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The Right to Know: Re-evaluating Donor Anonymity in the Era of Children's Rights from an Indonesian Legal Perspective

Deity Yuningsih,[1] Idaman Alwi,[1] Wa Ode Zuliarti,[1] Sudirman,[2] Saraswati[1]
[1] Universitas Halu Oleo Kendari, Indonesia
[2] Universitas Muhammadiyah Kendari, Indonesia
Email: deityhukum@gmail.com

Abstract

Indonesia's increasing integration into cross-border assisted reproductive technology (ART) networks has created a normative gap concerning the right of donor-conceived individuals to access information about their biological origins. Although Indonesia has ratified international human rights instruments, its domestic framework, including Law Number 17 of 2023 on Health and Law Number 35 of 2014 on Child Protection, regulates ART fragmentarily and provides no clear legal basis for this right. This research is normative legal research, also known as doctrinal research, to analyze the legal paradox of donor anonymity in Indonesia and uses descriptive analysis to synthesize a new legal framework that is appropriate to the Indonesian context and uses legal, conceptual, and comparative approaches, examining Indonesia's framework alongside the United Kingdom's Human Fertilization and Embryology Act 2004 and Australia's Assisted Reproductive Treatment Act 2008. The findings indicate that absolute donor anonymity is not fully compatible with Indonesia's constitutional principles and Islamic legal values. From a *Maqasid al-Shariah* perspective, anonymity may undermine *Hifz al-Nasl* (preservation of lineage), while *sadd al-dhara'i* supports limiting anonymity to prevent inadvertent consanguineous marriage. The right to know one's biological origins may also constitute a dimension of the right to health under Article 28H (1) of the 1945 Constitution. Comparative analysis shows that open-identity donor frameworks do not necessarily require legalizing third-party gamete donation. Accordingly, a Semi-Open Disclosure System could provide a constitutionally compatible model within Article 127 of Law Number 17 of 2023. The study recommends legislative reform, a National Donor Registry, mandatory ART counseling, and proactive constitutional interpretation to balance lineage protection, children's rights, the right to health, and Islamic legal values.

Keywords: Donor Anonymity, Right to Know, Children's Rights, Hifz al-Nasl, Assisted Reproductive Technology, Maqasid al-Shariah

Abstrak

Integrasi Indonesia yang semakin meningkat ke dalam jaringan teknologi reproduksi berbantuan (ART) lintas batas telah menciptakan kesenjangan normatif mengenai hak individu yang dikandung melalui donor untuk mengakses informasi tentang asal biologis mereka. Meskipun Indonesia telah meratifikasi instrumen hak asasi manusia internasional, kerangka kerja domestiknya, termasuk Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan dan Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak, mengatur ART secara terfragmentasi dan tidak memberikan dasar hukum yang jelas untuk hak ini. Penelitian ini merupakan penelitian hukum normatif, juga dikenal sebagai penelitian doktrinal, untuk menganalisis paradoks hukum anonimitas donor di Indonesia dan menggunakan analisis deskriptif untuk mensintesis kerangka hukum baru yang sesuai dengan konteks Indonesia dan menggunakan pendekatan hukum, konseptual, dan komparatif, dengan meneliti kerangka hukum Indonesia bersamaan dengan Undang-Undang Fertilisasi dan Embriologi Manusia 2004 Inggris Raya dan Undang-Undang Perawatan Reproduksi Berbantuan 2008 Australia. Temuan menunjukkan bahwa anonimitas donor absolut tidak sepenuhnya sesuai dengan prinsip-prinsip konstitusional Indonesia dan nilai-nilai hukum Islam. Dari perspektif Maqasid al-Shariah, anonimitas dapat melemahkan Hifz al-Nasl (pelestarian garis keturunan), sementara sadd al-dhara'i mendukung pembatasan anonimitas untuk mencegah perkawinan sedarah yang tidak disengaja. Hak untuk mengetahui asal biologis seseorang juga dapat menjadi dimensi dari hak atas kesehatan berdasarkan Pasal 28H (1) Konstitusi 1945. Analisis komparatif menunjukkan bahwa kerangka kerja donor identitas terbuka tidak selalu memerlukan legalisasi donasi gamet pihak ketiga. Dengan demikian, Sistem Pengungkapan Semi-Terbuka dapat memberikan model yang sesuai secara konstitusional dalam Pasal 127 Undang-Undang Nomor 17 Tahun 2023. Studi ini merekomendasikan reformasi legislatif, Registri Donor Nasional, konseling ART wajib, dan interpretasi konstitusional proaktif untuk menyeimbangkan perlindungan garis keturunan, hak anak, hak atas kesehatan, dan nilai-nilai hukum Islam.

Kata Kunci: *Anonimitas Donor, Hak untuk Mengetahui, Hak Anak, Hifz al-Nasl, Teknologi Reproduksi Berbantuan, Maqasid al-Shariah*

Introduction

The advancement of Assisted Reproductive Technology (ART) has transformed family formation by providing new solutions to infertility, but its rapid development has outpaced legal regulation concerning donor-conceived individuals. A central issue is donor anonymity, originally intended to protect donor privacy and family stability, but increasingly challenged by the individual's right to know their genetic origins. This creates a legal and ethical tension between donor privacy and the child's interests in identity, medical history, and psychological well-being. Although some jurisdictions have limited or abolished donor anonymity, legal

approaches remain fragmented, revealing a significant normative gap. In Indonesia, existing regulations on reproductive health, family formation, and child protection do not yet provide a clear and comprehensive framework governing donor-conceived individuals' access to information about their genetic origins. This gap highlights the need to develop a legal framework that balances donor privacy with the child's right to know their biological origins.[1]

