

Maqāṣid al-Syarī'ah's Analysis of Assisted Reproduction Arrangements in Article 111 of Government Regulation Number 28 of 2024

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ABSTRACT

Having children is a primary goal of marriage, but infertility prevents many couples from conceiving naturally. Medical advances such as Assisted Reproductive Technology (ART) like in vitro fertilization (IVF) offer solutions but also raise ethical and legal dilemmas, particularly concerning lineage clarity, the sanctity of marriage, and the bounds of reproductive technology under Islamic law. In Indonesia, IVF is regulated by Article 111 of Government Regulation No. 28 of 2024 as an implementing regulation of the Health Law. This study analyzes that provision through the lens of maqāṣid al-sharī'ah using the framework of the five objectives of Islamic law (al-ḍarūriyyāt al-khams). A normative legal research method was employed with textual and conceptual approaches, based on library research of relevant laws, fatwas (MUI and Majma' Fiqh al-Islāmī), and literature on fiqh and maqāṣid. The analysis maps each clause of Article 111 onto the five maqāṣid categories. The results indicate that normatively Article 111 embodies principles protecting all five objectives of Islamic law, with lineage protection being dominant. Restrictions limiting ART to legally married infertile couples, requiring the spouses' own gametes, involvement of authorized medical professionals, and prohibitions of third-party donation, surrogacy, and non-medical sex selection reflect a maqāṣid al-sharī'ah-oriented approach. Nevertheless, the regulation's implementation is not yet fully maqāṣidī, requiring further reinforcement. This study recommends enacting a specific law on assisted reproductive technology and more comprehensive regulation (including cross-border practices) to optimally safeguard all five objectives.

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1. INTRODUCTION

Offspring is one of the main goals of marriage in various traditions. However, not every married couple can have children naturally due to infertility or fertility problems. Globally, about 1 in 6 people of reproductive age experience infertility, and in Indonesia the prevalence of infertility reaches 10–15% of couples of childbearing age (Ministry of Health of the Republic of Indonesia, 2022). Infertility not only has an impact on health aspects, but also causes psychological and social stress in the household (stress, depression, conflict), and even has the potential to trigger tension in marriage (Ministry of Health of the Republic of Indonesia, 2022).

Advances in reproductive medicine technology offer solutions for infertile couples through *assisted reproductive technology* (ART) programs, including in vitro fertilization (IVF) procedures known as IVF. The IVF method has become one of the effective techniques in handling infertility with a success rate of around 30% per cycle in the last decade (Hendarto, 2019). Although it offers hope medically, the practice of ART raises ethical and legal dilemmas, especially in religious societies such as Indonesia (Putra et al., 2025). His main concerns concern the clarity of the nasab (lineage) of the child born, the sanctity of the marriage bond, and the limits that are justified in utilizing reproductive technology according to religious norms. Several studies show that there are different views in Islamic law regarding IVF, especially when it involves sperm or surrogacy (Pulungan & Musthofa, 2021).

Scholars and fatwa authorities generally agree that assisted reproductive technology is allowed if it is carried out by a legal married couple and without involving a third party, both in terms of donors and surrogate mothers (International Islamic Fiqh Academy, 2021; Mahmudah, 2023). The Indonesian Ulema Council (MUI) through a 1979 fatwa affirmed the prohibition of IVF practices involving donors and surrogate mothers, in order to prevent chaos of the nasab (Mahmudah, 2023). A similar provision was also issued by the Majma' al-Fiqh al-Islāmī (International Islamic Fiqh Academy) in 1986 at the international level, arguing that the involvement of outsiders could disrupt the nasab and violate the sanctity of marriage. (Mahmudah, 2023; International Islamic Fiqh Academy, 2021). These sharia principles are a reference in the regulation of national law in Indonesia.

In the realm of positive law, Indonesia began to recognize and regulate IVF services since Law No. 36 of 2009 concerning Health which contains basic provisions regarding the validity of couples, the origin of gametes, and the role of medical personnel (Article 127). Further technical arrangements are contained in Government Regulation (PP) No. 61 of 2014 concerning Reproductive Health which explicitly prohibits sperm/ovum donation and surrogate practices (Article 40). The update was then carried out through Law No. 17 of 2023 concerning Health which emphasizes aspects of quality, safety, and conformity with religious values in assisted reproductive services (Articles 57–58). Furthermore, Government Regulation No. 28 of 2024 concerning the Implementation of the Health Sector was issued as an implementing regulation of Law 17/2023. This Government Regulation contains Article 111 which is the current legal basis and is more specific for assisted reproductive services in Indonesia. The article comprehensively integrates medical, ethical, religious, and legal aspects, so that it is the focus of this study.

