

Embryo Frozen Storage Agreement According to Civil Law in Indonesia

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ABSTRACT

The increasing use of in vitro fertilization (IVF) technology and embryo cryopreservation presents new legal challenges, especially regarding embryo frozen storage agreements in Indonesia. Currently, this agreement is categorized as an innominaat agreement based on the principle of freedom of contract (Article 1338 of the Civil Code), but there is no specific regulation governing it. This study analyzes embryo frozen storage agreements from the perspective of Indonesian Civil Law. This study uses a normative juridical method through literature study, with secondary data derived from laws and regulations, legal literature, and other relevant sources, as well as qualitative analysis of the collected data. The results of the study indicate that the validity of the agreement depends on the fulfillment of the requirements in Article 1320 of the Civil Code, namely agreement, capacity, certain objects (the legal status of embryos is still debated), and lawful cause. The rights and obligations of the parties (husband and wife and clinic) must be clearly regulated, including safe storage, costs, instructions for use/destruction, time period, and comprehensive informed consent. Important clauses include duration, costs, liquidation/destruction procedures, responsibilities, and dispute resolution. Cancellation or termination of the agreement can occur for various reasons, including expiration of time, default, or change in marital status.

Keywords: cryopreservation; embryo; embryo frozen storage agreement; test tube baby.

INTRODUCTION

The increasing prevalence of In Vitro Fertilization (IVF) and embryo cryopreservation as assisted reproductive technologies (ART) has brought significant changes to how individuals and couples form families. Embryo cryopreservation, or embryo freezing, allows viable embryos to be stored for future use, providing additional flexibility and opportunities in fertility treatment. Originally intended for heterosexual couples experiencing infertility, this practice is now increasingly used by same-sex couples, single women, and in surrogacy arrangements.¹ Data indicates that frozen embryo transfer cycles are increasingly contributing to pregnancy success compared to fresh embryo cycles.² In the United States, approximately 2% of all births are now the result of assisted reproductive technology, highlighting the important role this technology plays in modern society.³

An embryo freezing agreement plays an important role in managing the fate of these embryos, especially in unexpected circumstances such as divorce, separation, or the death of one of the parties. Without a clear agreement, potential disputes regarding the use, storage, or disposal of embryos may

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¹ Embryo cryopreservation - Wikipedia, accessed February 23, 2025, https://en.wikipedia.org/wiki/Embryo_cryopreservation

² Oocyte, embryo and blastocyst cryopreservation in ART: systematic review and meta-analysis comparing slow-freezing versus vitrification to produce evidence for the development of global guidance - PMC, accessed February 23, 2025, <https://pmc.ncbi.nlm.nih.gov/articles/PMC5850862/>

³ Considering IVF? You probably need an embryo disposition agreement. - Oleaga Law LLC, accessed February 23, 2025, <https://www.mainereproductionlawyer.com/post/considering-ivf-you-probably-need-an-embryo-disposition-agreement>

arise, which can lead to complicated and emotional legal proceedings. This agreement aims to provide clarity and avoid future disputes regarding the embryos, including what happens if the parties separate and one party wants to have a child from the embryos while the other party wants the embryos destroyed.⁴

In recent decades, assisted reproductive technology, particularly in vitro fertilization (IVF), has become a hope for many couples who have difficulty conceiving naturally. The IVF process involves fertilizing an egg with sperm outside the woman's body, which then produces an embryo. As an integral part of the IVF procedure, more embryos are often produced than are needed for a single transfer cycle. To utilize embryos further in the future, or when there are medical indications requiring the postponement of embryo transfer, embryo freezing or cryopreservation technology is used. This method allows storage of embryos at very low temperatures so that cell metabolism stops without causing death, so that the embryos can be reused at a later date.

Although the practice of IVF and embryo freeze storage is increasingly common in Indonesia, regulations specifically governing embryo freeze storage agreements in Indonesian civil law still do not exist. This absence of clear rules creates legal uncertainty for couples who store their embryos and for clinics or storage service providers. Therefore, an in-depth analysis of the civil law implications of these agreements is crucial to provide legal certainty and protect the interests of all parties involved. The increasing practice of IVF and embryo freezing in Indonesia, while a legal framework specifically regulating embryo banking agreements is yet to be established, creates an urgent need for legal analysis based on the principles of Indonesian Civil Law. This legal vacuum could potentially lead to uncertainty and disputes in the future.

