

Childfree Marriage from the Perspective of Islamic Law and Legislation in Indonesia

Abstract

Ahmad Khotim,¹
Purwantoro²

^{1, 2} Institut Agama
Islam At-Tahdzib
Jombang, Indonesia
email:
akhodjala.tbi@gmail.
com,¹
purwantoro789@gma
il.com²

Background. The phenomenon of childfree in marriage has increasingly become a topic of discourse in Indonesia, particularly among young Muslim couples.

Aim. This research was written to answer the questions outlined in two problem. analyze the existence of childfree choices in marriage from the perspectives of Islamic law; analyze the existence of childfree choices in marriage from the perspectives Indonesian legislation.

Methods. The method used with comparative and conceptual approaches, this study examines shar'i arguments, opinions of scholars from the four major madhabs, and applicable positive legal provisions.

Results. The research results indicate that Islamic law regards the childfree choice as permissible under certain conditions (conditionally mubah), although it contradicts the primary purpose of marriage, namely procreation (nasl). Meanwhile, Indonesian legislation does not explicitly prohibit childfree choices; however, Law Number 1 of 1974 and the Compilation of Islamic Law (CIL) encourage marriage aimed at forming a sakinah family which inherently includes the dimension of lineage. This study concludes that childfree falls within the domain of personal choice that is legally permissible, but must be balanced with a comprehensive understanding of maqasid al-shari'ah, particularly hifz al-din.

Keywords: Childfree; Marriage; Islamic Law; Maqasid al-Shari'ah; Indonesian Positive Law

INTRODUCTION

Marriage is one of the most important legal institutions in human life. In the Indonesian legal system, marriage is defined as a physical and spiritual bond between a man and a woman as husband and wife, with the goal of forming a happy and eternal family (household) based on the One Almighty God.¹ Marriage is not just a formal contract, but contains complex spiritual, social and biological dimensions.²

Recently, a phenomenon that has attracted considerable attention in Indonesian society has emerged: the childfree choice in marriage. Lexically, childfree refers to a condition in which an individual or couple consciously and voluntarily chooses not to have children.³ In contrast to childless, which means a medical inability to have children, childfree refers more to a deliberate and fully conscious choice.⁴

¹ Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan (Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 3019), Pasal 1.

² Khoiruddin Nasution, *Hukum Perkawinan dan Warisan di Dunia Muslim Modern* (Yogyakarta: Academia, 2012), p. 23.

³ Merriam-Webster Dictionary, s.v. "childfree," diakses 10 Januari 2025, <https://www.merriam-webster.com/dictionary/childfree>.

⁴ Laura Scott, *Two is Enough: A Couple's Guide to Living Childless by Choice* (Berkeley: Seal Press, 2009), p. 5.



Recent demographic data shows a growing trend of couples choosing to be childfree in Indonesia, particularly among millennials and Generation Z living in urban areas. According to the 2022 Indonesian Demographic and Health Survey, there has been a significant increase in married women of productive age who do not want children in the short or long term.⁵ This phenomenon raises a fundamental question: how do Islamic law and legislation in Indonesia view this choice?

Studying this issue is significant given that the majority of Indonesia's population is Muslim and lives within a legal system influenced by Islamic values. Al-Qur'an explicitly states that one of the signs of God's power is the creation of spouses and offspring.⁶ Meanwhile, in the hadith, the Prophet Muhammad SAW clearly encouraged his followers to marry and have many children.⁷ On the other hand, Indonesian positive law also considers the family dimension a crucial element in marriage.

This study formulates two main questions: how Islamic law views the existence of childfree options in marriage; and how Indonesian legislation regulates and responds to the phenomenon of childfreedom in the context of marriage. This study is expected to make a scientific contribution to the development of Islamic family law in Indonesia and serve as a reference for stakeholders in responding to evolving social dynamics.

