

From Exclusivism to Openness: Deconstructing the Role of Deaf Individuals as Marriage Witnesses in the Compilation of Islamic Law

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ABSTRACT

The role of marriage witnesses for deaf individuals has been a subject of debate among various Islamic schools of thought. The *Compilation of Islamic Law (Kompilasi Hukum Islam or KHI)*, as Indonesia's codified Islamic jurisprudence, adopts the view of scholars who prohibit deaf individuals from serving as marriage witnesses. This article critically examines the KHI's stance, arguing that it marginalizes deaf individuals in the marriage process. This study employs a normative approach, utilizing Auda's *maqāsid al-sharī'ah* concept. The findings reveal that the exclusion of deaf individuals as marriage witnesses stems from the KHI's restrictive interpretation, which is rooted in classical *fiqh*. As a legal product influenced by Shafi'i jurisprudence, the KHI maintains the requirement that marriage witnesses must have both auditory and visual capabilities. However, through the principles of openness and purposefulness in Auda's *maqāsid al-sharī'ah*, this study argues that hearing-impaired individuals possess the necessary qualifications to serve as marriage witnesses. In contemporary society, deaf individuals effectively communicate through various means, including sign language and assistive technologies. Therefore, a legal reinterpretation based on universal Islamic values—particularly those emphasizing equality and justice—is both necessary and justified.

[Peran saksi pernikahan bagi individu tunarungu telah menjadi perdebatan di antara berbagai mazhab fikih. Kompilasi Hukum Islam (KHI) mengadopsi pandangan ulama yang melarang individu tunarungu menjadi saksi pernikahan. Artikel ini secara kritis meninjau pandangan KHI, dengan berargumen bahwa

ketentuan tersebut (sengaja) meminggirkan individu tunarungu dalam proses pernikahan. Penelitian ini menggunakan pendekatan normatif dengan memanfaatkan kerangka *maqāṣid al-sharī'ah* ala Auda. Temuan penelitian ini menunjukkan bahwa eksklusif terhadap individu tunarungu sebagai saksi pernikahan berasal dari interpretasi KHI yang terbatas, yang berakar pada doktrin fikih klasik. Sebagai produk hukum yang banyak dipengaruhi oleh mazhab Syafi'i, KHI menetapkan bahwa saksi pernikahan harus memiliki kemampuan mendengar dan melihat. Namun, melalui prinsip keterbukaan dan 'kebertujuan' dalam *maqāṣid al-sharī'ah* Auda, penelitian ini berpendapat bahwa individu dengan gangguan pendengaran tetap memenuhi kualifikasi untuk menjadi saksi pernikahan. Dalam masyarakat kontemporer, individu tunarungu dapat berkomunikasi secara efektif melalui berbagai sarana, termasuk bahasa isyarat dan teknologi pembantu. Oleh karena itu, reinterpretasi hukum berdasarkan nilai-nilai universal Islam—khususnya yang menekankan kesetaraan dan keadilan—dapat dibenarkan.]

KEYWORDS

Shafi'i jurisprudence, marriage witness, deaf individuals, Compilation of Islamic Law, openness

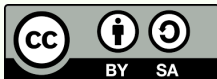
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Introduction

Since it was ratified on June 10, 1991, the Compilation of Islamic Law (hereinafter referred to as KHI) has not been updated. In fact, since the early 2000s, criticism of the contents of KHI material has emerged, pioneered by the liberal progressive group.¹ The group proposed the Counter Legal Draft of KHI (CLD-KHI) because KHI was considered bringing about patriarchal values that give rise to discrimination

¹ Following Imam Mawardi's opinion, the liberal-progressives in question are those who promote Islamic values and modernism, advocate human rights, human and gender equality, and offer an alternative Islam. See Ahmad Imam Mawardi and Achmad Kemal Riza, "Why Did Kompilasi Hukum Islam Succeed While Its Counter Legal Draft Failed? A Political Context and Legal Arguments of the Codification of Islamic Law for Religious Courts in Indonesia," *Journal of Indonesian Islam* 13, no. 2 (2019): 421–53.

against women. Another reason is as an agenda to promote the value of gender equality in written norms.²

One of the factors causing the emergence of CLD-KHI is due to social conditions that segregate groups of women, such as increasing cases of domestic violence and abandonment of wives due to polygamy.³ However, the CLD-KHI became controversial because there was opposition from groups who did not agree. Therefore, the draft was suspended and cancelled, and the initiative to be discussed in the legislature was stopped.⁴

Nevertheless, criticism of KHI continues to emerge as time progresses. Several studies show that KHI will always be criticized, both in terms of methodological criticism as expressed by Nuroniyah.⁵ It is also criticized from the patriarchal issue and conservative in the material as outlined by Fakhyadi,⁶ and Sodik's.⁷ The point is that KHI's is criticized due to its material content which tends to marginalize women.⁸

In addition to patriarchal concerns, which often serve as the primary basis for critiques of KHI, issues affecting persons with disabilities also warrant critical attention. One particular area of concern within the KHI pertains to the provisions on marriage witnesses with sensory disabilities.⁹ Article 25 of KHI stipulates that one of the requirements for serving as a marriage witness is the absence of deafness or intellectual disability. This provision reflects a lack of recognition of the rights of deaf individuals to serve as marriage witnesses. By excluding them, Article 25 implies that deaf individuals lack legal capacity, thereby undermining their status as full legal subjects. However, deaf individuals are, in fact, complete legal persons entitled to equal recognition and protection under the law.¹⁰

² Siti Musdah Mulia, "MUSLIM FAMILY LAW REFORM IN INDONESIA: A Progressive Interpretation of The Qur'an," *Al-Mawarid* 15, no. 2 (2015): 1-18.

³ Alfitri, "Whose Authority? Contesting and Negotiating the Idea of a Legitimate Interpretation of Islamic Law in Indonesia," *Asian Journal of Comparative Law* 10, no. 2 (2015): 191-212.

⁴ Mawardi and Riza, "Why Did Kompilasi Hukum Islam Succeed While Its Counter Legal Draft Failed? A Political Context and Legal Arguments of the Codification of Islamic Law for Religious Courts in Indonesia."

⁵ Wardah Nuroniyah, "Kritik Metodologis Terhadap Pembaruan Hukum Perkawinan Dalam Kompilasi Hukum Islam," *Mahkamah: Jurnal Kajian Hukum Islam* 1, no. 1 (2016): 33-47.

⁶ Defel Fakhyadi, "Patriarkisme Hukum Kewarisan Islam: Kritik Hukum Waris Islam Dan Kompilasi Hukum Islam," *Jurnal Hukum Islam* 3, no. 1 (2021): 1-16.

⁷ Mochamad Sodik, "Pembacaan Progresif Terhadap Fikih Keluarga (Kritik Terhadap KHI Dan RRU HTPA)," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 46, no. 1 (2012): 109-38.

