

Harmonization of Human Reproduction with Islamic Law: A Review of Legal Aspects in the Context of the Development of Reproductive Technology

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ABSTRACT

Human reproduction is a very important process and is related to Islamic law. In this case, Islam's role is as a moral and ethical foundation that influences the way humans handle reproduction. Several aspects related to the legal aspects of human reproduction are cloning reproduction, test tube babies and abortion. The aim of this research is to determine the legal aspects of human reproduction by connecting them with theories related to Islamic law. This research method uses descriptive qualitative with literature study methods to analyze data taken from books, national journal articles and other literature. The research results show that IVF, reproductive cloning and abortion are things that can be done with the provisions that have been made and do not violate religious and legal norms.

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INTRODUCTION

Reproductive health is defined as a state of complete physical, mental and social well-being, and simply refers to a state of being free from disease and disability in all matters of health, function and reproductive processes. The World Health Organization (WHO) states that the problem of female reproductive failure contributes 33% of the total burden of disease in women throughout the world. This has an impact on the Infant Mortality Rate (IMR) and Maternal Mortality Rate (MMR) due to childbirth which is quite high, but these two indicators make the most important contribution to achieving the Millennium Development Goals. (Susanti, 2022)

One of the achievements of advanced scientific and technological progress is genetic engineering through cloning technology. Cloning is the process of replicating an organism by transferring the nucleus of a fetal cell that has differentiated from an adult cell or by transferring the nucleus of a somatic cell. These cells are inserted into the mother's egg cells before the body's cells divide. Cloning is a technique of copying genes to produce offspring that have genetic characteristics that are superior to their parents. On the one hand, cloning technology reflects progress in science and technology (science and technology), however, because the results of cloning are contrary to religious and theological teachings and are contradictory from a civilizational point of view, for some groups this can have worrying implications for society and endanger humanity. (Fahmi, 2011). In Indonesia itself, there is already a positive law that specifically regulates cloning reproduction or

what is better known as assisted reproduction or pregnancy outside of natural means, in PP RI. NO. 61 of 2014 concerning Reproductive Health in Article 1 Paragraph (10), states "Reproduction with Assistance or Pregnancy Outside of Natural Methods is an effort to obtain pregnancy outside of natural methods without going through the process of sexual intercourse between husband and wife if natural methods do not produce results"

Nowadays, technological developments are quite rapid, which also occurs in medical technology, especially in reproductive health related to IVF (insemination) or assisted reproduction or pregnancy outside of natural means. In ancient times, to obtain offspring, one had to initiate direct sexual intercourse between the husband and wife and then the sperm was stored in the uterus and then pregnancy occurred, nowadays with the very rapid development of technology in the medical world, there is no direct sexual intercourse between the husband and wife, through assisted reproductive technology or pregnancy outside of natural means can lead to pregnancy. Generally test tube baby also known as in vitro fertilization (IVF) is a medical producer in which a woman's egg cells are fertilized in a laboratory and then implanted back into the woman's uterus for further development. (Musfira, 2023).

With the rapid progress of technology, the government has now made these regulations with the promulgation of Republic of Indonesia Law No. 17 of 2023 concerning Health in article 58 which states "Assisted reproduction can only be carried out by legal married couples with the following provisions: a. the fertilization results of the sperm and ovum of the husband and wife concerned are implanted in the wife's womb from which the ovum originates," which in the sense of the article states that as long as the child is born in a valid marriage, the child's legal position is valid, even though the child is the product of sperm and an ovum that is not directly fertilized naturally.

Abortion comes from English (abortion) and refers to miscarriage, miscarriage, or termination of pregnancy before 28 weeks of gestation or before the fetus weighs 1000 grams. 4 In a broader sense, abortion is the initial damage or destruction of the reproductive potential of an egg or fetus. (Mardani, 2021). Article 346 Chapter 14 of the Criminal Code explains that "A woman who deliberately aborts or terminates her pregnancy or orders someone else to do so, is threatened with a maximum prison sentence of four years". (Reni, 2023).

