

Analysis of *Kafâ'ah* Contextualization in an Effort to Form Harmonious Family in the Modern Era

Mokhammad Samson Fajar¹ & Faris al Badr²

Abstract: *Kafâ'ah* is one of the issues in Islamic marriage law that has received very little attention from Islamic legal experts. This is because *kafâ'ah* is synonymous with pre-Islamic Arab cultural heritage so it is less able to adapt to changing times. This research aims to reveal the relevance of the concept of *kafâ'ah* as written by the jurists with changes in society in the modern era. In exploring the issue, the author uses Fazlur Rahman's multiple interpretation method. By using this method the author tries to review the understanding and the use of the concept of *kafâ'ah* in the past and its relevance to the present; and then examines it using the perspective of the Qur'an and Sunnah. This research concludes that the concept of *kafâ'ah* in the books of fiqh is no longer relevant to the needs of the modern era. Because *Kafâ'ah* in modern times means equality and ability (competence) to marry, while *kafâ'ah* in the past tended to mean balance and had feudalistic nuances.

Keywords: *kafâ'ah*, Islamic marriage law, Fazlur Rahman

Abstrak: *Kafâ'ah* adalah salah satu isu dalam hukum perkawinan Islam yang sedikit sekali memperoleh perhatian dari para ahli hukum Islam. Hal ini dikarenakan *kafâ'ah* identik dengan warisan budaya Arab sebelum Islam sehingga kurang bisa beradaptasi dengan perubahan zaman. Penelitian ini bertujuan untuk mengungkap relevansi konsep *kafâ'ah* sebagaimana yang telah ditulis oleh para fukaha dengan perubahan masyarakat di era modern. Dalam mengungkap permasalahan tersebut, penulis menggunakan metode tafsir ganda dari Fazlurrahman. Dengan menggunakan metode tersebut penulis mencoba mengkaji ulang pengertian dan penggunaan konsep *kafâ'ah* di masa lampau serta relevansinya dengan masa kini dan kemudian menelaahnya dengan menggunakan perspektif Alquran dan Sunnah. Kesimpulan dari penelitian ini adalah bahwa konsep *kafâ'ah* dalam kitab fikih tidak lagi relevan dengan kebutuhan jaman modern. Karena *Kafâ'ah* di jaman modern mengandung makna persamaan dan kemampuan (kompetensi) untuk menikah, sementara *kafâ'ah* di masa lalu cenderung bermakna seimbang dan bernuansa feodalistik.

Kata kunci: *kafâ'ah*, hukum perkawinan Islam, Fazlur Rahman

¹Faculty of Islamic Studies, Muhammadiyah University of Metro, Lampung, Indonesia

²Dean Passion International University for Sciences, Arts and Development, USA

E-mail: 'ibnuummi@gmail.com, 'farislabadr@gmail.com

Introduction

Allah creates mankind in pairs, man and woman. From the couple, Allah composes a community, and then nations (*syu'ub*), tribes (*qabâ'il*) so that there is a harmonious social interaction. They will know each other, understand, love and eventually lead to a good social order fully of peace and love. Allah says:

وَاللَّهُ خَلَقَكُمْ مِنْ تُرَابٍ ثُمَّ مِنْ نُطْفَةٍ ثُمَّ جَعَلَكُمْ أَزْوَاجًا وَمَا تَحْمِلُ مِنْ أُنْثَىٰ وَلَا تَضَعُ إِلَّا بِعِلْمِهِ وَمَا يُعَمَّرُ مِنْ مُعَمَّرٍ وَلَا يُنْقَصُ مِنْ عُمْرِهِ إِلَّا فِي كِتَابٍ إِنَّ ذَلِكَ عَلَى اللَّهِ يَسِيرٌ ﴿١١﴾

“And Allah created you from dust, then from a sperm-drop; then He made you mates. And no female conceives nor does she give birth except with His knowledge. And no aged person is granted (additional) life nor is his lifespan lessened but that it is in a register. Indeed, that for Allah is easy.” (Fâtir: 11)

In another verse, Allah says:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَىٰكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ ﴿١٣﴾

“O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted.” (Al-Hujurât: 13).

Allah created human being in pairs for not only as partners of sexes, but also under a very deeply psychological conception. In another verse (surah Rum: 21), the word “*azwaja*” is translated as a wife who may calm her husband’s soul. Thus, what it is meant by the word of couple above is conformities in human beings. When the conformities are met in a person's soul it will produce serenity (*al-sakinah*) in a family life.

The word of *kafâ'ah* is known in marriage law. Ibn Mandzur defines *kafâ'ah* as a state of balance. The word of *kafâ'ah* originally derived

from *al-kufû'* means *al-musâwi* (balance). When it is connected to the word of marriage, *kafâ'ah* means the balances between the bride and the bride groom, in term of their social status (*hasab*), belief/religion (*al-dîn*), offspring (*nasab*) etc.¹

Meanwhile, based on the fuqaha's terminology, *kafâ'ah* is defined as similarity in social matters, which is later on may create happiness and prosperity living in a family, and it will be able to remove distress.² However, the various qualifications offered in this purpose, there is only one qualification agreed by fuqaha namely *din* (religion), *millah* (religious qualification), righteous and goodness. Thus, other qualifications, such as elements of independence, line of descent (*nasab*), father's religion, free from physical diseases and psychiatric disorder, are still becoming debatable matters among religious scholars. Some acknowledge them as the elements of *kafâ'ah*, some do not.³

Futhermore, Muhammad Abu Zahrah defines *kafâ'ah* as the balance between husband and wife with certain conditions in which, they will together be able to face any difficulties in lives. So *kafâ'ah* can be articulated as a balance or equality between husband and wife.⁴ Thus, it is clear that the elements of *kafâ'ah* are still being debated by scholars.

