

Childfree: Between the Sacredness of Religion, Law and the Reality of Society

Siti Nurjanah¹, Iffatin Nur²

Abstract: *Childfree: Between the Sacredness of Religion, Law and the Reality of Society.* One of the fundamental problems of a cultural shift in the contemporary era today is the existence of a phenomenon that is contrary to the norm. One of them is the childfree phenomenon with the main goal being the voluntary choice not to have children in a family. Seeing this phenomenon, it seems that it has brought about a shift that must be answered from the perspective of religion, Islamic law, and the reality of society. This is because so far the position of children in religion, law, and the reality of society is a group that must be protected. With the above problems, this study aimed to formulate an approach to the childfree phenomenon from the point of view of Islamic law, particularly the objectives of Islamic law (*maqâshid shari'ah*) and the reality of society. Through literature review and literature study, this study finds that the main dimensions of the Islamic law approach model based on *maqâshid shari'ah* and the reality of society are based on the benefit to be addressed and are in line and tandem with the reality of society. The phenomenon of being childfree is contrary to the mission and objectives of *maqâshid shari'ah* and the reality of society. The conclusion of this study has strengthened the discourse of an Islamic Law study on the childfree phenomenon as one of the contemporary phenomena that should be responded to by using the perspective of benefits to people.

Keywords: childfree, Islamic law, *maqâshid shari'ah*, reality of society

Abstrak: *Childfree: Antara Sakralitas Agama, Hukum, dan Realitas Masyarakat.* Salah satu problem mendasar dari pergeseran budaya di era kontemporer saat ini adalah adanya fenomena yang berseberangan dengan kelaziman. Salah satunya adalah adanya fenomena childfree dengan tujuan utamanya adalah peniadaan anak dalam sebuah keluarga. Melihat fenomena tersebut, nampaknya membawa arus pergeseran yang harus dijawab oleh kaca mata agama, hukum Islam, dan realitas masyarakat. Hal ini dikarenakan selama ini posisi anak dalam agama, hukum, dan realitas masyarakat merupakan kelompok yang harus dilindungi. Dengan problem di atas, kajian ini bertujuan untuk merumuskan pendekatan terhadap fenomena *childfree* dengan kaca mata hukum Islam, terkhusus tujuan hukum Islam (*maqâshid syari'ah*) dan realitas masyarakat. Melalui kajian pustaka dan studi literatur, kajian ini menemukan bahwa dimensi utama model pendekatan hukum Islam berbasis *maqâshid syari'ah* dan realitas masyarakat didasarkan oleh kemaslahatan yang hendak dituju dan sejalan serta beriringan dengan realitas masyarakat. Terhadap fenomena *childfree*, *childfree* bertentangan dengan misi dan tujuan *maqâshid syari'ah* dan realitas masyarakat. Kesimpulan dalam kajian ini telah menguatkan diskursus kajian hukum Islam bahwa fenomena *childfree* merupakan satu

¹Institut Agama Islam Negeri Metro Lampung

²UIN Sayyid Ali Rahmatullah Tulungagung

E-mail: 'siti.nurjanah@metrouniv.ac.id, 'iffaeltinury@gmail.com

dari fenomena kontemporer yang harus direspon dengan kaca mata kemaslahatan dalam masyarakat.

Kata kunci: *childfree*, hukum Islam, *maqâshid syari'ah*, realitas masyarakat.

Introduction

In the religious conception, marriage is a law chosen by God as a means for humans to produce offspring. In the legal aspect, Law Number 1 of 1974 concerning Marriage states that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of preserving offspring and forming an eternally happy family based on the One and Only God.¹ Meanwhile, in the aspect of social reality, marriage is something that is very sacred and has dimensions of unification between two parties to continue generations as an effort to continue and preserve life in the world.²

Regarding offspring (children) in a family, the presence of children is a major manifestation for married couples. In the religious aspect, children will be able to save and provide help to their parents in the hereafter. In the legal aspect, children have rights that must be protected and realized by their parents. Meanwhile, in the aspect of social reality, the presence of a child is a means of solace and happiness for parents. But along with the development and various movements and patterns of thought, *childfree* is one of the phenomena that occurs - when a husband and wife choose not to have a child.³

Regarding the phenomenon of *childfree* in Indonesia, the virtual world in Indonesia is being stirred up by the term *childfree*. This is because not long ago, an Indonesian celebrity declared herself a *childfree*

¹ See, Muhammad Ngizzul Muttaqin, 'Unregistered Marriage Between Indonesian Citizens And Foreign Citizens With The Legal Perspective Of Marriage In Indonesia', *Jurnal Ilmiah Mizani*, 7.2 (2020).

² See, Muhammad Ngizzul Muttaqin & Nur Fadhilah, 'Hak Ijbar Wali Tinjauan *Maqâshid Syari'ah* dan Antropologi Hukum Islam', *De Jure*, 12.1 (2020), 103.

³ See, Tim Editor, 'Isu *Childfree* Jadi Pembahasan Hangat, BKKBN: Ini Terkait dengan Pentingnya Edukasi Reproduksi', *KompasTV*, 06 September, 2021 <<https://www.kompas.tv/article/208685/isu-childfree-jadi-pembahasan-hangat-bkkbn-ini-terkait-dengan-pentingnya-edukasi-reproduksi>>.

supporter on her social media account. So, many people are still surprised by the emergence of this understanding. Even though the term childfree has existed since the late 2000s and even is also popular in developed countries.⁴ Regarding the meaning of children in the family, Iriani Indri Hapsari and Siti Rianisa Septiani conclude in their study that the absence of children has implications for the emotional presence of couples who do not have children.⁵

Meanwhile, Tri Rejeki Andayan, a psychologist at the medical faculty of Universitas Sebelas Maret, says that someone who chooses not to have children has implications for difficulties in contributing to life. Besides, families who choose not to have children may face implications such as various pressures from various parties, including the community.⁶ Specifically, related to the position and standing of children in religion, the Qur'an states that children are a means to realize peace of heart and soul for their parents.⁷

Regarding the previous studies on childfree, Miwa Patnani, et al. mentioned that the existence of children in a family is a gift from God that brings a positive impact on the continuity of family happiness.⁸ Khasanah and Ridho stated that childfree is the female's reproductive right that should be accepted by their partner to not damage one of the parties.⁹ Akbar and Umam also stated that childfree is allowed as long as it may change only based on the motive and reason that will not lead to the aspect of negative implications.¹⁰ Meanwhile, Tiara

⁴ A. Syalaby Ichsan, 'Childfree, Tampanan Keras Bagi Dunia Parenting', *Republika.Co.Id*, 25 Agustus, 2021 <<https://www.republika.co.id/berita/qydidg9483/childfree-tampanan-keras-bagi-dunia-parenting>>.

