



## **Reproductive Fiqh: The Phenomenon of Egg Freezing Among Muslim Societies**

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### **Abstract**

This study was intended to respond to the egg-freezing phenomenon, a growing issue in contemporary society, by formulating the *fiqh* of reproduction. As seen in the culture of modern society, technological advancement affecting the culture of people is a certainty. Along with the advancement of technology in today's contemporary era, the phenomenon of egg freezing and its impacts cannot be ignored. As in the study of Islamic jurisprudence (*fiqh*), every action is always considered to have an effect caused by the act, both positive and negative. This study used a literature review with data on egg freezing



Received: 30 Oct 2022, Accepted: 25 Nov 2022, Published: 29 Dec 2022

DOI: 10.19105/karsa.v30i2.8626

as a new reproductive phenomenon in contemporary society. The data then became the basis for interpreting the concept of the principle of *maqāṣid sharī'ah* (objectives of Islamic law) in the study of *uṣūl fiqh* (the foundation of Islamic jurisprudence) as the basis for the formulation of *fiqh* of reproduction. The findings in this study show that egg freezing, according to the study of *fiqh* of reproduction, may be performed with the proper reasoning of benefit for women.

[Kajian ini bertujuan untuk merespon fenomena *egg freezing* yang menjadi salah satu isu dalam masyarakat kontemporer melalui perumusan fiqh reproduksi. Hal ini sebagaimana dalam budaya masyarakat kontemporer, perkembangan teknologi yang mempengaruhi budaya masyarakat menjadi sebuah keniscayaan yang tidak dapat dihindarkan. Seiring perkembangan teknologi di era kontemporer saat ini, aspek penggunaan *egg freezing* hingga dampaknya menjadi keniscayaan yang harus menjadi perhatian. Sebagaimana dalam kajian hukum Islam (fiqh), setiap perbuatan selalu dinilai memiliki dampak yang diakibatkan oleh perbuatan tersebut, baik dampak positif maupun negatif. Kajian ini menggunakan kajian pustaka dengan data fenomena *egg freezing* sebagai fenomena reproduksi baru pada masyarakat kontemporer. Data ini kemudian menjadi pijakan dalam interpretasi konsep asas *maqāṣid sharī'ah* dalam kajian *uṣūl fiqh* sebagai landasan perumusan fiqh reproduksi. Temuan dalam kajian ini menunjukkan bahwa *egg freezing* dalam kajian fiqh reproduksi bisa dilakukan dengan landasan kemaslahatan yang tepat bagi perempuan.]

**Keywords:** egg freezing; female reproduction; *fiqh* of reproduction; *maqāṣid sharī'ah*

## Introduction

In the past few years, Assisted Reproductive Technology (ART) has been successfully developed to overcome female infertility. Furthermore, in its development, it is also regarded as a biomedical innovation that affects human life with many advantages and controversies.<sup>1</sup> The controversy surrounding developing more

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<sup>1</sup> Mladen Havelka, Damir Lucanin and Jasminka Despot Lucanin, "Biopsychosocial Model-The Integrated Approach to Health and Disease," *Collegium antropologicum* 33, no. 31 (2009): 301-310, <https://hrcak.srce.hr/39603>.



sophisticated technology is the growing concern about the possibility of manipulating life and the human body, especially for women. This condition is then indicated and has implications for disrupting intimacy and relationships as a couple with a partner. In addition to internal family relationship problems, social interaction with the general public has turned out to cause controversy between technology and society, which is described as bio-objectification.<sup>2</sup>

One of the rapidly growing health technologies today is seen in the field of obstetrics and gynecology (OBGYN). This aspect has implications for egg-freezing practice, which, in medical terms, is called mature oocyte cryopreservation. Health experts refer to egg freezing as freezing eggs in women taken from their ovaries.<sup>3</sup> Then, it is frozen and stored to be used later when the woman is ready to have a child.<sup>4</sup> If a woman is ready to have a child, the process is continued with *in vitro fertilization* (IVF). Through this process, the egg is fertilized and then implanted into the woman's uterus.<sup>5</sup>

It is worth noting that a woman will be in her most fertile period when she is 20-30 years old. It is because, in this age range, egg cells are at their best quality. However, as she gets older, the rate of her egg cells will also decrease. It can cause older women more difficulty getting pregnant or having high-risk pregnancies.<sup>6</sup> Women of childbearing age who want to delay pregnancy, give birth, or have

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<sup>2</sup> Editorial Team, "Negative Effects of Technology: What to Know," *www.medicalnewstoday.com*, n.d.

<sup>3</sup> Heidi Mertes and Guido Pennings, "Social Egg Freezing: For Better, Not Worse," *Reproductive Biomedicine Online* 23, no. 7 (2011): 824-829.

<sup>4</sup> Molly Johnston *et al.*, "Employer-Sponsored Egg Freezing: Carrot or Stick?" *AJOB Empirical Bioethics* 13, no. 1 (2022): 33-47, <https://doi.org/10.1080/23294515.2021.1941413>.

<sup>5</sup> Julio Saumet *et al.*, "Egg Freezing for Age-Related Fertility Decline," *Journal of Obstetrics and Gynaecology Canada* 40, no. 3 (2017): 356-368. <https://doi.org/10.1016/j.jogc.2017.08.004>.

<sup>6</sup> Merry Dame Cristy Pane, "Egg Freezing, Metode untuk Meningkatkan Peluang Kehamilan di Usia Lanjut", *alodokter.com*, April 24, 2022, <https://www.alodokter.com/egg-freezing-metode-untuk-meningkatkan-peluang-kehamilan-di-usia-lanjut>



certain health conditions can carry out egg freezing to avoid these various risks. The aim is to preserve egg cells that are still of good quality so that if the woman wants to get pregnant later, she still has egg cells of healthy quality.<sup>7</sup> Egg freezing has become famous for women who want to delay pregnancy for various reasons. While the egg-freezing process was initially developed for women undergoing cancer treatment,<sup>8</sup> it has since become a viable option for those who want to preserve their fertility for social, personal, or medical reasons. In this context, many women increasingly consider egg freezing a viable option to extend their reproductive timeline.<sup>9</sup>

Initially, egg freezing carries the purpose of medical and social indications. Medical indications include malignancy of cancer in the cells of the female reproductive organs, especially the ovaries. At certain stages, egg freezing can be done through fertility cryopreservation, although this program by women in some cancer therapies, such as chemotherapy and radiography, can trigger menopause. Another medical indication is congenital anomalies. There are still indications of chromosomal abnormalities where if egg cryopreservation continues, it will cause a low pregnancy rate for women. Furthermore, regarding social indications, egg freezing benefits women with hectic schedules and who have not had time to get married at a productive age. Even when the woman still wants to have children in the future, egg freezing cannot be done freely but must consider the eggs' age and health condition.<sup>10</sup>

In the context of Indonesia, Nahdi and Sulistiyowati stated that advanced reproductive technology has generated controversy from a

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<sup>7</sup> Pane, "Egg Freezing, Metode untuk Meningkatkan Peluang Kehamilan."

