

REGULATING SPERM DONATION IN INDONESIAN IVF: A MAQASHID AL-SHARIAH PERSPECTIVE



Cut Zatihulwani¹ , Muhsan Syarifuddin² 

*Correspondence :

Email :
cutzatihulwani@gmail.com

Affiliation:

¹ Sekolah Tinggi Dirasat
Islamiyah Jember,
Indonesia

² Sekolah Tinggi Dirasat
Islamiyah Jember,
Indonesia

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Abstract

The rapid development of assisted reproductive technologies has expanded the application of in vitro fertilization (IVF), including sperm donation, a practice prohibited under Indonesian positive law and Islamic legal principles. Despite these legal prohibitions, limited research has examined whether the existing regulatory framework effectively prevents sperm donation practices involving Indonesian citizens, particularly from the perspective of *Maqāṣid al-Sharī'ah*. This study aims to evaluate the effectiveness of Indonesia's sperm donor regulations in IVF practices through the lens of *Maqāṣid al-Sharī'ah*. The research employs a normative legal method using statutory, conceptual, and case-based approaches by analyzing legislation, Islamic legal opinions, judicial decisions, and relevant empirical evidence. Legal materials were examined through descriptive, comparative, and analytical techniques to assess the relationship between regulatory norms and their implementation. The findings reveal that although sperm donation is expressly prohibited under both Indonesian law and Islamic jurisprudence, regulatory effectiveness cannot be measured solely by the existence of legal restrictions because such practices continue through domestic and cross-border reproductive services involving Indonesian citizens. The study concludes that effective regulation requires not only legal prohibition but also consistent enforcement, institutional supervision, and cross-border legal cooperation to safeguard lineage (*ḥifẓ al-nasl*), religion (*ḥifẓ al-dīn*), human dignity (*ḥifẓ al-'ird*), and public welfare (*maṣlaḥah*). Academically, this study contributes by developing *Maqāṣid al-Sharī'ah* as an evaluative framework for measuring regulatory effectiveness, thereby extending its application beyond normative legal justification to the assessment of reproductive governance and the gap between legal norms and social practice.

Abstrak

Perkembangan pesat teknologi reproduksi berbantu telah memperluas penerapan fertilisasi in vitro (IVF), termasuk donor sperma, yang merupakan praktik terlarang menurut hukum positif Indonesia dan prinsip-prinsip hukum Islam. Meskipun larangan tersebut telah diatur dalam berbagai ketentuan hukum, penelitian yang mengkaji efektivitas kerangka regulasi dalam mencegah praktik donor sperma yang melibatkan warga negara Indonesia, khususnya dari perspektif *Maqāṣid al-Sharī'ah*, masih terbatas. Penelitian ini bertujuan mengevaluasi efektivitas regulasi donor sperma dalam praktik IVF di Indonesia melalui perspektif *Maqāṣid al-Sharī'ah*. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus melalui analisis terhadap peraturan perundang-undangan, pendapat hukum Islam, putusan pengadilan, serta data empiris yang relevan. Bahan hukum dianalisis menggunakan teknik deskriptif, komparatif, dan analitis untuk menilai hubungan antara norma hukum dan implementasinya. Hasil penelitian menunjukkan bahwa meskipun donor sperma secara tegas dilarang menurut hukum positif Indonesia dan fikih Islam, efektivitas regulasi tidak dapat diukur semata-mata berdasarkan keberadaan larangan hukum karena praktik tersebut masih berlangsung melalui layanan reproduksi berbantu, baik di dalam negeri maupun lintas negara, yang melibatkan warga negara



Indonesia. Penelitian ini menyimpulkan bahwa regulasi yang efektif tidak hanya memerlukan larangan hukum, tetapi juga penegakan hukum yang konsisten, pengawasan kelembagaan, dan kerja sama hukum lintas negara untuk melindungi keturunan (*hiḥz al-nasl*), agama (*hiḥz al-dīn*), martabat manusia (*hiḥz al-‘ird*), serta kemaslahatan umum (*maṣlahah*). Secara akademis, penelitian ini berkontribusi dengan mengembangkan *Maqāṣid al-Sharī‘ah* sebagai kerangka evaluatif untuk mengukur efektivitas regulasi, sehingga memperluas penerapannya dari sekadar justifikasi normatif menjadi instrumen untuk mengevaluasi tata kelola reproduksi serta menjelaskan kesenjangan antara norma hukum dan praktik reproduksi yang melibatkan warga negara Indonesia.

