



NAVIGATING NEW BEGINNINGS: ETHICAL AND LEGAL CONSIDERATIONS OF EGG FREEZING FOR MUSLIM WOMEN

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ABSTRACT

Egg freezing also known as Oocyte Cryopreservation, is a scientific advancement in the field of medicine that has a significant influence on society. Women undergo egg freezing as a proactive measure to preserve their fertility for future use when their reproductive capabilities decline. The objective of this research is to address the legality of egg freezing performed by women prior to marriage and its influence on the legal status of the children born as a result of the procedure in a review of Islamic law. The library research method is employed in this study, which pertains to the legal standards included in the principles of Islamic law alongside related laws and regulations. Data collection techniques involve the acquisition of relevant papers, journals, and publications. The research findings indicate that, according to the Egyptian fatwa and supported by the fatwa of the Indonesian Ulama Council (MUI), egg freezing is allowed under specific conditions. These conditions include ensuring that frozen egg cells are only fertilized with sperm cells from legally married couples, thereby enabling the production of lawful

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children in accordance with the law. However, if one were to contravene the conditions outlined in the fatwa, it would be considered forbidden and would lead to the ensuing kid being deemed illegitimate, hence being excluded from their father's lineage and inheritance entitlements.

Keywords: Egg Freezing; Islamic Law; Contemporary Issue; Children

INTRODUCTION

One of the innovations that has been brought about by the advancement of science, particularly in the sphere of medicine, is known as Egg Freezing. Egg freezing is one of the modern issues that has arisen with the intention of freezing the egg cells of a woman in order to make them available for use in the event that the woman gets married and desires to have children when she is no longer a young woman.¹ It is feasible to extract egg cells through the process of egg freezing when the woman is still in her fertile phase and is able to create them successfully for the future.²

The egg freezing phenomenon emerged following a controversial post on Facebook by an Egyptian woman named Reem Mahana who decided to freeze her eggs on the grounds that she could not guarantee exactly when she would get married.³⁴ Meanwhile in Indonesia, egg freezing became a concern when actress Luna Maya

¹ A M Emon and R Ahmed, *The Oxford Handbook of Islamic Law*, Oxford Handbooks (OUP Oxford, 2018), <https://books.google.co.id/books?id=Rs90DwAAQBAJ>.

² B Hawkins and C Hendy, *Everything Egg Freezing: The Essential Step-By-Step Guide to Doing It Right* (Independently Published, 2019), <https://books.google.co.id/books?id=YDYvygEACAAJ>.

³ L van de Wiel, *Freezing Fertility: Oocyte Cryopreservation and the Gender Politics of Aging*, Biopolitics (NYU Press, 2020), <https://books.google.co.id/books?id=hEsIEAAAQBAJ>.

⁴ Sarah Alwi, *Egg Freezing Permissible in Islam According to Egypt's Dar Al-Ifta*. <https://blog.petrieflom.law.harvard.edu/2019/09/23/egg-freezing-permissible-in-islam-according-to-egypts-dar-al-ifta/>. (Accessed on February 24, 2024).



admitted to having done egg freezing.⁵ At some point in the future, after they were married, both women intended to make an effort to start a family of their own. It dawned on them that women go through a time of menopause in addition to a period of fertility.

Menopause is the period when the menstrual cycle ends in women which is diagnosed after 12 months (one year) of women not experiencing a menstrual period.⁶ In its development, it is impossible for women to avoid menopause because it is a natural event that every woman will experience if she is blessed with long life. This period is often called the climax period because it is considered to have brought major changes in a woman's life and occurs between the ages of 45-55 years, but there are also those who experience it younger or even older. Research finds that genetic, hormonal and nutritional factors play an important role in influencing the timing of menopause.⁷ Briefly, it can be understood that menopause is the cessation of menstruation in a woman, which is also a sign of the end of a woman's ability to reproduce. Menopause occurs as a result of the loss of ovarian activity.⁸

Egg Freezing is beneficial for women who want children at the age of menopause. Women at a young age will experience a decrease in egg cell quality. Through the egg freezing method, women store their eggs when they are of childbearing age. This can be done even though

⁵ Nur Rohmi Aida, Sari Hardiyanto, *Luna Maya Lakukan Egg Freezing, Apa itu?*. <https://www.kompas.com/tren/read/2022/01/19/130300265/luna-maya-lakukan-egg-freezing-apa-itu->. (Accessed on February 24, 2024).

