

## THE CONCEPT OF KAFA'AH IN MODERN SOCIETY FROM ISLAMIC LEGAL PERSPECTIVE



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### Abstract

The concept of *kafa'ah* is an important aspect of marriage in society to determine the suitability of a couple. The actualization of *kafa'ah* can vary between communities which is influenced by local values and developing traditions. This article examines the concept of *kafa'ah* from the perspective of Islamic family law and the actualization of the concept of contemporary marriage *kafa'ah*. This paper uses a literature review as a data source. It was found that the concept of *kafa'ah* in the sociological context of modern Islamic society refers to the principle of harmony or suitability between partners in various aspects of life. This term is often used in the context of marriage, where the compatibility between prospective husband and wife is assessed in various aspects, such as social, economic, cultural, and religious backgrounds. A marriage that is considered *kafa'ah* is a marriage between two people who have similar religious beliefs or at least have a high level of conformity in religious practices; have a good level of conformity in terms of social norms and community values; conformity with customs, traditions and cultural values believed in by the community; suitability of educational level.

**Keywords:** *Kafa'ah*, Modern Society, Islamic Society

## INTRODUCTION

The concept of *kafa'ah* in marriage has an important meaning in promoting marital peace. What is the importance of paying attention to this? Often families who have been building a household for a long period face unexpected challenges that stem from a lack of compatibility in various areas such as economic circumstances, moral values, social status, educational background, and personal interests. These problems are sometimes only revealed after a long time has passed. A marriage based solely on mutual consent and sincere affection, with the belief that such a foundation will lead to happiness.

When choosing a life partner, it is advisable to choose an individual who shares the same values, has a harmonious disposition, and displays a sense of equality. Although not considered an essential or universally recognized prerequisite for marriage, it is worth noting that some scholars argue that *kafa'ah* may be considered a genuine criterion for marriage under certain circumstances. *Kafa'ah* aims to achieve a condition of harmony and cohesion in the household. Often, rifts in household relationships arise as a result of a lack of equality that stems from differences in religious beliefs and socioeconomic classes. These differences have the potential to cause conflict, thereby causing a lack of harmony in the household.

According to the beliefs of Muslims, Allah has determined that Islam is the most perfect religion (Royani, 2013), therefore, Islam is believed to provide comprehensive direction in regulating various aspects of human life, including personal affairs, social interactions, and even important topics such as politics and government. Marriage has an important meaning within the framework of Islamic regulations. The user text is too short to be rewritten academically. Marriage is the only prescribed method by which individuals can ensure the survival of the human species on this planet.

Islam pays significant attention to the institution of marriage. This phenomenon can be seen from the many discussions on this matter in various fiqh literature, such as *Bidayah al-Mujtahid*, *Sunnah Fiqh*, *al-arba'ah mazahib* style Fiqh, and various other literature. Each of these publications provides a comprehensive analysis of the institution of marriage, delving into many aspects such as the application process, the circumstances necessary for marriage, and the fundamental pillars that support married life.

In contemporary society, there is an observable trend in which individuals prioritize material considerations when choosing a marriage partner. This tendency towards evaluating material is contrary to the teachings of the Prophet Muhammad SAW, who emphasized the importance of prioritizing the quality of a partner's religion. As a result, individuals tend to focus only on the visible aspects of life and ignore the deeper meaning and purpose of the institution of marriage.

The concept of *kafa'ah* is one of the characteristics considered to marriage, among the other aspects listed. *Kafa'ah*, as defined, refers to equality of educational attainment between husband and wife. The concept under discussion relates to the idea of equality or parity between partners in a particular domain. It is important to recognize that establishing a harmonious household is an important consideration in the context of marriage, but is not a mandatory prerequisite.

The book *Nihayatuz Zain*, written by Imam Nawawi al-Bantani, explains the issue of *kafa'ah*, highlighting five main considerations. This is the freedom of the prospective husband and his father, maintenance of religious beliefs, lineage, work, and the absence of reprehensible qualities in the prospective husband. user text is too short to be rewritten academically. Likewise, Sayyid Sabiq describes the parameters within which *kafa'ah* operates in the context of the marital union. Imam Nawawi outlined five categories related to *kafa'ah*, and the scholars mentioned above then expanded this discourse by identifying six specific factors that became the focal point of his analysis (Sahrin Anas, Sutisna, 2024). These factors include lineage (*nasab*), social position as a free person or slave, religious affiliation of parents, profession, wealth, and physical disabilities. In the following discussion, the author will describe various customs related to *kafa'ah*.

