

# **A View of Civil Law and Islamic Law on the Practice of Surrogate Mother**

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**Article History: Received: November 20, 2023; Accepted: January 20, 2024**

## **ABSTRACT**

IVF is one of the modern methods that can help legal couples obtain children. Both Indonesian Civil Law and Islamic Law allow this practice. Still, it must be carried out based on the provisions, namely by involving couples who are legal in the eyes of the law. IVF carried out through surrogate motherhood is prohibited by both positive law and Islamic law because its existence can disrupt lineage. Children born from this practice are not considered legitimate due to confusion and ambiguity during the process. This research is a normative juridical literature study that is processed based on primary and secondary legal sources consisting of primary, secondary, tertiary legal materials, and non-legal materials with the aim of: 1) Understand how Indonesian civil law and Islamic law view the issue of surrogate mothers; and 2) Knowing how the guardianship status of IVF children born through surrogacy practices. It was found that both Positive Law and Islamic Law prohibit the practice of IVF with surrogate mothers because it results in legal confusion for the child. This research is expected to contribute to further research, especially research that raises the theme of IVF.

**Keywords:** Civil; Comparison; Islam; Law; Surrogate

## **1. INTRODUCTION**

The development of today's times is identical to the development of modern technology which is getting more sophisticated every day. Tools are created with new ideas to facilitate human survival. In this era of globalization, these things are very admirable, given the tendency of countries in the world competing to develop sophisticated technological inventions and creations, this is done to prove that the country is developing and heading towards developed countries.

These extraordinary developments occur in all fields. Whether it's robots, the military, nuclear power and rockets, or computer science, all of which are designed to be sophisticated and made by humans with the results of their thinking, these discoveries show the quality of human resources that are increasingly skilled and developed (Cintamulya, 2015). This development has led the world to technological modernization so that convenience in various fields of life can be enjoyed by other humans, other countries, and even unborn offspring in the future.

One of the technological sophistications discovered by humans in the field of medical science is in the form of reproductive technology with the IVF method (Tandirerung, 2018). The presence of IVF in society today is an alternative way for married couples who have difficulty in



giving birth to offspring naturally, either due to their body disorders, endometriosis (inflammation of the mucous membrane of the uterus), oligospermia (the husband's sperm is not good), and immunologic function (immune function). Louise Brown, a British scientist in 1978 is credited as the first inventor of IVF (Hs, 1993).

The invention of advanced technology in general is always accompanied by various kinds of responses from several parties, both pros and cons. One of them is the view of Muslims. In another perspective, marriage is defined not only as a place to express sexual passion legally and legitimately, but in it there are noble lessons that can only be achieved and obtained through marriage (Tahar, 1987). The noble values include having offspring because the offspring will be the next generation of life in the world. Sexual desire in humans is a generator or a driving force in obtaining offspring (Al-Ghazali, 1994).

Law Number 1 Year 1974 article 1 on marriage states that: "Marriage is a physical and mental bond between a man and a woman as husband and wife to form a happy and lasting family (household) based on God Almighty."

Based on the reference to the article above, we can see that the process of family formation is closely related to obtaining offspring as the main purpose of marriage. Offspring or children become an important value in a household journey. Therefore, it is natural that there are married couples who are medically declared incapable of obtaining offspring naturally, willing to do anything to obtain offspring. One of them is through IVF (In vitro Fertilization) better known as IVF. The first IVF practice in Indonesia was conducted at Harapan Kita Children's Hospital (RSAB), Jakarta in 1987 (Kertapati, 2019). Over time IVF has become the answer to the problems of couples who want to have offspring.

However, with the development and passage of time, many women are willing to rent out their wombs as a place to grow embryos, then this term is called surrogate mother. This condition will cause a shift in community law or community norms because it cannot be denied that humans live with ties, both religious law, affirmative law, and traditions or norms of decency. In later developments, the leasing of the womb became a means to make a profit. For example, in India, a woman named Joey Dave decided to become a surrogate mother to fulfill the family's economic needs because her husband lost his arm while working in a factory and could not earn a living. The income received from a surrogate mother ranges from \$15,000 (Rp. 150,000,000) to \$30,000 (Rp. 300,000,000) depending on the agreement and financial capability of the person who needs the surrogate mother's services.



