

## **Islamic Law Thought: The Existence of the Concept of *Kafāah* in the View of the Acehnese Society and Syafi'iyyah Scholars**

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### **Abstract**

*This study aims to describe the views of the Syafi'iyyah clerics on the concept of kafāah; this is important to discuss because so far, in the opinion of the general public and especially Aceh, kafāah is only limited to equivalence in the field of religion. In contrast, in other fields, its existence is ignored. This research methodology uses normative juridical with a literature review; then, the descriptive analysis is used to describe the collected data that has been reduced; the primary data in this study are the works of Syafi'iyyah scholars. As for the findings of the study; the conception of kafāah in Acehnese society only focuses on conformity in terms of religion because this is the most basic right of a marriage, without having to fulfil other fields of kafāah, while in the view of Syafi'iyyah scholars, religion is the main requirement of kafāah, but other aspects of kafāah must also be considered and are as important as the religious side, such as; heredity, occupation and no defects experienced by the prospective husband which can occur faskh, and all the standardization of kafaah become a condition for the validity of the marriage under certain conditions.*

**Keyword:** *Kafāah, Marriage, Scholars*

### **Abstrak**

Penelitian ini bertujuan untuk mendeskripsikan pandangan ulama Syafi'iyyah terhadap konsep *kafāah*, hal ini penting untuk dibahas, karena selama ini dalam anggapan masyarakat umum dan khususnya Aceh *kafāah* hanya sebatas kesepadan dibidang agama saja, adapun dalam bidang-bidang yang lain diabaikan keberadaannya. Metodologi penelitian ini menggunakan yuridis normatif dengan telaah kepustakaan, selanjutnya deskriptif analisis digunakan untuk menguraikan data yang terkumpul yang telah direduksi, data primer dalam penelitian ini ada karya-karya dari ulama Syafi'iyyah. Adapun temuan dari penelitian; konsepsi *kafāah* dalam masyarakat Aceh hanya terfokus kepada sesuai dari sisi agama, karena ini adalah hak yang paling mendasar dari sebuah pernikahan, tanpa harus memenuhi pada bidaang-bidang *kafāah* yang lain, sedangkan dalam pandangan ulama Syafi'iyyah, agama menjadi syarat utama dari kafaah, tetapi sisi *kafāah* yang lain juga harus diperhatikan dan sama pentingnya dengan sisi agama, seperti; keterunan, pekerjaan dan tidak ada

cacat yang dialami oleh calon suami yang dapat terjadinya *fasakh* dan semua standarisasi kafaah tersebut menjadi syarat akan sahnya akan nikah dalam kondisi tertentu.

**Kata Kunci:** Kafaah, Pernikahan, Ulama

## Introduction

One of the actions considered very noble is marriage because a Muslim has done the sunnah of the Prophet Muhammad.<sup>1</sup> Marriages that have been carried out are not only binding in religious ropes that have united men and women, and this will also create peace and tranquillity of the individual human soul, which is the hope and aspiration of all individuals. The most decisive factor for this separate peace and tranquillity is harmony and equivalence, which in the study of *fiqh* is called *kafā'ah*.<sup>2</sup>

Realizing a *sakinah*, *mawaddah* and *rahmah* family is the essence of the purpose of marriage, a *sakinah* family is one where there is balance and harmony between fulfilling the rights of husband and wife, *sakinah* in the family must be felt by both husband and wife.<sup>3</sup> Therefore, one factor in divorce is the incompatibility between husband and wife so that the household that should lead to happiness becomes an arena for defending each other's ego and prioritizing emotions in solving household problems.<sup>4</sup>

Harmony and equality of position must be considered before undergoing marriage. This is a complement and a significant factor for holding a marriage, which aims to ensure a match between a prospective husband and wife. It has been regulated systematically in the study of *fiqh* in seeing the harmony between two candidates who want to get married.<sup>5</sup> Specifically called *kafā'ah*, although *kafā'ah* is not one of the pillars of marriage, its existence is essential in a marriage, so *kafā'ah* is the prerogative of women and guardians, which has become an agreement of *mazhab* scholars.<sup>6</sup>

One area that is thick with the practice of *fiqh* is Aceh. *Syafi'iyyah fiqh* is Aceh's main foundation of community charity, both in matters of worship, *muamalah*, *munakahat* and *jinayat*. This became very fundamental in the life of the Acehnese people; this is because the Islamic religion that was brought into Aceh for the first time in the field of *fiqh* was *Syafi'iyyah fiqh*. In the matter of *munakahat* or marital affairs, the concern is about the concept of *kafā'ah*, where the practice of people who all follow *Syafi'iyyah fiqh* but in fact, in applying the concept of *kafā'ah* it

<sup>1</sup> Shobirin Sholihin, *Hukum Pernikahan Islam*, STISNU Nusantara Tangerang, 2018, p.26.

<sup>2</sup> Muhammad Yunus Shamad, "Hukum Pernikahan Dalam Islam (Wedding Law In Islam)," *ISTIQRA'* V, no. September (2017): p.39.

<sup>3</sup> Haryadi Haryadi, "Kafaah: Implementasi Standar Pasangan Ideal Menurut Fikih Dalam Hukum Perkawinan Di Indonesia," *Ijtihad* 33, no. 1 (2019), <https://doi.org/10.15548/ijt.v33i1.21>.

<sup>4</sup> Dhea Chania and Syarifah Gustiawati Mukri, "Urgensi Kafaah Terhadap Keutuhan Rumah Tangga," *Mizan: Journal of Islamic Law* 5, no. 1 (2021): p.123, <https://doi.org/10.32507/mizan.v5i1.939>.

<sup>5</sup> Rafida Ramelan, "Sekufu Dalam Konteks Hukum Keluarga Modern," *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 4, no. 1 (2021), <https://doi.org/10.29313/tahkim.v4i1.7560>.

<sup>6</sup> Nurhanisah Hadigunawan et al., "Kafaah: Impak Perbezaan Sosial Terhadap Kesejahteraan Rumah Tangga," *Journal of Fatwa Management and Research* 26, no. 2 (2021): p.89, <https://doi.org/10.33102/jfatwa.vol26no2.424>.

is felt that it is not by the concept of kafaah which *Syafi'iyyah fiqh* scholars have explained.

This is because Aceh society only makes religious factors one of the basics of the concept of *kafā'ah* and ignores or does not consider other things as described by *Syafi'iyyah fiqh* scholars. From the description above, it is essential to have a description of how the concept of *kafā'ah* is evident in the view of the *Syafi'iyyah fiqh* scholars so that the public can understand the concept of *kafā'ah* comprehensively. Relationship with the community's understanding of the concept of *kafā'ah*.

