



ANALYSIS OF CHILDREN BORN THRU IVF IN INHERITANCE FROM THE PERSPECTIVE OF ISLAMIC LAW AND POSITIVE LAW

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E-ISSN : 3109-9777

Received: September 2025

Accepted: September 2025

Published: Oktober 2025

Abstract :

The development of assisted reproductive technology, particularly In Vitro Fertilization (IVF), has raised significant legal issues in Indonesia concerning lineage (nasab) and inheritance rights of children. This study aims to analyze the legal status of IVF-born children from the perspectives of Islamic law and Indonesian positive law, with a focus on lineage legitimacy and its implications for inheritance. The research employed a library research method with a normative juridical approach, descriptive-analytical nature, and comparative analysis techniques using statutory regulations, classical fiqh, fatwas, and academic literature. The findings reveal that Islamic law permits IVF when gametes originate from a legally married couple, but prohibits third-party donors and surrogacy, as such cases result in illegitimate children without inheritance rights. In contrast, Indonesian positive law recognizes children born within lawful marriage but lacks explicit regulation regarding the use of donors or surrogate mothers, leading to a legal vacuum. This study concludes that harmonization between Islamic legal principles and positive law is essential to ensure legal certainty, safeguard the rights of IVF-born children, and prevent future inheritance disputes.

Keywords : Test tube babies, inheritance, children.

INTRODUCTION

The development of assisted reproductive technology, particularly In Vitro Fertilization (IVF) or test-tube babies, has given hope to married couples experiencing infertility issues (McShane, 2014). In Indonesia, in vitro fertilization services are increasingly developing as healthcare facilities improve, but this raises new legal issues. Complexity arises primarily in relation to the legal status, lineage, and inheritance rights of children born thru this program, especially if it involves sperm donors, egg donors, or surrogate mothers who are not legally married. (Marsh & Ronner, 2019) The difference in perspectives between Islamic law and Indonesian positive law clarifies the urgency of this study (KHI Article 99; Marriage Law No. 1 of 1974 Article 42).

The research questions in this study are: (1) What is the legal status and inheritance rights of children born thru in vitro fertilization (IVF) if the sperm and ovum come from a legally married couple according to Islamic and positive law; and (2) What is the legal status and inheritance position of children born thru IVF if the sperm or ovum comes from a third-party donor according to both legal systems? The purpose of this study is to determine the legal status and inheritance rights of children born thru IVF using gametes from both legally



married couples and third-party donors, and to analyze a comparison of Islamic and positive legal perspectives on this issue (Ardakani et al., 2021).

The relevance of this research lies in the importance of legal certainty regarding the lineage and inheritance of children born thru IVF. Several previous studies, such as those conducted by Nur Afifah Rizkiani (Dermawan, 2024), Alimah Qathrun Nada (Alimah Qothrun Nada, n.d.), Putra Halomoan Hutasuhut, and Taufik Rizal Hasbi (Dermawan, 2024), essentially concluded that in vitro fertilization is permissible if it uses gametes from a legally married couple. However, these studies are still limited to specific focuses, such as aspects of maqashid syariah, Islamic civil law, or guardianship, and have not extensively comparatively examined the differences between Islamic law and positive law in cases of sperm donation, ovum donation, and surrogacy.

The previous studies above show that there are still differences and legal gaps in regulating gamete donation and surrogate motherhood (Nyamache, 2024). Therefore, this research is expected to contribute academically by filling the literature gap, while also offering a basis for consideration for family law policymakers in Indonesia to be more responsive to modern reproductive technology developments while remaining in accordance with Sharia principles.

RESEARCH METHOD

This research uses library research with a normative legal approach. The nature of this research is descriptive-analytical, which means it attempts to deeply describe legal issues related to children born thru IVF and their inheritance rights, and then analyze them based on Islamic law and positive law (Negara, 2023).