## REVIEW OF LITERATURE

### *Kafa'ah*

*Kafa'ah* in Islam is the concept of equality and harmony between prospective husband and wife in marriage. The following are some aspects related to *kafa'ah*: 1) Religious Equality: *Kafa'ah* emphasizes religious equality between husband and wife. This is important to maintain harmony in the household and avoid conflicts that can arise from religious differences (Faradilah et al., nd); 2) Equality of Nasab (Descent): *Kafa'ah* also considers

*nasab*, namely descent, as one aspect of equality. In the view of some scholars, people who are not Arabs are not equal to Arabs, and in some cases, people who are not descendants of Quraish are not equal to descendants of Quraish (Aziz & Junaidi, 2022); 3) Social and Economic Equality: *Kafa'ah* also considers equality in terms of social and economic status. For example, a husband who works as a hawker is not equal to a wife who comes from a rich family (Faradilah et al., nd); 4) Equality of Morals and Wealth: *Kafa'ah* also considers equality in terms of morals and wealth. Husband and wife must have equal levels of morals and wealth so that the household can run harmoniously; 5) Purpose of *Kafa'ah*: The purpose of *kafa'ah* is to avoid crises in the household and achieve harmony and harmony in marriage. It is hoped that *Kafa'ah* can help each candidate to achieve harmony and harmony in the household (Mulyadi & Dahlan, 2021).

In some views, *kafa'ah* does not only focus on equality between husband and wife but also harmony and harmony within the household. *Kafa'ah* is considered the foundation and main support for achieving the goal of marriage, namely the building of *a sakinah, mawaddah, warahmah* family (Mulyadi & Dahlan, 2021).

### **Islamic Law**

The Receptio A Contrario theory is the opposite of the reception theory. This theory was put forward by Hazairin and Sayuti Talib as the founders of the receptie theory. It is said to be a breaker because this theory expresses an opinion that is opposite to Christian Hurgronje's theory of reception. In this theory, it is precisely customary law that is under Islamic law and must be in line with Islamic law, so customary law can only apply if it has been legalized by Islamic law. Sayuti Talib stated that Islamic law applies to marriage and inheritance laws for Muslims. This is in accordance with his beliefs, legal ideals, and moral ideals, namely, this theory states that customary law can apply to Muslims if it does not conflict with Islamic law. Thus it is clear that the Receptio A Contrario theory is the opposite of the Recepie theory (Widjojanto, 2016).

### **RESEARCH METHOD**

In this research, the author used an empirical type of research. Therefore, the research approach used is Empirical Juridical because this research is based on legal provisions and

phenomena or events that occur in the field. This approach aims to understand the real situation regarding the facts that occur in society. The data collection method used is descriptive qualitative. This method produces descriptive data in the form of written or spoken words from people and observed behavior. The resulting data is factual and accurate data, which reflects the facts and characteristics of a particular population or situation. This research uses data collection techniques through interviews and documentation. The data sources used are primary data sources and secondary data sources. The primary data source was obtained from the views of community leaders regarding the meaning of *kafa'ah* in marriage. Secondary data sources are data that previously existed and were used as additional references in this research.

## **RESULTS AND DISCUSSION**

### **The Concept of *Kafa'ah* in Islam**

The concept of *kafa'ah* or equal is discussed by fiqh experts in the context of marriage matters, especially in relation to the compatibility between prospective female partners. The concept of *kafa'ah* or equal, as explored by jurists in the context of marital affairs, is outlined in Munjid's lexicon. This relates to the compatibility or suitability between potential partners for a woman, taking into account many aspects such as character, social status, and other relevant factors (Yudowibowo, 2012).

