

INVESTIGATING THE REALITY OF KAFĀ'AH IN THE MOSLEM COUNTRIES OF JORDAN, MOROCCO, AND PAKISTAN AT CONTEMPORARY ERA

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Abstract

The main purpose of this research is to investigate and understand the importance of the concept of Kafā'ah in practice of marriage moslem communities in Jordan, Morocco, and Pakistan. Kafā'ah in text or context can be understood by the concept of harmony between the two brides to be, both in terms of wealth, nasab, beauty/handsomeness, especially in religious matters. This related research, author conducted by using qualitative research approach (library research) to facilitate the process of extracting and analyzing data. The results showed that the concept of Kafā'ah in the moslem countries of Jordan, Morocco, and Pakistan in general is stil'll guided by the view of priests school, especially in Jordan and Pakistan which is more inclined to the provisions of priest of Hanafi school which as the main criteria of Kafā'ah is concerning 5 basic things, including: religion, leakage, hurriyah, wealth of both prospective spouses and the field of work as well. By contrast, Kafā'ah in Morocco is more inclined to the provisions of the priest of Maliki school which emphasizes on religious and health aspects, whether physical or psychic condition of a person. However, in some ways it has shifted to the standard of Kafā'ah which includes not only material, leakage, or religion, but the prospective husband and wife love each other. Thus, the newest of family law is expected to be adopted or implemented in legislation, especially related to marriage in Indonesia.

Keywords: Marriage, Kafā'ah, Moslem Country.

Abstrak

Tujuan utama diadakannya penelitian ini adalah untuk menelisik serta memahami arti penting konsep Kafā'ah dalam praktek perkawinan masyarakat muslim di negara Yordania, Maroko, serta Pakistan. Kafā'ah secara teks ataupun konteks dapat dipahami dengan konsep kesepadanan antara kedua calon mempelai, baik dari segi harta kekayaan, nasab, kecantikan/ ketampanan, utamanya dalam permasalahan keagamaan. Penelitian terkait ini penulis lakukan dengan menggunakan pendekatan penelitian yang bersifat kualitatif (library research) guna memudahkan proses penggalan dan analisis data. Hasil penelitian menunjukkan bahwa konsep Kafā'ah di negara muslim Yordania, Maroko, serta Pakistan secara umum masih berpedoman pada pandangan imam madzhab, utamanya di negara Yordania serta Pakistan yang lebih cenderung pada ketentuan Imam madzhab Hanafi yang mana sebagai kriteria utama Kafā'ah adalah menyangkut 5 hal dasar, meliputi: keagamaan, keturunan, hurriyah, harta kekayaan kedua calon mempelai, serta bidang pekerjaan. Secara kontras di negara Maroko lebih condong pada ketentuan Imam madzhab Maliki yang menekankan pada aspek keagamaan serta kesehatan, baik itu secara fisik atau kondisi psikis seseorang. Akan tetapi, dalam beberapa hal telah bergeser pada standar Kafā'ah yang tidak hanya meliputi materi, nasab, ataupun agama saja, melainkan pada rasa cinta atau kasih sayang di antara kedua calon mempelai. Dengan demikian materi pembaruan hukum keluarga yang ada, diharapkan dapat diadopsi atau diimplementasikan dalam peraturan perundang-undangan khususnya terkait perkawinan di Indonesia.

Kata Kunci: Perkawinan, Kafā'ah, Negara Muslim.

INTRODUCTION

One of the most important aspects before conducting a marriage process is agreement consideration or *Kafa'ah* between the prospective husband and wife. It is conducted because *Kafa'ah* is one of the most important keys to create a household with peace of life (*sakinah*), there is a sense of love (*mawadah*), and the emergence of affection (*rahmah*).¹

In general, *Kafa'ah* consideration is treated by equality in terms of property ownership, beauty/handsomeness, lineage, and consideration of the similarity of a belief (*al-din*). On the classic fiqh scholar's point of view, an equal belief in religious affairs is considered to be the most important thing. Because, if someone's religion has been damaged, then it indicates the other damage on prospective husband and wife's life.

