

REINTERPRETATION OF THE KAFA'AH CONCEPT IN JASSER AUDA'S PERSPECTIVE

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Abstract: *This research is intended to study and analyze the concept of kafa'ah in JasserAuda's perspective. In the concept of kafa'ah, it should be noted that there are still many people who think that kafa'ah only includes the same elements in terms of degree or social strata or wealth. Whereas the essence of kafa'ah is not like that, but among the strategies to create a sakinah, mawaddah, warohmah family. This type of research is library research, namely by collecting a number of data related to the concept of kafa'ah in marriage according to JasserAuda's perspective with the approach maqashidasy-syariah. The Method analysis data used is an inductive qualitative method. This method is done by collecting data, compiled and classified into themes that will be presented, then analyzed and presented with a research framework and then given a full interpretation by describing what it is. The results of the study show that (1) Kafa'ah is equality or harmony, it is important to do in order to achieve the perfection of marriage that avoids domestic life from harm and misery; (2) Wisdom requireskafa'ah is to get to the marriage relationship sakinahmawaddahwarahmah, and result destination weddings are not only referring to the happiness of the world, but also happiness hereafter; (3) The essence of the requirement for kafa'ahinperspectiveJasserAuda's is as a form of self-protection and honor for both each partner and for the two families who have been united in a marriage bond.*

Keywords: *Kafa'ah, Maqashid ash-Shari'ah, JasserAuda.*

The Introduction

Marriage is a way that is ordered by Allah SWT as a way to preserve offspring with each of the partners having the same role in realizing the purpose of marriage. The purpose of marriage is not only to meet physical needs, but there are other equally important goals that can be achieved together.

Islam came with the aim of perfecting various aspects of life, both the relationship between Allah and His creatures or the relationship between creatures. In terms of relations between creatures, especially humans, Islam has never differentiated between humans from one another, whether social strata, ethnicity, nation or religion, because what distinguishes humans from one another is only piety.

Along with the development of science today, there is a need to review the various provisions contained in Islamic marriage law. Among the provisions in Islamic marriage law that is important to review is related to the concept of kafa'ah. In kafa'ah, it should be noted that there are still many people who think that kafa'ah only includes the same elements in terms of degree, social strata or wealth. Whereas the essence of kafa'ah is not like

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that, but among the strategies to create a *sakinah, mawaddah, warahmah* family.

To reinterpret the concept of kafa'ah in the marriage, the contribution of JasserAuda's thoughts with the reconstruction of maqashid ash-shari'ah will be very helpful. The concept of maqasid ash-Shari'ah promoted by JasserAuda offers a concept that upholds human values and provides solutions for people's lives to be in harmony and balance by using maqasid ash-Shari'ah. JasserAuda reconstructed the concept maqashid previous shari'ah which moved not only as *protection and preservation* but also towards *development and rights*.

This paper attempts to reinterpret the concept of kafa'ah in marriage law by using thinking maqashid ash shari'ah JasserAuda's. In reviewing this problem, first we will discuss how the concept of kafa'ah that we have understood so far, where did the concept of kafa'ah come from, what are the concepts of kafa'ah offered by scholars fiqh and what is the essence of the requirement for kafa'ah in marriage according to JasserAuda. And finally, the results of the discussion in this paper will be concluded.

Research Methods

This research uses research methods *qualitative*, namely research that does not carry out calculations. This means that the data collected is not in the form of numbers but words (Moleong, 2002: 6). The type of research used is library *research*, which is a research whose data sources are obtained from books, journals, and papers that are relevant to the problem of the concept of kafa'ah in JasserAuda's perspective.

This research is seen from its nature, including research *prescriptive*, which is a study aimed at getting advice on what to do to overcome certain problems. The approach taken in this research is the approach maqashid ash-shari'ah.

The Method analysis data used is an inductive qualitative method. This method is done by collecting data, compiled and classified into themes that will be presented, then analyzed and presented with a research framework and then given a full interpretation by describing what it is.

Discussion and Result

Kafa'ah comes from the word *kafa'ah* which means *al-mumatsalah* (same) or *al Musawah* (balanced). In the Indonesian dictionary, in terms of terminology the word kafa'ah has the same meaning as high, equal in degree and dignity (Purwadarminto, 1976: 532). In the Encyclopedia of Islamic Law, kafa'ah is defined as the equality that prospective husbands and wives need to have firmly in order to avoid reproach and problems, kafa'ah becomes important in marriage in fostering harmony in domestic and social life (Pedia, 1996: 845).

While the word kafa'ah in marriage is explained by SayyidSabiq, meaning equal, equal or comparable, meaning that *kufu* in marriage is a man equal to the woman he will marry, equal in terms of position, comparable in terms of social level and equal in character and wealth. If the position between men and women is comparable, it creates a happy husband and wife life and guarantees the safety of marriage from failure household (Sabiq, 2009: 93).