The main objective of this research is to comprehensively analyze embryo frozen storage agreements from the perspective of Indonesian civil law. This research is expected to provide a deeper understanding of the legal aspects involved in the agreement, identify potential legal issues that may arise, and provide solutions or recommendations that can contribute to the development of law in the field of assisted reproductive technology in Indonesia.

The main novelty of this article lies in its specific and in-depth focus on the contractual aspects of embryo frozen storage agreements as a separate legal entity in Indonesian Civil Law. While existing literature often discusses Assisted Reproductive Technology (ART) broadly, In Vitro Fertilization (IVF), or surrogacy, this article provides a detailed and practical framework for an unregulated yet increasingly common practice. This approach goes beyond simply identifying regulatory gaps by proposing concrete legal structures and clauses, offering practical guidance for legal practitioners and policy makers in this evolving field.

Based on the description above, there are several legal issues, including: What is the definition and scope of embryo freeze storage agreements in the context of Indonesian civil law? Which articles in the Civil Code (KUHPerdata) are relevant to embryo freeze storage agreements, especially those

⁴ What is an embryo disposition agreement? - HelloPrenup, accessed February 23, 2025, <https://helloworldprenup.com/embryo/what-is-an-embryo-disposition-agreement/>

relating to agreements? What are the rights and obligations of the parties involved in the embryo freeze storage agreement, such as husband and wife, wife and the clinic or storage service provider? What important aspects need to be considered in the embryo frozen storage agreement based on civil law, including clauses that are commonly included?

METHODS

This research uses a normative juridical approach, which is carried out through literature studies. According to Soerjono Soekanto, a method is a means to achieve the objectives of the researcher.⁵ The data used in this research is secondary data obtained from relevant laws and regulations, legal literature such as books and scientific journals, and other sources relevant to the research topic. This research will also conduct qualitative analysis of the data collected. The normative juridical approach is considered appropriate because this research aims to analyze and interpret the applicable positive law and legal principles relevant to embryo frozen storage agreements.

DISCUSSION

DEFINITION AND SCOPE OF EMBRIO FREEZE SAVING AGREEMENT IN THE CONTEXT OF INDONESIA'S CIVIL LAW

Definition of Embryo Freeze Save Agreement

A comprehensive embryo freeze save agreement includes various provisions and considerations to ensure that all important aspects are addressed. Given the high divorce rate and potential disagreements over the fate of frozen embryos, these agreements often outline options such as one person taking ownership, ownership being shared, ethical destruction, donation to science, or donation to another couple. High-profile cases have highlighted the importance of addressing these issues early on to avoid prolonged legal disputes.⁶

An embryo freeze storage agreement can be defined as an agreement between a couple undergoing IVF and a clinic or storage service provider to store fertilized embryos at very low temperatures, usually using liquid nitrogen.⁷ The main purpose of this storage is to maintain the viability of the embryo so that it can be used in the future in the couple's efforts to have offspring through IVF.⁸ In the context of Indonesian civil law, embryo freeze storage agreements fall into the category of innominaat agreements.⁹ An innominaat agreement is a type of agreements that are not

⁵ Sri Mamudji and Soerjono Soekanto, *Penelitian Hukum Normatif Suatu Tinjauan Singkat, 18th edition*, Depok: Raja Grafindo Persada, 2018, p. 15.

⁶ Navigating the Legal Aspects of Egg and Embryo Freezing - LegalFix, accessed February 23, 2025, <https://www.legalfix.com/articles/legal-aspects-of-egg-and-embryo-freezing>

⁷ Bayi Tabung - RSUP Dr Sardjito, accessed February 16, 2025, <https://sardjito.co.id/rujukan-nasional/bayi-tabung/>

⁸ Judi Januadi Endjun *Embrio Beku dalam Perspektif Etika dan Hukum*, Alumni: Bandung, 2019

⁹ H. Salim H.S. and Erlies Septiana Nurbani, *Perkembangan Hukum Kontrak Innominaat di Indonesia (Buku Kedua)*, Jakarta: Sinar Grafika, 2017, p. 45.

specifically regulated in the Civil Code (KUHPerduta) but were born and developed in community practice based on the principle of freedom of contract as stipulated in Article 1338 of the KUHPerduta.¹⁰ Due to the absence of specific regulations in the Civil Code, the legal framework for these agreements relies heavily on general principles of contract law and the interpretation of existing laws and regulations, particularly those relating to health and reproductive technology.

