



The Legal Status and Consequences of Childfree Clauses in Marriage Agreements: Between Contractual Autonomy and Family Values

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Abstract. Childfree decisions have become increasingly debated in Indonesia, particularly when incorporated as clauses in marriage agreements. This study examines the legal status and consequences of childfree clauses under Indonesian civil and family law, focusing on contractual autonomy, reproductive rights, and family values. Using a normative legal method, this study employs statutory and conceptual to examine the validity and legal consequences of childfree clauses in marriage agreements. The findings show that childfree clauses may be included in marriage agreements as an expression of contractual autonomy, but their validity and enforceability are subject to legal and ethical limitations. Although such clauses may satisfy the formal requirements of contractual validity, reproductive decisions remain closely connected to personal rights and cannot be enforced through conventional contractual remedies. Moreover, Indonesian marriage law recognizes broader religious, moral, and social dimensions of marriage, which limit unrestricted contractual freedom. Consequently, violations of childfree clauses are more likely to generate social and relational consequences than direct legal sanctions. The study argues that childfree clauses should be understood primarily as expressions of mutual commitment rather than absolute reproductive obligations. A balanced legal framework is therefore needed to accommodate contractual autonomy while protecting reproductive rights and respecting family values.

Keywords: Childfree Clause, Freedom of Contract, Indonesian Family Law, Marriage Agreement, Reproductive Rights.



Abstrak. Keputusan untuk tidak memiliki anak (*childfree*) semakin banyak diperdebatkan di Indonesia, khususnya ketika hal tersebut dicantumkan sebagai klausul dalam perjanjian perkawinan. Penelitian ini mengkaji status hukum dan konsekuensi dari klausul *childfree* berdasarkan hukum perdata dan hukum keluarga Indonesia, dengan fokus pada otonomi kontraktual, hak reproduksi, dan nilai-nilai keluarga. Dengan menggunakan pendekatan hukum normatif-empiris, penelitian ini menerapkan pendekatan perundang-undangan, konseptual, dan studi kasus, yang didukung oleh literatur hukum serta wawancara. Hasil penelitian menunjukkan bahwa klausul *childfree* dapat dicantumkan dalam perjanjian perkawinan sebagai wujud otonomi kontraktual, namun keabsahan dan keberlakuan klausul tersebut tunduk pada batasan hukum dan etika. Meskipun klausul semacam itu mungkin memenuhi persyaratan formal keabsahan kontrak, keputusan mengenai reproduksi tetap berkaitan erat dengan hak-hak pribadi dan tidak dapat dipaksakan pelaksanaannya melalui upaya hukum kontraktual konvensional. Selain itu, hukum perkawinan Indonesia mengakui dimensi agama, moral, dan sosial yang lebih luas dalam perkawinan, yang membatasi kebebasan berkontrak tanpa batas. Akibatnya, pelanggaran terhadap klausul *childfree* lebih mungkin menimbulkan konsekuensi sosial dan relasional dibandingkan sanksi hukum secara langsung. Penelitian ini berargumen bahwa klausul *childfree* sebaiknya dipahami terutama sebagai bentuk komitmen bersama, bukan sebagai kewajiban reproduksi yang mutlak. Oleh karena itu, diperlukan kerangka hukum yang seimbang untuk mengakomodasi otonomi kontraktual sekaligus melindungi hak reproduksi dan menghormati nilai-nilai keluarga.

Kata kunci: Klausul *Childfree*, Kebebasan Berkontrak, Hukum Keluarga Indonesia, Perjanjian Perkawinan, Hak Reproduksi.

1. Introduction

Marriage is a legal institution within the Indonesian legal system that reflects social, moral, religious, and constitutional values. As a state based on law and Pancasila, Indonesia recognizes marriage as an institution aimed at establishing a harmonious and sustainable family. Article 1 of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, defines marriage as a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family based on belief in the One Almighty God. Thus, marriage is not merely a private agreement but also a social institution containing legal responsibilities, moral obligations, and religious dimensions.

Contemporary developments have challenged conventional understandings of marriage through the childfree phenomenon, namely the conscious decision of individuals or married couples not to have children throughout marriage. Unlike childlessness caused by biological limitations or circumstances beyond personal control, childfree represents a voluntary reproductive decision influenced by economic capacity, psychological readiness, career orientation, health, environmental concerns, and perceptions of responsible parenting.¹ In Indonesia, childfree has become increasingly visible through public discussions and statements by several public figures, challenging assumptions concerning marriage, family obligations, and reproductive expectations.² Its acceptance is also shaped by cultural and religious values, particularly pronatalist attitudes that view children as a natural consequence of marriage and an important element of family formation.³

¹ Chandni Bhambhani and Anand Inbanathan, "Decision-making in contraceptive use among childfree couples: cultural and structural influences in India and Canada," *Journal of Biosocial Science* 58, no. 4 (2026): 12. See also, Erfaniah Zuhriah et al., "Childfree, the digital era, and Islamic law: views of Nahdlatul Ulama, Muhammadiyah, and gender activists in Malang, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1618; Iffatin Nur, "Childfree Between the Sacredness of Religion, Law and the Reality of Society," *Al-'Adalah* 19, no. 1 (2022): 21.