INTRDUCTION

Assisted Reproductive Technology (ART), particularly In Vitro Fertilization (IVF), has increasingly been used as a solution for infertility issues in achieving parenthood.¹ Infertility is a fertility disorder that causes the inability to achieve pregnancy after regular sexual activity for a year without contraception.² However, IVF procedures that include third – party participation have generated complex and contentious debates due to religious considerations, socio – economic factors, and ethical concerns.³ In the Indonesian Legal System, IVF practices are regulated by Law number 36 of 2009 on Reproductive Health, which explicitly prohibits the use of sperm donors in IVF procedures.⁴ This prohibition affirms that attempts to achieve pregnancy through assisted reproductive technology can only be carried out using fertilized eggs from a legally married couple, which are then implanted in the wife's uterus.⁵ International Islamic Fiqh Academy (Majma' al – Fiqh al – Islami) and Indonesian Ulama Council (MUI) have issued fatwas related to this matter.⁶ Both institutions concluded that IVF using gametes that do not originate from a legally married couple is haram, because it is deemed analogous to sexual intercourse between a man and a woman outside a legally valid marriage (*zina*).⁷

Previous studies have discussed sperm donation and IVF practices from various legal perspectives. Mahish Faqih Abdullah (2023) explores the issue of lineage (*nasab*) of children resulting from artificial insemination with donor sperm, employing a *maqasid al – shari'ah* framework, with particular focus on the Hanafi and Shafi'i schools of law.⁸ From

¹ Tanzeela Bano et al., "Clinical Outcomes of In Vitro Fertilization (IVF) Versus Intrauterine Insemination (IUI) in Infertile Patients: Toward Evidence – Based Fertility Planning" 17, no. 9 (2025), <https://doi.org/10.7759/cureus.92511>.

² Ivana Erceg Ivkovic et al., "Infertility – a Great Challenge of the Past , Present , and Future" 37, no. Figure 1 (2025): 74 – 79, <https://doi.org/10.5455/msm.2025.37.74 – 79>.

³ Johnson Ekeleba et al., "Awareness and Acceptability of Assisted Reproductive Technology among Non – Medical Tertiary Students in a Low – Resource Setting," *Reproductive Biology and Endocrinology*, 2024, <https://doi.org/10.1186/s12958 – 024 – 01292 – w>.

⁴ James Hokkie Mariso, "ANALISIS YURIDIS TENTANG UPAYA KEHAMILAN DILUAR CARA ALAMIAH (INSEMINASI BUATAN) MENURUT UNDANGUNDANG NOMOR 36 TAHUN 2009 TENTANG KESEHATAN," *Lex Et Societatis* VI, no. 6 (2018): 140 – 51.

⁵ James Hokkie Mariso, "ANALISIS YURIDIS TENTANG UPAYA KEHAMILAN DILUAR CARA ALAMIAH (INSEMINASI BUATAN) MENURUT UNDANGUNDANG NOMOR 36 TAHUN 2009 TENTANG KESEHATAN," *Lex Et Societatis* VI, no. 6 (2018): 140 – 51.

⁶ Ahmad Sofyan Fauzi, "Perspektif Islam Terhadap Program Bayi Tabung: Etika, Hukum, Dan Hak Waris" 10, no. 1 (2024): 151 – 71.

⁷ Fauzi.

⁸ Mahish Faqih Abdullah, "STATUS NASAB ANAK DARI INSEMINASI BUATAN DENGAN DONOR SPERMA PERSPEKTIF MAQASHID SYARIAH MAZHAB HANAFI DAN MAZHAB SYAFI'I," *Institutional Repository UIN Syarif Hidayatullah Jakarta* (2023).

a positive law perspective, Mhd Fakhran Hadyan Simbolon et al. (2025) examined the legal status of children born through sperm donation under the Kitab Undang – Undang Hukum Perdata (KUHPerdata/Indonesian Civil Code) and customary law.⁹ In addition, Lutfiya Hendra Setianing Putri et al. (2025) also discussed the legality of sperm banks and emphasized the prohibition of such practices.¹⁰ Then, Haris Fadilah et al. (2024) conducted a comparative analysis between conventional civil law and Islamic civil law regarding sperm donation.¹¹ Previous studies generally conclude that sperm donation is prohibited under Islamic law and Indonesian legal norms due to its implications for lineage, inheritance, and child legitimacy. Several studies also discuss the legal consequences for children born through donor sperm and the absence of explicit regulatory accommodation within Indonesian reproductive law.

The phenomenon of sperm donation in the Indonesian context is not entirely hypothetical. Evidence of this practice can be found in several empirical sources. One such example is evident in court rulings involving disputes over the legal status of children conceived through sperm donation.¹² Additionally, previous research has shown that some Indonesian couples choose to undergo sperm donation procedures abroad due to domestic regulatory restrictions.¹³ This condition reveals a gap between normative regulation and reproductive practice, raising questions about the effectiveness of legal restrictions in preventing sperm donor arrangements.

This study aims to evaluate the effectiveness of the prohibition on sperm donation in in vitro fertilization (IVF) practices in Indonesia through the perspective of *Maqāṣid al-Sharī'ah*. Although previous studies have applied *Maqāṣid al-Sharī'ah*, they have primarily focused on providing normative justification for the prohibition, particularly concerning the protection of lineage (*ḥifẓ al-nasl*). Existing research has not sufficiently examined whether current legal restrictions effectively address the continuing indications of sperm donor practices involving Indonesian citizens, especially in cross – border reproductive services. This study fills this gap by assessing regulatory effectiveness based on the objectives of *Maqāṣid al-Sharī'ah*, including the protection of religion (*ḥifẓ al-dīn*), lineage (*ḥifẓ al-nasl*), human dignity (*ḥifẓ al-irḍ*), and public welfare (*maṣlahah*). The findings are expected to contribute conceptually by extending *Maqāṣid al-Sharī'ah* from a framework of normative justification to an evaluative framework for measuring legal effectiveness and strengthening future regulatory policies governing IVF practices in Indonesia.