⁵ Iriani Indri Hapsari dan Siti Rianisa Septiani, 'Kebermaknaan Hidup Pada Wanita Yang Belum Memiliki Anak Tanpa Disengaja (Involuntary Childless)', *Jurnal Penelitian dan Pengukuran Psikologi*, 4.2 (2015).

⁶ Humas UNS, 'Childfree dari Kacamata Psikolog UNS', *Universitas Sebelas Maret*, 1 Juli, 2021 <<https://uns.ac.id/id/uns-update/childfree-dari-kacamata-psikolog-uns.html>>.

⁷ Samiudin, 'Kedudukan Anak dalam Keluarga Menurut Al-Qur'an', *PANCAWAHANA: Jurnal Studi Islam*, 12.2 (2017).

⁸ Miwa Patnani, Bagus Takwin, & Winarini Wilman Mansoer, "Bahagia Tanpa Anak? Arti Penting Anak Bagi Involuntary Childless," *Jurnal Ilmiah Psikologi Terapan* 9, no. 1 (2021).

⁹ Uswatul Khasanah & Muhammad Rosyid Ridho, 'Childfree Perspektif Hak Reproduksi Perempuan dalam Islam', *Al-Syakhsiyah: Journal of Law & Family Studies*, 3.2 (2021).

¹⁰ Nano Romadlon Auliya Akbar & Muhammad Khatibul Umam, 'Childfree Pasca

Hanandita considers that the childfree phenomenon occurs due to the shift in contemporary people's mindset. The childfree phenomenon in constructing people is a phenomenon contrary to habituation to humans.¹¹

Based on the aforementioned previous studies, this study attempts to provide a new construction in the discourse of an Islamic Law study through the approach of *maqasid al-shariah* which is the sacredness of religion and social reality among people. The construction of the method of *ijtihad* in this contemporary Islamic law should be a must in answering the challenges and the complexity of contemporary problems, including childfree. To respond to the phenomenon and problem of the voluntary childless decision (childfree), it is necessary to formulate and elaborate from various perspectives. In this case, religion as well as in Islamic legal discourse, in which the purpose of each requirement is to realize the benefit of mankind. Meanwhile, in the aspect of community reality, every religious and legal provision always has the dimension of customs which in its estuary is the ability to realize the benefit and prevent harm. So, through the problems of the childfree phenomenon, there needs to be new construction in the perspective of religion, the objectives of Islamic law and the reality of society, thus this phenomenon can be studied comprehensively to be able to formulate a solution for the various impacts that occur.

In reinforcing this study, the authors depended on the theoretical argument stating that children's existence in a family is a necessity and the effects of a marriage covenant. In other aspects, the position of children in religion is extremely venerable and their rights are protected. Therefore, this concept results in a theory of descendant protection (*hifdz al-nasl*) in the discourse of *maqâsid al-sharî'ah* as a manifestation of the sacredness of religion.¹² Besides the aspect of the goals intended by Islamic

Pernikahan: Keadilan Hak-Hak Reproduksi Perempuan Perspektif Masdar Farid Mas'udi dan al-Ghazali', *Al-Manhaj: Journal of Indonesian Islamic Family Law*, 3.2 (2021).

¹¹ Tiara Hanandita, 'Konstruksi Masyarakat Tentang Hidup Tanpa Anak Setelah Menikah', *Jurnal Analisa Sosiologi*, 11.1 (2022).

¹² See, Muhammad Ngizzul Muttaqin & Iffatin Nur, 'Fiqh Jalan Tengah (Mempertemukan *Maqâshid Syari'ah*, Hukum, dan Realitas Sosial)', *Zawiyah: Jurnal Pemikiran Islam*, 5.2 (2019).

Law (*maqâsid al-sharî'ah*),¹³ contemporary Islamic law also deals with contemporary problems that stimulate the Islamic law to immediately determine the goals of more adaptive *ijtihâd* in contemporary society.¹⁴ Through this logical viewpoint, the theoretical review in this study was based on the aspect of a childfree phenomenon amid the society, *maqâsid al-sharî'ah*, and the aspect of the reality of contemporary society.

Research Methods

This library research¹⁵ was intended to dismantle the childfree phenomenon through a critical study of primary legal sources. The normative legal research approach was used to find the truth of the coherence of whether the childfree phenomenon is in accordance with religious norms, humanity and the objectives of Islamic law (*maqâsid al-sharî'ah*). The *maqâsid al-sharî'ah* approach and the reality of society need to be formulated by examining various impacts with the problems and impacts being studied. This analytical descriptive study aimed to explain the childfree phenomenon through the integration of *ijtihâd* based on *maqâsid al-sharî'ah* and the reality of society. Primary data sources used were various reference sources for the study of Islamic law. Meanwhile, secondary data were obtained from data and research related to the childfree phenomenon which was then analyzed using content, comparative, and critical analysis.¹⁶

The Childfree Phenomenon in Marriage in the Contemporary Era

The term childfree has been used liberally since the 1970s in both popular and scientific discourse. The National Organization for Non-

¹³ See, Iffatin Nur, Syahrul Adam, M. Ngizzul Muttaqien, 'Maqâshid al-Sharî'at: The Main Reference and Ethical Spiritual Foundation for the Dynamization Process of Islamic Law', *Abkam: Jurnal Ilmu Syariah*, 20.2 (2020).

¹⁴ See, Muhammad Ngizzul Muttaqin, Iffatin Nur, & Ahmad Muhtadi Anshor, 'Social Media Fiqh: Social Media Use Intensity and Family Harmony in Tulungagung Regency', *The Journal of Society and Media*, 6.1 (2022).

¹⁵ Ranjit Kumar, *Research Methodology: A Step-by-Step Guide for Beginners* (London: Sage Publication, 2000).

¹⁶ M.Q Patton, *Qualitative Evaluation Methods* (London: Sage Publication, 1980).

