

# kafaah\_in\_islam.pdf

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## KAFA'AH IN ISLAM Towards a Pogressive Interpretation

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### Abstract

*Etimologically, the word kafa'ah means egalitarian, equivalent, comparable, or similar. In the constellation of the Islamic thought, kafa'ah is meant that a prospective husband is expected to be comparable to the prospective bride in terms of religion, education, social status, profession, descent/ancestry, independence status, physical-spiritual conditions, wealth, position, degree and so on. It is intended to guarantee the relation between a husband and his wife as well as ensuring a harmony of their family life in the future. This article describe about kind of Moslem's thinker perspective, especially about kafa'ah concept. Some of them recommend a strict implementation of kafa'ah from the point of religion to the factor of wealth that the prospective groom must meet all the detailed requirements; but some others do not give much regards to it. The latter grounds their views on a reason that any Moslem, as long as he is not an adulterer, has the right to marry any Moslem's woman he want.*

*[Kafa'ah secara etimologi berarti egaliter; sepadan; sebanding; semisal. Dalam konstalasi pemikiran Islam, kafa'ah dimaksudkan bahwa seorang calon suami diharapkan sebanding dengan calon istri dalam agama, tingkat pendidikan, status sosial, profesi, keturunan, kemerdekaan, kondisi jasmani-rohani, kekayaan, jabatan, derajat dsb. Hal ini dimaksudkan agar terjaminnya keharmonisan pergaulan suami istri dalam rumah tangga di kemudian hari. Artikel ini coba menguraikan beragam pandangan para pemikir Muslim mengenai konsep kafa'ah. Ada yang mensyaratkan secara*

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*ketat pelaksanaan kafa'ab, sejak poin agama sampai poin kekayaan; di mana kriteria calon mempelai laki-laki harus memenuhi secara terinci persyaratan di atas. Namun ada juga yang sama sekali tidak melihat kepentingan kafa'ab ini, dengan alasan Muslim mana saja, asal tidak pezina, memiliki hak untuk menikahi Muslimah yang diinginkannya.]*

**Keywords:** *Kafa'ab, Egalitarianism, Progressive*

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## Introduction

The reformation of *kafa'ab* is a contemporary issue which is relevant to be continually developed to achieve the efforts of attaining perfect benefit (to mankind). The word *kafa'ab* is a classical the me that had been discussed in detail by Moslem thinkers since the time of the Prophet's companions. However, the efforts of understanding, developing, implementing and aligning *kafa'ab* so that it stays applicable are a new issue in the milieu of the movement of Islamic thought reformation. Therefore, discussing the reformation of *kafa'ab* must be extra careful since this theme closely links up with a group of traditionalist Moslems who insist that such problems exist in the sacred area, making it impossible to be deconstructed. Even some of them argue that the Islamic scholars' thoughts are included in the transcendental, sacred, and eternal territory, and become a part of revelation so they contain the absolute truth.

However, the common opinion states that the scholars' thought sexist on the *ijtibadi* region. Therefore, they can be deconstructed and renewed in accordance with the condition and situation as long as it keeps referring to the spirit of revelation. Based on such opinion, the thoughts of Islamic scholars still source from the transcendental revelation; however, it should be emphasized that they are not the revelation it self, but rather they are the product of an earnest understanding performed by the mujtahid towards the purposes of the revelation. That's why the thoughts of Islamic scholars are not sacred, not eternal, and do

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not constitute an absolute truth since an understanding of a mujtahid towards the revelation may be incorrect or, similarly, it is even liable to be incorrect. Furthermore, in the process of performing an *ijtihad* (either *ijtihad insyai'i* or *ijtihad tathbiqi*)<sup>1</sup> as well as the codification of the results of *ijtihad* carried out by the Islamic jurists, scholars, *ushuliyin*, *mufassir* (interpreters of the holy Qur'an and the hadis), and even the *umara* (Moslem governments), there very likely found incorrectness in understanding and grasping the meaning and purposes of the revelation. The differences in the community's socio-cultural conditions and the period of time in which the scholars' thoughts will be applied need to be considered in stipulating the law. And even more important is the spirit of reformation towards the issue of the scholars' thoughts in efforts to realizing the benefits, freedom, and justice (*maqasid al-syariah*) for men and women, Moslem and non-Moslem, Arabic people and ajami (non-Arabic people), the rich and the poor alike.

Restoring the concept of the scholars' thoughts to the basis of the Islamic universal values that upholds the benefits to all is urgent since some texts of the conventional Islamic scholars' thoughts are considered to contain biases (in the forms) of religion's injustice, race, strata of life, and gender.<sup>2</sup> Such as, concepts are predicted to hinder the potencies' actualization in an increasingly inclusive social interaction.

The emergence of the idea that *kafa'ab* is sufficiently oriented to the two foci, namely the religion and agreement as previously explained, is due to the fact that the text of *kafa'ab* in the conventional Islamic

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<sup>1</sup> *Ijtihad insyai'i* that the author meant is the *istinbat* in formulating (creating) the law from its transcendental sources (i.e. the Qur'an and the sunnah). Whereas *ijtihad tathbiqi* is *istinbat* in the application of law in a particular condition and situation. See for more: Satria Muhammad Efendi Zein, *Fikih Muamalah: Suatu Upaya Rekayasa Sosial Umat Islam Indonesia* (Jakarta: IAIN Syarif Hidayatullah, a seminar paper on the Actualization of the Fiqh of Human Interactions in Today's Life, 1989), p. 10.

<sup>2</sup> For example: Muslim women are not allowed to marry non-Muslim men (an example on the religion aspect). And "*al-aimmatu min quraisyin*" which means: The leaders are favorably from the Quraysh tribe (an example on the race or tribe aspect).

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scholars' thoughts observed from the universal benefit point of view, is, on one hand, assessed to potentially shackle a progressive process of Moslem women's marriages. Beside that, the rampant demand for reinterpretation and reformation of the products of *fikih* which are considered barren and not grounded, needs to be addressed so that the Islamic scholars' thoughts do not become a mere sacred ideas that do not fit to the needs of the benefits for the *ummah* (Moslem communities). At the same time, secularized cultures have also massively changed the theocentric orientation towards the anthropocentric one. These all have instigated the emergence of revivalism (resurrection) of the religion.

