

An Islamic Legal Review on Marriage Contract for Prospective Groom with Speech Impairment

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Abstract

Acceptance of consent for mute speech is valid with the sign, if it can be understood, as is the case with a sale and purchase contract that is valid with the way of the sign, because the sign has a meaning that can be understood. But if one of the parties does not understand the signal, the consent is not valid, because the one who does the consent is only between the two people concerned. However, the issue of consent granted by mute-mute grooms can be done in several ways, including by sign, in writing or by way of representation. This research uses a juridical empirical approach. Sources and types of data in this study only use primary data and secondary data. Data collection in this study was carried out using literature and field studies. The analysis of the data obtained was carried out by means of qualitative analysis with an inductive mindset. The results of this study indicate an overview of Islamic law that marriages with speech impairments whose *qabul* use sign language in the form of hand and mouth movements that he understands the meaning of the contract, the marriage is considered valid provided that it fulfills the pillars and conditions of marriage. The practice of consent for marriage using sign language for persons with disabilities represented by expert guardians in Metro Timur District is the practice of consent for marriage done in sign language, which is spoken directly by the mute bridegroom, namely by using sign language, such as hand movements, head movements, eye blinks, statements of agreement and so on that can be understood in the majlis. The inhibiting factor in the implementation of the marriage contract for mute-spoken grooms is the lack of sign language expert guardians who understand Islamic religion, especially in terms of the pillars and conditions of marriage. As well as the witness' lack of understanding



about sign language, the witness was only given an understanding that the meaning of these gestures was like consent and acceptance under normal conditions.

Keywords: Marriage Contract, Speech Impairment, *Ijab Qabul*

Introduction

Marriage is a covenant commanded by Allah SWT to establish lawful relations between two individuals who are not mahram, while also defining responsibilities for each other.¹ The purpose of marriage is to form a family that is harmonious, affectionate, and full of compassion. Allah SWT states in the Quran:

"And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought." (Surah Ar-Rum: 21)

The mechanism of marriage, based on the general rules of Islamic jurisprudence (fiqh), involves four elements commonly known as the pillars of marriage: the prospective husband and wife, the guardian (wali), two witnesses, and the marriage contract (akad *ijab kabul*). When these requirements are fulfilled, the marriage is considered valid in Islamic law (shariah).² The *ijab* is the offer made by the guardian (in the case of the bride) to the prospective groom, while the *qabul* is the acceptance made by the prospective groom. Scholars agree that the *qabul* may be expressed using specific words indicating approval, such as "I accept," "I agree," "I undertake," and others.³ Moreover, the *qabul* may be expressed in any language, including Arabic, Sundanese, Javanese, or, more commonly, Indonesian.

The last aspect discussed regarding the requirements and pillars of marriage is the marriage contract (akad nikah), which is covered in the Compilation of Islamic Law (Kompilasi Hukum Islam) Articles 27-29. Article

¹ Beni Ahmad Saebani, 2013. *Fiqh Munakahat 1*, cet ke-VII Bandung: CV. Pustaka Setia, 2018, 9

² Hanif Nur Pradani, "Nikah Dengan Dua Akad Dan Dua Wali Yang Berbeda Perspektif Masalah Di Kua Wonokromo Surabaya," *Al-Hukamah: The Indonesian Journal of Islamic Family Law* 09, no. 02 (2019): 400.

³ Tihami & Sohari Sahrani, *Fiqh Munakahat: Kajian Fikih Nikah Lengkap* (Jakarta: Rajawali Pers, 2014), 80.

27 states that the *ijab* and *qabul* between the guardian and the prospective groom must be clear and consecutive without any interval.⁴ This is in line with the majority opinion of jurists. The Shafi'i school of thought emphasizes the importance of avoiding long intervals between the *ijab* and *qabul*. If a prolonged interval occurs, the contract is considered invalid since the extended time would separate the *qabul* from being an immediate response to the *ijab*.⁵

The most essential element in marriage for both parties is the willingness and consent to enter the marital union. This aspect is abstract and psychological, making it difficult to measure. Therefore, to achieve consent, it must be expressed through words, actions, or gestures that can be understood, as long as there is no rejection.⁶ However, this cannot be carried out by someone with speech impairment. Speech impairment refers to a defect or disorder affecting voice, speech articulation, or fluency.⁷ Individuals with speech impairment also have the human rights to marry and establish a family.

