

Endogamous Marriage as a Criteria for Kafaah in the Arab Community of Jember Based on Al-'Adah Muhakkamah Perspective

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Abstract: *The purpose of this study is to ascertain and comprehend the perspectives of Ulama about kafaah in endogamous marriage, as well as the practises and perspectives of al-'Adah Muhakkamah in endogamous marriage within the Arab community of Jember. The research methodology employed in this study is field research, utilising a juridical, normative, and sociological approach. The findings of this study indicate that some Ulama perceive endogamous marriage as a component of moderate compatibility (kafaah), while others do not. Furthermore, the majority of the Arab community in Jember agrees with the viewpoint of Ulama who believe that endogamous marriage is not a part of kafaah. After analysis, it was concluded that the implementation of endogamous marriage was acceptable because it was in accordance with the principles of al-'Adah Muhakkamah.*

Keywords: Endogamy, kafaah, al-'Adah Muhakkamah.

Abstrak: Penelitian ini bertujuan untuk mengetahui dan memahami pandangan Ulama mengenai kafaah dalam pernikahan endogami serta praktik dan perspektif al-'Adah Muhakkamah dalam pernikahan endogami pada komunitas Arab Jember. Metode penelitian yang digunakan adalah penelitian lapangan (field research) dengan pendekatan yuridis, normatif, dan sosiologis. Hasil penelitian ini menunjukkan bahwa sebagian Ulama memandang bahwa pernikahan endogami merupakan bagian dari kafaah sedang yang lain tidak, dan sebagian besar komunitas Arab Jember sepakat dengan pendapat Ulama yang beranggapan bahwa pernikahan endogami bukan bagian dari kafaah. Setelah dianalisa bahwa penerapan pernikahan endogami boleh diterapkan karena sejalan dengan kaidah al-'Adah Muhakkamah.

Kata Kunci: Endogami, kafaah, al-'Adah Muhakkamah.

Introduction

Marriage is a sacred agreement that establishes the legal permissibility for a man and a woman, who are initially non-mahram, to engage in lawful social interaction.¹ Marriage is a sanctioned institution in Islamic teachings, as prescribed in the Quran, serving as a mechanism for the legitimate procreation of progeny. The primary objective of marriage is to establish a moral and ethical framework by legally permitting sexual relations between individuals of opposing genders, thereby mitigating the risk of engaging in immoral and sinful acts such as adultery. Additionally, marriage serves to fulfil the sexual

¹ Annisa Nurul Jannah, "PENERAPAN KAFA'AH DALAM PERSPEKTIF MAQASHID AL-SYARI'AH (Studi Kasus Tradisi Di Pondok Pesantren Darul Hikmah)," 2022.



needs of the partners involved while fostering an environment of peaceful affection and emotional fulfilment in their shared lives.²

When a person diligently performs the "muqaddimah az-zawaj," the prelude to marriage, in accordance with the guidelines of Islamic law, they can achieve their goal of having a successful marriage. One of the preliminary steps in the context of marriage is the selection of a potential mate. The selection of a possible mate is a significant aspect of Islamic jurisprudence that Muslims are advised to consider diligently. Regrettably, there is a notable number of Muslims who disregard this process, leading to unfulfilled marital objectives.

The concept of selectivity towards possible spouses, generally referred to as kafaah in Islamic literature, encompasses the principles of commensurability, equality, compatibility, and suitability.³ Kafaah refers to the concept of gender equality, which encompasses equal treatment and opportunities for both women and men. In the event that a woman's guardian seeks to arrange a marriage between a lady under his supervision and a man of unequal social standing, the guardian possesses the prerogative to decline the proposed union. Similarly, in the event that a lady desires to enter into matrimony with a man who holds dissenting views and thereafter encounters disapproval from her guardian about this union, the guardian possesses the authority to impede the occurrence of the marriage or, alternatively, dissolve it retroactively through legal means, should the marriage have already been solemnised before a judicial authority.⁴

Scholars hold divergent viewpoints concerning the categorization of kafa'ah. According to a group of ulama, kafaah is believed to encompass various aspects such as faith, ancestry, independence, and vocation. However, Imam Malik maintains that the concept of kafaah is applicable only in the domains of religion and protection from bodily impairments.⁵ The concept of kafaah does not serve as a determinant of the validity of a marriage but rather seeks to establish conditions that promote a harmonious domestic life, reduce conflicts, and facilitate the formation of a content and blissful family unit.⁶

Endogamous marriage refers to a marital union that adheres to the principle of kafaah, which emphasises equality in the context of marriage. Endogamous marriage, as defined by the Big Indonesian Dictionary, refers to a marital union characterised by a high degree of kinship proximity to the surrounding social milieu.⁷ To provide further clarity, endogamous marriage refers to the practice of individuals from distinct ethnic and racial groupings marrying within their own social and cultural milieu as well as between relatives.⁸ According to David M. Newman, endogamous marriage refers to a marital union wherein individuals are restricted in their choice of spouses to a single group exclusively.⁹ . In

² Ahmad Muzakki, "Kafaah Dalam Pernikahan Endogami Pada Komunitas Arab Di Kraksaan Probolinggo," *Istidlal: Jurnal Ekonomi Dan Hukum Islam* 1, no. 1 (2017): 15–28.

³ Fahmi Assulthoni, "Analisis Masalah Terhadap Konsep Kafa'ah Dalam Tradisi Perkawinan Di Kalangan Pesantren Pamekasan," *Al-Hukama'* 8, no. 1 (2018): 28–52.

⁴ Jannah, "PENERAPAN KAFA'AH DALAM PERSPEKTIF MAQASHID AL-SYARI'AH (Studi Kasus Tradisi Di Pondok Pesantren Darul Hikmah)."

⁵ M. Ali Asobuni, "Konsep Dan Eksistensi Kafa'ah Nasabah Dalam Perkawinan Masyarakat Keturunan Arab (Studi Tentang Masyarakat Keturunan Arab Di Kecamatan Condet Jakarta Timur)," 2015.

⁶ Otong Husni Taufiq, "Kafâah Dalam Pernikahan Menurut Hukum Islam," *Jurnal Ilmiah Galuh Justisi* 5, no. 2 (2017): 246–59.

⁷ Endogami. 2016. Pada KBBI daring. Diambil 14 April 2023, dari <https://kbbi.kemdikbud.go.id/entri/endogami>.

⁸ Heri Zuhadi and M. Mohsi, "Pandangan Hukum Islam Terhadap Adat Perkawinan Endogami Masyarakat Sade," *Ulumuna: Jurnal Studi Keislaman* 5, no. 1 (2019): 78–92.

