

## CRIMINAL ACTION OF SALES OF HUMAN EGGS USING ILEGAL REPRODUCTIVE TECHNOLOGY

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### ABSTRACT

*Donating eggs is an effort to help couples who are unable to have children. In return for their time and sacrifices, donors often receive a certain amount of money. The aim of this research is : To analyze the positive laws governing the prohibition of selling human eggs with illegal artificial reproductive technology; To analyze the penalties that will be given to the perpetrator of the criminal act of selling human eggs using illegal artificial reproductive technology; To analyze efforts to combat the criminal act of selling human eggs with illegal artificial reproductive technology. Data analysis was carried out qualitatively by collecting primary, secondary and tertiary legal materials related to research. The analysis results obtained are: The positive law that regulates the prohibition of selling human eggs with illegal artificial reproductive technology is regulated in the Republic of Indonesia Law Number: 36 of 2009 concerning Health and the Republic of Indonesia Minister of Health Regulation Number: 73 / Menkes / PER / II / 1999 concerning the Implementation of Artificial Reproductive Technology Services but not there is an explicit mention of human egg sellers. The application of punishment can only be carried out to doctors in medical practice who carry out reproductive technology illegally as stated in the Law of the Republic of Indonesia Number: 29 of 2004 concerning Medical Practice in Article 36, as well as the medical code of ethics; There is no punishment that can be given to the perpetrators of selling human eggs with illegal artificial reproductive technology, but punishment can only be applied to doctors who practice illegal artificial reproductive technology or hospitals who do not have permission to implement reproductive technology in humans; Efforts to combat the criminal act of selling human eggs with illegal artificial reproductive technology can only be done through non-penal efforts by providing an understanding to the public about the dangers of fertilizing eggs that are not in accordance with health procedures established by the government based on statutory regulations*

*Keywords:* Crime, Human Egg Sales, Artificial Reproduction Technology, Illegal

### INTRODUCTION

Having children is a dream for every married couple, but it cannot be denied that there are certain circumstances where a wife cannot become pregnant because of her birth defect or other factors that prevent a wife from becoming pregnant. Medical technology has found a solution for couples who have problems with the difficulty of getting offspring, for example by artificial insemination or with in vitro fertilization technology known as IVF, or another term called egg recipient. Donating eggs is an effort to help couples who are unable to have children. In return for their time and sacrifices, donors often receive a certain amount of money. Not only to help disadvantaged couples, eggs are also donated for research purposes. However, some parties still question the health risks for donors. Unlike in western countries, advertisements that openly seek egg donors are almost never found in Indonesia.

According to embryologist Harris Harlianto, sperm donor and ovum donor are medically practiced abroad. In Indonesia, the technology is actually qualified and the medical personnel are also capable and good at it. It's just that, Indonesia prohibits these things. The problem is a legal and ethical problem. It is not possible by law. Egg and sperm donors use sperm banking technology. In Indonesia, the technique of freezing sperm and ovum is only available for IVF programs. If in Indonesia it must be used by a husband and wife legally bound by a marriage bond, other than that it is not possible. This opinion can be seen from the Decree of the Minister of Health Number: 72 / Menkes / Per / II / 1999 concerning the Implementation of Artificial Reproduction Technology, which contains among other things the prohibition of buying and selling spermatozoa, ova or embryos.

Likewise, there is the Minister of Health Regulation Number: 43 of 2015 concerning the Implementation of Assisted Reproduction Services or Pregnancy Outside the Natural Way which is stated in Article 1 number (1) which states that "Assisted Reproductive Services or Pregnancy Outside the Natural Way, hereinafter referred to as Services Assisted Reproductive Technology is an effort to obtain a pregnancy outside the natural way without going through the process of husband and wife relationship (intercourse) if the natural method does not get results, by bringing together the husband's spermatozoa with the wife's egg in the tube "as well as Article 13 number (1) which states that" Assisted Reproductive Technology Services are carried out by: a. conventional; and b. Intra Cytoplasmic Sperm Injection (ICSI) "as well as number (2) which states that" Assisted Reproductive Technology Services in the conventional way as referred to in paragraph (1) letter a are carried out by bringing together a normal husband's spermatozoa and wife's oocyte in a tube, then the formed embryo is transferred to the wife's womb ".

