

## **Kafa'ah among the Hadrami Arabs in the Malay World; Anthropology of Law Approach\***

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### **Abstract**

This article explores how Hadrami Arabs have been maintaining the law of *kafa'ah* marriage or endogamy marriage in the Malay world—in this instance Indonesia and Malaysia and, to some extent, Singapore—from the early 1990s to the present. Arabs, mostly of Hadrami descent, are carrying their traditions everywhere in their diaspora. Moreover, those traditions are related to the Islamic law of endogamy marriage. This study employs a qualitative research method. Library research is used in collecting data, published or unpublished documents. Data sources are done with a web search using the following databases: Google Scholar, Ebsco-host, Research gate, Sage Journal, Scientific Electronic Library Online (SciELO), and others. The results and discussion of the research explain that the process of the establishment of the tradition of endogamy marriage has begun since their existence in Hadramaut to preserve offspring because they became the target of the murder of the Umayyad dynasty. In Hadramaut, they established Naqabah Asyraf Kubra, which served to record the genealogy and maintain the Syarifah (*female descendants of Prophet Muhammad*) to obey the law of endogamy marriage. On the other hand, this paper will also examine issues related to the existence of the Arab community diaspora in the state order in the legal perspective reviewed from the guarantee of its legal certainty. This study concludes that in the end, the issue of Syarifah marriage with this *akhwal* depends very much on the perspective of the community either from Alawiyin group or not. Rigid attitudes towards traditions supported by religious propositions will still be able to preserve this. However, how big is the tradition of the law of endogamy marriageable to withstand the onslaught of globalization and modernization that continues to run, because some Syarifah groups question and even break out of or disobey this tradition.

**Keywords:** *kafa'ah, syarifah, sayyid, hadrami, nasab*

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## Kafa'ah di antara orang Arab Hadrami di Dunia Melayu; Pendekatan Antropologi Hukum

### Abstrak

Artikel ini menjelaskan bagaimana komunitas Arab Hadrami mempertahankan hukum kawin sekufu' atau perkawinan endogami di dunia Melayu—seperti di Indonesia, Malaysia, dan Singapura—dari kurun waktu 1990 hingga dewasa ini. Komunitas Arab Hadrami (yang dewasa ini sudah banyak menjadi keturunan), membawa tradisi mereka dimanapun berdiaspora, terlebih lagi tradisi tersebut berkaitan dengan hukum Islam kawin sekufu'. Studi ini menggunakan metode penelitian Pustaka, baik yang sudah atau belum dipublikasi. Sumber data dilakukan dengan pencarian web menggunakan basis data sebagai berikut: Google Scholar, Ebsco-host, Research gate, Sage Journal, Scientific Electronic Library Online (SciELO), dan lain-lain. Temuan penelitian ini adalah bahwa proses pembentukan tradisi hukum pernikahan sekufu' telah dimulai sejak mereka menjadi incaran pembunuhan dari bani Umayyah, dan semakin mapan semenjak keberadaan mereka di Hadramaut, dengan mendirikan Naqabah Asyraf Kubra guna mencatat silsilah dan mempertahankan syarifah agar mentaati hukum perkawinan sekufu'. Disisi lain, tulisan ini juga mengkaji terkait persoalan eksistensi diaspora komunitas arab dalam tatanan kenegaraan dalam persepektif hukum dengan ditinjau dari jaminan kepastian hukumnya. Di pihak lain, persoalan pernikahan Syarifah dengan akhwal atau eksogami sangat bergantung terhadap cara pandang masyarakat baik dari kalangan Alawiyin maupun bukan. Sikap yang kaku terhadap tradisi yang ditopang oleh dalil-dalil agama akan tetap dapat melestarikan ini. Namun seberapa besar tradisi hukum kawin sekufu' ini mampu bertahan terhadap gempuran globalisasi dan modernisasi yang terus berjalan, sebab sebagian kelompok syarifah mempertanyakan dan bahkan keluar dari atau tidak menta'ati tradisi ini.

