

**KAJIAN BIOETIKA DAN YURIDIS MENGENAI SEL PUNCA (STEM CELL)
MENURUT HUKUM PERDATA DI INDONESIA**

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INTISARI

Penelitian ini termasuk lingkup hukum kesehatan khususnya tentang bioteknologi, bioetika dan medikolegal kedudukan sel punca menurut KUHPerdara di Indonesia. Penelitian ini bertujuan untuk mengkaji perlindungan hukum terhadap manusia, martabat dan integritasnya sebagai manusia serta nilai-nilai yang dianutnya terhadap kemajuan-kemajuan di bidang ilmu kesehatan khususnya pelayanan kesehatan dibidang sel punca. Tujuan pokok itu dijawab melalui empat tujuan penelitian yaitu: Mengkaji dan menganalisis kedudukan sel punca menurut nilai-nilai filosofis Pancasila, bioetika, dan agama-agama di Indonesia; mengkaji kedudukan hukum sel punca baik embrionik maupun non embrionik (*adult stem cell*) yang disimpan di dalam bank darah menurut Hukum Perdata di Indonesia; mengkaji perlunya pengaturan masalah sel punca dan pengaturan masalah sel punca baik embrionik maupun non embrionik (*adult stem cell*) yang ideal di Indonesia di masa datang; mengkaji dan menganalisis implementasi *informed consent* dalam memberikan perlindungan hukum bagi donor sel punca dan rumah sakit berkaitan dengan proses pengambilan dan penyimpanan sel punca.

Penelitian tentang sel punca ini merupakan suatu penelitian dengan metode pendekatan normatif yang didukung data empiris. Analisis yang digunakan adalah deskriptif kualitatif.

Hasil penelitian menunjukkan bahwa: Kedudukan sel punca menurut: a) Pancasila merupakan subjek hukum karena manusia adalah ciptaan Tuhan Yang Maha Esa. Manusia sebagai ciptaan Tuhan YME harus dihormati martabatnya sejak di dalam kandungan (aspek individualitas/pribadi). b) Berdasarkan prinsip-prinsip bioetika *Beneficence*, *Non Maleficence*, *Autonomy* dan *Justice*, kedudukan embrio sebagai sumber sel punca embrionik adalah makhluk hidup (bakal manusia), sedangkan sel punca yang berasal dari sel punca non embrionik (*adult stem cell*) dimana sel punca diambil dari sumsum tulang, berbagai jaringan dan tali pusat bayi yang baru lahir (placenta) adalah benda bukan makhluk hidup; c) menurut pemuka agama Islam, embrio yang terbentuk dan berkembang sejak akhir minggu kedua hingga akhir bulan kedua belum merupakan makhluk hidup. Menurut Agama Kristen, Katholik, Hindu, Budha maupun Kong Hu Chu menganggap bahwa kehidupan manusia telah ada sejak terjadinya pertemuan antara sel telur (*ovum*) dan sperma. Kedudukan hukum sel punca baik embrionik maupun non embrionik (*adult stem cell*) yang disimpan di dalam bank sel punca darah tali pusat menurut hukum perdata di Indonesia adalah sebagai benda karena memenuhi unsur-unsur benda sebagai hak milik yang tercantum di dalam Pasal 570 KUHPerdara. Sel punca bersifat *sui generis*. Pengaturan masalah sel punca baik embrionik maupun non embrionik (*adult stem cell*) di Indonesia sebaiknya harus memenuhi prinsip pelayanan sel punca yang bersifat: mandiri atau otonomi dan tindakan pelayanan sel punca harus bermanfaat. Implementasi isi *informed consent* yang ideal dalam memberikan perlindungan hukum bagi donor sel punca dan rumah sakit berkaitan dengan proses pengambilan dan penyimpanan sel punca belum sesuai dengan ketentuan peraturan perundang-undangan. Berdasarkan kesimpulan di atas, maka perlindungan hukum terhadap manusia, martabat dan integritasnya sebagai manusia serta nilai-nilai yang dianutnya terhadap kemajuan-kemajuan pelayanan kesehatan dibidang sel punca untuk sel punca dewasa (*adult stem cell/ non embrionic stem cell*) maupun sel punca embrionik belum mendapat perlindungan hukum secara preventif.

Kata kunci: Bioetik, Sel Punca, Kedudukan Hukum

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BIOETICS AND LEGAL STUDY OF STEM CELL ACCORDING TO INDONESIAN CIVIL LAW

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ABSTRACT

This research is in the scope of health law, especially on the biotechnology, bioethics and medico legal related to the position of stem cells according to the Civil Code in Indonesia. This study aims to examine the legal protection of human beings, their dignity and integrity as well as the values they adhere in the field of health science, especially health services in the field of stem cells. The main objectives are answered through four research objectives: (1) assessing and analyzing the position of stem cells according to the philosophical values of Pancasila, bioethics, and religions in Indonesia; (2) reviewing and analyzing the legal status of embryonic and non embryonic stem cells (adult stem cells) stored in blood banks according to Civil Law in Indonesia; (3) reviewing the need to regulate stem cell problems and ideal regulation of embryonic and non-embryonic stem cell in Indonesia for the future; (4) reviewing and analyzing the implementation of informed consent in providing legal protection for stem cell donors and hospitals relating to stem cell retrieval and storage processes.

This research is using a normative approach supported by empirical data. The normative research includes research on legal principles, legal, theoretical, legal teachings, expert opinions and legal provisions to answer problems. The analysis used is descriptive qualitative.

The research showed that: the position of stem cells according to: a) Pancasila, is the subject of law because humans are created by God Almighty. Humans as God's creations must be respected since they are in the womb (individuality/personal aspects). b) Bioethics, embryonic stem cells originating from the embryo pose many ethical problems, because human life has existed since fertilization took place. Based on the principles of Beneficence, Non Maleficence, Autonomy and Justice, the position of the embryo as a source of embryonic stem cells is a living creature. Whereas, stem cells that derived from adult stem cells (where it is taken from the bone marrow, various tissues and newborns placenta) are seen as an objects, not living things; c) According to Islam, religious leaders, embryos formed and developed from the second week to the end of the second month are not yet living beings because they do not have spirits. While according to Christianity, Catholicism, Hindu, Buddhism, and Confucianism, it is assume that human life has existed since the meeting between the ovum and sperm. So health services using embryonic stem cells are prohibited because it means eliminating the chance to live for the fetus. The legal status of stem cells, both embryonic and non-embryonic (adult stem cells) stored in cord blood stem cell banks according to civil law in Indonesia is an object because it fulfills the elements of the property listed in Article 570 of the Civil Code. Health services using stem cells need to be regulated because it can affect human dignity, so there needs to be restrictions. The regulation of stem cell in Indonesia in the future should better fulfill the stem cell service principles that are: independent or autonomous; beneficial; The ideal implementation of informed consent in providing legal protection for stem cell donors and hospitals related to stem cell retrieval and storage processes is not in accordance with the provisions of legislation. Based on the above conclusions, the legal protection of human beings, their dignity and integrity as well as their values towards advances in the field of health science, especially health services in the field of stem cells is not enough to get legal protection in a repressive manner.

Keywords: Bioethics, Stem Cells, Legal Status

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