It is like a marriage practice of Malay Moslem community, Indonesia, or other Moslem country which positioned *kenfu'* criteria on religion side as one of the things that have been fulfilled. It happens especially in classic fiqh era, where a religious aspect is still upheld², and more put forward from scholars' school point of view, such as Syafi'iyah school in Indonesia, and Moslem countries in the other Southeast Asia, or Jordan and Pakistan which apply Hanafi school regulation. Or in Morocco which implements Maliki school provisions. When requirements are not fulfilled, *khitbah* process which leads to marriage realization may be

cancelled and it cannot be continued anymore.³

However, the classic fiqh paradigm of the family law field on Moslem society in the world tends to get shift and change slowly. The change caused by technological advancement, era and science development. They change some cultures in a particular society slowly but surely. There are some people who are still consistent in practicing the classic fiqh paradigm. On the other hand, there is also one who tries to harmonize and combine both of the classic fiqh paradigm and modern fiqh paradigm, or even there are some people who change the whole classic fiqh paradigm into modern fiqh paradigm. It is conducted because it is more able to exist and can answer human needs and new issues in society extendedly.⁴

Next, innovation in Islamic family law field itself is interesting enough to be discussed based on some categories in Moslem countries in the world. *Firstly*, like some countries in the Middle East, Saudi Arabia, this country chooses to obey classic Islamic family law regulation, guided by leakage regulation, or fiqh scholars' opinion on their era. It means, law products which have been available from a long time ago are still trying to be maintained and do not change at all.⁵

Secondly, like some countries on the European continent, Turkey is one of them that has tried to change the product of family law. It changes from classical-religioustic fiqh, turns into secular law, that the elements of religion have to be separated from state

¹ Komarudin Komarudin, "Hukum Keluarga Di Tunisia Dan Indonesia," *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam* 18, no. 1 (2019): 197, <https://doi.org/10.15408/kordinat.v18i1.11481>.

² Komarudin Komarudin, "Hukum Keluarga Di Tunisia Dan Indonesia," *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam* 18, no. 1 (2019): 197, <https://doi.org/10.15408/kordinat.v18i1.11481>.

³ Koko Komarudin, "Hakikat Keluarga Islam", *Al-Ihkam: Jurnal Hukum Keluarga*, Vol. 12, No. 2 (Juni 2020): 129."

⁴ Imam Mustofa, "Ijtihad Kontemporer Sebagai Upaya Pembaruan Hukum Keluarga Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 7, no. 2 (1970), <https://doi.org/10.24090/mnh.v7i2.565>.

⁵ Hamsah Hudafi, "Pembentukan Keluarga Sakinah Mawaddah Warahmah Menurut Undang – Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam," *Al Hurriyah : Jurnal Hukum Islam* 5, no. 2 (2020): 175, <https://doi.org/10.30983/alhurriyah.v5i2.3647>.

administration. Or the *third* category, like Indonesia, Tunis, Pakistan, Morocco, Jordan, Egypt, and some other countries, which try to change the previous classic Islamic family law, by collaborating it with secularistic law.⁶

As a religion that are practiced in majority by Pakistan, Morocco, and Jordan society, Islam grows as a base of *idiil* which treated as street and first guidance life. *Kafa'ah* concept between both of spouses who want to do their marriage is settled as well in these countries. Even though it is not a must in a marriage, for building a good and harmonic household, at least it will be more guaranteed if each candidate of prospective husband and wife determine their life partner by applying equality concept or *kufu'* itself.

Based on the case above, do these Moslem countries also implement the similar concept like in Indonesia, or vice versa? Based on the background explanation above, it is important to discuss the concept of *kafa'ah* in Moslem countries of Jordan, Morocco, and Pakistan. It will pay attention to the reality which exists in the contemporary era.

The title of this research is "Investigating the Reality of Kafa'ah in the Moslem Countries of Jordan, Morocco, and Pakistan in the Contemporary Era". Writer uses a qualitative approach in this research. Data is taken by *library research*. It is done by finding data from books, academic journals, magazines, articles, acts of family law, and other literature which have correlation with the research. One of the aims to take the data from related literature is to ease the writer in analyzing the data.⁷

THE CONCEPT OF KAFĀ'AH IN MARRIAGE

In Islam, marriage has strong relation with worship. It also relates with *mua'malah* aspect among human beings that cannot be

separated from rules of law in a country. One is allowed to conduct a marriage if she/he has fulfilled all of the requirements and prominent principle in religion regulation. However, if she/he can fulfill the administrative state regulation, then she/he is going to get guaranteed both religion and law of his country in his marriage.⁸

"O Youths! Whoever among you already has the ability, get married immediately, because marriage can keep your gaze and maintain your genitals. And whoever is not able to do it, it is suggested to get fast, because fasting will barricade the lust" (HR. *Muttafaqun 'Alaih*)⁹

As a sunnah of prophet Muhammad SAW, if it is seen by the purpose of marriage, it aims to make peace of life (*sakinah*), there is a sense of love (*mawadah*), and the emergence of affection (*rahmah*) family. Therefore, the carefulness in determining a partner's life becomes the most important thing to be noticed. One of the most important considerations in choosing a spouse itself is the *Kafa'ah* process.¹⁰

Criteria used to assess someone in the same *kufu* is very relative. Yet, in the context of classic fiqh, someone can be treated in the same *kufu* with her/his partner in terms of religious (*al-din*), ownership property of each prospective husband and wife (*al-mal*), lineage, or beauty/handsomeness aspect. From all of these four aspects, the religious (*al-din*) aspect is the main principal aspect in assessment.¹¹

Kafa'ah is clearly the most important matter before getting married. At least, if an equality between each prospective spouse is fulfilled, the happiness of marriage life will be easy to obtain. Then, divorce and quarreling in a household can be avoided.¹²

In Islam, marriage is settled in a very detail way. Even, rules for choosing

⁸ Komarudin, "Hukum Keluarga Di Tunisia Dan Indonesia, 197.

