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### **Marriage Agreement Not to Have Children According to Islamic Law**

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#### **Abstract**

This study analyzes the marriage agreement not to have children made by prospective husbands and prospective wives before the marriage contract. Islam commands its people to carry out marriages between men and women to obtain good offspring. What if the future husband and wife agree not to have children before the marriage contract? This research is library research, and the data used is secondary data taken from several literatures. The collected data is analyzed by qualitative descriptive method. The finding of this study is that the scholars differed in opinion on this issue, Sheikh Ali Jum'ah, the grand Mufti in Egypt, allowed the marriage agreement not to have children because the Prophet Muhammad allowed the practice of 'Azal to prevent pregnancy. The implication of this opinion will appear that prospective husbands and prospective wives marry only to fulfill biological needs, not to have children. Other scholars argue that the marriage agreement not to have children is prohibited (haram) because one of the primary purposes of marriage is to have children.

#### **Keywords:**

Marriage Agreement, Islamic Law, Child Free.

#### **A. INTRODUCTION**

Law number 1 of 1974 concerning marriage, later amended by law number 16 of 2019, has stated that it is permissible for prospective husbands and prospective wives to make marriage agreements in article 29 (Djubaedah, 2019). One of the principles in this law related to the marriage agreement is the balanced rights and position of husband and wife. If there is a violation of the marriage

agreement that has been agreed upon, then each party can carry out legal actions independently (Ardi & Maizura, 2018).

Article 29 reads: at or before the marriage, both parties may, with mutual consent, engage into a written agreement confirmed by the marriage registrar, the terms of which apply to third persons so long as they are involved. This marriage agreement is also explained in the Compilation of Islamic Law in Chapter VII, articles 45 to 52 (Kusuma & Khisni, 2018). Substantially, there is no difference between the marriage agreement contained in Law no. 1 of 1974 concerning marriage with that in the compilation of Islamic law (KHI), only the explanation is more detailed in the compilation of Islamic Law. The legal consequences of a marriage agreement that the prospective husband and prospective wife have made are binding on both parties, and if there is a violation in the future, then the parties can take legal action (Ramanta & Samsuri, 2020).

Some people still consider that making a marriage agreement between a prospective husband and a prospective wife before the marriage contract is not good and contrary to eastern customs. The purpose of creating a marriage agreement is actually for the good of the parties as a preventive measure so that there are no disputes at the time of the termination of the marriage (Jawad & Elmali-Karakaya, 2020). With the marriage agreement, the distribution of property between husband and wife becomes easier. The marriage agreement is regulated in the Civil Code (BW) Book 1, Chapter IV in articles 139 to 154, it applies and binds the bride and groom in marriage. The function of the marriage agreement is to limit or eliminate the mixing of assets between husband and wife (Annan et al., 2021).

Regarding the time when the marriage agreement was made, based on Article 147 of the Civil Code, it was made before the marriage took place. Law number 1 of 1974 concerning marriage article 29 provides two options, namely, a marriage agreement can be made before and at the time the marriage is carried out. The marriage agreement (prenuptial agreement) in the Civil Code (KUHPerdata) is an agreement regarding the property of husband and wife during the marriage (Smith, 2021; Thompson, 2018).

Article 119 of the Civil Code explains that marriage essentially causes the mixing of a married couple's assets unless the married couple makes a marriage agreement that regulates the separation of assets. In Islamic law, the marriage agreement is not only related to property issues but also other issues such as the agreement will not be polygamous, will not commit domestic violence, and will not have children (Sofa, Asola, & Thompson, 2021; Vitali & Fraboni, 2022). This marriage agreement not to have children is interesting because Islamic teachings command men to marry women to obtain children.

## **B. LITERATURE REVIEW**

### **1. Marriage Agreement**

In a formal sense, a marriage agreement is every agreement carried out following the provisions of the law between prospective husbands and wives

regarding their marriage, no matter what its contents are (Latifiani, 2019). According to Wirjono Projodikoro, the word agreement is defined as "a legal relationship regarding assets between two parties, in which one party promises or is deemed to have promised to do something, while the other party has the right to demand the implementation of the promise" (van der Burg et al., 2021).

