

FAMILY PLANNING IN THE SOCIAL FIQH PERSPECTIVE OF K.H. SAHAL MAHFUDH

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Abstract

The study results from literature research to answer when family planning (Keluarga Berencana/K.B.) begins in Indonesia. The study also tries to observe the family planning program from K.H. M.A. Sahal Mahfudh and the istinbath (the power of decision making in Islamic law) used in the discourse of family planning. The author used legal-normative and legal-sociological approaches. The results indicate that Kiai Sahal views family planning as regulating childbirth, not eliminating children. It is an effort to form maslahah (public interests) in a family. There are two kinds of social fiqh that Kiai Sahal used in his istinbath, namely madhab Madzhab Qauli and madhab Madhab Manhaji. Madzhab Qauli refers to the hadith of Prophet Muhammad regarding 'azl. Kiai Sahal also refers to al-Ghazali, Ibn Hajar, and Sayyid Sabiq, which allow family planning. Madhab Manhaji used by considering the benefit of the program itself. Besides, Kiai Sahal's opinion about family planning can also be referred to as analogizing 'azl with family planning tools. He believes that advances in medical science and technology, especially regarding contraceptive services, such as natural ones to modern contraceptives, are essentially similar to 'azl. The development of social fiqh is always based on caring for the old, yet it is still relevant and for the greater good. Kiai Sahal's perspective on social fiqh believes that the family planning program is permitted because it aims to create good quality families.

Keywords: Family Planning; Social Fiqh.

A. Introduction

In his book Population and Urban Future, Philip M Hauser mentions that the urban population in Asia was 689 million in 1980, distributed as 330 million in East Asia and 330 million in South Asia. By 2000, the urban population in Asia will increase by 73 percent in East Asia and 139 percent in South Asia. The urban population of South America in 1980 was 241 million and will probably double through 2000. With its urban population of 133 million in 1980, Africa will more

than double (137 percent.) before and until 2000.¹ As part of Southeast Asia, Indonesia's population projection results show that in the next twenty-five years, it will continue to increase from 238.5 million in 2010 to 305.6 million in 2035.²

According to the demographic transition theory, the low-income agrarian economy is characterized by high birth rates and deaths. The birth rate increases, while the death rate varies according to various circumstances. The economy gets more interdependent and forms a market economy system, and then the average mortality rate decreases. With a growing organization and advancement in science and medicine, the mortality rate declines steadily. Soon, the birth rate also decreases. Both follow a line of decline that roughly parallels the decline in the previous highest birth rate. When the death rate can be further reduced, birth rate equals death rate; therefore, population growth rate increases with lower risk of mortality.³

Discussing the population of Java, since the end of the 19th century, population pressure and population growth have always been issues. The continuous population growth shows that land ownership is getting smaller, and more farm laborers cannot own cultivated land. Accordingly, it causes poverty.⁴ Also, in maintaining their survival, human beings need primary needs, including clothing, food, and shelter. Furthermore, food availability is inseparable from population growth. A steady surge in population growth should be balanced with an increase in food production. To ensure food availability on a global scale, human beings must optimize their land and farming productivity. Thus, food crises will no longer threaten the earth's population. Besides finding solutions relating to land and farming productivity and balancing food availability, we have also sought control over the surge in the earth's population.

¹ Philip M. Hauser, Robert W. Gardner, Aprodicio A. Laquian, Salah El-Shakhs, *Penduduk dan Masa Depan Perkotaan*, (Jakarta: Yayasan Obor Indonesia, Cet. I, 1985), p. 15

² The data is taken from the catalog of the Central Bureau of Statistics entitled Indonesian Population Projection 2010-2035, accessed on 7 February from www.bappenas.go.id, p. 35.

³ James T. Fawcett, *Psikologi dan Kependudukan*, (Jakarta: CV. Rajawali, 1984), p. 20.

⁴ Masri Singarimbun, *Penduduk dan Perubahan*, (Yogyakarta: Pustaka Pelajar, Cet. I, 1996), p. 10.

The imbalance in the increasing number of food source production and the growing numbers of inhabitants will cause a food crisis which will be challenging to disentangle.⁵

Furthermore, the increase in the earth's population will be getting out of control. This problem has been prompted by the United Nations (U.N.) by encouraging high populated countries to participate in controlling the population rate. Indonesia is one of these countries. Its condition encourages the government to participate in family planning programs actively or commonly addressed as *Keluarga Berencana*. The program is implemented through a campaign *Dua Anak Cukup* (a family with two children) and contraception. Societies, especially religious leaders, responded to the program polemically.⁶

Regulation No. 10/1992, which establishes the family planning program, aims to raise society's awareness and participation through controlling marriage age, maintaining birth control, fostering family resilience, and increasing family welfare to create a small, happy, and prosperous family. This program was fully backed by the government, especially by the Minister of Health, who mentioned that the ideal number of children in a family is only two. The program had been launched in the 1970s.