The issue of the marriage process (*munakahab*) is a part of the field of the scholars' products of thoughts that maybe renewed; the reformation region is focused on all areas of the product of the scholars' thoughts that are assessed to be bias for example the concept of *kafa'ah*.

### ***Kafa'ah in the Qur'an and Hadis***

A hadis of the Prophet Muhammad (peace be upon him) reads:

الناس سواسية بكل سنان الشط لا فضل لعربي على عجمي انما الفضل  
بالتقوى

*"All mankind essentially is the same/equal like the spokes of a comb; the Arabs are not superior to the 'Ajam (non-Arab people). Any superiority among them is only due to their piety."*

Also, Allah says in the Holy Qur'an Surah al-Furqan (25): 54:

وهو الذي خلق من الماء بشرا فجعله نسبا وصهرا وكان ريك قديرا  
*"And it is He Who has created man from water; then He has established relationship of lineage and marriage, for thy Lord has power (over all things)."*

Allah also says:

والله فضل بعضكم على بعض في الرزق  
*"And Allah favored some of you from the others in terms of fortune."* (an-Nahl (16): 71).

Among them, there are those who have advantages over the others

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in terms of knowledge (intellectual ability), as Allah says:

يرفع الله الذين آمنوا منكم والذين أوتوا العلم درجات

"Surely Allah will exalt those who believe among you and those who are given knowledge by some degrees" (al-Mujadalah (58):11).

The hadith of the Prophet Muhammad that underlie the arguments (of those who favor of taking the *kafa'ab* issue lightly) are:

ثلاث لا تؤخر الصلاة اذا اتت والجنابة اذا حضرت والايم اذا وجدتها كفو

"There are three matters that cannot be delayed; performing a prayer when its time comes, caring for the dead body when the death is obvious, and marrying a single (Moslem) woman to someone considered befit (*kufu*)."

Also a hadith from Jabir:

لا تنكحوا النساء الا الاكفاء ولا يزوجهن الا الاولياء ولا مهر دون عشرة دراهم

"Do not all of you wed (your) women except with befitmates, do not wed them unless with (the involvement of) their trustees, and the dowry for them should be no less than ten dirhams."

A hadith of Ibn Umar:

العرب بعضهم اكفاء لبعض قبيلة بقبيلة ورجل برجل والموالي بعضهم اكفاء لبعض قبيلة بقبيلة ورجل برجل الا حائك او حجام

"Arab people are equivalent to each other, a tribe is equivalent to another, a man is equivalent to another, the *mawali* are equivalent to the others a like, a *kabilah* (group) is equivalent to another, and a man is equivalent to another, except bruisers."<sup>3</sup>

This hadith is based on the decree of Allah the God Almighty:

ولا تنكحوا المشركات حتى يؤمنن ولا مئمة مؤمنة خير من مشركة ولو أعجبتكم ولا تنكحوا المشركين حتى يؤمنوا ولعبد مؤمن خير من مشرك ولو أعجبكم أولئك يدعون إلى النار والله يدعو إلى الجنة والمغفرة بإذنه

"And do not marry unbelieving women until they believe; Indeed a slave woman who believes is better than an unbelieving woman although she allure you. And do not marry (your girls) to unbelievers until they believe. A man slave who believes is better than an unbeliever even though he impress you. They invite you to the Fire, but Allah beckons you by His grace to the heaven

<sup>3</sup> Muhammad ibn Isma'il al-Amir al-Yamani al-San'ani, *Subul Baligh Sharh al-Salam al-Maram Min Jam'I Adillat al-Abkam*, Vol 3 (Beirut: Dar al-Fikr, 1991), p. 248-249.

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and forgiveness.” (Surah al-Baqarah (2): 221).

A hadis of the Prophet Saw reads:

تنكح المرأة لاربع: لمالها ولحسبها ولجمالها ولدینها فاظفر بذات الدين تربت  
يداك

“A woman is usually married due to four factors; her wealth, or her descent/  
lineage, or her beauty, or her religion. Choose (your wife) due to (her) religion;  
(otherwise) you will find a misery.”<sup>4</sup>

Apart from Moslem women, those who are regarded equivalent  
(*kufu'*) to Moslem men are women from the people of the Book (*ahl al-  
Kitab*) who guard their chastity, as decreed by Allah:

اليوم أحل لكم الطيبات وطعام الذين أوتوا الكتاب حل لكم وطعامكم  
حل لهم والمحصنات من المؤمنات والمحصنات من الذين أوتوا الكتاب من قبلكم  
“This day are (all) things good and pure made lawful unto you. .... (and  
lawful unto you in marriage) are (not only) chaste women who are believers  
but also chaste women among the people of the Book revealed before you ...”  
(al-Maida (5): 5).

Basically, majority of Islamic scholars agree on the permissibility  
for Moslem men to marry women of *kitabiyah* (people of the Book).  
That's because there is a decree of Allah that says:

والمحصنات من المؤمنات والمحصنات من الذين أوتوا الكتاب من قبلكم  
It means: “... (and lawful unto you in marriage) are (not only) chaste women  
who are believers but also chaste women among the people of the Book revealed  
before you...” (al-Maida (5): 5).

The Prophet (p.b.u.h.) said in one hadis:

لا اعرف شيئاً من الا شراك اعظم من ان تقول المرأة ربها عيسى او عبد من  
عباد الله تعالى

“I do not know a polytheism which is greater than someone who says that  
his/her God is Jesus or anyone of the servants of Allah the Almighty.”<sup>5</sup>

<sup>4</sup> Ahmad ibn Ali ibn Hajar al-Asqalani, *Fath al-Bari bi Sharh Sahih al-Bukhari*, ed  
*Abd al-Aziz ibn Abd Allah ibn al-Baz*, Vol. 10 (Beirut: Dar al-Fikr, 1995), p. 165.

<sup>5</sup> Muhammad Ali al-Shabuni, *Rawa'u al-Bayan Tafsir Ayat al-Ahkam Min al-Qur'an*,  
Vol. 1 (Beirut: Dar al-Fikr, year of publication unknown), p. 287-289.

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Allah also says:

لقد خلقنا الإنسان في أحسن تقويم

“*Verily We have indeed created man in the best possible shape.*” (at-Tiin (95): 4).

