

Childfree in Islamic Law Perspective of Nahdlatul Ulama

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Abstract

Childfree is a social phenomenon that is becoming an interesting discussion today. It deserves the attention of Islamic law. Nahdlatul Ulama (NU), through the NU Bahtsul Masail Institute (LBM-NU), has issued four fatwas synonymous with the childfree phenomenon. This article aims to analyze the childfree phenomenon from the perspective of the *istinbāt al-ahkām* method used by NU and its relevance to the four fatwas. This article is qualitative research using a normative Islamic law approach, which examines NU's legal decisions regarding the denial of childbirth. These decisions are then analyzed to determine the meaning and method of *istinbāt* used. This article finds two things. First, the *istinbāt al-ahkām* method used by LBM-NU is the *qawli intiqādi* method. Second, from the aspect of its application, childfree can be equated in law with decisions that have been determined by LBMNU regarding child refusal, as long as the method adopted is legal. However, from the aspect of substance, where childfree is used as a principle and lifestyle, it requires a new *fatwā* decision, especially with the *manhajī* approach.

Keywords: childfree; *istinbāt al-ahkām*; Nahdlatul Ulama; *qawli*; *manhajī*



Childfree merupakan fenomena sosial yang menjadi diskusi menarik dewasa ini. Ia patut mendapatkan perhatian dari hukum Islam. Nahdlatul Ulama (NU), melalui Lembaga Bahtsul Masail (LBM-NU), telah memutuskan empat fatwa yang identik dengan fenomena tersebut. Artikel ini bertujuan untuk menganalisis fenomena *childfree* dengan perspektif metode *istinbāt al-ahkām* yang digunakan oleh LBM-NU dan relevansinya dengan keempat fatwa tersebut. Artikel ini merupakan penelitian kualitatif dengan pendekatan hukum Islam normatif, yaitu mengkaji putusan hukum NU terkait penolakan kelahiran anak. Putusan-putusan tersebut dianalisis untuk mengetahui makna dan metode *istinbāt* yang digunakan. Artikel ini menemukan dua hal. Pertama, metode *istinbāt al-ahkām* yang digunakan LBM-NU adalah metode *qawli intiqādi*. Kedua, dari aspek penerapannya, *childfree* dapat dipersamakan hukumnya dengan putusan-putusan yang telah ditetapkan oleh LBMNU terkait penolakan anak, selama metode yang ditempuh dilegalkan. Namun begitu, dari aspek substansi, di mana *childfree* dijadikan prinsip dan gaya hidup, membutuhkan putusan fatwa baru, terutama dengan pendekatan *manhajī*.

Kata Kunci: *childfree*; *istinbāt al-ahkām*; Nahdlatul Ulama; *qawli*; *manhajī*

Introduction

According to the Cambridge Dictionary, childfree is a choice not to have children or a condition without children.¹ He is currently being discussed in various media in Indonesia. Many openly expressed their desire to be childfree,² including Indonesian Youtuber Gita Savitri and a public figure, Cinta Laura. Meanwhile, in many developed countries, childfree is nothing new. It is a common practice among its citizens. In the United States, in the National Survey of Family Growth report, the number of citizens who choose not to choose offspring is around 15% for women and 24% for men.³

Amy Blackstone, a sociologist from the University of Maine, reveals various reasons why a person or partner prefers to practice childfree. One of the reasons is the result of their views after observing other people who experience life changes after the birth of children. Another reason, couples who practice childfree want the two of them to be able to continue to be close to each other. They believe this condition will change and become limited when there are children.⁴

Islamic law, with its jargon as a law that is always responsive (*ṣāliḥ li kulli zamān wa makān*), is required to answer this phenomenon. Childfree is a husband and wife's desire or agreement regarding not being born or having children. This study can be applied in at least four ways in Islamic law. First, never get married. Second, after marriage, prevent each partner from not having contact. Third, get married and have intercourse, but not until orgasm or semen comes out (*inzāl*). Fourth, get married and have intercourse, but do not put sperm into the womb (*'azl*). Some of these ways are relevant and synonymous with the concept of childfree, namely, refusing to have children.⁵

¹ "Child-Free," Cambridge Dictionary, n.d.

² Roma Wijaya, "Respon al-Qur'an atas Trend Childfree (Analisis Tafsir Maqāṣidi)," *Al-Dzikra: Jurnal Studi Ilmu Al-Qur'an dan Al-Hadits* 16, no. 1 (2022): 41–60, <https://doi.org/10.24042/al-dzikra.v16i1.11380>.

³ A Pawloeski, "7 Reasons why People Choose to Be Childfree," Today.com, August 2016. <https://www.today.com/health/i-don-t-think-me-7-reasons-why-people-choose-t102160>.

⁴ Muhammad Hanif and Pitoyo Marbun, "Mengenal Konsep Child-Free: Menikah Tapi Tak Ingin Punya Anak," Gooddoctor.co.id, June 2022. <https://www.gooddoctor.co.id/hidup-sehat/info-sehat/mengenal-konsep-child-free-menikah-tapi-tak-ingin-punya-anak/>.

⁵ Ahmad Muntaha, 'Hukum Asal Childfree dalam Kajian Fiqih Islam', Islam.nu.or.id, 22 August 2021, <https://islam.nu.or.id/nikah-keluarga/hukum-asal-childfree-dalam-kajian-fiqih-islam-CuWgp>.

Islamic law is contained in many forms; laws (*qānūn*), court decisions (*qāḍā'*), and fatwas. One of the religious organizations concerned with responding to social phenomena is Nahdlatul Ulama (NU). Through the Bahtsul Masail Institute (LBMNU), in several decisions, both the Mukhtamar, National Conference, and Konbes, NU has formulated issues regarding refusing to have children. Until the child-free phenomenon emerged, NU had made four *fatwā* decisions related to child refusal. First, decision No. 283 concerning Family Planning. Second, decision No. 381 regarding Vasectomy and Tubectomy. Third, decision No. 382 on Using a Spiral or IUD. Fourth, decision no. 399 concerning contraception using vaccines made from male sperm (see Table 1).⁶

Based on the explanation above, it becomes relevant when these decisions are reviewed and contextualized on childfree issues. However, this theme has been extensively studied by several previous researchers. Presenting relevant previous studies is important to do.