METHODS

This research employs a qualitative method with a descriptive – analytical normative legal method (doctrinal research). To achieve this objective, multiple normative approaches are used in this research, including the statute approach to examining legislation on sperm donation prohibitions in IVF practices; the case approach to analyzing

⁹ Mhd Fakhran Hadyan Simbolon, Tan Kamello, and Utary Maharany, "KEDUDUKAN HUKUM DAN HAK WARIS ANAK HASIL DONOR SPERMA MENURUT HUKUM ISLAM, KUH PERDATA DAN HUKUM ADAT" 6, no. 6 (2025): 1 – 29.

¹⁰ Lutfiya Hendra Setianing Putri and Rosalinda Elsin Latumahina, "Legalitas Bank Sperma (Sperm Bank) Di Indonesia" 3, no. December (2025): 186 – 94.

¹¹ Haris Fadilah, Nur Azmi As'syifa Munirah, and Rahmatul Magfirah, "STUDI KOMPARATIF HUKUM DONOR SPERMA PERSPEKTIF HUKUM PERDATA KONVENSIONAL DAN HUKUM PERDATA ISLAM" 2 (2024): 611 – 20.

¹² Putusan Nomor 126/Pdt.G/2017/PTA.JK (n.d.).

¹³ Linda Bennett and Mulyoto Pangestu, "Regional Reproductive Quests: Cross – Border Reproductive Travel among Infertile Indonesian Couples," *The University of Melbourne*, n.d., <https://doi.org/10.1111/apv.12160>.

relevant court decisions; and the conceptual approach to scrutinizing legal experts' opinions as a basis for argumentation. Data for this research are derived from primary legal materials, including Laws (Undang – Undang), Regulations of the Minister of Health (Peraturan Menteri Kesehatan), and Supreme Court Decisions, as well as secondary legal materials, including legal literature, contemporary fiqh scholars' fatwa books, and scientific journals. The selection of data sources in this study is based on exhaustive sampling techniques, which involved collecting all legal materials relevant to the research focus to minimize various forms of bias. The data was then validated through source triangulation to reinforce the findings and ensure data consistency. This was tested by comparing positive law, fatwas (religious rulings), and court decisions. Data analysis was conducted in stages: description, interpretation, and legal construction, followed by an evaluation of the effectiveness of the prohibition on sperm donation from the perspective of Maqasid al – Shari'ah. As such, this research is expected to contribute to understanding advances in reproductive technology within the framework of Islamic Law.

RESULT AND DISCUSSION

RESULT

Normative Regulation of Sperm Donation in Indonesian Law

The practice of in vitro fertilization (IVF) or test – tube baby programs in general is regulated by various positive laws in Indonesia. One of the main regulations often cited is Law No. 36 of 2009 on Health, specifically Article 127.¹⁴ This article explains that pregnancy achieved through non – natural methods may be carried out only by a legally married couple, provided that fertilization occurs with the couple's sperm and egg, and that the resulting embryo is implanted in the wife's uterus from which the ovum originated.¹⁵ This provision was then reinforced by the Minister of Health Decree No. 72/Menkes/Per/II/1999 on the Implementation of Artificial Reproduction Technology, which was later adopted by the Directorate of Special and Private Hospitals as the Guidelines for IVF Services in Hospitals.¹⁶ One of these guidelines states that IVF procedures may only be performed using the husband and wife's own eggs and sperm.¹⁷

One consequence that may arise from this practice is the birth of a child who biologically has no blood relationship with his father, even though he was born from his biological mother's womb. In the Compilation of Islamic Law (KHI), Article 99 defines a legitimate child as a child born as a result of a valid marriage or a child conceived outside the womb (test – tube baby) and then born to the wife.¹⁸ In the case of a test – tube baby conceived using donor sperm, the legal status of the child is considered illegitimate based on the provisions of the above article. These findings show that Indonesian regulations on IVF are limited to reproductive procedures involving legally married couples and do not explicitly regulate sperm donation practices.

¹⁴ Lavenia T. Mailensun, Engelien R. Palandeng, and Roy Ronny Lembong, "KEDUDUKAN HUKUM BAYI TABUNG DALAM HUKUM POSITIF INDONESIA" IX, no. 6 (2021): 35 – 44.

¹⁵ Mailensun, Palandeng, and Lembong.

¹⁶ Made Dinda, Saskara Putri, and Marzyadiva Camila Mashudi, "Komparasi Praktik Sewa Rahim Di Indonesia Dan Iran Dalam Perspektif Hukum Perdata Dan Hukum Islam" 7, no. 4 (2025): 2424 – 33.

