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The Childfree Phenomenon in the Perspective of Islamic Family Law and Maqasid Al-Shari'ah in Indonesia

Fenomena Childfree dalam Perspektif Hukum Keluarga Islam dan Maqasid al-Syari'ah di Indonesia

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Abtstract

The childfree phenomenon a deliberate and permanent choice to remain without biological children has gained increasing visibility in Indonesian society, posing complex legal and theological questions within the framework of Islamic family law. This article examines the childfree phenomenon from the dual perspectives of Islamic family law as codified in Indonesian legislation and the classical doctrine of maqasid al-shari'ah (the higher objectives of Islamic law). Employing a qualitative normative-juridical methodology, the study analyzes primary legal texts, classical juristic opinions, and contemporary scholarly discourse. The findings reveal that childfree choices stand in fundamental tension with the maqasid objective of hifz al-nasl (preservation of lineage and progeny), which Islamic scholars consider essential to human flourishing. While Indonesian positive law does not explicitly criminalise the choice to remain childless, Islamic jurisprudence classifies deliberate permanent childlessness as contrary to the spirit of marriage as enshrined in the Compilation of Islamic Law. The article concludes that nuanced, context-sensitive ijtihad is necessary to address emerging social phenomena without abandoning core Islamic values regarding family and procreation.

Keywords: childfree; Islamic family law; maqasid al-shari'ah; hifz al-nasl; Indonesian law

Abstrak

Fenomena childfree pilihan yang disengaja dan permanen untuk tidak memiliki anak biologis semakin mendapat perhatian luas di masyarakat Indonesia, dan menimbulkan pertanyaan hukum serta teologis yang kompleks dalam kerangka

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hukum keluarga Islam. Artikel ini mengkaji fenomena childfree dari perspektif hukum keluarga Islam yang dikodifikasikan dalam peraturan perundang-undangan Indonesia dan doktrin klasik maqasid al-syari'ah (tujuan-tujuan luhur hukum Islam). Dengan menggunakan metodologi normatif-yuridis kualitatif, penelitian ini menganalisis teks-teks hukum primer, pendapat para fukaha klasik, dan wacana akademik kontemporer. Temuan menunjukkan bahwa pilihan childfree berada dalam ketegangan mendasar dengan tujuan maqasid hifz al-nasl (pemeliharaan keturunan), yang dianggap oleh para ulama Islam sebagai esensi kesejahteraan manusia. Meskipun hukum positif Indonesia tidak secara eksplisit mengkriminalisasi pilihan untuk tidak memiliki anak, yurisprudensi Islam mengklasifikasikan kemandulan permanen yang disengaja sebagai bertentangan dengan semangat perkawinan sebagaimana diatur dalam Kompilasi Hukum Islam. Artikel ini menyimpulkan bahwa ijtihad yang kontekstual dan sensitif sangat diperlukan untuk merespons fenomena sosial yang berkembang tanpa meninggalkan nilai-nilai Islam yang fundamental tentang keluarga dan prokreasi.

Kata Kunci: *childfree; hukum keluarga Islam; maqasid al-syari'ah; hifz al-nasl; hukum Indonesia*

Introduction

Marriage and family formation occupy a central position in the normative architecture of Islamic civilization. Across the length and breadth of the Muslim world, the marital institution has traditionally been regarded not merely as a social contract between two individuals, but as a sacred covenant oriented toward the perpetuation of human life, the nurturing of moral character, and the realization of divine purposes on earth. Within this framework, procreation has long been treated as an intrinsic dimension of the marital relationship, aligned with both prophetic tradition and the jurisprudential consensus of classical Islamic scholarship. However, the contemporary era has witnessed a remarkable shift in demographic attitudes, with a growing number of individuals—including Muslims in Indonesia—choosing to forgo parenthood entirely through what has become known globally as the 'childfree' movement.

Indonesia, the world's largest Muslim-majority nation, has experienced rapid socioeconomic transformation over the past three decades, accompanied by significant changes in family structures, gender roles, and reproductive aspirations. The rise of women's educational attainment, urban migration, shifting

economic pressures, and the penetration of global lifestyle discourses through digital media have collectively created fertile ground for the emergence of childfree ideologies. National surveys and sociological studies conducted between 2018 and 2023 indicate a measurable increase in the proportion of Indonesian couples who either plan to remain childless voluntarily or express ambivalence about parenthood, raising urgent questions for Islamic scholars, legal experts, and policymakers regarding the permissibility and implications of such choices (Yusuf, 2022).

