



## Childfree Marriage in the Perspective of Maqashid Asy-Syari'ah

Dwi Arini Zubaidah\*

Universitas Islam Negeri Antasari Banjarmasin, Indonesia

[dwiarinizubaidah@gmail.com](mailto:dwiarinizubaidah@gmail.com)

\*Corresponding Author

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### Abstract

Regarding the birth of children as one of the goals of marriage, recently there have been problems with issues and childfree practices among the general public. This research uses a type of normative legal research that originates from primary data related to the concept of childlessness, the theory of the purpose of marriage, and the *maqashid asy-syari'ah* system theory of Jasir 'Audah. This study uses a conceptual approach. collection of research data based on description and analysis Jasir Audah's system theory has six features: 1) the cognition character of the Islamic legal system; 2) the overall Islamic legal system; 3) the openness of the Islamic legal system; 4) the interrelated hierarchies of the Islamic legal system; 5) the multidimensionality of the Islamic legal system; and 6) the meaningfulness of the Islamic legal system. Based on Jasir 'Audah's *maqashid asy-syari'ah* system theory, it can be concluded that *first*, childfree decisions are recommended not to be made if the underlying factors do not endanger the existence of benefit values, and *second*, childfree decisions are allowed if there is an urgency for the existence of benefit.

**Keyword:** *Childfree, the purpose of marriage, system theory, maqashid asy-syari'ah*

### Abstrak

Berkenaan dengan kelahiran anak sebagai salah satu tujuan perkawinan, belakangan merebak problematika isu dan praktik *childfree* di kalangan khalayak masyarakat. Penelitian ini menggunakan jenis penelitian hukum normatif yang bersumber dari data primer terkait konsep *childfree*, tujuan perkawinan dan teori sistem maqashid asy-syari'ah Jasir 'Audah. Penelitian ini menggunakan pendekatan konseptual. pengumpulan data penelitian ini berdasarkan deskripsi dan analisis. Teori sistem Jasir 'Audah memiliki enam fitur yakni 1) watak kognisi sistem hukum islam, 2) Kemenyeluruhan sistem hukum Islam, 3) Keterbukaan sistem hukum Islam, 4) Hierarki saling terkait sistem hukum Islam, 5) Multidimensi sistem hukum Islam dan 6) Kebermaksudan sistem hukum Islam. Berdasarkan teori sistem maqashid asy syari'ah Jasir 'Audah dapat disimpulkan bahwa *pertama*) keputusan *childfree* dianjurkan untuk tidak dilakukan apabila faktor yang melatarbelakangi tidak membahayakan eksistensi nilai



kemaslahatan, *kedua*) keputusan *childfree* diperbolehkan jika terdapat urgensi eksistensi kemaslahatan.

**Kata Kunci:** Childfree, tujuan perkawinan, teori sistem, maqashid asy-syari'ah

## Introduction

The marriage contract is a strong contract or mitsaqan ghalidhan. The Qur'an mentions a strong contract in QS An Nisa' (4): 21 which shows an agreement regarding marriage. The expression of a strong contract or mitsaqan ghalidhan shows that marriage is different from other civil contracts. In Law Number 1 of 1974, marriage is a physical bond between husband and wife by forming an eternal and happy household. In essence, marriage boils down to the life of the subject who wants the eternity of the household and the happiness of every family member.

The frame of an ideal household life has implications for achieving the goals of marriage. In the Compilation of Islamic Law, the purpose of marriage is to obtain a sakinah, mawaddah and rahmah household life. In general, men and women marry to fulfill certain goals, such as peaceful living together with loved ones, fulfilling biological needs within legal corridors and continuing the family struggle through the birth of children.

With regard to the birth of children, recently there have been problems with issues and childfree practices among the general public. Some people justify issues and practices on the basis of human rights, and some others reject the truth about childfree practices on the grounds that they are contrary to the purpose of marriage in the provisions of Islamic law. Based on the journal Family Issues "Historical Trends in Childlessness" by Donald T. Rowland, the emergence of childfree decisions that occurred in Europe and the United States was marked by a decrease in birth rates in the 1800s. But the childless decision that existed in Europe and the United States in the period 1800–1900 did not cause controversy. In contrast to the trend at that time, Indonesia was not yet familiar with the term childfree, because the perception of "many children, lots of fortune" had lived in the minds and souls of the people.<sup>1</sup>

The childfree decision has profound implications for the country's population. According to the American Community Survey, found in 2020 around 15.3% of the US population aged 18–44 do not have children. Meanwhile, based on data from the South Korean Ministry of Home Affairs and Security, in 2020 the number of births fell 10.8% to 272,400 babies. In Indonesia, the fertility rate is still quite high, 2.36 children per woman, but this result does not make Indonesia free from the childfree trend.<sup>2</sup> In the controversial realm of the concept of childfree, this study attempts to analyze it using the maqashid asy syari'ah system theory which is correlated with the purpose of marriage.

