The Shafi'i's and the School of Shafi'ite's (the Nawawi's and Ramli's) Concept of *Kafā'ah*

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Abstract

The harmonic household is objected to be one of the ideals of marriage. The harmony is possible to achieve when the couple have dealt with the equivalence and commonality (*kafā'ah*) of the principles covering the matters of education, economy, social status and morals. In dealing with the issue of *kafā'ah*, however, the scripture (al-Qur'ān and Sunnah) has no mentioned any specific regulation. Consequently, it tends to urge the emergence of various Islamic legal methods in inventing the legal status of the issue. The primary literatures have depicted similarities among the Muslim jurists' view (Shafi'i, Nawawi and Ramli) in formulating the criteria of *kafā'ah* in marriage, although they have remained in differences. This article purposes to examine the literatures and identify the factors influence the formation of the concept, and also consider the acceleration of it in the development of the Shafi'i and Shafi'ite legal thought. This article argues that the similarities involve the theme of pedigree, religion and wealth in *kafā'ah*, while the differences cover the matters of the physical disability as one of the requirements and rights (*khiyār*) in terms of transaction. It has been fundamentally influenced by the social, cultural and geographic factors, and the intellectual capacity and capability of the legal scholars.

Abstrak

Rumah tangga yang harmonis dianggap sebagai salah satu impian dalam perkawinan. Keharmonisan ini memungkinkan dicapai ketika di antara pasangan memiliki keseimbangan dan kesamaan prinsip (*kafā'ah*) dalam hal pendidikan, ekonomi, status sosial dan moral. Akan tetapi, masalah *kafā'ah* ini tidak diatur secara rinci di dalam kitab suci (al-Qur'ān and Sunnah). Karena itu, hal tersebut mendorong timbulnya berbagai metode penetapan hukum untuk menentapkan status *kafā'ah*. Berbagai kitab-kitab utama menjelaskan mengenai adanya kesamaan di antara para ahli hukum dalam menentukan kriteria *kafā'ah* (khususnya Imam Shafi'i, Nawawi dan Ramli), meskipun mereka juga memiliki perbedaan pendapat. Artikel ini bertujuan menelaah berbagai kitab tersebut dan mengidentifikasi faktor apa saja yang mempengaruhi konsep *kafā'ah*, dan juga mempertimbangkan konsep ini kaitannya dengan pembangunan pemikiran hukum di lingkungan Shafi'i dan para imam pengikutnya. Artikel ini menyatakan bahwa kesamaan *kafā'ah* terjadi di dalam perkara keturunan, keimanan dan kekayaan, sementara perbedaannya menyangkut keadaan disabilitas fisik yang dianggap sebagai salah satu syarat ataukah hak (*khiyār*) dalam melakukan transaksi tertentu. Persamaan dan perbedaan tersebut dipengaruhi oleh faktor sosial, kebudayaan dan geografis, serta juga kemampuan intelektual para ahli hukum yang ada.

Keywords: *Kafā'ah*; Shafi'i; Shafi'ite; *khiyār*; Islamic marriage; disability in Islamic law; Imam Nawawi; Imam Ramli.

Introduction

Islam regulates marital matters in great detail. The primary objective of marriage is to create a vast generation of civilisation. Accordingly, Muslims must pursue a marriage life filled with tranquillity (*sakīnah*), mutual respect and affection (*mawaddah wa rafimah*). Muslims, either married or about to marry, have to understand certain values required to hold during marriage, which is the life-long bond and harmony of marriage.[1] One way to guarantee the fulfilment of that value in a marital life is to rely on certain criteria in choosing a partner, even if it is not part of the legal requirements of a marriage. In Islam, there is a concept which defines the criteria to be considered although it is unrequired by Islamic law called *kafā'ah*.[2] When Muslim chooses a marriage partner, he or she should follow what Prophet P.B.U.H. teaches that above all criteria, religion is the most important source of consideration in selecting life partners. Nevertheless, *kafā'ah* concept is entirely interesting to study because each one of the criteria is a fundamental guideline to the harmony of marriage. In fact, religion is not the only one factor determining marriage longevity. From time to time, the issue of *kafā'ah* in terms of economic, social, and even physical status is crucial. The cases of domestic violence in Indonesia, for example, are mostly caused by economic and educational inequality problems, for example, the perpetrators of violence are husbands who do not work or do not attend high school, whereas their wives are the opposites.[3]

In the study of *kafā'ah*, a number of aspects taken into consideration are aspects of religion, lineage or *nasab*, employment, social status, and property.[4] Some examples of *kafā'ah* incompatibility are (1) Arab women and non-Arab men, based on the Hadith of the Prophet that Arabs are superior above other nations; (2) an ungodly man for a pious woman— although the marriage is justified if the man is willing to repent; (3) men whose income are lower than that of women's parents they wish to

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[1] Wahbah Zuhayli, *Uşūl al-Fiqh al-Islâmi*, *Vol. 2* (Damascus: Dār al-Fikr, 1986), 772 and 1025.

