

# Wahbah Zuhaili's and Sayyid Sabiq's Perspective on The Recitation of Marriage Contract in Indonesia

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**Abstract:** *Wahbah Zuhaili's and Sayyid Sabiq's Perspective on the Recitation of Marriage Contract in Indonesia.* This research discusses the utterance used in the marriage contract in Indonesia with various types of it. In practice, some scholars require the utterance in the marriage contract to use the word “nikah (marry)”, others require the word “kawin (mate)” and there are those who recommend both, “nikah dan kawin (marry and mate)”. This study attempts to analyze the use of these expressions from the views of Wahbah Zuhaili in his book *Fiqh al-Islam wa Adillatuh* and Sayyid Sabiq in his book *Fiqh al-Sunnah*. The goal is to gain a complete understanding of how Shara' actually governs the expression. The results showed that according to both Wahbah Zuhaili and Sayyid Sabiq the use of the phrase other than what has been mentioned in the Al-Qur'an is still valid. Sayyid Sabiq added that the utterance of the contract must be in words that can be understood by each party and must not use vague words. This study concludes that the validity of marriage expression is not determined from the utterance pronounced during the *Ijab and Qabul* (consent and approval) process, but on the meaning of the word, provided that the witnesses understand the condition and the intention or indication for marriage.

**Keywords:** Provision of pronouncing the words of “Nikah and kawin”, Ijab Qabul, Islamic Marriage Law.

**Abstrak Perspektif Wahbah Zuhaili dan Sayyid Sabiq tentang Lapadz dalam Akad Nikah di Indonesia.** Penelitian ini membahas tentang lapadz yang digunakan dalam akad nikah di Indonesia dengan berbagai jenis lapadznnya. Dalam praktek, ada ulama yang mengharuskan pelapadzan dalam akad nikah menggunakan kata “menikahkan”, adapula yang mensyaratkan dengan kata “mengawinkan” dan adapula yang menganjurkan keduanya, “menikahkan dan mengawinkan”. Penelitian ini mencoba untuk menganalisis penggunaan lapadz-lapadz tersebut melalui pandangan Wahbah Zuhaili dalam kitabnya *Fiqh al-Islam wa Adillatuh* dan Sayyid Sabiq dalam kitabnya *Fiqh al-Sunnah*. Tujuannya untuk memperoleh pemahaman yang utuh tentang bagaimana sesungguhnya Syara' mengatur tentang pelapadzan itu. Hasil penelitian menunjukkan bahwa baik menurut Wahbah Zuhaili maupun Sayyid Sabiq penggunaan lapadz selain dari yang telah disebut dalam Al-Qur'an hukumnya tetap sah. Sayyid Sabiq menambahkan lapadz akad haruslah dengan kata-kata yang dapat dipahami oleh masing-masing pihak dan tidak boleh menggunakan kata-kata yang samar. Penelitian ini menyimpulkan bahwa keabsahan lapadz-lapadz nikah tidak ditentukan dari lapadz yang diucapkan ketika *Ijab Qabul* melainkan pada makna dari kata yang diucapkan, dengan syarat dipahami oleh para saksi dan adanya niat atau indikasi untuk menikah.

**Kata Kunci:** Hukum penggunaan lapadz “nikah dan kawin”, Ijab-Qabul, Hukum Perkawinan Islam.

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## Introduction

Marriage is a contract/agreement between the prospective husband and the prospective wife aiming to foster a happy, harmonious and prosperous household. Al-Malkari in his book *Liarah Al-Thabbin* defines marriage as a contract that contains the ability of intercourse with the word *Nikah* (marry) or *Tazwij* (mating).<sup>1</sup> In other words, through the marriage contract, it is permissible for a husband to have *tazwij* or other relationships, enjoy or have fun with the woman who is allowed to marry with.<sup>2</sup> From this definition, it can be concluded that a marriage contract is a tangible form of an engagement between a man who will become a husband and a woman who will become a wife, which is carried out in front of at least two witnesses, using *ijab* (statement of the consent) and *qabul*. (statement of acceptance).<sup>3</sup>