In the case of individuals with speech impairment, the *ijab qabul* is valid when conveyed through gestures, provided they can be understood, just as a sales contract is valid when expressed through understood gestures since gestures carry meaning. However, if one of the parties does not comprehend the gesture, the *ijab qabul* becomes invalid, as the contract is solely between the parties involved. The Compilation of Islamic Law Article 17 paragraph (3) states that: "For prospective spouses with speech or hearing impairment, the agreement can be expressed in writing or understandable gestures."⁸ The Marriage Law (Law No. 1 of 1974) does not explicitly mention the technicalities of the *ijab qabul* for individuals with speech impairment. The basis is that marriage should be conducted according to each person's respective religious and belief systems. In other words, the technicalities of the marriage contract are based on how the religion (*fiqh*) regulates them.⁹

⁴ Citra Umbara, *Undang-Undang R.I nomor 1 tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam* (Bandung: Citra Umbara, 2016), 331.

⁵ Wahbah Al-Zuhayli, *al-Fiqh al-Islami wa Adillatuh*, Terjemah Abdul Hayyie al-Kattani, dkk., vol. 9 (Damaskus: DAR al-Fikr, 2004), 65.

⁶ Rahmat Hakim, 2000. *Hukum Perkawinan Islam*, Bandung: CV. Pustaka Setia, 73

⁷ Brebt D. Ruben & Lea P. Stewart, *Komunikasi Dan Prilaku Manusia* (Depok: PT Rajagrafindo Persada, 2013), 65.

⁸ Abdurrahman, *Kompilasi Hukum Islam di Indonesia* (Jakarta: Akademika Pressindo, 2010), 125.

⁹ Citra Umbara, *Undang-Undang R.I nomor 1 tahun 1974*, 125.

Gestures are considered valid in the process of *ijab qabul* for individuals with speech impairment if they can be understood, just as a sales contract is valid when expressed through understood gestures since gestures carry meaning. However, if the gesture is understood only by one party and not by both, the contract becomes void. This is reflected in the Compilation of Islamic Law, where prospective spouses with speech or hearing impairment can express consent through writing or understandable gestures. The main concern arises when the prospective groom with speech impairment and the guardians and witnesses do not comprehend the gestures during the marriage contract. Nevertheless, this issue can be addressed by implementing various methods, including using interpreters who understand sign language. This is also applied in the Office of Religious Affairs (KUA) in East Metro, which will be the location of this research.

As a case study, the author wishes to examine the practice of the marriage contract for individuals with speech impairment when they express their *qabul* using sign language. Considering Islamic law, the expression of *qabul* must be clear. Therefore, the research will investigate the Islamic legal perspective on *qabul* using sign language.

Marriage Involving Speech-Impaired Individuals

Islam is a religion that embodies *rahmatan lil'alamiin*, meaning mercy to all creations, indicating that Islam does not discriminate among individuals based on any criteria. The Qur'an explicitly mentions the existence of people with disabilities, acknowledging both non-physical and physical disabilities from a theological perspective.¹⁰

According to Article 1 of Law Number 8 of 2016 concerning Persons with Disabilities, a person with a disability is defined as 'any person who has physical, intellectual, mental, and/or sensory limitations for a long period and faces barriers and difficulties in fully and effectively participating with other citizens based on equal rights.¹¹ Persons with disabilities represent a diverse group in society, including those with physical, mental, or combined physical and mental disabilities. They hold the same rights and responsibilities as other members of society. Therefore, it is essential to provide special attention to persons with disabilities, aimed

¹⁰ Nurullita Almunawaroh, et al., "Strategi Pendidikan Islam Dalam Mengatasi Problematika Penyandang Disabilitas," *Jurnal Sustainable* 5, no. 2 (2022): 402.