[2] Abu Malik Kamal ibn As-Sayyid Salim, *Fiqih Sunnah Wanita*, trans. Agus Faisal Karim (Depok: Madina Pustaka, 2011), 168.

[3] Komnas Perempuan, *Catatan Kekerasan Terhadap Perempuan Tahun 2017 (Catahu KOMNAS Perempuan tahun 2018)* (Jakarta: Komnas Perempuan, 2018), 4; 24.

[4] Muhammad Fauzil Adlim and Muhammad Nazhif Masykur, *Di Ambang Pernikahan* (Jakarta: Gema Insani Press, 2002), 73.

marry—in order that women are not shocked by sudden change of lifestyle, although this rule is still highly debated by legal scholars; (4) a disabled candidate, whose disability can cause issues in the midst of the marriage.[5] It is assumed that *kafā'ah* is not intended to complicate marriage, but rather to protect women from forced marriages plotted by their guardians (parents or grandfathers) without their knowledge and consent; which means that *kafā'ah* serves as a guidance for the woman to determine the man of her choice in circumstances in which her guardian forces her to marry man she does not approve. Women are justified in rejecting forced marriage.[6] However, a guardian of a pious woman has the right to reject the proposal of a sinful man in the name of *kafā'ah*.[7] Unfortunately, *kafā'ah* is not clearly practiced yet.

The Jogja Rabithan Alawiyah Board strictly prohibits women of Arab Alawi descent (*sharīfah*) from marrying non-descendants.[8] In the noble families of Arab Muslims, *kafā'ah* is determined by class: the descendants of Quraysh are not equal to those of non-Quraysh, descendants of Bani Hashim and Bani Muṭalib are not equivalent to the other lineages, and ungodly men are unequal to respectable women.[9] Different from the Alawi, Arab *sheikh* is more open to new dynamics by accepting marriage with Ajam (non-Arab) and begins to remove *nasab* as one of the main requirements for marriage.[10] Changes in economic conditions and the weakening of tribal structure in Saudi Arabia causes the decreasing role of *kafā'ah* and even leads to protests by local intellectuals when the Saudi Arabian court decided to divorce Mansur al-Taymānī and his wife Fatima al-Azzaz over the complaints of the woman's half-sister for a *nasab*

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[5] Ahmad ibn Lu'lu' Naqib Al-Misri, *Reliance of the Traveller*, trans. Nuh Ha Mim Keller (Beltsville: Amana Publications, 1997), 524.

[6] Al-Misri, *Reliance*, 523.

[7] Musa, Muhammad Yusuf. *Afikām al-Afiwāl al-Shakhsiyyah fī al-Islām*. Cairo: Dār al-Kutub al-'Arabi, 1956. 144.

[8] Fattah, Nurul. "Hukum Pernikahan Syarifah dengan Laki-Laki Nonsayyid: Perspektif Jam'iyyah Rabithah Alawiyyah Yogyakarta." *Jurnal Al-Ahwal* 6, no. 2 (2013): 129-143. http://ejournal.uin-suka.ac.id/syariah/Ahwal/article/view/1093.

[9] Wahbah Zuhaili, *Fiqih Imam Syafi'i* (Jakarta: Penerbit Almahira, 2010), 470.

[10] Jamal, "Pergeseran Konsep *Kufu'* menurut Masyarakat Keturunan Arab," *Ulumuddin* 1, no. 1 (2018): 1-30.

disparity between them.[11] In Malaysia, descendants of *sayyid* and non-*sayyid* experience quite severe conflicts of opinion as non-*sayyid* descendants question the exclusive attitude of *sayyid* descendants in referring *kafā'ah* by arguing that equality is also a basic principle in Islam.[12] In more extreme cases, marriages in the name of *kafā'ah* can turn into unilateral or even forced marriages, with mostly female victims. There are reports stating that marriage proposal is not overtly forced on women, but rather by endlessly pressuring and manipulating them. Commonly in the name of *kafā'ah*, women are continuously made to believe that her rejection would undermine the family`s status in society. Such coercion happens mostly due to the consideration of *kafā'ah* in lineage and economy.[13] Al-Hibri even goes further: he argues that the view of Abu Hanifah on the ability of the guardians to cancel the wedding if her husband does not qualify *kafā'ah* devalues the Sunnah of the Prophet to the extent of betraying the universal principles of Islam.[14]

This dynamic nature happens because *kafā'ah* assimilates with humans and their complex cultural motives. As a result, the method of *kafā'ah* application are not definitely determined. As Imam Shafi'i said: "I do not know whether the rights of guardians are akin to those of women so that the latter are not married unless to men which are equal (*kufu'*) to them."[15] Imam Shafi'i states that there is a mixed perspectives here: who has the right to determine *kafā'ah*; the bride or her family? Do women have the rights to have different views from their guardians, or what if

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[11] Nadav Samin, "Kafāʾa fī l-Naṣab in Saudi Arabia: Islamic Law, Tribal Custom, and Social Change," *Journal of Arabian Studies* 2, no. 2 (2012): 109-126. DOI: https://doi.org/10.1080/21534764.2012.735456.

