



## The Understanding of Malaysian Society on Kafa'ah Concept in Marriage

Islamic  
Family Law

### Pemahaman Masyarakat Malaysia Tentang Konsep Kafa'ah dalam Perkahwinan

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#### ABSTRACT

Etimologically, *kafa'ah* means suitability or equality. Marriage in Islam is considered as 'ibadah. Therefore, performing a marriage means completing part of the religious duties. Perceived from the definition of marriage, which is to create a family full of love and mercy, the very important thing is to determine and choose a suitable partner, through a *kafa'ah* assessment process, and it must be given due attention by the wali before marrying off their daughters. This article only explores the understanding of the Malaysian society on the concept of *kafa'ah* in marriage in line with Shariah perspective. To answer that question, this article focuses on the meaning of *kafa'ah*, its position in the marriage contract and the characteristics of *kafa'ah*. The writer views that it is reasonable to reevaluate the characteristics of *kafa'ah* as understood by jurists in the past to suit the present times. The methodology employs quantitative which involved collecting data from the community about their perceptions on the importance of the *kafā'ah* in marriage and the elements of *kafa'ah*. The findings of this article are most of the concept of *kafa'ah* had been discussed in the literatures by the classical jurists, and the understanding of the society on *kafa'ah* is in line with the Shari'ah. Among Malaysians, the consideration of *kafa'ah* in marriage is desirable in religion to coincide with the standards of the four schools.

**Keywords:** *Kafa'ah*, Equivalent, Marriage, Malaysian, Understanding Current Study





## ABSTRAK

Secara etimologi, *kafa'ah* bermaksud setaraf atau sekufu. Sebuah perkahwinan dalam Islam dianggap ibadah. Oleh itu, pelaksanaan perkahwinan seperti menyempurnakan sebahagian daripada tanggungjawab agama. Pensyiaran perkahwinan dalam Islam adalah bertujuan untuk membina sebuah keluarga yang penuh dengan cinta dan kasih sayang. Sehubungan dengan itu, perkara paling penting adalah penentuan dan pemilihan pasangan, melalui proses penilaian *kafa'ah*. Ianya sangat penting dan wali perlu mengambil berat tentang *kafa'ah* sebelum mengahwinkan anak perempuan mereka. Artikel ini bertujuan untuk mengenalpasti pemahaman masyarakat Malaysia tentang konsep *kafa'ah* dalam perkahwinan selaras dengan perspektif Syariah. Bagi menjawab persoalan itu, fokus artikel ini adalah pada konsep *kafa'ah*, kedudukannya dalam ikatan perkahwinan serta perbincangan tentang ciri-ciri *kafa'ah*. Penulis berpendapat bahawa penilaian semula ciri-ciri *kafa'ah* yang disepakati oleh para ulama' terdahulu adalah wajar sesuai dengan peredaran dan perubahan zaman. Metodologi yang digunakan adalah kajian kuantitatif dengan mengumpul data-data daripada masyarakat Malaysia tentang kepentingan *kafa'ah* dalam perkahwinan dan ciri-cirinya. Hasil kajian menunjukkan sebahagian besar konsep *kafa'ah* telah dibincangkan oleh ulama terdahulu dan pemahaman masyarakat Malaysia tentang *kafa'ah* adalah selaras dengan perspektif syariah. Dalam kalangan rakyat Malaysia, pertimbangan *kafa'ah* dalam perkahwinan adalah diingini untuk faktor agama selaras dengan pemikiran keempat-empat mazhab fiqah.

**Kata Kunci:** *Kafa'ah*, Setaraf, Perkahwinan, Masyarakat Malaysia, Pemahaman

## INTRODUCTION

Marriage is a basis to build a family. The family institution is recognized as the core unit of society. Marriage is considered one of the greatest blessings of Allah the Almighty God to his 'Ibad, as mentioned in the Quran:

*And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. Indeed, in that are signs for a people who give thought.*

(Al-Nisa', 4: 21)

Islam has given freedom of choice to those who wish to get married. The mutual choice of the partner is given the highest consideration. The main goals of marriage are healthy married life with a good relationship. It is only possible when both man and woman shared their natural inclinations and backgrounds. In the lack of such harmony, it is indeed difficult to live together successfully, despite great efforts, as many divorces attested due to no *kafa'ah*.

*Kafa'ah* is needed to achieve the purpose of marriage. *Kafa'ah* either in religion, wealth, and knowledge, is a significant determinant in achieving such objective of



marriage. A marriage which the man is not equal with the woman will find it struggling in inventing a happy family (Iffatin Nur, 2014).