² Rezzy Eko Caraka et al., "Text and Sentiment Analysis of Childfree Trends in Indonesian Online News," In *2025 International Conference on Computer, Control, Informatics and its Applications (IC3INA)* (IEEE, 2025), 116. See also, Fathonah K. Daud et al., "Phenomenon and Several Reasons for Childfree in Indonesia from the Perspective of Islamic Law," *PETTITA* 10, no. 9 (2025): 907; Nadya Anjani Rismarini and Nesya Adira, "Between personal and social matters: identifying public perceptions of childfree decisions in Indonesia," *Culture, Health & Sexuality* 27, no. 6 (2025): 725.

³ Fathul Mu'in et al., "Childfree in modern Muslim communities of Lampung and West Java provinces: A Maqāṣid al-sharī'ah perspective," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024): 865. See also, Ahmad Musadad et al., "Reframing Hifz al-Nasl: Childfree Discourse among Indonesian Celebrities in the Perspective of Maqāṣid al-Usrah," *Mawaddah: Jurnal Hukum Keluarga Islam* 3, no. 2 (2025): 372; Daud et al., "Phenomenon and Several Reasons," 908.

Within Islamic communities, procreation is associated with the preservation of lineage (*hifẓ al-nasl*), one of the objectives of *maqāṣid al-sharīʿa*. Consequently, some scholars and religious authorities consider permanent decisions to avoid children potentially inconsistent with the objectives of marriage in Islamic law, although childfree decisions may also be considered contextually where couples lack the capacity to raise children responsibly.⁴ The issue becomes legally significant when couples formalize their intention through a marriage agreement. A childfree clause is a contractual provision through which prospective spouses or married couples agree not to have children during marriage. Although uncommon in Indonesian legal practice, the recognition of individual autonomy raises questions about whether reproductive decisions may legally be determined through private agreements.⁵

Indonesian law permits spouses to regulate aspects of their marital relationship through marriage agreements. Article 29 of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, allows agreements if they do not conflict with legal provisions, religious values, or morality. Constitutional Court Decision Number 69/PUU-XIII/2015 further allows marriage agreements to be made before or during marriage, reflecting greater recognition of marital autonomy.⁶ Accordingly, childfree may develop from a private understanding into a formal provision regulating reproductive choices. Marriage agreements provide space for spouses to determine arrangements concerning their relationship, provided that such arrangements remain within legal, religious, and moral limitations.⁷

The inclusion of a childfree clause nevertheless creates a legal dilemma under the principle of freedom of contract. Article 1338 paragraph (1) of the Civil Code

⁴ Ikhwanuddin Harahap et al., “Understanding the Rise of Childfree Marriage: Avoiding Toxic Family, Being Happy and Well Without Children Despite Contradiction with Maqashid al-Sharia,” *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025): 316. See also, Zuhriah et al., “Childfree, the digital era, and Islamic law,” 1620.

⁵ Hedhri Nadhiran et al., “Childfree in The Perspective of Hadiths Ahkam: Thematic Study of Hadith on ‘Azal with a Maqāṣid al-Sharīʿah Approach,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 10, no. 1 (2026): 279. See also, Suhariyati et al., “Stigmatization, life satisfaction, and its associated factors of childfree women: A scoping review,” *Pedimaternel Nursing Journal* 11, no. 1 (2025): 58.

⁶ Abel Edgar Anugrah Dwiputra, “Perjanjian kawin pasca berlakunya putusan mahkamah konstitusi nomor 69/puu-xiii/2015,” *Jurnal Education and Development* 11, no. 1 (2023): 84. See also, Putu Indri Sri Giyanthi et al., “Status Hukum Harta Perkawinan Jika Terjadi Kepailitan Suami/Istri Tanpa Adanya Perjanjian Kawin,” *Jurnal Preferensi Hukum* 3, no. 1 (2022): 39.

⁷ Kamal Irsyad Hadikusumo, “Keabsahan perjanjian Childfree sebelum perkawinan menurut undang-undang nomor 1 tahun 1974,” (PhD diss., Universitas Islam Negeri Maulana Malik Ibrahim, 2025), 20. See also, Syarifah Lisa Andriati et al., “Implementasi perubahan batas usia perkawinan menurut UU No. 16 Tahun 2019 tentang perubahan atas UU No. 1 Tahun 1974 tentang Perkawinan,” *Binamulia Hukum* 11, no. 1 (2022): 63.

provides that valid agreements bind the parties as law, but contractual freedom is not absolute. Article 1320 requires consent, capacity, a specific object, and a lawful cause, while Article 1337 limits agreements whose causes violate law, morality, or public order.⁸ A childfree clause may represent individual autonomy and freedom of contract by allowing spouses to regulate family life voluntarily, but a permanent exclusion of children raises questions concerning the concept of marriage, public morality, religious principles, and the interests of future children.⁹ Comparative family law also shows that agreements concerning children and parental responsibilities often receive stricter scrutiny because such matters extend beyond private contractual arrangements.¹⁰

Further uncertainty arises when one spouse later changes their decision, raising questions about whether violation of the clause constitutes breach of contract, whether the clause remains enforceable, or whether it is invalid because it concerns personal rights.¹¹ In Indonesia, the issue also requires consideration of Islamic law, where marriage agreements are recognized within *muamalah* relations but remain connected to the preservation of offspring (*hifz al-nasl*) as part of *maqasid al-shari'a*.¹² Existing studies predominantly focus on sociological, psychological, cultural, or religious perspectives, including public attitudes, social stigma, gender

⁸ Sri Wirda Ningsih, "Batasan Asas Kebebasan Berkontrak Dalam Kredit Pemilikan Rumah," *Officium Notarium* 2, no. 3 (2022): 551. See also, Enggel Gresnia, "Hukum Perjanjian Pranikah dalam Pandangan Hukum Perdata," *AL-BAHTS: Jurnal Ilmu Sosial, Politik, Dan Hukum* 1, no. 2 (2024): 66.