Each marriage process is carried out in certain ways, and always involves an *ijab-qabul* ceremony in which a guardian of the bride-to-be states certain sentences which are then answered by the prospective husband. In Indonesia, the *lapadz* (words) used in the *qabul* consent varies. Some use the word *nikah* (marry), some use the word *kawin* (mate), and some use both the word *nikah* and *kawin* (marry and mate). The term *pernikahan* (marriage), which comes from the root word *nikah* (marry), is used reciprocally and is even equated with the term *perkawinan* (mating) which comes from the word *kawin* (mate). Etymologically, such an analogy is not quite right, because the words *kawin* and *nikah* have a different meaning. The word *kawin* is generally used for all living things, while the word *nikah* is specifically for humans. In addition, the word *kawin* also means "copulation". while the word *nikah* means the relationship between a man and a woman in a marriage.<sup>4</sup>

<sup>1</sup> Ahmad Isybah Nurhikam, "Studi Analisis Pendapat Ibnu Qudamah tentang Tidak Sahnya Akad Nikah dengan Mendahulukan Qabul dan Mengakhirkan Ijab" (IAIN Walisongo, 2012), <http://eprints.walisongo.ac.id/1393/>. p.16

<sup>2</sup> Ahmad Isybah Nurhikam, "Studi Analisis Pendapat Ibnu Qudamah tentang Tidak Sahnya Akad Nikah dengan Mendahulukan Qabul dan Mengakhirkan Ijab" (IAIN Walisongo, 2012), <http://eprints.walisongo.ac.id/1393/>. p.16

<sup>3</sup> Noor Muklisin, "Hukum faṣl Antara Ijab dan Kabul Nikah (Studi Komparatif Pendapat Al-Juwaini dan Al-Syairazi)" (UIN Walisongo, 2016), <http://eprints.walisongo.ac.id/5778/>. p. 15

<sup>4</sup> H.M.A Tihami and Sohari Sahrani, *Fikih Munakahat: Complete Marriage Fiqh Study*, (Jakarta RajaGrafindo Persada, 2014), p. 7.

In several communities in Indonesia, wedding ceremonies are carried out in certain ways and generally use the ethnic language or other regional languages following local customs. The problem that arises is when the prospective groom is required to use the official Indonesian language, with the intention that all attendees understand it, he would find it difficult. This phenomenon raises the question: Does the *Ijab qabul lapadz* ( words of a statement of consent and acceptance) pronounced have to follow the *lapadz* (words) stated in the Al-Qur'an, namely *nikah* or *zajaw*? Is it permissible to use a language other than Arabic, for example, Indonesian or English, as long as it has the same meaning? What is the law if we use regional languages, such as the Dayak language, which is common among the Banjar people of South Kalimantan?

Such questions are interesting to discuss. Not only because the *fuqaha* (Muslim scholars) have differences in opinions, but more than that, the marriage contract is a sacred agreement and has a higher degree than other covenants, so that everything related to it becomes important to discuss. In this article, the author tries to analyze this problem by using the perspective of two well-known jurists, Wahbah Zuhaili<sup>5</sup> and Sayyid Sabiq<sup>6</sup> in their books, namely *Fiqh al-Islam wa Adillatuh* and *Fiqh al-Sunnah*.

### **Position of *Ijab-Qabul* (marriage vow) in The Marriage Contract**

In Al-Qur'an and Hadith, marriage is called *an-Nikah* النكاح or *az-Zawaj* الزواج or *az-Zawj* الزوج or " *az-Zijah* الزيجه." This contract has several *rukun* (pillars) and *syarat* (conditions) that must be fulfilled so that the contract can be legalized and has legal effects on both husband and wife. Before discussing anything about the *rukun* of marriage, however, it worth explaining first what is meant by the term *rukun* and what is the difference between *syarat*.

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<sup>5</sup> The author of the book *Fiqh al-Islam wa Adillatuh*, Wahbah Zuhaili was born in 1351 H / 6 March 1932 AD in DirAthiya Damascus (Syria). His full name is Wahbah bin Mustofa A Zuhaili the son of Mustafa az- Zuhaili

<sup>6</sup> Shaykh Sayyid Sabiq was born in 1915 H in Egypt and died in 2000 AD He was one of the scholars of al-Azhar who completed his studies at the faculty of shari'ah. His famous book entitled "*Fiqh Sunnah*" which consists of 14 volumes and was written for about 20 years.

