

Childfree in Muslim Families: A Comparative Study of *Maqasid al-Syari'ah* and Modern Reproductive Rights

Ahamad Khotim

Sekolah Tinggi Agama Islam At-Tahtdzib Jombang, Indonesia

Email: akhodjala.tbi@gmail.com

Abstract

The discourse of childfree, a conscious decision by married couples to remain childless throughout their marriage, has shifted from a mere private choice to a global ideological movement challenging traditional family structures, including within the Muslim family landscape. This study aims to comparatively dissect the dialectic between the concept of childfree in Muslim families through two conflicting paradigms: *Maqasid al-Syari'ah* (specifically the pillar of *hifz al-nasl*) and the doctrine of Modern Reproductive Rights (bodily autonomy). The research method used is a juridical-normative approach with a comparative approach and a philosophical approach. The results of the study indicate a deep epistemological gap. Modern Reproductive Rights places individuals as the absolute owners of their bodies (anthropocentric), thus giving rise to absolute freedom to refuse procreation. In contrast, *Maqasid al-Syari'ah* views reproduction within a theocentric framework, where the body and offspring are divine trusts oriented towards the public good (*maṣlaḥah 'ammah*) and the preservation of civilization. This study concludes that the concept of voluntary childfree without medical excuse is rejected by the consensus of *Maqasid al-Syari'ah* because it reduces the main essence of marriage, but in the corridor of positive law, it is in the area of the unavailability of formal sanctions (*rechtsvacuum*), so its enforcement rests on strengthening the legal culture of Muslim society.

Keywords: Childfree; Muslim Family; *Maqasid al-Syari'ah*; Reproductive Rights; *Hifz al-nasl*

INTRODUCTION

The currents of globalization have brought changes to the economic and technological sectors, and have penetrated massively into the most intimate social institution, the family. For centuries, the Muslim family has been constructed as the smallest unit of society, solid, sacred, and oriented toward the continuation of generations (procreation). Children, in Islamic theology, are the biological consequence of sexual intercourse; a manifestation of blessings; a continuation of righteous deeds; and the basic foundation for the formation of a strong human race.¹

Liquid modernity has given rise to radical challenges to traditional Islamic values. Childfreedom among urban Muslim couples is one concrete manifestation of this shift in values. Childfreedom is the conscious, planned, and permanent choice not to have children after marriage. Childfreedom is no longer considered an exclusive reality of Western secular society.² The narrative of the childfree idea on social media is starting to be adopted by some young Muslims. The childfree choice is rationalized with various profane arguments, ranging from financial anxiety (economic anxiety), mental unpreparedness

¹ Ami Nuruddin, "Kontekstualisasi Fiqh al-Nawazil Terhadap Fenomena Sosial Childfree dalam Keluarga Muslim Indonesia," *Jurnal Studi Islam Kontemporer* 12, No. 2 (2023): 148.

² Amy Blackstone, *Childfree by Choice: Movement, Redefining Family, and Creating a New Age of Independence* (New York: Dutton, 2019), 41.



(parenting phobia), past trauma (childhood trauma), to global issues such as environmental conservation (eco-anxiety).³

The idea of childfree within the domestic sphere of Muslim families has sparked a sharp epistemological clash. Modern reproductive rights doctrine, rooted in Western liberalism and feminism, has significantly influenced childfree discourse. Liberalism and feminism place bodily autonomy and individual rights at the pinnacle of law. Women and men are considered to have the absolute right to determine their own biological functions without interference from the state, society, or religious doctrine.⁴

Islamic law operates a completely different paradigm through the framework of *Maqāṣid al-Syarī'ah* (the noble objectives of sharia). Law, from the perspective of *Maqāṣid al-Syarī'ah*, is built on the foundation of submission to the will of Allah SWT (theocentric) and oriented towards the common good (*maṣlaḥah 'ammah*), rather than on the foundation of absolute individual freedom (anthropocentric).⁵ One of the main pillars of *Maqāṣid al-Syarī'ah* is *ḥifẓ al-nasl* (protection and preservation of offspring). The concept of *ḥifẓ al-nasl* is in contrast to the idea of permanent child abandonment.