According to Article 1313 of the Civil Code, "An agreement is an act by which one or more persons bind themselves to one or more persons" (Butts et al., 2019).

Article 139 of the Civil Code states that "By entering into a marriage agreement, the two prospective husbands and wife are entitled to prepare some deviations from the laws and regulations regarding the union of assets, provided that the agreement does not violate good morals or general order and as long as all the provisions below are heeded."

In the Marriage Law No. 1 of 1974, article 29 explains that:

- a. Prior to or at the time of the marriage, the parties may enter into a formal agreement confirmed by the marriage registrar, the terms of which shall apply to third parties for as long as the third party is concerned.
- b. If the agreement violates the boundaries of law, religion, and morals, it cannot be ratified.
- c. The contract becomes effective at the time of the wedding.
- d. Unless both parties agree to alter and the change does not hurt a third party, the agreement cannot be modified for the duration of the marriage unless both parties agree and the change does not harm a third party (Miqat & Patittingi, 2018).

In the Presidential Instruction Number 1 of 1974 concerning the Compilation of Islamic Law, Article 47 states that "At or before the marriage takes place, the two prospective brides can make a written agreement ratified by the Marriage Registrar regarding the position of property in the marriage" (Setiyaningsih & Khisni, 2019).

There is some literature that explains the marriage agreement, including the following:

- a. The agreement referred to in paragraph (1) may include mixing personal assets and separating their livelihood assets as long as it does not conflict with Islamic law (Adjie, 2022).
- b. In addition to the provisions in paragraphs (1) and (2) above, it is also permissible for the contents of the agreement to stipulate the respective authority to enter into mortgage bonds on personal assets and joint assets or property of the company (Saptono & Khozen, 2021).

Here are some meanings of the marriage agreement according to some experts:

- a. According to Gatot Supramono, a marriage agreement is an agreement made by the prospective husband and the prospective wife at the time or before the marriage, which agreement is made in writing and ratified by the Marriage Registrar, and its contents also apply to third parties as long as they agree (Hakim & Khisni, 2019).

b. According to R. Subekti, "A marriage agreement is an agreement regarding the property of husband and wife during their marriage which deviates from the principle or pattern established by law" (Le Bris & Tallec, 2022).

c. Komar Andasasmita said an 'agreement or terms of marriage' is an agreement made by a prospective husband and wife in regulating (the state of) property or wealth as a result of their marriage (Taufika et al., 2021).

d. Soetojo Prawirohamidjojo and Asis Safi Oedin said a "marriage agreement" is an agreement (agreement) made by a prospective husband and wife before or at the time the marriage takes place to regulate the consequences of the marriage on their assets (Kenny et al., 2019).

A Marriage Agreement is an agreement regarding the property of a husband and wife during their marriage, which deviates from the principle or pattern established by law. Furthermore, Article 147, in conjunction with Article 149 of the Civil Code, it is stated that the point is that the Marriage Agreement must be made with a Notary deed before the marriage takes place, which agreement takes effect from the time the marriage takes place and may not be withdrawn or changed in any way during the marriage (Holmelin, 2019).

## **2. Islamic Law**

Understanding Islamic law or Islamic Shari'a is a system of rules based on the revelation of Allah SWT and the Sunnah of the Prophet regarding the behavior of the mukallaf (people who can already be burdened with obligations) that are recognized and believed, which are binding on all adherents (Hakim, 2021). And this refers to what the Apostle has done to carry it out totally. According to the term, Shari'a means the laws ordered by Allah SWT for His people brought by a Prophet, both those related to belief (aqidah) and those about amaliyah (Dakhoir et al., 2022).

According to language, Islamic Shari'a means humankind's path to Allah Ta'ala. And it turns out that Islam is not only a religion that teaches about how to worship God only. The existence of rules or systems of Allah's provisions to regulate human relations with Allah Ta'ala and human relations with each other. These rules are rooted in all Islamic teachings, especially the Al-Quran and Hadith (Muliadi & Komarudin, 2020).