[12] Nazariah Noor and Nazirah Lee, "The Conflict among Hadrami Arab Community in Malaysia Regarding the Issues of Kafā'a in Muslim Marriage," *Journal of Women of the Middle East and the Islamic World* 11, no. 2-3 (2014): 252-274. DOI: https://doi.org/10.1163/15692086-12341249.

[13] Sigma Huda, "Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children 2007." United Nations. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/104/10/PDF/G0710410.pdf?OpenElement.

[14] Azizah Al-Hibri, "The Nature of the Islamic Marriage: Sacramental, Covenantal, or Contractual?," in *The Covenant Marriage in Comparative Perspective*, ed. John Witte Jr. and Eliza Ellison (Cambridge: William B. Ee R, 2005), 182-216.

[15] Abi Abdillah Muhammad ibn Idris Al-Shafi'i, *Al-Umm*, *Vol. 5* (Beirut: Dār al-Kutub al-'Ilmiyah, 1993), 25.

there is a conflict of opinion regarding *kafā'ah* between the bride and her guardian? Therefore, it is always dynamic and specific context must be taken into account. As time changes, the life of Muslims in various parts of the world also faces various new conditions which must be immediately addressed by Islamic law. Changing times mean changing legal decisions. *Kafā'ah* concept inevitably also experiences changes through ages.[16] However, it remains important for these changes to rest on the basic concepts that have been debated and developed in the classical period by early Muslim scholars. This basic concept is useful for explaining the extent to which a conception is dynamised without losing the principle of benefit which is the goal of Islamic law.

Therefore, in this study, the author proposes three names: Imam Shafi'i, Imam Nawawi and Imam Ramli. Imam Shafi'i in this study is a representation of the original Shafi'i school, while Imam Nawawi and Imam Ramli are representations of Shafi'i school, namely jurists who are methodologically bound to the discipline developed within Imam Shafi'i thoughts. The author believes that the views of the three Muslim scholars mentioned above towards *kafā'ah* have an urgency to be explored due to their broad explanatory power. Imam Shafi'i and Shafi'i school have a more contextual opinion regarding *kafā'ah* when compared to, for example, Imam Malik who does not include *hirfah* (job) as an element of equality. That is because Imam Malik's intellectual space is limited to Madinah and Hijaz, where the people are not too concerned with the type of job as one of the considerations of marriage, rather, it is more based on Hadith which states that character and religion should be the main considerations in selecting potential partners.[17] In contrast to Shafi'i who has traveled across many countries and seen a lot of people, thus *hirfah* is then regarded as a key to equality between husband and wife, as lifestyle suitability potentially results in harmony - a harmony based on the *'urf* (customs) of the local community.[18]

In this part, this article presents the theoretical concept of *kafā'ah* in general before getting into the discourse of *kafā'ah* according to Imam Shafi'i and Shafi'i school. This

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[16] Iffatin Nur, "Pembaharuan Konsep Kesepadanan Kualitas (*Kafaa'ah*) dalam Al-Qur'an dan Hadis," *Jurnal Kalam* 6, no. 2 (2012): 411-436. DOI: https://doi.org/10.24042/klm.v6i2.413.

[17] Abu 'Isa Muhammad ibn 'Isa Al-Tirmidhi, *Sunan al-Tirmidhi* (Beirut: Dār al-Fikr, 1999), 345.

[18] Abdur Rahman Al-Jaziri, *Al-Fiqh 'ala Madhahib al-Arbā'ah* (Lebanon: Dār al-Kutub, 2010), 732.

article arguably asserts that there are similarities between Shafi'i and the legal scholars in the circle of Shafi'ite (Nawawi and Ramli), despite the fact that there is also minor differences. While the former covers the aspects of the pedigree, religion and wealth in *kafā'ah*, the latter is about the physical disability as one of the requirements and rights (*khiyār*) in terms of transaction. Both similarities and differences have been conditioned by the factors of social, culture and geography, as well as the scholars' intellectualism.

The basic theory of *kafā'ah*

The concept of *kafā'ah*, especially among the *madhāhib al-arba'ah* (Hanafi, Maliki, Shafi'i and Hanbali) is a prevalent and central concept to discuss.[19] Based on the language, the term *kafā'ah* is derived from the word *kā-fa-'a/yu-kā-fi'u/kaf-'an wa ka-fā-'atan*. It is similar to the word *al-mithl*, *al-nadhīr* and *al-musāwiyān*, which means "similar, comparable, or equal". In other words, *kafā'ah* can be interpreted as equivalence, proportionality or equality between two things, usually in quality.[20] The word *kafā'ah* can be found, for example, in the Prophet's Hadith which says: *al-muslimūn tatakaffa'u dimā'uhum* (all Muslims are akin in blood).[21] One of the famous Hadith about *kafā'ah* are four criteria in marrying women, with the following narration: Prophet said: "Marry a woman for four things; her wealth, her ancestry, her beauty and her religion. However, choose the religion because it will prevent you from committing evil." This Hadith is narrated by Bukhari, in his Shahih (Hadith no. 5090).