Hanafi Hartanto mentions that family planning, according to, which is a human effort to conceive in the family, in general, does not violate religious law, state law, and Pancasila to obtain family and nation's welfare.⁷ Family planning promotion is the primary practical response in dealing with population problems. In the past decade, there has been tremendous interest and effort in government-initiated family planning programs. Its activities which the government currently supports, spread across forty developing countries. In industrialized countries, including the United

⁵Umdatul Baroroh dan Tutik Nurul Jannah, *Fiqh Sosial Masa Depan Fiqh Indonesia*, (Pati: PUSAT FISI, 2016), p. 93.

⁶Umdatul Baroroh dan Tutik Nurul Jannah, *Fiqh Sosial Masa Depan Fiqh Indonesia*, h. 93.

⁷Hanafi Hartanto, *Keluarga Berencana dan Kotrasepsi*, (Jakarta: Pustaka Sinar Harapan, 1994), h. 8.

States, greater government participation is also expanding.⁸ To implement the program, Indonesia's government takes steps including regulating pregnancy spacing, maintaining marriage age, counseling on the value of family planning, providing family planning infrastructure, and building Integrated Healthcare Centers.

One of the family planning program supporters is K.H. Sahal Mahfudh, a public figure who actively campaigns the importance of understanding population problems related to welfare. In his statement, Kiai Sahal often likens the world to a maximum capacity for a public vehicle. A row of passenger seats should be enough for five people; however, the seats are now filled by ten people. You can imagine the discomfort each person experienced. Here, there will inevitably violate rights and obligations due to overcapacity in fulfilling the need for security and comfort.⁹

Therefore, Kiai Sahal believes a family planning program is urgently needed. However, can spouses accept a limitation in the number of offspring in their family? Also, problems related to issues family planning in Islam. Islam recommends reproducing offspring and the blessings brought by children in a family.¹⁰ Nevertheless, in general, family planning is in line with Islamic teachings, shown in Surah Al-Isra ' verse 31.

وَلَا تَقْتُلُوا أَوْلَادَكُمْ حَسْبِيَ ۖ أَمْلِقُ ۖ نَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ ۖ إِنَّ قَتْلَهُمْ كَانَ خِطَاً كَبِيراً

"Do not kill your children for fear of poverty! We give the sustenance. Surely to kill them is a great crime (committed deliberately)."

Also, it is stated in Surah Al-'An'am verse 151:

قُلْ تَعَالَوْا أَتْلُ مَا حَرَّمَ رَبِّيَ عَلَيْهِ ۖ أَلَّا تُشْرِكُوا بِهِ شَيْئًا ۖ وَبِالْوَالِدَيْنِ إِحْسَانًا ۖ وَلَا تَقْتُلُوا أَوْلَادَكُمْ مِنْ إِمْلَاقٍ ۖ نَحْنُ نَرْزُقُكُمْ وَإِيَّاهُمْ ۖ وَلَا تَعْرَبُوا أَلْفُؤَاحِشَ ۖ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ ۖ وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ۖ ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ

⁸James T. Fawcett, *Psikologi dan Kependudukan*, p. 13-14.

⁹Umdatul Baroroh dan Tutik Nurul Jannah, *Fiqh Sosial Masa Depan Fiqh Indonesi*, h. 93.

¹⁰Cholil Nafis, *Fikih Keluarga Menuju Keluarga Sakinab, Mawaddah, Wa Rahmah, Keluarga Sehat, Sejahtera dan Berkualitas*, (Jakarta: Mitra Abadi Press, Cet. II, 2009), p. 75.

"Say: "Come, I will recite what your Lord has forbidden to you; that you do not associate anything with Him. And show kindness to your parents. Do not kill your children for (fear of poverty)". We provide sustenance for you and for them. Do not approach wickedness that is apparent or concealed. Do not kill, which Allah has forbidden except for a just cause. This He has enjoined you with that you may be mindful."

