Legal Status of Biobanks in the Contexts of Privacy Perception of Islamic Law

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Development of Biotechnology has brought a feasibility of the scientific analysis on this biological data and the processing of personal data content within human biological materials. In this sense, it has been recognized as the main principle to protect the privacy of biological data belonging to individual since it can determine genetic makeup of an individual processing of personal data in the biological materials of human origin. Speaking of this context, Islam accepts human as the most dignified creation. This dignity given to human makes biological materials of human origin and human private. Privacy brings immunity. The responsibility to protect the human body has been given to mankind in order not to lose this dignity. This responsibility is not bounded by human's own body. It must protect the body privacy of next generation which is the heir of genetic heritage. This study will focus on the reflection of the privacy perception of the Islamic law towards body on the legality of human biological materials usage for research purposes.

Keywords: privacy, responsibility, Maslahah, Fitrah, creation, dignity

Introduction

Development of biotechnology made available to establish biobanks protecting human biological materials for a long time. Biological materials of human origin are also stored in biobanks for the purpose of developing the quality of life and the health of people. Collected samples can be used for medical purposes. Additionally, performing genetic analysis on these samples is also possible.

Organization for Economic Cooperation and Development (OECD) describes the biobanks as places where large data analysis can be performed and collected human biological materials.¹ Council for Responsible Genetics (CRG), an organization founded in Cambridge, has identified biobanks as the DNA database. According to this definition, "a DNA database, or biobank, is a collection of people's DNA samples/data that often derive from one's blood, tissues or saliva."² It appears this definition comes from the statement that the one having biological materials has also genetic information inside of it.

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¹ OECD, Biological Resource Centres Underpinning The Future of Life Sciences and Biotechnology, 2001, 1.

² Aditi Shah, "Do You Know Where Your DNA Is? Genetic Privacy and Non-Forensic", Biobanks Council for Responsible Genetics, Cambridge, 2014, 4.

All kinds of data on the samples collected in biobanks can be processed.³ Systematically processing the human origin data has made possible to analyses of these data repeatedly and many people are able to use this data. At this point, what makes this data different from other data is that it accommodates the information of human biological material containing the genetic makeup of the individual as a member of family, race, and naturally-mankind. Thus, the records containing genetic data are not only the right to privacy of the individual but also it is concerned with privacy of mankind.

Whence, privacy right continues on biological materials since their connection to donor, therefore to humanity, goes on. The International Declaration on Human Genetic Data has pointed out this special status. Special status “They may have a significant impact on the family, including offspring, extending over generations, and in some instances on the whole group to which the person concerned belongs.”⁴ Therefore, it can be said that it is a right to privacy extending society and family starting from individual due to the genetic information content of human biological material.⁵

The main issues discussed in this context is how to preserve the privacy of the biological material. These issues in the Islamic world with Human Genome Project have started to be discussed more widely. In the context of the basic principles of Islam, the Islamic Fiqh Academies and fatwa committees have discussed these issues and are still discussing because the human body is a private area for Islam. It means human body is protected by the law. According to this, all types of procedures on body to be private area must be in accordance with the consent of the legislator.⁶ Any application made on the body including in cosmetic surgery principally goes through the consent of the legislator. If the legislator permits it, then it is left to that person’s consent. Accordingly, this study was prepared starting from necessity of handling the legal status of biobanks using biological samples for research within the framework of Islam’s perception.

Islamic Law and Privacy

Equivalent of the word privacy in Arabic is “mahramiat.” The origin of the word mahramiat is “Haram.”⁷ The word “haram” means any act prohibited by Allah. Qur’an uses the words “haram” and “muharrem” to express the sanctity of the Kaaba. In the Qur’an, Kaaba is classified as “Muharram.”⁸ This qualification refers

³ Definition of Biological Resource Centres: “They are specialised resources that acquire, validate, study and distribute collections of culturable organisms (e.g. microbial, plant, animal and human cells), replicable parts of these (e.g. genomes, plasmids, cDNA banks) and of viable but not yet culturable organisms.” OECD, Biological Resource Centres Underpinning The Future of Life Sciences and Biotechnology, 2001, 51.

