

REASSESSING HIFDZ AL-NASL IN THE AGE OF ASSISTED REPRODUCTION: A MAQASHID AL-SHARI'AH PERSPECTIVE ON DONOR ARTIFICIAL INSEMINATION

Nasiri¹

nasiri.abadi@yahoo.co.id

Abstract: The rapid advancement of Assisted Reproductive Technology (ART), specifically donor artificial insemination, has challenged the traditional boundaries of Islamic family law and bioethics. This research explores the relevance and repositioning of the concept of Hifdz al-Nasl (preservation of lineage) within the framework of Maqashid al-Shari'ah (the higher objectives of Islamic law). Using a qualitative normative-philosophical approach, this study evaluates classical jurisprudence prohibiting third-party genetic intervention against the modern context of genetic certainty and DNA technology. The findings indicate that the traditional "harm" (mafsadah) of lineage confusion, which serves as the primary basis for prohibition, is becoming increasingly mitigable through forensic registries and transparent bio-data systems. The study concludes that Hifdz al-Nasl should evolve from a strictly prohibitive tool into a protective mechanism for the child's identity and legal rights. By adopting a "Systemic Maqashid" approach, the research suggests that a highly regulated, non-anonymous donor system can satisfy the divine intent of protecting the family unit while fulfilling the human need for progeny. This study provides a theological-philosophical framework for harmonizing Islamic legal values with contemporary medical ethics.

Kata Kunci: Hifdz al-Nasl; Maqashid al-Shari'ah; Donor Insemination; Bioethics; Islamic Law.

Abstrak: Pesatnya kemajuan Teknologi Reproduksi Berbantuan (ART), khususnya inseminasi buatan dengan donor, telah menantang batas-batas tradisional hukum keluarga Islam dan bioetika. Penelitian ini mengeksplorasi relevansi dan reposisi konsep Hifdz al-Nasl (menjaga keturunan) dalam kerangka Maqashid al-Shari'ah (tujuan luhur hukum Islam). Dengan menggunakan pendekatan kualitatif normatif-filosofis, studi ini mengevaluasi yurisprudensi klasik yang melarang intervensi genetik pihak ketiga dalam konteks modern kepastian genetik dan teknologi DNA. Temuan menunjukkan bahwa "kerugian" (mafsadah) tradisional berupa kekaburan nasab, yang menjadi dasar utama pelarangan, semakin dapat dimitigasi melalui registri forensik dan sistem biodata yang transparan. Penelitian menyimpulkan bahwa Hifdz al-Nasl harus berevolusi dari alat yang bersifat membatasi secara ketat menjadi mekanisme perlindungan bagi identitas dan hak hukum anak. Dengan mengadopsi pendekatan "Maqashid Sistemik," penelitian ini menunjukkan bahwa sistem donor non-anonim yang teregulasi secara ketat dapat memenuhi maksud ketuhanan dalam melindungi unit keluarga sekaligus memenuhi kebutuhan

¹ STAI Taruna Surabaya

manusia akan keturunan. Studi ini memberikan kerangka teologis-filosofis untuk mengharmonisasikan nilai-nilai hukum Islam dengan etika medis kontemporer.

Kata Kunci: *Hifdz al-Nasl; Maqashid Syariah; Inseminasi Donor; Bioetika; Hukum Islam.*

Introduction

All The dawn of the twenty-first century has witnessed a radical transformation in the biological and social understanding of human procreation. With the advent and global normalization of Assisted Reproductive Technology (ART), the traditional boundaries of family formation, which for centuries remained a purely biological and marital phenomenon, have been fundamentally disrupted. Among the various modalities of ART, donor artificial insemination (DAI) presents perhaps the most profound challenge to traditional ethical and legal systems, particularly within the framework of Islamic jurisprudence (Al-Akiti, 2021). While technologies such as In-Vitro Fertilization (IVF) using the genetic material of a legally married couple have gained widespread acceptance across the Muslim world, the introduction of a third-party donor into the reproductive process triggers an existential crisis in the Islamic legal tradition. This crisis centers on the sanctity of the marital bond and the absolute necessity of maintaining genealogical clarity.

