

RECONSTRUCTION OF THE KAFAAH CONCEPT IN MARRIAGE

by Suwarjin Suwarjin

Submission date: 21-Mar-2023 10:07PM (UTC+0700)

Submission ID: 2042708494

File name: 8498-24266-1-PB_1.pdf (880.71K)

Word count: 5285

Character count: 27943

RECONSTRUCTION OF THE KAFAAH CONCEPT IN MARRIAGE

Suwarjin

Universitas Islam Negeri (UIN) Fatmawati Sukarno Bengkulu

Jl. Raden Fatah Pagar Dewa Bengkulu

E-mail: suwarjin@gmail.com

Abstract: *Kafaah* in marriage aims to create a complete and harmonious family. However, the old construction of *kafaah* contains discriminatory and problematic nuances. This can be seen from the criteria for *kafaah*, which are all physical-material, except for religion and piety. Humans are polarized into primordial partitions: beautiful-ugly, rich-poor, aristocratic-ordinary people, and free-slave. This polarization gives birth to discriminatory attitudes in society. In fact, Islam came to eliminate discriminatory social barriers. Through the *maqâshid al-syâri'ah* approach, this research seeks to reconstruct the concept of *kafaah* in several aspects, namely: reorienting the purpose of applying *kafaah*, repositioning *kafaah* rights, reviewing *kafaah* criteria and classifying *kafaah*. *Maqâshid al-syâri'ah* is presented here not as a doctrine to understand a particular context of Islamic law, but as a method to reconstruct the existing concept of *kafaah*. The goal is to produce a new concept of *kafaah* that is more substantive and humanist. From the results of the study, several conclusions were found. First, *Kafaah* legality is *ijtihad* because there are no valid texts found. Second, The construction of *kafaah* is influenced by the patrilineal system of Arab society. Third, Reconstruction of the concept of *kafaah* is carried out in two ways: (1) to include other criteria other than the seven criteria set by classical *fiqh*. (2) to compare the *kafaah* criteria between prospective husbands and prospective wives holistically. This things needs to be done to fulfill the current sense of justice and benef of the Muslim family.

Keywords: reconstruction; *kafaah*; *maqâshid al-syâri'ah*.

Abstrak: *Kafaah* dalam pernikahan bertujuan mewujudkan keluarga yang utuh dan harmonis. Namun, konstruksi lama tentang *kafaah* mengandung nuansa diskriminatif dan problematik. Ini dapat dilihat dari kriteria *kafaah* yang seluruhnya bersifat fisik-material, kecuali agama dan kesalihan. Manusia dipolarisasi kedalam sekat-sekat primordial: cantik-jelek, kaya-miskin, ningrat-rakyat biasa, merdeka-budak dan seterusnya. Polarisasi inilah yang melahirkan sikap diskriminatif dalam masyarakat. Padahal, Islam datang untuk menghilangkan sekat-sekat sosial yang diskriminatif. Melalui pendekatan *maqâshid al-syâri'ah* penelitian ini berusaha merekonstruksi konsep *kafaah* pada beberapa aspek, yaitu: reorientasi tujuan pemberlakuan *kafaah*, reposisi hak *kafaah*, meninjau ulang kriteria *kafaah* dan pengklasifikasian *kafaah*. *Maqâshid al-syâri'ah* di sini dihadirkan bukan sebagai doktrin untuk memahami konteks tertentu hukum Islam, melainkan sebagai metode untuk merekonstruksi konsep *kafaah* yang telah ada. Tujuannya, untuk menghasilkan konsep baru mengenai *kafaah* yang lebih substantif dan humanis. Dari hasil penelitian didapati beberapa kesimpulan. *Pertama*; legalitas *kafaah* bersifat *ijtihadi* karena tidak ditemukan *nash* yang sah. *Kedua*; Konstruksi *kafaah* dipengaruhi oleh sistem patrilineal masyarakat Arab. *Ketiga*; Rekonstruksi konsep *kafaah* dilakukan dengan dua cara, yaitu: (1) menyertakan kriteria lain di luar tujuh kriteria yang ditetapkan fikih klasik. (2) membandingkan kriteria *kafaah* antara calon suami dan calon istri secara holistik. Hal ini perlu dilakukan untuk memenuhi rasa keadilan dan kemaslahatan kekinian keluarga Muslim.

Kata kunci: rekonstruksi; *kafaah*; *maqâshid al-syâri'ah*.