The clash between the values of *ḥifẓ al-nasl* and the notion of childfree raises crucial academic questions. How can the conceptual reconstruction of childfree be reconciled within the dialectic between *Maqāṣid al-Syarī'ah* and modern reproductive rights? How do contemporary Muslim families negotiate individual privacy rights with the theological-social responsibilities imposed by sharia?

Previous studies have primarily examined childfree from a rigid formal positive legal perspective or black-and-white normative textual jurisprudence. There is a lack of understanding of the concept of *Maqāṣid al-Syarī'ah* in studies of childfree within Muslim families. This study aims to map the epistemological roots, common ground, and points of contention between the legal concepts of *Maqāṣid al-Syarī'ah*, and their implications for the existence of Muslim families in the modern era.

METHOD

This research uses a normative philosophical legal research design. This approach was chosen because the issue being studied is not simply the synchronization of written legal articles, but rather the clash of concepts, values, principles, and legal philosophies that underlie social behavior.⁶ To analyze the problem sharply, two types of approaches are used: Comparative Approach: Used to compare in depth the elements of similarities (commonalities) and differences (divergences) between the doctrine of Modern Reproductive Rights which is oriented towards Western Human Rights with the doctrine of *Maqāṣid al-Syarī'ah* which is rooted in Islamic ushul fiqh.⁷ Philosophical Approach: Used to uncover the epistemological roots, nature, and ontological values of human body ownership, the existence of children, and the nature of marriage according to the two systems of thought.

The study materials are sourced from library research literature which includes: Sources of Modern Rights Doctrine: ICPD Cairo 1994 Document, CEDAW Charter (Convention on the Elimination of All Forms of Discrimination against Women), Law No. 36 of 2009 concerning Health, and liberal feminist literature. Sources of *Maqāṣid al-Syarī'ah* Doctrine: *Kitab Al-Muwāfaqāt* by Abu Ishaq as-Syatibi, *Maqāṣid al-Syarī'ah al-Islāmiyyah* by Muhammad al-Thahir ibn Ashur, and contemporary fiqh books related to reproductive law (*Fiqh al-Nawāzil*). Data analysis was carried out using content analysis and legal hermeneutics methods. Data were analyzed, compared in tables/analysis matrix charts, then conclusions were drawn using logical deductive reasoning.⁸

³ Rachel Chrastil, *How to Be Childless: A History of Not Having Children* (Oxford: Oxford University Press, 2019), 112.

⁴ Rachel Chrastil, *How to Be Childless: A History of Not Having Children...*, 115.

⁵ Mohammad Hashim Kamali, *Freedom, Equality and Justice in Islam* (Cambridge: Islamic Texts Society, 2018), 64.

⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005), 47.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum...*, 52.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum...*, 89.

RESULTS AND DISCUSSION

Epistemology of Modern Reproductive Rights: Individual Sovereignty over the Body

Modern reproductive rights did not emerge from a vacuum. They are the offspring of Western Enlightenment philosophy, which gave birth to the ideologies of liberalism, individualism, and secularism. The deepest foundation of these reproductive rights rests on one central philosophical postulate: Bodily Autonomy.⁹

This theory of bodily autonomy states that every human individual is the absolute owner, sole ruler, and full sovereignty over their physical body. The body is viewed as the most fundamental private property. A logical consequence of this anthropocentric view is that individuals have the absolute right to treat, use, or terminate the biological functions of their organs without interference from any external authority, be it state institutions, sociological pressures from society, or religious dogma.¹⁰

As it developed, the second-wave feminist movement integrated this bodily autonomy into the realm of women's reproduction. Feminists such as Simone de Beauvoir, in her work, *The Second Sex*, asserted that throughout history, women have been structurally oppressed because their bodies have been locked into the domestic-biological function of preserving offspring.¹¹ For liberal feminists, true freedom for women can only be achieved if they have full control independently to determine whether they want to get pregnant or not, give birth or not.