The equivalence or *kafa'ah* between husband and wife is one of the factors that can influence family harmony. Literally, *kafa'ah* means equality or fitness (Norlia Mat Saed, 2004). Technically, in certain aspects, it means the status of a man with a woman, such as religion, lineage, freedom and other. The *kafa'ah* of a prospective groom with a prospective bride is all of these aspects, according to Ahmad Shukri (1966): tribe or family, religion, character, occupation, fortune and freedom. The *kafa'ah* of a man with a woman is all of these aspects, according to Ahmad Shukri (1966): tribe or family, religion, character, occupation, wealth, and freedom. However, some other jurists refers *kafa'ah* to wealth. And some other jurists also consider *kafa'ah* in respect of health.

'Al-Kafa'ah' according to those who contemplate it as consequential in marriage, is that the man must be equal to the woman in certain things. In addition, they only require *kafa'ah* of a man, because it is approvable for a man to marry any woman lower in status as it is something dis-approvable for a woman doing the same.

According to the judgement of Muhammad Rashid Ridha, there was no legal text in the Qur'an and Hadith in regards to *kafa'ah* in marriage, but it was accepted in accordance with customs. If one of the family was disgraced by such marriage, then the pair is considered as not *kafa'ah* and incompatible with each other. He, then clarified further that it was an *ijtihadiyyah* issue that the 'urf had accepted. Keeping away from *shiqaq* is important. Therefore, it is necessary to accept the custom that affirmed with the Qur'an and Hadith.

In terms of *kafa'ah*, according to some scholars, it is not important and necessary. For instance, some of Hanafi jurists had excluded *kafa'ah* as the condition in marriage as it is not essential. Therefore, marriage is valid without *kafa'ah*. Additionally, Ibn Hazm said, every Muslim man is entitled to marry any Muslim woman, as long as both of them did not commit adultery. Besides, he stated that all Muslim men are brothers and equal in status, so the male slave can marry a woman from the upper tribe. Likewise, a *fasiq* man, as long as he did not commit adultery is *kafa'ah* to the woman who did not commit adultery too.

It is necessary to note, some of the jurists acknowledged *kafa'ah* in terms of good behavior and attitude. They are not looking for *kafa'ah* in wealth, lineage, and occupation. Therefore, a pious man with a good religious background even in lower status is *kafa'ah* to a woman in upper status. Similarly, if a pious man is employed but with the disreputable job, he still considered *kafa'ah* to a woman with a good job. Hence, a poor man is entitled to marry a rich woman as long as he is pious. To put it another way, a pious man is equal to marry any woman regardless of lineage, occupation and wealth. Hence, a wali cannot disagree with a marriage with the consent of the woman.



In Malaysia, according to some scholars, *kafa'ah* is essential and needed in marriage, yet it is not regarded as one of the conditions that determine the marriage's validity. However, in the absence of *kafa'ah*, the marriage may be void. They emphasized the most important elements of *kafa'ah* in regard to religion. A man with a bad religious background is not *kafa'ah* with any woman. Likewise, a non-Muslim is not compatible with a Muslim.

Besides, in respect of *kafa'ah* in the level of education, it may be essential and needed for them depending on the partner of the marriage. The prospective groom still can marry the prospective bride even he has a lower educational level. However, the main significance and principle in marriage is the tolerance and the style of thinking between the couple. Furthermore, the academicians underline the elements of *kafa'ah* in respect to lineage, wealth and other elements is only for the pleasure of the marriage and for the welfare and satisfaction of the wife. Nevertheless, it is better for a man who has higher or equal to a woman in all aspects, particularly in terms of lineage, level of education as well as financial status.

Among Malaysians, the contemplation of the elements of *kafa'ah* in regards to religion, so the parties can live harmoniously. In addition, *kafa'ah* in terms of professions is not recognized as it does not become the basis of respectability for their society. Instead, all professions are considered equal as far as someone had the pay slip to provide maintenance to his wife. Usually, a person from a certain profession does not consider another to be lower in status; all professions are granted at the same level and status.

The practice in Malaysia regarding choosing suitable partner differs from one person to another. Thus, the objective of this paper is to determine the understanding of Malaysian society of *kafa'ah* in marriage and to get clarification on their perception on the importance of *kafa'ah* in marriage.