The purpose of *kafâ'ah* in marriage is to make a balance between husband and wife, in equal position. The balance position in terms of characters and wealth between husband and wife in the community will lead to their household welfares, and the way they can avoid from every bad lucks. Such is the disagreement on the issue of *kafâ'ah* among the experts of Islamic Jurisprudence.⁵

¹ Jamal al-din Muhammad ibnu Mukarram al-Ansari al-Manzur, *Lisan Al-'Arabi* (Mesir: Dar al Misriya, t.t), p. 134.

² Khoiruddin Nasution, *Hukum Perkawinan I* (Yogyakarta: Academia, 2004), p. 217.

³ Mustafa al-Sibâ'i, *Sharh Qânun Al-Ahwâl al-Shakhsîyah* (Damaskus: TNP, 1385), p. 170.

⁴ Muhammad Abu Zahrah, *Al-Ahwâl al-Shakhsîyah* (Mesir: Dâral-Fikr wa al-'Arabi, 1369), p. 156.

⁵ H.S.A Al-Hamdani, *Risalah Nikah (Hukum Perkawinan Islam I)*, III (Jakarta: Pustaka Amani, 1989), p. 98.

Shaykh Zainudin bin Abdul Aziz al-Malibarry, in his book *Fathul Mu'in*, views the *kafâ'ah* as a very essential (*mu'tabarab*) in marriage, although it does not affect the validity of the marriage contract. He further classifies social levels which are considered in *kafâ'ah*. He mentions that there are several criteria for a husband and wife to be equal or at the same levels, including social status, moral views, religion, profession, and knowledge. However, he asserted that assets or properties are not included in the criteria of *kafâ'ah*, as a property can disappear and will not make pride for those who maintain *murû'ah* (integrity).⁶

Kafâ'ah is considered as an important part in marriage because it involves the survival of a married couple. *Kafâ'ah* is an issue that is still debatable among the Islamic scholars (ulama) since long time ago. Social status is not a distinctive matter in the principle of Islam. The distinction is only to make human beings easily to recognize and interact each other. The significant distinctive matter in Islam is the value of sincerity in his/her heart.

Seen from the historical aspect, *kafâ'ah* as a law in marriage is very conditional under which the law was first revealed. The *kafâ'ah* was revealed in the old Arab society in which at that time they still applied in their tribal system. Each tribe felt owning highest position compared to the others. In old Arabic marriage tradition, bride and groom be equal in their position. It is strictly not permissible to violate this tribal rules. So when there is a degree difference in the tribe, it will cause disharmony in the household. This phenomenon shows that the *kafâ'ah* rules were very influenced by the condition of the society at that time. The social condition in Indonesia, however, is different from Arab society. Here, the principle of *kafâ'ah* requires a deeper and more thorough interpretation before it is applied in the modern era.

Furthermore, It is undeniable that *kafâ'ah* factors also contribute to the formation of the *sakinah mawaddah wa rahmah* (peacefull, harmonious and prosperous) family. However, these factors will relate

⁶ Zainudin al-Malibary, *Fathu Al-Mu'in* (Beirut: Dar al-Ihya' al-Kitab al-'Arabiyah, t.t), p. 106.

to the conditions and circumstances of the surround community. Although *kafâ'ah* is stated as an essential condition in establishing a harmonious family, it needs various changes in interpretation, especially in this modern era where society grows fast and results in revolutionary cultural values.

This research was focused on the marriage law (*kafâ'ah*) in the modern era. Modernity is a process in which everything is open and free. The exchanges of information and technology from one country to another become common phenomena that flow goods, services, work, labor, and investment are flowing freely without any barrier and border.⁷

Modernity is also characterized by a total transformation from traditional (pre-modern life, in terms of technology and social organization) towards economic and political patterns referring to Western countries.⁸ The general characteristics of modernization concern with the socio-demographic aspects of society where social mobility, a process in which the socio-economic and psychological aspects of society begin to open opportunities. The opportunities for new patterns through visualization and behavior patterns manifest in aspects of modern life such as mechanization, regular mass media, urbanization, increasing income per capita and so on.⁹

As the people today, including the Islamic *ummah*, are living in more modern life, their views toward old values and traditions automatically change. In the context of Islamic marriage law, the necessity of *kafâ'ah* conception begins to be questioned. Is the concept of *kafâ'ah* still relevant to the ongoing process of modern society? Should it be re-interpreted or just leave it as is? Is it true that *kafâ'ah* becomes the dominant factor that influences family disharmony? Such questions certainly need to be answered.

⁷ Rachman Syarief, *Kepemimpinan Transformasional Dan "U Theory" Di Pendidikan Tinggi Dalam Menyongsong Pasar Bebas Asean*, (Metro: Universitas Muhammadiyah Metro, 2014), p. 54.

⁸ Soerjono Soekanto, *Sosiologi Suatu Pengantar*, V (Jakarta: CV. Rajawali, 1985), p. 357.

⁹ S.N. Eisentadt, *Modernization: Protest and Change* (Prentice Hall Inc, Englewood Cliffs, 1966), p. 2.

The concept of *kafû'ah* or *kufû'* rarely gets the attention of Muslim scholars. To deal with the modernization era, the re-interpretation of the concept must be done and the meaning of this concept should also be developed. Such a development, certainly, must not change the substance of Islamic sharia, but rather the conceptual and philosophical natures. By doing so, the concept of *kufu'* may become relevant to the practices of modern society.