⁹ Sahrul Hidayatullah, "Pernikahan Endogami Jemaat Ahmadiyah Yogyakarta Perspektif Maqashid Al-Shari'ah," *Al-Hukama'* 12, no. 2 (2022): 1–20.

contrast, exogamous marriage might be understood as the antithesis of endogamous marriage.

Certain Jember Arab communities, particularly within the Muslim population, hold the belief that endogamous marriages or unions between those of Arab descent and Arab individuals do not fall within the purview of the kafaah nasab notion. It is posited that Allah subhanahu wata'ala regards all persons as equal, with the sole distinction being the level of piety exhibited by each individual. However, it is observed that the Jember Arab community continues to practice endogamous marriage despite acknowledging that it does not adhere to the notion of kafaah nasab. Consequently, the Jember Arab community is undergoing ongoing development. The Jember Arab population has a social stratification system that comprises two distinct layers: the Sayid and non-Sayid, or Ba'alwi and Masyaikh, respectively. In order to preserve the growth and continuity of the Jember Arab community, a customary practice is observed wherein endogamous marriages, or unions between individuals of Arab descent, are pursued. The perpetuation of this phenomenon persists within the Jember Arab population as well as within the Muslim community due to the desire to uphold cultural and customary practices in the context of endogamous marriages.

The author finds the concept of cultural equality in endogamous marriages within the Jember Arab community intriguing due to its potential to facilitate the process of adaptation and foster a harmonious and compassionate family unit known as *sakinah mawaddah* and *rahmah*. Exogamous marriages are frequently observed within the Jember Arab community. However, this practice has the unintended consequence of fostering feelings of isolation, inferiority, and alienation among the individuals involved. In some cases, these negative emotions can lead to the breakdown of familial bonds, thereby posing challenges to the achievement of marital objectives.

Culture plays a crucial role in the Jember Arab community's efforts to sustain marriages between individuals of Arab descent, commonly referred to as Arabs, and Arabiyah, referring to Arab women. The absence of intermarriage between Arab individuals and Arabiyah individuals may potentially contribute to the dissolution of familial connections within the Arab community of Jember. In the Jember Arab community, a significant number of marriages involve individuals from diverse cultural backgrounds. The strength and interconnectedness of these relationships are contingent upon the relative superiority of one culture over another. However, a potential issue arises when the Arab culture within the marriage is perceived as weak, leading to a corresponding weakening of the connection. In the event that familial bonds deteriorate and no proactive measures are taken to foster or restore them, it is conceivable that the relationship may become severed.

The aspiration of every partner in a marriage, including within the Jember Arab community, is to establish a harmonious, affectionate, and compassionate family unit, commonly referred to as *sakinah*, *mawaddah*, and *rahmah*. This community continues to uphold the tradition of Arab-Arabiyyah weddings with the intention of achieving this desired marital objective. However, it is important to note that not all Arab and Arabic marriages result in the formation of families characterised by *sakinah*, *mawaddah*, and *rahmah*. The Jember Arab community has witnessed numerous instances of divorce, serving as evidence that marriage within this society does not necessarily ensure the fulfilment of the intended objectives of matrimony. Nevertheless, the Jember Arab community holds the viewpoint that while the union between an Arab individual and an Arabiyah individual does not guarantee the establishment of a harmonious and compassionate family unit, they persist in upholding their tradition of same-sex marriages. This is based on the belief that the

attainment of a harmonious and compassionate family can be accomplished through the continuation of marriages between individuals of Arab descent and those who speak Arabic.

Marriages among the Jember Arab community exhibit notable distinctions in cultural practices and customs when compared to marriages of a more universal nature. Despite the permissibility of conducting marriages in accordance with Islamic law, the cultural and traditional practices surrounding endogamous marriages within the Jember Arab community exhibit a heightened level of complexity and distinctiveness compared to marriages in a broader context. The Jember Arab community has developed a set of cultural practices and traditions that have become customary at weddings. These customs typically include nadzar (a vow or pledge), a sermon, recitation of the fatihah (the opening chapter of the Quran), a proposal, a henna party, the signing of a marriage contract, a reception, and the ceremony to welcome in-laws.

Based on the aforementioned explanation, it is evident that the Jember Arab community does not consider endogamous marriage an integral component of kafaah. However, it is noteworthy that the Jember Arab community persists in upholding endogamous marriage due to the shared customs and cultural traits that exist within the community.

The historical presence of individuals of Arab descent in Jember was formerly established inside a regional colony situated in the Mangli and Dahlok districts. However, it is worth noting that their current presence cannot be confirmed within such a regional colony. Nevertheless, this does not impede efforts to uphold their Arab heritage.

Based on the provided description, it can be inferred that a significant number of Jember Arab communities continue to uphold the practice of preserving marriages between individuals of Arab descent, citing cultural preservation as a rationale to facilitate the realisation of desired marital objectives. Marriage practices within the Jember Arab community are deemed acceptable when an Arab individual marries an Arabiyah, despite the absence of adherence to the concept of kafaah nasab in endogamous marriages. This community holds the belief that marriage should serve a purpose, namely, the establishment of a harmonious and loving family unit characterised by *sakinah*, *mawaddah*, and *mercy*.

Given the contextual information provided, the author finds various study avenues intriguing. There exists a divergence in the interpretation of the concept of kafaah nasab, with the majority of ulama asserting that endogamous marriage is encompassed within kafaah nasab, while some members of the Jember Arab community hold the perspective that endogamous marriage does not fall under the purview of kafaah nasab. Nevertheless, the Jember Arab community continues to practice endogamous marriage as a means of safeguarding their cultural heritage. The author found this discussion to be intriguing, prompting them to undertake research on the definition of kafaah as understood by the Ulama and the prevailing understanding of kafaah within the Jember Arab population. In this instance, the researcher has encountered a dearth of scholarly literature pertaining to the specific topic they intend to address in their writing. The researcher aims to analyse the scientific work under investigation using the Al-'Adah Muhakkamah guidelines, given the lack of existing research on this topic. The rationale for selecting the Al-'Adah Muhakkamah rule as the framework for this study is based on the researcher's belief that it aligns well with the topic under investigation. Furthermore, there is a dearth of existing research that explores the use of this particular rule in the context being examined. The researcher aims to analyse the aforementioned research and assign it the term "Endogamous Marriage as a Criterion of Kafaah in the Jember Arab Community: A Perspective on Al-'Adah

Muhakkamah Rules. This study examines the idea of kafaah in marriage as defined by ulama, with a specific focus on the practice of endogamous marriage within the Jember Arab community. Additionally, it analyses endogamous marriage from the standpoint of al-'Adah Muhakkamah norms within the same community.