*Rukun* according to *Jumhur Ulama* (the majority of Muslim scholars) is the thing that causes the standing and existence of something or a thing that something will not come true but without it, or a thing that must exist.<sup>7</sup> In their famous words, *rukun* is something that shariah law cannot exist but with it or is interpreted as something that determines the essence of something, whether it is part of it or not. Meanwhile, the conditions are what determines the existence of something but are not a part of it. Hanafiyah scholars define *rukun* as part of the essence that determines the existence of something; while *syarat* are things that determine its existence but not part of its essence.<sup>8</sup>

According to the *jumhur ulama*, there are four pillars of marriage, namely: a prospective husband (groom), a prospective wife (bride), guardians, and *shigat ijab-qabul* (statement of consent and acceptance). According to Malikiyah, the pillars of marriage consist of a prospective husband (groom), a prospective wife (bride), guardians, *mahar* (dowry), and *shigat ijab-qabul*. According to Syafi'iyah, the pillars of marriage are the prospective husband/wife, guardian, two witnesses, and *shigat*,<sup>9</sup> According to the Hanafiyah there is only one *rukun* namely *ijab qabul*.<sup>10</sup> The prospective husband and guardian are two people who declare the contract. Meanwhile, the main thing of the contract is *istimta'a* (having fun) which is the goal of the bride and groom in getting married. As for the dowry, it is not very decisive in the contract. A dowry is only a requirement, as is the presence of a witness in the marriage contract.<sup>11</sup>

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<sup>7</sup> Ahmad Maskur, "Analisis Masalah Al-Mursalah Terhadap Hukum Pencatatan Perkawinan Di Indonesia: Studi Kritis Atas Ketentuan Peraturan Perundang-Undangan Dalam Masalah Pencatatan Perkawinan" (UIN Sunan Ampel Surabaya, 2014), <http://Digilib.Uinsby.Ac.Id/Id/Eprint/1709>.

<sup>8</sup> Muhammad Abduh dan others, "Pemikiran Muhammad Quraish Shihab Tentang Nikah Sirri" (PERPUSTAKAAN UIN SUNAN KALIJAGA, 2012), <http://digilib.uin-suka.ac.id/id/eprint/10586>. See also: Muhammad Isna Wahyudi, "Membaca Ulang Konsep Perwalian Dalam Perspektif Mohammed Arkoun," *Musawa: Jurnal Studi Gender dan Islam* 5 (2007), <http://www.academia.edu/download/37428995/arkoun.pdf>.

<sup>9</sup> Nur Chozin, "Wali nikah menurut pendapat empat imam mazhab: Abu Hanifah, Malik, Asy-Syafi'i dan Ahmad Ibn Hambal," 2002, <http://repository.uinjkt.ac.id/dspace/handle/123456789/6951>. Compare to Abdul Ghuftron, "Analisis pendapat Imam Al-Syafi'i tentang wali nikah bagi janda di bawah umur" (IAIN Walisongo, 2010), <http://eprints.walisongo.ac.id/3052/>.

<sup>10</sup> Ahmad Isybah Nurhikam, "Studi Analisis Pendapat Ibnu Qudamah tentang Tidak Sahnya Akad Nikah dengan Mendahulukan Qabul dan Mengakhirkan Ijab"

<sup>11</sup> Wahbah Az-Zuhaili, *Fikih Islam Wa Adilatuhu*, vol. 9, (Jakarta: Gema Insani, 2011), p.45.

## The *Lapadz* Used in *Ijab Qabul*

As previously explained, the scholars agree that *the ijab-qabul* is one of the pillars of marriage; while willingness is a condition that must exist for the bride and groom. The contract is a *syar'i* binding to the parts of behavior that arise as a consequence of the existence of *ijab-qabul*. The purpose of the contract lies in its *al-irtibaath* (attachment). Therefore, the Shari'at stipulates that the *ijab-qabul* becomes one of the pillars of marriage and functions as a statement to legally bind each other.

*Ijab-qabul* is generally in the form of speech, but it can also take the form of writing or even in the form of a sign. Because of their varied forms, the *lapadz* (words/phrases) that are pronounced in the *Ijab-qabul* can also vary. Some *lapadz* have been agreed upon by all jurists so that it is considered valid to be used in the marriage contract, some are agreed to be invalid, and some *lapadz* are still in dispute. Before discussing further the form of *lapadz* in marriage and the opinion of the fuqaha, it is necessary to understand what is meant by the term *lapadz nikah* itself.