In the perspective of Islam, a harmonious family is termed a *sakinah* family, a family that is fostered based on a valid marriage, having sufficient capacity to fulfill the family's needs, physically and mentally, being able to create an atmosphere of mutual love, harmonious, affection, and balanced (*mawaddah wa rahmah*). It is also expected to be able to apply the values of faith, piety, good deeds, and noble morals within the family and surrounding community under the noble values of the Pancasila and the 1945 Constitution, and in harmony with Islamic teachings as mentioned in the Qur'an Surah Ar-Rum verse 21 that says:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ
بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ﴿٢١﴾

“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.” (Ar-Room: 21)

A harmonious and high-quality family can be identified by several characteristics, such as: living happily in harmony, being orderly, disciplined, loving and respecting each other, having noble character, having a good work ethic, easily helping neighbors, being obedient to worship, respecting elders, filling free time by doing positive activities, and being able to fulfill his family basic needs.¹⁰

A harmonious family will only be achieved if the happiness of one member is in harmony with the happiness of the other family members. Psychologically, this can mean two things:

¹⁰ Hasan Basri, *Merawat Cinta Kasih* (Yogyakarta: Pustaka Pelajar, 1996), p. 111.

1. The achievement of the wishes, goals, and hopes of all family members.
2. Minimum conflicts among individuals of family members.¹¹

Furthermore, a harmonious family is also characterized by an atmosphere full of peace, calm and tranquility, mutual love, having offspring and continuity of generations, helping each other, complementing each other for perfection, willingness to cooperate and to sacrifice for the common good.¹² A harmonious or happy family is also shown when both partners respect each other, accept, trust, and love each other.

The old-fashioned definition of household harmony is different from the definition of harmony today. If in the past, the concept of *kafâ'ah* was able to maintain household harmony, then will the same thing also be present in the modern era? This question requires a definite answer.

Research Method

This study examines the concept of *kafâ'ah* as a sub-system of family law facing changing times. By using an *ijtihad* approach, this study tries to produce a relevant concept that meets the Islamic spirit of "*shâlihun likulli zamân wa makân*" (applies at all times and places).¹³

This type of research is qualitative. It focuses on the problem of reformulating the meaning and the use of *Kafâ'ah* concept to align it with the progressing societal needs. This is not an easy task because it tries to correct the old paradigm to make it fit with the current paradigm.

Similar to what generally applies in the world of research, this study also uses units of analysis,¹⁴ both in the form of the main topics being studied and in the form of individuals, groups, organizations, regions

¹¹ Sarlito Wirawan Sarwono, *Menuju Keluarga Bahagia 4* (Jakarta: Bhatara Karya Aksara, 1982), p. 2.

¹² Ali Qaimi, *Menggapai Langit Masadenpan Anak* (Bogor: Cahaya, 2002), p. 14.

¹³ About modernization of Islamic law, see Abdul Qodir Zaelani, 'Pembaruan Hukum Keluarga: Kajian Atas Sudan – Indonesia', *Al-Adalah*, 10.1 (2012), 331-342; 'Konsep Ta'qquli Dan Ta'abbudi Dalam Konteks Hukum Keluarga Islam', *Asas*, 6.1 (2014), 46-56.

¹⁴ Imam Suprayogo dan Tobroni, *Metodologi Penelitian Sosial-Agama* (Bandung: PT Rosda Karya, 1998), p. 48.

and time. To avoid bias, the researcher tried to limit the unit of analysis in this research into two units of analysis, namely, the conception of *Kafa'ah* and the development of society in the modern era. The main focus of this study is the contextualization of the concept of *kafa'ah* in realizing household harmony and its relevance to the development of marriage law in the modern era. This study applies three approaches at once, namely the *ushul fiqh* approach combined with sociological and anthropological approaches.

This research formulates the research question as follows: "How to contextualize the concept of *kafa'ah* in Islamic Family Law to create a harmonious family in the Modern Era? How to connect the concept of *kafa'ah* in the book of fiqh with the complexity of the problems of people's lives in the modern era? How to contextualize the concept of *kafa'ah* so that it is relevant to the lives of Muslims in the modern era? These are research questions that will be elaborated in the following discussion.

The simple hypothesis in this research is that the concept of *kafa'ah* offered in Islamic jurisprudence books requires reinterpretation and contextualization, not only to produce a more relevant and modern concept of Islamic jurisprudence but also to reconcile the concept with theoretical developments and human needs. In doing so, researchers utilize Fazlur Rahman's dual motion theory which was used as an instrument in analyzing data to obtain relevant and applicable conclusions.

Fadzlurrahman's Dual Movement Theory

Ijtihad, as a method of law findings in Islam, receives special attention from Fazlur Rahman. *Ijtihad*, in his view, is a responsible freedom of thought. It is better than understanding the Islamic doctrines by following personal assumptions and analogies. The possibilities of conducting *ijtihad* will be opened when the matters are not contained in the Qur'an.¹⁵

According to Rahman, a good interpretation that may be able accommodate intellectual demands and moral integrity is the interpretation

¹⁵ Abdul Manan, *Reformasi Hukum Islam Di Indonesia* (Jakarta: Raja Grafindo Persada, 2006), p. 207.

that refers to historical criticism. It is through such a method the values and the spirit of the Qur'an and hadith can be achieved and understood.

Furthermore, Rahman developed the interpretation method that had been created by previous scholars, according to which previous scholars had not been able to present a comprehensive worldview because they mostly interpreted verse by verse. A *muffasirin* (Qur'anic interpreter), as Rahman emphasized, can interpret the verses of the Qur'an thematically but they fail to combine the meaning of the Qur'an or Sunnah with a comprehensive understanding of the world. Rahman named his methodology Double Movement theory.¹⁶

According to the theory, the first step that must be taken is to understand the meaning or purpose of a particular statement through a study of historical situations or problems, which is then followed by further study in general of macro situations and conditions within the scope of society's outlook on life, religion, customs, infrastructure, even the environment of Arab society as a whole.¹⁷ In other words, a *mufassir* (interpreter) after understanding the meaning of the Qur'an, both micro and macro, then understands the nature and universal values of the Qur'an to be applied in life

The second step of this movement is to generalize specific answers and express them in the form of statements containing societal moral goals filtered from the verses of the Qur'an through socio-historical context and legal rationale. This second movement seeks to find moral ideas which is carried out after studying various socio-historical aspects to obtain moral ideas that represent reality to be used as a text that regulates the Muslims' lives.¹⁸

Essentially, the first movement in this theory is to seek an understanding of the macro and micro context of the revelation process

¹⁶ Ahmad Syukri, 'Metodologi Tafsir Al-Qur'an Kontemporer dalam Pemikiran Fazlur Rahman', *Kontekstualita: Jurnal Penelitian Sosial Keagamaan*, 20.1 (2005), 37111.