⁹ Al-Shan'any, *Subul al-Salam*, Juz 3 (Kairo: Dar Ihya' al-Turats al-Araby, 1980 M), 109.

¹⁰ Sulihkhodin, "Prosesi Khitbah Di Indonesia Perspektif Local Wisdom Dan Qaidah Fiqh, 391.

¹¹ *Ibid*, 391.

¹² Mustofa, "Ijtihad Kontemporer Sebagai Upaya Pembaruan Hukum Keluarga Di Indonesia."

⁶ Muhammad Nur Hasan Latief, "Pembaharuan Hukum Keluarga Serta Dampaknya Terhadap Pembatasan Usia Minimal Kawin Dan Peningkatan Status Wanita," *Jurnal Hukum Novelty* 7, no. 2 (2016): 198, <https://doi.org/10.26555/novelty.v7i2.a5467>.

⁷ Suharsimi Arikunto, *Prosedur Penelitian: Suatu Pendekatan Penelitian* (Jakarta: Rineka Cipta, 2014), 32.

prospective of spouse is also settled. It is because marriage is not only for creating a happy and peace full household, but it is also expected that marriage only occurs once in one's life. Therefore, *Kafā'ah* is one of the important process that has to be conducted.¹³

Kafā'ah is not a must in a marriage. Yet, in some sunnah of the prophet of Muhammad Saw., it has been given several specific guidance in choosing partner life. Some of them are: 1. One who is loyal to his/her religion and conducts all of the obligations that have been given to her/him, 2. One who comes from fertile descent, it means she/he does not come from sterile leakage, 3. One who is still a virgin or has no children or does not get married yet.¹⁴

As written in a hadith, "From Jabir, the Prophet said: "A woman may be married for four things: her wealth, her lineage, her beauty or for her religion. Choose the religious, may your hands be rubbed with dust (i.e., may you prosper)" (HR. Muslim & Tirmidzi).

This hadith specifically discusses criteria of a prospective wife. However, on the other meaning, it can be comprehended that those requirements can also be implemented in choosing a prospective husband. Good Moslem is for good Moslem woman and vice versa.

Basically, everyone has the same position, right and obligation in God's point of view. Yet, the quality of their faith to the God is the thing that differs them from other people. If someone has good religion and faith, then it can be assured that it will affect his/her other aspects in life. One of those aspects can happen in marriage life and household.

KAFĀ'AH IN JORDAN

As one of the Moslem countries in the world, Jordan is one of the countries that try to conduct innovation in Islamic family law. It

can be seen from law products related to family law.¹⁵ Generally, the principle law base which is implemented as a foundation to solve some problems in terms of family law refer to scholars opinion of classic fiqh. Hanafi School gets a special place in Moslem people in Jordan.¹⁶ Scholars with Hanafiyah's view of law also have a big influence in this country. In 1971, Jordan implemented a family law called "*The Ottoman Law of Family Rights*". This law applied after act no. 92 in 1951. Before "*The Ottoman Law of Family Rights*" arose to the surface, Jordan ever implemented a regulation called "*Qanun al-Huquq al-A'ilah al-Urduniyah*" number 26 in 1947. Therefore, after act no. 92 was born in 1951, all of the previous rules regarding family law were revised and changed.¹⁷

There are 132 articles in act no. 92 in 1951. Then, it is divided into 16 chapters. The content of this act has enough similarity with Turkey law regulation in 1917. It is similar enough with its systematic writing and contents.¹⁸ After that, this act is revised by the more comprehensive act called "*Law of Personal Status*". It is called "*Qanun al-Ahwal al-Syakhsbiyyah*" no. 61 years 1976 in a common term. Before this act arises, Hanafi School is conducted as legal reference.¹⁹

The basic principle which changed in the innovation of family law regulation in this country deals with one's minimum age to get married and administrative files for getting married. It consists of the day of marriage, divorced, and other administrative elements, talaq has to be conducted in the local religious

¹⁵ Komarudin, "Hukum Keluarga Di Tunisia Dan Indonesia, 198.

¹⁶ Komarudin, "Hukum Keluarga Di Tunisia Dan Indonesia, 198.