Several studies have been conducted on the topic under debate. One such study is a journal article authored by Dewi Ulya Rifqiyati, M.H.I., titled "The Dynamics of Endogamous Marriage in Arab Descendants in Yogyakarta". The findings of this study demonstrate that there is empirical evidence of a shift in the dynamics of endogamous marriage among Arab descendants in Yogyakarta towards exogamy. It appears that the traditional system of belief among Arab descendants, which promotes endogamy, has undergone a transformation.¹⁰ Furthermore, a study undertaken by Ahmad Muzakki titled "Kafaah in Endogamous Marriage within the Arab Community in Kraksaan Probolinggo" is worth mentioning. The findings of this study indicate that the enforcement of the legislation of kafaah nasab is a mandatory requirement within the endogamous marriage practice of the Arab community (Syarifah) residing in Kraksaan Arab Village, Probolinggo Regency.¹¹ Thirdly, a study was carried out by Sahrul Hidayatullah, entitled "Endogamous Marriage of the Yogyakarta Ahmadiyah Congregation from the Perspective of Maqashid Syariah". The findings of this study indicate that the concept of marriage within the Ahmadiyah Congregation, in terms of the family dimension based on maqasid al-syariah by Jamaluddin Athiyah, may be comprehended through the analysis of seven distinct domains of interaction.¹² In addition, a study undertaken by Husnul Haq titled "Al-'Adah Muhakkamah Rules in the Javanese Marriage Tradition" is worth noting. The findings of this study indicate that, when examined through the lens of Islamic jurisprudence, the customary practices seen in Javanese wedding ceremonies do not contradict the established norms that are deemed permissible under Sharia law.¹³ In their study titled "Implementation of Al-'Adah Muhakkamah Rules on Potodenako (Elopement Custom) in the Wakatobi Community," Ahmad Syaripudin, Fadhlan Akbar, and Aksan Ghazali did research. The results of this study show that the Wakatobi community's Potodenako custom can't fully follow the principles of al-'Adah Muhakkamah because it doesn't match up with the textual sources of Shari'a, which are the basis for both factual and normative guidance in life.¹⁴

Research Methodology

The research methodology entails the utilization of field research. The research methodology employed in this study is qualitative research. This study employs a normative legal and sociological framework. The employed data analysis technique involved utilising the outcomes of interviews, observations, and document recording. Thorough field notes were taken, followed by a process of data reduction. The initial step is data reduction, which is subsequently followed by the process of organising the data into a coherent narrative structure for presentation. Based on the facts provided, a preliminary conclusion is initially

¹⁰ Dewi Ulya Rifqiyati, "Dinamika Perkawinan Endogami Pada Keturunan Arab Di Yogyakarta," *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam* 2, no. 1 (2020): 25-44.

¹¹ Muzakki, "Kafaah Dalam Pernikahan Endogami Pada Komunitas Arab Di Kraksaan Probolinggo."

¹² Hidayatullah, "Pernikahan Endogami Jemaat Ahmadiyah Yogyakarta Perspektif Maqashid Al-Shari'ah."

¹³ Husnul Haq, "Kaidah Al-Adah Muhakkamah Dalam Tradisi Pernikahan Masyarakat Jawa," *Ahkam: Jurnal Hukum Islam* 5, no. 2 (2017).

¹⁴ Ahmad Syaripudin, Fadhlan Akbar, and Aksan Ghazali, "Implementasi Kaidah Al-'Adah Muhakkamah Terhadap Potodenako (Adat Kawin Lari) Pada Masyarakat Wakatobi," *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 4, no. 1 (2023): 1-21.

derived, which will subsequently evolve in tandem with the emergence of fresh evidence and enhanced comprehension. This iterative process aims to ultimately establish a robust conclusion that aligns with the prevailing circumstances.

Results and Discussion

Kafaah in marriage based on Ulama

Kafaah linguistically means balanced, equal, comparable, or the same.¹⁵ Meanwhile, according to the Big Indonesian Dictionary, the definition of kafaah is a balance between men and women who want to build a household in everything.¹⁶ In the Qur'an, the word kafaah is written in the letter al-Ikhlâs verse 4 *لَمْ يَكُنْ لَهُ كُفُوًا أَحَدٌ* which means none of them is equal to Him. So that according to Islamic law, kafaah in marriage can be defined as equality and similarity between the prospective husband and the prospective wife, both in morals, wealth, social level, and position, so that there are no objections to getting married.¹⁷

Islam recommends that someone who wants to marry pay attention to kafaah. The reason is that kafaah in marriage is a driving factor so that the husband and wife relationship after marriage becomes happier and avoids the breakdown of the household.¹⁸ Islam does encourage someone to pay attention to kafaah in marriage, but kafaah is not a requirement in marriage, which means kafaah is not a legal determinant of whether or not a marriage is valid, but kafaah is recommended only as a priority.¹⁹ Kafaah is the right of the woman and her guardian, so if the female guardian wants to marry a woman under her guardianship to a man who is not in the same league as her, then she has the right to refuse the marriage. Likewise, if a woman wants to marry a man who is not in the same league as her and the woman's guardian is not pleased with the marriage, the guardian can prevent the marriage from happening or he can confirm or annul it if the marriage has taken place before a judge. So if a woman wants to marry a man and then her guardian wants to marry someone who is not in the same league as her, the marriage does not take place except with his permission.²⁰

Scholars vary in defining kafaah in marriage. The prominent differences relate to the size and limitations of the kafaah used. However, the majority of scholars agree on including religion as a criterion for kafaah, while there are differences of opinion on other criteria. This is based on the word of Allah in Surah as-Sajdah/32: 18,

أَفَمَنْ كَانَ مُؤْمِنًا كَمَنْ كَانَ فَاسِقًا ۗ لَا يَسْتَوُونَ

Means:

“Believers are not like wicked people, they are not the same”²¹

As per the Ulama of Hanafiyah, the concept of kafaah pertains to the notion of equality between male and female candidates with regards to faith, Islam, lineage, occupation, self-sufficiency, and property. According to Hanafiyah scholars, kafaah does not pertain to the absence of conditions that may render a sale void, such as mental illness or

¹⁵ Jannah, “PENERAPAN KAFĀ’AH DALAM PERSPEKTIF MAQASHID AL-SYARI’AH (Studi Kasus Tradisi Di Pondok Pesantren Darul Hikmah).”