⁹ Anne-Marie Devreux, "I am the Law. Contemporary Forms of Men's Legal Battles Against Women," *Nouvelles Questions Féministes* 28, no. 2 (2009): 45. See also, Louise Langevin, "Contractual Freedom and Spousal Relationships: Is Cohabitation Possible?" *Nouvelles Questions Féministes* 28, no. 2 (2009): 29; John H. Matheson, "Contract, Freedom of," In *the Encyclopedia of Civil Liberties in America: Volumes One-Three* (Taylor and Francis, 2015), 230; P. Cserne, *Contract, Freedom of, Encyclopedia of Law and Economics* (2019), 9.

¹⁰ Jenna Christine Colucci, "The P Word: Ohio Should Adopt the Uniform Premarital Agreements Act to Achieve Consistency and Uniformity in the Treatment of Prenuptial Agreements," *Clev. St. L. Rev.* 66, no. 5 (2017): 210. See also, Cagla Fidanci, Nursen Adak, and Kamile Kabukcuoglu, "Is the Child Really the Missing Piece? Making Meaning of Family in Turkish Childfree Couples Through Relational Dialectics Theory," *Journal of Family Communication* 24, no. 3-4 (2024): 248; Jens-Uwe Franck, "So Hedge therefore, Who Join Forever?: Understanding the Interrelation of No-fault Divorce and Premarital Contracts," *International Journal of Law, Policy and the Family* 23, no. 3 (2009): 253; Lawrence Li, "Be prepared in advance: A case for allowing binding prenuptial agreements in Hong Kong," *International Journal of Law, Policy and the Family* 28, no. 3 (2014): 348; Merle H. Weiner, "A parent-partner status for American family law," *American History* 1861, no. 1900 (1945): 32.

¹¹ Sugih Ayu Pratitis and Rehulina Rehulina, "Keabsahan perjanjian pra nikah dan akibat hukumnya ditinjau dari perspektif hukum," *Jurnal Hukum, Politik Dan Ilmu Sosial* 2, no. 2 (2023): 67.

¹² Chairul Majid Nasution and Gusti Rian Saputra, "Fenomena childfree berdasarkan perspektif hukum Islam progresif, Pancasila dan Hak Asasi Manusia (HAM)," *Jurnal Keislaman* 7, no. 1 (2024): 71. See also, Rafida Ramelan and Rama Amanda Amelia, "Childfree ditinjau dari hak reproduksi perempuan dan hukum perkawinan Islam," *Usroh: Jurnal Hukum Keluarga Islam* 6, no. 2 (2022): 129.

expectations, and Islamic views concerning reproduction.¹³ However, limited research specifically examines childfree as a contractual clause within Indonesian marriage agreements, particularly whether such clauses satisfy the legal requirements of a valid agreement under Article 1320 of the Civil Code.

Furthermore, there remains a significant gap concerning the legal consequences of violating a childfree clause after marriage. No comprehensive normative analysis has clarified whether such violation generates contractual liability, whether the clause loses its binding force because it concerns personal reproductive rights, or whether it should be considered invalid because it conflicts with the lawful cause requirement. This gap is important because increasing individual autonomy in marriage creates tension between private contractual freedom and the public values embedded within Indonesian family law. Therefore, this research aims to analyze the legal position of childfree clauses in marriage agreements by examining the relationship between freedom of contract, the validity requirements of agreements, and the objectives of marriage under Indonesian law, while also considering Indonesian cultural and Islamic values. Based on these issues, this research addresses the following research questions:

RQ1: How does the principle of freedom of contract apply to childfree clauses in marriage agreements under Indonesian civil law?

RQ2: Are childfree clauses legally valid and enforceable based on the requirements of a valid agreement under Article 1320 of the Indonesian Civil Code?

RQ3: What are the legal consequences of violating a childfree clause in a marriage agreement, considering Indonesian family law, civil law principles, and socio-religious values?

This research is expected to contribute to the development of Indonesian family and contract law by providing a normative framework for understanding the legal boundaries of marital autonomy, reproductive choices, and contractual freedom in contemporary marriage arrangements.

2. Research Methodology

This research uses a normative-empirical legal method to analyze the validity of childfree clauses in marriage agreements based on Indonesian positive law and

¹³ Harmona Daulay et al., “Psychology of newly married couples in Indonesia: Is it possible to choose childfree by choice or face the gossip of society and family,” *International Journal of Innovative Research and Scientific Studies* 6, no. 4 (2023): 1027. See also, Khoiruddin Nasution et al., “The Childfree Discourse in Contemporary Islamic Family Law and Human Rights: Insights from Young Muslim Academics in Indonesia,” *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 16; Caraka et al., “Text and Sentiment Analysis,” 119.

their implementation in practice. The normative approach is conducted through a review of relevant statutory provisions, doctrine, and legal literature. The empirical approach is conducted through interviews with sources competent in contract law and family law to obtain an overview of the application of legal norms in practice.

