

Legal Status of Test Tube Baby Children: A Legal Review of Lineage and Inheritance Rights

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ARTICLE INFO	ABSTRACT
Keywords: Illegal Test Tube Babies; Lineage; Inheritance Rights; Civil Law; Children Born Out of Wedlock How to cite: Putri, Gia Anesta & Sari, Masda Agatha. (2026). Legal Status of Test Tube Baby Children: A Legal Review of Lineage and Inheritance Rights. <i>Veteran Law Review</i>. 9(1). 28-40. Received:2025-12-18 Revised:2026-05-26 Accepted:2026-06-02	Abstracts are written in English. Font Book Antiqua (10 pt) Italic and preferably 150-200 words. This study aims to analyze the legal status of illegal IVF children born from gamete donation or surrogacy procedures within the dualism of Indonesian Civil Law. The crucial issue discussed is the conflict arising between the principle of conservation of lineage in the Marriage Law and the limitations of inheritance rights in the Civil Code (KUHPerdata), especially considering the express prohibition of illegal procedures by Health Law No. 17 of 2023. The study uses a Normative Juridical method with a statutory, case, and conceptual approach. The main results indicate that children from illegal IVF procedures are categorized as children born out of wedlock, so their inheritance rights are limited to one-third of the portion of legitimate children if recognized. We found a legal conflict: the reactive protection solution through Court Decision No. 46/PPU-VIII/2010 has the potential to create civil and inheritance relations with anonymous gamete donors (biological fathers), this directly contradicts the preventive prohibition in the Health Law. In addition, the surrogacy agreement was confirmed null and void under Article 1320 of the Civil Code. This study concludes the need for regulatory harmonization to clarify the limits of the application of the Constitutional Court Decision in order to ensure legal certainty and the best protection for children's civil rights.

1. Introduction

The development of technology and health science continues to experience significant improvements in quality and innovation, including the presence of technology called IVF or Assisted Reproductive Technology (TRB).

In vitro fertilization (IVF) or assisted reproductive technology (TBR) is the process of fertilizing sperm and eggs outside the human body (in vitro fertilization). This fertilization takes place in a test tube and is then transplanted into the uterus of the wife or another woman called a surrogate

mother. In the last decade, technological and biomedical developments have paved the way for potential benefits for medicine and humanity in general. The presence of this technology provides a solution for married couples facing infertility, but at the same time sparks serious debate regarding bioethical, legal, and especially lineage aspects. Positive Indonesian law, especially Law Number 17 of 2023 concerning Health (Indonesia, 2023) and its implementing regulations, responds to this phenomenon with a conservative approach, strictly limiting the TRB procedure only to those married couples who are legally and are required to use gametes (sperm and ovum) from the couple themselves. This limitation aims primarily to maintain the conservation of lineage which is a fundamental pillar in Indonesian marriage law.

The central issue in this research is the conflict that arises when TRB procedures violate these normative boundaries, such as the practice of gamete donation (third-party sperm or ovum) or surrogacy. Although the Health Law prohibits these practices, complications arise within the Civil Code (KUH Perdata) framework regarding the legal status of children born from these illegal procedures (Madi, 2022).

Previous legal studies have successfully identified and resolved the legal status of children born from legal (homologous) IVF procedures, where the child is fully recognized as a legitimate child and has the right to other civil relations, including inheritance rights, both biologically and legally. In addition, legal studies have concluded that surrogacy agreements in Indonesia are null and void because they violate the lawful causes in Article 1320 of the Civil Code, because they are contrary to the Law, public order, and Marriage Law (Indonesia, n.d.). These available legal solutions show that the law has accommodated technology as long as the lineage is maintained (Alam et al., 2024).

However, the majority of existing research often does not provide a specific and solution-oriented legal framework regarding the long-term civil implications for children born through illegal procedures. The main limitation of this research lies in the absence of a specific framework in the Civil Code that regulates in detail the lineage of children resulting from gamete donation or children born by surrogate mothers. This gap creates legal uncertainty, especially in scenarios where the husband (non-biological) provides tacit recognition of the child resulting from gamete donation. Previous research has shown that the legal status of the child in this case is at risk of becoming an illegitimate child or a recognized child.