Parents was founded in 1972 to help connect a couple who choose not to have children. In addition, Scholars in the 1970s also adopted the term childfree in research writing (eg, Cooper, Cumber, & Hartner, Marciano).¹⁷ Since then, experts studying childfree have distinguished involuntary childfree (those who are childless due to infertility) and voluntary childfree (those who are fertile and childless by choice).¹⁸ However, in some literature, the term childfree continues to be used on the aspects of voluntary childfree, as well as involuntary childfree.¹⁹ Although these terms have been used interchangeably, operational definitions across studies have found problems caused by (a) the lack of separation between those who delay [pregnancy] and those who do not give birth, (b) the use of marriage to measure the persistence of a choice, and (c) the use of fecundity to establish possible choices.²⁰

First, the individual's desire and intention to have children are often not considered, thus grouping individuals who do not have children voluntarily with individuals who delay pregnancy until they are physically unable to conceive.²¹ Second, some studies have focused on married individuals or couples who have been together for several years to ensure commitment to childlessness (eg, Park) or to compare the results of previous studies (Rovi).²² For many studies, marriage is undoubtedly an important criterion for answering questions about married couples, however, given that only 53% of voluntary childless people are married - marriage is an inappropriate criterion for voluntary

¹⁷ ML. Tanturri & L. Mencarini, 'Childless or Childfree? Paths to Voluntary Childlessness in Italy', *Population and Development Review*, 34 (2008), 59.

¹⁸ See, MD. Somers, 'A Comparison of Voluntarily Childfree Adults and Parents', *Journal of Marriage and the Family*, 55 (1993).

¹⁹ See, Joanne Doyle, Julie Ann Pooley, Edith Cowan, 'A Phenomenological Exploration of the Childfree Choice in a Sample of Australian Women', *University Lauren Breen* <https://espace.curtin.edu.au/bitstream/handle/20.500.11937/23161/191411_191411.pdf?isAllowed=y&sequence=2>.

²⁰ JC. Abma & GM. Martinez, 'Childlessness Among Older Women in the United States: Trends and Profiles', *Journal of Marriage and Family*, 69 (2006), 1045.

²¹ D. Mollen & NG. Smith C. Vinson, 'Perceptions of Childfree Women: The Role of Perceivers' and Targets' Ethnicity', *Journal of Community and Applied Social Psychology*, 20 (2010), 430.

²² See, D. Mollen, 'Voluntarily Childfree Women: Experiences and Counseling Considerations', *Journal of Mental Health Counseling*, 28 (2006).

childlessness.²³ Reliance on marriage ultimately privileges heteronormative understandings of reproductive choice in which only heterosexual couples are assumed to be able to make child-bearing choices. Third, in the existing literature, the choice is often operationalized through fecundity or physical ability to have children biologically (eg, Abma & Martinez, Durham, Durham & Braithwaite, Park). However, Jeffries and Konnert's study reveals a difference between self-identification by choice and the researchers' classification of infertile heterosexual women as involuntary childlessness.²⁴ The researchers note that 'women's explanation' for this apparent inconsistency is that at some point they evaluate their choices of whether to continue trying to have children, pursue fertility interventions, pursue adoption, or adopt a childless lifestyle.²⁵ Notably, it is found that 2 of the 24 participants who define themselves as childless by choice are stepmothers, in contrast to the scientific definition that excluded individuals who became parents by marriage. The definitional trends in some studies illustrate how the discursive constructs of participant choice and identity are far more complex than many researchers admit. Furthermore, definitions that depend on participants' biological ability yield a simplistic understanding of reproductive choice in which only heterosexuality is considered normal, standard and natural.²⁶

As the National Health Statistics Report shows that among women aged 15 to 44 years between 2006 and 2010, 43% were childless. Of these, 6% were classified as voluntary childless women who were expected to be childless but fertile. The proportion of women who did not have children voluntarily remained relatively constant: 6.2% in 2002, 6.6% in 1995, 6.2% in 1988, and 4.9% in 1982. Further studies show that women who do not have children voluntarily are more likely to be white,

²³ R. Gillespie, 'Childfree and Feminine: Understanding the Gender Identity of Voluntarily Childless Women', *Gender and Society*, 17 (2003), 130.

²⁴ RL. Shaw & W. Morgan D. Giles, 'Representations of Voluntary Childlessness in the UK Press, 1990-2008', *Journal of Health Psychology*, 14 (2009).

²⁵ MJ. Hird & K. Abshoff, 'Women Without Children: A Contradiction in Terms?', *Journal of Comparative Family Studies*, 31 (2000).

²⁶ M. Kelly, 'Women's Voluntary Childlessness: A Radical Rejection of Motherhood?', *Women's Studies Quarterly*, 37 (2009), 160.

educated, employed and have a career - and are nonreligious, and less likely to marry than the general population.²⁷ However, the roles and demographics of voluntarily childless men in the United States could not be found, neither were roles nor demographics of individuals who identified as voluntary childless, childless by choice.²⁸

Model and Paradigm of *Maqâsid al-Shari'ah*, Law and Reality of Society Meeting

Developments in the field of thought marked by the victory of the supremacy of rationalism, empiricism, positivism over religious dogmatism in the 17th century is a scientific method that has a rational and empirical style. Where the development of this thought has led to a situation called modernism - which is a thought that is intellectually rational thinking based on logical and empirical science and technology. The development of this thought was also responded to by Islamic legal thinkers who tried to manifest the essence of Islamic law in a social system of society (little tradition). This is because changes in society in various fields must be able to be responded to by the products of Islamic law as social engineering and in order to realize social welfare. With these functions, the idea of progressive ushul fiqh as an effort to produce progressive Islamic law is able to provide solutions to the problems of society which are increasingly complex.²⁹

As a method in formulating legal products based on social ethics, the study of ushul fiqh certainly cannot be separated from logical and empirical ways of thinking. Therefore, in the discourse of the study of ushul fiqh, it has a very significant role as an effort to find the inductive and deductive of Islamic law. Through this idea, it is hoped that ushul fiqh has integration with other sciences such as science, philosophy, culture,

²⁷ C. Lee & H. Gramotnev, 'Motherhood Plans Among Young Australian Women', *Journal of Health Psychology*, 11 (2006).

²⁸ G. Letherby, 'Childless and Bereft? Stereotypes and Realities in Relation to "Voluntary" and "Involuntary" Childlessness and Womanhood', *Sociological Inquiry*, 72 (2002).