METHOD

The study of this research uses a descriptive qualitative research type with a literature study method. The data collection technique used in this research is the use of journals, ebooks and printed books in written form. The data analysis technique used in this research is inductive analysis, namely taking things related to the topic being discussed.

RESULTS

1. Test tube babies

The online KBBI states that what is meant by test tube baby is a baby produced through fertilization carried out outside the mother's womb. In vitro fertilization technology is the application of technology in the field of human reproduction. The medical term for test tube babies is in vitro fertilization (IVF). In Vitro comes from Latin and means "inside". Meanwhile, "fertilization" comes from English which means "fertilization". In short, IVF is an attempt to achieve pregnancy by uniting sperm and egg cells and fertilizing them in a container (such as a small glass bowl). This is mainly done by medical staff and the public eventually recognizes them as test tube babies because the fertilization process occurs in a beaker (like a tube).

The development of medical technology does have a positive impact on the perpetrators, but it is not necessarily in line with the rules of Islamic law or existing norms in society, so it can give rise to new problems in the future. The result of IVF (mahsada) is a mixed lineage, but because Islam has something to do with maharaman (halal and haram marriage) and inheritance, it actually maintains the purity of gender/honor and the lineage that is carried out.

Contrary to the Sunnah or Natural Law, insemination is essentially the same as prostitution/adultery, namely mixing semen and egg cells without legal marriage. Having a child born through artificial insemination can cause discord in the family. Especially for test tube babies who are born with the help of a donor, they are very unique children who can have very different physical shapes and characteristics, as well as the child's personality/psyche which is inherited from the mother and father. Gender Artificial Insemination/IVF conditions are worse than for adopted children whose origins and parents are generally known, because their mixed origins remain hidden and their donors are kept strictly confidential.

QS, Al-Luqman verse 14

تَهُوَ تَلَعُ نُهْوِي ال هَ صَفْوِ فِ نِي امَّ عَ نَأْيِ كِ رُ اش لَ كَيْدَالٍ وَلَوْ يَلَا يِرِ صَمَّ ال (14)

Meaning: "And We commanded man (to do good) to his parents. His mother conceived him in a state of increasing weakness, and weaned him at the age of two years. Give thanks to Me and to your parents. Only to Me will your return ." (Musfira, 2023).

In Indonesia, the laws and regulations governing artificial reproduction techniques are regulated in:

- 1) Assisted reproduction can be carried out by legal married couples with provisions, such as Health Law no. 17 of 2023 Article 58.:
 - a. The results of sperm and ovum production from husband and wife intercourse are named after the wife who gave birth to the ovum
 - b. Carried out by health service providers who have a strong sense of responsibility and commitment to this matter.
 - c. At certain health service facilities.

2. Reproductive Cloning

Cloning is a technique that produces genetically identical individuals. Derived from the Greek word "clon" which means "young shoot", a clone can be defined as a population of cells or organisms created through asexual cell division. Basically, cloning is a genetic reproduction technique that produces genetically and phenotypically identical offspring. The term "cloning" refers to a variety of processes that can be used to produce genetically identical copies of biological entities.

Human cloning has 2 different goals:

- Reproduction: aims to produce new individuals
- Therapy/Treatment: This therapy, also called therapeutic cloning, is the creation of blastocyst clones that are genetically identical to sufferers of degenerative diseases. Blastocysts are cultured from embryos to form stem cell lines. Stem cells, or stem cells, are cells that have the ability to reproduce (a cell phase in which the cell cycle repeats itself freely) and differentiate into different cell types.

In the context of cloning, the power and will taught by religion, especially Islam, are very clear, as stated in the Qur'an, for example in Q.S. Al-Ra'd: 16, which essentially states that Allah is the Creator of all things and is Almighty, Almighty. Likewise, in Q.S. Al-Waqiah: 59, the question is asked whether you or Allah created it. Then in Q.S. Al-Haj: 73, it is stated that humans cannot create anything even the smallest, even if they join together. These verses form the basis that the cloning process essentially violates God's will and nature, because basically God is the creator of all things.