Table 1
LBM-NU Decisions on Denial of Child Birth

No	Decision	Issues	Place and Time
1	No. 283	Family Planning	Jakarta, 18-22 April 1986 AD / 21-25 Shawwal 1379 AH
2	No. 381	Vasectomy and Tubectomy	Al-Munawwir Islamic Boarding School
3	No. 382	Use of spiral birth control (IUD)	Krapyak-Yogyakarta, 25 – 28 November 1989 M / 26 – 29 Rabiul Akhir 1410 H
4	No. 399	Contraception uses a vaccine made from male sperm	Cipasung-Tasikmalaya, 4 December 1994 M / 1 Rajab 1415 H

Roma Wijaya, in his article, examines the issue of childfree in terms of the propositional aspects contained in the Qur'an and analyzes it using the *maqāṣid* theory. It was explained that there are verses that directly address the issue of childfree ness; only in the Qur'an are there *maqāṣid al-sharī'ah* values, namely the command to protect religion (*hiḏ al-dīn*), the command to preserve

⁶ Tim LTN PBNU, *Ahkām al-Fuqahā fī Muqarrarāt Mu'tamarāt Nahdlatil Ulama; Solusi Problematika Aktual Hukum Islam, Keputusan Mukhtamar, Munas, dan Konbes Nahdlatul Ulama* (Surabaya: Khalista, 2019), 302, 448, 450, 488.

offspring (*hifẓ al-nasl*) whose relevance will be the occurrence of gaps in the future, and the order to protect the state (*hifẓ al-dawlah*) whose aim is to maintain the quality of society and the conditions of people's welfare.⁷

Nurjanah and Iffatin highlight the childfree phenomenon from the aspect of reality that occurs in society with the *maqāṣid al-sharī'ah* approach. In conclusion, the childfree phenomenon indirectly contradicts the main objective of Islamic law (*maqāṣid al-sharī'ah*) and the reality of society. It also strengthens studies in Islamic law that the issue of childfree is one of the contemporary problems that needs to be discussed and analyzed using the *al-maslahah* approach.⁸

Dania and Syaifuddin examine the childfree phenomenon developing in Indonesia from the perspective of human rights and *maqāṣid al-sharī'ah*. In his presentation, it was stated that the millennial generation in Indonesia considers child freedom as a phenomenon of married couples who do not want to have children. The millennial generation who support the childfree phenomenon reaches 60% of the total number of respondents because the choice to practice childfree is the human right of every individual. As many as 56% of respondents think that a person's decision not to have children does not conflict with Islamic teachings. However, in terms of *maqāṣid al-sharī'ah*, one of the main goals in Islam is to maintain offspring, which is a direct command from Allah to humans. The results of this study can provide consideration to the government and legal institutions in developing preventive measures so that phenomena that conflict with Islamic teachings can be appropriately controlled and negative impacts can be reduced.⁹

In the research of Irawan and Nasrullah, it was stated, family planning is regulating and carrying out sparing in giving birth to children or an effort to prevent pregnancy, either temporarily or permanently, due to certain reasons. The family planning program is expected to produce a quality generation

⁷ Wijaya, "Respon al-Qur'an atas Trend Childfree (Analisis Tafsir Maqāṣidi)."

⁸ Siti Nurjanah and Iffatin Nur, "Childfree: Between the Sacredness of Religion, Law and the Reality of Society," *Al-Adalah* 19, no. 1 (2022): 1–28, <https://doi.org/10.24042/al-adalah.v19i1.11962>.

⁹ Dania Nalisa Indah and Syaifuddin Zuhdi, "The Childfree Phenomenon in the Perspective of Human Rights and Maqashid Al-Shari'ah," *Proceedings of the International Conference on Community Empowerment and Engagement (ICCEE 2021)* 661, no. Iccee 2021 (2022): 222–31, <https://doi.org/10.2991/assehr.k.220501.025>.

because children are born to couples ready to care for children. According to Shaltut, the only family planning allowed is *tanzīm al-nasl* (temporary birth control).¹⁰

Imam Syafi'i conducted the research that examines explicitly the *Istinbāt Nahdlatul Ulama* system, which, in formulating a law, uses the *qawli* and *manhajī* methods). The *manhajī* model, namely a way of giving the law to contemporary problems based on the way of thinking and principles formulated by school scholars, is deemed necessary to be developed. This method is a way to refer directly to primary sources, namely the Qur'an, ḥadīth, and using *al-qawā'id al-uṣūliyyah* and *al-qawā'id al-fiqhiyyah* in answering the problems that occur. The development of this method is carried out -one of them- with *ijtihād jamā'ī* (collective *ijtihād*).¹¹

In contrast to the articles above, this article examines Nahdlatul Ulama's views regarding the denial of childbirth with *istinbāt* analysis of its decisions and their contextualization with the issue of child freeness. The big picture is whether it is necessary to issue a new fatwa or decision or are the results of an existing decision are deemed sufficient to provide a solution and address childfree issues with another approach, such as *uṣūl al-fiqh* (the principles of Islamic Jurisprudence)¹² or *al-maṣlaḥah*.¹³

This research is qualitative in the form of normative Islamic law research, namely making Islamic law norms as research objects.¹⁴ More specifically, the study focuses on the doctrine in the form of fatwas from Nahdlatul Ulama regarding the denial of childbirth. The NU decision is then analyzed so that the

¹⁰ N. Irawan, I., & Nasrullah, 'Argumentasi Keluarga Berencana dalam Hukum Islam (Studi Fatwa Syaikh Mahmud Syaltut)', *Jurnal Jawi* 3, no. 2 (2020): 178–203, <https://doi.org/10.24042/jw.v3i2.8078>.