Each of the criteria mentioned by the Prophet above is also emphasised by other Hadiths. For example, concerning the criteria of religion, we find a Hadith about how *kafā'ah* in terms of religion is much more fundamental and prioritised than for example, the physical appearence. Hadith from Fatima bint Qays narrates the words of the Prophet: "Marry Osama!" This Hadith is the advice of the Prophet to Fatima bint Qays who refused to be married to Osama, because Osama was a *mawla* and black, even though he was known by the Prophet as very pious man. The Prophet

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[19] Abd al-Wahab Al-Sha'rāni, *Al-Mīzān al-Kubrā, Vol. 1* (Beirut: Dār al-Fikr, Nd), 54.

[20] Louis Ma'luf, *Munjīd fī al-Lughah wa al-A'lām* (Beirut: Dār al-Mashriq, 1976), 139.

[21] Al-Jurzani, *Al-Ta'rifāt* (Beirut: Dār al-Kutub al-'Ilmiyah, 1988), 185.

keeps repeating this advice knowing all Fatima's efforts to avoid marriage to Osama. Eventually, Fatima gave up and said: "May Allah give me the goodness of (marrying with) Osama)," which is answered by the Prophet with other advice saying that obeying Allah and His Messenger is far more important to Fatima bint Qays.[22]

Another Hadith which is also similar narrated by Abu Dawud and al-Hakim, that Abu Hurairah said that the Prophet said: "O Bani Bayadhah, marry Abu Hindun and marry you to him." Abu Hurairah explained that Abu Hindun was a cupping therapist.[23] Abu Hindun, whose real name is Yasar, was the man who healed the Prophet when He was poisoned by a woman in Khaybar, and he was a *mawla* of Bani Bayadhah. This Hadith could actually be used as a justification to nullify *kafā'ah* in *nasab*. This opinion is strengthened by the fact that Bilal bin Rabah, the Umayyad slave freed by Abu Bakr, married a woman from a respectable family.[24] Even the Prophet has strongly advocated an honourable principle that says: "People are equal like the teeth of a comb, There is no difference between Arabs and non-Arabs (one race and another) except in piety."[25]

Based on Hadiths mentioned above, it is unsurprising that the idea to reform the orientation of *kafā'ah* emerge specially to limit it in two focus, namely "quality of religion" and "social agreement between the men and women" about how they will live their marriage. Conventional Islamic scholars commonly view the concept of *kafā'ah* by considering several benefits in certain circumstances, however this has the potential to restrain the spirit of progressive marriage for Muslim women. The demand of intellectual Muslims to reform various juristic products which are considered as bleak and ungrounded has increased that the idea of *kafā'ah* needs to be addressed to actually meet the needs of contemporary Islamic global community rather than become mere sacred conception. It is increasingly necessary to evaluate the Hadith of the Prophet which states that women who have met their potentially

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[22] Al-Shan'ani, *Subul al-Salām*, *Vol. 3* (Cairo: Maktābah Mustafā al-Bābi al-Halābi, 1950), 129.

[23] Abu al-Tayyib al-Siddiqi Al-'Aẓim, *'Aun al-Ma'būd Sharh Sunan Abi Dawud*, *Vol. 4* (Beirut: Dār al-Fikr, 1979), 491.

[24] Munir Ahmad Mughal, *Hadrat Bilal*. Monthly Islamic Literature, 1 Juli 1969, 420.

[25] Al-Shan'ani, *Subul al-Salām*, 129.

equal partners must marry immediately,[26] as a number of basic principles in the Koran emphasise that all Muslims are inherently equal.[27]

In Islamic marriage discourse, *kafā'ah* is interpreted as the balance between both prospective husband and wife in terms of status (*hāsab*), religion (*dīn*), lineage (*nasab*), as studied in the literature of the four schools of law (*madhāhib al-arba'ah*). There are many different opinions regarding what elements are included in *kafā'ah* depending on the tendencies of each of these schools. For example, Abu Zahrah defines *kafā'ah* as a balance between the future husband and wife in "certain state" in which its existence will prevent potential wreckages in the marriage. There are at least two theories that can be used to explain the concept of *kafā'ah*.