⁸ Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesian Religious Courts*, 1st ed. (Amsterdam: Amsterdam University Press, 2010), 106.

⁹ People with sensory disabilities are those whose function is disrupted by one of the five senses, including blindness, deafness and speech impairments. See Explanation of Article 4 Paragraph (1) letter d of Law No. 8 of 2016 concerning Persons with Disabilities (*Undang-undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas*).

¹⁰ Amran Suadi, "Kesamaan Di Hadapan Hukum (Equality Before the Law) Bagi Penyandang Disabilitas Di Peradilan Agama," in *Hukum Disabilitas Di Indonesia*, ed. Muhammad Sadi Is, Fadilah Mursid, and Ari Azhari (Depok: Rajawali Pers, 2021), 43.

KHI's view regarding the loss of the position of marriage witness for deaf individuals has to be criticized—particularly given the ongoing scholarly debate among Islamic legal schools (*madhāhib*) regarding the role and qualifications of marriage witnesses.¹¹ According to the Mālikī, Shāfi'ī, and Ḥanbalī schools, the presence of witnesses constitutes a foundational pillar (*rukn*) of marriage. In contrast, scholars from the Ḥanafī and Zāhirī schools classify witnesses as a condition (*shart*) for the validity of marriage.¹² However, there is considerable divergence among jurists on the specific qualifications required for a marriage witness—these typically include being of sound mind, having reached maturity, being free (non-enslaved), and possessing the ability to hear, see,¹³ speak, and comprehend the content of the marriage contract (*'aqd*).¹⁴ The KHI's categorical exclusion of deaf individuals thus overlooks the nuanced and pluralistic nature of Islamic jurisprudence on this matter.

The divergence of opinion among Muslim scholars reveals a critical space for examining and challenging the provisions of KHI, which is rooted in fiqh. This study argues that the exclusion of deaf individuals from serving as marriage witnesses in the KHI reflects a marginalization of persons with sensory disabilities. Within the framework of the KHI, deaf individuals are not recognized as full legal subjects, particularly in relation to their capacity to bear witness (*ahliyyah al-shahādah*).¹⁵ Such exclusion stands in contradiction to Indonesia's legal commitment to inclusivity, as articulated in Law No. 8 of 2016 on Persons with Disabilities, and is also at odds with the universal Islamic values of justice and equality.¹⁶

Critiquing the legal construction surrounding deaf individuals as marriage witnesses is essential to safeguarding the rights of persons with disabilities. In the legal context, such criticism aims to ensure that protections for people with disabilities are clearly defined and free from ambiguity. As noted by Sodiqin, existing regulations concerning disability rights in Indonesia exhibit a degree of disharmony and inconsistency.¹⁷ Not only that, from a sociological perspective, the urgency of this issue is underscored by the fact that persons with disabilities constitute approximately 8.5% of Indonesia's total population.¹⁸

¹¹ Wahbah Az-Zuhaili, *Fiqh Al-Islām Wa Adillatuh Juz 7* (Beirut: Dar al-fikr, 1985), 82.

¹² Az-Zuhaili, 70-71.

¹³ Syaikh Abdurrahman Al-Juzairi, *Terjemah Fikih Empat Mazhab Jilid 5* (Jakarta: Pustaka Al-Kautsar, 2015).

¹⁴ Ibrahim bin Muhammad bin Ahmad Al-Bajuri, *Hasyiyyah Al-Bajuri 'ala Syarh Ibnu Qosim Jilid 3* (Jeddah: Darul Minhaj, 2016), 350.

¹⁵ Ahmad bin Umar Asy-Syatiri, *Syarh Al-Yaqut an-Nafis Fi Madzhab Ibni Idris* (Beirut: Darul Minhaj, 2007), 588.

¹⁶ Qodariah Barkah, "Perlindungan Hukum Bagi Penyandang Disabilitas Dalam Perspektif Islam," in *Hukum Disabilitas Di Indonesia*, ed. Muhammad Sadi Is, Fadilah Mursid, and Ari Azhari (Depok: Rajawali Press, 2021), 71.

¹⁷ Ali Sodiqin, "Ambiguitas Perlindungan Hukum Penyandang Disabilitas Dalam Perundang-Undangan Di Indonesia," *Jurnal LEGISLASI INDONESIA* 18, no. 1 (2021): 41.

¹⁸ Kemenko PMK, "Pemerintah Penuhi Hak Penyandang Disabilitas di Indonesia", *Kemenko PMK*, 15 Juni 2023, diakses 7 Mei 2024, <https://www.kemenkopmk.go.id/pemerintah-penuhi-hak-penyandang-disabilitas-di-indonesia>.

Previous research has examined the issue of marriage witnesses, such as Hadi, who revealed that there was anxiety among marriage registrars in advocating for marriage witnesses with sensory disabilities.¹⁹ Hadi also researched the views of marriage registrars on the status of deaf marriage witnesses.²⁰ Yulianti studied the transformation of witnesses contained in *fiqh* into KHI. The research also finds that the Ḥanafī, Shāfi‘ī, and Ḥanbalī schools of Islamic law generally require that marriage witnesses be individuals without hearing impairments.²¹ Syafe'i tried to deconstruct the witness requirements contained in Article 25 of the KHI. This is because several requirements do not provide space for human rights freedom and equality such as women and deaf individuals.²² Abdillah conducted research by discussing that a witness is someone who can observe and explain something that is witnessed.²³

This paper aims to examine the issue of marriage witnesses with sensory disabilities, with a particular focus on deaf individuals. Employing a juridical-normative approach, the study critically analyzes Article 25 of KHI, which outlines the requirements for marriage witnesses. The author seeks to deconstruct the legal treatment of deaf individuals in marriage contexts in order to promote justice, equality, and legal certainty for them as full legal subjects. To support this deconstruction, the study draws on Auda's theory of *maqāṣid al-sharī‘ah*, while also utilizing a systems approach—specifically the principles of openness and purposefulness—to reinterpret the role of marriage witnesses in alignment with the broader objectives of justice and equality in Islamic and national legal frameworks.

Construction of Deaf Marriage Witnesses: Opinions of Muslim Scholars on the Position of Marriage Witnesses

KHI is a guideline for Indonesian Muslim society in acting in the civil sector.²⁴ KHI holds a significant position as a source of Islamic law in Indonesia, incorporating the views of various *madhhab* scholars, with particular emphasis on the Shāfi‘ī school of thought.²⁵ This is evident in the numerous provisions within the KHI that reflect the views of Shāfi‘ī scholars. For instance, Article 14 regards marriage

¹⁹ Mukhammad Nur Hadi, Fahrudin Ali Sabri, and Ahmad Masum, "Betwen Conservatism and Progresivism: The Young Penghulu in East Java's Legal Paradigm Addresses Disability Issues in Marriage," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 10, no. 2 (2023): 198.

