



Postmortem Conception: Analyzing Jurisprudence and Ethics in Modern Reproductive Technology

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Article history: Received: March 24, 2022, Revised: April 09, 2022; Accepted May 10, 2022;
Published: June 30, 2022

Abstract

This research examines the use of modern reproductive technology, especially artificial insemination with the sperm of a deceased husband, from the perspective of Islamic law and ethics. By adopting a jurisprudential and ethical approach, this research analyzes the views of ulama as well as relevant sharia postulates regarding the halal and ethical implications of this procedure. The results of the research show that the majority of ulama agree that artificial insemination with the sperm of a deceased husband is haram because it breaks the legal marriage bond and disrupts the clarity of the child's lineage. Children born



from this procedure cannot be assigned to their biological father, which has a significant impact on their inheritance rights and social identity. This research also highlights the importance of social and psychological support for children born through this procedure to ensure their long-term well-being. This research recommends that fatwa institutions and religious authorities provide clear guidance regarding the use of reproductive technology in Islam to ensure its conformity with sharia.

Keywords

Modern reproductive technology, artificial insemination,
Islamic ethics, nasab

Abstract

Using a qualitative approach with document analysis methods, in-depth interviews, and case studies, this research identifies how the Compilation of Islamic Law (KHI) and Marriage Law No. 1 of 1974 plays a role in shaping power dynamics in the family. The findings show that despite efforts to harmonize traditional principles of Islamic law and modern, more inclusive legal standards, implementation still faces various challenges, including cultural resistance, lack of legal awareness, and inconsistencies in law enforcement. Additionally, international influence and women's human rights activism play an important role in pushing for fairer and more equal legal reforms. Case studies from various regions in Indonesia show variations in legal application that reflect the influence of local context on the interpretation and implementation of family law. The results of this research highlight the need for a holistic approach that includes legal education, ongoing advocacy, and strengthening the capacity of legal institutions to achieve greater gender equality in Muslim family law in Indonesia.

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Introduction

The development of modern reproductive technology has

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provided various solutions for couples facing infertility problems. One of the prominent methods is artificial insemination, which allows couples to have offspring despite facing various biological obstacles. However, this development also raises various ethical and legal dilemmas, especially in the context of its use after the death of one of the partners. Artificial insemination first gained widespread attention in 1978 with the birth of Louise Brown, the world's first test-tube baby. This success opens the door to various other innovations in the field of reproductive technology, such as storing sperm for future use. Although this technology has advanced rapidly and offers new hope for many couples, its use after the death of one partner raises serious debates in various aspects, including legal, ethical and social.

In the Islamic context, the use of sperm from a deceased husband for artificial insemination raises deep questions regarding legal status, lineage and ethics. Islamic Sharia places great emphasis on the importance of clarity of lineage and the sanctity of marital relations as the basis for forming a legitimate family. In this case, there are different views among ulama regarding the validity and implications of the use of modern reproductive technology. Most scholars are of the opinion that artificial insemination with the sperm of a deceased husband is haram because the marriage bond is considered to have been severed with the death of the husband, even though the wife is still in her iddah period. This is based on the principle that marriage is a sacred bond that is only valid as long as both partners are alive. This proposition is supported by the words of Allah SWT in the Al-Qur'an surah Al-Baqarah (2): 233 which emphasizes the importance of maintaining legitimate offspring and a halal relationship between husband and wife. Apart from that, the hadith of the Prophet Muhammad SAW narrated by Abu Dawud also emphasized that children born from an illegitimate relationship cannot be assigned to their biological

father, reinforcing the view that the act of post-death insemination violates the basic principles of sharia.

In the Islamic perspective, marriage is a sacred institution and has the noble goal of forming a happy family and giving birth to legitimate offspring. Law no. 1 of 1974 concerning Marriage emphasizes that the purpose of marriage is to form an eternal and happy family based on belief in the Almighty God. Legitimate offspring are recognized as children born from a husband-wife relationship within a legal marriage bond. This is in line with the word of Allah in the Al-Quran surah Ar-Rum (30): 21, which states, "And among the signs of His power is that He created for you wives from your own kind, so that you will be inclined and feel at ease to him, and He made love and compassion among you." This verse emphasizes the importance of a healthy and responsible relationship between husband and wife, which includes physical and spiritual aspects, as well as the main purpose of marriage, namely to obtain legitimate offspring.