Characteristics and Elements of an Agreement

The main legal basis governing the validity of an agreement in Indonesia is Article 1320 of the Civil Code.¹¹ This article sets out four cumulative requirements that must be met in order for an agreement to be considered valid and legally binding: the existence of an agreement of the parties, the capacity of the parties to make an obligation, the existence of a certain thing that becomes the object of the agreement, and the existence of a cause that is lawful or not prohibited by law. Various legal sources and literature consistently identify these four elements as the foundation for any valid agreement in Indonesia.¹² The uniformity of this view across various types of sources, ranging from scholarly works to legal news portals and government legal databases, emphasizes how fundamental these four requirements are in the Indonesian contract law system.¹³

It is important to note that in the context of contract law, there is a distinction between subjective and objective conditions. Subjective requirements include the agreement of the parties and the capacity to enter into an agreement, which relates to the subject or the parties making the agreement. If one of the subjective conditions is not met, the agreement can be canceled at the request of one of the aggrieved parties. Meanwhile, the objective requirements consist of the existence of a certain thing and a lawful cause concerning the object and purpose of the agreement. If one of the objective conditions is not met, the agreement is null and void, which means that from the beginning the agreement is considered to have never existed and has no legal force. This distinction has significant implications in analyzing potential problems in embryo frozen storage agreements.¹⁴

Agreement

Agreement or consent is the first and essential condition for the validity of an agreement. Agreement is defined as the existence of a free accord of will between the parties regarding the contract. This means that each party must have a voluntary and uncoerced will to bind themselves in the agreement. This will can be expressed expressly through words or writing, or tacitly through certain actions or attitudes that can be interpreted as an agreement.

¹⁰ Sonny Dwi Judiasih dan Susilowati S Dajaan, "Aspek Hukum Surrogate Mother Dalam Perspektif Hukum Indonesia", *Jurnal Bina Mulia Hukum*, Vol. 1, No. 2, March 2017

¹¹ <https://jdih.sukoharjokab.go.id/berita/detail/definisi-dan-syarat-sah-perjanjian>

¹² I Wayan Arna Wigunanta, "Kedudukan Anak Hasil IVF (Bayi Tabung) Ditinjau Dalam Perspektif Hukum Perdata", *Jurnal Kertha Negara*, Vol. 12, No. 4, 2024, p.413-424

¹³ Martiana, A. A., "Asas Kebebasan Berkontrak dalam Perjanjian Surogasi di Indonesia dari Perspektif Hukum Perdata dan Etika", *Perspektif Hukum*, Vol. 24, No. 2, 2024, p. 295–316.

¹⁴ Alam, Abbed Rabbo Nur, and Muhammad Wildan. "Dampak Hukum Proses Bayi Tabung Dalam Perspektif Hukum Perdata", *Pancasakti Law Journal (PLJ)*, Vol. 2, No. 1, 2024.

However, a valid agreement must be free from defects of will, namely the absence of elements of mistake (*dwaling*), coercion (*dwang*), or fraud (*bedrog*). Article 1321 of the Civil Code explicitly states that agreements given due to oversight, duress, or fraud are invalid. The principle of consensualism underlying Indonesian treaty law states that an agreement is generally born and binding from the moment an agreement is reached between the parties, without requiring certain formalities. In the context of an embryo freeze storage agreement, the agreement between the couple as the owner of the embryo and the clinic as a storage service provider regarding storage, time period, and costs becomes a crucial element.

Capacity

The second requirement for the validity of an agreement is the capacity of the parties to make an obligation. Basically, Article 1329 of the Civil Code states that every person is capable of making an agreement, unless otherwise provided by law. Article 1330 of the Civil Code then details the parties who are considered incapable of making agreements, namely persons who are not yet adults (have not reached the age of 21 years and have not been married before), those who are placed under guardianship (*curatele*), and in certain matters determined by law, married women (although based on legal developments, married women are now considered capable of carrying out their own legal actions). The age of majority for legal capacity may vary depending on the legal context. For example, the Civil Code sets the age limit at 21 years old, the Marriage Law No. 1 of 1974 on Marriage in conjunction with Law No. 16 of 2019 sets the age limit at 19 years old while the Notary Office Law and the Labor Law set it at 18 years old. In the context of an embryo frozen storage agreement, a married couple as the owner of the embryo must meet the requirements of legal capacity so that the agreement with the clinic becomes valid.