The first theory is the theory of Bravmann. He believes that *kafā'ah* has emerged since pre-Islamic times. To support his theory, Bravmann gives examples of several marriages that were judged to be unequal for instance, the marriage of Bilal with Abdurrahman bin 'Auf's sister.[28] The second theory is the theory of Coulson and Farhat J. Ziadeh. This theory says that the conception of *kafā'ah* rises long after the Prophet died, i.e. in Iraq (specifically, Kufa, the city where Abu Hanifah dedicated himself intellectually). According to this theory, the concept of *kafā'ah* is not found in Imam Malik's book, *al-Muwaṭṭa'*. The concept of *kafā'ah* is first discovered in a book written by a *Malikiyyah* Muslim scholar, entitled *al-Mudawwanah*. Nevertheless, the conception of *kafā'ah* in this book is only very briefly mentioned. This theory further explains that there is a record which explains that Imam Malik himself never directly discussed the problem of *kafā'ah*.[29] According to this theory, it can be concluded that Imam Malik does not recognize the concept of *kafā'ah*. The conception of *kafā'ah* rises due to the cosmopolitan and complex nature of Kufa society at that time. The distinctive character of the Kufa is due to the longstanding tradition of urbanisation. The flux of urbanisation brought mixed ethnic groups, and it was not impossible to find marriage between Arabs and non-Arabs (who just converted to Islam). To avoid

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[26] Muhammad Abu Zahra, *Imam Syafi'i: Biografi dan Pemikirannya dalam Masalah Akidah, Politik dan Fiqih* (Jakarta: PT Lentera Basritama, 2005), 156.

[27] "And He is the One Who created man from (a sperm drop resembling) water, and made for him (kinship by) lineage and in-laws. And your Lord is All-Powerful." QS. al-Furqan: 54.

[28] Bravmann, *The Spiritual Background of Early Islam* (Leiden: E.J. Brill, 1972), 302-308.

[29] Sahnūn, A*l-Mudawwanah al-Kubrā*, *Vol. 3* (Cairo: Dār al-Sadr, 1323 H), 170.

disharmony in the household due to the mixing of cultures between partners, *kafā'ah* theory becomes necessary. Thus, according to this theory, the concept of *kafā'ah* is initially developed in response to the social differences, which then transformed as a legal matter.[30]

Up to this point, it can be concluded that *kafā'ah* is not a valid prerequisite of marriage. *Kafā'ah* is only a suggestion that must be taken into consideration by the prospective couples who will get married. Those who are about to get married are expected to be equal both religiously and socially, so that after being bound by a marriage contract, the marriage does not break because there is one party who feels affronted or treated dishonorably by their partners for differences in social status or the other. *Kafā'ah* is intended to guarantee happiness for couples who are bound by a marriage contract.[31] However, Shafi'i and Shafi'i school have other considerations that are quite fitting to the context of their time, which are interesting to be revisited.

Imam Shafi'i on the concept of kafā'ah

A cleric named Abu Abdillah Muhammad bin Idris bin Abbas bin Usman bin Shafi'i bin Saib bin Ubaid bin Yazid bin Hashim bin Abdul Muṭalib bin Abdul Manaf bin Qushai al-Quraish was born in Asqalan, a city close to Gaza, Palestine. His birth was parallel in time with the death of Imam Abu Hanifa. Imam Shafi'i was a respectable descendant of ahlu al-Bait, because Saib bin Yazid, the fifth grandfather of Imam Shafi'i, was the family of the Prophet from Bani Hashim and a companion of the Prophet. Despite having a good lineage, fate was not in his side. Imam Shafi'i was born to a poor family, in the immigrant settlement of Yemen.[32] Most likely, it was the childhood experiences of poor Imam Shafi'i as an immigrant that made him gain richer and more sensitive understanding of hierarchical social context and realised that they also influenced religious life, including marriage. He recognised that there is inequality in cultures

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[30] Khoiruddin Nasution, *Islam tentang Relasi Suami dan Istri (Hukum Perkawinan I)* (Yogyakarta: Academia Tazzafa, 2004), 213-216.

[31] Syukrawati, "Urgensi *Kafa'ah* dalam Perkawinan serta Kaitannya dengan Pola Hubungan Suami Istri dalam Perbedaan Status Sosial (Studi pada Dosen IAIN Kerinci)," *Jurnal Islamika: Jurnal Ilmu-Ilmu Keislaman* 17, no. 2 (2017): 97-120. https://ejournal.iainkerinci.ac.id/index.php/islamika/article/view/209.

[32] Huzaemah Tahido Yanggo, *Pengantar Perbandingan Mazhab* (Jakarta: Penerbit Logos, 1997), 121.

between one group and another in society that it might trigger culture shock in the marriage.

Out of concern for the noble blood, Imam Shafi'i`s mother took him to Mekkah. There he managed to memorize the Koran and the Hadiths of the Prophet. Hijaz was a place where the Hadith trail of the Prophet was still strong. He lived in the village of Bani Huzail and studied the ancient poems of the Arabs,[33] which possibly helped shape Imam Shafi'i`s understanding of various incompatibilities in society, at the same time, forming his contextual reasoning. This is clearly seen in *al-qaul*'s discourse.

