

**A LEGAL STUDY ON GAMETE DONATION: THE NECESSITY FOR A  
FORMAL REGULATION ON GAMETE DONATION IN MALAYSIA**

By

Nur Izatul Fatiha Bt Mohd Ali Hanafiah (2009290116)

Ommunajah Binti Ramli (2009860874)

Norulashikin Binti Mohammad Sopian (2009627274)

Submitted in Partial Fulfillment of the Requirement for the Bachelor in Legal Studies  
(Hons)

Universiti Teknologi Mara  
Faculty of Law

December 2011

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

## **Acknowledgement**

This project paper has been carried out with a full commitments and contribution by a team which comprises of Nur Izatul Fatiha Bt Mohd Ali Hanafiah, Ommunajah Binti Ramli and Norulashikin Binti Mohammad Sopian.

First and foremost, we would like to express our gratitude to Allah the Almighty for giving us strength and courage to complete this project paper in the given time. We would also like to express our appreciation to our honorable supervisor, Puan Habibah Binti Omar for her guidance and encouragement in the completion of this project paper. It was privilege to have her as our supervisor. Not to be forgotten, parents and family who had blessed us and give support all the way until this project paper has come to a success.

Lastly, a warm thanks to everyone who directly or indirectly contribute to us in the completion of our project paper. We appreciate so much all the assistance given to us until the completion of our project paper.

Thank you.

## **Abstract**

Infertility is one of the medical problems that happened among spouses which cause the incapability to conceive pregnancy after a year of unprotected sexual intercourse. Due to the advancement in medical field, the problem of infertility also has grabbed the attention of the medical expert to find the solution. Nevertheless, the current development in reproduction medicine had successfully found the ways in assisting the infertile couple to conceive without depending on sexual acts only. Gamete donation, one of the method in assisting infertile couple is a process where the gametes (sperm, ovum or embryo) from the third party or donor being used to conceive pregnancy. In this research paper, the study is within the scope of the practice of gamete donation among the Malaysian. The discussion in this research is about the legal position of the practice of gamete donation and the challenges on the use of gamete donation in Malaysia.

As for legal position, the examination on rules, regulations and policies are being observed in order to obtain a clear picture on the position of the practice of gamete donation in Malaysia. Amongst the rules, regulations and policies are Human Tissues Act 1974, Medical Act 1971, The National Organ, Tissue and Cell Transplantation Policy, The National Population and Family Development Board (NPFDB) of the Prime Minister's Department, Guidelines by Malaysian Medical Council (MMC), guidelines of private fertility centers and etc. By examining all these legislations, it can be concluded that in Malaysia there is no law which particularly govern the practice of gamete donation.

Apart from that, the discussion in this project paper is being extended on the challenges on the use of gamete donation in Malaysia. Among the major issues being discussed are human rights and religions perspectives which have influential basis for the practice of gamete donation among Malaysia citizens. These two perspectives also show that there is an existence of inconsistency among them. For example, the Muslim teaching disallow the practice of donated gamete in order to preserve the importance of lineage but the restraint of it may lead to the infringement of basic human right, which is the right to have family ( child ) and also autonomy of one's body. In addition, there are many other issues being touched such as the unethical procedure and practice by private fertility center, the exploitation of gamete, donor and infertile couple which may include the issues of commodification, commercialization and etc. These issues being elaborated in order to show that there are many defects of practice of gamete donation. These issues are appear due to the fact that the practice of gamete donation in Malaysia is largely unregulated. Therefore, this research is aimed to analyze the necessity of law enforcement regarding gamete donation in Malaysia.

## **TABLE OF CONTENTS**

Acknowledgement	ii
Abstract	iii
Contents	iv
List of Statutes and Legislation	vi
List of Cases	vii

### **CHAPTER ONE: INTRODUCTION**

1.0	Title	1
1.1	Introduction	1
1.2	Problem Statement	4
1.3	Objective	5
1.4	Research Questions	5
1.5	Significance of the Research	5
1.6	Literature Review	7
1.7	Research Methodology	13
1.8	Scope and Limitations	13
1.9	Conclusion	15

### **CHAPTER TWO: LEGAL POSITION OF GAMETE DONATION IN MALAYSIA**

2.0	Introduction	16
2.1	Law in Malaysia	17
2.2	Policy and the Guidelines on Gamete Donation in Malaysia	21
	2.2.1 Policies	21
	2.2.2 Guidelines by Malaysian Medical Council (MMC) and Private Fertility Centre	23
2.3	Conclusion	27

### **CHAPTER THREE: THE HUMAN RIGHTS DISCOURSE ON GAMETE DONATION**

3.0	Introduction	28
3.1	Rights of the Infertile Couple	29
	3.1.1 Rights to Form Family	29
	3.1.2 Homosexual Couple	30
	3.1.3 Enhancement the Rights of the Infertile Couple	31
3.2	Rights of the Gamete Donors	32

# CHAPTER 1: INTRODUCTION

## 1.0 TITLE

A legal study on gamete donation: The necessity for a formal regulation on gamete donation in Malaysia.

## 1.1 INTRODUCTION

The desire to have one's own offspring is a very strong human instinct. When couples get married, one of the desires in their marriage would be having a child as it may complete the family life. However some couples fail to become parents due to infertility. Infertility is the failure of a couple to conceive a pregnancy after trying to do so for at least one full year.<sup>1</sup> Infertility could be on the part of the husband who produces no sperms or produces few sperms. Infertility also occurs if he produces sluggish or immotile sperms or abnormal sperms. He may have an insufficient volume of seminal fluid, an excessive amount of fluid which over-dilutes the sperms, impotent or may not ejaculate or ejaculates prematurely.<sup>2</sup> On the other hand, female infertility may occur due to an ovulation in which the ovary does not produce an egg. Usually the cause is when the ovaries do not get adequate hormonal stimulation from the pituitary gland. Other causes are the absence of ovaries, hormonal disorders and tumors. The eggs may ripen but fail to escape because of scarring from endometriosis or infection.<sup>3</sup>

---

<sup>1</sup> <http://medical-dictionary.thefreedictionary.com/Infertility>, accessed on 19 February 2011.

<sup>2</sup> <http://www.healthscout.com/ency/68/690/main.html#cont>, accessed on 19 February 2011.

<sup>3</sup> <http://www.healthscout.com/ency/68/437/main.html#cont>, accessed on 19 February 2011.