Allah has glorified human beings, as in His words:

ولقد كرمنا بني آدم وحملناهم في البر والبحر ورزقناهم من الطيبات  
وفضلناهم على كثير من خلقنا تفضيلاً

“*And verily we have honored the sons of Adam; provided them with transport on land and at sea; given them for sustenance things good and pure; and conferred on them special favors, above a great part of Our creation.*” (al-Isra’(17):70).

And all men and jinn were created by Allah in the purpose to worship Him, as revealed in the Qur’an surah al-Dzariyat (51): 56 which reads:

وما خلقت الجن والإنس إلا ليعبدون

“*And I have only created jinn and men that they may worship Me.*”

Essentially, every human being is a part of a unity so that there should be no difference in superiority among them except in the degree of devotion to Allah, the Supreme Creator. The Prophet (p.b.u.h.) also said:

الناس سواء لا فضل لعربي على عجمي إنما الفضل بالتقوى

“*Every man in essence is the same; the Arabs are not superior to the Ajam (non-Arab). The superiority among them is due to their piety.*”<sup>6</sup>

Allah says:

قل هل يستوي الذين يعلمون والذين لا يعلمون إنما يتذكر أولوا الالباب

“*Say: Are they equal, those who know and those who do not know? It is those who are endowed with understanding that receive admonition* (al-Zumar (39): 9).

تلك الرسل فضلنا بعضهم على بعض منهم من كلم الله ورفع بعضهم درجات

“*Those Messengers We endowed with gifts, some of them above others. Among them are those who Allah spoke (directly with him) and others He raised to*

<sup>6</sup> Abu al-Abbas Shihab al-Din Ahmad al-Qastalani, *Irshad al-Sari Li Sharh Sahih al-Bukhari*, Vol. 11 (Beirut: Dar al-Fikr, year of publication unknown), p. 414.

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degrees (of honour)..” (al-Baqarah (2): 253).

نحن قسمنا بينهم معيشتهم في الحياة الدنيا ورفعنا بعضهم فوق بعض درجات ليتخذ بعضهم بعضا سخريا ورحمة ربك خير مما يجمعون

“It is We who portion out between them their livelihood in the life of this world, and We have exalted some of them above others in ranks, so that some may command work from others. But the mercy of thy Lord is better than the (wealth) which they collect.” (al-Zukhruf (43): 32).

Allah has emphasized with His decree:

يا أيها الناس اتقوا ربكم الذي خلقكم من نفس واحدة وخلق منها زوجها وبث منهما رجالا كثيرا ونساء

“O mankind! Reverence your Guardian Lord who created you from a single person; created, of like nature, his mate; and from them twain scattered (like seeds) countless men and women.” (al-Nisa’(4): 1).

أفمن كان مؤمنا كمن كان فاسقا لا يستوون

“Is then the man who believes no better than the man who is rebellious and wicked? Not equal are they.” (al-Sajada (32):18).<sup>7</sup>

A hadith of the Prophet (p.b.u.h.):

إذا جاءكم من ترضون خلقه ودينه فزوجوه إنكم إلا تفعلوه تكن فتنة في الأرض وفساد كبير

“When there comes to you someone you approve of his morals and his religion then marry him! Verily if you do not marry him then fear of defamation arising in the earth and the coming of huge damages.”<sup>8</sup>

Regarding to the attention given to the issue of *kafa'ah*, in the book titled *Awadhir al-Rawandi* as quoted by Muhammad Baqir al-Majlisi, the Prophet (p.b.u.h.) also said:

انكحوا الاكفاء وانكحوا منهم واختروا لنطف

“Marry them (i.e. Muslim women) with those of equal quality (*kufu'*) and marry you all to those of equal quality (*kufu'*) and seek and choose a (right

<sup>7</sup> Moch. Anwar, *Dasar-Dasar Hukum Islami dalam Menetapkan Keputusan di Pengadilan Agama* (Bandung: CV. Diponegoro, 1991), p. 37.

<sup>8</sup> Abu Ja'far Muhammadibn al-Hasan al-Tusi, *Tabdhib al-Abkam Fi Sharh al-Mugni'ab Li al-Shaykh al-Mufid*, Vol. 7 (Beirut : Dar al-Ta'ruf, 1992), p. 352.

<sup>1</sup>  
and comparable) partner for your sperm.<sup>9</sup>

### ***Kafa'ab in Marrital Life***

The equality in a marriage that must be given due attention by the trustees before marrying their daughters. The followings are dicussions on *kafa'ab* in the lights of four major school of laws; Hanafi, Syafi'i, Hanbali and Maliki schools of law.<sup>10</sup>

### **Hanafi School**

#### ***Descent/Ancestry Factor***

Principally, the equality and balance of the descent factor in a marriage is by being from the same tribe or nation. However, even in practice, there is often found a marriage where the prospective brides come from differenttribes/nations and this represents assimilation.

The Arab people are *kufu'* (equal) to each other. The Quraysh is considered *kufu'* to their fellow Quraysh, either they have lower or higher rank such assons of Muttalib, Hashim and others. Similarly, the Ajam or non-Arabs (*al-mawali*) are *kufu'* to each other.

According to the *mazhab* of Hanafiyah, non-Arab men are not *kufu'* to Arab women unless they have an intellectual ability, even then they are only considered *kufu'* to ignorant Arab women. They are also considered *kufu'* with a syarifah (noble) woman of the Quraysh off spring who is ignorant. This is considered as *kufu'* since the magnificence of science is higher than that of descent and the position of non-Quraysh (let alone non-Arab) men is not *kufu'* to that of the Quraysh women.

The issue regarding to the descent has an important role in a

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<sup>9</sup> Muhammad Baqir al-Majelisi, *Bihar al-Anwar al-Jami'ah Li Durar Akhbar al-Aimmah al-Atbar*, Vol. 100 (Beirut: Dar Ihya al-Turath al-'Arabi, 1983), p. 375.

<sup>10</sup> Ala al-Din al-Samarqandi, *Tubfat al-Fuqaha*, Vol. 2 (Beirut: Dar al-Kutub al-Ilmiyah, 1993), p. 154.

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marriage, since usually the issue of descent becomes a “competition” or a “show off” of greatness, glory, pride, and fame in the society’s life, especially in the family life.

### *Religiosity Factor*

The characters of religiousness meant in a marriage are the condition of not only being a Moslems, but also must possess characters of being piety and kind as well as commendable manners.<sup>11</sup> Therefore a *fasiq* (wicked) man is not *kufu'* to a pious woman who is a daughter of a pious man. Such a man is only *kufu'* to a *fasiq* woman either she is a daughter of a *fasiq* man or a pious one.