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<sup>1</sup> Asma Nadia, "Childfree dan Depopulasi," n.d., <https://www.republika.id/posts/37694/child-free-dan-depopulasi>. diakses pada tanggal 5 Mei 2023 Pukul 14:52.

<sup>2</sup> Fakhriansyah, "Awal Mula Childfree: Masif di Barat, Mulai Ditiru di RI," n.d., <https://www.cnbcindonesia.com/lifestyle/20230211210404-33-413020/awal-mula-childfree-masif-di-barat-mulai-ditiru-di-ri>. Diakses pada tanggal 5 Mei 2023 Pukul 14:52.

This paper was written accompanied by a literature review of previous studies with the same theme. The first article uses a normative juridical approach to analyze childfreeness in the perspective of women's reproductive rights in Islam. This article emphasizes maturity and awareness of thinking in making decisions for childfree. In addition, there must be a balanced agreement between husband and wife, because childfree concerns joint rights in the household. This paper also emphasizes the strong basic reasons that must be owned by married couples who choose to be childfree.<sup>3</sup>

The following article examines childfree from the perspective of women's roles and feminine identities and childfree trends. Rosemary Gillespie examines the development of the emergence of childfree which resulted from the attractiveness and advantages of the childfree lifestyle adopted by some women. This study used interviews with 25 women without children voluntarily. The conclusions in this study result in consideration of rearranging an understanding of feminine identity away from a mother-centered focus.<sup>4</sup> The article on childfree then provides a focal point on the correlation of a demographic incidence of the childfree phenomenon, the motivations underlying this decision on sociological aspects, traditional stereotypes usually associated with childless people, and psychological realities.<sup>5</sup>

The next article is about the decision to be childfree in Sweden and a rejection of the pronatalist notion that equates being a woman with being a mother. This research by Helen Peterson and Kristina Engwall sheds light on the persistence of social and cultural connections between motherhood and womanhood and also examines how these relationships breed conflict.<sup>6</sup>

The last article is about childfree which is based on the perspective of human rights and maqashid asy syari'ah on the childfree phenomenon in Indonesia. This research is based on 62 Indonesian citizen respondents in the age range of 18-30 years. This research resulted in a total of 60% of the millennial generation who support the childfree phenomenon on the grounds of the human rights of each individual. Unlike human rights. According to this researcher, the concept of childfree is different from the concept of maqashid asy syari'ah, namely caring for offspring. In the final conclusion, this study discusses the prevention of the childfree phenomenon and the negative impacts it can reduce.<sup>7</sup>

The author explores and examines five previous studies that have the same theme, namely childfree. The difference between the author's research and the five previous studies lies

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<sup>3</sup> Uswatul Khasanah and Muhammad Rosyid Ridho, "Childfree Perspektif Hak Reproduksi Perempuan Dalam Islam," *Al-Syakhshiyah Journal of Law and Family Studies* 3, no. 2 (Desember 2021): 105.

<sup>4</sup> Rosemary Gillespie, "Childfree and Feminine: Understanding the Gender Identity of Voluntarily Childless Women," *Gender & Society* 17, no. 1 (February 1, 2003): 122-36.

<sup>5</sup> Christian Agrillo and Cristian Nelini, "Childfree by Choice: A Review," *Journal of Cultural Geography, Race, Ethnicity, and Place*, 25, no. 3 (November 3, 2008).

<sup>6</sup> Helen Peterson and Kristina Engwall, "Silent Bodies: Childfree Women's Gendered and Embodied Experiences," *European Journal of Women's Studies* 20, no. 4 (October 22, 2013): 376-89.

<sup>7</sup> Dania Nalisa Indah and Syaifuddin Zuhdi, "The Childfree Phenomenon in the Perspective of Human Rights and Maqashid Al-Shari'ah," *Atlantis Press, Advances in Social Science, Education and Humanities Research, Proceedings of the International Conference on Community Empowerment and Engagement (ICCEE 2021)* (May 9, 2022).

not only in the methodology but also in the realm of the substance of the discussion and the results of the discussion. The author examines by exploring written sources and using a conceptual approach. The author tries to examine deeply and correlate the concept of childfree and the purpose of marriage. The research conducted by the author was analyzed in depth using the perspective of maqashid asy syari'ah. The concept of Childfree which has become a trend is analyzed using the concept of contemporary maqashid asy syari'ah through system theory. This research is expected to produce objective results regarding the correlation analysis of the concept of childfree and the purpose of marriage.