Introduction

Islam was revealed to society with an institutionalized culture, not in a vacuum. The laws it contains are normative, but most of them are historical. This is a logical consequence of Islam as the last sharia. Therefore, Islamic law is designed to use flexible and elastic tools to reach the dynamics of human society throughout time.¹ The texts of the Quran and hadith do not add up, while legal cases are popping up all the time. Therefore, the Quran and Hadith have dynamic, elastic, and flexible characteristics and are open to reinterpretation.²

The product of the interpretation of legal verses and traditions in the treasures of Islamic scholarship is called *fiqh*. As a product of thought, the truth of *fiqh* is not absolute. On the contrary, most of it is relative. Moreover, *fiqh* is generally born to answer actual problems in particular space and time dimensions.³ Therefore, the validity of *fiqh* is limited by the context of space and time. With this typology, the essential character of *fiqh* is temporal and can accept changes due to changes in space and time.

One of the historical *fiqh* products is *kafaah* in marriage. *Kafaah* is the equivalence (*mumatsalah*, *mu'adah*) between husband and wife in certain aspects to avoid defects.⁴

Previous scholars from the four schools of thought have discussed *kafaah* with almost the same concept. They agree on the importance of *kafaah* in marriage. The urgency lies in achieving the goals of marriage, namely: forming a *sakinah*, *mawaddah*, and *rahmah* family.⁵ That is a family that lives in harmony in love and affection.

However, the formulated concept of *kafaah* creates a division in society. Society is divided into social classes. These social classes ultimately become the dividing gap between the people themselves. The poor cannot marry the rich, the manual workers cannot marry the office workers, the prince cannot marry the common people, and so on. *Kafaah* construction like this has the potential to perpetuate oligarchy and aristocracy. The rich will get richer, and the poor will get poorer. This is not in accordance with the objectives of Islamic law.

This research which focuses on the theme of *kafaah*, is not the first research conducted. Many previous researchers have investigated similar themes. These themes can be grouped into four foci. First, research focuses on the position of *kafaah* in a normative marriage. Among these studies is research conducted by Muhammad Zaidan Zaidan, which focuses on two things: the aspects taken into account in *kafaah* and the impact that arises from neglecting *kafaah* in marriage. Second; research that focuses on the effect of *kafaah* on family integrity, such as *Ma'ayir al-Kafaah fi al-Zawaj wa atsaruha fi Istiqrar al-Ussrah* which focuses on two problems, namely: the normativity and

¹ Abbas Husni Muhammad, *al-Fiqh al-Islami Afaqah wa Tathawwuruh*, (Mesir, Dakwah al-Haq, 1412 H), p. 53.

² Al-Imam al-Akbar al-Syaikh Jad al-Haq Ali Jad al-Haq, *al-Fiqh al-Islami Murunatuhi wa Tathawwuruh*, (Kairo, al-Amanah al-Ammah li Lajnah al-Ulya li al-Dakwah al-Islamiyah, t.th.), p. 115.

³ HM. Ato Mudzhar, *Membaca Gelombang Ijtihad Antara Tradisi dan Liberasi*, (Yogyakarta: Titian Ilahi Pr, 1998), pp. 92-93.

⁴ Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuh*, (Damaskus: Dar al-Fikr, 1998), 3rd print, juz 7, p. 229.

⁵ Article 3 of the Compilation of Islamic Law affirms: Marriage is aimed at realizing a *sakinah*, *mawaddah* and *rahmah* household life.

historicity of *kafaah*, and the influence of *kafaah* on family integrity. Third; the influence of customs on *kafaah*, such as the research of Ali Mubarak al-Safran al-Marri, entitled: *Atsar al-Urf fi Ma'ayir al-Kafaah fi al-Nikah*, Dirasah Maqashidiyyah. This research using the Maqashid approach, examines the role of customs in expanding the scope of *kafaah*. Fourth; research that compares the concept of *kafaah* according to Islamic law and *kafaah* according to positive law, such as the research conducted by Huda Ghiadhan with the title: *al-Kafaah fi al-Zawaj fi al-Fiqh al-Islami wa Qanun al-Ahwal al-Syakhiyyah al-Urduni* and research by Ali Muhammad Maqbul, entitled: *al-Kafaah al-Mu'tabarah bi al-Nikah Dirasah Fiqhiyyah Muqaranah*. The first study compares *kafaah* to Islamic jurisprudence and positive law in Jordan. In contrast, the second study with the same approach compares the criteria taken into account in *kafaah* according to the four schools of thought.

From the four classifications above, it can be seen that there are similarities in some research focuses but differences in some other focuses. Likewise, in terms of the approaches used, there are the same but different in terms of the research focus. Thus, this research differs from previous research and contains an element of novelty in the focus and approach used.