A number of previous studies have examined the issue of IVF from various perspectives, such as the perspective of classical jurisprudence and the fatwa of scholars, the analysis of positive Indonesian law, to the approach of the concept of *maṣlaḥah* (benefit) in the case of IVF. For example, Dongoran (2020) analyzes the practice of IVF according to *maqāṣid al-syarī'ah* in general, and Adlina & Dwiyantri (2024) discuss the legal status of children resulting from sperm donation based on positive Indonesian law and Islamic law. However, there has been no study that specifically analyzes Article 111 of Government Regulation No. 28 of 2024 through the framework of *maqāṣid al-syarī'ah*. This research is expected to fill this gap by presenting a comprehensive normative analysis and assessing the extent to which this new regulation is in line with the principles of *maqāṣid al-syarī'ah*. The concept of *maqāṣid al-syarī'ah* itself refers to the basic goals to be achieved by Islamic law, which according to classical scholars (al-Syāṭibī) consists of five main points (*al-ḍ arūriyyāt al-khams*): protection of religion, soul,

intellect, lineage, and property (Kamali, 2019). This theoretical framework is used as an analysis knife in this study.

Based on the above background, this research is focused on answering three main questions. First, what is the content and scope of assisted reproduction arrangements in Article 111 of Government Regulation No. 28 of 2024? Second, how is the analysis of *maqāṣid al-syarī'ah* of the provisions of assisted reproduction in the article? Third, to what extent is the regulation in Article 111 of Government Regulation No. 28/2024 able to protect the five main objectives of Islamic sharia (*al-ḍarūriyyāt al-khams*)? This study seeks to contribute to the development of contemporary Islamic legal literature and strengthen national policies to be more responsive to the values of *maqāṣid al-syarī'ah* in reproductive bioethics in Indonesia.

2. METHODS

This research uses a normative (doctrinal) legal approach with a qualitative method, focusing on the analysis of regulatory texts and related legal doctrines (Marzuki, 2025; Muhaimin, 2020). The main object of the study is the norm in Article 111 of Government Regulation No. 28 of 2024 concerning the Implementation of the Health Sector (assisted reproductive arrangement), which is evaluated based on the perspective of *maqāṣid al-syarī'ah*. The approach used is textual (systematically studying the sound of the article) as well as conceptual (connecting positive legal concepts with the principles of Islamic law) in order to obtain a comprehensive understanding of the conformity of regulations with the purpose of sharia.

Data collection was carried out through literature studies. The primary legal materials studied include laws and regulations (especially Article 111 of PP 28/2024 and related regulations such as the 2023 Health Law and the 2014 Reproductive Health Regulation), as well as fatwa documents and decisions of religious institutions (including the 1979 MUI Fatwa on IVF and the 1986 *Majma' al-Fiqh al-Islāmī* decision). In addition, secondary legal materials in the form of relevant academic literature are used – including fiqh, books and journal articles on Islamic family law, reproductive bioethics, and the theory of *maqāṣid al-syarī'ah*. The collected data is analyzed qualitatively by document analysis techniques, namely interpreting the normative content of the article and comparing it with the framework of *maqāṣid al-syarī'ah*. Each verse in Article 111 is mapped to the five main objectives of the shari'a (*al-ḍarūriyyāt al-khams*: protection of religion, soul, intellect, descent, and property) to assess the objectives of the shari'i contained in it. The mapping results are presented in the form of a table to facilitate the identification of the dominant *maqāṣid* in each provision, which is then discussed narratively to answer the formulation of the research problem.

3. FINDINGS AND DISCUSSION

Scope of Article 111 PP No. 28 of 2024

Article 111 of Government Regulation No. 28 of 2024 regulates five main aspects regarding assisted reproductive technology services (IVF) in Indonesia. First, this service is only allowed for legal married couples who are medically experiencing infertility problems (paragraph 1). Second, it is forbidden to involve donors – the sperm and ovum used must come from the married couple, and the embryo from fertilization must be implanted in the womb of the wife who owns the ovum (verse 2). Third, medical procedures must be in accordance with the development of science and technology and not contrary to religious norms (paragraph 3). Fourth, the implementation of IVF techniques should only be carried out by competent and authorized health workers (paragraph 4). Fifth, the prohibition of sex selection of future children unless it is necessary to prevent certain genetic diseases (paragraph 5). These five paragraphs provide a legal framework that ensures that the practice of IVF in Indonesia takes place within the established moral, religious, and medical safety limits.