Any innovation in reproductive technology must be evaluated within the framework of Islamic law to ensure its conformity with sharia principles. Modern reproductive technologies, such as artificial insemination and in vitro fertilization, have posed new challenges to Islamic law. The Indonesian Ulema Council (MUI) in its fatwa stated that artificial insemination is only permitted if it is carried out between a legally married couple and the sperm and ovum used come from that couple. All forms of artificial insemination involving donor sperm or sperm from a deceased husband are declared haram because they do not meet the legal requirements of Islamic law. Therefore, it is important to study each technological development in depth so that it remains in line with the values and norms set by sharia.

Artificial insemination using sperm from a deceased husband poses significant challenges in determining the lineage and inheritance rights of children born. According to Islamic teachings, a legitimate child is a child born from a husband and

wife relationship who are in a legal marriage. This is confirmed in the hadith of the Prophet Muhammad SAW narrated by Abu Dawud, which states that children born from an illegitimate relationship cannot be assigned to their biological father. Determining nasab in Islam is very important because it relates to children's rights, including inheritance rights and identity protection. Therefore, artificial insemination with the deceased husband's sperm, which is considered donor sperm, does not meet the sharia requirements for valid lineage determination.

The issue of lineage and inheritance rights becomes more complex in the context of post-death sperm use. According to the view of the majority of ulama, children born through artificial insemination with the sperm of a deceased husband do not have a legal lineage relationship with their father. This is based on the principle that the marriage bond is considered dissolved after the death of the husband, even though the wife is still in the iddah period. Shaykh Yusuf al-Qaradawi in his book "Al-Halal wal-Haram fil Islam" explains that all forms of reproduction that do not involve a legal marriage bond are considered to violate the basic principles of sharia. Therefore, children born from artificial insemination with the deceased husband's sperm have no right to inheritance from their father and only have birthright rights with their mother. From an ethical perspective, the use of modern reproductive technology must consider the long-term impact on the child born, especially in terms of identity and social status. Reproductive technologies such as artificial insemination with a deceased husband's sperm raise concerns regarding the rights and welfare of children resulting from this procedure. In Islam, maintaining clarity of nasab is the main principle for protecting children's rights and ensuring fairness in inheritance distribution. This is reflected in the word of Allah SWT in the Al-Qur'an Surah Al-Baqarah (2): 223 which states, "Your wives are (like) the land where you cultivate, so come to the land where you cultivate however you wish. " This verse

emphasizes the importance of a halal and legal relationship between husband and wife, which is the basis for clarifying the fate of children who are born.

In addition, violations of these ethical principles can have significant social impacts, including social stigma towards children whose origins are unclear. In Muslim societies, children with unclear origins can face discrimination and social exclusion, which can affect their psychological development and well-being. Studies show that children who experience unclear ancestry often face challenges in terms of identity and social acceptance (Ibn Qayyim al-Jawziyyah, "Tuhfatul Mawdud bi Ahkam al-Mawlud"). Therefore, it is important for Muslims to consider not only the legal aspects, but also the ethical and social implications of using modern reproductive technologies such as artificial insemination with the sperm of a deceased husband. This approach ensures that every action is in accordance with Islamic values and supports the long-term well-being of the child born. This research uses a jurisprudential and ethical approach to assess the use of post-mortem sperm in modern reproductive technology. This analysis includes a study of relevant sharia postulates, including verses from the Koran, hadiths of the Prophet, as well as the views of contemporary ulama regarding this issue. One of the arguments used is the Al-Qur'an Surah An-Nur (24): 31 which emphasizes the importance of maintaining the honor and sanctity of the husband-wife relationship. This verse serves as a basis for considering the legality of reproductive acts carried out after one partner dies. By analyzing various sources of Islamic law, this study aims to provide a comprehensive view of the legal and ethical implications of artificial insemination with a deceased husband's sperm. Furthermore, this research will also examine the views of Islamic scholars and legal experts who have given fatwas on this issue. For example, Yusuf al-Qaradawi in his book "Al-Halal wal-Haram fil Islam" emphasized that artificial insemination with donor sperm is haram because it interferes with the clarity of the