Many types of research on *kafā'ah* have been carried out. However, there are several specific studies on *kafā'ah* concerning the views of the *Syafi'i* scholars, such as Ameliana research on *kafā'ah* in the *Syafi'i* school, in which this study explains that the determination of *kafā'ah* by Imam *Syafi'i* is oriented towards the creation of the common good. Namely avoiding the emergence of disabilities and divisions in the family<sup>7</sup>, this study only focuses on the opinion of the *Syafi'i* imam and does not examine the views of the *Syafi'iyyah* scholars as will be done in this article. Another study conducted by Hasan Bashori and Cipto Sembodo, in this study, revealed that Islamic law is not allowed to prevent marriage because of different *kafā'ah* issues; the most important thing is not to disturb harmony in the household; the opinion of Imam *Syafi'i* supports this.<sup>8</sup> other research conducted by Moch. Aufal tried to compare the opinions of Imam *Syafi'i* contained in the book of *al-Umm* and Ibn Hazm in *Kitab Al-Muhalla*, the study's findings were the *kafā'ah* between Imam *Syafi'i* and Ibn Hazm. There were similarities and differences. In matters of religion as a criterion for *kafā'ah*, they use it only in different applications.<sup>9</sup>

So far, no research discusses specifically the views of the Acehnese people about the concept of *kafā'ah* and the views of the *Syafi'iyyah* scholars in a comprehensive manner; this shows that this research is important to do. Moreover, this research is here to describe how there are visible gaps in community practice. Aceh, in understanding *kafā'ah* as the most important part of marriage, the Aceh community is in practices religious rituals based on the *Syafi'iyyah* school, but in the case of *kafā'ah*, it is not guided by the opinion of the *Syafi'iyyah* scholars so that later it will be clear that the novelty in this research emphasizes that the standardization of *kafā'ah* in the view of the *Syafi'iyyah* scholars must be implemented and becomes the basic guideline for the Acehnese people in determining the standardization of *kafā'ah*.

This research is qualitative research<sup>10</sup> with a library research study<sup>11</sup>, with the approach used being content analysis.<sup>12</sup> The nature of this research is

<sup>7</sup> Dina Ameliana and Sheila Fakhria, "Kafa'ah Sebagai Barometer Pernikahan Menurut Madzhab Syafii," *Legitima : Jurnal Hukum Keluarga Islam* 4, no. 2 (2022): 136–53, <https://doi.org/10.33367/legitima.v4i2.2565>.

<sup>8</sup> Hasan Bashori and Cipto Sembodo, "Relevansi Fatwa Mazhab Syafi'i Tentang Kufu Dalam Nikah Terhadap Kompilasi Hukum Islam (KHI)," *Ulumuddin : Jurnal Ilmu-Ilmu Keislaman* 8, no. 2 (2018): 99–114, <https://doi.org/10.47200/ulumuddin.v8i2.190>.

<sup>9</sup> Moch Aufal, Hadliq Khayyul, and Millati Waddin, "Konsep Kafa'ah Dalam Hukum Islam (Studi Komparasi Pemikiran Antara Imam Syafi'i Dalam Kitab Al -Umm Dan Imam Ibnu Hazm Dalam Kitab Al- Muhalla)" 3, no. 01 (2022): 61–84.

<sup>10</sup> Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, Cet, XI. Bandung: PT Remaja Rosdakarya, 2018.

normative juridical, which will analyze primary data from the works of Syafi'iyyah scholars. First, these data were collected using documentation techniques on references that discussed<sup>13</sup> the concept of *kafā'ah*. Then the data collected was analyzed using a descriptive analysis method intended as an effort by researchers to describe the concept of *kafā'ah* in the view of the Syafi'iyyah scholars.

Meanwhile, the primary sources include; *Raudhat al-Thālibīn*, *al-Majmū'* *Syar al-Muhadzdzab*, and *Minhāj al-Thālibīn* by *al-Imām al-Nawawī*, *Syarḥ al-Kabīr*, *Fath al-'Azīz*, and *al-Muharrar* by *al-Imām al-Rāfi'*, *I'ānat al-Thālibīn* by *Muhammad Syathā*, *Bughyat al-Mustarsyidīn* by *'Abdurrahman bin Muhammad Husain* and *al-Mahallī* by *Jalāl al-Dīn al-Mahallī* and so on.

### **The Definition of *Kafā'ah* in the Perspective of *Fuqahā'***

*Kafā'ah* in marriage means compatibility, equality and equivalence between a man who is a prospective husband and a woman who is a prospective wife at the level of position, dignity, status of social institutions, ethics, morals and financial ability. Thus, equivalence in these matters can create a more harmonious, prosperous and secure household life from disputes.<sup>14</sup> Etymologically, the word *kafā'ah* is guilty of the word *kafā'*, meaning *musāwah* and *mumāsalah* (equality and balance). In *al-Munawir*'s dictionary, the word *kafā'ah* is taken from the word *kafā'-kafā'ah*, which has the same meaning, equal and match.<sup>15</sup> While in the extensive Indonesian dictionary, *kafā'ah* means balanced, in the sense of a balance between the two men and women who will form the household as well as possible and in all respects.<sup>16</sup> According to Syatta, *kafā'ah* is *tasāwi* (similarity) and *ta'ādul* (balance).<sup>17</sup>

*Kafā'ah* is also often referred to as *kufu'* to describe the degree of equality and equivalence in marriage, namely between men and women must be equal; the emphasis of *kafā'ah* lies in the balance, and harmony in terms of religion, morals, lineage and property.<sup>18</sup> Zainudin al-Malibari mentions *kafā'ah* linguistically or etymologically means equality and equality. At the same time, *kafā'ah*, in terms of terminology, is a matter which, if it is not found or does not exist in marriage, will cause defects while the limitation is equality between husband and wife on the other hand. Perfection or lack.<sup>19</sup> Az-Zuhaili explained that etymologically *kafā'ah* is equality or equality. At the same time, in terms of *kafā'ah* it is equality between

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<sup>11</sup> Sugiyono, *Metode Penelitian Pendidikan Pendekatan Kuantitatif, Kualitatif Dan R&D* (Bandung: Alfabeta, 2012).

<sup>12</sup> Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktik* (Jakarta: Rineka Cipta, 2010).

<sup>13</sup> Soerjono Soekarto dan Sri Mamudji, "Penelitian Hukum Normatif Suatu Tinjauan Umum," in *Rajawali Pers, Jakarta*, 2007.