In the current international human rights era, the traditional paradigm of donor anonymity faces unprecedented scrutiny. The 'Right to Know' one's biological origins has emerged as a fundamental pillar of children's rights, underpinned by the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), particularly Articles 7 and 8 regarding the right to identity.[2] Globally, a significant shift is occurring as various jurisdictions transition from anonymity toward 'open identity' systems, driven by the realization that secret-based system often conflict with the child's long-term welfare. This transition reflects a growing international consensus that the psychological and medical well-being of a child, including the need to access genetic history, should take precedence over a donor's desire for privacy.[3]

In Indonesia, this gap is especially pronounced. Existing legislation, such as Law Number 17 of 2023 on Health and Law Number 35 of 2014 on Child Protection, addresses ART only in fragmentary terms, primarily focusing on medical procedures rather than the rights of the resulting offspring.[4] These frameworks leave unresolved the fundamental question of whether a donor-conceived child holds any legally enforceable right to information about their biological origins.[5] This legal vacuum persists despite Indonesia's ratification of international human rights standards and domestic bioethical regulations.

The urgency of this issue is underscored by recent cases of transnational reproductive tourism. A notable instance involves an Indonesian woman who underwent a sperm donation program in Taiwan, selecting a donor profile of a British national. This case presents a multi-layered legal challenge: the procedure occurred

[1]Eric Blyth and Lucy Frith, "Donor-Conceived People's Access to Genetic and Biographical History: An Analysis of Provisions in Different Jurisdictions Permitting Disclosure of Donor Identity," *International Journal of Law, Policy and the Family* 23, no. 2 (2009). Fiona Kelly et al., "From Stranger to Family or Something in Between: Donor Linking in an Era of Retrospective Access to Anonymous Sperm Donor Records in Victoria, Australia," *International Journal of Law, Policy and the Family* 33, no. 3 (2019), p. 277–97.

[2]Samantha Besson, "Enforcing The Child ' S Right To Know Her Origins : Contrasting Approaches Under The Convention On The Rights Of The Child And The European Convention On Human Rights," *International Journal of Law, Policy and The Family* 21, no. 2 (2007), p. 137–59.

[3]Joyce C Harper, et., al, "The End of Donor Anonymity : How Genetic Testing Is Likely to Drive Anonymous Gamete Donation out of Business," *Human Reproduction* 0, no. 0 (2016), p. 1–6.

[4]Yusefri, Mu'adil Faizin, and Wahyu Abdul Jafar, "Protecting Child Labor Rights: Maqasid Sharia Framework and Policy Recommendations," *Samarah* 8, no. 2 (2024).

[5]Inez Raes, An Ravelingien, and Guido Pennings, "The Right of the Donor to Information about Children Conceived from His or Her Gametes," *Human Reproduction* 28, no. 3 (2013).

in Taiwan, involved a donor from the United Kingdom, and resulted in a child living in Indonesia.[6] While state authorities, such as the Immigration Office, have facilitated the child's administrative rights by issuing passports based on the mother's legal status, they remain silent on the child's future legal right to access their cross-border genetic heritage.

Although the Constitution guarantees a child's right to grow and develop and receive protection, domestic law remains largely restrictive regarding the disclosure of biological origins in ART cases. This creates a legal disconnect between domestic regulations and the evolving international standards that prioritize the child's right to identity.[7] Furthermore, the proliferation of direct-to-consumer DNA testing and the digital era have rendered absolute anonymity virtually impossible to maintain, effectively dismantling the traditional "wall of silence" in donor conception.[8] Consequently, the re-evaluation of Indonesia's legal position is no longer a mere theoretical exercise, but an urgent practical necessity to prevent future legal and psychological crises for donor-conceived individuals.[9]

Providing access to genetic origins is not merely a policy preference but a fundamental requirement to protect the child's autonomy and long-term well-being. This right encompasses three crucial dimensions that remain largely neglected in Indonesian law: the medical aspect (access to family history), the identity aspect (personal narrative), and the relational aspect (the possibility of future contact with biological kin). By failing to address these dimensions, Indonesia's current legal framework inadvertently creates an identity void that contradicts the constitutional mandate to ensure a child's holistic development.[10]

This research aims to re-evaluate the practice of donor anonymity in the Indonesian legal framework through the lens of the international children's rights movement. By analyzing the inherent tension between the right to privacy and the right to identity. This research aims to provide a normative pathway for legal reform in Indonesia. The central research question is how Indonesia can align its domestic ART regulation with the global shift toward transparency, while respecting its unique socio-religious context. The novelty of this research lies in its departure from a traditional emphasis on legal paternity, instead proposing a 'right to identity'

[6]Kanimjaksel, "Instagram," 2025.

[7]Charlotte Mol, "The Child's Right to Participate in the UN Convention on the Rights of the Child," in *The Child's Right to Participate in Family Law Proceedings*, 2023.

[8]Harper, Kennett, and Reisel, "The End of Donor Anonymity : How Genetic Testing Is Likely to Drive Anonymous Gamete Donation out of Business."

[9]Lucy Frith Leah Gilman, Caroline Redhead, Nicky Hudson, Marie Fox, Petra Nordqvist, Fiona MacCallum, Jackson Kirkman-Brown, "No TitleDirect-to-Consumer Genetic Testing and the Changing Landscape of Gamete Donor Conception: Key Issues for Practitioners and Stakeholders," *Reproductive BioMedicine Online* 48, no. 1 (2024).