Al-qaul is the professional opinion of Imam Shafi'i as a jurist. This opinion, even when Imam Shafi'i was alive, differed depending on changes in the context of space and time. The difference is referred to *al-qaul al-qadīm* and *al-qaul al-jadīd*. *Al-qaul al-qadīm* is covered in his book called *al-Hujjah* written by him when he was in Iraq, while *al-qaul al-jadīd* is in his book titled *al-Umm* written by him when he was in Egypt.[34] The new situation (location, time) faced by a mujtafiid also influences his professional opinions. The difference between *al-qaul al-qadīm* and *al-qaul al-jadīd* in Shafi'i school is similar (although not absolute) to that applied in *nāsikh mansūkh* in the rules of interpretation.[35] This clearly illustrates that the existence of "old" and "new" discourse in the world of Imam Shafi'i thoughts experiences a strong dynamics, which also influences the conception of *kafā'ah*.

In the view of Imam Shafi'i, *kafā'ah* is actually reserved for women and their guardians, so that women are not married except with equal partners. Of all women guardians, the one who has the right to marry a woman to her equal man is a direct family and with woman`s permission. In other words, a woman gives power to someone to represent her in marrying with someone equal to her. However, an unequal marriage could still take place if all guardians approve the marriage.[36] This is in accordance with the principle that *kafā'ah* is not a legal requirement for marriage,

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[33] Muhammad Abu Zahra, *Imam Syafi'i*, 27-28.

[34] Yanggo, *Pengantar*, 124.

[35] Sahal Mahfud, *Ahkamul Fuqaha: Solusi Problematika Aktual Hukum Islam, Keputusan Muktamar, Munas dan Kombes Nahdlatul Ulama* (1926-1999 M) (Surabaya: Lajnah Ta'lif Wan Nasyar Nahdhatul Ulama, 2011).

[36] Al-Shafi'i, *Al-Umm*, 25.

but an unequal marriage can diminish the position of the bride and her guardian. Nevertheless, deficiencies in *nasab*, for example, can be replaced by more expensive dowries and job guarantees.[37]

Kafā'ah, in addition to the quality of religion, consists of several aspects of quality according to Imam Shafi'i. These aspects are (a) the lack of disability, (b) *nasab*, (c) nobility, (d) professional dignity, and (e) free from slavery.

Lack of disability

One of *kafā'ah* standards in Shafi'i school is that the bride and groom must be free of any disability, which is usually considered detrimental to marital life. Disability here means medical condition that causes a man to take *khiyar* or a decision to cancel a marriage, such as psychiatric disorders, leprosy, and imperfect genital condition which could prevent them from marital intercourse. Any man who has a potent physical flaw is not equal for healthy and normal woman, and vice versa. If the disability is not severe but still detested by the partner such as blindness, disabled hands or feet, or marred body, then according to Imam Shafi'i, the partner is not equal to someone normal and healthy. If this aspect is unfulfilled, the bride and groom will be deemed incompatible with each other.[38]

Nasab or lineage

Imam Shafi'i classifies nasab or lineage and race of mankind into two groups. First is the Arab race and second is the non-Arab race (called *'ajami*). The Arab race is then divided into two tribes, namely the *Quraysh* tribe and the non-*Quraysh* tribe. For Imam Shafi'i, the tribe of *Quraysh* is only deemed equal to fellow tribe of *Quraysh* alone, including in this case the descent of Muttalib and Hashim. That is because some people, especially among the nobility of the *Quraysh* tribe, are still very proud of their lineage than that of another tribe. They are more concerned on the issue of lineage especially when choosing a partner moreover from outside their own tribe. Given that the consequence is blood purity.

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[37] Al-Shafi'i, *Al-Umm*, 26.

[38] Abu Zakariyya Yahya ibn Sharf Al-Nawawi, *Raudat al-Ṭālibin*, *Vol. 5* (Beirut: Dār al-Kutub al-Ilmiyah, 1992), 424.

Imam Shafi'i also views that non-Arab women (*'ajami*) are only equal to Arab men, and not vice versa. To find out whether someone is included in the Arab race or not, tracking can be done by checking the bloodline of their father. Similarly, to find out whether someone is a descendant of the *Quraysh* clan (or what is referred to as *Qurayshiyyah*) is by tracing the bloodline of their father up. Apparently, this lineage calculation is not only a characteristic of the Arabs. *Ajami* people from other cultures also have this similar system of lineage calculation, so that the recognition of Imam Shafi'i to lineage as *kafā'ah* criteria is important for places where Islamic *da'wah* faces the new environment that emphasizes the virtues of such *nasab*.[39]

Self-respect

Self-respect is the preservation of someone from immoral acts. A woman who distances herself from despicable actions (*'iffah*) and a woman who does not practice *bid'ah* (*sunniyah*) is not equal for a man who is known for being sinful or for the man who likes practicing *bid'ah*. There are also women equal to corrupt men in which they themselves are similarly corrupt, or they are equal if they both have repented from sin. In other words, impious women are only equivalent to impious men with the same level of impiety. When the level of impiety between the bride and groom are not the same, for example: both are known as alcoholics but one of them commits sexual debauchery and the other does not, then they are deemed not equal. *Kafā'ah* in terms of self-respect means *kafā'ah* in religiosity. This is because the issue of *'iffah* (preservation of a person from despicable actions) is an important part of embracing religious virtue. So in the study of *kafā'ah*, a person is called *'iffah* if he is a truly devout believer before his God, so that if he is loved by humans, he will act kindly toward them and if he is hated by humans, he will not respond ruthlessly.[40]