A Certain Thing

The third requirement for the validity of an agreement is the existence of a certain thing that is the subject matter or object of the agreement. Article 1333 of the Civil Code states that an agreement must have an object (*zaak*) that can at least be determined. This means that what is being agreed upon, namely the rights and obligations of both parties, must be clear and detailed, or at the very least, the object of the agreement can be identified by its type. The object of the agreement must also be tradable goods and not contrary to law, decency, or public order. In the context of an embryo freeze storage agreement, the object of the agreement is the storage of fertilized embryos in frozen conditions. The question that arises is whether frozen embryos can be categorized as "a certain thing" in the sense of treaty law.

Halal Cause

The fourth and final requirement for the validity of an agreement is the existence of a halal cause or *causa* that is not prohibited. *Causa* in this context refers to the content and purpose of the agreement itself, not merely the subjective motives or reasons of the parties. Article 1337 of the Civil Code emphasizes that a cause is prohibited if it is contrary to law, decency, or public order. If no cause is stated, but there is a lawful cause, the agreement remains valid. In a frozen embryo storage agreement, the desire of a married couple to have offspring in the future is the underlying purpose of this agreement. This goal is generally considered valid according to the law and does not conflict with prevailing values.

Like agreements in general, embryo freeze save agreements have several characteristics and important elements. First, there are parties involved, namely a married couple as the owner of the embryo and the clinic or storage service provider. Second, there is an agreement between the parties regarding embryo storage, including storage, time period, and costs. Third, the object of the agreement is the storage of fertilized embryos in frozen conditions. Fourth, the *causa* or cause of this agreement is the desire of a married couple to have offspring in the future, which is a legitimate goal according to law. Finally, in this agreement there is also the potential for achievement from the clinic in the form of storage services and counterproduction from the married couple in the form of payment of storage fees.

Limitation of Scope in Civil Law

The analysis in this article will be limited to the scope of Indonesian civil law. Although ethical and religious aspects are highly relevant in the context of assisted reproductive technology, an in-depth discussion of these aspects is beyond the scope of this article. The main focus will be on the agreement aspect as regulated in the Civil Code. It is important to distinguish between embryo freeze storage agreements and agreements related to IVF programs as a whole, which may include various medical measures and procedures. While embryo freezing is a technical aspect of IVF, the agreement governing its storage forms a distinct legal relationship that is subject to the principles of contract.

ARTICLES OF THE CIVIL LAW (KUHPERDATA) RELEVANT TO THE EMBRYO FREEZE SAVING AGREEMENT

Relevance to the Law of Obligation (Book III of the Civil Code)

The embryo freeze saving agreement, as an *innominaat* agreement, is closely related to Book III of the Civil Code which regulates obligations or agreements.

The Principle of Freedom of Contract (Article 1338): The principle of freedom of contract stipulated in Article 1338 of the Civil Code provides freedom to the parties to make any agreement as long as it does not conflict with the law, decency, and public order. This principle becomes the legal basis for the existence of a frozen embryo storage agreement even though there is no specific

regulation regarding it in the Civil Code.¹⁵ Thus, married couples and clinics have the freedom to determine the contents of the embryo storage agreement, including the time period, costs, and other procedures, as long as these provisions do not violate the limits set by law. This freedom allows the creation of new contracts that were previously unknown in the Civil Code, such as embryo frozen storage agreements. However, this freedom is not without limits and remains subject to general legal principles.

Terms of validity of agreement (Article 1320): For an agreement to be valid, including an embryo freeze storage agreement, it must meet the four cumulative requirements set out in Article 1320 of the Civil Code: agreement of the parties, capacity to enter into an agreement, a certain subject matter, and a lawful cause. The agreement of the parties means that there must be free and voluntary consent between the married couple and the clinic regarding embryo storage. Capacity to enter into an agreement requires that the parties must be adults (21 years old or married) and not under guardianship. A specific subject matter means that the object of the agreement, namely the storage of embryos in frozen conditions, must be clear and defined. Finally, a lawful cause means that the purpose and content of the agreement must not conflict with the law, decency, or public order. Fulfillment of these four conditions is crucial to ensure the validity of the embryo freeze storage agreement. If one of the subjective conditions (agreement or capacity) is not met, the agreement can be canceled by one of the parties. Meanwhile, if the objective conditions (specific subject matter or lawful cause) are not met, the agreement is void by law.¹⁶