The type of research used by the author is normative legal research. The author presents several concepts in this article, namely the concept of childfree, the purpose of marriage and maqashid asy sharia. All three are the core of this writing. Childfree as a concept and decision that is implemented by a person has a close correlation with the purpose of marriage in both the normative and empirical realms. So that in order to produce comprehensive thinking results, an analysis is needed through maqashid ash sharia Jasir 'Audah. The approach used by the author is a conceptual approach (conceptual approach).<sup>8</sup> The author uses a conceptual approach, with the hope that writing about Childfree can be used as a scientific contribution and a new horizon among existing writings. In this study, there are two sources of data, namely primary legal material regarding the concept of childfree, the texts of the Qur'an and the purpose of marriage in Islam. The secondary legal materials used are books, scientific articles in the form of theses, theses and journals, legal dictionaries, narratives by a community on digital pages.<sup>9</sup>

### **The Concept of Childfree from Various Viewpoints**

The term childfree has recently become a topic of discussion among the general public, both through the virtual world of digital media and conversations in the real world. According to the Oxford Dictionary, childfree is a condition in which a person/spouse does not have children for the main reason, namely as a life choice.<sup>10</sup> The term childfree is also side by side with the term childless which means the condition of a person who does not have children due to infertility (infertility).

In essence, childfree is not a new thing, people who voluntarily choose not to have children (voluntary childlessness) have an exclusive designation, namely childfree. According to The Washington Post, in the 21st century there are millions of women around the world aged forty-five (45) living without having children. The concept of childfree has been accepted by society in both developed and developing countries.<sup>11</sup>

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<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Group, 2013).

<sup>9</sup> Mukti Fajar and Yulianto Achmad, *Dualisme Penentuan Hukum Normatif Dan Empiris*, (Yogyakarta: Pustaka Pelajar, 2017).

<sup>10</sup> "Apa itu Childfree dan Bagaimana Dampaknya?," Agustus 2021, <https://kumparan.com/berita-hari-ini/apa-itu-childfree-dan-bagaimana-dampaknya-1wOU0f0qCZR/2>. Diakses pada tanggal 14 Maret 2023, Pukul 15:05 WITA.

<sup>11</sup> Utomo Priyambodo, "'Childfree' Bukan Hal Baru, Sejarah Mencatat Argumen yang Berulang," *National Geographic Indonesia* (blog), February 10, 2023, <https://nationalgeographic.grid.id/read/133687411/childfree-bukan-hal-baru-sejarah-mencatat-argumen-yang-berulang?page=all>. Diakses pada tanggal 14 Maret 2023, Pukul 14:55 WITA.

The perception of a marriage orientation -which gives birth to offspring- has undergone a change in thinking among women or married couples. this is proven by the declaration expressed by someone loudly and boldly about the choice of childfree. Someone's decision to choose childfree can be categorized for several reasons, namely:<sup>12</sup>

- a) Economic Factors, financial considerations are one of the reasons someone is childfree. In this regard, the process of conceiving, giving birth to raising a child requires a lot of energy and financial strength. The material needs of pregnant women such as milk, baby equipment and child education costs are a factor for a person/couple to worry about themselves not being able to carry the burden and care for children with children.
- b) Closeness Relationship Factors with Partners, some couples are satisfied with the presence of each party, so that both of them do not need the birth of a child, as a third and new person in household life. Both husband and wife partners are able to complement and fill each other's love tanks in navigating the household ark without the presence of a child.
- c) Health Factors, health is the third factor for someone not wanting children. For someone who has a certain illness, they have feelings of worry and anxiety about dividing their time between curing their illness and caring for their child in the future. So that someone anticipates this anxiety by making childfree decisions.
- d) Traumatic Factors in the Past, an event in the past that someone experienced can be a traumatic story. Traumatic stories can go or stay in someone's memory for a long time. The influence of traumatic things that persist in a person's memory becomes a factor in a person's behavior in the present and the future, including the realm of childfree.
- e) Joint Decision, the general pattern of the concept of childfree is based on a joint decision between husband and wife. Every couple has reasons and motivations in running the household.

