Children Resulting from Insemination Through the Surrogate Mother Process (Substitute Mother) and Their Instruction Rights Islamic Law Perspective

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Abstract. This study analyzes the status of children resulting from insemination through the Surrogate Mother process and their inheritance rights, the main issues are divided into several sub-problems, namely; What is the general description of insemination, the status of children resulting from insemination through this process in Islamic law, and the inheritance rights of children resulting from insemination through this process in Islamic law. The research method used is a syari'i and juridical approach. This research is library research, which is research carried out using literature such as books, fiqh, laws, notes and journals. The results of this study are that insemination is a process of fertilization of an egg cell by a sperm cell outside the woman's body, in Indonesia Surrogate Mother is contrary to Islamic law which is where Surrogate Mother is considered haram as stated in the MUI decision Number: Kep-952/MUI/XI/1990 on Insemination. It is very clear that the results of the jihadi prohibit the use of the Insemination technique using the Surrogate Mother process. Thus, it is clear that the status of a child born to a surrogate mother is said to be an adulterous child, so that a child born from the use of a Surrogate Mother who is a girl or a widow will only inherit to the mother who gave birth to it, not to the spouse who owns the seed.

Keywords: Insemination, Islamic Law, Islamic Inheritance, Surrogate Mother.

1 Introduction

The occurrence of a family that is through a legal marriage, either according to Islamic law or the provisions of applicable laws. From here, a harmonious, peaceful and inner and outer life will be realized which every ordinary human being desires. In the aspect of Islam, the basis of marriage is clear in the Qur'an and as-Sunnah. Allah says in QS an-Nur/24:32.

وَقَالَ عِلَيْهِ الصُّلَاةُ وَالسَّلَامُ: النِّعَمَاتُ بَيْنَ الْمَلَائِكَةِ وَعَبْدٍ مَّلِيْقٍ مِنَ الْمَلَائِكَةِ

It means:

The Prophet SAW said "Marriage is part of my sunnah, whoever does not like my sunnah, then it is not part of me" (HR. by Bukhari).

So, it is clear, that carrying out a marriage means following the teachings of the noble Sunnah of the Prophet. The scholars argue, the law of marriage is basically a sunnah muakkadah for every Muslim who has the desire and ability to marry. However, if the relationship between a man and a woman has approached the act of adultery, the law of marriage becomes obligatory, and if marriage is misused for purposes that are contrary to what is taught by religion, then the law of marriage becomes haram [1].

Marriage is the goal of the Shari' a brought by the Prophet Muhammad, namely the arrangement of human matters in worldly and ukhrowi life. If we observe at a glance, in the body of fiqh teachings, it can be seen that there are four lines of the arrangement, namely:

a. Rub'al-ibadat, which regulates the interaction of humans as living beings with their creators;
b. Rub'al-ma'amalat, which regulates human interaction with humans and humans with objects;
c. Rub'al-munakahat, which regulates human interaction with other humans within the scope of family formation;

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d. Rub‘al-jinayat, which regulates social order for the sake of creating security

Zakiyah Darajat, et al. State the five purposes of marriage, namely:
a. Obtain and carry-on offspring;
b. Fulfilling the human desire to channel his lust and bestow his affection;
c. Fulfilling religious orders, protecting oneself from evil and corruption;
d. Maximizing the seriousness and sense of responsibility in accepting rights and obligations, as well as actually obtaining halal assets; as well as
e. Creating households to create a peaceful society on the basis of love and affection.

Having children is one of the goals of marriage. With the presence of children, it is hoped that happiness and household harmony can be achieved. Children are also the hope of parents. In addition, in marriage a sense of love and affection between husband and wife must be instilled. Both have roles that must be carried out for the survival of life so that both must share and complement each other. But sometimes in obtaining offspring there is usually a failure caused by the unhealthy husband or wife.

Along with the times, in the field of medicine, science and technology is growing very rapidly and has a positive impact on mankind. One proof of the development of science and technology in this field is the discovery of new things in the reproductive aspect, the term in the medical field is called in vitro fertilization or commonly called insemination.