⁶ Milatul Asifah dan Menik Sri Daryanti, *Pengetahuan Wanita dalam Menghadapi Menopause di Pedukuhan Gowok Kabupaten Sleman*, (Jurnal Kesehatan Masyarakat: Vol.8, No. 2, Februari 2021), p. 180.

⁷ Nuryati A. Rasimin, *Ada Apa Dengan Menopause?*. Buletin Psikologi, Tahun VIII, No. 1 Juni 2000 ISSN: 0854-7108. 28-32.

⁸ Ita Eko Suparmi dan Reni Yuli Astutik, *Menopause dan Masalah Penanganannya* (Sleman: CV Budi Utama, 2016), p. 11.



the marriage period has not yet passed and will be used after the woman is married.^{9 10}

Egg freezing is a well-established practice in medical, but it presents a novel situation in the context of Islamic Law. The Indonesian Ulama Council (MUI) has not issued any fatwa about the practice of egg freezing. The 1979 MUI fatwa pertained to in vitro fertilization (IVF) and artificial insemination. The fatwa declares that in vitro fertilization (IVF) using sperm and ovum from a lawfully married couple is permitted, since it falls within the scope of religiously sanctioned endeavors. According to the fatwa, in vitro fertilization (IVF) is only permitted for married couples.¹¹ This treatment differs from egg freezing, as it can be performed regardless of marital status and involves fertilization after marriage. This subject pertains to the perspective of Islamic law on the legality or legal status of infants conceived by the procedure of egg freezing. However, legal complications occur due to the absence of law that specifically addresses the legal status of infants born through the method of egg freezing. This article aims to address the legal status of infants born through the method of egg freezing, in relation to the issues mentioned above.

METHODS

The methodology utilized in this study is library research, and it employs qualitative research methods. This study makes reference to the legal norms that are included in the principles of Islamic law, in addition to the laws and regulations that are connected to those principles. The acquisition of relevant papers, journals, and books is the

⁹ Michelle J Bayefsky and Louise Perkins King, "Ethical and Legal Analysis of Advertising for Planned Oocyte Cryopreservation," *Fertility and Sterility* 112, no. 3 (2019): e51.

¹⁰ Gamal I Serour, "Ethical Issues in Human Reproduction: Islamic Perspectives," *Gynecological Endocrinology* 29, no. 11 (2013): 949–52.

¹¹ Majelis Ulama Indonesia, Fatwa Nomor 213 Tahun 1979 Tentang Bayi Tabung/Inseminasi Buatan.



method that is utilized in the process of data collection procedures. Additionally, the data findings are analyzed in an unbiased and empirical manner, considering many perspectives and viewpoints. The data analysis results are subsequently utilized to create an informative, thorough, and unbiased review paper on egg freezing. This aims to present a lucid overview to the reader on the advantages, drawbacks, and factors to be taken into account in relation to this method.

RESULTS AND DISCUSSION

The Approach of Egg Freezing and Its Compliance with Law

Egg freezing is a method that involves freezing egg cells in order to stimulate the ovaries and cause the eggs to grow larger. The eggs that are produced as a consequence of this process are then chosen and frozen for preservation. The egg cell is then confronted by a sperm cell once the owner of the egg has informed them that they intend to produce a child.¹²

One of the advantages of freezing eggs is that it helps to preserve fertility. Because egg cells are stored, the length of time that a woman has the possibility to produce children increases. This is due to the fact that egg harvesting is often done when a woman is still in her fertile phase, which is before she reaches the age of 35 years old. By the time a person reaches the age of forty, the quality of their egg cells will begin to decline. As a result, married couples who intend to have children will find that participating in an egg freezing or egg cell preservation program is of wonderful assistance to them. Women who have not discovered their soul mate until they are elderly and who then hope that in the future when they meet a spouse, they will still be able

¹² Hawkins and Hendy, *Everything Egg Freezing: The Essential Step-By-Step Guide to Doing It Right*.



to have children can also benefit from egg freezing as a way out of their situation.¹³