The religiousness indeed becomes a very important factor; even it is more important than the lineage factor according to Abu Hanifah and Abu Yusuf. Both stated that the religiousness factor has the highest pride and glory than other elements of *kafa'ah*. A woman would be more degraded if married by a *fasiq* man, let alone in the absence of religious characters, such marriage would be more misleading or humiliating to the woman concerned.

Thus, the factor of both brides are Moslem becomes a very important concern since by being *kufu'* in the religion, a marriage will not create anarchy for families and communities. Contrarily, if a Moslem woman is married to a man of different religion, this will usually cause shocks and chaos for both brides themselves and other people.

### *Free from Slavery*

*Kufu'* in marital life implies a male-slave is not *kufu'* to a free woman. A man with a grandparent that had been a slave is not *kufu'* to a woman with a grandparent that had never been a slave.<sup>12</sup> This is so because, according to the *mazhab* of Hanafiyah, a free woman married

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<sup>11</sup> Kamal al-Din Muhammad ibn Abd al-Wahid al-Siwasi, *Sharh Fath al-Qadir*, Vol. 3 (Beirut: Dar al-Fikr, year of publication unknown), p. 299.

<sup>12</sup> Ala al-Din al-Samarqandi, *Tuhfat al-Fuqaha*..., p. 275.

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to a slave is considered reprehensible, even more despicable than the imbalance or less equivalence of the lineage between them. Besides that, the nobility of a person can also be obtained by the independence status of his/her parents.

### *Wealth*

The wealth become a measurement of *kafa'ab* in a marriage; it means that any man that will get married must have a dowry and maintenance (for living). Anyone who does not have a property to pay for a dowry and maintenance for living (or one of them) is not considered *kuflu'*. That's because the dowry behaves as a replacement for intercourse which has to be fulfilled by the prospective husband, while the maintenance (for living) is necessary to keep the sustainability of the family life.<sup>13</sup>

Therefore, a man of 'Ajam (non Arab people) that has the intellectual capacity but poor is regarded *kuflu'* to an ignorant Arab woman although she is rich. Such a man is even equivalent to a syarifah (noble) woman from Alawiyah clan (i.e. the offspring of the Prophet Muhammad). This is so because the nobility of intellectuality is above that of the descent and wealth. And this is the opinion of Ibn al-Hammah, one of the Hanafi's scholars.<sup>14</sup>

Nonetheless, there is also one group of people who think that the wealth is a privilege which is equal to the descent. Even some communities regard it higher than the descent. Due to this fact, the factor of wealth also becomes a measurement of *kafa'ab* in a marriage.

### *The Factor of Job/Profession*

The factor of job/profession is also a part of *kuflu'* in a marriage. A woman from a family with a respectable profession is not *kuflu'* to a man who works as an unskilled laborer.

<sup>13</sup> *Ibid.*, p. 300.

<sup>14</sup> Abd. Al-Allah Muhammad ibn Idris al-Shafi'i, *al-Umm*, trans. Ismail Ya'kup, Vol. 7 (Jakarta: CV. Faizan, year of publication unknown), p. 76.

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People who have respectable professions regard it as a flaw to have their daughters married to men of hard professions. Ideally, being *kefu'* in the profession is when a trader is married to a trader, a laborer to a laborer, a government employee to a government employee, a businessman to a business woman and so forth alike.

Thus, if there be similarities in profession between the groom and the bride or somehow nearly balance, it is considered to be equivalent, harmonious and equal (*kefu'*). To know whether one's profession is considered to be respectable or not may be assessed from the local customs since a profession that may be considered respectable in a place it is probably considered not else where.

So, that is the explanation about the profession (*al-Sina'i*) factor in connection with the issue of *kefu'* in a marriage according to the *mazhab* of Hanafiyah.

### Syafi'i School

Al-Syafi'i in his book, *al-Umm*, stated that: "I am not aware (of other matters) that to the trustees there presents a matter regarding women (under their guardianship) that is made clearer (for them) than a tenet that those women should not be married to any men unless they are equivalent (*kefu'*)."<sup>15</sup>

According to the common *mazhab* of Syafi'iyah, the *kafa'ab* in a marriage includes five criteria:

#### *Being Not Disabled*

Being not disabled that becomes a standard of *kafa'ab* is that the prospective brides must be safe from any disability that may cause it permissible to take a *kehiyar* (an option either to cancel the marriage or to continue it) such as being crazy, having leprosy, the penis is cut off, or the vagina is clogged.

Any man who has a glaring physical disability is not *kefu'* to a

<sup>15</sup> *Ibid.*, p. 155.

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woman who is healthy and normal. If the disability is not so obvious but looking less favored such as being blind, having maimed hands and having an ugly stature, then according to al-Rahwani, such man is not *kufu'* to a normal and healthy woman.<sup>16</sup> That is the explanation of being not disabled, whenever such criterion is found, the prospective bride and groom are considered to be not equivalent.

### *Descent*

The Syafi'iyah, classifies the descent and race of people into two groups: first are the Arab people and the second are non-Arab people ('Ajam). The Arab people are then divided into two tribes which are the Quraysh tribe and non-Quraysh tribes.

To the Syafi'iyah, the Quraysh tribe is only *kufu'* too their fellow Quraysh, including the descendants of Muttalib and Hashim. That's because some people, especially among the Quraysh and the like, are very proud of their descent or lineage than other tribes. They are very concerned about the issue of descent or clanship especially when choosing spouses from other than their own tribes.

The Syafi'iyah also views that non-Arab ('Ajam) women are only *kufu'* to Arab men. To find out whether a person is an Arab or not, his/her lineage can be traced from their father. It is so alike; for knowing whether a person is a Qurashiyah (a descendant of a Quraysh tribe) or not is by tracing his/her lineage from their father.<sup>17</sup>

We recognize and acknowledge, however that the issue of lineage (especially in marriage) is highly reckoned among the Arab. The same thing also occurs among non-Arab ('Ajam) people.

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<sup>16</sup> Abu Zakariyya Yahya ibn Sharf al-Nawawi al-Dimashqi, *Rawdat al-Talibin*, Vol. 5 (Beirut: Dar al-Kutub al-Ilmiyah, 1992), p. 424.

