

Implementation of Reproductive Services with Assistance

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| Article Info: | ABSTRACT |
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| Submitted: 09-04-2025 Final Revised: 21-04-2025 Accepted: 23-04-2025 Published: 26-04-2025 | <p>Assisted Reproductive Technology (ART) has become a significant advancement in addressing infertility issues, offering solutions to couples struggling with reproductive challenges. In Indonesia, ART is increasingly relied upon as a medical intervention, but its legal framework has not kept pace with technological advancements. This research, a normative legal study utilizing statutory, conceptual, and comparative approaches, explores the role of health institutions, practitioners, and policymakers in ensuring equitable access to ART while respecting cultural and religious values. The findings reveal that although Indonesia has established basic regulations on ART, there is a pressing need for legal reforms to address gaps in regulating emerging technologies and to better serve the evolving needs of society. The lack of harmonized regulations between countries further complicates the legal status of children born through ART, especially in cross-border cases. This legal ambiguity poses challenges, particularly regarding the recognition of parental rights and the status of offspring. The research also highlights the impact of pretrial motion decisions on the continuation of criminal legal proceedings, where inconsistencies in legal interpretations can result in wrongful arrests. Such decisions not only delay justice but may also complicate the process of compensating victims of wrongful detention. The study recommends legal reforms to streamline ART-related laws, enhance cross-border legal cooperation, and address the gaps in the protection of rights for individuals involved in ART processes.</p> <p>Keywords: Assisted Reproductive Technology; Health Law; Regulation.</p> <p>Attribution-ShareAlike 4.0 International (CC BY-SA 4.0)</p> |



Introduction

The development of reproductive technology in the medical field has advanced rapidly, providing a significant opportunity for couples to use methods such as In Vitro Fertilization (IVF) (Asplund, 2020; Atina, 2019; Felix et al., 2022; Ferrell et al., 2024; Ghidini et al., 2022; Gunawan & Setiawan, 2022; Moor & Petrosky, 2021; Purtschert et al., 2021). The mechanism of assisted

reproductive services has raised legal issues, as the information related to these services is not widely known to the public. In the last two decades, there have been major innovations in reproductive technology, such as IVF, intracytoplasmic sperm injection (ICSI), and other methods, which have opened new possibilities for couples facing difficulties in conceiving naturally. This development aligns with the 1945 Constitution of the Republic of Indonesia, Article 28B, Paragraph (1), which states that every person has the right to form a family and continue their lineage through lawful marriage. Additionally, Article 28H, Paragraph (1) of the Constitution also guarantees the right to live prosperously, both physically and mentally, and to receive good health services. This progress brings about various legal and ethical challenges that need to be addressed in the context of health law.

The regulations regarding assisted reproductive services in Indonesia are still relatively new and require further development. According to Minister of Health Regulation No. 43 of 2015 on the Implementation of Assisted Reproductive Services or Non-Natural Pregnancy, there are significant legal challenges in the health law context, including the lack of legal certainty regarding patient rights and standard operating procedures (SOPs) for clinical practices (Bancin Dewi R, 2022; Permenkes RI No.65, 2013). This often leads to legal uncertainty or conflicts of norms for both healthcare providers and patients. Norm conflicts arise because laws that were once applicable may no longer be relevant in the context of current developments. Another issue is the varying interests of different societal groups, which makes it difficult to create regulations that satisfy all parties. Furthermore, the process of creating regulations may be flawed, leading to misinterpretation or errors in the formulation of laws, thus causing conflicts. This is evident in the enactment of Law No. 17 of 2023 on Health, which introduces a *sui generis* legal framework, unique and incomparable to others, with the *Lex Specialis Derogat Legi Generalis* principle, created to address specific situations requiring special treatment.