### **KAFA'AH IN THE QUR'AN AND HADITH**

The basis of the doctrine of *kafa'ah* in marriage is based on the Qur'an and Hadith. In essence, every human being is part of a unity, so that there is no difference in superiority should be made between them except in the degree of adherence to Allah, the Creator. In the Holy Qur'an, Allah (s.w.t) says:

*And it is He Who has created man from water; then He has established a relationship of lineage and marriage, for thy Lord has power (over all things).*  
(Al-Furqan, 25:54)

Allah (s.w.t) also says in another verse: Surah An-Nahl (16):71:

*And Allah favored some of you from the others in terms of fortune.*  
(An-Nahl, 16:71)

A hadith of the Prophet Muhammad (peace be upon him) reads:

" يَا أَيُّهَا النَّاسُ، أَلَا إِنَّ رَبَّكُمْ وَاحِدٌ، وَإِنَّ أَبَاءَكُمْ وَاحِدٌ، أَلَا لَا فَضْلَ لِعَرَبِيٍّ عَلَى عَجَمِيٍّ، وَلَا لِعَجَمِيٍّ عَلَى عَرَبِيٍّ، وَلَا أَحْمَرَ عَلَى أَسْوَدَ، وَلَا أَسْوَدَ عَلَى أَحْمَرَ، إِلَّا بِالتَّقْوَى أَبْلَغَتْ "

*O, you people! Your Lord is one, and your father is one. All mankind essentially is the same/equal like the spokes of a comb; the Arabs are not superior to the 'Ajam (non-Arab people). Any superiority among them is only due to their piety.*

(al-Musnad, 23849)

The hadith of the Prophet Muhammad underlying the arguments, of those who prefer to take the issue of *kafa'ah* lightly are:

*There are three matters that cannot be delayed; performing a prayer when its time comes, caring for the dead body when the death is obvious, and marrying a single (Moslem) woman to someone considered befit (*kufu'*).*

(Jami' At-Tirmizi, 7, 5090)

## THE PURPOSE OF Kafa'AH IN MARRIAGE

Equivalence or *kafa'ah* of a man with a woman means that he should not be inferior to the woman in his position, character, or social status. The principle of *kafa'ah* honored the woman and specified that not every man is suitable and fit to marry any woman. This principle, however, does not apply to women whom they are deemed suitable and fit for marrying any man. So, *kafa'ah's* principle applies to the man alone, not to the woman.

It was stated that the principle of *kafa'ah* was excluded in order to protect women from contracting unsuitable marriages, and Imam Syafie did not agree with it in this regard. According to Imam Syafie, a marriage is null without the *kafa'ah* between the husband and the wife. However, this is not absolute. He further stated that even though there is no *kafa'ah*, a marriage is valid, provided the woman and her wali consent to solemnize the marriage. So, it can be said that the rational thing behind this is to preserve the woman and her family's moral and social status. It is pertinent to note that, marriage is not just about sexual desires and satisfaction, but also about reinforcing and strengthening the connection of the families.

From the discussion of the juristic opinions on the position of *kafa'ah* in a marriage, it is understood that it is seen as a balancing mechanism between the right of wali *mujbir* who is entitled to marrying his daughter off without her consent, as well as the right of a daughter who wants to marry using the wali hakim if the guardian of the *nasab* refused or rejected. This is seen in the school, which makes the wali a legitimate requirement for marriage, as in the Syafie School. For an opinion that allows a woman who is *aqil baliqh* to marry herself without a guardian's consent, the *kafa'ah* requirement is seen as a middle ground between the freedom of a daughter to choose her own spouse with the



guardian rights in the pursuit of the honor and harmony of the family (Miszairi, Mustafa, 2018).

It is best for a lady to be solemnized by her wali so that she would not be defrauded by unawareness and ignorance and stay safe from the devastating feelings of desires. In addition, when she marries a man who is equal to her, so she could avoid marriage distress and inharmony because of incompatibility of marriage.

### **KAFA'AH IS THE RIGHT OF THE WOMAN AND HER FAMILY**

*Kafa'ah* or equality in marriage is recognized as the right of a woman and her family. Accordingly, they have the right to object the marriage and apply for its dissolution if the husband is not equal to his wife. All Muslim jurists point out that *kafa'ah* is the right of a woman and her wali (Abdul Karim Zaidan, 1994). If there is no *kafa'ah* in marriage, the woman and her guardian may apply for the dissolution of the marriage. This right is upheld and maintained as long as they make *kafa'ah* as a condition in marriage. But if they agree to solemnize the marriage without *kafa'ah*, they will lose the right to apply for its annulment (Abd Aazim, 2003).