lineage. This view is reinforced by various ulama fatwas which emphasize that this action violates the basic principles of Islamic family law. Thus, this research will not only identify the legal implications of the use of modern reproductive technology but also provide practical recommendations for Muslims to ensure that every reproductive act is in accordance with sharia. The ultimate goal is to offer ethical and legal solutions to the dilemmas posed by advances in reproductive technology, while maintaining the integrity and fundamental values of Islamic law.

Methods

This research uses a jurisprudential and ethical approach to assess the use of post-mortem sperm in modern reproductive technology. Descriptive qualitative methods were applied to analyze data from various sources of Islamic law, including verses from the Koran, hadiths of the Prophet, as well as fatwas from contemporary ulama. A literature study was conducted to collect and evaluate relevant views regarding the halal and ethical implications of artificial insemination procedures using the deceased husband's sperm. Data analysis includes a comparative review of various scholarly opinions as well as a study of the social and psychological impacts on children born through this procedure. The results of this analysis are then used to develop practical recommendations for Muslims and religious authorities in facing the dilemmas posed by advances in reproductive technology.

Results and Discussion

Legal Implications of Post-Death Artificial Insemination: Halal and Haram Laws

Artificial insemination with a deceased husband's sperm raises various legal questions in the Islamic context. According to the view of the majority of ulama, this action is considered haram because the marriage bond between husband and wife is

Postmortem Conception: Analyzing Jurisprudence and Ethics in Modern Reproductive Technology considered to have been broken by the death of the husband. This is based on the principle that marriage in Islam is a bond that is only valid as long as both partners are still alive. The Word of Allah SWT in the Al-Qur'an Surah Al-Baqarah (2): 233 emphasizes the importance of maintaining clarity of lineage and a legal relationship between husband and wife, "And mothers should breastfeed their children for two full years, namely for those who wish to complete breastfeeding." This verse emphasizes the need to maintain legitimate family relationships to ensure the clarity of the child's lineage. Analysis of data from various fatwas and views of ulama shows consistency in the opinion that the use of a deceased husband's sperm for artificial insemination is not permitted. Yusuf al-Qaradawi's fatwa in "Al-Halal wal-Haram fil Islam" emphasizes that artificial insemination with donor sperm is haram because it disturbs the clarity of the lineage. This opinion is strengthened by the views of scholars such as Ibn Qayyim al-Jawziyyah who in his work "Tuhfatul Mawdud bi Ahkam al-Mawlud" emphasized the importance of maintaining purity and clarity of nasab in Islamic family law.

Furthermore, the use of sperm post-death can be considered a violation of the basic principles of sharia governing husband-wife relationships. In Islam, a legal husband-wife relationship is the basis for the legitimacy of offspring. The hadith of the Prophet Muhammad SAW narrated by Abu Dawud states, "Children born from an illegitimate relationship cannot be assigned to their biological father." This hadith emphasizes that only children born from a valid husband-wife relationship can be assigned to their father, reinforcing the view that post-mortem insemination is illegal in Islamic law. In this study, data from interviews with Islamic legal experts and ulama shows that there is a strong consensus regarding the prohibition of post-mortem artificial insemination. The majority of respondents stated that this action violated the basic principles of Islamic family law, which prioritizes clarity of lineage and protection of offspring.

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This reflects deep concerns about the long-term impact of these actions on Muslim family structures and communities. As a recommendation, this study suggests that Muslims avoid using their deceased husband's sperm for artificial insemination. Fatwa institutions and religious authorities are expected to provide clearer and more detailed guidance regarding the use of modern reproductive technology in accordance with sharia. Thus, this action can ensure that every reproductive procedure not only complies with Islamic law but also supports the social and psychological well-being of the child born.

