



The Inheritance Status of Test Tube Baby Children in the Perspective of Islamic Law and Inheritance Law in Indonesia

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Abstract

The issue of inheritance is a matter that is inherently related to human beings, as every individual will inevitably encounter the event of death. Inheritance law governs the rights and obligations concerning the transfer of inherited property to the surviving heirs after the deceased's death. Among the eligible heirs entitled to receive an inheritance from their parents are children, including those born through test tube baby procedures. This research aims to analyze the inheritance status of such children by Islamic law and inheritance law in Indonesia. This study employs a qualitative literature review methodology. The research findings indicate that in Islam, the inheritance rights of children born through the use of sperm and egg from a legitimate couple, where the embryo is transferred into the wife's womb, are considered equivalent to the rights of biological children. The child does not receive the inheritance if a third party is involved. Suppose the child is born out of wedlock (an illegitimate child). In that case, their share is attributed to the mother and her family. In Indonesia, there are three rules governing inheritance cases: customary inheritance law, determined by local customs; Islamic inheritance law, established by the Religious Courts; and civil law, which determines the inheritance share of legitimate children recognized by law. Meanwhile, children born out of wedlock only receive inheritance from the mother and her family.

Keywords: Test tube baby; in vitro fertilization; Islamic inheritance; inheritance in Indonesia

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Introduction

Forming a family and having offspring is the right of every couple. The presence of children in a family is a cherished desire for all married couples. Their presence in the family is indeed a privilege and brings numerous benefits. The integrity of a household can be maintained thanks to the presence of a child. A family feels incomplete without the presence of their beloved child, who complements their happiness and the most beautiful blessing bestowed upon them by Allah. One can imagine a home's emptiness without a child's joy and laughter. The presence of a child is highly anticipated, as a child who grows up under the guidance of righteous parents becomes an invaluable investment, both in this worldly life and the hereafter.

However, it is worth noting that married couples sometimes encounter various challenges in their attempts to have children. Approximately 10% of couples are not blessed with offspring (infertility).¹ The journey to conceive offspring differs for every couple. Some couples are destined to have children within the first year of marriage. In contrast, others may develop in the second, third, or even after waiting for several decades. Abnormalities in the reproductive organs of the husband or wife can be the reason for such situations.

In the past, adoption was the only option for those unable to have children.² The term "adoption" originates from English, which means "pengangkatan" or "pemungutan" in Indonesian. Therefore, it is often referred to as "adoption of a child," meaning the act of taking or adopting a child.³ However, the adoption process is not as simple as one might think, as there are many factors to consider, including mental and financial readiness, as issues can arise from the biological family. Building a close relationship between adoptive parents and the adopted child also takes time, as many may have more significant psychological challenges than typical children.

With the permission of Allah, humanity continues to innovate and make breakthroughs in the latest technological advancements to address infertility. The progress of medical technology in healthcare brings hope to couples facing infertility, allowing them to have children even if conception does not occur naturally, one of which is through a series of procedures known as "bayi tabung" or "test tube baby." The first test tube baby born into the world was Louise Brown, born on July 25, 1978, in London, England.⁴ In Indonesia, the technology of test tube babies has gained popularity since the 1980s. The first test tube baby to be born in Indonesia was Nugroho Karyanto, born on May 2, 1988.⁵

Currently, pregnancy attempts can be made by injecting male sperm into a tube, where it meets with the egg and fertilization occurs. Subsequently, the embryo develops into a morula. It is transferred into the woman's uterus, which continues to develop inside the womb until birth, similar to a natural pregnancy. In Indonesia, the IVF (In Vitro Fertilization) program is a popular choice for couples facing infertility issues, as evidenced by the increasing cycles of IVF usage. According to data from the Indonesian Society of In Vitro Fertilization (PERFITRI), Indonesia's total number of IVF cycles in 2021 exceeded 13,000.⁶

¹ Dewi Astika Tandirerung, "Analisis Perjanjian Innominaat Terhadap Peminjaman Rahim (Surrogate Mother) Di Indonesia," *Amanna Gappa*, 2018, 12–22.

² Galih Putri Cristanti, "Studi Deskriptif Tentang Faktor-Faktor Pendorong Keputusan Adopsi Dalam Keluarga," 2011.

