

COMPARATIVE LEGAL ANALYSIS OF SURROGACY BETWEEN INDONESIA AND INDIA

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ABSTRACT

As a form of assisted reproduction methods, surrogacy remains controversial today. The practice of using surrogates has been around for very long time and serves a wide variety of functions in countries all over the world. The purpose of this research is to ascertain whether or not surrogacy is permissible under the laws that have been enacted and are in effect in Indonesia to govern the processes involved in surrogacy. This research also intends to determine whether or not surrogacy is allowed in India and analyze the legislative framework of that country in comparison to that of Indonesia. The type of research is normative legal research which relies on secondary data, in the form of legal material especially primary and secondary legal materials. This normative legal research employs both statutory and comparative approaches. Comparison is made between Indonesia and India. It is found that India has legalized the practice of surrogacy since long time ago. In addition, surrogacy in India does not only serve the reproductive purpose but also commercial purpose. On the other side, although the practices of surrogacy are also found in Indonesia, however, it remains illegal so far in this country.

Keywords: *unnatural reproductive procedure; surrogacy; comparative law.*

INTRODUCTION

Currently, improvements in medical technology in the area of human reproduction are expanding at a swift pace. An artificial reproductive technology has been invented to address the issue of infertility through to so called external uterine fertilization or in vitro fertilization (IVF). This process is made by manipulating oocytes before they are transferred as embryos.¹ With the advent of in vitro fertilization (IVF) in 1970, couples who unable to conceive had a greater chance of having children.² This endeavor is undertaken as a last option by infertile couples since it may bring anguish to the intended partners and in other ways as well.³

After the development of IVF, medical professionals identified additional issues highlighted by infertile couples. The issue is what to do if the wife's womb is not working correctly due to circumstances that do not permit pregnancy. It is similar to the instance of uterine cancer that required the removal of his wife's womb. In order to solve the problem, medical specialists must make a breakthrough or innovation in artificial reproductive technology. In relation to this, the concept and technology of surrogacy was introduced. Infertile wife may have a child with the help of another woman called surrogate mother.⁴

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¹ Ni Nyoman Putri Purnama Santhi, *The Comparative Law Perspective of Surrogation: Indonesia and Several Countries that Legalized Surrogation*, *Kertha Patrika*, Vol. 41, No. 2, p. 82. Available at: <https://ojs.unud.ac.id/index.php/kerthapatrika/article/view/50935>.

² Mega Dwi Ambarwati & Ghina Azmita Kamila, *The Evaluation of Surrogacy System in Indonesia as Comparison to India's Legislation*, *Lentera Hukum* Vol. 6, No. 2, July 2019.

³ Irianto, K, *Panduan Lengkap Biologi Reproduksi Manusia*, Bandung: Alfabeta, 2014, p. 315.

⁴ Ni Nyoman Putri Permana Santhi, *Op. Cit.*, at 83.

According to Desriza Ratman, surrogacy is an extension of IVF known as a womb lease agreement, where a woman agrees to pregnant and bear a child for another party (intended parent).⁵ Surrogacy is derived from the Latin *surrogatus* (means substitute). Contrary to popular belief, surrogacy allows infertile couples to exercise their constitutional right to parenthood. It's also used when a woman decides to get pregnant and have a child for someone else. Infertile couples can now exercise their constitutional right to parent.

There are some countries which allow the surrogacy agreement between the genetic parents and the surrogate mother. The agreement will generally include the surrogate mother's contractual obligation, such as her willingness to accept artificial insemination; use the name the genetic parents have chosen for the baby; hand the baby over to the genetic parents as soon as possible after birth; fully assist in settlement of the family legal procedure associated with the desired legal status and name change; keep the baby safe and healthy throughout pregnancy, and accept the baby. Other common obligations include using the name the genetic parents have chosen for the baby. In some circumstances, the surrogate mother will be expected to deliver the newborn child to the biological parents as soon as possible following the birth of the child. In a similar vein, the genetic parents would be required to pay for all expenditures spent during the pregnancy, including delivery fees, in addition to giving monetary compensation to the surrogate mother. This would be in addition to paying for the surrogate mother's time and effort.