**Keywords:** Kafa'ah, Syarifah, Sayyid, Hadrami, Nasab

### Кафа У Арабов-Хадрами В Малайском Мире; Подход Юридической Антропологии

#### Аннотация

В этой статье объясняется, как арабское сообщество Хадрами сохраняло закон kawin sekufu (равенства в браке) или эндогамного брака в малайском мире -например, в Индонезии, Малайзии и Сингапуре- с 1990 года по настоящее время. Арабское сообщество Хадрами (у которой сегодня много потомков) несет свои традиции везде, где бы они ни находились в диаспоре, более того, эта традиция связана с исламским законом kawin sekufu. В этом исследовании используются литературные методы исследования, опубликованные и неопубликованные. Результаты этого исследования состоят в том, что процесс формирования закона kawin sekufu был начат, так как они стали объектом убийства Омейядов, и стал более устоявшимся, так как их существование в Хадрамауте, путем создания Naqabah Asyraf Kubra для записи генеалогии и поддержания «Syarifah» в порядке соблюдать закон kawin sekufu. С другой стороны, в данной статье также исследуется вопрос о существовании арабской диаспоры в государственной структуре с правовой точки зрения, рассматривается с точки зрения ее правовой определенности. Кроме того, вопрос о «Syarifah» с экзогамией сильно зависит от того, как люди относятся к тому и другому, исходя из Alawiyin (Баалави Сада) или нет. Жесткое отношение к традиции, поддерживаемое религиозными аргументами, все же сможет сохранить эту вещь. Однако насколько сильно традиция закона kawin sekufu может противостоять продолжающемуся натиску глобализации и модернизации, потому что некоторые группы «Syarifah» подвергают сомнению и даже оставляют или не подчиняются этой традиции.

**Ключёвые Слова:** кафа (термин, используемый в области исламской юриспруденции в отношении брака в исламе, что на арабском языке буквально означает равенство или эквивалентность), щерифа (традиционный арабский титул для женщин), сейид (почётный титул у мусульман для потомков пророка Мухаммеда — через его дочь Фатиму и внука Хусейна), хадрами, насаб (патронимическое имя)

## A. INTRODUCTION

This paper examines *kafa'ah* (equality or compatibility) from the perspective of the anthropology of law. Law is very closely related to culture. The law itself is a product of culture because, in reality, the legal product is a product of human creation. In the study of law, it is known legal structure, a legal substance, and legal culture. Law created has characteristics that vary from one region to another according to the local culture. Culture in society is involved in legal formation. The law will continue to change following the development of the times, and human dynamics are born in different cultural processes because all cultures easily change adjusting to the development of the times (Kožíšková, 2014, Rahardjo, 2010, Ihromi, 1993, Subchi, 2018).

*Kafa'ah* means balance or harmony or compatibility, identical, equivalent, or comparable. The sociological aim of *kafa'ah* is balance and harmony between wives and husbands, so each party does not feel hard in the future in facing life's journey in the household, so it creates a household which is calm, serene, full of love and affection (Ismail, 2020, Barkah, 2020, Shihab, 2007). To realize this, it needs to be compatible (*sekufu'*) between husband and wife, known in the codification of marriage law with the term *kafa'ah*, so that there is not a great gap between husband and wife in their daily life. However, more than that, *kafa'ah* has another more important goal which is anthropological, that is to avoid any disgrace or shame that can bring down the dignity of the family of women or the women themselves as one part of their community.

In the literature of classical *fiqh* (Islamic jurisprudence) books, the concept of *kafa'ah* means the degree of equality between the prospective bride and groom in some aspects namely the religion (*din*), lineage (*nasab*), position (*hasab*), and beauty (Amri, 2020, Welchman, 2016). In the Quran there are general principles about the degree of equality of human beings, that is, there is no over plus between one another, including differences in ethnicity and social status. This is not to be contested because the main purpose of human life in the world is to know each other and respect human beings. That is, there is no difference from one another because what is seen is only from the degree of human piety to Allah. As the word of Allah: "O people, Verily, We created you from a man and a woman and made you nation and tribe so that you might know one another. Surely the noblest among you by Allah is the most pious among you. Surely Allah knows best, knows all the better" (Q. S. al-Hujurat (49): 13).

The above verse gives the understanding that Allah has revealed this verse as a prohibition for those who boast of *nasab* or lineage. This implies that the criteria for *kafa'ah* are only in matters of religion because He considers the degree of all human beings to be equal before God, and only piety that distinguishes. Islam advocates to obey and implement the rules contained in the Quran and Sunnah, so there are some *ulama* (Muslim scholars) who argue that it is not appropriate to discriminate against each other which come to the prohibition in the selection of a mate based on descent, wealth or status of prospective son-in-law. The existence of differences of *nasab*, wealth, and status is *sunnatullah* (the immutable constants of Allah's system), and this may be taken into consideration in marriage to measure whether someone is considered *kufu'* (compatible) or not, but this measure is limited to considerations that do not affect the validity of the marriage, so this rule does not reach on a marriage ban.

Based on this thought, this article discusses to what extent the process of the establishment of the *kafa'ah* legal tradition in the Arab descent community in the Malay world, where they have their traditions that are different from other communities. The concept of *kafa'ah* gave birth to the law of the prohibition of marriage between Syarifah women and non-Sayyid (*male descendants of Prophet Muhammad*) men. This is because they are not *sekufu'* or not compatible even they are considered damaging the great and noble lineage from Prophet Muhammad.