The legal complexities surrounding assisted reproductive services include issues related to gamete donation and surrogacy (Envuladu et al., 2023; Gebreyesus et al., 2019; Mazur et al., 2018; Rad et al., 2023; B. D. Tilahun et al., 2024; T. Tilahun et al., 2021; Waga et al., 2023). In 2004, in Mimika, Papua, a woman named S was diagnosed with infertility due to severe infection of her womb. According to the customs of the Key tribe, if a married couple has not been blessed with children, the husband must divorce his wife. S and her husband, B, decided to undergo IVF at a hospital in Surabaya. The tests showed that S could not conceive. The doctor had explained that IVF could also be done by implanting the fertilized embryo into another woman's womb. This process was carried out with the assistance of M (S's younger sister) after a thorough examination. Legal issues regarding the rights and obligations between the donor, the recipient, and the child born through this technology often remain unclear and need to be updated. Legal ambiguity in certain aspects creates challenges for medical practices and patients. Regulations regarding embryo management and storage have also become a critical topic. The duration of embryo storage, ownership rights, and the destruction process of embryos must be clarified to avoid future conflicts. There is a clear need for more specific and transparent regulations regarding the management and storage of embryos to prevent disputes in the future. Evaluating clinic compliance with international standards is also crucial. A comparison with global standards can provide valuable

insights into the shortcomings and areas of improvement in assisted reproductive services, ensuring that these services align with both ethical and legal standards.

Research in the field of assisted reproductive technologies (ART) has grown significantly over the past two decades, addressing various medical and ethical challenges. Several studies have highlighted the complexities of ART regulations, particularly regarding gamete donation and surrogacy (Behr et al., 2020; Behrman, 2016; Moor & Petrosky, 2021). However, much of the previous research focuses primarily on the medical and ethical aspects of ART, with less attention to the legal and regulatory issues surrounding it. For instance, the legal status of children born through ART and the legal framework regarding embryo storage and gamete donation have been subjects of some studies ((Force, 2021) Task Force, 2021). While some countries have adopted comprehensive legislation to regulate ART, Indonesia's legal framework remains relatively underdeveloped and ambiguous, leading to challenges in applying international standards effectively (Gilson et al., 2010; Iskandar, 2022). This study aims to fill the research gap by providing a critical examination of the legal and regulatory framework for ART in Indonesia. The novelty of this research lies in its focus on the intersection of ART with Indonesian law, specifically analyzing how the legal system can address issues such as the legal status of children born through ART, gamete donation, and embryo storage management. This research proposes potential policy changes and suggests regulatory improvements that align ART services with both international standards and the needs of Indonesian society. The objectives of this research are as follows: (1) to analyze the regulations governing assisted reproductive services, and (2) to provide a legal analysis of the status of children born through assisted reproductive technologies.

Materials and Methods

This research employs a normative legal research method, focusing on analyzing the legal norms and regulations applicable to the subject matter in health law. The research approach involves analyzing relevant laws and regulations, a conceptual approach, and a comparative legal analysis with the United Kingdom and Singapore, as there are significant differences in the legal treatment of parents/surrogate donors and the status of children born through assisted reproductive technologies in these countries. The legal materials used in this research consist of primary, secondary, and tertiary sources. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 17 of 2023 on Health, Law No. 39 of 1999 on Human Rights, Law No. 35 of 2014 on Child Protection, Government Regulation No. 28 of 2024 on the Implementation of the Health Law of 2023, Government Regulation No. 61 of 2014 on Reproductive Health, Minister of Health Regulation No. 43 of 2015 on Assisted Reproductive Services, the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1966, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, and the Convention on the Rights of the Child (CRC) 1989. Secondary legal materials include textbooks, research journals, theses, dissertations, and other related sources, while tertiary legal materials include dictionaries, encyclopedias, websites, and similar sources. Legal materials will be collected through library research, reviewing relevant legal literature, regulations, and court decisions. Additionally, interviews will be conducted with legal

experts and healthcare practitioners to gain practical insights into the implementation of laws related to assisted reproductive services in Indonesia. The collected legal materials will be analyzed using qualitative analysis, categorizing and interpreting the materials based on existing legal norms. This analysis aims to provide a comprehensive understanding of the legal issues related to assisted reproductive services and to formulate recommendations that could improve or refine the existing regulations.