Some surrogacy characteristics were also recognized in European texts. In the case of the royal family, the monarch had sexual intercourse with many surrogates until a son was born. The surrogate mother then served as a nanny for all the royal children, and the child saw the king and queen as his biological parents. Therefore, the child's legitimacy was never questioned.

Noel Keane established the first infertility center. The story of Louise J. Brown, the first child born after in vitro fertilization, garnered news for gestational surrogacy. When the first standard compensated surrogacy occurred in the 1980s, a 37-year-old mother got \$10,000 for giving birth to a child. In 1985, the first gestational surrogacy was performed. In a well-known example, a 58-year-old grandmother gave birth to her own twin grandchildren. Similarly, there are many surrogacy success stories which provide continued support and ray of hope for childless couples.

Generally, there are various intentions of surrogacy, amongst them are: i) a woman with no chance of getting pregnant because of a disease or disability that prevents her from pregnancy and child birth, ii) a woman who has had a uterus removal surgery, iii) a woman who wanted to have children without having to go through pregnancy, child birth, and breastfeeding, and also wanted to keep the shape of their body, iv) a woman who wanted to have children but already experienced menopause, and v) a woman who wanted to look for income by renting their womb to other people.⁶

⁵ Ratman, D, *Surrogate Mother dalam Persepektif Etika dan Hukum: Bolehkah Sewa Rahim di Indonesia?* Jakarta: Gramedia Indonesia, 2012, p. 35.

⁶ Rizka and Rozanah Abd. Rahman, Legality of Surrogacy in Indonesia based on Transcendental Values, *European Journal of Molecular and Medicine*, Vol. 7, No. 10, 2020, at 841. Retrieved from https://ejmcm.com/pdf_4463_296378dd7a5c6369cc5a84c18167c990.html.

Surrogacy is often practiced in several nations, including India, Pakistan, Bangladesh, China, Thailand, and the United States, for a variety of reasons, including challenging economic conditions. In the meanwhile, the primary reason for the selection of surrogate mothers, who are, on average, from communities in wealthy nations, is the concern of having a poor physical appearance after giving birth.⁷ However, in this article, we will only focus on the legality and implementation of surrogacy in Indonesia and India.

The purpose of this article is to investigate the legal ramifications of surrogacy in Indonesia in accordance with the existing and enforced laws governing surrogacy operations. Surrogacy will bring significant changes to the fields of health and research, as well as to how we see the institution of marriage, pregnancy, and children.

METHODS

The type of research is normative legal research which relies on secondary data, in the form of legal material especially primary and secondary legal materials. The legal materials were collected through library study. This normative legal research employs both statutory and comparative approaches. Comparison is made between Indonesia and India. Relevant legislation both in Indonesia and in India have been studied for the purpose of this comparative study.

DISCUSSION

An Overview on Surrogacy in Indonesia

In Indonesia, the concept of Assisted Reproductive Technology (hereafter ART) is still relatively restricted. In accordance with the Indonesian Health Law, the most prevalent ART treatment available to infertile couples is in vitro fertilization [hence referred to as IVF] or *Bayi Tabung*. IVF which refers to a process in which an individual's sperm and egg are placed in the uterus of another woman rather than the patient's own.

Surrogate mothers are one kind of IVF therapy. After the baby is born, the woman is required to hand up custody of the child to the married couple who were the parties to the arrangement.⁸ Nonetheless, surrogacy, also known as *Sewa Rahim*, is beginning to be presented as an alternative infertility therapy for couples with clearly established medical conditions that prevent them from having their own biological children.⁹

Despite the fact that surrogate mother technology offers a solution for childless married couples, it raises a number of legal concerns in Indonesia. Questions of morality and law that have never been considered. The Law Number 36 of 2009 on Health expressly forbids renting the womb of a woman who is not the couple's lawful wife.¹⁰ The protection of women from various forms of

⁷ Muhammad Djumhana, *Hukum dalam Perkembangan Bioteknologi*, Citra Aditya Bakti, Bandung: 1995, p.163.

⁸ FA Al Yadayni. Surrogate Mother Agreement and the Effect on Children's Status Born. *Journal of Law and Legal Reform*. 2020; Vol. 1, No. 2, p. 311-324. <https://doi.org/10.15294/jllr.v1i2.35418>.