⁴ “(ii) They may have a significant impact on the family, including offspring, extending over generations, and in some instances on the whole group to which the person concerned belongs”, UNESCO, International Declaration on Human Genetic Data, 16 October 2003.

⁵ Amelia Martín Uranga & M.^a Concepción Martín-Arribas, Outstanding Legal and Ethical Issues on Biobanks, Instituto de Salud Carlos III Ministerio de Sanidad y Consumo, Madrid, s. 18-19; bkz. Arif Barış, Özbilen, İnsan Kökenli Biyolojik Maddelere İlişkin Hukuki İşlemler, (Legal Actions Related to Human Origin Biological Substance), Vedat Kitapçılık Basım Yayın Dağıtım LTD. ŞTİ., İstanbul, 2011, 70; Daniel J. Solovet, “Conceptualizing Privacy”, California Law Review, vol. 90, 2002, 1088-1155, Edzard Schmidt-Jortzig, Human Biobanks for Research, Deutscher Ethikrat, Berlin, 2010, s. 15-16; Mehmet Ali Zengin, Biyoloji Uygulamaları ve Tıbbi Müdahaleler Karşısında İnsan Haklarının Korunması, Adalet Yayınevi, Ankara, 2012; Murat Emir, Legal and Ethical Aspects of Biobanks in Biomedical Research. Hacettepe University Institute of Health Sciences, PhD Thesis in Medical Ethics and History of Medicine, Ankara, 2013.

⁶ According to the 173 decision and 18 session of the Islamic Fiqh Academy, aesthetic intervention should be therapeutic. If there is a physical defect of individual from birth or later, it is allowed to make an intervene aiming to return the creation. Organization of Islamic Cooperation, Islamic Fiqh Academy, Decision Number 61, session: 18, 24-28 July 2007.

⁷ Ebu'l- Fazl Muhammed b. Mukrim el- Misri Ibn Manzur, Lisani'l- Arab, Daru Sadır, Beirut, 1994, XII, 123.

⁸ “O our Lord! I have made some of my offspring to dwell in a valley without cultivation, by Thy Sacred House; in order, O our Lord, that they may establish regular Prayer: so fill the hearts of some among men with love towards them, and feed them with fruits: so that they may give thanks.” İbrahim Süresi, 14/37.

to its respectability. This expression of respectability implies that its surrounding has been secured. The word “muhteram” used to characterize human is also derived from the word “haraam” and likewise this word indicates an area made secured because it is a dignified existence. Protection of the dignity of the body is only possible by ensuring its security. Hence, behaviors towards the human body must depend on the legal permission as a moral attitude. Based on this evaluation we can say that privacy of the people refers to a secured area protected from his people’s harassment. It is a duty of the law to provide this security. From this point of view, privacy on the human body makes necessary to investigate the legality in processing on it.⁹

The source of the person’s privacy is the individual himself in Islam. Outstanding value given to human makes inevitable to protect its existence.¹⁰ According to the Qur’an, two essential elements for the protection of privacy body must be taken into consideration. The first is “al-Mukarram,” and the second “fitrah.”

“al-Mukarram” indicates a dignified existence.¹¹ This feature is an element that makes human different from other creatures. Having a dignified existence of human being indicates that it should be subject to different rules than those of his other creations because it is sufficient to be created as human beings for the existence of these attributes. This attribute does not disappear from the body even after his death. It is valid the same dignity after his death.¹² This moral values attributed to the human body brought the immunity of the human body from a legal sense.¹³ Also, because of this moral value loaded on the body, any processing to be made on the body is subject to the approval of the legislator.