[10] Blyth and Frith, "Donor-Conceived People's Access to Genetic and Biographical History: An Analysis of Provisions in Different Jurisdictions Permitting Disclosure of Donor Identity."

framework that aligns Indonesian socio-religious values, particularly *maqashid al-shariah*[11] With modern genetic transparency and the Health of Law 2023.

This research employs normative legal research methodology, also known as doctrinal research, to analyze the legal paradox of donor anonymity in Indonesia. Normative legal research examines legal norms and principles as contained in legislation, jurisprudence, and legal doctrine.[12] To provide a comprehensive evaluation, this research employs three distinct approaches. *First*, the statutory approach examines the relevant legislative framework. Law Number 17 of 2023 on Health, the Indonesian Civil Code, the Compilation of Islamic Law, and international instruments, including the UNRC. *Second*, the conceptual approach analyzes key legal concept[13] including the 'best interest of the child', the 'right to identity', the 'right to privacy', and *maqashid al-shariah*, to understand the conflict of values between donor anonymity and the modern human rights paradigm, *Third*, the comparative approach benchmarks Indonesia's legal position against jurisdiction that have transitions to open identity systems,[14] namely the United Kingdom (Human Fertilization and Embryology Act 2004) and Australia, to map the adaptability of those models to the Indonesian context.

Legal material consists of primary sources (legislation and international treaties) and secondary sources (journal articles, legal commentaries, and judicial decisions).[15] All material is analyzed using descriptive qualitative analysis to synthesize a new legal framework appropriate to the Indonesian context.[16]

The Right to Identity in International Human Rights Law

The right to identity is anchored primarily in Articles 7 and 8 of the UNCRC,[17] which together constitute an affirmative obligation on states to preserve a child's identity, including their name, nationality, and family relations. Within this framework, the 'identity' protected is not merely a legal status but a comprehensive

[11] Al-Syathibi, *Al-Muwafaqat Fi Ushul Al-Ahkam*, I (Beirut: Dar Al-Fikr, n.d.). Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008). Muhammad Ali Murtadlo, "Islamic Family Law Reform in Indonesia," *Islamic Contemporary Issues in Social Sciences*, 2020.

[12] Peter Mahmud Marzuki, *Penelitian Hukum*, 13th ed. (Jakarta: Kharisma Putra Utama, 2017).

[13] Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayu Media Publishing, 2006).

[14]Werner Menski, *Comparative Law in A Global Context: The Legal Systems of Asia and Africa* (New York: Cambridge University Press, 2006). Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah* 5, no. 1 (2021), p. 426–49.

[15] Soekanto Soerjono and Sri Mamudji, *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, 1st ed. (Jakarta: Raja Grafindo, 2010).

[16]Terry Hutchinson, "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law," *Erasmus Law Review* 8, no. 3 (2016), p. 130–38.

[17]Besson, "Enforcing The Child ' S Right To Know Her Origins : Contrasting Approaches Under The Convention On The Rights Of The Child And The European Convention On Human Rights."

"biological truth" that is essential for the child's psychological development and long-term well-being.[18]

The jurisprudence of the European Court of Human Rights (ECtHR) reinforces this position through a progressive interpretation of the right to private life under Article 8 of the European Convention on Human Rights. In Gaskin v. United Kingdom, the ECtHR held that the applicant had a vital interest protected by the Convention in receiving information necessary to know and understand his childhood and early development,[19] establishing that the right of access to personal origins falls within the scope of private life. This principle was significantly elaborated in *Odièvre v. France,* where the Grand Chamber acknowledged that people have a right to know their origins, that right being derived from a wide interpretation of the scope of the notion of private life, and that the child's vital interest in its personal development is widely recognized in the general scheme of the Convention. Crucially, the Grand Chamber framed the applicant's claim as one to be entitled in the name of *biological truth* to know her personal history, reaffirming that Article 8 protects a right to identity and personal development, and that the preservation of mental stability is an indispensable precondition to effective enjoyment of the right to respect for private life.[20]

Taken together, these decisions establish that the 'right to know' one's origins is a substantive interest under international human rights law that cannot be dismissed as merely ancillary to other rights. An examination of national legal arrangements reveals, beyond differences in approaches, a very clear trend towards recognizing the right to know one's origins in the context of assisted reproduction,[21] reflecting a broader global normative trajectory toward greater transparency in ART. While these precedents are not directly binding on Indonesia as a non-party to the ECHR, they constitute persuasive authority in comparative legal analysis, demonstrating that the absolute nature of donor anonymity is increasingly difficult to reconcile with evolving international standards of child rights and personal identity protection.[22]

This international normative shift is particularly significant when applied to cross-border ART practices involving jurisdictions with high transparency standards. For instance, the involvement of a British donor brings a unique legal dimension, as the United Kingdom has abolished donor anonymity since 2005, reflecting a legal

[18]S. B. Steinberg, "Sharenting: Children's Privacy in the Age of Social Media," *Emory Law Journal* 66, no. 4 (2017).

[19]Merris Amos, "The Value of the European Court of Human Rights to the United Kingdom," *European Journal of International Law* 28, no. 3 (2017).

[20]Julia Feast and David Howe, " Open Adoption Records, the Human Rights of Adopted People, and Discrimination: The Case of Odièvre v France 2003 ," *European Journal of Social Work* 7, no. 1 (2004). Thérèse Callus, " Tempered Hope? A Qualified Right to Know One's Genetic Origin: Odièvre v France," *The Modern Law Review* 67, no. 4 (2004).