Novelty This research lies in a critical examination of the implications of the automatic inheritance rights of illegitimate children born from these illegal

procedures. Using normative juridical methods, this research aims to analyze in depth the conflict between the principle of conservation of lineage (Marriage Law) and the doctrine of child recognition (Civil Code) in the case of gamete donors, as well as its implications for the civil inheritance rights of vulnerable children. This research will specifically examine three main aspects, namely: first, how the status of the lineage of children from Illegal IVF (gamete donors/womb rental) is viewed from the principle of legitimate children in the Marriage Law; second, what are the civil law implications for the inheritance rights of children from Illegal IVF; and third, how Article 1320 of the Civil Code becomes the basis for the cancellation of womb rental. By sharply identifying that the unclear legal status of these children is a potential threat to their civil rights, this research has significance in providing recommendations for regulatory synchronization so that the best protection for children can be guaranteed legally (Trisnayani, 2021).

A normative legal review of the status of test tube babies involves a synthesis of various Civil Law regulations.

Table 1: Main Regulatory Framework Related to TRB and Nasab

Regulation	Number and Year	TRB Regulation Main Focus	Relevance of Children's Legal Status
Marriage Law	UU no. 1/1974 jo. UU no. 16/2019	Definition of Legitimate Children and the Validity of Marriage	Determining the prerequisites for lineage: Children must be born "as a result of a legitimate marriage."
Health Law	Law No. 17/2023	Advanced Reproductive Health Regulations	Absolute prohibition on gamete donation/surrogacy ; restricting TRB to



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Regulation	Number and Year	TRB Regulation Main Focus	Relevance of Children's Legal Status
			legally married couples only.
Implementing Government Regulation on Health Law	Government Regulation No. 28/2024	Technical Details of TRB Implementation	Affirming the prohibition of gamete donation and the implications of sanctions for illegal procedures.
Constitutional Court Decision	No. 46/PUU-VIII/2010	Civil Relations of Children Born Out of Wedlock	Opening up the possibility of a lineage and inheritance relationship with the biological father if proven.

2. Method

The research method used in this manuscript is the Normative Juridical research method. This research focuses on literature study, namely by reviewing legal materials relevant to the issue of the legal status of IVF, lineage, and inheritance rights within the framework of Civil Law. The approaches used include: Statutory Approach, analyzing and reviewing the hierarchy and content of the Marriage Law, Health Law and Civil Code; Case Approach, reviewing relevant jurisprudence and court decisions, especially Constitutional Court Decisions; and finally, the Conceptual Approach, analyzing civil law doctrines.

3. Main Heading of the Analysis or Results

This section presents the main findings of research examining the status of lineage and the inheritance rights implications of IVF children born from procedures prohibited by Positive Law, and highlights the conflict between the principle of conservation of lineage and the doctrine of child recognition and the limitations of existing regulations. These findings are important because they attempt to fill the gap in specific civil law governing lineage and inheritance of children from illegal IVF procedures, which has not been fully addressed by previous legal studies.

3.1. Status of Children of Illegal IVF (Gamete Donors and Surrogates)

Determining the lineage status of IVF children is based on the legality of the TRB procedure. The results of the analysis show that children born from homologous procedures (husband's sperm and wife's ovum) are fully recognized as legitimate children based on Article 42 of the Marriage Law because they are born "as a result of a legal marriage" (Indonesia, n.d.).

In contrast, heterologous test tube babies (gamete donors) and children born through surrogacy are categorized as children born outside of a legitimate marriage (*natuurlijke kinderen*). This status is a direct consequence of the violation of *lex specialis*, namely Health Law No. 17 of 2023 which prohibits the use of third-party gametes or surrogate wombs (Indonesia, 2023).

3.1.1. Lineage Conflict and the Limitations of Constitutional Court Decision No. 46/PUU-VIII/2010

Categorization as an illegitimate child pushes the protection of children's rights into the realm of Constitutional Court (MK) Decision Number 46/PUU-VIII/2010. This MK Decision extends the civil relationship of illegitimate children to their biological father (Hamzani, 2015). However, this finding highlights a crucial limitation that distinguishes it from ordinary illegitimate children: in the context of gamete donors, the literal application of the MK Decision can create a civil relationship and potential inheritance rights between the child and the gamete donor who has no intention of becoming a social parent or heir. This conflict shows that the reactive protection instrument (MK Decision) clashes with a preventive prohibition (Health Law) (Indonesia, 2024), which legally hinders the legal certainty of the child's lineage with the social parent (the husband who raised them).

3.1.2. Validity of Homologous Procedures (Categorization of Legitimate Children Based on the Marriage Law and the Civil Code)

Children born from homologous IVF procedures – that is, fertilization using the husband's sperm and the wife's legitimate ovum – have a fully guaranteed legal standing. Based on Article 42 of Law Number 1 of 1974, the child absolutely has the status of a legitimate child because he was born "as a result of a legal marriage." This status is also in line with Article 250 of the Civil Code which defines a legitimate child as a child born or raised during the marriage of his parents. This homologous child has a full lineage relationship with both of his social parents, so that the legal consequences of civil law, including inheritance rights, are fully guaranteed (Lahia, 2017). They are automatically classified as class I heirs in the Civil Code, without portion limitations.