This doctrine later gained international legitimacy at the International Conference on Population and Development (ICPD) in Cairo (1994). Article 7.3 of the Cairo Charter defines reproductive rights as: "...the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence..."¹²

If we examine the text of the Cairo Charter, the phrase "decide freely" provides moral and legal legitimacy for childfree practices. The choice not to have children is considered a legitimate variant of the exercise of reproductive rights. From this perspective, refusing to have children is on a moral level equal to choosing to have children; both are valid expressions of human freedom and should be protected by modern state law.¹³

Epistemology of *Maqasid al-Syari'ah*: Divine Sovereignty and the Mandate of Reproduction

In stark contrast to the anthropocentric (human-centered) paradigm of modern reproductive rights, Islamic legal epistemology is theocentric (God-centered). In the Islamic worldview (*al-tasawwur al-Islāmī*), humans are not the absolute owners of themselves. The true owner of the universe, including the human physical body, is Allah SWT. Humans merely act as vicegerents and trustees on earth.¹⁴

The concept of body ownership in Islam is bound by sharia law. Humans are not free to do whatever they please with their bodies. For example, Islam forbids suicide (*intihar*), self-harm, tattooing, and altering God's creation (*taghyir khalqillāh*) without a medical emergency, even if these acts are done consciously and without harming others.¹⁵ The body is a trust that will be held accountable for its every function on the Day of Judgment.

It is in this context that the concept of *Maqasid al-Syari'ah* works. According to Abu Ishaq as-Syatibi, all the Shari'a revealed by Allah have one macro goal, namely to bring about benefit for humans (*jalb al-maṣāliḥ*) and avoid harm (*dar' al-mafāsīd*) both in this world and in the afterlife.¹⁶ This benefit is supported by five main pillars (*al-Darūriyyāt al-Khamsah*).

⁹ Rachel Chastil, *How to Be Childless...*, 142.

¹⁰ Simone de Beauvoir, *The Second Sex* (New York: Vintage Books, 2011), 87.

¹¹ Simone de Beauvoir, *The Second Sex...*, 92.

¹² United Nations, *Report of the International Conference...*, pasal 7.3

¹³ Amy Blackstone, *Childfree by Choice...*, 78.

¹⁴ Muhammad Imārah, *Al-Islam wa Huquq...*, 195.

¹⁵ Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu*, Jilid 9 (Damaskus: Dar al-Fikr, 2002), 640.

¹⁶ Abu Ishaq as-Syatibi, *Al-Muwafaqat fi Ushul al-Syariah* (Beirut: Dar al-Kutub al-Ilmiyyah, 2005), 112.

In the hierarchy of *Maqasid*, the pillar of *Ḥifẓ al-nasl* (Preserving Offspring) occupies a very vital position. Muhammad al-Thahir ibn Ashur in his book *Maqasid al-Shari'ah al-Islamiyyah* expands the meaning of *ḥifẓ al-nasl* not only to civil matters of maintaining the clarity of lineage/family lineage from sperm mixing due to adultery (*ḥifẓ al-nasb*), but also includes a more macro dimension, namely preserving the quantity and quality of humanity in order to prosper the earth (*'imārat al-ardq*).¹⁷

Marriage (*al-nikāḥ*) is positioned by Islam as the sole legal institution to carry out this enormous mission of *ḥifẓ al-nasl*. Therefore, experts in ushul fiqh have formulated that procreation (having children) is the primary objective of the prescribed marriage, while the channeling of biological desires (*al-istimtā'*) and peace of mind (*sakinah*) are secondary/supporting objectives..

When a Muslim couple chooses to be permanently childfree from the beginning of their marriage without any biological obstacles (infertility) or medical emergencies, the priority scale of *Maqasid* is distorted. The couple is deemed to have intentionally destroyed the primary purpose of marriage (*al-maqṣad al-aslī*) and pursued only its secondary purpose (*al-maqṣad al-tābi'*). In the principles of ushul fiqh, actions that totally negate the basic purpose of a shari'a are classified as actions contrary to the will of the Shari'a (*mukhālafah qaṣd al-Syāri'*).¹⁸

Dialogical Comparative Matrix: Modern Reproductive Rights vs *Maqasid al-Shari'ah*

To sharply map the conceptual territory between these two legal paradigms, here is a dialectical comparison matrix table:

Comparative Dimension	Modern Reproductive Rights Perspectives	<i>Maqasid al-Shari'ah</i> perspective
Philosophical Roots	Liberalism, Secularism, Anthropocentric Humanism.	<i>Tawhid</i> , Islamic Sharia, Theocentric-Maslahat.
Body Status	Absolute property of an individual (Absolute Property).	Trust and entrustment from Allah SWT (Divine Trust).
The Nature of Children	Optional choices, individual rights, emotional complements.	Gift, theological mandate, investment in the afterlife, pillar of civilization.
Purpose of Marriage	Private consensus for happiness and life partners.	Sacred bond (<i>mīthāqan ghaīẓan</i>) for worship and procreation.
Limits of Freedom	Rights of others (secular Harm Principle).	Sharia provisions and public welfare (<i>Maṣlaḥah 'Ammah</i>).
Childfree Legality	Completely legal, protected as an individual reproductive right.	Strictly restricted; It is <i>Makruh</i> to <i>Haram</i> without the syar'i excuse.