The legal dimensions of the childfree phenomenon in Indonesia are particularly complex because the country operates a plural legal system in which Islamic law coexists alongside secular civil law. Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), which serves as the principal reference for Islamic family matters adjudicated in Religious Courts, both articulate procreation as among the purposes of marriage. Article 1 of the Marriage Law defines marriage as ‘a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and everlasting family (household) based on Almighty God,’ while Article 3 of the KHI further stipulates that marriage aims, inter alia, to ‘produce offspring.’ These provisions create a normative tension with the deliberate, permanent refusal to bear children.

Theoretically, the present study draws upon the doctrine of maqasid al-shari’ah as systematized by the eleventh-century jurist Abu Hamid al-Ghazali and later elaborated by al-Shatibi in his seminal work al-Muwafaqat. This doctrine posits that the divine law is oriented toward five essential objectives: the preservation of religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-‘aql), progeny (hifz al-nasl), and property (hifz al-mal). Contemporary scholars, most notably Jasser Auda (2021), have extended and reconceptualized the maqasid framework to address modern ethical and legal dilemmas, arguing that the objectives must be understood dynamically rather than as static prescriptions, thereby enabling the Shari’ah to engage productively with novel social phenomena such as childfree lifestyles.

A growing body of contemporary scholarship has begun to engage directly with the intersection of reproductive choices, Islamic law, and human rights. Hallaq (2019) has argued that the classical Shari'ah tradition possesses inherent mechanisms—most notably the principle of maslaha (public interest) and the rule that the original position in all matters unaddressed by explicit texts is permissibility (ibahah)—that can accommodate diverse reproductive choices without abandoning the tradition's normative commitments. Similarly, Mir-Hosseini (2020) has highlighted the persistent tension between patriarchal interpretations of Islamic family law and women's bodily autonomy, noting that childfree discourse is often animated by women's desire for self-determination in reproductive matters, a concern that Islamic ethical frameworks have historically engaged, albeit imperfectly.

Within the Indonesian context specifically, scholars such as Mulia (2021) have situated the childfree debate within broader struggles over gender equality and legal reform in Islamic family law, arguing that the state's failure to update marriage legislation to reflect women's equal agency perpetuates normative frameworks that are no longer socially sustainable. Wahid (2022) has further contended that Indonesian Islamic jurisprudence, characterized by its pluralism and its tradition of contextual ijtihad (independent legal reasoning), is well positioned to produce nuanced responses to the childfree phenomenon that balance the objective of hifz al-nasl with the imperative to respect individual dignity and spousal rights. These scholarly contributions constitute the theoretical horizon within which the present analysis is situated.

Existing literature, however, exhibits notable lacunae. First, few studies have undertaken a systematic analysis of the childfree phenomenon through a combined lens of positive Indonesian law and maqasid al-shari'ah theory. Second, the dominant mode of Islamic legal discourse on reproduction tends toward binary judgments of permissibility or prohibition without sufficient attention to the structural and socioeconomic factors driving childfree choices in contemporary Indonesian society. Third, the implications of the childfree phenomenon for Islamic

marriage law, particularly regarding spousal consent, divorce grounds, and the legal status of childfree marriages, have not been comprehensively addressed. The present article seeks to fill these gaps by offering a structured normative analysis that integrates positive law, classical jurisprudence, and contemporary maqasid scholarship.

The article proceeds as follows. The methodology section explains the normative-juridical approach adopted and describes the primary and secondary sources consulted. The results and discussion section is organized around three thematic subsections: first, the legal status of childfree choices under Indonesian Islamic family law; second, the evaluation of childfree choices through the lens of maqasid al-shari'ah with particular emphasis on hifz al-nasl; and third, the juristic and policy responses available within the Indonesian Islamic legal tradition. The article concludes with a synthesis of findings and recommendations for further scholarly and legislative engagement with this pressing issue.

