



## THE DILEMMA OF SINGLE WOMEN: THE CONCEPT OF KAFĀ'AH IN ISLAMIC JURISPRUDENCE AND THE COMPILATION OF ISLAMIC LAW

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### ABSTRACT

*The modern world, which provides women with the freedom to pursue the highest possible education, can also have negative impacts on them. Modern women with higher education often face challenges in finding partners due to the concept of equality (kafaah). This study aims to analyze the concept of kafaah in Islamic jurisprudence (Fiqh) and the Compilation of Islamic Law and its relevance to the phenomenon of highly educated women remaining single for extended periods. This study employed a qualitative method with a library research approach, analyzing various literature such as fiqh books, scientific journals, and laws and regulations. The results show that in Islamic law, kafaah is not a requirement for a valid marriage, but rather a social consideration to maintain household harmony, with the primary benchmarks being religious and moral aspects. Differences in social, economic, or educational status cannot be used as a reason to hinder marriage. However, in social reality, the understanding of kafaah often shifts in meaning due to patriarchal culture and materialistic perceptions, so that highly educated women are often considered difficult to find a "comparable" partner. Meanwhile, Indonesian positive law, through the 1945 Constitution, Law No. 1 of 1974 concerning Marriage, and the Compilation of Islamic Law, guarantees protection for women's right to choose their life partner without discrimination. Thus, both Islamic law and positive law emphasize that equality in marriage should be based on moral and spiritual values, not social status or educational level.*

**Keywords:** Highly educated women, Kafaah, Fiqh, Compilation of Islamic law

## 1. INTRODUCTION

Modernization and globalization have brought significant transformations to social structures, particularly in gender relations and women's roles in the public sphere. Women's access to higher education and active participation in the professional world are no longer marginal phenomena, but rather a growing social reality. However, this progress

has given rise to a new social paradox: the increasing number of highly educated women who remain single for relatively long periods. This phenomenon is often not understood as a result of structural and cultural dynamics, but rather reduced to the individual problem of women who are considered "too picky" or "not sekufu" in the context of marriage.

In Muslim societies, one concept often used to justify this phenomenon is *kafa'ah* (equivalence in marriage). Normatively, *kafa'ah* in Islamic jurisprudence is not intended as an instrument to limit women's rights, but rather as a social consideration to maintain household harmony. However, in contemporary social practice, this concept often experiences a narrowing of meaning and is reinterpreted materialistically, measured by economic status, educational level, and social position, thus deviating from the normative spirit of Islam, which places religion and morality as the primary benchmarks (Ibn Rushd, 1995; Wahbah al-Zuhaili, 1985).

This distortion of the meaning of *kafa'ah* is intertwined with a strong patriarchal culture that still positions men as "superior" to women in various aspects, including education and economics. As a result, highly educated women are often perceived as a threat to men's symbolic dominance in the household. This situation not only perpetuates gender inequality but also creates social and psychological pressure for women who actually meet the standards of piety and morality emphasized in Islamic teachings (Fakih, 2013; Mulia, 2007).

From a *fiqh* perspective, the majority of Islamic scholars assert that *kafa'ah* is neither a pillar nor a valid requirement for marriage. The Maliki school, for example, strictly limits *kafa'ah* to religious and moral aspects, while other schools of thought, such as the Hanafi and Shafi'i, do consider social factors, but still consider them as the rights of the woman and her guardian, not as an absolute barrier to marriage (Amir Syarifuddin, 2006). Therefore, making education or social status the primary reason for rejecting a marriage contradicts the principles of benefit and justice in Islamic law.

Similarly, the *Compilation of Islamic Law* (KHI), the codification of Islamic law in Indonesia, stipulates in Article 61 that incompatibility (non-*sekufu*) cannot be used as a reason to prevent a marriage, except due to religious differences. This provision demonstrates that the state normatively rejects discrimination based on social, economic, or educational status in marriage. This principle is reinforced by Law Number 1 of 1974 concerning Marriage, which places the consent of both prospective bride and groom as the primary foundation for the validity of a marriage, without explicitly specifying the criteria for *kafa'ah* (Laws of the Republic of Indonesia, 1974).

Furthermore, the constitutional guarantees in the 1945 Constitution of the Republic of Indonesia, particularly Article 27 paragraph (1) and Article 28B paragraph (1), affirm the principle of equality before the law and the right of every individual to establish a family without discrimination. Thus, both Islamic law and Indonesian positive law are normatively equal in guaranteeing women's right to freely and dignifiedly choose their life partners.

However, there is a clear gap between legal norms and social practices. This gap places highly educated women in a dilemma: normatively protected by law, but sociologically still confined by gender-biased social constructs. Therefore, this study is crucial for reconstructing a comprehensive understanding of *kafa'ah* through the perspective of

Islamic jurisprudence and the Compilation of Islamic Law, while simultaneously critiquing social practices that have strayed from the values of justice, equality, and humanity that constitute the core spirit of Islamic law.