LITERATURE REVIEW

Marriage in Islam

From an Islamic perspective, marriage is an act of worship that has both vertical (*hablun minallah*) and horizontal (*hablun minannas*) dimensions. Islamic jurisprudence scholars define marriage as a contract that permits sexual intercourse, using the words marry or *tazwij*.⁸ Al-Ghazali in *Ihya' 'Ulum al-Din* mentions five goals of marriage: to have children, to channel lust, to obtain peace of mind, to take care of household affairs, and to train oneself with sincerity.⁹

Ibn Qudamah in *al-Mughni* stated that marriage is *sunnah muakkadah* for those who are able, and can be obligatory for those who are worried about falling into sin if they do not marry.¹⁰ This opinion reflects the flexibility of Islamic law in viewing marriage according to individual circumstances. Yusuf al-Qaradawi added that Islam is a religion of nature that views humans holistically, including their biological needs.¹¹

Maqasid al-Shari'ah and *Hifz al-din*

The concept of *maqasid al-syari'ah* developed by al-Syatibi places the maintenance of offspring (*hifz al-din*) as one of the five main objectives of Islamic law (*al-daruriyyat al-khams*) along with the maintenance of religion (*hifz al-din*), soul (*hifz al-nafs*), reason (*hifz al-'aql*), and property (*hifz al-mal*).¹² The position of *hifz al-din* in the hierarchy of *maqasid* makes it a very fundamental need in human life.

The implication of the position of *hifz al-din* in *maqasid al-syari'ah* is that every action that has the potential to threaten the continuity of human offspring needs to be studied in depth. The choice of childfree in marriage is directly related to this aspect because it eliminates the reproductive function of the marriage bond. However, contemporary scholars differ regarding the extent to which this choice conflicts with *maqasid al-syari'ah*.

Marriage in Indonesian Positive Law

⁵ Badan Pusat Statistik, *Survei Demografi dan Kesehatan Indonesia 2022* (Jakarta: BPS, 2023). p. 47.

⁶ Al-Quran Surah al-Nahl (16): 72. Lihat juga Surah al-Rum (30): 21.

⁷ Muhammad bin Ismail al-Bukhari, *Sahih al-Bukhari*, Kitab al-Nikah, Bab ma Yukrahu min al-Taba'tul wa al-Ikhtisa', Hadits No. 5065 (Beirut: Dar Tuq al-Najah, 1422 H).

⁸ Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuh*, Juz IX (Damaskus: Dar al-Fikr, 1989). p. 6575.

⁹ Al-Imam Abu Hamid Muhammad al-Ghazali, *Ihya' 'Ulum al-Din*, Juz II (Beirut: Dar al-Ma'rifah, t.t.). p. 22.

¹⁰ Ibn Qudamah al-Maqdisi, *al-Mughni*, Juz IX (Kairo: Maktabah al-Qahirah, 1968). p. 340.

¹¹ Yusuf al-Qaradawi, *al-Halal wa al-Haram fi al-Islam* (Kairo: Maktabah Wahbah, 1985). p. 178.

¹² Al-Syatibi, *al-Muwafaqat fi Usul al-Syari'ah*, Juz II (Kairo: Maktabah al-Tijariyyah al-Kubra, t.t.). p. 8.

Indonesian positive law regulates marriage, primarily through Law Number 1 of 1974 concerning Marriage. This law affirms that the purpose of marriage is to form a happy and lasting family.¹³ Furthermore, the CIL, which is the material law of religious courts, regulates in more detail the rights and obligations of husband and wife, including the right to have children.^{14, 15}

In addition to the Marriage Law, there is also Law No. 52 of 2009 concerning Population Development and Family Development¹⁶ and Government Regulation No. 87 of 2014,¹⁷ which regulates population policy, one dimension of which touches on fertility and family planning. These two regulations provide the legal framework for how the state views reproduction as part of public policy.