¹⁶ Kafaah. 2016. Pada KBBI daring. Diambil 14 April 2023, dari <https://kbbi.kemdikbud.go.id/entri/kafaah>.

¹⁷ Muzakki, “Kafaah Dalam Pernikahan Endogami Pada Komunitas Arab Di Kraksaan Probolinggo.”

¹⁸ Taufiq, “Kafāah Dalam Pernikahan Menurut Hukum Islam.”

¹⁹ Asobuni, “Konsep Dan Eksistensi Kafa’ah Nasabah Dalam Perkawinan Masyarakat Keturunan Arab (Studi Tentang Masyarakat Keturunan Arab Di Kecamatan Condet Jakarta Timur).”

²⁰ Wahbah Zuhaili, *al-Fiqh al-Islami Wa Adillatuhu*, (Damaskus: Dar al-Fikr, 1985) Juz 7, 237.

²¹ Kementerian Agama, 2019, *Al-Qur’an Dan Terjemahnya*, h. 600.

leprosy. According to academics of the Maliki school of thought, kafaah refers to the principle of equality between male and female candidates, specifically in religious affairs, as well as the absence of physical impairments that may affect a woman's ability to exercise her rights or make choices. These impairments include conditions such as mental illness, leprosy, and similar afflictions. According to academics of the Syafiiyah school of thought, the concept of kafaah aligns with the views articulated by Maliki scholars, albeit with certain additional considerations. These additional considerations pertain to the principle of equality between male and female candidates in terms of lineage, independence, chastity, and effort. As per the perspectives of Hanabilah scholars, the principle of kafaah entails the requirement of parity between male and female candidates in various aspects, including religious adherence, professional pursuits, financial status, self-sufficiency, and genealogical lineage.²²

The Ulama community has widely acknowledged the inclusion of lineage within the concept of kafaah. According to the prevailing consensus among experts, there exists a distinction between Arabs and non-Arabs that renders them incomparable. The Maliki school of thought does not consider ancestry as a determining factor in assessing kafaah. Nasab refers to the genealogical link that establishes a connection between an individual and their ancestral lineage, specifically tracing back to their paternal and paternal grandfather roots. In contrast, an individual can possess knowledge of their paternal and maternal lineage, unlike an individual engaged in illicit activities such as pickpocketing, who may lack awareness of their familial heritage spanning multiple generations. Regarding the concept of hasab, it represents a commendable attribute that emanates from its inherent qualities, such as piety, intelligence, courage, and various other virtues. The existence of hasab is not usually observed in individuals with nasab. Nasab is always present in the presence of hasab.²³

The Hanafiyah Madzhab incorporates the concept of ancestry as a crucial component of kafaah. The individual expressed the viewpoint that there exists a distinction between foreign males and Arab females, despite the fact that the former may possess expertise in the field of science and even hold positions of authority. The Hanafiyah school derives its viewpoint from the statements attributed to Umar bin Khattab, when he expresses his intention to prohibit individuals from marrying those who lack honour, unless in the case of a suitable match. Furthermore, it is noteworthy that the Arab country holds a unique position in the divine order, as it was chosen by God to receive the presence of the Rasulullah *shalallahu 'alaihi wasallam*. Regarding the Syafiiyah sect, there is a story mentioned by Ahmad.

إن الله اصطفى من العرب كنانة، واصطفى من كنانة قريشا، واصطفى من قريش بني هاشم، واصطفاني من بني هاشم.

Means:

“Verily, Allah has chosen the Arabs, and has chosen from the Quraish, and has chosen from the Quraish, and has chosen me from the Hasyim.”

It can be understood from the hadith above that people other than Bani Hasyim and Bani Muttalib are not equal to other Quraysh people.²⁴

The majority of jurists agree that the Quraish tribe, which is from the Kinanah tribe, is the highest and noblest lineage among the Arabs. So that Quraish women only correspond to Quraish men. As for Quraish men, they are equal to all Arab women. Then a

²² Wahbah Zuhaily, *al-Fiqh al-Islami Wa Adillatuhu*, (Damaskus: Dar al-Fikr, 1985) Juz 7, 230.

²³ Wahbah Zuhaily, *al-Fiqh al-Islami Wa Adillatuhu*, (Damaskus: Dar al-Fikr, 1985) Juz 7, 243.

²⁴ Wahbah Zuhaily, *al-Fiqh al-Islami Wa Adillatuhu*, (Damaskus: Dar al-Fikr, 1985) Juz 7, 244.

woman who is not from the Quraysh tribe is equal to an Arab man from any tribe. But Arab women who are not from the Quraish tribe are not compatible with non-Arabs.

In addition to the above hadiths, the majority of Ulama also rely on hadiths,

العرب بعضهم أكفاء لبعض، قبيلة بقبيلة، ورجل برجل، والموالي بعضه أكفاء لبعض، قبيلة بقبيلة، ورجل برجل إلا حائك أو حجام.

Means:

“Some of the Arabs are comparable to others, tribe to tribe, male to male, some of their maula are compared to others, tribe to tribe, male to male, except for blowers of fire or cupping.”²⁵

So it can be concluded that endogamous marriages among Arab descendants are marriages between Arabs who are equal and equal to other Arabs according to the majority of Ulama. The height of the nasab of the Arabs is because the Prophet sallallahu 'alaihi wasallam was also an Arab, this makes the Arabs have priority over others.

Some others do not place lineage or nationality as part of the kafaah because according to them all human beings are equal in the sight of Allah and what distinguishes them is their piety.²⁶ In accordance with the word of God in Surat al-Hujurat/49: 13,

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۗ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَىٰكُمْ ۗ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

Means:

“O mankind, verily We have created you from a male and a female, then We made you nations and tribes so that you may know one another. Indeed, the noblest among you in the sight of Allah is the one who is most pious. Indeed, Allah is All-Knowing, All-Aware.”²⁷

Apart from relying on the verse above, some Ulama who do not make nasab part of the kafaah also rely on the reality that occurred at the time of the Prophet sallallahu 'alaihi wasallam, namely the many marriages that took place without considering a person's nasab and nationality, such as the marriage that took place between Fatimah bint Qais a Quraish woman with Usamah bin Zaid who was a slave because of orders from the Prophet sallallahu 'alaihi wasallam himself.²⁸

Endogamous Marriage Practices in the Jember Arab Community

The historical presence of Arabs in Indonesia was characterised by the establishment of an Arab community that significantly influenced the growth of Islam and the economy within the Indonesian context. The aforementioned historical progression was characterised by a notable surge in the influx of Arab individuals who migrated to Indonesia and subsequently intermingled with the local populace.²⁹

The Arab community in Jember differs from Arab communities in other regions since it lacks designated colony areas. Consequently, the majority of the Arab population in Jember consists of migrants from neighbouring towns, such as Bondowoso, Banyuwangi, Surabaya, and other urban centres that possess established colony areas. The migration of the Arab community to Jember primarily stems from economic and matrimonial considerations.³⁰

²⁵ Wahbah Zuhaily, *al-Fiqh al-Islami Wa Adillatuhu*, (Damaskus: Dar al-Fikr, 1985) Juz 7, 232.