<sup>14</sup> Ahmad Muzakki and Himami Hafshawati, "Kedudukan Dan Standarisasi Kafaah Dalam Pernikahan Perspektif Ulama Madzhab Empat," *Asy-Syari'ah: Jurnal Hukum Islam* 7, no. 1 (2021), <https://doi.org/10.55210/assyariah.v7i1.429>.

<sup>15</sup> Ahmad Warson Munawar, "Kamus Arab Indonesia Al Munawir," in *Cetakan 14*, 1997.

<sup>16</sup> Kemendikbud, *Kamus Besar Bahasa Indonesia, Kementerian Pendidikan Dan Budaya*, 2011.

<sup>17</sup> Muhammad Syatha, *Hasyiyat I'anat Al-Thalibin* (Bairut: Daar al-Kitab al-Arabi, 2001).

<sup>18</sup> Ali Muhtarom, "Problematika Konsep Kafaâ€TMah Dalam Fiqih (Kritik Dan Reinterpretasi)," *Jurnal Hukum Islam*, 2018, <https://doi.org/10.28918/jhi.v16i2.1739>.

<sup>19</sup> Zainuddin bin Abdul Aziz al-Malibari, *Fathul-Mu'in Bi Syarhi Quratul-'Aini* (Bairut: Daar al-Ma'arif, 2001).

husband and wife to reject the existence of defects in some instances.<sup>20</sup> Muhammad Zuhri Etymologically, *kafā'ah* is equality and balance; in terminology, *kafā'ah* is a business that can lead to disability if it does not exist.<sup>21</sup>

According to Abdurrahman, *kafā'ah* is a case that is faced with shortcomings if it is not fulfilled between the balance and similarity between the prospective husband and the prospective wife in terms of perfection and shortcomings and avoids the burden of marriage.<sup>22</sup> The similarity between the prospective husband and wife in the aspect of physical disability cannot be called *kafā'ah* (equality), such as if the prospective husband and wife have the same disease, such as leprosy, so that with the disease, the husband and wife are given the authority to asking for Faskh, and this is not called *kafā'ah* because they both have disgrace, because in principle humans psychologically will not like or hate the disease experienced by others, even though they also experience the disease.<sup>23</sup>

From several definitions expressed by the *fuqahā'*, it can be emphasized that *kafā'ah* in marriage is to avoid a crisis in the household. With the existence of *kafā'ah* or harmony in marriage, it is hoped that prospective husbands and wives will be able to get harmony and harmony in carrying out their duties. Household wheel.

### **The Concept of *Kafā'ah* in Acehnese Society**

The people of Aceh are known for their practice of worship rituals as a whole, doing charity with the fiqh of the Syafi'iyyah school, especially in the field of munakahat. On the issue of *kafā'ah* in marriage, the Acehnese are very concerned about the problem of balance or compatibility between the prospective groom and the guardian of the woman who is the prospective father-in-law, and it is not a problem if the difference lies only in the amount of property owned by the prospective bride or prospective father-in-law. This is because, as long as the bride and groom have good religious knowledge and morals and are obedient in performing religious rituals.<sup>24</sup>

In Acehnese society, *kafā'ah* is a factor that needs to be paid attention to, especially in religious similarity for prospective husbands and wives, because with the similarity of religion, it will be sure that the marriage will be valid. The other fields of *kafā'ah* are complementary and return to sincerity and willingness for wife and guardian. In the views of the Acehnese people, religion is the most crucial factor that must be considered, precisely the *aqidah* of the prospective husband; this can be seen in the concept of *kafā'ah* that occurs in society if the prospective husband is an expert heresy and is considered not as compatible with the prospective wife who is *ahlussunnah*.<sup>25</sup> But as in the field of work, the prospective

<sup>20</sup> Wahbah. Az-Zuhaili, *Fiqh Islam Wa Adillatuhu* (Mesir: Maktabah al-Ma'arif, 1992).

<sup>21</sup> Muhammad al-Zuhri, *Sirāj Al-Wahhāj 'alā Matn Al-Minhāj* (Bairut: Daar al-Ma'arif, 1992).

<sup>22</sup> Abdurrahman bin Muhammad Husain, *Bughyat Al-Mustarsyidin* (Mesir: Daar Nu'man li Ulum, 1998), p.48.

<sup>23</sup> Syihāb al-Dīn Al-Qulyūbī, *Hāsyiyat Al-Qulyūbī Wa 'Amīrah* (Bairut: Daar al-Ma'arif, 2012), p.90.

<sup>24</sup> Yuliza, "Adat Perkawinan Dalam Masyarakat Aceh," *Al-Mabhat*, *Jurnal Penelitian Sosial Agama* 5, no. 1 (2020): p.32.

<sup>25</sup> Y Roslaili, "Kajian 'Urf Tentang Adat Ranub Kong Haba Dan Akibat Pembatalannya Di Aceh (Study of 'Urf on The Custom of Ranub Kong Haba and Its Cancellation in Aceh)," *Samarah: Jurnal Hukum Keluarga Dan Hukum* ..., 2019.

husband is not a factor of consideration for a female guardian because not working is not considered something lacking in Acehnese people's lives. Likewise, social status and good financial condition are not a measure in assessing the *sekufu* or not of a potential husband.

*Kafā'ah* is a matter that must be considered in the matter of marriage; it is very inherent in the existence and culture of the Acehnese people, even though kafaah is not a pillar in marriage. The nature of *kafā'ah* in the culture of the Acehnese people is more conditional, so if a place respects customs and culture in *kafā'ah*, then considering *kafā'ah* for a prospective husband is very important and must be implemented; in Aceh itself has a standardization of regional *kafā'ah*, then the kafaah factor can be different from one region to another in determining the balance and equivalence of the prospective husband.

In the Pidie area,<sup>26</sup> for example, it is considered *kafā'ah* if the prospective husband has good morals and a good understanding of religion, even though the man as the prospective husband does not have a permanent job, while the woman has a job.<sup>27</sup> In the North Aceh region<sup>28</sup>, it is considered *kafā'ah* if the prospective husband is an office boy with a woman who works in a Bank; in the South Aceh region<sup>29</sup>, it can be considered *sekufu* if women have and are rich with men who have good ethics and religion, then the issue of *kafā'ah* in society Aceh is not included in the realm of work.<sup>30</sup>

In terms of heredity, it is also not a significant problem, as in the Langsa region<sup>31</sup>, a prospective husband who is not a descendant of the *Habib* (descendants of the Prophet) can marry a woman who is of the *Habib* descent because in the view of the Acehnese people this heredity is a matter of destiny not included in the consideration.<sup>32</sup> Benefit. Because the issue of *kafā'ah* is the right for women and guardians to accept and reject proposals from men, it is customary for women and guardians to only look at the religion and aqidah of the prospective husband who will ask for her han.