²⁹ See, Iffatin Nur & Muhammad Ngizzul Muttaqin, 'Reformulating The Concept of Mashlahah: From A Textual Confinement Towards A Logic Determination', *Justicia Islamica Jurnal Kajian Hukum Dan Sosial*, 17.1 (2020).

economics and—of course, religious knowledge contained in the texts of the Qur'an and Hadith. This is absolutely necessary to build responsive and solution-based Islamic legal products (fiqh) in today's modern era. The integration of ushul fiqh with other disciplines by determining this benefit by Yûsuf al-Qaradhawi is called the indimaji method³⁰ which in its actualization is not only focused on textual-linguistics.

Regarding the concept of benefit embodied in *maqâsid al-sharî'ah*, the many problems of Islamic law and the stagnation of ushul fiqh in dialogue with social realities have encouraged al-Syâthibi to reinvigorate his theoretical studies on ushul fiqh,³¹ especially his efforts to include *maqâsid al-sharî'ah* as the main consideration in the study of istimbath al-ahkam (excavation of Islamic law) which is the realm of ushul fiqh. It was at this time that it became the first foundation for the inclusion of maqashid shari'ah studies in ushul fiqh discourses. Ibn 'Ashur saw the need for maqashid shari'ah to be a separate scientific discipline and apart from ushul fiqh study, so maqashid shari'ah is no longer a conception confined by ushul fiqh, but it can evolve into an approach in istimbath al-ahkam (excavation of Islamic law).³² Finally *maqâsid al-sharî'ah* became a separate theoretical breakthrough in the world of contemporary Islamic law.³³

In modern thought, *maqâsid al-sharî'ah* is defined as an objective (mission) to be achieved behind the provisions of shari'ah law, both communal-universal (*kulliyah*) or particular (*juz'iyah*) for the sake of realizing the goodness and benefit of human life - which is the object of *Sharî'ah* law. This is as stated by Ibn 'Ashur who stated that what is meant by the purpose of the *Sharî'ah* is the meaning and wisdom that is considered by *al-Sharî'ah* (the maker of the *Sharî'ah*) in each or the majority of God' legal provisions.³⁴

³⁰ Yusuf al-Qaradhawi, *Madkhal li-Dirâsah al-Syari'ah al-Islâmiyyah* (Al-Qahirah: Maktabah Wahbah, 2000).

³¹ Abu Ishaq al-Shatibi, *al-Muwâfaqot Fi Ushûl al-Syari'ah* (Beirut: Dar al-Kutub al-Ilmiyah, 2004), 244.

³² See, Muhammad Thahir Ibn 'Asyur, *Ushûl al-Nidzâm al-Ijtimâ'i Fi al-Islâm* (Kairo: Dar al-Islam, 2010).

³³ Ahmad Imam Mawardi, *Fiqh Minoritas (Fiqh al-Aqalliyat aan Evolusi Maqâshid al-Syari'ah dari Konsep ke Pendekatan)* (Yogyakarta: LKiS, 2010): 188.

³⁴ Muhammad Thahir Ibn 'Asyur, 38.

It has become a certainty that the law is made and created - has an objective and mission to be achieved. If the law is created without any final objective to be achieved, then the law is dry, both from meaning and use.³⁵ As stated in an-Najjar's statement that the objective to be achieved by the law is a must, especially for people who are involved in making laws (legislative) and implementing them (executive). Therefore, it is easier to understand a legal product in truth than to apply it correctly and appropriately.³⁶ If knowing the objective of the rules in general is very important, then knowing the objective and the wisdom of Islamic law (*shari'ah*) which come from Allah when carrying out theoretical and practical *ijtihad* becomes even more important and urgent. It can be seen that the Islamic *shari'ah* has been perfected and the transmission of revelation has ended at the same time as the death of the Prophet PBUH. Thus, it is also closed the possibility of legal transformation for its adherents, except by conducting a careful and thorough search for the intent and purpose of the *shari'ah* (*maqâsid al-shari'ah*) to be well understood and applied appropriately in conducting Islamic law *ijtihâd* in theoretical aspect, as well as in its practical application.³⁷

Especially today, the problems in human life are endless. In fact, it is often for some problems to have legal status and at the same time - differences of opinion between classical scholars in these problems and their respective viewpoints and arguments. This is something that should be understood because the legal status of the problem is obtained through a *zhanni ijtihad* process. It is rare, in most cases of Islamic law, that what is unanimously agreed (*al-mujma' 'alaih*) is compared to that which is disputed. In fact, many problems which are considered by some populace as *ijmâ'* turn out to be still disputed after research. According to Najjar, *maqâsid al-shari'ah* is based on the theological principle that has become a doctrine among the majority of scholars

³⁵ Abdul Majid al-Najjar, *Maqâshid Syari'ah Bi Ab'ad Jadidah* (Beirut: Dar al-Gharb al-Islami, 2008): 16.

³⁶ Abdul Majid al-Najjar, *Maqâshid Syari'ah Bi Ab'ad Jadidah*, 18-19.

³⁷ Abdul Majid al-Najjar, *Maqâshid Syari'ah Bi Ab'ad Jadidah*.

that the shari'ah laws are established with an objective, whether it is *qath'î* or *zhannî*.³⁸

The realization of *maqâsid* is a guarantee for the continuity and sustainability of Islamic *shari'ah* law, as well as to present a treatise for future generations who are present long after the prophethood - because the number of *shari'ah* texts is limited, while legal events are always updated. Thus, not considering *maqashid* as an objective and target is a neglect - and at the same time blasphemy against religion. Not paying attention to *maqashid* also means that religion is static, rigid, obsolete and out of date. This is in line with the view of al-Qarafi who called a static and rigid attitude in front of *shari'ah* texts as religious error and ignorance of the objective of the *salafush-shâlih* scholars.³⁹

The urgency of knowing *maqâsid al-shari'ah* for a mujtahid in Islamic law according to an-Najjar is very significant in two areas, namely (1) in understanding *shari'ah* law; and (2) in applying the law at the level of reality (grounding the law). In terms of understanding the law, *maqâsid al-shari'ah* helps a lot in producing *shari'ah* law from its arguments. Where the known objective of the *shari'ah* will be able to strengthen and favor a legal status over other legal statuses when the *mujtahid* is faced with *shari'ah* texts which are *zhannî ad-dilâlah* (speculative-hypothetical). In addition, *maqâsid al-shari'ah* is also very important in identifying and disclosing the law through *qiyas* because *qiyas* is guided by the knowledge of Allah. Meanwhile *'illah* is nothing but the objective of the *shari'ah* which is partial. Thus, the determination of *shari'ah* law based on *qiyas* is very dependent on knowledge of *maqâsid al-shari'ah*.⁴⁰

The scholars agree that problems of a *zhannî* nature are included in the realm of *ijtihad*, as mentioned by Yusuf al-Qaradhawi in "*al-Ijtihad fi al-Shari'ah al-Islâmiyyah*"⁴¹ that the law derived from the *zhannî*

³⁸ Abdul Majid al-Najjar, *al-Khilâfah al-Insâniyyah Baina al-'Aql Wa al-Wahy* (Beirut: Dar al-Gharb al-Islami, 2006): 119.