¹⁷ Aulia Muthiah, *Hukum Islam Dinamika Seputar Hukum Keluarga* (Yogyakarta: Pustaka Baru Press, 2017), 47.

¹⁸ Latief, "Pembaharuan Hukum Keluarga Serta Dampaknya Terhadap Pembatasan Usia Minimal Kawin Dan Peningkatan Status Wanita, 199.

¹⁹ Abdul Halim Barkatullah dan Teguh Prasetyo, *Hukum Islam Menjawab Tantangan Zaman yang Terus Berkembang* (Yogyakarta: Pustaka Pelajar, 2006), 122.

¹³ Ahmad Rofiq, *Hukum Perdata Islam di Indonesia Edisi Revisi*, Cet. 2 (Jakarta: PT. Raja Grafindo Persada, 2015), 54.

¹⁴ Beni Ahmad Saebani, *Fiqih Munakabat 1* (Bandung: CV Pustaka Setia, 2013), 152.

court, guardian matter, and marriage contract.²⁰

Islam as a major religion has a big impact to the Jordan society culture, even in governance. As a country with genuine Moslem followers, it is a common thing if Jordan law products have a religious nuance. It also has its own characteristics. Like other Moslem countries in the Middle East, this country treats Islamic religious values as one of the sources of state law.²¹

One more time, the nuance and law pattern of Hanafi School can feel strong enough in this country. Jordan was one of the colonized countries under Ottoman Turkish power a long time ago.²² Now, it is an independent country. As mentioned before, *Kafa'ah* concept in some countries that apply to Hanafi school has 5 main basic criteria. Equal kufu' is considered based on religion, lineage, *hurriyah*, ownership property of each prospective spouse, and one's job position. It is also possible if these criteria of equal kufu' apply in kufu' of equal ethnic, notion, and race of each prospective spouse.²³

It is like the prophet who comes from the Quraysh. Arabic Moslem with other Arabic Moslem woman. Then, Asian Moslem with another Asian Moslem woman. Yet, in modern context, it cannot be interpreted based on those criteria. It is because human being has equal position in God's point of view. Human is different because of their faith and virtuous to their God.²⁴

On the Hanafiyah School perspective, a man who comes from Arabic clan has equal kufu' with a woman who comes from Arabic clan as well. It is vice versa. A woman who comes from Arabic notion has equal kufu' with

a man who comes from Arabic nation itself. Yet, a pious man with high intellectuality is considered to have equal *kufu'* with a woman of Arabic clan even though he is not from Arabic clan. It can occur because one's intellect has a higher degree compared with his/her lineage and property.²⁵

Lineage is an important aspect for someone. Characteristics of a person can be seen throughout their lineage, even though it cannot be a main guarantee in this contemporary era. There are people who come from low class, but they have a good attitude. By contrast, people who are born from a good lineage, but do not have well attitude.

It is similar to Indonesia. In Jordan, *kufu'* is assessed based on religion and piety of each prospective spouse. It means one is considered as a real Moslem if she/he has good behavior and is also virtuous. Servants are distinguished from their faith and piety to his God. They are not different based on their own property.²⁶

Regarding to the age of marriage, based on the act of this country, men and women can get their marriage if they are already 16 and 15 years old. Meanwhile, in Indonesia, the age of marriage is renewed to 19 years old as mentioned in the marriage act. In Jordan, those ages are considered as mature age.²⁷

It means, if people are already in that age, they are supposed to get married. If a man does not get approval from a woman's guardian, she/he can propose permission to their local court. As long as the husband candidate is considered to have equal kufu' with the wife candidate, parents' blessing can be replaced by court approval. As mentioned in article 21 of marriage regulation in this country, a woman's family, especially her guardian can cancel the marriage if a husband candidate does not have equal kufu' with the

²⁰ Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer," *Unisia* 30, no. 66 (October 25, 2007): 329-341, <https://doi.org/10.20885/unisia.vol30.iss66.art1>.

²¹ *Ibid*, 335.

²² *Muslim Secular Democracy, Muslim Secular Democracy*, 2013, <https://doi.org/10.1057/9781137282057>.

²³ Sulihkhodin, "Prosesi Khitbah Di Indonesia Perspektif Local Wisdom Dan Qaidah Fiqh, 393.

²⁴ Komarudin, "Hukum Keluarga Di Tunisia Dan Indonesia, 197.

²⁵ Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer, 334.

²⁶ Nurhadi Nurhadi, "Undang-Undang No. 1 Tahun 1974 Tentang Pernikahan (Perkawinan) Di Tinjau Dari Maqashid Syariah," *UIR Law Review* 2, no. 2 (2018): 125,

[https://doi.org/10.25299/uirlrev.2018.vol2\(02\).1841](https://doi.org/10.25299/uirlrev.2018.vol2(02).1841).