Previous Studies on Childfree

Research on childfree in the context of Islam and family law is still relatively limited. Some previous studies include: Satria Effendi M. Zein's study on the problems of Islamic family law, which touches on the dynamics of the development of marriage goals but does not specifically address childfree.¹⁸ Musdah Mulia's¹⁹ study on the gender perspective in Islamic family law, which is relevant for analyzing the dimensions of reproductive freedom. Sociological studies on demographic trends in contemporary Muslim families in Indonesia. The lack of studies focusing on normative juridical analysis of the childfree phenomenon from the perspective of Islamic law and Indonesian positive law makes this research uniquely original and academically urgent. This research aims to fill this academic void with a comprehensive and balanced approach.

METHOD

This research uses a normative legal research method, focusing on the study of legal norms contained in Islamic legal sources (the Quran, Hadith, *ijma'*, and *qiyas*) as well as applicable laws and regulations in Indonesia. The approaches used include: a comparative approach, used to compare the views of various Islamic fiqh schools on the phenomenon of childfree; a conceptual approach, used to analyze relevant legal concepts such as *maqasid al-shari'ah*, *hifz al-din*, and the purpose of marriage; and a statutory approach, used to examine all regulations related to marriage and population in Indonesia. The legal sources used in this research are divided into three. First, primary Islamic legal materials include the Quran, authentic Hadith, and classical fiqh works from the four schools of thought. Second, positive primary legal materials include the 1945 Constitution, Law Number 1 of 1974, the CIL, Law Number 52 of 2009, and Government Regulation Number 87 of 2014. Third, secondary legal materials include law books, scientific journals, seminar results, and relevant academic works. The legal materials were collected through systematic library research of primary and secondary sources. The analysis was conducted qualitatively and descriptively using legal interpretation techniques, including grammatical, systematic, teleological, and historical interpretations.

RESULTS AND DISCUSSION

Childfree in Islamic Law Review

Evidence for the recommendation to have children

Islamic law, through various sources, strongly encourages married couples to have children. A hadith narrated by Abu Dawud explicitly commands: "Marry women who are affectionate and have

¹³ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-undang Perkawinan* (Jakarta: Kencana Prenada Media Group, 2006). p. 46.

¹⁴ Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pasal 3 dan Pasal 4.

¹⁵ Kompilasi Hukum Islam, Instruksi Presiden Nomor 1 Tahun 1991, Pasal 77 dan Pasal 78.

¹⁶ Undang-Undang Nomor 52 Tahun 2009 tentang Perkembangan Kependudukan dan Pembangunan Keluarga (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 161).

¹⁷ Peraturan Pemerintah Nomor 87 Tahun 2014 tentang Perkembangan Kependudukan dan Pembangunan Keluarga, Keluarga Berencana, dan Sistem Informasi Keluarga.

¹⁸ Satria M. Zein Effendi. *Problematika Hukum Keluarga Islam Kontemporer*. Jakarta: Kencana, 2004.

¹⁹ Musdah Mulia, *Islam dan Inspirasi Kesetaraan Gender* (Yogyakarta: Kibar Press, 2007),

many children, for I will be proud of your great number among the nations on the Day of Resurrection.”²⁰ This ḥadīth is one of the main arguments used by scholars to require or recommend having children.

Wahbah al-Zuhaili in *al-Fiqh al-Islami wa Adillatuh* explains that the main purpose of marriage is to preserve human offspring (*istimrar al-nasl al-basyari*) and increase the number of Muslims. This view emphasizes that having children is not just a personal choice, but has important social and religious dimensions in Islam.

The views of the scholars of the four schools

Scholars from the four schools of Islamic jurisprudence essentially agree that having children is one of the primary purposes of marriage. Abdurrahman al-Jaziri, in his book on Islamic jurisprudence (*al-Fiqh 'ala al-Madzahib al-Arba'ah*), states that the wisdom behind the prescription of marriage is, among other things, to ensure the continuity of human progeny.²¹ The difference in views between schools of thought lies in the law of *al-'azl* (coitus interruptus) which can be fulfilled with the childfree option.

The Hanafi school of thought allows *al-'azl* without certain conditions as long as it is not harmful. The Maliki school of thought allows this on condition of the wife's consent. The Shafi'i school of thought allows *al-'azl* but views it as *makruh* because it reduces the chance of having children. The Hanbali school also allows *al-'azl* but requires the wife's permission.