“Fitrah” refers to the protection of the created shape of the created.¹⁴ This concept establishes a linear connection between human dignity and the shape of the human creation. Human dignity is equipped with features that can be considered as superior to his other creations. By taking from this point, what humans are supposed to do for humans that is created with the most outstanding features is to protect these features. This change in its properties means it goes back to the lower value properties. In this case, it refers to the loss value in terms of its humanity. At this point, the most important duty imposed on human of the creator is protection of the features resulting from the creation of the human. Hence, protection of human nature “fitrah” is protection of his dignity; protection of his dignity means keeping his privacy.

This evaluation for the human body is valid for the materials separated from human. Materials separated from human do not constitute a commodity. Even after separated from human of biological materials maintains the connection to the human being. Therefore, these biological materials are buried with the same dignity as

⁹ Bkz, Nurten Zeliha Şahin, *Islamic Law and Bioethics (Bioethics Discussions in The Axis Of Responsibility And Autonomy)*, Suleyman Demirel University Institute of Social Sciences, PhD Thesis, Isparta, 2013, 63-67; Nurten Zeliha Şahin, “Legal Status of the Biological Materials Human Origin in Terms of Islamic Law”, *Journal of Islamic Law Studies*, V.25, 2015, 205-223; Nurten Zeliha Şahin, “Human Body as Private Life”, *Symposium of Privacy Perceptions in the Contexts of Religion, Tradition and Ethics*, Unpublished Communique, 1-18

¹⁰ “We have indeed created man in the best of moulds” *The Fig (At-Tin)*, 95/4; “We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favors, above a great part of Our Creation.” *The Night Journey (Al-Isrâ)*, 17/70; “But He fashioned him in due proportion, and breathed into him of His spirit. And He gave you (the faculties of) hearing and sight and understanding: little thanks do ye give”, *Adoration (As-Sajdah)*, 32/9.

¹¹ “We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favors, above a great part of Our Creation.” *The Night Journey (Al-Isrâ)*, 17/70.

¹² “To break the dead bone is like to break it while alive”, *Ebû Dâvut, Cenâiz*, Hadith No. 3207.

¹³ *Ebu'l- Fazl Muhammed b. Mukrim el-Misri Ibn Manzur, Lisânu'l- Arab*, Daru Sadır, Beirut, 1994, XII, 123.

¹⁴ “So set thou thy face truly to the religion being upright; the nature in which Allah has made mankind: no change (there is) in the work (wrought) by Allah: that is the true Religion: but most among mankind know not.” *The Romans (Ar-Rûm)*, 30/30. Ismail b. Hammad Ahmed Abdulgafur Attar el Cevheri, *es- Sihah: Tac'ul Luga ve Sihahu'l Arabiyye*, Dar'ul- Ilm Li'l- Melayin, Beirut, 1990, II, 781.

humans are buried.¹⁵

This is the basic approach to the pieces of the human body according to Islamic lawyers. However, the Qur'an has a judgment on breast milk.¹⁶ This judgment has made legal that the mother's milk is payable. In this context, Islamic jurists discussed whether this judgment is acceptable for the other materials removed from human. At this point, Islamic jurists addressed two different approaches about whether the legal status of the materials of human origin changes or not as long as humans can benefit from them.

The Perspective Based on Value

According to some of Islamic jurists Hanbali and Hanafi, biological materials separated from body are valued as human.¹⁷ Bone, milk, hair are also valuable like the human himself. This value stems from the dignity attribute. This quality makes biological materials separated from human immune as it makes human beings. The materials separated from human are protected by the right of personality. Therefore, these materials may be utilized within legal limits, but it is not a subject of commerce. According to them, the price given to foster mother in the Qur'an is not the price of milk. It is for the labor of foster-mother. According to this, it is also not the subject of commerce in biological materials as people cannot be the subjects of commerce.