Method

This study uses the *Maqâshid al-syâri'ah* approach as an analytical knife. This approach has been promoted by Imam Haramain al-Juwaini,⁶ al-Ghazali and reached

its peak in the hands of al-Syathibi.⁷ According to the maqashid theory, every law prescribed by Allah must contain worldly and hereafter benefits. Sharia⁸ laws are enforced solely for the good of humans⁹ by maintaining (*hifz*) religion, soul, lineage, property, and reason.¹⁰

According to this theory, the text is a medium for conveying messages. Messages in the text must represent the benefit of humans. Therefore, the highest essence of the texts is a benefit, while the texts and the laws they contain are the media.¹¹ If the text zhanni no longer realizes human benefit, it cannot be applied and must be reinterpreted.¹² In this regard, Fathi al-Duraini said: The legal texts cannot be applied if they cannot realize the benefit.¹³

In this study, *Maqâshid al-syâri'ah* is positioned as a method for rereading the old concept of *kafaah*. This rereading is needed to reconstruct the idea of *kafaah* that better reflects the sense of justice and the present benefit. This reconstruction produces laws that align with the benefits of space and time.

Result and Discussion

¹¹ Yudian Wahyudi, *Ushul Fikih versus Hermeneutika Membaca Islam dari Kanada dan Amerika*, (Yogyakarta: Pesantren Nawesea Press, 2014), p. 44.

¹⁰ Izz al-Din Abd al-Aziz bin Abd al-Salam al-Sulami, *al-Fawa'id fi Ikhtishar al-Maqashid*, (Beirut: Dar al-Fikr al-Mu'ashir, 1996), p. 7.

⁹ Al-Imam al-Muhaddis Sulthan al-Ulama' Abi Muhammad Izz al-Din Abd al-Aziz bin Abd al-Salam al-Sulami, *Qawa'id al-Ahkam fi Mashalih al-Anam*, (Beirut: Dar al-Kuwait al-Ilmiyyah, 1999), juz 1, p. 10.

⁸ Abu Ishaq Ibrahim al-Lakhmi al-Gharnathi al-Sathibi, *al-Muwafaqat fi Ushul al-Ahkam*, (Beirut: Dar al-Fikr, .t.th. 1995), juz 2, p. 4.

⁷ Fathi al-Duraini, *al-Manahij al-Ushuliyah fi al-Ijtihad bi al-Ra'y fi al-Tasyri' al-Islami*, (Damaskus: Dar al-Kitab al-Hadith, 1975), p. 27.

⁶ Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami*, (Damaskus: Dar al-Fikr, 2006), juz 2, p. 80.

⁵ Al-Duraini, *al-Manahij...*, p. 10.

³³ In his book, *Al-Burhan fi Usul al-Fiqh*, he explains that the purpose of Islamic law is to protect faith, soul, mind, family and property.

Construction of Classical *Fiqh* Perspective *Kafaah*

The issue of *kafaah* in marriage has been discussed by previous scholars. Their attention is focused on several things: the legality of *kafaah*, the holder of the right to *kafaah*, the position of *kafaah* in marriage, the criteria for *kafaah*, and the legal consequences of the absence of *kafaah*.

a. *Kafaah* Legality

Scholars have discussed *kafaah* from the legal aspect. They agreed that there was no evidence from the Quran or authentic hadith. The hadiths regarding *kafaah* are all weak, so scholars differ on their legality. According to Imam Malik, *kafaah* is not required in marriage except in matters of religion. This is also the opinion of Ibn Umar and Ibn Mas'ud from among the companions, as well as the opinion of Ibn Sirin and Ibn Abdul Aziz from the *tabi'in*.¹⁴ This opinion is based on the letter 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

"O humankind, indeed, We created you from a male and a female and made you into nations and tribes so that you may know one another. Verily, the most honorable of you in the sight of Allah is the most pious among you. Verily, Allah is All-Knowing, All-Knowing."

According to the majority of scholars, *kafaah* is required in marriage. They argue

¹⁴ Syekh Abu Abdillah Abdussalam Always, *Ibnah al-Ahkam Syarh Buluh al-Maram*, (Beirut: Dar al-Fik, t.th.), juz 3, p. 280.

with the hadith of the Prophet narrated by Imam al-Hakim¹⁵:

عن ابن عمر رضي الله عنهما قال: قال رسول الله صلى الله عليه وسلم: العرب بعضهم أكفاء بعض والموالي بعضهم أكفاء بغض إلا حاكًا أو حجامًا.

¹⁵ "From Ibn Umar RA. said: 'The Messenger of Allah. The Prophet said: Some of them are equal to some of them, and some are equal to some non-Arabs, except ironers and cuppers.'

