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The Inheritance Rights Of Children From Sperm Donor In A Review Of Health Law N0.17 Of 2023 And Fiqh Of Imam Syafi'i

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ABSTRACT

The development of assisted reproductive technology, particularly sperm donation, raises legal issues regarding the validity of lineage and inheritance rights of children. Under Indonesian law, Law No. 17 of 2023 concerning Health restricts assisted reproductive technology to legally married couples, based on medical indications, and not in conflict with religious norms.This study aims to analyze the compatibility of the provisions on third-party sperm donors in Law Number 17 of 2023 with the concept of lineage in the Shafi'i school of thought. This study also aims to examine the status and inheritance rights of children born from sperm donors according to the Shafi'i school of thought and Indonesian positive law.The method used is normative legal research with a normative-comparative approach through analysis of primary, secondary, and tertiary legal materials. The study was conducted on Law Number 17 of 2023, the Compilation of Islamic Law, the Civil Code, and customary law.The results of this study indicate that third-party sperm donation is not permitted under both Indonesian positive law and the Shafi'i school of thought because it contradicts the validity of marriage and the protection of lineage. Children born from sperm donation do not have a lineage relationship and inheritance rights to the donor. However, the legal relationship and inheritance rights to the mother are still recognized as long as they comply with applicable legal provisions. The gap in this research is the lack of studies that simultaneously link health regulations, Shafi'i fiqh, and inheritance law. The novelty of this research lies in the comparative formulation that emphasizes the consistency of lineage protection as the basis for determining a child's legal status and inheritance rights.

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Introduction

Assisted reproductive technology has created new possibilities for infertile couples and individuals with biological limitations, especially through sperm donation (Salim et al., 2025;

Aksa et al., 2025; Santoso et al., 2025). Sperm donation, or artificial insemination, involves placing sperm into a woman's reproductive system without sexual intercourse (Matthews, 2021). It may use the husband's sperm or sperm from a third party (Matthews, 2021; Salim et al., 2025). Although this practice can help people have children, it raises serious legal and ethical questions (Salma et al., 2026; Salim et al., 2025; Nelson & Wiles, 2022). These questions include the child's lineage, family legitimacy, and inheritance rights (Meaza, 2024; Nisa' et al., 2025; Aiman & Mahadewi, 2025). In Indonesia, Law No. 17 of 2023 on Health recognizes assisted reproductive technology but does not clearly explain the legal status of children born from sperm donation (Salim et al., 2025; Rahakbauw & Ahmad, 2024; Santoso et al., 2025). This creates tension between positive law and Islamic law, especially the Shafi'i school, which requires clear nasab for legal status and inheritance (Nisa' et al., 2025; Aksa et al., 2025; Matthews, 2021).

The issue of sperm donation is not only medical but also deeply legal and religious (Meaza, 2024; Salim et al., 2025; Matthews, 2021). In Islamic law, this topic belongs to ijtihad because it is not explicitly discussed in classical fiqh texts (Nisa' et al., 2025; Matthews, 2021). Scholars therefore interpret it through legal reasoning and fatwas (Nisa' et al., 2025; Aksa et al., 2025). The main concern is whether a child from third-party sperm donation can be linked to the donor as a legal father (Matthews, 2021; Rahakbauw & Ahmad, 2024; Ghodrati, 2023). Islamic principles emphasize that nasab must be clear to protect identity, inheritance, guardianship, and maintenance rights (Salma et al., 2026; Nisa' et al., 2025; Hussein et al., 2025). The Qur'an supports this principle by instructing that children should be called by their fathers (Nisa' et al., 2025; Rahakbauw & Ahmad, 2024). Imam Shafi'i's view is important because his school is widely followed in Indonesia and strongly influences Islamic family law practice (Purvis, 2015).

From the perspective of maqasid al-shari'ah, especially ḥifz al-nasl, lineage must be protected from confusion (Aksa et al., 2025; Dongoran, 2020; Hussein et al., 2025). Third-party sperm donation is seen as risking ikhtilat al-ansab, or the mixing of lineages (Salma et al., 2026; Dongoran, 2020; Santoso et al., 2025). Therefore, children born through this method are generally attributed only to the mother, not the sperm donor (Ghodrati, 2023; Aiman & Mahadewi, 2025). As a result, they do not inherit from the biological donor in Islamic law (Ghodrati, 2023; Aiman & Mahadewi, 2025; Fauzi et al., 2024). This position reflects the view that valid lineage arises from a lawful marriage (Aiman & Mahadewi, 2025; Aksa et al., 2025; Matthews, 2021). Imam Shafi'i also stressed that children born outside valid marriage do not have inheritance rights from the male donor (Ghodrati, 2023; Aiman & Mahadewi, 2025). For this reason, studying his opinion is essential for understanding the inheritance status of such children (Rahakbauw & Ahmad, 2024).