⁹ Aulia, Ulfah. "A Family for All: Legalization of Surrogacy in Indonesia." PhD diss., Universitas Gadjah Mada, 2020.

¹⁰ RJ Wulandari, N Darmadha. Legal Consequences of Surrogate Mother Ditinjau dari Hukum Pidana. Kertha Wicara. *Journal Ilmu Hukum*, 2019; [S.l.], Vol. 9, No. 1, 2019, p. 1-14.

violence has often been cited as the primary basis for state policies that regulate aspects of women's bodies and activities.

It is very clear in the Indonesian law that there must be a valid marriage present in order for a human being to be brought into the world. If pregnancy and delivery of a child take place outside of the context of a legally binding marriage, it will have implications for numerous areas of the law, most notable inheritance regarding the rights and obligations. The behavior in question is not just a breach of trust but also a criminal offence. Regardless of whether or not an unplanned pregnancy had occurred, the following circumstances are subject to the legislation governing health care: First, it is possible for a husband and wife to perform an unnatural pregnancy as a last-ditch effort to have children. Second, an unnatural pregnancy can only be performed by a legitimately married couple under the following conditions, which are: (1) the conception of ovum and sperm from the legitimate husband and wife is implanted in the uterus of the wife where the ovum originates, and (2) the procedure must be carried out by medical professionals who have experience and authority in the field.¹¹

Currently, there is no specific law governing human surrogacy. The practice of "renting out" wombs is intricately connected to the legalities around contracts or agreement. The criteria of an agreement need to be satisfied by both parties before it can be determined whether or not the agreement satisfies legal requirements. Article 1320 lays forth the requirements that must be met before an agreement may be considered lawful as follows:

- a) consent of the individual who are bound thereby;
- b) the capacity of respective parties to conclude an obligation;
- c) a specific subject matter
- d) a legal cause.

The agreement between the surrogate mother and the genetic parents was deemed unlawful under civil law. This is so because one of the requirements for a valid agreement is not satisfied, namely a justifiable purpose as intended in Article 1320 of the Indonesian Civil Code (*Kitab Undang-undang Hukum Perdata*).¹² Therefore, it is difficult for a woman to give up her newborn child to another party in accordance with an agreement.

Legal Barrier for Human Surrogacy in Indonesia

*Although surrogacy is unlawful, however its illegal practices are found in Indonesia. They are conducted in secret manner.*¹³ The indication of illegal practice of surrogacy can be seen in the internet where many Indonesian women registered themselves for being surrogate mothers.¹⁴

¹¹ M Septikasari, M Dwi. *Kesehatan Reproduksi*, Nuha Media, Yogyakarta: 2009.

¹² Adinda Permana Putri, et.all. "Surrogate Mother Validity Against Children's Civil Status: Comparative Study of Surrogate Mother in Indonesia and Ukraine". *Unifikasi* Vol 8 No. 1. 2021, p. 79.

¹³ Dinarjati Eka Puspitasari, The Legal Status of Surrogate Mother in Indonesia, *Batulis Civil Law Review* vol. 3, No. 1, May 2022.

¹⁴ Sonny Dewi Judiasih & Susilowati S Dajaan, Aspek Hukum Surrogate Mother dalam Perspektif Hukum Indonesia, *Jurnal Bina Mulia Hukum*, Vol. 1 No. 2, March 2017, p 143.

Several restrictions governing surrogacy are listed below. First, Section 127 point (1) of the Law Number 36 of 2009 on Health (*Undang-undang Nomor 36 Tahun 2009 tentang Kesehatan*) states that "pregnancy efforts outside the natural manner can only be made by a legitimate married couple under the following provisions: (1) The conception of ovum and sperm from the legitimate husband and wife is implanted in the womb of the wife where the ovum originated; (2) The process is carried out by medical personnel with expertise and authority in the field; and (3) The process took place in a certain healthcare facility."