*Lapadz* according to the Indonesian Dictionary is a person's way of pronouncing sounds.<sup>12</sup> while *nikah* is a marriage bond (contract) that is carried out following the provisions of law and religious teachings.<sup>13</sup> So it can be concluded that the term *lapadz nikah* is the way someone says something that is done in a marriage contract.

The *lapadz* for the marriage contract consist of four types, namely:

1. The *lapadz* which is valid, although it does not mention the dowry. The *lapadz* is *ankahtuka* (I marry you with) and *zawajtuka* (I mate you with);
2. The *lapadz* will become valid if the dowry is stated at the time of the marriage contract; if it is not stated then the contract is considered invalid. The *lapadz* is *wahabtu* (I give).
3. The *lapadz* which still has the meaning of lasting/lifelong, but its

<sup>12</sup> Kamus Besar Bahasa Indonesia (KBBI) Online," accessed through <http://kbbi.web.id/lapadz>, accessed on 17 May 2017,

<sup>13</sup> Nurhikam, "Studi Analisis Pendapat Ibnu Qudamah tentang Tidak Sahnya Akad Nikah dengan Mendahulukan Qabul dan Mengakhirkan Ijab."

validity is doubtful such as the words, "I gave my daughter to you with such a dowry", or by using the word "I legalize with dowry" or also with the words "I sold her to you". So by using such *lapadz* some say the contract is valid, because it says dowry, but other opinions say that the contract is invalid.

4. The *lapadz* that are agreed upon not valid, because it does not contain the meaning of lasting for life, such as the words "to give temporarily", "to rent", "to lend" and so on.<sup>14</sup>

Jurisprudence experts have agreed on the validity of the *lapadz* that is pronounced in the marriage contract, namely using the words *nakaha* or *zawaja*, or the translation of both as long as it is pronounced clearly (*sorih*).<sup>15</sup> This *lapadz* are what jurisprudence experts agree on as *lapadz* used in marriage as they are mentioned in several verses in the Al-Qur'an, among others, in Surah an-Nisa 4:22 and Surah al-Ahzab 33:37 and 50 As follows:

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ ۗ إِنَّهُ  
كَانَ فَاحِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا

*And do not marry women who have been married to your father, except in the past. That action is very abominable and hated by Allah and the worst the path is taken* (Surah al-Nisa 4: 22)

وَإِذْ تَقُولُ لِلَّذِي أَنْعَمَ اللَّهُ عَلَيْهِ وَأَنْعَمْتَ عَلَيْهِ أَمْسِكْ عَلَيْكَ زَوْجَكَ وَاتَّقِ اللَّهَ  
وَتُحْفِنِي فِي نَفْسِكَ مَا اللَّهُ مُبْدِيهِ وَتَخْشَى النَّاسَ وَاللَّهُ أَحَقُّ أَنْ تَخْشَاهُ ۗ فَلَمَّا قَضَى  
زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاكَهَا لِكَيْ لَا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَنْزَاجِ أَدْعِيَائِهِمْ  
إِذَا قَضَوْا مِنْهُنَّ وَطَرًا ۗ وَكَانَ أَمْرُ اللَّهِ مَفْعُولًا

*..... So when Zaid had ended the need for his wife (divorced her), We married you to her so that there would be no objection for believers to*

<sup>14</sup> Uswatun Khasanah, "Pandangan Islam Tentang Pernikahan Dini," *Jurnal Terampil* 2, no. 2 (2015): 217–232. See also Sofya Krutikova and Kathleen Beegle, "Adult Mortality and Children's Transition into Marriage," *Demographic Research* 19 (September 1, 2008): 42.

<sup>15</sup> Wahbah az-Zuhaili, *Fiqh Islam wa 'Adilatuhu*, (Damaskus: Dar al-Fikr, 1985), Vol. 7, p. 38..

(marrying) the wives of their adopted children, if they were adopted, children. it has completed the needs of his wife and is the providence of Allah it is bound to happen. (Surah al-Ahzab 33: 37).