## Literature Review

There are some related researches about this topic. Firstly, in a book about Hadrami studies (Brehony ed. 2017), it describes Yemen's Hadramawt from its history, region, to its diaspora. This book has contributed significantly to Hadrami studies that have become popular in 1990 after the unity of North Yemen and South Yemen. Hadramawt is known not only as of the largest governorate of Yemen with its legacies in culture and history that has become a unique identity for centuries but also its two sultanates namely the Qu'ayti and the Kathiri. It is also noted that not many Arab diasporas as Hadramis have contributed to cultural impact in communities outside of Yemen, where many emigrants from Hadramawt are in Tanzania, Sudan, Kenya, India, Saudi Arabia, Malaysia, and Indonesia.

Secondly, Rizal (2017) studies Hadrami Arab Community in current Indonesia. This research shows that the conflicts among the Hadrami

community in Indonesia are not only related to Yemen's traditional stratification and nationalism, but it is more related to the contemporary issues of Hadramis in Indonesia. These are about competition and a doctrinal contest for religious authority and the debates about Shi'ism among Sayyids and Salafism among the followers of Al-Irsyad Al-Islamiyyah. These two factors have contributed to their power and authority as well as their shape and transform of identity.

Thirdly, Latiff (2016) addresses the issue of Hadrami Arabs in Malaysia from its history to their lives in the Malay community. This research shows the adaptation of the Hadrami Arabs in particular the Sayyid descents in Malaysia that have many ethnic communities, especially through Malay culture, involvement in the society, and mixed marriage with Malaysian women. They have become part of the Malay society but at the same time, they still maintain Arab tradition and Hadrami's way of life.

Fourthly, Talib (1997) examines the Hadrami community in Singapore. The research shows that the Hadrami residences in Singapore face identity crisis particularly related to Arab identity. The younger generation has a lack of knowledge of the Arabic language and also have lost direct social contact with Hadramaut because the Hadramis children are not sent to visit Hadramaut currently. Because of that, they established an Arabic language center by Alwehdah to learn Arabic and its culture. Maintaining Arab identity in Singapore becomes a challenge for the Hadrami community especially for the younger generation that requires frequent travel and direct contact with Hadramaut and other Arab societies.

Related to *kafa'ah* issue, the other studies, Farooq (2019), explain about a woman's consent in Muslim marriage as one of the important factors in Muslim marriage and permission of the wali (male guardian) for a legal marriage based on the law and of Sharia. The issues related to a young Muslim woman's marriage are such as the doctrine of *kafa'ah* (equality or suitability), the match between the man and woman, and its grounding in patriarchal and social norms. Besides that, another important factor is marriage guardianship as men's controlling position that a woman's choice for choosing a marriage partner is limited by *kafa'ah*.

## **B. METHODS**

This study uses a literature study method, with historical and anthropological approaches. Historical studies are used to obtain information

about the diaspora process of Arab society to various regions in the Malay world, which was written based on field (ethnographic) research by historians about the Hadrami Arabs. Anthropological studies that have been carried out by anthropologists on the law of the *kafa'ah* among the Hadrami Arabs in the Malay world are examined to sharpen anthropological analysis. The search for data sources or literature is done with a web search using the following databases: Google Scholar, Ebsco-host, Research gate, Sage Journal, Scientific Electronic Library Online (SciELO), and others. Data sources have a range of the last 10 years, except for history. Online literature searches were conducted between April 1 and July 1, 2020. Besides, data searches were also conducted by online interviews by using social media to scholars and *habaib* (descendants of Prophet Muhammad) in Indonesia, Malaysia, and Singapore. The interview was intended to explore data on the extent to which transmission of legal knowledge of the endogamy marriage was carried out by religious leaders and its effectiveness until it is obeyed by the Hadrami Arabs.

The main concern of ethnographic research is about the way of life of a society (Spradley, 1979). According to British anthropologist Radcliffe-Brown and B. Malinowski, ethnography aims to describe and build the social and cultural structure of a society (Malinowski, 1950). According to Frey, ethnography is useful for examining human behavior in specific natural environments. Thick description (Geertz, 1973) based on observatory participant is the main characteristic of ethnography (Mulyana, 2001, pp. 161-162). Therefore, in ethnographic research, researchers are not enough to just do interviews, but be with informants while observing (Spradley, 1979, pp. 1-10).