From a feminist point of view, the concept of childfree is a woman's control over her own body and determining her own path in life. A study in Australia by conducting a survey of 7448 women with an age range of 22 to 27 years showed that 9.1% wanted to be childfree. Women who choose to be childfree are a relatively new group and have come into the industry with the advent of contraception, increasing labor force participation rates and eliminating gender differences in job opportunities.<sup>13</sup>

In terms of health, there are no research studies that explain that not being pregnant and not giving birth can trigger the emergence of certain diseases or medical conditions. In the medical world itself, the term sterilization is known which aims to prevent pregnancy permanently. Self-sterilization is performed for patients who have had offspring beyond the

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<sup>12</sup> "Mengenal Istilah Childfree dan pengaruhnya untuk Kesehatan," *Siloam Hospitals* (blog), March 1, 2023, <https://www.siloamhospitals.com/en/informasi-siloam/artikel/apa-itu-childfree.>, Diakses pada tanggal 14 Maret 2023, Pukul 16:20 WITA.

<sup>13</sup> Citra Widyasari and Taufiq Hidayat, "Tinjauan Masalah Mursalah Terhadap Fenomena Childfree," *Diktum: Jurnal Syariah Dan Hukum* 20, no. 2 (Desember 2022): 404.

recommended number or because subsequent pregnancies could endanger the mother's life. On the other hand, being child-free, women who have been pregnant and breast-feeding are known to have a lower risk of breast, endometrial and ovarian cancer than women who have never been pregnant. In this regard, pregnancy and breastfeeding affect the ovulation cycle, besides that the hormones estrogen and progesterone during pregnant and lactating women can reduce the risk of the two diseases above.<sup>14</sup>

From the point of view of Islamic scholars (Muhammadiyah), the concept of childfree is not justified because it violates one of the goals of marriage, namely to produce offspring. A person's/couple's decision to be child-free is seen as purely worldly reasons such as career interests and economic considerations. Muhammadiyah Kupang scholars explained that childfree is a concept that does not develop the religion of Allah, is not in harmony with regeneration and maintenance of property. The decision not to have children is only permissible when in an emergency situation (*maslahat dharuriyat*), namely on a medical basis one cannot have children with another name *childless*.<sup>15</sup>

From the point of view of *maslahah mursalah* as a method of discovering Islamic law, the concept of childfree does not have a theoretical basis nor is it canceled by *syara'* through detailed *syara'* propositions. However, according to the concept of *maslahah ad-daruriyat* which was built on the thoughts of Imam al-Gazali. Nash from both the Al-Quran and Al-Hadis recommends the birth of children from the implications of marriage. In other words, the decision not to have an analytic because the choice is not supported by the text.<sup>16</sup>

### Interpretation of Legal Verses Regarding the Purpose of Marriage

The purpose of marriage is implicitly stated in the text of the Al-Qur'an letter Ar Rum verse 21 which reads;

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Meaning: "And of His signs is this: He created for you helpmeets from yourselves that ye might find rest in them, and He ordained between you love and mercy. Lo! herein indeed are portents for folk who reflect".

The meaning of the word of Allah SWT, *أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا* "He created for you helpmeets from yourselves," according to Imam Al-Qurtubi in his commentary explaining that Allah has created men, namely women. According to him, the meaning of "from your own kind" is that women were created from the semen of men, besides that another opinion was put forward by Qatadah namely that women (Hawa) were created by Allah SWT from the ribs of

<sup>14</sup> "Mengenal Istilah Childfree dan pengaruhnya untuk Kesehatan."

<sup>15</sup> Rahma Pramudya Nawang Sari et al., "Pendangan Tokoh Muhammadiyah Di Kota Kupang Terhadap Childfree," *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* 12, no. 2 (Desember 2022): 369-70.

<sup>16</sup> Citra Widyasari and Taufiq Hidayat, "Tinjauan Masalah Mursalah Terhadap Fenomena Childfree." 412

men (Adam).<sup>17</sup> While the word of Allah SWT, لَتَسْكُنُوا إِلَيْهَا “that ye might find rest in them,” opinion of Quraish Shihab quoted by Prof. Khoiruddin Nasution in his book Marriage Law I said that marriage is a meeting between a man and a woman who turns anxiety between the two into peace.<sup>18</sup>

Furthermore, the word of Allah SWT, وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً “and He ordained between you love and mercy,” According to two commentators, namely Ibn Abbas and Mujahid, the word al mawaddah means a biological relationship between husband and wife, while the word rahmah is the form of children.<sup>19</sup> Interpretation of verses إِنَّ فِي ذَلِكَ لَآيَاتٍ لِّقَوْمٍ يَتَفَكَّرُونَ “Lo! herein indeed are portents for folk who reflect,” The word fikr is commonly used in the Qur'an in the sense of contemplating things that are empirical and accessible to the five senses. The object of study in this verse is clear, namely about men and women who were created in pairs and brought peace, love and compassion to both of them. However, to achieve this, men and women as husband and wife need to think and meditate.<sup>20</sup>

In QS Ar Rum (30): 21 there are three words as keys in achieving marriage, namely sakinah, mawaddah and rahmah. Sakinah comes from the word Sakana-yaskunu-saakinun wa maskanun which means calm or silence after something is turbulent. While mawaddah comes from the word wadda-yawaddu-waddan-ma waddatan which means love, affection and liking. And rahmah comes from the word rahima-yarhamu-rahmatan-wa marhamatan which means love, pity.