## 2. RESEARCH METHOD

This study uses a qualitative approach with a normative-empirical approach. It aims to deeply analyze the construction of the concept of kafa'ah in Islamic law and its relevance to the phenomenon of unmarried, highly educated women in the context of Indonesian Muslim society. This approach was chosen because the issues studied are not only normative-doctrinal in nature, but also relate to social practices and the interpretation of law in the realities of community life (Creswell & Poth, 2018).

Normatively, this study examines sources of Islamic law, including the Quran, Hadith, the opinions of classical and contemporary Islamic jurists, and Indonesian positive legal regulations, particularly the Compilation of Islamic Law (KHI) and Law Number 1 of 1974 concerning Marriage. The normative analysis was conducted to identify the position of kafa'ah within the structure of Islamic marriage law and its legal limitations within the national legal system. This approach allows researchers to trace the shift in the meaning of kafa'ah from a normative Islamic jurisprudence concept to a social practice that tends to be discriminatory (Ali, 2017).

Meanwhile, the empirical aspect of this research focuses on exploring the social reality of how the concept of kafa'ah is understood and implemented in society, particularly regarding marriage preferences for highly educated women. Empirical data was obtained through sociological and gender literature studies, previous research findings, and academic reports relevant to issues of gender relations, education, and marriage. This empirical approach was used not for statistical generalization, but rather to strengthen contextual analysis and bridge the gap between legal norms and social practices (Miles, Huberman, & Saldaña, 2014).

Data collection techniques were conducted through systematic library research of primary and secondary sources. Primary sources included mu'tabarah fiqh books, laws and regulations, and official legal documents, while secondary sources included academic books, reputable journal articles, and relevant previous research findings. Source selection was carried out selectively, considering scientific authority, thematic relevance, and novelty of the study to ensure the academic validity of the data used (Zed, 2014).

Data analysis was conducted using descriptive-analytical and comparative-critical analysis methods. Descriptive analysis was used to map the concept of kafa'ah within various schools of Islamic jurisprudence and Islamic legal regulations in Indonesia. Furthermore, a comparative-critical analysis was applied to compare classical Islamic jurisprudence views with contemporary social practices and positive legal provisions, thus identifying points of tension, gender bias, and their normative implications for women's rights. This critical approach allows the research to go beyond conceptual explanation and offer a reinterpretation oriented toward justice and the common good (Fakih, 2013).

### 3. RESULT AND ANALYSIS

#### **Reconstructing the Concept of Kafa'ah in Islamic Marital Jurisprudence**

The concept of kafa'ah in Islamic marital jurisprudence has strong historical roots in the classical Islamic schools of thought, although it has never been unanimously agreed upon. The Hanafi school interprets kafa'ah relatively broadly, incorporating elements of lineage, profession, independence, and wealth as social considerations to maintain the honor of women and their families. The Shafi'i and Hanbali schools also recognize the social dimension of kafa'ah, but maintain that it is the right of the woman and her guardian, not a determining factor in the validity of the marriage contract. In contrast, the Maliki school more strictly limits kafa'ah to religious and moral aspects, arguing that piety is the primary foundation of marital harmony (Ibn Rushd, 1995; Al-Zuhaili, 1985). This genealogy demonstrates that from the beginning, kafa'ah was not intended as a rigid legal-formal standard, but rather as a contextual consideration of a social and ethical nature. These differing views indicate a fundamental distinction between kafa'ah as a social requirement and kafa'ah as an ethical principle. In Islamic jurisprudence, kafa'ah is never considered a pillar or requirement for valid marriage, as the legitimacy of marriage in Islam rests on the fulfillment of the pillars of the marriage contract, the consent of both parties, and the absence of Islamic prohibitions. Scholars agree that rejecting the validity of a marriage solely due to incompatibility of social status contradicts the principles of convenience (*taysir*) and benefit, which are characteristic of Islamic law. Therefore, kafa'ah is more accurately understood as an ethical principle aimed at minimizing the potential for social conflict within the household, rather than as a normative selection mechanism that limits an individual's right to marry (Syarifuddin, 2006; Ali, 2017).

However, in contemporary social practice, the function of kafa'ah has undergone a significant shift. What was originally a protective principle—particularly to protect women from detrimental marital relationships—has instead become a tool of social exclusion, particularly when linked to education, economic status, and class. This shift is inextricably linked to the strength of patriarchal culture, which reproduces gender hierarchies and prioritizes male social superiority. Consequently, kafa'ah is often mobilized to justify the rejection of highly educated women, not for their benefit, but to maintain unequal power relations. In this context, kafa'ah loses its ethical dimension and transforms into a discriminatory mechanism that contradicts the fundamental goals of Islamic law, which emphasizes justice, equality, and humanity (Fakih, 2013; Mulia, 2007).

