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## IMPLICATION OF CHILDFREE ON INHERITANCE RIGHTS IN ISLAMIC FAMILIES: NORMATIVE ANALYSIS BASED ON MAQASHID SHARI'AH

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**ABSTRACT:** *The phenomenon of childfree, namely the conscious decision not to have offspring, is a contemporary social dynamic that impacts the Islamic family law system, particularly in the area of inheritance. This study aims to analyze how the choice of childfree affects the structure of inheritance rights in Islam and how the maqashid shari'ah approach can be employed to address these changes. Employing normative legal research methods with theological, conceptual, and maqashid shari'ah approaches, the study finds that the absence of descendants due to a childfree decision shifts the inheritance structure to horizontal relatives or the public treasury (Baitul Mal). Instruments such as wills (wasiyyah) and grants (hibah) play a crucial role in regulating the distribution of estates in this context. The study concludes that although childfree alters the traditional family structure, the principles of justice, property protection, and social sustainability can still be upheld within the Islamic legal framework through a maqashid shari'ah-based reinterpretation. Therefore, strengthening legal literacy and adjusting regulations are essential to address this phenomenon fairly and in line with Islamic objectives..*

**Keywords:** Childfree , Inheritance Rights, Islamic Family Law, Maqashid Shari'ah, Wasiyyah.



**ABSTRAK:** *Fenomena childfree, yakni keputusan sadar untuk tidak memiliki keturunan, merupakan dinamika sosial kontemporer yang berimplikasi terhadap sistem hukum keluarga Islam, khususnya dalam aspek pewarisan. Penelitian ini bertujuan untuk menganalisis bagaimana pilihan childfree mempengaruhi struktur hak waris dalam Islam serta bagaimana pendekatan maqashid syari'ah dapat digunakan untuk merespons perubahan tersebut. Menggunakan metode penelitian hukum normatif dengan pendekatan teologis, konseptual, dan maqashid syari'ah, studi ini menemukan bahwa ketiadaan keturunan akibat keputusan childfree menyebabkan pergeseran jalur waris kepada kerabat horizontal atau ke Baitul Mal. Instrumen wasiat dan hibah menjadi mekanisme penting dalam mengatur distribusi harta warisan dalam konteks ini. Penelitian ini menegaskan bahwa meskipun childfree mengubah struktur tradisional keluarga, prinsip-prinsip keadilan, perlindungan harta, dan keberlanjutan sosial tetap dapat ditegakkan dalam kerangka hukum Islam melalui reinterpretasi berbasis maqashid syari'ah. Oleh karena itu, diperlukan penguatan literasi hukum dan penyesuaian regulasi untuk menghadapi fenomena ini secara adil dan maslahat.*

**Kata Kunci:** *Childfree, Hak Waris, Hukum Keluarga Islam, Maqashid Syari'ah, Wasiat.*

## INTRODUCTION

The global social changes that have occurred in recent decades have given birth to a variety of new lifestyle choices, one of which is phenomenon of childfree, which is a couple's conscious decision not to have children.<sup>1</sup> This phenomenon is gaining widespread attention, including in muslim countries such as Indonesia, Malaysia and some countries in the Middle East, along with a growing awareness of right to personal autonomy and redefinition of traditional family values.<sup>2 3</sup> Culturally, Indonesian society tends to view children as a gift and symbol of marital success, so childfree is considered taboo and against social norms.<sup>4</sup> Although childfree is also seen as a private right that should not be intervened by other parties, especially if it based on strong reason such as health.<sup>5</sup> Whereas in the Islamic context, marriage is traditionally seen as an institution not only to fulfill biological and emotional needs, but also to preserve offspring (*tanasul*), as affirmed in the word of Allah: "and Allah made for you from your spouses children and grandchildren..." (Al-Nahl: 72).

<sup>1</sup> Farrencia Nallanie dan Fhelincia Nathanto, "Childfree Di Indonesia, Fenomena Atau Viral Sesaat?," *Syntax Idea* 6, no. 6 (2024): 2663–2673.

<sup>2</sup> Eva Fadhilah, "Childfree Dalam Pandangan Islam," *al-Mawarid Jurnal Syariah dan Hukum (JSYH)* 3, no. 2 (2022): 71–80.

<sup>3</sup> Rania Hasan, *The Modern Muslim Family: A Contemporary Exploration* (Kuala Lumpur: Islamic Renaissance Front, 2021).

<sup>4</sup> Fika Natasya Umala dan Atiya Mumtaza, "Tafsir Kontekstual Qs. Al-Anfal [8] : 28 Dan Kaitannya Dengan Fenomena Childfree (Aplikasi Pendekatan Abdullah Saeed)," *Mafatih* (2022), <https://consensus.app/papers/tafsir-kontekstual-qs-alanfal-8-28-dan-kaitannya-dengan-umala-mumtaza/169a8c543cef5651976cce85ba536551/>.

<sup>5</sup> S Nuroh dan M Sulhan, "Fenomena Childfree Pada Generasi Milenial Ditinjau Dari Perspektif Islam," *An-Nawa: Jurnal Studi Islam* (2022), <https://consensus.app/papers/fenomena-childfree-pada-generasi-milenial-ditinjau-dari-nuroh-sulhan/eb5ad20a0a385801bd1c151f15a01939/>.