¹¹ *Undang-Undang Nomor 8 Tahun 2016 tentang Penyandang Disabilitas*, Pasal 1.

at protecting them from discrimination and, particularly, violations of human rights.¹²

There are many types of disabilities within different categories, one of which is speech impairment. Speech impairment refers to someone who has difficulty communicating through speech, making it challenging or even impossible for others to understand them. This speech disorder may be caused by deafness from birth or early childhood, organic deficiencies in speech organs, or motor impairments related to speech.¹³ According to Maria Agustin Ambasari, a person with speech impairment is someone who faces difficulty in speaking due to the malfunctioning of speech organs, such as the oral cavity, tongue, palate, and vocal cords. Additionally, it may be due to hearing impairment.¹⁴

Based on the information above, speech impairment (*tunawicara*) is a physical disorder where an individual experiences difficulty in speaking and may even be unable to speak at all. This condition can be caused by various factors, such as problems with the vocal cords, throat, or other bodily organs, and may also be influenced by genetic factors."

The passage appears to be discussing the marriage contract involving a groom who is speech-impaired either due to a congenital condition or an illness. During the marriage ceremony, the *ijab* (proposal) and *qabul* (acceptance) are performed according to the capabilities of the groom. The *qabul* (acceptance) can be expressed either through representation or using sign language. The marriage contract, in general, is usually conducted with the pronouncement of the *ijab* and *qabul* in the presence of witnesses and other marriage requirements. In the case of a groom who is speech-impaired, the marriage contract is considered valid if specific hand movements in sign language are used, as long as it can be understood. This is similar to how a contract of sale would be conducted.¹⁵ The marriage guardian (father or male relative of the bride) is the one who pronounces the "*ijab*." Then, the speech-impaired groom can accept the *ijab* through sign language, ensuring that the essence of the sign language matches the acceptance of the marriage proposal.

¹² Frichy Ndaumanu, "Hak Penyandang Disabilitas Antara Tanggung Jawab Dan Pelaksanaan Oleh Pemerintah Daerah," *Jurnal Ham* 11, no. 1 (2020): 132.

¹³ Haryanto & Haris Iriyanto, *Pelayanan Publik Bagi Penyandang Disabilitas* (Malang: Media Nusa Creative, 2020), 25.

¹⁴ Maria Agustin Ambasari, *Mengenal ABK: Anak Berkebutuhan Khusus* (Tangerang: PT Human Persona Indonesia, 2022), 22.

¹⁵ Republika, "Bagaimana Tunawicara Melaksanakan Akad Nikah?," accessed September 20, 2022, <https://uc.xyz.Rebulika-Online-Mobile/Bagaimana-Tunawicara-Melaksanakan-Akad-Nikah?html>.

In Indonesian legislation, only the Compilation of Islamic Law (Kompilasi Hukum Islam) regulates the representation of the "*qabul*." The explanation regarding the representation of *qabul* in the Compilation of Islamic Law can be found in Article 29, consisting of three clauses: a) The right to express *qabul* belongs to the prospective groom personally. b) In certain cases, the acceptance of the marriage proposal can be represented by another man with the condition that the prospective groom grants written authority explicitly stating that the representation of the marriage contract is on behalf of the groom. c) If the prospective bride or her guardian objects to representation on behalf of the prospective groom, then the marriage contract cannot proceed.¹⁶

The passage also mentions that a marriage contract for a speech-impaired person can be valid through writing or understandable sign language. Therefore, the *ijab* and *qabul* performed by a speech-impaired groom using sign language alone is sufficient for the marriage to be legally valid, as stated in the book "*I' anah at-Talibin*."¹⁷

Legal Review of Islamic Marriage Contract for Speech-Impaired Prospective Groom at the East Metro Islamic Office (KUA)

Marriage is considered a highly significant event in society as it involves not only the prospective bride and groom but also their respective families, including parents, siblings, and other family members. Marriage cannot be solemnized without fulfilling the established conditions and requirements, and one of the most crucial aspects of marriage is the *Ijab Qabul*. Among the five essential elements of marriage, *Ijab* is the statement of offer made by the bride's guardian (usually the female side) to the prospective groom, while *Qabul* is the acceptance statement from the prospective groom. Scholars of Islamic jurisprudence unanimously agree that, in the *Qabul*, specific words can be used as long as they indicate satisfaction and consent.¹⁸

Ijab and *qabul* constitute one of the pillars of marriage, where *ijab* involves the utterance by the guardian or a substitute declaring, "I marry you to *Fulanah*." On the other hand, *qabul* is the statement of acceptance by

¹⁶ Abdurrahman, *Kompilasi Hukum Islam*, 128.