<sup>17</sup> Ibn Hajar al-Haytami, *Mablagh al-Arab fi Fakhr al-Arab* (Beirut: Dar al-Kutub al-Ilmiyah, year of publication unknown), p. 234.

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***Being Preserved from Disgraceful Acts***

A woman who keeps her self away from disgraceful acts (*'iffab*) and a woman who does not practice any heresy (Sunniah) aren't *kufu'* to wicked men (*fasiq*) and those who practice heresy.<sup>18</sup> Neither those women are *kufu'* to adulterer men, although they have already repented.

A *fasiq* is only equivalent to a *fasiq* woman when their wickedness is equal. When their wickedness is not equal, for example: both are drinkers but one of them also commits fornication, then they are considered to be not *kufu'*.<sup>19</sup>

In many references from the group of Syafi'iyah, the issue of religiousness as a consideration for *kafa'ab* is included in the issue of *'iffab* (being preserved from disgraceful acts). Regarding to this, Ali Zadah (when describing *kafa'ab*) said that it refers to every believer who is truly pious to Allah so much so that if he/she is loved, he/she will glorify and if a hatred is shown to him/her, he/she won't retaliate by doing arbitrary actions against his/her opponents. That is a philosophical view of *'iffab* that constitutes to be one of the criteria of *kafa'ab* in a marriage.

***The Profession***

*Al-hirfab* means the social status related to employment and professions. So, according to this *mazhab*, hard professions such as: road janitors, bruisers, office guards, cattle herders and latrine guards are not equivalent to tailors' children. So a like, children of tailors are not equivalent to those of merchants; children of merchants are not equivalent to children of pious people or (Islamic) judges.<sup>20</sup>

A man with low level of jobs, such as a janitor and others which are similar, is not comparable or *kufu'* to a woman whose job or her father's

<sup>18</sup> Abu Muhammad al-Husayn ibn Mas'ud ibn al-Farra al-Baghawi, *al-Tabdhib fi Fiqh al-Imam al-Shafii*, Vol. 5 (Beirut: Dar al-Kutub al-Ilmiyah, 1977), p. 297.

<sup>19</sup> Abu Bakr ibn Muhammad Shata al-Dimyati, *Ianat al-Talib*, Vol. 3 (Semarang: Toha Putra, year of publication unknown), p. 331.

<sup>20</sup> Ali Zadah, *Sharb Shir'ab al-Islam* (Beirut: Dar al-Kutub al-Ilmiyah, year of publication unknown), p. 418.

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profession is of higher level.

### *Free from Slavery*

The free status become a consideration in *kafa'ab*; the opinion of Shafi'iyah is the same as that of Hanafiyah in this case, i.e. a slave man is not *kufu'* to a free woman. Thus, a slave man that had obtained his freedom is not *kufu'* to an originally independent woman. A man whose father or grandfather had been a slave is not *kufu'* to a woman whose they had never been a slave. However, the nature of ever being slave that is attached to the father and or the mother of a person, according to Ibn al-Rif'ah and al-Subki, gives no effect onto the children born (by such parents) in relation to the issue of *kafa'ab* for a independent person. Even, there is no difference between a man born by a slave woman and a man born by an (independent) Arab woman, since the issue of lineage is related to the father, and not the mother.

Being free, according to the *mazhab* of Shafi'iyah, has a very important concern because a free woman would feel humiliated to become the wife of a slave man. Besides, some depravation will occur (to the woman); bearing in mind that a (man) slave cannot promise a good living but poverty and indigence.<sup>21</sup>

These considerations bring the independence status (of the brides) into becoming one category of *kafa'ab* in a marriage.

### **Hanafi School**

According to Hanabilah, elements that can be used as benchmarks or standards of *kafa'ab* in a marriage are these 5 factors:

### *Religiosity*

The religiousness meant here is the obedience of each bride towards the religion. In the perception of the *mazhab* of Hanabilah,

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<sup>21</sup> Al-Dimashqi, *Rawdat* (Beirut: Dar al-Kutub L al-Ilmiyah, year of publication unknown), p. 425.



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a good woman (who preserves herself and guards her honor) is only *kufu'* to a good man a like. And like wise, a *fasiq* woman is only *kufu'* to a *fasiq* man.

A *fasiq* man is not *kufu'* to a good woman. And vice versa. This is so because a *fasiq* man/woman is despicable, his/her witness is denied, cannot be accounted for himself/herself and his/her property, and his/her power is seized. In addition, a *fasiq* man/woman has a low value before Allah and before men, and is given little parts/grace in this world and the here after.<sup>22</sup> That's the basic principles of the religiousness in relation to the equivalence or *kafa'ab* in a marriage.

### *Descent*

The thing which is meant by al-Mansab is the ethnicity and descent which are the levels of social position or status in society. Regarding to this issue, the perception of the *mazhab* of Hanabilah is just the same as other *mazhab*; i.e. the Quraysh people are only *kufu'* too ther fellow Quraysh including the descendants of Muttalib and Hashim. That's because some people, especially among the Quraysh and the like, are very concerned with their descent/lineage than other tribes. The Arabs (non-Quraysh) are only *kufu'* to the Arabs alike (non-Quraysh) while non-Arab ('Ajam) women are only *kufu'* to men who are non-Arab.

### *Free from Slavery*

The freedom status, according to the *mazhab* of Hanabilah, is included as one criterion of *kafa'ab*. As such was proven by the Prophet Muhammad when he gave options to a companion named Barirah when she was offered to be married by a slave, though she ended up to do so, but this was largely due to her willingness and sincerity. A slave is not *kufu'* to an independent person. That's because the weakness (condition) of the slave will bring many influences and very obvious dangers. A

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<sup>22</sup> Ibn Qadamah al-Maqdisi, *al-Mughni* (Beirut: Dar al-Kutub al-Ilmiyah, 1977), p. 375.

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part from being still tied to his master, a slave is not entitled to spend what someone else possesses, including even for his children's needs. Thus, shortly speaking, a burden (of life) when laid on a slave will bring a condition as if he is not present or he does not exist. That is exactly why this *mazhab* views that a slave is considered to be not *kufu'* to an independent person.

### *Profession*

The profession becomes one of criteria of *kufu'* in a marriage. A woman from a family with a respectable job background is considered to be not *kufu'* to a man who has a profession as an unskilled laborer.