The research object is focused on legal rules, jurisprudence literature, and legislation governing child status and inheritance (Sesniati et al., 2024). Primary data sources consist of classical fiqh books, hadiths, and regulations such as Law Number 1 of 1974, Law Number 36 of 2009, Law Number 35 of 2014, and the Compilation of Islamic Law. Secondary data sources include books, articles, journals, and previous research relevant to the theme of in vitro fertilization and inheritance.

Data was collected thru literature studies and document review, then analyzed descriptively and comparatively. (Fink, 2019) The analysis was conducted by categorizing the data, interpreting the legal meaning from the available sources, and then comparing Islamic legal perspectives with positive law (Hamzani et al., 2023). From this, the researcher concludes the legal status of children born thru IVF and its implications for inheritance rights.

FINDINGS AND DISCUSSION

1. Legal and Inheritance Status of Children Conceived Thru IVF Using Sperm and Ova from a Legally Married Couple

The research results show that both Islamic law and Indonesian positive law recognize the legitimacy of the status of a child born thru in vitro fertilization procedures as long as the sperm and ovum come from a legally married couple,

and the embryo is implanted in the wife's own womb.

According to the four major schools of thought (Hanafi, Maliki, Shafi'i, and Hanbali), the child has a clear lineage to both the father and mother, and is therefore fully entitled to inheritance. As stated in the Hanafi school of thought found in the book *Bada'i Al-Sana'i*, by Ala Al-Din Abu Bakar Ibnu Mas'ud Ibnu Al-Kasani, as follows:

الْوَلَدُ الْمُلْحَقُ بِأَبِيهِ فِي النَّسَبِ يَنْبُتُ لَهُ جَمِيعُ أَحْكَامِ الْبُتُوَّةِ مِنَ الْإِرْثِ وَالنَّفَقَةِ وَالْحِضَانَةِ وَغَيْرِهَا

Meaning: A child who is attributed to their father retains all the legal rights associated with a child, such as inheritance, maintenance, custody, and others. (Al-Kasani, Ala al-Din Abu Bakr ibn Mas'ud, n.d.)

In the discussion above, it is stated that emphasis is placed on the importance of kinship ties in determining inheritance rights. Next, the opinion of the Maliki school aligns with the opinion of the Hanafi school, which states in the book *Al-Mudawwanah Al-Kubra* as follows:

كُلُّ وَلَدٍ يُولَدُ عَلَى فِرَاشِ الرَّجُلِ مِنْ امْرَأَتِهِ فَهُوَ وَلَدُهُ يُلْحَقُ بِهِ

Meaning: Every child born on a man's bed from his wife is his child, attributed to him. (Sahnun ibn Sa'id al-Tanukhi, 1994)

Based on the discussion above, offspring born from the in vitro fertilization process where both gametes are from a legally married couple can have the lineage of the husband, as there is no mixing in that process. This is also in line with the Shafi'i school of thought, which aligns with the opinions of the Hanafi and Maliki schools found in the manuscript of the book *Al-Umm*, as follows:

الْوَلَدُ لِلْفِرَاشِ، وَلِلْعَاهِرِ الْحَجَرُ

Meaning: The child belongs to the owner of the bed, and for the adulterer, it is only a stone (punishment/rejection). (Muhammad ibn Idris al-Shafi'i, 1990)

In the discussion above, it is stated that the act of introducing the sperm of one's lawful spouse into the womb of the woman who is their wife is an effort to obtain offspring in Islam. As for the last one, the Hanbali school of thought states, as found in the book *Al-Mughni* by Ibn Qadamah, as follows:

وَإِذَا أُخِلَ مَاءُهُ فِي فَرْجِهَا بِغَيْرِ وَطْءٍ، فَحَدُّ التَّعْزِيرِ، وَالنَّسَبُ يُلْحَقُ بِصَاحِبِ الْمَاءِ

Meaning: "If semen is introduced into a woman's genitals without intercourse, the ruling is ta'zir, and the lineage is attributed to the owner of the semen." (Abd Allāh ibn Aḥmad ibn Muḥammad ibn Qudāmah al-Maqdisi, 1997)

The discussion above states that if a man's sperm is introduced into a woman's genitals without sexual intercourse, that action is considered a violation under Islamic law and may be subject to ta'zir punishment (Ichsan Kusuma, 2025). From the discussion above, it is clear that lineage is determined by the existence of a valid marriage relationship and the use of the couple's own seed. Positive law also reinforces this thru Law No. 1 of 1974 Article 42, which states

that: "A legitimate child is a child born within or as a result of a valid marriage." (Yusrizal, 2024) The legal status of a child in the Indonesian legal system is determined by birth from a legally married couple, which grants full access to rights such as family identity, inheritance, and legal guaranties.