In QS Ar Rum (30): 21 it is explained that one of the signs of Allah SWT's power is to create men and women in pairs of the same type, namely humans. Editorial pairs indicate that there is a life together between men and women in and or through marriage ties as husband and wife. husband and wife see each other and witness the goodness and privileges of each. So that peace overshadows men and women in the household.<sup>21</sup>

The majesty of a marriage and the affection it creates so that QS Ar Rum (30): 21 closes by stating that everything is a sign of the power and greatness of Allah SWT for those who are willing to use their minds and minds.<sup>22</sup> This is an affirmation that humans should always be grateful and remember the power of Allah. Humans have been created by Allah in pairs, that is, a person can be united with the opposite sex from foreigners so that they unite and create a feeling of love and affection between the two so that peace is created for both of them.

In the content of the discussion of fiqh, there are four arrangements regarding the human condition, the first is Rub'ul Ibadat, namely the arrangement of human relations as created with Allah SWT as the creator of humans, the second is Rub'ul Mu'amalat, namely the arrangement

<sup>17</sup> Shams al-Din al-Qurtubi, *Al-Jami' Li Ahkam al-Qur'an* (Beirut: Dar Ihya al-Turath al-'Arabi, 1985). 39

<sup>18</sup> Khoiruddin Nasution, *Hukum Perkawinan I Dilengkapi Perbandingan UU Negara Muslim Kontemporer* (Yogyakarta: ACAdemia + TAZZAFA, 2013). 43-44

<sup>19</sup> Shams al-Din al-Qurtubi, *Al-Jami' Li Ahkam al-Qur'an*. 39

<sup>20</sup> M. Quraish Shihab, *Tafsir Al-Misbah* (Jakarta: Lentera hati, 2012). 37

<sup>21</sup> Departemen Agama RI, *Al-Qur'an Dan Tafsirnya (Edisi Yang Disempurnakan)* (Jakarta: Widya Cahaya, 2011).

<sup>22</sup> Departemen Agama RI.

of relations among humans in order to meet daily needs. -day, the third is Rub'ul Jinayat, namely the arrangement of humans in a social security arrangement that guarantees a peaceful life, and the fourth Rub'ul Munakahat, namely the regulation of human relations in the family realm.<sup>23</sup>

The discussion on the fourth arrangement is Rub'ul Munakahat which is also commonly called Islamic marriage law. Several Muslim scholars say that the goals of marriage do not only lead to one achievement, but are many. Among them, Zakiyah Darajat said there were five (5) purposes of marriage, namely:

- a) Obtain and maintain offspring
- b) Fulfilling human needs with procedures for channeling lust and expressing affection between the two
- c) Fulfilling religious calls, protecting oneself from evil and evil
- d) Growing an attitude of seriousness to be responsible for accepting rights and carrying out obligations, as well as trying earnestly in obtaining halal assets
- e) Building a household to form a peaceful society on the basis of love and compassion

In the opinion of Tihami and Sahrani in their book it states that the purpose of QS Ar Rum (30): 21 is the formation of an Islamic family based on a combination of peace (sakinah), full love (mawaddah) and affection (Rahmah). As these three things can overshadow family life, solid cooperation is needed between family members.<sup>24</sup>

Family members who play a role, namely women as obedient and loyal wives, men as husbands who are honest and sincere, the role of fathers who give affection and be friendly, mothers who play a role with gentle and subtle actions, children as sons and daughters obedient and obedient parents. The ideal frame of family life does not escape the awareness of family members who know each other's rights and obligations.

Apart from Zakiyah Darajat, there are other Muslim scholars explaining and analyzing the purpose of marriage. Prof. Khoiruddin Nasution mentioned 5 (five) purposes of marriage. Namely:<sup>25</sup>

- a) Get a life that is sakinah, mawaddah and Rahmah  
The main goal in the implementation of marriage is to obtain sakinah (tranquility), mawaddah (love) and Rahmah (compassion). While complementary goals are to obtain offspring, fulfillment of biological needs, self-preservation and worship. The four complementary goals have a large portion of their fulfillment. So that the main goal can only be achieved if the complementary goals are fulfilled properly. The relationship between husband and wife is a relationship that is mawaddah and rahmah. The relationship between husband and wife is not only limited by material and biological services. Fulfillment of material and biological as a means of achieving spiritual needs.