Apart from these conditions, egg freezing is also recommended for women who have conditions, including not feeling ready to have children at childbearing age but planning to have children at a later date, suffering from health problems that affect fertility such as sickle cell anemia or autoimmune diseases such as lupus, moderate undergoing medication or treatments that reduce fertility such as radiation therapy or chemotherapy, and are planning an IVF program (in vitro fertilization). The chance of pregnancy from the egg freezing procedure is around 30-60%. However, the chance of pregnancy depends on the woman's age when doing egg freezing.¹⁴

Preparation for egg freezing is basically like the stages in the test tube baby process. This includes giving hormone injections and drugs for the egg cell maturation process. If around 6-15 egg cells are mature, the next process is to retrieve the egg cells from the ovaries using a special tool that will be inserted through the vagina. The eggs that have been removed will be frozen using a vitrification procedure and then stored so they can be used at a later date. The shelf life of frozen eggs is usually a maximum of 10 years.¹⁵

The problem that arises is related to the legality of egg freezing. As Muslims, every behavior in life will always be measured whether it is

¹³ Emily Jackson, "The Ambiguities of 'Social' Egg Freezing and the Challenges of Informed Consent," *BioSocieties* 13, no. 1 (2018): 21–40.

¹⁴ dr. Merry Dame Cristy Pane, *Egg Freezing, Metode untuk Meningkatkan Peluang Kehamilan di Usia Lanjut*, <https://www.alodokter.com/egg-freezing-metode-untuk-meningkatkan-peluang-kehamilan-di-usia-lanjut> (Accessed on February 24, 2024).

¹⁵ dr. Merry Dame Cristy Pane, *Egg Freezing, Metode untuk Meningkatkan Peluang Kehamilan di Usia Lanjut*, <https://www.alodokter.com/egg-freezing-metode-untuk-meningkatkan-peluang-kehamilan-di-usia-lanjut> (Accessed on February 24, 2024).



in accordance with religious values.¹⁶ Having children is one of the recommendations in Islam. As is the order of marriage with the aim of preserving offspring and giving birth to good offspring. However, as is known, not all married couples can have children through a natural process. Egg freezing is one form of effort carried out married couples.¹⁷

In her article on the review of maqashid sharia regarding the freezing of human egg cells (Egg Freezing), Firzza Shafira Rizkiyana clarifies that it is permissible to freeze egg cells to postpone pregnancy for reasons that are not in contradiction with the principles of Islamic sharia, such as when undergoing cancer treatment. Cryopreserving egg cells for individuals undergoing chemotherapy and radiation therapy, in order to get viable egg cells, aligns with the maqashid of sharia, specifically *hifzh al-nasl* (preserving progeny). Regarding the preservation of religion (*hifzh al-din*) and lineage (*hifzh al-nasb*), it is important to ensure that any procedures undertaken adhere to religious requirements. For instance, if the process includes the involvement of a third party, such as using someone else's womb or sperm from an individual not bound by the marital relationship. Regarding the perspective of *hifzh al-aql* (preserving the mind), its impact is not yet clearly evident, but it can be inferred that freezing human egg cells (egg freezing) can be seen as a means of promoting *hifzh al-aql* for newly married couples. Couples who are married or have been married for a significant period of time but have not had children may face stress, sadness, and emotional problems due to the uncertainty around the timing of starting a family. Regarding the principle of *hifzh al-mal* (asset preservation), it is important to note that in the future, biological offspring will be recognized as legal heirs and

¹⁶ Abdul Halim Ibrahim et al., "Maqasid Al-Shariah Based Islamic Bioethics: A Comprehensive Approach," *Journal of Bioethical Inquiry* 16, no. 3 (2019): 333–45.

¹⁷ Iffatin Nur, Umi Nurul Laelatul'zah, and Siti Marpuah, "Reproductive Fiqh: The Phenomenon of Egg Freezing Among Muslim Societies," *KARSA Journal of Social and Islamic Culture* 30, no. 2 (2022): 298–327.



given precedence. Therefore, spouses who own money but do not have children should consider preserving their assets through the process of egg freezing.¹⁸

The egg freezing method has several benefits, which can be understood by considering the reasons for undergoing it. However, it is important to note that this process also has negative effects caused by the hormone injection process and other beneficial factors. However, having children certainly has a greater purpose than these side effects. In the rules of fiqh it is stated that:

إذا تعارض مفسدتان روعي أعظمهما ضررا بارتكاب أخفهما

The meaning:

If two dangers collide, the greatest danger is considered and the lightest danger is chosen.