<sup>8</sup> L. van de Wiel, *Freezing Fertility: Oocyte Cryopreservation and the Gender Politics of Aging* (New York: New York University Press, 2020). <https://www.ncbi.nlm.nih.gov/books/NBK568238/>.

<sup>9</sup> Niyati Pandya, "Egg Freezing: A Practical Solution to Preserve Fertility," *lifecell.in*, July 28, 2023. <https://www.lifecell.in/blog/health-bank/egg-freezing-a-practical-solution-to-preserve-fertility>.

<sup>10</sup> Muhammad Suryadiningrat, "Mengenal Egg Freezing, Berikut Penjelasannya," *news.unair.ac.id*, March 20, 2022, <https://news.unair.ac.id/2022/03/20/mengenal-egg-freezing-berikut-penjasannya/?lang=id>.



legal and ethical perspective. Conceptually, the development of reproductive technology is primarily influenced by Western values. These values give rise to directives on Islamic bioethics, which provoke interpretation and *ijtihad* (intellectual exercise) from various Islamic organizations in Indonesia. For example, The Indonesian Council of Ulama (MUI), Nahdlatul Ulama (NU), and Muhammadiyah have their methods of enacting laws regarding aspects of ART.<sup>11</sup> Varlas *et al.* found that reproductive technology is strategic in overcoming age-related infertility among women.<sup>12</sup> Meanwhile, Huda stated that the use of ART from an Islamic point of view has induced warnings regarding its potential *mafsadāt* (harms).<sup>13</sup>

Considering various studies described above, ART has brought about positive and negative impacts. According to Islamic law, practicality as the *maqāṣid sharī'ah* conception in every deed is fundamental to studying Islamic jurisprudence.<sup>14</sup> Through the issue mentioned above of ART emerges the aspect of medical procedures leading to social phenomena. It means that the development of this egg-freezing technology should consider frameworks of bioethics, bio-policy, bio-economy, law firm, and bio-religion. In this condition, this social situation and complexity are related to cultural issues in an anthropological, psychological, and social sense.

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<sup>11</sup> Maizer Said Nahdi and Eka Sulistiyowati, "Bioethics and Islamic Values: Assisted Reproductive Technology in the Context of Indonesia," *Studia Islamika* 24, no. 1 (2017): 69-98, <http://dx.doi.org/10.15408/sdi.v24i1.2209>.

<sup>12</sup> Valentin Nicolae Varlas *et al.*, "Social Freezing: Pressing Pause on Fertility," *International Journal of Environmental Research and Public Health* 18, no. 15 (2021): 8088, <https://doi.org/10.3390/ijerph18158088>.

<sup>13</sup> Moh. Huda, "Penggunaan Teknologi Reproduksi Bantu (Assistive Reproductive Technology) Dan Implikasinya Terhadap Kesehatan Reproduksi Dalam Pandangan Islam," *Analisis: Jurnal Studi Keislaman* 21, no. 1 (2021): 183-202, <https://doi.org/10.24042/ajsk.v21i1.7695>.

<sup>14</sup> Iffatin Nur, Syahrul Adam, and M. Ngizzul Muttaqien, "Maqāṣid Al-Sharī'at: The Main Reference and Ethical Spiritual Foundation for the Dynamization Process of Islamic Law," *Ahkam: Jurnal Ilmu Syariah* 20, no. 2 (2020): 331-360, <https://doi.org/10.15408/ajis.v20i2.18333>.



## Methods

This study is qualitative research with normative and empirical-judicial approaches. It employed a technique of contemporary Islamic law known as *maqāṣid sharī'ah* (objectives of Islamic law) with its fundamental principles: obtaining *maṣlahāt* (benefits) and rejecting *mafsadāt* (harms). The normative legal research approach was used to find the truth of the coherence of whether the egg-freezing phenomenon is in accordance with religious norms, humanity, and the objectives of Islamic law (*maqāṣid sharī'ah*). In the context of the attitude towards the egg-freezing phenomenon as previously described, Muslims are required to be more selective and wise in responding to this. It means that any activity can be justified in Islamic law to be permissibly done when it brings *maṣlahāt*; otherwise, if it leads to *mafsadāt*, such training must be avoided.

This paper will reveal the egg-freezing phenomenon analyzed using *maṣlahāt* and *mafsadāt* theories as the essence of the *maqāṣid sharī'ah* paradigm. The data were obtained through a literature study on several media about the egg-freezing phenomenon. Then, they were dialogued against the essence of *maqāṣid sharī'ah*. Meanwhile, the data were analyzed using content, comparative, and critical analysis so that it was expected to produce a view of the egg-freezing phenomenon through the perspective of *maṣlahāt and mafsadāt*.<sup>15 16</sup>

## Result

In Indonesia, the issue of egg freezing is currently being widely discussed by the public. An artist and celebrity, Luna Maya, once said that she decided to freeze her eggs so that she could still have children in the future even though she is no longer young.<sup>17</sup> To her, by doing egg

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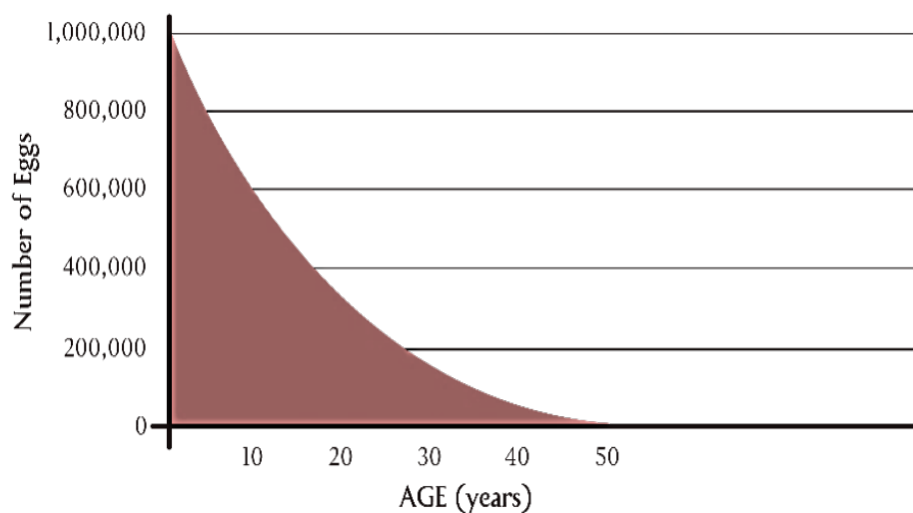
<sup>15</sup> John W. Creswell, *Qualitative Inquiry and Research Design* (Los Angeles: SAGE, 2013); C. R. Kothari, *Research Methodology: Methods and Techniques* (New Delhi: New Age International Ltd. Publisher, 2004).