The choice to become childfree raises serious theological and legal questions in the study of Islamic family law (*fiqh al-usrah*), especially with regard to the consequences for the Islamic inheritance law system (*fara'id*). The law of inheritance in Islam pays great attention to the structure of family relationships based on *nasab*.<sup>6</sup> Children as vertical heirs have a central position in the inheritance structure, where the existence of children, especially sons, can determine the distribution of inheritance rights among other heirs<sup>7</sup>. In the absence of biological offspring due to childfree decisions, the structure of inheritance relationships changes drastically, giving rise to the dominance of horizontal heirs (such as siblings or uncles) or even causing property to be transferred to *dhawil arham* (distant relatives) or handed over to the state *baitulmal* in extreme situations.<sup>8</sup>

Furthermore, the phenomenon of childfree raises debates about the concept of *'illat* (legal cause) in the distribution of inheritance, as well as how *maqashid shari'ah* (the objectives of *shari'ah*) should be interpreted to respond to this new phenomenon. Can the principles of justice, property protection and social continuity be maintained without the presence of vertical heirs? What is the relevance of mechanisms such as *wasiyyah* (will) in regulating the distribution of assets for *childfree* couples? Some contemporary scholars, such as Yusuf Al-Qaradawi and Wahbah Al-Zuhaili, emphasize the importance of the flexibility of Islamic law in responding to social dynamics through the *maqashid* approach.<sup>9 10</sup>

In the Indonesian context, positive regulations such as the Compilation of Islamic Law (KHI) still rely on conventional family structures that assume the existence of offspring. Therefore, the childfree phenomenon raises the need to review inheritance arrangements within the framework of national Islamic law so that it is still able to provide substantive legal justice in the midst of these social changes.<sup>11</sup>

Based on this background, this article aims to critically examine the implications of the childfree phenomenon on the inheritance rights system in Islamic family law, by highlighting the normative consequences, practical problems, and the possibility of legal reconstruction based on *maqashid shari'ah* to answer the needs of the times.

<sup>6</sup> Muhammad Barrunnawa, Berlian Fajrul Falakh, dan Firdha Setyawan Maslakul Huda, "Hukum Waris dalam Islam: Dari Era Klasik Hingga Kontemporer," *Jurnal Ilmiah Mahasiswa Raushan Fikr* 10, no. 2 (2021): 149–163.

<sup>7</sup> Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publication, 2008).

<sup>8</sup> Sayyid Sabiq, *Fiqh al-Sunnah*, vol. 2 (Beirut: Dar al-Fikr, 1989).

<sup>9</sup> Yusuf Al-Qaradawi, *Fiqh al-Awlawiyyat: Dirasah Jadidah fi Dhau' al-Qur'an wa al-Sunnah* (Kairo: Maktabah Wahbah, 1998).

<sup>10</sup> Wahbah Al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu* (Damaskus: Dar al-Fikr, 2011).

<sup>11</sup> Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), <http://www.jstor.org/stable/j.ctt46msj2>.



## METHOD

This research uses the *normative legal research* method, which is research focused on literature studies of applicable legal norms,<sup>12</sup> both in the form of sacred texts of the Qur'an, hadith, fiqh rules, and positive legal documents such as the Compilation of Islamic Law (KHI) in Indonesia. This approach was chosen because the issue of childfree and its implications for inheritance rights is a normative issue that requires analysis of the provisions of Islamic law textually and contextually. This is in accordance with the theory of Noel J. Coulson, who put forward the theory of historical-based Islamic legal research and tried to reveal its relevance which led to *neo-ijtihād*.<sup>13</sup>

This type of research is qualitative research with an approach: A normative-theological approach, to examine the teachings of the Qur'an and hadith relating to the purpose of marriage, inheritance, and family relationships. Conceptual approach, to develop an analysis of the concept of childfree in relation to the principles of Islamic inheritance law and its practical problem. And maqashid shari'ah approach, to understand the orientation of shari'ah goals in the face of changes in contemporary social phenomena.<sup>14</sup>

The data collected is analyzed by technique: Qualitative analysis in a descriptive-analytical manner, namely describing the legal text, describing the phenomenon of childfree, then analyzing its relationship with the structure of Islamic inheritance rights. And maqashid shari'ah analysis developed by Jaseer Audah which is more oriented towards the meaning behind the text towards development and human rights,<sup>15</sup> to assess the extent to which the principles of property protection, justice, and social sustainability can be maintained in childless family situations.

## RESULT AND DISCUSSION

### The Concept of *Childfree* in the Perspective of Islamic Law

In order to get adequate discussion results related to this study, it is necessary to understand the concept of childfree and the perspective of Islamic law regarding it. Childfree is the conscious decision of an individual or couple not to have children,<sup>16</sup> whether for personal, economic, health or worldview reasons.

<sup>12</sup> Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020).

<sup>13</sup> Faisar Ananda dan Watni Marpaung, *Metode Penelitian Hukum Islam* (Jakarta: Prenada Media, 2018).

<sup>14</sup> Ghofar Shidiq, "Teori Maqashid Al Syari'ah Dalam Hukum Islam," *Sultan Agung* Vol XLIV, no. 118 (2009): 117-130.

<sup>15</sup> Fatmawali, Zainan Abidin, dan Gani JUMat, "Teori Maqashid Al-Syari'ah Modern: Perspektif Jasser Auda," *Prosiding Kajian Islam dan Integrasi Ilmu di Era Society 5.0 (KIIIES 5.0) Pascasarjana Universitas Islam Negeri Datokarama Palu 2024* 3, no. 1 (2024): 232-237, <http://jurnal.uindatokarama.ac.id/index.php/kiiies50/article/view/3236/1618>.

<sup>16</sup> Titin Samsudin et al., "Childfree is a form of desecration of the purpose of Marriage," *Jurnal Hukum dan HAM Wara Sains* 2, no. 03 (2023): 172-180.



