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Pro and Cons of Insemination and Baby Tubes According To Islamic Law

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ABSTRACT: *One of the goals of a marriage in addition to forming a happy family is to get offspring. The presence of children in a household is very important. In a household there is a husband and wife who cannot get offspring, so in such circumstances a husband and wife will certainly take various efforts as a way out. Artificial insemination is one solution that can be taken for married couples who experience infertility. This program is a process of conception (conception) carried out outside the uterus, which is between the sperm and the ovum reunited in a fetri dish which is given the temperature according to the heat of a woman. This is intended to stay alive to the stage of being inserted into the womb of a woman, or more popular with the test-tube baby. In this discussion the author discusses IVF with sperm and ovum from donors whose embryos are transplanted into the womb of the wife. This is done on a husband and wife who are not good in their wife's condition and the husband's sperm is lacking so that fertilization is not possible. In the end the couple receives the ovum and sperm from the donor, after fertilization, the embryo is transplanted into the womb of the wife. Artificial insemination programs with sperm and ovum from donors whose embryos are transplanted into the womb of the wife cause various problems in Islamic law. That is because it is not in accordance with the provisions of the syara law '. Furthermore, how is the law and status of children as a result of artificial insemination from donors in a review of Islamic law? What is the position of guardian of a child as a result of artificial insemination from a donor in a review of Islamic law? The method used by the author is a library research method, namely research whose data comes from library materials: books, books, laws and other scientific works. The approach in this study is normative-juridical. While the nature of the research is descriptive-analytic, namely describing and describing the law, status and guardianship of children from artificial insemination from donors in the perspective of Islamic law, then analyzed from the point of Islamic law. The analysis in this study is qualitative data analysis, namely in the form of deductive analysis. The results of this study are that according to Islamic law the legal provisions of the implementation of artificial insemination with sperm and ovum from donors who are not husband and wife then the embryo is transplanted into the womb of the wife is illegitimate, children born from the process are illegitimate children or the same as zina children and he was only associated with his mother and obtained a series of rights from the mother and family of his mother, one of which was guardianship when he was a child and not yet an adult. This trust includes guardianship of the self and property of the child. Guardianship of a child is in accordance with Maqasidasy-Shari'ah, namely for hifz an-nafs and hifz al-mal.*

KEYWORDS: *Post and Cons, Insemination, IVF*

I. INTRODUCTION

Allah SWT creates everything in this world in pairs. Humans, animals and plants are not separated from a ritual called marriage. Marriage is an agreement or agreement between a man and a woman which by the agreement will cause the legitimacy of a sexual relationship (sex) between the two, namely by using the word marriage or other words that mean it. In Islam marriage certainly has a purpose as other laws that are set with a specific purpose in accordance with the purpose of its formation, and the purpose of the marriage is to fulfill religious instructions in order to establish a harmonious, prosperous and happy family. Harmonious in using the rights and obligations of family members. Prosperity in the sense of the creation of inner and outer calm caused by the fulfillment of the necessities of life, so that happiness and affection arises between family members. The purpose of marriage in Islam includes two



aspects, namely to fulfill sexual instincts and fulfill religious instructions. Imam Gazali's opinion as quoted by Said Agil Husin Al-Munawar divides the purpose of marriage into five categories, namely:

1. to get a child,
2. to channel lust,
3. to entertain the heart,
4. to manage the household, and
5. to carry out social obligations.

In general, nasab has two different places to understand it: first, nasab from the lineage of women and men. Second, nasab from one marriage to giving birth to offspring. Nasab from the lineage of women is usually placed when we want to marry someone who is commonly known as a party, so in this case it is recommended to look at the property, beauty, and religion of the lineage of the woman to be loved.

The second one is caused by the existence of a marriage bond, this kind of thing will give birth to the responsibility of one party with the other and even the child at once, and so on. Therefore Nasab has the meaning of a legality of family relations based on blood ties as one of the consequences of a legitimate marriage. Nasab is a confession for the relationship of a child with his father's lineage, so that the child becomes a family member of the offspring, thus the child has the right to obtain rights as a result of nasab relations such as inheritance rights, marriage, guardianship and so forth.