²⁶ Wahbah Zuhaily, *al-Fiqh al-Islami Wa Adillatuhu*, (Damaskus: Dar al-Fikr, 1985) Juz 7, 230.

²⁷ Kementrian Agama, 2019, *Al-Qur'an Dan Terjemahnya*, h. 755.

²⁸ Asobuni, “Konsep Dan Eksistensi Kafa'ah Nasabah Dalam Perkawinan Masyarakat Keturunan Arab (Studi Tentang Masyarakat Keturunan Arab Di Kecamatan Condet Jakarta Timur).”

²⁹ Siti Sarah Rahmawati, “Orang Arab Di Indonesia: Pengaruh Kehadiran Orang Arab Terhadap Ekonomi Di Cipanas-Cianjur (1991-2000)” (PhD Thesis, UIN Sunan Gunung Djati Bandung, 2020).

³⁰ Faisol Nasar Bin Madi, “Dosen Universitas Islam Negeri KH. Achmad Siddiq Jember, *Wawancara*, Kecamatan Sumpersari, 15 April 2023.”

The precise number of Arab communities in Jember remains unknown due to the absence of a distinct settlement exclusively designated for the Jember Arab population, in contrast to Surabaya, which possesses a dedicated neighbourhood known as Ampel for its Arab community.³¹ Initially, the city of Jember was predominantly inhabited by Arab communities, particularly in the Dahlok and Mangli areas. However, it is worth noting that a significant number of Arab immigrants in Jember have opted to relocate from the city due to economic considerations or marriage-related factors. Subsequently, individuals who opt to remain within the urban confines of Jember engage in endogamous unions, departing from the colony region and opting to integrate with other local inhabitants. Consequently, the absence of a distinct territorial enclave can be attributed to this assimilative tendency within the Jember Arab population.³²

Endogamous marriage refers to a marital arrangement wherein individuals are restricted to selecting a spouse from inside their own social group or community, thereby excluding the possibility of marrying someone from outside said group. Moreover, endogamous weddings can be characterised as matrimonial unions that take place between individuals who share a familial relationship or are cousins.³³ The practice of endogamous marriage within the Jember Arab community lacks explicit written regulations mandating unions exclusively between individuals of Arab descent. However, endogamy remains a prevalent tradition upheld by the majority of community members, thus evolving into an unwritten norm that persists within the Jember Arab community to this day.³⁴

The regulation of marriage is stipulated in Chapter I, Article I, of Law Number 1 of 1974. Marriage can be understood as a sacred union between a man and a woman, with the objective of establishing a harmonious and everlasting family unit rooted in a shared belief in a supreme deity. The individuals involved assume the roles of husband and wife within this institution. Based on the analysis of Chapter I, Article I, of Law Number 1 of 1974, it may be inferred that the achievement of a prosperous and enduring marital union is contingent upon the realisation of certain determining criteria. One crucial determinant for the success and longevity of a marital union is the presence of gender equality within the institution of marriage. The concepts of equality and equity, are not explicitly addressed in Article 2 paragraph 1 of Law Number 1 of 1974. This article specifies that marriage is deemed lawful when conducted in accordance with the religious customs and beliefs of the individuals involved. According to the interpretation of the passage, it is asserted that a marriage is deemed null and void, without legal validity, if it is conducted in a manner that deviates from the religious and belief-based regulations stipulated by the 1945 Constitution. This article focuses on the regulation of the idea of religious kafaah.³⁵ In addition to being governed by specific legislation for individuals who adhere to Islam in Indonesia, the matter is also addressed in Article 61 of Presidential Instruction No. 1 of 1991 in the Indonesian Compilation of Islamic Law (KHI). The article stipulates that the absence of equality cannot serve as a valid justification to impede marriage unless the lack of equality arises from

³¹ Rusydi Baya'gub, "Dosen Universitas Islam Negeri KH. Achmad Siddiq Jember, *Wawancara*, Kecamatan Sumbersari, 18 April 2023."

³² Faisol Nasar Bin Madi, "Dosen Universitas Islam Negeri KH. Achmad Siddiq Jember, *Wawancara*, Kecamatan Sumbersari, 15 April 2023."

³³ Muzakki, "Kafaah Dalam Pernikahan Endogami Pada Komunitas Arab Di Kraksaan Probolinggo."

³⁴ Rusydi Baya'gub, "Dosen Universitas Islam Negeri KH. Achmad Siddiq Jember, *Wawancara*, Kecamatan Sumbersari, 18 April 2023."

³⁵ Syafrudin Yudowibowo, "Tinjauan Hukum Perkawinan Di Indonesia Terhadap Konsep Kafa'ah Dalam Hukum Perkawinan Islam," *Yustisia Jurnal Hukum* 1, no. 2 (2012).

religious disparities or ikhtilafu al-din.”³⁶ In essence, the concept of kafaah or sekufu does not serve as a hindrance or deterrent to the formation of a marriage if it is not fulfilled, with the exception of sekufu in religious concerns.³⁷

In endogamous marriages that occur in the Jember Arab community, religious kafaah is, of course, clearly an obligation that must be present in every marriage. So that the application of religious kafaah in the Jember Arab community is in line with the provisions contained in Chapter I articles 1 and 2 paragraph 1 of Law Number 1 of 1974 and KHI Presidential Instruction Number 1 of 1991. As for Nasab Kafaah, so far, there are no special regulations that regulate this matter. So that the implementation of endogamous marriage in the Jember Arab community is not part of the application of positive law in Indonesia. However, the nasab kafaah, which still continues today in the Jember Arab community, is part of the ongoing customs, so it is considered normal and commonplace.³⁸