Example of surrogate mother cases that occurred in Indonesia, for example in 2004, surrogate mother was carried out secretly by residents of Mimika Papua, the practice was carried out by a husband and wife, where medically, his wife was diagnosed as unable to conceive due to an infection in her uterus. However, due to Papuan customs that require husbands to divorce their wives, when their wives cannot provide offspring, the couple took the path of a surrogate mother, namely by renting the womb of the wife's sister to carry her child. This practice is carried out voluntarily by both the hired party and the hirer, and there is no element of coercion and does not want to be published (Sri Rahayu, 2009).

The above case coupled with the discovery of advanced technology accompanied by the occurrence of this unique event, became the impetus for researchers to take the theme of surrogate mother and will be analyzed through the views of civil law and the views of Islamic law. If India legalizes the practice of surrogate mothers, what about Indonesia, where the majority of the population is Muslim, and this issue has not been regulated in the legislation in force in Indonesia? This problem also concerns the validity of children born through the surrogate mother process both in state law and Islamic law which regulates the rights of guardians and inheritance rights while living in the world.

## **2. RESEARCH METHOD**

Legal research is a scientific activity that departs from systematic methods whose purpose is to analyze a phenomenon based on existing legal norms. The legal research in the form of this literature study is a normative juridical research that analyzes events by examining them using concepts, models, theories, legal principles, and laws and regulations that are relevant to the topics raised in this research (Efendi & Ibrahim, 2018). The data used is obtained through primary data sourced from respondents' information on laws and regulations and secondary data which includes primary legal materials such as laws and regulations, secondary legal materials consisting of books, journals, articles, scientific research, and other literature, tertiary legal materials obtained from the internet, and non-legal materials whose function is to support the relevance of the research results. All data is then processed with a conceptual and statutory approach, both of which are intended to analyze in detail the practice of surrogate mothers in Indonesia and Islam by looking at it from the perspective of legislation.



### **3. RESULT AND DISCUSSION**

#### **Legal Status of Children Obtained by Surrogate Mother Process According to Civil Law and Islamic Law**

Children are the most beautiful gift as well as an extraordinary mandate given to a married couple. Their existence is a light, a complement, and a perfection in the household. There is an unbroken responsibility when someone decides to become a parent, whether the decision is taken with full awareness and readiness or due to mistakes and oversights. This responsibility is attached directly when the child is born into the world.

The child is a vulnerable person who must be given protection and be under the supervision of the parents (Harefa, 2019). Positive Law and Islamic Law are both united in preparing the best curriculum for the growth and development of children so that they are not polluted and tainted with negative things that can destroy their future. Let alone bad practices, and behavior that can bring a child closer to these heinous acts must be avoided.

Parents play an important role in the formation of a child's personality (Ayun, 2017). If a couple is legally married in the eyes of both Sharia and the law and then has offspring in the marriage through a legal marriage, then the child born can be considered a legitimate biological child (Manurung & Sulastri, 2021). This is closely related to the status of the child's lineage to his parents (Hutapea et al., 2022). As for things that are not what has been determined by law and sharia, it can confuse determining the status of a child, while the status of a person is very important to determine what is his right.

The status of a child is considered valid if the child is born to a married couple who are legally related according to the laws and regulations (Bafadhal, 2014). In line with that, the status of the child born from surrogacy is the legal child of the intended parent, because the child is the biological child of the intended parent (Musfira, 2023). Likewise, with child custody, it can be legally stipulated that the custody of the child lies with the intended parent, who will then get treatment and obtain their rights like biological children.

Rahayu (2022) in their research on IVF practices with surrogate mothers explained that the practice of IVF with the surrogacy method is contrary to existing laws in Indonesia. The pregnancy that is allowed is with a pure IVF process between a legal married couple, while pregnancy outside of natural means such as surrogate mother is not allowed by law because it results in a confusion of legal status that is difficult to cover by existing regulations.

Then Latif (2021) in their writing explained that the practice of surrogate mother is prohibited by Islamic law because it contradicts the Word of the Prophet Muhammad SAW:



"There is no sin in the sight of Allah SWT after shirk that is greater than a man who puts his semen into a womb that is not lawful not lawful for him." (HR Muslim)

Insemination is allowed if it is done between a legal husband and wife. This means that the man's sperm belongs to the legitimate husband and is then inserted into the womb of the legitimate wife of the owner of the sperm. If this is not the case, then insemination falls under the category of zina. As for this research, the author will provide an explanation of the legal comparison of the practice of surrogate mother based on Indonesian civil law with Islamic law.