This can also be seen in Article 127 of Law Number: 36 Year 2009 concerning Health which states that efforts to conceive outside the natural way can only be carried out by a legal married couple provided that: a) The results of fertilization of sperm and ovum

from the husband and wife concerned implanted in the wife's womb from which the ovum originates; b) carried out by health workers who have the expertise and authority to do so; c) at certain health service facilities.

According to detikHealth, although it is common practice in developed countries and several neighbouring countries such as Vietnam and Malaysia, egg cell donors have not received legal recognition in Indonesia, aka illegal. The Indonesian Doctors Association and the Ministry of Health prohibit sperm donation, egg donation and surrogate mothers. According to David Lahia, this is due to the impact the child will produce. Positive law in Indonesia regulates the legal status of a child as regulated in the Civil Code and Law Number 1 of 1974 concerning Marriage. However, in this regulation, there are no provisions that strictly regulate the legal position of children born through IVF. According to Idries (1997), because there are no rules in it, it can cause legal problems from technology including its implementation (doctors, researchers, scientists), husbands, wives, sperm donors, egg donors, school mothers and babies born with the process.

Because there are no explicit provisions such as criminal sanctions against selling or donating eggs, so it is possible for parties to take advantage of this situation to sell eggs. The practice of selling eggs illegally has very often occurred abroad, such as in China, Spain and other countries, but in Indonesia, until now there have been no cases that have surfaced or perhaps the practice of selling eggs is still neatly carried out by certain people so that there are no cases. known to law enforcement officials. If found, the question is how law enforcement officers enforce the law against egg sellers or egg recipients. In the Health Law Number: 36 of 2009 concerning Health, there is no explicit regulation relating to the sale of eggs so it is very risky if it is applied to people who sell their eggs to other people and whether the practice of selling eggs is called an act crime and illegal.

Therefore, a draft law on family resilience has now been drafted which explicitly prohibits leasing of the uterus, sperm donor and egg donor. This is stated in article 31 of the draft law on family resilience in article 31 which reads "(1) Every person is prohibited from buying and selling sperm or ovum, donating voluntarily, accepting donors of sperm or ovum that are carried out independently or through an institution for the purpose of obtaining offspring, (2) Everyone is prohibited from inducing, facilitating, coercing, and / or threatening other people to buy and sell sperm or ova, donate or accept sperm or ovum donors that are done independently or through institutions for the purpose of obtaining offspring

The sanctions given to people involved in it are subject to criminal penalties as stated in article 139 of the Bill on family resilience which reads "Anyone who deliberately trades sperm or ovum, donates voluntarily, or accepts sperm or ovum donors who are done independently or through institutions the need to obtain offspring as referred to in Article 31 paragraph (1) shall be punished with imprisonment of no longer than 5 (five) years and / or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah)".

However, before the draft law was enacted, what was the legal view of the egg seller. Based on the description above, the researcher wants to deepen it into a study entitled: "The Crime of Selling Human Eggs Using Illegal Artificial Reproduction Technology".

## **METHOD**

This type of research used in writing law is normative legal research and conducted in Indonesia so that this data can be used by Indonesian Government to enforce the regulations. Legal research does not recognize field research because what it is researching is legal materials. The approach used discusses the problems contained in this research, namely the normative juridical approach and the empirical juridical approach in order to obtain a correct and objective research result. The normative juridical approach is an approach by examining the rules, norms, rules related to the problem to be studied. This approach is intended to collect various kinds of laws and regulations, theories and literatures that are closely related to the problem to be studied while the empirical juridical approach is to research and collect primary data obtained directly through research on the object of research by means of observation. and interviews with respondents or sources related to the problems discussed in this study. Data collection uses library research techniques or document study, namely by examining the data sources mentioned above in relation to the problems studied by reading, reviewing and studying library materials. The data analysis technique used in this study is non-statistical. This non-statistical analysis was carried out using qualitative data analysis techniques. Qualitative data analysis according to Bogdan & Biklen is an effort made by working by organizing data, sorting it into manageable units, synthesizing it, looking for and finding patterns, finding what is important and what is learned and deciding what to tell people. other.