### **The concept of *Kafā'ah* in the View of the Syafi'iyyah Scholars**

The purpose of marriage is to maintain offspring, secrete semen that can endanger the soul if preserved in the body and enjoy the delicacy and delights of

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<sup>26</sup> Muhammad Iqbal, "Interview a Religious Leader and Member of the MPU (Ulema Consultative Assembly)" (Pidie Jaya, 2022).

<sup>27</sup> Abi Hasan, "Konsep Kafa'ah Dalam Perkawinan Dan Urgensinya Dalam Membina Rumah Tangga Menurut Fikih Mazhab," *Jurnal MEDIASAS: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsiyah* 3, no. 01 (2020): p.18.

<sup>28</sup> Abdullah, "Interview a Religious Leader and Member of the MPU (Ulema Consultative Assembly)" (Aceh Utara, 2022).

<sup>29</sup> Ja'far, "Interview with a Religious Leader and Member of the MPU (Ulema Consultative Assembly)" (Aceh Selatan, 2022).

<sup>30</sup> Zainuddin Zainuddin and Zaki Ulya, "Recording Siri's Marriages In Obtaining Legal Certainty (Reflections on the Rise of Siri Marriages in Aceh)," *Syariah: Jurnal Hukum Dan Pemikiran* 21, no. 1 (2021): p.67, <https://doi.org/10.18592/sjhp.v1i1.3276>.

<sup>31</sup> Salahuddin, "Interview with a Religious Shop and Chair of the MPU (Ulema Consultative Assembly)" (Kota Langsa, 2022).

<sup>32</sup> Hasyim Assegaf, *Derita Putri-Putri Nabi Studi Historis Kafa'ah Syarifah* (Bandung: Remaja Rosdakarya, 2000), p.128.

the world.<sup>33</sup> In addition, meeting the inner needs feared by not getting married will affect the occurrence of unlawful acts in the form of masturbation and so on. This is also to realize a *sakinah*, *mawaddah* and *rahmah* household by religious demands. But this is not easy to be realized in the form of reality.

Therefore, *syara'* formulates Islamic law that can lead people to the path of peace and prosperity by determining the line of equality between the two prospective brides and grooms by establishing the right of *kafā'ah*. *Kafā'ah* is a condition for the validity of the marriage contract with a note if the prospective bride and her guardian disagree with men who are not commensurate. *Kafā'ah* is also a legal requirement for the marriage contract for the guardian who has the right of coercion (*wali mujbir*), namely the father and grandfather of the prospective bride.<sup>34</sup> Thus, if the father or grandfather wants to marry a child under his authority by force, it is required that they marry a suitable husband. However, if the child gives up on something that is not commensurate, then the contract is valid, and the right of *kafā'ah* falls on the woman.<sup>35</sup>

By the above discussion, if a father or grandfather marries his daughter who is still a virgin either before puberty or after marriage with a man who is not commensurate and has no sincerity, then the marriage contract is invalid, according to a strong opinion. It is valid according to the second opinion and invalid according to the third opinion if the guardian finds it is not commensurate. Based on the opinion that says it is legal, children who have reached the age (*bāligh*) and after reaching the age of those who are still small are given the right to sue *faskh*.<sup>36</sup>

al-Rāfi'ī, in the book *al-Muḥarrar* mentions that the marriage contract is cancelled based on a strong opinion (*ashah*).<sup>37</sup> The words of the prospective wife must prove willingness to what is not commensurate; if a widow (*tsaib*), if a girl (*bikr*), then according to one opinion, it is enough to remain silent whether the person performing the marriage contract is *wali mujbir* or not, according to another opinion it is not. It is enough if the person who makes the contract is not a *mujbir* guardian but must be in clear words.<sup>38</sup>

The description above is illustrated in Muhammad Syathā expression that *kafā'ah* is a condition of marriage when there is no sincerity from the woman who wants to undergo the marriage. However, *kafā'ah* is not a condition of marriage if there is consent from the woman who is the prospective wife.<sup>39</sup>

Al-Jaziri, mentions that *kafā'ah* is a condition for a valid marriage contract if the woman does not agree to the marriage to be carried out because that *kafā'ah* is a fundamental right of the woman and the woman's guardian so that the woman and the woman's guardian do not agree. If a man's status is not equal to the woman's to be married, the marriage will be invalid. *Kafā'ah*, in Al-Jabiri's view, is a condition for the validity of the *mujbir* guardian's marriage contract. Parents who

<sup>33</sup> al-Malibari, *Fathul-Mu'in Bi Syarhi Quratul-'Aini*.

<sup>34</sup> al-Zuhri, *Sirāj Al-Wahhāj 'alā Matn Al-Minhāj*.

<sup>35</sup> Abdurrahman Al-Jaziri, *Fiqh Al-Madzahib Al-'Arba'ah* (Bairut: Daar al-Fikr, 1998), p.52.

<sup>36</sup> Muhyī al-Dīn Al-Nawawī, *Raudhat Al-Thālibīn Wa 'Umdat Al-Muftīn*, Jld. V (Bairut: Dar al-Kutub al-Miyah, 2006), p.428.

<sup>37</sup> 'Abd al-Karīm bin Muhammad Al-Rāfi'ī, *Al-Muḥarrar* (Bairut: Daar al-Fikr, 2005), p.294.

<sup>38</sup> Al-Rāfi'ī, p.297.

<sup>39</sup> Syatha, *Hasyiyat I'anat Al-Thalibin*, 330.

are *mujbir* guardians who want to marry off their daughters without the permission of their daughters must marry those who are *sekufu'* as the woman. Vice versa, if the woman is willing to be married to someone who is not commensurate, then the marriage contract is valid, and the rights are invalid. In terms of the willingness of a woman who wants to be married to someone who is not *sekufu'* as the woman, it must be proven by a verbal statement, this applies to widowed women, but if the woman is a girl (*bikr*), it is enough to keep silent, it will be counted as her consent. But there is another opinion that there must be a clear explanation from the girl (*bikr*).<sup>40</sup>

Muhammad al-Zuhr, in the book *Sirâj al-Wahhâj 'alâ Matn al-Minhâj*, asserts that *kafâ'ah* is not a condition for a valid marriage, but *kafâ'ah* is a fundamental right for women and guardians and guardians may also ignore *kafaah*<sup>41</sup>, and in certain conditions, *kafâ'ah* is a condition. However, in other conditions, Muhammad al-Zuhr acknowledged the *kafâ'ah* as a valid condition for the marriage contract, such as the condition that the wife was willing to marry a potential husband. He was not commensurate with her and was willing to be part of an equal guardian. In this case, the willingness of another equal guardian is required. The contract is invalid if there is no other guardian's willingness.<sup>42</sup> By paying attention to the opinion of Muhammad al-Zuhr above, it can be said that Muhammad al-Zuhr implicitly agreed to *kafâ'ah* as a valid condition for marriage, even under certain conditions.