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<sup>23</sup> Tihami and Sohari Sahrani, *Fikih Munakahat: Kajian Fikih Nikah Lengkap* (Depok: Rajawali Pers, 2022). 15.

<sup>24</sup> Tihami and Sohari Sahrani. 17-18

<sup>25</sup> Khoiruddin Nasution, *Hukum Perkawinan I Dilengkapi Perbandingan UU Negara Muslim Kontemporer*. 43-60.



b) Reproduction/regeneration

Marriage is the union of two people on earth. From various texts of the Qur'an and al Hadith, it is mentioned about the creation of humans in pairs which has implications for the birth of offspring. This shows that Muslims are always encouraged to marry in order to have children. The recommendation from the texts is not only about obtaining offspring, but also by paying attention to the quality of offspring.

Muslims are encouraged to regenerate through legal marriage ties and leave behind a weak generation. Because regeneration is a way to continue the relay of life and spread Islamic da'wah throughout the world. The Prophet Muhammad SAW invited his people to live as a family and pass on and maintain offspring and live life as citizens and pious Muslims. The aim of reproduction and regeneration is to give birth to a strong and many generation to uphold Islamic teachings.

c) Fulfillment of biological needs

Fulfillment of biological needs is required through men and women who hold the status of husband and wife in a legal marriage. Several verses of the Koran discuss sexual relations. Sexual relations are only permissible for husband and wife, so the Nash recommends that someone who is unable to get married should take care of himself. Husband and wife are analogous to clothes used to protect and warm one another. In addition, sexual relations addressed to husband and wife are emphasized on their maintenance. Husband and wife are required to maintain and maintain self-esteem from channeling lust which is not permitted by religion.

d) Maintain honor

Maintaining honor includes self-respect, children and family. This fourth goal of marriage is correlated with the third goal. Channeling a person's sexual desires is properly regulated, namely through marriage and at the same time to maintain his honor.

e) Worship

The implementation of worship can be sourced from various ways, one of which is by carrying out marriage.

### **Review of Childfree and the Purpose of Marriage in the Maqashid asy-Syari'ah System Theory**

Contemporary Muslim scholar, Jasir 'Audah places maqashid asy syari'ah in an important position in every portion of the application of Islamic law. System theory as a method of thinking and analysis developed by Jasir 'Audah. Systems theory is applied to improve and update the maqashid ash syari'ah concept and explain the Islamic legal framework. According to Jasir 'Audah, the system is *a set of interecting units or elements that forms an integrated-whole*

*intend to perform some function.*<sup>26</sup> It can be concluded that systems theory is a holistic approach that involves units, elements and sub-systems as a single unit that are interconnected and work together through certain procedures to achieve a goal. Systems theory has six features;<sup>27</sup>

### *Cognitive Character of Islamic Law*

The jurists are of the opinion that the law is a manifestation of the assumptions of the mujtahids when examining a text. Different assumptions have implications for a variety of ijtihad results. With that in mind, the mujtahid's study of a text can have many versions of truth. System theory of Islamic law is interpreted as a system in the ontological realm. The application of system cognition features points to conclusions that are judged by jurists as the most probable truth and variations of opinion as valid.

One of the fiqh experts, namely Imam Al Ghazali, conducted ijtihad regarding the decision of someone who does not want children (Childfree). Although it is not clear regarding the concept of childfree, Imam al Ghazali examines it using the editorials of 'azl and inzal. The law of 'azl or spilling sperm outside the vagina and inzal or not spilling sperm inside the uterus after inserting the penis into the vagina is permissible (mubah) does not reach makruh and is unlawful. Only as a path taken to leave primacy.

Imam al Ghazali explained:<sup>28</sup>

وَأَمَّا قُلْنَا لَا كَرَاهَةَ بِمَعْنَى التَّحْرِيمِ وَالتَّنْزِيهِ، لِأَنَّ إِثْبَاتَ النَّهْيِ إِنَّمَا يُمَكِّنُ بِنَصٍّ أَوْ قِيَاسٍ عَلَى مَنْصُوصٍ، وَلَا نَصٌّ وَلَا أَصْلٌ يُقَاسُ عَلَيْهِ. بَلْ هَهُنَا أَصْلٌ يُقَاسُ عَلَيْهِ، وَهُوَ تَرْكُ النِّكَاحِ أَصْلًا أَوْ تَرْكُ الْجِمَاعِ بَعْدَ النِّكَاحِ أَوْ تَرْكُ الْإِنْزَالِ بَعْدَ الْإِيلاجِ، فَكُلُّ ذَلِكَ تَرْكٌ لِلْأَفْضَلِ وَلَيْسَ بِإِزْكَابٍ نَهْيٍ. وَلَا فَرْقٌ إِذِ الْوَلَدُ يَتَكَوَّنُ بِوُقُوعِ النُّطْفَةِ فِي الرَّحِمِ