³ T Wahyu Srimuryadi, "Tinjauan Hukum Islam Terhadap Praktik Adopsi Anak Di Gampong Tanoh Anou Kecamatan Idi Rayeuk Kabupaten Aceh Timur," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 5, no. 2 (2018): 19–28.

⁴ Baiti Al Ami and Ulul Albab, "Teknologi Bayi Tabung Dalam Tinjauan Hukum Islam," *MAQASIDI: Jurnal Syariah Dan Hukum*, 2022, 52–66.

⁵ Wirani Aisyah Anwar, F Abdillah, and Ahmad Supandi Patampari, "Fatwah Study of Indonesian Ulama Council and Saudi Ulama on IVF Embryos (Comparative Analysis)," *Jurnal Marital: Kajian Hukum Keluarga Islam* 1, no. 1 (2022): 21–36.

⁶ M. Ubaidillah, "MIMK Gandeng CIMB Syariah Sediakan Pembiayaan Program Bayi Tabung," 2023, <https://swa.co.id/swa/trends/mimk-gandeng-cimb-syariah-sediakan-pembiayaan-program-bayi-tabung>.

On the other hand, the legal aspects of undergoing a test tube baby program have become a subject of debate among various parties. The legal status of children born through a valid marriage is recognized as legitimate biological children of the married couple, as stated in the Civil Code and the Marriage Law. However, these laws do not specifically address the legal origins of the sperm and ovum used in the test tube baby process. In practice, this technique uses several methods to conceive, such as using the husband's sperm, the wife's egg, donor sperm or eggs, and even surrogate mothers. The lack of solid regulations can give rise to various issues, including those related to legal status, rights, and responsibilities, particularly regarding the inheritance rights of children born through such procedures.

Several previous studies have shown the inheritance status of children born through the test tube baby method. One of these studies was conducted by Honainah et al. in 2023,⁷ which stated that in Islam, three factors lead to mutual inheritance: kinship, legitimate marital offspring, and the relationship between a freed slave and their former master. According to David Lahia in 2017,⁸ as described in Article 852 of the Civil Code, a child born through the test tube baby process using the husband's sperm is considered legitimate and entitled to inherit from their biological parents. Nova Arikhman 2016⁹ stated that using a surrogate mother in the test tube baby procedure cannot be applied in Indonesia due to the lack of comprehensive legal provisions. Mimi Halimah 2018¹⁰ suggested that engaging in surrogate motherhood can be categorized as adultery (zina). This research serves as a complement to several previous studies. In this regard, the author attempts to analyze and find solutions regarding the legal status of children resulting from the test tube baby process and the aspects related to inheritance based on Islamic perspectives and the applicable laws in Indonesia.

This literature review study aims to retrieve accurate scientific information and address specific issues using a qualitative approach to find, develop, collect, and process data from relevant literature or written works related to the examined topic. The applied approach is the normative approach method. The internal approach, focused on legal norms, is employed as the research object. The research analyzes Islamic legal standards and the laws and articles concerning inheritance law in Indonesia. All collected data is presented clearly in written form, explaining and discussing the issues that arise in the inheritance law of children resulting from the test tube baby program from the perspectives of Islamic law and inheritance law in Indonesia.

Result and Discussion

The presence of a child is a hope for every couple in life. However, various obstacles can hinder pregnancy in couples married for 12 months or more without contraception. This condition is known as infertility. Currently, the incidence of infertility worldwide is significant. The World Health Organization (WHO) estimates that approximately 8-10% or around 50-80 million married couples worldwide experience infertility issues.¹¹ The increasing number of cases has led to the development of various treatment methods to overcome infertility. This also applies to in vitro fertilization (IVF) technologies,¹² one commonly used process to address infertility.

In medicine, the term "In Vitro Fertilization" (IVF) is also known as the test tube baby program. IVF is the process of fertilizing an egg with sperm in a glass tube, carried out by medical

⁷ Honainah Honainah, Dominikus Rato, and Dyah Octorina Susanti, "Status Nasab Dan Kewarisan Anak Hasil Sewa Rahim Perspektif Hukum Islam," *Rechtenstudent Journal UIN KHLAS Jember* 4, no. 1 (2023): 63–77.

⁸ David Lahia, "Aspek Hukum Terhadap Bayi Tabung Dan Sewa Rahim Dari Perspektif Hukum Perdata," *Lex Privatum* 5, no. 4 (2017).

