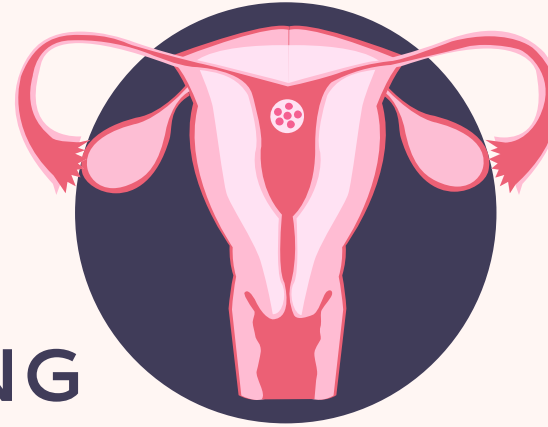




REPRODUCTIVE RESPONSIBILITY AS A VALID CONSIDERATION IN ENSURING **IMPACTFUL INNOVATIONS** THAT PROTECT FUTURE PROGENY



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POSTGRADUATE COLLOQUIUM 2022

INTERNATIONAL ISLAMIC UNIVERSITY, MALAYSIA



INTRODUCTION

Aim of the presentation – to share my experience on how researchers need to ensure that their research is able to produce distinctive innovations that would impact the Ummah in positive ways.

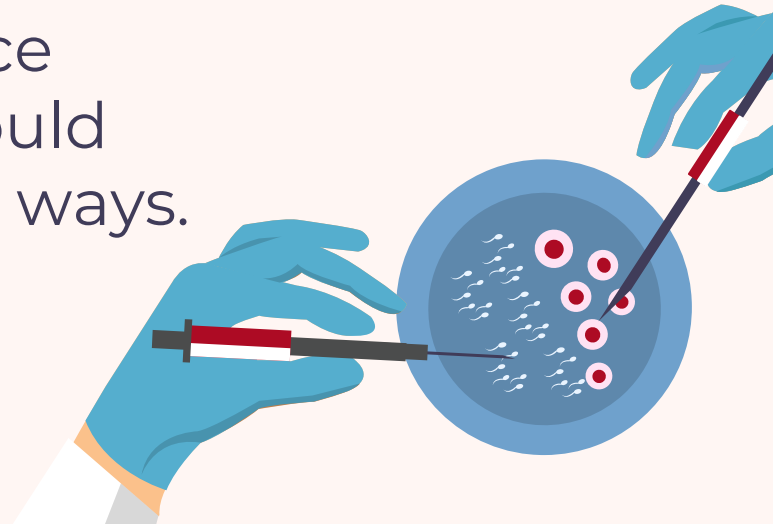


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**01**

IN THE BEGINNING

Find a problem – that is real,
pressing, solvable

02

METHODOLOGY

You can describe the topic of
the section here

03

ANALYSIS

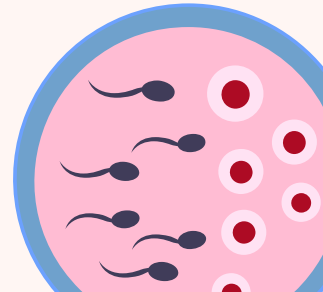
You can describe the topic of
the section here

04

CONCLUSIONS

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AN ETHICO-LEGAL ANALYSIS OF ASSISTED REPRODUCTIVE TECHNOLOGIES IN MALAYSIA: BALANCING RIGHTS AND RESPONSIBILITIES

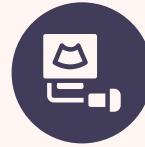


BACKGROUND



INFERTILITY

INABILITY TO REPRODUCE
AFTER 1 YEAR OF TRYING



ART

ASSISTED REPRODUCTIVE
TECHNOLOGIES



OPTIONS

MADE AVAILABLE TO INFERTILE
COUPLES/ALL WHO WISH



WHO'S GAMETES?

1. THE COUPLE
2. THRID PARTY



HOW?

1. THE WIFE
2. A SURROGATE



WHY?