The explanation of the verses above which explain human cloning in the Koran, includes:

1. Q.S. Al-Rad: 16

means: "Say: "Who is the Lord of the heavens and the earth?" He answered: "Allah". Say: "So should you take your protectors from other than Allah, when they have no benefit or harm to themselves?" Say. : "Is there the same for those who are blind and those who can see, or is there equal darkness and pure light? Do they make partners with Allah who can create like His creation so that the two creations are similar in their opinion?" Say: "Allah is the Creator of all things and He is the Almighty, All-Mighty God."

2. Q.S. Al-Waqiah: 19

meaning: "Did you create it, or did We create it?"

3. Q.S. Al-Haj: 73

meaning: "O people, a parable has been made, so listen to the parable. Verily, those who you call apart from Allah cannot create a single fly, even if they unite to create it. And if the fly takes something from them, they will not can snatch it back from the fly. It is very weak who worship and very weak (also) who are worshipped."

4. Q.S. Al-Baqarah: 32

meaning: "They (the angels) answered: "Glory be to You, we know nothing apart from what You have taught us; Indeed, You are the All-Knowing, the Most Wise."

5. Q.S. Al-Baqarah: 255

meaning: "Allah, there is no God (who has the right to be worshipped) but He Who is eternally alive and continually takes care of (His creatures); neither slumbers nor sleeps. To Him belongs whatever is in the heavens and on the earth. There is none who can intercede 'at with Allah without His permission? Allah knows

what is before them and behind them, and they know nothing from the knowledge of Allah except what He wills. The seat of Allah encompasses the heavens and the earth. And Allah do not find it difficult to look after both of them, and Allah is Most High, Most Great."

According to Indonesian positive law, reproductive health is limited to several areas and then expanded. First, there is the law. Article 54 paragraphs 1 and 2 of Law 17/2023 concerning Health states: (1) The aim of reproductive health education is to protect and improve the reproductive system, function and process of women and girls. According to paragraph (1), reproductive health indicators include: a. psychological disorders, pregnancy, childbirth and postpartum; B. sexual disorders, pregnancy, and contraceptive services; and C. reproductive disorders. Reproductive rights are a degradation of human nature and are characterized by conflict.

3. Abortion

The word abortion consists of the English word "abortion" and the Latin word "abortion". Etymologically it means miscarriage. In the KBBI abortion is:

- 1) Risk of fetal non-viability (before 4 months of pregnancy). Miscarriage or vaginal discharge.
- 2) A state in which normal growth (of an organism) has stopped.
- 3) Abortion, Fetus. Miscarriage. Abortion in the Big Indonesian Dictionary refers to the development of pregnancy. Termination (death) and expulsion of a pregnancy before the end of the 20th week (calculated from the last day) or if the fetus weighs less than 500 grams or is less than 25 centimeters long. Just as clear is abortion.

According to the medical definition, abortion is the process of conceiving a child before they can live their own life outside the home. It is usually observed in children aged between 20 and 30 years (WHO). This definition simply states that abortion is performed on those who are unable to remain outside the womb.

There are 2 different forms of abortion, namely:

a. Spontaneous miscarriage is an abortion that occurs naturally without any particular reason or for certain reasons. Spontaneous miscarriage can be caused by accidents, chromosomal abnormalities, uterine abnormalities, hormonal abnormalities, and sometimes infections or diseases such as syphilis, kidney disease, or tuberculosis. In fiqh terminology, this type of abortion is called *isqad al-afw* (permissible abortion) and therefore has no legal consequences.

b. Intentional abortion (*abortus provocatus/induced pro-abortion*) due to certain causes, namely:

1. A live mother, who would be at risk if her pregnancy is maintained, will be induced or have an abortion sanctioned by a doctor for medical indications before a child is born naturally. In the community, this type of abortion is referred to as "Istat ad Darli" or "Iskat al-Iraj."

Abortion carried out non-medically, or criminal abortion. Even though this abortion was carried out deliberately, there are no medical indicators that can be used to identify the cause, such as economic factors, psychological factors, aversion to morality, or other factors that have strong personal implications. The scholars call it "*isqa't al-Ikhtiyari*" which means abortion without ties. This type of abortion is usually carried out illegally, without consent, or both. Islam is a religion based on Confucian principles of life. This is supported by many verses in the Koran which explain the above.