Al-Nawawî, in his work *Raudhat al-Thâlibîn wa 'Umdat al-Muftîn*, argues that *kafâ'ah* is a joint right between the prospective wife and her guardian, whether the guardian is only one person or more, all of whom are on the same (*equal*) level. Suppose a guardian or an equal guardian marries a prospective wife with a husband who is not commensurate with the sincerity of the prospective wife and other guardians. In that case, the marriage contract is valid. However, if the other guardian does not give up, it is not valid even if the prospective wife gives it up.<sup>43</sup>

Furthermore, al-Nawawî emphasized that *kafâ'ah* is not a condition for a valid marriage contract. However, in other conditions, he acknowledges the *kafâ'ah* as a valid condition for the marriage contract, such as in the condition that the wife is willing to have a husband who is not commensurate with her and is willing to be part of an equal guardian. In this case, the willingness of another equal guardian is required. The contract is invalid if there is no other guardian's willingness. This is based on a strong opinion (*al-Madzhab*).<sup>44</sup>

By paying attention to the opinion of al-Imâm al-Nawawî above, it can be said that he implicitly agreed to *kafâ'ah* as a condition for a valid marriage, even under certain conditions. Al-Ramlî, in the book *Nihâyat al-Muhtâj*, mentions that *kafâ'ah* is not an absolute requirement for a valid marriage contract. However, if the prospective wife does not give up her marriage to a prospective husband who is not commensurate with her, especially in the case of a prospective husband who

<sup>40</sup> Al-Jaziri, *Fiqh Al-Madzahib Al-'Arba'ah*, 52.

<sup>41</sup> al-Zuhri, *Sirâj Al-Wahhâj 'alâ Matn Al-Minhâj*.

<sup>42</sup> al-Zuhri, p.369.

<sup>43</sup> Al-Nawawî, *Raudhat Al-Thâlibîn Wa 'Umdat Al-Muftîn*, p.429.

<sup>44</sup> Al-Nawawî, p.428.

does not have genitals (majbūb) or is experiencing impotence. *Kafā'ah* is also a condition for a valid marriage contract if the prospective wife and guardian are not willing to have a husband who is not commensurate with the prospective wife, in addition to the case that the prospective husband does not have genitals and is impotent.<sup>45</sup> al-Haitamī (d. 973)<sup>46</sup> and al-Syarwānī (d. 1231 H)<sup>47</sup> mention the same thing and support it.<sup>48</sup>

*Kafā'ah* is a joint right between the prospective wife and her guardian, whether the guardian is only one person or many, all of whom are at the same (equal) level. However, if the aspects of the disgrace of marriage, such as the prospective husband do not have genitals or suffering from impotence, leprosy, leprosy and stress/crazy, then, in this case, the one who has the right to decide whether or not to agree is only the prospective wife. Meanwhile, the guardian does not have the right to intervene because it is the personal right of the prospective wife. Thus, if the prospective wife is willing to live in a household with a man with the disease, the marriage contract is valid; in this case, the guardian's willingness is not reviewed.<sup>49</sup>

Five things are considered disgraceful in marriage. Three of them are in men and women, namely madness, leprosy and leprosy. While the other two, especially in men, have no genitals and are impotent.<sup>50</sup> In connection with the above, if a woman with a sense of initiative is willing to marry a man, she deems commensurate, but in the future, it turns out that her husband is enslaved. But, at the same time, he is independent, then he is given the right to vote (*khiyār*) to perpetuate or *faskh*, and the guardian is also given the proper intervention.

Attention and application of *syara'* to *kafā'ah* is only specifically for prospective wives. While the prospective husband has no *kafā'ah* rights, with this, the prospective husband may choose any woman he loves, whether it is an enslaved person, a servant, etc., who is below his level because human principles are not inferior and do not feel humiliated if he marries a woman who is not worthy.<sup>51</sup> Suppose a guardian or an equal guardian marries a woman under his authority with a potential husband. The latter is not commensurate with the consent of the woman and the other guardians. In that case, the marriage contract is valid. However, if the other guardian does not give up, it is not valid even if the prospective wife gives it up.<sup>52</sup>

Al-Rāfi'i declared the contract void. This is based on a solid opinion. The weak opinion says it is valid and not invalid.<sup>53</sup> Thus, they may ignore this right

<sup>45</sup> Muhammad bin Abī 'Abbās Al-Ramlī, *Nihāyat Al-Muhtāj Ilā Syarh Al-Minhāj*, Jld. I (Bairut: Darul Kutub Ilmiyah, 2003), p.254.

<sup>46</sup> Ibnu Hajar Al-Haitami, *Tuhfatul Muhtaj Bi Syarh Al-Minhaj*, Juz VI (Kairo: Maktabah At-Tijariyah Al-Kubra, 1994), p.173.

<sup>47</sup> Abd al-Hamīd Al-Syarwānī, *Hawāsyī Al-Syarwānī Wa Ibn Qāsim Al-'Ubādī 'alā Tuhfat Al-Muhtāj* (Bairut: Darul Kutub Ilmiyah, 2012).

<sup>48</sup> Al-Haitami, *Tuhfatul Muhtaj Bi Syarh Al-Minhaj*, p.173.

<sup>49</sup> Al-Jaziri, *Fiqh Al-Madzahib Al-'Arba'ah*, p.60.

<sup>50</sup> Ibrāhīm bin 'Alī, *Takmilat Al-Majmū' Syarh Al-Muhadzdab*, Jld. 19 (Bairut: Daar al-Ma'arif, 2007), p.178.

<sup>51</sup> Al-Jaziri, *Fiqh Al-Madzahib Al-'Arba'ah*, p.53.

<sup>52</sup> Al-Jaziri, p.60.