The Perspective Based on "Maslahah" Public Interest

According to some of Islamic jurists Hanbali and Maliki, Shafi'i, the price paid to milk the foster mother is the price of milk. According to this, if people use the biological materials of human body, it may have a price in return of this benefit. According to them, if it becomes a tradition of using biological materials of people in society, these materials can be considered as commodity. The legality of the price received from milk stems from the fact that it is traditional to benefit from breastfeeding in public. For example, tear is not a subject of commerce since it is not a tradition to benefit from it.¹⁸

This assessment of Islamic jurists has been made for the reason of traditional use of breast milk. The main aim is to make easy to reach it and benefit from it for people. This evaluation reveals the human-centric view of Islam. The basic value of Islam is to make human live. This shows the value given to human beings. In this context, it reveals the basic approach to the biobanks of Islamic law that comes from this assessment associated with utilization from biological materials.

Biobanks Between Human Dignity and Benefits

Islam's basic approach to the human body is that it is not the owner of his own body. The human body is not a possession in terms of Islamic law.¹⁹ Using the body does not give the right of ownership in terms of

¹⁵ Ebu Zekeriyya Muhyiddin b. Şeref en-Nevevi, *Kitabu'l- Mecmu Şerhu'l- Mühezzeb li'ş- Şirazi, Mektebetu'l- İrşad, Jeddah, III, 147.*

¹⁶ "If ye decide on a foster-mother for your offspring, there is no blame on you, provided ye pay (the foster mother) what ye offered, on equitable terms. But fear Allah and know that Allah sees well what ye do." The Heifer (Al-Baqarah), 1/233.

¹⁷ Ebü'l-Velid Muhammed b. Ahmed b. Muhammed Kurtubi İbn Rüşt, *Bidayetü'l-Müctehid ve Nihayetü'l Muktesid, thk. Abdullah el-İbâdic, Dârü's-Selam, 1995, III, 1561.*

¹⁸ Ebû Muhammed Muvaffakuddîn Abdullah b. Ahmed b. Muhammed b. Kudâme, *el-Mugni Şerhu Kebir, tahkik Abdullah b. Abdülmuhsin Türki, Daru'l Kitabî'l Arabî, 1995, XI, 39; Nevevi, el-Mecmu' Şerhi'l-Mühezzeb li'ş-Şirazi, IX, 304-305; İbn Rüşt, Bidayetü'l-Müctehid ve Nihayetü'l-Muktesid, III, 1561.*

¹⁹ Hanafi jurist Ibn Nuceym (d. 970/1563), possessions: "a name to created things for the best interests of people other than the human." Zeynüddin Zeyn b. İbrâhim b. Muhammed Misri Hanefi İbn Nuceym, *el-Bahrü'r-Raik Şerhu Kenzi'd-Dekaik, hr. Zekeriyâ Umeyrat, Dârü'l-Kütübî'l-İlmiyye, Beyrut, 1997/1418, V. 431.*

rights in rem to individual. Property rights on the human body belong to the Creator. Therefore, there are two rights defined about human body: God right and personal right. However, the right of God is superior from personality rights.²⁰ This means that it has right to benefit on the body of human. The right to benefit is not meant to have the rights in rem to the body. In this sense, the changes made on the human body, except for treatment, have been considered as interfering with the property of the creator.²¹

It continues in the same way to define the rights of the materials separated from the human body. Thus, it is not true to say that there is a distinction between losing and not losing its status as being of a human material separated from human.²² That is, the connection between the creator and any biological material is not interrupted. Thus, biological materials are not considered to lose its originality, make it disconnected, become an anonymous for continuing the right of God although he does not keep the right people. It means that the legal protection continues on biological materials by the presence of the right of God. Therefore, there is custodial relationship with the human body, there is no possessive relationship with the body.

Attitude toward the human body has been shaped as a responsibility since human body is confided to the individual. Human has responsibility to bury the materials removed from his own body as protect this own body. As well as materials removed from human body are independent from the individual, its origin is still human. That's why the privacy perception on human body is valid for the materials removed from human body.