Rights as a nasab relationship will also result in a prohibition, namely the prohibition to marry, both in a sense that is forever and in whatever circumstances men and women cannot marry, the prohibition in this form is called a mahram. Or it is temporary in the sense that the prohibition applies in certain circumstances and times, one day when a certain situation and time has changed it is no longer a haram, which we usually know as a mahram.

As a result of the advancement of modern science and sophisticated medical and biological technology, IVF technology has also advanced rapidly. So that if IVF technology is handled by people who are less faithful and devoted, it is feared that it can damage human civilization, and can damage religious values, morals, and national culture.

In its development the artificial insemination program is not only to help couples who crave the presence of children, but also based on other motivations, one of which is to get super babies and geniuses. In order to fulfill this purpose, the implementation of artificial insemination no longer uses husband's sperm but by using another person's sperm or donor that can be obtained at the sperm bank. This was practiced by Afton Blake a psychologist from the United States who has succeeded in giving birth to Dorron with the help of a sperm bank. Sumapraja believes that in Indonesia there have been many children resulting from artificial insemination from donor sperm.

In its development, this artificial insemination program has also been practiced by using donor sperm and ovum that are not husband and wife, then the embryo is transplanted into the womb of the wife. This is done if the wife has a disease or because she experiences several events (accidents) so that the quality of her ovum is not good and also because the husband's sperm is very lacking. This type of artificial insemination is also called donor conception.

Artificial insemination with donor sperm and ovum that is not husband and wife is very little to be known by women who receive sperm and ovum, most women do not know who donors sperm and ovum. Sperm banks and clinics are usually only willing to tell the type and standard of sperm and ovum needed. This means that the donor will remain a secret and will not be known to the recipient of the sperm and the ovum.

II. LITERATURE REVIEW

Artificial insemination is a translation of the English term artificial insemination. In Arabic it is called al-talqih al-shina'iy. In Indonesian there are those that call it artificial games, artificial fertilization, or artificial pregnancies. The limits are formulated with various editors. Drh. Djamalin Djanah stated that what is meant by artificial insemination is "The work of inserting semen (sperm or semen) into the womb (uterus) by using a special device with the intention of conception".

In general, it can be taken the notion that artificial insemination is a method or technique to obtain a pregnancy without going through coitus (coitus). The techniques are two ways, namely:

a. In Vitro Fertilization (FIV)



In Vitro Fertilization (In Vitro Fertilization) is an attempt to fertilize outside the body, in a culture dish (petri disk), with an atmosphere that is close to scientific. If successful, when it reaches the morula stage, the results of fertility are transferred to the endometrial uterine cavity. This technique is usually known as "IVF" or fertilization outside the body.

b. Tandur Alih Gamet Intra Tuba (TAGIT)

Tandur Transfer Gamet Itra Tuba (Gamet Intra Fallopian Transfer) is an attempt to bring together seed cells (gametes), namely the ovum and sperm, by spraying the mixture of seed cells using the tubal cannula into the ampulla. This method is not a IVF method because fertilization occurs in the oviduct (fallopian tube) of the mother herself. Abroad, the TAGIT technique is more successful than FIV. The comparison is quite striking namely 40:20. The technique that is derived from both depends on the state of the owner of the sperm and the ovum and the state of the womb.

The problem of artificial insemination is a contemporary problem in Islamic law. But even though it is a contemporary problem, many studies have been carried out on these problems in the form of books, fiqh books, theses and articles. Research in the form of books include: Shaheb Tahar in his work "Artificial Insemination According to Islamic Law", which discusses the law of artificial insemination in the view of Islamic law, both when artificial insemination using sperm from the husband or by using sperm or donor ovum. Shaheb also explained the legal chaos arising from artificial insemination by using donor sperm or ovum which includes: 1) the status of the child as a result of artificial insemination, namely when implementing artificial insemination using donor sperm or ovum the child is an illegitimate child and only given to his mother. 2) the effect on inheritance law is that the child from artificial insemination can only inherit from his mother, and 3) the effect on moral and psychological aspects is that artificial insemination using donor sperm or ovum is not ethical and moral so that it will affect the psyche of both the husband, wife and child .