²⁷ *Ibid*, 126.

women. Meanwhile, equal kufu' regulation has been mentioned in previous agreements. This case is called as *fasakh*.²⁸ If it is found that a woman (whether virgin or widow) who marries herself to her selected man, and apparently they have different kufu', then her guardian has the right to cancel the marriage.

"The assessment of the husband and wife candidate is in *kufu'*. It is not the size of a dowry. Even though it is not *mitsil* dowry, but they are still in the same kufu', the guardian cannot propose *fasakh* of that marriage" (article 22). "A judge will accept the *fasakh* proposal if the wife is not pregnant matter" (article 23).²⁹ It has to be highlighted that *kafa'ah* criteria can be noticed through man's effort to give cash dowry in the solemnization of marriage. It can also be seen throughout the ability of man to fulfill his wife and children physically and inwardly.³⁰

Even though wealth is not the first priority, but it is also an important matter compared with other kufu' criteria. If daily needs can be fulfilled well, harmony, peace, and happiness of a household can be obtained.³¹ As a country with the majority of the society implementing Hanafi school, the presence of a guardian is not a must in solemnization of marriage. Meanwhile, his rights in marriage regulation have to be respected and upheld.³²

Although a woman is already in mature age and she is able to do her marriage,

specifically when she gets 18 years old, the guardian still has the right to do his authority such as educating, taking care of his child, and controlling all of their behavior especially on the civil matter of his children. It is also viewed as a progress in Islamic family law field.³³

KAFĀ'AH IN MOROCCO

Moslem is the major population in Morocco. This country is popular enough by the other Moslem countries. Morocco uses Islamic sultanate in the form of its government. Its population is more or less 32 million people. It cannot be said as a small number of populations. Almost all of the people believe in Islam. It is not less than 99%. Sunni is one of the biggest schools that is practiced by the people in this country.³⁴

Arabic is official language of this country. France is considered as popular foreign language by its society. Moslem people are called as Moslem with Sunni school in Morocco. Regarding the innovation process of family law product, it has a fair act. It is conducted fairly. It also pays attention to gender equality between man and women. It can be seen especially in the distribution of a wife and husband role and position. It can be observed in the element of regulation content through its "Mudawanah" as well.

"Mudawanah al-Usrah" or act of family law was launched successfully in 2004. It is created as an effort to create gender equality in community life throughout a small area which is family. Thus new acts replace previous regulation that has been conducted for more or less 50 years.³⁵

There are several important innovations of Islamic family law in Morocco. It can be seen as below:

1. The responsibility to keep integrity and continuity in a household becomes the wife and husband's responsibility. Previous regulation

²⁸ Lihat Regulasi tentang Perkawinan di negara Yordania mengenai permasalahan sekufu dalam pernikahan, serta alasan-alasan apa saja yang dapat dijadikan sebagai proses pengajuan *fasakh* apabila diketemui ketidaksesuaian dalam perjanjian perkawinan. Sebagaimana termaktub dalam "*Qanun al-Ahwal al-Syakhsbiyyah*" Nomor 61 Tahun 1976.

²⁹ Kendati seorang anak memiliki legalitas untuk dapat menikahkan dirinya sendiri dengan seseorang yang dicintai dan dipilihnya sendiri, akan tetapi hak kewalian orang tua tidak serta merta lepas begitu saja. Mereka juga masih tetap mempunyai hak untuk mengajukan pembatalan (*fasakh*).

³⁰ Muhammad Ridwansyah, "Keadilan Gender Dalam Rancangan Qanun Hukum Keluarga," *Jurnal Hukum Samudra Keadilan* 14, no. 2 (2019).

³¹ *Ibid*.

³² Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer, 336.

³³ *Ibid*, 336.

³⁴ Komarudin, "Hukum Keluarga Di Tunisia Dan Indonesia, 198.

³⁵ Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer, 337.

only emphasizes those matters to a husband. It happens because he is the leader of the household. Yet, after regulation is revised by the government, a husband and wife have equal responsibility. There is no dominant role.

2. If a woman is already mature and ready to get married, they are given the right to choose their partner's life without being forced by guardians. If they are forced to marry someone who is not loved by them, they have the prerogative right to refuse it. Without permission of their guardian, women can conduct their marriage by themselves.
3. The minimum age to get married is 18 years old. If it is compared with revised regulations in Indonesia, it is only a one year difference. This age is also applied as one of the efforts to press early-age marriage.
4. Polygamy has strict regulation. It changes the previous regulation. The old regulation deliberates someone to conduct polygamy in this country.³⁶

This great regulation has a long history in its process whether in determining and creating specific steps as an effort to revise previous regulation. It is also the first step to make a coordination process toward gender activists. This phenomenal family law regulation cannot be separated from the big contribution of Morocco female activist coalition whether in idea, material, politic, and so on.³⁷

Next, after the first step is done, the second step is determining the formulation process to achieve state regulation that wants to be achieved whether in structural or substantial areas. This process takes a lot of time because there are so many people with

different importance and ideas that have to be synergized.