This norm must be regulated in the Health Law later to emphasize the position or status of children born through surrogacy procedures. The affirmation in the law is done to clarify the status of the child as well as to prevent disputes over the custody of the child. This arrangement is very important because it relates to how the child's rights can be fulfilled. The concern that occurs is the phenomenon of child neglect. Child protection should also be the main focus of the reformulation of the law in legalizing the practice of surrogate mothers in Indonesia someday.

Referring to Law Number 35 of 2014 concerning Child Protection in Article 1 number 12, it is explained that children have rights that are comparable or equal to the rights possessed by adults, namely the rights to obtain guarantees, protection, and complete rights that must be fulfilled by all relevant parties including the community, parents, government as well as local governments, and the state. Article 3 also affirms the purpose of child protection as a step to ensure the fulfillment of children's rights. That is why the role of parents is so essential that it must be regulated later that intended parents must guarantee that they will be able to take full responsibility for their children and not leave them under any circumstances. Therefore, the role of parents and society is the first pillar that is supported and strengthened by the government in providing certainty and legal guarantees for the IVF phenomenon.

IVF is the result of technological developments discovered by humans to solve the problems they face. The IVF program was originally started in 1959 by an Italian scientist named Daniele Petrucci. Then his discovery was developed by scientists in the following period until in 1978 the first IVF baby was born to married couple John and Leslie Brown. Along with the development of technology in the field of medicine, IVF has now spread throughout the world to Indonesia (Muawanah, 2019).

The term surrogate mother in Indonesian means surrogate mother. Surrogacy in Latin is called *surrogatus* which means substitute, with another meaning that someone is chosen to replace someone else's position. In the Encyclopedia of Reproduction (Second Edition), Tetsuya Ishii defines surrogacy as a form of third-party reproduction with a woman carrying a pregnancy for an



infertile couple for medical reasons. Other studies define it as an IVF technique (in vitro fertilization), where the couple's sperm and ovum are processed in a tube, then inserted and implanted into another woman's uterus instead of the couple's uterus (Judiasih et al., 2016). Referring to the various definitions of surrogate mother, the author argues that the concept of surrogate mother is an attempt at pregnancy outside the natural way by referring to one form of development of the IVF method in general or In Vitro Fertilization (IVF), with the difference being that the fertilized egg is transplanted and conceived by a surrogate mother until the age is sufficient to be born, then the baby will be handed back to biological parents called intended parents (Kennedy, 2019).

According to the author's analysis of various studies that discuss surrogate mothers, almost all of them interpret the concept of surrogate mother as the same as a womb rental agreement or many other authors consider surrogate mother to be a womb rental. Whereas these two things are very different, uterine rent refers to the uterine organ as the object of rent regardless of whether the purpose is for surrogacy, research and research, or other purposes. Whereas surrogate mother directly refers to the rental of the womb to produce a child who is nurtured by the renting couple.

However, surrogate mother is a concept in the surrogacy method where the embryo that has been formed is implanted in the womb of another woman who is called a surrogate mother, of course it is very clear that there is no element of rent in it, so it is a mistake of thinking when equating surrogate mother with uterus rental. Moreover, the surrogate mother is also based on the voluntary basis of lending the womb of the surrogate mother to the parents who want a child and is not set out in the form of a lease agreement. Therefore, it is clear that the surrogacy method cannot necessarily be equated with uterine leasing, given that the purposes and types of surrogacy vary.

There are several provisions in Article 127 paragraph (1) of Law Number 36 of 2009 concerning Health regarding what must be considered regarding pregnancy outside of natural means, namely: First, pregnancy with the IVF method must be used as a last resort for a married couple after other efforts have been made in obtaining offspring. Second, if the IVF method is an option, then fertilization must come from the sperm and ovum cells of the husband and wife concerned and be placed in the womb of the wife where the ovum cell originated. So it can be understood that if fertilization is carried out in the womb of another woman, it violates this provision. Third, the IVF process must be carried out by medical personnel who are authorized and have the expertise to carry out the process. The process must also be carried out through adequate health facilities. Otherwise, it is feared that it will endanger both the prospective parents and the baby in the future.





By looking at the provisions in the article above, it is clear that the process of artificial insemination or IVF can only be carried out by married couples who are legal according to Indonesian positive law, not using a surrogate mother, because it is not following legal norms, norms of decency and norms of decency.