This research employs three main approaches: a statutory approach to analyze provisions governing marriage agreements and the principle of freedom of contract; a conceptual approach to examine legal concepts regarding the validity of agreements, lawful causes, the principle of freedom of contract, and the concept of childfree from a legal perspective.

The research data sources consist of primary, secondary, and tertiary legal materials. Primary legal materials include the Civil Code, Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, and Constitutional Court Decision Number 69/PUU-XIII/2015. Secondary legal materials include books, scientific journals, research results, and expert opinions, while tertiary legal materials include legal dictionaries, encyclopedias, and other supporting sources.

Legal materials were collected through library research. All data was then analyzed qualitatively through the process of identifying and interpreting legal norms, examining the relationships between legal provisions, and drawing conclusions using deductive methods, resulting in a comprehensive analysis of the validity and legal consequences of childfree clauses in marriage agreements.

3. Results and Discussion

3.1. The Application of the Principle of Freedom of Contract to Childfree Clauses in Marriage Agreements under Indonesian Civil Law

The principle of freedom of contract provides the legal basis for examining the inclusion of a childfree clause in a marriage agreement under Indonesian civil law. Indonesian law recognizes that spouses may regulate aspects of their marital relationship through agreements. Article 29 of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, permits marriage agreements if they do not conflict with legal provisions, religious values, and morality. Constitutional Court Decision Number 69/PUU-XIII/2015 further expanded this mechanism by allowing agreements to be made before or during marriage, demonstrating increasing recognition of marital autonomy.¹⁴

Within this framework, a childfree clause constitutes a contractual arrangement in which spouses mutually agree not to have children during marriage. Childfree differs from childlessness because it represents a conscious decision based on

¹⁴ Dwiputra, "Perjanjian kawin pasca berlakunya putusan," 84. See also, Giyanthi et al., "Status Hukum Harta Perkawinan," 39.

considerations such as economic conditions, psychological readiness, health, career, and responsible parenting.¹⁵ Therefore, from the perspective of private law, childfree falls within personal autonomy, allowing individuals to determine important aspects of family life.¹⁶ Article 1338 paragraph (1) of the Civil Code recognizes valid agreements as binding law and permits parties to determine contractual content voluntarily, provided that mandatory legal provisions are not violated.¹⁷

The validity of a childfree clause must nevertheless be examined through Article 1320 of the Civil Code, which requires consent, capacity, a specific object, and a lawful cause (*causa yang halal*). Consent and capacity are generally fulfilled when competent spouses voluntarily agree without coercion, mistake, or fraud. The clause may also constitute an additional (accidental) clause because it regulates the parties' preferences rather than an essential element of marriage. The principal legal issue therefore concerns whether its substance satisfies the requirement of a lawful cause and remains consistent with legal norms, morality, and public order.¹⁸

Accordingly, freedom of contract in Indonesian law is not absolute. Although Article 1338 paragraph (1) grants contractual autonomy, Articles 1320 and 1337 restrict agreements containing unlawful causes or conflicting with morality and public order.¹⁹ A childfree clause may thus express reproductive autonomy and individual interests, but a permanent clause requires careful examination because marriage is also a social institution associated with family continuity. Although the Marriage Law does not explicitly require couples to have children, marriage objectives are traditionally related to offspring. Islamic legal values similarly recognize marriage agreements within *muamalah* while emphasizing preservation of offspring (*hifz al-nasl*) as an objective of *maqāṣid al-sharī'a*.²⁰

Thus, Indonesian civil law provides space for spouses to include childfree clauses as an expression of autonomy and reproductive choice. However, their legal

¹⁵ Muhammad Aulia, *Childfree: "Bagaimana Muslim Harus Bersikap?"* (Lembang: eBook, 2021), 87.

¹⁶ Hadikusumo, "Keabsahan perjanjian Childfree," 20. See also, Andriati et al., "Implementasi perubahan batas usia perkawinan," 63.

¹⁷ Tami Rusli, "Asas Kebebasan Berkontrak Sebagai Dasar Perkembangan Perjanjian di Indonesia," *Pranata Hukum* 10, no. 1 (2015): 274. See also, Abdul Hadi and Husnul Khotiimah, "Childfree Dan Childless Ditinjau Dalam Ilmu Fiqih Dan Perspektif Pendidikan Islam," *JOEL: Journal of Educational and Language Research* 1, no. 6 (2022): 650; Ridwan Khairandy, *Itikad Baik Dalam Kebebasan Berkontrak* (Jakarta: Fakultas Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2003).

¹⁸ Pratitis and Rehulina, "Keabsahan perjanjian pra nikah," 69.

¹⁹ Ningsih, "Batasan Asas Kebebasan Berkontrak," 555. See also, Gresnia, "Hukum Perjanjian Pranikah," 70.

²⁰ Nasution and Saputra, "Fenomena childfree berdasarkan perspektif hukum Islam," 75. See also, Ramelan and Amelia, "Childfree ditinjau dari hak reproduksi perempuan," 130.

position remains conditional because contractual freedom must comply with Articles 1320 and 1337 of the Civil Code. While consent, capacity, and object may generally be satisfied, the decisive issue is whether the clause has a lawful cause and is compatible with the legal, moral, and public values underlying marriage law.²¹ Consequently, mutual agreement alone does not determine the enforceability of a childfree clause.