Results and Discussions

The Position of Children in the Perspective of National and International Law

In the concept of legal standing, it is a fundamental element in the judicial system that ensures that only parties with legitimate and relevant interests can file lawsuits. With provisions on the rule of law, the judicial system can function more effectively and fairly, providing access for individuals and groups to seek justice in court. Legal standing is a situation when a party is deemed qualified to apply for dispute resolution in a court.

Legal standing and the rights and obligations of legal position can be seen in Article 51, Paragraph (1) of Law No. 24 of 2003 on the Constitutional Court, as amended multiple times, most recently by Government Regulation in Lieu of Law No. 1 of 2013, which changes the second amendment of Law No. 24 of 2003 on the Constitutional Court. This regulation defines constitutional rights and authority that are harmed by the enactment of a law, which includes:

1. Individual Indonesian citizens, including groups of people with similar interests.
2. Indigenous legal communities as long as they are still in existence and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law.
3. Public or private legal entities.
4. State institutions. The legal position of children born through Assisted Reproductive Technology (ART) is a complex legal issue, given the various legal, social, and ethical aspects involved. ART procedures such as in vitro fertilization (IVF), intracytoplasmic sperm injection (ICSI), egg donation, and surrogacy raise fundamental questions about the legal status of children born from these procedures, especially in the context of family law, human rights, and child protection.

National Legal Framework in the Context of the Legal Status of Children Born through Assisted Reproductive Technology. In Indonesian positive law, the legal status of children born through ART is regulated in Article 73, Paragraph (1) of Law No. 17 of 2023 on Health, which states that reproductive technology procedures can only be performed by legally married couples according to both religious and state laws. According to Zahrowati, many couples face difficulties and failures in having children. Research shows that around 10% of married couples experience infertility, making adoption a challenging option. Issues arise when ART is performed by unmarried couples, cohabiting partners, or those using third-party gamete donors, as the legal status

of the child becomes unclear. According to Law No. 1 of 1974 on Marriage (as amended by Law No. 16 of 2019), Article 42 states that a legitimate child is one born from a legal marriage. Meanwhile, Article 43, Paragraph (1) provides an exception for children born out of wedlock, establishing only a civil relationship with the biological mother and her family. John Rawls, in his book *A Theory of Justice*, developed the concept of justice as fairness. He emphasized equal liberty, meaning each individual has the same rights to fundamental freedoms that must be protected by law and institutions (e.g., in terms of inheritance, lineage, and civil registration). Equal distribution of resources and rights, according to Rawls, allows for inequalities only if they benefit the least advantaged members of society (the difference principle). The Constitutional Court's decision No. 46/PUU-VIII/2010 acknowledges the legal relationship between a child born outside marriage and their biological father. This decision reflects an effort to approach justice in accordance with Rawls' principles.

Veil of Ignorance Rawls advocates fair rulemaking based on hypothetical positions where rulemakers are unaware of their social, economic, or biological positions. In this context, policymakers should ignore how a child is born (naturally or through the help of technology) when establishing legal rights and status. What are the implications in law and policy? In Civil Registration, the law must guarantee equal civil registration for children as a result of ART, through the role of birth certificates, without mentioning their birth method and state recognition, in accordance with Law No. 23 of 2006 concerning Population Administration.

Legal Status of Children In Indonesian civil law, children born from IVF have complex legal status. According to the Civil Code, a child is considered legal if born in a legal marriage bond. However, in the case of a child born to a surrogate mother, the legal status becomes more complicated. The child is often considered an adopted child and has no direct inheritance rights from his or her biological parents without formal recognition.

