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# **Kafaah and Marriage in Jahily and Early Islam (Studies in the History of Islamic Law)**

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## **Abstract**

Knowing the background to the emergence of a law, the reasons for establishing a sharia law and the history of the formation of the law is an important thing to study. The purpose of this study is to provide readers with an understanding that the application of kafaah in marriage has a long history starting from the Arab Jahiliyah era to the era of the madzhab scholars. This research is in the form of library research, where the tasyri` date books and Islamic history books are the main materials for data exploration. The results of this study indicate that Lineage played a central role in marriage in pre-Islamic Jahiliyya Arab society. In the highly tribal and family-oriented society of Jahiliyya Arab society, lineage was a determinant of social status, protection, political alliances, and inheritance rights. The arrival of the Prophet Muhammad with the religion of Islam brought significant changes in the views of Arab society towards kafaah nasab. Islamic teachings emphasize equality among all human beings before God, thus shifting the focus from nasab as the main factor in marriage to be more inclusive, emphasizing other aspects such as religion and morality. The arrival of the Prophet Muhammad with the religion of Islam brought significant changes in the Arab community's view of kafaah nasab. Islam still maintains kafaah, but with more humane criteria. Kafaah is a tradition that existed before Islam and was continued by Islam. Islamic teachings emphasize equality among all human beings before God, thus shifting the focus from nasab as the main factor in marriage to be more inclusive, emphasizing other aspects

such as religion and morality. Subsequent developments during the time of the ulama' madzhab kafaah emerged as a logical necessity of the existing legal rules of marriage, balancing the arguments for the benefit of marriage and the principle of egalitarianism in response to the social conditions in each region and the evolving legal logic.

**Keywords:** *Application of Kafaah, Arab Jahiliyah, Period of the Prophet, Madzhab Scholars*

## Abstrak

Mengetahui latar belakang munculnya suatu hukum, sebab-sebab ditetapkannya suatu hukum syariah dan sejarah pembentukan hukum merupakan hal yang penting untuk dikaji. Tujuan penelitian ini adalah memberikan pemahaman kepada pembaca bahwa penerapan kafaah dalam pernikahan memiliki sejarah panjang mulai dari Arab Jahiliyah hingga masa ulama madzhab. Penelitian ini berbentuk penelitian kepustakaan (library research), dimana kitab-kitab tarikh tasyri' dan buku-buku sejarah Islam sebagai bahan utama penjelajahan data. Hasil penelitian ini menunjukkan bahwa Nasab memainkan peran sentral dalam pernikahan masyarakat Arab Jahiliyah pra-Islam. Dalam masyarakat Arab Jahiliyah yang sangat berorientasi pada struktur suku dan keluarga, nasab menjadi penentu status sosial, perlindungan, aliansi politik, dan hak-hak warisan. Kedatangan Nabi Muhammad dengan agama Islam membawa perubahan signifikan dalam pandangan masyarakat Arab terhadap kafaah nasab. Islam tetap mempertahankan kafaah, namun dengan kriteria yang lebih humanis. Kafaah merupakan tradisi yang ada sebelum adanya Islam dan dilanjutkan oleh Islam. Ajaran Islam menekankan kesetaraan di antara semua umat manusia di hadapan Allah, sehingga menggeser fokus dari nasab sebagai faktor utama dalam pernikahan menjadi lebih inklusif, dengan menekankan aspek-aspek lain seperti agama dan moralitas. Perkembangan selanjutnya pada masa ulama' madzhab kafaah muncul sebagai kebutuhan logis dari aturan hukum perkawinan yang sudah ada, menyeimbangkan antara argumentasi kemaslahatan perkawinan dan prinsip egalitarianisme sesuai dengan respon terhadap kondisi sosial di masing-masing wilayah dan logika hukum yang sudah berkembang.

**Kata Kunci:** *Penerapan Kafaah, Arab Jahiliyah, Masa Nabi, Ulama Madzhab*

## Introduction

Discussions about the history of Islamic law are an important topic in Islamic studies. In Islamic studies, it is known as the *tarikh tasyri'*, which is an interesting and important topic to

study. The study of tasyri' dates not only records the chronological process of the formation of Islamic law, but also analyzes legal principles, the methodology for establishing them, and how these laws interact with social, political and cultural contexts. In this article, we will review the history of the law on kafaah in marriage since the pre-Islamic Jahiliyah Arab era until the formation of the fiqh schools of thought.

There are several studies that examine the history of Islamic legislation and kafaah in marriage. First, Nabia Abbott<sup>1</sup> examines the role of women in marriage in early Islam<sup>2</sup>; Second, M.M. Bravmann, Rew Rippin<sup>3</sup> examines *The Spiritual Background of Early Islam. Studies in Ancient Arab Concepts*.<sup>4</sup> Third, Awin Haqqol Walid examines the periodisation of the development of Islamic law from Jahiliyah to Medina.<sup>5</sup> Fourth, Muhammad Toyyib and Muhammad Chairul Huda examine the dynamics of Islamic family law: From Pre-Prophethood to Prophethood.<sup>6</sup> Third, Amalina Zukhrufatul, Ahmad Mahrus, Bahriyah and Moh Mujibur Rohman wrote *Periodisation of Islamic Law (Looking at the Practice of Islamic Law in the Early Period of Islam and its Realisation in Indonesia)*.<sup>7</sup>

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<sup>1</sup> Abbott explores how marriage was not only a personal bond between a man and a woman, but also closely related to the social and political structures of the time. In the early Islamic tradition, the concept of *kafaah* referred to the equality of the couple getting married. This includes compatibility in social, economic, family status and religious aspects. In his book, Abbott explains that marriage at that time was influenced more by social considerations than individual choice. This meant that factors such as family status, wealth, and social standing largely determined the compatibility between couples. According to Abbott, while *kafaah* is often seen as a principle that ensures marital harmony, it also has a political dimension. In early Islamic societies, marriage had a broader function than simply the union of two individuals. Marriage was often seen as a tool to build or strengthen alliances between families or clans, which in turn could influence political and social stability.