Second, the Health Minister Regulation Number 73 of 1999 on the Service of Administering Artificial Reproduction Technology (*Permenkes RI No.73/Menkes/PER/II/1999*) stipulates that the service of administering artificial reproduction technology can only be given to a husband and wife in a legitimate marriage and as their last attempt to have children, what more if it is based on medical indication. This law also states that the service of administering artificial reproduction technology can only be given to a husband and wife in a legitimate marriage and as their last attempt (under Section 4). Infractions of these Ministerial Regulations will result in administrative procedures (Section 10), which may range from a stern warning to the revocation of the service license for artificial reproduction technology.

Thirdly, Decree of Directorate General of Medical Service, Health Ministry of Indonesia of 2000 (*SK Dirjen Yan Medik Depkes RI*) issued IVF Service Guidelines in hospitals that contains some relevant recommendations. There are a total of 10 regulations, three of which are as follows. Firstly, the service of artificial technology can only be carried out with egg cells and sperm from the married couple. Secondly, the artificial technology service is part of the infertility service, which means that the service framework is part of the overall management of the infertility service. Thirdly, as a result, it contradicts the morality issue because it is not in accordance with the moral norm and culture of the general population in Indonesia or their environment, and it contradicts the beliefs of a specific religion (Islam) due to the fact that adultery is a fundamental element that prohibits the practice of surrogacy. In conclusion, it is a contradiction.

Article 1337 of the Indonesian Civil Code explains that "a cause is prohibited if it is prohibited by law or if it is contrary to morality and public order." These two articles are connected in that they describe the goals and forms of causes that do not violate the law and public order and are not outlawed.¹⁵ In light of this argument, it is clear that the womb leasing agreement in Indonesia is illegitimate or void. In accordance with Indonesian law, only in vitro fertilization (IVF) techniques are permissible, whereas pregnancy efforts outside the natural way, as well as those stipulated in Section 127 of Law Number 36 of 2009 on Health, in this case, the lease agreement for a surrogate or surrogate mother or the safekeeping of another woman's embryo, are illegal and cannot be performed in Indonesia.

This is bolstered by Article 1339 of the Civil Code which provides that "agreements bind not only the issue expressly specified in it, but also everything else needed by decency, custom, or the

¹⁵Sanjaya A. W.), *Aspek Hukum Sewa Rahim (Surrogate Mother) dalam Perspektif Hukum Perdata dan Hukum Pidana. Rechts Law Review*, Vol. 5 No, 2, 2016, p. 41.

law, according to the nature of the agreement." This article stressed that in assessing the validity of a contract, both parties must adhere not only to what was clearly stated in the contract but also to what is implied by decency, custom, and the law.¹⁶

Article 127(1) of Law Number 36 of 2009 on Health (Law No. 36/2009) the imposition of criminal punishment on people who act as surrogate mothers. According to Article 127(1) of Law Number 36 of 2009 on Health, "only a legal intended parent may engage in artificial insemination under the following conditions. Firstly, the outcomes of sperm and ovum fertilization between the concerned husband and wife are implanted in the uterus of the woman from whom the ovum originated. Secondly, it is conducted by health professionals with the knowledge and authorization to do so. Thirdly, it must be conducted at certain medical institutions. Moreover, according to Section 2 of Health Minister Regulation Number 39 of 2010, "artificial reproductive technology services may only be provided to legally married couples as the last option to have offspring and based on medical grounds." On the basis of this legislation, it is assumed that the practice of surrogate mothers was forbidden in Indonesia.

REGULATION OF SURROGACY IN INDIA

According to the WHO Report, the incidence of infertility worldwide, including in India, is around 10-15%. It is estimated that the Indian surrogacy sector is valued between Rs 1,000 and Rs 5,000 crore rupees, which is much less than the worldwide market (about a fourth of what they would cost in the United States). Instances of surrogacy in India have surged by more than 150 percent in recent years. India is the only nation in the world to have legalized commercial surrogacy (in 2002), with an annual business volume of \$500 million and at least 350 institutions providing surrogacy services. According to studies conducted by the Confederation of Indian Industry, around 10,000 foreign couples visit India annually for this reason. Nearly 30% of this demographic is either single or LGBT. Comparatively, the cost of surrogacy in India is around half that of other countries. This has renewed international interest in surrogacy in India. The material and financial needs of the status-conscious lower middle class are being met via surrogacy.