In Muslim circles, marriage between Arabs and Arabis is not something that is obligatory and required to be carried out. This is in accordance with the thoughts of Shaykh Ahmad Surkati, who is the founder of Al-Irsyad. He said that the marriage of an Alawiyyin with a non-Alawiyyin is permissible according to Sharia law, which is fair. This is the basis for thinking among masyaikh, who allow marriage even though they are not Arabs.³⁹ However, in every region, even every family in the Jember Arab community practically has its own provisions and policies, as well as influencing factors such as wider friendships and no fanaticism in a group, so that the relationships one obtains influence a person's perspective in terms of marriage, especially in endogamous marriages.⁴⁰

The practice of endogamous marriage in the Jember Arab community is carried out in several stages. These stages are unique in themselves and are part of the traditions that are still guarded and maintained in the Jember Arab community. The first stage of marriage in the Jember Arab community begins with a plan to match an Arab man with an Arab woman either through a matchmaker, namely a third party, or through acquaintance between families with the consent of both parties, which is then continued with the nadzar stage.⁴¹ According to Munawir, Nadzar is defined as seeing, or looking at. It can be understood that nadzar in marriage is an effort made to see the prospective wife directly to find out her face, fertility, and height. According to the Jumhur Ulama, the nadzar law is mandub, while according to the Hambali school of thought, the nadzar law is permissible.⁴² The practice of nadzar in the Jember Arab community usually begins with exchanging photos to get an idea of the candidate who will be proposed to, and if it feels suitable, the male candidate asks permission to visit the female candidate's house to do alzar or see him

³⁶ Amir Syarifuddin, “Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakahat Dan Undang-Undang Perkawinan,” 2011.

³⁷ Yudowibowo, “Tinjauan Hukum Perkawinan Di Indonesia Terhadap Konsep Kafa’ah Dalam Hukum Perkawinan Islam.”

³⁸ Faisol Nasar Bin Madi, “Dosen Universitas Islam Negeri KH. Achmad Siddiq Jember, *Wawancara*, Kecamatan Sumbersari, 15 April 2023.”

³⁹ A. Rahmayani Samfirna, “Peranan Syaikh Ahmad Surkati Dalam Perkembangan Islam Di Jawa 1911-1943” (PhD Thesis, Universitas Islam Negeri Alauddin Makassar, 2018).

⁴⁰ Rusydi Baya’gub, “Dosen Universitas Islam Negeri KH. Achmad Siddiq Jember, *Wawancara*, Kecamatan Sumbersari, 18 April 2023.”

⁴¹ Rusydi Baya’gub, “Dosen Universitas Islam Negeri KH. Achmad Siddiq Jember, *Wawancara*, Kecamatan Sumbersari, 18 April 2023.”

⁴² R. Dodi Yarli, “Urgensi Fiqih Nadzar Dalam Proses Pernikahan,” n.d.

in person and share his blessings. Before allowing the prospective groom to visit, usually the prospective bride's family has first investigated the historical of opposites family.⁴³

If, after nadzar, the male candidate feels attracted to the female candidate, then the next stage is the stage of preaching. *Khitbah* is conveying her intention to propose marriage by submitting an application to a female candidate from a male candidate. At this stage, the prospective woman and her family are given time to consider accepting the proposal. The next stage is *fatihah*, which is an event held as a symbol of acceptance of the male candidate by the female party. *Fatihah* is one of the wedding traditions between Arabs and Arabians in the Arab community, especially in Jember, which begins with the opening, reading the sentence of proposal from the man addressed to the woman, then continues with the reading of the sentence of acceptance by the woman. *Fatihah* is usually carried out at the woman's family residence. At this stage, the families of both parties have usually discussed the wedding date.⁴⁴

The next stage is the application, which is defined as giving a gift from the male candidate's family to the female candidate. Proposals in Arab and Arabic marriages in the Jember Arab community include the provision of equipment from head to toe that aims to meet the needs of prospective women from the prospective male families, such as prayer tools, towels, makeup, shoes, and bags, up to a nominal amount of money. Proposals for Arabic and Arabic weddings are usually placed in decorated boxes or suitcases. At the application stage, usually the prospective groom will give his best offering in the form of goods or a nominal amount of money to the prospective woman as a form of appreciation for her acceptance and as a form of respect for the prospective woman and her family.⁴⁵

The next stage is the henna party, or henna night, in the Jember Arab community, which is usually held the day before the marriage ceremony. A henna party is the giving of henna from the fingertips of the wrist to the feet of the prospective woman. Likewise with the guests, who also decorated their fingers with henna. The purpose of holding a henna party is to strengthen the relationship between the prospective woman and her family and relatives. Besides that, tonight is a precious moment for the prospective woman because tonight is the last moment of her bachelor period before the contract is held the next day. At this stage, the guests are treated to various foods and drinks, as well as dances such as belly dancing by the girls.

The next stage is the marriage contract. The contract is a vow containing the consent and *qabul* between the guardian of the female candidate and the male candidate. At this stage, the male candidate in the Jember Arab community usually wears a robe, or *thawb*, with a headband, or *kuffiyah*, complete with a garland made of jasmine flowers, and is then escorted and paraded by his family members when heading to the ceremony. The marriage contract at Arabic and Arabic weddings is held separately between male and female guests to avoid *ikhtilat*.⁴⁶ Before the marriage contract is carried out, the event begins with a wedding sermon that talks about the virtues of marriage. This is followed by an Arabic-language *ijab qabul* between the female candidate's guardian, either a father, brother, or uncle, and the male candidate, which is then closed with the recitation of a prayer.⁴⁷

⁴³ Yumna Baktir, "Psikolog, *Wawancara*, Kecamatan Sumber Sari, 6 Mei 2023."

⁴⁴ Salma Ali Bobsaid, "Wirawasta, *Wawancara*, Kecamatan Sumber Sari, 29 April 2023."

⁴⁵ Salma Ali Bobsaid, "Wirawasta, *Wawancara*, Kecamatan Sumber Sari, 29 April 2023."

⁴⁶ Rusydi Baya'gub, "Dosen Universitas Islam Negeri KH. Achmad Siddiq Jember, *Wawancara*, Kecamatan Sumber Sari, 14 April 2023."

⁴⁷ Salma Ali Bobsaid, "Wirawasta, *Wawancara*, Kecamatan Sumber Sari, 29 April 2023."

The next stage is the wedding reception and welcoming Daughter in-laws ceremony. The wedding reception and welcoming daughter in-laws in the Jember Arab community actually have no significant differences other than the place where they are held. The wedding reception is held in the city where the bride lives, while the wedding reception is held in the city where the groom lives. The purpose of holding a reception or welcoming daughter in-laws is to build closer relationships with other family members because, in the Jember Arab community, the marriage contract that has been held only invites a few nuclear families, whereas at the reception and welcoming daughter in-laws stage, guests invited by the host can come from various circles.⁴⁸

The stages of endogamous marriage in the Jember Arab community that have been described above are largely a culture and tradition that grew and developed among the Jember Arab community and are still maintained and guarded to this day. However, these stages are the reason why marriages are still carried out with fellow Arabs and marriages with non-Arabs are avoided. Although it cannot be avoided, marriage to a non-Arab could be an option for the Jember Arab community to continue their descendants because there are no written regulations that require marriage to be with another Arab.