To facilitate the analysis, the following is a summary of the contents of Article 111 and the purpose of shari'i (*maqāṣid*) that is dominant in each of these verses:

Verse	Main Provisions of Article 111	Maqāṣid Dominant
(1)	Assisted reproduction services are only for legal married couples who are medically infertile.	Ḥifẓ al-Dīn & Ḥifẓ al-Nasl (Religion & Lineage)
(2)	The use of gametes is mandatory from the married couple and the embryo is implanted in the wife's womb.	Ḥifẓ al-Nasl (Descendants)
(3)	The procedure must be in accordance with science and technology and not contrary to religious norms.	Ḥifẓ al-Dīn & Ḥifẓ al-'Aql (Agama & Akal)
(4)	The implementation of the procedure is only by expert and authorized medical personnel.	Ḥifẓ al-Nafs (Soul)
(5)	Prohibition of sex selection except for the prevention of serious genetic diseases.	Ḥifẓ al-Nasl (Descendants) <i>is supported by Ḥifẓ al-Nafs & Ḥifẓ al-Dīn</i>

Table 1 above shows that each verse in Article 111 corresponds to the protection of values that are in line with maqāṣid al-syarī'ah. Furthermore, the following discussion will unravel the five dimensions of maqāṣid and how their application is reflected in the provisions of the article.

Religious Protection (Ḥifẓ al-Dīn)

The protection of religious aspects is strongly reflected in Article 111. The state requires that the entire IVF process must not be contrary to religious norms (paragraph 3), and should only be carried out within the framework of a valid marriage (paragraph 1). This provision is in line with the principles of Islamic sharia which require every effort to obtain offspring to remain within the halal corridor and maintain the sanctity of marriage. By prohibiting the involvement of third parties such as sperm/ovum donors and surrogate mothers, this regulation prevents practices analogous to adultery or mixing nasab that are prohibited by religion (Pulungan & Musthofa, 2021).

In addition, the affirmation that procedures follow religious norms shows that religious values are used as the main ethical benchmark in assisted reproductive services. This is in line with the MUI fatwa which makes religious norms an important parameter in the ability of IVF (Mahmudah, 2023). Thus, Article 111 has fulfilled the maqāṣid ḥifẓ al-dīn by keeping this medical innovation from violating the faith and morals, and still respecting Islamic laws related to family and posterity.

Protection of the Soul (Ḥifẓ al-Nafs)

The aspect of life protection focuses on the safety of the mother and the future child in assisted reproductive procedures. This is reflected in paragraph (4) of Article 111 which requires that IVF actions should only be carried out by expert and authorized medical personnel. The goal is to ensure the safety and health of patients, thereby preventing the risk of injury, disability, or death due to malpractice. This policy fulfills the principle of non-maleficence in medical ethics, as well as the implementation of maqāṣid ḥifẓ al-nafs by ensuring that the lives and health of mothers and babies are protected.

In addition, the prohibition of non-medical gender selection in paragraph (5) also implicitly supports the protection of life, as it aims to prevent practices that can harm the demographic balance and potential discrimination that is detrimental to social life. Overall, these rules show an orientation to prioritize safety and the welfare of life, in accordance with the maqāṣid of the protection of the soul in Islamic law.

Protection of Reason (Ḥifẓ al-'Aql)

The dimension of the protection of reason in this context is related to ensuring scientific and moral integrity in the implementation of reproductive technology. Article 111 paragraph (3) states that the procedure must be based on the latest science and technology and not contrary to religious norms. This means that the state seeks to ensure that IVF practices are carried out rationally and responsibly, following correct scientific standards.

Thus, the potential for deviation or misuse of technology can be prevented so that common sense and knowledge (knowledge) are respected. The concept of ḥifẓ al-'aql not only includes preventing things that are destructive to the mind (such as narcotics and khamr), but also guarantees that medical practice is carried out honestly and scientifically. The provisions of paragraph (3) of Article 111 which prohibit actions contrary to religious norms also ensure the ethical integrity of the medical profession. It contains the message of maqāṣidī that the use of advanced technology must remain within the frame of moral and scientific honesty. In other words, the state seeks to protect the human mind – both the collective intellect of society and the medical personnel – from damage due to the misuse of reproductive technology, in line with the goal of ḥifẓ al-'aql.

