

Economic Ability as a *Kafā'ah* Principle and the Recognition of Difabel Marriage Guardian in *As-Silāḥ fī Bayāni An-Nikāḥ* by Khalil Al-Bangkalany

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Abstract

Fuqaha (Islamic jurists) have extensively deliberated upon the notions of *kafā'ah* and marriage guardianship. Many subsequent scholars have adopted and adapted the opinions of their predecessors concerning these two concepts. This article examines Al-Bangkalany's perspectives on *kafā'ah* and marriage guardianship as presented in his book *As-Silāḥ fī Bayāni An-Nikāḥ*. Within this work, Al-Bangkalany's viewpoint on *kafā'ah* and marriage guardianship is considered distinct. The contents of this article are the outcome of a comprehensive literature review, involving the analysis of the concepts of *kafā'ah* and marriage guardianship within the book *As-Silāḥ fī Bayāni An-Nikāḥ*. According to Al-Bangkalany, the notion of *kafā'ah*, as portrayed in *fiqh* literature, does not serve as the primary criterion for selecting a bride. Instead, the pivotal principle revolves around the groom's ability to adequately provide for the family's needs. Furthermore, Al-Bangkalany argues that individuals with disabilities, such as blindness, deafness, or muteness, can assume the role of marriage guardians after receiving suitable assistance. The intellectual capacity of the guardian, on the other hand, does not determine their eligibility for the role of marriage guardian.

[Para fuqaha telah mendiskusikan konsep kafā'ah dan wali nikah. Pendapat-pendapat fuqaha tersebut biasanya diappropriasi oleh ulama-ulama belakangan baik dengan atau tanpa memodernisasi konsep tersebut. Artikel ini mengkaji pendapat Al-Bangkalany tentang kafā'ah dan wali perkawinan dalam kitabnya *As-Silāh fī Bayāni An-Nikāh*. Dalam buku tersebut, ia dianggap memiliki pandangan tentang Kafā'ah dan wali nikah yang unik. Artikel ini merupakan penelitian pustaka. Data dikumpulkan dengan menelaah konsep kafā'ah dan wali nikah dalam buku *Al-Bangkalany As-Silāh fī Bayāni An-Nikāh*. Artikel ini berargumen bahwa, menurut Al-Bangkalany, konsep *kafā'ah* sebagaimana dalam berbagai kitab fikih bukanlah patokan utama dalam memilih pasangan. Namun prinsip utama yang perlu ditegaskan adalah calon mempelai pria harus memiliki kemampuan dalam memenuhi kebutuhan rumah tangga setelah pernikahan dilangsungkan. Sedangkan tentang wali nikah, Al-Bangkalany berpendapat bahwa penyandang disabilitas (buta, tuli, dan bisu) dapat menjadi wali nikah dengan bantuan sarana pendukung. Wali nikah juga tidak ditentukan dari pengetahuan intelektual sang wali.]

Keywords

Kafā'ah, difabel marriage guardian, Khalil al-Bangkalany

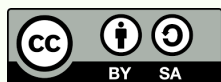
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Introduction

An essential prerequisite for marriage entails achieving equality and harmony between the prospective bride and groom, as well as their respective families, which is accomplished through the concept of *kafā'ah*. The purpose of *kafā'ah* in the context of marriage is to

establish parity and compatibility between the husband and wife, ensuring they occupy equivalent social standings encompassing both moral values and material possessions. The presence of similarity and concordance between the husband and wife serves to foster a harmonious household and avert any potential misfortune. Thus, marriage materializes when suitable and fitting criteria are met by both prospective brides.¹

Furthermore, the presence of a marriage guardian renders the marriage valid. A marriage guardian is an individual who represents the bride's interests during the marriage contract. While the role of a marriage guardian holds significant importance in the institution of marriage, there exist specific legal prerequisites for assuming this responsibility, including those pertaining to guardianship for individuals with disabilities. Consequently, a comprehensive examination of *kafā'ah* and marriage guardianship from the scholarly perspective of Sheikh Khalil al-Bangkalany, a prominent Madurese cleric, becomes imperative. These two facets exhibit variations in the laws and customs that are contingent upon the prevailing environmental conditions.

The exploration of the notion of the household and the reciprocal duties between husband and wife within that realm has been a source of inspiration for numerous writers and scholars throughout history, prompting them to document their findings in written works. Such endeavors can be viewed as a moral obligation undertaken by religious leaders, who often serve as the central figures in matters of legal concepts. Additionally, it is not uncommon for *ulama* (cleric) figures to actively participate in the sacred rituals associated with marriage, as their involvement is deeply ingrained in the cultural practices of the community, spanning several decades. Geertz sheds light on various marriage customs prevalent within society, further illustrating these traditions.² This cultural practice has evolved into a set of laws that are adhered to by the local community, carrying repercussions for any transgressions. Referred to as customary law, these regulations hold

¹ Abdul Hadi Ismail, "Kafa'ah in The Muslim Community Marriage: A Study of The Social History of Islamic Law," *Indonesian Journal of Education, Social Sciences and Research (IJESSR)* 1, no. 1 (2020): 16–23, <https://doi.org/10.30596/ijessr.v1i1.4878>; Syarifah Gustiawati and Novia Lestari, "Aktualisasi Konsep Kafa'ah Dalam Membangun Keharmonisan Rumah Tangga," *Mizan: Journal of Islamic Law* 4, no. 1 (2018): 33–86, <https://doi.org/10.32507/mizan.v4i1.174>.