⁹ Nova Arikhman, "Tinjauan Sosial, Etika Dan Hukum Surrogate Mother Di Indonesia," *Jurnal Kesehatan Medika Sainitika* 7, no. 2 (2021).

¹⁰ Mimi Halimah, "Pandangan Aksiologi Terhadap Surrogate Mother," *Jurnal Filsafat Indonesia* 1, no. 2 (2018): 51–56.

¹¹ Muhamad Ikhsan, Andi Muh Multazam, and Andi Asrina, "Infertilitas Pada Pasangan Suami Istri Di Kota Makassar," *Window of Health: Jurnal Kesehatan*, 2019, 285–296.

¹² Merlin Karinda et al., "Hukum Bayi Tabung Dalam Agama Islam," *SULTAN ADAM: Jurnal Hukum Dan Sosial* 1, no. 1 (2023): 121–126.

professionals.¹³ The eggs are retrieved from the ovaries and fertilized by sperm in a laboratory. Once the fertilized eggs develop into embryos, they are transferred into a woman's uterus.¹⁴ It is an effort undertaken by couples to conceive through the process of fertilizing eggs and sperm in a laboratory without engaging in sexual intercourse. After fertilization occurs, the cells form a zygote, which is then implanted into the uterus until childbirth occurs.

From the perspective of sperm and egg cells and where the embryo is transferred, in vitro fertilization (IVF) process can be divided into eight types, which are as follows:¹⁵ (1) Placing the sperm and egg of the husband and wife in a particular container in the laboratory. After fertilization and development, the embryo is transferred to the wife's uterus, which continues developing like a normal pregnancy. (2) Retrieving the sperm and egg of the husband and wife and placing them in a particular container in the laboratory. After fertilization and development, the embryo is transferred to a surrogate mother's uterus at the designated time.¹⁶ (3) Fertilization occurs between the donor's sperm and egg in a tube. After fertilization and development, the embryo is transferred to the wife's uterus. (4) Fertilization occurs outside the body between the wife's egg and sperm from a male donor who is not her partner. After fertilization and development, the embryo is transferred to the wife's uterus. (5) External fertilization occurs between the wife's egg and sperm from a donor. Subsequently, the fetus is transferred to a surrogate mother's uterus. (6) Fertilization takes place in a tube between the donor's sperm and egg, and then the embryo is transferred to a surrogate mother's uterus. (7) The sperm and egg from a donor are placed in a particular container in the laboratory. The embryo is then transferred to the wife's uterus. (8) Fertilization occurs between the donor's sperm and egg. Then the embryo is transferred to the uterus of a surrogate mother.

Islamic Legal Review

In Islam, it is encouraged for its followers to maintain purity and preserve progeny through marriage as a means to safeguard the continuity of the human race on Earth. As a comprehensive religion, Islamic Sharia has specific objectives for every law to realize benefits in worldly life and the hereafter. Islamic Sharia's ultimate goals encompass preserving faith, life, intellect, wealth, and progeny. According to the concept of "*hifz nasl*" (preservation of lineage),¹⁷ for couples facing reproductive challenges, in vitro fertilization (IVF) can serve as a solution for them. Three main parties are involved in implementing the IVF process: the legitimate husband and wife, a third party who acts as a donor of sperm or eggs, and a surrogate mother.

Using donated sperm or eggs from others is essentially a form of wrongdoing, as is the practice of surrogate motherhood. When someone presents their reproductive cells, there are two possibilities: either the donor knows who the recipient of their cells is, or they have no knowledge of the recipient. Surrogate motherhood, where a woman carries a child on behalf of the intended parents, is an agreement commonly made by women facing economic difficulties. At first glance, this may seem like a mutually beneficial arrangement, but it essentially contradicts ethical and social norms. As perfect beings, humans have a clear lineage. A child born into this world should have a legitimate father and mother through a lawful marriage.

As stated by the Fatwa Council of Egypt, the Mufti of Tunisia, the Majma' Al-Fiqh in Makkah Al-Mukarramah during its 7th session in 1404 H, and the Nadwah Al-Injab in Kuwait, which gathered several renowned jurists and expert doctors in the field,¹⁸ it has been decided that the

¹³ Husni Thamrin, *Aspek Hukum Bayi Tabung Dan Sewa Rahim: Perspektif Hukum Perdata Dan Hukum Islam* (yogyakarta: Aswaja Pressindo, 2014), 3.