²⁰ Mukhammad Nur Hadi, "Nalar Fikih Penghulu Di Kota Malang Dalam Saksi Nikah Tuli," *Inklusi* 8, no. 2 (2022): 169–84.

²¹ Irma Yulianti, "Transformasi Fiqh Empat Madzhab Ke Dalam Kompilasi Hukum Islam Tentang Saksi Nikah," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 12, no. 1 (2019): 61–84.

²² Abdul Malik Syafe'i, "Dekontruksi Pasal 25 Kompilasi Hukum Islam Tentang Kesaksian Perempuan Dalam Perkawinan," *Medina-Te Jurnal Studi Islam* 14, no. 1 (2016): 195–210.

²³ Syaik Abdillah et al., "Revisiting the Role of Women as Witnesses in Fiqh Justice," *Ahkam: Jurnal Ilmu Syariah* 19, no. 1 (2019): 61–80.

²⁴ Naskur Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia," *Samarah* 6, no. 2 (2022): 514–36.

²⁵ Ahmad Rajafi, "Sejarah Pembentukan Dan Pembaruan Hukum Keluarga Islam Di Nusantara," *Aqlam: Journal of Islam and Plurality* 2, no. 1 (2018): 1–20.

witnesses as a fundamental pillar of marriage, while Article 25 stipulates hearing as a requirement for marriage witnesses.²⁶ The concept of marriage witnesses as a fundamental pillar of marriage is reflected in Article 14, which stipulates that a valid marriage must be attended by the prospective husband and wife, a marriage guardian, two witnesses, and the declaration of *ijab* and *qabul*. This article clearly outlines the essential components for the execution of a marriage:

To carry out a marriage there must be: a). Prospective husband, b). Prospective wife, c). Marriage guardian, d). Two witnesses, e). *Ijab and kabul*.

Article 14 reflects the consensus of the majority of scholars, as evidenced by various interpretations regarding the role of marriage witnesses. To provide a clearer understanding of the differing views among *madhhab* scholars, the table below illustrates these varying perspectives.

Table 1. Comparison of the position of marriage witnesses from the *madhhab* scholars' perspective

<i>Madhhab</i> Scholars	witness as pillar	witness as a requirement	witnesses are not pillars and requirement
Shāfi'ī scholars	✓	X	X
Ḥanbalī scholars	✓	X	X
Ḥanafī scholars	X	✓	X
Mālikī scholars	X	✓	X
Shī'ah scholars	X	X	✓
Ja'farī scholars	X	X	✓

Information: ✓ = Accept, X = Reject

The table above presents an overview of the views held by the Shāfi'ī and Ḥanbalī scholars, who consider witnesses to be a fundamental pillar of marriage. In contrast, the Ḥanafī and Mālikī scholars classify witnessing as a legal condition for the validity of marriage.²⁷ The basis of this group's thinking is based on two hadiths, namely: 1) Hadith narrated by Ibn Abbas from the Prophet Muhammad Saw. said "*al-baghāyā al-lātī yunkiḥna anfusahunna bi ghoiri bayyinatīn* (prostitutes are people who marry themselves without any witnesses)". 2). Hadith narrated by Aisyah r.a. from the Prophet Muhammad Saw. said "*lā nikāḥa illā bi*

²⁶ Marriage witnesses as a pillar of marriage are not only explained in the KHI, but there are laws and regulations in Indonesia that regulate marriage witnesses. In Law Number 1 of 1974 concerning Marriage, article 26 states that a marriage that is not attended by two witnesses can be requested to be annulled. The validity of marriage witnesses is then emphasized in PP Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974, article 10, which states that marriage procedures must be carried out in the presence of two witnesses. Meanwhile, in the Regulation of the Minister of Religion of the Republic of Indonesia Number 30 of 2024 concerning Marriage Registration, article 10 also explains that the pillars of marriage include the prospective husband, prospective wife, marriage guardian, two witnesses, and *ijab kabul*.

²⁷ According to some jurists from Malikiyyah schools, witness is not the pillar of marriage, however the marriage should be announced. For further, see Az-Zuhaili, *Fiqh Al-Islām Wa Adillatuh* Juz 7, 70.

waliyyin wa syahidai 'adlin (there is no marriage except with a guardian and two just witnesses)".²⁸

The reason for the difference in the position of the marriage witness is because of the difference in understanding the pillars and valid requirements in marriage between *madhhab*. According to the majority of scholars, a marriage witnessed as a pillar is a matter that supports the occurrence of an event because it is an internal part of the marriage. Witnesses are a pillar of marriage because they are part of the marriage. According to Ḥanafī scholars, pillars refer to elements that determine the very existence of something and are integral to its essence. In this view, the pillars of marriage are limited to the *ijab* and *qabul*, as the essence of marriage is found solely in the marriage contract itself.²⁹

There are also lesser-known views that support the validity of marriage without witnesses. This opinion has been expressed by the Shī'ah madhhab, as well as by figures such as Abū 'Abd al-Raḥmān bin Maḥdī, Yazīd bin Ḥārūn, Imam al-Zuhrī, and the Ja'farī scholars. The basis for this position lies in historical practices, such as those of Ibn 'Umar, Ḥasan bin 'Alī, Salīm and Ḥamzah (the sons of 'Abd Allāh bin 'Umar), who are reported to have conducted marriages without witnesses. Additionally, several narrations confirm that 'Abd Allāh bin al-Zubayr also practiced marriage without witnesses.³⁰

The legal basis for the opinion that marriage without witnesses is valid is rooted in the statement of Ibn Munzīr, who argued that there is no hadith explicitly requiring the presence of two witnesses for the validity of a marriage, "*lā yatsbutu fī syāhidaini fī ḥikahi khobarun* (there is no hadith that stipulates the requirement for the presence of two witnesses in a marriage)". Another basis for this view is the statement of Yazīd bin Ḥārūn, who argued that Allah specifically mandated the presence of witnesses in transactions such as buying and selling, but did not prescribe their presence in the context of marriage, "*amara allahu bil isyhādi fī al-bai'i dūna an-nikāhi*".³¹ Mālikī scholars hold differing opinions regarding the timing of witnessing in marriage. The majority of Mālikī scholars consider the presence of witnesses at the time of the marriage contract to be recommended. However, they deem the presence of witnesses when the husband and wife engage in sexual intercourse to be mandatory. This perspective views the role of witnesses as serving to publicly announce the marriage, a requirement that can be fulfilled either during the marriage contract or when consummating the marriage.³²

Based on the above explanation, it is clear that, according to the majority of scholars, the presence of witnesses plays a crucial role in determining the validity of a marriage. In the broader context of marriage, the role of witnesses is of

²⁸ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakahat Dan Undang-Undang Perkawinan* (Jakarta: Prenada Media Group, 2009), 82.