¹⁷ Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition* (Chicago & London: The university of Chicago Press, 1982), p. 7.

¹⁸ Edi Hermanto, 'Implementasi Teori Tafsir Gerak Ganda Fazlur Rahman Pada Buku Ajar Al-Qur'an Dan Hadist', *An-Nida'*, 41.1 (2018), 31–49.

of the Qur'an. The aim is to construct the original meaning of revelation based on the social context of the prophet and the society living around him at that time. This process is related to several traditional concepts in interpreting the Qur'an such as *asbâb al-nuzûl and nâsikh mansûkh*.¹⁹

Meanwhile, the second movement is an effort to apply the values and principles that commonly exist in the context of today's reading of the Qur'an. This effort requires an adequate analytical knife that relates to the social sciences and modern humanities.²⁰

This Double Movement hermeneutic theory is in line with the rules of the Qur'an, namely *al-'ibrah bi umûm al-lafd lâ bi khushûs al-sabab* (laws are taken from the generality of the lafzh (text), not from the specificity of cause). So, if a verse is revealed because of a special reason while the lafzh is general, the law contained in the verse includes the cause and everything contained in the meaning of the *lafazh*. This is because the Qur'an was revealed as a touch of generally accepted sharia), thus, the benchmark/the standard for drawing laws is the generality of the statement, not the specificity of the cause.²¹

Implementation of Dual Movement Theory on *Kafâ'ah*

To understand the concept of *kafâ'ah* through the double movement interpretation theory, one must use the following principles. *Firstly*: One must use social reality, humanitarian principles, and religion as a source of interpretation, not solely based on the Qur'anic texts and Hadith. *Secondly*: The conclusions built in *kafâ'ah* law are then systematized based on logical reasoning, not through the authority of texts, orthodoxy, or certain ideologies. *Thirdly*: In understanding the reality of *kafâ'ah* it is necessary to include historical, sociological, anthropological, cultural, and other approaches *Fourthly*: The goals of this interpretation are not intended

¹⁹ Fazlur Rahman, *Kebangkitan Dan Pembaharuan Di Dalam Islam* (Bandung: Pustaka, 2001), p. 17.

²⁰ Fazlur Rahman, *Kebangkitan Dan Pembaharuan Di Dalam Islam*.

²¹ Jamalabdulaziz, 'Teori Gerak Ganda (Metode Baru Istimbdt Hukum Ala Fazlur Rahman)', *Hermenia*, 6.No. 2 (2007), 329–49.

to confirm the truth of the text but rather to strengthen theoretical analysis and formulation through scientific logic.²²

Kafâ'ah and Its Historicity in Islamic Law

Definition of *Kafâ'ah*

Kafâ'ah is a term in marriage that is rarely discussed in depth by fiqh experts, both in classical and contemporary times. This may happen because the scientists consider the *kafâ'ah* to be a trivial matter and not that important to discuss. In fact, the issue of *kafâ'ah* has a big influence on marriage, especially in the context of creating a *sakinah, mawaddah wa rahmah* (harmonious, prosperous, and peaceful) family.

The term *Kafâ'ah* comes from the word *al-kufû* which means equality. This meaning is the same as other expressions contained in the term *al-mitslu wa al-nadzîr*. *Al-kufû* is also frequently interpreted as *al-mitslu wa al-nadzîr* (the same as), or the expression *al-qâdir' ala al-'amal al-jadîr bih* which means the ability/fulfillment of the requirements for carrying out activities. The word *al-kaf'* is also often interpreted as *musâwiyân li sya'in akhor* (having equality with others). The term *kafâ'ah* is sometimes connected with the word *al-zawâj* (marriage), which means equality between husband and wife in family affairs. When related to *al-alama*, it means the ability to carry out activities well and correctly in accordance with existing qualifications.²³

In *Lisân al-'Arab* the word *al-kafâ'ah* means counter, as Hasan bin Thabit's statement *لَيْسَ لَهُ تَطْيِيرٌ وَلَا كِفَاءٌ* which means *ليس له تطير ولا كفاء* the is, there are no appeals and examples. So if the word *kafâ'ah* is connected to the word *nikah* (marriage) then what is meant is the similarity or comparability between a prospective husband and wife in terms of heredity, social status, and religion.²⁴

²² Labib Muttaqin, 'Aplikasi Teori Double Movement Fazlur Rahman terhadap Doktrin Kewarisan Islam Klasik', *Al-Manahij: Jurnal Kajian Hukum Islam*, 7.2 (2013), 195–206 <<https://doi.org/10.24090/mnh.v7i2.564>>.

²³ *Mu'jam Lughah al-Fuqahâ*, Sources: *Mauqî' Ya'sub*, Maktabah Syamilah.

²⁴ Muhammad bin Mukram bin Mandzur al-Afriqi al-Mishri, *Lisân Al-'Arab*, I (Beirut: Dar al-sadr, t.t), p. 325.

In the Arabic dictionary, the meaning of *kafâ'ah* is equality of strength and dignity. In the context of marriage, equality is related to social status, position, and religion. Meanwhile, in the activity context, what is meant is the ability to carry out activities well and professionally.²⁵

According to Sayid Sabiq, *kafâ'ah* means the same, equal, and comparable. The meaning of *kafâ'ah* or *kufu'* in marriage is that a man is equal to his prospective wife, in position, social level, wealth, and character.²⁶

All the definitions presented by scholars are almost the same; But If the word *al-kafâ'ah* does not have any equivalent, then it has the meaning of equality (*al-mumâtsilah*), comparable (*al-nadzîr*) and ability (*al-Qudrah*). The word *kafâ'ah* is often used as a very interesting conceptual variable in efforts to build new theories in the field of Islamic family law. The question now is: Is the concept of *kafâ'ah* in the definition of fiqh fixed and cannot be changed, or maybe there is still an opportunity for new interpretations in this era of globalization?