¹⁷ Dinda, Putri, and Mashudi.

¹⁸ Fakultas Hukum, Universitas Halu, and Oleo Kendari, "Bayi Tabung (Fertilisasi In Vitro) Dengan Menggunakan Sperma Donor Dan Rahim Sewaan (Surrogate Mother) Dalam Perspektif Hukum Perdata" 1, no. 2 (2017): 196 – 219.

Islamic Legal Perspectives on Sperm Donation

Majelis al – Majma al – Fiqh al – Islami, in its third conference, examines explicitly various methods of artificial insemination (IVF) held in Amman on October 11 – 16, 1986. They further stated that seven methods of artificial insemination are currently in use, based on expert and physician explanations. Five of the seven existing methods involving a third party who is not the legal husband or wife are absolutely prohibited because they cause confusion regarding lineage and the biological mother's status. Meanwhile, the other two methods, which use the sperm and eggs from a legally married couple, either through internal insemination or external fertilization by implanting the embryo into the wife's womb, are permitted provided that all Sharia requirements are fulfilled.¹⁹

In addition to decisions of the international fiqh institution, contemporary Islamic scholars have also issued fatwas on IVF practices. Al – Lajnah ad – Da'ima lil – Buḥūṭs al – 'Ilmiyya wal – Ifta, which is an official institution under the Senior Scholars Council of Saudi Arabia, explains that the test – tube baby method cannot be justified in terms of Sharia because it has the potential to violate Sharia in its implementation procedures, such as the exposure of the *'awrah* between doctors and *non-mahram* patients.²⁰ Sheikh Muhammad Nashiruddin Al – Albani, in an audio recording of his fatwa Rihlat an – Nur (Rajab 1410 H), emphasized that infertility is not an emergency condition that allows for *rukhsah* (concession), so that IVF is permitted. Instead, this is considered *kufr* (ungratefulness for God's blessings) regarding the medical condition experienced.²¹

Considering that a Muslim must accept every divine decree that Allah has decreed for him, Sheikh Abdullah bin Jibrin stated in his fatwa that this method is not permissible in Islam. He mentioned something similar to Sheikh Al – Albani regarding the risk of exposing the *'awrah* and genitals in IVF practices, which has the potential to violate Sharia law.²² While scholars do not explicitly state the prohibition of sperm donation in IVF, their prohibition of the IVF practice implies that all methods associated with it are considered unlawful. This line of reasoning is consistent with the fiqh principle of *sadd al-dhara'i*, which holds that whatever leads to harm is itself prohibited.²³

According to Tafsir Ibn Kathir and al – Baghawī, this verse states that Allah alone has the power to determine who will be blessed with offspring, in accordance with His will. Allah not only has the power to choose the gender of the child, but also has the power not to grant children at all. *Al-'uqm* (infertility) is not a punishment that He gives to His servants, but rather a destiny that has wisdom behind it.²⁴ The Indonesian Council of Ulama (Majelis Ulama Indonesia, MUI), as the highest national fatwa authority, on June 13, 1979, also unequivocally stated that the use of sperm or egg donors from third – party participation in the process of in vitro fertilization (IVF) is haram. Under this legal

¹⁹ Habib Kholilulloh et al., "HUKUM INSEMINASI BUATAN DAN BAYI TABUNG SERTA IMPLEMENTASINYA" 3 (n.d.): 152 – 77.

²⁰ Musthofa Aini, Hanif Yahya, and Amir Hamzah, *Fatwa-Fatwa Terkini 1*, ed. Darul Haq, Cetakan IV (Jakarta, 2006).

²¹ "رأي الشيخ الألباني بطفل الأنبوب," n.d., <https://www.al-albany.com/audios/content/142136/-السائل>, Diakses pada 3 Oktober 2025.

²² "التلقيح الاصطناعي وأطفال الأنبوب," n.d., <https://cms.ibn-jebreen.com/fatwa/home/section/4181>, Diakses pada 3 Oktober 2025.

²³ Mohammed Gamal Abdelnour, "Artificial Intelligence and the Islamic Theology of Technology: From 'Means' to 'Meanings' and from 'Minds' to 'Hearts,'" *Religions*, 2025, 1 – 15.

²⁴ 'Abd al – Rahman ibn Nasir Al – Sa'di, *Tafsir Al-Sa'di* (Dar al – Salam, 2002). Hlm. 897.

classification, the practice is subject to the prohibition on zina.²⁵ According to Muhammadiyah scholars, the 21st Tarjih Congress Decision in Klaten (1980) stated that IVF using gametes from a valid married couple is permissible if it is in accordance with Islamic law.²⁶ Through its Baḥth al – Masa'il forum, Nahdlatul Ulama generally approves IVF for legally married couples when medically necessary, as long as it does not involve third – party reproductive material. This stance highlights the importance of lineage protection and adherence to traditional fiqh principles in evaluating the permissibility of assisted reproduction.²⁷

Empirical Evidence of Sperm Donation Practices in Indonesian IVF Programs

Based on Soerjono Soekanto's theory, the effectiveness of law is influenced not only by legal substance but also by five factors: (1) legal rules (substance of law), (2) law enforcement (structure of law), (3) facilities and infrastructure, (4) public awareness, and (5) culture (culture of law).²⁸ Therefore, empirical evidence becomes relevant to illustrate how regulatory provisions on sperm donation intersect with actual reproductive practices involving Indonesian citizens.