According to al-Kamal bin al-Humam, as quoted by Wahbah Zuhaili, the traditions used as the legal basis for the legality of *kafaah* in marriage are all in the status of *dha'if*. However, these narrations are mutually reinforcing so that these traditions increase their status to the *Hasan* degree.¹⁶ According to most scholars, the *Hasan* hadith can be used as evidence in determining the law.

b. Right Holder to *Kafaah*

Scholars agree that the holder of the right to *kafaah* is a woman and her guardian. Men are required to be equal to women or at least close to equal. While women are not required to be equal or close to men.¹⁷ This is in line with the philosophy of *kafaah* in marriage, which is to avoid disgrace and shame from his wife and family.¹⁸ This provision arises from a patriarchal culture that is gender biased. The protection of women in the issue of *kafaah* shows that the relationship between men and women at

¹⁵ Sayyid al-Imam Muhammad bin Ismail al-Kahlani al-Shan'ani, *Subul al-Salam Syarh Bulugh al-Maram*, (Marang: Toha Putra, t.th.), juz 3, p. 128.

¹⁶ Wahbah al-Zuhaili, *al-Fiqh al-Islami...*, juz 7, p. 233

¹⁷ Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuha*, (Damaskus: Dar a-Fikr, 1989), juz 7, p. 239.

¹⁸ Wahbah al-Zuhaili, *al-Fiqh al-Islami...*, juz 7, p. 239

that time was subordinate, where men were the ordinate, and women were the subordinates. Positioning like this is not under God's will to make humans, men and women, equal. The Prophet likened all human beings to the same level in humanity, like the teeth of a comb, flat, no one is higher or lower. Currently, women have been treated as equal to men. Therefore, it is no longer relevant to distinguish humans based on gender.

c. *Kafaah's* Position in Marriage

Is *kafaah* a legal requirement for marriage (syarth al-shihhah) or just a *luzum* condition? Most scholars agree that *kafaah* is not a condition for a valid marriage but only a condition for *luzum*. This means marriage without *kafaah* is legal. However, if the wife or one of her guardians objects to the marriage, they can file a *faskh*. However, if the wife or guardian is satisfied with the absence of *kafaah*, the marriage already has permanent legal force (usually).¹⁹

d. Legal Consequences of Marriage Without *Kafaah*

The ownership of women and their guardians over this *kafaah* resembles the right of *khiyar* in buying and selling. If the wife marries a man who is not commensurate with her, her guardian can apply for *Faskh* to the Religious Court. On the other hand, if the wali marries her to a man who is not worthy, the wife has the right to apply for *Faskh*.²⁰ In a hadith narrated, a woman came to the Prophet saying that her father married her to her brother's son

(who was not worthy), so the Prophet left this matter to the woman.

e. *Kafaah* Criteria

Because there are no explicit texts, the mazhab scholars differ in determining the criteria for *kafaah*. Malikiyah scholars only view two things, namely religion and not being flawed as criteria. Hanafiyah scholars set six criteria: Islam, religious obedience, independence, lineage, property, and work. According to Shafi'iyyah scholars, there are five: religion, *'iffah*, independence, lineage, and safety from defects. Meanwhile, according to the Hanabilah scholars, there are five, but they differ in terms of criteria from the Syafi'iyyah scholars. The five criteria are religion, independence, lineage, economic status (wealth), and work. Suppose you collect all the criteria taken into account in *kafaah* according to the scholars of the four schools of thought. In that case, there are seven: religion, obedience, lineage, not disabled, independence, property, and work. Each criterion will be explained as follows:

a. Religion

Kafaah in religion is the only criterion that must be met in marriage. The prospective husband and the prospective wife who will be married must have religious similarities; both are Muslims. The existence of religion as a criterion of *kafaah* is absolute. If these religious criteria are not met, the marriage cannot take place, and the marriage is invalid if forced.

b. Piety

A devout Muslim family is an essential factor in shaping the character of pious and intelligent children. The family is the first school where children

¹⁹ Sayyid Abu Bakr, *Iá nah al-Thalibin...*, juz 3, p. 330

²⁰ Wahbah al-Zuhaili, *al-Fiqh al-Islami...*, juz 7, p. 237.

learn about various knowledge, skills, noble values, and faith.²¹

A good education for children will only be achieved when the father and mother who educate them are pious people. Therefore, Islam prioritizes the aspect of piety in selecting a life partner. In a hadith narrated by Imam Bukhari and Muslim, the Prophet said:

عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ قَالَ تَنْكُحُ الْمَرْأَةَ لِأَرْبَعٍ لِمَالِهَا وَلِحَسَبِهَا وَلِجَمَالِهَا وَلِدِينِهَا فَاظْفَرُ بِذَاتِ الدِّينِ تَرَيْتَ يَدَاكَ .