Research Method

This study employs a normative-juridical research methodology, which Marzuki (2017) defines as a form of legal inquiry that takes legal norms, principles, and doctrines as its primary objects of analysis rather than empirical social facts. Specifically, the study adopts a doctrinal approach that examines the internal logic and normative implications of the relevant legal texts—including the Indonesian Marriage Law No. 1/1974, the Compilation of Islamic Law (KHI), the opinions of classical Islamic jurists preserved in the primary sources of the four Sunni schools, and contemporary fatwa documents issued by authoritative bodies such as the Indonesian Ulema Council (Majelis Ulama Indonesia/MUI) and the Fatwa Committee of Nahdlatul Ulama. The normative-juridical method is particularly appropriate for this study because the central research questions pertain not to the empirical prevalence or sociological causes of childfree behavior, but to the normative status of such behavior within the frameworks of Islamic family law and maqasid al-shari'ah.

The study also incorporates an interpretive-analytical dimension, engaging critically with secondary literature in Islamic legal theory, comparative family law, and gender studies to situate the doctrinal findings within their broader scholarly context. As Soekanto and Mamudji (2015) observe, normative legal research is strengthened when doctrinal analysis is supplemented by critical engagement with legal scholarship, since purely text-immanent readings of legal norms risk missing the interpretive traditions and contextual factors that shape their application. Accordingly, the present article draws on sources published within the past decade, prioritizing peer-reviewed journal articles, monographs from established academic presses, and official legal and religious texts. Content analysis was employed systematically to identify convergences and divergences between classical Islamic juristic positions on procreation, the normative framework of Indonesian Islamic family law, and the contemporary maqasid scholarship that seeks to reinterpret the tradition in light of present-day social realities.

Results and Discussion

1. The Childfree Phenomenon and Indonesian Islamic Family Law

Indonesian Islamic family law, as codified primarily in the Compilation of Islamic Law (KHI), situates marriage within a teleological framework in which procreation occupies a prominent normative position. Article 3 of the KHI explicitly states that one of the purposes of marriage is 'to produce offspring who are religious, faithful, pious, healthy, educated, and prosperous.' This formulation is not merely aspirational; it reflects a juristic consensus within the Shafi'i school that has historically dominated Indonesian Islamic legal thought, a school in which the encouragement to marry and reproduce carries the weight of a strong sunnah (prophetic practice), and in certain circumstances approaches the category of wajib (obligatory) when procreation is the only means of preserving the community (al-Nawawi, as cited in al-Zuhayli, 2019).

Notwithstanding this normative orientation, Indonesian positive law does not prescribe any civil or criminal sanction against couples who choose to remain childless voluntarily. The Marriage Law No. 1 of 1974 is silent on the question of

deliberate childlessness, reflecting the liberal constitutional principle enshrined in Article 28B of the 1945 Constitution, which guarantees the right of every person to 'establish a family and continue the lineage through lawful marriage.' The use of the word 'right' rather than 'duty' in this constitutional provision has been interpreted by constitutional scholars as implying that procreation is a legally protected option rather than a legally mandated obligation, a reading that effectively creates a space—however contested normatively—for the childfree choice within the Indonesian legal order (Yusuf, 2022).

The tension between the KHI's teleological framing of marriage and the constitutional right not to procreate has produced a range of scholarly responses within Indonesian Islamic jurisprudence. One position, associated with more conservative scholars affiliated with traditionalist Islamic organizations, holds that the childfree choice, when motivated by purely individualistic or hedonistic considerations, constitutes a violation of the maqasid dimension of marriage and may provide grounds for an Islamic judge (qadi) to advise dissolution of a marriage in which one spouse has unilaterally decided to remain permanently childless against the other spouse's wishes. This position draws support from the KHI provisions on divorce, which include persistent dissension and the failure to fulfill marital duties among recognized grounds for dissolution (Wahid, 2022).

A more progressive scholarly position, gaining traction particularly among younger Indonesian Islamic intellectuals and gender scholars, argues that the normative status of procreation within Islamic family law must be understood in light of the broader principle of mutual consent (ridha) and spousal equality that pervades the KHI. Mulia (2021) contends that if both spouses agree freely and informedly to a childfree arrangement, such an agreement falls within the domain of permissible personal choices (ibahah), provided it does not involve harmful practices such as permanent sterilization without medical necessity, which the majority of classical scholars regard as impermissible (al-qatr' al-nasl). This view represents a significant departure from the teleological reading of marriage in

classical Shafi'i fiqh, but it finds support in the interpretive flexibility afforded by the maqasid tradition.