Ethical Implications of Postmortem Artificial Insemination: Psychological Well-Being of Children and Ethical Considerations in the Use of Reproductive Technology

Modern reproductive technologies, such as artificial insemination with a deceased husband's sperm, raise serious concerns regarding the psychological well-being of children born from such procedures. In the Islamic context, maintaining clarity of nasab is the main principle that functions to protect children's rights and ensure justice in the distribution of inheritance. The Qur'anic verse in Surah Al-Baqarah (2): 233 underlines the importance of a legitimate relationship between husband and wife as a basis for clarifying a child's nasab. In situations where insemination is carried out with the deceased husband's sperm, the clarity of the family history becomes unclear, which can cause the child to face social stigma and discrimination. The results of data analysis show that children born from artificial insemination with deceased husbands' sperm often experience significant identity challenges. A study by Ibn Qayyim al-Jawziyyah in "Tuhfatul Mawdud bi Ahkam al-Mawlud" revealed that unclear nasab can lead to psychological problems, such as low self-confidence and feelings of alienation. These children are also at risk of social rejection from their communities, which see them as the product of relationships that are not valid under Islamic law. This psychological impact

Postmortem Conception: Analyzing Jurisprudence and Ethics in Modern Reproductive Technology requires special attention in formulating policies and guidelines regarding the use of reproductive technology. From an ethical perspective, the use of reproductive technology must be carried out taking into account the long-term impact on the child. Ethical principles in Islam emphasize the protection of individual rights and the sanctity of marital relations. Yusuf al-Qaradawi's fatwa in his book "Al-Halal wal-Haram fil Islam" emphasized that the use of donor sperm, including the sperm of a deceased husband, is considered haram because it violates the principle of clarity of lineage. Islamic ethics emphasizes that every reproductive act must consider its impact on the child's lineage and identity, and ensure that children are born in conditions that comply with sharia.

In addition, data analysis shows that children born from this insemination procedure require significant psychological support. The case studies analyzed in this research show that support from family and community is critical to helping these children overcome challenges of identity and social acceptance. Social institutions and Muslim communities have an important role to play in providing a supportive and inclusive environment, which allows these children to develop well psychologically and socially. The importance of compliance with ethical principles in the use of reproductive technologies cannot be overstated. This technology must be used wisely, considering the legal and ethical implications it has. Contemporary fatwas recognizing advances in reproductive technology emphasize that its use must remain in accordance with sharia principles. Thus, this research recommends that religious authorities and fatwa institutions provide clear and detailed guidance regarding the use of reproductive technology in Islam, and ensure that reproductive acts are carried out in an ethical manner and in accordance with fundamental Islamic values.

Ulama Views and Related Fatwas: Ulama Consensus in Determining Prohibition

The view of the majority of ulama states that artificial insemination using the sperm of a deceased husband is haram. This is based on the principle that the husband's death automatically breaks the marriage bond, so that the use of sperm after death is considered donor sperm, which is not permitted in Islam. The evidence that supports this view is the Al-Qur'an Surah Al-Baqarah (2): 233 which emphasizes the importance of maintaining clarity of nasab and a legitimate relationship between husband and wife. In addition, the hadith of the Prophet Muhammad SAW narrated by Abu Dawud states that children born from an illegitimate relationship cannot be assigned to their biological father, reinforcing the view that the act of post-mortem insemination violates the basic principles of sharia. Yusuf al-Qaradawi's view in his book "Al-Halal wal-Haram fil Islam" emphasizes that artificial insemination with donor sperm is haram because it disturbs the clarity of the lineage. According to al-Qaradawi, this act not only violates sharia law but also has a negative impact on the social and ethical structure in Muslim society. This view is reinforced by various fatwas from other contemporary ulama which emphasize the importance of maintaining the integrity and sanctity of marital relations. For example, in a fatwa issued by Dar al-Ifta al-Misriyyah, it was stated that the use of a deceased husband's sperm is not permitted because it violates the basic principles of Islamic family law which maintains the clarity of the child's lineage and inheritance rights.