We can see examples of these principles in the Koran, including:

"Whoever kills a human being, not because that person (killed) another person or not because he caused damage on the face of the earth, then it is as if he had killed all of humanity. And those who despise one person's life, thereby, in a sense, despise all of humanity. (QS. al-Maidah: 32)

"And do not kill your children for fear of poverty. We are the ones who will provide sustenance to them and also to you. Indeed, killing them is a great sin." (QS al Isro': 31)

"And do not kill a soul which Allah has forbidden (to kill), except for a right (reason)." (QS al – Isro':33)

Based on these verses, Islam has a clear legal doctrine which states that human nature is sinful; therefore, human nature should be avoided and not strengthened (discontinued) unless there is a valid reason or a legitimate difficulty exists, such as the performance of a rite of passage. Can be applied to disputes or personal matters based on Islamic law.

Abortion after four months of pregnancy is haram because it means killing a living creature. This is included in the category of murder, but the prohibition is based, among other things, on Sharia arguments. as

Allah SWT says: "And do not kill your children because of poverty. Allah will provide sustenance to them and to you (QS Al An'am: 151)

"And do not kill your children for fear of poverty. We will provide sustenance to them and to you. (QS Al Isra': 31)

And do not kill a soul which Allah has forbidden (to kill) except for the right (reason) (according to the Sharia). (QS Al Isra': 33)

"And when the babies who are buried alive are asked for what sin they were killed..." (QS At Takwir: 8-9)

Based on these arguments, abortion is haram for a uterus that is still alive or is already four months old. Because, in a situation like this, abortion would be considered murder, and this is prohibited in Islam. Provisions regarding the right to abortion in Indonesia's positive criminal law are regulated in the Criminal Code and the Health Law. The criminal law does not allow abortion for any reason or by anyone. In the Criminal Code, the act of intentional abortion is regulated in Chapter XIV Volume 2 concerning Moral Crimes, specifically in Article 299.

The following is a description of the regulation of abortion provocatus contained in the article:

CHAPTER 2) The penalty can be increased by one third if the perpetrator of the act seeks profit, carries out a profession or habit, or is a doctor, midwife or pharmacist. Article 346: Women who intentionally have an abortion or ask someone else to have an abortion are threatened with a maximum prison sentence of four years. Article 347: (1) Whoever intentionally carries out an abortion or terminates a pregnancy without the woman's consent, is threatened with imprisonment for a maximum of 12 years. (2) If the act results in the death of a woman, the maximum penalty is imprisonment for 15 years. Article 348(1) Whoever intentionally aborts a woman's pregnancy or terminates her pregnancy with her consent, is threatened with imprisonment for a maximum of five years and six months. (2) If the act results in the death of the woman, the maximum penalty is seven years in prison. Article 349; "If a doctor, midwife or pharmacist assists in committing a crime under article 346, or helps commit one of the crimes in article 347, 348 then the penalty specified in that article can be increased by one third and the right to carry out the livelihood for which the crime was committed may be revoked. "

The law prohibits abortion, but is permitted under certain conditions. The provisions governing abortion are contained in Decree Number 2. The contents of one of the provisions of Articles 31 to 39 of Article 61 of 2014 are as follows: (1) Abortion can only be carried out based on a. Signs of a medical emergency. or b. Pregnancy due to rape (2) Abortion due to rape as intended in paragraph b paragraph (1) can only be carried out if the pregnancy period does not exceed 40 days, starting from the first day of the last menstruation.

CONCLUSION

The study of test tube babies, reproductive cloning, and abortion from the teachings of Islamic law produces several conclusions. First, IVF is a special condition in pregnancy where the zygote (the first cell that appears after fertilization) is not accessible to the ovaries and uterus until the woman. In Islamic teachings, IVF is considered a condition that is still in the process of formation and is not considered mandatory for adoption.