2. Childfree Choices Through the Lens of Maqasid al-Shari'ah

The maqasid al-shari'ah framework provides the most analytically powerful lens through which to evaluate the normative status of childfree choices within Islamic law. As systematized by al-Ghazali and later refined by al-Shatibi, the five essential objectives of the Shari'ah—hifz al-din, hifz al-nafs, hifz al-'aql, hifz al-nasl, and hifz al-mal—are hierarchically ordered, with the preservation of progeny (hifz al-nasl) occupying the fourth position in the classical ranking. Jasser Auda (2021) has argued persuasively that the traditional hierarchical reading of the maqasid is insufficient for addressing contemporary ethical dilemmas, and that the objectives must be understood systemically, as mutually conditioning rather than independently operative principles. This systemic reading opens analytical space for considering how hifz al-nasl interacts with other maqasid objectives such as hifz al-nafs (which arguably encompasses individual wellbeing and psychological flourishing) in the evaluation of childfree choices.

At the individual level, classical Islamic scholars unanimously agree that hifz al-nasl requires not only the biological continuation of lineage, but also the protection of the legal, social, and moral framework within which children are raised and socialized. Childfree choices, particularly when accompanied by permanent sterilization, have historically been treated by the majority of classical fuqaha as contrary to hifz al-nasl, since they render impossible the actualization of this objective at the individual level. However, al-Zuhayli (2019) notes that classical scholars drew a distinction between temporary contraception, which most schools permit in cases of hardship or medical necessity, and permanent sterilization without medical indication, which is generally prohibited as an act that 'closes the door' to progeny entirely. The childfree movement, in its strong form, closely parallels the latter and is therefore normatively more problematic from a classical maqasid perspective.

Contemporary maqasid scholars have sought to reframe this analysis by foregrounding the objective of hifz al-nafs in its extended sense as encompassing not only physical preservation of life but also psychological wellbeing, autonomy, and dignity. Mir-Hosseini (2020) argues that a strictly pro-natalist reading of hifz al-nasl risks instrumentalizing women's bodies as vessels of demographic reproduction, a position that is incompatible with the Qur'anic principle of mushawarah (mutual consultation) and the prophetic ethic of compassion toward women. She suggests that a gender-sensitive reading of maqasid would require Islamic jurisprudence to weigh the hifz al-nasl interest against women's interest in hifz al-nafs, especially in contexts where pregnancy and child-rearing impose disproportionate physical and psychological burdens. This argument does not endorse permanent childlessness as a norm, but it does complicate the classical consensus by introducing a relational and contextual dimension into maqasid analysis.

At the collective level, the childfree phenomenon raises distinct maqasid concerns that transcend individual choices. Classical scholars, including Ibn Khaldun, observed that the vitality of civilizations depends in part on demographic reproduction, a concern that finds expression in the hadith attributed to the Prophet Muhammad urging Muslims to 'marry and reproduce, for I will take pride in your numbers before the nations.' If the childfree choice were to become widespread within the Muslim community, the collective dimension of hifz al-nasl would be implicated, since a generational decline in Muslim population would arguably undermine the community's capacity to perpetuate the religious and civilizational mission that Islamic law is designed to protect. However, Hallaq (2019) has cautioned against demographic alarmism in Islamic legal discourse, noting that the maqasid tradition has never posited unlimited population growth as a legal obligation, and that the prophetic encouragement to reproduce must be contextualized within the specific demographic and social conditions of early Islam.

3. Juristic and Policy Responses Within the Indonesian Islamic Legal Tradition

Indonesian Islamic jurisprudence occupies a distinctive position in the global landscape of Islamic legal thought, characterized by its historically rooted tradition of contextual ijtihad, its accommodative approach to local custom (adat), and the institutional plurality of its religious authority structures. The two largest Islamic organizations in the country, Nahdlatul Ulama and Muhammadiyah, represent complementary but sometimes divergent juristic traditions that have both engaged with contemporary reproductive and family issues. Wahid (2022) notes that Nahdlatul Ulama's legal apparatus, the Bahtsul Masa'il, has historically favored contextual-maslahah reasoning that balances classical texts with social realities, while Muhammadiyah's Tarjih Council has tended toward text-centered reasoning with selective openness to contemporary scholarly developments. Both traditions possess, in principle, the juristic resources to respond constructively to the childfree phenomenon.

