

Juridical Analysis of the Implementation of Artificial Insemination in Indonesia: Legal Status and Children's Rights in a Positive Legal Perspective

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ABSTRACT – This study aims to analyze the implementation of artificial insemination in Indonesia based on Law Number 36 of 2009 concerning Health and evaluate the legal status and rights of children resulting from artificial insemination using sperm donors from a positive legal perspective. Using a normative juridical approach, this study utilizes secondary data from laws and regulations, legal journals, and academic literature. The results of the study show that the regulation regarding artificial insemination in Indonesia is still not comprehensive. Existing regulations focus more on the medical aspect, without providing legal certainty on the status of children resulting from artificial insemination, especially those involving sperm donors or surrogate mothers. These children often lose legal recognition which has an impact on the loss of civil rights, such as inheritance rights. The fatwa of the Indonesian Ulema Council also emphasized that this practice is contrary to religious norms, creating a dilemma for couples who need assisted reproductive technology. This study recommends the establishment of special regulations to accommodate the development of this technology, harmonization between legal and religious norms, and protection of the rights of children resulting from artificial insemination. Comprehensive regulations will provide legal certainty and reduce social conflicts that may arise.

Keywords: Artificial Insemination, Positive Law, Sperm Donation, Children's Rights, Regulation.

A. INTRODUCTION

The desire to have children is a very human thing. For many couples, children are a symbol of love, happiness, and completeness of life. However, when natural conception does not occur, feelings of disappointment and sadness often arise. Artificial insemination is present as one of the solutions to overcome these

challenges and provide new hope for couples who crave the presence of a baby (Issalillah, 2021). Infertility is a fairly common reproductive health problem. Various factors, ranging from lifestyle, medical conditions, to environmental factors, can be the cause. For couples diagnosed with infertility, artificial insemination is one of the treatment options that can increase the chances of pregnancy. This procedure has been proven to be effective in helping many couples realize their dream of having children (Hamdani, 2010).

Gandasubrata (1989) underlined that the absence of detailed regulations opens up opportunities for the misuse of assisted reproductive technology. For example, the practice of renting a uterus or surrogate mother has not been expressly regulated in Indonesian law. Fuad Muhammad Fachruddin (1991) added that this can cause moral and ethical conflicts in society. In the scope of civil law, Soimin (2004) stated that the status of children resulting from artificial insemination has not been adequately accommodated in the Civil Code. Article 280 of the Civil Code which regulates child recognition still does not cover children born through assisted reproductive technology. This is reinforced by the opinion of Salim (1993), who stated that there is a need to revise existing laws and regulations to adjust to technological developments.

Thamrin (2013) revealed that children who are artificially inseminated using donor sperm often experience legal discrimination. They are often not recognized as legitimate children so their rights, including inheritance rights, are neglected (Neraf, 1997). Supramono (2005) also highlights the lack of legal protection for these children in the national legal system. The Indonesian Ulema Council (MUI) through its fatwa in 2006 emphasized that the use of sperm or ovum from donors, as well as the practice of surrogate mothers, is not justified under Islamic

law. This poses a dilemma for Muslim couples who need this technology. Darwan Prints (1999) emphasizes the need for synchronization between positive law and religious norms to provide legal certainty.

The high cost required for artificial insemination programs, as outlined by Nakita (2002), adds to the complexity of the problem. Access to this technology is limited for couples with a middle-to-lower economy, so it is not in line with the principles of social justice mandated by the 1945 Constitution. Ratman (2012) highlights ethical and legal aspects related to the practice of surrogate mother or uterine rental. The absence of clear regulations can lead to legal conflicts, especially regarding the civil status of children and the rights of surrogate mothers. This is in line with the view of Sudikno Mertokusumo (1990), who stated that there needs to be a firm legal rule to avoid ambiguity in legal status.

Technological developments such as Intracytoplasmic Sperm Injection (ICSI) and Microsurgical Epididymal Sperm Aspiration (MESA), as described by Steptoe and Edwards (1978), have not been accommodated in national regulations. This shows that there is a lag in regulations compared to advances in medical technology. Regulation of the Minister of Health Number 39/MENKES/SK/I/2010 concerning the Implementation of Assisted Reproductive Services has tried to regulate this practice. According to Anshary (2014), the regulation is still not comprehensive enough and needs to be updated to better suit the needs of society and technological developments.