In inheritance, children resulting from IVF have the same rights to their parents' inheritance. A waiver of this right would be contrary to the principle of fair distribution. A child born through a surrogate mother does not automatically get inheritance rights from his or her biological parents. To grant inheritance, a will or other testamentary arrangement is required. A will is an heir named in a will. A will is a deed made as evidence if the heir dies which requires the intervention of an official notary official.

In the Civil Inheritance Law of Western countries, there are two ways of distributing inheritance, namely *ab intestato* (based on blood and marital relations between heirs and heirs). The heir can appoint one or several people as the executor of the will, called the executor of the will, whose job is to supervise that the will is executed in accordance with the will of the heir. This creates legal uncertainty for children and parents, so it is important that there are clear regulations to protect their rights.

According to Abbed Rabbo Nur Alam in the *Panca Sakti Law Journal*, the inheritance rights of children born through IVF are divided into three categories as follows:

- a. The inheritance rights of a child born through IVF using the sperm of a husband are considered legitimate and equal to those of a biological child, thus entitling the child to inherit from their biological parents if the parents (heirs) have passed away, in accordance with Article 830 of the

Civil Code.b. The inheritance rights of a child born through IVF using sperm from a donor depend on the child's status within the marriage. If the child is recognized, they have inheritance rights from the parent who acknowledges them, in line with Article 280 of the Civil Code. However, a child born from adultery does not have inheritance rights from their legitimate parents but is only entitled to maintenance for their needs, as regulated in Article 867(1) of the Civil Code. C) The inheritance rights of a child born through IVF with a surrogate mother are legitimate if the child is recognized as a legitimate child and inherits from the biological parents who entrusted them, in accordance with Article 830 of the Civil Code.

In social discrimination and stigma, inequality based on birth methods is an injustice, and the law must actively protect these children from discrimination. Hans Kelsen in *General Theory of Law and State* (1945) developed a normative positivist legal theory, known as pure theory of law. This theory emphasizes that law is a hierarchical system of norms, with the basic norm (*grundnorm*) as its foundation. In the context of regulating the status of assisted reproductive children (ART), this theory offers a guide that legal arrangements should be based on agreed basic norms and provide legal certainty.

Implications of Legal Arrangements, according to Kelsen, the first is Consistency with Basic Norms, Rules related to the status of children resulting from ART must comply with basic norms that uphold justice and equal rights. For example, a legal arrangement that does not recognize the status of children as a result of ART because of the method of birth would be contrary to the principles in the 1945 Constitution article 28B (2) and Pancasila is a normative basis in protecting the status of children, including children resulting from ART. The second is Legal Neutrality: Kelsen argues that the law must be free from moral or religious biases. In this context, even if there are certain religious views that do not support ART, the law should remain neutral and focus on the protection of children as the subject of the law. The third is Legal Certainty: A law that gives a clear status to children as a result of ART will create legal certainty. This includes the right to identity, inheritance, and other legal protections.

The process of legalizing children born from in vitro fertilization (IVF) in Indonesia is relatively complex and is influenced by civil law and relevant laws. The first step is the Recognition of Legal Children for married couples who participate in IVF programs using sperm and eggs from a legal married couple, where the child born is recognized as a legitimate child and has inheritance rights and civil relations equivalent to a child born naturally. Genetic Relationship and Proof is also an important aspect, where a child born from IVF is recognized as a legitimate child if born in a valid marriage in accordance with Article 43 Paragraph (1) of Law No. 1 of 1974. However, if IVF involves surrogacy, the child's legal status becomes more complex and the child is considered an adopted child, with no direct inheritance rights from his or her biological parents without formal recognition. Blood/DNA testing can be done to prove the validity of the child's status, especially if the husband wants to prove that the child is the result of adultery, with a DNA test that can be used as evidence in court. The Constitutional Court's decision in No. 46/PUU VIII/2010 states that children born from an illegitimate marriage only get the *nonax* from their mother, but children resulting from IVF can obtain civil rights from their biological father if it can be proven through science and technology or other legal evidence.