<sup>17</sup> Financial factors, past trauma, Western cultural influences, and increased awareness of environmental and social issues are some of the reasons why many couples choose not to have children. Furthermore, past trauma, such as trauma from childhood or family trauma, also influences the decision not to have children.<sup>18</sup>

In the late 20th century, feminists introduced the term "childfree". The term generally stems from couples' belief that having children is a human right that cannot be forced on anyone. Some people who choose not to have children say that this helps control overpopulation. Some argue that women's bodies are their own and no one has the right to force someone to conceive, bear and breastfeed their child.<sup>19</sup> Margono and Fenny's study shows that a person's decision to live a childfree lifestyle causes controversy on social media. This shows that the topic is a sensitive issue and provokes public debate.<sup>20</sup>

In the view of Islamic law, offspring is one of the *maqashid of marriage* (*maqashid al-nikah*),<sup>21</sup> as confirmed in the Qur'an: "Allah makes for you from your spouses children and grandchildren, and gives you sustenance from good ..." (Al-Nahl: 72). Classical scholars, such as Al-Ghazali in *Ihya' Ulumuddin*, place the continuity of offspring as part of the protection of religion and the existence of the ummah.<sup>22</sup> Thus, in the classical normative framework, the decision to go childfree appears to contradict the spirit of *maqashid*. However, contemporary scholars such as Yusuf Al-Qaradawi<sup>23</sup> state that Islam still provides space for individual freedom in matters that do not explicitly contradict the *qath'i nash* (definite text). Therefore, the *childfree* phenomenon can be understood within the corridor of *maslahat*, as long as it is not intended to reject the basic principles of sharia.

In general, childfree practices can be divided into two categories, namely choosing not to have children by not getting married or getting married but not having intercourse or having intercourse but doing '*azl*'.<sup>24</sup>

<sup>17</sup> Wahyu Samudra, Muhammad Ferdiansyah, dan Zubaidah Zubaidah, "Fenomena Childfree Ditinjau dari Perspektif Forum Genre Provinsi Jambi," *Indonesian Journal of Educational Counseling* 8, no. 1 (2024): 80-91.

<sup>18</sup> Nallanie dan Nathanto, "Childfree Di Indonesia, Fenomena Atau Viral Sesaat?"

<sup>19</sup> Wijdatun Nabila et al., "A Feminist Study of the Childfree Trend in Generation Z: A Normative Review," *Solo International Collaboration and Publication of Social Sciences and Humanities* 2, no. 02 (2024): 143-158.

<sup>20</sup> Hendro Margono dan Fenny Nur Aprillia, "Analisis Sentimen Komentar Childfree di Aplikasi X Menggunakan Naïve Bayes," *The Indonesian Journal of Computer Science* 13, no. 3 (2024): 4577-4584.

<sup>21</sup> Purnomo dan Moch. Aziz Qiharuddin, "Maqosid Nikah Menurut Imam Ghazali dalam Kitab *Ihya' Ulumuddin*," *Jurnal Pemikiran dan Hukum Islam* 7, no. 1 (2021): 109-119, <https://ejournal.iaifa.ac.id/index.php/faqih>.

<sup>22</sup> Purnomo dan Qiharuddin, "Maqosid Nikah Menurut Imam Ghazali dalam Kitab *Ihya' Ulumuddin*."

<sup>23</sup> (1998)

<sup>24</sup> Alfa Syahriar et al., "Childfree Dalam Perspektif Islam Dan Sosial, Dan Implikasinya Terhadap Ketahanan Keluarga," *Isti'dal: Jurnal Studi Hukum Islam* 10, no. 1 (2023): 47-62, <http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0>





Basically, *childfree* is allowed in Islamic shari'a, considering that there is no *sharih* prohibition found in either the nash Al-Qur'an or hadith. This is as stated in the broadcast of Bimas Islam of the Ministry of Religion.<sup>25</sup> In this context, *childfree* is considered as the authority and freedom of individuals to plan their life journey.<sup>26</sup> Regarding the law of *childfree* can basically be divided into two conditions, namely *first*, rejecting the presence of a child before its potential existence, meaning before the sperm enters the womb of a woman. In this case it can be due to '*azl* or in other ways that prevent the sperm from reaching the womb, so this kind of *childfree* condition is considered permissible and not forbidden. It is considered permissible and not forbidden, because it is only at the level of abandoning the virtue.<sup>27</sup>

Then the *second* type, namely *childfree* by completely stopping the function of the reproductive organs by means of *vasectomy* or *tubectomy*, then in the context of this type of practice is considered as something forbidden. Regarding this, permanently disabling the function of the reproductive organs is *haram* based on the decision of the 28th NU Congress at PP Al-Munawwir Krapyak Yogyakarta on 26-29 Rabiul Akhir 1410 H/25-28 November 1989 AD.<sup>28</sup>

Whereas in their study, Putri and Labib tried to trace the law of *childfree* in the view of Manhaj Tarjih Muhammadiyah with *bayani*, *burhani* and *irfani* approaches by concluding that *childfree* is an action that is not justified in Islamic law.<sup>29</sup>

### Islamic Inheritance Law System and the Position of Children

In the Islamic inheritance law system (*faraid science*), children have a position as primary heirs whose existence determines the overall structure of inheritance distribution. Because a child fulfills the requirements of nasab connection.<sup>30</sup> The son, in this case, is included in the category of '*ashabah bi nafsih* (heirs because of themselves) who are entitled to the rest of the property after the owners of certain shares (*dhawu al-furud*) receive their share. This position makes

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Ahttps://www.researchgate.net/publication/305320484\_SISTEM\_PEMBETUNGAN\_TERPUSAT\_STRATEGI\_MELESTARI.

<sup>25</sup> Bimas Islam Kemenag, "Hukum Childfree dalam Islam," *kemenag.go.id*, last modified 2023, diakses April 30, 2025, <https://bali.kemenag.go.id/denpasar/berita/44472/hukum-childfree-dalam-islam>.

<sup>26</sup> Fadhilah, "Childfree Dalam Pandangan Islam."

<sup>27</sup> Ahmad Muntaha, "Kupas Tuntas Childfree dalam Islam: Hukum Asal, Motif, hingga Rambu-Rambu di Dalamnya," *nu.or.id*, last modified 2025, diakses April 30, 2025, <https://www.nu.or.id/lapsus/kupas-tuntas-childfree-dalam-islam-hukum-asal-motif-hingga-rambu-rambu-di-dalamnya-YTVCE#:~:text=Bahkan mereka sampai mengqadha shalat,daripada punya anak%2C dan semisalnya>.