People with respectable professions (usually) consider it as a deficiency when having their daughters engaged or married to men who have hard jobs. Some of them even consider it as a flaw that resembles to the incompatibility in the descent/lineage between the brides.<sup>23</sup>

Ideally, being *kufu'* in profession means that a merchant is married to a merchant alike, an unskilled laborer to an unskilled laborer alike, an employee to another employee, a businessman to a business woman, and so forth.

### *Wealth*

The wealth is also one of criteria of *kufu'*. So, if there is a wealthy woman who is under the power of a destitute man, such situation will endanger her (and her wealth). The husband will find difficulties to meet the living needs for their children. Furthermore, people also reckon that the wealth is a privilege as regarded so to matter of the descent. Even, in realities, some people value it higher than the descent.

Realizing of how important is the issue of a groom's wealth and the levels of ability in searching for it, so the matter of wealth becomes a measure of *kafa'ab* as it does to the descent.

Nevertheless, the wealth that becomes a concern in relation to

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<sup>23</sup> *Ibid.*, p. 377.

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*kafa'ab* is just in a sum that is enough to make a (daily) living and is appropriate to the groom's obligation and ability to pay the dowry.

### Maliki School

In contrast to the previous three *mazhab*, the *mazhab* of Malikiyah only specify two types or factors related to the issue of *kafa'ab* which are vitally important in a marriage, namely:

#### *The Religiousity*

What is meant by religiousness is a person who has the religion of Islam and is responsible, he/she does not have the attitudes of being a *fasiq* person and leaves wicked acts transparently. Al-Qanuji al-Bukhari interpreted religiousness as being a Moslem and having an attitude of being just or conscionable.<sup>24</sup>

Therefore, a *salihab* (good) woman is not *kufu'* to a *fasiq* man. However, in the view of this *mazhab*, the equal level of righteousness between the groom and the bride is not required.

That is the understanding of the religiousness element that constitutes a major factor and has become a consensus among all *mazhab*, particularly the *mazhab* of Malikiyah.

#### *Health*

The definition of health here is that the bride and the groom are healthy both physically and mentally, and they are safe from having any disability that can bring up a situation that arises options whether the marriage is to be continued or not. By all means, when the marriage had taken place, the bride is allowed to do a *fasakh* (i.e. filing a lawsuit for a divorce). Therefore, a healthy (i.e. not disabled) woman is not *kufu'* to a disabled man, for example he is mad, suffering from leprosy and so on.

As for the issue of wealth, ethnicity, profession, independence

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<sup>24</sup> Muhammad Sadiq Hasan khan al-Qanuji al-Bukhari, *Al-Rawdab al-Nadiyah Sharh al-Durar al-Bahiyah*, Vol. 2 (Riyadh: Maktabah al-Kawtar, 1993), p. 19.

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status and so on are not considered as essentially required by Malikiyah in relation to *kafa'ab*, but only considered as importantly required. By the latter consideration, those factors are considered voluntary only. Therefore, an 'Ajam man, according to this *mazhab*, remains *kufu'* to an Arab woman from both the Quraysh and non-Quraysh ethnics alike. Similarly a poor man or one of low social status is still regarded as being *kufu'* to a rich woman or one of high social strata.

So long that the both brides are Moslem and have no either physical or mental disabilities, they are considered to be balance, harmonious or equivalent, since every Moslems is *kufu'* to any other fellow Moslem, as decreed by Allah in the Holy Qur'an Surah al-Hujurat (49): 13.<sup>25</sup>

The health factor is included as one category of *kafa'ab* by this *mazhab* in conjunction with the objective for nothing else but as an effort to create happiness and harmony in the family life.

### **Egalitarian Interpretation of *Kafa'ab***

What is meant by the reformation efforts of *kafa'ab* is any effort taken to rebuild the concepts of *kafa'ab* that focuses more heavily on the *maqasid syariah*; objectives of the *syariah* (read: welfare) which should be more egalitarian and fair, through an approach of Islamic thought. This is done by further scrutinizing any products of *istinbat* towards the (Islamic) laws done by the Islamic scholars-jurists-mujtahids about the issue of *kafa'ab* from the transcendental sources which are the Qur'an and hadis. Whereas the concept maybe defined as any theory that had been tested; what the author means about the concept in this paper is the codification of the products of *ijtihad* done by Islamic scholars about *kafa'ab* which is interpreted aequal, similar, balance or harmonious. The harmony that is meant here is the equivalence in certain criteria between

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<sup>25</sup> Muhammad Afandi Sasi al-Magribi al-Tunisi, *al-Mudawwanah al-Kubra li-Imam Dar al-Hijrah al-Imam Malik ibn Anas al-Ashabi*, Vol. 3 (Kairo: Matba'ah al-Saadah, 1323 H), p. 164.

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a candidate husband and a candidate wife.<sup>26</sup>

The concepts of *kafa'ah* from the Islamic jurists, especially the *mazhab* *al- arba'ah* (i.e. the four most common *mazhab*: Hanafi, Maliki, Syafi'i and Hanbali), becomes a priority since their treasures remain institutionalized until this day.<sup>27</sup> There are three important keywords that are closely related to the reformation efforts, namely: (1) the representation: everything related to the idea, illustration, image, narration, visual and scientific products on the Islamic jurisprudence (*fikih*) about women. Another word, that can be used to describe this representation is "text", so that the object in question regarding to this representation is the text itself. While the social realities of Moslem women is the intellectuality of the books of *fikih* about women. It means that the fact of the women's existence is constructed by the linkage among texts; (2) the deconstruction; every representation has a nature of being cultural and is established and constructed socially. In criticizing the construction that is no longer able to cover actual issues or is assessed to contain injustice, then such construction must be dismantled, this is where the concept of deconstruction is needed. Dismantling and deconstructing the texts mean changing the condition of the texts that used to be closed and claimed sacred to become open and de-sacred by rejecting all norms that were considered to be "the only truth" in interpreting the texts.

In this deconstruction activity, an approach employing the terms either, neither and or is rejected, for example: a Moslem woman should be this way or that way otherwise they would not exist, etc.; instead, an if approach is used (e.g. if it's like this, it will become that; if this is done, then the alternative is that, and so on). So, it can be seen that there are many alternative texts, representations, and images with their

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<sup>26</sup> Farid Wajdi, *Dairat Ma'arif al-QAM al-Isbrin*, Vol. 8 (Beirut: Dar al-Fikr, year of publication unknown), p. 160.