¹¹ Imam Syafi'i, "Transformasi Madzhab Qouli Menuju Madzhab Manhaji Jama'iy dalam Bahtsul Masa'il", *Asy-Syari'ah: Jurnal Hukum Islam* 4, no. 1 (2018): 19–29, <https://doi.org/10.36835/assyariah.v4i1.99>.

¹² Adelina Nasution, 'Narsisme Ulama: Dilema dan Possibilitas Rekonstruksi Ushul Fiqh di Indonesia', *Al-Ahkam: Jurnal Pemikiran Hukum Islam* 28, no. 2 (2018): 219–44, <https://doi.org/10.21580/ahkam.2018.28.2.2308>.

¹³ Said Syaripuddin, "Maslahat as Considerations of Islamic Law in View Imam Malik," *Samarah* 4, no. 1 (2020): 85–106, <https://doi.org/10.22373/sjhkv4i1.6754>.

¹⁴ Sutisna dan Abdurrahman Misno, *Metodologi Penelitian Hukum Islam Berbasis Metode Ushul Fiqh* (Bogor: UIKA PRESS, 2019).

meaning, *istinbāt* method, and its application are known. After the data is analyzed, it is then presented descriptively so that it can be fully understood.¹⁵

Childfree Concept in the West and Indonesia

The term childfree does not have a specific meaning in the English dictionary.¹⁶ The term comprises two words, child and free, which means free from children or without children.¹⁷ This term came into use in the West in the 1970s. According to Agrillo and Nelini, a childfree consciously chooses not to have children,¹⁸ it can be interpreted as a married couple committed to not wanting to have offspring or children.¹⁹

Several studies related to childfree distinguish it into involuntary childfree (not having children because they are forced) and voluntary (not having children because they want or voluntarily). However, in other literature, the term childfree is still used, both voluntary and forced childfree aspects.²⁰ This division is based on the aspect of female or male fertility. A person is declared childless or unable to have children due to certain factors related to physical health problems, unlike those without children voluntarily and consciously of their personal choices.²¹

¹⁵ Nawawi Thabrani, *Metode Penelitian Fiqh dan Ekonomi Syari'ah* (Malang: Madani Media, 2019), 117.

¹⁶ Indah and Zuhdi, "The Childfree Phenomenon in the Perspective of Human Rights and Maqashid al-Shari'ah."

¹⁷ Julia Moore, "Reconsidering Childfreedom: A Feminist Exploration of Discursive Identity Construction in Childfree LiveJournal Communities," *Women's Studies in Communication* 37, no. 2 (2014): 159–80, <https://doi.org/10.1080/07491409.2014.909375>.

¹⁸ Christian Agrillo & Cristian Nelini, "Childfree By Choice: A Review," *Journal of Cultural Geography* 25, no. 3 (2008): 347–63, <https://doi.org/10.1080/08873630802476292>.

¹⁹ Robert Pralat, "Sexual Identities and Reproductive Orientations: Coming Out as Wanting (or Not Wanting) to Have Children," *Sexualities* 24, no. 1–2 (2021): 276–94, <https://doi.org/10.1177/1363460720926967>.

²⁰ Joyce C. Abma and Gladys M. Martinez, "Childlessness among Older Women in the United States: Trends and Profiles," *Journal of Marriage and Family* 68, no. 4 (2006): 1045–56, <https://doi.org/10.1111/j.1741-3737.2006.00312.x>.

²¹ Sharon K. Houseknecht, "Voluntary Childlessness in the 1980s," *Marriage & Family Review* 5, no. 2 (n.d.): 51–69, https://doi.org/10.1300/J002v05n02_04.

Many millennials in Indonesia have begun to follow this child-free trend, especially after marriage.²² They understand childfree as a lifestyle, even though the reproductive system is healthy and fertile.²³ Some of them think that family harmony can be established by holding this principle, namely without the presence of children.²⁴

This shift in view influenced the thinking of the Indonesian people, who previously thought that having children in household life was a gift and even a necessity.²⁵ However, there are at least two factors a person or couple chooses child-free, namely external factors and internal factors.²⁶ External factors include the economy, overpopulation, the individualism and non-religious nature of society, and changes in values due to the influence of Western mindsets. At the same time, internal factors include mentality, the partner's attitude towards the choice of partner, decision-making maturity, and family experience.²⁷

Nahdlatul Ulama's Law Exploration and Discovery Methods (*Istinbāt al-Ahkām*)

Based on the results of the National Alim Ulama Conference (Munas) and the NU Grand Conference (Konbes) held in Bandar Lampung in 1992, it was found that the decision-making system by the Bahtsul Masail Nahdlatul Ulama Institute (LMBNU) used the *qawli* method. The procedure for answering the problem is made within the framework of adhering to one of the four agreed schools of jurisprudence and prioritizing the *qawli* school rather than the

²² Muhammad Khatibul Umam and Nano Romadlon Auliya Akbar, 'Childfree Pasca Pernikahan: Keadilan Hak-Hak Reproduksi Perempuan Perspektif Masdar Farid Mas'udi dan Al-Ghazali', *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 2 (2021): 157–72, <https://doi.org/10.19105/al-manhaj.v3i2.5325>.

²³ Eva Fadhilah, 'Childfree dalam Perspektif Islam', *Al-Mawarid: Jurnal Syari'ah & Hukum* 3, no. 2 (2022): 71–80, <https://doi.org/10.20885/mawarid.vol3.iss2.art1>.

²⁴ Wijaya, "Respon al-Qur'an atas Trend Childfree (Analisis Tafsir Maqāshidi)."