² Clifford Geertz, *Abangan, Santri, Priyayi Dalam Masyarakat Jawa* (Pustaka Jaya, 1983).

significant sway within the community and are widely recognized and acknowledged.³ The convergence of customary law and Islamic law is an inevitable occurrence, particularly evident in the context of marriage practices in Bangkalan-Madura. Purnama's research introduces a widely recognized phrase that encapsulates this relationship, stating "Adat is based on Syara' and Syara' is based on the Book of Allah." This expression highlights the interplay between local customs and Islamic legal principles, emphasizing the adherence to Islamic teachings as the foundation of customary practices.⁴

Madura, renowned for its rich cultural heritage, customs, and adherence to the Islamic legal system, presents a unique context for examining marriage practices. In this region, marriage is not only regarded as a social event but also carries significant legal implications within the specific societal framework. While the classical *fiqh* paradigm in family law across Muslim communities worldwide has undergone gradual changes, certain regions maintain consistency in implementing *fiqh* laws while incorporating customary practices for socio-cultural reasons.⁵

Sheikh Khalil al-Bangkaly, in his book *As-Silāh fī Bayāni An-Nikāh*, provides insights derived from the interpretations of the Bangkalan community. Specifically, he discusses marriage laws using Arabic terminology and delves into the meaning of *pegon* (Javanesse with Arabic letter) in the context of question-and-answer sessions. This paper aims to elucidate the laws of *kafā'ah* and marriage guardianship as outlined in the book, shedding light on their relevance to the social conditions of the 19th century. With a focus on al-Khalil's thoughts on Islamic *fiqh* marriage law concerning *kafā'ah* and marriage guardianship, this paper adopts a content analysis approach. The study involves a comprehensive examination of the book's textual content, connecting it with social norms,

³ Ratno Lukito, *Tradisi Hukum Indonesia: Disertai Postscript Baru Oleh Pranoto Iskandar*, vol. 5 (Institute for Migrant Rights Press, 2013).

⁴ Handika Purnama, "Hukum Islam, Adat Dan Hukum Negara Dalam Perkawinan Masyarakat Suku Melayu Di Pekanbaru Riau: Keabsahan, Etika, Dan Administrasi Perkawinan," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (n.d.): 1–10, <https://doi.org/10.14421/ahwal.2021.14101>.

⁵ Stijn Cornelis Van Huis, "Khul 'over the Longue Durée: The Decline of Traditional Fiqh-Based Divorce Mechanisms in Indonesian Legal Practice," *Islamic Law and Society* 26, no. 1–2 (2019): 58–82, <https://doi.org/10.1163/15685195-00254A05>; Muhammad Iqbal and Shahid Rahman, "Arsyad Al-Banjari's Dialectical Model for Integrating Indonesian Traditional Uses into Islamic Law," in *Argumentation Through Languages and Cultures* (Springer, 2020), 73–99, https://doi.org/10.1007/978-3-031-19321-7_5; Gideon Libson, "On the Development of Custom as a Source of Law in Islamic Law," *Islamic Law and Society* 4, no. 2 (1997): 131–55, <https://doi.org/10.1163/1568519972599770>.

legal frameworks, and cultural practices. This approach acknowledges the use of both Islamic and customary laws by the community, serving as a foundation for establishing harmonious families within their social context.

This research is conducted as a form of library research, gathering data from a variety of books, journals, and articles related to the topic under discussion. Given the cultural and legal intertwining of Islamic customs and laws in the Bangkalan area of Madura, these practices are intricately woven into the marriage ceremony proceedings. Several studies related to *kafā'ah* and the traditional marriage culture of the Madurese community have previously looked at this phenomenon from a normative point of view such as research by Iswira and Herlia,⁶ Hipni,⁷ Zamzami,⁸ Mahbub,⁹ and Adawiyah. Based on the background of the problem above, the formulation of the problem in this research is how the concept of *kafā'ah* and guardian of marriage applied by Shaykh Khalil in the book *As-Silāh fī Bayāni An-Nikāh* in Bangkalan, Madura.

The Concept of Marriage in Islam

Marriage practices in Bangkalan, Madura do not strictly adhere to the legal principles of *fiqh*, as they are influenced by the local environment and prevailing customs.¹⁰ Consequently, Sheikh Khalil bin Abdul Lathif formulated several marriage laws that are tailored to the specific conditions prevalent in the region. In Madura's customary law, marriage is viewed not only as a union between a man and a woman but also as the merging of two family heads. One aspect of this is the concept of *kafā'ah*, wherein the

⁶ Tiara Widya Iswara and Irine Firsta Herlia, "Tradisi Pernikahan Budaya Madura Sebagai Komodifikasi Untuk Menunjukkan Status Sosial Dalam Masyarakat (Studi Kasus Di Pulau Giliyang, Sumenep)", accessed, 2022.

⁷ Mohammad Hipni and Shofiyun Nahidloh, "Budaya Tanean Lanjeng Dalam Pernikahan Kerabat Di Kalangan Keluarga Pondok Pesantren Bangkalan," *Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo* 8, no. 1 (2015): 55–64, <https://doi.org/10.21107/pamator.v8i1.2079>.

⁸ Mohammad Subhan Zamzami, "Tradisi Pernikahan Pada Bulan Syawal Di Madura: Kajian Living Hadith," *Harmoni* 17, no. 1 (2018): 137–51, <https://doi.org/10.32488/harmoni.v17i1.186>.

⁹ Syukron Mahbub Syukron Mahbub, "Manakar Kafā'ah Dalam Praktik Perkawinan Kyai Di Madura," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 6, no. 2 (2011): 228–55, <https://doi.org/10.19105/al-ihkam.v6i2.311>.

¹⁰ Azizah Al-Hibri, "Islam, Law, and Custom: Redefining Muslim Women's Rights," in *Women and International Human Rights Law* (Brill Nijhoff, 2000), 379–420, https://doi.org/10.1163/9789004531130_016.

preliminary process of marriage (*muqaddimat al-zawaj*) is carried out in accordance with Islamic law and is considered favorable.