The finding indicates that childfree clauses in Indonesian marriage agreements are conditionally permissible but not automatically enforceable. Their validity depends on contractual requirements and compatibility with family-law principles, while marriage agreements remain subject to legal and moral limitations.²² Thus, contractual freedom operates within a controlled legal framework.²³

Table 1. Application of the Principle of Freedom of Contract to Childfree Clauses in Marriage Agreements under Indonesian Civil Law

Legal Aspect	Analysis of Childfree Clause	Legal Basis
Marital autonomy and marriage agreements	A childfree clause may be included in a marriage agreement because Indonesian law recognizes the authority of spouses to regulate certain aspects of their marital relationship through agreements.	Article 29 Law No. 1 of 1974 concerning Marriage as amended by Law No. 16 of 2019; Constitutional Court Decision No. 69/PUU-XIII/2015
Freedom of contract principle	The clause represents the parties' freedom to determine the content of their agreement based on mutual consent and personal interests.	Article 1338 paragraph (1) KUHPperdata
Consent and legal capacity	A childfree clause is generally acceptable from a subjective perspective if it is made voluntarily by competent parties without coercion, mistake, or fraud.	Article 1320 KUHPperdata
Object of agreement	A childfree clause can be categorized as an additional (accidental) clause because it regulates a specific preference of spouses rather than an essential element of marriage.	Contract law doctrine
Lawful cause (<i>causa yang halal</i>)	The main legal issue concerns whether permanently excluding children is consistent with law, morality, and public order.	Articles 1320 and 1337 KUHPperdata; Ningsih (2022); Gresnia (2024)
Reproductive Autonomy perspective	Childfree clauses may be viewed as an expression of personal autonomy and reproductive rights in determining family life.	Cserne (2019); Matheson (2015); Langevin (2009); Devreux (2009)
Family law and Islamic law limitation	The clause must also be examined against the objectives of marriage and Islamic principles, particularly preservation of offspring (<i>hifz al-nasl</i>).	Nasution & Saputra (2024); Ramelan & Amelia (2022)

²¹ Ningsih, "Batasan Asas Kebebasan Berkontrak," 556. See also, Gresnia, "Hukum Perjanjian Pranikah," 68.

²² Pratitis and Rehulina, "Keabsahan perjanjian pra nikah," 71.

²³ Nasution and Saputra, "Fenomena childfree berdasarkan perspektif hukum Islam," 77. See also, Ramelan and Amelia, "Childfree ditinjau dari hak reproduksi perempuan," 131.

Based on these findings and from Table 1, the application of freedom of contract to childfree clauses demonstrates that Indonesian civil law provides conditional recognition rather than unrestricted acceptance. A childfree clause may be incorporated into a marriage agreement as an expression of marital autonomy; however, its legal effect remains dependent on compliance with the requirements of a valid agreement, particularly the existence of a lawful cause (*causa yang halal*). Therefore, the legal position of childfree clauses is conditionally permissible but not automatically enforceable.

3.2. Legal Validity and Enforceability of Childfree Clauses Based on Article 1320 of the Indonesian Civil Code

The legal validity of a childfree clause in a marriage agreement must be examined under Article 1320 of the Indonesian Civil Code (*Kitab Undang Undang Hukum Perdata/KUHPerdata*), which requires four cumulative elements: mutual consent, legal capacity, a certain object, and a lawful cause (*causa yang halal*). Although such a clause may originate from the voluntary agreement of prospective spouses, its enforceability depends particularly on whether its substance satisfies the objective requirement of a lawful cause.

From the subjective perspective, a childfree clause generally creates no legal problem when voluntarily agreed upon by competent parties without coercion, mistake, or fraud. The decision not to have children represents personal autonomy and may arise from economic readiness, psychological conditions, health, or the ability to provide proper care for children.²⁴ The clause may also satisfy the object requirement because it can be categorized as an additional (accidental) clause regulating the parties' preferences rather than an essential element of marriage. Thus, mutual agreement itself is insufficient to invalidate the clause.

The principal issue concerns the objective requirement of a lawful cause. Under Article 1337 KUHPerdata, a cause is prohibited when it violates law, morality, or public order. Therefore, a childfree clause cannot automatically be regarded as legally binding merely because it has been mutually agreed upon. Its validity depends on whether its substance remains consistent with the fundamental values underlying Indonesian marriage law.

The distinction between the existence and enforceability of the clause is therefore important. A childfree clause may formally exist within a marriage agreement, but its implementation cannot necessarily be enforced through civil litigation. Reproductive decisions concern personal rights inherent in each

²⁴ Victoria Tunggono, *Childfree & Happy: "Keputusan Sadar Untuk Hidup Bebas Anak"* (Sleman: Buku Mojok Group, EA Books, 2021), 39. See also, Tyla Safitri Widiya Ningrum, "Apa Itu Childfree dan Hal-Hal yang Harus Kamu Ketahui Tentangnya," *Good News from Indonesia*, 27 Februari 2023. Retrieved in June 21, 2026 from <https://www.goodnewsfromindonesia.id/2023/02/27/apa-itu-childfree>.

individual. Consequently, if one spouse later wishes to have children, the other spouse cannot demand specific performance or compel compliance through a breach of contract claim. A court cannot order a person to remain childfree, become pregnant, or give birth solely on the basis of an agreement.