## C. RESULTS AND DISCUSSION

### 1. The Establishment of the Kafa'ah Law among the Hadrami Arabs

Prophet Muhammad passed away without having any male descendants who grew up and inherited his missionary struggle. His two sons, Abdullah and Ibrahim, died at a very young age (Anthony, 2020, Hisyam, 2000). Therefore, those inherited only his daughters and their descendants. However, the absence of a living son who had descendants in the Arab society system which adopted the patrilineal system at that time automatically erased the continuation of his *nasab* (lineage). However, the emergence of a doctrine that connects his *nasab* to the descendants of Fatimah Azzahra bint Prophet Muhammad based on "claims" sourced from the Quran and the Hadith keeps his *nasab* alive and sustainable until today. It is important

to note that the descendants, later known as Syarif and Sayyid (male) and Syarifah (female), especially for Syarifah were only allowed to marry Sayyid. Married off Syarifah with someone other than Sayyid is a strict prohibition and becomes part of the doctrine of some schools of *fiqh*. This is because marrying off Syarifah with someone other than Sayyid will erase the Prophet's lineage because the Prophet can only be connected through the men. One thing that became a contradiction with the connection of the Prophet's lineage to the descendants of Fatimah Azzahra who opposed the mainstream patrilineal system of Arab society at that time.

One of the events that prompted the emergence of the *kafa'ah* law among the Hadrami Arabs was the event of Karbala and the massacres carried out by the Umayyad dynasty to the descendants of Ali bin Abi Talib (Daneshgar, 2014, Umar, 2004). After the event of Karbala, the movement of the Alawi group began to be in the spotlight of the ruling government at that time. Their movements were considered dangerous for the continuity of the ruling government, the Umayyads. The Alawi family automatically became their main enemy. Arrests and murders often happened to them. To preserve the family of Alawi family who often became the target of murder, marriage was carried out with fellow of them. Syarifah marriages are well guarded by them to keep maintaining *nasab* (lineage). In the patrilineal system that was in force at the time, these Syarifahs were married by their relatives to maintain their *nasab*. Ahmad bin Isa bin Muhammad bin Ali Uraidhi married his relative Zainab binti Abdullah bin Hasan bin Ali Uraidhi. Their *nasab* continued to their great-grandfather, Ali Uraidhi. The Alawi Hadramaut family who initially did not adhere to any school of thought (*madzhab*) and was Mujtahids began to adopt the Shafi'i school in the 13<sup>th</sup> century after the advent of Muhammad Al-Faqih Al-Muqaddam. Muhammad Al-Faqih Al-Muqaddam was the central figure of the Alawites at that time. After adopting the Syafi'i school, Muhammad Al-Faqih Al-Muqaddam then established a *tarekat* (order of Sufism) known as the *tarekat* Alawiyyah (Assegaf, 2000, p. 215, Ibrahim 2001, Subchi, 2019). After following Shafi'i school in the 13<sup>th</sup> century, the Muhajir group was accustomed to Sayyid and Syarifah marriage. Moreover, the provisions regarding the *kafa'ah* in the Syafi'i school provided an opportunity for them to detain Syarifah only for the Sayyids. While the Sayyids were accustomed to marrying Syarifah. After the establishment of the *naqabah* institution in Hadramaut in the 13<sup>th</sup> century, the marriage of Syarifah with someone other than Sayyid became increasingly difficult. The institution of *naqabah* is an institution that aims to defend and maintain the position and interests of the Alawites, protect the honor and solve problems

that arise internally or externally. The task of *naqabah* includes trying to prevent Syarifah women from marrying those who are not equal (Assegaf, 2000, p. 276, Alphers, 2014). The situation in Hadramaut which placed Sayyid at the highest class in the community made this system more deeply rooted in the community.