²⁵ Mohammad Rindu Fajar Islamy et al., 'Fenomena Childfree di Era Modern: Studi Fenomenologis Generasi Z Serta Pandangan Islam terhadap Childfree di Indonesia', *Sosial Budaya* 19, no. 2 (2022): 81–89, <https://doi.org/10.24014/sbv19i2.16602>.

²⁶ Indah and Zuhdi, "The Childfree Phenomenon in the Perspective of Human Rights and Maqashid Al-Shari'ah."

²⁷ Salman Al-Farisi, 'Childfree dalam Perspektif Fiqh Al-Aulawiyat', *Maqasid: Jurnal Studi Hukum Islam* 10, no. 2 (2021): 1–9, <https://doi.org/10.30651/mqsd.v10i2.16059>.

manhajī school of jurisprudence.²⁸ Because basically, there are two methods that can be used in an effort to provide law answers to *fiqhīyyah* problems, namely the *qawli intiqādī* school method (التَّمَذُّبُ الْقَوْلِيُّ الْإِنْتِقَادِيُّ) and the *manhajī* school jurisprudence (التَّمَذُّبُ الْمَنْجِيّ).²⁹ More concisely, the NU school of methods flow is shown in Table 2.

Table 2
Flow of the Nahdlatul Ulama Method

Found only one opinion	→	<i>Mujma' 'alayh</i> (Agreed)	→	<i>Fatwā</i> issued.	
	→	<i>Ghayr mujma' 'alayh</i> (Disagree)	→	Have a strong legal basis.	Legal determination is made.
			→	Have a weak legal basis.	Abandoned until found something else that strengthens it (<i>ijtihād manhajī</i>)
Found two or more opinions	→	Choose the stronger opinion (<i>tarjih</i>)	→	<i>Fatwā</i> issued.	
	→	The basis for the argument is weak.	→	Abandoned until found something else that strengthens it (<i>ijtihād manhajī</i>)	
No scholarly opinions were found.	→	There is a <i>qawā'id al-fiqhīyyah</i> who oversees it.		→	<i>Fatwā</i> issued.
	→	Substantially it can be included in one of the existing fiqh chapters.		→	<i>Fatwā</i> issued.
	→	Not found a single opinion, either formally or substantially.		→	Abandoned until found something else that strengthens it (<i>ijtihād manhajī</i>)

²⁸ Ali Mutakin Nurjanah, Rahmatsyah, "Fatwa Lajnah Bahtsul Masail NU Concerning Istibdāl Wakaf and their Relevance with Renewal of Islamic Law," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 523–46, <https://doi.org/10.29240/jhi.v7i2.3707>.

²⁹ Mahsun, *Mazhab NU Mazhab Kritis* (Depok: Nadi Pustaka, 2015), 63.

Al-tamadhab al-qawli intiqādi is taking opinions from the products of *fiqh* experts (results of *ijtihad* in classical *fiqh* books) after a review and critical study of these opinions.³⁰ Another definition states that *al-tamadhab al-qawli intiqādi* is an opinion or *fatwā* of a *mufti* in establishing *fiqhiyyah* law from the thoughts of school scholars. It can also be interpreted as a result of legal *istinbāt* by a *mujtahid* used as a guide and confirmed by his students or followers, like the opinion of al-Shāfiʿī, who argues about the necessity of intending when doing ablution. According to him, intention is one of the pillars of ablution. His followers then used his opinion as a guide, later referred to as the al-Shāfiʿiyah school.³¹

As for being a mazhab in a *manhajī* manner, it means carrying out *istinbāt al-aḥkām* (digging into the law) based on the methodology (*manhaj*) formulated by the priests of the madhhab. In another explanation, the *manhajī* school is a method applied by *mujtahids* when studying, understanding, and establishing a *fiqhiyyah* law. For example, the methodology that has been formulated and used by Abū Ḥanifah, Mālik ibn Anas, al-Shāfiʿī, and Aḥmad ibn Ḥanbal. In terms of its application, such as the acknowledgment and blasphemy of the theory of *istiḥsān*, which was acknowledged by Abū Ḥanifah but was rejected by al-Shāfiʿī.³²

Nahdlatul Ulama Decree Regarding Family Planning

The fatwa answers questions regarding the law of limiting offspring or planning within the family. LBMNU studied it with several approaches. First, studying it through the concept of *'azl* (withdrawing the penis before orgasm or releasing semen outside the uterus. Second, discussing it through the study of using tools and taking drugs that can prevent pregnancy or fertilization. Both of these *'azl* and the use of tools that can prevent the entry of sperm into the uterus, such as a condom - is considered *makrūh*. The same law also applies to taking drugs to prevent pregnancy. However, the use of such devices or drugs does not reach the limit of totally terminating a pregnancy. Because if it

³⁰ Afifuddin Muhajir, *Metodologi Kajian Fiqh: Pendekatan Bermadzhab Qauli dan Manhaji* (Situbondo: Ibrahimy Press, 2009), 25.

³¹ Syafi'i, "Transformasi Madzhab Qouli Menuju Madzhab Manhaji Jama'iy dalam Bahtsul Masa'il", 2018, 22–23.

³² Syafi'i.

terminates the pregnancy, then it is punished, *harm*. According to the medical team, this prohibition does not apply to someone who could be dangerous if pregnant and other things that require them to do so.³³

Among the argements used are:

(وَالْعَزْلُ) وَهُوَ أَنْ يُنْزَلَ بَعْدَ الْجِمَاعِ خَارِجَ الْفَرْجِ (تَحَرُّرًا مِنَ الْوَلَدِ مَكْرُوهٌ) وَإِنْ أَدْنَتْ فِيهِ الْمَعْرُوفُ عَنْهَا حُرَّةٌ كَانَتْ أَوْ أَمَةً لِأَنَّهُ طَرِيقٌ إِلَى قَطْعِ النَّسْلِ

“Azl, namely expelling semen outside the womb because avoiding having children is *makrūh* even if the wife allows it, both from the free wife and from her slaves. That’s because ‘azl is a way to cut off offspring.”³⁴