In the Convention on the Rights of the Child (CRC, 1989), ratified through Presidential Decree No. 36 of 1990:

Article 7 of the CRC states that every child has the right to identity, including name, nationality, and, as far as possible, knowing his or her parents. However, in ART involving ovum donors, sperm anonymous, the child's right to know its biological origin is often overlooked, potentially violating CRC. In the UK, the legal status of children born through Assisted Reproductive Technology (ART) is clearly regulated in the Human Fertilisation and Embryology Act (HFEA) 1990 which was updated in the HFEA 2008. This rule ensures that the rights of children born from ART are legally protected and clarifies the status of parents in various situations.

Embryo Storage and Management (UK)

Clinics must adhere to cryopreservation standards as per HFEA guidelines, including strict documentation and written consent from the spouse for any actions performed on embryos. Embryo storage is limited to 10 years, unless there is a medical reason for the extension.

Transparency and Patient Rights

Patients should be provided with thorough information about the procedure and the risks of ART. Clinics are required to maintain complete records of the origins of gametes and embryos, including anonymous donors, to ensure that the child born can access information on their biological origin after the age of 18.

Gamete Donation and Surrogacy

Gamete donors are allowed, but clinics must record the identity of the donor for use if the child born wants to know their biological identity. Surrogacy is allowed to a certain extent, by a court-approved written agreement. Differences with Indonesia on Security and Documentation Standards. The UK has a more transparent system in the management of embryos and gametes, so cases of embryo loss like the one that occurred in Surabaya are rare. In Indonesia, regulations have not fully ensured strict documentation and supervision in cryopreservation.

Patient Access and Children's Rights (UK)

In the UK, children born with ART have clear legal rights, including access to the identity of the gamete donor. In Indonesia, the rights of children born of ART are often not explicitly regulated, especially if the procedure involves an anonymous gamete donor. 1) Biological Parents (UK), Gestational Mothers are regulated in Article 33 of the HFEA 2008. Women who give birth to children are always considered legal mothers, regardless of the origin of the gametes or embryos used. If the egg comes from a donor, the mother who gave birth still has legal status as the mother of the child. 2) Father or Maternal Partner (UK), Gamete Donor or Embryo is regulated in Article 41 of the HFEA 2008. If the mother is married when the child is conceived through ART, then her husband is legally considered the child's legal father, unless proven otherwise. If the mother is not married but undergoes ART with a male or female partner who gives written consent, the couple is considered a legal parent. 3) Sperm, egg, or embryo donors do not have legal status as parents

of children born from ART, regulated in Article 41 of the HFEA 2008. Children born from ART do not have a legal relationship with the donor, either in terms of obligations or rights, such as inheritance. 4) Legal Status In the Case of Same-Sex Couples (UK), lesbian couples who are married or in a civil partnership can be recognised as legal parents if they provide written consent to the ART. If not married, the couple must meet the consent requirements set by the HFEA. Gay couples usually use surrogacy to have children, and in this case they need to apply for a parental order to obtain legal status as parents.

Legal Status of Children in Surrogacy (UK),

In surrogacy cases, the woman who gives birth remains the legal mother until the court issues a parental order. A parental order transfers the legal status of the parent from the surrogate to the couple ordering surrogacy. Couples or individuals using surrogacy must file a parental order within 6 months of the child's birth.

The Rights of Children Born from Reproduction with assistance in the UK.

Citizenship of children born from ART has the same citizenship rights as children born naturally, based on the citizenship of legal parents. Access to Donor Information Where Children born from gamete or embryo donation have the right to know the donor's non-identity information when they reach the age of 16. At the age of 18, they can request donor identity information through the Human Fertilisation and Embryology Authority (HFEA). In the matter of inheritance, a child has a legal right to inheritance from their legal parents, but not from a gamete donor or surrogate.