Salim with his work "Tube Baby: A Review of Legal Aspects", describes the juridical position and inheritance law of the result of IVF. If the child is born through the process of IVF using the husband's sperm, then he is legally a legitimate child who is equated as a biological child, and he has the right to inherit from his parents. Furthermore, if the child is born through the process of IVF using donor sperm, then the child can be a legitimate child through recognition as a child of adultery. The child as a legitimate child if before the use of sperm the wife has obtained permission from her husband, because if without her husband's permission he could deny the validity of the child born to his wife and the position of the child as a child of adultery. In inheritance if the child is a legitimate child, he has the right to inherit from his parents, but if he is a child of adultery, he is only entitled to inherit from his mother. As for if the child is born through a process of IVF with a surrogate mother, the child is an adopted child, that is, the child is a child of a surrogate mother and her husband, while the child is genetically a child of a married couple who orders. The child replaces the position of adopted child, namely he has the right to inherit from his adoptive parents.

The research in the form of a thesis: Scientific work written by Nurudin with the title "Artificial Insemination with Zigot Husband and Wife After Husband Died Judging from Islamic Law ", this scientific paper discusses the law of artificial insemination with zygote husband and wife after the husband dies in terms of aspects of Islamic law. The law of insemination is haram and the status of the child as a child of adultery because the child is the same as a child born from mothers who have no marriages to their deceased husbands, and the child can only inherit from his mother and relatives.

Artificial insemination is fertilization that occurs without going through the intercourse process. When viewed from the origin of sperm, and the ovum and where the embryo is transplanted, artificial insemination can be divided into eight types, namely:

1. Artificial insemination using sperm and ovum from a married couple, then the embryo is transplanted into the womb of the wife.
2. Artificial insemination using sperm and ovum from a married couple, then the embryo is transplanted into the surrogate mother's womb.
3. Artificial insemination using sperm from the husband and the ovum comes from a donor, then the embryo is transplanted into the womb of the wife.



4. Artificial insemination using sperm from the donor, while the ovum comes from the wife then the embryo is transplanted into the womb of the wife.
5. Artificial insemination using sperm from a donor, while the ovum comes from the wife then the embryo is transplanted into the womb of the surrogate mother.
6. Artificial insemination using sperm from the husband while the ovum comes from a donor, then the embryo is transplanted into the womb of the surrogate mother.
7. Artificial insemination using sperm and ovum from the donor, then the embryo is transplanted into the womb of the wife.
8. Artificial insemination using sperm and ovum from the donor, then the embryo is transplanted into the womb of the surrogate mother.

Artificial insemination if done by using sperm and ovum from a married husband who is legally married, and not embryo transferred into the womb of another woman including his own other wife (for polygamous husbands) is permissible in Islamic law. But the ability is deep an emergency, this ability is based on the rules of fiqh.

The scientific work written by Siti Nuranisah with the title "Nasab Mother of Children from Artificial Insemination From Polygamous Husbands (Case Study of Yusuf Al-Qaradawi Fatwa)", emphasizes the discussion of the law of artificial insemination with embryos derived from sperm and ovum fertilization of married couples which is then transferred into another wife's womb (polygamy) and mother nasab for the child. The law of artificial insemination in the view of Yusuf al-Qaradawi is permissible, but this ability when in an emergency, the wife who has the ovum cannot get pregnant because her uterus is weak and it is feared that she will endanger herself and the baby she is pregnant with. Nasab's mother of the child is still a woman who has an ovum, and for women who conceive and give birth only as a mother and stepmother.

Scientific work written by M. Brief Jamaluddin with the title "Unit of IVF Using Donor Sperm According to Islamic Law and Positive Law", examines the status of children produced from IVF using donor sperm according to Islamic law and Positive law. In Islamic law, the status of the child from the results of the IVF is as an illegitimate child because conception is carried out not in a legal marriage. In positive law, the status of the child from the IVF is as a legitimate child but through recognition from the mother's husband who contains the child.