Protection of Descent (Ḥifẓ al-Nasl)

The element of hereditary protection is the most dominant maqāṣid in Article 111 of GR 28/2024. This dominance is seen in various restrictions aimed at maintaining the clarity of the destiny and the sustainability of the legitimate lineage. Paragraph (1) restricts IVF services only to couples who are bound by a legal marriage, so that every child born will have a clear legal status as a legal descendant of both parents. Paragraph (2) requires the use of gametes from the couple itself and prohibits the involvement of the donor, which prevents the mixing of the nasab or disputes over the identity of the child in the future. This provision is very important to ensure the certainty of the child's legal status, including in terms of guardianship, alimony, and inheritance rights. A case study at the North Jakarta Religious Court shows that the involvement of sperm donors raises serious legal issues related to the child's inheritance and inheritance rights (Adlina & Dwiyanti, 2024).

Similarly, the practice of surrogacy, has the potential to trigger conflicts regarding maternal status and inheritance, as warned by scholars (Honainah et al., 2023). Therefore, by expressly prohibiting donors and surrogacies, this regulation has anticipated the damage to the nasab (disorder of the lineage) that can occur. In addition, the prohibition of gender selection for the sake of certain (non-medical) preferences in paragraph (5) also supports maqāṣid al-nasl by maintaining generational balance and avoiding gender bias in society. Overall, each norm in Article 111 is directed to protect the purity of human offspring in accordance with the Shari'a, making maqāṣid ḥifẓ al-nasl the main focus of this regulation.

Protection of Property (Ḥifẓ al-Māl)

Although it is not explicitly stated, the protection of the property aspect also colors the regulation of IVF in Article 111. The purpose of ḥifẓ al-māl is realized, among other things, through the prevention of financial losses and commercialization that is detrimental to human dignity. By banning sperm/ovum donors and surrogate mothers, the government prevents the trade in reproductive cells or uterine rental transactions that reduce the procreation process to an economic commodity. The ban maintains family honor while preventing economic exploitation of women's reproductive organs. In addition, the clarity of the nasab guaranteed by Article 111 has an impact on the certainty of inheritance rights and maintenance responsibilities, thereby protecting the family's wealth from disputes due to unclear child status.

In the long run, this legal certainty avoids the social and economic costs arising from nasab conflicts. At the implementation level, the ḥifẓ al-māl aspect is also supported by derivative policies that require transparency of costs and accreditation of fertility clinics, in order to prevent fraud or medical practices that harm patients financially (Nugraha, 2025). Overall, although property protection

is not the dominant focus in Article 111, this principle is still implicitly present to ensure that assisted reproductive services do not cause economic mafsadat.

Evaluation of Maqāṣid Tendencies and Implications

Based on the above analysis, it can be concluded that the regulation of IVF in Article 111 of PP 28/2024 has been normatively aligned with the framework of maqāṣid al-syarī'ah. All five elements of al-ḍ arūriyyāt al-khams are protected in this regulation, with the strongest emphasis on the protection of heredity (ḥifẓ al-nasl) and religion (ḥifẓ al-dīn). The elements of soul (ḥifẓ al-nafs), reason (ḥifẓ al-'aql), and property (ḥifẓ al-māl) are also present in a complementary manner albeit with a more limited portion of protection. This inequality in the level of protection between maqāṣid shows the need for further efforts so that the five main objectives of the sharia can be achieved in a more balanced manner.

In terms of implementation, challenges still exist in the enforcement of rules (for example, supervision of clinical practices and compliance with religious norms) as well as legal gaps in certain aspects such as the regulation of cross-border IVF programs. Therefore, even though legally positive Article 111 has a maqāṣid perspective, strengthening the regulatory framework and supporting policies is still needed to realize the goals of sharia more effectively in practice.

4. CONCLUSION

This research successfully answered three main questions asked. First, Article 111 of Government Regulation No. 28/2024 substantially restricts the practice of IVF to only legal married couples with strict conditions and procedures (for example, it is mandatory to use the couple's own gametes and prohibits donors or surrogate mothers). These provisions ensure compliance with applicable religious and legal norms while providing a clear ethical foundation. Second, the analysis of maqāṣid al-syarī'ah shows that this regulation has contained the principle of protection of the five main objectives of the Shari'ah, with the main focus on the protection of posterity (nasl) and religion (dīn), while the protection of life, intellect, and property is also implicitly accommodated through the provisions of medical professionalism, scientific compliance, and the guarantee of legal certainty in the family. Third, regarding the extent to which this regulation protects the five maqāṣid, it can be concluded that the protection of nasl and dīn appears to be the most dominant, while the protection of reason ('aql) and property (māl) has not been accommodated in a balanced manner.