<sup>28</sup> Muntaha, "Kupas Tuntas Childfree dalam Islam: Hukum Asal, Motif, hingga Rambu-Rambu di Dalamnya."

<sup>29</sup> Khulanah Sutarno Putri dan Muhammad Alfreda Daib Insan Labib, "Childfree in the perspective of Manhaj Tarjih Muhammadiyah: An analytic study of *childfree* with *bayani*, *burhani*, and *irfani* approaches," *Gender Equality: International Journal of Child and Gender Studies* 10, no. 1 (2024): 1-12.

<sup>30</sup> Hasan Hasan, "Penerapan Hukum Faraidh Dalam Pembagian Harta Waris Di Kecamatan Ranto Baek Kabupaten Mandailing Natal Sumatera Utara," *Jurnal Payung Sekaki: Kajian Keislaman* 2, no. 1 (2025): 1-9.



the son central in the inheritance mechanism, not only because of his right to two shares compared to women (Al-Nisa': 11), but also because he can cause *hajib* (obstruction) against other heirs.<sup>31</sup>

The concept of *hajib* in *fara'id* means either preventing a person from inheriting entirely (*hajib hirman*) or only reducing his share (*hajib nuqshan*). For example, the presence of a son may prevent the testator's brother (*ikhwah*) from getting a share of the inheritance, as the priority of the son is higher in the inheritance hierarchy.<sup>32</sup> Daughters, despite having a fixed inheritance status, get half the share of the son's share when they inherit together according to the principle of *qawamah* governed by Qur'anic norms.

The position of children in the inheritance system reflects the principles of distributive justice in Islam, which considers social and economic responsibilities based on gender and closeness of blood relations (*qarabah*). In the context of fiqh, the opinion of the majority of scholars from the four madhhabs (Hanafiyah, Malikiyah, Syafi'iyah, and Hanabilah) agrees that the existence of children, especially males, strengthens the position of lineage (*nasab*) as the basis for inheritance rights.<sup>33</sup> In addition, in contemporary practice, this principle is still maintained in the inheritance law accommodated in the Compilation of Islamic Law (KHI) in Indonesia, especially in Articles 176-178.<sup>34; 35</sup>

Thus, children are not only priority heirs in Islamic inheritance law, but also play an active role in determining who is entitled and how much inheritance they receive. This function makes the position of children a strategic element in the normative design of Islamic inheritance law, which combines normative text, the logic of justice, and the social system of the family. Without children, the path of inheritance moves to parents, siblings, or even to Baitul Mal if there are no heirs.<sup>36</sup>

### Normative Consequences

Given the position of a child in Islamic inheritance, it is certain that the absence of a child due to childfree practices will have an impact on the legal level of inheritance itself. Some of the consequences are:

#### 1. Shifting Inheritance Paths

The decision to live childfree has direct implications for the distribution system of inheritance in Islamic law. One of the main normative impacts of this decision is the disconnection of the vertical inheritance path downwards, namely the absence of heirs from among children and grandchildren, who in the *fara'id* system are primary heirs (*ashabah nasabiyah*). In such circumstances, the

<sup>31</sup> Wahbah Al Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*. Beirut: Dar al-Fikr. (Beirut: Dar al Fikr, 2011).

<sup>32</sup> Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*. Beirut: Dar al-Fikr.

<sup>33</sup> Abu Bakr Al Jaziri, *Kitab al-Fiqh 'ala al-Mazahib al-Arba'ah (Volume II)* (Beirut: Dar al Fikr, 2003).

<sup>34</sup> Muhibuddin Zaini, "Kedudukan Hak Waris Anak Yang Masih Dalam Kandungan Dalam Prespektif Hukum Islam," *Jurnal Kajian Ilmu HUKUM* 3, no. 1 (2024): 15-37.

<sup>35</sup> Muhammad Saprun, Jumadiah Jumadiah, dan T. Yudi Afrizal, "Kedudukan Anak Perempuan Dalam Pembagian Harta Warisan Menurut Hukum Waris Islam Dan Hukum Waris Adat (Studi Penelitian di Desa Pasir Kecamatan Tripe Jaya Kabupaten Gayo Lues Provinsi Aceh)," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 6, no. 4 (2024).

<sup>36</sup> Sabiq, *Fiqh al-Sunnah*, vol. 2.



distribution of inheritance has shifted to lateral and upward paths, which include parents, siblings, or uncles, in accordance with the order of priority in *fara'id* science.<sup>37</sup>

In Islamic inheritance terminology, when there are no heirs within the circle of *dzawil furudh* or *ashabah*, then the inherited property can be transferred to more distant relatives (*dzawil arham*), or in extreme circumstances, handed over to *Baitul Mal* as an institutional representation of muslim society.<sup>38</sup> This concept refers to the principle of general *maslahat*, in which property that is not bequeathed to a particular individual due to the absence of legal heirs can be utilized for the benefit of the *ummah* collectively through state or religious institutions.<sup>39</sup> In the absence of heirs, or the loss of heirs *al-maqfud*, then the *baitul mal* can take on its role.<sup>40</sup>

Thus, the decision to go childfree not only impacts family and social dynamics, but also creates a systemic shift in the path of inheritance distribution. In this context, Islamic inheritance law shows its flexibility in accommodating social change, while maintaining the principles of justice and collective benefit.