The definition of Islamic law is shari'a which means the rules made by Allah for His people brought by a Prophet SAW, both laws related to belief (aqidah) and laws related to amaliyah (deeds) carried out by all Muslims (Hirdayadi et al., 2022).

Islamic law is not just a theory but also a rule to be applied in the joints of human life. Because many problems are encountered, generally in the field of religion, Muslims often think they tend to be different (Koehrsen, 2021). For this reason, sources of Islamic law are needed as a solution, namely as follows:

a. Al-Quran

The first source of Islamic law is the Al-Quran, a Muslim holy book revealed to the last Prophet, namely the Prophet Muhammad, through the Angel Gabriel. Al-

Quran contains commands, prohibitions, suggestions, Islamic stories, provisions, wisdom, and so on (Rahmah & Maknin, 2021). The Qur'an explains in detail how humans should live their lives to create a society with noble character. Therefore, the verses of the Qur'an become the primary basis for establishing a Shari'a (Mukti et al., 2022).

b. Al-Hadith

The second source of Islamic law is Al-Hadith, namely everything that is based on the Prophet Muhammad. Both in the form of words, behavior, and silence. In Al-Hadith contained rules that detail all the rules that are still global in the Qur'an (Manshur, 2020). The word hadith has expanded its meaning so that it is synonymous with sunnah, it can mean all the words (words), deeds, provisions, and approvals of the Prophet Muhammad, which are made into provisions or Islamic law (Mostfa, 2021).

c. Ijma'

The agreement of all mujtahid scholars at one time after the time of the Prophet on a matter of religion. And the ijma' that can be accounted for is what happened at the time of the companions, the tabi'in (after the companions), and the tabi'ut tabi'in (after the tabi'in). Because the scholars have dispersed after their time, and many disputes are increasing, it is not sure that all the scholars have agreed (Purkon, 2022).

d. Qiyas

The fourth source of Islamic law after the Qur'an, Al-Hadith, and Ijma' is Qiyas. Qiyas means explaining something without textual evidence in the Qur'an or hadith by comparing something similar to something that the law wants to know (Zuhri, 2019). This means that if a text has shown the law regarding a case in Islam and has been known through one method to find out the legal problem, then other cases are the same as the case in which the text is in that case as well, then the case law is equated with the case law with the text (Halmai, 2019).

## **C. METHOD**

This normative legal analysis research uses secondary data from various literature and previous articles. The collected data were analyzed using a qualitative descriptive approach with data reduction steps, data display, verification, and conclusion.

## **D. RESULT AND DISCUSSION**

### **1. Marriage Agreement in Islamic Law**

The term marriage covenant is not explicitly discussed in classical fiqh books. The term in classical fiqh books almost the same as the marriage agreement is "Conditions in Marriage" or "al-Syuruth Fi al-Nikah". The term conditions in this marriage are not the same as the "Marriage conditions". This includes the

conditions for marriage, such as marriage carried out between a man and a woman who are 19 years old, both have clear identities, are Muslim, and agree to marry. The terms and conditions in marriage are the same as the term marriage agreement because the marriage agreement contains conditions that the parties to the agreement must meet. The parties who agree here are the prospective husband and prospective wife, who are obliged to meet the conditions in the marriage agreement (Culhane, 2020).

The statement of carrying out the marriage contract, which is expressed in the sentence of consent and qabul, must be said in absolute sentences, meaning direct sentences, not associated with certain conditions, such as the requirement to divorce the wife after the marriage takes place within a certain period, for example after 2 or 3 years (Wimpelmann et al., 2021). According to Islamic law, marriage with such conditions is not valid, and this is the same as Nikah mut'ah, or marriage for a while called "contract marriage". Therefore, the marriage agreement is separate from the marriage contract and is carried out outside the marriage contract, even though it is still in the atmosphere of the marriage contract. There is no legal connection between a valid marriage contract and a marriage agreement. If the conditions made in the marriage agreement are not fulfilled, it does not automatically cancel the valid marriage contract. However, the party who feels aggrieved because the conditions agreed in the marriage agreement are not fulfilled can take legal action in the form of annulment of the marriage.