Kiai Sahal agrees that the family planning program does not contradict Islamic teachings. He disagrees if family planning is another form of modern-style child murder, as the essence of family planning is not to limit but to assist. This arrangement aims to create a quality family. If it is not appropriately regulated, children will become victims. Parents cannot just give birth to children without considering post-natal treatments, such as fulfilling basic needs, health, and education. Therefore, parents' choice and expertise are needed in managing the family.¹¹ Kiai Sahal views family planning as regulating or spacing out births. It is an effort to form a prosperous family, both from the perspective of the worldly and the afterlife (*ukbrowi*) so that *sa'adatuddarain* as a life goal is fully achieved.¹²

In Prophet Muhammad's life, there was also a birth control system applied. The difference is that Prophet Muhammad did not use any contraceptive tool and known as *azl* or *coitus interruptus*. '*Azl* is a deliberate effort to regulate pregnancy. Thus, '*azl* and family planning have the same goal, namely regulating pregnancy.¹³ Therefore, Kiai Sahal Mahfudh assumes that the involvement of the ulama in the family planning program serves as both motivator and dynamist in the context of constructing a *maslahah* family.¹⁴

The benefit of the family and its welfare are inseparable from the discussion on population issues which are expected to be resolved for a greater good, especially by implementing a family planning program. Kiai Sahal strengthens his argument with an authentic hadith narrated by Imam Bukhari and Imam Muslim related to '*azl* as a

¹¹ Cholil Nafis dan Abdullah Ubaid, *Keluarga Masalah Terapan Fikih Sosial Kiai Sahal*, (Jakarta: Mitra Abadi Press, 2010), p. 92.

¹² Sahal Mahfudh, "Program KB dan Ulama", Papers During the Population Lecture in Lamongan, November 1, 1986, (Pati Maslakul Huda, 1986), p. 4, t.d.

¹³ Sahal Mahfudh, "Pelaksanaan KB Nasional Ditinjau Dari Agama Islam", p. 6-7, t.d.

¹⁴ Sahal Mahfudh, "Program KB dan Ulama", p. 3 t.d.

method of regulating pregnancy performed by The Prophet's companions and confirmed by Prophet Muhammad himself.

وَعَنْ جَابِرِ رَضِيَ اللَّهُ عَنْهُ قَالَ: كُنَّا نَعْرِضُ عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَالْقُرْآنُ يَنْزِلُ وَلَوْ كَانَ شَيْءٌ يُنْهَى عَنْهُ الْقُرْآنُ - مَتَّفَقٌ عَلَيْهِ¹⁵

"From Jabir said: *We have done azl where Prophet Muhammad is still alive, even though the Al-Qur'an verse is still being revealed if it is forbidden (doing Azl), indeed the Al-Qur'an verse will forbid us.*"

Additionally, Imam Muslim also narrated a hadith related to 'azl.

كُنَّا نَعْرِضُ عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَبَلَغَ دَلِيكَ الَّتِي اللَّهُ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَلَمْ يَنْهَنَا عَنْهُ - رواه مسلم¹⁶

"*We have done azl at the time of the Prophet Muhammad, and the news has reached him, but he did not forbid us.*" (H.R. Muslim).

Furthermore, concerning ways of regulating pregnancy, fiqh scholars agree to provide several conditions. It is forbidden to do things that intend to permanently prevent pregnancy (*Qathu Al-Haml*), as it changes *kebilqah* (physical form). It indirectly indicates denial in the will of the Almighty. On the other hand, it also means negating the purpose of marriage declaration, namely *kehidh al-nasl*.¹⁷

In addition, Kiai Sahal requires that the family planning method be carried out by mutual agreement between husband and wife. When the wife does not want to get pregnant, and the husband agrees to it, Sharia does not justify it.¹⁸ Kiai Sahal Mahfudh gained a lot of criticism and opposition, especially from pesantren and Muslim groups. However, it did not prevent him from continuing to educate society, especially pesantren communities, about the reasons for prioritizing the family

¹⁵Imam Abu Husain Muslim bin al-Hajjaj al-Qusyairi al-Naisaburi, *al-Musnad al-Shabih al-Mukhtashor Bi Naql al-'Adli 'Ala al-'Adli Ila Rasulillah SAW*, (Beirut: Dar Ikhya' AL-Turats AL-'Arabi, t.t.), p. 1065.

¹⁶ Imam Abu Husain Muslim bin al-Hajjaj al-Qusyairi Al-Naisaburi, *al-Musnad al-Shabih al-Mukhtashor Bi Naql al-'Adli 'Ala al-'Adli Ila Rasulillah SAW*, p. 1065.

¹⁷ KH. MA. Sahal Mahfudh, *Wajah Baru Fiqh Pesantren*, (Jakarta: Citra Pustaka, Cet. I, 2004), p. 256.