The changes in the distribution path of inheritance in the absence of children due to the childfree option can be seen in the following chart:

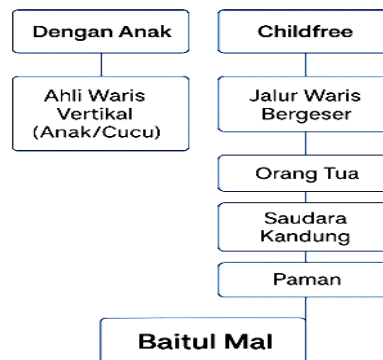


Chart 1. Childfree Inheritance Path Comparison<sup>41</sup>

In addition to changing the path of inheritance, the absence of children will also have implications for strengthening the rights of the husband or wife. In Islamic inheritance law, the division of inheritance between husband and wife depends on whether there are descendants (children or grandchildren) of the testator. If the testator dies without leaving children or grandchildren, then the wife's share of inheritance increases from one-eighth ( $1/8$ ) to one-quarter ( $1/4$ ) of

<sup>37</sup> Al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*.

<sup>38</sup> Jaziri, *Kitab al-Fiqh 'ala al-Mazahib al-Arba'ah* (Jilid II).

<sup>39</sup> Suryadi, Dahlan Ali, dan Teuku Muttaqin Mansur, "Dana Titipan Yang Tidak Diketahui Ahli Waris Pemiliknya Di Baitul Mal Kota Banda Aceh," *Syiah Kuala Law Journal* 1, no. 3 (2017): 119-139.

<sup>40</sup> Nor Amira et al., "Peranan Baitulmal Sebagai Institusi Kebajikan Ahli Waris Orang Hilang (*al-Maqfud*): Kajian di Majlis Agama Islam Wilayah Persekutuan (MAIWP)," *Journal Of Contemporary Islamic Law* 9, no. 2 (2024): 13-20.

<sup>41</sup> Al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*.





the total inheritance. Conversely, the husband gets half (1/2) of the inheritance, not a quarter (1/4) as when there are children or grandchildren.<sup>42</sup>

## 2. Social and Economic Risks

The decision to go *childfree* is not just an individualistic personal choice, but also has structural consequences in the Islamic social and family law system. One important impact of childlessness is the potential loss of social and economic protection for parents in old age. In traditional Islamic family structures, children act as *al-'ashabah* who not only receive inheritance, but also bear moral, social and material responsibilities towards their parents.<sup>43</sup> The function of children as *'abqariyyat al-nasl* (guardians of the continuity of the nasab) and *hafizh al-mal* (guardians of family wealth) is strongly reflected in the norms of the Qur'an and hadith, such as the commandment of filial piety to parents and the responsibility of children's maintenance towards their elderly parents.

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The absence of descendants also creates a void in the post-death property management mechanism. In this context, it is not uncommon for horizontal conflicts to arise within extended families due to unclear inheritance distribution, especially when there is no adequate legal planning. Islamic inheritance law (*fara'id*) has established standardized distribution channels, but in many cases, the absence of vertical heirs makes it difficult to apply them fairly in the absence of complements such as wills or grants.

In response to this challenge, Islam provides a number of flexible legal instruments to maintain social stability and clarity of property ownership. Instruments such as *hibah* (lifetime gift), *wasiyyah* (bequest of up to one-third of the estate), and the appointment of a guardian of the estate (*khazin al-mal*) are important alternatives for those who choose not to have children. These three instruments, if applied correctly and legally, can provide solutions to problems of wealth distribution, protection in old age, and maintaining the harmony of extended families.<sup>44</sup>

Thus, the decision to go *childfree* in the perspective of Islamic family law needs to be accompanied by legal awareness and careful social planning. Islam recognizes one's life choices, but still emphasizes the importance of social responsibility and justice between generations.

<sup>42</sup> Firman Arifandi, "Hukum Waris: Diskriminasi Islam Terhadap Perempuan?," *Rumah Fiqh Indonesia*, last modified 2017, diakses Mei 25, 2025, <https://www.rumahfiqh.com/fikrah/483>.

<sup>43</sup> Al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*.

<sup>44</sup> Wahida Aulia Fahrani dan Taufiq Ramadhan, "Fenomena *childfree* dalam pandangan hukum islam perspektif maqashid al- syari'ah dan relevansinya dengan harta waris," *Sahaja: Journal Shariah And Humanities* 3, no. 2 (2024): 335-343.



From the perspective of *maqashid shari'ah*, the Islamic inheritance system aims to protect property (*hifzh al-mal*), ensure distribution justice (*taqsim al-'adl*) and maintain the social structure of the family (*hifzh al-nasab*).<sup>45</sup> In this case Jasser Auda tries to provide an offer by reconstructing the concept of *hifzh al-nasl* in *maqashid shari'ah* in the field of family law, which was originally considered as the maintenance of offspring, turning to the development of family institutions, including justice in the family, child welfare, family economic welfare, wife's rights, and children's rights.<sup>46</sup> Furthermore, in the current era, *maqashid* focuses on the development of values and rights, so issues related to the development of family institutions such as justice in the family, child welfare, family economic welfare, wife's rights, and children's rights become the focus of *maqashid* discussion.

Thus, the phenomenon of *childfree*, despite changing the traditional family structure, can still be managed within the *maqashid* framework through several steps, namely upholding the principle of justice in the distribution of property, adjusting the distribution mechanism through legal wills or grants and strengthening the role of the state (*Baitul Mal*) in managing inherited property without heirs. Thus, *childfree* is not automatically contrary to *maqashid* as long as the management of financial and social rights is still carried out within the framework of sharia.

### Practical Problems

Among the problems that arise in efforts to practice the distribution of inheritance due to the absence of children as heirs are:

#### 1. Family Conflict

Family conflicts that arise due to *childfree* choices in terms of inheritance are mainly caused by the unclear division of inheritance due to the absence of offspring as the main heir. In the context of Indonesian inheritance law, especially those based on Islamic law, children are heirs who have the main rights to parents' property. If a couple chooses to be *childfree*, meaning that they do not have children, then the distribution of inheritance must be transferred to other heirs such as spouses, parents, or siblings in accordance with the provisions of the applicable inheritance law.