Ibn Mansur defines kafa'ah as a state of balance, conformity or harmony. When associated with marriage, kafa'ah is defined as a condition of balance between the prospective husband and wife in terms of position, religion, lineage and so on. Meanwhile, according to Abu Zahrah kafa'ah is a condition where in a marriage there must be a balance between husband and wife regarding certain aspects that can avoid a crisis that can damage married life (Zahra, 1957: 185). Can be underlined that the terminology kafa'ah has a meaning as equality or harmony owned by both the men and women in order to avoid those negative marital things that can happen in the future.

The introduction of the term kafa'ah itself is still a matter of debate, whether this term appears purely from the shari'ah or just the socio-conditions cultural of a society, which in the end coalesce and influence the legal elements related to marriage. There are two opinions that explain the historical aspect of the emergence of the term kafa'ah, the opinion *first*, the theory raised by Farhat J. Ziadeh, which is called the Iraqi theory, where the term kafa'ah emerged from Kufa (Iraq) where Imam Abu Hanifa's thought developed. According to him, this area at that time was a place where Islamic traditions were mixed with local traditions that had developed from generation to generation.

Compared to Medina and the Hijaz, which incidentally are the areas where the Maliki school of thought spread, Kufa is a more socially complex area, because there is a lot of mixing between ethnic groups, traditions, urbanization carried out by Arab groups and the legacy of stratification inherited from the dynasty Sasanian, during the This dynasty ruled that social stratification was strongly held by society, it was not allowed for someone who had a high social status to marry someone of a lower social status, and vice versa because people with lower social status were not allowed to look for reasons to raise their social status, wrong one by way of marriage. So according to Farhat, this is what led to the emergence of the term kafa'ah in Kufa (Ziadeh, 1957: 504-507).

The *second* is the opinion expressed by M. Bravmann, it is also explained that this opinion appears as a form of resistance to the first opinion. Bravmann explains that the term kafa'ah comes from Arabic, evidence of which is shown in the case of Bilal's marriage. This evidence states that kafa'ah has found rules and customs that were practiced in Arab society before Islam came. This is reinforced by the fact that Arabs have a habit of judging certain criteria in the matter of choosing a candidate for marriage from both the male and female sides. Generally, the criteria that are determined are problems of lineage and social status in society, so the term kafa'ah appears which makes the standard whether or not marriage can be carried out (Bravmann, 1972: 301).

So from the two opinions above it can be understood that the term kafa'ah emergence is influenced by certain community traditions which explain that a person cannot choose a partner he will marry if he does not have an equal degree or social status, it is not purely derived from the shari'ah, because Islam present to perfect various things, one of which is Islam has come to abolish all forms of discrimination or labeling caused by the concept of social strata, Allah says that there is nothing that

distinguishes humans from one another except piety, this is stated in Q.S al-Hujurat verse 13 :

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۚ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ ۚ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

The verse above gives a clear picture that all human beings have the same degree of humanity in the sight of Allah, there is no difference in human values between men and women. It is not natural for someone to be proud and feel himself superior to others. So this verse can be the basis for choosing a partner by looking at equality, and referring to his piety not to his social status, that there is no difference between one group and another, because piety is the basis of one's glory (Shihab, 2002: 260-262). Harmony and human equality are not seen from lineage, wealth, independence, profession, but kafa'ah in Islamic marriage is only a religion seen from one's piety to Allah SWT (Barkah & Andriyani, 2020). Equality is the main point in dealing with the term kafa'ah in marriage, furthermore, after making one's piety their main point of kafa'ah. So there are preventive measures for the need for more selective efforts in the matter of choosing a life partner, this is explained in Q.S al-Baqarah verse 221:

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ تُؤْمِنَ ۚ وَلَأَمَةٌ مُّؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ ۚ وَلَا تُنكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا ۚ وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَوْ أَعْجَبَكُمْ ۚ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ ۚ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ ۚ وَيُبَيِّنُ ءَايَةَ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