What makes the process legal on human body which is accepted as private by protected even from human himself is again protecting human body keeping its existence. Therefore, the protection of life is determined as the most basic necessity "daruriyah" best interest "maslahah." Nevertheless, the purpose here is only not to protect his dignity as created, but also protection of unborn life is considered as important in terms of protecting the dignity of humanity. The protection of the generation is accepted as another necessity (daruriyah) best interest "maslahah" addressed in this context.²³

Legality of the operations performed on the human body in Islamic law is determined in the frame of necessity and best interest by taking into account that human and generation need to be protected. "Maslahah" can be obtained in two ways: to get the best benefit and to remove the damage. In determining "maslahah," unborn generations and society are taken into consideration and to center the individuals. If we look at the issue from this perspective, while the general debates about biobanks continue based property, ownership and autonomy, we see the Islamic jurists discuss the issue in the context of protection of the area of privacy, within

²⁰ Alaeddin Ebubekir b. Mes'ud Meliku'l- Ulema el-Kasani, Kitabu Beda'l- Sana'i fi Tertibi's-Şera'i, thk. Ali Muhammed Muavviz, Adil Ahmed Abdülmevcut. Dârü'l-Kütübü'l-İlmiyye, Beirut, 1997/1418. X, 247; Şeyh Mansur b. Yunus b. Selahiddin el-Hanbeli Buhuti, Keşşafü'l-Kina'an Metni'l-Ikna', thk. Muhammed Emin Zinnavi, Âlemü'l-Kütüb, Beirut, 1997/1417, V, 518. Alaüddin Abdülazîz b. Ahmed b. Muhammed Abdülazîz el-Buhari, Keşfü'l-Esrar ala Usuli'l-Pezdevi, Dar'al-Kitab al-Arabi, Beirut, 1417, IV, 240.

²¹ Alaüddin Abdülazîz b. Ahmed b. Muhammed Abdülazîz el-Buhari, Keşfü'l-Esrar ala Usuli'l-Pezdevi, Dar'al-Kitab al-Arabi, Beirut, 1417, IV, 240.

²² "May Allah curse the one who adds hair extensions and the one who has them added" Muslim, Libas, 117; Buhari, Libas, 83.

In the classical sources, the usage of biological material separated from human has been discussed. Hanafi madhhab brings as evidence on this hadith that it will be the subject of commerce any biological material of human. Malikis are in the view that the one which is banned by the hadith is something Creator changed due to disapproving what the created is. The Shafi'i madhhab accept using the hair for different purposes as violation of human dignity. According to them, human hair and nails cannot be used by someone to change the creation of human. el-Kasani, Kitabu Beda'l-I's-Sana'i fi Tertibi's-Şera'i, V, 239; Ebû'l-Velid Süleyman b. Halef b. Sa'd et-Tücihi Baci, el-Münteka, Dârü'l-Kitâbi'l-İslâmî, Cairo, VII, h. 1332, 267; Ebû Muhammed Muvaffakuddîn Abdullah b. Ahmed b. Muhammed b. Kudâme Cemmâilî Makdisî İbn Kudâme, el-Mugni Şerhu Kebir, tahkik Abdullah b. Abdülmuhsin Türki, Daru'l Kitabi'l Arabi, I, 77.

²³ Muhammed Sa'd b. Ahmed b. Mes'ud el-Yubi, Makasidü's-Şeriati'l-İslamiyye ve Alakatuha bi'l Edilleti's-Şer'iyye, Dâru Gbni'l-Cevzi, Demmam, h. 1429, 244.

the concept of necessity, dignity, best interests, remove damage.

In this context, we will try to elaborate this basic approach of Islamic Law based on decision text of Islamic Fiqh Academy depending on the Organization of Islamic Cooperation which discussed the legality of genetic studies processing on human cells and biological experiments on human at meetings. Islamic Fiqh Academy, the center of Jeddah in its meeting in 2006 has determined legal rules on the usage of biological research human. Genetic researches processing on human cells and tissues has acquired the subject in 2013.²⁴

When we examine the last two declarations, it is observed that immunity of human and human dignity are the legal values to be protected. The human body is dignified and immune. This feature is also available in the materials separated from the people. Even if biological materials of human origin separate from the people, they do not lose the dignity thanks to the fact that these materials belong to human; that is why, it preserves the privacy as the human body does.