¹⁸ KH. MA. Sahal Mahfudh, *Wajah Baru Fiqh Pesantren*, p. 256.

planning program. His particular reason is the benefits that the communities can get in return.¹⁹

Kiai Sahal's perspective regarding human beings' primary goals and duties is the basis of his argument used in understanding various socio-religious problems in society. He strongly believes Allah assigns human beings to become the caliphs on earth. As a caliph, an individual has two major tasks, namely *ibadatullah* and *imaratul ardh*. *Ibadatullah* is worshiping Allah, the Almighty. It refers to ritual (formal) in nature and other services that are not bound by terms and conditions.

Meanwhile, *imaratul ardh* means to build the earth. Allah, the Almighty, creates human beings and the environment around them to build (*imarab*), enliven, and prosper the earth. All deeds, attitudes, and behavior (outside formal worship) based on Islamic teachings have the value of worship to the Almighty. For example, when we implement family planning programs, we want strong offspring that will create righteous families. It closely relates to worship since it is carried out peacefully. Likewise, direction without worship becomes a secular one.²⁰

Therefore, in the 1980s, Kiai Sahal Mahfudh actively participated in educating the public about family planning and was invited to various scientific forums that specifically discussed population problems and *fiqh* perspectives in solving these problems.

B. Biography of KH. MA. Sahal Mahfudh

Muhammad Ahmad Sahal bin Mahfudh bin Abdus Salam Al-Hajaini, who is familiarly called Kiai Sahal, born in Kajen, Kajen District, Pati Regency, on February 16, 1933. He is the son of KH Mahfudh bin Abdussalam and Hj. Badi'ah. This family has a lineage with KH. Ahmad Mutamakkin, a well-known pioneer of Islam in Kajen, Pati. Therefore, his lineage is KH. MA. Sahal Mahfudh bin KH. Mahfudh Salam bin

¹⁹ Umdatul Baroroh dan Tutik Nurul Jannah, *Fiqh Sosial Masa Depan Fiqh Indonesia*, h. 97.

²⁰ Umdatul Baroroh dan Tutik Nurul Jannah, *Fiqh Sosial Masa Depan Fiqh Indonesia*, p. 98.

KH. Abdussalam bin KH. Abdullah bin Nyai Mutiroh binti KH. Bunyamin bin Nyai Toyyibah binti KH. Endro Muhammad bin KH. Ahmad Mutamakkin.²¹

Kiai Sahal's success is closely related to his enthusiasm for study. Kiai Sahal started studying religion when he was six years old (1943) at Madrasah Ibtida'iyah Kajen and graduated in 1949. In 1950-1953, he continued his studies at the Mathali'ul Falah Kajen Islamic College. Kiai Sahal also studied general sciences by taking courses, for instance, philosophy, English, administration, psychology, and constitutional, with H. Amin Fauzan.²²

After graduating from Tsanawiyah, Kiai Sahal continued his education at Bendo Islamic boarding school, Pare, Kediri (1953-1957), an Islamic boarding school under the care of Kiai Muhajir, and at Sarang Rembang Islamic Boarding School (1957-1960) under Kiai Zubair. He was also given the task of teaching by K.H. Zubair Dahlan at Sarang Islamic boarding school. After graduating from Sarang, he completed his study in Makkah for three years (1961-1963) under K.H. M. Yasin Fadani, a leading hadith scholar.²³

Kiai Sahal studied quite diverse disciplines, ranging from *Tafsir*, *Fiqh*, *Hadith*, *Ushul Fiqih*, *Tauhid*, *Tasawuf*, *Mantiq*, *Balaghah*, and others. He completed many "Kitab Kuning" (textbooks used in traditional boarding schools), such as *Tafsir Jalalain*, *Fathul Mu'in*, *Tabrir*, *Asymuny*, *Jauharul Maknun*, *Alfiyah*, *Jam'ul Jawami'*, *Al Hikam*, and so on. These books were studied under the care of well-known teachers, especially his uncle, KH. Abdullah Zen Greetings.²⁴

Kiai Sahal is known for his aptitude since his youth. After returning from Makkah in 1963, at the age of 26, Kiai Sahal established Maslakul Huda Islamic Boarding School and the Director of Mathali'ul Falah Islamic College. These two

²¹Jamal Ma'mur dkk, *Mempersiapkan Insan Sholih-Akrom*, (Pati: Perguruan Islam Mathali'ul Falah, 2012), p. 111.

²²Jamal Ma'mur dkk, *Mempersiapkan Insan Sholih-Akrom*, p. 111.

²³Jamal Ma'mur dkk, *Mempersiapkan Insan Sholih-Akrom*, p. 113.