According to Munjid's lexicon, the term "*kafa'ah*" is symbolized by the word "*kufu*", which contains the meaning of similarity and commensurability. A prerequisite for building a healthy marital relationship and managing household affairs effectively is the existence of equality between the prospective husband and the prospective wife. The same term can also be found in the extensive Indonesian vocabulary, which specifically refers to the concept of equivalence and compatibility when choosing a life partner. The term "*kafa'ah*" which denotes the concept of equality, can be seen in the Qur'an, especially in Surah Al-Ikhlâs, verse 4.

In another verse it is explained when talking about equality, namely surah al-Nur: 267 Meaning: Women who are vile, for men who are vile (also) while good women are for good

men, and men who Good for good women too, they are clean from what people accuse them of. They obtain forgiveness and noble sustenance.

This verse confirms verse 3 which states that it is not natural for adulterers to marry unless their sexual partner is also an adulterer. This is because it has become *sunnatullah* that a person always tends towards those who have things in common with him.

*Kafa'ah* here means comparable, equivalent, commensurate, harmonious, and equal when entering into a marriage. What is meant by equals in marriage is that the prospective husband and his future wife have the same religion, the same position, the same social status, and the same morals. So the emphasis in *kafa'ah* is harmony, harmony, especially in the fields of religion and morals (Zahrotun Nafisah, 2018).

Mushtafa al-Khin and Mustafa al-Bugha explained in al-Manhaji's fiqh about *kafa'ah*, namely: the equality of the husband's condition to the wife's condition. On the other hand, in the book *i'alah al-Talibin*, in juz 3, it is stated that *kafa'ah* in linguistic or *lughawi* terms is a matter that is not found or does not exist in marriage so it will result in defects and the limitation is equality between the prospective husband and the prospective husband. wife in terms of perfection or shortcomings (Gustiawati & Lestari, 2018).

Of the various definitions and explanations of *kafa'ah* mentioned by scholars, the explanations are almost the same, only some prioritize one aspect among several. And they place the position of religion at the first level, which is then followed by morals. According to the author, this definition of *kafa'ah* is needed so that young people who want to start a married life choose their life partner in accordance with religious guidance so that a marriage can occur that can provide happiness in the afterlife (Shafi'i, 2020).

### ***Kafa'ah* Perspective Ulama**

The Islamic religion views a marriage bond as an ideal hope in which building a relationship requires similarities in vision, mission, or degree. The social contract between the two partners must occur well at the beginning of the desire to build a household because if this is not paid attention to, it will lead to social conflict that cannot be stopped. Islam itself recommends that the concept of *kafa'ah* is not merely a distinction between degrees of absolute social class, but rather beneficial for household harmony (Shodiq & Ridho, 2021).

The fuqaha do not differ significantly in opinion regarding the concept of kafa'ah, Imam Hanafi, Syafii, and also Hambali agree that equality includes: Islam, independence, expertise, and nasab (Suud Sarim Karimullah & Arif Sugitanata, 2022). But there are differences between them in terms of wealth and living space. Imam Hambali and Hanafi argue that this is a condition, but Imam Syafii does not. Meanwhile, Imam Malik does not see the need for equality except in matters of religion.

In the book *al-Ahwâl ash-Syakhsiyyah* written by Abū Zahrah, matters relating to kafâ'ah, differences of opinion among Maẓhab scholars, and who has the right to kufu' are explained. In this book, the criteria for kafâ'ah are explained comprehensively, accompanied by several opinions surrounding it. Wahbah az-Zuhailî in the book *al-Fiqh al-Islâm wa Adillatuhu*, describes the issue of kafâ'ah in detail, especially in explaining the differences between the jurists, regarding the terms and conditions of marriage. In this book, it is explained that there are two different opinions in determining kafâ'ah in marriage, whether kafâ'ah is a condition for the validity of the marriage or a normal condition (conditions that allow fasakh), or kafâ'ah is not a condition for the validity of the marriage (Yunianti, 2017).