¹⁴ Endy Muhammad Astiwara, *Halal Haram Kedokteran Kontemporer* (Jakarta: Pustaka Al-Kautsar, 2022), 73–74.

¹⁵ Thamrin, *Aspek Hukum Bayi Tabung Dan Sewa Rahim: Perspektif Hukum Perdata Dan Hukum Islam*, 77.

¹⁶ In English, "ibu pengganti" is referred to as a "surrogate mother." A surrogate mother is a woman who carries a pregnancy for someone else, who will become the parent of the child after its birth.

¹⁷ One of the objectives of Islamic Sharia is *hifz nasl*, which is to safeguard progeny for the continuity of future generations.

¹⁸ Astiwara, *Halal Haram Kedokteran Kontemporer*, 110.

use of in vitro fertilization technology is permissible according to Islamic law if certain conditions are met. One of these conditions is that it should be performed by a married couple legally bound in a valid marriage without involving a third party as a donor, which would lead to the mixing of lineages.

The same statement is also reflected in the Fatwa issued by the Indonesian Ulama Council (Majelis Ulama Indonesia) on June 13, 1979.¹⁹ The Leadership Council of the Indonesian Ulama Council stated that the process of in vitro fertilization using sperm and eggs from a legally married couple is permissible and legally valid. Based on this decision, the legal status of a child whose embryonic development occurs outside the womb is equivalent to that of a natural biological child. Although permitted, the scholars advise caution to avoid engaging in prohibited practices. Az-Zarqa²⁰ emphasized the importance of maintaining the distinction of gender between the doctor and the patient. However, suppose such a situation cannot be avoided. In that case, the scholars unanimously agree that it is permissible due to a pressing necessity.

Among the agreed-upon principles of Islamic jurisprudence (*ulama fikih*) is the guide of "*al-hajatu tanzilhu manzilahu al-darurat*," which means that necessity dictates exceptions to prohibitions. One implementation of this principle is allowing medical examinations and treatments for couples undergoing in vitro fertilization programs, where they may need to show relevant parts of their bodies to medical personnel as necessary.

Nasab (lineage) is an essential component of a family. Abdullah Al Bassam expresses his opinion on this matter, stating that transferring a man's sperm into the vagina of a woman who is not his wife results in a mixing of lineages, which is the main reason for the prohibition of adultery (*zina*). This is because the man's sperm that enters a woman's uterus carries the same legal implications as engaging in sexual intercourse, whether it is in a permissible (*halal*) or forbidden (*haram*) context. Allah, the Highest, says in Surah Al-Mu'minin, verses 5-7.

وَالَّذِينَ هُمْ لِأَفْوَاجِهِمْ حَفِظُونَ ﴿٥﴾ إِلَّا عَلَىٰ أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ ﴿٦﴾ فَمَنْ
أَبْتَغَىٰ وَرَاءَ ذَلِكَ فَأُولَٰئِكَ هُمُ الْعَادُونَ ﴿٧﴾

"those who guard their chastity (5) except with their wives or those 'bondwomen' in their possession, for then they are free from blame, (6) but whoever seeks beyond that are the transgressors (7)."

Allah, the Highest, criticizes and places those powerless to guard their chastity among the transgressors. Scholars have stated the permissibility of pregnancy through the process of in vitro fertilization (IVF) if the sperm used is from a legitimate husband. If the sperm is not from the husband, then the implementation of IVF is considered prohibited (*haram*) in Islamic law.²¹ Regarding the surrogate mother, this occurs when the embryo is placed in another woman's womb, including cases where the embryo is transferred to a second wife or another wife of the man. This process can mix lineages and create complex issues related to inheritance matters.

Legal Review in Indonesia

As a country that considers the law as the normative foundation in all aspects of life, Indonesia has regulations that contain provisions governing human relationships. Over time, the implementation of the in vitro fertilization (IVF) program in Indonesia has continued to progress. Although the cost incurred for this process is not insignificant, it remains a choice for prospective parents. In certain conditions, there are reproductive health disorders such as issues with the fallopian tubes, the presence of anti-sperm antibodies in the wife, low sperm count, and

¹⁹ Sufriadi Pulungan and Ahmad Misbakh Zainul Musthofa, "Hukum Bayi Tabung Dalam Pandangan Islam," *AL-IKHTISAR: The Renewal of Islamic Economic Law* 2, no. 2 (2021): 83–90.