يَا أَيُّهَا النَّبِيُّ إِنَّا أَحْلَلْنَا لَكَ أَزْوَاجَكَ الَّتِي أَتَيْتَ أُجُورَهُنَّ وَمَا مَلَكَتْ يَمِينُكَ  
 مِمَّا آفَاءَ اللَّهُ عَلَيْكَ وَبَنَاتِ عَمِّكَ وَبَنَاتِ عَمَّتِكَ وَبَنَاتِ خَالَكَ وَبَنَاتِ خَلَّتِكَ الَّتِي  
 هَاجَرْنَ مَعَكَ ۖ وَامْرَأَةً مُؤْمِنَةً إِنْ وَهَبْتَ نَفْسَهَا لِلنَّبِيِّ إِنْ أَرَادَ النَّبِيُّ أَنْ يَسْتَنْكِحَهَا  
 خَالِصَةً لَكَ مِنْ دُونِ الْمُؤْمِنِينَ ۗ قَدْ عَلِمْنَا مَا فَرَضْنَا عَلَيْهِمْ فِي ذَوِّهِمْ  
 وَمَا مَلَكَتْ أَيْمَانُهُمْ لِكَيْلَا يَكُونَ عَلَيْكَ حَرَجٌ ۗ وَكَانَ اللَّهُ غَفُورًا  
 رَحِيمًا

O Prophet, Verily We have made legal for you your wives, whom you have given your dowry and your slave servants who include what you get in warfare which Allah has given you, and (likewise) the daughters of your brothers. -Your father's sons, the daughters of your father's sisters, the daughters of your mother's brothers and the daughters of your mother's sisters who emigrated with you and the women of the believers who surrendered themselves to the Prophet if the Prophet wanted to marry her, as a specialization for you, not for all believers ..... (Surah al-Ahzab 33: 50).

The Syafi'iyah scholars emphasized that the *lapadz* used in marriage must use the *lapadz nikah* or *zauj* نكاح - زوج because they contain a clear meaning for marriage and has the meaning of belonging. This is because the purpose of a person in marriage, one of which is to have or get pleasure from his partner.<sup>16</sup> This opinion is agreed by Ulama 'Hanabilah and Hanafiyah.<sup>17</sup>

<sup>16</sup> Asrizal Sain, "Status Perkawinan Dalam Hukum Islam: Kajian Teoritik Fiqh Konvensional Dan Fiqh Kontemporer," *Al-Abual: Jurnal Hukum Keluarga Islam* 7, No. 2 (2014): 181–190.

<sup>17</sup> Maya Nuvitasari, "Analisis Yuridis Terhadap Pemenuhan Hak-Hak Istri Dan Anak Pasca Penolakan Ithbat Nikah Pada Putusan Pengadilan Agama Bangkalan Nomor: 0018/Pdt. P/2014/Pa. Bkl" (Uin Sunan Ampel Surabaya, 2016), <http://Digilib.Uinsby.Ac.Id/Id/Eprint/7468>. p. 20

## The Use of Lapadz Other than Lapadz Nikah or Zauj نکاح - زوج

Fuqaha Syafi'iyah and Hanabilah agree that the use of *lapadz* other than the words *nikah* or *zauj* may result in the invalidity of the contract.<sup>18</sup> This opinion is also held by some other jurists who argue that using *lapadz* other than those stipulated in the Qur'an or using *lapadz* which does not show permanence throughout life, or indicates that there is the gift of property rights to something in the present such as I grant, I lend, I lease, I will testify, I contract, I mortgage, I entrust, or the like is not valid. Because the words do not contain a bond between them.<sup>19</sup>

Meanwhile, Fuqaha Hanafiyah and Malikiyah argue that the *lapadz nikah* may use any word as long as it shows the intention to get married. They reasoned that the important thing in the *ijab qabul* is the existence of the intention of both of them to marry, and there was no requirement to use special words. This is the same as the *ijab-qabul* which uses figurative words because the most important thing is its meaning and being legally understandable. Therefore, they allow the marriage contract by using the *lapadz* which means *al-tamlîk* (ownership), *al-hibah* (grant), *al atha* (giving), *al-Ibahah* (acquisition), or *al-ihlal* (halal) as long as it is accompanied by *qarinah* (link) which shows the meaning of marriage. Except for *lapadz al-ijârah* (rent) or *al-âriyah* (loan), because the *lapadz* does not mean sustainability or continuity.<sup>20</sup>

The basis of Fuqaha Hanafiyah and Malikiyah permits the use of the *lapadz* which means ownership, submission, or such refers to the word *wahabat* (surrender) contained in surah al-Ahzab 4:50 and the hadith of the Prophet Muhammad where he used the word *tamlîk* (to present or give)" as mentioned in the hadith of the Prophet narrated from the way of Imam Malik.<sup>21</sup> The hadith states A man who did not have any

<sup>18</sup> Wahbah az-Zuhaili, *Fiqh Islam wa 'Adilatuhu*, Vo. 9, p. 47..