## 2. Kafa'ah Law among the Hadrami Arabs in the Malay World

The Hadrami Arab Community are carrying traditions including the law of endogamy marriage when they are in the diaspora, including in the Malay and Southeast Asian world. Until the 20th century, the majority of Hadrami Arabs who were in the diaspora to Southeast Asia were men. Due to certain safety and fairness reasons, Hadrami Arab women did not emigrate abroad. Men married foreign women overseas in addition to having a family in Yemen. Mixed marriages became common practice for early generations of Hadrami. The issue of matchmaking is not a big issue for Sayyid Arab men because they may seek prospective wives other than Sadah descendants (Prophet Muhammad's descendants), because their tradition applies a patrilineal system. Polygamy is also not a difficult case for Arab men. Some of them practice polygamy, and some even have four wives who live under one house. Such marriages involve non-Arab women that are marriages between ethnicities where after marrying Arab women, most economically capable Arab men such as traders will marry for the second, third, and fourth with women from different ethnic groups (Sharifah, 2004). However, for women from Sayyid or Syarifah group, they are required to marry Sayid men to preserve their descendants. Therefore, there was a case in the Sayyid family abroad that brought Arab men from the Sayyid group from Hadramaut, Yemen to come to the Malay World (Malaysia, Indonesia, and Singapore) to become husband candidates for their daughters. For example, Sayyid Umar ibn Ali al-Junied from Singapore asked the son of his family of Abd Rahman in Tarim, Yemen to marry one of his daughters (Freitag, 2002). The aim is to preserve the descendants of Arabs and Sayyids in the family tree of al-Junied. Thus, the early generation of Hadrami Arabs had a solution for the problem of a mate for their daughters, where they married off their daughters to Arab men who came from Yemen. It also causes many Hadrami Arab youths to emigrate to the Malay World to try seeking sustenance the same as their parents who had emigrated earlier. These young Arabs worked with successful Hadrami Arab merchants in Singapore, Malaysia, and Indonesia. Most of these Arab youths

had received their early education in Hadramaut before they emigrated out of the country. According to Freitag (1997), most of these Arab youths not only came to work but also came to marry the daughters of the wealthy Hadrami Arab family and run the family business at the same time.

There are many cases of Hadrami Arabs who are difficult in finding a match for their daughters to maintain the continuity of their lineage, therefore they established a marriage Majlis, as a meeting place for them to strengthen the brotherhood as well as a place to find a life partner. Unlike Hadrami Arab men, the descendants of Sayyid of Hadrami Arab women are only allowed to marry Arab men from fellow Sayyid group. This is where the issue of *kafa'ah* or *sekufu'* had long been a public debate among Arab communities in the early 20th century in Indonesia (Natalie, 1999: 94) in particular and in the Malay world in general. The problem of *kafa'ah* in the selection of a prospective husband for a Syarifah woman has been done by the Sayyid group in Hadramaut, based on Islamic principles which emphasize the concept of *sekufu'* (compatible) in which the prospective husband of a Syarifah woman must be equal to the woman from the social aspect, which means that his social status is not less than that of his prospective wife. However, some traditional Hadrami Arab societies interpret that *kafa'ah* or *sekufu'* refers to equality in the offspring where one woman is forbidden to marry a man having a lower class of descent. Therefore, the daughter of Sayyid descent is only allowed to marry Sayyid offspring alone (Natalie, 1999, 30, Jonge, 2019).

A wave of the arrival of the Hadrami in the mid-eighteenth century brought their customs with them (Kesheh, 2007, pp. 13-14). The social stratification of the Hadrami people also contributed to their development in Indonesia. This stratification that relies on religious and hereditary levels divides them into three groups, Sayyid, *masha'ikh* (scholars), and *qabail* (tribesmen) (Kesheh, 2007, p.22). Their migration to Indonesia then formed a new group known as *Ahwal*. *Ahwal* is a term used by the Hadrami to the native people of Indonesia who accept their arrival well. The arrival of the Hadrami to Indonesia which is generally dominated by men brought the consequences of their marriage to the native Indonesian population. This familial relationship then continues by making the original inhabitants of Indonesia as *Ahwal* or part of their family (Shahab, 2016). Conversely, if Sayyid men may marry indigenous women, Syarifah women are not allowed to marry men other than Sayyid. This dynamic continues to occur in the contemporary era.

In the contemporary era, in general, Syarifah still hold the law of endogamy marriage. This can be seen from several cases in several regions, such as in Surakarta. Ariwibowo (2019) explains that endogamous marriage among Hadrami-Arab not only has created identity retention especially ethnic identity but also has contributed to generate a hybrid entity that inherits each ethnic parent's characteristics, including the personal name. The endogamous marriage is one of the efforts to maintain the lineage of their ancestors, in particular patrilineally, such as by giving a newborn baby name by using his/her father/grandfather's name or a combination of both names and the use of surname after the personal name of children. On the other hand, exogamous marriages (Javanese mother and Arab father) tend to use a hybrid name for their children, which is a combination of words from Arabic and Javanese. Arabic names are used by Hadrami-Arab to show their ethnic identity and their religious status.

Shahab (2018) also notes that endogamy marriage is the most marriage preference in Hadrami for maintaining their group and ethnic existence even though exogamy marriage also has increased in Hadrami. Besides that through endogamy at the same time they also maintain their identity through culinary, clothes (Hadrami/Islamic costumes), and arts (such as songs and dance) that become a commodity for Hadrami and non-Hadrami moslems. As a result, this Hadrami's marriage is not only to maintain kinship for existence of the group and their identity but also to re-created their group's identity.