From the views of the four schools of thought above, it can be concluded that Islam does not absolutely prohibit couples from avoiding pregnancy under certain conditions. However, if the childfree choice is permanent and without a reason justified by sharia, then this can be categorized as *makruh* or *haram* depending on the intention and context.²²

Analysis of *maqasid al-shari'ah*

The study of *maqasid al-syari'ah* places *hifz al-din* as one of the primary needs (*dharuriyyat*) that must be maintained. Al-Syatibi explained that anything that threatens the sustainability of *nasl* is collectively categorized as a destroyer of public interest.²³ In an individual context, the childfree choice made by one or more couples may not directly threaten the existence of humankind. However, if it becomes a mass phenomenon, the implications for *hifz al-din* would be significant.

On the other hand, Islamic law also highly respects the principle of not causing harm (*la darar wa la dirar*). If a woman has a medical condition that would endanger her if she became pregnant, then the childfree option is not only permissible, but can become an obligation to protect her soul (*hifz al-nafs*). This shows that Islamic law views this problem with a holistic and contextual approach.

Childfree in the Perspective of Indonesian Positive Law Constitution and reproductive rights

Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that everyone has the right to form a family and continue their lineage through a legal marriage.²⁴ The phrase “entitled” in this article indicates that having children is a right, not an obligation. Therefore, someone who chooses not to exercise this constitutional right cannot be considered a violation of the law.

²⁰ Abu Dawud Sulaiman bin al-Ash'ats al-Sijistani, Sunan Abi Dawud, Kitab al-Nikah, Bab al-Nahy 'an Tazwij man lam Yalid, Ḥadīth No. 2050 (Riyadh: Dar al-Salam, 1999).

²¹ Abdurrahman al-Jaziri, *al-Fiqh 'ala al-Madzahib al-Arba'ah*, Juz IV (Beirut: Dar al-Kutub al-'Ilmiyyah, 2003), p. 2.

²² Lihat: Majma' al-Fiqh al-Islami, Keputusan Majelis Fiqh Islam OKI No. 39 (1/5) tahun 1988 tentang Tandhim al-Nasl (Pengaturan Kelahiran).

²³ Muhammad Abu Zahrah, *al-Aḥwal al-Syakhsiyyah* (Kairo: Dar al-Fikr al-Arabi, 1957), p. 19.

²⁴ Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia: ‘Everyone has the right to form a family and continue their lineage through a legal marriage.’

The Constitutional Court has emphasized in various decisions that reproductive rights are part of human rights protected by the constitution.²⁵ This means that the state cannot impose reproductive obligations on its citizens without a strong constitutional basis.

Marriage law and CIL

Law Number 1 of 1974 concerning Marriage defines marriage as having the goal of forming a happy and lasting family. This law does not explicitly require couples to have children. However, Article 3 stipulates that a husband may only have one wife, and Article 4 regulates polygamy, with one of the reasons being the wife's inability to bear children. This indirectly indicates that the law assumes children are part of the purpose of marriage.

Articles 77 and 78 of the CIL regulate the obligations of husband and wife, including building a household that is peaceful, loving, and compassionate. CIL does not explicitly stipulate the obligation to have children, but the spirit of Islamic marriage contained therein is strongly oriented toward establishing an intact family, including raising the next generation.

Population and family planning policy

Law Number 52 of 2009 concerning Population Development and Family Development regulates rights and obligations in the population sector. This law recognizes the right of every individual to determine the number of children they have within the framework of the family planning program. The family planning program implemented by the Indonesian government essentially encourages couples to plan their number of children, but this does not prohibit couples from choosing not to have children at all.

Government Regulation Number 87 of 2014, the implementing regulation for the Population Law, also does not contain provisions expressly requiring married couples to have children. This demonstrates that, legally speaking, the state provides autonomy for couples to make their own reproductive decisions.