Although normatively it has fulfilled maqāṣid al-shari'ah, the level of protection between dimensions has not been completely evenly distributed. From an implementation perspective, this regulation still needs to be strengthened so that the goals of sharia can be realized optimally. The government needs to ensure enforcement of rules on the ground (e.g. through supervision of fertility clinics and the provision of sanctions for violations), as well as closing existing legal loopholes; In particular, the phenomenon of infertile couples undergoing IVF programs abroad (cross-jurisdictional) has the potential to cause legal problems if the rules and ethics in the destination country are different from Indonesia, this needs to be anticipated within the national legal framework. In addition to the creation of special laws, it is also necessary to synchronize state policies with the MUI fatwa and the decisions of international fiqh institutions so that national regulations are in line with the views of scholars, so as to gain legitimacy and full support from the public. The findings of this research are expected to contribute to the development of reproductive health law with a maqāṣid perspective in Indonesia, as well as encourage further studies on the integration of sharia values in the regulation of modern reproductive technology.

REFERENCES

- Kementerian Kesehatan RI. (2022, Mei 23). *Kemandulan (Infertil): Stigma Negatif Pada Wanita Indonesia*. Retrieved from https://keslan.kemkes.go.id/view_artikel/12/kemandulan-infertil-stigma-negatif-pada-wanita-indonesia

- Hendarto, H. (2019). *Bayi Tabung: Teknologi, Etika, dan Tantangannya*. Pidato Pengukuhan Guru Besar, Universitas Airlangga.
- Putra, R., Lillah, A., Razi, A., & Aziz, M. (2025). Infertilitas, Teknologi Reproduksi Berbantu, dan Penggunaan Kecerdasan Buatan: Suatu Tinjauan Etika Kedokteran. *Jurnal Etika Kedokteran Indonesia*, 9, 23–28. <https://doi.org/10.26880/jeki.v9i1.87>
- Pulungan, S., & Musthofa, A. M. Z. (2021). Hukum Bayi Tabung dalam Pandangan Islam. *Al-Ikhtisar: The Renewal of Islamic Economic Law*, 2(2), Article 2.
- International Islamic Fiqh Academy. (2021). *Resolutions and Recommendations of the International Islamic Fiqh Academy – Organization of Islamic Cooperation (Second Issue)*. International Islamic Fiqh Academy.
- Mahmudah, N. (2023, Oktober 2). BAYI TABUNG/ INSEMINASI BUATAN. MUI Digital. Retrieved from <https://mui.or.id/baca/fatwa/bayi-tabung-inseminasi-buatan>
- Peraturan Pemerintah Nomor 28 Tahun 2024 tentang Penyelenggaraan Bidang Kesehatan. (2024). Retrieved from <https://farmalkes.kemkes.go.id/unduh/pp-28-2024/>
- Sugian, A. (2024). Konsep Maslahah al-Juwaini dalam Kitab al-Burhan fi Ushul al-Fiqh pada Penyelesaian Kasus Bayi Tabung. *Tasyri': Journal of Islamic Law*, 3(2), Article 2. <https://doi.org/10.53038/tsyr.v3i2.135>
- Dongoran, I. (2020). Bayi Tabung dalam Tinjauan Hukum Islam (Analisis Maqāṣid al- Syarī'ah). *TAQNIN: Jurnal Syariah dan Hukum*, 2(1).
- Adlina, S., & Dwiyaniti, A. (2024). Studi Kasus Putusan Pengadilan Agama Jakarta Utara Nomor 601/Pdt.G/2017/PA JU Mengenai Status Hukum Anak Yang Dilahirkan Melalui Proses Bayi Tabung Dengan Donor Sperma Ditinjau Berdasarkan Hukum Positif Indonesia Dan Hukum Islam. *Al-Hikmah: Jurnal Hukum dan Kemasyarakatan*, 5(3), 218–232.
- Kamali, M. H. (2019). *Maqāshid al-Syārī'ah Made Simple*. The International Institute of Islamic Thought (IIIT).
- Marzuki, P. M. (2025). *Penelitian Hukum* (Edisi Revisi). Kencana.
- Muhaimin. (2020). *Metode Penelitian Hukum*. Mataram University Press.
- Honainah, H., Rato, D., & Susanti, D. O. (2023). Status Nasab dan Kewarisan Anak Hasil Sewa Rahim Perspektif Hukum Islam. *Rechtenstudent*, 4(1), 63–77. <https://doi.org/10.35719/rch.v4i1.225>
- Nugraha, M. R. (2025, Februari 3). Sahkah Donor Sperma di Indonesia? *Klinik Hukumonline*. Retrieved from <https://www.hukumonline.com/klinik/a/sahkah-donor-sperma-di-indonesia-lt62aad2cc18f9d/>