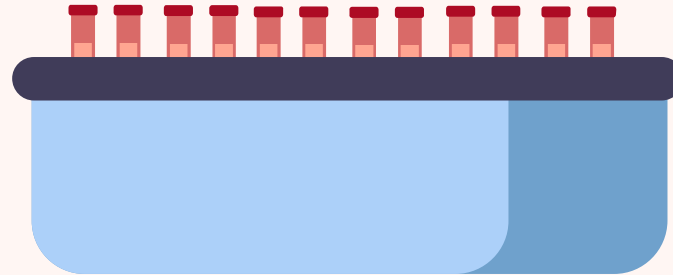
RESPECT FOR
RIGHTS/RESPONSIBILITIES

01



STATEMENT OF PROBLEM

SHOULD THE STATE BE ALLOWED TO
REGULATE THE REPRODUCTIVE CHOICES OF
INFERTILE COUPLES?

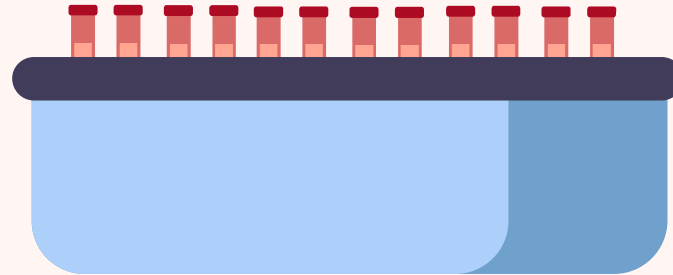


02



STATEMENT OF PROBLEM

SHOULD MALAYSIA LEGISLATE ART SERVICES AND WHAT SHOULD BE THE BASIS OF THE LEGISLATION IN MALAYSIA BE?



THE JURISPRIDENTIAL ISSUES

- WHAT IS THE MEANING OF REPRODUCTIVE RIGHTS?
- WHERE DID THE RIGHTS COME FROM?
- WHAT IS THE LEGAL BASIS OF A RIGHT?
- IS THE RIGHT ABSOLUTE?
- HOW IS THE RIGHT APPLIED IN MALAYSIA?
- WHAT ARE THE CONSIDERATIONS THAT NEEDS TO BE ADDRESSED IN ORDER TO LEGISLATE IN MALAYSIA.

DIVISION OF CHAPTERS

WHAT IS THE MEANING OF
REPRODUCTIVE RIGHTS?

WHERE DID THE RIGHTS COME
FROM?

WHAT IS THE LEGAL BASIS OF A
RIGHT?

IS THE RIGHT ABSOLUTE?

- CHAPTER 2
- CHAPTER 3

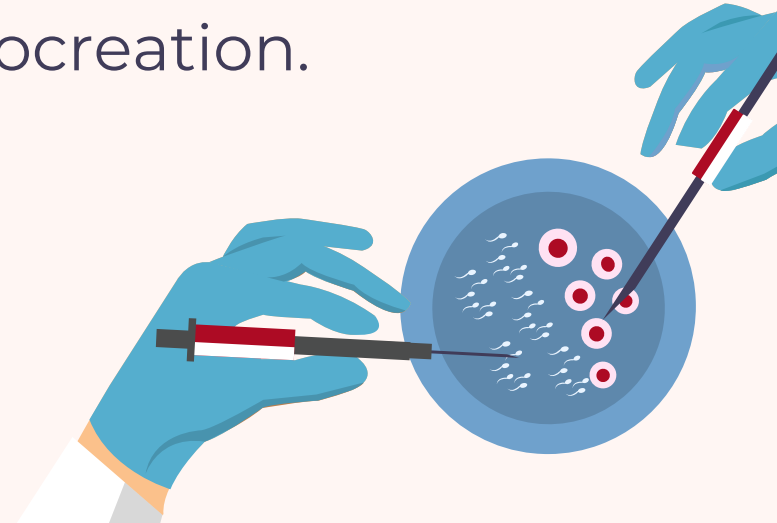
HOW IS THE RIGHT APPLIED IN
MALAYSIA?

WHAT ARE THE
CONSIDERATIONS THAT NEEDS
TO BE ADDRESSED IN ORDER
TO LEGISLATE IN MALAYSIA.