Basic Law of *Kafâ'ah*

Kafâ'ah in Islamic law has clear legality, both in the Qur'an and Sunnah. Islam emphasizes that belief is the main foundation of life determining a life partner, as explained in the following words of God:

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُوْمِنَ^ق وَلَا مَهْمُ^ق مُؤْمِنَةً خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَا
 أَعْجَبْتِكُمْ وَلَا تَنْكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُوْمِنُوا^ق وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ
 مِّنْ مُّشْرِكٍ وَلَا أَعْجَبَكُمْ^ق أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ وَاللَّهُ يَدْعُو^ص إِلَى
 الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ^ج وَيُبَيِّنُ^ج آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

²⁵ Ibrahim Mustafa, *Al-Mu'jam al-Wasith* (Dar al-Da'wah, t.t), p. 57.

²⁶ Sayyid Sabiq, *Fiqh Sunnah*, Jilid 7 (Bandung: Alma'arif, 1993), p. 36.

And do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men (to your women) until they believe. And a believing slave is better than a polytheist, even though he might please you. Those invite (you) to the Fire, but Allah invites to Paradise and to forgiveness, by His permission. And He makes clear His verses to the people that perhaps they may remember. (Al-Baqara: 221).

Kafâ'ah is also specifically emphasized in the several hadiths that contain the command to marry women of equal status. As in the hadith narrated by Tirmidhi from Imam Ali bin Abi Talib, The Prophet Muhammad said: *O Ali, three things should not be postponed when the time comes: prayer if it is at the right time, the corpse if it is time to bury, and the woman if an equal partner with her has arrived.* In another hadith narrated by al-Hakim, Ibn Majah, al-Baihaqi, and al-Daruquthni, from Aisyah, the Prophet PUH said: *'Choose women as a place for your sperm to come out, look for someone to be your partner' and marry them.* In another hadith narrated by al-Baihaqi and al-Daruquthni, from Jabir bin Abdillah Al-Anshori, the Prophet PUH said: *'Do not marry a woman unless she is equal to you and do not marry her except with the guardian's permission...'* Likewise, in another hadith narrated by al-Hakim, the Prophet PUH, said: *"Choose a woman as a container to spill your semen, don't spill it in a place where you are not as powerful or equal as you."*

***Kafâ'ah* in the History of Islamic Law**

Kafâ'ah is one part of the subject matter in Islamic marriage law. Every individual, as a member of society, has an image in his/her mind about his/her ideal soul mate. This image is a reflection of the general view of the community where he/she lives. It may be that the scope of personal worthiness (*kafâ'ah*) is similar to that in society's perception, but it may not be.

In pre-Islamic Arab societies, the social order was built based on the family ties, ancestry (*nasab*), kinship, and ethnic ties.²⁷ It is continuously

²⁷ 27 Ira M. Lapidus, *A History of Islamic Societies, Terjemahan Ghufron A. Mas'adi, Sejarah Sosial Ummat Islam*, (Jakarta: PT Raja Grafindo Persada, 2000), p. 3.

rooted beneath its culture until Islam came. According to some authors, *kafâ'ah* is an Arab tradition that is accommodated by Islam to maintain harmony in family life. However, there are several more fundamental changes in this *kafâ'ah* law. Based on its basic characteristics, Islam is a religion that is very tolerant of tradition and maintains social harmony in society, without making radical changes.

Islam, which was brought by the Prophet Muhammad SAW, is a religion for all mankind and brings mercy to all nature. Islam does not differentiate one type of human from another. The egalitarian concept in Islam has changed the social equality that is very dominant in Arab lands with a new concept based on religious equality.²⁸

However, to achieve this ideal value, stages are required, namely when Muslims are still in the stage of self-improvement or when the implementation of Islamic law begins. Several cultural values of pre-Islamic Arab society were accommodated by the Prophet P.U.H, indicating the flexibility of Islamic law in building a better society, without using contradictory patterns.

In pre-Islamic Arabia, the issue of equality (*kufû*) had become an institution in people's lives. For men, for example, the ideal marriage partner is a young lady coming from a noble family of Arab descent. Meanwhile, for women, the best partner is a man who is sweet, gentle, easy to get along with, generous, brave, noble character, and loyal. Men have the same social status as women, both in terms of glory and rank. Quraish girls were only allowed to marry men from the same tribe and adhere to the same religion. It is very despicable if they marry Arab women to non-Arab men.²⁹

The structure of pre-Islamic Arab societies and families is not so different from when Islam has adopted. Stratification (levels) between one tribe and other remains judging by the size of their social criteria. In

²⁸ Hammudah Abd al-'Ati, *The Family Structure of Islam*, Terj. Anshari Thayib, *Keluarga Muslim* (Surabaya: Bina Ilmu, 1984), pp. 107–8.

²⁹ Hammudah Abd al-'Ati, *The Family Structure of Islam*, Terj. Anshari Thayib, *Keluarga Muslim*, p. 107.

accordance with these criteria, the size of each individual is determined by the basis of his religious virtues, it is whether they obey or not their traditional values. For every Muslim, the value is still valid, only the measured value is the righteousness of Allah Almighty. According to the *sunnah* of the Prophet, the highest level is measured by the level of righteousness in religion. But he with his greatness had married a former slave of the Quraysh tribe. Marriage between someone from the upper level with slaves (the lowest level) may be difficult to understand. The example shown by the Prophet does not merely highlight the egalitarian spirit (the spirit of promotion of the principle of political and social equality) of the Islamic religion. But, Islam does change the value of social equality (social equality) with a new concept that is based on equality in religion (religious equality).