In the Indonesian context, such empirical indications can be identified through judicial decisions and previous studies documenting reproductive practices involving donor sperm. One concrete example appears in the Jakarta Religious High Court Decision No. 126/Pdt.G/2017/PTA.JK, which dealt with a divorce case and highlighted the issue of the status of children born through in vitro fertilization with the assistance of third – party sperm participation.²⁹ The case remains relevant because it involves Indonesian citizens and was adjudicated within the Indonesian legal system. In one of its legal considerations, the Panel of Judges stated in the decision:

"Considering that, based on the above considerations, although the child named (-) has a birth certificate as the child of the husband and wife of the Appellant and the Respondent, based on the results of the confirmation, qualification, and constitution conducted by the first-level Panel of Judges, that the child is not the legitimate child of the Appellant and the Respondent, but rather the legitimate child of the Respondent whose lineage is only to the Respondent, because the child is the result of in vitro fertilization whose sperm did not come from the Respondent's husband, then the birth certificate does not have binding legal force..."

This is also evidenced by the findings of Bennet & Pangestu (2017), who report that three of fifteen couples in their study explicitly stated that the main motivation for undertaking cross – border reproductive travel was to obtain gametes and surrogacy services in Singapore. Meanwhile, one other couple considered doing so in Thailand. Thus, at least around 26.7% of the fifteen couples undertook reproductive travel abroad because the IVF service system in Indonesia could not fulfill their wishes.³⁰ Although the

²⁵ Fauzi, "Perspektif Islam Terhadap Program Bayi Tabung : Etika, Hukum, Dan Hak Waris."

²⁶ Ahmad Hidir Adib et al., "Artificial Insemination in the Perspective of Indonesian Islamic Community Organizations," *SANTRI: Journal of Pesantren and Fiqh Sosial* 4, no. 1 (2023).

²⁷ Nabilla Khaufiz Zahra, "Bayi Tabung Dalam Perspektif Hukum Islam : Analisis Fikih Terhadap Teknologi Reproduksi Modern," *EL MAQASHID: Journal Syariah and Islamic Studies*, 2025, 269 – 79.

²⁸ Badri Ainul, "Efektivitas Kebijakan Pembatasan Sosial Berskala Besar (PSBB) Di Indonesia Ditinjau Dari Perspektif Hukum," *Jah (Jurnal Analisis Hukum)* 2, no. 2 (2021): 1 – 6.

²⁹ Putusan Nomor 126/Pdt.G/2017/PTA.JK.

³⁰ Bennett and Pangestu, "Regional Reproductive Quests: Cross – Border Reproductive Travel among Infertile Indonesian Couples."

procedures were conducted abroad, the participants identified in these studies were Indonesian citizens. The development of digital technology has also played an important role in facilitating cross – border sperm donation practices. One example is the Rattlestork platform, a global platform that connects sperm donors and recipients in countries where such practices are legally permitted.³¹ The existence of such platforms indicates a regulatory loophole that allows sperm donation practices to continue and may be accessed by Indonesian users.

DISCUSSION

The term *Maqasid al-Shariah* refers to the goals underlying Islamic legal rulings, as derived from the Qur'an and Sunnah. These goals focus on promoting human benefit and fulfilling the law's purpose in human life.³² According to Abu Ishaq al – Shatibi, *maqasid al-Shariah* aims to achieve benefits and prevent harm by safeguarding essential human interests. It functions through two key aspects: *tahsil* (gaining benefit) and *ibqa* (avoiding harm).³³ In the context of sperm donation, the *maqasid* approach emphasizes protecting religion (*hifz al-din*), life (*hifz al-nafs*), dignity (*hifz al-'ird*), and lineage (*hifz al-nasl*). Those principles seek to preserve family legitimacy, genealogical clarity, and compliance with Islamic legal norms.

In contemporary Islamic legal discourse, medical procedures related to reproduction are often allowed when there is a *hajah* (urgent need) or *darurah* (necessity), especially when they concern health, mental well – being, or family stability.³⁴ This perspective reflects the flexibility of *maqasid al-shariah* in addressing human needs while respecting ethical limits. In cases of infertility, the desire to have children is linked to safeguarding well – being and ensuring family continuity. Nonetheless, reproductive treatments remain restricted when they conflict with other *maqasid* goals, which emphasize upholding religious principles and genealogical integrity.