<sup>2</sup> Nabia Abbott, *Women And The State In Early Islam*, *Journal of Near Eastern Studies* 1.3 (1942), 341-368.

<sup>3</sup> Bravmann, Rew Rippin argue that the concept of social equality was a dominant concept in early Arab social life, so it is not surprising that the concept of kafaah and all that it entailed played an important role in relation to the norms and requirements of marriage.

<sup>4</sup> M.M. Bravmann, Rew Rippin, *The Spiritual Background of Early Islam. Studies in Ancient Arab Concepts*, Leiden Brill, 2009, 301-310

<sup>5</sup> Awin Haqqol Walid, *Periodisasi Perkembangan Hukum Islam Dari Jahiliyah Hingga Madinah. Al-Rasyad*, 2022, 1.2, 62-71.

<sup>6</sup> Muhammad Thoyib, Muhammad Chairul. *Dinamika Hukum Keluarga Islam: Dari Pra Kenabian Hingga Kenabian. Bidayah: Studi Ilmu-Ilmu Keislaman*, 2022, 132-148.

<sup>7</sup> Bahriyah, et.al, *Periodisasi Hukum Islam (Meneropong Praktik Hukum Islam Pada Masa Awal Islam dan Realisasinya di Indonesia)*. *ASASI: Journal of Islamic*

Fifth, Aisyah binti Azhar wrote on Nasab as a Criterion of Kafaah in Marriage (Comparative Study of Malikiyah and Syafi'iyah).<sup>8</sup> Sixth, Paisal studied the concept of Kafa'ah in marriage.<sup>9</sup> Seventh, Ali Muhtarom examines the problems of the concept of kafa'ah in fiqh (criticism and reinterpretation).<sup>10</sup>

The description shows that not many have written the history of the kafaah law in marriage specifically. Regarding the history of Islamic law, many discuss it in general. Meanwhile, regarding kafaah in marriage, the study focuses on the fiqh and legislative approaches. This study aims to improve this deficiency. The focus of the study in this study is the history of kafaah in the pre-Islamic Jahiliyah Arab era, the time of the Prophet Muhammad, to the time of the scholars of the fiqh school of thought

## Research Methods

The object of research in this article is the history of kafaah in Islamic law.<sup>11</sup> This research is in the form of library research, where the books of tasyri` dates such as Muhammad Khudari Baik 's *Tarikh Tasyri` Al-Islami, Marasim Zawaj Indal Arab Fi Ash Jahiliyah Wa Shadril Islam* and Islamic history books are the main materials for data exploration. This research will focus on theoretical findings using library data that require more philosophical and theoretical processing than empirical testing, namely by reading in detail books related to the history of kafaah from the Arab Jahiliyah Pre-Islam to the time of the scholars of the fiqh school of thought. This research uses a qualitative method. This research attempts to analyze and reveal ideas, concepts, and meanings that appear and then present them in a descriptive manner. This research was conducted by revealing the history of the dissection of kafaah in marriage.

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*Family Law*, 2023, 3.2, 135-156.

<sup>8</sup> Aisyah Binti Azhar, et al. *Nasab Sebagai Kriteria Kafaah Dalam Pernikahan (Studi Perbandingan Malikiyah dan Syafi'iyah)*. 2022. PhD Thesis. Universitas Islam Negeri Ar-Raniry.

<sup>9</sup> Paisal, *Konsepsi Kafa'ah dalam Pernikahan*. *Journal of Islamic Law El Madani*, 2024, 3.2: 15-26.

<sup>10</sup> Ali Muhtarom, *Problematika Konsep Kafa'ah Dalam Fiqih (Kritik Dan Reinterpretasi)*, *Jurnal Hukum Islam*, 2018, 16.2: 205-221.

<sup>11</sup> Lexy J Moleong, *Metodologi Penelitian Kualitatif*, Bandung, Remaja Rosdakarya, 2002, 6

## Result and Discussion

### The History of Kafaah Implementation in Marriage in Pre-Islamic Arab Society

The concept of kafaah or equality in marriage is a principle that applies in pre-Islamic Arab society, where marriage should ideally be between two individuals who have equal social status and lineage. Kafaah prevents marriages that are considered inappropriate or violate social norms. When an individual marries someone of lower birth, this is often seen as a form of insult to the higher family.<sup>12</sup>

In pre-Islamic Arab society, the social structure was based on the tribal principle, where each individual was identified through lineage or descent. This lineage became an element that determined the social status, political power, and honor of individuals in society. This is especially evident in marriage practices, where the selection of a partner was greatly influenced by the importance of lineage. Lineage was not only related to family or tribal identity, but also as a marker of equality (kafaah), which was considered important for maintaining the stability of the family and society in general.<sup>13</sup>

Pre-Islamic Arab society was organized into tribal groups that were strongly tied to tradition and lineage. Each individual had a strong social identity based on his tribe, and marriage became a means of maintaining or improving social status. For example, marrying someone from a tribe with greater political or economic influence could strengthen the family's social position. In this case, lineage was seen as a sign of nobility and status, where marriage to an individual from a tribe considered inferior would lower the family's status.<sup>14</sup>

Lineage in pre-Islamic Arab society also served as an instrument of social protection. Each tribe was responsible for protecting its members from external and internal threats. In the context of marriage, this meant that one would be safer and more protected if one married someone from a tribe with strong solidarity. For example, inter-tribal marriages were often used to secure military or political alliances between tribes.