<sup>27</sup> Abd al-Wahab al-Sha'rani, *al-Mizan al-Kubra*, Vol .1 (Beirut: Dar al-Fikr, year of publication unknown), p. 54; Fathurrahman Djamil, *Filsafat Hukum Islam* (Jakarta: Logos Wacana Ilmu, 1997), p. 67.

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corresponding implications. Thus, interpretative (Islamic) jurisprudences regarding women which are plural and includes alternatives will open up.

The third keyword is the Knowledge and Power; it means that any knowledge (read: texts, representations, visual and scientific products) is power. There is no knowledge that is free from power. The opposite is true: any power is always associated with the knowledge that contains (various) interests. Therefore, an approach used by the author in this paper is the historical approach, i.e. an approach by looking at the history, background and the factors that influenced the jurists when defining and stipulating the law.

The products of Islamic classical jurists concerning the concept of *kafa'ab* with all their miscellaneous attributes seem urgent and remain up-to-date, especially when accentuated on the rights of women. This is so said, bearing in mind that *kafa'ab* is one important element in a marriage; whereas a marriage, if viewed from the legal aspects, is a very strong agreement termed in the Qur'an as *mitsaqan ghalizan* which means a very strong agreement and bond. Such bond is regarded as strong since it involves many rules, starting from the pre requisites, pillars to enforce it, up to the procedures to break the marriage's bond, namely: *shiqaq*, *thalaq*, *fasakh* (separation, divorce, revocation) and so forth.

A marriage in Islam is closely related to the worship, social and legal aspect. Carrying out a marriage means performing religious, social and legal activities at the same time. Therefore, performing a marriage means perfecting a part of the religion duties. Observed from the purpose of a marriage, which is to create a tranquil family which is full of love and mercy (*sakinah, mawaddah wa rahmah*), the aspect of full awareness in determining the prospective spouse becomes a very important element. One consideration in choosing a spouse is through a process of assessing the *kafa'ab*. *Kafa'ab* is necessary so that the purpose of a marriage can be achieved. The balance, harmony and equivalence between the prospective bride and the prospective groom, either in their physical performances,

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wealth, statuses, knowledge, and so on, is an important factor in realizing such objective of the marriage. A marriage where the brides are not *keufu'* will find difficulties in contriving a happy family.

Linguistically, the word *kafa'ab* means equivalent, comparable, or similar. In the constellation of the Islamic thought, *kafa'ab* is meant that a prospective husband is expected to be comparable in his social status to the bride. It is intended to guarantee the relation between a husband and his wife as well as ensuring a harmony of their family life in the future.<sup>28</sup>

Regarding to the status of *kafa'ab* before the Islamic law and the extent to which this can be done, the *fuqaha* disagreed. Ibn Hazm did not look at all the importance of an assessment on *kafa'ab*. He said that any Moslem man, so long he is not an adulterer, has the right to marry any Moslem woman he wants, as long as she is not an adulterer either. His opinion was based on the view that all Moslems are brothers so there should be no obstacle for a black man to marry even an honorable white woman. This opinion is based on the Holy Qur'an Surah al-Hujurat (49) verse 10 and Surah al-Nisa (3) verse 24.

Meanwhile, the majority of *fuqaha* state that the *kafa'ab* elements must be taken into account seriously, especially regarding to the consistency of practicing the religion's teachings and conducting good manners, not in terms of descent, wealth and so forth. Even though, there is a man with no clear lineage story, he is still allowed to marry a woman who has a clear lineage. One thing that is important to note in this respect is the willingness of both parties. If both the bride and the groom do agree to get married, then the woman's trustees are not entitled to present their reluctance (*adblal*) to wed both of them, as long as both of them are consistent in practicing the religion and well mannered. This opinion is based on the decree of Allah in the Holy Qur'an Surah al-Hujurat (49) verse 13.

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<sup>28</sup> *Encyclopedia of Islamic Law*, Vol. 4 (Jakarta: PT. Ichtiar Baru Van Hoeve, 1994), p. 38.

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Contrary to the opinions and views already mentioned, Sayid Sabiq- as one of the reformers of Islamic law- for example, in his book *Fiqhus Sunnah* suggested six criteria that must be considered in assessing the *kafa'ab* of a person. They are the descent, independence status, religion, profession, wealth and physical condition.

Regarding to the matter of descent, it is mentioned that the Arabs are equivalent to other Arabs, and not equal to non Arab people. The foundation used for such opinion is a hadith narrated by Hakim from Ibn Umar.<sup>29</sup> According to Sabiq, in regard to the descent matter, there is no dissenting opinion between the Syafi'i's and Hanafi's schools of thought (*mazhab*); their opinions only differ in assessing the superiority of the tribe of Quraish.<sup>30</sup> However, al-Shabuny viewed that taking the descent factor seriously in regard to the *kafa'ab* in a marriage only prevails among fellow Arab tribes. This is so because it becomes a tradition of the Arabs to maintain their lineage and be proud with their descendants. For families who do not practice this tradition, as is generally the case in Indonesia today, the issue of descent does not require any further assessment.

Meanwhile, Imam Abu Hanifah did not include the profession (job) as an element of assessing the *kafa'ab*, although his two companions, namely Abu Yusuf and Muhammad, included it as a requisite for it. Whereas other scholars viewed that the profession is one element in determining *kafa'ab*. If someone has a noble profession, he/she is not equivalent to an ordinary hard laborer; however, the standard of the nobility of a profession is returned to the local *'urf* (custom).

<sup>29</sup> "The Arab people are equivalent/comparable to other Arabs (i.e. among them), a tribe is equal to other tribes, a village to other villages, and a man to another man ...." Furthermore, there are some hadis that are similar to this.

<sup>30</sup> The Hanafi's *mazhab* has an opinion that the Quraysh tribe is comparable to the Hasyim clan. Whereas the Syafi'i's *mazhab* considers that the Hasyim and Mutthalib tribes are not comparable to tribes of Quraish. The reason that this *mazhab* uses is the hadis reported by Wa'ilah bin Asqa that the Prophet said: "Allah has glorified sons of Kinana from the sons of Ishmael, and has glorified the sons of Quraish from the sons of Kinana, and has glorified Bany Hasyim from the sons of Quraish and He (Allah) has glorified me from Bany Hasyim. Surely we are the elect of choice ....."