Based on the foregoing explanation, the presence of legislation does not inherently ensure the proper implementation of these provisions. Within the scope of this study, this is evident in the prohibition of sperm donation in IVF practices, which is normatively regulated. However, in reality, transgressions persist. To understand the gap between legal norms and actual practice, it is necessary to elucidate the concept of legal effectiveness as a foundational analytical framework. The term effectiveness is derived from the word "effective," which denotes an entity's capacity to exert influence and produce intended outcomes. Within the context of law, effectiveness is measured by the extent to which legal rules guide individuals to act in accordance with established legal regulations.³⁵

³¹ Philipp Marx, "Bank Sperma Di Indonesia 2025: Fakta Hukum, Etika, Dan Alternatif Aman," 18 Oktober, 2025, <https://rattlestork.org/id-ID/parasite-sperm-bank>. Diakses pada 9 Februari 2026.

³² W Juniarti and S Shafra, "Contextualization of Maqashid Sharia Towards the Use of Sex Toys for Married Couples," *Al Hurriyah: Jurnal Hukum Islam* 8, no. 1 (2023): 1 – 10.

³³ Nor Hadi and Jadzil Baihaqi, "The Motive of Csr Practices in Indonesia:" 8, no. 2 (2020): 327 – 52.

³⁴ Mailiza Fitria, Beni Firdaus, and Rahmiati, "Vasectomy As a Condition for Social Assistance : The Maqasid Al – Shariah Approach and Gender Equality," *Al-Hurriyah : Jurnal Hukum Islam* 10, no. 2 (2025): 214 – 29.

³⁵ Nisa Amalina Adlina, "Efektivitas Penegakan Hukum Perjudian Online Di Indonesia : Mengatasi Hambatan Regulasi Dan Implementasi," *Journal of Contemporary Law Studies*, no. November 2024 (2025): 197 – 208.

To adequately assess the efficacy of the sperm donor prohibition in the context of IVF, a thorough examination of the legal evidence generated by law enforcement is imperative. A significant indicator of the prohibition's effectiveness can be observed in the judge's explicit acknowledgment within the court decision that the child in question was conceived through IVF utilizing sperm that did not originate from the defendant's husband. This finding substantiates the hypothesis that transgressions do indeed occur, even within the formal legal sphere. The panel's ruling is consistent with the findings of research conducted by Bennett and Pangestu, which revealed evidence that several Indonesian married couples had engaged in sperm donation practices within the context of IVF programs. The prohibition on gamete donation and surrogacy has effectively compelled Indonesian couples who do not meet the domestic requirements for obtaining assisted reproductive services to seek alternative options abroad, particularly in Southeast Asian countries that maintain more relaxed and flexible regulatory frameworks.³⁶ This has emerged as the predominant factor motivating married couples who do not meet the domestic requirements to engage in cross – border reproductive travel.

The identification of online platforms that offer sperm donor services also highlights a regulatory challenge in the digital era. Although Indonesian law restricts third – party reproductive procedures, individuals can still access cross – border fertility options via online sources. This condition suggests that legal prohibition alone may not be sufficient without complementary mechanisms of digital oversight, public awareness, and coordination between health regulations and online platform governance. Consequently, regulatory efforts might need to go beyond outright bans and include monitoring or restricting access to platforms that support reproductive practices that are contrary to domestic laws.

The analysis of the law's effectiveness indicates that prohibitions on sperm donation are not yet fully supported by adequate monitoring and enforcement mechanisms. There is a dearth of specific institutional oversight mechanisms for in vitro fertilization (IVF) procedures. This oversight deficiency extends to the realm of community – operating fertility clinics, where the utilization of donor sperm in IVF procedures is not systematically monitored or regulated. Public awareness concerning the legal, ethical, and religious implications of reproductive technology remains comparatively limited.³⁷ Consequently, practices that transgress established norms persist.

This assertion aligns with the view that the efficacy of a legal provision depends on its context. Soerjono Soekanto posits that the efficacy of a legal rule is contingent upon three primary conditions. First, the rule must be consistent with established principles of law. Secondly, it must be accompanied by adequate implementing regulations. Thirdly, the rule must be unambiguous, thereby precluding multiple interpretations and the consequent confusion among the public.³⁸ In the context of the prohibition on sperm donation, certain conditions have not been fully met. Consequently, the implementation of the prohibition has been suboptimal.

The efficacy of legislation prohibiting IVF practices utilizing donor sperm must be reinforced in multiple dimensions, encompassing both the substantive elements of the law

³⁶ Bennett and Pangestu, "Regional Reproductive Quests: Cross – Border Reproductive Travel among Infertile Indonesian Couples."

³⁷ Achmad Kemal Harzif, Victor Prana Andika Santawi, and Stephanie Wijaya, "Discrepancy in Perception of Infertility and Attitude towards Treatment Options : Indonesian Urban and Rural Area," 2019, 1 – 7.