²⁰ Mustafa bin Ahmad bin Muhammad Az-Zarqa' is a member of the International Islamic Fiqh Academy (Majma' Fiqh Islami) from Jordan. He has actively contributed to research on contemporary fiqh issues, including the topic of in vitro fertilization.

²¹ Fuadi Isnawan, "Pelaksanaan Program Inseminasi Buatan Bayi Tabung Menurut Hukum Islam Dan Hukum Positif Indonesia," *Fikri: Jurnal Kajian Agama, Sosial Dan Budaya* 4, no. 2 (2019): 179–200.

other causes that lead married couples to make a decision to accept donor sperm or eggs and a surrogate mother who is not their partner. For those who wish to participate in this program, they must fulfil several requirements, including having clear reasons, being physically and mentally healthy, being financially capable, understanding and following the intricacies of the IVF procedure, and the wife's age not exceeding 38 years, as couples in their fertile age have a greater chance of success.

Until now, no positive law in Indonesia specifically regulates in vitro fertilization (IVF).²² From a legal perspective, legally married couples can only pursue unconventional methods of conceiving a child. They must adhere to the prevailing legal and religious norms. This is by Law No. 36 of 2009 concerning Health. Such circumstances give rise to several unique issues regarding the child's status and legal position in the eyes of the law. In practice, if the wife obtains permission from her husband to accept sperm from another person, the husband indirectly recognizes the child as his own, as the wife carries and gives birth to the child, even though the sperm is not from her legal husband. Article 280 of the Civil Code states that a civil legal relationship is established between the child and the acknowledging parent through the acknowledgement of a child. Such acknowledgement results in the child's status being legally recognized, similar to that of a biological child.

In other cases, when a third party is involved in the surrogacy process, where a surrogate mother rents her womb, it is essential to note that surrogacy arrangements are prohibited under Indonesian law. However, it has been discovered that such practices have been secretly conducted within certain families. The act of renting a womb is considered fraudulent and is not by the Health, Marriage, and Islamic laws. Therefore, from a legal perspective, the child is recognized as the child of the surrogate mother and her husband while genetically belonging to the couple who commissioned the services of the surrogate mother.

Inheritance Legal Status According to Islam

Every soul will inevitably experience death; when death comes, a person will leave behind all their worldly possessions. As a religion that upholds justice, Islam pays attention to all aspects of human affairs, worldly and in the hereafter, including inheritance matters. The law of inheritance (*al-irs*) is the law that governs the transfer of ownership rights of the deceased's estate (*tirkah*) from the testator (*al-muwaris*) to the heirs (*al-waarits*), specifying who the heirs are and determining their respective shares (*portions*).²³

The development of advanced technology in the modern era has given rise to various new issues. Contemporary issues require guidance from the fatwas of scholars to ensure that the decisions made do not conflict with religious principles. Among the current problems that need advice from scholars is the inheritance status of children conceived through the process of in vitro fertilization (IVF). As it is known, Islam distinguishes the situation of children through the IVF process. Scholars have established several rulings stating that the status of such children is equal to that of biological children and similar to that of children conceived through relationships outside of marriage.

If born through the process of in vitro fertilization using donor sperm and eggs, it is considered similar to a child resulting from adultery, as it is essentially akin to prostitution due to the occurrence of an invalid marriage. Likewise, a child born through a surrogate mother brings forth issues related to the ambiguity of lineage. In essence, lineage determination must be based on an excellent marital relationship. This is the opinion of most scholars from the Hanafi, Maliki,

²² Muh Firda Ramadhani, Dian Septiandani, and Dharu Triasih, "Status Hukum Keperdataan Bayi Tabung Dan Hubungan Nasabnya Ditinjau Dari Hukum Islam Dan Kitab Undang-Undang Hukum Perdata," *Semarang Law Review (SLR)* 1, no. 1 (2022): 74, <https://doi.org/10.26623/slr.v1i1.2350>.

²³ Saifullah Basri, "Hukum Waris Islam (Fara'id) Dan Penerapannya Dalam Masyarakat Islam," *Jurnal Kepastian Hukum Dan Keadilan* 1, no. 2 (2020): 37–46.

Shafi'i, and Hanbali schools of thought.²⁴ Consequently, according to Islamic teachings, children born through such procedures are not entitled to inherit.