<sup>53</sup> Al-Rāfi'i, *Al-Muħarrar*, p.297.

because the *kafā'ah* is not an absolute requirement for the validity of the marriage contract. *Kafā'ah* is a right for guardians who are close to the family relationship with the prospective wife, not for guardians who are far from family relations. Therefore, if a guardian who is close to family relations (*aqrab*) marries his prospective wife with someone of low background (not commensurate) and there is a willingness on the part of the prospective wife, then the guardian who is far away by blood relations (*ab'ad*) should not complain and control it.<sup>54</sup>

However, if the marriage contract of the prospective wife is under the authority of the *Qādhi*/judge, then he must perform the marriage contract with a suitable husband. If *Qādhi* does otherwise, the contract is invalid even if the prospective wife gives it up. This is based on a solid opinion (*ashah*) of the two elements of the opinion of al-Imām al-Syafi'ī because *Qādhi* is like a substitute for a guardian; he must protect the rights of a guardian.<sup>55</sup>

*Kafā'ah*, a measure of the equality between the two prospective husbands and wives, applies at the time of the marriage contract. Does not affect the cancellation of the contract if things become the standardization of *kafā'ah* after the contract comes other than the nature of slavery (*riqq*). With this, if both the prospective husband and wife at the time of the marriage contract are independent (not owned by someone else), then after the contract, one of them becomes enslaved, and the marriage is invalidated.<sup>56</sup>

Syafi'iyyah scholars in affirming the position of *kafā'ah* have their basis, namely the hadith narrated by Ibn Majah:

تخيروا لنطفكم وانكحوا الأكفاء وانكحوا اليهم.

Meaning: "You should choose a better woman as a place to store my sperm and marry women who have similarities with you, and marry them".<sup>57</sup>

Logically, a marriage that does not have similarities between the two prospective husbands and wives will disgrace the wife and guardian.<sup>58</sup> By looking at the various opinions of the Syafi'iyyah scholars above, it can be concluded that according to the Syafi'iyyah scholars, *kafā'ah* is a condition for the validity of marriage, but not absolutely, but under certain conditions as described above. This can be understood from the description above, although some of them say it with an implicit editorial.

### Standardization of *kafā'ah* According to the Syafi'iyyah Scholars

Regarding the standardization of *kafā'ah* in marriage according to the Syafi'iyyah school, there are also contradictions among the Syafi'iyyah scholars. So, in this case, it is not specifically mentioned about the difference of opinion because this article only prioritizes those mutually agreed upon by the scholars of the Shafi'iyyah school.

<sup>54</sup> Al-Rāfi'ī, p.298.

<sup>55</sup> Al-Nawawī, *Raudhat Al-Thālibin Wa 'Umdat Al-Muftīn*, p.479.

<sup>56</sup> Syatha, *Hasyiyat I'anat Al-Thalibin*, p.336.

<sup>57</sup> Muhammad bin 'Abd Al-Hādī, *Hāsyiyat Al-Sanadī* (Makkah: Dar as Syuruq, 2003), p.218.

<sup>58</sup> Yahyā bin Abī Khair, *Al-Bayān Fī Al-Madzhab Al-Imām Al-Syafi'ī* (Jeddah: Dar al-Ma'rifah, 2002), p.276.

Overall standardization of *kafā'ah* according to the Syafi'iyah school, whether agreed upon or not, there are nine kinds: Religion (al-Din), Descendants (nasb), Freedom (hurriyyah), Work (shinā'ah), Freedom from the disgrace of marriage that This causes the permissibility of Faskh (salāmah min al-'Uyūb al-Mutsbit Li al-Khiyār), Wealth (māl), Age (al-Sann), Place of domicile (buldān), Outward characteristics (al-Sifāt al-Hissiyyah), such as length, short and so on.<sup>59</sup> However, what is mutually agreed upon by the scholars of this school is only the first to fifth points, namely religion, lineage, independence, work and freedom from disgrace.<sup>60</sup>

Syihāb al-Dīn al-Qulyūbī, in the book *Hāsyiyat al-Qulyūbī wa 'Amīrah*, says there are five standardizations or aspects that are assessed in the concept of *kafā'ah* in the view of Syafi'iyah scholars, including;<sup>61</sup> First, religion (al-Din) is the most dominant and most influential case at the *kafā'ah* level that gets the attention of syara' because all scholars, both the Syafi'iyah school and other schools agree (ijmā') claiming that religion is a matter that is highly considered in terms of equality between the two parties to the bride and groom.<sup>62</sup> The application of the religious aspect is absolute. Because in terms of religion completely belongs to Allah. A marriage that does not pay attention to religious issues is invalid. This is if what is meant by religion is Islam.<sup>63</sup> However, religion means being free from various types of sins that cause disobedience (adultery, drunkenness, etc.), not Islam, because Muslims understand that non-Muslims are not allowed to marry Muslim women other than the *Kitabiyyah*.

Thus, an adulterer man is not worthy of marrying a woman who is free from the sin of adultery ('afifah) even though she has repented because repentance from adultery cannot erase her general ugliness. However, if the crime committed is other than adultery, such as drinking wine and lying, then according to one opinion, it is considered appropriate; according to another opinion, it is considered inappropriate.<sup>64</sup> Male adulterers are considered commensurate with adulterous women. However, if the sin of one exceeds the other or the crime committed is different, it is considered disproportionate.

If a wicked man is considered disproportionate to a woman who has no sin, then for men, *ahl bid'ah (mubtadi')* is, above all, disproportionate.<sup>65</sup> This is as contained in the Qur'an al-Hasyr: 20, al-Nr: 3 al-Hujarāt: 13 and surah al-Sajadah: 18; as a whole, these verses emphasize the position and consideration of *kafā'ah* in terms of religion. Furthermore, in the hadith narrated by Abū Hatim al-Muzanī, the Messenger of Allah stated; If someone comes to you for whom you are religious and moral, then marry him; if you do not, there will be a slander on this earth and a great disaster.<sup>66</sup> This hadith clearly shows the urgency of equality between the two

<sup>59</sup> 'Alī, *Takmilat Al-Majmū' Syarḥ Al-Muhadzdzb*, p.191.

<sup>60</sup> Al-Qulyūbī, *Hāsyiyat Al-Qulyūbī Wa 'Amīrah*, p.236.

<sup>61</sup> Al-Qulyūbī, p.237.

<sup>62</sup> Muhyī al-Dīn Al-Nawawī, *Al-Majmū' Syarḥ Al-Muhadzdzb* (Libanon: Daar al-Ma'arif, 2001), p.283.

<sup>63</sup> Al-Jaziri, *Fiqh Al-Madzahib Al-'Arba'ah*, p.56.

<sup>64</sup> Al-Jaziri, p.57.

<sup>65</sup> Al-Nawawī, *Al-Majmū' Syarḥ Al-Muhadzdzb*, p.287.

<sup>66</sup> Abu Abdullah Muhammad Ibn Ismail Al-Bukhari, "Sahih Al-Bukhari," in *Al Jami' Al Musnad as Shahih* (Dar at-ta'shil, 2002), 150-51.

prospective husbands and wives regarding religion.