The culture or traditions that developed among the Jember Arab community invisibly meant that marriage was considered appropriate if it was held between fellow Arabs, even though according to them, this was not an obligation that had to be carried out. Because basically, the Jember Arab community is one of the communities that maintains patrilineal kinship in an effort to maintain close kinship traditions and strengthen kinship solidarity to avoid breaking ties.⁴⁹

Endogamous Marriage in the Arab Community of Jember Perspective of Al-'Adah Muhakkamah Rules

Endogamous marriage in the Jember Arab community has processes and practices that are quite different from marriage in general. This is because the Jember Arab community was raised in a different culture and culture. Starting from the nadzar stage to the marriage contract, each of which has differences. These differences make the Jember Arab community tend to choose to marry their offspring to fellow Arabs so that it is not difficult to adapt in the family, because marriage is not just uniting two people but two families to become one..

The concept of the rule of al-'Adah Muhakkamah is one part of the principles of fiqh or what is called Qowaid al-Fiqhiyyah. The word 'adah linguistically means repetition, so 'adah is an action or saying that is done repeatedly and becomes a habit that is easy to carry out. As for muhakkamah in language, it means to judge or decide human cases.⁵⁰ The rule of al-'Adah Muhakkamah explained by the scholars is a custom that can be used as a law. This is because there are many laws contained in both the Al-Quran and Hadith which still seem very general, so it is necessary to explain general laws by grouping them into more concrete rules so that they can be realized and practiced with due regard for discipline. and certain ways.⁵¹

⁴⁸ Salma Ali Bobsaid, "Wirawasta, *Wawancara*, Kecamatan Sumpalsari, 29 April 2023."

⁴⁹ Rifqiyati, "Dinamika Perkawinan Endogami Pada Keturunan Arab Di Yogyakarta."

⁵⁰ Addina Silmi Kaffah, "Urgensi Tradisi Sesan Dalam Pernikahan Adat Lampung Pepadun Dalam Perspektif Kaidah Al-'Adah Muhakkamah: Studi Di Desa Kedaton Induk Kecamatan Batanghari Nuban Kabupaten Lampung Timur" (PhD Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2022).

⁵¹ Syaripudin, Akbar, and Ghazali, "Implementasi Kaidah Al-'Adah Muhakkamah Terhadap Potodenako (Adat Kawin Lari) Pada Masyarakat Wakatobi."

The basis for the Ulama to make the rules of al-'Adah Muhakkamah become part of the rules of *usul fiqh* is found in sura Al-'Araf/7: 199,

خُذِ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ

Means:

“Forgive and tell people to do good and turn away from foolish people.”⁵²

Apart from that, in the hadith narrated by al-Hakim from Abdullah radhiyallahu 'anhu,

فَمَا رَأَى الْمُسْلِمُونَ حَسَنًا، فَهُوَ عِنْدَ اللَّهِ حَسَنٌ، وَمَا رَأَى الْمُسْلِمُونَ سَيِّئًا فَهُوَ عِنْدَ اللَّهِ سَيِّئٌ

Means:

“What is considered good by Muslims is also good in the sight of Allah. What is considered bad by Muslims is not good in the sight of Allah (H.R. Ahmad, Bazar, Ṭabrānī dalam kitab al-Kabīr dari Abdullah bin Mas'ūd).⁵³

Apart from the verses of the Al-Quran and Hadith, *Ijma'* is the basis used by the Ulama in establishing the rule of al-'Adah Muhakkamah. Imam al-Syatibi said that maintaining 'adah or habits with which you can realize the goal of benefit or maintain normal habits will avoid difficulties.⁵⁴

Based on the verses of the Koran, Hadith and *Ijma'* above, it is the basis that al-'Adah or a recurring habit that occurs in society which is part of the rules of jurisprudence can be used as a proof or argument in establishing a law. Because there are not a few people's habits that have not been found in law either in the Al-Quran or Hadith. So that the application of *fiqh* principles in the daily life of society is considered appropriate. Ibnu Abidin Rahimullah said that repeated customs or customs of society are one of the proofs that are recognized by Islamic law even though they are not written in *sharih*.⁵⁵

In applying the rules of al-'Adah Muhakkamah, the Ulama make it have several conditions so that customs can be considered as a law,

1. Tradition does not conflict with the texts of the Quran and Hadith Nabi *shallallahu 'alaihi wa sallam*.
2. The tradition is a good and can be accepted by common sense.
3. The tradition has been going on for a long time and is known and applies to the general public.⁵⁶

According to the Ulama, the *adat* that is proposed for legal implementation must not contradict *syar'i* texts, namely the Al-Quran and Hadith. These texts are regarded as the primary sources of Islamic law. Consequently, if a tradition conflicts with either of these sources, it is unequivocally rejected and deemed unsuitable for legal incorporation. Traditions that are in contradiction with the teachings of the Quran and Hadith are inherently incompatible with rationality, as common sense and Sharia-based arguments are inherently harmonious and cannot be at odds with one another. This is due to the belief that common sense is divinely ordained by Allah, and *syar'i* propositions are considered to be the divine words of Allah. Consequently, it is inconceivable for any element originating from Allah to be inherently contradictory, as Allah is believed to be devoid of any undesirable attributes. The utilisation of tradition, or 'adah, as a foundation for the establishment of Islamic law is contingent upon its widespread acceptance and

⁵² Kementrian Agama, 2019, Al-Qur'an Dan Terjemahnya, h. 241.

⁵³ Abu Abdullah Ahmad ibn Muhammad ibn Hanbal, Musnad Imam Ahmad, Cet. I, Juz I. (Beirut: Alam al-Kutub, 1998), h. 379.

⁵⁴ Ibrahim Ibn Musa Al-Shathibi, Al-Muwafaqat Fi Usul Al-Ahkam, Jilid II. (Beirut: Daral-Fikr, t.t.), h. 212.

⁵⁵ Muhammad Az-Zuhaily, *Al-Qowaid Al-Fiqhiyyah Wa Tathbiqotuha*, (Damaskus: Dar al-Bayan, 2019) Juz 1, 74.