Contemporary Legal Dialectics for Muslim Families

Reinterpretation of the Realm of 'azl and Modification of Childfree Ideology

In discussion forums, Muslims who attempt to position childfree as permissible often cite the legality of 'azl practices in classical Islamic jurisprudence. They cite the Shafi'i school of thought, which states that the basic law of 'azl (coitus interruptus) is permissible with the wife's permission.¹⁹ Imam al-Ghazali in *Ihyā' 'Ulūmuddīn* even mentions five motivations that permit 'azl, including *al-istibqā'* 'alā *jamālihā* (maintaining the beauty and freshness of the wife's body) and *khawf al-ḥaraj min kaṣrat al-'iyāl* (fear of experiencing difficulties and hassles due to having too many children).²⁰

¹⁷ Muhammad al-Thahir ibn Ashur, *Treatise on Maqasid al-Shari'ah* (London: International Institute of Islamic Thought, 2006), 122.

¹⁸ Abu Ishaq as-Syatibi, *Al-Muwafaqat...*, 135.

¹⁹ Ibnu Hajar al-Asqalani, *Fath al-Bari Syarh Shahih al-Bukhari*, Jilid 9 (Kairo: Dar al-Hadith, 2004), 305.

²⁰ Abu Hamid al-Ghazali, *Ihya Ulumuddin*, Jilid 2 (Kairo: Dar al-Hadith, 2004), 53.

However, contemporary jurists such as Wabbah al-Zuhayli and Muhammad Sa'id Ramadan al-Bouti have deconstructed this argument. They assert that there is a vast gulf (*al-fāriq al-jasīm*) between classical 'azl and modern childfree. Their conceptualization can be broken down as follows:

Spatial-Temporal Differences: The practice of 'azl in early Islam was casuistic, individual, and a temporary postponement (*tanzīm*). Couples who practice 'azl do not intend to seal their wombs for life. Childfree, on the other hand, is a total and permanent rejection from the beginning of marriage (*tathīr*).

Epistemological Root Differences: 'azl is driven by considerations of practical domestic well-being without negating the virtue of having children. Meanwhile, modern-day childfree has shifted into a lifestyle ideology that often carries a narrative of anti-natalism – a philosophical view that considers bringing children into the world a morally bad act because it will increase the burden of suffering on earth.²¹

Therefore, absolutely equating childfree with 'azl is a legal reasoning error which in ushul fiqh is called *Qiyās ma'al Fāriq* (a wrong analogy because there is a fundamental difference in the nature of the object).²²

Implementation of the Principle of *Sadd al-Dzarī'ah* in Stemming Depopulation

In formulating macro law, Islamic law does not only look at individual actions per individual, but also looks at the systemic impact that would arise if these actions were legalized collectively. This method of ijtihad is called *Sadd al-Dzarī'ah* (closing the road to harm).²³

When the childfree trend is widely promoted in digital public spaces and adopted by millions of millennial and Gen Z Muslim families, the impact goes beyond the private confines of the marital bedroom. The macro impact is the threat of depopulation and aging (an explosion in the population of unproductive older people), accompanied by a negative birth rate (zero or negative growth rate).²⁴

The socioeconomic systems of countries experiencing a birth crisis are showing clear fragility. The economy is slowing due to a shortage of productive labor, the tax burden on social security for the elderly is soaring, and in the long term, the nation's civilization is threatened with extinction. From an Islamic legal perspective, maintaining the existence of the *Ummah* (*quwwat al-ummah*) is crucial. The Prophet Muhammad (peace be upon him) needed a generation strong in both quantity and quality to continue the mission of Islamic da'wah. Therefore, based on the *Sadd al-Dzarī'ah* method, the law of choosing childfree without medical excuse, which was initially considered *makruh tanzih* (rejected) can be elevated to Absolute *Haram* (forbidden) if it transforms into a social movement that threatens demographic resilience and the existence of the Muslim community.²⁵