[21]Madeline Ash, "The Rights of Donor-Conceived Persons in Colorado: America's First Foray into Abolishing Anonymous Gamete Donation," *Indiana Law Journal* 99, no. 3 (2024).

[22] Lili Rasjidi dan Wyasa Putra, *Hukum Sebagai Suatu Sistem* (Bandung: Manda Maju, 2003).

culture that prioritizes the child's right to genetic history. When an Indonesian citizen utilizes such a system, as seen in procedures conducted in Taiwan that offer donor profile selection, it creates a conflict of legal expectations. If the child's identity is already 'knowable' and recorded in an overseas jurisdiction,[23] Indonesia's continued adherence to strict anonymity becomes not only a violation of international children's rights but also a practical failure to protect a child's existing genetic narrative."

Maqasid al-Shariah and The Protection of *Hifz al-Nasl* (Lineage)

Islamic jurisprudence, particularly within the framework of Maqasid al-Shariah (the higher objectives of Islamic law), identifies the preservation of lineage (*hifz al-nasl*) as one of its five indispensable objectives (al-dharuriyyat al-khams).[24] Classical scholars consistently include *hifz al-nasl* alongside the protection of religion (*hifz al-din*), intellect (*hifz al-aql*), life (*hifz al-nafs*), and property (*hifz al-mal*). Imam al-Ghazali, in al-Mustasfa min Ilm al-Usul, established this five-objective schema as the foundational architecture of Islamic legal theory,[25] while al-Shatibi in *al-Muwafaqat* further elaborated the hierarchy and jurisprudential implications of each objective.[26]

Contemporary scholars propose a systems-oriented reinterpretation of Maqasid, emphasizing that the objectives must be read purposively in light of present realities rather than applied mechanically.[27] Under this dynamic interpretation, preserving nasab in the era of genetic science logically demands transparency about biological origins rather than their concealment.[28] Donor anonymity, when it permanently precludes a child from knowing their genetic parentage, actively undermines the very objective of *hifz al-nasl* it ostensibly protects.[29]

Furthermore, the Islamic legal principle of *sadd al-dzari'ah* (blocking the means to harm) provides an independent doctrinal basis for rejecting absolute donor anonymity. If the concealment of donor identity creates a foreseeable pathway to a prohibited outcome, inadvertent consanguineous marriage between half-siblings sharing a common donor, then Islamic legal methodology requires that such

[23]Anna Pia Ferraretti et al., "Cross-Border Reproductive Care: A Phenomenon Expressing the Controversial Aspects of Reproductive Technologies," *Reproductive BioMedicine Online* 20, no. 2 (2010), p. 261–66.

[24]Zahrul Mubarrak et al., "The Urgency of the Islamic Law and Contemporary Societal Challenges: The Flexibility of Al-Maslahah in Determining the Hierarchy of Maqāṣid Al-Sharīʿah," *El-Usrah* 8, no. 1 (2025), p. 344–65.

[25]Muhammad Harfin Zuhdi and Mohamad Abdun Nasir, "Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context," *Samarah* 8, no. 3 (2024), p. 1818–39.

[26]Mursyid Djawas et al., "The Integration Between Syara'and Ade'in Marriage Tradition Bugis Bone, South Sulawesi," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 2 (2023).

[27]Zuhdi and Nasir, "Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context."

[28]Mutiara Fahmi and Fitiya Fahmi, "Penetapan Nasab Anak Mulā'anah Melalui Tes DNA," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 3, no. 1 (2019), p. 151–76.

[29]Fahmi and Fahmi.

concealment be prohibited or strictly regulated. The principle of sadd al-dzari'ah has historically been applied by Maliki and Hanbali jurists to prohibit otherwise-permissible acts when those acts predictably facilitate a forbidden outcome. Applied to donor anonymity: anonymity may represent a legitimate privacy interest, yet if it foreseeably enables unknowing incest (nikah mahram), *sadd al-dzari'ah* demands its restriction.[30]

The Tension and Paradox of Nasab and Genetic Truth in Indonesian Law and Cross-Boarder

The Indonesian Civil Code (KUHPerdata Indonesia) and the Compilation of Islamic Law (KHI) contain strict provisions on the establishment of nasab (lineage).[31] Under KHI Article 99, a child born within marriage is the legitimate child of the husband. This formal-legal construction of parentage, while essential for legal certainty, creates a profound paradox in the context of gamete donation,[32] by sealing the identity of the donor, the law paradoxically risks undermining the very sanctity of lineage it seeks to protect.[33]

A child conceived through anonymous sperm donation, for instance, carries a legal nasab tied to the mother's husband, while their true genetic lineage remains permanently unknown.[34] This bifurcation of legal identity from biological truth stands in tension with the foundational Islamic principle that lineage should reflect genuine biological descent.[35] The application of *maqasid al-syariah's hifz al-nasl* framework, when examined rigorously, therefore supports genetic transparency rather than impeding it: one cannot protect lineage while systematically concealing the information that defines it.[36]

The absence of a donor identity registry creates a concrete risk that two individuals conceived from the same gamete donor may unknowingly enter into a marriage relationship.[37] In densely populated regions where a single donor may have

[30]Murtadlo, "Islamic Family Law Reform in Indonesia."

[31]Jumarim, "The Practice of Adoption in the Sasak Community and Its Implications for Marriage Law in Indonesia," *Samarah* 8, no. 1 (2024), p. 445–67.