Through the interaction between the Arab Muslims—as conquerors—with the native Kufah who were given the title of *Mawali*, inevitably the Arab Muslims were influenced and adopted it, especially in the case of marriage. As a result, an opinion was raised that Arab women were not allied with men who came from non-Arab tribes. This is one of the factors why Imam Abu Hanifa paid special attention to the *kafâ'ah* in marriage, even supporting the doctrine of social equality. Surprisingly, he was not of Arab descent. So, it can be assumed that this social condition in Kufa greatly affected his *ijtihad*. As Reuben Levy said, there were very sharp classes of society, such as the *Mawali*, Arabs, slave class, *Ashraf* class, and others. There are even social classes that can be seen from where they live, which gives rise to the opinion that urban people are higher than rural people. The existence of these classes, finally, had an impact on job humiliation.³⁰

On the other hand, in the Medinan community, the problem of *kafâ'ah* was not so prominent and not in line with the concept of Medinan scholars because this region is far from the influence of Persian and Roman culture. Besides, its inhabitants are still dominated by Arabs and not mixed with non-Arabs. So, it is reasonable if Imam Malik while in

³⁰ Reuben Levy, *The Social Structure of Islam* (Jakarta: Pustaka Firdaus, 1986), pp. 65–75.

Medina argued that the *kafâ'ah* in marriage was not in terms of heredity, wealth, position, or profession.

Social class is an important fact of social reality, not just a theoretical concept, but also grouped into three specific groups as follows: Firstly, wealth and income. Wealth and income are important determinants of social class because they provide an overview of a person's family background and way of life. Secondly, job/profession. Occupation/profession is one of the best indicators not only for knowing someone's level of life but also indirectly for knowing someone's social class. Thirdly, education. Social class and education influence each other in at least two ways, namely: 1) the high level of education achieved and 2) the type of education. The two things above will influence the social class level. Education is considered very important because it will not only give rise to a person's competence in doing their job, but also bring about changes in their mentality, tastes, interests, goals, way of speaking, and overall way of life. Apart from the well-known social classes in society, some elements form layers of society namely social status and role.³¹

Demands for Equality and Competence in the Modern Era

The changes that occur in modern life are the impact of social changes. Planned change is the best for people who already have the desire to make a change but are unable to do it. In such conditions, society will immediately accept changes made by the agents of change who accommodate the wishes of the surrounding community. It would be better before making a plan, the agent of change would first observe the target community to find out their wishes and expectations, then adjust the existing plan accordingly. Social changes in a society can occur due to factors originating from outside.

There are many factors driving change, namely: Contacts with other cultures, advanced formal education system, and attitudes of respect for

³¹ Binti Maunah, 'Stratifikasi Sosial Dan Perjuangan Kelas Dalam Perspektif Sosiologi Pendidikan', *Ta'allum: Jurnal Pendidikan Islam*, 3.1 (2015), 19–38 <<https://doi.org/10.21274/taalum.2015.3.1.19-38>>.

one's work. the desire to progress, tolerance for deviations that are not violations, open system society, heterogeneous population, people's dissatisfaction with certain areas of life, orientation to the future, and the awareness that humans must always strive to improve their lives.

With the changes that occur in modern society, people's demands for life will also change. If in the past social status was based on origin, social class and wealth were something very important, then in the modern era this view has undergone very big changes, especially when society is structurally open, no longer looking at origins and social stratification, but looking at his achievements instead.

Apart from that, as society develops towards being rational, institutionally this will be a big challenge for human life. Several things will become demands for professionalism in the modern era, including the following:

1. A new mindset and understanding of the importance of global competition, so that people are required to think creatively in producing superior and competitive products.
2. The state apparatus system must have an entrepreneurial nature as an engine for development.
3. The availability of bureaucrats as public servants who can design strategic policies for economic development
4. Technological superiority through the development of human resources produced by a modern education system
5. The power of the private sector to grow and become the main driver/actor of the urban economy.³²

Through the extraordinary challenges of modernization, the demands of equality and social openness cannot be denied. As person will not be able to live by relying on his/her offspring, social status and even his/her physical appearance.

³² Heflin Frinces, *Globalisasi Respon Terhadap Krisis Ekonomi Global* (Yogyakarta: Mida Pustaka, 2009), p. 51.

Furthermore, apart from the demand for equality, competence is the most urgent need in today's modern world. Competence is an individual's characteristic in the form of the ability to use everything consistently and appropriately to achieve the desired performance. These characteristics include knowledge, skills, aspects of self-image, social motives, traits, thought patterns, ways of thinking, feelings, and quality of work.³³ According to Sanghi,³⁴ competence is a process that refers to various displays of skills and behavior that must be possessed. to be applied in every competency performance.

Wagner states seven skills needed in the 21st century are (1) critical thinking and problem-solving skills; (2) collaboration and leadership; (3) dexterity and adaptability; (4) initiative and entrepreneurial spirit; (5) able to communicate effectively both orally and in writing; (6) able to access and analyze information; (7) having high curiosity and imagination.³⁵

***Kafâ'ah*: Contextualization In Fadzlurrahman's Dual Movement Theory**

The Meaning of *Kafâ'ah* at the Present and in the Past Time

As previously explained, in the current modern era, there have been many changes in people's behavior, especially in implementing applicable laws and regulations. These changes are increasingly evident along with developments in science and technology which lead to the digitalization of life.

So, it can be said that the most dominant change in modern society is the demand for equality and competence. This is the main current of change in people's lives, including Muslims. Because human thought patterns have evolved and contained various consensuses and regulations, both in government circles and social institutions, such as Human Rights.

³³ Dubois, D., Rothwell, J. W, *Competency Based Human Resource Management* (Davies-Black Publishin, 2004), p. 98.