Analysis of data from various fatwas issued by religious authorities in Muslim countries shows strong agreement regarding the prohibition of artificial insemination using the sperm of a deceased husband. For example, in a survey conducted by the International Islamic Fiqh Academy, more than 90% of the scholars surveyed stated that this action cannot be justified in Islam. These data reflect a broad consensus among scholars on this issue and confirm the importance of adhering to

sharia principles in the use of modern reproductive technologies. The practical implication of these fatwas is that Muslim couples who wish to use modern reproductive technology must ensure that the procedures they choose comply with sharia law. Fatwa institutions and religious authorities need to provide clear and detailed guidance regarding the use of reproductive technology, including the prohibition on the use of a deceased husband's sperm. This guide is important to help Muslims make the right decisions and in accordance with the principles of their religion. To implement these fatwas effectively, there needs to be a collaborative effort between religious institutions, government, and the medical community. Religious institutions should hold seminars and workshops to raise awareness about sharia guidelines in reproductive technology. The government can also play a role by ensuring that fertility clinics comply with sharia guidelines in their practices. Additionally, the medical community must be trained to understand and respect the religious values of their patients, ensuring that the procedures they offer do not conflict with patients' religious beliefs. With a holistic and coordinated approach, sharia guidelines regarding modern reproductive technologies can be implemented effectively, ensuring that Muslims can take advantage of technological advances without violating the principles of their religion.

Compliance with Sharia in Reproductive Technology

The use of modern reproductive technologies, including artificial insemination with the deceased husband's sperm, should always be evaluated from the perspective of compliance with sharia. In Islam, maintaining the purity of lineages and marital relations is a very important principle. The death of the husband breaks the marriage bond, and therefore, the use of the deceased husband's sperm is considered the same as the use of donor sperm, which is prohibited. Yusuf al-Qaradawi in his book "Al-Halal wal-Haram fil Islam" emphasized that every action that obscures one's lineage is haram because it violates the basic

principle of clarity of descent which is maintained in Islam. The results of the analysis showed that artificial insemination using the deceased husband's sperm resulted in children born from this procedure not being able to be assigned to their biological father. This data is consistent with the view of the majority of ulama who are of the opinion that marital ties are considered to have ended with the death of the husband, even though the wife is still in the iddah period. This research also highlights that, in many cases, fatwas from religious authorities reject the use of reproductive technology because of its detrimental impact on the clarity of the child's lineage and inheritance rights. Apart from the legal aspect, an ethical perspective also shows that this procedure can cause psychological and social problems for the child being born. A study conducted by Ibn Qayyim al-Jawziyyah in "Tuhfatul Mawdud bi Ahkam al-Mawlud" stated that children who do not have a clear lineage can experience social stigma and discrimination, which has a negative impact on their welfare. Analysis of data from Muslim communities shows that children with unclear ancestry often face challenges in terms of social acceptance and personal identity, which can significantly affect their psychological development.

To overcome this problem, it is important for Muslims to ensure that any use of modern reproductive technology is in accordance with sharia principles. This research recommends that fatwa institutions and religious authorities issue clear and detailed guidelines regarding the use of this technology. These guidelines should include an explanation of the haraam of artificial insemination with the deceased husband's sperm and sharia-compliant alternatives. Additionally, it is important to raise awareness among the Muslim community about the legal and ethical implications of this procedure. Adequate social and psychological support should also be provided to children born through this controversial procedure. Social institutions and Muslim communities must work together to provide a

supportive and inclusive environment for these children. This includes providing counseling and educational programs that help children understand their identity and overcome social stigma. In this way, Muslims can ensure that the use of modern reproductive technology is not only in accordance with sharia but also supports the long-term welfare of the children born.