[32]Hoko Horii and Theresia Dyah Wirastri, "Living in a Legal Limbo: Mechanisms to 'Fix' The Legal and Social Positions of Unregistered Children in Indonesia," *The Indonesian Journal of Socio-Legal Studies* 2, no. 1 (October 2022). Dedy Sumardi et al., "The Niniak Mamak: Authority, Customary Law Construction, Jamee Tribe, Aceh, Indonesia," *Ahkam: Jurnal Ilmu Syariah* 26, no. 1 (2026), p. 183–96.

[33]Chokri Kooli, "Review of Assisted Reproduction Techniques, Laws, and Regulations in Muslim Countries," *Middle East Fertility Society Journal* 24, no. 1 (2019).

[34]Rafli Zidan Eka Ramadhan et al., "Sacred Bonds or Sinful Ties ? Interreligious Marriage in Islamic Law," *Contemporary Issues on Interfaith Law & Society* 3, no. 2 (2024), p. 247.

[35]Fahmi and Fahmi, "Penetapan Nasab Anak Mulā'anah Melalui Tes DNA."

[36]Zuhdi and Nasir, "Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context."

[37]Ferraretti et al., "Cross-Border Reproductive Care: A Phenomenon Expressing the Controversial Aspects of Reproductive Technologies."

contributed to dozens of conceptions, this risk is statistically non-negligible.[38] From the perspective of Islamic family law, consanguineous marriage (nikah mahram) is among the most strictly prohibited acts.[39] The inadvertent consanguinity risk constitutes a far graver threat to family sanctity than a properly regulated disclosure of genetic origins. This argument transforms the logic of Islamic legal protection: rather than supporting anonymity, *hifz al-nasl* demands a disclosure mechanism that allows individuals to verify the absence of prohibited genetic relationships before marriage.[40]

This imperative for a structured disclosure mechanism is not merely a doctrinal aspiration derived from Islamic legal theory; it finds concrete and instructive precedent in the regulatory experience of jurisdictions that have already navigated the transition from anonymity to transparency.[41] Several countries have demonstrated that the competing interests of donors, recipients, and donor-conceived individuals can be balanced within a coherent legal framework without causing the collapse of donation programs that critics of disclosure often predict.[42] Among these models, none is more thoroughly documented, more rigorously evaluated, or more frequently cited in comparative legal scholarship than the reform undertaken in the United Kingdom.[43]

The UK's transition from donor anonymity to an open-identity system, formalized through the Human Fertilisation and Embryology Act (HFEA) 2004, provides precisely such a model provides the most extensively documented reform model.[44] Since April 2005, all donor-conceived individuals in the UK are entitled, upon reaching the age of 18, to request identifying information about their donor from the Human Fertilisation and Embryology Authority (HFEA).[45] The reform was accompanied by comprehensive public awareness campaigns and counseling support structures.[46]

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[38]Tessa Copp and Karin Hammarberg, "Most Donor-Conceived People Have Good Psychological Health," *BJOG: An International Journal of Obstetrics and Gynaecology* 131, no. 13 (2024), p. 1760–61.

[39]Jumarim, "The Practice of Adoption in the Sasak Community and Its Implications for Marriage Law in Indonesia."

[40]Fahmi and Fahmi, "Penetapan Nasab Anak Mulā'anah Melalui Tes DNA."

[41]Inmaculada de Melo-Martín, "How Best to Protect the Vital Interests of Donor-Conceived Individuals: Prohibiting or Mandating Anonymity in Gamete Donations?," *Reproductive Biomedicine and Society Online* 3, no. July 2015 (2016), p. 100–108.

[42]Leah Gilman and Petra Nordqvist, "Organizing Openness: How UK Policy Defines the Significance of Information and Information Sharing about Gamete Donation," *International Journal of Law, Policy and the Family* 32, no. 3 (2018), p. 316–33.

[43]Lucy Frith, "The Limits of Evidence: Evidence-Based Policy and the Removal of Gamete Donor Anonymity in the UK," *Monash Bioethics Review* 33, no. 1 (2015), p. 29–44.

[44]Frith.

[45]Gilman and Nordqvist, "Organizing Openness: How UK Policy Defines the Significance of Information and Information Sharing about Gamete Donation."

[46]Frith, "The Limits of Evidence: Evidence Based Policy and the Removal of Gamete Donor Anonymity in the UK."

A significant concern among opponents of reform was that lifting anonymity would cause a precipitous decline in donor numbers, thereby restricting access to ART.[47] Longitudinal data from the UK, however, challenges this assumption. While there was a short-term reduction in donor registrations immediately following the 2005 reform, donor numbers subsequently recovered and have continued to grow.[48] This evidence undermines the principal utilitarian argument for maintaining anonymity and demonstrates that a well-managed transition can preserve donor availability while advancing child rights.[49]

Australian jurisdictions have progressively moved toward open-identity frameworks, with the state of Victoria pioneering retrospective legislation through the Assisted Reproductive Treatment Act 2008, which allows donor-conceived individuals to access identifying information about donors who consented to donation before the end of anonymity, and mandates it for those who donated afterward.[50] Adams et al. The Australian experience demonstrates the feasibility of retrospective reform,[51] albeit with heightened sensitivity toward the expectations of donors who contributed under an anonymity guarantee.[52]

The Australian case is particularly instructive for Indonesia because it demonstrates a federal model in which individual state legislatures have incrementally enacted reforms, creating a gradually converging national standard.[53] This incremental, state-by-state approach may offer a politically viable pathway for reform in Indonesia's decentralized governance context, allowing regional pioneers to demonstrate the feasibility of reform before national legislative action.[54]

Article 127 of Law Number 17 of 2023 on Health permits ART strictly for married couples using their own gametes under medical supervision, effectively prohibiting third-party gamete donation. While this provision reflects Indonesia's prevailing religious-ethical consensus, it does not fully resolve the de facto reality

[47]Lucy Frith, Eric Blyth, and Abigail Farrand, "UK Gamete Donors' Reflections on the Removal of Anonymity: Implications for Recruitment," *Human Reproduction* 22, no. 6 (2007), p. 1675–80.