- CHAPTER 4
- CHAPTER 5
- CHAPTER 6

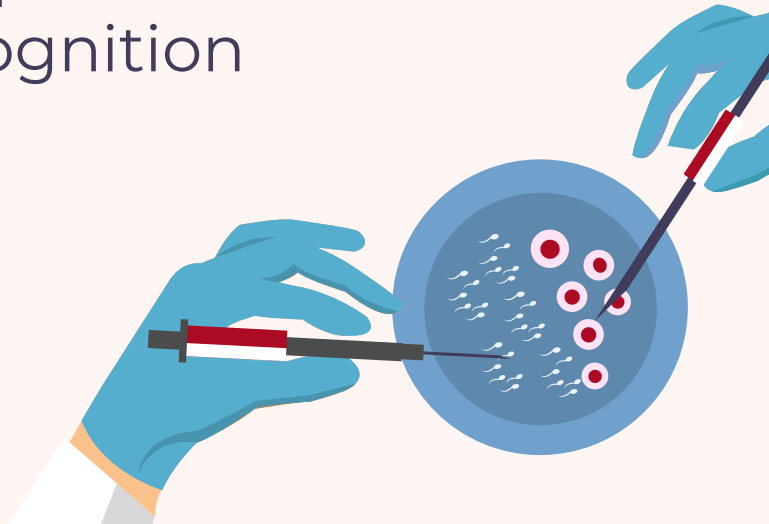
WESTERN CONCEPT OF REPRODUCTIVE RIGHTS

The right of individuals to determine freely matters pertaining to procreation.



WHERE DID THE RIGHT COME FROM?

The understanding of the notion was influenced by historical developments in the West that led to the recognition of individual rights.



EVOLUTION OF RIGHTS

RIGHTS TO REPRODUCE



RIGHTS AS LIBERTY

Together with Rights to
Privacy

Medieval West

Individual rights belonged only to males, the rich and those with power. Support – Christianity.

Renaissance

Return to humanism, Protestant Reformation, end of feudalism, rise of modern science.

Modern Era

Recognition of individual freedom led to the rights to privacy where the govt. cannot intrude