Performance and Interpretation of Agreements (Articles 1338-1351)

Article 1338 paragraph (3) of the Civil Code states that agreements must be performed in good faith. This principle is particularly important in the context of embryo frozen storage agreements, given the sensitivity and emotional implications of the subject matter of the agreement. Both the couple and the clinic are expected to act honestly and fairly in carrying out their obligations under the agreement. In the event of a dispute or ambiguity regarding the contents of the agreement, the interpretation of the agreement can be carried out based on custom, law, and propriety as stipulated in the following articles in Book III of the Civil Code.

In the context of a frozen storage agreement, the embryo factually becomes an object that is stored and maintained by the clinic at the request of a married couple. Article 1330 of the Civil Code regulates the incapacity to make an agreement, which implicitly indicates that the object of the agreement must be something that can be controlled and agreed upon by the capable parties. For an embryo to be a valid object of a storage agreement, it must be considered as something that the parties can legally control and agree upon. The view that embryos are objects under civil law is in line

¹⁵ Zahrowati. "Bayi Tabung (Fertilisasi In Vitro) Dengan Menggunakan Sperma Donor dan Rahim Sewaan (*Surrogate Mother*) Dalam Perspektif Hukum Perdata". *Halu Oleo Law Review*, Vol. 1, No. 2. September 2018.

¹⁶ Akbar, M., et. all., "Tinjauan Yuridis Perjanjian Sewa Rahim Ditinjau dari Hukum Perdata", *JUDGE : Jurnal Ilmiah Fakultas Hukum Universitas Jambi*, Vol. 05, No. 02, 2024.

with this requirement, allowing embryos to be the subject of contractual storage and maintenance obligations.

RIGHTS AND LIABILITIES OF PARTIES INVOLVED IN EMBRIO FREEZE STORAGE AGREEMENTS

Rights and Obligations of Spouses as Embryo Owners

As the parties who own the embryos and enter into the storage agreement, spouses have a number of rights and obligations. They have the right to have their embryos stored in safe and standardized conditions. They also have the right to determine the period for which their embryos will be stored and give instructions to the clinic regarding the future use of the embryos, including whether they will be transferred back to the uterus, donated (if allowed by law and the clinic), or destroyed. Couples also have the right to extend their embryo storage period in accordance with applicable procedures and requirements.¹⁷

On the other hand, the couple has the obligation to pay the embryo storage fee according to the prevailing rate and the storage period agreed upon in the agreement. They also have the obligation to provide clear and accurate instructions to the clinic regarding their wishes regarding the embryos. In addition, a clear and comprehensive informed consent process regarding the storage, use and destruction of embryos is very important.¹⁸ Through informed consent, couples ensure that they fully understand the agreement and make decisions regarding their embryos. This process is a crucial protection mechanism for the rights and autonomy of the couple in making decisions about their frozen embryos.¹⁹

Rights and Obligations of the Clinic or Storage Service Provider

The clinic or embryo storage service provider also has rights and obligations under the agreement. They have an obligation to provide safe storage facilities that comply with the cryogenic standards required to maintain embryo viability. They are also responsible for ensuring the safety and integrity of the embryos during storage and complying with applicable standards and guidelines in embryo storage practices. Permenkes No. 43 Year 2015 regulates the service standards of assisted reproductive technology, including facility requirements, equipment maintenance, and embryo freezing records.

The clinic also has an obligation to carry out instructions given by the couple regarding the use or destruction of embryos in accordance with the terms of the agreement and maintain the confidentiality of information relating to embryo storage. In return for the storage services provided, the clinic is entitled to receive payment of storage fees in accordance with the rates determined and agreed upon in the agreement. The clinic also has the right to determine the storage fee rate for their services. In addition, the clinic has an obligation to provide complete and clear information to the

¹⁷ <https://bocahindonesia.com/simpan-beku-di-bocah-indonesia/>

¹⁸ Hardiatna, Y. (n.d.). 9. *Informed Consent Simpan Beku Embrio*. Scribd. Diakses dari (<https://id.scribd.com/document/706569277/9-Informed-Consent-Simpan-Beku-Embrio>)