The process of *muqaddimat al-zawaj* serves as an introductory phase based on moral principles, remaining aligned with the religious norms embraced by the individuals involved. This journey ultimately culminates in a marriage that is firmly rooted in both cultural and religious values, thereby solidifying the union.¹¹ Nevertheless, certain individuals, be they prospective spouses or parents, hold the stance of not consenting to marriage or marrying off their children unless specific criteria are met. Some individuals prioritize factors such as equality, compatibility, harmony, and religious alignment. Others emphasize ancestry, wealth, social status, and occupation. Furthermore, some strictly require a particular level of education or a certain occupational position. Shihab asserts that individuals possess an inherent right to pursue legal action if their rights are violated in this regard.¹² For a marriage to be considered valid following Islamic principles, it must fulfill the necessary conditions and pillars. However, apart from these requirements, there are additional regulations that can impact the longevity of a marriage. These regulations encompass both Islamic laws, as regulated by the *ulama*, and customary laws influenced by the ethnic traditions of each region in Bangkalan. Islam encompasses comprehensive teachings that serve as a bridge between various ethnic, cultural, social, and economic differences prevalent in different regions. This integration allows for the harmonization of Islamic values with the ethnic values of the respective communities. As a result, Islamic teachings facilitate the integration and coexistence of diverse elements, fostering unity and understanding despite these differences. The subsequent step in the marriage process is the *ijab qobul*, which entails the exchange of spoken words between the couple indicating their intention to proceed with the marriage, under the prescribed regulations of Islam. The term "marriage" itself, linguistically speaking, denotes a gathering or union, while in Arabic it is referred to as "an-Nikah," signifying the formation of a family unit with a member of the opposite sex.¹³

¹¹ Hilman Hadikusuma, *Hukum Perkawinan Adat* (Alumni, 1977).

¹² M Quraish Shihab, *Perempuan: Dari Cinta Sampai Seks, Dari Nikah Mut'ab Sampai Nikah Sunnah, Dari Bias Lama Sampai Bias Baru* (Lentera Hati Group, 2010).

¹³ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Mumakabat Dan Undang-Undang Perkawinan* (Kencana, 2011).

Thoḥa¹⁴ emphasizes that the purpose of marriage in Islam is to achieve *sakinah* (tranquility), *mawaddah* (affection), and *warahmah* (mercy) within the context of domestic life. According to Islamic law, marriage is regarded as a contract or agreement between a prospective husband and wife, requiring the formalities of *ijab* (proposal) and *qobul* (acceptance). However, it is crucial to understand that the marriage contract should not be misconstrued as a transaction involving the purchase and sale of individuals. Instead, marriage is viewed as a mutual agreement and a sacred bond between a man and a woman, aimed at establishing a peaceful and harmonious household. It is carried out by fulfilling the principles and conditions set forth in Islamic law and recognized by the state.

***Kafā'ah* and the Marriage Practices in Madura**

In religious contexts, particularly in Islam, a valid marriage fulfills the pillars and requirements of marriage. These include the presence of the prospective bride (male and female), a guardian, witnesses, and the consent of both parties. Within Islamic marriage law, there is a significant emphasis on the concept of *kafā'ah*, which involves a general selection process. *Kafā'ah*, as defined by Ibn Mandzur, refers to a state of balance. It stems from the word *al-kufū'*, which means equality or balance. When applied to marriage, *kafā'ah* signifies the balance or compatibility between the bride and groom in various aspects, such as social status (*basab*), belief or religion (*ad-din*), descent or lineage (*nasab*), and other relevant factors. In essence, *kafā'ah* ensures that there is a harmonious match between the prospective couple, considering their compatibility in terms of social standing, religious beliefs, lineage, and other relevant factors. This concept reflects the importance placed on creating a balanced and compatible union in Islamic marriage.¹⁵

The purpose of *kafā'ah* in marriage is to establish equality of conditions between the husband and wife, placing them in the same position.¹⁶ It encompasses various aspects, including moral values, societal standing, and property. The underlying objective is to ensure similarity and harmony between the spouses, which in turn contributes to the well-being of their household and helps them avoid potential difficulties or misfortune. Islamic

¹⁴ Nasaruddin Thaha, "Pedoman Perkawinan Ummat Islam" (Jakarta: Bulan Bintang, 1960).

¹⁵ Jamal al-din Muhammad ibnu Mukarram al-Ansari al-Manzur, *Lisan Arabi* (Mesir: Dar al-Misriya, t.t), 134.

¹⁶ Atun Wardatun, "Ampa Co'i Ndai: Local Understanding of Kafā'a in Marriage among Eastern Indonesian Muslims," *Al-Jami'ab: Journal of Islamic Studies* 54, no. 2 (2016): 311–36, <https://doi.org/10.14421/ajis.2016.542.311-336>.

fiqh experts have extensively discussed and elaborated on the concept of *kafā'ah* concerning marriage. They emphasize the importance of aligning the characteristics, attributes, and social status of prospective spouses to create a balanced and compatible union.¹⁷ By seeking equality in various aspects, it is believed that the marital relationship can thrive, promoting a harmonious and prosperous family life. It should be noted that *kafā'ah* is not solely limited to material or external factors but also encompasses moral and spiritual compatibility. The goal is to establish a mutually supportive and balanced relationship that enhances the overall well-being of both husband and wife within the institution of marriage.¹⁸

Kafā'ah is considered an important part of marriage because it involves the survival of husband and wife. *Kafā'ah* has been a subject of extensive scholarly debate among Islamic jurists over an extended period. This ongoing discourse is primarily due to the recognition that social status alone does not constitute a comprehensive determinant in Islamic principles. Islam acknowledges and embraces the diversity and variations that exist among individuals, emphasizing the importance of fostering ease of communication and interaction. Within Islamic teachings, the paramount distinguishing factor is the presence of piety and righteousness within one's heart. True worth and significance in Islam are measured by an individual's devotion to God, adherence to moral and ethical principles, and the development of their character. These spiritual qualities hold far greater significance than mere social standing or external factors. While *kafā'ah* takes into consideration certain external elements such as social status and lineage, it is imperative to acknowledge that Islam places greater emphasis on the inner qualities of individuals. The level of piety, faith, and righteousness within one's heart assumes primary importance when assessing compatibility and suitability for marriage. Thus, Islamic principles direct attention towards nurturing and cultivating spiritual values, promoting unity, understanding, and compassion among individuals, irrespective of their social disparities. It is through these