The discussion of *kafā'ah* in this aspect of religion is seen in the father's path, but there is a disagreement of opinion among the scholars of the Syafi'iyah school about what level is the benchmark. Some scholars look at quality by arguing that the first and second levels are not reviewed except for the first level (father) and the second level (grandfather). Others said it was not like that but in terms of quantity, namely by calculating the number of parents who embraced Islam.<sup>67</sup>

Therefore, if in one family, only a boy embraces Islam while both parents still adhere to their original religion (other than Islam), then the child is not commensurate with a woman, and both parents adhere to Islam. However, some opinions say it is worth it.<sup>68</sup> *Second*, descent (*nasb*), as long as the marriage bond is expected to create unity in navigating all aspects of life to give birth to a good household image and eternal peace, unconditional love, and complete affection, then in this case, it is very appropriate to adjust the equation between the two prospective husbands and wives who will become mothers and fathers in the household.

Thus, it is necessary to pay attention to the similarities in terms of descent because if in terms of unclear descent or descendants of criminals, adulterers, and so on will affect the next generation who will also participate in a crime. Looking at the line of descent, in this case, men who are not Arabs (*Ajam* people) are declared to be not commensurate with women of Arab descent. This description is conveyed by the friend Salmān al-Farisī in an expression, O Arabs! We prefer you because of the advantages of the Messenger of Allah, we did not marry your women, and we did not precede ourselves from you in prayer.<sup>69</sup>

The statement of a friend of Salmān al-Farisī indicates that Arabs are higher in rank than others than *Ajam*, which affects marriage equality. Men of Arab descent who are not from the Quraysh tribe are also not worthy of accompanying women from the Quraysh tribe, as said the Prophet SAW in the *hadith marfū'*, narrated by al-Baihaqī; Prioritize the Quraysh and do not prioritize yourself from them.<sup>70</sup> The following hadith support this statement: we are Quraysh, Quraysh are the best of Arabs, and our masters are the best of masters.<sup>71</sup>

The consequences of the Messenger of Allah in the above hadith show that there are advantages and honors for the Quraysh tribe, so it has the potential to be one of the things that are taken into account in the aspect of equivalence between the two prospective husbands and wives. As for the Quraysh, are they considered equal? There are two views of the scholars of the Shafi school of thought; *first*, the Quraysh were equal. Whereas according to the second opinion, no, this second opinion argues that some of them have advantages that others do not have.<sup>72</sup>

Based on this opinion, people who are not the descendants of Hashim and Muttalib are not commensurate with those from their descendants. This is based on the words of the Prophet Muhammad in a *hadith mafū'*, narrated by al-Imām

<sup>67</sup> Al-Nawawī, *Raudhat Al-Thālibīn Wa 'Umdat Al-Muftīn*.

<sup>68</sup> Al-Nawawī, *Al-Majmū' Syarah Al-Muhadzdab*.

<sup>69</sup> 'Alī, *Takmilat Al-Majmū' Syarh Al-Muhadzdab*.

<sup>70</sup> Abu Husain Muslim bin Al Hajjaj Al-Muslim, *Shahih Muslim* (Bairut: Daar al-Fikr, 1918).

<sup>71</sup> Al-Bukhari, "Sahih Al-Bukhari."

<sup>72</sup> Al-Syarwānī, *Hawāṣyī Al-Syarwānī Wa Ibn Qāsim Al-'Ubādī 'alā Tuhfat Al-Muhtāj*.

Muslim, which reads: verily Allah chose Kinanah from the descendants of Ishmael, and chose Quraysh from the descendants of Kinanah and chose the descendants of Hashim from Quraysh and chose Me from the descendants of Hashim.<sup>73</sup> Meanwhile, the descendants of Hashim and Muttalib are on the same line of equality because the Messenger of Allah equates their share to one-fifth of Ghanīmah's and *Fai'* property.<sup>74</sup>

In line with the discussion above, the *nasb*, an important moment that should be a concern for Arabs in getting married, is also a *syara'* concern in determining the size of fellow Ajam people. This is based on a strong opinion (*ashah*).<sup>75</sup> It is possible that an opinion conflicts with another opinion, which cannot function in the same direction. Likewise, this issue received comments that *syara'* did not pay attention to equality with fellow Ajam people. This argument was presented by al-Qaffāl and Shaykh Abū 'Āshim because the Ajam people did not regard equality as an interest in marriage.<sup>76</sup> Based on the description of the statement from the *Syafi'iyyah* scholars above regarding the hereditary aspect, it can be understood that *syara'* also takes into account the heredity aspect.

Third, independence (*hurriyyah*) is also a barometer in assessing the equality between men and women regarding marriage. Thus, an enslaved man is assumed to be disproportionate to a free woman of descent (*ashliyyah*) and a free woman who was previously a slave (*'atīqah*). In this case, free men who were previously enslaved are not commensurate with free women of descent (*ashliyyah*). A man in one of the lineages above is an enslaved person not commensurate with a woman who has no one from the lineage above as an enslaved person. For example, a man on the path of his father, who is enslaved, and then close to blood relations is not commensurate with a woman who is on the path of his father, who is also enslaved but is far from family.

The measure of this problem is only the path of the father. Meanwhile, the maternal path did not have any effect as understood from the indications of the words of the companions of al-Imām al-Syāfi'i.<sup>77</sup> This is because religion despises the position of women who are in the line of marriage ties with enslaved men. Basically, as proof that believers and each other have the same degree in the case of murder (*jināyah*). If one kills or persecutes another, others have the right to take revenge (*qishāsh*), except for Muslims against infidels and free people with enslaved people.

Thus, if a Muslim kills an infidel or a free person kills an enslaved person, it is certainly not permissible for the heir or heir to take revenge. However, if the opposite happens, i.e., infidels kill Muslims, and enslaved people kill free people, the right of *qishāsh* still applies because the degrees of infidels and enslaved people are below the degrees of Muslims and free people.<sup>78</sup> Thus, it can be understood that my slaves are not commensurate with free people. Based on the description of the statements above regarding the aspect of independence, it can

<sup>73</sup> Al-Muslim, *Shahih Muslim*.

<sup>74</sup> al-Malibari, *Fathul-Mu'in Bi Syarhi Quratul-'Aini*.

<sup>75</sup> Al-Nawawī, *Raudhat Al-Thālibin Wa 'Umdat Al-Muftīn*.

<sup>76</sup> Al-Haitami, *Tuhfatul Muhtaj Bi Syarh Al-Minhaj*.