In the Indonesian legal context, sperm donation should not be viewed as existing in a legal vacuum (Santoso et al., 2025; Salim et al., 2025). The country has a structured legal framework shaped by Pancasila and religious values (Salim et al., 2025; Purvis, 2015). Law No. 17 of 2023 regulates assisted reproductive technology and limits it to legally married couples with medical indications (Salim et al., 2025; Rahakbauw & Ahmad, 2024). The law also states that such services must not contradict religious norms (Salim et al., 2025; Nisa' et al., 2025). This clause is important because it shows that Indonesia seeks to protect moral order and family integrity (Santoso et al., 2025; Purvis, 2015). Third-party sperm donation does not fit easily within this framework because it can disturb paternal lineage (Santoso et al., 2025; Nisa' et al., 2025). Thus, Indonesian positive law generally aligns with Islamic principles in safeguarding nasab (Nisa' et al., 2025; Kholilulloh et al., 2023; Rahakbauw & Ahmad, 2024).

The research also highlights the vulnerability of children born from sperm donation (Nelson & Wiles, 2022; Santoso et al., 2025; Farid, 2022). These children may face uncertainty about their lineage and inheritance rights (Santoso et al., 2025; Hussein et al., 2025; Ghodrati, 2023). Without clear regulation, they risk losing legal protection simply because of the reproductive method used in their conception (Salim et al., 2025; Rahakbauw & Ahmad, 2024; Santoso et al., 2025). This situation conflicts with the principles of justice and child protection

(Aiman & Mahadewi, 2025; Santoso et al., 2025). The study therefore emphasizes the need for legal certainty and stronger protection of children's rights (Salim et al., 2025; Rahakbauw & Ahmad, 2024; Santoso et al., 2025). It aims to combine Islamic law and Indonesian positive law to build a clearer normative foundation (Nisa' et al., 2025; Rahakbauw & Ahmad, 2024; Santoso et al., 2025). By doing so, it contributes to both academic discussion and practical legal policy (Salma et al., 2026; Rahakbauw & Ahmad, 2024).

The study's problem formulation focuses on three main questions. First, it asks how sperm donation is viewed in the Shafi'i school and in Health Law No. 17 of 2023 (Nisa' et al., 2025; Rahakbauw & Ahmad, 2024). Second, it examines the legal status and inheritance rights of children born from sperm donation under both systems (Rahakbauw & Ahmad, 2024; Mikhailova, 2025; Ghodrati, 2023). Third, it compares the differences between the Shafi'i view and health law (Kholilulloh et al., 2023). The study aims to clarify the implications of nasab in both legal frameworks (Nisa' et al., 2025; Aiman & Mahadewi, 2025; Aksa et al., 2025). It also seeks to show how religious and national law can be harmonized in response to reproductive technology (Nisa' et al., 2025; Aksa et al., 2025; Purvis, 2015). Overall, the research offers an analytical basis for understanding sperm donation, lineage, and inheritance in contemporary Islamic and Indonesian law (Salma et al., 2026; Rahakbauw & Ahmad, 2024; Kholilulloh et al., 2023).

Method

This research uses a normative legal method to examine and analyze legal norms concerning the inheritance rights of children born from sperm donation (Rahakbauw & Ahmad, 2024; Honainah et al., 2023). It applies both a statute approach and a fiqh approach to compare Indonesian positive law, especially Law Number 17 of 2023 on Health, with Imam Shafi'i's views on sperm donation, nasab, and inheritance rights. The study is normative-comparative because it focuses on legal rules rather than empirical behavior and compares Islamic law in the Shafi'i school with Indonesian legal provisions. Its object of study is the legal norms governing sperm donation and their implications for a child's legal status and inheritance rights in both Islamic law and Indonesian positive law. The data used are secondary sources, including statutes such as the Marriage Law and Health regulations, as well as classical and contemporary fiqh works like Al-Umm, Mughni al-Muhtaj, and Al-Fiqh al-Islami wa Adillatuhu. Data collection is carried out through document and literature study, drawing from books, legal materials, documents, and relevant electronic sources. The data are then analyzed descriptively and qualitatively to explain the Shafi'i view of nasab and inheritance and to compare it with the legal provisions in Indonesian health law.