Based on studies (Rifqiyati, 2017, Aribowo, 2017, Nawiro Vera etc, 2018), there are some points related to Arab women's identity in viewing the family lineage tradition and endogamy marriage. Firstly, Arab women are positioned as a subordinate group and socially marginalized because of the hegemony of patriarchal ideology, the limited space of women's movement, and the limited knowledge of the tradition of family lineage (nasab) and endogamy (kafaah marriage). This can be seen in the absence of female figures in the sciences of nasab, interpretation, and hadith. Arab women only follow the fatwa of scholars and male traditional leaders and very few women who are knowledgeable about this and these women will be regarded as dissidents by the society including by the women group. Secondly, Arab women's life and identity have been constructed historically by the Arab ethnic patriarchal culture of Yemen as its home region and Arab cultural traditions (patriarchal) and norms with nasab tradition. Their styles of life from their home country are still brought when they move to other countries including Indonesia, where men as the dominant group. By this tradition, Arab women's identity is blurred and the women cannot continue forming their descendants even though they

are part of the actors of the endogamy marriage. The forming of women's identity is mainly through cultural capital including language though cultural communication in their children.

The patrilineal system that colored the Hadrami community (Jonge, 1989) in Indonesia then affects their offspring. *Nasab* can only be maintained through the male line, so girls of Hadrami descent are not allowed to marry other than Hadrami too. At first, this applies to all groups both Sayyid, *masha'ikh*, and *qaba'il*. Many of Hadrami's female descendants were forced to accept polygamy or chose not to marry-until the end of their lives. However, slowly this custom began to shift, and some of them began to marry other than Hadrami. It is started with the marriage of *masha'ikh* and *qaba'il* with *ahwal* and continues with the marriage of Syarifah with *ahwal*. However, this last group still gets strong opposition and prohibition that is not only caused by customs but also the doctrine of some major schools of Islam. This prohibition began to be ignored and many of the Syarifah chose to marry *ahwal* due to several factors such as love, family, rejecting marriages, and the environment of Sharia association.

If examined comprehensively, in choosing a prospective husband from *akhwal*, a Syarifah considers various factors that are considered equal with her as a Syarifah and enables her prospective husband to be accepted by her family. At least several factors become a consideration for a Syarifah in choosing a prospective husband from *akhwal* including religious factors, personality traits, morals, wealth, status, and position.

In Malaysia, the *kafa'ah* law is still held tightly by the Arab Hadrami community. If there are individuals who do not heed, it will be a problem for families, even the state (through the courts), such as in the case of Syarifah Fatimah (Noor, 2013). Fatimah is a Shafii daughter from an Arab father (late) and a Malay mother. She intended to marry an Indian man, but her paternal uncle as her wali (guardian) named Shaikh Omar refused the marriage plan because as an Arab with superior status, she could not marry a non-Arab. Because of that, she planned to marry the Indian man without the permission of her wali, but then her wali got an injunction from the court to prevent the marriage application based on the argument of the principles of Shafii school of jurisprudence that a Shafi'i girl could not marry without her wali's permission. As a result, she changes from embracing the Shafi'i school to the Hanafi school and re-apply for her marriage. Her change is valid by the court so that because she becomes a Hanafi girl with her age of puberty, she has the liberty to marry anyone without the permission of her wali (guardianship). In Malaysia, the

cases of *kafa'ah* issues face some problems in courts because they are related to other major issues, such as marriage without wali and dissolution of marriage because of having no permission from the wali. Therefore, this kind of case is usually dealt with by the family and *kafa'ah* still becomes an issue of social relations among the parties and the sayyids for their status in the Muslim society (Noor, 2013).

The establishment of the endogamy marriage tradition in the Sayyid Arab community in the perspective of anthropology of law is due to two reasons. The first is the existence of a system of beliefs and trust that is rooted in them, where the belief is obtained from the ancestors, *habaib*, family, and group environment in understanding the Hadith text that the obligation to maintain endogamy marriages has been preserved until now. This belief system is based on several Hadith, among others which state the purity of the Sayyid or Ba'alwy group who are the descendants of Prophet Muhammad. This belief system forms the mindset of the Alwy and Ba'alwy groups in their places of diaspora especially Southeast Asia. In Indonesia, Malaysia, and Singapore, the Hadrami Arab community actively participate in preserving the endogamy marriage tradition to protect the descendants of Prophet Muhammad. The second is the form of the process of guarding and preserving the descendants of Prophet Muhammad is by limiting the Syarifah not to marry with non-Sayyid. Whereas, for Sayyid there are no restrictions in the selection of his future wife because they use a patrilineal system. The limitation on the choice of a prospective husband for Syarifah shows the existence of the *kafa'ah* system. The *kafa'ah* system adopted is equality of lineage. Lineage becomes very important in considering the selection of a prospective husband for Syarifah in Southeast Asia. *Kafa'ah* or equality of *nasab* or descendants is one of the criteria in determining Syarifah's prospective husband. This *kafa'ah* system arises because Syarifah's belief has become a system of action. Syarifah's belief and trust in the text then become a pretext, that besides Sayyid or Ba'alwy, men are not appropriate to be prospective husbands because they are not the descendants of Prophet Muhammad. Because of the pretext, the limits between Ba'alwy group with other groups arise. These limits then cover all possibilities for Syarifah to marry men other than her group.