<sup>19</sup> Wahbah az-Zuhaili, *Fiqh Islam wa 'Adilatuhu*, Vo. 7, p. 38..

<sup>20</sup> *Ibid*

<sup>21</sup> Noor Muklisin, "Hukum Faşl Antara Ijab Dan Kabul Nikah (Studi Komparatif Pendapat Al-Juwainî Dan Al-Syairazî)" (Uin Walisongo, 2016), p. 24.



property that could be used for a dowry unless he memorized the verses of the Koran. So the Messenger of Allah said:

«قد ملكتها بما معك من القرآن» Meaning: I made her yours by teaching her the Al-Qur'an".<sup>22</sup>

The use of *majaz* (allegorical words) in the words other than “*nikah* and *zawj*” according to Fuqaha Malikiyah and Hanafiyah is permissible as long as it can be understood by each party as a form of wish statement, and as long as it does not use obscure or vague words.<sup>23</sup> According to them, every *lapadz* that shows ownership of something that is stated on the marriage agreement is allowed. The Hanafi School does not differentiate between the marriage contract and the ownership contract in other mu'amalah fields,<sup>24</sup> Therefore in addition to using the words *nikah* or *zawj*, it can also use the words grant, *tamlik*, alms, or giving, on condition that there must be an intention or indication to marriage, such as a dowry, inviting the public and witnesses, and so on.<sup>25</sup> This means, using figurative *lapadz* such as *hibah*, *a'tha'*, or *sadaqah*, is considered valid as is the use of satire word in divorce,<sup>26</sup> According to them, even mistakenly saying the *lapadz* as long as it is intended to make having fun with women (marriage), or has been based on their customs is legal. as long as the contract is accompanied by a bond that shows the meaning of marriage.<sup>27</sup>

In contrast, Fuqaha Syafi'iyah argues that a marriage contract that uses *lapadz* “present” or “gives” is invalid because the *lapadz* does not indicate the meaning of marriage and the existence of a marriage bond. So by using *lapadz* “giving” or “grant” the marriage contract becomes invalid.<sup>28</sup> Furthermore, in addition to their agreement that

<sup>22</sup> Azwar Anas, “Konsep mahar dalam conter legal draf kompilasi hukum islam,” 2010, <http://repository.uinjkt.ac.id/dspace/bitstream/123456789/3399/1/AZWAR%20ANAS-FSH.pdf>.

<sup>23</sup> Sayyid Sabiq, *Fikih Sunnah*, (Bandung: Alma' Arif, 1990) Vol.6. p. 52..

<sup>24</sup> Muhammad Noor Fajri, “Bersatu Majelis dalam Akad Nikah (Studi Komparatif antara Mazhab Hanafi dan Mazhab Syafi'i),” 2009, <http://idr.iain-antasari.ac.id/id/eprint/2413.p..2>

<sup>25</sup> Wahbah az-Zuhaili, *Fikih Islam Wa Adilatuhu* Vol. 9, p. 47 .

<sup>26</sup> Sayyid Sabiq, *Fikih sunnah*. p.224

<sup>27</sup> Wahbah az-Zuhaili, *Fikih Islam Wa Adilatuhu* Vol. 9.p. 49.