Professional dignity

Professional dignity (*al-hirfah*) is the social status of a person regarding a job or profession. According to Imam Shafi'i, men with pure manual labor who rely solely on physical exertion (janitors, masons, farm laborers) are not equal to women with higher careers. In certain situations, it is the job of woman's father that is used as a

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[39] Ibn Hajar Al-Haitami, *Mablagh al-'Arab fī Fakhr al-'Arab* (Beirut: Dār al-Kutub al-'Ilmiyah, Nd.), 234.

[40] Abu Bakar Al-Dimyati, *I'ānat al-Ṭālibīn*, *Vol. 3* (Semarang: Toha Putra, 1993), 331.

standard. Herder is not equivalent to a tailor or his child, and similarly a tailor is not equivalent to the child of a merchant, and a merchant is not equivalent to honourable children of teacher or Islamic *mufti*.[41]

Free from slavery

Imam Shafi'i has taken the free status from slavery into consideration in discussing *kafā'ah*; The opinion of Imam Shafi'i in this matter is the same as that of Imam Abu Hanifa, i.e. a male slave is not *kufu'* for a free woman. Likewise, a male slave who has been freed by his master becomes non-*kufu'* for a woman who is initially independent then turned into slave. A man whose father or grandfather is a slave is not equal to a woman whose ancestors have never been parts of slavery. However, at the same time, there is an opinion that Imam Shafi'i does not consider the "slave ancestors" factor significant on a child, because someone who is born free is deemed fully independent, and he can decide to become an independent person. In fact, there is no difference between a man born by a slave and a man born by an independent Arab woman. Being free from slavery, according to Imam Shafi'i, puts a considerable attention to an independent woman who would otherwise feel upset when she has to become the wife of a (former) male slave. Because, conflict will arise if women who are accustomed to living in luxury, suddenly find their husbands unable to fulfill the promise of a better life, even falls to the extent of povert*y*.[42]

Imam Nawawi and Imam Ramli on the concept of *kafā'ah*

Imam Nawawi is a *shaykh al-Islam* from the Shafi'i school of law. He is well known as an expert in Hadith, Islamic jurisprudence, and Arabic. History refers him as an accomplished *mujtafiid* with the title, *al-Hafidz*. His full name is Muhyiddin Abu Zakariya Yahya bin Neural bin al-Khazami Murri al-Nawawi. He was born in 631 Hijriyah, he grew up in a family of religious experts and scholars. He lived a simple life, such as only eating one meal a day, after the evening prayer. At the age of 19, Imam Nawawi studied at *ar-Rahawiya* school in Damascus.[43] In fact, Imam Nawawi grew up

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[41] Ali Zadah, *Sharh Shir'ah al-Islam* (Beirut: Dār al-Kutub al-'Ilmiyah, Nd.), 418.

[42] Al-Nawawi, *Raudat al-Ṭālibin*, 425.

[43] Sirajuddin Abbas, *Sejarah dan Keagungan Madzab Syafi'i* (Jakarta: Pustaka Tarbiyah, 1994), 174; See also Muhammad Ali as-Sayyis, *Sejarah Fiqih Islam* (Jakarta: Pustaka al-Kautsar, 2003), 183.

in a metropolitan city which became a melting pot for many cultures. Imam Ramli is also known as one of Shafi'i experts. His full name was Shamsuddin Muhammad ibn Abi al-Abbas Ahmad bin Hamzah Syihabuddin Ibn al-Ramli. He was born in Cairo, one of the metropolitan areas which is also a melting pot for many cultures. Since childhood he was already nicknamed "little Shafi'i."[44]

Kafā'ah in Imam Nawawi`s perspective is match between men and women in degrees, jobs and wealth. If a guardian, like a father, uncle or brother, marries a woman to a man who is not equal but with the woman`s consent then the marriage is valid, because *kafā'ah* is all about the rights of women and their guardians. If the woman is willing to get married to a lesser man and her guardian is willing to give her permission to do so, then according to Imam Nawawi, a marriage needs to be considered even when it is believed unequal. If the man is equal to the woman then her guardian shall give them permission to marry. However, if several guardians have accepted to marry women with men who are not equal but there is a guardian who does not allow it, then the marriage should be prevented, because the marriage may lead to hardship that could reduce the quality of the marriage.[45]

Whereas *kafā'ah* in Imam Ramli's perspective is a form of expression to reject a flaw in a marriage, and not as a valid marriage condition that is absolutely binding. When the woman and her guardians find a liability that will threaten marriage, *kafā'ah* could be used as an argument to prevent the marriage to proceed which ultimately will lead to problem later. However, Imam Ramli remains firm in several limits. If a guardian marries a woman with a man who is not equal but on the basis of the woman's willingness, then the marriage is legal, but it is considered *makruh*.[46] If a direct family guardian marries a woman with a man who is not equal to her but at the willingness of the woman, then her distant family guardians can not oppose the marriage.[47]

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[44] Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam* (Jakarta: PT. Ichtiar van Houve, 1999), 352.