Furthermore, as stated in Law No. 36 of 2009, Article 127 paragraphs 1 and 2, (Putri & Ramadhani, 2021) which states that: "Pregnancy attempts outside of natural methods can only be carried out by legally married couples, with the following provisions: a. The fertilized egg or sperm from the couple in question is implanted in the wife's uterus from which the ovum originated; b. Performed by healthcare professionals with the expertise and authority to do so; c. At certain healthcare facilities." The above article emphasizes that using assisted reproductive technology is only permitted with gametes from the couple in question; any in vitro fertilization procedure with donor sperm and surrogacy is a legal violation that can result in criminal and administrative sanctions for the medical practice performing it. Thus, both religiously and legally, the status of a child born to a legally married couple does not pose any legal issues.

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2. Legal and Inheritance Status of Children Conceived Thru IVF Using Sperm or Eggs from a Third-Party Donor

Further research results indicate that both Islamic law and Indonesian positive law do not recognize the validity of the law and the inheritance rights status of a child born thru in vitro fertilization procedures where the sperm or ovum comes from a third party.

In the view of the four major schools of that (Hanafi, Maliki, Shafi'i, and Hanbali), a child born thru in vitro fertilization (IVF) using sperm or eggs donated by a third party cannot be granted legal status as a legitimate child, nor can they inherit from their parents, as inheritance is only valid thru three causes: lineage, marriage, and wala'. As the Hanafi school of that emphasizes in the book *Al-Fatawa Al-Hindiyyah*, it states that :

وَيُثْبِتُ النَّسَبُ إِذَا أُدْخِلَ مَاءُ الرَّجُلِ فِي رَحِمِ امْرَأَةٍ فَحَمَلَتْ، وَيَرِثُ مِنْهُ وَيَرِثُ مِنْهَا إِذَا كَانَ مِمَّا يَصِحُّ فِيهِ
النِّكَاحُ، وَإِلَّا فَلَا

Meaning: "Paternity is established if a man's semen is introduced into a woman's womb and she becomes pregnant, and the child inherits from him and

he inherits from the child, if this occurs under conditions that permit valid marriage. If not, then there is no inheritance." (Al-Fatawa al-Hindiyyah Committee, n.d.)

The discussion above confirms that lineage and inheritance rights are only recognized if conception occurs within a valid marriage. This aligns with Islamic literature, which places lineage as something sacred, so a legitimate child can only be born from a valid marriage, while a child born out of wedlock only has a legal relationship with their mother. Next, the opinion of the Maliki school, which is similar to the Hanafi school, states in the book *Mawahib al-Jalil* that :

وَلَا يُلْحَقُ النَّسَبُ مِمَّنْ وُلِدَ مِنْ مَاءٍ أَجْنَبِيٍّ بَعِيرٍ عَقْدٍ، فَلَا يَرِثُ وَلَا يُورَثُ

Meaning: "A child born from the semen of another man without a contract is not attributed lineage, so they do not inherit and are not inherited" (Muhammad ibn Muhammad ibn al-Mukhtar al-Hattab, n.d.). The above discussion addresses a child born from the semen of a foreign man without a marriage contract, who has no legal status or inheritance rights. Next, the Shafi'i school of thought, as stated in the book *Mugni al Muhtaj*, holds the following view:

وَلَا يُنْبِئُ النَّسَبُ إِلَّا مِنْ نِكَاحٍ أَوْ وَطْءٍ بِشُبُهَةٍ، فَإِنْ وَجَدَ مَاءَ أَجْنَبِيٍّ فِي رَحِمِ امْرَأَةٍ بِلَا ذَلِكَ لَمْ يُلْحَقْ بِهِ وَلَا يَرِثُ

Meaning: "Paternity is not established except thru marriage or intercourse due to doubt. If the semen of a stranger enters a woman's womb without this, it is not attributed to him and he does not inherit from her." (Muhammad ibn Ahmad al-Khaṭīb al-Shirbīnī, n.d.)