Even though *kafa'ah* is the right of both woman and her wali, in certain situations anyone of them will lose this right, and in some situations, this right remains in the hands of both. These circumstances can be classified as follows:

#### **The right of *kafaah* remains in the hand of the woman and the wali**

The situation appeared when a woman contracted her own marriage herself and demanded *kafa'ah* as one of the conditions of the marriage or the wali solemnized her marriage and made a determination that the husband must be equal to her. In these circumstances, the right of *kafa'ah* remained and both of them entitled for applying its annulment if the marriage is solemnized without *kafa'ah* between the husband and wife.

#### **This right remains in the hand of the wali but not in the hand of the woman**

The situation appeared when a woman contracted her own marriage herself without knowing either the man is *kafa'ah* to her or not as well as she did not demand *kafa'ah* as one of the conditions of the marriage. At this time, she lost her authority after later discovered that the man is not *kafa'ah* to her and she cannot apply for her marriage to be dissolved. However, the authority of *kafa'ah* remained in the hand of the wali if he objected the marriage. Furthermore, according to Hanafi scholars, the marriage is void, so he can apply for its dissolution.

#### **This right remains in the hand of a woman but not in the hand of the wali**

The situation appeared when the wali solemnized the marriage of the woman without knowing either the man is *kafa'ah* to her or not and did not demand *kafa'ah* as one of



the conditions in the marriage. This authority will remain to the woman as long as she objected the marriage. Accordingly, she has the right and may apply for her marriage to be dissolved if she later discovered that her husband is not *kafa'ah* to her.

### **This right is lost to both the woman and her wali**

The situation appeared when the wali solemnized the marriage and without knowing the condition of the man and did not demand *kafa'ah* as one of the conditions in marriage, as well as the woman agreed to it. Both of them lost their right to apply for their annulment in this situation.

### **THE TIME OF KAFA'AH**

*Kafa'ah* is considered at the time of the solemnization of marriage or the time of *'aqad*. After that, it has no effect. It has been quoted from Al-Fatawa Al-Hindiyah by Hanafi scholars that *kafa'ah* is recognized at the time of the marriage is solemnized, and it does not remain after that, even at the time of *'aqad* the husband is *kafa'ah* to his wife but loses the *kafa'ah* after the *'aqad*. Accordingly, they lose the right and cannot apply for their dissolution.

Next, for the Syafie jurists, *kafa'ah* is considered at the time of the *'aqad*, if the wali and the woman are agreed with the man, so they have no choice to dissolve the marriage except if the flaws and defectives of the man are too obvious in the time of *'aqad*.

But the view of Maliki jurists, if the wali knew that the man is not *kafa'ah* with his daughter and gave his consent, then the man divorced the woman with *talaq raj'i* or *talaq bain*, and the period of *'iddah* ended, and he wanted to return. The wife is agreed, but the wali refuses to do so, it is not permissible for him to abstain, since there is no need to refrain from doing so, and he is considered as *'adl*.

The last one, Hanbali jurists said, the existence of *kafa'ah* in marriage is considered in the time of *'aqad*, if it is lost after the marriage, it does not invalidate the marriage, because the conditions of marriage are considered in the time of *'aqad*. If it is lost in the time of *'aqad*, so the marriage is corrupted and damaged.

### **THE ELEMENTS OF KAFA'AH**

The *kafa'ah* in marriage is important and must be taken into account for the wali before solemnized the marriage of their daughter. There are some differences among the jurists regarding the elements or standards of *kafa'ah*. The followings are discussions on the standards of *kafa'ah* by four major school of law; Syafie, Hanafi, Hanbali and Maliki.



## Religion

All of the jurists are agree with this standard without exception. The interpretation of religion is different among all schools, such as it means an *'iffah* woman is only *kafa'ah* to an *'iffah* man, the religious characters in marriage not only being a Muslim, but also must have piety and kindness characters, and a pious woman is only *kafa'ah* to a pious man.

## Lineage

This element is recognized by all jurists, except for Maliki school. Primarily, marrying the same nation or tribe is one of the descent factors of equality and balance in marriage, like the Quraysh tribe only *kafa'ah* to their fellow. There are schools disagree as an *'ajam*, non-Arab woman is *kafa'ah* to 'Arab man.

## Profesion

*Al-hirfah* means employment and occupation related to social status. This standard is only agreed by three schools of law. A low level of employment man is not equivalent to a woman where the profession of her father is on a higher level; for instance, road janitors are not equal to the children of tailors. Likewise, tailor's children are not equivalent to a merchant's children.

## Freedom

The freedom becomes a standard of *kafa'ah* to the Syafie, Hanafi and Hanbali schools. It means a slave man is not *kafa'ah* to a free woman. A very important concern is being free as a woman will be degraded to become a wife of a slave, as the man is unable to promise a good life to the woman, but the poverty is definite.