¹⁹ Lavenia T. Mailensun, et.all., "Kedudukan Hukum Bayi Tabung dalam Hukum Positif Indonesia", *Lex Crimen*, Vol. X, No. 8, Juli 2021.

couple regarding the storage procedure, cost, timeframe, and options available to them including informing them about the procedure for extending the storage period and the consequences of not doing so.²⁰ Clinics have a professional and legal responsibility to ensure the safe storage and handling of frozen embryos and respect the couple's autonomy in making decisions about their use

IMPORTANT ASPECTS THAT NEED TO BE CONSERVED IN EMBRYO FREEZE SAVAGE AGREEMENTS BASED ON CIVIL LAW

Commonly Included Clauses

Given the absence of specific regulations regarding embryo freeze storage agreements in Indonesian civil law, it is important for parties to clearly regulate various aspects of their agreement. Some common clauses included in embryo freeze storage agreements include:

1. **Storage Period and Extension:** This clause specifies the initial period of embryo storage. It is also important to set out the procedures and requirements for extension of the storage period if the couple wishes to continue storage after the initial term expires. The agreement also needs to include the consequences of non-extension, such as the possibility of embryo destruction upon notification to the couple.²¹
2. **Storage Fees and Consequences of Late Payment:** This clause details the storage fees per time period (e.g., monthly or annually), the payment schedule, and the agreed payment method. It should also address sanctions or consequences in the event of late or failed payment of storage fees, such as potential termination of storage services or fines.²²
3. **Embryo Thawing and Use Procedures:** This clause describes the requirements and procedures that a couple must follow if they wish to retrieve and thaw embryos for use in future pregnancy attempts. This includes the required documentation, notification to the clinic, and the clinic's responsibilities regarding the embryo thawing process.²³
4. **Embryo Destruction Procedure:** This clause sets out the conditions under which embryos may be destroyed, such as at the written request of the couple, the expiry of the storage period without extension, or if the embryos are declared unfit for use by authorized medical personnel. The agreement should also describe the procedure for carrying out the destruction and the documentation that will be provided to the couple as proof of destruction.²⁴
5. **Liability and Indemnity Clause:** This clause aims to limit the liability of the clinic's liability for damage or loss of embryos caused by events beyond their control (force majeure), such as natural disasters or unforeseen system disruptions. However, this clause should also address

²⁰ Minister of Health of the Republic of Indonesia. (2015). Regulation of the Minister of Health Number 43 of 2015 concerning the Provision of Assisted Reproductive Services or Pregnancy Outside of Natural Means

²¹ Regulation of the Minister of Health Number 43 of 2015, Article 14 verse (3) dan (4)

²² Civil Code (KUHPperdata), Article 1233

²³ Minister of Health Regulation Number 2 of 2025, POGI Ethics and Professionalism Guidelines, Article 25

²⁴ Government Regulation Number 61 of 2014 concerning Reproductive Health, Article 43 Paragraph (3)

the clinic's liability if the damage or loss of embryos is caused by negligence or errors in the storage or handling of embryos. The potential for an indemnity clause can also be considered to protect the interests of both parties.²⁵

6. **Dispute Resolution Clause:** Given the potential for future disputes, this clause is very important to determine the dispute resolution mechanism agreed upon by the parties. This mechanism can be deliberation to reach consensus, mediation, arbitration, or through litigation in court.¹ This clause can also include the choice of law that will apply if the dispute cannot be resolved through other means.

The inclusion of clear and comprehensive clauses in embryo frozen storage agreements is essential to define the rights, obligations and responsibilities of both parties and to mitigate potential future disputes. A well-drafted agreement will anticipate various scenarios and outline the procedures and consequences for each situation.