THE NEED FOR A SHIFT IN UNDERSTANDING

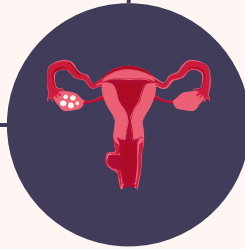
NATURE OF REPRODUCTION

Involve another procreator



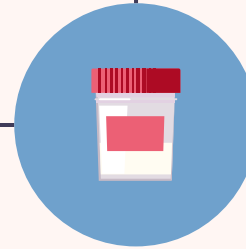
3RD PARTIES

Donors – sperm, ova, embryos



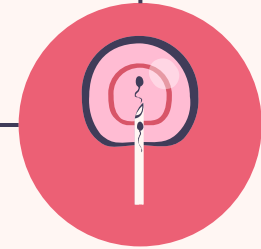
THE CHILD

Legitimacy
Many parents

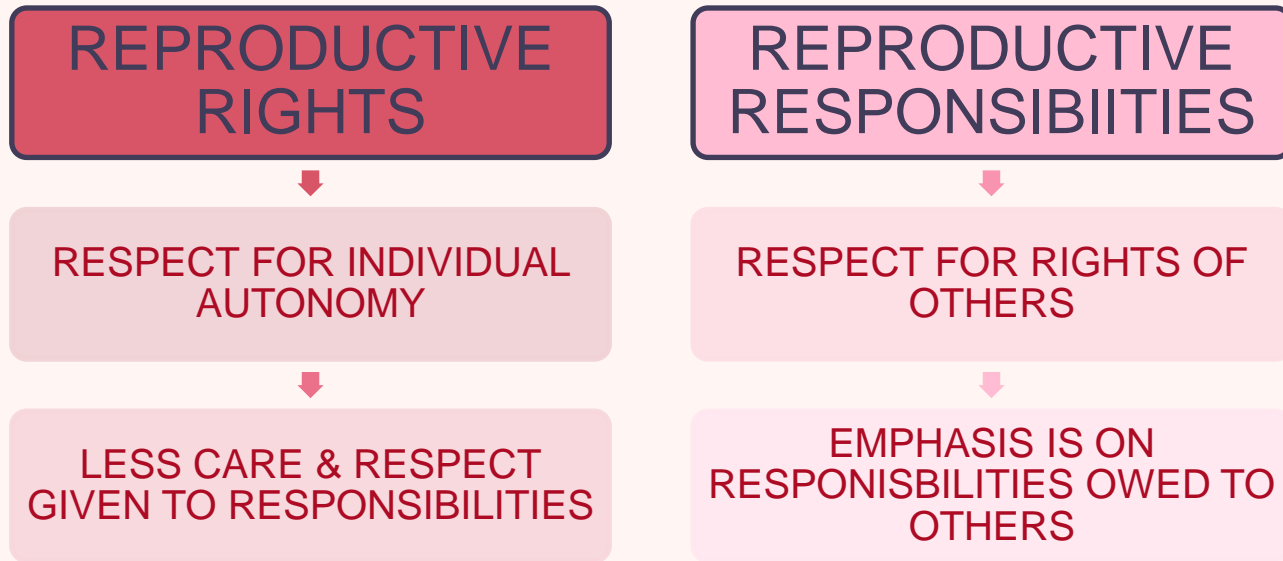


SOCIETY

Long term effects

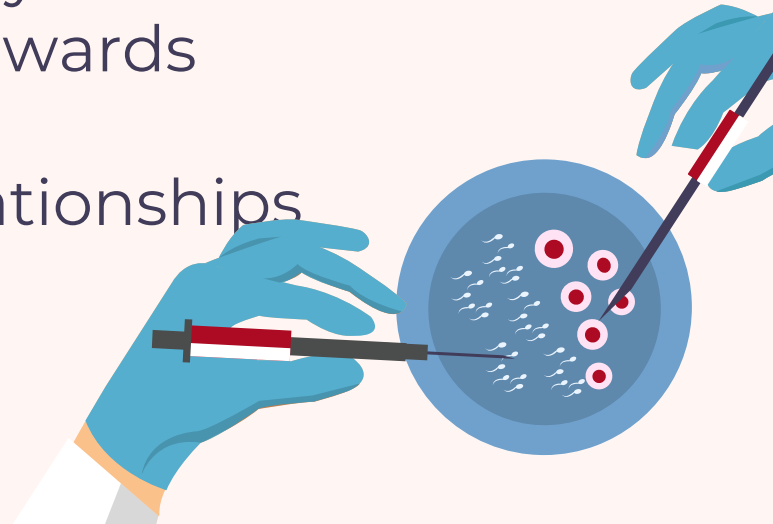


DIFFERENCE IN APPROACH

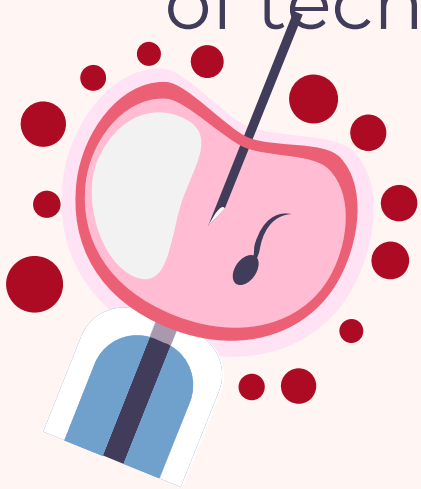


REPRODUCTIVE RESPONSIBILITIES

1. Binding responsibilities to the resulting child;
2. This also results in a corollary responsibility of the child towards the parents;
3. Establishment of family relationships



Reproductive rights includes the right of married couples to decide on matters relating to procreating which includes use of technology involving their reproductive organs and its functions.



NEW DEFINITION

THE ISSUES THAT NEED TO BE REGULATED



WHOSE GAMETES?

1. Who is the legal father?
2. Who is the legal mother?
3. Legitimacy



HOW?

1. Legal status of the child;
2. Status of the contract – can the child be a commodity?
3. Can surrogacy be a legal service?