Meanwhile, the concept of surrogacy is seen in letter a above, which emphasizes that a married couple who wants to pursue a non-scientific pregnancy can only do so if the fertilization results from the sperm and ovum of the husband and wife are implanted back in the wife's womb. If referring to the conception of a surrogate mother, then letter A only allows non-scientific pregnancy efforts through IVF, not surrogacy, because in the surrogacy method, in addition to a married couple, there is also a surrogate mother. There is no clear ratio as to why the Health Law prohibits the practice of surrogacy. It becomes an injustice when there is a condition where the wife has a problem in the form of a disease in the uterus that causes her to be unable to conceive, so she needs a surrogate mother's uterus. It is clear that the Health Law closes the gap for surrogate mother practices to be carried out in Indonesia so that those who do so will be considered to have carried out illegal practices.

Surrogate mother is basically like an agreement that should be done legally based on the law. The validity of the Agreement itself in Indonesia is regulated in Article 1320 of the Criminal Code in which an agreement must fulfill all 4 (four) existing requirements, namely 2 (two) subjective conditions and 2 (two) objective conditions: a) Agreement of the parties; b) Capability of the parties; 3) Regarding a certain matter; and 4) Halal cause. If returned to the origin of a valid agreement, then the practice of surrogate mother does not meet the requirements of a lawful cause because it is contrary to norms, decency, and public order or simply contrary to the provisions of Article 127 of the Health Law (Rahayu, 2022).

Children born through surrogacy procedures have the same rights as children in general. They are entitled to care, education, maintenance, guidance, and protection, which of course is closely related to the role of parents (Arifin et al., 2019). This is also part of what is required by Article 1 point 11 of the Child Protection Law. Therefore, the Health Law that will later be reformulated to accommodate surrogate mothers should also be in line with the principles and objectives of child protection based on Pancasila and based on the Constitution of the Republic of Indonesia as also regulated in the Child Protection Law.

Regarding the status of children, Indonesia has regulated the legal position of children, as stated in Article 48 paragraph (1) of the Marriage Law:

"a legitimate child is a child born in or as a result of a legal marriage".



By looking at the article, the author can conclude that children born from the IVF process using the services of a surrogate mother are not legitimate children. This is again confirmed in Article 43 paragraph (1) of the Marriage Law which stipulates that:

"children born in marriage only have a civil relationship with their mother and their mother's family".

The above article further emphasizes that how a child is born, will affect his status with his parents without even a word of disconnection. A child born by a surrogate mother through the IVF process, then it becomes clear that he and the mother who gave birth to him have a strong relationship.

With the technique of artificial insemination or IVF, the problems faced by married couples who cannot have children can be solved. However, not all of these problems can be solved, because various models of IVF techniques are increasingly triggering problems, one of which is by using surrogate mothers. The utilization of IVF with the services of a surrogate mother is what then confuses the status, rights, obligations, and anything that exists between a child and his parents. This confusion can occur considering that a child born with the help of a surrogate mother will eventually have a pair of mothers, namely a biological mother and also a mother who has conceived and given birth to her (PUTRA, 2021). So from the explanation above, it can be understood that Indonesian civil law prohibits the practice of surrogate mothers because it is feared that it will create legal confusion for the child who is born.

In the Quran itself, no letter or verse regulates the position of children born by surrogate mothers through the IVF process. In Islam, marriage is an act of worship that aims to obtain legitimate offspring according to sharia, so it can be concluded that a legitimate child is a child born through a marriage that is preceded by a valid marriage contract according to Islam because Islam wants to maintain offspring properly (Shufiyah, 2018).

Surah An-Nahl verse 72 explains that Allah desires children and grandchildren to be born to legitimate wives, not to women who are not his wives. According to Article 99a and b KHI, legitimate children are as follows:

1. Children born in or as a result of a valid marriage.
2. The result of fertilization of a legitimate husband and wife outside the womb and born to the wife.

By looking at the two articles, the author can conclude that children born with the help of surrogate mothers through the IVF process cannot be recognized as legitimate children. The child can only be said to be a legitimate child if it can be found clearly and definitely who the father and





mother are so that the nasab can be known as well. As for article 99 KHI letter b, there are provisions where the IVF process is only intended and allowed for a legitimate married couple and the baby was born by his wife.

Based on the explanation above, it can be concluded that artificial insemination is permissible in Islam, but it is not allowed to entrust the seed to another woman even if it is a second wife who has been legally married to a polygamous husband. This is intended to prevent the mixing of lineages because it will be very confusing to determine to whom the child will be attributed. Artificial insemination will not cause problems if the process is carried out using seeds from a legitimate married couple and the baby is indeed born from the womb of the legitimate wife. Seeds that come from and are obtained through a legal process have legal consequences where it will become clear and certain of a person's lineage. Compared to IVF in general, artificial insemination using a surrogate mother will certainly cause problems in the future.