The step to observe each importance fairly and equality can be seen through legal protection towards human rights and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the process on achieving theological and untheological from every circle is always conducted. It is treated as the third step. The fourth step is giving accompaniment towards people who have power in public policy so that all of the want can be gained.³⁸

The effort to innovate this family law regulation has been informed to the people who have power in public policy such as The House of Representatives. It has authority to make an act. Then, it is also informed to the political parties and government. The fifth step is making public opinions in a society. It is conducted so that they can comprehend and play an active role as the people who defend and fight for their right and importance as a citizen. It is like a demonstration on a street. It tries to utilize the advancement of information technology. Without strong and good synergy, the planning will be hard to realize.³⁹

The law family regulation called "Mudawanah al-Usrah" in Morocco cannot be separated from Sultan Muhammad al-Malik as-Sa'id's great role as a leader of Morocco. He is someone who has power in public policy as well. Sultan Muhammad al-Malik as-Sa'id is not only a Morocco leader, but he is also a scholar who has big impact in religion side.⁴⁰

One of the triggers of the innovation process in family law regulation is gender equality. It means, a husband and wife have equal position in family and society. This process also takes a lot of time. Then, it gains

³⁶Komarudin, "Hukum Keluarga Di Tunisia Dan Indonesia, 196.

³⁷Usman Musthafa, "Pembaharuan Hukum Keluarga Di Maroko." *Syaksia: Jurnal Hukum Perdata Islam*, 20(1) (2020): 56, <https://doi.org/10.37035/syakhsia.v20i1.1984>.

³⁸Latief, "Pembaharuan Hukum Keluarga Serta Dampaknya Terhadap Pembatasan Usia Minimal Kawin Dan Peningkatan Status Wanita, 199.

³⁹Hudafi, "Pembentukan Keluarga Sakinah Mawaddah Warahmah Menurut Undang – Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam," *Al Hurriyah: Jurnal Hukum Islam* 5, no. 2 (2020): 175, <https://doi.org/10.30983/alhurriyah.v5i2.3647>.

⁴⁰Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer, 337.

positive respond from Sultan Muhammad al-Malik as-Sa'id.

The draft of innovation in family law regulation is heard by the king. Then, he makes a "special commission" who discusses the content of that draft of innovation in family law regulation. It spends 3 years to arrange and discuss the regulation. This process always involves gender activists. Finally, in 2014, that draft was approved to become "Mudawanah al-Usrah".

There are so many efforts to gain this regulation. The new family law regulation has accommodated women's importance in her every process. It indicates equality gender is accepted and upheld. There is also resistance and rejection from some people toward this regulation. It especially comes from "Conservative Moslem". Yet, as a leader who has a power to make a policy, Sultan Muhammad al-Malik as-Sa'id faces the resistance and rejection firmly. At the end, all of the obstacles can be discussed well. There are many people who reject the regulation become supporting the regulation.⁴¹

The harmony of social, religion, culture, politic, and other aspects is considered giving a positive contribution in achieving this phenomenal family law regulation in Morocco. The awareness of society and the active role of every institution in the community become a big power to achieve this regulation. If it is seen in social dynamics that always changes as time goes by, it is not impossible if a woman will exist whether in family or public. For instance, women take a role as a public stakeholder.⁴²

When women have been able to play an active role and manage every importance in a country, it is not impossible if they are also able to control themselves and their family. It means, when women have been able to manage every basic interest of the country, putting themselves in every strategic position,

it can be make sure that the women are very able to control themselves and their priority.⁴³

The equal gender is very important in a family. Equality has been gained from a small circle of a family. It can be seen if there is no intervention or bad classification in that family. If it can be conducted, the dream of a fair country will come true.

Regarding equal kufu' in this contemporary era, if the previous kufu' is limited only in equal wealth, leakage, beauty/handsomeness, then in this era, kufu' is related with psychological matters such as both candidate spouses loving each other. Meanwhile, one's religion still becomes the main consideration.⁴⁴ It is because a marriage relationship is a sacred matter. It is also an antithesis toward the wali *mujbir* concept. It means, a woman who is already at marriage age, then she has a right to determine her partner's life. It is based on their love for each other. Restraining and compulsion will have a bad impact on women's psychology. She can get stressed and depressed.