Comparative analysis of islam and positive law

From the above explanation, there are both points of agreement and differences between the Islamic and positive law perspectives in addressing the childfree phenomenon. The similarity is that both legal systems do not absolutely prohibit the choice of childfree marriage. The difference lies in the normative basis used: Islamic law uses the *maqasid al-syari'ah* (objectives of sharia) as a benchmark, while positive law uses the principles of human rights and individual freedom.

Amir Syarifuddin stated that in the context of Islamic family law in Indonesia, there is a dynamic between classical fiqh norms and the needs of modern regulations. The childfree phenomenon presents a real test of this dynamic. An integrative approach is needed between Islamic values and humanistic principles of positive law.

Ahmad Rofiq added that Islamic civil law in Indonesia needs to continue to develop to respond to increasingly complex contemporary challenges.²⁶ The childfree phenomenon is one of these challenges that requires a comprehensive, balanced, and public interest-oriented legal response.

Legal implications and recommendations

Based on the above analysis, there are several legal implications that require careful consideration. First, from an Islamic legal perspective, childfree choices made for health reasons or other reasons justified by Islamic law can be categorized as conditionally permissible. However, childfree practices solely motivated by selfishness, the pursuit of worldly pleasures, or ideologies contrary to Islamic values can lead to objections, even prohibitions.

Second, from an Indonesian positive law perspective, childfree choices are not explicitly prohibited. However, couples who choose childfree need to understand that some legal provisions, such

²⁵ Constitutional Court of the Republic of Indonesia, Decision Number 22/PUU-XV/2017 concerning Marriage, legal considerations of the decision.

²⁶ Ahmad Rofiq, *Hukum Perdata Islam di Indonesia* (Jakarta: Raja Grafindo Persada, 2015). p. 53.

as Article 4 of the Marriage Law concerning polygamy, indirectly assume the production of children as part of the purpose of marriage.²⁷ Third, there is a need for clear regulations that accommodate citizens' reproductive rights while integrating the religious values embraced by the majority of Indonesia's population.²⁸

Fourth, fatwa institutions such as the Indonesian Ulema Council need to provide more comprehensive guidance on childfree law to provide the Muslim community with clear guidance. This aligns with the Islamic tradition of *ijtihad*, which encourages scholars to respond to contemporary issues based on authentic sources of Islamic law.²⁹

CONCLUSION

Based on the analysis conducted, this study yields several key conclusions, as follows: First, Islamic law does not absolutely prohibit childfree marriage, but it also does not fully support it. The applicable legal standard is that it is conditionally permissible if there are justified reasons according to Islamic law, such as health conditions. However, it is *makruh* (rejected) or even haram (forbidden) if it is done solely based on a rejection of human nature and contradicts the purpose of marriage in Islam.

Second, Islamic law, through the *maqasid al-shari'ah* approach, views *hifz al-din* (the principle of social responsibility) as a primary need that must be maintained. In an individual context, childfree may not necessarily destroy *hifz al-din*, but if it becomes a collective phenomenon, the implications for the sustainability of the Muslim community are very serious and require attention from scholars and religious authorities.

Third, Indonesian laws and regulations do not explicitly prohibit childfree. The Constitution guarantees reproductive rights as part of human rights. The Marriage Law and the CIL do not contain a legal obligation to have children, although the spirit of both regulations is strongly oriented towards establishing a complete and sustainable family. Fourth, there is a regulatory gap that needs to be filled through collective *ijtihad* from Indonesian ulemas and legislators to provide comprehensive, balanced legal guidance that favors the public interest without neglecting individual autonomy in making reproductive decisions.

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²⁷ Supreme Court of the Republic of Indonesia, Compilation of Islamic Law, Article 80 and Article 83 concerning the rights and obligations of husband and wife.

²⁸ Musdah Mulia. *Ibid.* p. 101.

²⁹ Hamid Fahmy Zarkasyi, Liberalisasi Pemikiran Islam (Ponorogo: CIOS ISID, 2008). p. 89.

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