¹⁷ Eva Solina and Saifan Riza, "Kafā'ah Ignore Factors in Marriage (Case Study in Bale Busu Village, Mutiara Subdistrict, Pidie Regency)," *Britain International of Humanities and Social Sciences (BIOHS) Journal* 2, no. 3 (2020): 773–81, <https://doi.org/10.33258/biohs.v2i3.494>; Moh Alfin Sulikhodin, "Examining the Reality of Kafā'ah in the Muslim Countries of Jordan, Morocco, and Pakistan in the Contemporary Era," *Al Hurriyah: Jurnal Hukum Islam* 6, no. 1 (2021): 79–90, <https://doi.org/10.30983/alhurriyah.v6i1.4195>.

¹⁸ Said bin Abdullah Al Hamdani and Agus Salim, *Risalah Nikah: Hukum Perkawinan Islam*, (No Title), 1989.

internal virtues that an individual's true worth is defined, contributing to the establishment of harmonious and fulfilling relationships within the framework of Islamic teachings.

The Madurese community is known for being obedient in practicing Islam. Because Madura makes Islam an ethnic identity.¹⁹ The Madurese community is characterized by a rich diversity of traditional wedding customs and is often associated with a culture that does not consistently align with Islamic values. Within the realm of marriage, the Madurese people have a longstanding tradition of engaging in deliberations that involve relatives. The outcome of these deliberations significantly influences parental opinions and plays a crucial role in reaching a consensus, particularly concerning assessing the equivalence between potential partners.

If we examine the teachings of bhupaa-bhabhu'-ghuru-rato, we can observe a consistent emphasis on selecting life partners without reservation. Consequently, these teachings have evolved into a form of traditional authority within the Madurese community. For instance, within the context of boarding schools, sons and daughters are often not granted the freedom to choose their life partners, particularly if they come from a lower social status. In this scenario, the preservation of lineage (*nasabshriya*) assumes greater significance, and the disparity in social status becomes a primary consideration.

Meanwhile, the criteria used to assess compatibility (*kuflu'*) between individuals are highly subjective. In the context of classical *fiqh*, individuals can be deemed compatible based on factors such as religion (*ad-din*), property ownership, lineage, and physical attractiveness. Among these aspects, religious compatibility is considered the primary factor. However, in the Compilation of Islamic Law (KHI) of Indonesia Book I, there are differences of opinion among scholars (*fuqaha*) regarding *kafā'ah*, particularly the factors considered in determining compatibility. According to the Hanafi school of thought, factors such as kinship, Islam, occupation, financial independence, and wealth are taken into account. The Maliki school of thought considers a broader range of factors in determining compatibility. Meanwhile, the Shafi'i school of thought emphasizes factors such as lineage, religion, financial independence, and professional status when assessing compatibility between individuals.

¹⁹ Huub De Jonge, *Madura Dalam Empat Zaman: Pedagang, Perkembangan Ekonomi, Dan Islam: Suatu Studi Antropologi Ekonomi* (Diterbitkan atas kerja sama Perwakilan Koninklijk Instituut voor Taal-, Land ..., 1989).

In addition to the traditional *tanean lanjeng* wedding, there is also the *pamogih* custom²⁰ in Bondowoso, which is an allied Madurese, research by Lubis and Suhri.²¹ The *pamogih* tradition is a husband's offering to complete the contents of the household that will be inhabited. The *pamogih* procession is usually carried out after the dowry marriage contract. The gifts are in the form of necklaces, rings, robes or robes, and household furniture in the traditional handover ceremony in Bondowoso. This tradition is the same as the *bhen-giben* in Susantin and Rijal's research²² in the Sumenep area, and the tradition of *rice' lance* weddings research by Syafi'i²³ in Daleman Galis Bangkalan Madura, explained that in the two customs, namely, a prospective husband prepares *bhen-ghiben*, then the prospective wife prepares an empty house, and it will be filled by the prospective husband. A husband is required to prepare a house, cash, and goods. Furthermore, *bhen-giben*, known as a grant in *fiqh* terminology, is a condition for the validity of marriage in traditional Madurese culture, in addition to the dowry.²⁴

The aforementioned explanation highlights the local marriage culture in Madura, Indonesia. The customs and traditions observed in Madura can be categorized as falling within the concept of *kafā'ah*, despite variations in terminology used. A common post-marriage tradition in Madura involves offering rituals. Hence, considering the significant influence of customary law in Madura, Sheikh Khalil al-Bangkalany establishes a correlation between customary law and marriage *fiqh* as applicable to the local community.

Biography Syekh Khalil Al-Bangkalany

Sheikh Khalil is a renowned and globally recognized cleric who holds a central position within the network of *santri ulama* (Islamic scholars) in Indonesia. He is widely regarded as a

²⁰ The *pamogih* tradition has an outline resemblance to *bhen-giben*, *seserahan*, *tukon surrender*, *japuik money*, and *others*.

²¹ Ali Akhbar Abaib Mas Rabbani Lubis and Muhammad Abdul Khaliq Suhri, "Relasi Hukum Islam Dan Adat Dalam Tradisi Pamogih Pada Perkawinan Masyarakat Muslim Bondowoso," *Volksggeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 2 (2020): 45–63, <https://doi.org/10.24090/volksggeist.v3i2.4014>.

²² Jamiliya Susantin and Syamsul Rijal, "Tradisi Bhen-Ghiben Pada Perkawinan Adat Madura; Studi Kasus Di Kabupaten Sumenep-Madura," *Kabilab: Journal of Social Community* 5, no. 2 (2020): 49–57.