Making conditions mutually agreed upon between the prospective husband and prospective wife written in the original legal marriage agreement is allowed. However, if the agreement has been made, then fulfilling the conditions that have been agreed upon is obligatory, just as the law fulfills other agreements. This is understood based on several verses of the Qur'an, such as "O believers! Honour your obligations." (Qur'an 5:1). "Honour 'your' pledges, for you will surely be accountable for them" (Qur'an 17:34). The Prophet Muhammad PBUH explained in his hadith, "Muslims may make whatever conditions are agreed upon, except for conditions that forbid what is lawful or justify what is unlawful" (HR, al-Thabrani).

The scholars classify the conditions made in the marriage agreement into 3 (three) kinds:

- a. First: the conditions that must be met, namely the conditions that follow the demands and the primary purpose of the marriage itself, such as the conditions for having good relations with the wife, providing a living, clothing, food, and housing (housing), not committing domestic violence, if the wife leaves the house it must be with the permission of her husband. The husband and wife must fulfill the conditions written in the marriage agreement. If parties do not meet the requirements in the agreement, it does not cause the marriage to be canceled. It's just that the party who feels aggrieved can file a lawsuit to the religious court to annul the marriage (Urbina & Ruiz-Villaverde, 2019).
- b. Second: Conditions that are not required to be met; namely, conditions that

are contrary to the demands and primary purposes of marriage, such as the condition that the husband is not obliged to provide a living for his wife, does not want to pay a dowry, will not have intercourse with her, does not want to stay at home with his wife except for a certain number of days. Likewise, the condition that the wife is obliged to provide a living for her husband and provide a house for her husband. If these conditions are stated in the marriage agreement, they are null and void because it means aborting the rights and obligations of the parties. Even though the conditions in the marriage agreement are null and void, the marriage contract is still valid because the marriage agreement is separate from the marriage contract. Marriage agreements like this are not required to be fulfilled, people who violate the agreement are not sinful, even though the original law is fulfilling the agreement (Molino et al., 2019).

c. Third: Conditions debated by the scholars, such as the condition that the wife does not want to be polygamous, does not want her husband to take her out of her parent's house to live together in the same place, does not want to be taken on a trip. Regarding the requirements for this third classification, the scholars differ on the law. Syafi'iyah and Hanafiyah scholars believe that a marriage agreement containing these conditions is not mandatory (Husain et al., 2019). This is because these conditions include requirements that forbid things lawful by Allah and are not contained in the Qur'an and Sunnah. Polygamy for husbands who can apply justly is permissible (Halal) and taking the wife to travel and move from her parent's house to her husband's house is legal (Halal) if this is made a condition in the marriage agreement, then it means forbidding what has been made lawful by Allah. Among the arguments used by the Shafi'iyah scholars is the hadith of the Prophet Muhammad PBUH "Every condition that is not in the book of Allah / Al-Qur'an, even though there are a hundred conditions" (H.R Ibn Majah).

Umar of bin al-Khattab, Umar bin Abdul Aziz and Hanabilah scholars believe that if a prospective wife makes a condition that she does not want to be polygamous, then the requirement must be fulfilled by her husband. The reason is that the Hadith of the Prophet Muhammad, s, a, w from 'Uqbah bin Amir "The most appropriate conditions to be fulfilled are the conditions related to marriage" (H.R. al-Bukhari & Muslim). In addition, there is no prohibition from the Prophet Muhammad PBUH in this regard. If the husband violates the wife's condition not to have polygamy, it will not immediately cause the marriage to be annulled. As a result of the law, the wife who feels aggrieved has the right to sue her husband in the religious court to annul the marriage. The opinion of the Hanabilah scholars is more suitable to be followed to reduce irresponsible polygamous marriages. Based on the opinion of the Hanabilah scholars, it is permissible to make conditions in the marriage agreement such as the Taklik Talak agreement in marriage and the existence of the joint property, although in the classical fiqh books, there is no known joint property, because of the original law, the husband's property belongs to the husband, and the wife's property belongs to the wife. In the Compilation of Islamic Law in Indonesia, in chapter VII, Article 45 concerning Marriage