²⁴Jamal Ma'mur Asmani, *Fiqh Sosial Kiai Sahal Mahjudh: Antara Konsep dan Implementasi*, (Surabaya: Khalista, 2007), p. 13-18.

institutions are at the forefront of community development in Kajen Village and its surroundings.²⁵

C. *Istinbath* used by K.H. M.A. Sahal Mahfudh in Family Planning Discourse

Istinbath, in terms of language, comes from the word *إستنبط- يستنبط- إستنباط* which means to *pull out*.²⁶ In terms of law, *istinbath* is an effort to extract laws from the Qur'an and Sunnah through *ijtihad*.²⁷ The law of *istinbath* cannot be separated from *ushul fiqh* as it is a rule that maintains *fuqaha*. Therefore, there will be no mistake in exploring the law. Also, the function of *ushul fiqh* is to distinguish between right and wrong in conducting *istinbath*.²⁸ Similar to *nahwu*, which distinguishes between the correct language structure and the wrong language arrangement, and *mantbiq*, which aims to know scientific arguments and scientific conclusions.²⁹ According to Abu Zahrah, *ushul fiqh* is a science that describes the methods used by *mujtahid* imams in exploring and establishing sharia laws from their texts.³⁰

Kiai Sahal is known as the Nahdlatul Ulama figure and served as Rais Am for the organization in 1999-2014. From this background, in his writings, Kiai Sahal defines legal *istinbath* as not merely taking the law directly from the sources (Al-Qur'an and Hadith). However, legal exploration is carried out by dynamically observing the *fuqaha*'s texts (in this case, Syafi'yyah) in the context of the problem that the law explores. When the discussion stops at Al-Qur'an and Hadith, society will keep changing and developing with various problems. Problems in social, cultural, political, economics, and others that emerge lately need to obtain fiqh legality immediately. *Fiqh* is considered responsible for providing solutions so that

²⁵Jamal Ma'mur dkk, *Mempersiapkan Insan Sholih-Akrom*, p. 113.

²⁶A.W. Munawir, *Kamus Al-Munawir Arab-Indonesia Terlengkap*, (Surabaya: Pustaka Progressif, 1997), p. 1379.

²⁷ Hasbiyallah, *Fiqh dan Ushul Fiqh*, (Bandung: PT Remaja Rosdakarya, 2013), p.45.

²⁸ Muhammad Shidqi bin Ahmad Al-Burneo, *al-Wajiz Fi Idhachi Qawaidh al-Fiqhi al-Kulliyati*, (Riyadh: Muassah Ar Risalah 1983), p. 22.

²⁹ Muhamad Abu Zahrah, *Ushul Fiqih*, (Jakarta: Pustaka Firdaus, 2008), p. 5.

³⁰Muhamad Abu Zahrah, *Ushul Fiqih*, p. ix.

changes and development in society remain within Sharia's corridor.³¹ The law of *istinbath* that are perceived as valid in *ushul fiqh* is *Qur'an*, *Hadith*, *Ijma'*, and *Qiyas*. Meanwhile, *istihsan*, *urf*, *mashlahab mursalah*, *istishbab*, *syar'u man qablana*, and *syad al-dzari'ab* are still debated among intellectuals. Syafi'i school does not recognize the *istihsan* method and Imam Syafi'i himself discussed this issue in a separate chapter in his book *Al-Umm* under *Ibtihalul Istihsan*.³²

However, Abdul Moqsih Ghazali, a lecturer at the Faculty of Ushuluddin State Islamic University Jakarta, stated that Kiai Sahal Mahfudh prefers to maximize the use of *qiyas* by expanding the scope of *Masalik Al-Illat* (a method in finding reasons (*illat*) used in legal stipulation). The resulting *fiqh* is under *mashlahat al-ammah*. Therefore, the fundamental paradigm of social *fiqh* is based on the belief that *fiqh* must be understood in the context of solving and fulfilling three types of human needs, namely *dharuriyah* (primary), *hajjiyah* (secondary), and *tabsiniyah* (tertiary). Hence, social *fiqh* a paradigm of social meaning.³³

According to Kiai Sahal, social *fiqh* is based on the view that addressing complex social problems is a significant concern in Islamic law. Therefore, operationally, social *fiqh* seeks to integrate *Maqasid Al-Sharia* in building a theoretical framework of *fiqh*. As a result, law's wisdom must be integrated into valid reasons (*illat*) to get a legal product-oriented to the principle of 'a greater good' as reflected in Kiai Sahal's opinion on family planning.³⁴

There are two approaches to implement the law of social *fiqh* proposed by Kiai Sahal, namely *Madzhab Qauli* (textually) and *Madhab Manhaji* (methodologically). These two procedures will lead to the legalization of family planning by considering *fiqh* texts to solve recent problems.