<sup>16</sup> M. Q. Patton, *Qualitative Evaluation Methods* (London: Sage Publication, 1980).

<sup>17</sup> Editorial Team, "Hukum Pembekuan Sel Telur dalam Islam," *cnnindonesia.com*, January 19, 2022, <https://www.cnnindonesia.com/gaya-live/20220119105359-284-748490/Hukum-pembekuan-sel-telu-dalam-islam>.



freezing, age is no longer an obstacle for women to have children.<sup>18</sup> As mentioned by Pandya, a woman's age has a significant impact on her fertility. With advancing age, the quantity and quality of eggs decline, resulting in increased difficulty in conceiving or carrying a pregnancy to term.<sup>19</sup> A decline in fertility with age (see Fig. 1) is an inevitable process that affects all women, regardless of their overall health.<sup>20</sup> At birth, females possess a set number of follicles that will remain constant throughout their lives. Approximately 2 million eggs are estimated to be present at birth, but this number decreases naturally to about 400,000 by the onset of puberty. As women begin menstruating, the supply of eggs gradually diminishes. Only 400 to 500 eggs reach maturity throughout a woman's lifetime.<sup>21</sup>



<sup>18</sup> Nugroho Meidinata, “Dilakukan Luna Maya, Ini Hukum Metode Egg Freezing dalam Islam,” *solopos.com*, September 5, 2023, <https://lifestyle.solopos.com/dilakukan-luna-maya-ini-hukum-metode-egg-freezing-dalam-islam-1731946>.

<sup>19</sup> ACOG, “Having a Baby After Age 35: How Aging Affects Fertility and Pregnancy,” *acog.org*, n.d., <https://www.acog.org/womens-health/faqs/having-a-baby-after-age-35-how-aging-affects-fertility-and-pregnancy>.

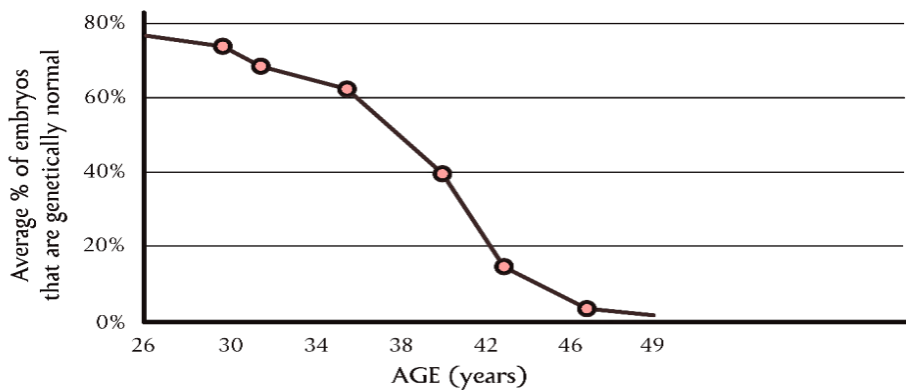
<sup>20</sup> Pandya, “Egg Freezing: A Practical Solution to Preserve Fertility.”

<sup>21</sup> “Ovaries,” *yourhormones.info*, n.d., <https://www.yourhormones.info/glands/ovaries/>.



Fig. 1. Egg Count over Time  
(Source: Pandya, “Egg Freezing: A Practical Solution to Preserve Fertility.”)

Pandya further explains that when a woman reaches her late 30s, approximately half of her eggs are likely to be chromosomally abnormal (see Fig. 2), meaning they have an incorrect number of chromosomes.<sup>22</sup> It often results in unsuccessful implantation, miscarriage, or babies with chromosomal abnormalities.<sup>23</sup> Moreover, once a woman hits her 40s, the probability of conceiving each month drops to just 5%.<sup>24</sup> Robertson finds that if a woman is not prepared to have a baby yet but wants to maintain the option of starting a family in the future, she should have better knowledge about egg freezing. Freezing a woman’s eggs while she is in her 20s or 30s lets her use her body’s optimal fertility when her eggs are in their prime condition.<sup>25</sup>



<sup>22</sup> Pandya, “Egg Freezing: A Practical Solution to Preserve Fertility.” Read further: ACOG, “Having a Baby After Age 35: How Aging Affects Fertility and Pregnancy.”

<sup>23</sup> Vittoria d’Alessio, “New findings about how a human egg matures may help prevent infertility and birth defects,” *europa.eu*, October 15, 2019, <https://ec.europa.eu/research-and-innovation/en/horizon-magazine/new-findings-about-how-human-egg-matures-may-help-prevent-infertility-and-birth-defects>; ACOG, “Having a Baby After Age 35: How Aging Affects Fertility and Pregnancy.”

<sup>24</sup> Pandya, “Egg Freezing: A Practical Solution to Preserve Fertility.”

<sup>25</sup> John A. Robertson, “Egg freezing and egg banking: empowerment and alienation in assisted reproduction.” *Journal of Law and the Biosciences* 1, no. 2 (2014): 113-136, <https://doi.org/10.1093/jlb/1su002>.





Fig. 2. The Relationship between Age and Egg Quality  
(Source: Pandya, "Egg Freezing: A Practical Solution to Preserve Fertility.")

As Chloe Taylor reported, between 2010 and 2016, American women freezing their eggs skyrocketed by 880%, driven by the American Society for Reproductive Medicine removing the "experimental" label from egg-freezing procedures in 2012. According to the American Society for Reproductive Technology, 10,936 US women froze their eggs in 2017 alone.<sup>26</sup> During the COVID-19 pandemic, many fertility clinics have seen a surge in interest in egg freezing. Several data show that egg freezing in the US has increased by 39% compared to before the pandemic,<sup>27</sup> whereas the preliminary national data for 2021 shows that the number of egg-freezing cycles reported by the Society for Assisted Reproductive Technology (SART)-member clinics increased by over 31% from the previous year, - from 16,786 to 24,558, - a marked increase in fertility preservation treatment in the US.<sup>28</sup> Meanwhile, in the UK, demand increased by 50% in summer 2020 compared to the previous year. For women who feel that the pandemic has disrupted their goal of starting a family, or for couples

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<sup>26</sup> Chloe Taylor, "Women have been led astray on egg-freezing, bombshell study finds. There are two major things they have to know," *fortune.com*, September 27, 2022, <https://fortune.com/well/2022/09/26/how-effective-is-egg-freezing-parenthood-childbirth-demographic-crisis-fertility/>.