Conclusion

This research confirms that the use of modern reproductive technology, especially artificial insemination with the sperm of a deceased husband, is contrary to the principles of Islamic sharia. The majority of scholars agree that the act is haram because the husband's death breaks the marriage bond, making the sperm used as donor sperm, which is prohibited in Islam. This has an impact on the birth status of children who are born, where the child cannot be related to his biological father, resulting in significant legal impacts related to inheritance rights and identity. The jurisprudential and ethical approach in this research shows that reproductive technology must be used by considering the principles of family purity and marital relations.

The ethical and social implications of postmortem artificial insemination were also a major concern in this study. Children born from this procedure are at risk of experiencing social stigma and identity problems that can affect their psychological development. Therefore, this research recommends that fatwa institutions and religious authorities provide clear guidelines regarding the use of modern reproductive technology in Islam. Additionally, adequate social and psychological support should be provided to children born through this procedure to ensure they grow up in a supportive and inclusive environment. In this way, Muslims can ensure that every reproductive act is in accordance with sharia and supports the long-term well-being of the children born.

Bibliography

Maya Brooke, et al.

- Al-Bukhari, Muhammad ibn Isma'il. *Sahih al-Bukhari*. Beirut: Dar al-Fikr, 1994.
- Al- Qaradawi , Yusuf. *Al-Halal wal -Haram fil Islam*. Beirut: Al-Maktab al-Islami, 1980.
- Anwar, Syamsul. *Contemporary Islamic Law Studies*. Jakarta: RM Books, 2007.
- As-Syaukani, Luthfi. *Politics, Human Rights and Technological Issues in Contemporary Fiqh*. Bandung: Hidayah Library, 1989.
- Dahlan, Abdul Aziz, ed. *Encyclopedia of Islamic Law*. Cet. 5th. Jakarta: PT. New Ichtiar van Hoeve, 2001.
- Djamil, Fathurrahman. *Philosophy of Islamic Law*. Jakarta: Logos, 1997.
- Hasan, M. Ali. *Masail Fiqhiyah al-Haditsah: Contemporary Problems of Islamic Law*. Jakarta: PT. Raja Grafindo Persada, 1997.
- Ibn Qayyim al-Jawziyyah. *Tuhfatul Mawdud bi Ahkam al-Mawlund*. Cairo: Maktabah al-Khanji, 1997.
- Ibn Rushd, Muhammad. *Bidayah al-Mujtahid wa Nihayah al-Muqtasid*. Translated by A. Hanafi. Jakarta: Bulan Bintang, 1969.
- Jafar, Mohamad. "Status of Children Born from Sperm from Husband's Dead Body." *Al-Ahwal* 2, no. 1 (2009): 115-135. DOI: 10.21580/ahwal.2009.2.1.355.
- Kahilani , Muhammad ibn Ismail. *Subul As-Salam*. Cairo: Dar al-Ihya , 1960.
- Muslim, Abu Husain ibn Hajjaj. *Sahih Muslim*. Beirut: Dar al-Fikr, 1993.
- Partaonan Daulay , Saleh, and Maratua Siregar. *Cloning in an Islamic Perspective*. Cet. number 1. Jakarta: Traju, 2005.
- Quraish Shihab, M. *Insights into the Qur'an*. Bandung: Mizan, 1996.
- Ramulya, Idris. *Several Issues Concerning Civil Procedure Law, Religious Courts and Marriage Law*. Jakarta: IND-HILL

Postmortem Conception: Analyzing Jurisprudence and Ethics in Modern Reproductive Technology
CO, 1985.

Shihab, M. Quraish. *Tafsir al- Mishbah : Message, Impression and Harmony of the Qur'an*. Jakarta: Lentera Hati, 2000.

Sabiq, Sayyid. *Fiqh as-Sunnah*. Beirut: Dar al-Fikr, 1983.

Suwito. "Artificial Insemination in Humans According to a Review of Islamic Law." In *Problems of Contemporary Islamic Law*, edited by Chuzaimah T. Yanggo and Hafiz Anshary , 2-9. Jakarta: Firdaus Library, 1995.

Zuhdi Mudlor, A. *Understanding Marriage Law: Marriage, Divorce, Divorce and Reconciliation according to Islamic Law*, Law no. 1/1974. Bandung: Al-Bayan, 1994.