#### **Distortion of the Meaning of Kafa'ah in Contemporary Social Practice**

In contemporary social practice, the concept of kafa'ah tends to experience a significant reduction in meaning, shifting from an ethical principle to a materialistic indicator. Equivalence in marriage is no longer understood as a match in values, religion, and morals, but rather is narrowed to the variables of education, economics, and social status. Women's higher education is often positioned as a symbol of relational imbalance, as it is associated with high economic expectations and potential non-compliance with traditional domestic roles. This reduction indicates a social process that instrumentalizes kafa'ah to reinforce class stratification and social hierarchy, thus losing its orientation

toward benefit and transforming it into a tool for legitimizing exclusion in mate selection (Bourdieu, 1986; Syarifuddin, 2006).

This distortion of meaning is inextricably linked to the influence of patriarchal culture and the construction of hegemonic masculinity that remains deeply rooted in society. Within this framework, men are constructed as superior economically, educationally, and possessing symbolic authority, while women are expected to occupy subordinate positions. When women possess higher educational attainment, this is perceived as a threat to men's masculine identity, resulting in a symbolic incompatibility rather than a basis in Islamic jurisprudence. These gender power relations operate subtly through social norms, family pressures, and cultural expectations, which collectively shape gender-biased marital preferences and normalize the rejection of highly educated women (Connell & Messerschmidt, 2005; Fakih, 2013).

As a result of these power relations, highly educated women face complex and multi-layered social impacts. They experience not only structural delays in marriage but also social stigmatization that labels them as "too independent," "unrealistic," or "difficult to manage." This stigma contributes to ongoing psychological distress, including anxiety, identity conflict, and internalized guilt about their own educational attainment. In this context, education—which is normatively an instrument of empowerment—is perceived as an obstacle to marriage, as it confronts a social value system that does not fully recognize gender equality in family relationships. This phenomenon emphasizes that the primary problem lies not with women's education, but rather with society's failure to reconstruct the meaning of kafa'ah fairly and contextually (Mulia, 2007; Ridgeway, 2011).

### **Kafa'ah, Women's Education, and the Paradox of Modernity**

Education in modern society functions as cultural capital that plays a crucial role in shaping social positions, life preferences, and individual relationship patterns, including in the context of marriage. Referring to cultural capital theory, education not only enhances one's intellectual capacity but also shapes their habitus, ways of thinking, and expectations for equal and reflective social relations. In marital relationships, highly educated women tend to be oriented toward partnership, dialogue, and a fair division of roles. However, this cultural capital often does not translate positively into marriage, as it still confronts a social structure that values equality based on traditional hierarchies, not equality of values (Bourdieu, 1986).

This situation gives rise to the paradox of modernity: increased access to and attainment of women's education is not accompanied by increased gender awareness within the institutions of family and marriage. Modernization at the structural level such as the education system and the job market is progressing more rapidly than modernization at the cultural and normative levels. As a result, highly educated women experience identity tensions when entering marriage, as the values of equality acquired through education clash with traditional domestic expectations. This paradox demonstrates that modernization is not linear, but rather produces unequal and contradictory social configurations (Inglehart & Norris, 2003).

In the context of Muslim societies, this paradox is further complicated by the tension between normative religious values and patriarchal social constructs. Normatively, Islamic teachings position men and women as equal moral subjects and emphasize the primacy of religion and morality in marriage. However, in social practice, these values are

often distorted by patriarchal cultural interpretations, so that women's education is seen as a factor disrupting established gender relations. This tension demonstrates that the primary problem lies not with religious teachings, but rather with the process of value socialization that conflates religious norms with the interests of preserving gender dominance (Mulia, 2007; Fakih, 2013).

Furthermore, educational modernization does not automatically produce gender equity, as power relations within the family and marriage are deeply embedded in the social structure. While education can enhance individual capacity, without transforming social norms and legal awareness, women's educational capital can be interpreted as a deviation from perceived "ideal" gender roles. In this context, *kafa'ah* is often mobilized as a normative argument to reject marital relations perceived as threatening male dominance, thereby rendering educational modernity emancipatory (Connell & Messerschmidt, 2005; Ridgeway, 2011).

Thus, the inconsistency between educational modernity and the understanding of family law reflects society's failure to contextually reconstruct the meaning of *kafa'ah*. Women's educational modernity should be read as a social asset that strengthens the quality of marital relations, not as an indicator of incompatibility. When family law both in its understanding of *fiqh* and in social practice does not move in line with changes in educational structures, what occurs is the reproduction of gender inequality in new formats. Therefore, a renewed understanding of *kafa'ah* is a crucial prerequisite for educational modernity to truly contribute to the realization of justice and well-being in contemporary Muslim marriages (Ali, 2017; Syarifuddin, 2006).