## **EFFORTS TO COMBAT THE SALE OF HUMAN EGG CELLS WITH REPRODUCTIVE TECHNOLOGY MADE ILLEGALLY**

Efforts to combat criminal acts are known as criminal policies. According to John Kenedi, from the point of view of criminal policy or criminal politics, it can be said that criminal law policy is identical to the definition of crime prevention policy through criminal law so that efforts are needed to create good regulations in accordance with existing and existing circumstances and situations. will come and state policies through the agency authorized to formulate and establish the desired and even expected regulations that can be used to express what is contained in society in order to achieve what is aspired. In other words, the goal to be achieved with a criminal law policy is a good criminal law that regulates the prohibition against the sale of human eggs to the perpetrator.

Therefore, good criminal laws and regulations must contain all aspects of the crime so that the perpetrators of the crime can be convicted under the applicable law, including those who sell human eggs with artificial reproductive technology that are carried out illegally. Herein lies the efforts to deal with crimes committed by means of penal measures. Efforts to tackle the crime of selling human eggs through penal channels emphasize the repressive nature or law enforcement / law enforcement after the crime of selling human eggs has occurred which of course must be based on evidence of at least two pieces of evidence in accordance with the provisions of the Criminal Procedure Code. In other words, a person who violates the law by selling human eggs directly

or through an intermediary for other people with artificial reproductive technology that is not in accordance with the applicable laws and regulations, can be charged with the law for the act committed.

Jimly Asshiddiqie revealed that law enforcement is a process of making efforts to uphold or function real legal norms as a code of conduct in legal relations in social and state life. In law enforcement, there are 3 elements that must always be considered, namely: legal certainty, justice and benefit. Legal certainty is justifiable protection against arbitrary actions so that with legal certainty, society will be more orderly. Then in terms of law enforcement, it must pay attention to justice, but law is not always synonymous with justice because law is general and binds everyone. Apart from that, in law enforcement, the public expects benefits, so that because law enforcement causes unrest in the community. These three elements must get proportional attention from law enforcers in enforcing the law, which of course is not easy, there will be factors that influence law enforcers in enforcing the law, including the absence of explicitly mentioning the prohibition on the actions of the perpetrator, causing multiple interpretations.

Based on this, the statutory regulation regarding the illegal sale of eggs with artificial reproductive technology can only be applied through the medical practice law, the law regarding the licensing of health services using artificial reproductive technology to the actors implementing the artificial reproductive technology.

The law has at least three main roles in society, namely as a means of social control, a means of expediting the process of social interaction, a means of creating certain conditions. Criminal law only recognizes people as perpetrators while criminal responsibility is adhered to the principle of guilt which means that it can impose a crime on the offender, in addition to fulfilling the elements of the offense formula, it must also fulfil the elements of guilt.

Based on the above, it can be concluded that it can be concluded that it is very difficult to control the criminal act of selling human cells through non-penal measures because the law that regulates human egg cells with artificial reproductive technology illegally is not regulated so that it can lead to multiple interpretations of the existing laws relating to the law. sales of human eggs such as health laws and ministerial regulations regarding the implementation of artificial reproductive technology.

#### **NON-PENAL EFFORTS TO OVERCOME SALES OF HUMAN EGG CELLS WITH ILLEGAL REPRODUCTION TECHNOLOGY**

Muladi stated that the enforcement of criminal law within the framework of the criminal justice system cannot be expected to be the only means of effective crime prevention considering that it is likely that there are perpetrators of criminal acts who are outside the framework of the criminal justice process. This opinion is in line with the view of criminal politics that non-penal policy measures are the most strategic crime prevention policies because they are preventive in nature before the occurrence of a crime. Countermeasures through non-penal channels are called efforts made through channels other than criminal law. This effort is a prevention effort that focuses more on preventive properties, namely measures in the form of prevention before the illegal sale of eggs occurs. Through this non-penal effort, the main objective is to deal with the conducive factors that cause the sale of eggs in an illegal way, which includes problems or social conditions that directly or indirectly cause or foster such illegal behavior. Prevention of illegal sale of human eggs in the form of non-penal measures focuses on social, economic and various competent parties' interference with the intention of preventing the bad behavior from occurring.