Women who are religious and good at guarding themselves against immoral acts are not commensurate with men who like to commit immorality (*fasiq*) and like to do (*bid'ah*) heresy.²² This provision is based on, among other things, verse 18 of the letter al-Sajadah:

أَفَمَنْ كَانَ مُؤْمِنًا كَمَنْ كَانَ فَاسِقًا لَا يَسْتَوُونَ

A pious and religious woman should not marry a man who is wicked or weak in religion. Because family life between husband and wife influences each other, it could be that a pious wife is influenced by her wicked husband or vice versa.

c. Riches

Wealth is an essential factor in marriage. A person who is not economically capable is not encouraged to marry.²³ Because getting married gives

rise to rights and responsibilities, primarily to provide for his wife and children. In classical *fiqh* literature, wealth (*mal*, *yasar*) is one of the criteria for *kafaah*. A poor man should not marry a rich woman because they are not worth it.

d. Work

In classical *fiqh*, women from wealthy families have good jobs and careers

e. Nasab/breed

Nasab is one of the four factors a person marries a woman. There are different understandings regarding this lineage object. In classical *fiqh* literature, lineage is associated with tribes or *qabilah*. Non-Arabs are seen as disproportionate to Arabs, Arabs from the Quraysh tribe are taller than Arabs from other tribes, and even the Quraysh from the descendants of Bani Hashim and Bani Abdul Muthallib are higher than the Quraysh from other descendants.²⁴

In Indonesian society, lineage generally distinguishes between ordinary-blood descendants and blue-blood descendants.

f. Social status/Freedom-slave

When the slavery system still swept the world, enslaved people became the lowest social strata. Enslaved people have laws that are different from free people in terms of criminal and civil law. One of the civil rights that distinguishes

²¹ Abdullah Nasih Ulwan, Pendidikan Anak dalam Islam, terj. Jamaluddin Miri, (Jakarta: Pustaka Amani, 2007), juz 1, p. 9.

²² Al-Allamah al-Fadhil al-Kamil al-Sayyid Abi Bakr bin al-Arif bi Allah al-Sayyid Muhammad Syatha al-Dimyathi, *l'annah al-Thalibin*, (Semarang: Toha Putra, t.th.), juz 3, 15331.

²³ Al-Imam Taqiy al-Din Abi Bakr bin Muhammad al-Husaini al-Hishni al-Dimasyqi, *Kifayah al-*

³ Akhyar fi Hall Ghayah al-Ikhtishar, (Bandung: Syirkah al-Ma'arif, t.th.), juz 2, p. 38.

¹⁷ Al-Syaikh al-Imam Muwaffiq al-Din Abi Muhammad Abdullah bin Ahmad bin Qudamah, al-Mughni, (Beirut: Dar al-Fikr, 2011), juz 7, p. 375.

the two is *kafaah*. Enslaved people do not favor free people; therefore, they should not marry. If they get married, then their slave status will change. Currently, slavery is prohibited by international law, which all countries have also ratified. Therefore, *kafaah* based on these criteria cannot be carried out and is no longer relevant to the present benefit.

g. Physical Perfection/No Defect.

In classical *fiqh* literature, physical disability is used as one of the reasons for the annulment of marriage. Physical disabilities that prevent a person from exercising his rights over his partner can be used as a reason for a marriage annulment. People who suffer from physical disabilities, such as not having a penis, vagina, or paralyzed legs and arms, are not commensurate with physically perfect people. Therefore they should not marry because it will cause harm. At the same time, one of the goals of Islamic law is to eliminate harm.

Kafaah Reconstruction of *Maqâshid al-Syâri'ah* Perspective

a. Need for Reconstruction

The conception of *kafaah* in marriage has been constructed by scholars from classical to medieval times. The conception was based on the culture and situation representing the benefit of space and time. A legal product resulting from *ijtihad* must reflect the benefit of the community. However, each space and time has its benefits. Laws for a specific place or time are not necessarily suitable for different places and times. Therefore, the law must change if the benefit of society changes.

The need to reconstruct the concept of *kafaah* is based on the fact that the existing construction of *kafaah* can no longer be fully maintained. Because there has been a dynamic in society that demands legal changes so that the law can serve the benefit of the times. Since the Companions' time, previous scholars have reconstructed the law to fulfill human benefit. Umar bin Khattab reconstructed the regulations regarding three divorces at once, which in the previous period resulted in the law falling for one divorce, changed to three divorces. He made this change for two reasons. First, there has been a shift in the behavior of Muslims, where loyalty to their partners can no longer be relied on. Second, there is concern that Muslims will fall back into the *jahiliyyah* tradition, where the husband can divorce his wife and refer her at any time without any limitation. These social changes are considered in carrying out legal reconstruction related to divorce.