In the book *I'ânah at-Tâlibin syarah Fathu al-Mu'in*, Abū Bakr ad-Dimyati discusses kafâ'ah or balance which considers important in a marriage because to avoid defects and misery in the household, it is all for the sake of creating a healthy family. happy. However, according to him, kafâ'ah is not a legal requirement for the marriage contract, but only a luzum requirement. Kafâ'ah in the language of Abū Bakr takes from the words *at-tasâwa* and *at-ta'adul*, namely equality. With a state of balance, which comes from the word *al-Kuf'u* which means *al-Musâwi* (balance). Hasyim As-sagâf explains that what is meant by kufu' is that a man is comparable to his future wife, equal in position, comparable in social level, and equal in morals, wealth, and descendants (Yunianti, 2017)

### ***Kafa'ah* in Positive Law and Modern Society**

Although kafa'ah is recognized in Islamic law, its practice and interpretation may vary across different societies and Islamic legal institutions. Some countries or regions may have different views and rules regarding kafa'ah. Ultimately, the kafa'ah assessment is often carried out by religious authorities or local marriage institutions, and the aim is to ensure the sustainability and success of the marriage in accordance with Islamic values.

The issue of kafa'ah in Indonesian positive law is not discussed explicitly. Law Number 1 of 1974 concerning Marriage does not touch on the issue of kafa'ah, while the Compilation of Islamic Law (KHI) mentions kafa'ah only in religious matters. As in article 61 of the KHI: "Not being equal cannot be used as a reason to prevent marriage, unless not being equal due to differences in religion or ikhtilafu al-dien" (Nursaniah Harahap, 2023).

Although Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law does not explicitly discuss the issue of kafa'ah, in general, there are two things related to this issue, namely differences in religion and age of marriage (Muhtarom, 2018). Even in Article 15 paragraph 1 of the KHI, it is not explained comprehensively, but the article contains the value of kafa'ah, namely age maturity. So, age maturity is not a legal requirement for marriage but only a normal condition to achieve a harmonious household (Yudowibowo, 2012). Therefore, kafa'ah is a fundamental concept for mitigating undesirable things. Apart from that, kafa'ah is the foundation and main support for achieving the goal of marriage, namely the building of a *sakinah, mawaddah, warahmah* family. Kafa'ah is not a condition for the validity of a marriage, but kafa'ah plays an important role in forming a harmonious family.

In modern society, consideration of kafa'ah in the current context often involves adapting to current developments, social values, and norms of life in today's society. Although the basic principles of religious, social, economic, and personal conformity remain relevant, their interpretation and application may vary depending on the culture and society in question. The results of this research are to find the irrelevance of kafa'ah in this Modern Era if we stick to the norms of jurisprudence of the past because it is feudalistic (Mahmudah, 2023).

Kafa'ah in the modern era is more relevant if it is interpreted as *Ahliyah li al Qiyam* (the ability to get married) because it has a more universal meaning. So, kafa'ah has an important role in establishing harmony because it is related to religious, economic, communication, and good appearance skills. This ability should be used as the basis for building legal regulations in Indonesia, such as the prospective bride and groom certification program, so that it can prevent post-wedding problems.

This reinforces that the interpretation and application of kafa'ah can vary significantly between communities and individuals. Some societies may be more flexible in viewing these modern aspects, while others may maintain more traditional principles. In the modern context, dialogue and understanding between individuals, families, and communities is the key to bridging differences and achieving a common understanding regarding kafa'ah.

## CONCLUSION

The concept of *kafa'ah* in Islamic law is a concept that regulates equality or equality between prospective husbands and prospective wives in marriage. *Kafa'ah* is not a legal requirement for marriage, but it is the right of the prospective wife and her guardian to cancel or accept the marriage if there is a discrepancy between the prospective husband and the prospective wife. *Kafa'ah* aims to maintain harmony and happiness in the household, as well as avoid embarrassment or inferiority on the part of either party.

Several important aspects of *kafa'ah* are independence, namely that the prospective husband and prospective wife must both be free, not slaves or servants. Second, Religion; the prospective husband and prospective wife must both be Muslims, and neither must be ungodly or apostate; the third Nasab, namely the prospective husband and prospective wife must have the same or equal descent, for example from the Bani Hasyim, Bani Muttalib, or Bani Quraish. Fourth, Occupation, namely the prospective husband and prospective wife must have the same or equivalent occupation, for example from among scholars, traders, or farmers, and Marriage Disgrace, namely the prospective husband and prospective wife must be free from disgrace or defects that could interfere with the husband-and-wife relationship.

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