وَكَذَا اسْتِعْمَالُ الْمَرْأَةِ الشَّيْءِ الَّذِي يُبْطِئُ الْحَبْلَ وَيَقْطَعُهُ مِنْ أَصْلِهِ فَيُكْرَهُ فِي الْأَوَّلِ وَيَحْرُمُ فِي الثَّانِي

“And so for a wife to use something that delays pregnancy is *makrūh*, while the use of something that can terminate the pregnancy (forever), then the law is unlawful.”³⁵

وَإِنَّمَا يُجُودُ الضَّرُورَةُ فَعَلَى الْقَاعِدَةِ الْفِقْهِيَّةِ إِذَا تَعَارَضَتِ الْمَفْسَدَتَانِ رُوِيَ أَنَّ أَعْظَمَهُمَا ضَرَارًا بَارِتْكَابٍ أَحَقُّهُمَا مَفْسَدَةً

“And in times of emergency, according to fiqhiyyah rules; if there are two mafsadat (dangers), pay attention to the one with the greater danger (avoided) by doing the one with the least mafsadat”³⁶

Based on these arguments, family planning, whether using ‘azl, condoms, or drugs, is *makrūh* in law. With a note, using the three is not up to the limit of terminating the pregnancy forever. That is because the act of terminating a pregnancy is unlawful.

Nahdlatul Ulama Decree on Vasectomy and Tubectomy

³³ Tim LTN PBNU, *Ahkām al-Fuqahā fī Muqarrarāt Mu'tamarāt Nahdlatil Ulama; Solusi Problematika Aktual Hukum Islam, Keputusan Mukhtar, Munas, dan Konbes Nahdlatul Ulama*, 302.

³⁴ Zakariyā Ibn Muḥammad Ibn Aḥmad Ibn Zakariyā al-Anṣārī al-Sunaykī, *Asnā al-Maṭālib* (Kairo: Dār al-Kutub al-Islāmī, n.d.), vols III; 186.

³⁵ Burhān al-Dīn Abū Ishāq Ibrāhīm Ibn Muḥammad Ibn Aḥmad Al-Bājūrī, *Ḥāshiyah al-Bājūrī* (Mesir: Isā Bāb al-Halabī, 1992), vols II; 95.

³⁶ Tim LTN PBNU, *Ahkām al-Fuqahā fī Muqarrarāt Mu'tamarāt Nahdlatil Ulama; Solusi Problematika Aktual Hukum Islam, Keputusan Mukhtar, Munas, dan Konbes Nahdlatul Ulama*, 303.

The fatwa answers questions regarding the law of vasectomy and tubectomy. Preventing and sparing childbirths that kill the reproductive function is not permissible in any way. However, it is still permissible if the sterilization is temporary and its function can be returned (to normal and functioning again).

Some of the arguments used include:³⁷

أَمَّا اسْتِعْمَالُ الرَّجُلِ وَالْمَرْأَةِ دَوَاءً لِمَنْعِ الْحَبْلِ فَقَدْ سُئِلَ عَنْهَا الشَّيْخُ عَزُّ الدِّينِ فَقَالَ : لَا يَجُوزُ لِلْمَرْأَةِ ذَلِكَ وَظَاهِرُهُ التَّحْرِيمُ ، وَبِهِ أَفْتَى الْعِمَادُ بْنُ يُونُسَ ، فَسُئِلَ عَمَّا إِذَا تَرَاضَى الرَّوْجَانِ الْحُرَّانِ عَلَى تَرْكِ الْحَبْلِ هَلْ يَجُوزُ التَّدَاوِي لِمَنْعِهِ بَعْدَ طَهْرِ الْحَيْضِ . أَجَابَ لَا يَجُوزُ أَهْ وَقَدْ يُقَالُ : هُوَ لَا يَزِيدُ عَلَى الْعَزْلِ ، وَلَيْسَ فِيهِ سِوَى سَدِّ بَابِ الدَّسَلِ ظَنًّا وَإِنَّ الظَّنَّ لَا يُغْنِي مِنَ الْحَقِّ شَيْئًا ، وَعَلَى الْقَوْلِ بِالْمَنْعِ فَلَوْ فُرِقَ بَيْنَ مَا يَمْنَعُ بِالْكُلِّيَّةِ وَبَيْنَ مَا يَمْنَعُ فِي وَقْتِ دُونَ وَقْتِ فَيَكُونُ كَالْعَزْلِ لَكَانَ مُتَّجِهًا . وَفِي شَرْحِ التَّنْبِيهِ لِلْبَالِسِيِّ نَحْوُ هَذَا أَهْ كَلَامُ الرَّزْكَانِيِّ

“A man or a woman if they use drugs with the aim of preventing pregnancy, according to ‘Izz al-Dīn the law is not permissible, even forbidding it. This is in line with the fatwa of al-‘Imād ibn Yūnus. So, what if it is done by an independent married couple and both are willing not to get pregnant, is it permissible to take medicine to prevent pregnancy after menstruation is clean? ‘Izz al-Dīn said that this was legally not permissible. However, what is meant by this impermissibility is not to exceed ‘*azl*, which only closes the existence of *zann* (prejudice) offspring. Whereas *zann* is different from reality. The use of drugs to prevent pregnancy in total with the use of drugs to prevent temporary nature, both have different laws. Therefore, this opinion is stronger. Al-Bālisī in *Sharḥ al-Tanbīh* also explains the existence of this consideration.”³⁸

In the *Ghāyah al-Talkhīṣ fi Fatāwā Ibn Ziyād* it is also explained:³⁹

وَفِي فَتَاوَيِ الْقِمَاطِ مَا حَاصِلُهُ جَوَازُ اسْتِعْمَالِ الدَّوَاءِ لِمَنْعِ الْحَيْضِ

“And in the book *Fatāwā al-Qimāt* it is concluded that the use of drugs to prevent menstruation is permissible.”