<sup>28</sup> Sayyid Sabiq, *Fikih Sunnah*, (Bandung: Alma' arif, 1990) Vol 6, p.52..

the marriage contract is valid if using *lapadz al-nikah* and *al-zawaj* or a form of both, the Fuqaha of the Maliki and Hambali schools also allow a person to use the word *hibah* (gift) on condition that it is accompanied by the mention of dowry. If not, then the contract is considered invalid.<sup>29</sup>

The fuqaha who approve of the permissibility of using the marriage contract by calling *lapadz* grant (surrendering), adhere to the principle of drawing in a contract at the ma'na and not the *lapadz*.<sup>30</sup> In addition, they also reasoned with the hadith of the Prophet contained in Sahih Al-Bukhari and Sahih Muslim as follows:

عَنْ سَهْلِ بْنِ سَعْدٍ أَنَّ النَّبِيَّ جَاءَتْهُ امْرَأَةٌ فَقَالَتْ يَا رَسُولَ اللَّهِ إِنِّي  
وَهَبْتُ نَفْسِي لَكَ. فَقَامَتْ قِيَامًا طَوِيلًا. فَقَامَ رَجُلٌ فَقَالَ: يَا رَسُولَ  
اللَّهِ زَوَّجْنِيهَا إِنْ لَمْ يَكُنْ لَكَ بِهَا حَاجَةٌ. فَقَالَ رَسُولُ اللَّهِ: هَلْ  
عِنْدَكَ مِنْ شَيْءٍ تُصَدِّقُهَا إِيَّاهُ؟ فَقَالَ: مَا عِنْدِي إِلَّا إِزَارِي هَذَا.  
فَقَالَ النَّبِيُّ إِنْ أَعْطَيْتَهَا إِزَارَكَ جَلَسَتْ لَا إِزَارَ لَكَ فَالْتَمَسَ شَيْئًا.  
فَقَالَ: مَا أَحَدٌ شَيْئًا. فَقَالَ: اِلْتِمَسْ وَلَوْ خَاتَمًا مِنْ حَدِيدٍ. فَالْتَمَسَ  
فَلَمْ يَجِدْ شَيْئًا. فَقَالَ لَهُ النَّبِيُّ: هَلْ مَعَكَ مِنَ الْقُرْآنِ شَيْءٌ؟ قَالَ: نَعَمْ.  
سُورَةٌ كَذَا وَسُورَةٌ كَذَا لِسُورٍ يُسَمِّيهَا. فَقَالَ لَهُ النَّبِيُّ: قَدْ زَوَّجْتُكَهَا  
بِمَا مَعَكَ مِنَ الْقُرْآنِ

*Meaning: From Sahal bin Sa'ad that the Prophet Solallahu 'alaihi wa sallam was approached by a woman who said, "O Messenger of Allah I will give myself to you", the woman stood a long time and then stood up a man who acted, "O Messenger of Allah marry me only if You don't want to marry her. "Rasulullah said," Do you have anything to make a dowry? He said, "Not except for my sarong." The Prophet replied, "if you give your sarong then you won't have any more*

<sup>29</sup> Muhammad Jawad, *Fikih Lima Mazhab* (Jakarta: Lentera, 2007) p. 311.

<sup>30</sup> Wahbah az-Zuhaili, *Fikih Islam Wa Adilatuhu* Vol. 6, p. 38.

*sarong, give me something else.” He said, “I did not get anything.” Rasulullah said, “Look for even a ring made of iron.” He looked for it again and did not get anything. Then the Prophet said again, “Do you memorize the Qur’an?” He replied, “Yes, the verse this and that while mentioning the verses he memorized. Then the Prophet said, “I have married you both with the dowry of memorizing your Qur’an (narrated by Bukhari Muslim).<sup>31</sup>*

Commenting on this opinion, Sayyid Sabiq says when doing the *ijab qabul*, one must pay attention that the *lapadz* spoken must be clear and can be implemented by both parties and should not use vague or obscure words.<sup>32</sup>

### The Altered Lapadz

The majority of scholars forbid the use of *lapadz* which was altered from the original word and *results in a change in meaning*. The *Syafi'iyah* scholars gave examples of altered *lapadz* such as the word *jawaztu* جوزت “instead of “*zawajtu*<sup>33</sup>.” تزوجت Similarly, the Hanafiyah ulama stated that if a marriage contract used the *lapadz* which was altered, such as تجوزت, زوزت instead of تزوجت (*tazawjtu*) is invalid because it is incorrect in meaning. However, if in the context of mispronouncing, or if it has been agreed by society as the *lapadz* has become a kind of new vocabulary for them, or only for understanding needs not showing meaning, then the marriage contract is valid.<sup>34</sup> Such because in a marriage contract, the most important thing is the intention and indication to the marriage, not in the *lapadz* used.