²³ Moh Toyyib Syafi'a, "Ben-Giben Dan Nase' Lanceng Pernikahan Di Daleman Galis Bangkalan Madura Perspektif Hukum Islam," *Al-Hukama'* 3, no. 1 (2013): 17–33, <https://doi.org/10.15642/al-hukama.2013.3.1.17-33>.

²⁴ Dian Eka Indriani et al., "Traditions: Radical or Peace-Building," in *International Conference on Religion and Public Civilization (ICRPC 2018)* (Atlantis Press, 2019), 11–15, <https://doi.org/10.2991/icrpc-18.2019.3>.

unifying force and source of strength within the Madura and Horseshoe region, which encompasses areas such as Situbondo, Banyuwangi, Probolinggo, Bondowoso, as well as the Pesantren Sidogiri Pasuruan and Talangsari Jember. Sheikh Khalil's full name is Muhammad Khalil bin Abdul Lathif, and he is honored with the title Kiai al-'Alim al-'Allamah ash-Shaykh Muhammad Khalil bin Abdul Lathif al-Bangkalani al-Maduri al-Jawi ash-Syafi'i. He was born in Lagundih Village, Ujung Piring, Bangkalan, on Tuesday 11 Jumadil Akhir 1252 H (September 20, 1834 AD), and he passed away on Thursday 29 Ramadan 1343 H (April 24, 1925 AD) at the age of approximately 105 or 106 years.²⁵

He hails from a lineage of scholars, with his father being K.H. Abdul Latif, who has a lineage connection with Sunan Gunung Jati. His grandfather, Kiai Hamim, was the son of Kiai Abdul Karim bin Kiai Muharram bin Kiai Asror Karomah bin Kiai Abdullah bin Sayyid Sulaiman. This lineage establishes a connection between Kiai Khalil and Sunan Gunung Jati through Sayyid Sulaiman, who is the grandson of Sunan Gunung Jati from his mother's side. Among his notable writings are *As-Silāh fī Bayāni An-Nikāh* (a book on the explanation of marriage), *Alfiyah Buku Tarjemahan* (a translation of the Alfiyah text), *Kitab Al-Matnas-Sharif al-Mulaqqab bin Fat-hil Latif* (a book on the noble lineage of Fat-hil Latif), and a collection of *wirid* (devotional practices) attributed to Kiai Khalil Bangkalan.

The Concept of *Kafā'ah* in the Book of *As-Silāh fī Bayāni An-Nikāh*:

Tendency to *Fiqh* Madhab?

Kafā'ah is a legal rule that regulates the compatibility, equality, or compatibility of a person with another person.²⁶ *Kafā'ah* has existed since the time of the Prophet until it becomes a problem today. The problems that arise today are not only comparative questions in religion but also in other matters, namely in terms of wealth.²⁷ The community recognizes the significance of the prospective groom's assets in the process of building and establishing a stable and prosperous household. The possession of assets is considered essential as it enables the prospective groom to fulfill his responsibilities in supporting his wife and meeting the basic needs of the marriage. By having sufficient assets, the

²⁵ Aah Syafaah, "Menelusuri Jejak Dan Kiprah Kiai Kholil Al-Bangkalani," *Jurnal Tamaddun* 5, no. 1 (2017), <https://doi.org/10.24235/tamaddun.v5i1.1964>.

²⁶ Abdullah, "Perkawinan dalam Islam dan Masalah Kesetaraan Gender", 59-63.

²⁷ Fiqi Taufiq Rahman, "Konsep Kafa'ah Dalam Perkawinan Menurut Pandangan Masyarakat Desa Haurpugur Kecamatan Rancaekek Kabupaten Bandung" (UIN Sunan Gunung Djati Bandung, 2017).

prospective groom is better equipped to provide a comfortable living environment and meet the financial requirements of a marital relationship. This perspective highlights the practical considerations involved in ensuring the welfare and stability of a household, emphasizing the role of financial resources in fulfilling the obligations of marriage.

Marriage is widely recognized as a fundamental human need, encompassing both biological and psychological aspects that are integral to human existence. In Islam, while emphasizing the importance of marriage, certain conditions are recommended to be fulfilled before embarking on married life. One such condition is *kafā'ah*. *Kafā'ah* represents a sociological convergence between Islam's perspective on the equality of women and men and the contemporary understanding of social change. Consequently, exploring the potential synergies between these perspectives can offer valuable insights into the concept of *kafā'ah* within the context of social change theories. This exploration provides an intriguing opportunity to examine how the principles of equality and social transformation can influence and shape the understanding of *kafā'ah*, contributing to a broader understanding of the evolving dynamics of marital relationships in contemporary society.

Kafā'ah in marriage is a factor that can encourage the creation of happiness between husbands and wives, and ensure the well-being and security of women within the marriage, protecting them from potential conflicts or failures within the household.²⁸ In Islam, *kafā'ah* serves as a guiding principle for fostering harmony and balance from a religious standpoint. It encompasses various aspects including lineage, social status, and physical appearance, all of which are delineated within the framework of Shari'a. Regardless of one's position or social standing, Islam emphasizes the equality of individuals in their relationships with each other. Shaykh Khalil al-Bangkalany provides an insightful explanation of the concept of *kafā'ah* as it applies to men in his book:

Affirming: essentially the economy is not the main requirement for the groom, but he (the groom) must meet the needs of the bride's four things, namely; dowry, allowances, clothing, and housing in marriage.

Based on the text in the book, the concept of *kafā'ah* appears to align with the Hanafi school of thought. According to this school, *kafā'ah* encompasses six elements: lineage, religion, freedom, wealth, morals, and occupation. The Hanafi scholars argue that non-

²⁸ Tihami Tihami and Sohari Sahrani, *Fikih Munakahat* (Jakarta: Rajawali Pers, 2010).