There are several types of insemination processes including the following:
1) Insemination by means of male seeds and egg cells from a husband-and-wife pair, then the fetus is inserted into the wife's womb;
2) Insemination by means of male seeds and eggs from a husband-and-wife pair, then the fetus is inserted into the womb of a surrogate mother;
3) Insemination by means of the male seed from the husband and the egg from the donor, then the fetus is inserted into the wife's womb;
4) Insemination by means of male seeds from the donor and eggs from the wife, then the fetus is inserted into the wife's womb;
5) Insemination by means of a male seed from a donor and an egg from a wife, then the embryo is inserted into the womb of a surrogate mother;
6) Insemination by means of the male seed from the husband and the egg from the donor, then the fetus is inserted into the womb of a surrogate mother;
7) Insemination by means of male seeds and eggs from a donor, then the fetus is inserted into the wife's womb;
8) Insemination by means of male seeds and eggs from a donor, then the fetus is inserted into the womb of a surrogate mother.

Insemination aims to help married couples who are unable to produce offspring due to abnormalities in their bodies, endometriosis (inflammation of the uterine mucous membranes), oligospermia (unfavorable husband's sperm), unexplained infertility (the cause cannot be explained), and the presence of immunologic factors (immune factors). And this Insemination program was able to provide a solution to happiness for married couples who had been living together in a legal marriage for many years. But behind that happiness, it turns out that the Insemination program has caused many problems, especially in the field of religion.

Determination of nasab in this case is a problem in determining nasab, this is because in the teachings of Islam there are no known children obtained from insemination techniques, but what are known are children obtained from sexual relations between a legal husband and wife. On the other hand, this insemination also raises problems in inheritance, namely in determining the inheritance rights of the child, so religious leaders must examine more deeply in the scriptures whether there are things that have something in common with it [2].

The things described above are important issues to be answered and studied scientifically so that the authors are challenged and take the initiative to raise and research problems that occur in the community because the Insemination method is very widely discussed by the wider community. Based on these problems, the researchers raised the title of the thesis "Status of Inseminated Children Through the Surrogate Mother Process and Inheritance Rights from the Perspective of Islamic Law"

2 Research Method

This research is a type of normative juridical research, in which this research is examined using library data in the form of books as the source. This research was conducted by reading and analyzing various existing literature, in the form of the Qur'an, hadith, laws and regulations, as well as research results.

The nature of the research used in this research is descriptive and comparative research. Descriptive research is research that describes certain objects and explains things related to or systematically describes facts or characteristics of certain populations in certain fields in a factual and accurate manner. While comparative research that compares, which is compared either in the form of similarities or differences.

Because this research is library research, the data sources are obtained from the literature, namely:
a. Primary data
The main data obtained by using direct research on the object of research to be studied. Primary data sourced from the Qur'an, Al-Hadith, Yusuf Al-Qardhawi's Book: Contemporary Fatwas Volume III, Halal and Haram in Islam, Ups and Downs of Islamic Movements, Qardhawi's Fatwa as for Ali Akbar's Book: Sexuality Judging from Islamic Law.
b. Secondary Data
Secondary data is data that is outside the actual object or data obtained by researchers from existing
sources such as books, research results and scientific works. Data obtained from various literatures related to this discussion, such as sources of data obtained from books and literature on uterine rental law and books that discuss this research.

The data that has been successfully collected will be analyzed using several methods, while the methods used to analyze this data are:

1) Descriptive analysis, that is, the collected data are arranged systematically to be described with detailed explanations, then discussed scientifically according to the procedure. This method is used to analyze all existing data.
2) Comparative method, which is the method used to determine the similarities and differences between the Indonesian Ulema Council and the Compilation of Islamic Law regarding the law of uterine rent.

3 Result and Discussion

3.1 Insemination Overview

Insemination is the process of fertilization of an egg cell by a sperm cell outside the woman's body. This process involves monitoring and stimulating a woman's ovulation process, by taking ova or egg cells from the woman's ovaries and allowing the sperm to fertilize the cells in a liquid medium in the laboratory, also known as an in vitro or tube. The fertilized egg (zygote) is cultured for 2 to 6 days in a growth vessel and then transferred to the womb of a legitimate woman or another woman, for successful pregnancy.

Insemination techniques can be used in various types of situations, and are one of the techniques in assisted reproductive technology for the treatment of infertility.