The Position of Children in the Perspective of Existing Norms in Society.

Legal norms refer to a set of rules or standards created through the legal formation process carried out by the state or other legal institutions. These rules are typically codified in the form of laws, regulations, decisions, and policies that are binding on society. Normative law functions to maintain social order, resolve conflicts, and protect individual rights. Legal norms emphasize ideal rules that aim to deliver justice to all parties. In the context of Assisted Reproductive Technology (ART), legal norms should reflect the moral, religious, and social values of Indonesian society.

Religious and social norms in Indonesia, particularly within the majority religions, generally reject ART practices involving third parties (such as gamete donors or surrogacy) because they are considered to violate the sanctity of marriage. This creates legal obstacles in recognizing the status of children born from such procedures. From an Islamic legal perspective, IVF (fertilization outside the womb) using the sperm and egg of a legally married couple is permissible (mubah), as it aligns with religious principles and does not result in mixing of lineage. This follows the principle that urgent needs or necessities should be treated like an emergency situation, as stated in the rule "Al hajatu tanzilla al-dharurat."

However, when the sperm of a man is mixed with the egg of a woman who is not his wife, resulting in fertilization and the embryo being implanted into the wife's womb, this process is known as egg donation. As such, this procedure is considered equivalent to adultery (zina) in Islam, and IVF performed in this way is clearly prohibited because it leads to the mixing of lineages.

According to Islamic jurisprudence, for artificial insemination to be permissible, the sperm and egg must come from a lawful marriage, adhering to the fiqh principle "Dar'ul mafsadah muqaddam 'ala jalbil maslahah" (preventing harm takes precedence over seeking benefit). IVF through such processes is forbidden in Islam because the harm outweighs the benefit, particularly due to the mixing of lineage, which Islam places great importance on protecting, especially in relation to marriage, family purity, and inheritance.

Socially, a child's status is often influenced by the society's view of their birth status. Children born outside of marriage or through assisted reproductive methods often face social stigma. Laurence M. Friedman explains that law cannot be separated from the culture of society, including how society perceives children based on their birth status. Normative law serves as a tool for social protection, working to address social injustices faced by children. The Constitutional Court's decision No. 46/PUU-VIII/2010 expanded legal recognition of children born outside marriage to protect their rights based on biological evidence. Maria Farida Indrati stated that law must provide protection for individuals, especially vulnerable groups such as children. With this recognition, children born outside of marriage have the same social rights, such as rights to name, identity, and inheritance.

Religious and customary norms also influence the legal position of children. In Islamic law, a child's lineage (nasab) is only recognized through a legitimate marriage. According to Wahbah Az-Zuhaili in *Al-Fiqh Al-Islami wa Adillatuhu*, nasab is a legal relationship that determines inheritance rights and social protection for children under Islamic law. In certain customary laws (e.g., Gorontalo), children born outside of marriage may not be recognized as part of the community, even though their legal rights are acknowledged under positive law.

The importance of child protection norms is to safeguard children from actions that may harm them physically, mentally, or socially, as children are considered individuals without full capacity to protect themselves. From an international context, the Convention on the Rights of the Child (CRC) (1989), Articles 3 and 19, establishes the principle that all children have the right to protection from harmful actions and the right to life, growth, and dignity. It is also stated that "every child has the right to survival, growth, and development, and the right to protection from violence and discrimination," as stated in Article 28B, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

The aspects of child protection norms encompass various interconnected components, including legal protection, which ensures children's rights to education, health, identity, and family. Social protection involves safeguarding children from exploitation, discrimination, and violence, both within the family and society. However, Friedman, L. M., asserts that child social protection requires synergy between law, society, and culture. Further, the aspect of protection from violence ensures children's rights to be free from all forms of violence, including physical, emotional, sexual abuse, and neglect. As outlined in Article 76C of Law No. 35 of 2014 on Child Protection, this law prohibits parents or any individual from committing violence against children. Finally, the protection of identity and family ensures children's rights to a name, nationality, and recognition as family members, as outlined in Article 7 of the CRC.