<sup>12</sup> Mücahit Elhut, Bakhtyar A. Mohammed, *Marasim Zawaj Indal Arab Fi Ash Jahiliyah Wa Shadril Islam*, Recep Tayyip Erdoğan Üniversitesi İlahiyat Fakültesi Dergisi 22 (2022), 240

<sup>13</sup> Muhammad Ali al-Hashimi, *The Ideal Muslim Society*, Riyadh: IIPH, 2007, 56

<sup>14</sup> MA Shaban, *Islamic History: A New Interpretation*, Cambridge University Press, 1993

The patriarchal system that prevailed in pre-Islamic Arab society gave inheritance rights primarily to men based on lineage. Lineage, in this case, played an important role in ensuring that family property and wealth remained in the control of groups with high social status. Therefore, families tended to marry their children to partners of equal or higher lineage to maintain the continuity of wealth.<sup>15</sup>

Lineage is also considered something sacred, which must be guarded and protected. Marriage with someone who has an unclear lineage or comes from slaves is considered to pollute the purity of the family lineage. In a society that strictly maintains the purity of lineage, someone from a tribe or family that has a lineage that is considered impure will have difficulty finding an equal partner.

Marriage in pre-Islamic Arab society measured kafaah by social influence in the community. It was not possible for them to marry off their children to someone with less influence, at least of equal standing in the community.<sup>16</sup> Marriage in pre-Islamic Arabia was often used as an instrument to build political alliances between tribes. Tribal leaders would marry their children to descendants of influential tribes to expand their political or military influence. Lineage was key in determining the strength of these alliances, where marriage ties between two tribes with strong lineages would be more respected and more influential.<sup>17</sup>

Lineage played a central role in pre-Islamic Arabian marriage. In a society heavily oriented toward tribal and family structures, lineage was a determinant of social status, protection, political alliances, and inheritance rights.<sup>18</sup> Equality in lineage, reflected in the concept of kafaah, became a prerequisite for marriage to maintain social stability, honor, and tribal strength. Although Islam brought about a change in the view of human equality, many traditional aspects related to lineage remained part of marriage practices in post-Islamic Arab societies, especially among those who maintained tribal values and lineage.<sup>19</sup>

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<sup>15</sup> Aziz Al-Azmeh, *Arab Civilization: Challenges and Responses*, Saqi Books, 2009.

<sup>16</sup> Abdus Salam Iltirmanini, *Az-Zawaj 'Ind al-Arab Fil Jahiliyati Wal Islam (Dirosoh Muqorona)*, (Kuwait, 'Alam al-Ma'rifah, 2008), 123.

<sup>17</sup> James Montgomery, *The Evolution of Marriage in Early Arabia*, Cambridge University Press, 2010, 67.

<sup>18</sup> Halim Barakat, Irfan M, *Social Structure and Institutions in Arabia: Arab World Series*. Nusamedia, 2021.

<sup>19</sup> Aris Muzhiat, *Pre-Islamic Arabic Historiography*, *Tsaqofah* 17.2 (2019): 129-136.

The author of *al-Mufasssol fi Tarikh Arab Qoblal Islam*<sup>20</sup> writes that a marriage that requires the partner to come from one's own family or qobilah is known as endogamy. On the other hand, marriage with a partner from outside the qobilah is called exogamy. According to him, there are some Arab communities that practice exogamous marriage, especially urban communities such as in Medina.

So it can be said that in pre-Islamic Arab society, marriage kafaah that emphasises kinship or nasab was indeed practised, but there are also some communities, especially urban communities, that allow marriage with partners outside one's own relatives or qobilah. An example of this is the father and mother of Ka'ab bin Asyraf, who came from different qobilahs. His mother belonged to the Jewish group of Bani Nadhir, while his father was an Arab from the Thoyyi' qobilah.<sup>21</sup>

#### History of the Implementation of Kafaah for Marriage During the Prophet's Time

The advent of Islam brought about a significant change in the Arab society's view of kafaah nasab. Islamic teachings emphasized the equality of all human beings before God, thus shifting the focus from lineage as the primary factor in marriage to being more inclusive, emphasizing other aspects such as religion and morality. However, the tradition of kafaah nasab persisted in some Muslim communities, especially in the context of marriages among prominent families or Arab nobility, albeit in a more moderate form.<sup>22</sup>

Several hadiths of the Prophet Muhammad SAW show the importance of equality in choosing a life partner. However, what the Prophet emphasized was equality in religion. The Prophet Says

عن سَعِيدِ بْنِ أَبِي سَعِيدٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ  
تَنْكَحُ الْمَرْأَةَ لِأَرْبَعٍ لِمَالِهَا وَلِحَسَبِهَا وَلِجَمَالِهَا وَلِدِينِهَا فَاظْفَرْ بِذَاتِ الدِّينِ تَرِبَتْ يَدَاكَ  
(رواه البيهقي)<sup>23</sup>

<sup>20</sup> Jawad Ali, *al-Mufasssol fi Tarikh Arab Qoblal Islam*, (Dar As-Saqi, 2021), Juz 8, 230

<sup>21</sup> Mücahit Elhut, Bakhtyar A. Mohammed, *Marasim Zawaj Indal Arab Fi Ash Jahiliyah Wa Shadril Islam*, Recep Tayyip Erdoğan Üniversitesi İlahiyat Fakültesi Dergisi 22 (2022), 240

<sup>22</sup> Mücahit Elhut, Bakhtyar A. Mohammed, *Marasim Zawaj Indal Arab Fi Ash Jahiliyah Wa Shadril Islam*, Recep Tayyip Erdoğan Üniversitesi İlahiyat Fakültesi Dergisi 22 (2022), 240

<sup>23</sup> Imam al-Baihaqi, *Sunan Sughro Lil Baihaqi*, Damaskus : Darut Tauqi an-Najah, 2002, Juz 2, 202.