The Egyptian Fatwa Institute (Daar Al-Ifta) issued a fatwa on egg freezing which was also published by the Petrieflom Center for Legal Policy, Biotechnology and Bioethics at Harvard Law School.¹⁹²⁰ The contents of the fatwa explain that freezing human egg cells is permitted in Islam as long as in the future the egg cells are fertilized by the legitimate husband's sperm cells and is carried out under four conditions, they are:

- a. The egg must be fertilized by the husband's sperm while the couple is married, and not after the marriage is completed, as in the case of divorce, or death;

¹⁸ Firzza Shafira Rizkiyana, "Tinjauan Maqashid Syariah tentang Pembekuan Sel Telur Manusia (Egg Freezing)", *Jurnal Riset Hukum Keluarga Islam*, Volume 3 No. 1 (2023): 29-34.

¹⁹ Alexis Heng Boon Chin and Shaikh Mohd Saifuddeen, "Is Social Egg Freezing (Oocyte Cryopreservation) for Single Women Permissible in Islam? A Perspective from Singapore," *The New Bioethics* 28, no. 2 (2022): 116–26.

²⁰ Ibrahim et al., "Maqasid Al-Shariah Based Islamic Bioethics: A Comprehensive Approach."



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- b. Fertilized eggs must be stored safely and under strict control to prevent intentional or accidental mixing with other preserved eggs;
- c. A fertilized egg should not be placed in the uterus of a woman who did not initially produce an egg;
- d. Egg freezing should not cause negative side effects on the fetus due to the impact of various factors to which it may be exposed during the process.

The Indonesian Ulema Council has not issued a fatwa on the matter of egg freezing. Nevertheless, if this issue is supported by the legal framework of in vitro fertilization (IVF) as outlined in the MUI fatwa, they are stated that:

- a. A baby with the sperm and the ovum of a legal spouse is permitted by law, because this right is based on religious principles.
- b. The baby tube of a couple of husbands with the wives' wombs
- c. The law of Sadd az-Zari'ah is forbidden, because it will cause a complicated problem in relation to the problem of inheritance (especially between the child born to a mother who has an ovum and the mother who conceives and gives birth to it, and vice versa).
- d. A baby from frozen sperm of a deceased husband is illegal according to the Sadd az-zari'ah law, because this will cause strange problems, both in relation to the determination of nasab and in connection with the matter of inheritance.
- e. A baby whose sperm and ovum are taken from a spouse other than a legal spouse is unlawful, so that it is equal to sexual intercourse between the opposite sex outside of a legal



marriage (zina), and according to the law of Sadd az-zari'ah, that is, to avoid the occurrence of real adultery.²¹

In general, the fatwa issued by the Egyptian Fatwa Institute concerning egg freezing and the fatwa issued by the MUI concerning test tube babies contain the same provisions. These provisions state that egg freezing and/or test tube babies are permitted to be carried out as a form of effort to have children as long as they are carried out in accordance with the provisions agreed on by the sharia.

Children's Legal Status Regarding the Egg Freezing Process

When it comes to the legal notion, children are not only considered to be descendants; it is also essential to take into consideration the manner in which the child was born because this will have an effect on the legal position of the child. It is stated in the provisions of Article 272 of the Civil Code that every child born out of wedlock (between a virgin and a girl) is eligible for recognition and legalization. The only exceptions to this rule are children born from adultery or incest, which are children born from the relationship of a man and a woman who are not allowed to marry both of them.²²

According to that particular article of the Civil Code, it is possible to draw the conclusion that sexual activity between a girl and a boy that does not involve marriage is not regarded zina. According to this interpretation, the term "zina" in the Civil Code refers to sexual encounters that are carried out outside of marriage by individuals to whom one of them is married or married. According to Article 99 paragraph 1 (one) of the Compilation of Islamic Law, a legitimate kid is a child who was born in or as a result of a valid marriage. This definition is established in the Compilation of Islamic Law. It is continued in

²¹ Fatwa of Majelis Ulama Indonesia (Indonesia Ulama Council) in 1979 regarding artificial insemination of tubular babies.