<sup>77</sup> Al-Nawawī, *Al-Majmū' Syarah Al-Muhadzdzab*.

<sup>78</sup> Al-Rāfi'i, *Al-Muḥarrar*.

be understood that syara' also takes into account the aspect of independence.

*Fourth*, handwork (*shinā'ah*), religion views craftsmanship as an advantage that has dominant values and is a person's creativity. Therefore, a male child of a cloth merchant is not commensurate with a female tailor/weaver. The copper's son is different from the cloth maker's son.<sup>79</sup> This is based on the hadith narrated by Hakim: Arabs are equal to each other, tribe to tribe, men to men, except weavers and cuppers.<sup>80</sup> The Prophet's statement indicates that there are different values and levels among these jobs. Thus, it is not permissible to equate the work level between merchants, weavers, and cuppers.

In this case, it is also reviewed to the customs of each region because it is not necessarily a noble custom in one area that is also noble in another. So, in this aspect, the custom has the potential to determine the degree of equality. The influence of adat in determining equality is only in matters for which there is no syara' provision and as long as it does not conflict with syara'. According to fiqh qaedah

العادة محكمة ما لم تخالف الشرع.<sup>81</sup>

It means: "*A custom can be potential as a law as long as it does not conflict with the provisions of syara'.*"

The difference in the degree and value of work for which there is no syara' provision will be measured by the community's customs. Based on the above basis, it can be understood that syara' also considers aspects of work. *Fifth*, free from all types of physical disabilities, physical disabilities are diseases that are considered disgraceful in marriage, so they have the potential to give rise to the right of the prospective wife to sue for *faskh*, such as leprosy, leprosy, insane, having no genitals and being impotent. A man is commensurate with a woman in this aspect if there is no such disease, even though the woman also experiences the same thing.<sup>82</sup> So, a man who suffers from the above disease is not worthy of accompanying a woman who does not have the disease. Al-Rauyānī added that blindness and ugly looks as a disgrace to marriage.<sup>83</sup>

The agreement of the *fuqahā`* of the Syafi'iyyah school in categorizing the disgrace of marriage in the standardization of *kafā'ah* does not contradict what the author has mentioned in the previous chapter of the second chapter, precisely on the notion of *kafā'ah*. There it is stated that being free from disgrace is not included in the standardization of *kafā'ah* as stated by al-Jazīrī; not including it in the standardization of *kafā'ah* does not mean not recognizing freedom from it as a measure of *kafā'ah*.<sup>84</sup> However, because of looking at the meaning of *kafā'ah*, namely the similarities between the two prospective husbands and wives, like perfection and shortcomings. In essence, if the two candidates both have characteristics that meet the standardization of *kafā'ah*, both are said to be commensurate.

<sup>79</sup> Al-Jazīrī, *Fiqh Al-Madzahib Al-'Arba'ah*.

<sup>80</sup> Al-Bukhārī, "Sahīh Al-Bukhārī."

<sup>81</sup> Al-Suyūthī, *Al-Asybah Wa Al-Nadhair* (Bairut: Daar al-Ma'arif, 2007), p.65.

<sup>82</sup> Al-Nawawī, *Raudhat Al-Thālibīn Wa 'Umdat Al-Muftīn*.

<sup>83</sup> Al-Hāitamī, *Tuhfatul Muhtaj Bi Syarh Al-Minhaj*.

<sup>84</sup> Al-Jazīrī, *Fiqh Al-Madzahib Al-'Arba'ah*.

Meanwhile, if both of them experience disgrace, the jurists of this school do not agree to say it is commensurate; even strong opinions view it as disproportionate. This is supported by most of the editors of the Shafi'iyyah fiqh book, including the statement from al-Qulyubi, that someone who experiences disgrace such as crazy, leprosy, or leprosy is not commensurate with a woman who is free from it because one's soul feels disgusted to accompany people who experience it. The disgrace, even though the individual experiences it. If the disgrace of the two is different or the same or one of the two exceeds the other even though it is more from the woman's side, then it is not commensurate according to a strong opinion (*ashah*).<sup>85</sup>

However, both of them can sue Faskh. Therefore, Abdurrahman al-Jazīrī did not include this disgrace in the standardization of *kafā'ah* when viewed in terms of similarities in both experiencing the disease. However, if viewed from the same liberation, he also recognizes it as a standardization of *kafā'ah*. Therefore, the *kafā'ah*, which is seen in this aspect, is not owned by the prospective husband from various disgrace, which can give rise to the right for the prospective wife to sue Faskh so that even if the prospective wife also experiences the same thing, it is still considered disproportionate.

'Alī bin Muhammad al-Māwaridī, in his book *al-Hāwī al-Kabīr* asserts that the reason for including freedom from the disgrace of marriage in the standardization of *kafā'ah* is because when the disgrace can cause the marriage phase, where the Faskh is unable to be caused by the deficiency of the heredity aspect, then the disgrace is associated with nasb and it is even more important to get the attention of *syara'* to categorize it in the standardization of *kafā'ah* (*qiyās al-Aulawī*).<sup>86</sup>

In this case, the Syafi'iyyah scholars use *qiyās al-Aulawī* as the basis. Based on the *qiyās* argument above regarding the aspect of being free from various disgrace, it can be understood that *syara'* also takes this aspect into account as standardization of *kafā'ah*. By looking at the various authentic foundations that have been put forward by the Syafi'iyyah scholars, it can be concluded that the Syafi'iyyah scholars agree in categorizing the five standardizations as things that are taken into account by the *syara'* regarding *kafā'ah* in marriage matters.

## Conclusion

The Acehnese people, in determining the issue of *kafā'ah*, which is an important factor in the issue of religion, good morals, good religious knowledge, and aqidah, is by the understanding of the ulama for prospective husbands. In contrast, other factors, such as descent and physical deficiency, are not considered. Which means. The issue of *kafā'ah* in Acehnese society is also conditional by region, and religious factors are the main problem in all regions.

The view of the Syafi'iyyah scholars is that *kafā'ah* is a condition in a marriage or marriage contract. However, it is conditional in nature; there are certain conditions in that *kafā'ah* is not a requirement, such as when a female guardian marries a sekufu or is equal to a man, and it becomes his authority. As for

<sup>85</sup> Al-Qulyūbī, *Hāsyiyat Al-Qulyūbī Wa 'Amīrah*.

<sup>86</sup> Al-Qulyūbī.

the Syafi'iyyah scholars, there are five scopes of standardization of kafaah: religion, lineage, independence, work, and freedom from various disgraces that give rise to the right of the prospective bride and groom to sue *faskh*.

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