¹⁷ Abu Bakar Al-Masyhuri bi As-Sayyidi Al-Bakri. *Kitab I' anah At-Talibin*, Jilid 3. Beirut: Dar Ibn Ashshashah, n.d., 319.

¹⁸ Tihami & Sohari Sahrani, *Fiqh Munakahat: Kajian Fikih Nikah Lengkap* (Jakarta: Rajawali Pers, 2014), 80.

the prospective groom or his authorized representative, saying, "I accept her marriage proposal." The requirements for a valid *ijab qabul* are as follows: 1) An expression of marriage offer from the bride's guardian. 2) An expression of marriage acceptance from the groom. 3) The use of the term "nikah" or other synonymous terms. 4) Clarity and coherence, stated in one gathering without a long interval.¹⁹

In the case of speech-impaired male prospectives, the *ijab qabul* can be carried out through writing and sign language. Imam Shafi'i generally opined that the marriage contract through written documents is not valid. However, considering the circumstances, if the prospective groom cannot attend the marriage contract, and there is a just and trustworthy representative with a written acceptance letter from the prospective groom, and there is an agreement among the prospective groom, the bride, the guardian, and the two male witnesses, and the representative reads the letter as an acceptance during the marriage contract, then the marriage contract is considered valid due to the argument of representation. Imam Shafi'i also stated that the marriage contract with sign language is generally specific to mute individuals who cannot articulate *qabul* verbally; hence, the marriage contract is valid, or it can be done through clear sign language but not vague gestures. However, if the individual is capable of writing, the marriage contract should include both writing and sign language due to urgent conditions.²⁰

From an Islamic legal perspective, the marriage process in Islam adheres to strict rules. A valid marriage contract must fulfill its pillars and conditions. Among the pillars are *ijab* and *qabul*, while the conditions include permission from the bride's guardian and the presence of two male witnesses. All these aspects should be carried out clearly and transparently to avoid deception and fraud. Therefore, the presence of the prospective groom or his representative, the bride's guardian or her representative, and the two witnesses are vital for the validation of the marriage contract.²¹

Generally, *ijab qabul* is conducted through verbal exchange between the female guardian and the male candidate. However, in the case of the East Metro District, the *qabul* is expressed through sign language due to the groom's speech impairment. Based on interviews with experts, such as Ahmad Subandi, the Head of the East Metro Islamic Office (KUA), he

¹⁹ Abdul Rahman Ghozali, *Fiqh Munaqahat* (Jakarta: Prenamedia Group, 2003), 53.

²⁰ Sobirin, "Implementasi Akad Nikah Dengan Tulisan Atau Isyarat Dalam Tinjauan Imam Syafi' I", *ISTI' DAL; Jurnal Studi Hukum Islam* 7, no. 1 (2020): 31.

²¹ Rizem Aizid, *Fiqh Keluarga Terlengkap* (Yogyakarta: Laksana, 2018), 107.

mentioned: "It happened around 2020, but I can't remember the exact date. I've also encountered cases outside the East Metro District, around Kota Metro, where two or three couples performed the marriage process in a similar manner. For speech-impaired male prospectives, *ijab* and *qabul* are usually carried out by bringing in a knowledgeable scholar as a representative for *qabul* or a proficient sign language interpreter. The process is witnessed by the public, and the witnesses declare it valid, even though the *qabul* of the speech-impaired groom is expressed through sign language. For individuals with disabilities, they are given the option to use sign language, writing, or entrust their *qabul* to someone they trust or have agreed upon. This is commonly known as *qabul* through representation."²²

This view was also supported by Yusroni, a counselor and a frequent marriage solemnizer: "During my tenure at KUA, I haven't married a couple where the groom used sign language for *ijab qabul* due to speech impairment. However, I've encountered cases where the bride was the one with limitations, but it didn't affect the marriage contract since the *qabul* was spoken only by the groom. In my opinion, the *ijab qabul* for speech-impaired male prospectives is similar to any other human marriage. However, in the case of speech-impaired marriage, the *qabul* of the groom is based on his capability. Therefore, in the marriage process, they can use sign language, such as hand gestures, head movements, or any sign understandable by the couple."²³