[48]Eric Blyth and Lucy Frith, "The UK's Gamete Donor 'crisis' - A Critical Analysis," *Critical Social Policy* 28, no. 1 (2008), p. 74–95.

[49]Frith, "The Limits of Evidence: Evidence Based Policy and the Removal of Gamete Donor Anonymity in the UK."

[50]Kelly et al., "From Stranger to Family or Something in Between: Donor Linking in an Era of Retrospective Access to Anonymous Sperm Donor Records in Victoria, Australia."

[51]Damian Adams and Caroline Lorbach, "Accessing Donor Conception Information in Australia: A Call for Retrospective Access," *Journal of Law and Medicine* 19 (June 2012), p. 707–21.

[52]Karin Hammarberg et al., "Proposed Legislative Change Mandating Retrospective Release of Identifying Information: Consultation with Donors and Government Response," *Human Reproduction* 29, no. 2 (2014), p. 286–92.

[53]Kelly et al., "From Stranger to Family or Something in Between: Donor Linking in an Era of Retrospective Access to Anonymous Sperm Donor Records in Victoria, Australia."

[54]Kooli, "Review of Assisted Reproduction Techniques, Laws, and Regulations in Muslim Countries."

that cross-border ART using donor gametes occurs among Indonesian citizens traveling abroad, and that donor-conceived individuals do reside in Indonesia.[55]

The legal framework's silence on this reality, rather than eliminating the issue, simply ensures that donor-conceived individuals in Indonesia lack any legal mechanism to access information about their origins. The comparative lessons from the UK and Australia suggest that open-identity frameworks do not require the legalization of third-party donation: disclosure registries can be established for cases where donor conception has occurred, regardless of whether it was permitted under domestic law. Indonesia can therefore adopt disclosure mechanisms as part of its child protection framework without necessarily endorsing or expanding the availability of donor-assisted reproduction.

Islamic Legal Framework: Nasab, *Hifz al-Nasl*, and *Sadd al-Dzari'ah*

The overwhelming consensus of contemporary Islamic scholars and fiqh councils holds that third-party gamete donation whether sperm or ovum donation involving a party outside the marital bond is prohibited (haram). The Islamic Fiqh Academy of the OIC, in Resolution No. 16 (4/3) of 1986 and reaffirmed in subsequent sessions, categorically prohibited donor gametes on grounds that it constitutes khalat al-ansab (confusion of lineages) and carries the same prohibitive rationale as zina in its capacity to corrupt nasab.[56] The MUI Fatwa on Bayi Tabung (1979, reaffirmed 2006) is consistent with this consensus, permitting IVF only where sperm and ovum derive from a legally married couple. However, this prohibition does not extinguish the existence of donor-conceived individuals on Indonesian soil; it merely ensures they are deprived of any legal framework to protect their rights.[57] The Islamic legal scholar's task is therefore not only to adjudicate on the permissibility of the act, but to determine the rights owed to a child who exists as a consequence of an impermissible act, a question the classical fiqh tradition has always recognized as requiring a separate and compassionate analysis.

Islamic fiqh has long grappled with establishing nasab for children born of irregular unions. The Quranic injunction in Q. 33:4-5 "Call them by the names of their fathers; that is more just in the sight of Allah" reflects the deep Islamic commitment to preserving authentic lineage as a matter of justice. The same principle that prohibits the severance of nasab through adoption applies, by analogy, to institutional mechanisms that permanently conceal genetic parentage.[58] The legal

[55]Ferraretti et al., "Cross-Border Reproductive Care: A Phenomenon Expressing the Controversial Aspects of Reproductive Technologies."

[56]Rahma Amir et al., "Solution to Inheritance Rights for Children in Pregnant Marriages: A Maqāṣid Al-Sharī'ah Approach," *El-Usrah* 8, no. 2 (2025), p. 933–51.

[57]Muh Firda Ramadhani, et., al, "Status Hukum Keperdataan Bayi Tabung Dan Hubungan Nasabnya Ditinjau Dari Hukum Islam Dan Kitab Undang-Undang Hukum Perdata," *Semarang Law Review (SLR)* 1, no. 1 (2022), p. 74–88.

[58]Ali Abubakar, et., al, "The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of Hifz Al-Nafs as Law Illat," *Samarah* 5, no. 1 (2021), p. 153–73.

maxim al-walad lil-firash assigns legal paternity for purposes of child welfare and social stability, but does not and was never intended to extinguish the child's right to know their biological origins where those origins are knowable. Classical scholars distinguished between the legal attribution of nasab for inheritance purposes and the ethical right of a child to knowledge of their biological descent: the former may be assigned by law; the latter is an intrinsic entitlement of the child as a moral agent.[59]