<sup>27</sup> Katie Bishop, "Pembekuan sel telur melonjak sejak pandemi, cara perempuan lajang 'membeli waktu' untuk punya anak," *bbc.com*, September 24, 2022, <https://www.bbc.com/indonesia/articles/czre1j219p8o>

<sup>28</sup> ASRM, "Egg Freezing Cycles Jumped 31% in 2021," *asrm.org*, March 30, 2023, <https://www.asrm.org/news-and-events/asrm-news/press-releasesbulletins/egg-freezing-cycles-jumped-31-in-2021/>



who have decided to postpone having children amidst economic uncertainty, egg freezing feels like a way out.<sup>29</sup>

Even so, Merry Pane noted that the chance of pregnancy from the egg-freezing procedure is around 30–60%. However, the possibility of pregnancy depends on the woman's age when doing egg freezing. Furthermore, since the egg-freezing method is relatively new, more data is still needed to accurately determine the success rate of egg freezing.<sup>30</sup> In a recent research paper, a team of experts from NYU's Grossman School of Medicine and Langone Fertility Center said that the proportion of patients who ultimately had a baby after going through the whole process of freezing and using their eggs was just 39%, and the patient's age heavily influenced the success rate. It has to do with how early (or late) women choose to freeze eggs and how many eggs they freeze when they do.<sup>31</sup>

So, egg freezing is no longer a concept associated with science fiction and has grown in popularity in the three decades since it was first discovered. The procedure is now gaining traction in Indonesia, with Morula IVF Indonesia (formerly the Morula Fertility Clinic) leading the trend as one of the largest fertility clinics in the country.<sup>32</sup> According to Batara Imanuel Sirait, head of Morula IVF Jakarta, more women are now delaying starting a family. *"We are dealing with an urban phenomenon where society tends to delay marriage. Many women choose to do so because they are pursuing their studies or careers,"* said Batara. *"Egg freezing is not a new thing; it's a daily procedure at any IVF [in-vitro fertilization] clinic. So, we're not offering, and we're making people aware of it instead."* While egg freezing is a procedure that is open to both unmarried and married women, it can be a little complicated for the latter. Married women can opt for egg freezing if unwilling to freeze an embryo. Moreover, under

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<sup>29</sup> Bishop, "Pembekuan sel telur melonjak sejak pandemic."

<sup>30</sup> Pane, "Egg Freezing, Metode untuk Meningkatkan Peluang Kehamilan."

<sup>31</sup> Taylor, "Women have been led astray on egg-freezing, bombshell study finds."

<sup>32</sup> Sheena Suparman, "A conversation about egg freezing in Indonesia," *thejakartapost.com*, February 24, 2022, <https://www.thejakartapost.com/culture/2022/02/24/a-conversation-about-egg-freezing-in-indonesia.html>



Indonesian law, their legal spouse can only fertilize preserved eggs, regardless of their marital status, during the egg-freezing procedure.<sup>33</sup>

## Discussion

### Egg Freezing: A Controversial Issue

*Oocyte cryopreservation* (egg freezing) is a controversial issue in contemporary society. This techno-medical innovation and development, pioneered in the late 1980s, is intended to 'store samples in the frozen form which aims to keep, guarantee, maintain, and preserve cell viability.' It is to store and preserve viable oocytes after collecting relatively young ovaries enough to allow more precise production. As an oocyte bank, humans are positioned as a species that produces offspring as babies. Like human embryos, stored oocytes can be characterized as bio-objects, such as artificial, living, and non-living. Oocyte cannot be separated from the body and remains alive for future use despite being manipulated, stored, and mobilized.

The medical world continues to develop, and over time, innovations continue to emerge for the good of humanity. The proof is the invention of methods related to female reproduction. The more general term is reproductive engineering. Reproductive engineering greatly helps women with special conditions (infertile) to have babies. In Vitro Fertilization (IVF) and egg freezing are two examples of reproductive engineering practiced in Indonesia.

Egg freezing is the process of freezing eggs, where in this method, a woman's eggs are taken from the ovaries, then frozen when they are not fertilized and stored for use when the woman is ready to have children.<sup>34</sup> The egg is thawed and fertilized in a laboratory to make an embryo that can be placed in a woman's uterus. This process benefits women with cancer who want to have children after undergoing radiation therapy, chemotherapy, or specific surgeries that can cause

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<sup>33</sup> Suparman, "A conversation about egg freezing in Indonesia,"

<sup>34</sup> Suryadiningrat, "Mengenal Egg-freezing, Berikut Penjelasanannya,"



infertility.<sup>35</sup> It is one effort to retain the reproductive potential of productive women.<sup>36</sup> Other names, such as *egg banking*, *egg cryopreservation*, and *oocyte cryopreservation*, are also known as egg freezing.<sup>37</sup> There is a particular term for the procedure of freezing female eggs for non-medical reasons, for example, when a woman delays her pregnancy and undergoes egg freezing due to social demands such as focusing on completing her education and building a career, namely social egg freezing.<sup>38</sup>

A human born from a frozen egg was first reported in 1986; egg freezing was initially classified as an experimental procedure. In late 2012, the American Society of Reproductive Medicine (ASRM) no longer categorized egg freezing as an experimental procedure.<sup>39</sup> Regarding its legality, the American Society of Reproductive Medicine (ASRM) declared that egg freezing is now legally acceptable and no longer experimental in January 2013.<sup>40</sup> The practice of egg freezing has also been performed in Indonesia. The Melati Clinic at Harapan Kita Hospital in Jakarta, the Indonesian Boy Fertility Center, and RSIA Ferina Surabaya are among the health services that provide egg-freezing procedures in Indonesia.<sup>41</sup> Egg freezing can be considered as

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<sup>35</sup> “Egg Freezing,” *National Cancer Institute*, n.d., <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/egg-freezing>.

<sup>36</sup> Editorial Team, “What Is Egg Freezing?” *uclahealth*, n.d., <https://www.uclahealth.org/medical-services/obgyn/fertility/egg-freezing>.

<sup>37</sup> “Egg Freezing”

<sup>38</sup> A. Borovecki *et al.*, “Social Egg Freezing under Public Health Perspective: Just a Medical Reality or a Women’s Right? An Ethical Case Analysis,” *Journal of Public Health Research* 7, no. 3 (2018): 1484. <https://doi.org/10.4081/jphr.2018.1484>.