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Regarding to the element of wealth, there are dissenting opinions among the scholars of the Syafi'i's *mazhab*. Some of them state that the poor are not comparable to the rich people in a marriage, because the living cost and the customs of the poor differ from those of the rich. Some others say that the wealth is not included in the element of assessing the *kafa'ab* between the prospective brides because it can be obtained through the marriage. Similar thing becomes Hanafi's opinion.

What is meant by the *kafa'ab* in the religion is the status of being Moslem to each of the bride's family and not only limited to the prospective brides. A woman with a father, grandfather, and so on upwards (i.e. the ancestors) who have been Moslem since the very beginning (i.e. they were born Moslem) is not *kafa'ab* to a new (i.e. reverted) Moslem both man or a man with non-Moslem father or grandfather. The books of *fikih* typically place this element specifically for non-Arab Moslems, because the element of "embracing Islam earlier" becomes a matter of pride among them. However, Abu Zahrah placed it particularly to the *mawali* (Persian tribes in early Islam that bound themselves to one of the Arab tribes when they were conquered by Islam for the sake of their own safety), and not to non-Arab as a whole. The other elements of the religiousness regarding to the issue of *kafa'ab* are the consistency and piety, so, a consistent and pious woman is not comparable to a wicked man.

Another element is the independence status; it means that a free person is not comparable to a slave. The last element is the perfection of physical condition: for the Syafi'i's *mazhab* this becomes one of the benchmark of *kafa'ab* while the Hanafi and Hanbali disagreed.

The Islamic scholars agree that the *kafa'ab* is basically only addressed to the prospective husbands, not to the prospective wives. This is due to the fact that since from the very beginning a man has been given the right to choose his soulmate while a woman has no right to assess the *kafa'ab* of her prospective husband. The majority of scholars

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assert that a woman's trustees are the people with all the right to assess someone's *kafa'ab*; however, a trustee is not justified to carelessly marry his daughter to a man who is not comparable to her. In this case, the trustee must make every effort possible to bring the most benefit for the person under his guardianship.

In the conception of Islamic jurists, there are those who are entitled to determine the *kafa'ab*. The *first* is Allah, the Almighty God, Who has passed His laws relating to the equivalence of the prospective brides. The rights of Allah must be met since they become requisites of a valid marriage. If the rights of Allah are not met, the marriage is invalid. The rights of Allah in *kafa'ab* are that the marriage should be done by men and women who are all Moslems. Besides that, it is also viewed as *kuflu'* when Moslem men marry to women of *abl al-Kitab* (people of the Book) who guard their chastity.

The *second* is the rights of the parties interested in the marriage. The people who are interested in the marriage are the prospective groom that has to be a mukallaf (a mature and mentally healthy Moslem, to whom the religion's duties can be obliged) and the bride's trustees. The prospective brides that are mukallaf have the rights regarding to their marriages. Their rights are greater than that of their trustees; whereas for the brides who are not mukallaf yet, the rights regarding to the issue of *kafa'ab* is in the hands of their trustees.<sup>31</sup>

Regarding to the time to determine whether the prospective brides have matched or not is at the time when the marriage covenant (*akad nikah*) ceremony will be held. When the marriage covenant ceremony had taken place and there had been evidence that the prospective brides are *kuflu'*, the marriage is considered valid and its legitimacy cannot be contested on the grounds of being not *kuflu'*.

Therefore, in the classical books of *fikih*, it is recommended that

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<sup>31</sup> Abu Muhammad Mahmud bin Ahmad al-Ayni, *al-Binayah fi Sharh al-Hidayah*, Vol. 4 (Beirut: Dar al-Fikr, 1990), p. 231.

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the parties who have the rights relating to the *kafa'ab* should express their opinions about the bride and groom which are written down. Such notes can be presented as evidence in future (i.e. after the marriage covenant takes place) should there be any party who would contest the marriage due to upcoming evidences that the brides are actually not *kufu'*.

Such issues relating to the *kafa'ab* prevail in the event of the marriage covenant, meaning that, if there found differences in the attitudes and identity stated before the covenant and at the time of the covenant takes place, it may be disputed. But if the assessment is made after the covenant takes place, it cannot be nullified.<sup>32</sup> Observing such conception of *kafa'ab*, the writer tries to offer reforming the concept of *kafa'ab*.

Relating to the issue of *kafa'ab*, the *fuqaha* disagree about its law status, and the extent to which it is possible to be done. Some of them require that all the elements, from the point of religion, level of education, social status, profession, descent, independence status, physical-spiritual condition, and the wealth have to be fulfilled in detail; some don't see in any way the benefit of assessing the *kafa'ab*, arguing that any Moslem, as long as he is not an adulterer, has the right to marry a Moslem woman he wants. The point that says '*as long as he is not an adulterer*' ranks top. There is also present another opinion that says: "All Moslem are brothers, so there is no obstacle for a Moslem man to marry any Moslem woman without any exception."

To develop the progressiveness of Moslem women on one hand and avoiding men's liberalities on the other hand, the standard of the brides' quality equivalence (*kafa'ab*) needs to be restored through simplification on only two things: the first is the assessment of *religion*, and the second is the *outcomes of agreement* between the bride (including her trustees) and the groom. Allah decrees in the Holy Qur'an Surah al-Hujurat (49):13, and Surah al-Nisa (3):14 which are reinstated by the

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<sup>32</sup> *Ibid.*, p. 617.

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Prophet's saying "*fabdzar 'aniddin* (which means "Be cautious (yourself) in regard to the matter of the religion!"), mean a purpose that only the religion factor which must not be negotiated, while others are relative, i.e. they are sufficiently based on the agreement of the parties of the wedding pillar elements.

### Conclusion

The issues of the *kafa'ab* concerning the physical-spiritual condition, ancestry, independence status, profession, wealth, education level, up to the wealth in the broadest sense actually only require agreement between the two bride sides. So, the issue of the *kafa'ab determinants* does no longer absolutely belong to the bride's trustees, but the bride also has a significant role in determining the standard of *kafa'ab* due to a consideration that the bride herself is the essential element in the marriage concerned. So, she should play a major role in establishing the proposed criteria of *kafa'ab*. This is necessary and needed in order to achieve the benefit for the future family as well as to develop the progressiveness of woman Moslem.

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