This uncertainty can lead to disputes within extended families, as other family members may fight over the rights to the assets. This conflict is exacerbated if there is no clear inheritance planning such as making a will or grant, so that the estate becomes a source of division and prolonged legal disputes.<sup>47</sup> In Indonesian society, where cultural and religious values strongly emphasize the importance of having children as family successors and heirs, the decision to go *childfree* often

<sup>45</sup> Nur Saniah, Nawir Yuslem, dan Hasan Matsum, "Analysis of Maqâshid Sharī'a on Substitute Heir in Compilation of Islamic Law (KHI)," *Al-'Adalah* 20, no. 1 (2023): 35–60.

<sup>46</sup> Soni Zakaria, "The Contextualization Of The Māqāsid Āl-Šyārīāh Jasser Auda Theory In The Concept And Practice Of Islamic Family Law," *Al-'Adl* 14, no. 2 (2021): 83.

<sup>47</sup> Fadlan Nugraha Nur Pangestu dan Jenuri Jenuri, "Fenomena Childfree Pada Keluarga Milenial Dalam Pandangan Islam: Kontroversi Atau Solusi?," *Tahdzib Al-Akhlaq: Jurnal Pendidikan Islam* 6, no. 2 (2023): 323–330.



goes against social norms and can create pressure or stigma on the couple.<sup>48</sup> This uncertainty arises because there is no direct successor (child), so the inheritance must be distributed to other heirs who may have different claims. For example, widows or widowers get a certain share, while the rest of the inheritance is distributed to parents or siblings. If there are no clear heirs, the property can be handed over to Baitul Mal or a religious social institution.

The absence of descendants also opens up opportunities for other extended family members to claim rights to assets, which can trigger internal conflicts, disputes, and even prolonged legal disputes. This is exacerbated if there is no legal documentation such as a will or grant that regulates the distribution specifically according to the testator's wishes.

## 2. Weak Function of Baitul Mal

In the Islamic inheritance law system in Indonesia, the distribution of inheritance is strictly regulated in the Compilation of Islamic Law (KHI) and various related regulations. One of the important provisions is regarding the handling of the remaining inheritance if the testator leaves no heirs other than the spouse or even no heirs at all. In this situation, the rest of the inherited property must be handed over to Baitul Mal, an institution that functions as a manager of Muslim property for the benefit of religion and public welfare (Article 191 KHI).<sup>49</sup>

Baitul Mal, which literally means “house of treasures”, acts as an institution for managing public funds covering religious income and expenditure, including the management of inherited property that does not have clear heirs or cannot be legally divided among existing heirs.<sup>50</sup> The transfer of the remaining assets to Baitul Mal is a form of social and religious responsibility so that the assets can be utilized for the benefit of the community at large, such as the construction of social facilities, education, and other religious activities.

However, in practice, the implementation of this provision still faces various obstacles. One of the main problems is the lack of socialization and public understanding of the obligation to hand over the remaining assets to Baitul Mal. As a result, the remaining assets are often taken entirely by the surviving spouse without going through the appropriate legal process, thus ignoring the rights of the social institution and reducing the social benefits of the assets. Empirical juridical research shows that although religious court decisions have stipulated the transfer of the remaining assets to Baitul Mal, implementation is often hampered due to a lack of coordination, the absence of technical guidelines, and

<sup>48</sup> Agam Pebriansah, “Childfree Dalam Konteks Hak Asasi Manusia : Tantangan Dan Perlindungan Serta Pencapaian Hak-Hak Individu,” *Jurnal Darussalam: Jurnal Pendidikan, Komunikasi dan Pemikiran Hukum Islam* XVI, no. 1 (2024): 194–218.

<sup>49</sup> Syarief Husein Akhmad Khisni, “The Law of Inheritance of Islam in Indonesia ( Study of Legal Development of Inheritance in Compilation of Islamic Law and Practice),” *Jurnal Akta* Vol. 5, no. No. 1 (2018): 75–86.

<sup>50</sup> Prihati Yuniarlin dan Endang Heriyani, “Tinjauan Hukum Islam Terhadap Fungsi Balai Harta Peninggalan Dalam Mengurus Harta Kekayaan Orang Yang Tidak Hadir,” *Jurnal Media Hukum* 25, no. 1 (2018): 1–9.



the lack of execution of the decision.<sup>51</sup>

Furthermore, the legal study confirms that Baitul Mal has strong legitimacy based on sharia and legislation to manage inherited property that cannot be divided or does not have clear heirs. This is also in line with the principle of social justice in Islam, which emphasizes the distribution of wealth so that it is not concentrated in certain individuals and still provides benefits to the wider community.<sup>52</sup>

### **Reconstruction Based on Auda's Maqashid Theory**

In a broader context, maqasid according to Auda is also related to universal moral values such as justice, human dignity, freedom, generosity, convenience, and social cooperation.<sup>53</sup> He considers classical maqasid to be too focused on individual benefits and has not been able to answer the complexity of modern world problems.<sup>54</sup> Therefore, Auda expanded the scope of maqasid to be more universal, including the protection of human rights, the development of scientific thought, social assistance, economic justice, and public welfare.

Jasser Auda's version of Maqasid is a flexible theoretical framework that is able to answer complex contemporary problems, including issues of human rights, development, and civilization. In practice, this approach has been applied in various fields such as Islamic economics, investment risk management, and marriage registration, with the aim of improving social justice and community welfare.<sup>55</sup>

Furthermore, in a higher effort to achieve broader public benefits, based on Audah's theory that seeks to integrate the classical principles (hizh al-din, nafs, nasl, aql, mal) by prioritizing maintaining family harmony (preventing inheritance disputes) and ensuring the distribution of property for public benefit by taking two ways, namely:

#### **1. Strengthening the Role of Wills**

According to Jasser Audah, married couples have the right to choose to live without children. This right falls under reproductive rights, which are also regulated in Islam, especially for women. Thus, within the framework of

<sup>51</sup> Pragita Fitriani, "ANALISIS PEMBERIAN HARTA WARIS KEPADA BAITUL MAL KETIKA PEWARIS MENINGGALKAN AHLI WARIS (Studi Putusan Pengadilan Agama Jakarta Selatan Nomor: 1776/PDT.G/2019/PA.JS Jo Putusan Pengadilan Tinggi Agama DKI Jakarta Nomor 34/Pdt.G/2021/PTA.JK Jis Putusan Mahk)" (Universitas Gajah Mada, 2023).