Then, insemination techniques are also the techniques used in pregnancy surrogacy, in which case the fertilized egg is implanted in the womb of another woman so that the child born is genetically unrelated to that woman. In some situations, donated sperm cells or egg cells may be used. A number of countries prohibit or otherwise regulate the availability of insemination work, causing fertility tourism [3].

3.3 The position of inheritance rights for children resulting from surrogate mothers in the view of Islamic law

There are several things that cause a person to become an heir which is divided into three types, namely:

3.3.1 Because of kinship or kinship relationship.

Kinship is a kinship relationship between heirs and heirs caused by birth factors. The process of a person's birth certainly requires a sexual relationship between people of the opposite sex, male and female. Women as people who give birth through the process of fertilization by men. Therefore, a child essentially has a kinship with the father and mother who gave birth to him.

Thus, the condition for the existence of kinship is essentially a sexual relationship between father and
mother. Therefore, this sexual relationship cannot be proven by other people's eyes, it requires conditions that can be witnessed by others, so that the child's kinship is clear and strong to be associated with the mother and father who have sex (Mazinnah). The only medium for that mazinnah is through a marriage contract. Because the marriage contract is a requirement in addition to sexual relations as proof of the existence of kinship. As for the essential kinship or lineage, Hanafiyyah calls it ar-Rahim, which means essential kinship. That is, any relationship whose cause is birth [4]. Allah swt says in Q.S. Al-Anfal/8:75:

وَالذَّيْنَ أَمْلَوْا مِنْ بَعْضٍ وَهَاجَزُوا وَجَاهَذُوا مَعْمَكَ فَأَوْلَيْكَ مَنْكَمْ وَأَوْلُوا الأَرْحَامِ بِغَضْبٍ أَوْلَيْ كَبْلَيْنَى عَلَى اللّهِ إِنَّ اللّهَ بِكُلِّ شَيْءٍ عَلِيمٌ

The translation: "And those who believed after that and then emigrated and fought with you, then those people belong to your group (too). People who have kinship relationships are partly more entitled to each other than those who have lineage in the book of Allah SWT. Verily, Allah knows all things."

Children born without fulfilling kinship
1). Child of Zina
Adultery children are born from a relationship between a man and a woman, both of which are still in another marriage relationship. In this case, the child resulting from adultery only has a kinship relationship with the woman who bears him, not with the man who has the seed.

2). Adopted Child
In Islam, an adopted child is expressly rejected as a biological child by the husband and wife who adopted him, while at the same time giving orders for the adopted child to remain in a relationship with the parents who gave birth to him. Therefore, the adopted child does not have the right to be inherited by his adoptive parents.

3). Stepdaughter
Stepchildren are children of a husband and wife produced by marriage with a previous wife or husband. In relation to inheritance rights, stepchildren only get inheritance rights from their biological father or mother who has fertilized or given birth [5].

3.3.2 Due to marital relations

The occurrence of a marriage relationship is due to the fact that a legal marriage has been carried out even though intercourse has not occurred. As for husband and wife who do not carry out a legal marriage, it does not cause inheritance rights.

Legal marriage according to Islamic law is a bond to bring together a man and a woman as long as the marriage bond is still happening. Each party is a mate and a helper for the other in carrying the burden of living together. Therefore, Allah gives a certain portion in return for the sacrifice of his hard work, if one of them dies and leaves an inheritance. On that basis, the rights of husband and wife are not veiled at all by any heir. They can only be veiled by nuqsan (minus their share) by their descendents or other heirs.

3.3.3 Because Wala'

Wala 'is inheritance caused by the services of someone who has freed a slave and then the slave becomes rich. If the slave dies, the person who freed him has the right to inherit. Wala which can be categorized as a relative legally, is also referred to as wala'ul iqti, and to someone who has been released as a slave [6].

3.4 The inheritance rights of children resulting from insemination through the surrogate mother process

To find out the inheritance status of children resulting from insemination through the Surrogate Mother process, the nasab status is determined first. The groups in determining the lineage are:

a. Group of Children Resulting from Insemination Through Surrogate Mother Process. To find out the status of the child from the Surrogate Mother, you must first look at the status of the woman.

b. Children out of wedlock who are not recognized. If the surrogate mother is a widow or girl, then the child born is an adulterous child.

c. Legit Son. If the status of the surrogate mother is bound in a legal marriage (with her husband), then the child born is the legal child of a married couple whose womb is used, until the husband of the surrogate mother denies the child as his child.