The concept of giving freedom to a woman in determining her partner life candidate is not in line with the wali *mujbir* concept in this country. *Wali mujbir* is still accepted in Morocco. Basically, marriage can be conducted in this country if both of the spouses have equal *kufu'*. In Particular, it has equality in each candidate's psychology.⁴⁵ Regarding the guardian's *ijbar* right, on the other words it can be called as the guardian's prerogative right to marry his daughter based on his compulsion. His aim is to prevent his daughter from the sin of adultery if he observes his daughter is in a wrong relationship or other *fasad* action.⁴⁶

As a country that its major people implement Maliki school, equal *kufu'* concept

⁴³ *Ibid.*

⁴⁴ Sulihkhodin, "Prosesi Khitbah Di Indonesia Perspektif Local Wisdom Dan Qaidah Fiqh, 394.

⁴⁵ Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer, 338.

⁴⁶ Moh. Alfin Sulihkhodin, "Maqashid Syariah Perspektif Izzudin Abdi Salam," *El-Faqih: Jurnal Pemikiran dan Hukum Islam* 7.1 (2021): 1-18, <https://doi.org/10.29062/faqih.v7i1.197>.

⁴¹ *Ibid.*, 338.

⁴² Cucu Solihah, "Prototype Pola Asuh Keluarga Dan Dampaknya (Suatu Kajian Pendidikan Hukum Anti Kekerasan Dalam Islam)," *Res Nullius Law Journal* 1, no. 1 (2019), <https://doi.org/10.34010/rnlj.v1i1.2491>.

is comprehended with equality in two matters. They are equal in religion and health whether physical or mental. It means, religion is still a primary assessment in choosing partner life. Religion is one of the marriage foundations. It can determine whether one has a bad or good household. If a wife and husband candidate has good faith and is also virtuous, they will not give up or get divorced when God gives them obstacles and problems in their household.

Upheaval and problems always exist in one's household. It depends on how the husband and wife react to that problem. Meanwhile, it has to be highlighted that consideration in choosing a partner's life is important. By considering the degree of one's *kufu'* means an effort to minimize incompatibility, conflict, and regret later. Based on this, Morocco also manages regulation in terms of the wife's right to propose filing for a divorce to her husband if:

1. Husband has a chronic disease and he is not able to give happiness to his wife and children.
2. When a husband fails to give and fulfill daily needs through *nafaqah* for his wife and children.
3. If a husband proved to do domestic violence.
4. A husband does not give *nafaqah* deliberately and he leaves his wife and children within more or less 1 year.

Based on those several reasons, then a wife can propose filing for a divorce to the local religious court so that she can demand her rights and her children's rights. This regulation is in line with Scholars' schools such as Syafi'i, Maliki, and Hanbali. Wherever she is, those points can be used by a wife as guidance to propose her objection in the court.⁴⁷ On the other hand, a priest of Hanafi argues a judge may not give *thalaq* to a woman instantly, unless the husband of a woman has an impotent disease. Then, it can be seen that innovative regulation of Islamic family law regulation gives gender equality in Morocco.

KAFĀ'AH IN PAKISTAN

Pakistan is one of the Moslem countries in the world. It is "descendent country" of India. In 1960, Pakistan adopted India

regulation and constitution in the aspect of family law, endowment, guardianship and person under guardianship, prevention of early marriage, divorced, and other civil matters. It means, most of the Pakistan regulation used India regulation.⁴⁸

In 1961s, there was a recommendation from the Pakistan national commission that wanted an innovation and improvement regulation in terms of family law. Based on that reason, there was a regulation namely the Islamic Family Law Ordinance approved in Pakistan.⁴⁹ In 1956, The Constitution of the Islamic Republic of Pakistan was approved for the first time. That constitution confirms that "It has to be make sure that all of the contents in the acts that will be conducted do not contradict Islamic law ". It means, all of the regulations have to be reviewed especially regulation deals with family law. This review aims to prevent contradictive contents with Islamic law which *rahmatan lil 'ālamīn*.⁵⁰

There are several important points that have to be conducted in a marriage in terms of family law regulation in Pakistan. This regulation is called as "The Muslim Family Laws Ordinance". They are as follows:

1. Basically, the state wants a marriage to be conducted with a noted process. It aims to prevent some breach of one's rights, especially women's rights.
2. If someone wants to do bigamy or polygamy, he has to obtain permission from the local "Arbitration Council". It is conducted as an effort to protect women's rights so that they do not get ill-treatment from her husband.⁵¹
3. Creating an announcement regarding divorced process by making an "Arbitration Council". Then, it has to be a peace full regulation when a husband and wife get divorced in three

⁴⁸ Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer, 338.

⁴⁹ Atho' Muzhdar & Khairuddin Nasution, *Hukum Keluarga di Dunia Islam Modern* (Jakarta: Ciputat Press, 2003), 90."