Agreements, it is taught that two potential brides may engage into a marriage contract in the form of taklik talak or other arrangements that do not violate Islamic law. Nasution explained that the taklik talak agreement was made to protect and guarantee women's rights (wives) (Nasution, 2015).

## **2. Marriage Agreement for Childfree**

Marriage agreements not to have children are a new problem in this century, which previous scholars have never discussed. At first, the Grand Mufti of the Arab Republic of Egypt, Sheikh Ali Jum'ah, was asked to give a fatwa on the question of a woman (wife). The question is: I am a wife and have arranged marriage with my husband after marriage. My husband is married to another woman and has 3 (three) children before this. The conditions agreed in this marriage agreement are 1. The requirements for not having children, 2. If it turns out that I am pregnant, then I must be willing to abort my pregnancy. It turned out that God ordained me to be pregnant, and my husband gave me two choices (options) aborting the womb or divorcing me. Is it permissible for me to abort my pregnancy to fulfill the conditions in the marriage agreement? If not, my husband accuses me of betraying my promise. I myself want to have children.

In answering this question, Sheikh Ali Jum'ah analyzed the contents of the marriage agreement, and there are two points, first, there is a requirement not to have children, the second point, if there is a pregnancy, the wife must be willing to abort the pregnancy. Sheikh Ali Jum'ah replied with his fatwa that the condition for not having children is permissible (Mubah), or makruh, according to differences of opinion among scholars. Because the Prophet Muhammad, s, a, w allowed the practice of 'azl to prevent pregnancy. 'Azl is having sexual intercourse with a wife, and when a man is about to release sperm, he pulls out his genitals, then removes it outside the vagina. Under certain conditions, it is not sinful to practice 'azl to prevent pregnancy. This is based on the Hadith of the Prophet Muhammad S.A.W from Jabir: "We did the practice of 'azl at the time of the Messenger of Allah s.a.w, and this news has reached the prophet, and he did not forbid us" (H.R. Muslim). If the agreement not to have children is allowed, then breaking the agreement means breaking the marriage promise. The wife who breaks the promise is sinful.

For the second condition, if there is a pregnancy, the wife must be willing to abort the pregnancy, according to Sheikh Ali Jum'ah, this condition is unlawful. The reason is that abortion is prohibited unless there is an opinion from a Muslim doctor who can be trusted (fair) that maintaining the presence of the fetus in the stomach is dangerous for the mother's safety. Abortion can be done before the fetus is four months old. Husband and wife cannot make a marriage agreement like this. If the agreement has been made, the husband and wife are sinful. The wife may disobey her husband in this case, because it is not permissible to obey the creatures in disobeying Allah.

Let's analyze the opinion of Sheikh Ali Jum'ah above. It is permissible to make a marriage agreement not to have children because it is permissible to do

`azl, which is incorrect. Because it was acceptable to do `azl the Prophet Muhammad for a while to regulate the spacing of the birth of children, which is called "Tanzim al-Nasl or Tanzim al-usrah. Sheikh Muhammad sayyid Thanthawi, the mufti of Egypt from 1986 to 1996, explained that Tanzim al-usrah is an agreement between husband and wife to choose a method that they think is capable of managing the distance between pregnancies or terminating it for a certain period. If the practice of `azl is carried out forever, it means that husband and wife agree not to have children forever, this is called restricting births or Tahdid al-Nasl. Sheikh Ahmad Thayyib, Mufti of Egypt, in the period 2002-2003 AD, explained that Tahdid al-Nasl is to stop pregnancy absolutely or to make one of the husband or wife unable to give birth forever (infertility), this method is unlawful.

