

SURROGATION IN PERSPECTIVE LAW OF HUMANITARIAN PARADIGM

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Abstract

Surrogation arises as a result of the development of reproductive technology science with techniques embryo transfer and in vitro fertilization (IVF) techniques. The existence of a surrogate mother both for altruistic and transactional motives have implications for the problem law. Some countries provide different regulations on surrogation. This writing is the Reform-oriented research, which confirms that surrogation does not meet the rules humanitarian values, so the need for reconstruction of health laws against the rules concerning the institutionalization of human organs, reproduction outside of natural pregnancy, the provision of sufficient spare embryos and criminalization policies against advocates, perpetrators and surrogate mother in order to achieve justice and legal certainty.

Keywords: surrogation, medicolegal, humanitarian paradigmatic law.

INTRODUCTION

Surrogation is an attempt to have children by hiring a female womb (surrogate mother). The trigger factors include for reasons of infertility,¹ that the wife of couples who want to have children suffer from diseases that will endanger their lives if she is pregnant or her uterus has been removed because there are abnormalities that require

uterus removed. A woman suffering from cardiovascular disease (blood pressure height / heart) for example usually by doctors not allowed to get pregnant. As well as women whose uterus are removed because of a tumor or other abnormality, despite the womb the egg is still producing eggs normally it is no longer possible to get pregnant. Technology in vitro fertilization using a woman's egg cell is reunited with sperm her husband was then entrusted to the womb of another healthy woman.

There is a reason for not wanting to get pregnant related to body aesthetic, that there is women who want to have children but don't want to conceive, just because the pregnancy will reduce the beauty of the body, On the

¹ there are approximately 10% of married couples who are not blessed with offspring (infertile), while small the possibility for them to adopt children. The cause of infertility is approximately 40% due to abnormalities in men, 15% due to cervical abnormalities, 10% due to peritoneal abnormalities (continuous tip sheets tissue, or membrane that lines the pelvic cavity, and covers the organs found therein), 20% due to ovarian abnormalities, and 5% due to other things, and this incidence is 100%, because in about 35% in husband and wife there are multiple disorders. Idries AM, *Medicolegal Aspects of Artificial Insemination / IVF*, Jakarta: Bina Rupa Aksara, p.15

other hand, economic factors (material needs) of the mother surrogate mother can cause a woman to do rental services womb.

In surrogation, surrogate mothers bind themselves to other parties (husband and wife) through a surrogate contract to become pregnant and after giving birth submit the child / baby to another party as previously been promised.² This phenomenon is common among celebrities, for example: Sharuk Khan, Michael Jacson, Cristiano Renaldo, Zarima Mirafsur, who have children from the womb of the mother's womb a substitute. The rules regarding surrogation in several countries are as follows: A America The union, through its Supreme Court decision, stipulates that every person has a right constitutional to determine how to have children. No one state may prohibit or limit the use of surrogate mothers or pregnancy with gametes or embryo donor .

Ukraine is a country that is friendly to questioning. As a result of the economic crisis. Prolonged assumption surrogation is a way to overcome problems with accept the consequences of surrogation users. A surrogate mother can receive compensation

of up to \$ 13,000 plus a monthly allowance of \$ 400.³

In Ukraine itself a married couple who do want to have children through how to rent a surrogate mother is considered a parent since conception in the surrogate mother content and is specifically mentioned as a person biological parents in the child's birth certificate without mentioning surrogate mother (mother substitute). Surrogate mother is not legally entitled to care for children the proceeds of the surrogate mother's uterus. Mexico, Nepal and Thailand in the years 2016, prohibits the practice of surrogation for foreigners. The Ukrainian legislators are more progressive than many other European countries.

In the plains of Asia and Eastern Europe allow the practice of surrogacy.⁴ Malaysia placing traditional surrogacy and gestational issues as the main policy issues. There is no Malaysian law expressly prohibits surrogation.⁵ Local culture considers ethically

³ Kydalov igor, "Surrogacy in Ukraine : posyive and negative aspects", <http://kydalov-partners.com/surrogacy-in-ukraine-positive-and-negative-aspects/+&cd=1&hl=id&ct=clnk&gl=id>, accessed October 15th 2019.