Another form of community involvement is situational prevention and community capacity building in the use of informal means of social control. The increase in crime prevention is offender-centered crime prevention and victim-centered crime prevention. Another opinion states that the best crime prevention efforts must meet the requirements, namely: a good police system and operation, an effective judiciary, authoritative laws and regulations, harmonious coordination between law enforcers and government officials, community participation in crime prevention., monitoring and preparedness against the possibility of crime and fostering social organizations.

Along with the development of technology, at this time cloning does not use sperm cells anymore like what dr. Jerry Hall, but uses eggs and cells other than sperm. Theoretically, through the cloning technique, the birth of a baby no longer requires the father's sperm, even a woman can have children without going through a marriage bond. Likewise, a man, if he wants to have a child, does not need to have a wife, simply orders eggs from a firm, gives the cells from one of his organs and then entrusts his prospective child to a woman's womb, which the firm could provide (surrogate mother). Therefore, cloning is also known as recombination of DNA which can be obtained in blood, hair, mucosal cells on the inside of the cheeks (in the mouth), and other tissues.

The development of artificial reproductive technology in Indonesia has not been as fast as in developed countries, however, this phenomenon needs to be anticipated through an understanding of the legal perspective prevailing in Indonesia so that it is clear as a benchmark for behavior. The law relating to reproduction is Law No.36 / 2009 as stated in Article 71 paragraph (1) to (3) which states that "reproductive health is a condition of being physically, mentally and socially healthy as a whole, not merely free from diseases or disabilities related to the reproductive system, function, and process in men and women where reproductive health includes the time before pregnancy, pregnancy, childbirth and after childbirth, pregnancy management, contraception and sexual health, reproductive health which is implemented through promotive, preventive, curative and rehabilitative activities". Law No.36 / 2009 in article 71 especially paragraph (3) is a form of non-penal effort in overcoming the illegal selling behavior of eggs with artificial technology. The government must be able to socialize these reproductive health efforts in the form of promotional activities so that people understand the importance of maintaining reproductive health so that they do not try to commit acts of selling eggs in illegal ways because it can endanger themselves.

## CONCLUSIONS

Based on the results of the analysis from the discussions that have been stated previously, it can be concluded as follows:

1. The positive law that regulates the prohibition of selling human eggs with illegal artificial reproductive technology is regulated in Republic of Indonesia Law Number: 36 of 2009 concerning Health and the Republic of Indonesia Minister of Health Regulation Number: 73 / Menkes / PER / II / 1999 concerning the Implementation of Artificial Reproductive Technology Services. however, there is no explicit mention of human egg sellers. The application of punishment can only be carried out to doctors in medical practice who carry out reproductive technology illegally as stated in the Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice in Article 36, as well as the medical code of ethics.
2. There are no penalties that can be given to the perpetrators of selling human eggs with illegal artificial reproductive technology, but punishment can only be applied to doctors who practice artificial reproductive technology illegally or to hospitals who do not have a license to implement reproductive technology in humans.
3. Efforts to combat the criminal act of selling human eggs with illegal artificial reproductive technology can only be done through non-penal efforts by providing an understanding to the public about the dangers of fertilizing eggs that are not in accordance with health procedures established by the government based on statutory regulations. legislation.

## SUGESSTION

By looking at the results of the analysis that have been obtained based on several legal materials, the following suggestions can be made:

1. Laws and penalties or sanctions against the sale of human eggs with artificial reproductive technology do not yet exist so it is hoped that the Government and the DPR can immediately pass the Bill on Family Resilience to the Law on Family Resilience because it contains technology sellers and implementers. artificial reproduction.
2. For the public not to carry out buying and selling human egg transactions, especially buyers illegally because it will have a negative impact on the health of the individual.
3. For further researchers, this research can develop more deeply so that it adds to the repertoire of legal knowledge, especially those related to the illegal sale of eggs and artificial reproductive technology.

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