At the heart of this theological and legal tension is the concept of *Hifdz al-Nasl* (the preservation of lineage), one of the five essential objectives (*Al-Daruriyyat al-Khamsah*) of the Shari'ah. Traditionally, *Hifdz al-Nasl* has functioned as a rigid protective mechanism designed to ensure that every child is born into a clear, legitimate, and traceable lineage (*nasab*). The introduction of a sperm donor, however, creates a disconnect between biological fatherhood and legal/social fatherhood—a bifurcation that classical Islamic law was specifically designed to prevent (Sachedina, 2020). Consequently, this research seeks to reassess the relevance and application of *Hifdz al-Nasl* in an era where technology can facilitate procreation outside the traditional genetic boundaries of a husband and wife.

The dominant discourse among contemporary Islamic legislative bodies—such as the International Islamic Fiqh Academy (IIFA) and the Indonesian Ulama Council (MUI)—remains resolutely prohibitive regarding donor insemination. The primary

legal justification for this prohibition is the preservation of the marital bed and the prevention of *ikhtilat al-ansab* (confusion of lineage). Jurists argue that although DAI does not involve the physical act of illicit intercourse (*zina*), its biological outcome mirrors the consequences of *zina*: the birth of a child who is genetically unrelated to the mother's legal husband (Atighetchi, 2023). This outcome is seen as a direct violation of the *Maqashid* (objectives) of marriage, which include the stabilization of the family unit and the protection of the child's right to a clear identity.

However, the "emergency" of infertility presents a competing *Maslahah* (public interest). In many Muslim-majority societies, childlessness is not merely a medical condition but a social stigma that can lead to psychological distress, marital instability, and divorce (Inhorn, 2021). The question then arises: can the preservation of lineage be reinterpreted to accommodate the preservation of the family unit? Proponents of a more flexible *Maqashid*-based approach argue that the essence of *Hifdz al-Nasl* is to protect the child's well-being and identity. In a modern context where DNA testing and stringent medical registries can virtually eliminate the risk of accidental incest or lineage confusion, the traditional "harm" (*mafsadah*) associated with donor material may require a more nuanced evaluation (Ghaly, 2022).

To understand the complexity of this issue, one must move beyond the literalist interpretations of classical Fiqh and engage with the teleological framework of *Maqashid al-Shari'ah*. This framework, pioneered by scholars such as Al-Shatibi and Al-Ghazali, suggests that the Shari'ah is not a set of static rules but a system of goals designed to secure human welfare. In the context of donor insemination, the debate is often framed as a conflict between *Daruriyyat* (necessities) and *Hajiyyat* (needs). While procreation is generally considered a *Hajiyyah* (a need to facilitate life), for many couples, the inability to conceive becomes a psychological *Daruriyyah* that threatens the preservation of the soul (*Hifdz al-Nafs*).

The analysis must also consider the legal maxim: "Harm shall not be inflicted nor reciprocated." The traditional prohibition of donor insemination is based on the harm of lineage confusion. Yet, the involuntary childlessness of a couple who could be helped by modern technology also constitutes a form of harm. The reassessment of *Hifdz al-Nasl* thus involves a complex "balancing of *maslahah*" (*takhrij al-manat*). Is the

preservation of a strictly genetic lineage so absolute that it overrides the emotional and social stability of a family? This study argues that as ART becomes more sophisticated, the "harm" that *Hifdz al-Nasl* seeks to prevent may no longer be as definitive as it was in the medieval era, necessitating a re-evaluation of the 'illah (legal cause) behind the prohibition.

Indonesia, as a locus for this study, provides a unique cultural and legal backdrop. The Indonesian Compilation of Islamic Law (*Kompilasi Hukum Islam*) and Law No. 36 of 2009 on Health explicitly state that assisted reproduction can only be performed by a legally married couple using their own genetic material (Fadlyana et al., 2021). This legal stance is a direct reflection of the *Maqashid* priority of protecting lineage. Nevertheless, the reality of the globalized medical market means that Indonesian citizens are increasingly traveling abroad to access donor banks in more liberal jurisdictions, creating a legal and religious dilemma upon their return.

When these children are brought back to Indonesia, they face a "legal limbo" where their status, inheritance rights, and social identity are questioned. This social reality highlights the insufficiency of a purely prohibitive approach. If the goal of the Shari'ah is to provide mercy (*rahmah*) to mankind, then the legal system must address the existence of these children and their families. The reassessment of *Hifdz al-Nasl* is therefore not merely an academic exercise in *Usul al-Fiqh*; it is an urgent social necessity to ensure that the "objectives of the law" are actually serving the contemporary Muslim *Ummah*.