³⁸ Ainul, "Efektivitas Kebijakan Pembatasan Sosial Berskala Besar (PSBB) Di Indonesia Ditinjau Dari Perspektif Hukum."

and the prevailing legal culture of society. The implementation of more explicitly revised regulatory frameworks, the augmentation of the supervisory capacities of agencies within fertility clinics, and the dissemination of legal education to the public at large are pivotal measures to ensure that the established norms possess the necessary degree of effectiveness to regulate behavior in a manner consistent with the underlying objectives of their establishment. In the context of Islamic law, a re-evaluation of this prohibition is imperative in light of the substantive objectives of Sharia. This evaluation should assess the extent to which the prohibition of sperm donation aligns with the *maqasid al-shari'ah*. Islam offers individuals the opportunity to seek treatment for physical ailments, as highlighted in the hadith of the Prophet, peace be upon him, which states:

While infertility is acknowledged as a medical condition that is amenable to treatment, the presence of a disease does not constitute a justification for undertaking a process that is proscribed by Sharia.³⁹ In the pursuit of compliant treatment methodologies, it is imperative to prioritize those that align with the tenets of the Qur'an and Sunnah. This approach is unequivocally preferable to methods expressly proscribed by Sharia. This is because, according to the doctrine, Allah, in His infinite wisdom, does not afflict humankind with disease without also revealing its cure, derived from permissible sources.⁴⁰

As for the practice of sperm donation in IVF, it needs to be analyzed through the *maqasid* framework in this subsection to see the extent of the effectiveness and relevance of the prohibition in the context of Sharia. The *maqasid* approach is necessary in addressing contemporary legal issues, particularly to achieve benefits and prevent harm in accordance with the principle of *jalb al-masalih wa daf'u al-mafasid*.⁴¹ Assisted reproductive technology can indeed be a means for infertile couples to have children, but scholars emphasize that the benefits are individual in nature. Conversely, the harm that accompanies it is fundamental, including the mixing of lineages and the potential for household conflict arising from differences in biological lineage.⁴²

According to Ahmad Raysuni, drawing from the thought of Abu Ishaq al-Shatibi, explains that *hifz al-nafs* goes beyond safeguarding physical life to also include maintaining lawful family structures through valid marriage.⁴³ The use of sperm donation in IVF may conflict with this objective, as many Islamic scholars classify it as prohibited (haram), while Majelis Ulama Indonesia links the practice with zina because it involves third-party reproductive material outside marriage.

From the perspective of *hifz al-nasl*, sperm donation has the potential to cause serious problems, namely that the child born may lose legal certainty about who his biological father is and various rights obtained from his father, including inheritance rights, financial

³⁹ Muzakir Muhammad Amin and Diauddin Ismail, "Treatment Using Haram Substances According to an Islamic Legal Perspective," *JOURNAL of MUJADDID NUSANTARA* 8654 (2025): 38–45.

⁴⁰ Syamsuri Ali, "Pengobatan Alternatif Dalam Perspektif Hukum Islam," *AL-'ADALAH* 12, no. 2 (2015).

⁴¹ Muhammad Harfin Zuhdi and Mohamad Abdun Nasir, "Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1818–39, <https://doi.org/10.22373/sjhk.v8i3.24918>.

⁴² Jelita Erlinda Nasution, "Konsep Inseminasi Buatan Pada Manusia Dalam Perspektif Maqasid al-shari'ah," *Doktrin: Jurnal Dunia Ilmu Hukum Dan Politik* 2, no. 1 (2023): 225–36, <https://doi.org/10.59581/doktrin.v2i1.1949>.

⁴³ Muhammad Bin Roslan and Anwar Bin Osman Zainuri, "The Theory of Hifz Al-Nafs in Islam: An Argumentative Analysis," *Ijqq: International Journal of Al-Quran and Knowledge* 3, no. 1 (2023): 1–14.

support, and others.⁴⁴ Not only can it lead to disputes over the child's status, but it can also cause emotional conflicts in social relationships.⁴⁵ The legality of a marriage is a key requirement for establishing legitimate lineage through the husband and wife's gametes, according to Islamic law.⁴⁶ Findings in court decisions show that the issue of child status does indeed arise in the context of IVF practices, so that the risk of genealogical confusion is not merely a theoretical possibility. In addition to lineage, *maqasid* emphasizes *hifz al-'ird*, rooted in efforts to preserve the sanctity of the institution of marriage and to prevent any mixing of semen.

From the perspective of *hifz al-din*, Islam regulates Muslim worship through legal rulings on medical and reproductive matters.⁴⁷ If this practice is permissible, there is concern that it could erase religious boundaries (*hududullah*) and weaken the community's understanding of family and lineage.⁴⁸ Based on the principle of *sadd al-dhara'i*, this prohibition aims to avoid the potential for adultery that is feared to happen in the process of in vitro fertilization using sperm from a third-party donor.⁴⁹

The use of assisted reproductive technology can also be seen as human interference in the creation of beings, which is not in line with the concept of *tawhid rububiyah*, which is the belief that Allah is the only Creator of Life.⁵⁰ As Allah Ta'ala says in Surah These two verses emphasize that Allah is the Creator who created humans as the best of all creatures, endowed with superiority and nobility compared to other creatures. Therefore, humans are required to respect their own dignity and the dignity of others, regardless of their background.⁵¹ Conversely, the practice of artificial insemination with a donor has the potential to tarnish that nobility.⁵² This situation may be reinforced through the fiqh principle *idha ihtama'a al-halal wa al-haram ghalaba al-haram* (when halal and haram elements coexist, the haram element prevails).⁵³ Although IVF may serve as a permissible medical solution for fertility, the involvement of donor sperm creates concerns regarding lineage, marital legitimacy, and genealogical clarity.