<sup>39</sup> Ethics Committee of the American Society for Reproductive Medicine, “Planned Oocyte Cryopreservation for Women Seeking to Preserve Future Reproductive Potential: An Ethics Committee Opinion,” *Fertility and Sterility* 110, no. 6 (2018): 1022-1028. <https://doi.org/10.1016/j.fertnstert.2018.08.027>.

<sup>40</sup> Habibatul Unayah, “Egg Freezing Dalam Perspektif Bioetika,” *suaramuhammadiyah.id*, May 29, 2022, <https://suaramuhammadiyah.id/2022/05/29/egg-freezing-dalam-perspektif-bioetika/amp/>.

<sup>41</sup> Admin, “Daftar Klinik & Rumah Sakit Di Indonesia Yang Bisa Melakukan Egg Freezing,” *kumparan.com*, February 18, 2022, <https://m.kumparan.com/amp/kumparanwoman/daftar-klinik-and-rumah-sakit-di-indonesia-yang-bisa-melakukan-egg-freezing-1xWsoNhT9kz>.



part of a series of assisted reproductive technology (ART) services because it represents an attempt to get pregnant outside the natural way.<sup>42</sup>

Egg freezing is an invention in the development of medical science and has many benefits, but certainly not without accompanying risks. The benefits of egg freezing include preserving a woman's fertility so she can still have children even though she has passed her fertile period. It can be both an option and hope for women undergoing specific medical treatments, for example, a woman who has cancer and is undergoing chemotherapy. It can also present a choice for those with certain medical conditions, such as endometriosis. Both of these can indeed harm the quality of reproduction. The accompanying risks include *ovarian hyperstimulation syndrome* (OHSS), especially for a woman with *polycystic ovary syndrome* (PCOS). The egg freezing procedure is followed by hormone injection to stimulate more egg cells. The injection is the most likely source of pain and soreness felt by women undergoing egg freezing, even though they are subjective.<sup>43</sup>

According to the earlier description, egg freezing presents excellent value for women who need it. This practice can be misused if the government does not have strict rules regarding egg freezing. With the egg-freezing process costing up to tens or even hundreds of millions of rupiahs, the assumption emerges that only women from certain classes will undergo egg freezing. Like the IVF process, egg-freezing results must only be fertilized by sperm from a legal partner. It is also forbidden to donate egg cells. The binding regulation allowing egg freezing is the Ministry of Health's Regulation Number 43 of 2015 on Implementing Assisted Reproductive Services or Non-Natural Pregnancy. Article 1 Paragraph 1 of the Regulation reads, "*Assisted*

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<sup>42</sup> Chelsea Raphael Rajagukguk, "Egg Freezing Di Indonesia, Di Mana Legitimasinya?" *kumparan.com*, 2022, <https://m.kumparan.com/amp/chelsea-raphael-rajagukguk/egg-freezing-di-indonesia-di-mana-legitimasinya-1yBNSii7PLd>.

<sup>43</sup> Editorial Team, "Egg Freezing & Embryo Banking," *nyulangone.org*, n.d., <https://nyulangone.org/locations/fertility-center/in-vitro-fertilization-egg-freezing-embryo-banking/egg-freezing-embryo-banking>.



*Reproductive Services or Non-Natural Pregnancy, starting now referred to as Assisted Reproductive Technology Services, is an attempt to obtain a pregnancy outside the natural way without going through the process of sexual intercourse if the natural method does not produce results, by bringing together the husband's sperms with the wife's egg in the tube.*"<sup>44</sup> The article can be interpreted that egg freezing is permissible because it is part of assisted reproductive technology.

*Oocyte cryopreservation*, or non-medical or social egg freezing, is a contentious issue in Islam in which several Muslim countries issue conflicting *fatwās* (religious edicts). Islamic authorities in Malaysia, for example, have issued *fatwās* prohibiting unmarried Muslim women from freezing their unfertilized eggs (vitrified oocytes) for use in marriage<sup>45</sup> Even though many Muslim scholars in Egypt allow the operation.<sup>46</sup> In Malaysia, the fundamental tenets of *fatwās* are as follows:

1. It is improper to use sperm and egg cells obtained before marriage to conceive a child.
2. It is inappropriate to remove mature egg cells from single women.
3. Fertility preservation in preparation for a later marriage is speculative and has not yet been proven.<sup>47</sup>

Suppose the frozen ovarian cortical tissue sections are re-transplanted back into the woman. In that case, mature egg cells can be readily produced, collected, and fertilized by the husband's sperm only during the period of the marriage contract (*'aqd al-nikāh*). It makes

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<sup>44</sup> Ministry of Health. *Peraturan Menteri Kesehatan Nomor 43 Tahun 2015 tentang Penyelenggaraan Pelayanan Reproduksi Dengan Bantuan Atau Kehamilan Di Luar Cara Alamiyah*, <https://peraturan.bpk.go.id/Details/116243/permenkes-no-43-tahun-2015>.

<sup>45</sup> A. H. B. Chin, S. M. Muhsin, and M. F. Ahmad. "Islamic Perspectives on Elective Ovarian Tissue Freezing by Single Women for Non-medical or Social Reasons," *Asian Bioethics Review* 15, no. 3 (2023): 335–349, <https://doi.org/10.1007/s41649-022-00236-z>.

<sup>46</sup> Rachel Siden, "Egypt says egg-freezing is permissible in Islam," [progress.org.uk](https://www.progress.org.uk/egypt-says-egg-freezing-is-permissible-in-islam/), September 9, 2019, <https://www.progress.org.uk/egypt-says-egg-freezing-is-permissible-in-islam/>.

<sup>47</sup> Chin *et al.*, "Islamic Perspectives on Elective Ovarian Tissue Freezing,"



ovarian tissue freezing a potentially more sharī'ah-compliant method than social egg freezing. Unlike unintentional mix-ups with frozen eggs, the muddling of lineage (*nasab*) would be automatically avoided in ovarian tissue freezing due to immunological rejection. But, after a critical analysis based on the Islamic legal maxims (*qawā'id fiqhiyyah*), the objectives of Islamic law (*maqāṣid-al-sharī'ah*), and the benefits versus detrimental effects on the society (*maṣlahah-maḥsadāt*), one can expect that the social issue of healthy single women freezing their ovarian tissue for social reasons will likely be highly contentious and controversial within Muslim communities, possibly going against conservative social-religious norms.<sup>48</sup>

Thus, more discussion on this is required between Islamic jurists, medical professionals, and biomedical scientists. To date, no written regulation of practices regarding oncofertility is available in Muslim-dominated countries, including Indonesia. Thus, our review is based on the recommendations of the related religious bodies and our understanding of the existing international *fatwās* and *muzākarah* (religious advice or consultation). Hence, notable *fatwās* related to gamete and ovarian tissue cryopreservation in cancer cases, especially single patients, should be decided by authoritative *fatwā* bodies in Muslim countries. *Fatwās* should also decide on *nasab* issues and all related matters to ensure a better understanding and exemplary implementation of oncofertility services among Muslim patients.<sup>49</sup>