³⁹ See, Al Qarafi, *Syarh Tanqih al-Fusûl Fi Ikhtisâr al-Mahsûl Fi al-Usûl* (Kairo: Dar al-Fikr, 2001).

⁴⁰ Abdul Majid al-Najjar, *al-Khilâfah al-Insâniyyah Baina al-'Aql Wa al-Wahy*, 19.

⁴¹ Yusuf al-Qaradawi, *al-Ijtihad Fi al-Shari'ah al-Islâmiyyah Ma'a Nazrati Tahliyyât Fi al-Ijtihad al-Mu'asir*, 19.

proposition (speculative-hypothetical in nature), both in terms of *tsubut* or its *dilalah*, can be reviewed and studied, whether its legal status is in accordance with current conditions or not. For the current era, among the models of *ijtihâd* that can be carried out according to al-Qaradhawi is *ijtihâd intiqâ'i*, namely by weighing the opinions of existing scholars and assessing the arguments used, both textual and methodological arguments, then is chosen between these opinions, the argument that is stronger and is based on the *tarjih* parameters. The *tarjih* parameters in question include 1) more in line with current conditions; 2) more humane; 3) closer to the principle of Islamic convenience; 4) more in line with *maqâsid al-shari'ah*; and 5) closer to the benefit of human beings and prevent harm to them. This is because a legal decision, undeniably, as stated by Ibn al-Qayyim in "*I'lâm al-Muwaqqi'in 'an Rabb al-'Alamîn*", can be transformed for the changes in time, place, intentions, conditions and customs.⁴² This is where the role of *maqâsid al-shari'ah* as a method of weighing and choosing (*al-tarjih al-maqâshidî*) among several different opinions among scholars on a problem.

Another contemporary figure in the field of *maqâsid al-shari'ah* is Jasser Auda.⁴³ Jasser Auda's thoughts can be mapped into three main points, namely the level of needs, the range of *maqâsid* and the systems approach. The levels of needs according to Jasser Auda include cognition, wholeness, openness, integrated hierarchy, multidimensionality and purposefulness. Cognition (*al-idrâkiyah*) offered by Jasser Auda is a form of *maqâsid al-shari'ah* deduced from the Qur'an and Sunnah - in which Jasser Auda thinks that the classical *maqâsid al-shari'ah* concept is still being deduced from various fiqh literature. The concept of wholeness illustrates that the causal process that exists is a whole and cannot be separated from one another. All of these things are formed holistically (whole) and thematically-chronologically.

⁴² Abî 'Abd Allah Muḥammad ibn Abî Bakr ibn Ayyub al-Ma'ruf bi Ibn Qayyim al-Jauziyah, *I'lâm Al-Muwaqqi'in 'An Rabb al-'Alamîn* (Beirut: Dar al-Arabi, 2007): 11.

⁴³ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: the International Institut of Islamic Thought, 2007).

The third concept is openness (*al-infatâhiyah*) - which is the openness of a *mujtahid* in accepting various knowledge s/he gets from outside. In addition to being open to various knowledge, the concept of openness is also used as a form of openness in making improvements and perfections that may occur. The fourth concept is the interrelated-hierarchy/*al-harakiriyah al-mu'tamadah tabâduliyan* - in which suggests the relationship between *dharûriyyat*, *hajiyyat* and *tahsîniyyat* human needs. There is no level that distinguishes these three concepts of needs in contrast to the classical concept. The fifth concept is multi-dimensionality (*ta'addud al-ab'ad*) - which says that everything should not be seen in one dimension but must be seen in various dimensions. The sixth concept is purposefulness (*al-maqâshidiyyah*) - which is the interrelationship between each of the existing concepts without this concept, all concepts will not be carried out properly.⁴⁴

The scope of *maqâsid al-sharî'ah* according to Jasser Auda includes *dharûriyyat*, *hajiyyat* and *tahsîniyyat*. This concept is different from the classical concept because it does not compare the existing levels but equates the levels between the three levels. The systems approach used by Jasser Auda is *maqâshid al-'âmm*, *maqâshid al-khâssah*, and *maqâshid juz'iyyah*. *Maqâshid al-'âmmah* is a *maqashid* that pays attention to the values of Islamic law as a whole which must include issues of justice, universality, convenience and freedom. A special *maqâshid* is a *maqâshid* that pays attention to only one Islamic law, meaning that its scope is smaller. Meanwhile, *maqâshid juz'iyyah* is a *maqâshid* that pays attention to the intentions behind the existing law.⁴⁵

Viewing the Childfree Phenomenon from the Perspective of Religion, Law and the Reality of Society

In society, children are investments and successors of their parents. In addition to the investment and successor aspects, children also become

⁴⁴ Zakaria Syafei, 'Tracing *Maqashid a-Shari'ah* in the Fatwas of Indonesian Council of Ulama (MUI)', *Journal of Indonesian Islam*, 11.1 (2017).

⁴⁵ Syahrul Sidiq, '*Maqâshid Syari'ah* & Tantangan Modernitas: Sebuah Telaah Pemikiran Jasser Auda', *Jurnal In Right: Jurnal Agama dan Hak Azazi Manusia*, 7.1 (2017).

something that is most desired when someone has married. This is evidenced by various data about those who are trying hard to have a child. So in such conditions, the position of the child becomes very important in the continuity of the family. The strong position of children in the family is reinforced in the reality of society, where when a family does not have children or it takes too long to have children, the family will get a label from the community that the couple has reproductive problems or diseases.