The central argument of this article's Islamic legal analysis is that Hifz al-Nasl, properly understood, constitutes an affirmative mandate for genetic transparency rather than a justification for concealment. The objective of Hifz al-Nasl is not merely the formal attribution of lineage for legal purposes, but the substantive protection of lineage integrity as a biological and social reality. A system of absolute donor anonymity does not protect lineage; it systematically obscures it, creating a class of individuals whose biological lineage is legally inaccessible.[60] As Ibn Asyur emphasizes in *Maqasid al-Shariah al-Islamiyyah*, the objectives of Islamic law must be understood in terms of their social and civilizational purposes: the social purpose of *hifz al-nasl* is a society in which lineage relationships are known, honored, and legally operative.[61] A society in which thousands of individuals are permanently denied knowledge of their biological parentage is, by this standard, a society in which *hifz al-nasl* has been systematically violated even if formal legal attribution of paternity remains intact on paper. This reading is further reinforced by *sadd al-dzari'ah*, where concealment of donor identity creates a foreseeable pathway to inadvertent consanguineous marriage (nikah mahram) between half-siblings sharing a common donor; Islamic legal methodology demands its restriction.[62]

Balancing Competing Rights: Child Identity, Donor Privacy, and the Right to Health

The core tension in donor anonymity jurisprudence is a conflict between two legitimate rights: the donor's right to privacy (encompassing bodily autonomy and informational self-determination) and the child's right to identity (encompassing knowledge of genetic origins and psychological integrity). Applying a proportionality test, as developed in ECtHR jurisprudence, requires an assessment of whether the interference with the child's right to identity is justified by the protection of the donor's right to privacy. The critical distinction in this analysis is temporal: the donor exercised an autonomous choice with full awareness of the legal framework at the time of donation, while the child had no choice in the circumstances

[59]Jumarim, "The Practice of Adoption in the Sasak Community and Its Implications for Marriage Law in Indonesia."

[60]Zuhdi and Nasir, "Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context."

[61]Mubarrak et al., "The Urgency of the Islamic Law and Contemporary Societal Challenges: The Flexibility of Al-Maslahah in Determining the Hierarchy of Maqāṣid Al-Sharīʿah."

[62]Muammar Bakry et al., "Reflections of Contemporary Islamic Law to the Spirit Doll Phenomenon: A Sadd Al-Żarī'ah Perspective," *Samarah* 6, no. 1 (2022), p. 20–35.

of their conception and bears the lifelong consequences of being denied knowledge of their genetic heritage. Under established rights-balancing principles, the vulnerability and non-choice of the child's position creates a compelling case that the child's right to identity should prevail, particularly when donor anonymity can be protected through regulated disclosure processes that include appropriate safeguards.[63] The Indonesian Constitutional Court's Decision No. 46/PUU-VIII/2010, which recognized the civil rights of children born outside of marriage vis-à-vis their biological fathers, offers a powerful domestic analogy: the Court affirmed that biological truth has legal significance independent of formal marriage status, reflecting a jurisprudential evolution toward greater recognition of the child's fundamental interest in knowing their origins.[64]

A distinctive contribution of this article is the reframing of the Right to Know not merely as a civil-identity right but as a dimension of the Constitutional Right to Health under Article 28H (1) of the 1945 Constitution.[65] In the era of precision medicine, knowledge of hereditary medical conditions carried by genetic parents constitutes an indispensable health tool. Hundreds of conditions, including hereditary cancers, cardiomyopathies, and Mendelian genetic disorders, are now routinely screened through family history assessment. A donor-conceived individual denied access to their genetic donor's medical profile is systematically disadvantaged in accessing adequate preventive healthcare and informed medical treatment. This denial constitutes, in effect, a violation of their constitutional health rights, transforming the Right to Know from a purely philosophical concern into a concrete health entitlement. Non-identifying medical information, including hereditary conditions, genetic predispositions, and immunological profiles, should therefore be accessible at any age, while identifying information should become accessible upon the donor-conceived individual reaching the age of 18, consistent with the threshold of adult autonomy in Indonesian civil law.[66]

Comparative Models and the Indonesian Reform Pathway

The imperative for a structured disclosure mechanism finds concrete precedent in the regulatory experience of jurisdictions that have navigated the transition from anonymity to transparency. The UK's Human Fertilization and Embryology Act (HFEA) 2004 provides the most extensively documented reform model. Since April 2005, all donor-conceived individuals in the UK are entitled, upon reaching age 18, to request identifying information about their donor from the

[63]Abubakar, et., al, "The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of Hifz Al-Nafs as Law Illat."

[64] Nasaiy Aziz and Muksal Mina, "Nasab Anak Yang Lahir Di Luar Nikah: Analisis Fatwa MPU Aceh Nomor 18 Tahun 2015 Dan Keputusan MK Nomor 46/PUU/VIII/2010" 1, no. 1 (2017).

[65]Abubakar, Juliana, and Hasan, "The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of Hifz Al-Nafs as Law Illat."

[66]Mubarrak et al., "The Urgency of the Islamic Law and Contemporary Societal Challenges: The Flexibility of Al-Maslahah in Determining the Hierarchy of Maqāṣid Al-Sharīʿah."

HFEA.[67] A significant concern among opponents of reform was that lifting anonymity would cause a precipitous decline in the number of donors.[68] Longitudinal data, however, challenge this assumption: while there was a short-term reduction in donor registrations immediately following the 2005 reform, donor numbers subsequently recovered and continued to grow,[69] demonstrating that a well-managed transition can preserve donor availability while advancing child rights.[70]

Australian jurisdictions have progressively moved toward open-identity frameworks, with Victoria pioneering retrospective legislation through the Assisted Reproductive Treatment Act 2008. The Australian case is particularly instructive for Indonesia because it demonstrates a federal model in which individual state legislatures enacted reforms incrementally, creating a gradually converging national standard.[71] This incremental approach may offer a politically viable pathway for reform in Indonesia's decentralized governance context.[72]

Article 127 of Law Number 17 of 2023 on Health permits ART strictly for married couples using their own gametes, effectively prohibiting third-party gamete donation. While this reflects Indonesia's prevailing religious-ethical consensus, it does not resolve the de facto reality that cross-border ART using donor gametes occurs among Indonesian citizens traveling abroad, and that donor-conceived individuals reside in Indonesia.[73] The comparative lessons from the UK and Australia demonstrate that open-identity frameworks do not require the legalization of third-party donation, and disclosure registries can be established for cases where donor conception has occurred, regardless of whether it was permitted under domestic law.