b. Reposition of *Kafaah* Rights

In the construction of classical thought, *kafaah* is positioned as the right of women and their guardians. This is in line with the purpose of *kafaah* itself: to prevent women from unequal partners to maintain their and their family's perfect name. This provision is in line with the family system that has been the basis for determining the construction of *kafaah* so far, namely the Patrilineal Arab community. In a patrilineal family system, the domination of men over women is genuine. Men occupy a superior position, while women occupy an inferior position. Under the shadow of a family system like this, the wife's fate is determined mainly by the

husband. Therefore, the legal instruments that apply to society are constructed based on a patriarchal system. At present, the majority of the nations of the world adhere to a bilateral kinship system in which men and women are treated equally. The rights and obligations of husband and wife have been regulated and protected by law. The wife's position is no longer subordinate to her husband but partners equally. Therefore, the right of *kafaah* has been given to both parties. This is following the principle of equality before the law brought by Islam.

c. **Reorientation of the Purpose of the Enforcement of *Kafaah*.**

Applying *kafaah* in marriage, as described in the classical fiqh conception, is to avoid disgrace from women and their families. This goal is undoubtedly relevant for its time, but if taken in the present context, it has lost its relevance. The application of *kafaah* should not only be related to the contract. However, it must be in a new context, namely, realizing the purpose of marriage to form a *sakinah, mawaddah wa rahmah* family. This goal can only be realized through the commitment of both parties.

d. ***Kafaah* Classification**

As mentioned above, the seven criteria for classical fiqh construction *kafaah* can be classified into two groups: *kafaah muthlaqah* and *ghairu muthlaqah*. *Kafaah muthlaqah* (absolute *kafaah*) is the equivalence that must be fulfilled in marriage between a husband and wife. *Kafaah Muthlaqah* is a religion. *Kafaah* in religion is the only criterion that must be met in marriage. The prospective

husband and the prospective wife who will be married must have religious similarities; both are Muslims. If these religious criteria are not met, the marriage cannot take place, and if it is forced, the marriage is invalid.

While *kafaah ghairu muthlaqah* are elements of equivalence that do not have to be in marriage but are highly recommended to maintain women's dignity (wives).

Islam has never discriminated against people into groups of rich or poor, people or rulers, let alone beautiful and ugly. The mention of rich and poor groups or the people or rulers in the Quran and Hadith is intended to explain their respective societal obligations. While in marriage, the marriage order is associated with the best choice according to individual judgment. This means that any woman can marry any man she wants, regardless of her lineage, social status, or the physical perfection of the potential partner. The prospective wife can ignore these criteria. The opposite is also true for men. He can marry any woman regardless of breed, social status, beauty, wealth, etc. This is the first offer.

e. **Holistic *Kafaah***

Allah created everything with its advantages and disadvantages. The same is true of the creation of man. Everyone is created with advantages and disadvantages. Deficiencies in humans do not mean imperfections in the creation process. On the contrary, creation with these shortcomings contains great wisdom for collective human life. With weaknesses and

strengths inherent in each person, humans are destined to live side by side and need each other. This mutual need factor encourages people to work together and help each other to fulfill their needs. Allah confirms:

وَاللَّهُ فَضَّلَ بَعْضَكُمْ عَلَىٰ بَعْضٍ فِي الرِّزْقِ ۖ فَمَا الَّذِينَ
فُضِّلُوا بِرَأْدِي رِزْقِهِمْ عَلَىٰ مَا مَلَكَتْ أَيْمَانُهُمْ فَهُمْ فِيهِ
سَوَاءٌ ۚ أَفَبِعِزَّةِ اللَّهِ يَجْحَدُونَ.

"And Allah has favored some of you over others in terms of sustenance, but those who have been extra (of their sustenance) do not want to give their sustenance to the enslaved people they have, so that they both (feel) the sustenance. Why do they deny Allah's favor?"

Based on these advantages and disadvantages, *kafaah* must be built to realize a holistic *kafaah*. Equivalence between a prospective husband and a prospective wife is determined by several criteria in each candidate. Because it may be that someone is gifted with advantages in certain aspects but has shortcomings in others. The strengths and weaknesses of the prospective husband and future wife are then weighed and compared holistically to find equivalence between the two. For example, a beautiful, intelligent woman with higher education, pious but not prosperous, can be judged commensurate with a rich man, shalih, even though he is not highly educated and less handsome. This concept of *kafaah* establishes equivalence criteria holistically, not partially. In the example above, the future wife, although not from a wealthy family, has beauty, intelligence, and higher education advantages that the prospective husband does not have.