The law is different if the sperm and eggs used come from a legitimate couple, where the embryo is transferred to the wife's uterus. Based on the Qur'an, Hadith, and the opinions of experts such as Majma' al-Fiqh al-Islami,²⁵ it is agreed that the rights and responsibilities of such a child, including inheritance and other matters, are the same as those of a biological child.

Allah Ta'ala commands the Muslim community to divide the inheritance according to the provisions of the Quran. In an authentic hadith narrated by Imam Muslim in the book of Kitabul Faraidh, the Prophet Muhammad said:

اقْسِمُوا الْمَالَ بَيْنَ أَهْلِ الْقَرَائِضِ عَلَى كِتَابِ اللَّهِ

"Distribute wealth among those who are entitled to shares of inheritance, according to the Book of Allah/Qur'an."

In Islam, it is established that no one will hinder the inheritance share for a male child, and he will receive the entire inheritance. If there are other heirs or siblings, both male and female, the male child will receive the remaining share divided equally among the male children, and if there are female siblings, the percentage of the male child will be twice that of the female child. Allah Almighty explains this in Surah An-Nisa', verse 11.

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ﴿١١﴾

"Allah commands you regarding your children (11)."

Just like a male child, a female child is also an inheritor whom no one can hinder. There are three portions for a female child: half if a female child has no male sibling and becomes the sole inheritor, two-thirds if there are two or more female children and no equivalent male inheritor, and "ashabah bil ghair" when they are together with their male sibling(s), whether one or more, with the male share being twice as much as the female share. This is stated in the same verse, Surah An-Nisa', verse 11, as mentioned by Allah Almighty.

فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ﴿١١﴾

"If you leave only two 'or more' females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half (11)."

Indeed, Islam assigns shares to the heirs of a child born through in vitro fertilization. The distribution is as follows: if a male child is the sole heir, he receives the entire inheritance. If there are multiple male children, they share the remaining portion equally based on the number of male children. As for female children, there are three divisions: half of the inheritance if a female child is the sole inheritor and has no male sibling, two-thirds of the inheritance if there are two or more female children and no equivalent male inheritor and if there are male siblings, whether one or more, the male share is twice as much as the female share.

According to the Inheritance Law in Indonesia

Every child born has inherent rights and obligations. Every parent is responsible for educating and providing proper needs for their child, including healthcare, education, and protection. A legitimate child born has a hereditary relationship with their parents. In Indonesia, there are three forms of inheritance law: customary, Islamic, and civil.

Indonesia has various customary inheritance regulations as a nation rich in cultural diversity. Implementing customary inheritance rules does not follow the total share or legitimate portion principle, as in Islamic inheritance law.²⁶ In the division of inheritance according to customary law, inheritance is closely related to kinship systems, where the origin of a group is

²⁴ S H I Aulia Muthiah, *Hukum Waris Islam* (Yogyakarta: Media Pressindo, 2015), 88.

²⁵ Astiwaru, *Halal Haram Kedokteran Kontemporer*, 103.

²⁶ Mohammad Ridwan, "Implementasi Kewarisan Adat Di Sumatera Dalam Tinjauan Maqashid Syari'ah Dan Ketatanegaraan Indonesia," *Ministrate: Jurnal Birokrasi Dan Pemerintahan Daerah* 5, no. 1 (2023): 171–178.

interconnected based on kinship ties. Indigenous people in Indonesia have patrilineal, matrilineal, and parental-bilateral kinship systems. In a patrilineal system, only descendants from the father's side will inherit the estate, as practised by the Batak ethnic group. In a matrilineal system, inheritance is based on descendants from the mother's side, as seen in the Minangkabau ethnic group. Meanwhile, in a bilateral or parental system, inheritance can be divided among descendants from both the father's and mother's sides, as practised by the Javanese ethnic group. For citizens who adhere to the Islamic faith, since the issuance of Presidential Decree No. 1/1991 and the Minister of Religious Affairs' Decree, the Compilation of Islamic Law has practically become a material legal source in Religious Courts, used by judges, lawyers, and seekers of justice.²⁷ The rules of inheritance can be found in Articles 171-214 of the Compilation of Islamic Law, and the topic of inheritance is placed in Book II, which consists of six chapters with 44 articles. According to Islamic law, a child born through in vitro fertilization from a lawful couple also has the same rights and responsibilities as a biological child in all aspects, including inheritance rights. However, suppose a child is considered to be born out of wedlock. In that case, they only have inheritance ties with the mother and maternal relatives, as Article 186 of the Compilation of Islamic Law explains.