With a strong foundation, various international legal instruments aim to protect children's rights. Children's rights are recognized as human rights that must be respected, protected, and fulfilled by the state. The principle of the best interests of the child forms the basis for every decision involving children. Countries that have ratified international instruments are obligated to align their national laws with the principles outlined within them. These countries are also responsible for creating systems that ensure children's rights, such as access to education, healthcare, protection from violence, and exploitation.

The Position of Children in the Perspective of Social Justice Concept.

The concept of social justice law is an approach that emphasizes the importance of the fair distribution of resources, rights, and responsibilities in society. This concept focuses on efforts to create social balance, where every individual has equal access to opportunities and fair treatment. Social justice is a principle that governs how wealth, rights, and responsibilities are distributed in society. This principle aims to ensure that all individuals, regardless of their social, economic, or cultural background, receive equal and fair treatment. Social justice encompasses aspects such as equality of rights, employment opportunities, education, healthcare, and legal protection.

In the context of Assisted Reproductive Technology (ART), the legal status of children involves unique dynamics rooted in the principle of social justice. The concept of social justice provides a normative framework for understanding how children born through ART should be treated fairly, both in law and society. Protection of children's rights in this situation includes issues such as identity, access to biological origins, and non-discrimination based on their birth status.

According to Rawls' theory of justice, in his book *A Theory of Justice*, Rawls outlines two main principles of justice: the Principle of Liberty, where each individual has the right to equal liberty, as long as it does not infringe on others' freedoms, and the Difference Principle, which justifies social and economic inequalities only if they benefit the least advantaged members of society. Rawls uses the concept of the "Veil of Ignorance," where individuals must formulate principles of justice without knowing their social position, to ensure objective justice.

Aristotle's views on justice can be found in his works *Nicomachean Ethics*, *Politics*, and *Rhetoric*. In *Nicomachean Ethics*, Aristotle argues that justice should be viewed as the core of legal philosophy, stating, "Law can only be established in relation to justice." For Aristotle, justice is a form of proportional equality, not identical treatment. He differentiates between equal rights in terms of proportional fairness. Equality under the law means that all individuals are treated equally, but proportional equality ensures that each person receives their due based on their ability and achievements.

Hans Kelsen's view on justice is based on legal positivism, where the justice of an individual can be understood through legal rules that accommodate general values while ensuring personal fulfillment and happiness. Kelsen acknowledges the validity of natural law, thus his concept of justice includes a dualism between positive law and natural law. He explains this dualism as reflecting Plato's metaphysical dualism, where the world is divided into two realms: the visible, sensory world of reality, and the invisible world of ideas.

In legal studies, one of the functions of law is to create justice. The relationship between law and justice is often linked, leading to the famous legal adage *Justitia fundamentum regnorum*, meaning justice is the highest, fundamental, or absolute value in law. Redistributive justice demands that children born through ART have the same rights and protections as other children. Practically, this includes legal recognition of the child's status, especially in cases where the biological and legal parents may differ, as in surrogacy or the use of anonymous donors.

Blyth emphasizes that children born through ART often face legal challenges regarding identity recognition, especially in jurisdictions where ART laws are inadequate or conflict with the principles of social justice. Some countries still restrict children's access to information about their biological origins, which affects their rights to personal and family identity. Procedural justice is achieved through specific procedures, with the aim of ensuring fairness in the process of making and implementing decisions. People feel satisfied when the procedures adopted treat them with care and dignity, making it acceptable even if they disagree with the outcome. Fair procedures are defined by consistency, neutrality, representation, and transparency. Procedural justice principles are relevant in ensuring the right of children born through ART to know their biological origins. Article 8 of the Convention on the Rights of the Child (CRC) guarantees the child's right to preserve their identity, including family relations, which are legally recognized. However, in ART cases, access to this information is often limited by policies such as anonymous donation or surrogacy confidentiality.