## Wealth

The wealth is considered as one of the elements of *kafa'ah* for Hanafi and Hanbali schools. Any man who wants to marry a woman must have the dowry and maintenance or allowance prepared, as the dowry acts as a substitute for the intercourse that the prospective husband must fulfill, while the livelihood maintenance is necessary to maintain the sustainability of family life.

## Health

This standard is only agreed by Syafie and Maliki schools, the meaning of health here is both man and woman is healthy in terms of physical and mental, and free from any disabilities that may give rise to a situation that opts for the bride whether or not the marriage should continue. Anyway, the bride has the authority and allowed to apply for a *fasakh* when the marriage is solemnized if the man is disabled.

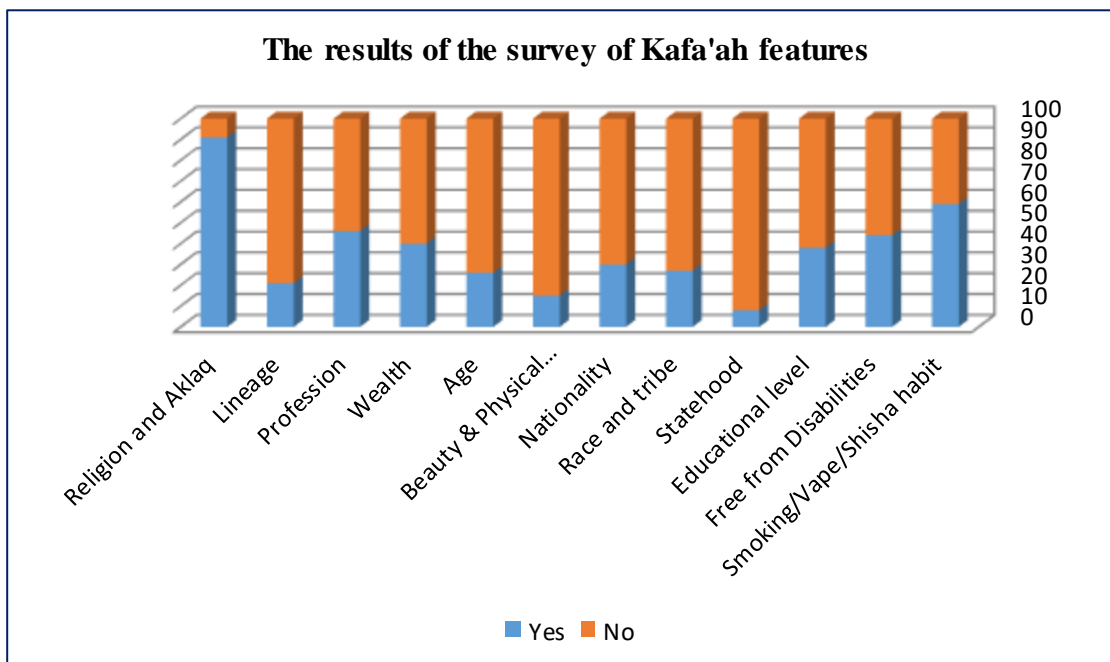
## THE VIEW OF MALAYSIAN SOCIETY'S ON THE ELEMENTS OF *KAFA'AH*

From the description of the characteristic that is taken into account in determining the *kafa'ah* of a man, only the religious factor has a valid and clear source, while the other elements are *ijtihadi*. The basis of *ijtihad* used is to maintain the well-being of the marriage and to protect the dignity of the family and the lineage. Many scholars are concerned that the characteristics of *kafa'ah* are closely related to the current situation and society. The views of the community in this era may be different from the previous and traditional community's views.

Therefore, the researcher tries to get the general view of society in Malaysia regarding the features that need to be taken into account through a survey conducted using a Google form that is sent randomly to respondents. Although this survey is comprehensive, it may be a reference for further research.

Questionnaires answers are just yes or no on these elements of *kafa'ah*. Research period started from 10<sup>th</sup> March 2019 until 10<sup>th</sup> April 2019. Of the total 505 respondents, 67% are women, 75% are under 30, and 72% are single, and 34% are from Selangor. The results of the survey on *Kafa'ah* features are as follows:

Table 1: The result of the survey of *kafa'ah* features



The result of the questionnaires clearly stated that 90% of respondents agree to make religion and akhlaq as one of the essential elements of *kafa'ah* coincide with the standards of the four schools. Besides that, 59% of respondents agree that smoking or vape or *shisha* habits can be count as one of the elements of *kafa'ah* too.



This survey's outcome is not definitive. The final ruling was in the hands of the wise Judge. The author suggests conducting a more thorough study and making a clear resolution to ensure uniformity in court.