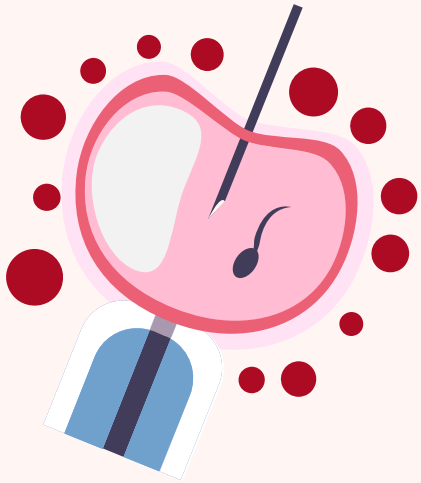
STORAGE ISSUES

Status of left-over embryos





Malaysia needs a legislation to regulate fertility treatments and it should be based on the protection of progeny.



HYPOTHESIS

WHAT WAS THE INNOVATION?



The legislation needed to reflect the respect that needs to be given to the progeny

A LEGISLATION

The practical side of the legislation. Matters that govern the practice of the services

A CODE OF PRACTICE



WHAT IS AN INNOVATION?

- Innovate – bring in novelties; make changes in something that was already established
- Law – through legislation – creates rights that can be enforced.
 - Law – instructs officials of the state to act in a particular way
 - The Legislation – in itself was an instrument of colonisers.
 - Innovation in law making – the task of rendering legal ideas as comprehensibly and clearly as possible
- However – in the realm of law making – encouraging innovation for its own sake is pointless and is dangerous
- Innovation in law making is – to address particular difficulties as they rise.

HOW?

- Learn from others;
- Listen to feedback;
- Seek out views;
- Key driver – Openness, engagement with the public and use of technology.