Frith's research shows that many children born through ART feel a loss of important parts of their identity if they are not allowed to know donor information. This creates a major challenge in applying the theory of social justice, as it creates an imbalance between the child's interest in knowing their biological origins and the privacy of the donor. The principle of non-discrimination means that all rights acknowledged in the Children's Human Rights Convention (CRC) should apply to every child, without any form of discrimination. This principle is found in Article 2 of the CRC, Paragraph (1), stating that States Parties must respect and guarantee the rights established in this convention for every child under their jurisdiction, without discrimination of any kind. Paragraph (2) further mandates that States take necessary measures to ensure children are protected from all forms of discrimination based on the status, activities, opinions, or beliefs of their parents or guardians. The message from this principle is clear: states must ensure every child's right to life is protected, as it is inherent to their existence, not a gift from the state or individuals. To guarantee this right, the state must provide a conducive environment, adequate living conditions, and access to the basic needs of each child.

In Indonesia's Child Criminal Justice System Law (Law No. 11 of 2012), one of the principles guiding its implementation is the principle of non-discrimination, which is stated in Article 2, Letter c. This principle asserts that there should be no differential treatment based on race, religion, gender, ethnicity, or legal status. This principle also applies to ART, as children born through ART should be protected from stigma or discriminatory treatment due to their birth status. In some societies, these children may face marginalization because of cultural or religious perceptions about ART.

Studies by Trimmings and Beaumont (2019) highlight that in some jurisdictions, inheritance law or nationality status does not automatically recognize children born through ART, especially in cross-border surrogacy cases, such as in *Menneson v. Labasev (France v. USA)*. The European Court of Human Rights found no violation regarding the IVF couple's claim for family life but recognized a violation of the child's right to private life, as French authorities did not acknowledge the child's status despite being recognized as the biological offspring of the American parents. Jurisprudence also prevents legal recognition of children born through legal surrogacy abroad, particularly where the biological father exceeds the recognition threshold allowed by member states, which impacts the individual's identity. This creates a legal imbalance that contradicts the principle of social justice. Although the theory of social justice provides an ideal framework, its application in the context of Assisted Reproductive Technology (ART) often faces challenges, including discrepancies between international and national laws, a lack of ART regulations, and cultural and religious conflicts regarding ART practices.

Conclusion

Based on the analysis of existing regulations and the challenges faced in the implementation of Assisted Reproductive Technology (ART) in Indonesia, it can be concluded that the current legal framework remains insufficient in addressing the complex issues surrounding ART. The ambiguity in regulations, particularly regarding the status of children born through ART, the legal implications of sperm/egg donation, and surrogacy, poses significant challenges to both healthcare providers and patients. Law No. 17 of 2023 and Government Regulation No. 28 of 2024 provide some guidelines, but critical gaps remain in ensuring the legal recognition of children born through ART and safeguarding their rights, particularly the right to know their biological origins. The lack of clear penalties for IVF participants and the removal of gender determination for IVF under the Health Law No. 17 of 2023 reflect a step toward modernization but leave many issues unresolved.

To address these challenges and strengthen justice in Indonesia's legal system, it is essential for the government to align national ART regulations with international standards, such as those provided by the Convention on the Rights of the Child (CRC). Concrete recommendations include the establishment of clearer regulations on the legal status of children born through ART, particularly those involving donors or surrogates. The creation of standardized laws governing cross-border ART cases is also crucial to avoid legal ambiguity. Additionally, strengthening pretrial motions related to the legal recognition of children and introducing compensation mechanisms for victims of wrongful legal decisions will contribute to more equitable legal outcomes. Future research should explore more comprehensive ways to integrate ART regulations with family law and human rights principles, ensuring the legal protection of both children and parents involved in ART.

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