Arabs are not considered equal to Arabs in terms of lineage, and the emphasis is placed on qualifying the religion of Islam, primarily through the agreement of the guardians. If the prospective husband's father agrees with the prospective wife's father, it is deemed to fulfill the *kafā'ah* requirement. The concept of continuous independence from parents is also taken into account. If the prospective husband's father is financially independent, it is considered equivalent to the independence of the prospective wife's father and mother. The qualification of wealth focuses on the husband's ability to pay the dowry and provide for the wife's maintenance. Additionally, Abu Yusuf's viewpoint emphasizes the importance of the husband's ability to fulfill the household's needs, while the dowry can be paid for by any capable family member, such as the father, grandfather, or any other person in accordance with customary practices.²⁹

Reinforced explanations from the research of Muhajir and Khasanah³⁰ that there is a job qualification of the prospective husband at least close to that of the prospective in-laws. According to Abu Yusuf, there is a distinction between professions such as a washerwoman or servant and professions like a merchant. This suggests that Abu Yusuf recognized the importance of considering the profession or occupation as an element of *kafā'ah*. In Madura, the concept of *kafā'ah* tends to align with the Hanafi school, which takes into account not only religion and ancestry but also factors such as wealth and occupation. *Kafā'ah* is seen as a common requirement in marriage. The inclusion of the element of *kafā'ah* related to social status can contribute to the aspiration of creating a happy and prosperous family. By considering factors such as wealth and occupation, the aim is to minimize potential disputes within the household. Thus, *kafā'ah* is primarily addressed to men, encouraging compatibility and harmony in marriage. Meanwhile, there are five general cases of *kafā'ah*, namely:

- a. No defects. The disgrace referred to in this case is the disgrace that made him able to do *khīyar faskh* (divorce) in his marriage.
- b. Independent

In this case, it is said that male slaves are not equal to free women. Even a man

²⁹ Abdul Rahman Jaziri, *Al-Fiqh 'Ala Madzhabil Arba'Ah Juz 2, Libanon, Beirut: Dar-AlKutub Al-Ilmiyah*, 2003.

³⁰ Fitrohtul Khasanah, "Konsep Kafā'ah Dan Nafkah Dalam Hukum Keluarga Di Syria," *Jurnal Ilmiah Abwal Syakhsbiyyah (JAS)* 4, no. 1 (2022): 78–87.

who has become independent later becomes a king even though he is still said to be not as strong as a free woman because of her descendants.

c. Descendants

Descendants in *kafā'ah* are based on their fathers. In other words, what is meant by descent here is Islamic descent. So a man who is Muslim himself while his father is still an infidel (non-Muslim) is not as balanced as a woman who is Muslim because of heredity (father/third generation and above).

d. *Iffah*

Iffah is refraining from illegal work. Therefore, there is no *kufu* of *fasiq* men with women who are not *fasiq*, not as *kufu* of heretical men and women who are experts in the Sunnah, even men and children of *fasiq* people are like *kufu* with women of people who are experts in the Sunnah. So that *iffah* people are just as *kufu* as *iffah* people too.

e. *Hirfah*

Hirfah is good at finding fortune or good at trying (to earn a living). In other words, what is meant by *hirfah* among scholars is known as work. In the Book of An-Nikah, it is stated that men who do not have intelligence in seeking sustenance are said to be not *kufu* like women who have intelligence in seeking sustenance. Then, someone who has a respectable job is not as *kufu* as someone who has a menial job. For example, garbage collectors, tanners, and animal herders, their children are not as good as the tailor's children, and servants' children are not as good as the merchant's children (traders).

It is also explained in Purbasari's research; Madurese culture adheres to a patriarchal system which characterizes that men are the heads of households³¹ both in the public sector and in the household, although the Bangkalan-Madura marriage tradition adheres to the *tanean lanjeng* culture which means after marriage, the man (husband) is considered a guest or immigrant to the woman's family (wife), but a husband is obliged to protect and fulfill all needs household, as described by Shaykh Khalil above in his book.

³¹ Dyah Purbasari Kusumaning Putri and Sri Lestari, "Pembagian Peran Dalam Rumah Tangga Pada Pasangan Suami Istri Jawa," *Jurnal Penelitian Humaniora* 16, no. 1 (2016): 72–85, <https://doi.org/10.23917/humaniora.v16i1.1523>.

While the Shafi'i school differs from the Hanafi school in its perspective on *kafā'ah*, it considers *kafā'ah* in marriage as a social need that should be adjusted to prevailing customs rather than a condition that determines the validity of a marriage. The Shafi'i school recognizes that *kafā'ah* alone cannot guarantee harmony in a family. Therefore, the contextualization of *kafā'ah* must be adaptable to the sociological life of the community.³² Regarding wealth, it is not considered a factor in determining *kafā'ah* because wealth can be gained or lost. It is believed that a woman with good character and a kind heart does not prioritize wealth when considering *kafā'ah* with a man. Therefore, a man who is not wealthy or does not possess material wealth can still be considered *kufū'* (compatible) with a wealthy woman. This perspective is reflected in the words of Ali bin Abi Talib, emphasizing the importance of inner qualities and character rather than material possessions.

Know that the world we are leaving little by little, while the hereafter little by little we will soon meet. Each of them has children. So be children of the hereafter, and do not be children of this world. Because today (in this world) is the time for charity and there is no reckoning, while tomorrow (in the hereafter) is the time for reckoning and there is no more practice". (HR. Al Baihaqi dalam Syu'abul Iman 7: 3426).

This hadith can be meaningful to recommend *kafā'ah* in matters of property in finding a partner, but it does not mean praising wealth or making wealth the main benchmark.