### **The *Fiqh* of Reproduction: Protection of Women's Health in the Discourse of Islamic Law Studies**

Reproduction is a woman's cycle of life related to aspects of fertility, birth, parenting, and other womanly matters.<sup>50</sup> Matters related to female reproduction hold significance in various studies of feminist

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<sup>48</sup> Chin *et al.*, "Islamic Perspectives on Elective Ovarian Tissue Freezing,"

<sup>49</sup> Chin *et al.*, "Islamic Perspectives on Elective Ovarian Tissue Freezing,"

<sup>50</sup> Editorial Team, "Reproduksi: Pengertian, Tujuan, Dan Jenisnya," *kompas.com*, January 28, 2021, <https://www.kompas.com/skola/read/2021/01/28/194746469/reproduksi-pengertian-tujuan-dan-jenisnya>.



tradition and discourse on Islamic law studies (*fiqh*). Female reproduction is a form of reflection on women's rights to control themselves. Furthermore, in addition to the aspect of women as individuals, reproduction, and matters relating to it have significance in aspects of the public domain, which then become public discourse and give rise to various responses and assessment discourses.

In the discourse of Islamic law (*fiqh*) on female reproduction, *fiqh* sees it as a dimension related to God's purpose for positioning women. The pattern of female reproduction is not only based on human problems but also on the epistemological objectives of Islamic law, which sees reproduction as a gift and provision from God, which has a philosophical basis and purpose.<sup>51</sup> Contemporary Islamic law scholars assume *the ijtihād* position based on the purpose of Islamic law (*maqāṣid sharī'ah*) as the most concrete representation to adapt to relevant conditions and time.<sup>52</sup> *Fiqh*, which prioritizes the realization of benefit and justice for all parties, is significant to show the existence of Islamic law in the contemporary era.<sup>53</sup> Moreover, the relationship between men and women needs more attention to position them with the relevant legal products. One of the most apparent aspects related to this problem is the concept of female reproduction from the perspective of Islamic law values.<sup>54</sup>

In the discourse on the study of Islamic law, there are three absolute frameworks: first, *washf al-zahīr* (external) and *al-munḍabiṭ* (measurable); second, the essence of an action known as *maṣāliḥ*

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<sup>51</sup> See in Alfitri, "Women's Rights and Gender Equality Issues in Islamic Law in Indonesia: The Need to Re-Read Women's Status in the Islamic Religious Texts," *Mazahib: Jurnal Pemikiran Hukum Islam* 13, no. 1 (2014): 23-38, <https://doi.org/10.21093/mj.v13i1.349>.

<sup>52</sup> Siti Nurjanah and Iffatin Nur, "Childfree: Between the Sacredness of Religion, Law and the Reality of Society," *Al-'Adalah* 19, no. 1 (2022): 1-28, <https://doi.org/10.24042/adalah.v19i1.11962>.

<sup>53</sup> Iffatin Nur and Muhammad Ngizzul Muttaqin, "Reformulating The Concept of Maṣlaḥah: From A Textual Confinement Towards A Logic Determination," *Justicia Islamica Jurnal Kajian Hukum Dan Sosial* 17, no. 1 (2020): 73-91, <https://doi.org/10.21154/justicia.v17i1.1807>.

<sup>54</sup> Nurjanah and Nur, "Childfree: Between the Sacredness of Religion, Law and the Reality of Society,"





(benefit) and *maḥāsīd* (harm) or *ḥikmāt al-tashrī'* (lawful wisdom); third, the consequence of ordinance in the form of *jalb al-manfa'āt* (obtaining benefits) or *daf'u al-maḍarrāt* (rejecting harm).<sup>55</sup> In the study of Islamic law, this is known as the concept of *maqāṣid sharī'ah*.<sup>56</sup> The concept of the understanding of *maṣlahah* and its relation to *maqāṣid sharī'ah* that *maṣlahah* is something that opens the way to benefits and guards against the harm of *maḥāsādāt*.<sup>57</sup> The correlation between *maqāṣid sharī'ah* and *maṣlahah* is contained in al-Ghazali's theory, saying that everything that serves to maintain the five foundations (*al-uṣūl al-khamsah*) is called *maṣlahah* and everything that undermines them is called *maḥāsādāt*.<sup>58</sup>

In al-Ghazali's perspective, all activities that maintain the objectives of Islamic law are referred to as *al-maṣlahah*, and vice versa are called *al-maḥāsadah*.<sup>59</sup> The most apparent actualization of the *maqāṣid sharī'ah* concept is adjusting Islamic law to contemporary problems.<sup>60</sup> Regarding technological developments and challenges for women, Islamic law emerges as the pathway to support the development of thought in technology and protect women from exploitation and injustice.<sup>61</sup> The formulation of *fiqh* of reproduction has implications for studies that represent a form of responsivity of Islamic

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<sup>55</sup> Muhammad Thahir Ibn 'Ashur, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Tunisia: Dar Sukhun li al-Nashr wa al-Tawzi', 2007).

<sup>56</sup> Ahmad al-Raysuni, *Nazāriyyāt al-Maqāṣid 'inda al-Imām al-Shaṭībī* (Beirut: Dar al-Arabi, 2007).

<sup>57</sup> Abu Ishaq al-Shatibi, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah* (Beirut: Dar al-Kutub al-Ilmiyah, 2004).

<sup>58</sup> Muhammad Ibn Muhammad al-Ghazali, *Al-Mustashfā min 'Ilm al-Uṣūl* (Beirut: Dar al-Fikr, 1999).

<sup>59</sup> al-Ghazali, *Al-Mustashfā min 'Ilm al-Uṣūl*.

<sup>60</sup> Iffatin Nur and Muhammad Ngizzul Muttaqin, "Fiqh Jalan Tengah (Mempertemukan Maqashid Syari'ah, Hukum, Dan Realitas Sosial)," *Zawiyah: Jurnal Pemikiran Islam* 5, no. 2 (2019): 197-217, <https://ejournal.iainkendari.ac.id/index.php/zawiyah/article/viewFile/1509/1076>.

