



## Childfree in the Lens of Islamic Jurisprudence: Women's Reproductive Rights between Classical and Contemporary Fiqh

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### Abstract

In religious conception, marriage is the law chosen by God as a means for humans to have offspring. However, not all married couples have the desire to have children. The unwillingness to have children is often referred to as childfree. Childfree is the desire not to have children in the future. In Indonesia, the term childfree began to attract attention on social media since Analisa Widyaningrum, a clinical psychologist, invited Gita Savitri, so that this opinion eventually reaped pros and cons in various circles. Therefore, researchers are interested in examining how childfree is viewed based on classical and contemporary fiqh studies. This research uses library research with a qualitative approach, namely to examine the phenomenon of childfree based on women's reproductive rights, then examine childfree based on historical facts from classical fiqh through the works of classical Ulama' and childfree based on contemporary fiqh, by adjusting the opinions of Ulama' in accordance with the reality of modern times. It can be found that according to the reproductive rights of childfree women, as stated by Masdar, emphasizing that a wife has the right to want to get pregnant and determine the number of children she wants, such things should be the free choice of the individual concerned. Any party has no right to intervene and even impose their will in any way and for any reason. Because in the future those who bear the risk are of course both parties, especially a wife. Furthermore, based on classical fiqh, Childfree can be equated with the term 'Azl, namely rejecting the existence of a child before it has the potential to exist and this is not punished as haram, but rather punished as makruh based on the Book of Ihya 'Ulum al-Din. Furthermore, childfree based on contemporary fiqh there is also no prohibition either in the Qur'an or hadith, the agreement of husband and wife not to have children is allowed especially on the basis of concerns or because of illness, this is also the same as classical fiqh where the problem of childfree is qiyaskan with the problem of Azl.



## Introduction

In religious terms, marriage is a law chosen by God as a means for humans to have children. Marriage serves as a means to bring two people together in a happy family bond, one of which is having children through a lawful relationship.<sup>1</sup> However, not all married couples can have children due to reproductive health reasons (childless), or because they do not want to have children (childfree). Childless is a term for a married couple who are unable to have children due to health problems. Additionally, the term childless can also refer to couples who choose to delay pregnancy or space out the birth of their children. Meanwhile, childfree refers to couples who have mutually agreed not to have children.<sup>2</sup>

Childfree is a term given to married couples who live together without wanting to have children, let alone raise them. Houseknecht defines childfree as people who do not have children and do not wish to have children in the future. The term childfree may sound unfamiliar to Indonesian society, as it is not a term that originates from the Indonesian language. Rather, it is a common phenomenon found in developed countries in Europe, America, and even Asia. According to Collins Dictionary, childfree describes a condition in which a person decides to live without children, mainly because of their own choice.<sup>3</sup> This is different from Indonesia, which is a country with a pronatalist culture, meaning that after marriage, it is considered necessary to have children. Although Indonesia is a democratic country, the pronatalist culture in Indonesia is one of the important considerations regarding the childfree phenomenon.<sup>4</sup>

In Indonesia, the term "childfree" began to attract attention on social media when clinical psychologist Analisa Widyaningrum invited Gita Savitri to discuss it.<sup>5</sup> Gita Savitri is a feminist from Indonesia who now lives in Germany. Regarding this statement, Widyaningrum and Gita Savitri had a conversation on the YouTube channel "Analisa Channel" on January 13, 2022. The 18:31-minute YouTube video explains the response of feminist figure Gita Savitri regarding her stance on having children. In this context, Gita Savitri revealed that she and her husband had mutually agreed to remain childfree. Regarding the discussion on the YouTube channel, several months later, one of Gita's followers on Instagram asked how Gita deals with people who oppose her choice not to have children.<sup>6</sup> According to Gita, statements about being childfree will attract pros and cons, but this is considered normal. However, it is not normal for

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<sup>1</sup>Husein Muhammad, *Fiqh Perempuan*, (Yogyakarta: Ircisod, 2019).

<sup>2</sup>Rudi Adi, Alfin Afandi, Analisis Childfree Choice Dalam Perspektif Ulama' Klasik dan Ulama' Kontemporer, *Tarunalaw: Journal of Law and Syariah*, Vol. 01 No. 01, January 2023, Page. 78-87.

<sup>3</sup>Collins Dictionary, "Childfree," <https://www.collinsdictionary.com/dictionary/english/childfree>.