## **PUBLIC OPINIONS ON THE IMPORTANCE OF KAFA'AH**

Public opinion is the measure of what the public thinks about a particular issue, party, or individual political figure. Historically, it's been pretty difficult to measure what the public thinks about a particular issue accurately.

The researcher used a closed-ended question in the survey as the closed-ended questions are more easily analyzed. Every answer can be given a number or value so that a statistical interpretation can be assessed. Closed-ended questions are also better suited for computer analysis. It can be more specific, thus more likely to communicate similar meanings.

The first question is, is *kafa'ah* important in marriage? Based on the result, it is clear that 86 percent of the respondents agree that *kafa'ah* is important in marriage. Family formation begins with the selection of life-partners based on Islam criteria. Before getting married, one of the efforts to avoid marital conflicts is to examine the practice of *kafa'ah* between future husband and wife.

Looking at this era and situation, the society at this time has less emphasis on the characteristics of *kafa'ah* in marriage as the social structure of society has been different compared to the old days. The people now exposed to a more modern and open-minded way to choose a partner. Although the term *kafa'ah* is less well-known among the public, the community has actually adopted the concept of *kafa'ah* when choosing the life-partner to marry.

After looking at the result, it is necessary to note that Malaysian are very concerned with the selection of the life-partner before the realm of marriage. According to Harun (2012), the various aspects in the selection of life-partners are quite difficult to be fulfilled, but largely can be achieved if the *kafa'ah* criteria in the selection pair are considered. Furthermore, according to Ahmad Royani (2013), the current situation of society is more likely to evaluate *kafa'ah* of their partners from various angles.

In general, considering the concept of *kafa'ah* practiced between a prospective husband and wife is one of the efforts to build a sustainable household and avoid conflicts that can lead to a divorce. It should be noted before the marriage because the existence of *kafa'ah* can have a great influence to create compatibility between husband and wife.

The more criteria of *kafa'ah* can be fulfilled, the higher the level of suitability between men and women in choosing a partner. Furthermore, the existence of *kafa'ah* can also have a positive impact on the building household. A happy home depends largely on the right choice of the life-partners, especially those who are concerned with religion



because of the unsuitable choice of couples can cause various conflicts in the household that can lead to divorce.

Therefore, the choice of life-partner is very important before getting married so that the dream family institution can be realized.

### **EFFECT OF MARRIAGE WITHOUT KAFA'AH**

No specific provision is provided in the Islamic Family Law of Malaysia in relation to the affairs of the *kafa'ah* in marriage. In all the Islamic Family Laws in Malaysia, there is no provision that permits a woman to solemnize herself without a guardian in the view of Syafie's School. The law stipulates that the marriage contract can only be performed by a guardian or wali, whether the wali *nasab*, representative of the wali (*wakalah wali*) or wali Raja (wali Sultan or wali Hakim).

Islamic Family Law (Selangor) Act 2003, Section 7: Persons by whom marriages may be solemnized:

- (1) A marriage in the State of Selangor shall be in accordance with the provisions of this Enactment and shall be solemnized in accordance with Hukum Syarak by -
  - (a) the wali in the presence of the Registrar;
  - (b) the representative of the wali in the presence and with the permission of the Registrar; or
  - (c) the Registrar as the representative of the wali.
- (2) Where a marriage involves a woman, who has no wali from *nasab*, in accordance with Hukum Syarak, the marriage shall be solemnized only by the wali Raja.

The Islamic Family Law also clarifies that the marriage cannot be exercised without the consent of both parties, that is, no compulsion from any party. This is stated in the Islamic Family Law Selangor Act 2003, Section Consent required:

A marriage shall not be recognized and shall not be registered under this Enactment unless both parties to the marriage have consented thereto, and either—

- (a) the wali of the woman has consented thereto in accordance with Hukum Syarak; or
- (b) the Syarie Judge having jurisdiction in the place where the woman resides or any person generally or specially authorized in that behalf by the Syarie Judge has, after due inquiry in the presence of all parties concerned, granted his consent to the Wali Raja to solemnized in accordance with Hukum Syarak; such consent may be given wherever there is no wali by *nasab* in accordance with Hukum Syarak available to act or if the wali cannot be found or where the wali refuses his consent without sufficient reason.

In the last sentence in Section 13, there are three situations in which the Court has the authority to allow a married woman applying for wali Raja or wali Hakim:



- i. No wali *nasab*.
- ii. The existence of wali *nasab* is unknown or lost.
- iii. Wali *nasab* refused to marry the woman without sufficient reason.