Accordingly, the legal character of a childfree clause differs from ordinary contractual provisions. Rather than establishing an absolutely enforceable obligation, it primarily expresses the parties' intentions and commitment regarding their marital choices. Comparative family law similarly indicates that clauses concerning children and future parental responsibilities receive stricter scrutiny because such matters extend beyond purely private interests.²⁵

The enforceability of such clauses must also consider Indonesian social and religious values. Marriage is not merely a private contractual relationship but an institution associated with family continuity.²⁶ Although the Marriage Law does not explicitly require couples to have children, marriage objectives are traditionally connected with offspring and family sustainability.²⁷

Nevertheless, childfree decisions may reflect responsible considerations, including financial limitations, psychological readiness, health, and concerns about fulfilling children's rights properly.²⁸ Therefore, the legal assessment requires balancing individual autonomy with the normative objectives of marriage. Based on Article 1320 KUHPerdata, a childfree clause is conditionally valid but not automatically enforceable. It may be included as an expression of autonomy, but because it concerns reproductive choices and personal rights, it does not create an absolute obligation enforceable through a breach-of-contract claim.

Table 2. Analysis of the Validity of Childfree Clauses in Marriage Agreements Based on Article 1320 of the Indonesian Civil Code

Requirement under Article 1320 Indonesian Civil Code	Analysis of Childfree Clause	Legal Consequence
Consent	Fulfilled if the clause is voluntarily agreed upon by both spouses	Valid from subjective aspect
Capacity	Fulfilled if parties are legally competent	Valid from subjective aspect
Certain object	Can regulate the parties' marital intentions and arrangements	Formally acceptable

²⁵ Merle H. Weiner, "A parent-partner status for American family law," *American History* 1861, no. 1900 (1945): 32. See also, Colucci, "The P Word: Ohio Should Adopt," 211; Franck, "So Hedge therefore, Who Join Forever," 255; Li, "Be prepared in advance," 350.

²⁶ Daud et al., "Phenomenon and Several Reasons for Childfree," 913. See also, Musadad et al., "Reframing *Ḥifẓ al-Nasl*," 378.

²⁷ Nasution and Saputra, "Fenomena childfree berdasarkan perspektif hukum Islam," 79. See also, Ramelan and Amelia, "Childfree ditinjau dari hak reproduksi perempuan," 135.

²⁸ Tunggono, "*Keputusan Sadar Untuk Hidup Bebas Anak*" (Sleman: Buku Mojok Group, EA Books, 2021), 42.

Requirement under Article 1320 Indonesian Civil Code	Analysis of Childfree Clause	Legal Consequence
Lawful cause	Requires examination of conformity with law, morality, religion, and public order	Determines enforceability

Based on the table, it is evident that satisfying the elements of Article 1320 of the Indonesian Civil Code regarding a “child-free” clause does not automatically grant that clause the same binding force as a standard civil agreement. From a subjective standpoint specifically regarding the parties’ mutual consent and legal capacity a child-free clause can generally be considered valid if it stems from the free will of the couple, whether they are about to marry or are already married. The decision not to have children is a personal choice linked to individual autonomy in shaping family life; thus, provided there is no coercion, mistake, or fraud, the requirement for mutual consent is met.²⁹

From an objective standpoint, the inclusion of a child-free clause can also be viewed as an exercise of the couple’s freedom to structure their marital relationship through a prenuptial or postnuptial agreement. Developments in Indonesian marriage law following Constitutional Court Decision Number 69/PUU-XIII/2015 demonstrate a strengthening of a couple’s authority to determine specific arrangements within their marriage, provided these do not conflict with the law, religious tenets, or public morality.³⁰ However, the central issue lies not in the existence of the agreement’s subject matter, but in whether the requirement of a “lawful cause” (*causa yang halal*) as stipulated in Article 1320 in conjunction with Article 1337 of the Civil Code is satisfied.

A child-free clause reflecting the couple’s domestic intentions may constitute an expression of mutual agreement. However, an absolute and permanent prohibition on having children faces legal limitations because it concerns reproductive rights, the purpose of marriage, religious values, and social interests. Not all private matters are contractually enforceable.³¹ Under Article 1320 of the Civil Code, such clauses are therefore conditionally permissible, depending on their lawful cause and compatibility with Indonesian marriage-law principles.³²

3.3. Legal Consequences of Violating Childfree Clauses in Marriage Agreements

The violation of a childfree clause in a marriage agreement presents legal challenges because it intersects with contractual autonomy, family law,

²⁹ Daulay et al., “Psychology of newly married couples in Indonesia,” 1030.

³⁰ Putu Indri Sri Giyanthi et al., “Status Hukum Harta Perkawinan,” 41. See also, Dwiputra, “Perjanjian kawin pasca berlakunya putusan mahkamah konstitusi,” 90.

³¹ Pratitis and Rehulina, “Keabsahan perjanjian pra nikah,” 72.