THE PROBLEM

HARM TO OTHERS PRINCIPLE



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graph TD; A[HARM TO OTHERS PRINCIPLE] --> B[ALLOWS LIMITS TO INDIVIDUAL LIBERTY ONLY WHEN HARM TO OTHERS IS ESTABLISHED]; B --> C[TO LIMIT THE USE OF A.R.T TO MARRIED COUPLES COULD BE DEEMED AS AN ENCROACHMENT ON THE RIGHTS OF INDIVIDUALS];
```

ALLOWS LIMITS TO INDIVIDUAL LIBERTY ONLY
WHEN HARM TO OTHERS IS ESTABLISHED

TO LIMIT THE USE OF A.R.T TO MARRIED COUPLES
COULD BE DEEMED AS AN ENCROACHMENT ON
THE RIGHTS OF INDIVIDUALS



THE BASIS FOR LEGISLATION

FACTORS TO CONSIDER

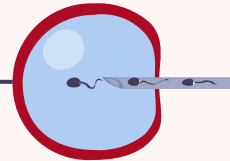
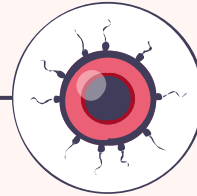
REPRODUCTIVE RIGHTS

NOT ABSOLUTE

REPRODUCTIVE RESPONSIBILITIES

DUTIES OWED TO THE CHILDREN

- RIGHT TO KNOW THEIR PARENTS
- PROTECTION FROM GENETIC DISEASES
- PROTECTION FROM INCESTUAL MARRIAGES



EXISTING LAW

1. THE CONSTITUTION
2. FAMILY LAWS
3. REGISTRATION LAWS
4. INTERNATIONAL LAW

THE SHARI'AH

THE MAQASID AL-SHARI'AH
- HIFZ AL-NASL



EXISTING LAWS



THE CONSTITUTION

ARTICLE 5(1)



EVIDENCE LAW

WITH DONATED SPERM

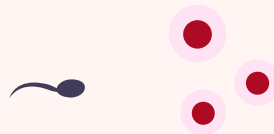


FAMILY LAW



LAW IN OTHER COUNTRIES

GESTATIVE/GENETIC

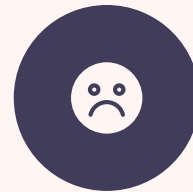


FINDINGS



GOAL

Protecting the progeny



EFFECTS

No legislation – respects autonomy of the infertile couples ONLY

RESULTS

Reproductive rights is not an absolute right. The state can and should limit the right in order to protect the responsibilities owed to the resulting child.

Constitution

Fund. Liberties

Freedom to reproduce – can be limited

Family Law

Legitimacy

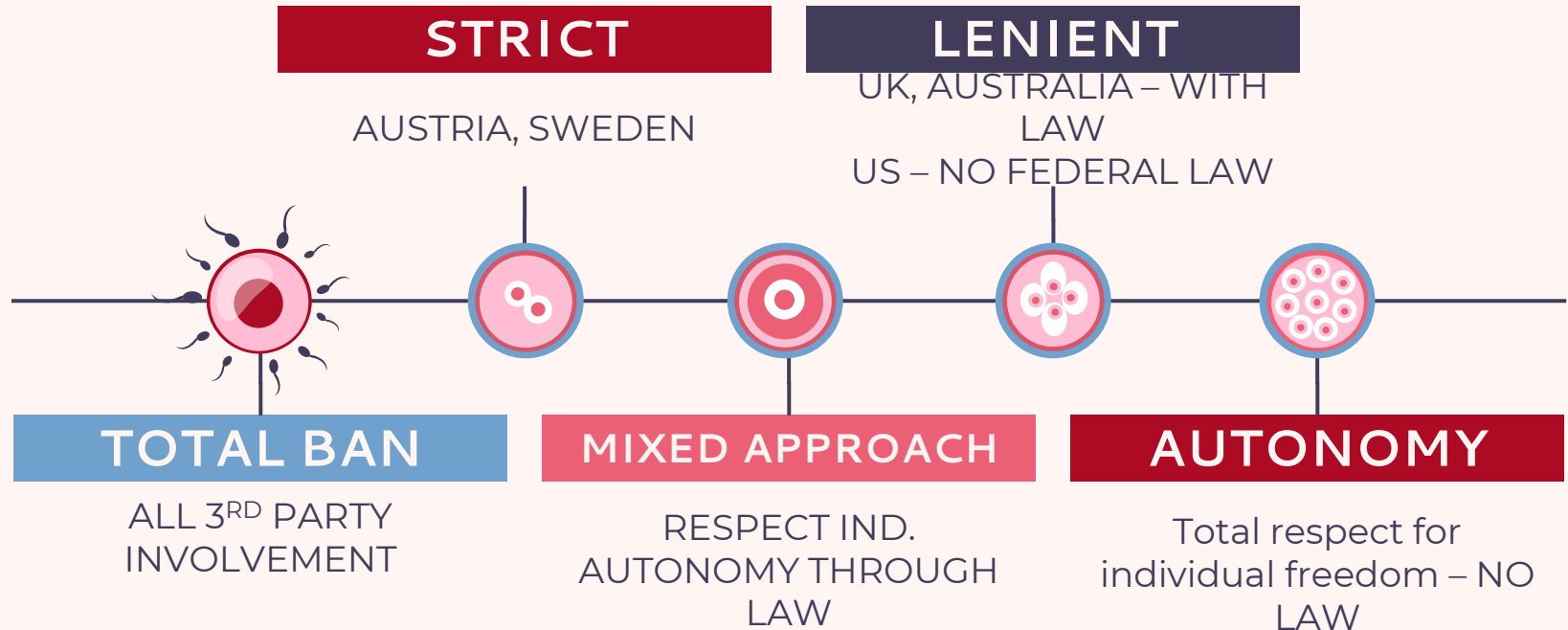
Respects legitimacy

New Law

The Shari'ah

Protects the progeny – creates responsibilities to the child

LEGISLATIONS FROM OTHER COUNTRIES



LEGISLATIONS AROUND THE WORLD



**UK,
AUSTRALIA,
SINGAPORE**

FULL RESPECT FOR
AUTONOMY

TURKEY

BALANCED
APPROACH

CREATION OF NEW RESPONSIBILITIES