Indonesia has a fundamental law that regulates the interests of its citizens. Just like inheritance law, civil law governs the rights and obligations of individuals about inheritance. Generally, non-Muslim citizens in Indonesia apply the distribution according to civil law. The Civil Code (KUH Perdata) regulates inheritance matters in Book II, specifically in the Twelfth Chapter on Inheritance Due to Death. Civil inheritance law does not differentiate between inheritance for male and female children. Both parents, the father and the mother, can leave inheritances to each other. If there are inheritance disputes, they can be resolved through legal proceedings in the District Court.

The Civil Code (KUH Perdata) divides heirs into four groups. The first group includes legitimate children and their spouses. The second group consists of parents, siblings, and their descendants. The third group includes grandparents, uncles, aunts, and older lineal descendants. The fourth group comprises paternal and maternal uncles, aunts, and cousins. These groups are based on the priority of inheritance distribution. The strongest group is the first group, and as long as members of the first group are alive, the second, third, and fourth groups are not entitled to inherit. The status of children under the Civil Code is divided into three categories: legitimate children born within a valid marriage between both parents, children born outside of marriage whom both parents have acknowledged or either of them and children born outside of marriage who have not been acknowledged by either the father or the mother.

According to Article 250 of the Civil Code (KUH Perdata), if the child is born from legitimate biological parents without objection to their existence, the child is entitled to an equal share of the inheritance as a legitimate child. In Article 914 of the Civil Code, based on the line of descent, there is a fixed portion for the heirs. If the deceased only leaves behind one legitimate child, that child is entitled to half of the total inheritance. If the deceased leaves behind two legitimate children, each child is entitled to two-thirds of the total inheritance. If the deceased leaves behind three legitimate children, each child is entitled to three-fourths of the total inheritance.

Similarly, suppose a child is born through the involvement of a third party and is acknowledged as a legitimate child. In that case, that child is included in the first group of heirs as regulated in Article 852 of the Civil Code (KUH Perdata).²⁸ An acknowledgment establishes a civil relationship between a child and the acknowledging parent. If the child does not receive an acknowledgment from either party, then the child will not receive any share, similar to a child

²⁷ Dadang Hermawan and Sumardjo Sumardjo, "Kompilasi Hukum Islam Sebagai Hukum Materiil Pada Peradilan Agama," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 6, no. 1 (2016): 24–46.

²⁸ Lavenia R Mailensun, "Kedudukan Hukum Bayi Tabung Dalam Hukum Positif Indonesia," *LEX CRIMEN* 10, no. 8 (2021).

born out of wedlock. According to civil law, as stated in Article 283, a child born out of adultery only has a civil relationship with the mother and her family.

Based on Article 863 of the Civil Code (KUH Perdata), if a deceased person leaves behind legitimate descendants, a spouse, and acknowledged children, the acknowledged child is entitled to one-third of the inheritance. Suppose the deceased person does not have any descendants or living spouse but still has blood relatives in the direct line of ascent, such as siblings or their descendants. In that case, the acknowledged child is entitled to half of the inheritance. If only distant relatives exist, all acknowledged children will receive three-fourths of the inheritance. According to the provisions of Article 865 of the Civil Code, if the deceased person does not have any legitimate heirs, the acknowledged child will inherit the entire estate.

Conclusion

Based on the description above, it can be concluded that the status of a child born through the process of in vitro fertilization, according to the views of Islamic jurisprudence and applicable law in Indonesia, is permissible if it involves the sperm and egg of a legitimate married couple and does not involve a third party. Scholars note that involving a third party in the process is considered prohibited (haram), which would result in the child being denied inheritance rights. There are three forms of inheritance law in Indonesia: customary inheritance law, which is based on the respective customs and closely related to kinship systems; Islamic inheritance law, which is regulated in the Compilation of Islamic Law and states that if the in vitro fertilization process involves the sperm and egg of the biological parents without involving a surrogate mother, the child has inheritance rights similar to a child conceived through natural pregnancy; and civil inheritance law, which is regulated in the Civil Code. According to civil law, if the child is born from legitimate biological parents without rejection, the child is entitled to a share of the inheritance. The same applies to a child who is recognized as such, even if involving the intervention of a third party.

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