Choosing not to have children tends to place women outside the boundaries of socio-cultural expectations supported by pronatalism that encourages an increase in birth rates and strengthens socio-political, family and religious obligations to produce children for the good of the country and future generations.⁴⁶ Pronatalism means that women who choose not to bear children are seen as a challenge to the natural role of women and deny the fundamental essence of feminine identity in pronatalist societies. Given these contextual pressures, investigations into women's choices to choose not to have children are important in considering the potential effects on their health and well-being.⁴⁷

Women who choose not to have children also challenge the pathways and characteristics of female development.⁴⁸ For example, analysis of marriage and family textbooks produced from 1950 to 2000 illustrates that depictions of adults without children are mostly negative - and adults who are childfree voluntarily are characterized as more disapproving than those of involuntary childlessness.⁴⁹ Analysis of media representations of childlessness in the UK reveals selfishness as an explanation for the phenomenon. Similarly, surveys of parents, students and the general

⁴⁶ See, RL. Shaw, 'Women's Experiential Journey Towards Voluntary Childlessness: An Interpretative Phenomenological Analysis', *Journal of Community and Applied Social Psychology*, 21 (2011).

⁴⁷ Secombe, 'Assessing the Costs and Benefits of Children: Gender Comparisons Among Childfree Husbands and Wives', *Journal of Marriage and the Family*, 53 (1991), 195.

⁴⁸ Lihat dalam, LS. Scott, *Two Is Enough: A Couples Guide to Living Childless by Choice* (Berkeley, CA: Seal Press, 2009).

⁴⁹ I. Rowlands & C. Lee, 'Choosing to Have Children or Choosing to Be Childfree: Australian Students' Attitudes Towards the Decisions of Heterosexual and Lesbian Women', *Australian Psychologist*, 41 (2006), 60.

public show that childless women are considered selfish, deviant and ultimately unfeminine. For example, the act of giving birth remains a symbolically important rite of passage that strengthens women's gender and social identity.⁵⁰

Women as 'mothers' are social identities that occur through the complex interaction of societal realities. This is reinforced in the scientific, psychological and modern medical perspectives that children have a strong influence in promoting mothers' role as the center of womanhood and perpetuating the deficit status of childless women. In another review, the religious influence of the dominant Judeo-Christian beliefs has underpinned Western culture that sees womanhood as heterosexual and fertile. Even the current discussion about the choice of not having children (childfree) is often explored using language that reinforces perceived deviations by women, such as 'barren (infertile) women'. Besides, discrimination and labeling of women who choose not to have children is a necessity in the reality of society.⁵¹

In the female aspect, the choice to forget motherhood and deviate from accepted social norms can be seen through the lens of developmental theory. At this stage, adults who do not become parents, or take on leadership roles in society will not reach their full potential and will instead become psychologically stagnant. However, empirical research shows little or no difference in psychological adjustment between women with and without children. This can be seen in the slight difference in the psychological adjustment of women who do not have children voluntarily compared to those who become parents. A study of 678 Australian women aged 22 to 27 years [who don't want children] shows little social or psychological difference when compared to their friends who want children.⁵² Furthermore, the research literature on socioeconomic status, health and social networks shows that adults

⁵⁰ DT. Rowland, 'Historical Trends in Childlessness', *Journal of Family Issues*, 28 (2007), 1311.

⁵¹ T Rothauff & TM Cooney, 'The Role of Generativity in Psychological Well-Being: Does It Differ for Childless Adults and Parents?', *Journal of Adult Development*, 15 (2008), 150.

⁵² K Park, 'Choosing Childlessness: Weber's Typology of Action and Motives of the Voluntarily Childless', *Sociological Inquiry*, 75 (2005), 375.

without children are the group that experiences sadness in living their lives.

However, there are some positive differences - with childless women tend to be more highly educated, have little or no affiliation with religious beliefs, hold non-traditional sex roles, have high employment careers, and be more likely to live in urban areas than women with children. Childless women also challenge the idea that categorically normal adult development includes motherhood - and that they do not see themselves as unfit.⁵³ Childless women voluntarily reject the idea of motherhood as an instinct and central to women's identity.⁵⁴ Furthermore, childless women may characterize childbearing as a burden that demands the sacrifice of time, energy and identity - and includes social obligations that they do not want to bear. Most studies that focus on women with fertility problems rather than women who do not have children voluntarily differ from women who expressly choose not to have children.⁵⁵

Seeing the childfree phenomenon in today's contemporary world, it seems that there needs to be a breakthrough and solution from the point of view of Islamic law. This is because, in the study of Islamic family law, children are seen as legal objects that have the right to be fulfilled. In such conditions, contemporary Islamic law has legal products that always put forward the principle of the best interests of the child. So, Islamic law formulates the concept of marriage law explicitly in order to provide protection for children.

In the formulation and methodology of Islamic law (*ushûl fiqh*), the format of ushul rules will not be judged correct except if the *al-ma'âl* principle which is the basis for its formulation is declared correct from the point of view of the *sharî'a*. From this, it can be seen the urgency of the principle of *al-ma'âl* in formulating, shaping and building the rules of ushul to direct it to the formulation of legal rules that guarantee the

⁵³ K Park, *Sociological Inquiry*, 379.

⁵⁴ K Park, 'Stigma Management Among the Voluntarily Childless', *Sociological Perspectives*, 45 (2002), 30.

⁵⁵ K Park, *Sociological Perspectives*, 39.

realization of the objective of *maqâsid al-sharî'ah* and the will of God to pass down the *sharî'ah*. On the basis of these considerations, the classification of *sharî'ah* laws that are under the scope of one ushul rule is not justified to violate the objective (*maqâsid al-sharî'ah*). It is a must for a *mujtahid* to conceptualize the limits and objects of ushul rules by referring to primary sources of the *Sharî'ah* that are oriented towards efforts to present forms of goodness (*mashâlih*) and ward off all forms of damage (*mafâsid*).⁵⁶

In line with that, a *mujtahid* is required to critique and review the *al-ma'âl* principle, related to fatwas that refer to the principles of ushul fiqh or general arguments (*dalîl kully*), before the fatwas are issued. When a *mujtahid* feels confident in the validity of the *ma'âl* principle that underlies a legal fatwa, the *mujtahid* still has the obligation to re-examine the fatwa formulation to strengthen the belief that the fatwa issued is in line with the objective of the *sharî'a* (*maqâsid al-sharî'ah*).⁵⁷

The principle of results and consequences of action (*al-ma'âl*) from the point of view of functions and procedures is in line with the meaning of eliminating the factors causing the emergence of forms of potential danger and closing access that leads to threats, as preventive measures before the danger actually occur. In this case, the potential danger (*al-dharar*) is in the same position as causal ('*illah*), with the consideration that the *al-ma'âl* aspect cannot be separated from the preventive procedure in a state of existence or in a state of nil.⁵⁸ From the point of view of its substance, the principle of *al-ma'âl* may be understood as experimental fiqh (*al-fiqh al-tajribiyy*) which relies on applying hypotheses to fiqh assumptions, so that later it is known whether or not the *ijtihâd* process and fatwa formulation are valid.⁵⁹

⁵⁶ Aiman Abdul Hamid Al-Bidarain, *Nazhariyyatu al-Taq'id al-Ushûli* (Beirut: Daar Ibn Hazm, 2006), 130.