⁴ JSS Website Development, "Sensible Surroacy/Stabie and Secure Options Are Avabile Within Erope". <https://www.sensiblesurrogacy.com/surrogacy-in-ukraine/>, diakses pada tanggal 13 Februari 2019. Posner, R. 1989. *The ethics and economics of enforcing contracts of surrogate mother*. Journal of Contemporary Health Law and Policy, hlm 23.

⁵ Taylor & Francis Online, "Surrogacy in Malaysia",

² Kartono Mohamad. 1992. *Tehnologi Kesehatan dan Tantangan Bioetika*, Jakarta: PT Raja Gramedia Pustaka Utama, p. 77.

bring someone else's child as a family member.

Section 27 of the Fertilization and Human Embryology Act of 1990 British Law, states: the practice of feminists believes that a woman must be allowed to do whatever she wants with her body.⁶ After all, if a pre-sold person sells his sperm, why a woman must stop using her reproductive organs for a certain payment. Freeman in his article 'Is surrogacy exploitative?':⁷ Sufficiently offering women money to give birth to children for others creates the possibility of exploitation. The Warock Committee calls for a change of direction (surrogate mother) which is made for financial gain and treats the uterus as an incubator for some other people.⁸

PROBLEM STATEMENT

This paper discusses more about how surrogation is seen from a perspective of human values in law. The author uses the method of legislation approach to health laws and government regulations on reproduction, conceptual approach to the existence of law

<https://www.tandfonline.com/doi/full/10.1080/03050718.2016.1256785?scroll=top&needAccess=true>, accessed October 15th 2019.

⁶ Posner, R. 1989. *The Ethics And Economics Of Enforcing Contracts Of Surrogate Mother*, Journal of Contemporary Health Law and Policy, p. 23.

⁷ Mahoney, J. 1988, *An Essay On Surrogacy And Feminist Thought*, Journal of Law, Medicine & Healthcare, p. 81.

⁸ Freeman, M. 1989. *Is surrogacy exploitative?* in Shiela Mc Lean's Legal issues in human reproduction. Gower Publishing Co. Ltd. Aldershot. P. 166.

that aims to achieve humanitarian values and protect human rights, and an eclectic approach that synthesizes the law into a building for protecting human dignity.

DISCUSSION

Surrogation In The Perspective Of Indonesian Medicolegal

Health Act Number 36 of 2009 regarding Health here in after referred to as the Health Act) regulates the development of health based on humanity, and is aimed at promoting social health standards so that people are productive socially and economically (articles 2 and 3). This law also regulates reproductive health, reproductive health, which includes: before pregnancy, pregnancy, childbirth, and after childbirth; regulation of pregnancy, contraception, and sexual health; and reproductive health. Furthermore, in Article 127 (1) Pregnancy efforts beyond natural experience can only be carried out by a legitimate husband and wife with the following provisions: sperm and ovum fertilization results from the husband and wife related to the mother in the womb from where the ovum originated; conducted by health professionals who have the expertise and authority to do so; and at certain health services.

The Health Law in article 64 juncto 192, regulates that organs and / or tissues of the body are prohibited from being traded for any

reason. On the promise of a logistics dialogue, transactional relationships place the surrogate mother as the "bought" side of dignity and dignity for the sake of economic interests.

Regulations concerning maternity can be guided by Government Regulation Number 61 of 2014 concerning Reproduction, where in Chapter V Reproductions with assistance or pregnancy outside of nature, article 40 is regulated as follows:

1. Reproduction with Assistance or Pregnancy Outside the Natural Way can only be done on a husband and wife who are bound by a legal marriage and have infertility or infertility to obtain a child. This means that the final release must take place within the legal marriage framework.
2. Reproduction by Assistance or Pregnancy Outside the Natural Way is intended to be carried out by using sperm and ovum fertilization results from the relevant husband and planted in the uterus from where the ovum originated. These provisions take into account the religious norms. Thus, the interpretation of this, that the question is essentially the use of the womb of other women outside the law of marriage, is a violation of the law.