Islam views the phenomenon of IVF with the help of a surrogate mother as a separate problem considering that a baby is born into the world, naturally and his *fitroh* will be attached between his and his parent's rights, obligations, and responsibilities that are directly intertwined from birth to death. Even insemination with the help of a surrogate mother falls under the category of adultery or *zina* (Latif, 2021).

Article 100 KHI, stipulates that:

"Children born outside marriage only have a nasab relationship with their mother and their mother's family".

The above article explains that children born through the IVF process using the services of a surrogate mother only have a relationship with the birth mother. The form of artificial insemination with the services of a surrogate mother adds to the problem, especially in determining the issue of nasab and the position of children born in this way. To determine the nasab of a child born by artificial insemination, it is necessary to examine matters relating to the determination of nasab.

Based on QS *Al-Baqarah* verse 282, Nasab can occur from three things, namely:

1. *Al Firashuh Shahih*, meaning a valid marriage. A child born to a married couple can be said to be a legitimate child if he or she is born to parents who enter into a marriage that fulfills the terms and conditions set by Sharia.
2. *Al Iqrar*, meaning that the father acknowledges that the child born is his.
3. *Al Bayyinatush Shahihah*, meaning valid evidence, where nasab is established based on evidence that is considered valid according to Shara'.



By looking at the provisions of the verse, it can be understood that the position or legal status of children born from the IVF process with the services of a surrogate mother is not a legitimate child so it only has a nasab relationship with the mother who gave birth to it and her mother's family, not connected to the actual owner of the embryo, namely a married couple who ask for help from another woman to become a surrogate mother.

Based on the explanation of the practice of surrogate mother, it is found and can be understood that this method is contrary to the provisions regulated by Indonesian civil law and Islamic law. Civil law disputes the halal clause in the uterus rental agreement with the surrogate mother method because this situation is considered to have contradicted the norms regulated in Article 127 paragraph (1) of the Health Law. Then Islamic Law views insemination with a surrogate mother as an act of adultery which results in confusion and confusion of nasab for the child who is born. Both laws agree that the practice of IVF with a surrogate mother violates the provisions of the law because there will be many problems arising from this method which cannot be answered by laws that collide with each other.

### **Guardianship of Children Born Through Surrogate Mothers**

The guardianship or rights of children born from the process of IVF with the services of a surrogate mother are not the same as the rights of children born from legal marriage, due to differences in nasab. The rights of a child are as follows:

1. The right to nasab (lineage) is based on Surah Al-Baqarah verse 223.
2. The right of breastfeeding is based on Surah Al-Baqarah verse 223 and Surah At-Thalaq verse 6.
3. Maintenance rights based on Surah Al-Baqarah verse 253.
4. The right of guardianship (concerning matters of marriage, education, and supervision) is based on Surah Al-Baqarah verse 220 and Surah An-Nisa verse 2.

In addition to these rights, a child born in a legal marriage also has the right to inherit if one or both parents die. He has this right of inheritance because the law of inheritance is closely related to the bloodline in a family tree. The closer a person's lineage to the heir, the greater the possibility and even the share he gets in the inheritance. Their existence can also prevent distant heirs from getting an inheritance (Aminuddin, 2019). So the clarity of nasab is the main key in determining the share of inheritance. If there is confusion or ambiguity in determining the status of a person's nasab, it will have an impact on the difficulty of determining who the heirs are and how many shares for each heir.



As has been stated, there are two types of artificial insemination, where the nasab of the child born is distinguished according to the origin of the sperm, namely:

1. The child of artificial insemination with the sperm of a legal husband is attributed to that husband.
2. The child of artificial insemination with donor sperm is attributed to the woman who gave birth to it.

In the case of artificial insemination with the husband's sperm, there is no problem; everything, including the law of inheritance, is treated as a natural-born child, and all the provisions of the science of *faraidh* apply to the child. For example, if the father dies, the child is entitled to all the property if he is a boy alone and if he is with his sisters, he gets twice the share received by the sisters. This division is not absolute for every case so it is fair to use the method of deliberation to give the same portion of inheritance between girls and boys.

The chaos that arises from IVF using surrogate mother techniques will greatly impact inheritance issues (Pratiwi & Habib, 2023). Allah, the All-Knowing with all His knowledge, justice, and wisdom will give each of them their rights according to the determined lines fairly and perfectly without lacking anything. So important is the issue of inheritance that there is a special arrangement in the Qur'an.