<sup>52</sup> Petty Aulia Mandasari et al., "Penyelesaian Sengketa Pembagian Waris Kepada Golongan Dzawil Arham Melalui Litigasi Dan Non Litigasi Dalam Perspektif Sistem Pewarisan Islam," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Universitas Padjadjaran* 6, no. 1 (2022): 144–158.

<sup>53</sup> Fatimawali Fatimawali, Zainal Abidin, dan Gani Jumat, "Teori Maqashid Al-Syari'ah Modern: Perspektif Jasser Auda," *Prosiding Kajian Islam dan Integrasi Ilmu di Era Society 5.0 (KIIIES 5.0)* 3 (2024): 232–237.

<sup>54</sup> Ah. Soni Irawan, "Maqāshid al-Sharīah Jasser Auda Sebagai Kajian Alternatif Terhadap Permasalahan Kontemporean," *The Indonesian Journal of Islamic Law and Civil Law* 3, no. 1 (2022): 39–55.

<sup>55</sup> Anisa Maulita Suryana, "Gagasan Maqashid Syariah Jasser Audah dan Implementasinya dalam Bidang Ekonomi dan Keuangan Syariah," *AL-URBAN: Jurnal Ekonomi Syariah dan Filantropi Islam* 8, no. 2 (2024): 239–251.





contemporary maqashid sharia, the decision not to have children can be considered as part of individual freedom and rights.<sup>56</sup>

Legal reconstruction that can be done in situations where a person or couple chooses not to have offspring (childfree), the instrument of *wasiyyah* (will) becomes an important mechanism in the Islamic legal system to regulate the distribution of inheritance in a more targeted and personalized manner. This is relevant given that the absence of vertical heirs (children and grandchildren) can lead to property being passed on to relatives who may be socially and emotionally undesirable, or even to the state through *Baitul Mal* if no legal heirs are found. Therefore, the use of wills allows the testator to ensure the continuity of the rights of certain parties who are not automatically included in the list of *fara'id* heirs.

Wasiat has been verified by the Qur'an, Sunnah, and consensus.<sup>57</sup> The Qur'an explicitly provides room for the implementation of wills within a maximum limit of one-third of the total estate: "*It is obligatory upon you, when death comes to one of you, if he leaves behind a large estate, to make a bequest to his parents and relatives in a fair manner, as an obligation upon the pious.*" (Al-Baqarah: 180)

Some scholars commented on this verse as an obligation to make a will, but others said that the verse was *abrogated* by the verse on inheritance. Quoting Ibn 'Ashur's interpretation, this verse arose because of the custom of the Arabs of the pre-Islamic era of giving their wealth to those who were far away to show their respect, and leaving their close relatives poor and destitute because of enmity and disagreement. Therefore, this verse was written by Allah to restore the rights of close relatives to those who live far away.<sup>58</sup>

The classical provisions also mention that the will cannot exceed one-third of the property, except with the consent of all heirs.<sup>59</sup> In this context, *childfree* couples have the flexibility to:

- a. Prepare a will in writing and legally. The preparation of a will in writing by taking into account the provisions of sharia law and national laws and regulations is a strategic preventive step to minimize the potential for inheritance disputes in the future. A legally drafted will not only reflects prudence in planning the distribution of assets, but also shows the juridical and ethical awareness of the testator in maintaining justice and family harmony after his death. This is in line with the principles of *maqashid shari'ah*, especially

<sup>56</sup> Pepy Marwinata, "PARADIGMA CHILDFREE DALAM KONTEKS HAK REPRODUKSI PEREMPUAN PERSPEKTIF MAQASHID SYARIAH JASSER AUDA" (UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM, 2023), <http://etheses.uin-malang.ac.id/58589/1/210201220006.pdf>.

<sup>57</sup> Siti Asishah Hassan, Rusnadewi Abdul Rashid, dan Zeti Zuryani Mohd Zakuan, "the Preservation of Property in Maqasid Al-Syariah: With Special Reference To the Appointment and Duties of Wasi in Estate Administration," *International Journal of Law, Government and Communication* 7, no. 29 (2022): 318–328.

<sup>58</sup> Muhammad Muhajir, "Konsep Wasiat Wajibah dalam Tafsir Surat Al-Baqarah Ayat 180," *YUDISIA : Jurnal Pemikiran Hukum dan Hukum Islam* 12, no. 1 (2021): 151.

<sup>59</sup> Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*. Beirut: Dar al-Fikr.





in the aspects of *hifzh al-mal* (protection of property) and *hifzh al-nafs* (protection of the soul), and supports legal order in society.<sup>60</sup>

- b. Explicitly appointing the recipient of the will (*al-musha lahu*), the will can be addressed to parties outside the group of heirs recognized by Islamic inheritance law, such as adopted children, nephews, or close friends, as well as social and religious institutions, as a form of channeling human values and benefits. This step is also a mechanism to prevent the inheritance from falling into the hands of parties who are not personally desired by the testator, but legally may still be the recipient of inheritance if there is no previous arrangement.
- c. Managing the distribution of wealth ethically and *ma'ruf*. Managing the distribution of wealth ethically and based on the principle of *al-ma'ruf* is a manifestation of commitment to the values of benefit (*maslahah*) and distributive justice (*al-'adalah al-tauzi'iyah*) in Islam. This approach considers not only the legal-formal aspects, but also the moral and social dimensions, to ensure that the distribution of inheritance reflects substantive justice, avoids conflict, and strengthens solidarity and harmony within the family and community.