²² Republic of Indonesia, Code of Civil Procedure, article 272..



paragraph 2 (two) of the same article that a legitimate child is the consequence of actions taken by a legitimate husband and wife outside of the womb, and that the kid is born to the wife.

For this reason, a child who is seeded and/or born as a result of a lawful marriage is considered to be a legitimate child. Illegitimate children, on the other hand, are children who are produced as a consequence of sexual intercourse between a man and a woman who are not married, as well as children who are the product of artificial insemination, which is the process of using egg cells and sperm cells from a husband and wife who are married to each other. In addition to children who are not recognized by the spouse, such as in the case of Li'an, legitimate children are also included.

In terms of the lineage relationship and the inheritance relationship with the parents, the impact of the child's position takes into consideration both of these aspects.²³ According to the Marriage Law, children who are born outside of marriage are only allowed to have a civil relationship with their mother and the family of their mother during their childhood. This causes children who are born outside of marriage to be cut off from their lineage and inheritance from their father's side. Instead, they are only able to inherit from their mother and their mother's family.²⁴

Following to the explanation of the medical procedure known as egg freezing, it is known that egg cells are frozen when a woman is in her fertile phase. These egg cells are then employed in the event that the woman desires to commence the process of having children. Even before the lady really enters into a marriage that is recognized by the law, the egg collection process begins. However, according to the

²³ Angel Petropanagos et al., "Social Egg Freezing: Risk, Benefits and Other Considerations," *Cmaj* 187, no. 9 (2015): 666–69.

²⁴ Alicia J Paller, "A Chilling Experience: An Analysis of the Legal and Ethical Issues Surrounding Egg Freezing, and a Contractual Solution," *Minn. L. Rev.* 99 (2014): 1571.



explanation regarding the legality of egg freezing that is found in a review of Islamic law, even though the egg cells are taken before marriage, this is permissible because it takes into consideration the principle of benefit in the process of trying to have children. However, it is important to note that the egg cells can only be reunited with the sperm cells of the husband's partner who has been legally married.

If it is explained based on the fatwa from Egypt and the fatwa from the Indonesian Ulama Council regarding test tube babies, it can be explained that every child born by egg freezing is a legitimate child and has legal rights such as the position of a legitimate child in terms of lineage and inheritance rights on the condition that it satisfies the provisions. These provisions state that the fertilization process must be carried out by a married couple who are bound by a legal marriage and that it may not be carried out after the dissolution of the marriage, whether it be due to death or divorce. The legal standing of the child will alter if it is conceived after the divorce has been finalized.

This is analogous to the situation of an adulterous child whose lineage and inheritance tie with his father has been severed. The next requirement is that it must be carried out under close supervision to ensure that it does not become contaminated with other seeds and that it is not permitted to be implanted in the uterus of another woman who is not the owner of the frozen eggs. It is forbidden to place an egg in the uterus of another woman, and doing so can even make it difficult to trace the lineage. Therefore, if a uterus is borrowed on the basis of these laws, it will result in the legal status of the kid being at the same level as the provisions for children that are the product of adultery.

CONCLUSION

The development of science regarding freezing women's egg cells or known as egg freezing is one solution for women to try to have children even though they are no longer productive. This issue is included in the contemporary problem which raises problems regarding



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the legal status of children born through the egg freezing process because egg cells can begin to be stored before marriage. Based on the Egyptian fatwa from Al-Ifta regarding egg freezing and confirmed by the fatwa of the Indonesian Ulama Council regarding test tube babies, egg freezing is permissible if several conditions are met, namely that the egg is fertilized by sperm from a woman and man who are bound by marriage and cannot be done after marriage, either through death or divorce. Furthermore, frozen eggs must be stored safely and under strict care to avoid mixing with other eggs and must not be fertilized in the uterus of another woman who does not have the frozen eggs. Another condition is that the egg cell must not cause negative side effects on the fetus, in this case it does not harm the fetus. If it meets these criteria, then the resulting child will have the status of a legitimate child, whereas if it is done outside of these criteria it will have the impact of being an illegitimate child and breaking off the lineage relationship and inheritance rights of the father.



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