³⁷ Tim LTN PBNU.

³⁸ Shihāb al-Dīn Aḥmad Ibn Aḥmad Ibn Hamzah al-Ramlī, *Nihāyah al-Muḥtāj Ilā Sharḥ al-Minhāj* (Beirut: Dār al-Fikr, n.d.), vols VIII; 443.

³⁹ ‘Abdurrahmān Ibn Muḥammad Bā ‘Alawī, *Ghāyah al-Talkhīṣ fi Fatāwā Ibn Ziyād* (Beirut: Dār al-Fikr, n.d.), 247.

This decision is not much different from the previous one, which stated that pregnancy prevention is permissible as long as it does not kill the reproductive function through drugs or other means. In this case, sterilization using a vasectomy or tubectomy is permissible if nature can still be restored to become pregnant or give birth.

Nahdlatul Ulama Decision on the Use of Spiral Contraception (IUD)

This discussion concerns the Spiral Contraception (IUD) law, where installation must be done by looking at the private parts (vagina). LBMNU decided that using a device such as an IUD was permissible. The legal status is equated with *'azl*. This law also applies to the use of other contraceptives. However, the law can become unlawful because installing the device requires the installer to see the nakedness. Therefore, in pairing the device, efforts must be made to do it in a way justified by Islamic law, such as the husband who installs it.

The arguments used are:⁴⁰

وَمِنْ مَعَاصِي الْعَيْنِ النَّظَرُ إِلَى النِّسَاءِ الْأَجْنَبِيَّاتِ وَكَذَا نَظَرُهُنَّ إِلَيْهِمْ وَنَظَرُ الْعَوْرَاتِ
فَيَحْرُمُ نَظَرُ الرَّجُلِ إِلَى شَيْءٍ مِنْ بَدَنِ الْمَرْأَةِ الْأَجْنَبِيَّةِ غَيْرِ الْحَلِيلَةِ وَيَحْرُمُ عَلَيْهَا كَشْفُ
شَيْءٍ مِنْ بَدَنِهَا بِحَضْرَةِ مَنْ يَحْرُمُ نَظَرُهُ إِلَيْهَا وَيَحْرُمُ عَلَيْهِ وَعَلَيْهَا كَشْفُ شَيْءٍ مِمَّا بَيْنَ
السُّرَّةِ وَالرُّكْبَةِ بِحَضْرَةِ مُطَّلِعٍ عَلَى الْعَوْرَاتِ وَلَوْ مَعَ جَنْسٍ وَمَحْرَمِيَّةٍ غَيْرِ حَلِيلَةٍ

“And among the evils of the eye, that is, looking at a man at another woman who is not his *maḥram*, the same goes for a woman looking at another man who is not a *maḥram*, and also looking at her private parts. Therefore, it is forbidden for a man to look at the body parts of a woman who is not a *maḥram* except for his wife. And it is also forbidden for women to reveal their body parts in front of people who are forbidden to look at them. Men and women are forbidden to reveal (open) between the navel and the knees in front of people who can see it, even if they are of the same sex and have a *maḥram* relationship, except for their wives.”⁴¹

⁴⁰ Tim LTN PBNU, *Ahkām al-Fuqahā fi Muqarrarāt Mu'tamarāt Nahdlatil Ulama; Solusi Problematika Aktual Hukum Islam, Keputusan Mukhtar, Munas, dan Konbes Nahdlatul Ulama*, 450.

⁴¹ Muhammad Ibn 'Umar Nawawi al-Jāwī, *Mirqāh Ṣu'ūd al-Taṣdīq Sharḥ Sulam Tawfiq* (Surabaya: Maktabah al-Hidayah, n.d.), 66.

Nahdlatul Ulama Decision on Contraception with Vaccines from Male Sperm

The issue being questioned in this *fatwā* is regarding vaccines based on male sperm. The vaccine immunizes women so they do not get pregnant. In its formulation, contraception through immunization using the vaccine is permissible because disgust or dirtiness (*istiḡzār*) no longer exists. In addition, it is required that sperm be released in a way that is not prohibited (*muḥtaram*).

The arguments used include:⁴²

(وَأَنْ كَانَ) غَيْرَ الْمُسْكِرِ (طَاهِرًا فَإِنْ كَانَ مُضِرًّا) بِمَنْ يَتَنَاوَلُهُ كَالسَّمِّ (أَوْ مُسْتَقْدَرًا غَالِبًا كَمُخَاطِ
فَحَرَامٍ) تَنَاوَلُهُ لِتَضَرُّرِهِ بِهِ وَاسْتَقْدَارِهِ لَهُ... (فَإِنْ تَقِيَ ذَلِكَ) أَي مَا ذُكِرَ مِمَّا يَفْتَضِي التَّحْرِيمَ فَحَلَالٌ.
قَوْلُهُ مِمَّا يَفْتَضِي التَّحْرِيمَ) وَهُوَ أَرْبَعَةٌ الْإِسْكَازُ وَالْإِسْتِقْدَارُ وَالْإِضْرَارُ وَالنَّجَاسَةُ

“If there is a drink that is not intoxicating and holy, but if consuming it can cause harm, such as poison, or is generally disgusting, such as snot, then consuming it is unlawful. The reason is because there is an element of danger and disgust. If it does not exist, then it becomes lawful. There are four elements that make haram, namely intoxication, disgusting, harmful, and unclean.”⁴³