<sup>4</sup>Jihan Salma Mubarak, Eva Meidi Kulsum, Wahyudin Darmalaksana, 2022, Syarah Hadis Seputar Fenomena Childfree di Indonesia dengan Pendekatan Ijmali, *Jurnal Gunung Djati Conference Series*, Volume 8.

<sup>5</sup>Analisa Widyaningrum is a Clinical Psychologist at Jogja International Hospital (JIH) born in 1989. She is the Founder of Analisa Personality Development Center, a professional consulting institution which operates in the field of psychology and personality.

<sup>6</sup>Analisa Widyaningrum, "Kpn Punya Anak? Aku Pngen Punya Ponakan Online" Jawaban & Alasan Gita Savitri Utk Pertanyaan Tersebut," Analisa Channel, 2022, <https://www.youtube.com/watch?v=rwd5i9XXEKM>.

those who are against it to insult others and interfere with their privacy, because this will most likely cause the person to suffer from their choice. Gita also stated that being happy with her life choice will not disturb or interfere with other people's life choices.<sup>7</sup>

The response to the question posed to Gita invited many comments. Initially, the question was personal in nature, but it turned into a topic of discussion among various experts, especially those in the field of religion, both classical and contemporary.<sup>8</sup> Therefore, researchers are interested in studying how childfree views are based on women's reproductive rights, along with classical and contemporary fiqh perspectives. Childfree is a new phenomenon that is widely discussed in terms of its legal status and compatibility with the objectives of sharia. Not only that, childfree is also seen as very controversial, so an in-depth study of this topic is urgently needed. With the emergence of the concept of childfree, researchers are interested in conducting a study based on several perspectives, including how childfree is viewed in terms of women's reproductive rights, and through classical and contemporary fiqh studies as a way to gain clarity on the phenomenon of childfree.<sup>9</sup>

## Method

This study uses library research. Library research is a series of activities related to the method of collecting library data.<sup>10</sup> Library research is research conducted by obtaining information data through books, magazines, documents, historical records, or pure library research related to the research subject. Library research can be conducted through a process that includes systematically identifying a theory, finding references in the library, and analyzing various documents related to the research topic.<sup>11</sup>

The approach used in this study is a qualitative approach, which is a research approach conducted and aimed at describing and analyzing phenomena, events, social activities, beliefs, perceptions, attitudes, and thoughts of individuals and groups. Several descriptions are used to find principles and explanations that lead to research conclusions. In this case, the type and approach used is to examine the phenomenon of childfree based on several topics of study, including women's reproductive rights in the childfree phenomenon, then examining childfree through the historical facts of classical fiqh through the works of classical scholars in terms of legal rulings, which we do not doubt, because the sources are very close to the time of the Prophet Muhammad SAW. It also examines childfree based on contemporary fiqh by adjusting the opinions of scholars in accordance with the realities of an increasingly developing era.

<sup>7</sup>Gita Savitri is a content creator, singer and book writer born in 1992. The content she produces is very diverse, ranging from song covers, vlogs and several opinions on issues related to education, diversity, gender and minorities.

<sup>8</sup>This was also conveyed by Victoria Tunggono in the opening of the book *Childfree and Happy*. "Buku ini bukan ditulis untuk mempengaruhi siapa pun supaya mengikuti pilihan hidup Bebas-Anak"

<sup>9</sup>Shelvy Susanti dan Nurchayati, 2019, *Menikah Tanpa Keturunan : Masalah Psikologis yang Dialami Perempuan Menikah Tanpa Anak dan Strategi Coping Dalam Mengatasinya*, Jurnal Penelitian Psikologi, Volume 06, Nomor 01.

<sup>10</sup>Mahmud, *Metode Penelitian Pendidikan*, (Bandung : Pustaka Setia, 2011), Page. 31.

<sup>11</sup>M. Nazir, *Metode Penelitian*, (Jakarta : Ghalia Indonesia, 2003), Page. 27

## **Result and Discussion**

### **Definition of Childfree**

Childfree consists of two words, namely child, which means child, and free, which means free. According to Victoria Tungguno in her book entitled "Childfree and Happy", she defines childfree as a conscious lifestyle choice made by someone who wants to live a life without having children.<sup>12</sup> Childfree is an agreement made by a husband and wife not to have children in their marriage for various considerations and reasons. In the concept of fiqh itself, childfree can be defined as an agreement made to reject childbirth or marriage. Childfree can also be defined as a condition in which a person or couple chooses not to have children, so that in a household, careful consideration must be given to the decision to choose the childfree path.<sup>13</sup>