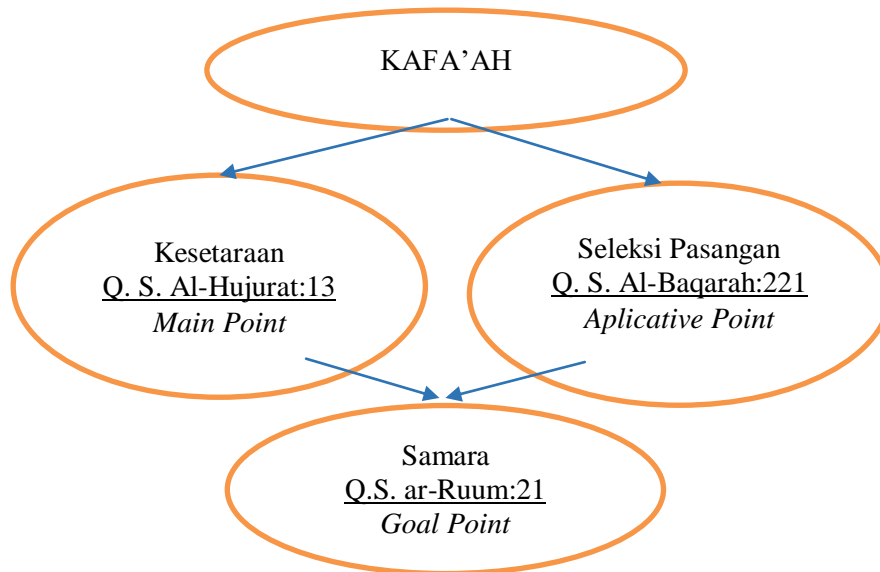
Although this verse does not clearly mention the term kafa'ah, there is an attempt by the Qur'an to show protection against piety which cannot necessarily be assessed physically because human piety can only be seen from the religion. This verse explains that in choosing a partner, it is obligatory for us to selectively prioritize the religion of both men and women. Selective here when we have made religion the main foundation for building domestic life. It is impossible for a marriage to be harmonious if the values held between husband and wife are different, because these values will affect the thoughts and behavior of each party.

To have a lasting marriage requires someone who strives to maintain something that is eternal, which will not be destroyed by the passage of time. Beauty, wealth and intelligence will run out with time but religion will remain eternal. So it can be concluded that faith in Allah is a solid foundation for building a household full of goodness (Shihab, 2002: 473-474). Furthermore, the meaning of the snippet of the verse is explained *"they invite to hell while Allah invites to heaven"*, giving an indication of the achievement of the purpose of marriage which is not only worldly but is achieved in the hereafter.

With equality as the main point in choosing a partner, it is applied through a more selective selection in order to achieve the goal of the implementation of marriage. This is explained in the word of Allah in Q.S ar-Rum verse 21:

وَمِنْ ءَايَتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَءَايَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Because of the creation of humans in pairs who are united in marriage for the achievement of a quiet life, far from anxiety that causes problems in the household, all of these things can be done if based on equality so that the wisdom of kafa'ah is achieved, namely *sakinah mawaddah warahmah* (Shihab, 2002: 33). To provide a clearer understanding of the above concepts will be illustrated in a chart below:



Kafa'ah in the View of Fiqh Scholars

After the concept of kafa'ah has been described above, it is also important to explain the opinions of scholars fiqh in understanding kafa'ah. The scholars differ in determining the criteria for kafa'ah. According to the Maliki school of thought, the only factor that becomes the criteria for kafa'ah is in terms of religion. However, in another narration it is also stated that this school also recognizes the criteria for kafa'ah in three respects, namely: religion, independence, and freedom from defects. However, according to other sources, Imam Malik still tolerates about disgrace which if in a state of necessity it will not affect the size of equality person's (Nasution, 2004: 220).

Hanafi scholars differ in their understanding of whether kafa'ah is entered as a condition for the validity of marriage or just a normal condition. However, most of the Hanafi school of thought include kafa'ah as a legal requirement for a marriage in several cases, such as:

1. If a woman of legal age marries herself with someone who is not equal (comparable) to her or in that marriage there is a large element of fraud, then in this case the guardian of the asabah group, such as father and grandfather, has the right to disapprove of the marriage before the contract takes place.
2. If a woman who is not capable of taking legal action, such as a child or a crazy person, is married off by her guardian other than her father or

grandfather to someone who is not compatible, then the marriage is broken, because the guardian's duties are related to the benefit of the girl's child, with marrying her off to someone who is not compatible with her will not benefit her.

3. If the father is known as a person whose choice is always bad to marry his immature daughter to someone who is not equal (*sekufu*), then the scholars agree to declare that this marriage is void (Az-Zuhaili, 2007: 218-220).

The scholars who argue that kafa'ah is not an important factor in marriage and not a condition for a valid marriage are Hasan al-Basri, Sufyan as-Sauri and Abu al-Hasan. While the majority of scholars are of the opinion that the harmony and happiness of a household begins with the harmony of the couple, in the context of harmony in the life of a household, it is very logical to pay attention to the fact that kafa'ah is considered by the guardians, because marriage not only affects the couple, but also affects the relationship between them both families (Pedia, 1996: 845).

Scholars agree that kafa'ah is the right of women and their guardians. If the guardian marries his daughter to a man who is not as loyal to her, while the daughter does not agree, she can apply for an annulment of the marriage, and vice versa if a woman chooses to marry someone who is not compatible with her, her guardian has the right to refuse and demand an annulment wedding. This is in line with the hadith which tells that a girl came to the Messenger of Allah, she complained that she was married to a man who was not in a relationship with her, then the Messenger of Allah gave the girl two choices, if she did not agree, then cancel it but if she agreed, continue the marriage (HR. Ahmad Ibn Hanbal, an-Nasa'i and Ibn Majah) (Pedia, 1996: 846).