Istinbāt al-Ahkām NU's Analysis of “Refusing the Presence” of Children

Based on the arguments in deciding issues related to refusing childbirth, it is known that the *istinbāt* method used is the *qawli intiqādi* approach. In practice, this method begins by examining the books (*turāth*) and prioritizing the *mu'tabarah* (authoritative) books from the four schools of *fiqh*. In this case, LBMNU refers to the books of al-Shāfi'iyah. On the four issues studied, it is believed that there is only one *qawl* (opinion), which is *mujma' 'alayh* (agreed upon). So that if there is no dispute, then the opinion is directly used as the basis. The books used as references were taken from the books of the al-Shāfi'iyah school of thought, including *Asnā al-Maṭālib* by Zakariyā al-Anṣārī (d. 926 H), *Ḥāshiyah al-Bājurī* by Ibrāhīm al-Bājurī (d. 1276 H), *Nihāyah al-Muḥtāj ilā Sharḥ al-Minhāj* by Muḥammad Ibn Shihāb al-Dīn al-Ramlī (d. 957 H), *Ghāyah al-*

⁴² Tim LTN PBNU, *Ahkām al-Fuqahā fi Muqarrarāt Mu'tamarāt Nahdlatil Ulama; Solusi Problematika Aktual Hukum Islam, Keputusan Mukhtar, Munas, dan Konbes Nahdlatul Ulama*, 488.

⁴³ 'Abdullāh Ibn Ḥijāz Ibn Ibrāhīm al-Sharqawī, *Ḥāshiyah al-Sharqawī* (Kairo: Dār al-Kutub al-Islāmiyah, n.d.), vols II; 451.

Talkhīṣ fī Fatāwā Ibn Ziyād by ‘Abd al-Raḥmān Ibn Muḥammad Bā ‘Alawī, and *Ḥāshiyah al-Sharqawī* by ‘Abdullāh al-Sharqawī (d. 1227 H).

In detail, the method used by LBM-NU in establishing laws is as follows. 1) *ibārah al-kitāb*, namely tracing the opinions of the scholars recorded in various books. 2) *taqrīr jamā’ī* is taking one of the opinions in the Salaf books. 3) *ilhāq al-masā’il bi nazā’irihā*, namely equating problems that have no legal certainty in the books of the Salaf. 4) *istinbāṭ jamā’ī*, namely gathering experts in fields related to the issues discussed.⁴⁴ Nahdlatul Ulama fatwā determination method can be seen on Figure 1.

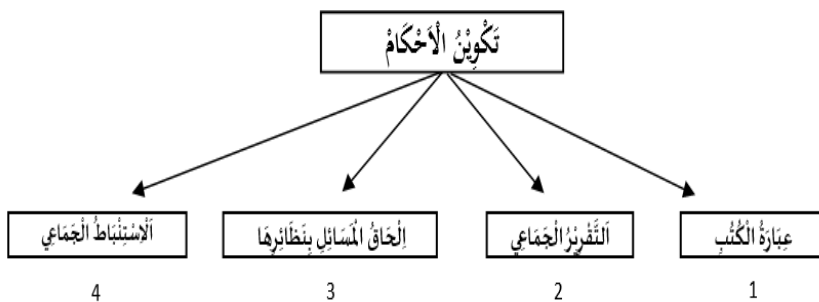


Figure 1
Nahdlatul Ulama *Fatwā* Determination Method

The *qawli intiqādī* or *ibārah al-kitāb* method can speed up answering questions and does not require effort to mobilize the mind (*ijtihād*). This method is carried out by dynamically applying the texts resulting from the *ijtihād* of jurists in the context of the problem sought by the law. It can also be seen that the LBM-NU decision does not take the law directly from the Qur’an and Sunnah. It is known as the basic attitude in the school of jurisprudence.

Contextualization of the NU Decision with the Childfree Phenomenon

Three keywords are used as the basis of reference in determining the permissibility of refusing births. First, *‘azl*, which is removing sperm (revoking the penis) outside the female genitals when he is about to orgasm during

⁴⁴ Kasuwi Saiban, *Metode Penetapan Hukum Islam, Membangun Madzhab Fiqih Kontemporer Indonesia* (Malang: Setara Press, 2019), 123.

intercourse. The goal is that sperm does not enter the uterus. It aims to break the fertilization in the uterus and avoid having children. This term was already at the time of the Prophet. At that time, one of the companions asked the Prophet about the issue of *'azl*. This concept is found in the decision of Nahdlatul Ulama regarding Family Planning.

Second, the use of contraceptive devices such as intrauterine devices (IUD), implants, injections, condoms, operative methods for women (tubectomy), and operative methods for men (vasectomy). These tools are used to prevent pregnancy or fertilization. This concept can be seen in the decisions of Nahdlatul Ulama on Family Planning, vasectomy and tubectomy, and using spiral contraception (IUD).

Third, drug use, namely by consuming pills or other substances that can delay or prevent pregnancy. This concept is stipulated in the LBM-NU decision regarding Family Planning and contraception with vaccines from male sperm. Based on these three keywords, it is important to note that preventing temporary pregnancy does not eliminate the potential to get pregnant forever. Also, the objects used must be pure, including sperm, because they are not disgusting.

Reading the four LBM-NU fatwas and the three categorizations above, preventing pregnancy and not having children can be divided into two types: first, temporary prevention (*mu'aaqqat*). He still can have children—second, permanent prevention (*mutlaq*). In this second way, pregnancy prevention is carried out by covering the potentials that can make a child have offspring, both from the male and female sides.⁴⁵ There are differences regarding using the term *taḥdīd al-nasl* (restrictions on having offspring). The term *taḥdīd al-nasl*, in this case, is interpreted as a permanent restriction on heredity. At the same time, those that are not permanent (temporary) are termed *tanzīm al-nasl* (regulations in having offspring).⁴⁶

The four *fatwās* with the methodology used by LBM-NU can be contextualized on the childfree issue. It is because both of them concentrate on

⁴⁵ Sayyid Bakr ibn Sayyid Muḥammad Shatā al-Dimyāṭī, *I'ānah al-Ṭālibīn* (Beirut: Dār al-Kutub al-Islāmi, 2009), vols III; 470.