The overall findings show that Indonesian legal rules and Islamic principles consistently restrict the use of sperm donors in IVF, primarily due to concerns about lineage, legitimacy, and family integrity. However, reproductive practices involving sperm donation among Indonesian citizens demonstrate that regulatory challenges may arise in

⁴⁴ Fauzi, "Perspektif Islam Terhadap Program Bayi Tabung : Etika, Hukum, Dan Hak Waris."

⁴⁵ Fauzi.

⁴⁶ Ainur Rofiq and Nur Kamilia, "THE DETERMINATION OF A MARRIAGE GUARDIAN FOR CHILDREN OF MARRIAGE FROM THE PERSPECTIVE OF ISLAMIC LAW AND POSITIVE LAW," *BUSTANUL FUQAH: JURNAL BIDANG HUKUM ISLAM* 6, no. 2 (2025): 324–42, <https://doi.org/10.35719/aladalah.v24i2.77.2>.

⁴⁷ Joseph G Schenker, "Assisted Reproductive Practice : Religious Perspectives" 10, no. 3 (2005): 310–19, [https://doi.org/10.1016/S1472-6483\(10\)61789-0](https://doi.org/10.1016/S1472-6483(10)61789-0).

⁴⁸ Ayman Shabana, "Islamic Normative Principles Underlying Fatwas on Assisted Reproductive Technologies: Al-Azhar Fatwa on Artificial Insemination 1," 2021, 511–33, <https://doi.org/10.1111/muwo.12406>.

⁴⁹ Fauzi, "Perspektif Islam Terhadap Program Bayi Tabung : Etika, Hukum, Dan Hak Waris."

⁵⁰ Nasiri, "The Analysis of Sperm Donor Insemination Based on Perspective of Islamic Criminal Law" 1, no. 1 (2023): 1–11.

⁵¹ Universitas Islam et al., "Islamic Theological Perspectives on Human Rights : Bridging the Gap between Faith and Universal Principles," *Pharos Journal of Theology* 106, no. 2 (2025): 1–20.

⁵² Nasiri, "The Analysis of Sperm Donor Insemination Based on Perspective of Islamic Criminal Law."

⁵³ Frizka Oktaviani, "Analysis of Islamic Law on the Requirements of a Maximum of 10% of Non-Halal Income in the Issuance of the Sharia Securities List in Indonesia," *JIL : Journal of Indonesian Law* 2, no. 1 (2021): 25–47, <https://doi.org/10.18326/jil.v2i1.25-47>.

both domestic and cross-border contexts. Under *Maqasid al-Shariah*, the effectiveness of regulation is understood not only through formal bans but also by its ability to uphold genealogical clarity, safeguard religious values, and adapt to new reproductive practices. The importance of Indonesian regulations lies not only in setting legal limits but also in managing the legal implications that continue to emerge within Indonesia.

CONCLUSION

This study shows that banning sperm donation in IVF is supported by Indonesian laws and Islamic principles, especially in protecting lineage, marriage legitimacy, and family integrity. However, the effectiveness of these regulations cannot be assessed solely through the existence of formal legal restrictions, as empirical findings indicate that reproductive practices involving Indonesian citizens still happen both domestically and across borders. This indicates that regulation effectiveness depends not only on laws but also on accessibility, social factors, and evolving reproductive pathways. From the *Maqashid al-Shariah* perspective, regulation effectiveness can be measured by its ability to protect *hifz al-din*, *hifz al-nasl*, *hifz al-nafs*, and *hifz al-'ird*. In this view, sperm donation is seen not just as medical but as having wider effects on lineage, family wellbeing, dignity, and legal certainty. Thus, *maqashid* offers a broader framework that looks beyond formal legality to the core goals of Islamic law. This research contributes by proposing *maqashid* as a tool to evaluate regulation effectiveness, not just as a basis for prohibition. Practically, the results emphasize the need for clearer regulation of assisted reproductive technology, stronger administrative and digital oversight, and increased public awareness about the legal aspects of sperm donation involving Indonesian citizens.

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The first author contributed fully to the conceptualization of the study, data collection, data analysis and interpretation, manuscript drafting, revision, and final approval of the manuscript. The second author, serving as the academic supervisor, contributed through academic guidance, recommendations of relevant references, and suggestions for improving the content of the manuscript.

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The authors declare that they have no competing financial or non – financial interests related to this study. This research was conducted as part of the author's academic final assignment.

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ADDITIONAL INFORMATION

Correspondence and requests for materials should be addressed to: cutzatihulwani@gmail.com.

ORCID

Cut Zatihulwani  <https://orcid.org/0009-0004-3976-6211>

Muhsan Syarafuddin  <https://orcid.org/0009-0001-8344-2730>

Muhammad Yusuf Siddik  <https://orcid.org/0009-0006-2907-2149>

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