⁵⁷ Abdurrahman al-Sanusi, *Ma'alat Wa Mura'atu Nata'iji al-Tasharrufat* (Beirut: Dar Ibn Jauzi, 2000).

⁵⁸ Ahmad Muhammad Rawafid Kan'an, *Nazharat Fi 'Ilmi Ushûl al-Fiqhi* (Kuwait: Kementerian Wakaf Kuwait, 2010).

⁵⁹ Abdurrahman al-Sanusi, *Ma'alat Wa Mura'atu Nata'iji al-Tasharrufat*, 229.

A form of expansion of the principle of *al-ma'âl* by considering *maqâsid al-sharî'ah* is whether an action or object of law is within the corridor of *sharî'a* law or outside it. So the rules of *al-dzarâi'* (*sadd al-dzarâi'*) and *fath ldzarâi'* were initiated - in which they have very essential positions to formulate legal provisions that are based on considering aspects of reality in solving all problems by ensuring the realization of the benefit that is *mu'tabar* in consideration of the *Sharî'a*. In another case, it is the *ijtihâd* procedure that is placed and used as a methodology (methodological device) to harmonize an event that leads to the continuation of law enforcement by avoiding consequences that present potential dangers (*al-ma'alat al-dharariyyah*).

This is what is referred to as the alignment process between partial texts (*juz'i*) and factual issues within the framework of the essential objective of establishing Islamic law. This is another meaning of justice that is aspired to be realized by this rule, whose goal is to protect religious texts from inequality in carrying out their social roles; this is where integration occurs between the goals of Islamic law (*maqâsid al-sharî'ah*) and the reality of society.⁶⁰ The application of the *al-dzarâi'* rule in its meaning is to determine the legal status of the intermediary in accordance with legal provisions regarding the aspects of results and consequences (*al-ma'âl*) caused by the intermediary. At the level of actualization, there are many legal texts (*nash*) all of which underline one meaning and have *qath'i* legal force. The meaning in question is that when an act is allowed based on consideration of the existence of a form of goodness (*mashlahah*) that is realized—or a form of damage (*mafsadat*) that is resisted. However, at the same time, the act becomes the intermediary (*dzarî'ah*) for the escape of another form of goodness (*mashlahah*) that is greater or the emergence of another form of damage (*mafsadat*) that is greater, then in such circumstances it is understood that those who lower the rule of law will to prohibit the intended action in order to realize a more important form of goodness (*mashlahah*) and avoid a greater form of damage (*mafsadat*).⁶¹

⁶⁰ Abdurrahman al-Sanusi, 260.

⁶¹ Abdurrahman al-Sanusi, 263-262.

In the aspect of the legality of the application of the *al-dzarî'ah* rule, it is directly influenced by the *al-ma'âl* aspect which is domiciled as a determinant for the conception and describes the object of its application. Thus, it can be clearly observed that the contributing role of the *al-ma'âl* principle in distinguishing between the two categories of *ad-dzarâi'* (*sadd al-dzarâi'* and *fath al-dzarâi'*). On the other hand, it can be underlined that there is a very close relationship between the rules of *ad-dzarâi'* and the general objective of establishing Shari'a law (*maqâshid al-sharî'ah*), which is to present forms of goodness and benefits (*mashâlih*) and overcome the coming forms of damage (*dar'u al-mafâsid*).⁶²

So the formulation of *al-dzarâi'* depends directly on the *al-ma'âl* principle that occurs or is expected to occur in relation to the application of the proposition (*istidlâl*). However, *al-dzarâi'* itself is not just a pattern, but there are times when *al-dzarâi'* is applied (*fath*) as a necessity because it considers the *al-ma'âl* principle that supports the realization of a strong form of goodness and benefit (*al-maslahah*). In addition, there are times when *al-dzarâi'* is prevented (*sadd*) because it considers the *al-ma'âl* principle which has the potential to cause damage (*al-mafsadah*) which is strongly suspected to occur.

So, what happens is the process of considering, measuring and comparing the *maslahah* aspects that exist in the action and what kind of damage will arise as a consequence of the act. If the decision that is obtained is to prevent and hinder *al-dzarâi'*, this means that there is a more dominant form of damage than the goodness and benefits that are expected to be realized based on the original law.⁶³ Considering the principle of *al-ma'âl* in action is indeed the objective of *sharî'ah* law (*maqâshid al-sharî'ah*) to control the dynamics of *maslahah* and *mafsadat*. So the *sharî'ah* legal system as a whole is directed at realizing *maslahah* and hindering *mafsadat*.

From this description, it can be described the extent to which the relationship between the rules of *ad-dzarâi'* and the principle of *al-*

⁶² Zahrah, *Ushûl al-Fiqh*, 295.

⁶³ Umar Jiddiyya, *Ashl 'tibari al-Ma'al Bain al-Nadzariyya Wa al-Tathbiq* (Beirut: Dar Ibnu Hazm, 2010), 132.

ma'âl which aims to secure the boundaries of *mashlahah* and limit the hegemony of *qiyâs* in interacting with the extrinsic aspects of revealed texts - by only relying on speech and ignoring aspects of the consequences and considering the realization of the forms of goodness and benefits (*mashâlih*) desired by the *Shari'a*.