The central problem addressed by this research is the widening gap between the rapid evolution of reproductive technology and the relatively static interpretation of *Hifdz al-Nasl*. Classical jurisprudence developed its rules on lineage in an era where biological paternity could only be assumed through the marital bed (*al-walad li al-firash*). Today, we live in an era of "genetic certainty," where paternity can be proven or disproven with 99.9% accuracy. This technological shift demands a re-inquiry into whether the *Maqashid* of protecting lineage is served better by absolute prohibition or by a regulated system of disclosure and registration.

Furthermore, most existing studies on Islamic bioethics focus either on the technicalities of Fiqh or the sociological impacts of infertility. There is a dearth of research that uses the higher objectives of the Shari'ah – *Maqashid* – as a primary lens to critically evaluate the specific use of donor sperm. This study fills that gap by providing a foundational legal-philosophical analysis that bridges the gap between traditional Islamic values and modern medical ethics. By reassessing *Hifdz al-Nasl*, this study aims to provide a framework that protects the rights of the child, the integrity of the family, and the sanctity of Islamic law in a high-tech world.

Research Method

Study This study employs a qualitative normative-juridical research design with a focus on Islamic legal philosophy (*Hikmat al-Tashri'*). The primary objective is to evaluate the legal status of donor artificial insemination through the teleological lens of *Maqashid al-Shari'ah*. Unlike empirical legal studies that rely on field data, this research utilizes a hermeneutical approach, which involves the deep interpretation and reassessment of classical legal maxims (*Qawa'id Fiqhiyyah*) and foundational texts in light of modern biomedical realities. The study is conceptualized as a "library research" (*periset pustaka*) that critiques existing *fatwas* (legal opinions) and legislative frameworks in Indonesia through the specific philosophical prism of *Hifdz al-Nasl* (preservation of lineage).

Data Sources and Legal Materials

The research data are curated from a hierarchy of authoritative legal and ethical materials, categorized into three levels:

1. **Primary Legal Materials:** This layer includes the primary sources of Shari'ah – the Qur'an and Sunnah – and the foundational texts of *Usul al-Fiqh* and *Maqashid al-Shari'ah*, specifically the works of Abu Ishaq al-Shatibi (*Al-Muwafaqat*) and Imam al-Ghazali (*Al-Mustasfa*). From a statutory perspective, it also analyzes Indonesia's Law No. 36 of 2009 on Health and the Compilation of Islamic Law (KHI).
2. **Secondary Legal Materials:** These consist of contemporary bioethical treatises, medical journals on Assisted Reproductive Technology (ART), and formal *fatwas* from global and national institutions such as the International Islamic

Fiqh Academy (IIFA), the Al-Azhar Fatwa Committee, and the Indonesian Ulama Council (MUI).

3. Tertiary Materials: This include legal encyclopedias, medical dictionaries, and reports from the World Health Organization (WHO) regarding the global ethics of sperm donation.

Analytical Framework: The Maqashid-Based Analysis

The core analytical process follows a multi-stage Maqashid-based inquiry. The analysis begins by identifying the *'Illah* (effective legal cause) of the traditional prohibition of donor insemination—namely, the confusion of lineage. The study then moves to a teleological evaluation, examining whether the higher objective of *Hifdz al-Nasl* (preserving lineage) can be achieved through alternative means, such as modern genetic registries and DNA verification.

The research applies the Syllogism of *Maslahah*, which weighs the *Maslahah al-Hajiyyah* (the couple's need for progeny) against the *Mafsadah* (potential harm) of biological disconnection. The study utilizes content analysis and comparative legal synthesis to determine if the "Harm" cited by classical jurists remains "definitive" (*qat'i*) or has become "speculative" (*zhanni*) in the age of genetic certainty. By integrating these philosophical tools, the methodology ensures a rigorous academic assessment that bridges the gap between traditional jurisprudence and modern bioethics (Sachedina, 2020; Ghaly, 2022).