“From Said bin Abi Said from his father from Abu Hurairah from the Prophet SAW.: Indeed he said: “Marry a woman for four things: first because of her wealth, second because of her status, (her lineage), third her beauty, fourth her religion, then choose her because of her religion, then all your needs will be fulfilled.” (HR. Baihaqi)

In the Hadith above, it is explained that if a man is going to marry a woman, then he will usually pay attention to four things, namely her wealth, her status (lineage), her beauty, and her religion. However, the Prophet SAW. Although mentioning four things that are usually considered in choosing a partner, he strongly emphasizes the religious factor to be considered in choosing a partner.

During the time of the Prophet Muhammad and earlier times, Arabs placed great importance on lineage and social status in determining potential partners. The Prophet Muhammad came to bring teachings about equality between humans. Piety and kindness are the main barometer. Below I write two histories of marriage during the time of the Prophet which did not prioritize social status, but prioritized piety and faith, namely the history of the marriage of Zaid bin Haritsah and Usamah bin Zaid.

One of the famous stories in Islamic history about a marriage involving a female friend and a slave is the story of the marriage of Zainab bint Jahsy to Zaid bin Haritsah, which took place at the suggestion of the Prophet Muhammad SAW. Zainab bint Jahsy was a woman from the Quraysh who came from a prominent family, while Zaid bin Haritsah was a slave who was freed by the Prophet Muhammad SAW and then adopted as an adopted son by the Prophet. Despite Zaid’s social status as a former slave, the Prophet Muhammad SAW loved and respected him very much.<sup>24</sup>

Prophet Muhammad SAW proposed to Zainab to marry Zaid bin Haritsah as part of an effort to promote equality in Islam and eliminate discrimination based on social status. Initially, Zainab refused because she felt that she came from a noble family and Zaid was only a former slave, who was considered not her equal in social terms.<sup>25</sup>

However, the Prophet Muhammad SAW emphasized that in the view of Allah SWT, a person’s value is not measured based on his social

<sup>24</sup> Abu Abdillah Muhammad bin Umar bin Hasan bin Husain Ar-Rozi, *Tafsir Mafatihul Ghoib*, Beirut, Darul Polar Ilmiah, 2000, Juz 12, 354.

<sup>25</sup> Abu Abdillah Muhammad bin Umar bin Hasan bin Husain Ar-Rozi, *Tafsir Mafatihul Ghoib*, Beirut, Darul Polar Ilmiah, 2000, Juz 12, 354.



status, but based on his piety. After a revelation from Allah came down that supported this decision, Zainab accepted the Prophet's proposal and married Zaid bin Haritsah.<sup>26</sup>

Despite this, their marriage did not go well and they eventually divorced. After the divorce, Allah SWT ordered the Prophet Muhammad SAW to marry Zainab bint Jahsy as proof that the laws that apply to his people also apply to the Prophet, and to abolish Arab customs that prohibit someone from marrying the ex-wife of an adopted child.

Zainab's marriage to Zaid is one real example that shows that the Prophet Muhammad SAW tried to eliminate the differences in social status in society, especially in terms of marriage. This story emphasizes the message that in Islam, the most important thing is piety to Allah, not social status or position in society.

The second story is The Prophet Muhammad SAW married Usamah bin Zaid, who was once a slave. This story is an important example in Islamic history that emphasizes social equality and respect for piety, not a person's social status or position.

Usamah bin Zaid is the son of Zaid bin Haritsah, a former slave who was appointed by the Prophet Muhammad SAW as his adopted son. Even though Usamah came from a former slave background, he had a very close relationship with the Prophet Muhammad SAW, in fact the Prophet loved him very much like his own grandson. The Prophet paid great attention to Usamah and educated him with great affection.<sup>27</sup>

When Usamah reached adulthood, the Prophet Muhammad SAW chose a partner for him, namely Fatimah binti Qais, a woman from the respected Quraysh tribe. Fatimah binti Qais was a woman of high status in society. This marriage shows the main principle in Islam, that what is more important in choosing a partner is not social status, but a person's faith and morals.<sup>28</sup>

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<sup>26</sup> Abul Fida' Ismail bin Umar bin Katsir al-Quraisyi al-Dimasyqi, *Tafsir Ibnu Katsir*, Egypt, Dar Toyyibah, 2001 Juz 6, 422.

<sup>27</sup> Fadhilah Is, *Strategi Komunikasi Rumah Tangga Nabi Saw: Bantahan Terhadap Orientalis Dan Feminis*, An-Nadwah 29.1 (2023): 104-122.

<sup>28</sup> Sari, F., & Febriyeni, F. (2023). *Telaah Ma'anil Hadis Memilih Pasangan Hidup yang Mapan (Kasus Hadis Fathimah Binti Qais)*. *Journal Education And Islamic Studies*, 1(1), 19-30. doi:10.55062//JEDIES.2023.v1i1.158/5.