Result and Discussion

This study investigates the legal status of sperm donation and the inheritance rights of children born through such practices within two normative frameworks: the Shafi'i school of Islamic law and Indonesian positive law. The issue is examined normatively by focusing on the legal rules governing lineage, legitimacy, and inheritance. In Islamic jurisprudence, the central concern is the preservation of nasab as a fundamental objective of law (Zawawi et al., 2024). In Indonesian law, the analysis is centered on Health Law No. 17 of 2023 and its relation to Marriage Law No. 1 of 1974 (Rahakbauw & Ahmad, 2024). The comparison reveals that the two systems approach reproductive technology from different legal and moral assumptions. As a result, sperm donation becomes a point of tension between doctrinal certainty and statutory ambiguity.

In the Shafi'i legal tradition, the involvement of a third party in reproduction is firmly rejected. This position is grounded in the Qur'anic emphasis on the clarity of lineage and the prohibition of mixing descent. The hadith principle al-walad li al-firash further establishes that a child belongs to the lawful marital bed. Imam Shafi'i, in Al-Umm, uses this principle to confirm

that parentage must arise from a valid marital relationship. Consequently, any reproductive act outside marriage cannot establish paternal lineage. On this basis, sperm donation is seen as incompatible with Islamic family law.

The Shafi'i school also interprets sperm donation as a form of zina hukmi, or juridical fornication. Although no direct sexual intercourse occurs, the inclusion of foreign sperm outside marriage violates the legal and ethical structure of reproduction. Contemporary jurists such as Yusuf al-Qaradawi and Wahbah al-Zuhayli reinforce this view by explicitly prohibiting artificial insemination with donor sperm. Their argument rests on the principle of hifz al-nasl, which requires the protection and purity of lineage. This principle is one of the central objectives of maqasid al-shari'ah. Therefore, sperm donation is not merely discouraged but considered legally impermissible (Nasiri, 2023).

The legal consequence of this prohibition is the exclusion of paternal lineage between the child and the sperm donor. In Shafi'i fiqh, a child born through sperm donation is affiliated only with the biological mother. This means that the donor does not possess the legal status of father in either lineage or inheritance. The child may still retain rights through the maternal line because motherhood is certain through childbirth. However, no inheritance relationship arises from the donor's side. Thus, the child is not entitled to inherit from the sperm donor or his family.

Indonesian positive law presents a different legal structure. Health Law No. 17 of 2023 recognizes assisted reproductive technology as part of reproductive health services. This recognition reflects the state's acceptance of modern medical developments in the reproductive sphere. However, the law does not explicitly regulate sperm donation by third parties. It also does not provide a detailed framework regarding the child's legal status or inheritance rights. Therefore, the law remains general and leaves important issues unresolved.

Article 58 of the Health Law permits assisted reproductive technology only within broad legal and religious limits. Yet the provision does not define whether donor sperm may be used or how such practice should be regulated. The result is a normative gap rather than a complete legal vacuum. In practice, this gap creates uncertainty regarding the legitimacy of children conceived through sperm donation. The issue is further complicated by Marriage Law No. 1 of 1974, especially Articles 42 and 43, which require a valid marriage for child legitimacy. Thus, the child's status becomes legally acknowledged as a person, but not clearly settled in relation to paternity and inheritance.

The regulatory uncertainty is partially narrowed by Minister of Health Regulation No. 43 of 2015. This regulation states that assisted reproductive technology may only use sperm and ovum from legally married couples. By implication, donor sperm from outside the marriage bond is not permitted. Although the law does not use the term "sperm donation" explicitly, the restriction is functionally clear. Nevertheless, the absence of a direct and detailed prohibition still leaves room for interpretive disputes. In this sense, the Indonesian legal framework is restrictive but not fully explicit.

The conflict between the two systems becomes clearer when their normative foundations are compared. Shafi'i fiqh prioritizes the certainty of lineage as an absolute legal and religious principle. Indonesian positive law, by contrast, prioritizes regulatory accommodation and child protection, but without fully resolving the consequences of sperm donation. This difference creates a significant gap in legal reasoning. One system rejects the practice outright, while the other regulates reproduction in general terms without a complete inheritance framework. Such divergence may lead to uncertainty in both administration and litigation. For that reason, the issue requires harmonization rather than isolated interpretation.