²⁹ Az-Zuhaili, *Fiqh Al-Islām Wa Adillatuh* Juz 7, 36.

³⁰ Abdul Karim Zaidan, *Al-Mufassshal Fi Ahkam Al-Mar'ah Wa Bait Al-Muslim Fi Syari'ah Al-Islamiyyah* Juz 6 (Beirut: Muassasu ar-Risalah, 1993), 109.

³¹ Sayyid Sabiq, *Fiqh As-Sunnah* (Beirut: Dar al-Fatah al-'lam ak-'Arabiy, 2012).

³² Zaidan, *Al-Mufassshal Fi Ahkam Al-Mar'ah Wa Bait Al-Muslim Fi Syari'ah Al-Islamiyyah* Juz 6, 110.

paramount importance. In light of this, the KHI appears to align with the majority view adopted by the Shāfi‘ī and Ḥanbalī schools, which regard marriage witnesses as a fundamental pillar of marriage. This stands in contrast to the views of the Ḥanafī and Mālīkī schools, which consider marriage witnesses to be a valid requirement for the marriage to be recognized.

Construction of Deaf Marriage Witnesses: Affiliation of *Madhhab* in the Compilation of Islamic Law

In addition to marriage witnesses as a pillar, KHI also formulates the requirements for marriage witnesses. This is accommodated in Article 25, which includes that marriage witnesses must be Muslim men, fair, sane, mature, have no memory impairment, and must not be people with sensory disabilities, especially deaf individuals.³³ The article states:

Those who can be appointed as witnesses in a marriage contract are Muslim men, just, mature, have no memory impairment and are not deaf individuals.

It is clear that the KHI does not recognize the existence of deaf witnesses. This means that deaf individuals cannot be witnesses. This position is certainly far from the inclusive concept that prioritizes equality. Basically, the majority of scholars agree that marriage witnesses must have the ability to testify (*ahliyyah al-syahādah*). Among these abilities include Islam, rational, and being just. (*al-‘adālah*), man (*adh-dhukūra*), able to hear (*as-samā’*), able to speak (*an-nuṭqu*), intelligent (*ḍabṭ*), able to see (*al-baṣar*), and know the spoken word or language of the person doing the contract (*ma’rifatu lisan au lughot al-‘aqīdainī*).³⁴ However, there is debate among *madhhab* regarding the requirements for witnesses to a marriage, especially regarding the ability to see (*al-baṣar*), speak (*an-nuṭqu*), and hear (*as-samā’*). The summary and description are explained below:

Table 2. Comparison of marriage witnesses for people with sensory disabilities from the *madhhab* scholars' perspective

Disabilities	Ḥanafī scholars	Mālīkī scholars	Shāfi‘ī scholars	Ḥanbalī scholars
Blind	✓	✓	X	✓
Speech	✓	✓	X	X
Deaf	-	X	X	X

Information: ✓ = Accept, X = Reject, - = difference

³³ The requirement that marriage witnesses must not be deaf is only found in the KHI. General laws and regulations (*lex generalis*) such as Law Number 1 of 1974 concerning Marriage and PP Number 9 of 1975 do not contain requirements for deaf marriage witnesses. Likewise, there is no prohibition on deaf marriage witnesses. In article 14, it only states that the requirements for witnesses are male, Muslim, mature, sane, and fair.

³⁴ Khulud Badru Zamanan, “شروط عقد النكاح في الفقه الإسلامي واختبارات قانون الأحوال الشخصية الكويتي”, مجلة كلية 32, no. 4 (2017): 1440–1517.

The first issue concerns the position of a blind person as a marriage witness. According to the Shāfi‘ī school, blind individuals are generally not permitted to serve as witnesses to a marriage. This is because the Shāfi‘ī scholars maintain that a valid marriage witness must be able to see, arguing that the *ijab* and *qabul* must be directly witnessed through both sight and hearing to ensure the authenticity of the contract.³⁵ However, a minority opinion within the Shāfi‘ī school allows for the possibility of a blind person serving as a witness, provided they are certain that the words of *ijab* and *qabul* are being exchanged by the contracting parties.³⁶ In contrast, Ḥanafī scholars permit blind individuals to act as marriage witnesses, regarding them as equal to sighted persons in this context. Citing Imam al-Kāsānī, the Ḥanafī school opines that visual observation is not a prerequisite for the validity of a marriage contract, and therefore the presence of a blind witness does not affect the legitimacy of the marriage.³⁷

The opinion of Ḥanafī scholars regarding the validity of blind witnesses is followed by Mālikī scholars, namely that seeing is not included in the requirements for witnesses to a marriage.³⁸ Likewise, according to the Ḥanbalī scholars, a marriage is valid with a blind marriage witness. Therefore, a marriage witness who can see is not a requirement for a marriage witness. However, the Ḥanbalī scholars note that a blind witness must know and believe that the voice of *ijab* and *qabul* comes from two people who are entering into a marriage contract even though they cannot see.³⁹

Secondly, the position of a mute individual as a marriage witness is also subject to differing scholarly opinions. Both the Ḥanafī and Mālikī schools tend to permit mute persons to serve as witnesses to a marriage. In these traditions, the inability to speak does not invalidate a person's testimony. The Ḥanafī scholars argue that the essential qualification of a witness lies in their ability to comprehend and receive information about the marriage contract, rather than in their ability to verbally express it.⁴⁰ Similarly, the Mālikī scholars permit mute individuals to act as witnesses, provided they understand the *ijab* and *qabul* exchanged during the marriage contract. Their reasoning is based on the principle that as long as the witness is able to comprehend the process through clear indicators or cues, their testimony is valid. Moreover, they contend that there is no direct correlation between the ability of the contracting parties to speak and the muteness of the witness, since the mute individual is still capable of hearing and understanding the verbal exchange.⁴¹

³⁵ Zaidan, *Al-Mufassshal Fi Ahkam Al-Mar'ah Wa Bait Al-Muslim Fi Syari'ah Al-Islamiyyah* Juz 6, 122.

³⁶ Asy-Syatiri, *Syarh Al-Yaqut an-Nafis Fi Madzhab Ibni Idris*, 588

³⁷ Zaidan, *Al-Mufassshal Fi Ahkam Al-Mar'ah Wa Bait Al-Muslim Fi Syari'ah Al-Islamiyyah* Juz 6, 122.

³⁸ Wazarootul auqof wastikwanul islamiyyah, *Al-Mausu'ah Al-Fiqhiyah Al-Kuwaitiyah* Juz 41 (Kuwait: Wazarootul auqof wastikwanul islamiyyah, 2002), 299.