The essence of the existence of a kinship is the existence of a sexual relationship between a husband who fertilizes and a wife who gives birth to children and the media for sexual intercourse is through a marriage contract. Meanwhile, children from Surrogate Mothers are not born in a marriage bond because the mother who gave birth does not have a marriage bond with the man who fertilized her. So, the child born from the insemination can be categorized as a child out of wedlock or it could be a child born due to adultery. Children born due to adultery; the status of the offspring is only to the mother who gave birth. This is in accordance with the Hadith of the Prophet Muhammad:

أَلْوَلَّدْ لِلنَّفْسِ وَلِلْعَذَّابَ الْحَذَرِ

It means:

"Children are the right (men) who have a bed and those who commit adultery do not have any rights (over the child)". (Narrated by Bukhari No. 6749 and Muslim No. 171)

اَيُّمَا رَجْلٌ عَمَّانَ بَخَرَةٌ أَوْ أَمْلَةٌ فَأَوْلَدَ وَلَدًّا رَزَّانَ، لَا يَرْتُ وَلَا يَؤْرُثُ

It means:

"Those who commit adultery with their women and slave women, then the child born is a child of adultery, not inheriting each other." (HR. At-Turmuzy; Al-Muntaqa 2:467) [7].

So, the child resulting from the rental of a womb who is born by a surrogate mother who is a widow or girl is categorized as a child outside of marriage or a
child born due to adultery and only has kinship and inheritance relations with the mother who gave birth to him, namely the surrogate mother automatically the child is not entitled to become an heir and cannot inherit from a biological father. A child born to a surrogate mother who has marital ties with her husband then her inheritance returns to the surrogate mother's husband until the husband says "no".

In the Compilation of Islamic Law, in principle, it has the same view as the Marriage Law because Article 100 of the Compilation of Islamic Law contains a formulation that is no different from Article 43 Paragraph (1) of the Marriage Law, where a child out of wedlock only has a kinship relationship with his mother and the mother's family which automatically the child is not entitled to be the heir of the male who fertilizes. And if the surrogate woman (surrogate mother) has a marital relationship with another man (a husband) then the child born is a "Legal Child" and the lineage returns to the husband of the surrogate mother (Article 42 of the Marriage Law Number 1 of 1974) until the husband says "no" or denying the child, the husband has the right to deny the child born to his wife by confirming it through the li'an institution [8].

4 Conclusion

Insemination is a process of fertilization of an egg cell by a sperm cell outside the woman's body. This process involves monitoring and stimulating the ovulation process of a woman or woman, by taking an ovum or egg cells from the woman's ovary (ovary) and allowing the sperm to fertilize the cells in a liquid medium in the laboratory, or commonly referred to as vitro or tube. The fertilized egg (zygote) is cultured for 2 to 6 days in a growth medium and then transferred to the womb of the same woman or another woman, with the aim of creating a successful pregnancy.

The law on the process of Insemination through Surrogate Mothers is based on the MUI Decree Number: Kep-952/MUI/XI/1990 concerning Artificial Insemination which states that: Artificial insemination with sperm and ovum taken muharram from a husband-wife pair for women who otherwise the law is haram/not justified in Islam, it is very clear that the results of the ijtihad are an explanation for the prohibition of the use of the Insemination technique which uses sperm and ovum from a husband and wife pair and then the embryo is transplanted or inserted into the womb of another woman. Therefore, it is clear that the status of children born through the Surrogate Mother process can be categorized as adulterous children.

The category of children resulting from insemination through the process is as a child out of wedlock or a child born due to adultery and only has kinship and inheritance relations with the mother who gave birth to him, namely a surrogate mother who is legally safe the child does not have the right to be an heir and cannot get inheritance from the owner of the seed. Children born to surrogate mothers who have marital ties with their husbands, the inheritance returns to the surrogate mother's husband until the husband does not acknowledge it.

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