Kiai Sahal stated that in *Madzhab Qauli*, the development of *fiqh* could be realized by contextualizing *Kitab Kuning* or developing examples on the applications

³¹ KH. MA. Sahal Mahfudh, *Nuansa Fiqh Sosial*, p. xxv.

³² Muhamad Abu Zahrah, *Ushul Fiqih*, p. 412.

³³ Sahal Mahfudh, *Nuansa Fiqh Sosial*, p. Xxxvi.

³⁴ Cholil Nafis dan Abdullah Ubaid, *Keluarga Maslahab Terapan Fikih Sosial Kiai Sahal*, p. Vii.

of the *ushul fiqh* rules and *qawa'id al-fiqhiyyah*. It means that when you respond to *masail*, you first go through the texts, hadiths, and *fiqh* texts from *Kitab Kuning*, which are *mu'tabar*. Therefore, it is accepted to be *Madzhab Qauli*.

Madhab Manhaji is carried out when the *Madzhab Qauli* can no longer deal with an obstacle. Kiai Sahal observes the relevance of applying underdeveloped theories within the Syafi'i school, i.e., *maqashid Sharia* and *maslahah*, in considering benefits as the law's principle all aspects of human life by excluding pure *ubudiyah*. He believes that any life aspect that surrounds a human's life must be addressed by focusing benefit into one's consideration. The stability of the benefit makes the duties of worship carried out accurately.³⁵ Additionally, *Madhab Manhaji* emerged from the development of the *masalik al-illat*. It can methodologically be implied by incorporating the wisdom of law into the *illat* of the law. Thus, the resulting *fiqh* is under *maslahat al-ammah*.³⁶

In the context of family planning, the writer finds that Kiai Sahal explores law regarding family planning using both *madhab qauli* and *madhab manhaji*. *Madzhab qauli* is an application by referring to the hadith of Prophet Muhammad regarding '*azl*'. Also, he refers to al-Ghazali, Ibn Hajar, and Sayyid Sabiq, who agree to family planning. In *Madhab Manhaji*, Kiai Sahal considers the benefit of the program itself. Also, Kiai Sahal's opinion on family planning refers to the *qiyas* method, which analogizes '*azl*' as a family planning method. Kiai Sahal asserts that advances in medical science and technology, especially regarding the development of contraceptive service suggestions, are similar to '*azl*'.³⁷

During the life of Prophet Muhammad, '*azl*' did not need any tool, but contraception is required in today's modern family planning. Sheikh Abdul Majid Salim, a prominent Egyptian *mufti*, in his book *Family Fiqh*, claims that he agrees to family planning by using '*azl*' as a principle of *qiyas* to new contraceptive methods.

³⁵ Muhammad Faeshol Muzammil, "Menyegarkan fiqh sosial Kiai Sahal", in Tutik Nurul Jannah, ed., *Metodologi Fikih Sosial dari Madzhab Qauli Menuju*, (Pati: Fiqh Sosial Institute STAI Matholiul Falah, 2015), p. 222.

³⁶ Sahal Mahfudh, *Nuansa Fiqh Sosial*, p. Xxxvi.

³⁷ KH. MA. Sahal Mahfudh, *Wajah Baru Fiqh Pesantren*, p. 256.

In addition, Syekh Qardhawi also confirms that modern contraceptive methods have the same purpose as *'azl* and are permitted based on *qiyas*.³⁸ These theologians' ideas are the same as Kiai Sahal's opinion.

For Kiai Sahal, *maslahah 'ammah* (public interest) must be the first concern in the decision-making process. A *mujtabid* must have social sensitivity to maintain public interest. Therefore, Kiai Sahal can sort public interest out of groups or government ones.³⁹ It is in line with his thought on family planning; hence, it provides a basis on legal certainty for those conducting family planning programs.

Hence, the writer formulates several family planning law exploration steps based on Kiai Sahal's social *fiqh* perspective.

Step 1: Problem Formulation

1. The quantity of the Indonesian population is increasing. Statistically, Indonesia is the fourth most populous country.
2. Family planning is recognized as the best solution in responding to population issues. However, some intellectuals disagree with family planning. They argue that the program is against the argument of the verses (*Nash*).
3. Family planning must be vied from its goal, namely eliminating *mafsadah* and obtaining *maslahah*.
4. Islam encourages mothers to breastfeed their children for two years.