This marriage may have initially come as a surprise to some because of Usamah's status as the son of a former slave. However, the Prophet Muhammad wanted to emphasize that in Islam, a person's position before Allah is not determined by lineage or social status, but by the level of piety and good morals. The Prophet Muhammad taught that a person who has good qualities of faith and morals is the most worthy of honor, regardless of his social background. The story of Usamah bin Zaid's marriage has a very deep moral message. The Prophet Muhammad SAW showed that Islam came to eliminate social discrimination based on lineage, social status, or wealth. In Islam, piety is the main measure of a person's nobility. In the social context of that time, the marriage between Usamah and Fatimah binti Qais was a symbol of the Prophet's courage in fighting against discriminatory social norms. This marriage was also a reminder that Muslims must prioritize faith, morals, and goodness in choosing a life partner, not just looking at social status or family background.<sup>29</sup>

By marrying Usamah bin Zaid, the Prophet Muhammad SAW gave a real example that the status of a former slave is not an obstacle for someone to get a respectable place in society, as long as he has faith and noble morals. This is a brave and very good breakthrough made by the Prophet. The Prophet did not eliminate the kafaah of lineage and social strata, but the Prophet made the Arab community aware that there is a more important kafaah to consider, namely the kafaah in religion, piety and faith.

#### History of Kafaah during the Madzhab Ulama Period

During the emergence of the fiqh school of thought, the concept of kafaah became one of the typical provisions in the early schools of fiqh that developed in Kufa.<sup>30</sup> The main purpose of kafaah is to protect the guardian's interests in marriage to maintain the family's reputation, especially since adult women under guardianship have the right and freedom to marry themselves. The main figure behind this implementation was Nu'man bin Thabit Abu Hanifah (died 150 H), the founder of the Hanafi school of thought that emerged in Kufa.<sup>31</sup>

<sup>29</sup> Sari, F., & Febriyeni, F. (2023). *Telaah Ma'anil Hadis Memilih Pasangan Hidup yang Mapan (Kasus Hadis Fathimah Binti Qais)*. *Journal Education And Islamic Studies*, 1(1), 25.

<sup>30</sup> N Syafrin, *Konstruksi Epistemologi Islam: Telaah bidang Fiqh dan Ushul Fiqh*, TSAQAFAH, 2009, 5(2), 227-256.

<sup>31</sup> Ali Akbar, et al. *Hukum Islam Pada Periode Imam Mazhab*, Didaktik: Jurnal Ilmiah PGSD STKIP Subang, 2024, 10.1: 108-122.

In the 8th century, Kufa was one of the most important cities in the Islamic world, and its society was very diverse.<sup>32</sup> The social structure in Kufa consisted of various classes, including Arab tribes, newly converted Persians, and mawali (non-Arab Muslims who were converted to Islam). In this highly hierarchical society, factors such as lineage, social status, and profession played an important role in determining social relationships, including marriage.

Arab society generally placed great value on lineage and descent, and this tradition continued to flourish in Kufa. As a result, equality or kafaah in marriage was often considered to ensure that both parties had equal social status.<sup>33</sup> Abu Hanifah acknowledged this social reality, but also attempted to adapt the concept of kafaah to more egalitarian Islamic principles.

Imam Abu Hanifah provides clear guidance on kafaah in marriage law, emphasizing the importance of maintaining equality between prospective husband and wife in order to create harmony in the household. According to him, kafaah in marriage must be considered from various aspects, including religion, lineage, profession, and social status. However, Abu Hanifah also emphasizes that kafaah is not an absolute requirement, but rather a tool to prevent conflict and incompatibility in the household.<sup>34</sup>

Although Abu Hanifah gave adult women the right to marry independently, he still gave the role to the guardian to consider the equality of the prospective husband. In addition, he also emphasized the importance of kafaah as a condition of marriage, so that the reputation of the woman's family and her guardian is maintained.

In Kufa, Abu Hanifah found a very diverse and complex society with a higher class consciousness than in Medina. Arab and non-Arab ethnicities mixed, and urbanization had long been underway, so that social differences were very clear.<sup>35</sup> This factor is one of the reasons

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<sup>32</sup> Dudung Abdurahman, *Komunitas Multikultural dalam Sejarah Islam Periode Klasik*. Penerbit Ombak, 2014. 54.

<sup>33</sup> Siti Jahroh, *Reinterpretasi Prinsip Kafā'ah Sebagai Nilai Dasar Dalam Pola Relasi Suami Istri*, *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 2016, 5.2: 57-92.

<sup>34</sup> Sulhani Hermawan, *Pertentangan Prinsip Kemaslahatan Perkawinan dengan Prinsip Egalitarian Dalam Hukum Perkawinan Islam (Kajian Normatif dan Historis Kontekstual tentang Konsep Fiqh al-Kafa'ah)* <https://sulhanihermawan.wordpress.com/wp-content/uploads/2010/01/al-kafaah.pdf>

<sup>35</sup> Badrian, *Konsep Kafa'ah Dalam Hukum Perkawinan Islam: Sebuah Tinjauan Sosio-Historis*. *Himmah*, 2006, 7.20: 51-71.

why the Hanafi school developed the concept of kafaah, which then spread to other regions and was adopted by schools of thought and regulations in several Islamic countries.

However, the social complexity factor in Kufa and Iraq was not the only reason for the development of kafaah in the Hanafi school. In Morocco, for example, although family and economic comparability were maintained, social status was not made a legal rule. This is also seen in Sufyan al-Tsauri, a jurist from Kufa who rejected the concept of social kafaah based on the principle of egalitarianism. Al-Sarakhshi argued that al-Tsauri showed his humility, while Abu Hanifah, who came from Persia, prioritized the status of Arabs over non-Arabs.