## CONCLUSION

In conclusion, applying *kafa'ah* in marriage by choosing the right partner, will create happiness, peace in the relationship between the husband and the wife, and its absence will disturb the determination of marriage and the process of fulfilling one another's rights and generate mutual disputes. *Kafa'ah* in marriage is one of the factors that could foster the creation of happiness between husband and wife and better ensure women's safety from domestic household failure or shock. Similarly, the purpose of *kafa'ah* in marriage is to encourage people to be happy in a marriage. The Shariah has therefore commanded that *kafa'ah* should be considered in choosing the life-partner as it was given solely to keep things well-managed and well-ordered.

The results of the view of Malaysian society on the elements of *kafa'ah* clearly stated that 90 percent of respondents agree with the religion and akhlaq as one of the essential elements of *kafa'ah* coincide with the standards of the four schools. Hence, the understanding of Malaysian society is in line with Shari'ah perspective.

Lastly, The Islamic Family Law recognizes the wali *mujbir* of father and grandfather. However, the law does not detail the conditions that need to be met to use the right of a wali *mujbir*. The Islamic Family Law allows a daughter to use the wali hakim in her marriage if the wali is refused, but there is no further explanation of the conditions that allow it.

## REFERENCES

Al-Quran al-Karim.

Abd. Aazim Sharaf Al-Din. 2003. *Ahkam Al-Ahwal Al-Shaksiyah*. Vol.1. Kaherah: Syarfu Al-Din Lil Tijarah.

Abd. Rahman Hj. Osman. 1993. *Aulia Nikah dan Bidangkuasanya, Satu Kajian Fiqah dan Undang-Undang Keluarga Islam*. DAIJ Thesis. IIUM: Kuliyyah of Laws.

Abdul Halim Bin Zulkifli. 2014. *Conditions for Validity of Marriages A Comparative Analysis*. Master Thesis. IIUM: Kuliyyah of Laws.

Abdul Karim Zaidan. 1994. *Ahkam Al-Mar'ah wa Al-Bait Al-Muslim fi Al-Syariah Al-Islami*. Vol. 6. Beirut: Muassasah Al-Risalah.

Abdul Rahman bin Umar Bin Abi Al-Qasim Bin Ali Bin Usman Al-Basari Al-Darir. 2000. *Al-Wadih fi Sharh Mukhtasar Abi Al-Kassem Al-Kharqi*. Vol.3. Beirut: Dar Al-Khidr.



- Abu Bakr ibn Muhammad Shata al-Dimyati. Year of publication unknown. *Ianat al-Talib*. Vol. 3. Semarang: Toha Putra.
- Abu Muhammad al-Husayn ibn Mas'ud ibn al-Farra al-Baghawi. 1977. *al-Tahdhib fi Fiqh al-Imam al-Shafii*. Vol. 5. Beirut: Dar al-Kutub al-Ilmiyah.
- Ahmad Royani. 2013. *Kafa'ah dalam perkawinan Islam: Tela'ah kesederajatan agama dan sosial*. *Al-Ahwal*, 51.
- Ahmad Shukri. 1960. *Muhamedan Law of Marriage and Divorce*. New York: AMS Press INC.
- Al-Dimashqi. Year of publication unknown. *Rawdat*. Beirut: Dar al-Kutub Al-Ilmiyah.
- Al-Imam Ahmad ibn Hanbal. 1991. *Al-Musnad*. Beirut: Dar al-Fikr. 23849.
- Ala Al-Din Al-Samarqandi. 1994. *Tuhfat al-Fuqaha*. Beirut: Dar al-Kutub al-Ilmiyah.
- Allamah Muhammad Jawad Maghniyyah. 1997. *Marriage According to the Five Schools of Islamic Law*. Vol.5. Iran: Islamic Culture and Relations Organisation.
- Ali Zadah. Year of publication unknown. *Sharh Shir'ah al-Islam*. Beirut: Dar al-Kutub al-Ilmiyah.
- Asghar Ali Engenieer. 1992. *The Rights of Woman in Islam*. Malaysia: IBS Buku Sdn Bhd.
- Azlinor bt. Sufian. 1993. *Legal and Moral Implication of Runaway Marriage Under the Syafii School of Law with Specific Reference to The Federal Territory of KL and Selangor*. Master Thesis. IIUM: Kuliyyah of Laws.
- Charles Hamilton. 1985. *The Hedaya: Commentary on the Islamic Laws by Shyakh Burhanuddin Abu Bakr Al Marghinan*. Vol. 1. India: Nusratali Nasri for Kitab Bharan.
- Enactment No. 2 of 2003, Islamic Family Law Negeri Selangor Enactment 2003. Section 7 &13.
- Faisal Ahmadi. 2014. *The Need to Establish A Pre-Marriage Curse Regulation in Indonesia With Special Reference to Jambi Province*. Master Thesis. IIUM: Kuliyyah of Laws.
- Harun ar-Rasyid Haji Tuskan dan Abu Azka al-Madani. 2012. *Melayari nikmat rumahtangga bimbingan buat mereka yang menempuh gerbang perkahwinan*. Selangor: Pustaka al-Ehsan.
- Ibn Hajar al-Haytami. Year of publication unknown. *Mablagh al-Arab fi Fakhr al-Arab*. Beirut: Dar al-Kutub al-Ilmiyah.