The opinion of Sheikh Ali Jum'ah, which allows marriage agreements not to have children, is contrary to Islam's teachings, which instruct its people to multiply offspring. Among the hadiths of the Prophet Muhammad from Ma'qal bin Yasar, a man came to the Messenger of Allah and said: "I love a woman who is very beautiful and of good descent, but she is barren, can I marry her?" The Prophet replied: "No". Then he came again before the Prophet a second time, and the Prophet did not allow him to marry a woman who could not bear children. Then the person came again a third time, and the Prophet said: "Marry you a loving woman who has many children because I will feel proud of other people with your number" (H/R Abu Dawud). This hadith provides information that the Prophet Muhammad S.A.W liked and felt proud that the number of his followers was large, because he was ordered to find a wife from a descendant of many children.

If the opinion of Sheikh Ali Jum'ah is analyzed with the primary purpose (maqashid ashliyah) of marriage, indeed, the primary purpose of marriage is to meet biological needs. Therefore, if you look at the definition of marriage made by scholars, it will be clear that the primary purpose of marriage is to fulfill sexual needs. The definition of marriage made by Syafi'iyah scholars, for example, marriage is a contract or agreement that intends to allow sex with lafaz ankaha and Tazwij or their translation. So, the primary purpose of marriage is to permit sexual relations between men and women. As for having children, it is not the primary purpose of having children, but maqashid tab'iyah is a follow-up goal. This means that after fulfilling sexual needs through marriage, other goals will follow this primary goal, such as getting good offspring, educating children, emerging affection, mutual love, and mutual help.

From this point of view, the opinion of Sheikh Ali Jum'ah can be justified by an agreement not to have children because sexual needs have been met. However, the fulfillment of sexual requirements between husband and wife who agree not to have children by doing `azl makes their sexual relationship not optimal and does not satisfy the wife. The practice of `azl is allowed by scholars on the condition that there is agreement and willingness from the wife. Imam al-Syaukani explained, "There is no difference of opinion among scholars regarding the permissibility of the practice of `azl, but with the condition that the wife's permission and willingness

are present because the wife is his loyal friend in having sex". Most Hanafiyah, Malikiyah, Syafi'iyah, and Hanabilah scholars agree that it is permissible for a husband to do 'azl when having sex with his wife, but the practice is hated (Karahah tanzihyah) on condition that the wife's consent and willingness are present. If there is no consent and willingness of the wife, then doing 'azl for the husband is haram. In having sex, the wife has the right to feel the peak of her lust, and the husband has the right to it. Umar bin Abdul Aziz advised husbands: "Do not have sex unless your wife has felt the peak of pleasure as you have felt it. Do not precede the completion of sexual intercourse while your wife has not yet felt the peak of the pleasures of her lust."

Based on the analysis above, it can be said that Sheikh Ali Jum'ah's fatwa regarding the permissibility of a husband and wife to make a marriage agreement not to have children by allowing the husband to do 'azl is incorrect. Because the practice of 'azl should not be done forever. In addition, the wife has the right to have children from her marriage, just as the husband has the right to have children from his sexual relationship with his wife. As stated by a woman who asked Sheikh Ali Jum'ah if She wanted to have children, should I abort this womb? In the question above, it is explained that her husband has been married to another woman before and has 3 (three) children. This means the husband's desire to have children has been fulfilled from his previous marriage with another wife. Then his new husband and wife agreed not to have children, while his wife does not yet have children, her instincts still want to have children, so the wife asked Sheikh Ali Jum'ah, can I abort the pregnancy? From this, it can be understood that the husband agreed to benefit himself, while the wife did not have children. The position of husband and wife here is not balanced. The author can say that the fatwa of Sheikh Ali Jum'ah, which allows marriage agreements not to have children, is contrary to Islamic teachings, which instructs his people to carry out marriages to obtain many children.