One important factor in the concept of marriage according to the Hanafi school is a more liberal system, including the freedom of adult women to marry without the intervention of a guardian. In this case, kafaah serves to protect the woman's family socially. If the prospective husband is not equal, then the guardian's approval becomes absolute. This is different from the Maliki school which prioritizes the role of the guardian in marriage, so that it does not require the concept of kafaah as a legal rule.<sup>36</sup>

Al-Syafi'i only discussed kafaah in general terms, where the aim was more to protect the prospective wife than the interests of the guardian.<sup>37</sup> These two objectives are the basis for the argument of welfare in marriage, showing that historically, kafaah emerged as a response to developing social conditions and eventually became part of the legal rules.

Thus, kafaah emerged as a logical need of existing marriage law regulations, balancing the arguments of the benefit of marriage and the principle of egalitarianism in accordance with the response to social conditions in each region and the legal logic that has developed.

### The Position of Kafaah in Marriage According to Madzhab Scholars

It is first necessary to explain the meaning of kafah in marriage. Kafaah comes from the Arabic word كَفَى, which means the same or

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<sup>36</sup> Sulhani Hermawan, *Pertentangan Prinsip Kemaslahatan Perkawinan dengan Prinsip Egalitarian Dalam Hukum Perkawinan Islam (Kajian Normatif dan Historis Kontekstual tentang Konsep Fiqh al-Kafa'ah)* <https://sulhanihermawan.wordpress.com/wp-content/uploads/2010/01/al-kafaah.pdf>

<sup>37</sup> Zainuddin bin Abdul Aziz al-Malibari, *Fathul-Mu'in Bi Syarhi Quratul-'Aini*, Semarang: Toha Putra, t.th, 78.

equal. Kafaah etymologically means equal, suitable and comparable.<sup>38</sup> So what is meant by kafaah in marriage is the similarity between the prospective husband and wife, equal in position, comparable in social level and equal in character and wealth.<sup>39</sup> However, the scholars of Imam Madzhab differ on the definition of kafaah in marriage. This difference is due to the different measures of kafah that they use.<sup>40</sup> According to the Hanafis, kafaah is the equality of a man and a woman in lineage, Islam, profession, freedom, piety and wealth. And according to the Malikiyah scholars, kafaah is the equality of a man and a woman in religion and the absence of defects that allow a woman to make khiyar against her husband.<sup>41</sup>

Ibn Hazm believes that kafaah is not important in a marriage, according to him, one Muslim and another Muslim are the equal. All Muslims, as long as they have never committed adultery, have the right to marry all Muslim women who have never committed adultery.<sup>42</sup>

Based on the words of Allah SWT QS. Al-Hujurat:

إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ

"Indeed, the believers are brothers..." (QS. Al-Hujurat: 10).<sup>43</sup>

Likewise, al-Hasan al-Basri, as-Sauri, and al-Karkhi are of the opinion that kafaah is not an important factor in marriage and is not included in the valid conditions or common conditions of marriage. According to them, the inadequacy of the prospective husband and wife does not become an obstacle to the continuation of the marriage.<sup>44</sup> Their reasons are based on the word of Allah SWT. :

إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ (الحجرات : ٣١)

<sup>38</sup> Qosim Bin Abdullah Bin Amir `Ali al-Qunuwi, *Anisul Fuqoha` Fi Ta`rifil alfadz al-Mutadawilah Binal Fuqoha`*, Maktabah Syamilah, Juz 1, 149.

<sup>39</sup> Sayyid Sabiq, *Fiqh As-Sunnah*, Beirut, Darul Kutub Arabi, 2010, Juz 2, 143.

<sup>40</sup> Abdur Rahman Al-Jaziri, *Fiqh `Ala Al-Madzahib Al-Arba`ah*, Beirut; Darul Kutub Ilmiyah Juz 4, 533.

<sup>41</sup> Wahbah Zuhaily, *al-Fiqh al-Islami Wa Adillatuhu*, Damaskus : Darul Fikr, 2010, Juz 7, 240.

<sup>42</sup> Sayyid Sabiq, 2004, *Fiqh As-Sunnah*, Egypt: Darul Hadith, 2010, 572.

<sup>43</sup> Departemen Agama RI, *Al-Qur'an dan Terjemahnya*, Bandung : Jabal Raudlotul Jannnah, 2010, 516.

<sup>44</sup> Wahbah Zuhaily, *al-Fiqh al-Islami Wa Adillatuhu*, Damaskus : Darul Fikr, 2010, Juz 7, 230.

“Indeed, the noblest person among you in the sight of Allah is the most pious person among you.”. (QS. Al-Hujurat: 13).<sup>45</sup>

From the verses above it can be concluded that all humans are equal in rights and obligations, there is no privilege between one and another except with piety. And they also stated that respect and appreciation for a person’s blood in criminal law is the same. If the murderer is an honorable person and the murdered person is a commoner, then the punishment of qisas is still carried out. If kufu’an is applied in Islamic criminal law, then the provisions in marriage should not be applied.<sup>46</sup>

The argument for the validity of a marriage that is not mutually exclusive is the Hadith which tells about the marriage between Fatimah bint Qois and Usamah, even though Fatimah bint Qois was a free woman and descended from the Quraysh tribe while Usamah was a slave. In the book Sunan Shugro Lil Baihaqi the Hadith is written as follows,

عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ ، عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ ، أَنَّ أَبَا عَمْرٍو بْنَ حَفْصِ بْنِ الْمُغِيرَةَ ، طَلَّقَهَا الْبَتَّةَ ، وَهُوَ غَائِبٌ بِالشَّامِ ، فَأَرْسَلَ إِلَيْهَا وَكَيْلَهُ بِشَعِيرٍ فَسَخَطَتْهُ فَقَالَ : وَاللَّهِ مَا لَكَ عَلَيْنَا مِنْ شَيْءٍ ، فَجَاءَتْ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ، فَذَكَرَتْ ذَلِكَ لَهُ ، فَقَالَ : لَيْسَ لَكَ عَلَيْهِ تَفَقُّةٌ ، وَأَمْرُهَا أَنْ تَعْتَدَ فِي بَيْتِ أُمَّ شَرِيكِ ثُمَّ قَالَ لَهَا : تِلْكَ امْرَأَةٌ يَعْشَاهَا أَصْحَابِي اعْتَدَى عِنْدَ عَبْدِ اللَّهِ ابْنِ أُمِّ مَكْتُومٍ فَإِنَّهُ رَجُلٌ أَعْمَى تَضَعِينَ ثِيَابِكَ عِنْدَهُ فَإِذَا حَلَلْتَ فَأَذِينِي ، قَالَتْ : فَلَمَّا حَلَلْتُ ذَكَرْتُ لَهُ أَنَّ مُعَاوِيَةَ بْنَ أَبِي سُفْيَانَ ، وَأَبَا جَهْمِ بْنِ هِشَامٍ خَطَبَانِي فَقَالَ : وَأَمَّا أَبُو جَهْمٍ فَلَا يَضَعُ عَصَاهُ عَنْ عَاتِقِهِ ، وَأَمَّا مُعَاوِيَةُ فَصُعْلُوكٌ لَا مَالَ لَهُ ، أَنْكِحِي أُسَامَةَ بْنَ زَيْدٍ ، قَالَتْ : فَكَرِهْتُهُ ، ثُمَّ قَالَ : أَنْكِحِي أُسَامَةَ بْنَ زَيْدٍ ، فَجَعَلَ اللَّهُ فِيهِ خَيْرًا وَاعْتَبَطْتُ بِهِ (رواه البيهقي)

*“From Abu Salamah bin Abdurrahman from Fatima bint Qais that Abu Amru bin Hafsh had divorced her with triple divorce, while he was far from her, then he sent a representative to him (Fathimah) with wheat, (Fathimah) refused him. So (Deputy ‘Amru ) said; By Allah, we have no further obligations towards you. Therefore, Fatima went to Rasulullah sallallaahu ‘alaihi wasallam to ask him about this, he said: “Indeed, he is no longer obliged to provide maintenance.” he told him to spend*

<sup>45</sup> Departemen Agama RI, *Al-Qur’an dan Terjemahnya*, Bandung : Jabal Raudlotul Jannah, 2010, 517.

<sup>46</sup> Wahbah Zuhaily, *al-Fiqh al-Islami Wa Adillatuhu* , Damaskus : Darul Fikr, 2010, Juz 7, 230..

his iddah period at Umm Syarik's house. But then he said: "She is a woman who is often visited by my friends, therefore, wait for your iddah period at Ibnu Ummi Maktum's house, because she is a blind man, you are free to put your clothes there, if you are *halal* (finished your iddah period), tell me." He (Fathimah) said; After my iddah period was over, I told him that Mu'awiyah bin Abi Sufyan and Abu Al Jahm had proposed to me, then the Prophet sallallahu 'alaihi wasallam said: "Abu Jahm is a person who never leaves his stick from his neck (likes to hit -pent) , while Mu'awiyah was a poor person, had no wealth, therefore married Usamah bin Zaid." But I didn't like it, he still said: "Marry Usamah." Then I married Usamah, Allah has given him an abundance of goodness to make him happy."<sup>47</sup>

Meanwhile, the *Jumhur Fuqaha'*, including the Ulama of the Four Madzhab, are of the opinion that kafaah is very important in marriage even though kafaah is not a valid requirement for a marriage and is only a common requirement for a marriage. They put forward arguments based on the Hadith of the Prophet and reason (*ratio*).<sup>48</sup>

Among the Hadiths of the Prophet SAW that explain about kafa'ah are:

وروي عن ابن عمر مرفوعا : « الْعَرَبُ بَعْضُهَا أَكْفَاءُ لِبَعْضٍ ، قَبِيلَةٌ بِقَبِيلَةٍ ، وَرَجُلٌ بِرَجُلٍ ، وَالْمَوَالِي أَكْفَاءُ لِبَعْضٍ قَبِيلَةٍ بِقَبِيلَةٍ ، وَرَجُلٌ بِرَجُلٍ إِلَّا حَائِكًا أَوْ حُجَّامًا  
(رواه البيهقي)

"From Ibn Umar, the Messenger of Allah, peace and blessings be upon him. Said: "Arabs are equal to each other." One *sekufu'* tribe with the same tribe, one *sekufu'* group with the same village, between men among the *sekufu'* except tailors or cuppers." (HR. Al-Baihaqi).<sup>49</sup>

The meaning of the above hadith is that Arabs are compatible with Arabs, Arabs are not compatible with other Arabs, one tribe is compatible with another tribe, and former slaves are compatible with former slaves. So a person is considered compatible if he is from the same group. According to the Hanafis, *nasab* (descent) in kafaah is specific to Arabs only. Therefore, the husband and wife must be from the same tribe. If a man is from the Quraysh, then his lineage is

<sup>47</sup> Abu Bakar al-Baihaqi, *Sunan Shugro Lil Baihaqi*, Beirut, Darul Kutub Ilmiah, 2005, Juz 2, 364.