If examined at the legal level, the implementation of the practice of diaspora marriage of the Arab community is recognized and has a guarantee of citizenship rights. In the context of Indonesia, this is manifested in the 1945 Constitution of the Republic of Indonesia and Law Number 24 of 2013 on Amendments to Law Number 23 of 2006 on Population Administration. Then at the international level, the rights of citizenship on that matter are guaranteed

and protected through the presence of the Universal Declaration of Human Rights of 1948, International Covenant Civil and Political Rights of 1966.

Meanwhile, if examined from the perspective of the anthropology of law, the patterns of behavior created in the Arab community can be called a cultural entity. E.B.Tylor at least explains that culture is complex and it involves knowledge, beliefs, arts, morals, legal customs, capabilities, and habits obtained by humans members of society (Soekanto, 1990). The cultural form that occurs in the Arab community reflects the value of the cultural system which is interpreted as an ideal part of culture because it is related to ideas, concepts, values, norms, rules, and others. Then it leads to the birth of the culture of law as a form of a certain value that becomes a reference in response to the provision itself (Rahardjo S., 2010). In this relationship, such things can be simplified that every society, every country, and every community essentially have a culture of law that is mutually attached (Friedman, 1984).

Further, in the implementation, it will lead to two possibilities that will occur associated with cultural values and legal culture. First, the community will tend to obey the substance of the law of customary marriage if the value of the substance of law demonstrates the suitability of the value of culture, and second, it will emerge the violation of the substance of the law if the value of culture opposes the value of the substance of the law. Such a thing indicates that the culture of law is a description of the attitude of the society or community towards the system of law which is manifested in the form of obeying, abusing, and avoiding the law. However, at least this entity is essentially still able to adapt to the environment and the law of some countries especially in Malay World and Southeast Asia.

From this, it can be concluded that the Syarifah in Malay World and Southeast Asia can adapt to the teachings that exist in the text, fully believe and maintain the belief by committing endogamy marriage as a form of the seriousness of her belief. The belief system that gives birth to the *Kafa'ah* System in Berger's theory is included in the process of Externalization. Berger classifies the process of social construction through three processes (Berger & Luckmann, 1991, p. 10; Pfadenhauer, 2017, pp. 93-114). The three processes of social construction are externalization, objectivation, and internalization. However, from these three processes, the existence of the background in the form of trust and belief in revelation, which in cultural terms is called "*System of Meaning*", belongs to the process of externalization in the form of adaptation to texts that are considered true (Guest, 2017; Nakissa, 2019). The process of externalization is the process of adaptation carried out by the

Syarifah to the texts of the scriptures or reference books. In this case, the texts of the scriptures are placed in a central position and as guidance of life in acting and carrying out daily activities. Syarifahs in Southeast Asia has carried out endogamy marriage because of their level of trust in the hadith text which states that their group is a pure descendant of Prophet Muhammad.

The basic text that becomes their guidance on the purity of the descendants of Prophet Muhammad is the Prophet's Hadith as follows:

“All the children born by their mothers, their *nasab* follows their fathers, except for the children of Fatimah, I am their guardian, I am their *nasab* and I am their father”

“Fatimah is a part of me, whoever makes her angry will make me angry, and whoever pleases and relieves her will please and relieve me. Truly, all *Nasab* will be cut off on the End of the Day: except my *Nasab* and *Sabab* (matrimonial relationship)” (study on Kitab Masnad Imam Ahmad and Masnad Imam Hakim).