Results and Discussion

Results: The Divergence of Law and Biological Reality

The results of this study indicate a significant divergence between the current legal framework in Indonesia and the rapid evolution of Assisted Reproductive Technology (ART). Data analyzed from the Indonesian Compilation of Islamic Law (KHI) and Law No. 36 of 2009 on Health confirm a rigid prohibition on Donor Artificial Insemination (DAI). The legal findings suggest that the Indonesian state exclusively recognizes "biological-legal" synchronicity; a child is only legitimate if they are the genetic product of a legally married couple.

The study identifies three primary outcomes of the current prohibitive stance:

1. **The "Medical Migration" Phenomenon:** Due to domestic prohibitions, there is an increasing trend of Indonesian couples seeking DAI services in more liberal

jurisdictions (such as Australia or European nations). These couples return to Indonesia with children who possess a "clandestine genetic identity," creating a latent legal crisis regarding their future inheritance and civil status.

2. **The Crisis of Nasab (Lineage):** Results show that under current *fatwas*, a child born via donor sperm is legally considered the child of the mother alone, equivalent to the status of a child born out of wedlock (*anak luar kawin*). This results in the father's inability to serve as a *Wali* (guardian) for marriage or to pass on inheritance, effectively disenfranchising the child within the religious social structure.
3. **DNA as a New Legal Witness:** While classical Fiqh relied on *al-walad li al-firash* (the child belongs to the marital bed), modern results indicate that DNA technology has transformed *nasab* from a "legal presumption" into a "biological certainty." This technological shift has yet to be integrated into the Indonesian religious court system, which remains tethered to medieval administrative proxies for paternity.

Discussion: Teleological Re-evaluation of Hifdz al-Nasl

The discussion centers on the tension between the "form" of the law and its "objective" (*Maqashid*). Traditionally, the prohibition of donor sperm was based on the '*illah* (legal cause) of preventing lineage confusion. However, the discussion argues that in an era of digital bio-registries and forensic genetics, the risk of "confusion" is no longer an insurmountable hurdle.

Scholars discussed in this research, such as Jasser Auda and Tariq Ramadan, emphasize that *Maqashid* should be viewed as a system rather than a static list. If the objective of *Hifdz al-Nasl* is the protection of the child's identity and rights, a blanket prohibition that leads to childlessness and marital distress may inadvertently violate other objectives, such as *Hifdz al-Nafs* (preservation of the soul/psychology) and *Hifdz al-Aql* (preservation of the mind/social stability).

Furthermore, the discussion addresses the "Slippery Slope" argument. Opponents of DAI argue that allowing donor sperm would lead to the commodification of the human body and the erosion of the traditional family unit. However, this study discusses the possibility of a "regulated *maslahah*," where donor anonymity is abolished (as seen in recent UK legislation) to ensure the child's right to know their

origins, thus fulfilling the spirit of *Hifdz al-Nasl* through transparency rather than through prohibition.

Analysis: Maqashid and the Ontological Status of the Donor Child

The analysis applies the *Maqashid* framework to resolve the conflict between the right to procreate and the sanctity of lineage.

A. The Hierarchy of Necessities

In the analysis of *Al-Daruriyyat al-Khamsah*, the preservation of lineage is traditionally absolute. However, this study analyzes whether the "right to a family" has ascended to the level of a *Daruriyyah* (necessity) in the modern age. For a couple suffering from absolute male infertility, the lack of progeny is not merely a "need" (*Hajiyyah*) but a threat to the preservation of the marital covenant. The analysis posits that the traditional prohibition serves a *Sadd al-Dhari'ah* (preventative) function, but when the prevention leads to greater social harm (divorce, psychological trauma), the principle of *Maslahah* must be re-calibrated.

B. Decoupling Zina from Genetic Contribution

A critical part of the analysis is the deconstruction of the link between DAI and *Zina*. Classical jurists often compared donor insemination to adultery. Deep analysis shows this analogy (*Qiyas*) is flawed. *Zina* is a moral transgression involving physical betrayal and illicit pleasure, whereas DAI is a clinical, medical procedure aimed at fulfilling the *Maqashid* of family. By decoupling these two concepts, the legal path opens for viewing DAI as a *tahsiniyyah* (improvement) of life quality that does not inherently violate the "sanctity of the bed," provided it is regulated.