³⁹ Zaidan, *Al-Mufassshal Fi Ahkam Al-Mar'ah Wa Bait Al-Muslim Fi Syari'ah Al-Islamiyyah* Juz 6, 122.

⁴⁰ Zaidan, 123.

⁴¹ Zamanan, "شروط عقد النكاح في الفقه الإسلامي واختيارات قانون الأحوال الشخصية الكويتي", 1470.

In contrast, the majority of Shāfi‘ī and Ḥanbalī scholars hold that a marriage witness must be capable of speech; therefore, a marriage witnessed by a mute individual is not considered valid according to these schools.⁴² Thirdly, regarding the position of deaf individuals as marriage witnesses, an examination of classical texts from scholars across various schools reveals three distinct perspectives: those that oppose, those that support, and those that adopt a neutral stance on the issue.

The first perspective is the opposing opinion. The majority of scholars maintain that marriage witnesses must be able to hear the *ijab* and *qabul*. This view is regarded as the strongest (*ashāh*) among Shāfi‘ī scholars and as the preferred (*mukhtār*) opinion within the Ḥanbalī school.⁴³ The logical argument of this group is that the *ijab qabul* speech is something that must be understood and comprehended by the witnesses, whereas deaf individuals are unable to hear and will certainly not be able to understand what is being said by the person who is performing the marriage contract.⁴⁴ Similarly, Mālikī scholars hold that a marriage is invalid if one of the witnesses is deaf, arguing that the inability to hear the verbal elements of the contract renders the witness incapable of performing their function.⁴⁵

The second perspective is the supportive (pro) opinion, although it is generally classified as weak (*ḍa‘īf*) in scholarly discourse. Only a limited number of scholars permit deaf individuals to serve as marriage witnesses, among them certain Ḥanafī scholars. Notably, Imam al-Sughdī held that marriage with deaf witnesses is permissible,⁴⁶ as the requirement, in his view, is the presence of witnesses rather than their ability to hear.⁴⁷ However, this opinion remains contested within the Ḥanafī school itself. For instance, Qāḍī Khān leans toward the view that deaf individuals should not serve as marriage witnesses, while Al-Zayla‘ī attributes the permissive stance to Imam Al-Sughdī but still considers it weak (*ḍa‘īf*). Consequently, this view has not gained wide acceptance and is not upheld by the majority of scholars.⁴⁸

The third perspective represents a neutral stance. This group refrains from engaging in debates over the validity of a marriage witnessed by deaf individuals. Instead, it adopts a more moderate approach by suggesting that a marriage may be considered valid in the presence of a deaf witness, particularly if the groom himself is deaf and the *ijab* and *qabul* are conveyed through sign language that the witness

⁴² Wazarootul auqof wastikwanul islamiyyah, *Al-Mausu‘ah Al-Fiqhiyah Al-Kuwaitiyah Juz 41*, 299

⁴³ Abu Bakar Utsman Muhammad Syatha Ad-Dimyati, *I‘anatu Ath-Thalibin Juz 3* (Beirut: Darul Fikr, 1997), 343.

⁴⁴ Syamsuddin Muhammad bin Ahmad al-Khotibi Asy-Syirbini, *Mughi Al-Muhtaj Ila Ma‘rifati Ma‘ani Alfadz Al-Minhaj Juz 4* (Beirut: Darul Kutub Ilmiyyah, 1994), 235.

⁴⁵ Muhammad bin Ahmad bin Arafah ad-Dasuqi Al-Maliki, *Hasiyyah Ad-Dasuqi ‘ala Syarh Al-Kabir Juz 4* (Beirut: Darul Fikr, n.d.), 168.

⁴⁶ Burhanuddin Abi Al-Ma‘ali, *Adz-Dzakhīrotu Al-Burhaniyyah Al-Musamma Dzakhīrotu Al-Fatawa Fi Al-Fiqh ‘ala Mazhab Al-Hanafi* (Beirut: Darul Kutub al-Ilmiyyah, n.d.), 278.

⁴⁷ Fakhruddin al-Hasan bin Mansur, *Fatawa Qadihan* (Beirut: Darul Kutub Ilmiyyah, 2009), 294.

⁴⁸ Zainuddin bin Ibrahim bin Muhammad Al-Mishri, *Bahru Al-Raiq Syarh Kanzu Ad-Daqaiq Juz 3* (Beirut: Darul Kutub al-Islami, n.d.), 94.

can comprehend. This position emphasizes contextual understanding and communication over strict adherence to auditory requirements.⁴⁹

Seeing the debate on witnesses to marriages with sensory disabilities, especially deaf individuals, it is evident that the KHI, as a formulation of Indonesian *fiqh*, adopts the dominant opinion of the majority of classical scholars. The primary reference underlying the formulation of Article 25 of the KHI is the view that prohibits deaf individuals from serving as marriage witnesses, a position closely aligned with the Shāfi'ī school of thought. This indicates that the drafting of Article 25 follows a predominantly textualist approach, with little to no consideration given to alternative or more inclusive interpretations, such as the pro or neutral opinions found within other schools of Islamic jurisprudence.

Criticism of the Compilation of Islamic Law: Exclusivism of Deaf Marriage Witnesses

Reflecting on the preceding discussion, the author contends that the formulation of Article 25 of KHI, concerning the requirements for marriage witnesses, is textual and reflects the views of Shāfi'ī scholars. This observation forms the basis of the author's critique that the KHI adopts a notably exclusive approach. The notion of exclusivity, as used by the author, is articulated in two interrelated dimensions: methodological exclusivity and the foundational paradigm upon which the KHI is based.

Firstly, the KHI demonstrates methodological exclusivity. This is evident in its tendency to deepen its legal formulations through the study of classical *fiqh* texts from various schools of thought (*madhhab*), with a predominant emphasis on the Shāfi'ī school, which holds significant influence among Indonesian Muslim scholars. Notably, approximately 38 classical texts were examined across seven designated State Islamic Religious Colleges (Perguruan Tinggi Keagamaan Islam Negeri, PTKIN).⁵⁰ The endeavor to refine the KHI was not limited to textual analysis of *fiqh* literature; it also encompassed interviews with religious scholars,

⁴⁹ Muhammad bin Amin bin Umar bin 'Abdi Aziz 'Abidin Al-Hanafi, *Darul Mukhtar 'ala Ad-Dari Al-Mukhtar Juz 3* (Beirut: Darul fikr, 1992), 22-23.