⁵⁶ Haq, “Kaidah Al-Adah Muhakkamah Dalam Tradisi Pernikahan Masyarakat Jawa.”

comprehension among all strata of society over an extended period. Consequently, traditions that pertain solely to individual practices and lack continuity cannot serve as a reliable framework for the formulation of legal principles.

The utilisation of the principles of al-'Adah Muhakkamah in the context of endogamous weddings within the Jember Arab community is deemed appropriate due to the absence of definitive and established legal regulations pertaining to such unions. Examining the possibility of turning a community habit or custom into a law, based on the three conditions listed above, makes it possible to punish endogamous marriage in the Arab community of Jember. It is noteworthy that no scriptural evidence from the Koran or authenticated hadith of the Prophet sallallahu 'alaihi wa sallam exists that explicitly advocates for the regulation of marriage practices. Endogamy refers to the cultural practice of marrying within one's own social, ethnic.

In the Jember Arab community, endogamous marriages adhere to the principles outlined in the Al-Quran and Hadith. These marriages are based on cultural similarities and practices, which contribute to the preference of most Arabs to marry within their own community. Endogamous marriage is practiced within the Jember Arab community as a means to facilitate the assimilation of individuals into their partner's or extended family's culture, owing to shared cultural affinities and similarities. The Jember Arab community experiences challenges in adapting due to a lack of awareness of the consequences of endogamous marriage.

There are various factors that contribute to the challenge of adaptation, which frequently arises when a marriage involves individuals from different cultural backgrounds. One primary cause is when the union does not occur between two Arabs, resulting in each partner feeling estranged from the other's cultural norms, particularly within the Arab community. Furthermore, the presence of cultural disparities between partners, if not accompanied by the individual's capacity for adaptability, can give rise to challenges in adjusting, particularly within the context of the partner's familial environment. This, in turn, can lead to tensions within the household. Friction within the household is a common occurrence; nevertheless, it is imperative within the context of marriage to mitigate the frequency of conflicts in order to foster a harmonious family environment characterised by tranquilly, affection, and compassion. This objective aligns with one of the fundamental aims of marriage. Frictions within households in marriages lacking cultural commonalities and exacerbated by challenges in adaptation can engender feelings of inferiority in individuals. If the perpetuation of feelings of inferiority persists, it may lead an individual to disengage from their partner's familial unit, resulting in a state of estrangement. Interpersonal relationships within the familial unit.⁵⁷ Despite the Islamic teachings that prohibit the severing of friendships and emphasise the need to maintain strong bonds, the problem is extensively addressed in the Quran. One such instance can be found in Surah Al-Anfal (8:1).

يَسْأَلُونَكَ عَنِ الْأَنْفَالِ قُلِ الْأَنْفَالُ لِلَّهِ وَالرَّسُولِ فَأَتَقُوا اللَّهَ وَاصْلِحُوا دَاتَ بَيْنِكُمْ وَأَطِيعُوا اللَّهَ وَرَسُولَهُ إِن كُنْتُمْ مُؤْمِنِينَ

Means:

“They asked you (Muhammad) about the (distribution) of the spoils of war. Say, "The spoils of war belong to God and His Messenger (according to the provisions of

⁵⁷ Faisol Nasar Bin Madi, “Dosen Universitas Islam Negeri KH. Achmad Siddiq Jember, *Wawancara*, Kecamatan Sumpersari, 14 April 2023.”

God and His Messenger), so fear God and mend the relationship between yourselves, and obey God and His Messenger if you are believers.”⁵⁸

The practise of endogamous marriage within the Jember Arab community can be traced back to the cultural norms of the former Hadramaut people. These individuals consistently arranged marriages for their descendants exclusively within the Arab community, despite the fact that the broader Arab community in the archipelago primarily consists of individuals of mixed heritage, commonly referred to as muwallad, who have an Arab father and a non-Arab mother.⁵⁹ In addition to the presence of cultural and ethnic affinities, the Jember Arab population is further characterised by a notable inclination towards preserving endogamous marital unions. The practise of endogamous marriages among the Jember Arab community continues to have a significant influence on the durability of these unions, as it serves as a means to preserve the purity of the bloodline (nasab) among various tribes, ethnicities, and other social groupings within the community. The practise of endogamous marriage within the Jember Arab community is a longstanding tradition that has been diligently upheld and widely observed by its members.

Certain Jember Arab communities do not adhere to endogamous marital practises as a component of kafaah. Consequently, marriages outside the Jember Arab community, involving individuals who are not of Arab descent, are a viable alternative due to the absence of explicit regulations mandating unions exclusively between Arabs and Arabiyah. Nevertheless, within the Jember Arab community, there is a prevalent practise of marrying within their own ethnic group. This practise has given rise to unwritten norms that have become deeply ingrained in the community. Consequently, the Jember Arab community adheres to these norms, as they believe that a suitable marriage can only be achieved through unions between individuals of Arab descent.⁶⁰ . The perpetuation of the practise of marrying within the Jember Arab community among fellow Arabs has resulted in the classification of endogamous marriage, specifically inter-Arab marriage, as an embodiment of the principles of al-'Adah Muhakkamah.

Conclusion

Based on the aforementioned discussion of endogamous marriage as a criterion for kafaah in the Arab community of Jember from the perspective of the principle of al-'Adah Muhakkamah, it can be concluded that there are differing opinions among scholars in the classification of kafaah. In the practise of endogamous marriage within the Arab community in Jember, several stages are observed, namely nadzar (pledge), khitbah (proposal), fatihah (reading of the Quran), lamaran (engagement), pesta henna (henna party), akad nikah (marriage contract), resepsi (wedding reception) and ngunduh mantu (welcoming the bride into the groom's family). These stages represent the culture and traditions that have evolved within the Arab community in Jember and are still maintained to this day. The practise of preserving traditions within the Arab community in Jember has become an unwritten rule, which deems endogamous marriages as appropriate. The practise of endogamous marriage within the Arab community in Jember might be deemed permissible according to the perspective of the al-'Adah Muhakkamah principle, since it fulfils the necessary conditions for customary practises to be recognised as legal.

⁵⁸ Kementerian Agama, 2019, Al-Qur'an Dan Terjemahnya, h. 243.

⁵⁹ Rifqiyati, "Dinamika Perkawinan Endogami Pada Keturunan Arab Di Yogyakarta."

⁶⁰ Rusydi Baya'gub, "Dosen Universitas Islam Negeri KH. Achmad Siddiq Jember, *Wawancara*, Kecamatan Sumpalsari, 18 April 2023."

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