The second major finding concerns the inheritance rights of children born through sperm donation. Under Shafi'i fiqh, no paternal lineage exists between the child and the donor. Since inheritance in Islamic law depends on legally recognized kinship, the child cannot inherit from

the sperm donor. The child's legal relationship is limited to the biological mother, whose lineage is certain. This position is consistent with classical and contemporary Shafi'i scholarship. Accordingly, the donor is excluded from the child's legal family structure (Nasiri, 2023).

Under Indonesian positive law, the child is protected as a legal subject, but inheritance remains less certain. The child protection framework ensures social and juridical recognition of the child's existence and rights. However, the law does not specifically determine inheritance rights in sperm donation cases. Inheritance claims are therefore often assessed through broader family law principles rather than through explicit statutory provisions. This creates uncertainty when courts must determine whether a donor can be treated as a legal parent. As a result, the child's welfare is recognized, but the inheritance dimension is unresolved.

When viewed through Indonesia's broader inheritance systems, the same ambiguity appears. In the Compilation of Islamic Law, inheritance rights depend on lawful lineage and valid marital relations. The Civil Code likewise requires recognized legal parentage or formal acknowledgment. Customary law bases inheritance on kinship structures accepted within a particular community. In all three systems, the absence of recognized paternity weakens or eliminates claims against the donor. The child may therefore inherit from the mother, but not from the sperm donor.

The comparative analysis suggests that the Shafi'i school offers a more coherent and definite normative position. It establishes a clear link between lineage, legitimacy, and inheritance. Indonesian positive law, on the other hand, provides broader protection for the child but lacks explicit rules on sperm donation. This imbalance creates a gap between child protection policy and family law certainty. If left unresolved, the gap may produce disputes and inconsistent judicial outcomes. Hence, clearer regulation is required to reconcile reproductive technology with family law principles.

In conclusion, the study shows that sperm donation is rejected in the Shafi'i school because it disrupts the purity of lineage and violates the principle of hifz al-nasl. Indonesian Health Law No. 17 of 2023 recognizes assisted reproductive technology but does not explicitly regulate donor sperm or its inheritance consequences. As a result, the legal status of children born through sperm donation remains uncertain in positive law. The child is protected as a legal subject, but inheritance from the donor is not firmly established. A clearer derivative regulation, fatwa, or policy instrument is needed to harmonize Islamic legal principles with national child protection goals. Such harmonization would provide legal certainty while preserving the ethical and doctrinal integrity of family law.

Conclusion

This study concludes that the legal status and inheritance rights of children born through sperm donation are determined primarily by the principle of lineage clarity, which is treated differently in Indonesian positive law and the Shafi'i school of Islamic law. In Indonesian positive law, Law Number 17 of 2023 on Health provides a general framework for assisted reproductive technology, but it does not explicitly regulate third-party sperm donation or its consequences for child status and inheritance rights. In contrast, the Shafi'i school clearly prohibits sperm donation involving a third party because it disrupts the preservation of nasab and prevents the establishment of lawful lineage. As a result, a child born through sperm donation has no inheritance rights from the sperm donor under Shafi'i inheritance law, although rights from the maternal line remain recognized. The comparison shows a broad normative alignment between both legal systems in prioritizing the protection of lineage, even though Indonesian law still leaves important details open to interpretation. The research gap identified in this study is that existing legal discussions have generally focused on assisted

reproductive technology in a broad sense, while the specific implications of sperm donation for legal status, lineage, guardianship, and inheritance rights remain insufficiently examined. Therefore, the novelty of this research lies in its focused comparative analysis of Shafi'i jurisprudence and Law Number 17 of 2023, offering a more precise doctrinal and normative explanation of how sperm donation should be understood within the Indonesian legal context.

References

Aiman, L., & Mahadewi, K. J. (2025). The Legal Status of Lineage and Inheritance Rights of Children Conceived After the Father's Death (Posthumous Conception) in Islamic Jurisprudence. JURNAL AKTA. https://doi.org/10.30659/akta.v12i3.48516

Aksa, F. N., H., Tahmid, M., & Widia, S. (2025). Tinjauan Hukum Islam terhadap Teknologi Bayi Tabung dan Surrogacy: Kajian Normatif Berdasarkan Maqasid al-Syari'ah. Palita: Journal of Social Religion Research. https://doi.org/10.24256/pal.v10i1.6537

Dongoran, I. (2020). Bayi Tabung Dalam Tinjauan Hukum Islam (Analisis Maqashid Syari'ah). https://doi.org/10.30821/taqnin.v2i1.7604

Farid, M. (2022). Ethical Issues in Sperm, Egg and Embryo Donation: Islamic Shia Perspectives. HEC Forum, 36, 167 - 185. https://doi.org/10.1007/s10730-022-09498-4