⁵⁰ The 7 IAINs include: 1). IAIN Ar-Raniri Aceh who studied Al-Bajūri, Fathul Mu'in, Asy-Syarkawi 'ala at-Tahrir, Al-Mughni al-Muhtaj, Nihayatul muhtaj, and Asy-Syarqawi, 2). IAIN Syarif Hidayatullah studied the books 'Ilanatu at-Ṭālibīn, At-Tuhfah, Targhib al-Musytāq, Bulghat al-Sālik, Asy-Syamsuri fi al-Farāid, al-Mudāwanah, 3). IAIN Antasari Banjarmasin studied Al-Qalyubī/al-Mahallī, Fathu al-Wahhab wa Syarhuh, Bidāyatu al-Mujtahid, al-Umm, Bughyah al-Mustarsyidin, 'Aqidah wa al-Syarī'ah, 4). IAIN Sunan Kalijaga Yogyakarta studied al-Muhalla, al-Wajiz, Fathu al-Qādir, Al-Fiqh 'ala al-Madzāhib al-Arba'ah, Fiqh as-Sunnah, 5). IAIN Sunan Ampel studies the Kasyf al-Qina, Majmu' al-Fatāwi Ibn Taymiyyah, Qawāni asy-Syar'iyyah by Sayyid Usman bin Yahya, al-Mughni, al-Hidāyah Syarh Bidāya at-Taimiyyah Muhtadi, 6). IAIN Alauddin studies the Al-Qawānīn asy-Syar'iyyah of Sudaqah Dakhlan, Nawab al-Jalil, Syarh Ibn Abdini, al-Muwattā, Hasyiah Syamsuddin Muh Irfat Dasuki, 7). IAIN Imam Bonjol Padang studies Badai al-Sannai, Tabyin al-Haqāiq, al-Fatāwi al-Hindiyyah, Fathu al-Qādir, Nihāyah. See Mahkamah Agung RI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Dengan Pengertian Dalam Pembahasannya* (Jakarta: Mahkamah Agung RI, 2011), 25-26.

reviews of jurisprudence from the Religious Courts, comparative legal studies involving several countries, as well as legal material development through workshops and seminars.⁵¹

Similarly, in its formulation, Article 25 of the KHI stipulates that one of the conditions for serving as a witness to a marriage is that the individual must not be deaf or disabled. In this instance, the KHI adopts the dominant opinion of the majority of classical scholars, without adequately engaging with alternative, including more inclusive or neutral, perspectives. This approach reflects the epistemological foundation of the KHI, which is deeply rooted in classical *fiqh*, a framework that tends to reinforce exclusivist interpretations. As Wahid observes, the KHI adopts *fiqh* as codified in authoritative texts by scholars affiliated with specific schools of thought.⁵² The underlying reason for this, he argues, lies in the perception of *fiqh* as a sacred, flawless, and immutable body of knowledge—considered universally applicable across time and place.⁵³

From the perspective of legal reform methodology, Article 25 of the KHI employs an intra-doctrinal reform approach, relying primarily on conventional *fiqh* concepts.⁵⁴ The article was formulated using the *takhyir* method, which involves selecting the opinion of one jurist or school of thought from among several established views within Islamic jurisprudence. Some scholars argue that *takhyir* is functionally equivalent to *tarjih*, as both involve choosing a particular opinion—typically on the grounds of its perceived strength or greater relevance to contemporary needs.⁵⁵ In the case of Article 25, the process of *takhyir* was confined to the Sunni legal tradition, with particular emphasis on the views that dominate among the four major *madhhab*.⁵⁶ As previously discussed, the primary reference guiding the formulation of this article was the opinion of Shāfiʿī scholars, who hold that individuals who are deaf cannot serve as valid marriage witnesses.

Based on the method employed, Article 25 of the KHI tends to reflect a more exclusive orientation, as it does not incorporate more responsive or context-sensitive interpretive approaches. The article was not developed through methods

⁵¹ Mahkamah Agung RI, 23.

⁵² Marzuki Wahid, “THE DISCOURSE OF INDONESIAN FIQH; Methodological Bid of Family Law Reform,” *Al-Mawarid* 15, no. 2 (2015): 143–60.

⁵³ Marzuki Wahid and Nurrohman, “Syari’at Islam Versus Negara -Bangsa: Problem Paradigma Pemikiran Keislaman,” in *Pemikiran Islam Kontemporer Di Indonesia* (Yogyakarta: Pustaka Pelajar, 2012), 159.

⁵⁴ Khoiruddin Nasution, *Pengantar Dan Pemikiran Hukum Keluarga (Perdata) Islam Indonesia* (Yogyakarta: Academia+Tazzafa, 2010), 44.

⁵⁵ Khoiruddin Nasution, “Metode Pembaruan Hukum Keluarga Islam Kontemporer,” *Unisia* 30, no. 66 (2007).

⁵⁶ The use of *takhyir* in the Sunni madhhab can be done with several alternatives, namely: 1). Abandoning the existing rules and seeking alternative opinions that exist in the same madhhab, 2). Seeking views that are developing and popular in the Sunni madhhab, 3). If there are none, then seeking from the madhhab that are not popular, 4). Seeking the opinions of *khalaf fiqh* experts, 5). If the previous method cannot be done, then adopting the legal rules that have developed in the Syi’ah tradition. See Ahmad Bunyan Wahib, “Reformasi Hukum Keluarga Di Dunia Muslim,” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 14, no. 1 (2014): 13.

of reinterpretation or by prioritizing principles of public interest (*maṣlahah*). This approach contrasts with the formulation of other articles within the KHI, such as Articles 5, 6, and 7 concerning marriage registration, and Article 10 concerning reconciliation registration, where more adaptive methodologies were applied. Notably, the drafting of Article 25 did not utilize the method of *istiḥsān* (juridical preference), which allows for legal flexibility grounded in fairness and public welfare. This stands in contrast to the formulation of Article 99 of the KHI, which addresses the definition of legitimate children. Article 99 expands the traditional framework by recognizing children not only as those born within a lawful marriage but also as those resulting from the legitimate actions of a husband and wife outside the womb, as long as they are born by the wife. This provision departs from conventional doctrine and aligns more closely with considerations of *maṣlahah*, indicating a shift toward a more inclusive and welfare-oriented approach.⁵⁷

The textual approach adopted by the KHI in formulating Article 25 reflects a tendency toward conservative orthodoxy, resulting in a stagnant and regressive interpretation of Islamic legal principles. Rather than engaging in critical analysis or contextual reinterpretation, the KHI appears to accept uncritically the views of classical jurists who reject the validity of deaf individuals as marriage witnesses. This unexamined reliance on traditional *madhhab*-based jurisprudence demonstrates a lack of engagement with more comprehensive and inclusive methodologies. Consequently, the KHI fails to address the broader implications of disability within Islamic legal discourse, as it remains constrained by the conservatism inherent in classical *fiqh* frameworks.