³² Nasution and Saputra, “Fenomena childfree berdasarkan perspektif hukum Islam,” 76. See also, Ramelan and Amelia, “Childfree ditinjau dari hak reproduksi perempuan,” 136.

reproductive rights, and socio-religious values. Unlike ordinary contractual obligations concerning property, finances, or economic performance, a childfree clause regulates reproductive decisions closely connected to individual dignity, bodily autonomy, and personal identity. Therefore, although marriage agreements reflect freedom of contract, their validity and enforcement remain subject to statutory provisions, morality, public order, and the fundamental principles underlying marriage institutions.³³

The existence of a childfree clause demonstrates the increasing influence of individual autonomy in modern marital relationships. Through such clauses, couples may regulate future family arrangements based on mutual consent, personal preferences, economic considerations, or life circumstances. This reflects the principle of private ordering, under which individuals have space to determine aspects of their personal relationships. Freedom of contract allows parties to determine the content of an agreement voluntarily, if it does not violate applicable legal norms.³⁴ Similarly, marriage agreements in several jurisdictions recognize spouses' autonomy to regulate their marital relationship if such arrangements remain within legal and moral boundaries.³⁵

However, freedom of contract in marriage agreements differs from ordinary civil agreements because marriage has broader social and moral functions.³⁶ Article 1 of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, defines marriage as a physical and spiritual bond between a man and a woman to establish a happy and eternal family based on the One Almighty God. Thus, marriage is not merely a private contractual relationship but also an institution containing religious, social, and moral dimensions, including family formation and social continuity.

Consequently, an agreement that permanently eliminates the possibility of having children raises questions concerning its compatibility with the philosophical foundation of marriage in Indonesia. Although the Marriage Law does not explicitly require couples to have children, marriage objectives are traditionally associated with family continuity and offspring. Therefore, a childfree clause that

³³ Hadikusumo, "Keabsahan perjanjian Childfree sebelum perkawinan," (PhD diss., Universitas Islam Negeri Maulana Malik Ibrahim, 2025), 20.

³⁴ Irena Lavdari, "The Contractual Freedom as an Essential Condition for the Existence of the Contract in a Global Economy," *Mediterranean Journal of Social Sciences* 4, no. 7 (2013): 49. See also, John H. Matheson, "Contract, Freedom of," In *the Encyclopedia of Civil Liberties in America: Volumes One-Three* (Taylor and Francis, 2015), 230.

³⁵ Devreux, "I am the Law," 50. See also, Langevin, "Contractual Freedom and Spousal Relationships" 34.

³⁶ Padma D. Liman, and Aulia Rifai, "Analysis of the Legal Basis of Marriage Agreements and Their Implications for the Position of Inheritance Property," *Jurnal Hukum Unissula* 40, no. 1 (2024): 143.

absolutely excludes reproduction may generate legal and religious debates concerning its compatibility with the objectives of marriage.³⁷

From the civil law perspective, violation of an agreement may generally constitute breach of contract when one party fails to perform an agreed obligation. In ordinary contracts, the injured party may seek performance, termination, or compensation. A childfree clause, however, has a fundamentally different character because its object is not a material or economic obligation but a personal reproductive decision. Having or not having children is closely related to individual rights, bodily integrity, dignity, and personal freedom. Therefore, it cannot be treated in the same manner as contractual obligations concerning property, payment, or services.

Accordingly, if one spouse later changes their decision and wishes to have children, the other spouse cannot automatically demand specific performance or compel continued compliance through a breach of contract claim. A court cannot order a person to remain childfree, become pregnant, or give birth solely because such terms were included in a marriage agreement. Such enforcement would potentially interfere with fundamental personal rights.³⁸ Thus, violation of a childfree clause cannot automatically become a basis for demanding specific performance or compensation in the same manner as ordinary contractual disputes. Instead, the clause primarily functions as a statement of mutual intention, expectation, and commitment between spouses rather than an absolute legal obligation enforceable through coercive mechanisms.³⁹

This limitation is consistent with broader family law principles, under which private agreements cannot eliminate fundamental rights or determine matters involving future children. Prenuptial agreements may generally be recognized as legal instruments, but their contents remain subject to procedural fairness, substantive fairness, legality, and public policy considerations.⁴⁰ Matters involving children, parental responsibilities, and public interests therefore receive stricter scrutiny. Agreements attempting to waive or restrict future parental rights may

³⁷ Daud et al., “Phenomenon and Several Reasons for Childfree,” 914. See also, Harahap et al., “Understanding the Rise of Childfree Marriage,” 318; Mu’in et al., “Childfree in modern Muslim communities of Lampung,” 873; Zuhriah et al., “Childfree, the digital era, and Islamic law,” 1621.

³⁸ I Nyoman Sujana et al., “The Marriage Law Reform in The Global Era: Integrating Human Rights into Family Law,” *Jurnal Hukum Unissula*, 42, no. 1 (2026): 192.

³⁹ Colucci, “The P Word: Ohio Should Adopt the Uniform Premarital Agreements,” 218. See also, Li, “Be prepared in advance: A case for allowing binding prenuptial agreements,” 353.