Other scholars, such as Sheikh Muhammad Shalih al-Muanajjid, argue that the marriage agreement not to have children is contrary to the texts of the Shari'a, which instruct Muslims to marry to multiply children, and is contrary to the primary purpose of marriage. If the marriage contract has been carried out, it is still valid, while the condition for not having children made in the agreement is void, both parties cannot fulfill it (al-Muanajjid, al-ittifaq 'ala 'adam al-Injab) (Abillama, 2018).

In the books of fiqh, it is explained that conditions in the marriage agreement benefit the wife. The husband must meet these conditions. In the book of al-Mughni by Imam ibn Qudamah and the book of Fiqh al-Sunnah by Sayyid Sabig, he describes a case that occurred in the time of Umar bin Khattab (Subeitan, 2022). A man performs a marriage with a woman. The woman made a condition that she did not want to be moved from her parent's house to another place. Then the husband wanted to take his wife to move to another place. Then the two disputed and went to Umar bin Khattab to report his case. Then Umar bin Khatab decided that his wife could make the conditions she wanted, the certainty of that

right when it was made into a condition (Laha Syarthuha inna maqothi'a al-Huquq 'inda al-syarth). The man said I would divorce him (H.R al-Bukhari and Muslim). According to Ibn Qudamah, conditions like this are beneficial for the wife and do not hinder the primary purpose of marriage, just as if the wife asks her future husband to increase her dowry. This is the opinion of the main friend, Umar bin Khatab who defends women's rights, and no other friend argues against it.

In his book *Bidayah Mujtahid*, Ibn Rushd explains that the reason for the difference of opinion on the issue of conditions in the marriage agreement is the conflict between general arguments and specific arguments (Cohen & Karim, 2022). It means that the general proposition is the hadith of the Prophet "Every condition that is not in the Book of Allah is vanity, even though there are one hundred conditions (Kullunsiyartin Laisa Fi Kitabillah Fa Huwa batil even though kana Mi'ata syartin). The specific argument is the hadith of the Prophet: "The conditions that are most eligible to be fulfilled are the conditions relating to marriage" (Ahaqqu al-Syuruth an Yuwaffiya Bihi mas Tahlaltum Bihi al-Furuj). Both of these hadiths are equally authentic and narrated by Imam al-Bukhari and Muslims. However, there is a method used by Usul Fiqh experts that specific arguments are prioritized over general arguments. According to the author, this aligns with the positive legal principle "Lex Specialis Derogat Lex Generalis".

If further analyzed the fatwa of Sheikh Ali Jum'ah that the condition in the marriage agreement is not to have children, it is permissible, while the second question, it turns out that later the woman is pregnant, is it permissible for her to abort the pregnancy? Sheikh Ali Jum'ah forbids abortion. The logic of Sheikh Ali Jum'ah's thinking is not straight, and it should be if the agreed conditions for not having children are allowed, then the logical consequence is that if later his wife is pregnant, he is also allowed to abort the womb.

## **E. CONCLUSION**

Based on the explanation of the problem along with the arguments and rationale, as described above, it can be concluded that the marriage agreement not to have children is allowed by Sheikh Ali Jum'ah, grand mufti in the Arab Republic of Egypt. The reason is that the Prophet allowed the husband to practice 'azl. Sheikh Ali Jum'ah did not explain further that the practice of 'azl is permitted with the condition of the wife's consent and willingness and cannot be forever but is allowed only for a particular time. If the practice of 'azl is carried out by the husband forever, the consequence is that the husband and wife do not want to have children forever. One of the purposes of marriage is to have children. The practice of 'Azl forever also causes the wife to not feel the peak of pleasure in sexual intercourse with her husband. Whereas Islam teaches that husbands should not quickly finish their sexual relationship before the wife feels the peak of pleasure her husband feels. Sheikh Ali Jum'ah's fatwa implies that men marry only to fulfill their sexual needs, not to have children. Sheikh Muhammad Shalih al-Munajjid, a great scholar in Egypt, argued that the marriage agreement not to have children was contrary to

the teachings of Islamic law, which ordered every Muslim to multiply children through marriage. The author agrees more with the opinion of Sheikh Muhammad Shalih al-Munajjid.

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