### The Use of Lapadz or A Language Other than Arabic

The jurisprudence experts agree that if there are foreigners who are not Arabs who carry out the marriage contract in their language, not

<sup>31</sup> Sayyid Sabiq, *Fikih Sunnah*, (bandung: al-Ma' arif, 1990), p. 52

<sup>32</sup> Sayyid Sabiq, *Fikih Sunnah* (Jakarta: Cakrawala Publishing, 2008) Vol. 3, p. 23

<sup>33</sup> Az-Zuhaili, *Fikih Islam Wa Adilatuhu*, P. 49

<sup>34</sup> Az-Zuhaili, *Fikih Islam Wa Adilatuhu*, P. 49

Arabic, the marriage contract is still valid as long as they use the *lapadz* which is close to marriage or marriage. Because in the marriage contract, language is not a basic requirement, but its meaning. So that for people who are unable to use Arabic, their obligation is exempted. Such is the opinion of Jumah scholars, including the Syafi'i scholars. Even if someone is able to use Arabic, he may still use another language as long as it can be understood by the audience because that goal/desire can be expressed through every language, even though it is not Arabic. Both parties are only required to use words that correspond to the meaning of *nikah* in their language, and not necessarily to use the *lapadz nikah* in Arabic.<sup>35</sup> However, some other jurists argue that a marriage contract using a language other than Arabic, even though the person is able to grow up, is invalid. This is because he has moved from *lapadz* "tazwiij" and "inkah" to another *lapadz*, even though he is able to measure it.<sup>36</sup> Imam Shafi'i., Ulama Hanabilah, and Ibn Qudamah said "if he is able to carry out the marriage contract in Arabic, but he does not do it, then the contract will be invalid".<sup>37</sup>

In dealing with this opinion, Sayyid Sabiq tends to the allowing opinion. He reasoned that using Arabic for non-Arabic people would only make it difficult for them, whereas the character of Islam was easy and did not burden the people. Besides, the main pillar of marriage is willingness, while the *ijab-qabul* is only a symbol that show this sense. If the *ijab-qabul* has been carried out then it is sufficient regardless in any language.<sup>38</sup>

### The Use of Sign Language

A person who is deaf or mute is allowed to do the marriage contract in sign language, just as he is also allowed to buy and sell, because basically, this sign serves to explain what he is doing. However, the gesture is required to be understood by the interlocutor. If the interlocutor

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<sup>35</sup> Sayyid Sabiq, *Fikih Sunnah*, (Jakarta: Cakrawala publishing, 2008). Vol. 3, p. 23.

<sup>36</sup> Sayyid Sabiq, *Fikih Sunnah*, p. 23.

<sup>37</sup> Sayyid Sabiq, *Fikih Sunnah*, p. 23.

<sup>38</sup> Sayyid Sabiq, *Fikih Sunnah*, 6 (Bandung: Alma' Arif, 1990). P. 53

cannot understand the meaning of the signal, then the marriage contract is invalid, because the person who carries out the marriage contract is required to understand each other.<sup>39</sup>

## Conclusion

Based on what has been described at length in the above description, it can be concluded that both Wahbahaz-Zuhaili and Sayyid Sabiq allow the use of *lapadz* other than what has been stipulated in the Qur'an. This is because, according to Wahbah az-Zuhaili, in a marriage contract what is important is the meaning not to the *lapadz*, provided that there is an intention or indication for marriage and is understood by the witnesses. Similar to that, Sayyid Sabiq emphasized that the *lapdz* used in a marriage contract must be understood by each party carrying out the marriage contract as a statement of desire to marry and should not use vague or vague words.

Both also have no problem if a marriage contract is carried out using *lapadz* other than Arabic. This is because Islam is easy and does not make it difficult. After all, the main pillar in marriage is willingness, while *the ijab-qabul* is only a symbol that shows this sense of willingness. Using the perspective of the two jurists above, the marriage contract using the Banjar language of South Kalimantan, namely "*unjuk, jurung, gitkam*" yang which is connected to *nikahiakan* is permitted as long as it contains the meaning of marriage, clear and is understood by all parties concerned; However, using the *lapadz* that has been stipulated in the Qur'an, namely "*nikah or zawj*" would be better.

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<sup>39</sup> Sabiq, *Fikih Sunnah*. p. 246

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