Second, reproductive cloning is the process of making cell copies from existing cells. In Islamic teachings, reproductive cloning is considered a violation of Allah SWT's obligation to make each individual unique and different. Clones do not have their own identity and are considered to violate the law of Allah SWT which determines that each individual must have unique and different characteristics.

Third, abortion is the process of medically eliminating a pregnancy. In Islamic teachings, abortion is considered to violate the law of Allah SWT which determines that every individual must have the right to life and must be cared for. Abortion negates Allah SWT's rights regarding pregnancy and is considered a violation of Allah SWT's law.

Apart from that, another conclusion obtained is that ulama and scientific experts must carry out research and technological development in a way that is in accordance with Islamic teachings. Technology must be adapted to Islamic teachings so as not to cause moral and ethical problems. Technology development must be carried out in a way that takes into account human health and safety.

In this case, ulama and scientific experts must carry out technology studies in a way that is in accordance with Islamic teachings so as not to cause moral and ethical problems. Technology development must be carried out in a way that takes into account human health and safety. Ulama and scientific experts must find solutions that are in accordance with Islamic teachings to face problems related to modern reproductive technology.

REFERENCES

- [1] Undang undang Nomor 17 Tahun 2023 Tentang Kesehatan
- [2] Peraturan Pemerintah Nomor 61 Tahun 2014 Tentang Kesehatan Reproduksi
- [3] Afif Muamar. 2013. Ketentuan Nasab Anak Sah, Tidak Sah dan Anak hasil Teknologi Reproduksi buatan Manusia: antara UU Perkawinan dan Fikih Konvensional. *Al-Ahwal* Vol. 6.
- [4] Anindya Nurvianti, dkk. 2023. Hukum Bayi Tabung dalam Pandangan Islam. *Jurnal Agama, Sosial dan Budaya*. Vol 1
- [5] Fatmawati. 2016. Aborsi dalam Perspektif Hukum Islam (Meluruskan Problema perempuan di Mata Publik). *Jurnal Al-Maiyyah*. Vol 1
- [6] Fuadi Isnawan. 2019. Pelaksanaan program Inseminasi buatan Bayi Tabung menurut Hukum Islam dan Hukum Positif Indonesia. *Jurnal Kajian Agama, Sosial dan Budaya*. Vol 4
- [7] Mardani. 2021. Aborsi dalam Perspektif Hukum Islam. *Jurnal Hukum International*. Vol 4
- [8] Muhammad Fahmi. 2011. Rekayasa Genetika dalam Pandangan Islam: Tinjauan atas Teknologi Kloning. *Jurnal al-Adalah*. Vol 4
- [9] Musfira. 2023. Bayi Tabung (Inseminasi) dalam Perspektif Hukum Islam. *Universal Grace Journal*. Vol 1
- [10] Mova Arikhman. 2016. Tujuan Sosial, Etika dan Hukum Surrogate Mother di Indonesia. *Jurnal Kesehatan Medika Sainatika*. Vol 7
- [11] Restesa Rahmayumita. 2022. Rekayasa Genetika Ditinjau dari Segi Etika dan Moral dalam Kajian Human Cloning. *Jurnal Ilmiah Multi Sciences*. Vol 14
- [12] Susanti, dkk. 2022. Pengaruh Teknologi Digital terhadap Peningkatan Kesehatan Reproduksi Perempuan. Vol 3
- [13] Zulfahmi Alwi. 2013. Abortus dalam Pandangan Hukum Islam. *Jurnal Studia Islamika*. Vol 10
- [14] Faisal, M dan Ahmad S. 1997. Aborsi Tradisional, Pengalaman Dukun dan Klien. Yogyakarta: PPK UGM an Ford Foundation.
- [15] Nasarudin Umar. "Aborsi Dalam Tinjauan Agama Samawi". dalam Maria Ulfah Anshor. dkk. *Aborsi Dalam Perspektif Fiqh Kontemporer*.
- [16] Nelly Yusra *ABORSI DALAM PERSPEKTIF HUKUM ISLAM*
- [17] Rizky Aditya Prawira, dkk. 2023. Perspektif Agama Islam terhadap Kloning Manusia. *Jurnal Kajian Islam Kontemporer*.