Secondly, the exclusivity of the KHI's underlying paradigm further reinforces its limitations. The author argues that the exclusion of deaf individuals as valid marriage witnesses in Article 25 stems from the absence of an inclusive legal paradigm. An inclusive paradigm recognizes disability as a fundamental aspect of human rights, affirming the equal status of all individuals regardless of gender or physical condition. In the context of Article 25, it is evident that the legal provisions within the KHI remain significantly detached from the principles of disability inclusion. This exclusion reflects a broader tendency to treat deaf individuals as objects of the law rather than as autonomous legal subjects. In contrast, within a human rights-based framework, deaf individuals are recognized as full legal subjects, entitled to equal participation in legal processes. Accordingly, the legal framework of the KHI should be revised to ensure that deaf individuals are granted the opportunity to serve as marriage witnesses, thereby aligning Islamic legal norms with contemporary human rights standards.

From the perspective of human rights and legal recognition, the status of deaf individuals as legal subjects must not be disregarded. The longstanding stigma that regards deaf individuals as legally incompetent within the context of family law is increasingly incompatible with contemporary principles of legal protection and

⁵⁷ Nuronyah, "Kritik Metodologis Terhadap Pembaruan Hukum Perkawinan Dalam Kompilasi Hukum Islam.", 45.

equality. As Suadi emphasizes in his writings, persons with disabilities are entitled to equitable access to justice.⁵⁸ Consequently, it is imperative to reconsider and deconstruct the exclusion of deaf individuals from serving as marriage witnesses. Such a re-evaluation would not only affirm their legal personhood but also align Islamic family law with broader commitments to human rights and inclusive justice.

The exclusivist paradigm reflected in the KHI exemplifies a broader tendency within the development of Islamic law in Indonesia to insufficiently engage with human rights principles. The KHI's a priori stance on disability, particularly as manifested in Article 25, risks undermining the universal and humanistic ethos of Islamic law, which ideally prioritizes justice, equality, and compassion. By excluding deaf individuals from serving as marriage witnesses, Article 25 compromises these core principles and fails to embody the responsive and humanistic spirit that Islamic law aspires to uphold. Such provisions warrant critical reconsideration, especially given that deaf individuals possess equal legal standing and should be granted the same rights under the law. The author concurs with Sodik's position that the challenges faced by deaf individuals can be constructively addressed through respectful and enabling means, including the application of science and technology to facilitate effective communication and information access.⁵⁹

Deconstruction of Deaf Marriage Witnesses: Justice and Equality Based on the *Maqāṣid Al-Syarī'ah* System Approach

Considering the preceding discussion, it is necessary to undertake efforts to restore the humanistic spirit within KHI, particularly with regard to Article 25, which outlines the requirements for marriage witnesses. As time progresses, such efforts are essential to ensure the KHI remains relevant to issues concerning disability. The goal is to guarantee that its provisions do not contain elements of discrimination against vulnerable groups. In this context, deconstruction grounded in *maqāṣid al-syarī'ah* offers an alternative approach to revitalizing the humanistic character of Indonesian *fiqh*.

In developing *maqāṣid al-syarī'ah* to align more closely with human rights, Auda proposes several key features for re-examining Islamic law, including the openness of the Islamic legal system and its orientation toward purposefulness.⁶⁰

⁵⁸ Suadi, "Kesamaan Di Hadapan Hukum (Equality Before the Law) Bagi Penyandang Disabilitas Di Peradilan Agama.", 41

⁵⁹ Sodik, "Pembacaan Progresif Terhadap Fikih Keluarga (Kritik Terhadap KHI Dan Ruu HTPA)."

⁶⁰ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System Approach, The International Institute of Islamic Thought* (USA: The International Institute of Islamic Thought, 2007), 30. See also Mohammad Fauzan Ni'ami and Bustamin, "Maqāṣid Al-Syarī'ah Dalam Tinjauan Pemikiran Ibnu Asyur Dan Jasser Auda," *JURIS: Jurnal Ilmiah Syari'ah* 20, no. 1 (2021): 91–102. Ainol Yaqin, "Rekonstruksi Maqāshid Al-Syarī'ah Dalam Pengembangan Metodologi Hukum Islam (Kajian Eksploratif Pemikiran Jasser Auda)," *Madania: Jurnal Kajian Keislaman* 22, no. 1 (2018): 63–81. Akhmad Supriadi, "Sistem Sebagai Filsafat (Tawaran Baru Jasser Auda Bagi Pengembangan Hukum Islam Kontemporer)," *Jurnal Studi Agama Dan Masyarakat* 13, no. 2 (2017): 219–42. Muhammad Salahuddin, "Menuju Hukum Islam Yang

We present a schematic framework intended to assist the reader by clarifying the analysis of the deconstruction of provisions regarding hearing-impaired marriage witnesses. This analysis is guided by the features of openness and purposefulness within the Islamic legal system, as proposed in the *maqāṣid al-syarī'ah* approach. The deconstruction of the regulation concerning hearing-impaired marriage witnesses in Article 25 of the KHI, based on *maqāṣid al-syarī'ah*, is outlined below.

The first feature is openness toward the issue of deaf marriage witnesses. In this context, openness refers to the capacity of Islamic law to interact dynamically with its surrounding environment.⁶¹ Consequently, Islamic law must remain open and adaptable, rather than closed and rigid. By adopting such a legal framework, Islamic law becomes dynamic and flexible, allowing it to respond effectively to emerging issues. This approach requires scholars to adopt a broad and contextual worldview. In analyzing legal questions, scholars must employ perspectives that are relevant to contemporary conditions and specific situational contexts.

In the context of Article 25, the principle of openness invites a reinterpretation of the status of deaf marriage witnesses from a global perspective—particularly through the lens of human rights and national disability regulations in Indonesia. Human rights instruments prioritize the values of equality and justice, thereby requiring the elimination of all forms of discrimination against individuals or groups, especially those with disabilities. Law No. 19 of 2011, concerning the Ratification of the Convention on the Rights of Persons with Disabilities, affirms the state's recognition of the inherent dignity, worth, and equal rights of persons with disabilities. Moreover, human rights frameworks embedded within national regulations obligate the state to fulfill these rights by reforming legal provisions, enacting inclusive policies, and ensuring the active participation of persons with disabilities in all areas of public life.

However, in practice, various forms of human rights violations against persons with disabilities persist. Moreover, certain legal provisions in Indonesia still reflect elements of discrimination and stigmatization, including those found in Article 25 of KHI. Based on the principle of equality, the state has an obligation to eliminate all forms of discrimination against persons with disabilities. One step toward fulfilling this obligation is to deconstruct the current provisions regarding deaf marriage witnesses by revising Article 25 of the KHI. This provision not only contradicts human rights instruments but also conflicts with the philosophical foundations of Indonesia's disability legislation, particularly Law No. 8 of 2016 on Persons with Disabilities. The author identifies two key philosophical principles within this law: equal opportunity and respect. From the perspective of equal opportunity, the KHI should grant deaf individuals the right to serve as marriage witnesses. In terms of respect, the KHI should acknowledge and uphold the

Inklusif-Humanistis: Analisis Pemikiran Jasser Auda Tentang Maqāṣid Al-Syarī'ah," *Ulumuna: Jurnal Studi Keislaman* 16, no. 1 (2012): 103–24.