Fauzi, A., Madina, D. D., Rosyid, M., Alfani, I., Difia, D., Madina, M., Irfan, R., & A. (2024). Perspektif Islam terhadap Program Bayi Tabung: Etika, Hukum, dan Hak Waris. El-Faqih : Jurnal Pemikiran dan Hukum Islam. https://doi.org/10.58401/faqih.v10i1.1151

Ghodrati, F. (2023). Embryo Donation and the Conditions of Children's Inheritance: A Shiite Perspective. Journal of Iranian Medical Council. https://doi.org/10.18502/jimc.v6i4.13438

Hussein, F. A., Abolaji, A. T., & Gbolahan, A. S. (2025). Maqāṣid al-Sharīʿah and the Ethics of Surrogacy: A Critical Appraisal of Lineage and Legal Certainty in Contemporary Islamic Law. Mazahibuna. https://doi.org/10.24252/mazahibuna.vi.56753

Honainah, H., Rato, D., & Susanti, D. O. (2023). Status Nasab dan Kewarisan Anak Hasil Sewa Rahim Perspektif Hukum Islam. *Rechten Student*. https://doi.org/10.35719/rch.v4i1.225

Kholilulloh, H., Qomari, N., Musthofa, K., Rusli, R., Basaiban, K., & Mubin, U. (2023). Hukum Inseminasi Buatan dan Bayi Tabung serta Implementasinya. ANWARUL. https://doi.org/10.58578/anwarul.v3i1.871

Matthews, Z. (2021). A Review of the Rulings by Muslim Jurists on Assisted Reproductive Technology and Reproductive Tissue Transplantation. Religions. https://doi.org/10.3390/rel12090720

Meaza, M. (2024). Exploring the Legal Framework of Artificial Reproduction in Ethiopia: Regulations, Challenges, and Prospects. Journal of Indian Medico Legal and Ethics Association. https://doi.org/10.5005/jimlea-11019-0001

Mikhailova, I. A. (2025). Implementation of Inheritance Rights in the Context of the Use of Reproductive Technologies. Lex Russica. https://doi.org/10.17803/1729-5920.2025.220.3.131-141

Nasiri, N. (2023). Analysis of Sperm Donor Insemination Based on Perspective of Islamic Criminal Law. Syura: Journal of Law. https://doi.org/10.58223/syura.v1i1.35

Nelson, B., & Wiles, A. (2022). A shifting ethical and legal landscape for sperm donation. Cancer Cytopathology, 130. https://doi.org/10.1002/cncy.22626

Nisa', I. S., Faizah, I., Mashuri, B., & Khasanah, M. (2025). Penerapan Konsep Ijtihad dalam Mengatur Teknologi Reproduksi Modern di Indonesia. Al-Faruq: Jurnal Hukum Ekonomi Syariah dan Hukum Islam. https://doi.org/10.58518/al-faruq.v4i1.3394

Purvis, T. (2015). Assisted reproduction in Indonesia: policy reform in an Islamic culture and developing nation.. Reproductive biomedicine online, 31 5, 697-705. https://doi.org/10.1016/j.rbmo.2015.07.008

Rahakbauw, F. P., & Ahmad, M. J. (2024). Kedudukan Hukum dan Hak Waris Anak Hasil Inseminasi Buatan di Indonesia. Journal Evidence Of Law. https://doi.org/10.59066/jel.v3i3.771

Salim, S., Noor, T., & Adriano, A. (2025). The Human Rights Aspects Involved in the Implementation of Pregnancy Programs Through Non-Natural Methods. Jurnal Indonesia Sosial Sains. https://doi.org/10.59141/jiss.v6i3.1663

Salma, S., Jarudin, J., Nafsa, A. R., & Ashfiya, H. (2026). Donor Sperm, Lineage, and Preventive Islamic Legal Reasoning: A Sadd al-Dharīʿah Analysis. Indonesian Journal of Islamic Law. https://doi.org/10.35719/yga8ay27

Santoso, A., Sutarno, S., & Pramono, B. (2025). Implementation of Reproductive Services With Assistance. Jurnal Indonesia Sosial Sains. https://doi.org/10.59141/jiss.v6i4.1684

Zawawi, M., Mohd, A., & Hussain, B. (2024). NASAB (FILIATION) OF CHILDREN IN ASSISTED REPRODUCTIVE TECHNOLOGY (ART) UNDER THE SHARĪʿAH DISCOURSE. IIUM Law Journal. https://doi.org/10.31436/iiumlj.v32i1.911