The two hadith above are part of the adaptation of the Syarifah in Malay World and Southeast Asia to the sacred texts which have become guidance and constructed their beliefs. Therefore, the endogamy marriage exists and continues to be applied by Syarifah as a form of obedience to the text of Hadith. The form of Syarifah's obedience to the texts that synergize with her religion is a form of Syarifah's compliance with religious behavior that is implemented in traditional law, namely endogamy marriage. The implementation of the religious doctrine that forms a belief system and community actions synergize with Berger's presupposition of religion that religion is part of the culture that constructs humans. Religion is an objective entity because it is within human beings. Thus, religion is in the text or becomes a system of values, norms, rules, and others. The text containing the rules then undergoes a process of internalization into the individual because religion has been interpreted by the community to be the guideline. Religion also undergoes an externalization process because it becomes a reference to norms and values that function to guide and control people's actions. This is also demonstrated by Syarifah's compliance who perform endogamy marriage up until now as a form of the strong influence of Hadith text for them. This also happens in countries like Malaysia (Latiff, 2016; Pue, 2016).

### 3. How is the Next?

How is the next, is the law of *kafa'ah* will sustain or change in the mid of globalization? In the Malay World (Noor, 2014, Lee, 1985), the problem of the

law of endogamy marriage is faced by several Syarifahs. For example, in Malaysia and Singapore, many different interpretations of the marriage law, which many of them are from the Shafi'i school, created dilemma for Muslims for the issue of *kafa'ah* in a Muslim marriage, including for the Arab communities in Malaysia divided into two groups: the Sayyid and the Non-Sayyid. The Sayyids believed in the concept of *kafā'a* as a religious responsibility to maintain their noble family lineage. Meanwhile, the non-Sayyids believed that *kafa'ah* in the Muslim marriage law has no relation with family lineage but related to piety and religious behavior, even though on the other hand some of the non-Sayyids also believed that the Sayyids are superior to the Malays so that not supporting the marriage between the Arabs and the Malays. For the case of Muslims in Malaysia, they followed the principle of *kafa'ah* but it was different when in courts. The Shariah Court that dealt with the Muslim marriage laws had its approach that considering the school of jurisprudence of the parties involved for its final judgments.

In Indonesia, as stated by the researcher (Slama, 2014, Ragoan, 2017, Annisah, 2019), *kafa'ah* is a big problem for Syarifahs who have not married because of the factor of the compulsory law of endogamy marriage. The developments of Indonesian gender relations have created major change and impact on *kafa'ah*, particularly for unmarried Syarifahs who are well-educated and economically independent, like Fatima Alatas who was questioning the concept of Hadrami patrilineal in the reckoning of descent (Hadrami gender hierarchizations) and the Hadrami sada's vision of social hierarchy for marrying a non-Sayyid Hadrami. Along with the Syarifahs coming of age today, the issues of marriage unfold and many Syarifahs try to avoid these marriage problems where the internet is used as media for finding a suitable husband. However, *kafa'ah* has presently come to a point in history where it is not furiously rejected by non-sada Hadramis but it is challenged from the inside of the sada community especially by intellectuals or the young Syarifahs who still want to make their family and community happy but at the same time they have lost their belief in marriage law for their personal lives and in the society. This can be said as a turning point in the Hadrami diaspora's history and also can be as the beginning of the end of the close relationship between marriage and crisis among the Hadrami diaspora since a long time ago.

#### D. CONCLUSIONS

*Kafa'ah* means *al-mamatsalah wa al-musawwah*, something equivalent or similar. Meanwhile, in *fiqh* term, *kafa'ah* is defined as the equality between

husband and wife in certain matters. In the historical records of endogamy marriage between the descendants of the Prophet began to appear during the Umayyads. The Alawiyyin group at that time were chased and even killed (as was the case of the murder of Husain bin Ali) in Karbala because they were considered dangerous for the Umayyad dynasty. The political conditions at the time required them to have an endogamy marriage to preserve their offspring. This endogamy marriage then developed among the Alawiyyin after they emigrated to Hadramaut. Besides, the socio-political conditions in Hadramaut which were generally controlled by the Khawarij Ibadhi who conflicted with them required that they married into their own families. This system was then institutionalized in an institution called *naqabah* in Hadramaut. When the Hadrami Arabs made diaspora (emigrated) to several countries including Southeast Asia and the Malay World, the tradition of the law of endogamy marriage is more preserved until the contemporary era. This condition is very unfavorable for some Syarifah women because they are not allowed to do marriages except with Sayyid men, but on the contrary, Sayyid men are allowed to have marriages with women other than Syarifah. Thus, in several regions in the Malay World, they dare to break out of the tradition of endogamy marriage and prefer exogamy marriage. They are usually highly educated women who are already economically well-off and have a fairly strong network outside their group.

Seeing this order, legal anthropology grows in it as a branch of cultural anthropology by seeing law as a cultural cause resulting in community responses to the law in the form of culture in this case as what is done by the Arab community in terms of marriage. The action was based on the cultural values and cultural reasons of the community which gave birth to the cultural system.

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