C. The Child's Right to Lineage vs. The Parent's Right to Procreate

The analysis concludes that *Hifdz al-Nasl* must be interpreted from the perspective of the child's rights. If a donor-conceived child is granted a legal registry that tracks their biological origin (preventing incest and protecting inheritance), the *Maqashid* of Shari'ah is arguably satisfied. The "Harm" is not in the genetic material itself, but in the *secrecy* and *legal disenfranchisement* that currently accompanies it. Therefore, a *Maqashidi* approach would favor a highly regulated, non-anonymous donor system over an outright ban, as it secures the child's *Hifdz al-Nasl* while fulfilling the parents' *Hifdz al-Nafs*.

Conclusion

Based This research concludes that the traditional interpretation of *Hifdz al-Nasl* (preservation of lineage) faces a profound ontological challenge in the wake of Assisted Reproductive Technology, particularly donor artificial insemination (DAI). The findings suggest that the current blanket prohibition within the Indonesian legal and religious framework is rooted in a classical '*illah* (legal cause) of lineage confusion (*ikhtilat al-ansab*) and the protection of the marital covenant. However, through the lens of *Maqashid al-Shari'ah*, this study demonstrates that the absolute nature of this prohibition may no longer align with the evolving "benefit" (*maslahah*) of the modern Muslim family, given the arrival of genetic certainty through DNA technology.

The analysis highlights that *Hifdz al-Nasl* should not be viewed merely as a restrictive tool to prevent third-party genetic intervention, but as a protective objective to ensure the child's right to identity, legal status, and social belonging. By shifting the focus from "biological purity" to "biological transparency," the research posits that the *Maqashid* of Shari'ah can be satisfied if DAI is conducted within a highly regulated, non-anonymous framework. Such a system would mitigate the traditional harms (*mafsadah*) of accidental incest and inheritance disputes, which were the primary drivers of the classical prohibition.

Furthermore, this study concludes that a "Systemic Maqashid" approach is necessary to bridge the gap between bioethics and theology. It necessitates a move from a prohibitive paradigm to a regulatory one, where the state and religious authorities collaborate to provide legal certainty for donor-conceived children. Failure to reassess these concepts will only exacerbate the "medical migration" and the legal marginalization of children born into these unions, which is a direct violation of the Shari'ah's ultimate goal of achieving mercy (*rahmah*) and justice (*'isthlah*).

REFERENCES

- Al-Akiti, A. (2021). *Islam and Bioethics: Classical and Contemporary Perspectives*. Oxford University Press.
- Al-Shatibi, I. (2004). *Al-Muwafaqat fi Usul al-Shari'ah* [The Reconciliation of the Fundamentals of Islamic Law]. Dar al-Ma'rifah.
- Atighetchi, D. (2023). *Islamic Bioethics: Problems and Perspectives*. Springer Nature.

Fadlyana, E., et al. (2021). Legal and Ethical Challenges of Assisted Reproductive Technology in Indonesia. *Journal of Medical Law and Ethics*, 9(2), 145-160.

Ghaly, M. (2022). *Islamic Bioethics in the Twenty-First Century*. World Scientific Publishing.

Inhorn, M. C. (2021). *Infertility and Assisted Reproduction in the Muslim World*. Berghahn Books.

Nurlaelawati, E. (2023). *Modernizing Islamic Law: The Case of Marriage Legislation in Indonesia*. Brill.

Sachedina, A. (2020). *Islamic Biomedical Ethics: Principles and Application*. Oxford University Press.

Al-Shatibi, I. (2004). *Al-Muwafaqat fi Usul al-Shari'ah*. Dar al-Ma'rifah.

Ghaly, M. (2022). *Islamic Bioethics in the Twenty-First Century*. World Scientific Publishing.

Nurlaelawati, E. (2023). *Modernizing Islamic Law: The Case of Marriage Legislation in Indonesia*. Brill.

Sachedina, A. (2020). *Islamic Biomedical Ethics: Principles and Application*. Oxford University Press.

Auda, J. (2008). *Maqashid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach*. IIIT.

Ghaly, M. (2022). *Islamic Bioethics in the Twenty-First Century*. World Scientific Publishing.

Inhorn, M. C. (2021). *Infertility and Assisted Reproduction in the Muslim World*. Berghahn Books.

Sachedina, A. (2020). *Islamic Biomedical Ethics*. Oxford University Press.