Thus wills not only serve as a mechanism to adjust the distribution of the estate,<sup>61</sup> but also serve as a legal and ethical tool that enables a balance between the normative requirements of *fara'id* and the contextual needs of individuals. In this situation, wills provide testators with the opportunity to legally channel their wishes to parties not included in the *fara'id* inheritance system, provided that they do not breach the limit of one-third of the total estate (*tsuluts al-mal*).<sup>62</sup>

## 2. Strengthening the System and Role of Baitul Mal

However, Audah's approach also emphasizes that the benefit (*maslahah*) is not only individual, but must consider the collective interests and the benefit of humanity at large.

The essence of Jasser Audah's system theory is that Islamic law must be able to provide solutions to contemporary problems, including the phenomenon of childfree, by examining the background and motives behind the decision. Thus, if childfree is chosen on the basis of a justifiable benefit according to sharia, then the decision can be accepted. However, if there is no strong reason, then the decision can have a negative impact on the continuity of humanity and social benefit at large. In the context of inheritance, childfree couples still have the right to regulate the distribution of their assets as long as they do not violate the principles of Sharia.

After the inheritance is distributed through the will, which aims to fulfill the rights of those entitled to receive based on the provisions of Islamic law, the

<sup>60</sup> Nur Aisyah, "Wasiat Dalam Pandangan Hukum Islam Dan Bw," *El-Iqthisadi : Jurnal Hukum Ekonomi Syariah Fakultas Syariah dan Hukum* 1, no. 1 (2019): 54–61.

<sup>61</sup> Hassan, Abdul Rashid, dan Mohd Zakuan, "the Preservation of Property in Maqasid Al-Syariah: With Special Reference To the Appointment and Duties of Wasi in Estate Administration."

<sup>62</sup> Taiwo Moshood Salisu, "Will-Making (Wasiyyah) in Islam: a Juristic Exposition," *Jurnal Syariah* 24, no. 1 (2017): 157–180.



remaining assets that are not divided or there are no more entitled heirs, are allocated to Baitul Mal. This is in accordance with the principle in Islamic inheritance law, where the inheritance that has no heirs will become the right of Baitul Mal as an institution for managing the wealth of the people.<sup>63</sup> This mechanism ensures that no inheritance is neglected and still provides benefits to the wider community.

With the existing problems as previously stated, where baitul mal does not have a maximum position so that strengthening is needed. Strengthening the Baitul Mal system is very important so that this institution can optimally carry out its function as a manager of people's assets, especially assets that have no man or no heirs, as well as a social financial institution that supports the welfare of the community.<sup>64</sup>

Things that need to be strengthened include how to clarify the regulations governing the operation of Baitul Mal, including aspects of legality, accounting standards, and monitoring mechanisms.<sup>65</sup> Improved coordination between Baitul Mal, the government, and cooperative supervisory authorities to ensure compliance with sharia principles and national laws is also urgent.

In addition, the baitul mal should also develop innovative Islamic financial products that meet the needs of the community, such as interest-free financing, social funds, and business advisory services<sup>66</sup> Scholarship programs and the development of health institutions are no less important, given the community's need for fulfillment in these areas. So that the purpose of this inheritance-related sharia, namely protecting the soul (*hifzh nafs*), *mal* and *nasl*, will be maintained. By strengthening the role of baitul mal and various product innovations also show efforts to deconstruct the classical maqashid hierarchy into an interconnection of values between maqashids. From *hifzh mal*, used as an instrument for the protection of the *aql* through education and so on.

## CONCLUSION

The phenomenon of childfree (a conscious decision not to have children) has a significant impact on the inheritance system and mechanism in Islamic family law. In the faraid system, the presence of children is an important factor in determining the distribution of inheritance. The absence of children will have implications for changes in the inheritance path or even the absence of heirs. In this case, the Shari'ah provides a way out by taking the route of wills and handing

<sup>63</sup> Azmi Zamroni Ahmad, "Wasiat Wajibah dalam Perspektif Hukum Positif dan Hukum Islam: Analisis Maqāshid asy-Syarī'ah Jasser Auda," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 52, no. 1 (2018): 55–73, <http://asy-syirah.uin-suka.com/index.php/AS/article/view/945>.

<sup>64</sup> Ahmad, "Wasiat Wajibah dalam Perspektif Hukum Positif dan Hukum Islam: Analisis Maqāshid asy-Syarī'ah Jasser Auda."

<sup>65</sup> Naheri, Rabiatal Adawiyah, dan Rahman Ambo Masse, "Strategi Pengembangan Baitul Mal Wattamwil Sebagai Sumber Pembiayaan Alternatif Bagi Usaha Mikro, Kecil Danmenengah," *Journal of Management and Innovation Entrepreneurship (JMIE)* 1, no. 2 (2024): 238–247.

<sup>66</sup> E Suyono dan H Rokhayati, "Pengelolaan Baitul Mal wa Tamwil Berbasis Komputer di Kabupaten Banyumas, Jawa Tengah," *Jurnal Visioner & Strategis* 5, no. March 2016 (2016): 23–34, <http://journal.unimal.ac.id/visi/article/view/227>.



over assets to the baitul mal. although in practice there are often family conflicts in the inheritance dispute, and the baitul mal is not an institution that is trusted to receive the assets.

In the view of maqashid jasser audah, two things are prioritized in this case, namely maintaining family harmony by strengthening the will and maintaining public welfare by strengthening the function of the baitul mal. Based on Audah's theory, the role of the baitul mal is highly emphasized because the general maslahat is very likely to be realized with the maximum role. On the other hand, baitul hal must improve by touching various fundamental aspects of community needs. Therefore, strengthening regulations, improving inheritance law education, and coordination between related institutions are needed to ensure that the remaining inheritance assets can be managed optimally by Baitul Mal. Efforts to increase socialization, prepare technical implementation guidelines, and effective supervision are key so that this provision can run in accordance with sharia objectives and applicable regulations in Indonesia.

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