3.1.3. *Natuurlijke Kinderen* Status Due to *Lex Specialis* TRB Violation

On the other hand, children born from heterologous procedures (gamete donors) or children born through surrogacy are legally categorized as children born outside of a legal marriage (*natuurlijke kinderen*) (Djumikasih, 2013). This classification is a direct consequence of:

1. Violation of Health Law
Law No. 17 of 2023 and its implementing regulations strictly prohibit the use of gametes from third parties or the implantation of embryos in another woman's uterus (surrogacy) [1]. Procedures that violate these provisions are considered illegal and contrary to the norms of legal marriage.
2. Violating Article 42 of the Marriage Law
The child fails to meet the requirements for being a legitimate child because they were not born "as a result of a valid marriage" between their social parents, but rather involved the prohibited intervention of a third party.
3. Civil Law Doctrine (*Mater Semper Certa Est*)
In cases of surrogacy, Indonesian civil law tends to adhere to the principle of *Mater Semper Certa Est* (The Mother Is Always Clear), where the woman who gives birth is legally recognized as the legitimate mother. This means that a child born through a surrogate mother is legally recognized as an illegitimate child of the couple who commissioned the child.

3.2. Implications of Civil Law for the Inheritance Rights of Children from Illegal IVF

The inheritance rights of test tube babies depend fundamentally on the legal status of their lineage. The analysis confirms that because heterologous test tube babies are classified as illegitimate children, they

face significant limitations on their inheritance rights under the Civil Code, which is a direct implication of a violation of *lex specialis* TRB (Madi, 2022).

While homologous children are recognized as Full Class 1 Heirs [4], illegitimate children only have a civil relationship with their mother and her family, unless they are recognized by their father/mother. If heterologous children are legally recognized by their social parents, they are only entitled to receive a very limited share of the inheritance, generally one-third of the portion that legitimate children should receive (Pahlefi, 2015). Although Constitutional Court Decision No. 46/PUU-VIII/2010 opens up the potential for inheritance rights from biological fathers through DNA testing, as highlighted in previous findings, this is practically problematic if the biological father is an anonymous donor, thus hindering the determination of fair and stable inheritance rights in Civil Law.

3.2.1. Doctrine of Recognition of Children Born Out of Wedlock (Articles 281-285 of the Civil Code)

According to the Civil Code, an illegitimate child has no legal relationship with his or her father and only has a civil relationship with his or her mother and her mother's family, unless there is a Child Recognition (*erkenning*). This doctrine of recognition is regulated in Articles 281-285 of the Civil Code.

1. Recognition Mechanism

Article 281 of the Civil Code stipulates that an illegitimate child can be legally recognized by either the father or the mother. In the case of a heterologous test tube baby, the social husband (who is not the biological father) can choose to recognize the child. This recognition provides certainty of legal status and creates a limited civil relationship with the acknowledging social parent (Gani, 2011).

2. Status Limitations

While this recognition provides certainty of status, it does not change the status of an illegitimate child to a legitimate one. Their status remains that of a recognized illegitimate child, which has significant consequences for their inheritance rights.

3.2.2. Limitations on Inheritance of Children Born Out of Wedlock (Articles 862-865 of the Civil Code)

The most significant implication of the recognized status of illegitimate children lies in inheritance rights. The analysis highlights that the Civil Code explicitly differentiates inheritance shares between legitimate and illegitimate children.

Articles 862 and 863 of the Civil Code determine:

1. Basis of Inheritance

Article 862 of the Civil Code states that illegitimate children who have been legally recognized according to law can inherit inherited property.

2. Portion Limitation (Article 863 of the Civil Code)

The portion received by a recognized illegitimate child is a very limited virilism portion, depending on the class of other heirs left by the testator (social parents):

- If an illegitimate child inherits together with heirs of Category I (legitimate child, legitimate husband/wife), he/she is only entitled to receive one third (1/3) of the portion that should be received by a legitimate child(Sondakh, 2015).
- If he inherits together with heirs of Group II or Group III (siblings, grandparents), he is entitled to receive half (1/2) of the inheritance.
- If there are only Class IV heirs (more distant relatives), he is entitled to receive three-quarters (3/4) of the inheritance.

This limited portion shows that although civil law provides financial protection for children resulting from illegal TRB through recognition, this protection is partial and discriminatory compared to the full inheritance rights of homologous children.