On the other hand, the future husband, although not highly educated and less handsome, has advantages in terms of wealth. The necessity of paying attention to the elements of *kafaah* holistically is based on the spirit of the letter al-Baqarah verse 237:

وَلَا تَسْنَأُوا الْفَضْلَ بَيْنَكُمْ الْبَقَرَةَ

And the hadith of the Prophet narrated by the Muslim Imam:

عن أبي هريرة رضي الله عنه مرفوعاً: لا يفرِّك مؤمناً مؤمنة إن كره منها خلقاً رضي منها آخر، أو قال: غيره.

From Abu Hurairah -*raḍiyallāhu 'anhumarfū*,' "Let a believer not hate a believer! Because, if he does not like one woman's temperament, of course, he likes the other."

From the verses and hadith above, an understanding can be drawn that the elements of advantages must be considered in each prospective husband and wife and weighed against the shortcomings they have. In a marriage, prospective husbands and prospective wives must have what they want from their partners to realize happiness. This happiness will be realized if each partner has what his partner needs to realize his happiness. What is lacking from the prospective wife to complete her happiness can be fulfilled by her future husband, and vice versa. Thus, happiness will be obtained for each prospective husband and wife. Moreover, happiness is the marriage's highest goal (*al-Maqshud al-A'zham*).

Conclusion

The primary purpose of marriage is to achieve happiness, which in the language of religion is symbolized in three words: *sakinah*, *mawaddah*, and *rahmah*. All barriers

that can hinder achieving goals in various forms and sources must be removed to achieve this. Some of these barriers are sourced from out-of-date religious understandings, and some are sourced from cultural constructions. Like the construction of *kafaah* in marriage presented by classical *fiqh* books, it is time for the existence of *kafaah* construction to be reviewed because it can no longer accommodate justice in husband-wife relations. The purpose of Islamic law is to achieve equal justice among humankind. With this reconstruction, it is hoped that everyone's dream of marriage can be realized.

Reference

- Abbas Husni Muhammad, *al-Fiqh al-Islami Afaqah wa Tathawwuruh*, Mesir, Dakwah al-Haq, 1412 H.
- Abd al-Wahhad Khallaf, *Ilm Ushul al-Fiqh*, t. tp., Dar al-Qalam, 1978).
- Abu Bakar Ahmad bin al-Husain al-Baihaqi, *Syu'ab al-Iman*, Beirut: Dar al-Kutub al-Ilmiyyah, 1410 H, juz 4.
- Abu Ishaq Ibrahim al-Lakhami al-Gharnathi al-Sathibi, *al-Muwafaqat fi Ushul al-Ahkam*, Beirut: Dar al-Fikr, .t.th., juz 2.
- Al-Allamah al-Fadhil al-Kamil al-Sayyid Abi Bakr bin al-Arif bi Allah al-Sayyid Muhammad Syatha al-Dimyathi, *Hasyiyah l'annah al-Thalibin*, Semarang: Toha Putra, t.th.
- Al-Imam al-Akbar al-Syaikh Jad al-Haq Ali Jad al-Haq, *al-Fiqh al-Islami Murunatuha wa Tathawwuruh*, Kairo, al-Amanah al-Ammah li Lajnah al-Ulya li al-Dakwah al-Islamiyyah, t.th.
- Al-Imam al-Muhaddis Sulthan al-Ulama' Abi Muhammad Izz al-Din Abd al-Aziz bin Abd al-Salam al-Sulami, *Qawa'id al-Ahkam fi Mashalih al-Anam*, Beirut: Dar al-Kutub al-Ilmiyyah, 1999, juz 1.
- , *al-Fawa'id fi Ikhtishar al-Maqashid*, Beirut: Dar al-Fikr al-Mu'ashir, 1996.
- Al-Syaikh al-Imam Muwaffiq al-Din Abi Muhammad Abdullah bin Ahmad bin Qudamah, al-Mughni, Beirut: Dar al-Fikr, 2011, juz 7.
- Fathi al-Duraini, *al-Manahij al-Ushuliyah fi al-Ijtihad bi al-Ra'y fi al-Tayy' al-Islami*, Damaskus: Dar al-Kitab al-Hadis 1975.
- HM. Atho Mudzhar, *Membaca Gelombang Ijtihad Antara Tradisi dan Liberasi*, Yogyakarta: Titian Ilahi Press, 1998.
- Jalal al-Din Abd al-Rahman, *al-Mashalih al-Mursalah wa Makanatuha fi al-Tasyri'*, t.tp.: Maktabah al-Sa'adah, 1983.
- Kompilasi Hukum Islam Indonesia.
- Syekh Abu Abdillah Abdussalam Always, *Ibanah al-Ahkam Syarh Buluh al-Maram*, Beirut: Dar al-Fikr, t.th., juz 3.
- Undang-Undang Republik Indonesia nomor 16 Tahun 2019 tentang Perubahan terhadap Undang-Undang nomor 1 Tahun 1974 tentang Perkawinan.
- Undang-Undang Republik Indonesia nomor: 1 Tahun 1974 tentang Perkawinan.
- Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuh*, Damaskus: Dar al-Fikr, 1998, 3rd print, juz 7.
- Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami*, Damaskus: Dar al-Fikr, 2006.
- Yudian Wahyudi, *Ushul Fikih versus Hermeneutika Membaca Islam dari Kanada dan Amerika*, Yogyakarta: Pesantren Nawesea Press, 2014.