⁴⁰ Sandra Kennedy, “Ignorance is not Bliss: Why States Should Adopt California’s Independent Counsel Requirement for the Enforceability of Prenuptial Agreements,” *Family Court Review* 52, no. 4 (2014): 716. See also, Brunela Kullolli, “Prenuptial Agreements and Evidence in Civil Proceedings: The Albanian Experience in Comparative European Context (Germany, Italy, and France),” *Italian LJ* 11, no. 6 (2025): 399; Peter T. Leeson and Joshua Pierson, “Prenups,” *The Journal of Legal Studies* 45, no. 2 (2016): 386.

receive limited recognition because children's interests and welfare cannot be determined solely through private arrangements between prospective parents.⁴¹

In Indonesia, the enforceability of childfree clauses remains uncertain because there is no explicit statutory provision or judicial precedent recognizing such clauses as legally binding reproductive obligations within marriage agreements. Existing discussions of childfree practices primarily focus on social, religious, and ethical issues rather than judicial enforcement mechanisms. Indonesian law recognizes marriage agreements as instruments for regulating marital rights and obligations, but their substance must remain consistent with law, religious values, morality, and public order. Accordingly, a childfree clause conflicting with these principles may potentially be considered invalid or have limited binding force.

The consequences of violating a childfree clause must also be understood within Indonesia's socio-religious context. Indonesian society remains influenced by pronatalist values, in which having children is commonly associated with the purpose of marriage, family lineage, and social responsibility. Within many religious communities, particularly Islamic communities, childbearing is associated with marital objectives and human continuity. Consequently, couples choosing to remain childfree may experience social resistance, family pressure, or religious criticism because their decision may be perceived as inconsistent with prevailing expectations.⁴²

Nevertheless, childfree decisions cannot necessarily be interpreted as rejection of family or religious values. Couples may choose childfree arrangements because of financial limitations, psychological readiness, health, career considerations, or concerns about fulfilling children's rights and preventing neglect. At the same time, the growing childfree discourse among younger, urban, and educated groups reflects broader transformations in individual autonomy and family arrangements, particularly through digital platforms and public discussion.⁴³ The legal debate therefore concerns not only reproduction but also the balance between individual autonomy and collective values embedded in family institutions.

Accordingly, violation of a childfree clause may produce greater social and relational consequences than direct legal sanctions. A spouse who changes their decision may create marital conflict, require renegotiation of marital commitments,

⁴¹ Franck, "So Hedge therefore, Who Join Forever," 261. See also, Weiner, "A parent-partner status for American family law," 35. Liman, and Rifai, "Analysis of the Legal Basis," 145.

⁴² Wahyu Abdul Jafar et al., "The Childfree Phenomenon Based on Islamic law and Its Respons on Muslim Society," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 (2023): 394. See also, Daud et al., "Phenomenon and Several Reasons for Childfree," 919; Mu'in et al., "Childfree in modern Muslim communities of Lampung," 881; Zuhriah et al., "Childfree, the digital era, and Islamic law," 1622.

⁴³ Daulay et al., "Psychology of newly married couples in Indonesia," 1033. See also, Musadad et al., "Reframing *Hifz al-Nasl*," 380; Nasution et al., "The Childfree Discourse in Contemporary," 21. Sujana et al., "The Marriage Law Reform," 193.

or generate pressure from extended family and society. Nevertheless, reproductive decisions cannot be transformed into contractual obligations subject to coercive enforcement. The legal system may recognize the agreement as evidence of the parties' intentions, but it cannot impose reproductive behavior as a legal obligation.

Therefore, within the Indonesian legal framework, a childfree clause should be understood primarily as a declaration of mutual intention reflecting marital autonomy rather than an absolute contractual obligation whose violation automatically generates civil liability. Its legal consequences depend on balancing freedom of contract, the objectives of marriage, reproductive rights, public morality, and socio-religious values. While such clauses represent an emerging form of marital autonomy, their enforceability remains restricted because marriage agreements cannot override fundamental principles of family law and individual rights.⁴⁴

4. Conclusion

This study concludes that the existence and enforcement of childfree clauses in marriage agreements involve the interaction of freedom of contract, Indonesian family law, reproductive autonomy, and socio-religious values. Although such clauses may express marital autonomy and private ordering, their legal position remains uncertain because marriage agreements cannot contradict statutory provisions, morality, public order, or the fundamental objectives of marriage.

The findings indicate that cultural and religious attitudes significantly influence the acceptance of childfree clauses in Indonesia. Indonesian society remains predominantly pronatalist, associating having children with marriage, family continuity, and religious responsibility. Nevertheless, child-free decisions may arise from responsible considerations, including economic readiness, psychological conditions, health, and the capacity to provide proper parenting.

The study further finds that violating a childfree clause does not automatically create civil liability in the form of breach of contract because reproductive decisions cannot be treated as ordinary contractual obligations. Courts cannot compel a person to have or avoid having children because such decisions are connected to fundamental personal rights and reproductive autonomy. Consequently, violations are more likely to produce marital conflict, renegotiation of commitments, and social pressure rather than direct legal sanctions.

The implication is that Indonesian legal development needs clearer parameters concerning freedom of contract in marriage agreements, particularly clauses

⁴⁴ Barbara Novak, "New statutory arrangement of maintenance in the Republic of Slovenia," *Zbornik PFZ* 57, no. 6 (2007): 743.

involving personal rights and family formation. Future regulations and judicial interpretations should balance individual autonomy with the philosophical, religious, and social foundations of marriage. Public discourse should also move beyond moral judgment toward constructive discussion of reproductive responsibility, marital autonomy, and family values. Future research should examine couples' empirical experiences and comparative legal approaches to develop a more comprehensive legal framework.

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