3.3. Limits of Contract Validity (Article 1320 of the Civil Code) and Civil Protection Mechanisms

Regarding illegal TRB agreements, particularly surrogacy, the analysis confirms that the agreement is null and void. Civil law doctrine, particularly Article 1320 of the Civil Code, requires a lawful cause for the validity of an agreement. Agreements. Uterine rental agreements, because they violate the Law (Health Law) and public order (marriage law norms) [5,6], do not legally meet these requirements.

Even if the parent agreement is void, the civil law system offers a mechanism for Child Recognition and Validation in the District Court (for non-Muslims) to provide legal certainty and limited civil rights for children who are already born. Jurisprudence influenced by the Constitutional Court Decisions paves the way for determining the parentage of illegitimate children. However, this finding reaffirms that the lack of specific civil regulations that specifically regulate the parentage of children born of illegal TRB forces the courts to use reactive general legal

instruments. This limitation is a major gap from previous research and indicates the need for legislative intervention to ensure comprehensive child protection.

3.3.1. Review of the Legal Voidability of the Uterine Rental Contract (Article 1320 of the Civil Code)

Regarding other illegal TRB agreements, namely surrogacy or womb rental, the analysis confirms that the agreement is null and void.

1. Violation of Article 1320

The conditions for a valid agreement as regulated in Article 1320 of the Civil Code include four things, one of which is a lawful cause. A womb rental agreement, even though based on an agreement, is considered to violate a lawful cause because it is contrary to the Law (Health Law) and public order (marriage law norms) (Marx, 2025).

2. Legal Consequences

Even if the contract is void, the child who has already been born must still be protected. Jurisprudence and legal studies determine that the child's status is that of an illegitimate child of the surrogate mother (who gave birth), and inheritance rights can only be determined through limited recognition in court.

Table 2: Comparison of Nasab Status and Inheritance Rights Based on Type of TRB Procedure



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Procedure Type (TRB)	Legalization of Procedures (Health Law)	Lineage Status (Marriage Law/Civil Code)	Inheritance Relationship of the Civil Code
Homologous (Husband's Sperm + Wife's Ovum)	Legal	Legitimate Child (Full Lineage)	Full Class I Heirs
Heterologous (Gamete Donor)	Illegal/Prohibited	Children Born Out of Wedlock	Limited. Can inherit from a father/mother who acknowledges (with portion restrictions) or through a Constitutional Court Decision.
Surrogacy (Substitute Mother)	Illegal/Prohibited	Children Born Out of Wedlock	Requires recognition/validation. Inheritance is limited and requires a court decision.

4. Conclusion

The main objective of this study is to analyze the conflict between the principle of conservation of lineage (Marriage Law) and the doctrine of child recognition (Civil Code) in the case of gamete donors and its implications for the civil

inheritance rights of children of Illegal Test Tube Babies. Based on a normative legal review, it can be concluded that the lineage of children of Illegal Test Tube Babies (gamete donors/womb rental) is legally placed as children outside of legal marriage (*natuurlijke kinderen*) due to the violation of the prohibition of *lex specialis* in the Health Law. The civil legal implications for these children's inheritance rights are the limitation of inheritance rights according to the Civil Code, where they are only entitled to a limited portion of inheritance from the social parents who acknowledge them. Furthermore, the womb rental agreement is declared null and void because it violates the requirements of a lawful cause in Article 1320 of the Civil Code (Indonesia, n.d.), because it is contrary to law and public order. Overall, civil protection for these vulnerable children relies heavily on reactive legal instruments such as Constitutional Court Decision No. 46/PUU-VIII/2010, but this instrument is hampered by ethical and legal conflicts due to the potential for establishing a civil relationship with the gamete donor.

The high risk of legal uncertainty regarding the civil rights of children resulting from illegal TRB requires decisive legislative action. Therefore, this study recommends two strategic steps:

1. Harmonization of Lineage Regulations: It is necessary to immediately issue a Government Regulation or a regulation at a lower level of law that explicitly clarifies the limits of the application of Constitutional Court Decision No. 46/PUU-VIII/2010 in cases of heterologous IVF. This clarification should prevent the establishment of legal relationships of inheritance or guardianship with gamete donors, thus maintaining consistency between the prohibition on health procedures and the principle of lineage conservation in family law.
2. Strengthening the Child Recognition Mechanism: The government must strengthen the Child Recognition and Validation mechanism in the District Court, especially for cases of heterologous test tube babies, so that the child receives limited civil rights protection from the social parents who raise them. This mechanism must ensure that, even if full parentage cannot be fulfilled, the child's material and non-material interests are still guaranteed.

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