RECONSTRUCTION OF THE KAFAAH CONCEPT IN MARRIAGE

ORIGINALITY REPORT

12%

SIMILARITY INDEX

11%

INTERNET SOURCES

8%

PUBLICATIONS

%

STUDENT PAPERS

PRIMARY SOURCES

| | | |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 1 | jurnal.ar-raniry.ac.id Internet Source | 2% |
| 2 | research.iars.info Internet Source | 1% |
| 3 | ejournal.iainbengkulu.ac.id Internet Source | 1% |
| 4 | Muhammad Zainuddin, Roibin Roibin, Abbas Arfan. "JEULAMEE ON ACEH PEOPLE'S MARRIAGE IN ISLAMIC LAW AND PHENOMENOLOGY PERSPECTIVE", LISAN AL-HAL: Jurnal Pengembangan Pemikiran dan Kebudayaan, 2022 Publication | <1% |
| 5 | core.ac.uk Internet Source | <1% |
| 6 | www.scribd.com Internet Source | <1% |
| 7 | es.scribd.com Internet Source | <1% |

| | | |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 8 | www.afaqattaiseer.net Internet Source | <1 % |
| 9 | repository.ar-raniry.ac.id Internet Source | <1 % |
| 10 | dspace.uui.ac.id Internet Source | <1 % |
| 11 | pt.scribd.com Internet Source | <1 % |
| 12 | Ramlah Ramlah Ramlah. "THE IMPLEMENTATION OF NIKAH SIRI WITH THE PURPOSE OF MAINTAINING FAMILY SALARY BENEFITS: THE PERSPECTIVE OF ISLAMIC LAW", INNOVATIO: Journal for Religious Innovation Studies, 2022 Publication | <1 % |
| 13 | ahmadrajafi.wordpress.com Internet Source | <1 % |
| 14 | ejournal.uin-suka.ac.id Internet Source | <1 % |
| 15 | 123dok.com Internet Source | <1 % |
| 16 | lim lim, Syarial Dedi, Hartini Hartini. "The Concept of Kafa'ah in Marriage (Study of Thought of Madrasah Teachers in Rejang | <1 % |

Lebong)", Al-Madrasah: Jurnal Pendidikan Madrasah Ibtidaiyah, 2022

Publication

| | | |
|----|---------------------------------------------------------------------------------------------------------|------|
| 17 | digilib.uin-suka.ac.id Internet Source | <1 % |
| 18 | issuu.com Internet Source | <1 % |
| 19 | digilib.uinsby.ac.id Internet Source | <1 % |
| 20 | ejournal.iai-tribakti.ac.id Internet Source | <1 % |
| 21 | idristunru.wordpress.com Internet Source | <1 % |
| 22 | repo.iain-padangsidimpuan.ac.id Internet Source | <1 % |
| 23 | repository.iainbengkulu.ac.id Internet Source | <1 % |
| 24 | staimaarifjambi.ac.id Internet Source | <1 % |
| 25 | journal.unpak.ac.id Internet Source | <1 % |
| 26 | archive.org Internet Source | <1 % |
| 27 | repository.uinjkt.ac.id Internet Source | <1 % |

28 sunnah.com <1 %
Internet Source

29 Ratu Humaemah. "Persyaratan Khusus Dalam Ragam Akad Syirkah Pada Literatur Fikih Mazhab", *Ulumuddin : Jurnal Ilmu-ilmu Keislaman*, 2019 <1 %
Publication

30 Ruslan Daeng Matteru, Abdulahanaa Abdulahanaa. "Justice of a Husband who Performs Polygamy in Classic, Contemporary, and Indonesian Perspectives", *Al-Bayyinah*, 2022 <1 %
Publication

31 peguamsyariefas.com.my <1 %
Internet Source

32 repositori.uin-alauddin.ac.id <1 %
Internet Source

33 research.bangor.ac.uk <1 %
Internet Source

Exclude quotes On

Exclude matches Off

Exclude bibliography On