In general, *ijab qabul* or the marriage contract requirements are well-defined in both the Compilation of Islamic Law and the societal understanding. *Ijab* represents the statement of intent from the female candidate and is conveyed by the female guardian. It signifies the bride's willingness to bind herself with the male candidate. *Qabul*, on the other hand, represents the acceptance statement from the male candidate, expressing his acceptance of the bride's proposal. This spoken exchange in the presence of witnesses is what constitutes the marriage contract. However, in specific cases, such as speech-impaired individuals, the *ijab qabul* may be conducted using sign language, and if necessary, in writing, to ensure the validity of the marriage contract. As long as the marriage process is transparent, witnessed, and fulfills the Islamic legal requirements, it can be considered valid.²⁴

²² Interview with Ahmat Subandi, Head of KUA Metro Timur, December 20, 2022.

²³ Interview with Yusroni, Counselor of KUA Metro Timur, December 20, 2022.

²⁴ Interview with Ahmat Subandi, Head of KUA Metro Timur, December 20, 2022.

Another questions related to specific requirements and guidelines for those who perform the marriage contract using sign language. There is no difference from regular prospective couples. As for special guidelines for pronouncing the marriage contract using sign language for people with disabilities, it is conditional and flexible. This means that during the *ijab* and *qabul* involving the marriage officiant and the groom, it is essential that the acceptance (*qabul*) is clear, indicating that the groom accepts, agrees, and understands the words of the officiant conducting the marriage. Because it is conditional, it depends on the capabilities of the groom. If the groom needs written assistance, we provide a written document. But if the groom can use sign language, then we proceed with sign language, ensuring that he truly comprehends the meaning, words, and purpose of the *ijab qabul* that he is participating in and understands that he is getting married.²⁵

In the case of counseling for prospective couples with special needs such as speech impairment, direct communication with the individuals involved may not be possible. Instead, we can involve a family member or relative who understands and has been familiar with both prospective couples and their daily sign language or communication methods. The Marriage Advisory, Development, and Preservation Agency (BP4) will convey the counseling through the family member or relative, and they will then relay the information to the prospective partners with special needs. Direct interaction by the BP4 may be lengthy and challenging, as understanding someone's gestures alone is not easy, especially for those who are not well-versed in sign language and have little experience interacting with them. Therefore, marriage counseling for individuals with disabilities is still provided through various alternatives, such as using family members or relatives as intermediaries, employing images or videos, or utilizing written communication for those who can read and understand written language.²⁶

Regarding the witnesses, there are no specific requirements that witnesses must fulfill in the marriage of a speech-impaired individual. However, it would be better if the witnesses can understand what the couple is communicating, and typically, in such cases, the witnesses are people who are accustomed to communicating with the couple. Based on the explanation, regarding the witnesses, it can be concluded that there are no specific requirements for the witnesses. However, if possible, it is recommended to have witnesses who understand sign language to facilitate

²⁵ Interview with Ahmat Subandi, Head of KUA Metro Timur, December 20, 2022.

²⁶ Interview with Yusroni, Counselor of KUA Metro Timur, December 20, 2022.

a smoother process during the *ijab qabul*. Alternatively, witnesses can be selected from those who have interacted with the marrying individuals for a long time and understand what is being conveyed through sign language, fulfilling the criteria to serve as witnesses.²⁷

Regarding registration, there are no specific records required for individuals with disabilities. In the process of filling out personal data (marriage procedure), there is no mention of any physical or non-physical disabilities of the prospective bride or groom. Only in the marriage certificate will it be stated that the *ijab qabul* (marriage proposal and acceptance) was conducted using sign language, with a note that the groom is in a state of disability, such as being speech-impaired. However, the registration process at the Office of Religious Affairs (KUA) remains the same as for regular marriages.²⁸

The purpose of marriage registration is to provide certainty and protection for the parties involved in the marriage, thereby creating authentic evidence of the occurrence of the marriage. This allows the parties to uphold the validity of their marriage before the law and be recognized by anyone. Conversely, if the marriage is not registered, the marriage will not hold legal validity and will not be considered as a valid marriage.