Step 2: Fatwa Formulation

1. *Adillah* Analysis

Al-Qur'an:

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ ۖ لِمَنْ أَرَادَ أَنْ يُبْرِئَ الرِّضَاعَةَ ۖ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۚ لَا تُكَلِّفُ نَفْسٌ إِلَّا وُسْعَهَا ۚ لَا تُضَارَّ

³⁸ Cholil Nafis dan Abdullah Ubaid, *Keluarga Maslahah Terapan Fikih Sosial Kiai Sahal*, h. 98

³⁹ Sahal Mahfudh, *Nuansa Fiqh Sosial*, p. Xx.

وَالِدَةٌ بِوَالِدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدِهِ ۚ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ ۗ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا ۗ وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ بِالْمَعْرُوفِ ۗ وَاتَّقُوا اللَّهَ وَعَلِمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

"Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing (period). Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child and no father through his child. And upon the (father's) heir is (a duty) like that (of the father). And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah sees of what you do." (Surah Al-Baqarah, verse 233).

The verse illustrates that breastfeeding is recommended in Islam. Two years is the maximum time for breastfeeding. Nevertheless, breastfeeding is not an obligation. Thus, a mother who breastfeeds her child automatically spaces out her pregnancies. Exclusive breastfeeding is a means of contraception. A baby's suction during breastfeeding can stimulate *prolactin*. This hormone can inhibit the maturation of eggs; thus, it delays fertility. It proves that exclusive breastfeeding is an effort to regulate pregnancy as breastfeeding minimizes the maturation of the egg.⁴⁰

Besides, Kiai Sahal illustrates that family planning is essential as Islam teaches that there is a need of balance between obtaining offspring or children in a family and achieving the following three things: first, maintaining mother and children's health, guaranteeing their mental safety, and keeping physical and spiritual health along with pregnancy, childbirth, breastfeeding, and childcare; second, maintaining mental, physical, and spiritual safety of any children, and third, guaranteeing religious needs for parents who work to meet their families needs.⁴¹

⁴⁰Cholil Nafis dan Abdullah Ubaid, *Keluarga Masalah Terapan Fikih Sosial Kiai Sahal*,... h.96.

⁴¹Sahal Mahfudh, "Pelaksanaan KB Nasional Ditinjau Dari Agama Islam", Makalah, (Pati: Perpustakaan Maslakul Huda, 1984), p. 8, t.d.

Islam recommends reproducing offspring and blessing every child born. However, Islam also gives relief, even calls upon every Muslim to regulate his or her offspring for a qualified generation, as mentioned in Surah Al Ahqaf verse 15.

وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا ۚ

"The carrying of the child to his weaning is a period of thirty months."

Imam al-Qurtubi, in his book *Family Jurisprudence*, interprets the verse with the following analogies. If a woman is six months pregnant, she needs to breastfeed her baby for 24 months. If a woman is seven months pregnant, she needs to breastfeed her baby for 23 months. If a woman is eight months pregnant, she needs to breastfeed her baby for 22 months. If a woman is nine months pregnant, she needs to breastfeed her baby for 21 months. Therefore, if breastfeeding is less than thirty months, there is a possibility of affecting the mother's health,⁴² as mentioned in a hadith narrated by Bukhari and Muslim.

وَعَنْ جَابِرِ رَضِيَ اللَّهُ عَنْهُ قَالَ: كُنَّا نَعْرُضُ عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَالْقُرْآنُ يَنْزِلُ وَلَوْ كَانَ شَيْءٌ يُنْهَى عَنْهُ الْقُرْآنُ - مَتَّفَقٌ عَلَيْهِ⁴³

"From Jabir said: "We have done *azl* where Prophet Muhammad (PBUH) was still alive, even though the Al-Qur'an verse was still being revealed if it were forbidden (doing *azl*), surely the Al-Qur'an verse would forbid us."

According to Kiai Sahal, '*azl*' existed since Prophet Muhammad's time. Therefore, its practice is legitimate. Kiai Sahal has a strong opinion that the family planning program does not contradict Islamic teachings. Family planning and '*azl*' are two different terms, but their purposes are the same: regulating pregnancy.

2. *Aqwal* Analysis

Kiai Sahal observes the opinions expressed by several experts regarding Islamic teachings that allow family planning programs.

a. Al Ghazali's reasonings

⁴² Cholil Nafis, *Fikih Keluarga*, p. 75.

⁴³Imam Abu Husain Muslim bin Al-Hajjaj Al-Qusyairi Al-Naisaburi, *al-Musnad al-Shahib al-Mukhtashor Bi Naql al-'Adli 'Ala al-'Adli Ila Rasulillab SAW*, p. 1065.