Finally, the issue of children's human rights is also a major concern. The rights of children resulting from artificial insemination need to be protected in accordance with the Convention on the Rights of the Child, which has been ratified by Indonesia. Ridwan Syahrani (1992) emphasized the importance of legal protection for children in all situations, including those born through assisted reproductive technology. Although various studies have been conducted on the medical and ethical aspects of artificial insemination, there are still gaps in the specific legal arrangements in Indonesia. Most of the literature, as pointed out by the experts above, highlights the problem but does not provide a concrete solution in the form of effective regulation. The absence of specific laws regulating artificial insemination creates legal uncertainty for married couples, children born and medical personnel involved.

This study offers a new perspective by analyzing the need for specific regulations related to artificial insemination in Indonesia. Through a normative juridical approach, this study seeks to fill the legal void and provide concrete recommendations for the formation of comprehensive laws. This is expected to provide legal certainty and protection for all parties involved. This study aims to analyze the implementation of artificial insemination in Indonesia based on Law Number 36 of 2009 concerning Health, as well as evaluate the legal status and rights of children resulting from artificial insemination using seeds from a variety of donors within the national legal framework.

B. METHOD

This study uses a normative juridical approach, which aims to analyze the applicable laws and regulations related to the implementation of artificial insemination in Indonesia. This approach focuses on literature study, by examining legal documents such as laws, government regulations, and fatwas and other relevant official documents. The type of research used is normative-descriptive legal research, which aims to provide a comprehensive overview of the legal provisions that govern the implementation of artificial insemination. This study also explores the inadequacy or legal vacuum related to the status of children and the rights inherent in children resulting from artificial insemination.

The data sources used come from secondary data, including laws and regulations such as Law Number 36 of 2009 concerning Health, Law Number 1 of 1974 concerning Marriage, the Civil Code, and other related regulations. In addition, the study draws on a variety of legal literature, scientific journals, and articles from relevant experts. The data validity technique is carried out through source triangulation, where data obtained from laws and regulations is compared with the opinions of legal experts and other relevant documents. This process ensures that the analysis carried out has high validity and accuracy. The data analysis technique used is qualitative analysis, where the data obtained is systematically arranged, analyzed based on relevant legal theories, and logically concluded. This analysis process aims to answer the formulation of the problem that has been prepared, by referring to the regulations and legal norms that apply in Indonesia.

C. RESULTS AND DISCUSSION

Implementation of Artificial Insemination in Indonesia

The implementation of artificial insemination in Indonesia is regulated by Law Number 36 of 2009 concerning Health as the main legal basis. Article 127 of this law emphasizes that assisted reproductive technology can only be carried out in accordance with legal, religious, and moral norms. The provision is considered too general and does not include important details related to the implementation of artificial insemination procedures, including regulations on sperm donors and surrogate mothers.

Regulation of the Minister of Health Number 39 of 2010 tries to fill the gap by providing technical guidance on the implementation of assisted reproductive services. However, this regulation emphasizes more on medical and procedural aspects, while legal and social aspects do not receive adequate attention. For example, the procedure for using donor sperm or surrogate mothers is not specifically regulated, causing legal uncertainty (Hardijanto, 2010).

The absence of specific regulations regarding artificial insemination in Indonesia results in mixed legal interpretations. Law Number 1 of 1974 concerning Marriage defines a legitimate child as a child born from a legal marital relationship. However, in the case of artificial insemination involving sperm donors, the status of the child becomes unclear. This raises legal questions regarding the legitimacy of the child related to civil law.

The fatwa of the Indonesian Ulema Council (MUI) in 2006 added a layer of complexity to the implementation of artificial insemination. The fatwa states that the use of donor sperm or ovum, as well as the practice of surrogate mothers, is contrary to Islamic principles. This fatwa creates a dilemma for Muslim couples who need this technology to have offspring, because it is contrary to religious norms while being in a gray area in positive law. From a formal juridical perspective, the practice of artificial insemination in Indonesia must also comply with Article 28H paragraph (1) of the 1945 Constitution, which guarantees the right to fair and equitable health services. However, access to assisted reproductive technology is still limited, especially for the lower middle economic community. The cost of artificial insemination programs carried out in large clinics requires a very large cost (Nakita, 2002).