Obstacles in Implementing the Marriage Contract for Speech-Impaired Groom

Looking at the practice of marriage contracts involving speech-impaired grooms, it is observed that speech-impaired grooms who perform the *ijab* and *qabul* with prospective brides are often represented through a practice called *tawkil ijab*. In this practice, a person designated by the family represents the process of *ijab*. The factors hindering the implementation of the marriage contract for speech-impaired grooms in the Metro Timur region are as follows:

1. Lack of knowledgeable guardian (wali)

During an interview with Ahmat Subandi, the head of KUA (Office of Religious Affairs) Metro Timur, he stated that, "It is undeniable that KUA Metro Timur itself does not have members who are experts in sign language. Therefore, KUA must make efforts to find someone who not only

²⁷ Interview with Ahmat Subandi, Head of KUA Metro Timur, December 20, 2022.

²⁸ Interview with Yusroni, Counselor of KUA Metro Timur, December 20, 2022.

understands sign language but also comprehends the principles and requirements related to marriage in Islam." Similarly, Yusroni, a KUA Metro Timur official, mentioned that, "As a marriage officiant, we have never been given specific guidance by the Department of Religious Affairs of Kota Metro on the implementation of *ijab* and *qabul* for speech-impaired grooms.²⁹

Based on the information provided, it is evident that there is a shortage of knowledgeable guardians who are proficient in sign language and have a good understanding of Islamic marriage. This raises concerns about the potential for misunderstandings in interpreting sign language gestures if there is no expert guardian in sign language.

2. Lack of understanding among witnesses regarding sign language

During an interview with Ahmat Subandi, the head of KUA Metro Timur, he mentioned that, "Before conducting the *ijab* and *qabul*, KUA provides a briefing to the prospective couple, guardians, and witnesses. This is essential because in cases where the prospective groom is speech-impaired, the '*ijab*' and '*qabul*' will be conducted using sign language. The issue with guardians can be addressed by having knowledgeable guardians who understand sign language and can represent the prospective bride's guardian in performing the '*ijab*' to the speech-impaired groom. However, the problem lies with the witnesses. Will they understand what the knowledgeable guardian and the speech-impaired groom are doing? This matter is discussed and conveyed during the briefing before the *ijab* and *qabul*.

Based on the information provided above, it can be deduced that witnesses in cases of marriage involving speech-impaired grooms who use sign language may not fully comprehend the meaning of the gestures performed during the *ijab* and *qabul*. Witnesses are only given a general understanding that these gestures resemble the *ijab* and *qabul* in normal circumstances. However, a potential issue arises when the person performing the *ijab* and *qabul* using sign language makes a mistake in their gestures, which automatically changes the intended meaning. In such cases, the witnesses might not understand the changes. Thus, KUA Metro Timur should intensify its efforts in raising awareness through socialization about marriage practices for speech-impaired grooms.

Conclusion

²⁹ Interview with Ahmat Subandi, Head of KUA Metro Timur, December 20, 2022.

The marriage contract for individuals with speech impairment can be valid if the *ijab* and *qabul* are expressed through understandable gestures or sign language. The essential element in marriage is the willingness and consent of both parties, which can be expressed through words, actions, or gestures that can be understood. However, if one of the parties does not comprehend the gesture, the contract becomes invalid. The Compilation of Islamic Law Article 17 paragraph (3) states that individuals with speech or hearing impairment can express their agreement in writing or understandable gestures. The legal review of the Islamic marriage contract for speech-impaired prospective grooms at the East Metro Islamic Office (KUA) confirms that the *ijab* and *qabul* performed by a speech-impaired groom using sign language alone is sufficient for the marriage to be legally valid. The Indonesian legislation, specifically the Compilation of Islamic Law, regulates the representation of the *qabul* and allows representation through written authority explicitly stating that the representation is on behalf of the groom. Islam recognizes the existence of people with disabilities, including speech impairment, and emphasizes the importance of treating all individuals with mercy and equality. The Qur'an acknowledges both non-physical and physical disabilities and promotes the rights and responsibilities of persons with disabilities. Indonesian law also defines persons with disabilities and aims to protect them from discrimination and human rights violations. Overall, the marriage contract for speech-impaired individuals can be conducted according to the capabilities of the groom, using understandable gestures or sign language to express consent. The legal validity of the contract is determined by the understanding and comprehension of both parties involved.

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