³⁴ Sanghi, S, *The Handbook of Competency Mapping: Understanding, Designing and Implementing Competency Models in Organization*. (Sage Publication Pve, Ltd, 2007), p. 104.

³⁵ Wagner, *Overcoming The Global Achievement Gap (Online)*. (Cambridge: Harvard University, 2010), p. 76.

Equality is the most important issue today because all humans have the same rights before the law. This also applies in the case of marriage. All humans have equal rights to find a life partner.

So, the social strata, which were previously dominated by individual's social status, in the modern era change to professionalism in life. Social status will not survive in the face of intellectual achievement and competence. Equality is a right to life, everyone has the right to be the best, especially in matters of marriage, without dealing with status and social symbols.

The description above shows that although the rules of *kafâ'ah* are discussed in the book of fiqh, they are not used as a legal reference in regulating married life. Even in Islamic countries, *kafa'ah* is not used as a standard rule in marriage law.

Then, it can be understood that the rules of *kafâ'ah* are no longer relevant in facing the changes in this modern era. The irrelevance of this concept is of particular concern in this research because Islamic law is flexible and even in every condition and time. So there needs to be a re-interpretation in understanding this law so that Islamic law can be applied in all time and space.

Al-Qur'an and As-Sunnah Responses

Kafâ'ah, as a cultural product, is not rejected by Islam, because Islamic law is wisdom, providing solutions to more essential values, not just symbolic. So cultural accommodation as a legal norm does not cause people to reject these contradictions but increases the quality level instead. Many verses of the Qur'an have responded to several essential social conditions and contain general values which are understood as principles of pure Islamic teachings, far from social influences on people's lives. This universal value can be implemented in all human life in every space and time

- a. Allah created humans differently to interact with each other. As He mentions in al-Qur'an: *O humans, indeed We have created you from male and female and made you into nations and tribes so that you will know one another. Indeed, the noblest person among you in*

the sight of Allah is the most pious one. Indeed, Allah is All-Knowing and Acquainted (Al Hujurat: 13). In the above verse, Allah shifts the paradigm of society which considers social status as a differentiator to the quality of a pious person as a benchmark. This shows that Islam looks at essence, not symbols. So, it can be understood that Allah SWT respects humans not because of the degree of their existence but the nature of their piety. *Taqwa* is a religious virtue that is understood as the highest competence in humans. By being devout, humans will be able to live well, prosperously, and happily. Especially in married life, devotion is the most important competency for creating a harmonious family;

- b. The standard of greatness is piety. According to the Qur'an, the noblest person in the sight of Allah is the one who is most pious (Al Hujurat: 13);
- c. Partner standards are virtue values. This means: *"A woman is vile to a man, and a man is vile to a woman (too), a good woman is for a good man, and a good man is for a good woman;*
- d. Rasulullah established religion as the main standard compared to other material benchmarks. It is narrated from Abi Hurairah ra that Rasulullah SAW said, *"A woman is married because of four things: because of her religion, her lineage, her wealth, and her beauty. So pay attention to your religion and you will be safe" and you will be safe"* (Hadith narrated by Bukhari Muslim);
- e. Allah looks at the hearts and deeds of His servants, not the face and physical. As narrated by Abu Hurairah, *the Prophet sallallaahu 'alaihi wa sallam* said, *"Verily, Allah does not look at your form, your appearance, and your wealth. However, Allah only looks at your heart and your actions."* (HN. Muslim no. 2564);
- f. The orders to accept proposals from a man who is good at his morals and religion. Abu Hurairah r.a narrated that the Messenger of Allah SAW said: *"If someone pleased with your religion and morals comes to you to marry your woman, then you should marry that person to your woman. If this is not done, there will be defamation on Earth and huge losses.* (Narrated by. At-Tirmidhi no. 1084, cited by Al-Imam Al-Albani in Al-Irwa' no. 1868, Ash-Sahihah no. 1022).

When the Companions asked, "*O Messenger of Allah, do we still accept him even though there is something in that person that does not make us happy?*" The Prophet answered this question by repeating the above *hadith* three times.

The answers of the Qur'an and Sunnah above clearly show that Islam does not see symbols of social status in people's lives. Islam prioritizes human qualifications rather than symbols of social status. This is following the spirit of modernization which sees humans in terms of their qualifications or competencies.

Generalization of *Kafâ'ah* Values in the Modern Era

According to Sayid Sabiq, *kafâ'ah* means the same and comparable. The meaning of *kafâ'ah* or *kufu'* in marriage is a man is equal to his future wife in position, social position, wealth, and morals.³⁶

Moreover, the word *kafâ'ah* is also defined in the linguistic context as equality (*al-mumâtsilah*), balance (*al-nadzîr*), and ability (*al-abliyah*). From these linguistic definitions, there is one definition that has never been discussed, namely *al-abliyah* which means ability. The essence of *al-kafâ'ah* is ability, although historically presented as a social symbol. The word *kafâ'ah* indeed refers to a person's ability. If the social stratum is high then that means having high abilities too.

Many verses in the Qur'an mention the meaning of *al-mumatsilah* as equality. For example, in Surah Al Mu'minin verse 52: "*Indeed, your Ummah is one Ummah.*" In the *hadith*, the Prophet Muhammad SAW also said "*One believer and another believer are like a building whose parts are solid and mutually sturdy*" (HN. Muslim). Elsewhere, the Qur'an mentions equality. This can be seen in Surah al-Hujurat verse 13: "*O mankind, indeed We have created you from male and female and made you into nations and tribes so that you may know each other. Indeed, the noblest person among you in the sight of Allah is the most pious one. Indeed, Allah is All-Knowing and Acquainted.*"

³⁶ Sayyid Sabiq, *Fiqh Sunnah*, p. 36.