Thus, the problem is focused on the consequences of the action, not the act itself based on the original law. This is a complicated matter that lays out the kulli frame desired by the *Shari'a* regarding the determination of legal products for every action, act and speech of *mukallaf*. In this case, the rules of *al-dzarâi'* (*fath al-dzarâi'* and *sadd al-dzarâi'*) in their formulation and then the provisions for their application are influenced by the *al-ma'âl* principle by considering whether the consequences of the actions are in line with or contrary to the objective of the *Shari'a* (*maqâshid al-shari'ah*) in establishing the law. In this context, the legal provisions of the *dzari'ah* are following the legal provisions of the consequences by overriding the legal status of the act based on the law of origin. If an act is judged to embody the form of goodness and benefit (*maslahah*) recognized by the *Shari'a*, then the act is desired. On the other hand, if an act is judged to have caused damage (*mafsadah*), then the act is forbidden.

Here, element *al-ma'âl* domiciled as a party that provides limits on the right and wrong of an act in the eyes of *shari'ah* law. Application or prevention of *dzari'ah* rests on the element of *al-ma'âl*, to the exclusion of aspects of intention and purpose. Meanwhile, the only thing that determines whether an action is desired or not, accepted or rejected by the *Shari'a* is the aspect of the result of the act. Thus, it becomes clear that the validity or invalidity of the *dzari'ah* rules is based on the *al-ma'âl* principle which is formulated from a number of considerations of *maslahah* to be realized and a number of *mafsadat* to be avoided as the will of the *Shari'a*.

Thus, the formulation of the rules of *al-dzarâi'* in the framework of the methodology of Islamic law (*ushûl fiqh*) is based on a number of conditions and considerations; either the necessity to do prevention (*sadd al-dzarâ'i'*) or [the necessity to do] application (*fath al-dzarâi'*). First is

the conditions and considerations for the necessity of doing prevention (*saddu al-dzarâi'*).⁶⁴ Second is the conditions and considerations for the necessity of applying *ad-dzarâi'* (*fathu al-dzarâi'*).⁶⁵ Third is the conditions and considerations related to the necessity to fortify the provisions for applying the *al-dzarâi'* rule from extreme attitudes.⁶⁶

From here, it is necessary to make an effort to estimate, measure and weigh the forms of goodness and benefits (*mashâlih*) and forms of damage (*mafâsid*).⁶⁷ Seeing the urgency of the study of Islamic law in the discourse of integration between *maqâshid al-sharî'ah* which is oriented towards preventing mafsadat with the reality of society, it is very possible when Islamic law products can see the phenomenon in the eyes of and the realization of benefit. In this aspect, the childfree phenomenon certainly has various impacts on people's lives. In the internal aspect of the family, for example, childfree has a positive impact in the form of women's independence in terms of parenting and their attachment to children. So, women who choose not to have children will be free to carry out all their activities in the world of career, work, education and social life.

But on the negative aspect, women who choose not to have children will become women who are contrary to the nature of women who have a motherly spirit. In addition to the aspect of family harmony, the joint decision between husband and wife not to have children is certainly a deficiency and makes the incompleteness of family members within the framework of the family frame as the conception in Islamic family law. Especially in the aspect of social reality, children in a family have a very strategic place and position to provide honor and completeness for the continuity of the family. In such a position, society assumes that the child is something that must exist in the family sphere.

⁶⁴ Al-Shatibi.

⁶⁵ Zahrah, *Ushul al-Fiqh*, 342.

⁶⁶ Khudri al-Sayyed al-Thayyib, *al-Ijtihâd Fi Ma La Nashsha Fibi* (Beirut: Dar al-Arabi, 1983), 148.

⁶⁷ Umar Jiddiyya, *Ashl 'tibari al-Ma'al Bain an-Nadzariyya Wa al-Tathbiq*, 152.

Moreover, in the health aspect, female reproduction, which has an existence when she gives birth to children, seems to be tainted when she chooses not to have children. So, the impact in terms of health certainly has various aspects and consequences. Seeing the phenomenon of the impact and the various things that arise from the decision not to have children by a married couple, the integration of *maqâshid al-shari'ah* and the reality of society states that preventing all things that cause evil and gathering a paradigm that can be accepted by the majority of the community as a form of goodness is a form of goodness that must be realized.

As an elaborative effort through the integration of religion, the objective of Islamic law (*maqâshid al-shari'ah*), and the reality of society, the childfree phenomenon conflicts with the religious dimension which considers children as manifestations of parents as a means of worship. From the point of view of *maqâshid al-shari'ah*, *hifdz al-nasl* (maintaining the existence of children) is a must that must be realized. Meanwhile, in the aspect of social reality, the position of a child is a part of the family member who is used as a support and successor of the parents' future.

Based on the explanation of a childfree phenomenon in the sacredness of religion perspective, the goals intended by Islamic law, and the social reality, it can be assumed that Islamic law conception (*fiqh*), in fact, does not only orientate towards prohibition and permission to a certain action, but also in the aspect of cause-effect regarding the action. By seeing the result of several previous studies as explained above, it is clearly seen that childfree is a phenomenon that cannot be accepted by many people. People think that childfree behavior is a form of denying God's design and order. Meanwhile, this study suggests that childfree cannot be accepted by people due to the impacts caused by childfree behavior. Regarding the public interest (*maslahah*) and negative implications (*mafsadat*), this study formulated one flexibility of Islamic law (*fiqh*) that considered the impacts as the result of the *ijtihad* approach. Therefore, childfree behavior may be permitted or prohibited. However, this study specifically formulated an approach model by bringing maqasid al-shariah together

as a manifestation of the sacredness of religion and the reality of society as a benchmark for the acts. This study, therefore, has different points from previous studies; this study investigated the impacts of childfree behavior from the perspective of *maqâshid al-sharî'ah* and the reality of society as a fundamental value in the *ijtihâd* approach for contemporary Islamic law (*fiqh*).

Conclusion

Childfree is a phenomenon caused by the reality of contemporary society with a specific objective. Practically, childfree is done to get some things that might be hampered when someone has a child. Also practically, families (especially women) who choose not to have children (choose the childfree path) will experience both positive and negative impacts. On this impact, prevention and consideration of harm is a must in the discourse of Islamic law studies. Through interpretation based on religious views, the objective of Islamic law (*maqâshid al-sharî'ah*), and the reality of society, it seems that childfree culture cannot be justified when the main point is not to have children in the family. However, the decision to do child-free can be made with special considerations that lead to a greater benefit. Based on the conclusion of this study, besides resulting in a new approach to a childfree phenomenon, this study also contributes to the development and the approach of contemporary Islamic Law. The maqasid al shariah-based approach as a manifestation of the sacredness of religion and the reality of society affects the more adaptive products of Islamic legal thought in responding to contemporary problems.

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