⁶¹ Jasser Auda, *Membumikan Hukum Islam Melalui Maqashid Syariah: Pendekatan Sistem*, ed. Rosidin and 'Ali 'Abd El-Mun'im (Jakarta: PT Mizan Pustaka, 2008), 88.

inherent dignity and rights of persons with disabilities in matters of family law, without prejudice or exclusion.

The second feature is purposefulness in relation to the inclusion of deaf individuals as marriage witnesses. According to Auda, purposefulness represents the central component of his systems approach to *maqāṣid al-syarī'ah*. Within this framework, the realization of legal objectives must be grounded in openness, renewal, flexibility, and realism. The overarching purpose of Islamic law should be oriented toward the welfare of society, with a focus on protecting human dignity and upholding human rights. In Islamic thought, the preservation of human rights based on principles of justice and equality is not merely recommended but is a fundamental obligation. This is because the ultimate aim of religion is to embody and safeguard the values of human dignity and rights.⁶²

In relation to Article 25 of KHI, the prohibition against hearing-impaired individuals serving as marriage witnesses constitutes a form of legal marginalization. The current provision recognizes only hearing individuals as valid witnesses, a stance that warrants reconsideration in light of the principles of justice and equality before the law. The objective is to ensure that the law embodies justice, promotes equality, and guarantees legal certainty. The role of marriage witnesses is fundamentally to serve as *i'lan* (public notification) of the marital union to the broader community. Broadly speaking, the function of a witness encompasses two main dimensions. First, a witness is someone present at an event to observe and retain knowledge of it, enabling them to later provide information and affirmation if needed. Second, a witness is a person who offers testimony or evidence regarding facts they are aware of, thereby contributing to the process of legal verification.⁶³

Rajafi argues that the presence of marriage witnesses serves to reinforce the values of *mithāqan ghalīẓan*—a solemn and binding covenant—in marriage.⁶⁴ Similarly, according to the Mālikī school, the primary role of marriage witnesses is to serve as proof of the marriage, emphasizing the importance of publicly announcing the union. Thus, witnesses function as instruments of *i'lan* (public declaration) in marriage.⁶⁵ This perspective is echoed by Al-Zuhaylī, who highlights that the presence of marriage witnesses provides authentic legal evidence of the marital contract.⁶⁶

In light of this objective, the deconstruction of the prohibition on deaf marriage witnesses—previously not permitted—should shift toward inclusion, provided that the essential purpose and function of a marriage witness are fulfilled. Specifically, the following criteria should be met: 1) Deaf marriage

⁶² Zaprul Khan, *Rekonstruksi Paradigma Maqashid Asy-Syari'ah: Kajian Kritis Dan Komprehensif* (Yogyakarta: IRCiSoD, 2020), 294.

⁶³ Ahmad Rajafi, "Urgensi Keberadaan Saksi Perkawinan Di Era Revolusi Industri 4.0," in *Progres Hukum Keluarga Islam Di Indonesia Pasca Reformasi; Dimensi Hukum Nasional, Fiqh Islam, Kearifan Lokal*, ed. Ahmad Rajafi (Yogyakarta: CV. Istana Agency, 2020), 162.

⁶⁴ Rajafi, 162.

⁶⁵ Zaidan, *Al-Mufassshal Fi Ahkam Al-Mar'ah Wa Bait Al-Muslim Fi Syari'ah Al-Islamiyyah* Juz 6, 109

⁶⁶ Az-Zuhaili, *Fiqh Al-Islām Wa Adillatuh* Juz 7, 72

witnesses must be able to understand the implementation of the marriage contract; 2) Deaf marriage witnesses should be capable of recording or remembering the details of the marriage contract event; 3) Deaf marriage witnesses must be able to publicly declare that the two parties have legally married; and 4) Deaf marriage witnesses must be able to assess and analyze the event of the marriage contract.

Based on the deconstruction of the marriage witness provisions from the perspective of the system features outlined above, the requirements for marriage witnesses in Article 25 of the KHI, which currently exclude deaf individuals, can be reformulated or reinterpreted to offer a new perspective. Consequently, the formulation of the requirements for a marriage witness in Article 25 should be revised as follows:

Those who can be appointed as witnesses in a marriage contract are a Muslim man, just, mature, and a deaf, mute, or visually impaired person who has the ability to understand the events of the marriage contract.

The deconstruction of the prohibition on deaf marriage witnesses is undertaken to align with the objectives of *maqāṣid al-syarī'ah*, expanding its scope from mere protection to encompass development and rights. Such a critical approach is necessary to ensure that the provisions within the KHI are inclusive of disability-related issues, promoting a more equitable and just legal framework.

Conclusion

This paper concludes that the marginalization of deaf individuals as marriage witnesses arises from the exclusivity embedded in Article 25 of the KHI. This exclusivity manifests in two key ways: First, there is methodological exclusivity in the preparation of the KHI, particularly Article 25, which adopts the *takhyīr* method associated with the Shāfi'ī school of thought. Article 25 further aligns with the majority scholarly opinion that marriage witnesses must be able to hear the *ijab* and *qabul* (marriage vows). The rationale is that the *ijab* and *qabul* must be understood and comprehended by the witness, yet deaf individuals are unable to hear and, consequently, cannot grasp what is being conveyed by the contracting parties. Second, the exclusive framework of the KHI paradigm, which lacks inclusivity, is a key reason why deaf individuals are denied access to serve as marriage witnesses. This exclusive stance renders the KHI rigid in addressing disability-related issues, hindering its adaptability to a more inclusive approach.

By applying the openness and purposefulness features of *maqāṣid al-syarī'ah*, Auda concludes that deaf individuals should be allowed to serve as marriage witnesses. The construction of the role of deaf marriage witnesses is grounded in the universality of Islam, which upholds values such as equality, justice, and legal certainty. Through the openness feature, deaf marriage witnesses are examined from a global perspective, incorporating human rights principles and disability regulations in Indonesia. The purposefulness feature—focused on justice, equality, and legal certainty—further supports the deconstruction of the prohibition on deaf marriage witnesses, suggesting that such individuals can be permitted to serve,

provided they fulfill the intent and function of a marriage witness. The implications of this study extend to the inclusiveness of family law in Indonesia. By employing a systems approach, this paper proposes a concept of deconstructing the role of marriage witnesses to be more inclusive of deaf individuals, thereby allowing for a reformulation of Article 25 of the KHI. This reformulation should prioritize human rights values such as justice and equality, while reducing discrimination against persons with disabilities.

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