⁵⁰ J.N.D. Anderson, *Hukum Islam di Dunia Modern*, alih bahasa Machnun Husein (Surabaya: Amar Press, 1990), 23.

⁵¹ Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer, 339.

⁴⁷ *Ibid*, 13.

months. 4. If there is a dispute in one's household, it has to be done in Family Court. It is also known as a religious court in Indonesia. Therefore, there are no people who play vigilante for the sake of their ego and importance because the matter is finished by the competence judges directly.⁵² There are also other regulations in terms of family law.

Regarding age for marriage, Pakistan allows one to get married if a man is already 18 years old and a woman is already 16 years old. If it is compared with Indonesia, these ages are not appropriate with the regulation. In Indonesia, the minimum age to get married is 19 years old for men and women. Yet, principally, Pakistan regulation does not support early-age marriage. If it is found that a man marries a woman under 16 years old, they will be sent to jail for one month. They also can get a punishment by paying a fine of 1000 rupee. It is also possible that they can get both of the punishments.⁵³ Next is the *Kafa'ah* concept in Pakistan. The majority of people practice Mahzab Hanafi and almost all of them is Sunni. The equality concept is seen based on one's religion and health whether physically and mentally.

Regarding the wealth factor, even though it is one of the criteria to find a partner, wedding parties are limited enough in Pakistan. Wedding parties can be conducted with some regulation. It is supposed to be done in a simple wedding. The wedding is not allowed to spend much money.⁵⁴

It is in line with marriage regulation in Pakistan. If there are people who do not obey "The Muslim Family Laws Ordinance", they will get firm punishment from state whether criminal (getting jail) or administrative punishment. It is very different from Indonesia. Pakistan has conducted it in

enough detail. It also applies a punishment to people who do not obey it. Meanwhile, Indonesia is not concerned enough about it yet. It is especially in giving a punishment in criminal and family law.

THE ADVANTAGE TOWARDS FAMILY LAW IN INDONESIA

Indonesia is a plural country. It consists of so many ethnicities, races, religions, cultures, languages. As a plural country, Indonesia has civil law such as Islamic Law Compilation and act of marriage. Through this regulation, it is expected that justice and order can be gained by human beings generally and Moslem people specifically.⁵⁵

Different cultures, customs and traditions also give different law design in a particular community in Indonesia. It also relates with beliefs practiced by specific ethnic. It deals with the *Kafa'ah* concept or criteria for choosing a spouse candidate.

People who practice matrilineal, patrilineal, and parental culture have their each standard and regulation. There are some people who uphold leakage and wealth aspect. In Javanese, it is called as "*Bibit, bobot, bebet*." If there is an Indonesia family law regulation that does not regulate about particular things, it can imitate some regulation from the Moslem country such as Jordan, Pakistan, Morocco, and other Moslem countries. Order in social life is expected can be obtain through the firmness of a country in managing *Kafa'ah* concept regulation, wedding party, and other matters in marriage. It aims to prevent social gap of community in a country. It also aims to give easiness to people who want to conduct marriage. They do not need to think a lot about the material matter. Then, the other aim is to control rich people in using their money of a marriage. They do not need to squander their money in a wedding party.

In the writer's perspective, this regulation does not mean to meddle in one's civil matter, or even restrain. It is conducted to create a benefit whether in social community,

⁵²Hudafi, "Pembentukan Keluarga Sakinah Mawaddah Warahmah Menurut Undang – Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam, 176.

⁵³ Komarudin, "Hukum Keluarga Di Tunisia Dan Indonesia, 199.

⁵⁴Hudafi, "Pembentukan Keluarga Sakinah Mawaddah Warahmah Menurut Undang – Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam, 176.

⁵⁵ Taufiqurrohman Syahuri, *Legislasi Hukum Perkawinan di Indonesia: Pro-Kontra Pembentukannya Hingga Putusan Mahkamah Konstitusi* (Jakarta: Prenadamedia Group, 2015), 167.

law, culture, and specially in regional aspects. On the other hand, it also needs to give some punishment if people do not obey the regulation that has been made.

CONCLUSION

Based on the discussion above, it can be concluded that the *Kafā'ah* concept in Islamic Family Law in Jordan, Morocco, and Pakistan can be found in equal leakage and religion. Religion is the most important aspect. Another *Kafā'ah* criteria can be observed through education, wealth, etc. Yet, it has to be highlighted that the standard of *Kafā'ah* in

Jordan and Pakistan tend to practice Hanafi school regulation. There are 5 criteria based on this school such as: religion, leakage, *hurriyah*, wealth of both spouse candidates, and job position. On the other hand, Morocco tends to apply Maliki School that gives determination into one's religion and health whether physically and mentally. Every country has tried to conduct some innovation process in terms of family law regulation. It is based on their country's needs and considerations.

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