Policy Recommendations: Toward a Semi-Open Disclosure System

This research proposes four concrete measures for legal reform. *First*, non-identifying medical information, including hereditary conditions and genetic predispositions, should be accessible to the child or guardians at any age, while identifying information should become accessible upon the donor-conceived individual reaching age 18, consistent with the threshold of adult autonomy in

[67]Gilman and Nordqvist, "Organizing Openness: How UK Policy Defines the Significance of Information and Information Sharing about Gamete Donation."

[68]Blyth and Frith, "The UK's Gamete Donor 'crisis' - A Critical Analysis."

[69]William M. Wraight et al., "Bilateral Breast Reduction Surgery in England: A Postcode Lottery," *Journal of Plastic, Reconstructive and Aesthetic Surgery* 60, no. 9 (2007), p. 1039–44.

[70]Frith, "The Limits of Evidence: Evidence Based Policy and the Removal of Gamete Donor Anonymity in the UK."

[71]Kelly et al., "From Stranger to Family or Something in Between: Donor Linking in an Era of Retrospective Access to Anonymous Sperm Donor Records in Victoria, Australia."

[72]Kelly et al.

[73]Ferraretti et al., "Cross-Border Reproductive Care: A Phenomenon Expressing the Controversial Aspects of Reproductive Technologies."

Indonesian civil law.[74] *Second*, the Ministry of Health should establish a centralized, secure National Donor Registry to maintain genetic and personal profiles of gamete donors in a confidential database accessible only through a formal legal process, including a mechanism for voluntary donor contact mirroring Australia's voluntary contact register model.[75] *Third*, ART clinics should be required to provide comprehensive counseling to prospective parents and donors on the long-term identity implications of gamete donation and the practical impossibility of maintaining anonymity in the DNA testing era.[76] *Fourth*, this framework is constitutionally compatible with the existing Indonesian legal architecture: it operates as a child protection measure under Law Number 35 of 2014 on Child Protection, giving effect to the constitutional guarantees under Articles 28B and 28H of the 1945 Constitution, and does not require the legalization of third-party gamete donation under Article 127 of Law 17/2023.[77]

This research makes three original contributions to the literature on ART law and children's rights in Indonesia. *First*, it reconstructs *hifz al-nasl* as an affirmative mandate for genetic transparency: by applying a contemporary *maqashid al-shariah* analysis to gamete donation, the research reinterprets a principle traditionally deployed in support of anonymity into a doctrinally rigorous foundation for disclosure reform. *Second*, it offers the first systematic analysis of Law Number 17 of 2023 in relation to the Right to Know, identifying the Semi-Open Disclosure System as a model constitutionally compatible with Indonesia's Basic Law. *Third*, this research re-frames biological identity as a justiciable health right under Article 28H(1) of the 1945 Constitution, elevating the Right to Know from a civil-identity claim to a substantive constitutional entitlement with direct implications for the Ministry of Health and the Constitutional Court.

Conclusion

Indonesia's traditional donor-anonymity paradigm is increasingly difficult to sustain in the context of global children's rights and genetic transparency. The current legal framework, which emphasizes donor privacy and legal parenthood, does not yet adequately guarantee donor-conceived individuals' right to know their biological origins, as reflected in the CRC and the 1945 Constitution. This legal gap affects not only identity and psychological well-being but also access to potentially important hereditary medical information. The study further demonstrates that the right to know biological origins is compatible with Indonesia's socio-religious context and the objectives of *maqasid al-shariah*, particularly *hifz al-nasl*

[74]de Melo-Martín, "How Best to Protect the Vital Interests of Donor-Conceived Individuals: Prohibiting or Mandating Anonymity in Gamete Donations?"

[75]Jackson Kirkman-Brown et al., "Good Practice Recommendations for Information Provision for Those Involved in Reproductive Donation," *Human Reproduction Open* 2022, no. 1 (2022).

[76]Kirkman-Brown et al.

[77]Abubakar, Juliana, and Hasan, "The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of Hifz Al-Nafs as Law Illat."

(preservation of lineage). Absolute donor anonymity may instead create risks of inadvertent consanguineous marriage, making regulated disclosure more consistent with lineage protection. Accordingly, a semi-open disclosure system offers a constitutionally and socio-religiously compatible approach without necessarily requiring the legalization of third-party gamete donation. This study recommends a semi-open disclosure system within the framework of Article 127 of Law Number 17 of 2023 on Health, supported by four measures: (1) legislative reform recognizing access to non-identifying medical information and identifying information at adulthood; (2) establishment of a secure National Donor Registry; (3) mandatory counseling for donors and prospective parents; and (4) proactive constitutional interpretation by the Constitutional Court, particularly regarding the child's right to grow and develop under Article 28B(2) of the 1945 Constitution. These reforms would balance donor privacy with children's rights, the right to health, protection of lineage, and Islamic legal values while providing greater legal certainty for Indonesia's ART framework.

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