The discussion above mentions that a child born thru in vitro fertilization using a sperm or ovum donor cannot be linked to lineage except thru the mother. As for the Hanbali school of thought, it states in the book *Kashshaf Al Qina'* that:

مَنْ وُلِدَ مِنْ مَاءٍ أَجْنَبِيٍّ أُدْخِلَ فِي رَحِمِ امْرَأَةٍ لَا يَجُلُّ لَهُ لَا يُلْحَقُ نَسَبُهُ بِهِ وَلَا يَرِثُهُ

Meaning: "Whoever is born from the semen of a stranger introduced into the womb of a woman who is not permissible for him, his lineage is not attributed to him and he does not inherit." (Muhammad ibn Ahmad al-Dasuqi, n.d.)

The discussion above states that a child born thru in vitro fertilization using donor sperm or ovum is treated the same as a child born outside of marriage; the child's rights, obligations, and inheritance rights are limited to the mother's property only. So, the discussion above is clear: lineage is determined by blood relations and relations established thru marriage.

Positive law also clarifies this, with Law Number 36 of 2009 concerning health, thru Article 127 paragraphs 1 and 2, which states: "Pregnancy attempts outside of natural methods can only be carried out by legally married couples, with the following provisions: a. The fertilized egg or sperm from the couple in question is implanted in the wife's uterus from which the ovum originated; b. Performed by healthcare professionals with the expertise and authority to do so;

c. At certain healthcare facilities."

The above rules are clarified by Permkes Number 39 of 2010, Article 22, which states: "It is prohibited to use sperm, ova, or embryos from parties other than a legally married couple, as husband and wife."

The above regulation states that in vitro fertilization (IVF) in Indonesia can only be performed using reproductive cells from legally or religiously married couples, thus prohibiting the use of sperm donors or ovum donors from third parties (As' Adi & Sari, 2021). This prohibition aims to maintain the clarity of a child's lineage, avoid legal issues related to a child's legitimacy and inheritance rights, and protect the moral values and legal principles of marriage in Indonesia, which stipulate that offspring can only come from a legally married couple.

In line with the views of the four major schools of thought, Indonesian positive law also prohibits the use of sperm or ovum donors from third parties, which affirms the similarity in principle that lineage and inheritance rights can only be established thru legal marriage (Yee & Sulaiman, 2017). From an Islamic perspective, this prohibition is based on theological reasons, positioning the child resulting from donation as an illegitimate child who only has a lineage relationship with their mother. Meanwhile, positive law emphasizes medical and administrative aspects to ensure clarity of a child's legal status and prevent inheritance disputes (Dailey & Rosenbury, 2018). Thus, although their starting points differ, both Sharia and positive law share the goal of preserving the purity of lineage and family legal order. Therefore, future regulatory harmonization is essential to ensure legal certainty and protect children's rights.

CONCLUSION

This research shows that children born thru IVF with sperm and ovum from a legally married couple have a clear legal status and full inheritance rights under both Islamic law and Indonesian positive law. Conversely, test-tube babies involving third-party donors or surrogate mothers are not recognized for their lineage and inheritance rights from the father or donor, but only thru the mother, as affirmed by all major schools of jurisprudence, contemporary scholars, and provisions in the Marriage and Health Law.

Thus, this research successfully answers the problem formulation regarding the legitimacy of the lineage and inheritance rights of children born thru IVF from the perspective of Islamic law and positive law, both of which place a valid marriage bond as an absolute requirement.

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