### **Legal Analysis: *Kafa'ah* in the Compilation of Islamic Law and National Law**

Legally, the concept of *kafa'ah* does not occupy a determinant position in the Indonesian marriage legal system. The Compilation of Islamic Law (KHI) explicitly states in Article 61 that incompatibility (non-*sekufu*) cannot be used as a reason to prevent marriage, except due to religious differences. This provision demonstrates a progressive normative stance by rejecting the use of social, economic, or educational status as a barrier to marriage. Similarly, Law Number 1 of 1974 concerning Marriage places the consent of both prospective bride and groom as the primary foundation for the validity of a marriage, without specifying the *kafa'ah* criteria as a legal requirement. Thus, both the KHI and the Marriage Law consistently affirm that marriage is a legally protected personal right, not an arena for the reproduction of social hierarchies (Laws of the Republic of Indonesia, 1974; Syarifuddin, 2006).

The principle of consent of the prospective bride and groom is also intertwined with the principle of equality before the law, as guaranteed in Article 27 paragraph (1) and Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This principle affirms that every citizen, without discrimination based on gender, education, or social status, has the same right to form a family. However, although legal norms have adopted the principles of equality and non-discrimination, social practice shows that *kafa'ah* is still often used as an instrument for gender-biased partner selection. This indicates that the internalization of legal values has not been fully effective in shaping public legal awareness, particularly in the realm of family law, which is heavily influenced by cultural norms and informal religious interpretations (Mulia, 2007; Ali, 2017).

This asymmetry can be understood as a legal gap between written law (law on the books) and the law that lives in society (living law). Progressive legal norms often clash with social realities that maintain patriarchal patterns of relations and traditional hierarchies. In this context, state law has not fully penetrated the private domain of the family, which remains controlled by cultural authorities and conservative religious interpretations. Consequently, *kafa'ah* continues to function as a social mechanism that limits women's choices, even though it lacks legal binding force. This phenomenon explains why egalitarian legal norms fail to fully shape social practices, as legal changes are not always accompanied by transformations in social consciousness and the gender power structures surrounding them (Friedman, 2011; Fakih, 2013).

#### 4. CONCLUSION

This research demonstrates that the problem of *kafa'ah* in Islamic marriage lies not in its normative concept, but rather in the distortion of its meaning in contemporary social practice. The main finding of this study confirms that *kafa'ah*, which in Islamic jurisprudence and national law has never been positioned as a valid requirement for marriage, has shifted its function to become a mechanism of social exclusion that disadvantages highly educated women. This shift reflects a collective failure to distinguish between the ethical principles of Islamic law and patriarchal cultural constructs legitimized through religious interpretations and social norms. Thus, women's education is not an inherent obstacle to marriage, but rather becomes a "problem" when interpreted through the framework of unequal gender power relations (Syarifuddin, 2006; Fakih, 2013).

Theoretically, this research contributes to the development of Islamic family law studies by emphasizing that *kafa'ah* must be repositioned as an ethical-relational principle oriented toward the welfare of women, rather than as an instrument of social hierarchy. The integration of Islamic jurisprudence (*fiqh*), positive law, and gender theory perspectives demonstrates that the tension between legal norms and social practices cannot be resolved solely through formal regulation but requires a reconstruction of legal and cultural awareness. These findings enrich the discourse on the legal gap between the law on the books and the living law, particularly in the context of family law, which is heavily influenced by cultural and symbolic values (Ali, 2017; Friedman, 2011).

From a practical and policy perspective, this research confirms the crucial role of religious institutions, religious leaders, and premarital education programs in fostering a just and contextual understanding of *kafa'ah* (the legal framework). Without systematic efforts to mainstream the perspective of equality and *maqāṣid al-shari'ah* (the primary objectives of Islamic law), progressive legal norms in the Compilation of Islamic Law (KHI) and the Marriage Law will continue to face social resistance. Therefore, the renewal of the *kafa'ah* discourse must be directed at strengthening the values of partnership, dialogue, and equality in marital relations as part of a broader social transformation (Mulia, 2007).

This study has limitations due to its normative-analytical nature and the inability to directly explore the empirical experiences of highly educated women in the context of marital decision-making. This limitation also opens up opportunities for further research using socio-legal or empirical qualitative approaches, such as in-depth interviews or cross-regional case studies. Future research could also expand the comparative study by

examining kafa'ah practices in other Muslim countries, to deepen our understanding of how Islamic family law can transform more equitably and responsively to the dynamics of modernity.

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