Meaning, "I am of the opinion that the law of 'azl is not makruh with the meaning of makruh tahrîm or makrûh tanzîh, because to stipulate a prohibition against something can only be done on the basis of texts or qiyâs on texts, even though there is no text or origin or source of qiyâs that can be used as evidence for makruh 'azl. In fact, what exists is the origin of qiyâs that allows it, namely not getting married at all, not having intercourse after marriage, or not inzal or spilling sperm after inserting the penis into the vagina. Because everything is just an act of abandoning virtue, not an act of prohibiting it. Everything is no different because a new child will potentially exist by placing sperm in the woman's uterus".

Imam al Ghazali's opinion about the permissibility of rejecting the existence of children before they have the potential to form can be compared with the opinions of Ibn 'Abbas and Mujahid who interpret the words mawaddah and rahmah in QS Ar Rum (30): 21 as a biological relationship between husband and wife which has implications for the birth of children.

<sup>26</sup> Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law* (London: The International Institute of Islamic Thought, 2008).33

<sup>27</sup> Jasir 'Audah, *Membumikan Hukum Islam Melalui Maqasid Syariah* (Bandung: Mizan, 2015). 86-97.

<sup>28</sup> Abu Hamid Al-Ghazali, *Ihya' 'Ulumiddin* (Beirut: Darul Ma, n.d.).51

Basically, the decision of a person/spouse to be childfree is permissible in Islamic law and is a step that leaves priority, namely the recommendation to regenerate or give birth to children.<sup>29</sup>

### *The Overall Islamic Legal System*

The overall feature is as an antithesis to atomistic and reductionist understanding, namely relying on one text to solve all kinds of problems without looking at other related texts. The atomistic approach is criticized by jurists because it creates uncertainty. Therefore, contemporary scholars try to correct the shortcomings of this approach in the maqashid idea. Just as Ibn 'Asyur prioritized social maqashid over individual maqashid, Rashid Ridha inserted reforms and community rights into his maqashid theory, Yusuf al-Qaradawi created universal maqashid based on the Qur'an with the aim of building a good family and nation.<sup>30</sup>

The concept of childfree and the purpose of marriage can be reflected in the texts of the Al-Qur'an, including the following;

QS An Nisa' (4): 1

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۚ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۚ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

Meaning: "Mankind! Be careful of your duty to your Lord Who created you from a single soul and from it created its mate and from them twain hath spread abroad a multitude of men and women. Be careful of your duty toward Allah in Whom ye claim (your rights) of one another, and toward the wombs (that bare you). Lo! Allah hath been a watcher over you".

QS An Nisa' (4): 9

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَفًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا

Meaning: "And let those fear (in their behaviour toward orphans) who if they left behind them weak offspring would be afraid for them. So let them mind their duty to Allah, and speak justly".

QS At Tahrim (66): 6

يَا أَيُّهَا الَّذِينَ آمَنُوا قُوا أَنْفُسَكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ وَالْحِجَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَاظٌ شِدَادٌ لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ

Meaning: "O ye who believe! Ward off from yourselves and your families a Fire whereof the fuel is men and stones, over which are set angels strong, severe, who resist not Allah in that which He commandeth them, but do that which they are commanded".

The three texts of the Qur'an above explain family matters. QS An Nisa' (4): 1 as an editorial which indicates regeneration/reproduction by starting from Adam and Eve, QS An

<sup>29</sup> Shams al-Din al-Qurtubi, *Al-Jami' Li Ahkam al-Qur'an*. Hlm. 39-40.

<sup>30</sup> Jasir 'Audah, *Membumikan Hukum Islam Melalui Maqasid Syariah*. Hlm. 257-258.

Nisa' (4): 9 mentions the recommendation to give strong and prosperous offspring and QS At Tahrim (66): 6 explains the recommendations to protect yourself and your family from the fires of hell.

The three verses above can explain the correlation between the concept of childfree and the purpose of marriage. In essence, married couples are encouraged to reproduce by giving birth to children, but in the process of conceiving until giving birth they must be in the right way so as to produce quality offspring both from a spiritual and worldly point of view.