For couples who choose to be childfree, there can be positive impacts. For example, when a husband and wife agree to be childfree, they are freer to do things without the obligation of caring for children, and can focus more on each other, which can lead to greater satisfaction in their relationship. Couples who choose to be childfree are also considered to have more time to pay attention to their partner and fulfill their needs, which can have a positive impact. However, childfree also has negative impacts because the presence of a child in marriage is also considered important for regeneration, which is the purpose of marriage. Not only that, the presence of a child is also important in establishing a marital relationship that can strengthen communication and interaction between spouses. In social matters, children are also important in practicing religion or continuing culture and traditions.<sup>14</sup>

### **Childfree Based on the Perspective of Women's Reproductive Rights**

In analyzing the childfree phenomenon, the author cites the views of Masdar and Imam al-Ghazali. According to Masdar, a married woman and man have equal rights and obligations in sexual relations. Therefore, there are three categories of women's rights that must be fulfilled by husbands towards their wives, including: the right to health and safety, the right and obligation to welfare, and the right and obligation to participate in discussions related to matters concerning women's interests.<sup>15</sup> In this case, Masdar also emphasized that husbands are not merely subjects and wives objects, but rather that husbands and wives have the right to be both subjects and objects in matters of child

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<sup>12</sup>Victoria Tungguno, *Childfree and Happy*, ed. Rifai Asyhari, (Yogyakarta: Buku Mojok Group, 2021), Page. 13.

<sup>13</sup>Nasiri Nasiri, "Marriage in Morocco: A Practices of The Mudawwanatul Usrah Law in The Land of Guardians," *International Journal of Islamic Thought and Humanities* 1, no. 1 SE-Articles (March 1, 2022): 27–39, <https://doi.org/10.54298/ijith.v1i1.13>.

<sup>14</sup>Imam Sujono, "Legal Education about Marriage of Women without Divorce Certificate and Previously Unregistered Marriage," *International Journal of Law Society Services* 2, no. 2 (October 24, 2022): 48, <https://doi.org/10.26532/ijlss.v2i2.22410>.

<sup>15</sup>Masdar F. Mas'udi, *Islam dan Hak-hak Reproduksi Perempuan (Dialog Fiqih Pemberdayaan)*, (Bandung: Mizan, 1997), 74.

reproduction and marital relations, and that neither party should dominate the other, because domination would result in the restriction of rights and existence.

Masdar emphasized that a wife has the right to decide whether to become pregnant and to determine the number of children she wants. Such matters should be left to the free choice of the individuals concerned. No party has the right to intervene or impose their will in any way or for any reason. Ultimately, it is both parties, especially the wife, who bear the risk. According to Masdar, regarding reproductive rights, women have the right to choose a partner, enjoy sexual relations, have children, regulate the spacing of pregnancies, take maternity leave, and divorce their partners. From this, it can be seen that women's reproductive needs are very important, and if they are not used properly, harmony in the family will be difficult to achieve, because essentially, what is expected in a household is children or offspring. This can be achieved through reproduction.<sup>16</sup>

The decision to remain childfree for married couples is still a subject of debate, particularly on social media, especially in Indonesia. Many women argue that there is nothing wrong with being childfree because it is a matter of human rights, especially women's rights, as reproduction is a woman's prerogative and women have the right to choose whether or not to reproduce. Having children means taking on a huge responsibility for them. When a woman becomes pregnant, her responsibilities do not end with giving birth and raising the child, but also include caring for and educating them until they grow up. Meanwhile, everyone's ability to raise children varies. The decision to be childfree is one that can only be made if the couple is in a legal marriage. If individuals feel unable to meet the needs of their children, then the couple can postpone having children. Therefore, the acceptance of the concept of childfree in Indonesia is due to the fact that childfree does not violate the Human Rights Law which protects the absolute rights of every individual. It is also in line with the concept of *toenransi* in the second principle of Pancasila.