This cost is the main obstacle for many couples who need the service.

Developments in medical technologies such as Intracytoplasmic Sperm Injection (ICSI) and Gamete Intra-Fallopian Transfer (GIFT), as described by Steptoe and Edwards (1978), offer solutions for couples experiencing fertility problems. This technology has not been fully accommodated by regulations in Indonesia. Law Number 36 of 2009 only provides general guidance without mentioning details about the use of this medical technology related to the law. In addition, legal regulations regarding the legal status of children resulting from artificial insemination are still the main issue. Article 280 of the Civil Code states that recognition of a child has legal consequences in the form of a civil relationship between the child and the parent who recognizes it. However, in the case of artificial insemination, especially those involving sperm donors, this recognition is often not made for moral or social reasons. This causes children to lose their civil rights, including inheritance rights (Septiana, 2020).

The legal approach in Indonesia in regulating artificial insemination is still far from comprehensive. Countries such as the United Kingdom and the United States have developed specific regulations that accommodate various aspects of assisted reproductive technology, including the use of sperm donors and surrogate mothers. This international experience should be a learning material for Indonesia to develop a better legal framework. Overall, the implementation of artificial insemination in Indonesia requires special regulations that cover medical, legal, social, and moral aspects. Harmonization between positive law and religious norms is also needed to provide legal certainty for all parties involved.

Status and Rights of Children Resulting from Artificial Insemination

The legal status of children resulting from artificial insemination in Indonesia is still a complex issue, especially related to the legal status and civil rights of children. In Indonesian civil law, the legal status of children is determined by Article 42 of Law Number 1 of 1974 concerning Marriage, which states that a legitimate child is a child born in or as a result of a valid marriage. However, this concept becomes problematic when applied to children resulting from artificial insemination, especially if using sperm donors.

Article 250 of the Civil Code stipulates that a child born in a marriage bond is considered a legitimate child. However, if the sperm used comes from a donor outside the married couple, the legal status of the child becomes ambiguous. The legal doctrine refers to the argumentum a contrario, which states that a child who does not meet the requirements of Article 250 and Article 42 of the Marriage Law can be considered invalid or even have no civil relationship with a father who does not donate sperm.

The 2006 fatwa of the Indonesian Ulema Council (MUI) reinforced the view that artificial insemination using sperm donors is not allowed in Islam, and children born from this procedure are considered adulterous children. The legal consequence is that the child only has civil rights to his biological mother, in accordance with Article 867 paragraph (1) of the Civil Code, which states that adulterous children are only entitled to maintenance as necessary from their mother. This legal dilemma shows that regulations in Indonesia have not been able to accommodate the development of assisted reproductive technology. In comparison, countries such as the United Kingdom through the Human Fertilisation and Embryology Act 2008 regulate in detail the legal status of children resulting from artificial insemination, including legal procedures for parental recognition and children's civil rights. Indonesia does not have this level of regulation, which has led to many legal cases related to artificial insemination not being adequately resolved.

Another problem that arises is related to inheritance rights. In Indonesian civil law, a legal child has full inheritance rights from his or her biological parents, as stipulated in Article 830 of the Civil Code. However, for children resulting from artificial insemination who are not recognized by their biological father, their status becomes similar to that of illegitimate children, whose inheritance rights are limited only to the biological mother and her family. Article 863 of the Civil Code grants inheritance rights to children out of wedlock only if there is formal recognition by their biological father or mother. In the case of surrogate mothers, the absence of legal arrangements in Indonesia exacerbated the situation. Article 1548 of the Civil Code concerning rent-lease agreements is often used as a legal basis to regulate the relationship between a married couple and a surrogate mother. However, this approach is problematic because the womb cannot be treated as a rent-a-rent object in accordance

with Article 1335 of the Civil Code, which states that an agreement that is contrary to decency is null and void. This consequence causes uncertainty about the legal status of children born to surrogate mothers, both in terms of civil relations and inheritance rights (Mardani & Rahman, 2021).