Each partner in a marital relationship has control over his life. Childfree decisions can be encouraged or avoided. Childfree decisions can be of great value if they cause the loss of the values of the purpose of marriage, as well as childfree decisions can be of value in achieving the goals of marriage, namely happiness and tranquility for the person taking that step.

#### *The openness of the Islamic legal system*

The system must always maintain a level of openness and self-renewal to stay alive. This is intended because environmental situations and conditions, both individual and societal, can change along with the development of the times so that the existing problems of life must be resolved by open Islamic law. Meanwhile, a closed system is like a unit that is isolated from the environment, which is commonly called the door of *ijtihad*, which has been closed.

Childfree can be juxtaposed with childless. Besides that, there is another concept, namely delaying pregnancy that can be done by couples through the use of contraception. Childfree decisions can be based on human rights by considering several factors behind childfree decisions. Opinions about childfree are from various points of view. With that, if it is correlated with the purpose of marriage it will always give rise to varied thoughts, opinions and analysis.

#### *Interrelated Hierarchy of Islamic Legal System*

Hierarchical features are interrelated to classify *maqashid al 'ammah* which is analyzed from all parts of Islamic law, *maqashid al Khassah* which is studied from all chapters of Islamic law and *maqashid particular* which is formed by a particular text or law. This feature has implications for universally reaching communities, nations and the entire human race.

A person's decision to be childfree can be motivated by several factors, such as financial worries, career advancement obstacles and medical reasons. If viewed from these factors, a person is allowed not to have children with the intention that the couple can stabilize their interests while still intending to have children at other times.

#### *Multidimensional Islamic Legal System*

Some people think that only one dimension is needed in examining a problem, so that ideas and ideas will tend to diverge and conflict with each other. The multidimensional feature views Islamic law as no longer producing (zero-sum games) but shifting to (win-win games), ideas and ideas are defined as competitions that are won together. The issue of whether or not childfree is permissible has implications for views from many angles, with different hypotheses.

## *The Purpose of the Islamic Legal System*

The feature of meaning has a chance of elasticity in examining a problem in life. Mujtahids can achieve the same result using different *ijtihad* methods in the same environment and also produce different *ijtihad* in different environments. In essence, the similarities and differences in the results of *ijtihad* are valid as long as they reach *maqashid ash syari'ah* for the benefit of the people. A person's decision to have children and or not to have children at a certain time or permanently must be based on the common good. So that decisions can be taken after undergoing a process of serious contemplation.

The six features of Jasir 'Audah's *maqashid asy syari'ah* system theory are interrelated, but only one feature interprets the core methodological study of Islamic law, namely the feature of intent. The highest point as well as encompassing all the features of Jasir 'Audah's *maqashid asy syari'ah* system theory is the intentional value that produces human benefit. The six features are interrelated in examining the concept of *childfree* with the goal of marriage. *Childfree* decisions exist with various background factors. While the purpose of marriage in Islam exists with several values of the meaning of marriage itself, one of which is the central sentence, namely "to have offspring".

The concept of *childfree* and having offspring will forever be counter-productive if it is not understood comprehensively and is able to go hand in hand if in the process of examining through various considerations and prioritizing the situation and conditions of the *childfree* decision maker. In this analysis, *childfree* decisions based on the goals of marriage and the *maqashid asy syari'ah* *maslahah* values (safeguarding religion, soul, property, mind and offspring) result in two things: *first*) *childfree* decisions are recommended not to be made if the underlying factors do not endanger the existence of beneficiary values, *second*) *childfree* decisions are allowed if there is an urgency for the existence of benefit.

## **Conclusion**

*Childfree* is a condition where a person or couple chooses not to have children for reasons of choice. Some of the factors behind the decision of a *childfree* person/spouse are economics, close relationship with a partner, health, past trauma and joint decisions. The concept of *childfree* can be viewed from a feminist, social, character and health point of view. Meanwhile, from the point of view of the first source of Islamic law, *childfree* is not something that is prohibited or encouraged, because the editorial text of the Qur'an gives advice that every married couple should give birth to good offspring. In essence, the process of breeding and giving birth to offspring is a complementary goal to achieve *sakinah* (tranquility), *mawaddah* (love) and *rahmah* (love) as the main goal of marriage. One's happiness can be achieved by not wanting children in marriage, while another way is to live a household life by moving towards achieving the goal of marriage, namely regeneration. Based on Jasir 'Audah's *maqashid asy syari'ah* system theory, it can be concluded that the concept of *childfree* with the correlation of the purpose of marriage produces two things, namely *it is recommended to do and it is permissible to do*.

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