Scientific work written by Siti Chalimah with the title "Status of Children, Results of IVF Process with Donor Ovum's Assistance According to Syaikh Mahmud Syaltut's view ", discussing the law and status of children produced by the process of IVF using the help of an ovum donor in the view of the Shaykh Mahmud Syaltut. In the view of Mahmud Syaltut, the law of the IVF is unlawful, because according to Syaltut the process is considered to be worse and lower than the collection of children. The status of the child is as a child of adultery, because the IVF process results in sex pollution and nasal mixing, and the child is only offered to the woman who gave birth.

Shaheb Tahar in his work "Artificial Insemination According to Islamic Law", which discusses the law of artificial insemination in the view of Islamic law, both when artificial insemination using sperm from the husband or by using donor sperm or ovum. Shaheb also explained the legal chaos arising from artificial insemination by using donor sperm or ovum which includes: 1) the status of the child as a result of artificial insemination, namely when implementing artificial insemination using donor sperm or ovum the child is an illegitimate child and only given to his mother. 2) the effect on inheritance law is that the child resulting from artificial insemination can only inherit from his mother, and 3) the effect on moral and psychological aspects, namely that artificial insemination using donor sperm or ovum is not ethical and moral so that it will affect the psyche both psychological husband, wife and child.

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Some of the results of the research described above, the authors did not find a common theme with what the authors would study. Many studies have been carried out on artificial insemination, but the study only discusses the laws of artificial insemination, child status, child nasab, and inheritance of children resulting from artificial insemination. The study by the author is a new study because there is no specific study of guardianship of children as a result of artificial insemination from donors in the view of Islamic law, especially guardianship of self and property rights.

III. METHODOLOGY

1. Type of Research

This research includes the type of library research (Library Research), which is a research technique that collects data and information with the help of various kinds of material contained in the literature, both in the form of books, magazines, journals and several other writings that have relevance to the discussion of guardianship of children resulting from artificial insemination.

2. Nature of Research

The study in this study is descriptive-analytical in nature, which provides an overview and assessment of legal issues, children's status, and guardianship of children resulting from artificial insemination which are then analyzed from the point of view of Islamic law.

IV. RESULT AND DISCUSSION

A. The results of social analysis that occur in the community against the pros and cons of implementing insemination and IVF in the community:

NO	Pros	Cons
1.	Some people choose to take insemination and IVF to get offspring. There are doubts about the success of these actions	There are doubts about the success of these actions Some people still doubt whether this action is permissible or not (permissible according to Islamic law) If the egg and sperm are not from a legitimate husband and wife, then it is doubtful that the baby will be born
2.	In taking the ovum can not be separated from seeing, feeling even maybe inserting something into a woman's big genitals, then it should be handled by a specialist doctor who is a woman.	In taking the ovum can not be separated from seeing, feeling even maybe inserting something into a woman's big genitals, then it should be handled by a specialist doctor who is a woman.
3.	The cost of action is too expensive	

B. Ijtihada By the Indonesian Ulema Council (MUI) in the Fatwa of Legal Provisions Against the Process of Artificial Insemination / IVF



The role and function and position of the Indonesian Ulema Council (MUI) is to issue fatwas on certain issues relating to religious life. The nature of the task of the Indonesian Ulema Council (MUI) is only to give advice, because the Indonesian Ulema Council (MUI) is not permitted to carry out practical programs. The fatwas are intended to unite the opinions of the Muslims and provide advice to the government about religious law to be considered in preparing certain policies.

The Fatwa Commission is held according to needs or if the Indonesian Ulema Council (MUI) has been consulted by the public or by the government regarding certain issues in Islamic law. Such hearings are usually in addition to the chairperson and members of the commission, also attended by outside invitees consisting of free ulama and secular scientists who have to do with the issues being discussed. To issue a fatwa is usually only needed once a session, but sometimes one fatwa requires up to six sessions; on the contrary, there is also a one-off fatwa in one trial. The fatwas themselves are in the form of statements, announced either by the Fatwa Commission itself or by the Indonesian Ulema Council (MUI). The form and outline of the fatwa are always the same, starting with the statement that the commission has held a hearing on a certain date regarding the questions that have been raised by certain people or agencies. Then proceed with the arguments used as the basis for making the fatwa in question. The arguments differ in length and depth for each fatwa.