<sup>48</sup> Wahbah Zuhaily, *al-Fiqh al-Islami and Adillatuhu*, Damascus: Darul Fikr, 2010, Juz 7, 232.

<sup>49</sup> Abu Bakar al-Baihaqi, *Sunan Kubro Lil Baihaqi*, Beirut : Darul Kutub Ilmiah, 2003, Juz 7, 212.

comparable to a woman who is from the Quraish.<sup>50</sup>

This means that non-Arab men are not comparable to Quraysh women and Arab women. Arabs who are not Quraysh are not comparable to Quraysh women. However, according to the Shaafa'is, Arabs are comparable to other Quraysh except Banu Hashim and Muthalib because there are no Quraysh comparable to them (Banu Hashim and Banu Muthalib). And the consideration in terms of lineage is the father. The Hanafis believed that the Quraysh were comparable to the Banu Hashim. The Malikiyah group argues, as explained in the book *Fiqh Islam Wa Adillatuhu*, that in Islam there is no difference between one group and another, for Arabs or non-Arabs, the most important thing for the Malikiyah group is one's faith and piety towards Allah SWT.<sup>51</sup>

The above hadith is also the basis for saying that someone who has a respectable job is compatible with someone who also has a respectable job. Conversely, someone who has a respectable job is not compatible with someone who works as a cupper. According to the majority of scholars, a man's occupation should be at least close to that of a woman's family. The Hanafis, on the other hand, believe that the man's income must be comparable to the income of the woman's family according to the prevailing custom. If customary sewing is higher than weaving, then the tailor is not comparable to the weaver's son, then the tailor is not comparable to the weaver's son. In response to this problem, the Malikiyah argued that there is no difference between occupations, all of which can change according to the fate of Allah, so the work of the Malikiyah scholars is not included in the criteria for kafaah.<sup>52</sup>

The home life of a couple will be happy and harmonious if there is kafaah between them. kafaah is measured from the woman's side, not the man's. because usually the woman who has a high degree will feel humiliated if she marries a man with a low degree. Unlike the man, he will not feel humiliated if he marries a woman who is lower than him.<sup>53</sup>

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<sup>50</sup> Muhammad bin Ali Asy Syaokani, *Nailul Author Syarah Muntaqol Ahkbar*, Damaskus : Darul Fikr, 2010, Juz 10, 336

<sup>51</sup> Wahbah Zuhaily, *al-Fiqh al-Islami Wa Adillatuhu* , Damaskus : Darul Fikr, 2010, Juz 7, 247.

<sup>52</sup> Wahbah Zuhaily, *al-Fiqh al-Islami Wa Adillatuhu* , Damaskus : Darul Fikr, 2010, Juz 7, 247.

<sup>53</sup> Sayyid Sabiq, *Fiqh As-Sunnah* , Mesir : Darul Hadist, 2014, 572.



If a woman of high standing marries a man of lower standing, based on custom, the wife will feel ashamed and humiliated and the husband, who should be the respected head of the household, will become humble and feel unworthy of standing on equal footing with the wife, and in the end, harmony and happiness in the household, which is the main goal of marriage, will not be achieved.<sup>54</sup>

However, among Hanafiyah scholars there are differences of opinion about the position of kafaah in marriage. They say that kafaah is a common requirement (continuity) of a marriage. But according to the muta'akhirin Hanafiyah scholars, kafaah becomes a valid requirement for marriage under certain conditions, namely:

- 1) If a woman of mature age marries herself to a man who is not equal to her or in the marriage there is an element of fraud, then in this case the guardians of the ashabah group such as fathers and grandfathers have the right to disapprove of the marriage before the contract takes place.
- 2) If a woman who is not competent to act legally, such as a child or an insane person, is married by a guardian other than her father or grandfather to someone who is not equal to her, then the marriage is *fasiq* because the guardian's duty is related to the welfare of the daughter, marrying the daughter to someone anything that is not adequate' is seen as not inviting any benefit at all.
- 3) If a father is known as someone who always makes bad choices, marries a daughter who has not or is not competent to act legally with someone who is not equal, then the marriage will be invalid.<sup>55</sup>

## Conclusion

Kafaah nasab played a central role in the marriages of the Arab society of the pre-Islamic Jahiliyya period.. In Jahiliyya Arab society, which was highly oriented towards tribal and family structures, nasab became a determinant of social status, protection, political alliances, and inheritance rights. Equality in lineage, reflected in the concept of

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<sup>54</sup> Wahbah Zuhaily, *al-Fiqh al-Islami and Adillatuhu*, Damaskus: Darul Fikr, 2010, Juz 7, 239.

<sup>55</sup> Wahbah Zuhaily, *al-Fiqh al-Islami and Adillatuhu*, Damascus: Darul Fikr, 2010, Juz 7, 235.

kafaah, became a prerequisite in marriage to maintain social stability, honor, and tribal power. The concept of kafaah in the pre-Islamic period was closely related to political interests between tribes. However, during the Islamic period, the concept of kafaah was Islamized based on piety and faith. The arrival of the Prophet Mohammed with the religion of Islam brought significant changes in the Arab community's view of kafaah nasab. The teachings of Islam emphasized equality among all human beings before God, thus shifting the focus from nasab as the main factor in marriage to a more inclusive one, emphasizing other aspects such as religion and morality. Nonetheless, the tradition of kafaah nasab persisted in some Muslim communities, especially in the context of marriages among prominent families or Arab nobility, albeit in a more moderate form. Later developments during the period of the ulama' madzhab kafaah emerged as a logical necessity of the existing legal rules of marriage, balancing the arguments of marital benefit and the principle of egalitarianism in response to the social conditions in each region and region.

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