From the above, that in the opinion of their kafa'ah important jurists in marriage, with based on a hadiths that explains that equal necessary so that couples who live a life of marriage to find happiness and away from all the problems, the sound hadiths is:

عن أبي هريرة أن النبي ﷺ انه قال : تتكح المرأة لأربع لمالها, ولحسبها, ولجمالها, ولدينها
فاظفر بذات الدين تربت يداك

The above hadith is the basis for scholars in determining the criteria that must be met in kafa'ah, but the author argues that for the present it is possible to expand the meaning of the concept of kafa'ah when understanding the above hadiths which states that "marry a woman", for the future now we need to reinterpret it with the meaning of "marry someone". So the criteria are not only focused on a woman but also on the part of men can also be determined using these criteria.

Reinterpretation of the Kafa'ah Concept in Jasser Auda's Perspective

The concept of maqasid ash-shari'ah promoted by Jasser Auda, he offers a concept that upholds human values and provides solutions for people's lives to be in harmony and balance by using maqashid ash-shari'ah. Jasser Auda reconstructs the concept of maqashid previous sharia that moved not only as protection and preservation, but has led to the development and right (Auda, 2008: 5-6).

Based on its scope, contemporary scholars divide *maqasid* into three parts, namely *maqasid amah* (general *maqasid* or general goals), *maqasid typical* (specific *maqasid* or special goals) and *maqasid juz'iyah* (partial *maqasid* or partial goals). Meanwhile, according to its use *maqasid* consists of three levels, namely *daruriyyah*, *hajiyyah* and *tahsiniyyat*. In his view, JasserAuda stated that *maqasid shari'ah* with all the levels are not a tiered arrangement but are interconnected and tangent circles (Auda, 2015: 36).

From the requirement of the lesson *kafa'ah* is that by using equality as the initial foundation of marriage, followed by the selection of a life partner, both male and female. Man and women who prefer selective in choosing a partner to achieve the wisdom of *kafa'ah* itself is contained in a letter *ar-Rum* verse 21 which has been mentioned in the previous discussion, namely *sakinah*, *mawaddah* *warahmah*.

The essence of required the concept *kafa'ah* in marriage is that by including *kafa'ah* in election preparation the choice of spouses that refers to equality is to provide self-protection and honor for both husband and wife and between the two families and also to avoid discriminatory traits that will lead to harm in the form of ending married life or a bigger impact, namely the splitting of relations between the two families. Who had originally been united in a marriage bond.

When someone has the desire to build a household that is *sakinah mawaddah warahmah* then he needs to make careful and preparations proper, so this is where the *kafa'ah* position is needed, in order to build the foundation of a solid marital relationship. To get to the goal of a perfect marriage, everyone must try how to build a marriage relationship. There are no problems that cause harm, so it is true that the last verse of the letter *ar-Rum* verse 21, Allah hints that everything is good will come for those who want to think. The point in this case is that if someone wants to try and think about preparing for marriage, then he will get good results, namely the achievement of a solid marriage.

From the explanation above, the essence of the essence of the requirement for *kafa'ah* can be obtained from *arule fiqh* which states that:

مالايتم الواجب إلا به فهو واجب

"An obligation is not perfect except with something, then with something it becomes obligatory".

The purpose of this rule is associated with the *kafa'ah* concept that marriage is a commandment, then the command to perfect marriage is obligatory. In order for the marriage to achieve perfection by conveying the purpose of marriage, it is necessary to include something that can complete the marriage, one of which is *kafa'ah*, so that *kafa'ah* becomes a very important thing in marriage.

Seeing the existence of *kafa'ah* with the consideration of *maqasid shari'ah*, JasserAuda's thought which was originally in the minds of scholars was an attempt to find similarities before marriage based on religion, property, descent, work, and no disability. So it can be emphasized that *kafa'ah* can be seen through conformity that prioritizes compatibility in the heart and is strengthened by religious balance between the husband and wife, so that it can be used as a vehicle to find harmony or compatibility for

couples to live together to create family happiness that is placed proportionally.

Conclusion

Kafa'ah is equality or harmony, it is important to do in order to achieve the perfection of marriage that avoids domestic life from harm and misery. Wisdom required kafa'ah to get to the marriage relationship *sakinah mawaddah warahmah*, and result destination weddings are not only referring to the happiness of the world, but also happiness hereafter. While the essence of the requirement for kafa'ah in perspective Jasser Auda's is as a form of self-protection and honor both for each partner and for the two families who have been united in a marriage bond.

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