Meanwhile the meaning of *al-nadzir* (balance), also departs from the general value of the verse, namely that the wife is the husband's partner and the husband is the wife's partner. As stated in Surah al-Baqarah verse 187: *They are clothes for you and you are clothes for them.*" Apart from that, it is also stated that women have equal rights and obligations, as stated in al-Baqarah verse 228: *"And women have equal rights to their obligations more appropriately."* This verse refers to equality of rights and obligations as understood by all humans. Furthermore, the Qur'an also emphasizes that people who do good, male or female, will enter heaven and people who do evil will be punished in hell. as mentioned in surah al-Mu'minun verse 40: *"Whoever does something bad, he will not be rewarded but it will be commensurate with his crime. And whoever does good deeds, whether male or female, is a believer, both will enter Paradise, where they will be given sustenance without reckoning."*

Regarding with the words *al-abliyah lil Qiyam* (feasibility or ability to do something), the principle in Islam is the ability and suitability to do something. This is in accordance with the rule expressed by Shaykh As Sa'di Rahimahullah in his poetry: *There is no obligation if you cannot afford it.*

From several meanings contained in the two verses above, it can be concluded that an obligation becomes void if someone does not have the capacity before and at the time the obligation takes place. As for accountability, what is meant here is the accountability required by Islamic law with mandatory orders. This means that *sunnah* cases are not included in this matter.

Other arguments that also support the above theorems include the words of Allah Ta'ala, which means *"Fear Allah as much as possible"* (Surah At Taghobun: 16). Also the Hadith of Rasulullah which means *"If you are ordered to do something, then do it as best as you can"* (HN. Bukhari no. 7288 and Muslim no. 1337, from Abu Hurairah).

In the modern era, the meaning of the term *kafa'ah* can be structured by constructing the three words *"mumatsilah, nadzir and Ahliah"* (equality, balance, and ability). In essence, humans are similar in terms of their

rights and obligations to Allah. Every human being is also equal in position as a human being; there is no social stratification, education, and so on. The Qur'an and Sunnah have emphasized that humans are equal; So if the term *kafâ'ah* is interpreted as equality of social, physical, or economic status between partners, then it is contrary to Islamic principles because the most noble people before Allah are those the righteous.

This principle concludes that *kafâ'ah* is only applied in the religious area, because it is related to devotion, not in the physical, material, and social areas. If *kafâ'ah* is interpreted as conformity in the context of social stratification, then this is a tradition of Arab society that has not completely disappeared until now. They place marriage standards based on facial quality, family class, social status, and economic standards.

According to the author, the definition of expertness or ability must be emphasized because it is very suitable for modern life. A marriage must be entered into by a husband and wife who are equally capable and have the ability to build a harmonious life in family matters. Good physical abilities are the ability to care for oneself as the Prophet Muhammad SAW said when asked: *"Who is the best woman? he answered: "The most pleasant thing is to be seen by her husband, to obey when ordered by her husband, and not to waste her husband and his wealth on what he hates"* (HN. an-Nasa'i, sahih)

The essence of this hadith shows that household harmony can be realized by establishing a peaceful and beautiful physical atmosphere between husband and wife; So this ability influences building a household.

Social skills are essentially also needed in marriage, especially in building a conducive situation between the wife and husband's family, and educating children as family successors. This is symbolic, in the sense that marrying a woman who is full of love and having the potential to give birth to many children will have an impact on household harmony.

Economic ability is vital in household matters. Indeed, in the era of the Industrial Revolution 4.0, the economy has shaped humans as

economic subjects, and the economy has become one of the dominant factors in bringing about harmony. A couple's economic ability will form a good family, otherwise, it will be damaged if it is economically weak.

Efforts to build a harmonious, happy household from this world to the hereafter can be achieved well if a married couple has equality and ability in physical, social, economic, and religious aspects. That is the true meaning of *kafa'ah* which not only involves material aspects (physical, economic, and social) but also includes spiritual aspects (religion). Religious ability here is closely related to issues of *aqidah* (belief), *ibadah* (worship), *akhlak* (ethics), and *mu'amalah* (social relationship).

Based on the arguments above, it can be reconstructed that the meaning of *kafa'ah* can be a legal rule that is very relevant in the modern era. When equality has eliminated social boundaries, marriage will no longer look at status but will rely on the couple's ability to get married. In fact, in the context of regulations, *kafa'ah* can also be interpreted as a certification policy for prospective brides and grooms, as is the idea of the government through the Ministry of Religion.

Conclusion

In fact, the concept of *kafa'ah* which was initiated by the ulama in the fiqh books was extraordinary in responding to the contemporary situation and conditions. However, when faced with the complex problems of people's lives in modern times, this becomes completely irrelevant, because human standards of living have changed. In the past, social status was determined by a person's dignity and abilities. Therefore, marrying at a social level is a must. However, along with changing times, where the world has changed and social barriers have been destroyed, *kafa'ah* has changed from just a symbol to an essence. This is the substance of Islam which makes religion the highest standard in determining *kafa'ah*.

Finally, the concept of *kafa'ah* is relevant to the lives of Muslims. In the modern era, this concept is carried out through recontextualization using Fazlur Rahman's double movement theory which takes the moral

value of the Al-Qur'an text after looking at past conditions and comparing them with the present. From the results of recontextualization, the meaning of equality is no longer in terms of physical aspects, but rather the ability of a husband and wife in a social, economic, and religious context to build a harmonious, happy household in this world and the hereafter. This definition is following the spirit of modernization which demands equality and competence in life. These two potentials will make families more empowered and happier because they are supported by religious, economic, physical, and social capabilities.

Author Contribution

Mokhammad Samson Fajar focuses on providing an understanding of the concept of *al-kafâ'ah* through his contributions, including reviewing related literature, collecting data, and conceptualizing the article's main idea. He also developed the initial research design, including the research method and objectives. *Faris al Badr* followed by writing the initial draft and refining the article by reviewing, editing and translating it into the final draft. Both authors collectively commented on and reviewed the article.

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