Civil Law Implications Related to Cancellation or Termination of Embryo Freeze Storage Agreement Causes of Cancellation or Termination of Agreement

An embryo freeze storage agreement can be canceled or terminated for several reasons. First, based on the agreement of the parties, where the married couple and the clinic agree to terminate the agreement. Second, the agreement can terminate by itself after the agreed storage period has expired and is not extended by the couple. Third, the cancellation of the agreement can occur if one of the parties violates the terms of the agreement, for example, the married couple does not pay the storage fee according to the schedule, or the clinic does not store the embryos correctly according to the agreed standards. Fourth, the agreement can also end due to force majeure, which is an event beyond the control of the parties that makes embryo storage impossible, such as a natural disaster that damages the storage facility.²⁶

In addition, situations such as divorce or the death of one party of the couple can also raise questions regarding the status and continuation of the embryo frozen storage agreement. Although Indonesian civil law does not clearly regulate this, Government Regulation No. 28 of 2024 prohibits the implantation of embryos if the father of the embryo dies or gets divorced. This indicates that such events may be grounds for termination of the storage agreement. Events such as the divorce or death of one of the parents who deposited the embryo raise complex legal and ethical questions regarding the fate of the frozen embryo, thus requiring clear provisions in the agreement and possibly also in laws and regulations.

²⁵ Civil Code (KUHPerduta), Article 1365

²⁶ Christina Bagenda, et. all, "Analisis Yuridis Terhadap Pembatalan Perjanjian Berdasarkan Keadaan Memaksa (Force Majeure)", *Jurnal Kolaboratif Sains*, Vol. 7, No. 12, Desember 2024.

Legal Consequences of Cancellation or Termination of the Agreement

The legal consequences of the cancellation or termination of the embryo cryopreservation agreement may vary depending on the cause and the provisions of the agreement. Generally, if the agreement ends because the storage period has expired or by the agreement of the parties, the clinic is obligated to return the embryo to the married couple (if it is to be used elsewhere) or destroy it in accordance with the procedure agreed upon in the agreement. The married couple is obligated to pay any storage fees that may not have been paid up to the date of the termination of the agreement. If the cancellation of the agreement is caused by a breach by one of the parties, the aggrieved party has the potential to file a lawsuit for damages in accordance with the principles of civil law.

Relevance of Comparative Law for Legal Development in Indonesia

A legal comparison with other countries, such as the United States, can help identify best practices and potential solutions to legal problems related to embryo cryopreservation agreements in Indonesia. By reviewing how other countries regulate issues such as the legal status of embryos, standard clauses in storage agreements, and dispute resolution mechanisms, Indonesia can consider developing more specific and comprehensive regulations in this field. However, in adopting models from other countries, it is important to consider the prevailing social, ethical, and cultural implications in Indonesia.

CLOSING

The embryo freezing agreement in Indonesia currently falls into the category of innominate agreements, whose existence is based on the principle of freedom of contract in the Civil Code. However, there is no specific regulation governing this agreement, so its legal aspects heavily rely on the general principles of contract law and property law in the Civil Code, as well as health-related regulations such as Minister of Health Regulation Number 43 of 2015 concerning the Implementation of Assisted Reproductive Services or Pregnancy Outside Natural Methods. The legal status of frozen embryos is still a subject of debate. With diverse views on whether it should be considered an object or have a special status as a potential life. The rights and obligations of the parties, namely the husband and wife and the clinic, need to be clearly regulated in the agreement, including aspects of storage duration, costs, embryo release and destruction procedures, as well as responsibilities and dispute resolution. The limitations of specific jurisprudence in Indonesia indicate that this area still requires further attention. Comparison with practices in other countries reveals various approaches to regulating this issue, which can provide insights for the development of law in Indonesia.

Some suggestions include the need for more specific regulations, such as laws. Policymakers need to consider drafting more specific regulations regarding embryo freezing agreements in Indonesian civil law. This regulation can provide legal certainty regarding the definition of the agreement, the rights and obligations of the parties, the standard clauses that need to be included,

and the dispute resolution procedures. The Importance of Comprehensive Informed Consent: Clinics and service providers need to ensure that the informed consent process given to married couples covers all important aspects related to embryo storage, including duration, costs, usage and disposal options, as well as legal implications in the event of changes in marital status or death. Consideration of the Legal Status of Embryos: Further discussion at the legal and ethical levels is needed regarding the legal status of frozen embryos. The results of this discussion can serve as a basis for the formation of regulations that are more in line with the values and legal norms in Indonesia. Dispute Resolution Regulation: Future regulations need to consider effective and fair dispute resolution mechanisms, especially in sensitive cases such as embryo ownership disputes post-divorce or death. With clearer and more comprehensive regulations, it is hoped that legal certainty and better protection can be created for all parties involved in embryo freezing agreements in Indonesia.

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