

Compilation is the practice of gathering different written information about a certain issue from multiple written sources. In a legal context, compilation has little difference from codification, which is meaningful bookkeeping (*al- tadwin*), that is A certain laws or collection books containing certain legal rules or materials, legal opinions, or legal regulations.¹³ If the word compilation is connected to Islamic law in Indonesia, this compilation might be considered of as *fiqh* in statutory language, which includes chapters, articles and verses.

The inauguration of the KHI began on June 10 1991, which was signed by the President of the Republic of Indonesia containing Presidential Instruction Number 1 of 1991. As *de jure* proof that the KHI was enacted as material law that is applicable inside Religious

¹²M. Ali Hasan, *Perbandingan Mazhab*, (Cet. III; Jakarta: PT Raja Grafindo Persada, 1998), p. 211.

¹³Abdurrahman, *Compilation of Islamic Law in Indonesia* (Jakarta: Akademika Pustaka Pressindo , 1992), p. 12.

Courts across Indonesia, this instruction was thereafter distributed to all Chairmen of the Religious Courts and Chairmen of the High Religious Courts.¹⁴

The Compilation of Islamic Law is the result of Indonesian jurisprudence which seeks to shape the environment for the development and determination of Islamic Law in Indonesia, especially in the Religious Courts. As a result, it turns out that KHI has begun to attract the attention of observers and experts in Islamic law in Indonesia, because if we examine its legal form, it is found that KHI's position is not in the legal order and hierarchy that applies in Indonesia. The position of KHI is not mentioned in Law Number 12 Article 7 paragraph (1) concerning the Formation of Legislative Regulations.

RESEARCH METHODOLOGY

This type of research uses qualitative field research *with* a case study type. This research was conducted in 3 (three) District KUAs in Makassar City, namely: KUA Biringkanayya District, KUA Tamalate District and KUA Tallo District. The approach used in this research is a *theological-normative approach* and a *sociological approach*. The data sources for this research were obtained from primary data and secondary data. The data collection process in this research was carried out using three methods, namely observation, in-depth interviews, and documentation. The research instruments are observation guidelines and interview guidelines. The data that was obtained during the research period was then collected for analysis using qualitative analysis. Activities in the analysis include three stages in the form of: data reduction, data display and conclusion drawing as well as verification.

FINDINGS AND DISCUSSION

Description of the Legal Strength of Marriage for the Speech Impaired in Makassar City from the Syafi'i School and KHI Perspectives

Speech-Impaired marriages are quite rare in Makassar City. This is proven by data found in the field, for example recorded from 1,000 marriage events that occur every year in the District KUA Biringkanaya. There was only one speech-impaired marriage; these kinds of unions don't occur frequently.¹⁵ Research conducted at KUA Tallo District and KUA Tamalate District also shows the same result that Speech-Impaired marriages are quite rare. Even in the District Tamalate since From 2000 until now, this has only happened 2 times¹⁶ and in Tallo District it was recorded only 1 Speech-Impaired marriage.¹⁷ At least quantity disabled person disability including speech impaired does not show any discriminatory treatment in terms of religious rights and government services towards them.

Law of the Republic of Indonesia Number 8 of 2016 concerning disabled person disability states that in article 8 paragraphs (a) and (b) it reads:

¹⁴Compilation of Islamic Law in Indonesia, (Bandung: Humaniora Utama Press, 1992), pp. 5- 6. and Ahmad Rofiq, *Islamic Law Reform in Indonesia* (Yogyakarta: Gama Media, 2001), p. 95.

¹⁵Abdurrahman, Head of District KUA Biringkanaya , *Interviewed on August 15, 2022.*

¹⁶Hastuty , District KUA Extension Officer Tamalate , *Interviewed on August 19, 2022.*

¹⁷Muhammad Kasim, Head of KUA Tallo District , *Interviewed on August 15, 2022*

1. Recognized as a private human being who can demand and obtain the same treatment and protection in accordance with human dignity in public;
2. Forming a family and continuing offspring through legal marriage;

Marriage is a natural process and a need for every citizen as outlined in the law. On the Law about disability as previously mentioned outlines that they are as disabled person disability including speech impaired have equal rights, protection and treatment before the law. They enjoy the same rights as ordinary human beings, including the ability to start a family through a legal marriage.

Research Finding from the KUA Biringkanayya, Tallo, and Tamalate District shows that KUA in Makassar City has held weddings for the disabled. It demonstrates that the KUA services in Makassar City have provided equal protection and opportunities to carry out marriages for people with speech-Impaired. As long as the requisites and conditions in marriage are met, they can build a family through a legal marriage.

Law Number 1 of 1974 concerning Marriage is a legal regulation that applies generally to the Indonesian nation which regulates marriage provisions. In 2019, Law Number 16 of 2019 was issued regarding amendments to Law Number 1 of 1974 in Article 7 which states that marriage is only permitted if the man and woman have reached the age of 19 years.

Speech-Impaired marriages have been determined in KHI Book I concerning Marriage in Article 17 paragraph (1) to paragraph (3) which reads:

1. The marriage registrar requests the prospective bride and groom's approval in front of two witnesses prior to the marriage ceremony.
2. The marriage cannot happen if it turns out that one of the prospective bride and groom does not approve of the union.
3. In the event that the potential spouses are nonverbal or have hearing impairments, written consent or understandable signals can be used to convey consent.