<sup>61</sup> Siti Nurjanah and Iffatin Nur, "Gender Fiqh: Mobilization of Gender-Responsive Movement on Social Media," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (2022): 1-18. <https://doi.org/10.18326/ijtihad.v22i1.1-18>.



law toward technological developments and women's position in the contemporary era. It is in the context of preserving the existence of human resource progress in the field of medical technology and maintaining the dignity of women.<sup>62</sup>

The most apparent standard of the *ijtihad* concept of *fiqh* of reproduction is positioning women to fulfill their rights and guarantee their protection. It means that today's social changes and development, and technological advancement become the foundation of conducting *ijtihad* in the *fiqh* of reproduction to position women as it should. Women are demanded to produce offspring and other things that support their freedom and protect their reproductive organs. The realization of benefit for women has dimensions in all aspects related to the protection of safety for the existence of women and the realization of offspring through the womb of women with *maqāṣid sharī'ah* as a basis and approach to reproductive jurisprudence.

### **Egg Freezing in the Study of *Fiqh* of Reproduction**

One measure and form of a woman's pride is offspring born without having to take various medical steps. That being said, In the reality of society, many reproductive problems have implications for efforts and medical measures to get offspring. One of the medical programs for female reproductive organs is the egg-freezing method. This method is executed by taking eggs from the ovaries, which are then frozen and stored in the laboratory. In the medical world, freezing eggs benefits women who want to avoid wasting excess embryos and women who have medical treatments that threaten fertility and preserve eggs to be used when ready and in the best situation to have children. The procedure for its use is fertilization through the IVF method.

In its use, several guidelines must be heeded because this technology has an impact on reproductive health. One of which is that egg freezing must be performed before the age of 40 or 35 years on the

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<sup>62</sup> Muhammad Ngizzul Muttaqin, Miftah Rosadi, and Arif Nur'aini, "Fiqh Emansipatoris: Membangun Metodologi Fiqih Pembebasan Bagi Perempuan," *Raheema: Jurnal Studi Gender Dan Anak* 8, no. 2 (2021): 125-133, <https://jurnal.iainpontianak.or.id/index.php/raheema/article/view/1587>.



ground that egg cells are still healthy at that age range. It is because the egg cells taken from the ovaries are then frozen and stored and used again when a woman is ready to undergo the process of pregnancy and birth. The most obvious indications for women to experience egg freezing are medical health and social aspects.<sup>63</sup>

One medical health indication for a woman to undergo egg freezing is the presence of health conditions that might compromise reproductive health, especially the female ovaries, such as cancer of the cells in the female reproductive organs and congenital abnormalities of the egg. Even so, using artificial technology still carries risks for women, such as stimulation failure, unguaranteed success, impact on fertility drugs, complications during egg extraction, and psychological implications.<sup>64</sup> From a social perspective, women opt for egg freezing due to professional and career demands. Therefore, egg freezing is carried out at the childbearing age and used later at the desired period.<sup>65</sup>

The above conditions are evidence of the interrelationships between health disciplines, social reality, and aspects of Islamic law, which have become standardization of ethics in responding to various technological developments and social changes in the contemporary era.<sup>66</sup> It means that the relationship between technological developments and the culture of contemporary society is currently a form of human resource development that must be responded to with

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<sup>63</sup> Rina Ayu Panca Rini, "Mengenal Metode Egg Freezing, Manfaat, Risiko & Usia Paling Ideal Lakukan Pembekuan Sel Telur," *tribunnews.com*, March 21, 2022, <https://www.tribunnews.com/kesehatan/2022/03/21/mengenal-metode-egg-freezing-manfaat-risiko-usia-paling-ideal-lakukan-pembekuan-sel-telur>.

<sup>64</sup> Editorial Team, "Sebelum Lakukan Egg Freezing, Kenali Dulu Efek Samping Dan Risikonya," *kumparan.com*, February 20, 2022, <https://kumparan.com/kumparan-woman/sebelum-lakukan-egg-freezing-kenali-dulu-efek-samping-dan-risikonya-1xXfTZcZoSO/full>.

<sup>65</sup> Chantel Cross, "Freezing Eggs: Preserving Fertility for the Future," *hopkinsmedicine.org*, 2022, <https://www.hopkinsmedicine.org/health/wellness-and-prevention/freezing-eggs-preserving-fertility-for-the-future>.

<sup>66</sup> Iffatin Nur, "Stem Cell Therapy: Its Legality In The Perspectives Of Indonesian Law And Progressive Islamic Jurisprudence," *International Journal of Advanced Research* 8, no. 2 (2020): 202-212, <http://www.doi.org/10.21474/IJAR01/10455>.



patterns and standardization of ethics in the concept of Islamic law. It is necessary to provide ethical guidelines and aspects of truth through the values of Islamic law (*fiqh*).<sup>67</sup> As an effort of *fiqh* foundation of reproduction, Arab civilization long ago considered women as objects that could be inherited and mortgaged for men's pleasure. In addition, women are also seen as a source of misery and calamity, which is considered a devil's curse and deserves to be killed. The reality of ancient Arab civilization then displayed the belittlement of women in Arab and pre-Islamic societies. It was a big issue, especially when put side by side with the concepts of equality and justice. Islam, born amid a patriarchal culture, has emphasized that men and women are created from the same entity. This concept is clear evidence of the concept of monotheistic theology brought by Islam as an effort to realize equality between men and women.<sup>68</sup> The Islamic concept of men and women includes spiritual, intellectual, and sexual aspects as well as all the life practices of men and women.<sup>69</sup>

In the aspect of sexuality, the relationship between men and women in the social reality of society still wrestles with many issues. Women in this aspect are marginalized as a form of double burden on them. The commitment and responsibilities of women related to reproduction revolve around pregnancy and birth. During pregnancy and childbirth, women are demanded to meet their needs and face activities, careers, and health-related conditions. Pregnant women often wrestle with actions and jobs that discriminate against social and economic activities. Post-pregnancy childcare is also a burden and

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<sup>67</sup> Iffatin Nur, "Postgenderism: Weighing a Future World without Gender with the Islamic Law's Philosophy," *Journal of Talent Development and Excellence (JTDE)* 12, no. 1 (2020): 1374-1384, [https://www.researchgate.net/publication/342453692\\_Post\\_Genderism\\_Weighing\\_a\\_Future\\_World\\_Without\\_Gender\\_with\\_the\\_Islamic\\_Law's\\_Philosophy](https://www.researchgate.net/publication/342453692_Post_Genderism_Weighing_a_Future_World_Without_Gender_with_the_Islamic_Law's_Philosophy).

<sup>68</sup> Arifah Millati Agustina, "Gender Construction in The Perspective of Living Fiqh in Indonesia," *Justicia Islamica Jurnal Kajian Hukum Dan Sosial* 18, no. 2 (2021): 189-210, <https://doi.org/10.21154/justicia.v18i2.2488>.