[45] Al-Nawawi, *Al-Majmu'*, *Vol. 17* (Beirut: Dār al-Fikr, 2000), 337.

[46] Syamsuddin Muhammad ibn Abi al-Abbas Al-Ramlī, *Nihāyah al-Mufitāj ilā Sharh al-Minhāj*, *Vol. 6* (Lebanon: Dār al-Kutub al-'Ilmiyah, Nd.), 253.

[47] Al-Ramlī, *Nihāyah al-Mufitāj ilā Sharh al-Minhāj*, 254.

For more details, look at the table concept of *kafā'ah* according to Imam Shafi'i, Imam Nawawi and Imam Ramli below.

Table 1: The concept of *kafā'ah* according to Imam Shafi'i, Imam Nawawi and Imam Ramli.

No	Concept/ Theory	Imam Shafi'i	Imam Nawawi	Imam Ramli
1	*Kafā'ah* definition	Equality or similarity between men and women in marriage is a mandatory requirement for their guardians.	Equality between men and women in marriage that should exist and is used to prevent a flaw in marriage, not as a requirement for the validity of the marriage	Equality between men and women in marriage that should exist and is used to prevent a flaw in marriage, not as a requirement for the validity of the marriage
2	Nasab	Imam Shafi'i believes that nasab issue has nothing to do with property.	A woman attributes herself to her guardian and her noble ancestors, because Arabs would feel disrespected seeing the marriage of an Arab man with a woman from a lower class.	A woman attributes herself to her guardian and her noble ancestors, because Arabs would feel disrespected seeing the marriage of an Arab man with a woman from a lower class.
3	Religion	Muslim women are not allowed to marry with non-Muslim men although they are *Ahl al-Kitāb*	*Kafā'ah* in religion is only designated for Arabic people, and for the people other than Arabs, the opposite applies	*Kafā'ah* in religion is only designated for Arabic people, and for the people other than Arabs, the opposite applies
4	Wealth	Wealth is a measure for men to pay dowry in cash	*Kafā'ah* in wealth is a requirement in marriage but it is different between those who live in cities and those in the villages	*Kafā'ah* in wealth is a requirement in marriage but it is different between those who live in cities and those in the villages

5	No disability	There are several criteria on the disability affecting marriage such as leprosy, mental illness, castrated genitals for men and *qarnu* disease for women.	There are several criteria on the disability affecting marriage such as leprosy, mental illness, castrated genitals for men and qarnu disease for women. However, if both are disabled, then the marriage is legal.	There are several criteria on the disability affecting marriage such as leprosy, mental illness, castrated genitals for men and qarnu disease for women. However, if both are disabled, then the marriage is legal.
6	Free from slavery	It is not considered as *kafā'ah* conditions.	A slave is not equal to an independent person.	A slave is not equal to an independent person.
7	Job	It is not considered as *kafā'ah* conditions.	Job is an important factor in an equal marriage because it is a matter of capability to provide a living for family.	Job is an important factor in an equal marriage because it is a matter of capability to provide a living for family.

Conclusion

Kafā'ah, at the root of its concept, is the opportunity given to women to protect themselves from marriages that do not bring happiness due to inequality. The purpose of this equality is to create a condition that facilitates mutual acceptance between two partners over economic conditions, extended family culture, daily living habits, and others. In dealing with this part, between Shafi'i and Shafi'ite scholars such as Nawawi and Ramli have similarities and differences in deciding the legal position of *kafā'ah*. They seem to have no any disagreement over the issues of pedigree, religion and wealth, but the physical disability. While Shafi'i concerns about it as one of the requirements in terms of transaction, the Shafi'ite scholars tend to categorise it under the topic of the rights of *khiyār*. The influential factors such as societal, culture and geography, and also the intellectual background of the legal scholars have conditioned both the Islamic legal reasoning and its legal decision.

In the practical context, *kafā'ah* is actually negotiable and when a woman is proposed by a man who is unequal to herself, but she is able to see the good side of him and she believes that he can lead her to a happy marriage, then she may convince her guardian to accept his proposal. Indeed, however, the reality can not always work on this way, because it must deal with the complexity of human culture and the dynamics of the ego. Marriage is the union of two family cultures and the continuation of marriage is also determined by the patience of the couple in dealing with certain egos of these cultures, as well as in dealing with humans who are unable to keep their ego and tongue. For this reason, *kafā'ah* then develops to be more open to the dynamic cultures. Imam Shafi'i and Shafi'i school are parts of tradition that is intellectually affirmative of dynamic culture. For Imam Shafi'i and Shafi'i school, the concept of *kafā'ah* is considered important for the continuity and longevity of a marriage, even if it is not a legal condition of a marriage.[]

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