The Qur'an does regulate the issue of inheritance, it's just that for children born with the help of a surrogate mother through the IVF process, there is no provision for him in the Qur'an regarding how much share he gets in inheritance. Therefore, it is appropriate for Islamic jurists to try to find the legal basis for this matter.

According to Salim HS, children born with the help of a surrogate mother through the IVF process can also be referred to as breastfeeding children. The definition of a breastfed child itself is a child who is breastfed by another woman who is not his mother. In this situation, the breastfed child is entitled to inheritance but inheritance from his biological parents, while he is not entitled to inheritance from the estate of the surrogate mother.

Another opinion relating to the issue of the distribution of inheritance was also conveyed by Salim Dimiyati, which means as follows:

The position of a child born with the help of a surrogate mother through the IVF process is not the same as that of a biological child. He will only be considered an adopted child because his presence was born from the womb of a woman who is not the spouse of the husband whose sperm was deposited with the woman. This results in his ineligibility to inherit and be inherited (Hs, 1993).

By looking at these two opinions, the author agrees more with the opinion of Salim Dimiyati where the child is juridically a child of the mother who gave birth to him. This is in line with the provisions in Article 99 letters a and b of the Compilation of Islamic Law (KHI) concerning the definition of a legitimate child. If a legitimate married couple carries out the IVF process using their sperm and eggs deposited in the womb of a surrogate mother, then the child born from the process is not legitimate. Islam also does not justify this action because it is not by sharia and can cause the mixing of nasab which is very much avoided in Islam.

Article 100 of the Compilation of Islamic Law states that:

"Children born outside of marriage only have a relationship of mutual inheritance with their mother and their mother's family".

Based on the above provisions, it is very clear that Indonesia as a state of the law does not recognize children born with the help of surrogate mothers through the IVF process as legitimate children, so the legal consequences are that they only have inheritance relationships from the mother and the mother's family who gave birth to them.

When referring to the opinion of Salim Dimiyati who said that children born through the IVF process using sperm and ovum from a legal husband and wife then entrusted to a surrogate mother are only limited to adopted children, then their biological parents if they intend to give their property to the child, should not equate with their biological children this is by the words of Allah SWT in QS. *Al-Ahzab* verses 4-5 which reads:

“Allah has not made for any man two hearts in his (one) body: nor has He made your wives whom ye divorce by Zihar your mothers: nor has He made your adopted sons your sons. Such is (only) your (manner of) speech by your mouths. But Allah tells (you) the Truth, and He shows the (right) Way.”

“Call them by (the names of) their fathers: that is juster in the sight of Allah. But if ye know not their father’s (names, call them) your Brothers in faith, or your maulas. But there is no blame on you if ye make a mistake therein: (what counts is) the intention of your hearts: and Allah is Oft-Returning, Most Merciful.”

Thus, the provision of inheritance is carried out through the provision of mandatory wills within the limit of one-third of the amount of assets before dying based on the provisions of article 209 KHI and grants amounting to one-third of the portion with the condition that it must be the right of the grantee by article 210 KHI, namely without coercion, in the presence of 2 (two) witnesses, and the property owned is the grantee's property. Because the share between adopted children and biological children must be distinguished.



By looking at the above provisions, it means that the inheritance rights of children produced through the surrogate mother process can receive grants or wills from their biological parents with a maximum amount of one-third of the property. For the problem of wills, it must first be based on the consent of the heirs, especially if the bequeathed property exceeds one-third of the share, the heirs have the right to reject or accept the testator's decision. As for the granting of grants, the consent of the heirs is required if the grantor is sick and near death.

#### **4. CONCLUSION**

The IVF technique using the help of a surrogate mother is an act that is forbidden by Islam because it can lead to chaos in the purity of nasab (lineage) and is very contrary to human values. Islam and the Civil Law in Indonesia do not prohibit someone from using IVF techniques as long as it is done in the right way, married couples who want children using IVF techniques must meet certain conditions, namely: the sperm and ovum used must come from a married couple and must be conceived by the wife who is the owner of the ovum. So IVF babies born outside of these provisions cannot be considered legitimate children both from a juridical and Sharia perspective.

Children born through IVF techniques with the help of surrogate mothers, because they cannot be considered legitimate children, are deprived of inheritance rights. He cannot inherit except from the mother and the family of the mother who gave birth to him. If the biological parents wish to give their property to the child, they can do so through grants or compulsory bequests, the amount of which cannot exceed one-third of the entire estate left behind.

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