1970s

- Contraception – Sexual Revolution

1980s

- Reproductive Revolution

1990s

- Contractual Model Relationships

SHARI'AH

AS A SOURCE OF REFERENCE FOR MAKING LAW

MAQASID AL-SHARI'AH

DHARURIYYAH AL-KHAMSAH – 5 ESSENTIAL
VALUES THAT THE SHARI'AH PROTECTS

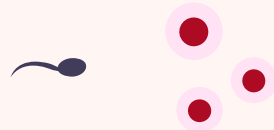
HIFZ AL-NASL

PROTECTION OF THE PROGENY



LEGISLATION – MUST PROTECT FUTURE PROGENY

Through respect and recognition of
not only reproductive rights of couples
BUT also the responsibilities owed to
the resulting children



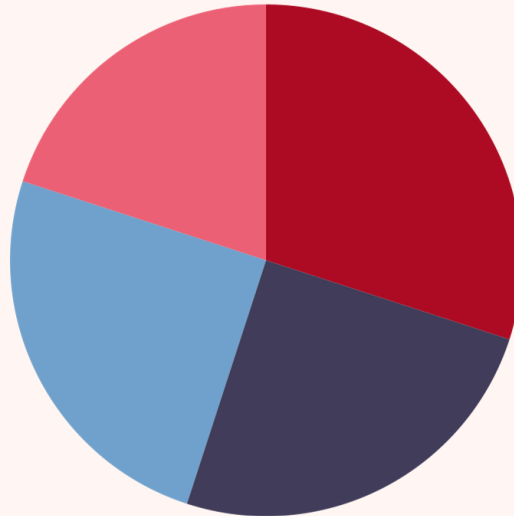
THE SHARI'AH POSITION

AMANAHA

Responsibility to child and Allah.

HUMAN DIGNITY

Focus on rights=fulfilling of Nafs NOT Needs



HIFZ AL-NASL

Through preservation of the family institution

LEGAL

Establishment of legal relations and rights

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For more info, click here



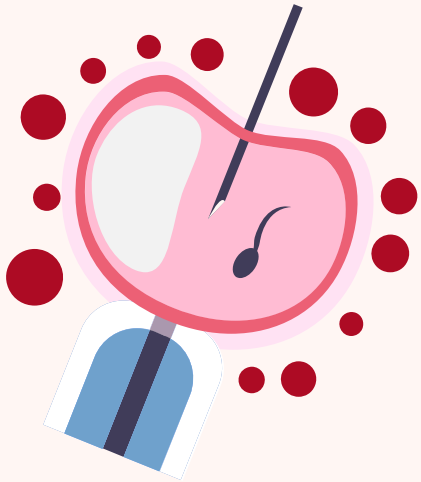
TREATMENTS ALLOWED UNDER THE SHARI'AH

CLASSIFICATION OF RIGHTS CREATED

PERMITTED	ALL TREATMENTS GAMETES OF THE MARRIED COUPLES	PATERNITY, MATERNITY AND LEGITIMACY	CUSTODY CARE MAINTENANCE COROLLARY RESPONSIBILITY
PROHIBITED	USE OF DONATED MATERIALS SURROGACY	CONFUSION IN PATERNITY/MATERNI TY & ISSUES TO LEGITIMACY	ISSUES AS TO CUSTODY, CARE, MAINTENANCE & NO COROLLARY RESPONSIBILITY



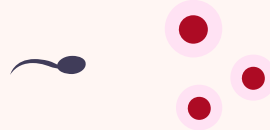
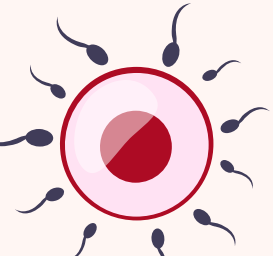
Malaysia needs a legislation to regulate fertility treatments and it should be based on the protection of progeny.

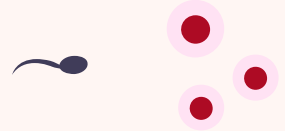


And cannot rely on Western model

THE LAW

SHOULD BE BASED ON PROTECTION OF FUTURE PROGENY





CONCLUSIONS

WHEN CONSIDERING NEW INNOVATIONS FOR YOUR
RESEARCH – BE BOLD – CONSIDER MATTERS WHICH WORK
BEST FOR THE UMMAH



BARAKALLHU FI KUM! ~



Do you have any questions?
z.majdah@iiium.edu.my

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