### Childfree Based on Classical Fiqh Perspectives

Fiqh is one of the branches of knowledge that developed in the early days of Islam. Because fiqh is a product of Islamic law, it can evolve in line with developments in society. Fiqh was developed by scholars of fiqh using the method of *ijtihad*. This tradition of *ijtihad* has essentially been ongoing since the time of the Prophet Muhammad (peace be upon him).<sup>17</sup> Harun Nasution said that the classical scholars' way of thinking was directly connected to the Qur'an and hadith, which resulted in a lot of qualitative *ijtihad*.<sup>18</sup>

Based on the Book of *Al-Umm*, the most popular fiqh book attributed to Asy-Syafi'i. In this book, there is no specific discussion about childfree. However, there are several perspectives and views related to the choice to be childfree. As is known, childfree is not a

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<sup>16</sup>Seno Aris Sasmiti, "Pemikiran Masdar Farid Mas'udi Tentang Hak Reproduksi Wanita," *Buana Gender* 15, no. 1 (Juni 2020): 59

<sup>17</sup>Rizem Aizid, 2015, *Sejarah Peradabaan Terlengkap*, Yogyakarta: Diva Press, Cet. 1, hal. 93-97.

<sup>18</sup>Muhammad Azhar, 1990, *Fiqh Kontemporer*, makalah Seminar Nasional Ukhuwah Islamiyah, IAIN Sumut, hal. 19.

lifestyle choice to not have children in marriage. Rather, the term childfree is a new discussion to describe couples who choose not to have children. In childfree, there are several reasons why couples choose to be childfree. Among them are factors such as health/fertility, psychological, economic, social, and concerns about not being able to care for children properly.<sup>19</sup>

In addition, according to the book *Al-Mughni* by Ibn Qudamah, may Allah have mercy on him, it is one of the great works of the Ahlus Sunnah wal-Jama'ah in terms of discussing Islamic jurisprudence. In this book, the phenomenon of childfree is examined in depth, although there is no specific discussion on this phenomenon. Among other things, this book states that one of the purposes of marriage is to provide for one's wife and children. The scholars agree that a father is obliged to provide for his young children who do not have any wealth. This is because children are part of their fathers. When a father is obliged to provide for himself, he is also obliged to provide for his children. Similarly, a mother is also obliged to be provided for and to provide for her children if they do not have a father (due to death). This opinion was expressed by Imam Abu Hanifah and Imam Syafi'i.<sup>20</sup>

Furthermore, in Imam Malik's book *al-Muwatta*, there is no specific discussion or view on childfree in the chapter on discussion, but there are several views that can be used as a basis for an in-depth study of the childfree phenomenon, including the concept of 'azl.<sup>21</sup> In Islamic studies, Childfree can be likened to the term 'Azl. 'Azl is defined as spilling semen outside the vagina. In medical science, al-'Azl is referred to as Coitus Interruptus, which is ejaculating outside the vagina so that the sperm does not meet the wife's egg. Therefore, as a result, the semen released by the husband is scattered outside the wife's vagina, or by using contraceptives for both husband and wife to prevent fertilization (pregnancy).<sup>22</sup>

The term childfree is analogous to 'Azl because it is essentially the same as the childfree choice, which is based on the mutual rejection of having a child before it has the potential to exist. Sexual relations between husband and wife are the most likely cause of pregnancy. This method can be a way for a husband and wife to continue living together and having sexual relations without having children, because the wife will not become pregnant if the husband's sperm does not enter her egg. Imam Ghazali said that abandoning marriage, abandoning sexual intercourse after marriage, or abandoning Azl during sexual intercourse is not considered haram. This is as stated in his book *Ihya' Ulum al-Din*, which means: We say that what is meant by makruh is not makruh tahrim or

<sup>19</sup>Muhammad bin Idris Asy-Syafi'i, 2001, *Al-Umm*, jilid 6, Madinah: Dar al-Wafa' Li at-Thaba'ah Wa an-Nasyar Wa al-Tauzi', t.th, hal. 110.

<sup>20</sup>Ibnu Qudamah, 1997, *Kitab Al-Mughni*, Jilid 11, Dar Alamul Kutub, Riyadh, Page. 373.

<sup>21</sup>Malik bin Anas, 1999, *al-Muwatta* Imam Malik Ibn Anas, terj. Dwi Surya Atmaja. Ed. cet. I; Jakarta: PT. RajaGrafindo Persada. Page. 360.