In this context, there should be a legal justification for violation of privacy of the human body and materials. This legal justification is expressed with a word “*maslahah*” which means putting the harm away from them and providing benefits to human being and mankind.

It is observed that the topic in the related declaration has been discussed in terms of both personality rights and ethical. First, being the subject of the research individual itself makes crucial not to objectify the person’s body. Therefore, to maintain the donor’s personality rights in experiments on the human body is the main legal

²⁴ 22-28 December (December) 1985, Resolution: 6 (6/2), Second Session, Issues Discussed: Human Milk Bank.
 11-16 October (October) 1986, Resolution: 16 (4/3), Third Session, Issues Discussed: Vitro Fertilization.
 11-16 October (October) 1986, Resolution: 17 (5/3), Third Session, Issues Discussed: Resuscitation Equipment.
 14-20 March 1990, Resolution: 54 (5/6) [1], Sixth Session, Issues Discussed: Cultivation of Brain Cells and The Nervous System.
 14-20 March 1990, Resolution: 55 (6/6) [1], Sixth Session, Issues Discussed: The Extra Eggs After in Vitro Fertilization.
 14-20 March 1990, Resolution: 56 (7/6) [1], Sixth Session, Issues Discussed: Embryos as a Source For Organ Transplantation.
 14-20 March 1990, Resolution: 57 (8/6) [1], Sixth Session, Issues Discussed: Genital Organ Organ Transplantation (Cultivation Genital).
 9-14 May 1992, Resolution: 67 (5/7) [1], Seventh Session, Issues Discussed: The Medical Treatment.
 21 -27 June (June) 1993, Resolution: 79 (10/8) [1], Eighth Session, Issues Discussed: The Secret in The Medical Professions.
 21 -27 June (June) 1993, Resolution: 80 (11/8) [1], Eighth Session, Issues Discussed: The Ethical Responsibilities of Doctors.
 June 28 (June) 3 - July 1997, Resolution: 94 (2/10) [1], Tenth Session, Issues Discussed: On Human Cloning.
 24 to 28 June (June) 2006 Resolution: 161(10/17), Seventeenth Session, Issues Discussed: Sharīah for Biomedical Research on Human.
 14 July 2007, Resolution: 172 (18/10), Eighteenth Session, Issues Discussed: Allow for Urgent Surgical Operations.
 14 July 2007, Resolution: 173 (18/11), Seventeenth Session, Issues Discussed: Plastic Surgery and Its Provisions.
 26 to 30 April 2009, Resolution: 184 (19/10), Nineteenth Session, Issues Discussed: Allow for Urgent Surgical Operations.
 22 to 18 November 2013, Resolution: 203 (21/9), Twenty-First Session (21. Oturum), Issues Discussed: Genetic and Genetic Engineering, Human Genome.

If we examine the declarations in terms of the use the biological materials of human with the purpose of *maslahah*, the general approach of Islamic law for biological materials can be put as follows:

1. If there is an explicit legal norm in the Qur’an related to the use of materials of human origin, the judgment will be according to these legal norms.

2. If there is not an explicit legal norm in the Qur’an related to the use of materials of human origin, then, especially preservation of life and the generation which are essential *darurahs* (necessity) of the Islamic conservation purposes will be considered initially. In this context, what taken into consideration is to preserve the right to exist and being as creation which can have life now and yet unborn by God. <http://www.iifa-aifi.org/cs>.

International Fiqh Academy accompanied by the World Association of Muslims in Mecca has put a rule pointing to source of stem cells in the declaration regarding the use of stem cells for medical purposes: “The use of stem cells of obtained illegally is also illegal.” According to this statement;

1. Stem cells obtained from the fetuses which are aborted deliberately without basing on a reason permitted by legislator.
2. Stem cells obtained by fertilization of donated eggs and sperm.
3. Therapeutic cloning.