⁴⁶ Sulaymān al-Bujayramī, *Hāshiyah al-Bujayramī 'alā al-Khaṭīb* (Beirut: Dār al-Fikr, 1981), vols IV; 40; Muḥammad al-Khasht, *Fiqh al-Nisā' fi Daw' al-Madhāhib al-Arba'ah wa al-Ijtihādāt al-Fiqhiyyah al-Mu'āshirah* (Kairo: Dār al-Kitāb al-'Arabī, 1994), 247.

the problem of rejecting children before they have the potential to exist. In *fiqh* studies, these issues can be reviewed through five methods; not getting married at all, refraining from having intercourse after marriage, through *'azl*, by not *inzāl* (not releasing sperm by inserting the penis into the vagina), and by using contraceptives or drugs that can prevent uterine fertilization. By looking at the equivalent cases above, from the aspect of its application, child-free cases can be equated in law with decisions that LBM-NU has stipulated.

Formulation of New Law on Childfree Cases; a Necessity

Determination of law on contemporary issues requires maximum effort. Apart from still referring to the arguments and opinions of scholars, social and cultural values are an integral part.⁴⁷ Because the case to be solved is in Indonesia, Indonesian social and cultural values become an inevitable reference—at least two highlights of the child-free phenomenon. First, childfree is a lifestyle -it can even be considered an ideology- to refuse to give birth, adopt, or have children for married couples even though they can get pregnant -have healthy reproductive organs-. From the start, the husband and wife did not want children. That choice has the effect of becoming a principle. It differs from the LBMNU decision, whose main issue is spacing or regulating pregnancies. This problem indicates that there is still a desire to give birth or have children someday. In addition, the LBMNU decisions point to the method's validity.

Second, the concept of childfree was born in the West due to the expansion of thought liberalism. Among these thoughts is the view of overpopulation and changes in the value of a child in the family due to the influence of Western mindsets. At some level, it can lead to depopulation and loss of the working-age population in the future. From an Islamic point of view, there is no term childfree or refusing to have children, especially for married couples. Even protecting offspring is an important part of Islamic law (*hifz al-nasl*).

Based on these arguments, a new law formulation is needed, especially for LBM-NU to study child freedom by looking at its substance. As a contemporary problem, it is possible not to find an opinion in the texts of books written by

⁴⁷ Moh. Dahlan, Zakiyuddin Baidlawy, and Sugiono Sugiono, "Gus Dur's Ijtihād Paradigm of Contemporary Fiqh in Indonesia," *Al-Ahkam* 29, no. 2 (November 2019): 167, <https://doi.org/10.21580/ahkam.2019.29.2.4193>.

scholars. Therefore, the need to carry out *istinbāt al-ahkām* should use the *manhajī* approach by referring directly to the Qur'an and Sunnah, and still based on the methodology (*manhaj*) of the school's imam.

There are at least three verses of the Qur'an that can be referred to answer the childfree problem. First, Surah al-Baqarah (2) Verse 223:

حَرْتُ لَكُمْ فَأْتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ ۖ وَقَدِّمُوا لِنَفْسِكُمْ ۖ وَاتَّقُوا اللَّهَ وَعَلِمُوا أَنَّكُمْ مُلَاقُوهُ ۗ وَبَشِّرِ الْمُؤْمِنِينَ ﴿٢٢٣﴾

“Your women are a tilth for you (to cultivate) so go to your tilth as ye will, and send (good deeds) before you for your souls, and fear Allah, and know that ye will (one day) meet Him. Give glad tidings to believers, (O Muhammad).”

Second, Surah al-Nahl (16) Verse 72:

وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ أَزْوَاجِكُمْ بَيْنَ وَحَفَدَةً وَرَزَقَكُمْ مِنَ الطَّيِّبَاتِ ۗ أَفَبِالْبَاطِلِ يُؤْمِنُونَ وَبِنِعْمَتِ اللَّهِ هُمْ يَكْفُرُونَ ﴿٧٢﴾

“And Allah hath given you wives of your own kind, and hath given you, from your wives, sons, and grandsons, and hath made provision of good things for you. Is it then in vanity that they believe and in the grace of Allah that they disbelieve?”

Third, Surah al-Rūm (30): Verse 21:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً ۗ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ﴿٢١﴾

“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 three verses above emphasize that when a man and a woman have married, the two are ordered to have good relations with each other (*mu'asharah bi al-ma'rūf*). Included in the term is to have sexual intercourse properly. That is because it becomes part of the purpose of marriage, which is to maintain despicable lust. In addition, another purpose of marriage, and this goal is the main goal, namely, to continue and preserve offspring. The existence of children in a family will lead to the wisdom of marriage, namely the realization

of a peaceful and loving life (*sakīnah, mawaddah, raḥmah*). The Prophet also explained that marriage is intended to continue offspring.⁴⁸

Conclusion

The Nahdlatul Ulama Bahtsul Masail Institute (LBM-NU) has issued four fatwas related to refusing to have children. First, decision No. 283 concerning Family Planning. Second, decision No. 381 regarding Vasectomy and Tubectomy. Third, decision No. 382 regarding using spiral contraception (IUD). Fourth, decision no. 399 concerning contraception with male sperm-based vaccines. The *istinbāt* method in deciding the four *fatwās* uses the *qawli intiqādī* approach. When contextualized with the childfree case, the law can be equated with the decisions the LBM-NU has determined. This similarity is obtained through a review of the aspects of its application. While in substance, some differences and problems need to be studied in depth, especially through the *manhajī* and *maqāsid al-sharī'ah* approaches. It is when childfree is used as a life principle as an ideology and published to the general public to be followed so that it impacts society. Because campaigning for childfree has implications for the principle of life, which ultimately affects the human population even in a justified way.[a]

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⁴⁸ Aḥmad ibn Ḥusayn Ibn 'Alī ibn Mūsā Abū Bakr al-Bayhaqī, *Sunan al-Bayhaqī al-Kubrā* (Makkah: Maktabah Dār al-Baz, 1994), vols VII; 78.

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