The Concept of Marriage Guardian in the Book of *As-Silāh fī Bayāni An-Nikāh*

In accordance with the tenets of the Shari'ah, Daly defines a marriage guardian as an individual vested with the authority and responsibility to undertake legal actions on behalf of individuals under their guardianship.³³ Among the numerous conditions and pillars governing marriage within Islamic law, the role of the marriage guardian holds significant importance as it delineates the legal procedures associated with the institution of marriage. In the Indonesian context, the predominant adherence is to the Shafi'i school of thought,

³² Mokhammad Samson Fajar and Faris Al Badr, 'Kafā'ah Contextualization in an Effort to Form Harmonious Family in the Modern Era: An Analysis Of Fazlur Rahman's Double Movement', *AL-ADALAH*, vol. 17, no. 2 (2021), pp. 203–30.

³³ Peunoh Daly, *Hukum Perkawinan Islam*, Cet. ke-1 (Jakarta: Bulan Bintang, 1988), hlm,134.

which stipulates the requirement of a marriage guardian for women. Guardianship is considered one of the fundamental pillars that must be fulfilled for a marriage to be valid. The absence of a marriage guardian renders the marriage null and void.³⁴ The inclusion of a woman's guardian in her marriage contract is considered an integral pillar, as elucidated in Al-Baqarah: 232. This verse underscores that the decision-making authority in matters of marriage is entrusted to men rather than women, emphasizing the significance of the guardian's role.³⁵ The prohibition mentioned in the verse specifically pertains to the guardian, indicating their authority to prevent a marriage from taking place if it is conducted without their consent or in contravention of religious principles. The presence of the guardian in the marriage process is obligatory, and the absence thereof renders the marriage contract invalid. The guardian's position as a fundamental element in marriage is widely recognized among religious leaders, establishing a consensus on their indispensable role. Within the marriage contract, the guardian assumes the responsibility of acting on behalf of the bride and serves as the primary authority approached for approval of the marriage continuation.

Imam Malik firmly asserts that the presence of a guardian is an indispensable requirement for a valid marriage, and this viewpoint aligns with that of Imam Shafi'i. Both scholars emphasize the essential role of a marriage guardian in the marriage contract. However, it is crucial to note that specific criteria must be met by individuals assuming the role of a guardian. Eligible guardian is required to be adult, morally upright, financially independent, male, and adherents of the Islamic faith. These qualifications ensure that the designated guardians possess the necessary attributes to fulfill their responsibilities effectively within the context of a marriage contract.³⁶ However, there are differences in the terms of the guardian in the book of Shaykh Khalil al-Bangkalany:

The conditions for the guardian are the same as the conditions for the guardian, namely being able to hear and see, but it is not required for a guardian to be able to see and hear, meaning that deaf and blind people can become marriage guardians.

³⁴ Ibn Rushd and Muḥammad ibn Aḥmad, “Bidāyat Al-Mujtahid Wa Nihāyat Al-Muqtaṣid,” *T. Tḥ: Dār Al-Kutub Al-‘Arabiyah, t. Th*, 1988.

³⁵ James N D Anderson, “The Eclipse of the Patriarchal Family in Contemporary Islamic Law,” in *Family Law in Asia and Africa* (Routledge, 2021), 221–34, <https://doi.org/10.4324/9781003243397-14>; Lucy Carroll, “Marriage-Guardianship and Minor’s Marriage at Islamic Law,” in *Issues in Islamic Law* (Routledge, 2017), 47–62, <https://doi.org/10.4324/9781315092386-5>.

³⁶ Sudarsono, *Pokok-Pokok Hukum Islam*, (Jakarta: Rineka Cipta, 2000).

Sheikh Khalil al-Bangkalany, a prominent figure in Madurese religious circles, has demonstrated a profound respect for individuals with disabilities, considering their social circumstances. In the realm of marriage law, experts assert that a guardian must fulfill certain requirements. These include being a mentally capable, mature, financially independent, and Muslim man, while not being deaf. Article 22 of the KHI, which serves as a legal reference for Islamic marriages, explicitly prohibits mute or deaf individuals from acting as marriage guardians. It is important to acknowledge that the KHI is one of the bodies responsible for the enforcement of civil and family laws. While it serves as a guiding document for practitioners of Islamic law, not all practitioners strictly adhere to its opinions, as they are not legally binding. Nevertheless, the KHI represents a compilation of diverse *fiqh* opinions that should be taken into consideration. Consequently, individuals with disabilities are only considered within the scope of *fiqh* as potential marriage guardians if their disability is limited to speech impairments.

Sheikh as-Syarbani holds the view that individuals with speech disabilities may still be eligible to act as marriage guardians if they possess the ability to communicate effectively through writing or sign language, ensuring that their communication is intelligible to others. According to his perspective, the capacity to convey one's intentions and fulfill the responsibilities of a guardian using alternative means of communication should be taken into consideration when determining their suitability for the role. This opinion highlights a more inclusive approach, acknowledging that individuals with speech disabilities can potentially fulfill the duties of a marriage guardian if they can effectively express themselves through alternative forms of communication.³⁷ The KHI serves as an enforcement agency for civil and family law and remains a valuable resource for practitioners of Islamic law. While the opinions presented in the KHI are considered, it is worth noting that many practitioners do not rigidly adhere to its viewpoints since the KHI does not carry legally binding force. Rather, the KHI functions as a compilation of diverse opinions found in *fiqh* books meant to be acknowledged and taken into account. Within the realm of *fiqh*, individuals with disabilities are specifically addressed as potential marriage

³⁷ Anwar Hafidzi, "Penolakan Nasab Anak Li'an Dan Dhihar Dengan Ta'liq (Analisis Komparatif Naskah Kitab Fiqh Al-Islam Wa Adillatuhu Dengan Al-Mughni)," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 1, no. 2 (2018): 77–94, <https://doi.org/10.30659/jua.v1i2.2419>.

guardians only when their disability pertains to speech impairments.³⁸ Sheikh as-Syarbani's opinion suggests that individuals with speech disabilities who can effectively communicate through writing or sign language, understood by the community, may be considered eligible to act as marriage guardians. However, it is important to note that within the Shafi'i school of thought, this viewpoint remains a topic of debate among scholars, as indicated in al-Ghazali's book *al-Wasith fi al-Madzhaba*. The varying perspectives within the Shafi'i school contribute to ongoing discussions and differing interpretations concerning the eligibility of individuals with speech disabilities as marriage guardians.