(01.10.2002 17th Session 3. Decision, International Fiqh Academy accompanied by the World Association of Muslims in Mecca).

rule to be observed by researchers. In addition, like the law, ethics is also regarded by the researchers as the research topic is.

As to the genetic research on samples removed from human, they should aim to protect the human health and provide treatment. Here, the ethical concern showing up is the possibility that these studies may alter the human genetic code. That's why clinical studies are limited to medical purposes in the declaration on this issue of Fiqh Academy. Researches related further improvement of the human gene are not permitted with the aim of protecting the rights of future generations. Here, the ones whose rights are to be protected have been recognized as the next generation and the donor.

The heir of the genetic code is the future generation. According to this statement, two rights and two parts come into stage: rights of personality and the rights of the unborn. Here to rights to be protected contains the rights of the unborn and personality. According to this signification, if the subject is to process these data and collection of the genetic information content of human biological material, then it can be said that the issue has been evaluated by handling the issue thoroughly in terms of protection of both rights. Thus, it can be said that it is asserted as both a moral and legal attitude to protect the rights of unborn in the text of the declaration.

International Fiqh Academy, accompanied by the World Association of Muslims in Mecca, has set the boundaries in the area the use of genetic science from an Islamic perspective in the meeting dealt with the benefit of Muslims from genetic science. When the decision has been analyzed, it can be seen that the rights about the unborn and the society beginning from the individual who may be affected by the use of genetic information in accordance with different purposes has been determined separately. Not personalizing these data and not converting to a study towards the donor's personality makes compulsory. As to rights of society, there should be a purpose of providing benefit to society and the results of the research shouldn't be used to cause hostility in community. In terms of future generations, these data should not aim to improve the human race.²⁵

It is important to obtain the donor's informed consent first for the protection of the privacy of these materials to be the subject of research of biological materials of human origin because the primary responsibility in this body protection belongs to the individual. After obtaining informed consent, the security of the information contained in biological materials stands out. In biological materials, the first right holder is the donor. In this sense, it can be discussed about the right of the donor to be informed the security of personal information and can be defined different rights to protect the donor.²⁶ The right of the security of information is not only a right of the individual because this right is oriented to the one as members of the family, society and the unborn. That's why we can speak of collective rights over biological materials. When the biological material is evaluated from this point, the area of legal security related to the security of the information content of human biological material must be kept large. It is stated in the declaration of the Fiqh Academy that it is a duty of the state to make the legal arrangements of the rights of the biological materials in a way that would guarantee those rights.

Conclusion

Islamic Law gives immunity to the biological materials removed from the human as it does to human itself

²⁵ Islamic Fiqh Academy, Fifteenth session/The first decision, 4/11/1998, (Fifteenth Session / First Decision)—that Muslims take advantage of the science of genetic engineering-<http://ar.themwl.org>.

²⁶ International Ethical Guidelines for Biomedical Research Involving Human Subjects (An Islamic Perspective), CIOMS Geneva 2004 The Islamic Organization for Medical Sciences 2004.

because it belongs to him. It is a concern of personality right to protect privacy right even if these materials separate from human. Secondly, family, society, and future generations are the ones whose rights should be protected in the contexts that the content of human biological material are associated with the information in it. In this sense, if we take biological materials donated to the biobanks into consideration, we can see that it is a genetic material in the unborn together with person himself. Accordingly, it is not only the person's interest, but also the interest of the society and the next generation.

The issue that the data obtained in this research can be the subject of studies changing the codes of the human creation is one of the major concerns. In the sense of community rights, Islamic Law holds the opinion that the rights of the union should be protected. It is a right to exist as God's creation in the future to be an individual of the society. Therefore, it should be taken into consideration to maintain these two rights in order to provide full privacy of biological materials. These rights are individual rights and the rights of the unborn arising from the principle of the preservation of generation in Islamic Law. As a result, it is a requirement to accept the body not only as an individual but also the mankind's privacy, to make legal arrangements in the researches corresponding to protect the privacy of the human body, and to reveal the code of ethics in the same context.

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