- Ibn Mansur, Sa'id. Year of publication unknown. *al-Musnad*. Riyadh: Dar al-Sumay'i lil Nashr wa-al-Tawzi.
- Ibn Qadamah al-Maqdisi. 1977. *al-Mughni*. Beirut: Dar al-Kutub al-Ilmiyah.
- Iffatin Nur. 2014. *Kafaah in Islam: Towards a Progressive Interpretation*. *Episteme*, 91, 85-116.
- Jamadi Masud. 2006. *Al-Kafā'Ah Fī Al-Zawāj Wa Athruhā Fī Intishār Al-Ṭalaq Fī Al-Mujtama' Al-Jazzāī*. Mater Thesis. University of Batna.
- Kamali, Mohammad Hashim. 2003. *Principles of Islamic Jurisprudence*. Cambridge: The Islamic Texts Society.
- Miszairi Sitoris, Mustafa Mat Jubri @ Shamsuddin. 2018. *Pensyaran Kafā'ah di Dalam Akad Nikah dan Amalannya di dalam Undang-Undang Keluarga Islam di Malaysia*. Melaka: Konvensyen Serantau Pengajian Islam RCIS.
- Mohd Anuar Ramli. 2006. *Instrumen 'Urf dan Adat Melayu Sebagai Asas Penetapan Hukum Semasa di Malaysia*. *Jurnal Pengajian Melayu*, Jilid 17.
- Muhammad bin Abul Abbas, Ahmad bin Hamzah Syihabuddin Ar-Romli. 1984. *Nihayatul Muhtaj Ila Syarhil Minhaj*. Vol.6. Beirut: Dar Al-Fikr.
- Muhammad Bin 'Īsa Al-Tirmidhi. 1975. *Jāmi' Al-Tirmidhī*. Mesir: Matba'ah Al Bābī Al Halabī.
- Muhammad bin Isma'il al-Bukhārī al-Ja'fi. 2001. *al- Jāmi' al-Musnad al-ṣaḥīḥ al-Mukhtaṣar min Umūr Rasūlullah SAW wa Sunaninih wa Ayyamih ṣaḥīḥ al-Bukhārī*. Manṣūrah, Mesir: Dār Tuq al-Najah. 7: 5090.
- Muhammad Sadiq Hasan khan al-Qanuji al-Bukhari. 1993. *Al-Rawdah al- Nadiyah Sharh al-Durar al-Bahiyah*. Vol. 2. Riyadh: Maktabah al-Kawtar.
- Norlia Mat Saed. 2004. *Kafaah Equality in Marriage in Islam: Its legal and social importance in the Modern Era. Islamic Family Law: New Challenges in the 21st Century*, Vol. 11, International Islamic University Malaysia.
- Nurhafizah Haji Ismadi, Mohd. Norhusairi Mat Hussin and Raihanah Abdullah. 2019. Analisis persepsi pihak berkuasa agama terhadap permasalahan kufu dalam perkahwinan masyarakat Melayu Negara Brunei Darussalam. *Melayu: Jurnal Antarabangsa Dunia Melayu*. 121. 124 - 143.
- Rashid Ridha. 1910. *Majallat al-Manar*. Vol.13. Egypt: Matba'ah Al-Manar.



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Sheikh Muhamamd Rif'at Uthman. 1995. *The Laws of Marriage in Islam*. London: Dar Al-Taqwa Ltd.

Susan A. Spectorisky. 1993. *Chapter on Marriage and Divorce Responses of Ibn Hanbal and Ibn Rahwayh*. US: University of Texas Pres.

Al-Zuhaili, Wahbah. 1989. *Al-Fiqh Al-Islami Wa Adillatuhu*. Vol.7. Damsyiq, Darul Fikr.

Zaleha Kamarudin. 2004. *Islamic family law*. Kuala Lumpur: IIUM Research Centre.