In Article 41 Government Regulation *a quo*, husband and wife who want to use Reproductive Services with Assistance or Pregnancy Outside the Natural Way must

meet the requirements including: have done the management of infertility appropriately; there are medical indications; understand the general procedure procedures; able / able to approve medical measures (informed consent); able to finance the procedures undertaken; able to pay for childbirth and raise the baby; and mental discs.

Furthermore, in Articles 42 and 43 Government Regulation *a quo*, the matters are regulated that: Reproductive Services with Assistance or Pregnancy Outside the Natural Way should be prior to counseling and approval of medical action (informed consent), including management of excess embryo. The advantages of fertilization outside the human body (in vitro fertilization) that are not buried in the womb must be kept in place until the father is banned (for example): prohibited from the sentence (for example); or other women. If blessing is not used, this PP explanation states that the spare embryo can be carried out by burying, cremation or other actions according to the desires of the couple in the possession of embryos.

These conditions were not explicitly committed to surrogate mother, but the provisions were not permitted to be embryodically injected into the uterus of other women, similarly to the action of

unconventional surrogacy that was identical with violation of the law.

Human Resource Perspective Paradigm Of Humanity.

Humanitarian law is a humanitarian law based on civilized humanity, which is realized by giving protection to dignity and dignity in a holistic manner. The life expectancy of an adult starts from the life force, which is at the time of fertilization.

Human rights law and humanity view that human life is in a just civilization. Civil law contains elements of dominance and dominance, the strong and the vulnerable. The existence of the law appears in the protection function of vulnerable people. The respondents in this surrogation are surrogate mother and fetus conceived. The positive law in Indonesia which provides the sex to mothers whose wombs are leased.

Practical logic says that women who are within economic limitations dare to sell their wombs. Even in the case of the agreement, the position of the surrogate mother is not proportional or unbalanced. In the framework of reform-oriented research, the research of rights cannot be separated from legal views regarding the development of science and technology. The process of forming and composing positive laws, but must be based

on or responding to judgments that cannot be shaken by dynamic changes in global value data.⁹ Human action often is not indexed, is law positioned as a norm system that reflects values. The validity of a law lies in how law can bring justice and benefits to the cost of human dignity.

Regulations in the Health Law only regulate the organs, without explanation of what is being forced into the uterus (womb). Surrogation means trading organs. The meaning of this is nullified in the subject of law which is a woman whose womb is used. The women who are pregnant are bought by their organs, while the buyers are seen as husbands of wives who want children, are not subject to punishment.

Indonesian Government Regulation Number 61 of 2014 concerning Reproduction, emphasizes that:

Reproduction by Assistance or Pregnancy Outside the Natural Way is intended to be derived from the combination of sperm and ova originating from the husband in question and implanted in the womb from where the ova originated. Women who have their wombs and are viewed as criminals. This is in addition to humanity, that women who are

⁹ Han Jonas dalam Franz Magnis-Suseno, 2006, *Etika Abad Kedua Puluh*, Yogyakarta: Kanisius, p.185-186.

hired have experienced cyclotension to develop health and death as a pregnancy.¹⁰

The informed consent referred to in Article 41-43 Government Regulation *a quo*, shows a cross-border action against criminal women against women, and the spare embryo where in the explanatory section mentioned the possibility of eradicating the embryo.

The utilitarianism provides the idea that spare embryos are better utilized for research. But the view is still unreal with a weak source of humanitarian paradigm that surrounds humanity. Research with an embryo presupposition may only provide the benefit, but must be at the expense of the status and dignity of the life of a person as a human.

CLOSING

Surrogations in the perspective of human rights paradigm perspective is a phenomenon of law that injures human values. In the framework of legal reform, there needs to be some fact which is urgent to be addressed, namely:

1. at the level of law making (law making function): reconstruction of legislation in the field of health by giving a separate chapter that defines definitions of the organ, provides syntax to the advocate, the user, the doctor who handles the alert, implements the regulation that embryo is

in the invitro fertilization only made as many as necessary.

2. at the law enforcement level: surrogation is not a private matter, but a public problem because it is humane, applies proportional and non-discriminatory treatment to all parties involved in the surrogation.

There is a need for socialization about humanity in every behavior towards the human body. Benefits are not measured by programs that are secular in nature, but at the expense of human dignity. The human body cannot be instrumentalised and criminalized.

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