The premise for most fatwas begins based on the verses of the Qur'an along with the hadiths concerned and the quotations of fiqh texts in Arabic. The arguments according to *ra'yu* (rational / rational) are also given as supporting information. After that, the actual statement of the fatwa is given and it is stated at the end. However, in some instances there is absolutely no mention of the arguments, whether quoted from the verses of the Qur'an or according to reason, but the decision directly contains a statement of fatwa, in which the arguments may be found in the court records. .

Another way to realize the fatwa is to discuss the matter at the annual conference of the ulamas organized by the Indonesian Ulema Council (MUI). Such a conference, which was attended by a larger number of ulama from the wider environment, raised issues that required the issuance of a fatwa and after several issues could be agreed upon and completed by their arguments, then registered and presented the issues to the Fatwa Commission will then be announced in its usual form. Thus the members of the Fatwa Commission do not have to discuss it anymore because these issues have been negotiated in a larger session.

On January 30, 1986 a detailed guidebook for issuing fatwas was issued by the Indonesian Ulema Council (MUI), which explained that the grounds for issuing fatwas according to the order of levels were (1) the Qur'an; (2) *As-Sunnah*; (3) *Ijma* 'and (4) *Qiyas*. This still has to be followed up by researching the opinions of the existing school priests and the jurists who have conducted in-depth studies of similar problems.

V. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

Based on the results of research and discussion that has been done in the chapter previously, it can be concluded that:

1. The *Ijtahada* process carried out by the Indonesian Ulema Council (MUI) and other religious scholars in the legal provisions on the IVF by looking at the comparison between the positive side (benefit) and negative which will be caused by the process of artificial insemination / test-tube baby.
2. The legal position of children in families born through IVF by using husband's sperm, donor sperm and surrogate mother.
 - a. Artificial insemination / IVF using sperm and ovum cells from Legitimate couples are permitted in Islam and status the position of the child resulting from this kind of insemination is legal according to Islam;
 - b. Artificial insemination / IVF using sperm cells and / or ovum those from donors are forbidden in Islam and their status is as the child is the same as a child born outside a legal marriage.
 - c. Artificial insemination / IVF by using a surrogate mother (entrusted mother) there are 2 (two) opinions. The first opinion states that the legal provisions in this way are permissible in Islam



because the child born is equated with a child who is justified in Islam. While the second opinion, states that the legal provisions of artificial insemination / IVF in this way are haram because sperm and ovum taken illegally from husband and wife to other wives are illegitimate / not justified in Islam. But, in this case the author emphasizes that the process of artificial insemination / IVF by using surrogate mother is forbidden by reason, namely that between a child and his biological mother is not naturally related to maternal relationships and also the intrinsic meaning of a mother is a woman who has a child in a weakened state of increase, and weaning in at least two years (note Surah Luqman verse 14 and Surah Al-Ahqaf verse 15) and his status as a child is illegitimate.

3. Position of children born through IVF by using

husband's sperm, donor sperm and surrogate mother in terms of inheritance.

- a. The position of the child born through the process of IVF using sperm The husband is the child has a legitimate inherited relationship and the same as children born normally (naturally), the position of children born through IVF using donor sperm is the child only inherited from his mother and his mother inherited from the child. The child does not have inheritance rights to deal with the father. Only his mother became the subject of his inheritance for the inheritance which he would later inherit, the inheritance left by his family had no connection at all with the position of the child;
- b. the position of children born through IVF by using surrogate Mother is the relationship inheriting the child remains to his biological parents and there are no rights and obligations inherited to the surrogate mother.

B. Suggestions

1. To all people in general and especially Muslim societies, if you want to use artificial insemination / IVF to obtain offspring, you should know the legal provisions in advance by considering the masalah and harm that might occur if there are offspring obtained through artificial insemination / test-tube baby;
2. This research can be continued by other researchers who want to examine more deeply the provisions of the laws of artificial insemination / IVF with more valid data.

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