In addition, the protection of children's rights resulting from artificial insemination is still far from ideal. The Convention on the Rights of the Child, which has been ratified by Indonesia through Presidential Decree No. 36 of 1996, obliges the state to protect the rights of children without discrimination. However, in practice, children resulting from artificial insemination often face social stigma and discrimination, both in the family and in society.

Juridically, this issue shows the need for a comprehensive regulatory update. Law No. 36 of 2009 concerning Health and Regulation of the Minister of Health No. 39 of 2010 need to be revised to include detailed arrangements regarding the legal status of children resulting from artificial insemination. In addition, the establishment of a special law regulating assisted reproductive technology can be a solution to fill this legal void. To harmonize with religious norms and positive laws with the ideal approach is to create regulations that not only accommodate the development of medical technology but also are in line with the religious and moral norms of Indonesian society (El Faqih, 2020). The MUI fatwa can be used as one of the normative references, while positive law can be adapted based on the experience of other countries such as the United Kingdom and Australia. Thus, children resulting from artificial insemination face many legal challenges in Indonesia. The absence of formal recognition, social stigma, and regulatory vacuums create detrimental uncertainty. Therefore, concrete steps are needed to develop special regulations that provide legal certainty and protect the rights of children with assisted reproductive technology.

D. CONCLUSIONS

The conclusion of this study confirms that the implementation of artificial insemination in Indonesia is still in the legal gray area. Existing regulations, such as Law No. 36 of 2009 concerning Health and Regulation of the Minister of Health No. 39 of 2010, only provide general guidelines that focus more on the medical aspect. The absence of specific legal

rules creates uncertainty for married couples, children resulting from artificial insemination, and medical personnel who carry out the procedure. The legal void is very visible in the aspects of the use of sperm donors, surrogate mothers, and the legal status of children born from the procedure. In addition, the Fatwa of the Indonesian Ulema Council that prohibits the use of donor sperm and surrogate mothers also strengthens the view that existing regulations are not enough to accommodate religious, moral, and community norms.

The legal status of children resulting from artificial insemination is also a serious problem. In Indonesia's positive law, a child is only considered valid if he is born in or as a result of a valid marriage. However, children resulting from artificial insemination involving sperm donors are often not recognized as legitimate children, which has an impact on the loss of their civil rights, including inheritance rights. This social stigma against children is also reinforced by the absence of formal legal recognition. In some cases, they are even categorized as illegitimate children or adulterous children, which adds to the complexity of their legal status. The disharmony between positive law and religious norms further adds to the challenge of providing fair legal protection for these children.

In order to provide a solution to this problem, it is recommended that the government immediately draft special regulations regarding artificial insemination. These regulations must include comprehensive technical and legal arrangements, from medical procedures, the use of sperm donors, surrogate mothers, to the legal status of the resulting child. This regulation must also accommodate the religious and moral norms of Indonesian society to create harmony between positive law and social norms. This step is needed to provide legal certainty for all parties involved, including married couples, medical personnel, and children resulting from artificial insemination. In addition, the government needs to pay attention to the accessibility of assisted reproductive technology for people from various economic levels. Subsidies or government programs can be one of the solutions to ensure that the right to health services as stipulated in Article 28H paragraph (1) of the 1945 Constitution can be realized equally. These efforts will not only improve social justice but also strengthen people's right to health.

Legal protection for children resulting from artificial insemination must also be a top priority. The Convention on the Rights of the Child, which Indonesia has ratified, can be the legal basis for drafting rules that protect children's rights without discrimination. By providing clear legal status and equal rights protection, these children can have a brighter future without being hindered by social stigma or legal vacuums. The whole study confirms that the implementation of artificial insemination requires serious attention in legal, social, and moral aspects. By drafting regulations that are comprehensive, harmonious, and in favor of justice, Indonesia can create a legal framework that protects all parties without ignoring the values that exist in society. This step will bring long-term benefits in creating a legal system that is adaptive to technological developments and the needs of society.

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