To date, no authoritative Indonesian Islamic institution has issued a comprehensive fatwa specifically addressing the childfree phenomenon. The MUI's existing fatwa on contraception, originally issued in the context of the national family planning (KB) program, permits temporary contraception within marriage for reasons of health, spacing of births, or economic hardship, but it is silent on the question of permanent, voluntary childlessness as a lifestyle choice. This regulatory lacuna reflects the historically family-planning-oriented framing of reproductive discourse within Indonesian Islamic institutions, which assumed that Muslim couples desire children but may need assistance in managing the timing and number of births, rather than that some couples might reject parenthood entirely. Filling this lacuna requires Indonesian Islamic scholars to undertake a fresh round of ijtihad that directly confronts the normative and philosophical foundations of the childfree choice, rather than simply extending existing contraception fatwas by analogy (Mulia, 2021).

Any juristic response to the childfree phenomenon within the Indonesian Islamic context must navigate the tension between the tradition's normative commitment to hifz al-nasl and the constitutional and human rights framework that protects individual reproductive autonomy. Yusuf (2022) has proposed a three-tier analytical framework for this purpose: first, distinguishing between the ethical evaluation of childfree choices (where Islamic jurisprudence may offer negative moral guidance without legal compulsion) and their legal regulation (where the principle of non-imposition of religious norms through state coercion constrains legislative action in a plural democratic state); second, differentiating between unilateral childfree decisions imposed by one spouse on another (which may constitute a justiciable violation of marital rights) and mutually agreed childfree arrangements (which fall within the domain of permissible personal contracts in Islamic law); and third, addressing the specific case of medical sterilization undertaken for permanent contraceptive purposes, which requires a distinct juristic ruling calibrated to both the severity of the act and the range of motivating circumstances.

From a policy perspective, the childfree phenomenon calls for a multi-stakeholder response that integrates Islamic legal guidance, public health considerations, and social welfare imperatives. Auda (2021) has argued that maqasid-informed policy in the contemporary Muslim state should prioritize the creation of social conditions that make parenthood genuinely viable and attractive, rather than relying on normative prescription or social pressure to maintain fertility rates. In the Indonesian context, this would imply addressing the structural drivers of childfree preferences—including inadequate childcare infrastructure, gender-unequal distribution of domestic labor, economic insecurity among young adults, and the absence of robust paternity leave policies—through comprehensive family policy reforms grounded in Islamic social ethics. Such an approach would more effectively serve the collective dimension of hifz al-nasl than prohibitory fatwas that fail to engage with the social realities driving the childfree trend.

Conclusion

This study has examined the childfree phenomenon through the dual lenses of Indonesian Islamic family law and the maqasid al-shari'ah framework, revealing a complex normative landscape in which the tradition's commitment to hifz al-nasl stands in tension with constitutional protections for reproductive autonomy, gender-sensitive readings of Islamic ethics, and the structural realities driving childfree preferences in contemporary Indonesian society. The findings demonstrate that while Indonesian positive law and Islamic jurisprudence both treat procreation as among the purposes of marriage, neither framework mandates parenthood through legally enforceable sanctions, and that the space between ethical guidance and legal compulsion is precisely the domain in which Islamic juristic creativity is most urgently needed. A contextually sensitive ijtihad, informed by contemporary maqasid scholarship and attentive to the social realities of Indonesian Muslim life, is capable of producing nuanced normative responses that affirm the value of procreation without reducing the marital relationship to its reproductive function, protect the dignity and agency of both spouses in reproductive decision-making, and address the structural conditions that render parenthood an unattractive or impossible prospect for an increasing number of Indonesian Muslim couples. Future research should complement this normative analysis with empirical studies of the motivations, experiences, and religious self-understandings of childfree Indonesian Muslims, in order to ground further juristic and policy deliberation in a more complete understanding of the phenomenon.

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