- 1) To maintain the wife's beauty and health for the lasting pleasure of the husband.
 - 2) To protect the wife's life from risky pregnancy
 - 3) To avoid having a child from a slave (now no longer exist)
 - 4) To avoid economic problems
- b. Ibn Hajar's reasonings
- 1) To avoid burdensome responsibilities
 - 2) To avoid tandem nursing
 - 3) To avoid having a child from a slave (now no longer exist)⁴⁴
- c. Shaykh Sayyid Sabiq's reasonings
- 1) When a man already has many children and afraid of his inability to raise them properly.
 - 2) If the wife is sick.
 - 3) If the wife gets pregnant too often (*mausulatul haml*)
 - 4) To maintain the wife's beauty and health for the lasting pleasure of the husband (also mentioned by Imam Ghazali)⁴⁵

Kiai Sahal argues that family planning is necessary. Pregnancy or birth regulation aims to create a good family. As a Muslim, you must consider your abilities. In this sense, abilities are material sufficiency and assurance in health, education, and religion. Every addition in a family will also increase life problems,⁴⁶ as mentioned in Surah An-Nisa' verse 9 and two hadiths.

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَافًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا
قَوْلًا سَدِيدًا

"And let those fear as if they had left weak offspring behind and feared for them (that they would be exposed to injustice). So let them fear Allah and speak words of justice (righteousness)".

⁴⁴Sahal Mahfudh, "Pelaksanaan KB Nasional Ditinjau Dari Agama Islam", p. 12, n.d.

⁴⁵Sahal Mahfudh, "Pelaksanaan KB Nasional Ditinjau Dari Agama Islam", p. 12, n.d.

⁴⁶Sahal Mahfudh, "Pelaksanaan KB Nasional Ditinjau Dari Agama Islam", p. 8, n.d.

إِنَّكَ إِنْ تَذَرْتَهُمْ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ - متفق عليه^{٤٧}

"Surely it is better for you to leave your heirs in a well-off condition than to leave them a burden on the crowd." (Bukhari Muslim)

وَأَخْرَجَ ابْنُ أَبِي شَيْبَةَ وَالْبَيْهَقِيُّ عَنْ أَنَسِ رَضِيَ اللَّهُ عَنْهُ كَادَ الْفَقْرَانُ يَكُونُ كُفْرًا - رواه مسلم^{٤٨}

"Poverty brings disbelief." (H.R. Muslim)

Therefore, in Kiai Sahal's perspective, the family planning program is permitted to create good families. The development of social *fiqh*, as exemplified by Kiai Sahal, always rests on the principles of:

المحافظة على القديم الصالح والأخذ بالجديد الأصح

"Maintaining the old but still good and relevant and taking the new better."

It will, in turn, will create a just and prosperous society in the hereafter. This principle teaches to remain open to any forms of progress but wise in selecting innovation. People need to keep up with any reforms that occur at any time.⁴⁹

D. Conclusion

Kiai Sahal observes family planning as regulating childbirth, not eliminating children. It is a human effort to form a *maslahah* family. Family planning is considered a solution to current population problems. Kiai Sahal made an analogy on contraceptive tools with *'azl*, which is practiced Prophet Muhammad's time. Kiai Sahal also put a great concern on the dynamics of life problems. When a problem had no solution from a *naqli perspective*, he tried to seek a *fiqh perspective* without contradicted *qath'i* argument. Kiai Sahal interpreted and studied *fiqh* texts without violated procedure in extracting the law (*thuruq al-istinbath*) to achieve legal enactment, for example, in supporting the family planning program.

⁴⁷Abdur Rahman bin Abi Bakar, *al-Dar al-Mantsur*, (Beirut: Dar Al-Fikr), p. 692.

⁴⁸Imam Abu Husain Muslim bin Al-Hajjaj Al-Qusyairi Al-Naisaburi, *al-Musnad al-Shahih al-Mukhtashor Bi Naql al-'Adli 'Ala al-'Adli Ila Rasulillah SAW*, p. 1065.

⁴⁹Sahal Mahfudh, *Pesantren Mencari Makna*, (Jakarta: Pustaka Ciganjur 1999), p. 63.

There are two approaches to implement the law of social *fiqh* proposed by Kiai Sahal, namely *Madzhab Qauli* (textually) and *Madhab Manbaji* (methodologically). These two procedures will lead to the legalization of family planning by considering *fiqh* texts to solve recent problems. Kiai Sahal confirms that '*azl*' existed since Prophet Muhammad's time. Therefore, its practice is legitimate. He believes that the family planning program does not negate Islamic teachings. Family planning and '*azl*' are two different terms, but their purposes are the same: regulating pregnancy. Therefore, in Kiai Sahal's perspective, a family planning program is permitted since it aims to create good families.

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