<sup>22</sup>Fauzi, A. (2017). *Keluarga Berencana Perspektif Islam Dalam Bingkai Keindonesiaan*. Keilmuan Dan Teknologi, 3(1), Page. 92–108.

makruh tanzih, because establishing a prohibition is only possible with nash or qiyas in nash, and there is no nash or qiyas that can rule Azl as makruh. However, there is an analogy that permits it, namely not marrying at all, not having intercourse after marriage, or not practicing Azl during intercourse. All of these are merely abandoning what is more preferable, not violating something that is forbidden.<sup>23</sup>

### Childfree Based on Contemporary Fiqh Perspectives

In addition to classical fiqh, there is also modern fiqh or contemporary fiqh. Modern fiqh is a field that studies various practical sharia laws based on detailed arguments, which discuss issues in the contemporary era. One method of resolving contemporary legal issues is through contemporary fiqh. This is done through ijihad, through contemporary fiqh scholars who are considered to have a major role in resolving issues that arise.<sup>24</sup>

The term contemporary fiqh itself is equivalent to masail fiqhiyah, defined as fiqh research on issues related to the present day. Therefore, it can be understood that Islamic law in the contemporary era refers to the Islamic legal perspective on various current issues, taking into account the themes raised, in relation to developments in the era regarding new values and ways of thinking, which is one of many major changes that have occurred. The same applies to the latest issue of childfree. Based on the book *Fiqh As-Sunnah* by Sayyid Sabiq, there is no specific discussion on the perspective regarding the practice of childfree. However, there are several views that can be used as a benchmark for examining the childfree practice, including the purpose and wisdom of marriage, which is to multiply (continue) offspring and preserve life, for which each spouse has been given the means by Allah to achieve this as best as possible.<sup>25</sup>

Furthermore, based on the book *Fiqhu al-Islam wa Adillatuhu* by Imam Wahbah Az-Zuhaili, there are several views in this book that can be used as a basis for an in-depth study of the childfree phenomenon, including the purpose of marriage, which is to preserve the human community from extinction by continuing to give birth.<sup>26</sup> Next is regarding 'Azl. Most scholars agree that performing 'azl without her permission is makruh (disliked), because intimate relations are the means of conceiving a child, and the wife has the right to have children. By doing so, the opportunity to have children is lost.

In addition, the Egyptian Fatwa Institution Dar al-Ifta' Egypt Number 4713, February 2019 Sheikh Sauqi Alam also issued a Fatwa that in Childfree, among others: In Islam, there is no prohibition in the Quran or Hadith regarding the Childfree movement. The agreement between husband and wife not to have children is permissible, especially if it is based on concern or due to illness. According to Sheikh Ibrahim Alam, the issue of

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<sup>23</sup>Imam Abi Hamid Muhammad Ibn Muhammad al-Ghazali, *Ihya' Ulum al-Din*, Kitab Adab al-Nikah (Beirut: Dar al-Kutub, 2001), Page. 51.

<sup>24</sup>Gibtiah, 2016, *Fikih Kontemporer*, Jakarta: Prenadamedia, Cet. 1, Page. 7.

<sup>25</sup>Sayyid Sabiq, 2008, *Fikih Sunnah*, Tahkik dan Takhrij: Muhammad Nasiruddin Al-Bani, Cakrawala Publishing, Jakarta, hal. 196-197.

<sup>26</sup>Wahbah az-Zuhaili, 1989, *Al-Fiqhu Al-Islam wa Adillatuhu*, Dar al-Fikr, Beirut, hal. 31.

Childfree is analogous to the issue of 'Azl or interrupting sexual intercourse before reaching orgasm, thereby preventing the husband's sperm from entering the wife's vagina.<sup>27</sup>

## Conclusion

Based on the discussion of the topic of childfree, it can be concluded that childfree is an agreement made by a husband and wife not to have children in their marriage for various considerations and reasons. For couples who adhere to childfree, they believe that there will be positive impacts, including that when a husband and wife agree to be childfree, the couple will be freer to do things without the obligation to take care of children, and will be more focused on each other, thereby providing satisfaction in their marital relationship. Therefore, in this study, the researcher analyzes childfree based on the perspectives of women's reproductive rights, classical fiqh, and contemporary fiqh. According to women's reproductive rights, as emphasized by Masdar, a wife has the right to decide whether to become pregnant and to determine the number of children she wants. This should be a free choice for the individual concerned. No party has the right to intervene or impose their will in any way or for any reason. Ultimately, both parties, especially the wife, will bear the risks. Furthermore, based on classical fiqh, childfree can be likened to the term 'Azl, which means rejecting the existence of a child before it has the potential to exist, and this is not considered haram, but rather makruh based on the book *Ihya' Ulum al-Din*. Furthermore, based on contemporary fiqh, there is no prohibition in the Qur'an or Hadith against childfree. The agreement between husband and wife not to have children is permissible, especially if it is based on concern or illness. This is also in line with classical fiqh, where the issue of childfree is analogous to the issue of Azl.

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