<sup>69</sup> Zulfatun Ni'mah, "The Violation on Women's Rights in the Unilateral Divorce in Sasak Community From a Feminist Legal Theory," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 13, no. 1 (2018): 25-48, <https://doi.org/10.19105/al-lhkam.v13i1.1482>.



responsibility for women. This condition is exacerbated by social and work environments that do not support the pregnancy, childbirth, and post-childbirth process for women.<sup>70</sup>

Pregnancy and delivery also pose risks to women's health and even life. There are quite a number of women who suffer health problems and even die during pregnancy and childbirth. In addition to the aspect of physical health, during pregnancy and childbirth, women's psychological health must also be maintained. It can be seen from the trend of high maternal mortality in Indonesia. Data from the Ministry of Health show 6,856 such deaths in 2021. The condition is alarming and frightening for pregnant women.<sup>71</sup>

Apart from the threats and burdens women face as described above, women also have a big task in terms of human preservation through offspring. It is in line with one of the purposes of marriage, which is to preserve and perpetuate generations. This double burden borne by women is at the point of protecting their health and safety for themselves with the obligation to maintain offspring through their wombs. This condition sometimes gives rise to a social construction that prioritizes the responsibility to continue offspring over their safety.

The contradiction between the obligation to produce offspring and protect women's lives then gives rise to various strategies and progresses in reproductive technology to bridge the two. One of which is egg freezing, which is a reproductive engineering effort that has been practiced in Indonesia. An effort to provide regulation for the process

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<sup>70</sup> Mentari Rizki Utami, "Pengaturan Terkait Kekerasan Seksual Dalam Lingkungan Kerja Sebagai Perwujudan HAM Terhadap Perempuan Sebagai Kaum Rentan," *kompasiana.com*, December 8, 2022, <https://www.kompasiana.com/mentaririzki4927/639197ede1a1672e1c7cda12/pengaturan-terkait-kekerasan-seksual-dalam-lingkungan-kerja-sebagai-perwujudan-ham-terhadap-perempuan-sebagai-kaum-rentan>.

<sup>71</sup> Ministry of Women Empowerment and Child Protection, "Siaran Pers Nomor: B-578/SETMEN/HM.02.04/11/2022: Saatnya Laki-Laki Terlibat Untuk Cegah Dan Turunkan Angka Kematian Ibu (AKI)," *kemenpppa.go.id*, 2022, <https://kemenpppa.go.id/index.php/page/read/29/4243/saatnya-laki-laki-terlibat-untuk-cegah-dan-turunkan-angka-kematian-ibu-aki>.



of freezing eggs is used when a woman is ready to undergo the process of pregnancy until birth. Women often take this step with a career with reasons to stay active and have a desired job. Furthermore, women with health vulnerabilities and predispositions to complications during pregnancy and childbirth often opt for egg freezing.

Based on the contradiction between the two women's interests above, Islamic law is committed to providing guidance and an epistemological foundation based on the benefit and goodness of humankind. Although among the goods and benefits, humans want to realize, sometimes contradictions are carried, and, ultimately, one thing must be prioritized and sacrificed. Therefore, the construction of Islamic law has relevance and urgency in the framework of realizing justice and universal human benefit as a provision for living.<sup>72</sup>

Regarding benefits for women, women in this contemporary are understood as being able to stand equally with men. It means they have shown achievements in economy, career, education, and political activity. Its condition should be taken into account in formulating *fiqh* law for women. Like the concept of *maqāṣid sharī'ah*, this concept acquires the realization of *ḥifẓ al-nafs* (protecting one's soul) as a means to provide protection over the existence and safety of women.

Apart from their protection for their existence, the manifestation of benefit for women is justice and benefit when she can give offspring through her marriage. The relationship between women as mothers and the birth of a child shows the nobility of women's dignity in continuing offspring as the purpose of marriage. Not only that, the honor of a woman as a mother can be realized when she is able to foster and shape the child's personality through postnatal care.<sup>73</sup>

Related to egg freezing, *fiqh* of reproduction based on *maqāṣid sharī'ah* views egg freezing as a form of reproductive technological developments. Even so, it must be understood that the primary objective

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<sup>72</sup> Fauzi, *Hak Asasi Manusia dalam Fikih Kontemporer* (Depok: PRENADAMEDIA GROUP, 2018).

<sup>73</sup> Muhammad Ihsan and Erna Dewi, "Wanita Karir Dalam Tinjauan Maqashid Al-Shari'ah," *Juris: Jurnal Ilmu Syari'ah* 19, no. 1 (2020): 45-57, 48, <https://ojs.iainbatu.sangkar.ac.id/ojs/index.php/Juris/article/view/2108>.



of *maqāṣid sharī'ah* is to protect women, especially in the use of technology. Even though this technology brings about controversies in society, *fiqh* of reproduction at least provides a basis that the use of this technology is harmless and beneficial to women. The consideration of higher benefits over *mafsadāt* of using technology is a non-negotiable basis to reflect the primary goal of Islamic law, namely the realization of benefits for humans.

Furthermore, egg freezing for women contradicts the interests of realizing the existence of women and the interest of raising children as descendants. Standardization of benefits for women in egg freezing is adapted to the personal interests of women themselves. It means that the decision to undergo egg freezing is accompanied by particular reasoning. For example, egg freezing is permitted if the reason to put off pregnancy is related to health issues or mental readiness to experience pregnancy and childbirth. Apart from that, there are other reasons in the world of activities that are relevant and accepted by their partners and the general public as an effort to provide freedom and freedom as well as justice for women.

On the contrary, if the reason for opting for egg freezing cannot be rationally accepted and contextualized for Islamic law (*maqāṣid sharī'ah*), then the realization of offspring must be prioritized. As a result, egg freezing is an advance in reproductive technology that must be responded to with relevant standards and values as the concept of Islamic law aims. The primary objective is to position women as whole human beings without coercion and discrimination against them. Apart from the use of reproductive technology causing specific side effects and impacts, the aim of Islamic law is standardization to prevent *mafsadāt* that can occur to female reproductive organs. The permissibility of egg freezing is based on the *maqāṣid sharī'ah* approach as a representation of the embodiment of *fiqh* of reproduction to respond to issues and developments in reproductive technology in the current contemporary era.



## Conclusion

Egg freezing is one of the pieces of evidence of development in the reproductive technology sector. Even though its use has brought about controversies, it dramatically helps women in some cases. In its practice, women's decision to undergo egg freezing is based on several reasons. The most apparent reason for the study of *fiqh* of reproduction is the realization of benefits and protection of women. The completion of benefits for women is manifested in taking steps between protecting the soul (*hifz al-nafs*) and dignity (*hifz al-'ird*) of women with the protection and realization of offspring (*hifz al-nasl*). It is to reformulate a *fiqh* concept that is relevant to the interests of women and responsive towards the developments of reproductive technology.

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