According to al-Ghazali's explanation, it is argued that a blind individual can still fulfill the role of a guardian since their ability to hear remains intact, and the validity of the marriage contract is not contingent upon vision. This viewpoint is generally accepted among scholars within the Shafi'i school of thought. However, if there appears to be a perceived contradiction in this opinion, it opens up the possibility of considering individuals with hearing and speech disabilities as potential marriage guardians. It is essential to strike a balance between this consideration and the practical reality of the situation. In the Bangkalan-Madura region, for instance, Sheikh Khalil al-Bangkalany permits individuals with disabilities, including those who are deaf, blind, or have speech impairments, to act as witnesses in marriages. This aligns with the opinion of Hamid, who emphasizes that interpretations derived from textual sources should be grounded in the reality of the situation.³⁹ When textual analysis intersects with real-life activities, the interpretation and understanding of the text may evolve. Disregarding the reality and practical implications of the text will reduce it to a mere historical or philosophical artifact. The community must recognize that the realm of human life is continuously expanding and changing, defying fixed categorization. From a logical standpoint, if the infinite nature of reality cannot be encompassed by finite concepts, the field of legal science incorporates narratives that can be adapted and applied. This dynamic approach acknowledges the need for contextual understanding and adaptation within the study and practice of law.

³⁸ Mukhammad Nur Hadi, 'Bisu dan Tuli, Apakah Sah Menjadi Wali Nikah?', *Islami[dot]co* (5 Aug 2020), <https://islami.co/bisu-dan-tuli-apakah-sah-menjadi-wali-nikah/>, accessed 8 Aug 2022.

³⁹ Kusmana Kusmana, "Hermeneutika Humanistik Nasr Hamid Abu Zayd: Al-Qur'an Sebagai Wacana," *Kanz̃ Philosophia: A Journal for Islamic Philosophy and Mysticism* 2, no. 2 (2012), <https://doi.org/10.20871/kpjiipm.v2i2.33>.

According to the perspective of *usul al-fiqh* (principles of Islamic jurisprudence), a person is deemed capable of fulfilling legal obligations if they meet the criteria of being an expert in implementing legal rights and obligations, referred to as *al-ada'kamilah*. This status is applicable to individuals who have reached the age of *aqil* (mentally sound), *baligh* (puberty) and are free until their death. This status is known as *mukallaf*. In his book, Wahbah az-Zuhaili identifies eleven types of barriers within the category of *awaridh samawiyyah* (heavenly impediments). These barriers include individuals with mental disabilities, children, those with intellectual disabilities, forgetfulness, sleep, fainting, illness, slavery, menstruation, childbirth, and death. These barriers are considered inherent and beyond human control. Additionally, there are seven types of obstructions within the category of *awaridh muktasabah* (acquired impediments) that arise due to human actions, either from oneself or others. These obstructions include *jahl* (ignorance), drunkenness, *hazl* (jesting), *saft* (temporary insanity), *safar* (travel), and *khata'* (mistake). These classifications serve to acknowledge and address the different conditions and circumstances that may impede an individual's ability to fulfill legal obligations and responsibilities within the framework of Islamic law.

Based on the provided information, it appears that individuals with hearing and speech disabilities should still have the right to act as marriage guardians. This is because these disabilities do not necessarily indicate intellectual or mental impairments, which is a common misconception in society. However, it is worth noting that not all local experts in Islamic family law currently allow individuals with hearing impairments to serve as marriage guardians, despite Sheikh Khalil al-Bangkalany's stance on the matter. At present, experts in the KHI have not officially recognized and advocated for individuals with disabilities to be considered marriage guardians. The KHI has not fully addressed or accommodated this issue. Consequently, there is a need to emphasize the ethical dimension when understanding legal matters, ensuring that inclusivity and the rights of individuals with disabilities are upheld and respected within the framework of Islamic law.⁴⁰ The ethical dimension has a strong foundation in the history of the Prophet's introduction of Islam in

⁴⁰ Etty Murtiningdyah, "Peranan Wali Nikah Dalam Perkawinan Dan Pengaruh Psikologis Adanya Wali Nikah Dalam Perkawinan Menurut Kompilasi Hukum Islam" (program Pascasarjana Universitas Diponegoro, 2005).

Mecca. The Prophet emphasized three fundamental principles: fostering friendships, safeguarding familial ties, and ensuring the safety of the community. Ultimately, the Prophet highlighted the significance of prioritizing the human aspect in all spheres, including Islamic law, intending to diminish social inequality in terms of human dignity.

Conclusion

It can be concluded that *kafā'ah* in marriage entails the equality of men and women in terms of religion, social standing, morality, and economic factors. The concept of *kafā'ah* is based on the consensus among Islamic scholars regarding various aspects such as religion, lineage, independence, profession (*hifab*), wealth, and safe disgrace. Al-Bangkalany asserts that a husband should possess the ability to provide for the needs of his wife and family, including financial responsibilities such as dowry, maintenance, clothing (*kiswah*), and housing. However, it is important to note that wealth is not the sole determining factor in assessing *kafā'ah*. Al-Bangkalany emphasizes that the economic aspect is one of the foundational pillars of the household. Regarding guardianship, Al-Bangkalany argues that the requirements for becoming a marriage guardian are not related to physical or mental health. Anyone who holds a guardianship relationship, irrespective of being blind, deaf, or mute, has the right to act as a guardian. This includes the possibility of a man acting as a guardian for a woman who is under his guardianship.

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