Indonesia's Positive Legal Resolution to Conflicts of Values

How does the Indonesian national legal system respond to the clash between Maqasid al-Syari'ah and Modern Reproductive Rights? As has been analyzed, Indonesian positive law experiences a rechtovacuum (substantive legal vacuum) regarding sanctions for childfree perpetrators. The state cannot possibly criminalize a couple whose room is not occupied by a crying baby. According to Lawrence M. Friedman's Legal System theory, if the written legal substance is neutral or sterile, then legal stability will be largely determined by the strength of the community's Legal Culture.²⁶ Indonesian legal culture, particularly among Muslim communities, possesses a strong resilience to resist childfree ideology. Communal culture, strengthening religious institutions through fatwas issued by Islamic organizations (such as the Indonesian Ulema Council, Nahdlatul Ulama, and Muhammadiyah), and

²¹ Amy Blackstone, *Childfree by Choice...*, 102.

²² Muhammad Sa'id Ramadan al-Bouti, *Mas'alat Al-Tahaddid Al-Nasl: Wika'atan wa 'Ilajan* (Damaskus: Maktabah al-Farabi, 1997), 45.

²³ Ibnu Hajar al-Asqalani, *Fath al-Bari Syarh Shahih al-Bukhari*, Jilid 9 (Kairo: Dar al-Hadith, 2004), 305.

²⁴ Abu Hamid al-Ghazali, *Ihya Ulumuddin*, Jilid 2 (Kairo: Dar al-Hadith, 2004), 53.

²⁵ Wabbah al-Zuhayli, *Al-Fiqh al-Islami...*, 658.

²⁶ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 116.

premarital education (courses for prospective brides and grooms) provided by the Ministry of Religious Affairs are highly effective non-penal instruments.

State institutions, through the National Population and Family Planning Agency, have also redefined their slogans. While during the New Order era, the slogan “Two Children Are Enough,” which focused on quantity, has shifted policy direction in the contemporary era to “Quality Families” and stunting prevention.²⁷ This policy is in line with the concept of *Maqāṣid al-Syarī’ah*, where Islam does not simply pursue a large number of but weak children (*ḡuṣā’ ka-ḡuṣā’ al-saīl* / foam on the ocean), but rather desires offspring who are physically, mentally, intellectually and spiritually strong (*hiḡz al-nasl al-qaīw*).

CONCLUSION

There is an irreconcilable epistemological gap between these two paradigms. Modern Reproductive Rights Doctrine places humans at the center of absolute sovereignty over their bodies (bodily autonomy), thus viewing childfree choices as a legitimate individual right equal to the choice to reproduce. In contrast, *Maqāṣid al-Syarī’ah* places the human body and reproductive system within a theocentric framework as a divine trust whose sustainability must be maintained to achieve the pillars of *hiḡz al-nasl* (preservation of offspring) and the macro-civilization of the earth (*‘imārat al-ardq*).

In practical terms of contemporary Muslim family law, analogizing permanent-ideological childfree with classical ‘*azl* practices is a methodological error (*Qiyās ma’al Fāriq*). Islamic law establishes the legal status of voluntary childfree without medical-emergency reasons as an act that is *makruh tanzih* to *haram*, especially when viewed through the *Sadd al-Dzarī’ah* method due to its macro impact that can trigger depopulation of the community. Legal resolution in Indonesia places this issue beyond the scope of positive criminal/civil law (*rechtsvacuum*), so that the strategy for containing it is shifted to strengthening legal culture through marriage guidance that integrates the vision of modern healthy reproduction with the noble orientation of *Maqāṣid al-Syarī’ah*.

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²⁷ Ami Nuruddin, "Kontekstualisasi Fiqh al-Nawazil...", 165.

Nuruddin, Ami. "Kontekstualisasi Fiqh al-Nawazil Terhadap Fenomena Sosial Childfree dalam Keluarga Muslim Indonesia." *Jurnal Studi Islam Kontemporer* 12, no. 2 (2023): 145-168.

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