The KHI Law above explains that for those who cannot fulfill the pillars of marriage in the form of stating the words of the marriage contract, it can be stated in written form or with signs that can be understood by the witnesses. This rule compatible with jurisprudence Syafi'i school of thought written by Syamsuddīn al- Ramlī an ulamaa of the Shafi'i school in his book *Nihāyah al- Muḥtāj Ila Syarḥi al- Minhāj* which reads :

"Marriage for mute people is possible happen with the signal that is not only understood by intelligent people. So as written by a mute person is also considered valid. If the signal from a mute person cannot be understood and cannot be carried out because it is an emergency situation that, then the agreement done with writing accompanied by signs that are not only understood by intelligent people."

According to the Syafi'i school of jurisprudence, a mute person in a marriage can use signs in the same way that a verbal person would, as long as the signs the mute person uses are understandable to witnesses and not unique signals that only highly educated people can interpret. This is due to the fact that signals that are only understood by the highly clever can be interpreted in a different way and are therefore cause for concern.

Taqiyuddin also explained the opinion of the Shafi'i school regarding marriages for the speech impaired in the book:

"It is permissible for blind people to marry, there is no difference of opinion in this. "As for mute people, they must use writing or signs that can be understood."

The wedding Implementation in the field show a difference between a speech-impaired bride and a normal bride and groom lies in the marriage contract procession. The marriage contract procession for the deaf in Makassar City takes several forms. A speech-impaired marriage that occurred at the District KUA Biringkanayya held with teach and guide the prospective groom in advance regarding the signs that will be used before the marriage contract takes place. It is not uncommon for a marriage contract to be repeated many times because candidate bride Sometimes people still give wrong signals because they are stiff or nervous like candidate another normal bride. Apart from that, there are differences between deaf brides and grooms, if they are educated, it will be easier to guide them in his marriage procession contract because signs given using SIBI sign language can be combined with writing.¹⁸

Chief Muhammad Kasim in the KUA Tallo District who has been marrying a deaf couple said:

*"When marrying a deaf bride or groom, sometimes it is only reported when they are at the bride and groom's house that they are mute. However, that is not a problem for the celebrant, as long as the marriage conditions and the requisites are met, the wedding can still be held. Before carrying out the contract, the groom-to-be is first taught the signs that will be used. Prospective brides and grooms who have never received formal education are married off with mentioned the sambal agreement gives a signal. It even requires more extreme signals like this. (He curls the index finger and thumb of his right hand and inserts the index finger of his left hand). "They understand this gesture better than the wedding gesture (putting the right palm and left palm together)."*¹⁹

The signs required for people with speech impairments according to the Syafi'i school Madhhab were explained by Sayyid Sabiq in his book Fiqh al-Sunnah:

"A speech-impaired marriage becomes valid with signs that can be understood. If the signs cannot be understood then the marriage is invalid because the contract takes place between two people and the signs must be understood by each of the two (those who perform the ijab and kabul)."

District KUA Tamalate also have been marrying a deaf couple. Chief Kibo conveyed experience When marrying a deaf couple that there is nothing different from marrying another normal couple. What was different at the ceremony was that the groom's teacher sat beside him as translator between the bride and groom. Despite this, the marriage was still carried out wisely and sacredly, greeted by cries of "legitimate" from the audience. A marriage like this certainly does not reduce the essence of marriage because the basic requirements are still met.²⁰

Mother from Renny Djafar (27 years old) said about the marriage of his speech impaired daughter to Muhajir (25 years old) who is also speech impaired:

¹⁸Abdurrahman, Head of KUA Biringkanaya District, *Interviewed on 15 August 2022*

¹⁹Muhammad Kasim, Wedding Chief at KUA Tallo District, *Interviewed on 15 August 2022.*

²⁰Kibo, Head of KUA Tamalate District, *Interviewed on August 19, 2022.*

“Renny got married like any other normal bride. The marriage took place wisely. The thing that moved me as her mother was when the Imam who represented her father had started to say the ijab accompanied by hand signals that shook hands with the groom. Welcoming the Imam's words, the groom nodded and gave a gesture of acceptance as a sign accept contract his marriage.”²¹

Based on data on speech-impaired marriage events that occurred in 3 KUA sub-districts in Makassar City, it is representative of speech-impaired marriage events that occurred in Makassar City. speech-impaired marriages in Makassar City are carried out based on Law of the Republic of Indonesia Number 1 of 1974 concerning marriage and the Compilation of Islamic Law, and are in line with the opinions that have been expressed in fatwa by the Syafi'i Madhhab most widely adhered to by Indonesian society.

CONCLUSIONS AND IMPLICATIONS

Conclusion

The legal power of speechless marriages in Makassar City is based on Law Number 1 of 1974 concerning Marriage which regulates marriage provisions. As for marriages with speech impairments, it has been determined in KHI Book I concerning Marriage in Article 17 paragraph (3) and This has compatible with Shafi'i school.

Implications

Based on the conclusions above, the following research implications can be stated:

- a. Being married is the longest practices in life and has become a normal part of human life. Islam has therefore arrived to every ceremony with a comprehensive explanation of the law. It is intended that the availability of this written work will serve as a resource for anybody researching marriage-related law, including contracts, terms and conditions, and agreements. It can serve as a theoretical foundation for the wedding of speech-impaired people, specifically.
- b. As a scientific work that explains the concept of marriage, it is hoped that the results of this research can become a reference in examining a legal rule or phenomenon in society in the form of wedding for disabled person specifically speech impaired. It can also be used as input and reference as well as practical guidance for students studying Islamic studies, especially in the field of Islamic law relating to marriages with deaf people.

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