According to data compiled by the National Artificial Reproductive Technologies Registry of India (NARI), the number of cases increased by about 300 percent, from 50 or so in 2004 to 158 in 2005. The reproductive tourism industry is anticipated to be valued at more than 25,000 crore rupees by 2020. India has attained exceptional heights in the area of surrogacy on a worldwide scale due to the insignificant cost of medical care, which is between 10 and 15 lakh rupees. Based on the facts and figures mentioned above, we may conclude that India has the highest prevalence of commercial surrogacy.

Article 14 of the Constitution states, "the state shall not deny to any person equality before the law and equal protection of laws within the territory of India". Everyone, no matter who they are, where they come from, whether affluent or impoverished, is indistinguishable and will be

¹⁶Rizka, *Op.Cit.* p. 844.

treated uniformly, however only in akin circumstances.¹⁷ Ensuring equality means preventing any form of discrimination, and article 15 and 16 denies any form of discrimination, even based on sex. The article not only ensures impartiality but also guarantees that the individual's right is not violated. Here, equality is also bounded by way of exemptions (special privileges to the President and the Governor) and reservations. Stating precisely, class legislation means a class of people, all of whom stand in the same relation to the privilege granted, is wrongly discriminated against by a law which confers particular privileges upon a group of persons arbitrarily selected from a large number of other individuals who are not afforded the privilege. Article 14 under no circumstances allows for class legislation by serving equals heterogeneously without any justification. Though class legislation does not have a mounting in the law, the principle of reasonable restriction and intelligent differentia should not be disregarded.

The reasonable classification laid down in the case of *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar & Others* has been the instrument for quantifying arbitrariness, if any, in the classification whenever done. The test gave way to two important stances, i.e. classification being based on intelligent differentia should separate those clubbed together from others, and the differentia should be coherent. Henceforth, the classification should be rational by not being based on any singular characteristics being present only in some people grouped and absent in people being left out of the arena. Shedding light on the notable case of *State of West Bengal v. Anwar Ali Sarkar*, it was the one which gave a new dimension to Article 14. Concretely, the case inferred that there must exist a reasonable nexus between the fundamental principle of classification and the purpose of the action that shapes the classification.

Prior to 2005, India had no laws governing the issue of fertility, including surrogacy. Nevertheless, India's continuity is governed by the requirements of the Indian Council of Medical Research or ICMR. The ICMR then developed standards for surrogacy clinics later in 2005. This policy is meant to safeguard the interests of the intended parent. The existence of these restrictions has been criticized on the grounds that they violate the reproductive rights of surrogate mothers.

The ICMR asks the Indian government to enact legislation that safeguards the rights of all parties involved in a surrogacy arrangement, particularly the surrogate mother's rights. Then, since the rise of surrogacy operations in India was so fast, the Assisted Reproductive Technology Regulation Bill of 2010 was enacted to govern the surrogacy businesses in India. The provisions stipulated the following:

1. Single parents and married couples may participate in the surrogacy procedure.
2. The intended parent is responsible for all processing fees incurred throughout pregnancy and up to the delivery of the child.
3. Surrogate mothers are authorized to receive pay, although particular amounts are not specified.
4. The intended parent's name appears on the birth certificate of the child born via surrogacy, so that the intended parent is regarded as a legal parent.

¹⁷India Constitution. Art. 14, cl. 1.

Commercialization of Surrogacy in India

The commercialization of a child is difficult to conceive since a child is a sign of love, not of money, and having a child is not often associated with marketing efforts. In India, however, surrogacy has become a part of the commercial sector. This commercialization of surrogacy is now a topic of political discussion in Indian society. The market for surrogacy is getting more broad and expanding quickly. There are "N" numbers of prospective parents in India who want to hire other women to carry their kids.

Surrogate services are now marketed since the notion of surrogacy has transformed a regular biotic function of a woman's body into a business transaction. Surrogates are recruited, and the running agencies that use them generate enormous profits. The commercialization of surrogacy is nothing more than the creation of a new issue involving the sale of children and the establishment of breeding farms, which may transform women into baby producers.

Numerous analysts refer to the administration of the surrogacy procedure in India as a baby-booming industry. In India, surrogacy is now referred to as the commercial contract for a woman's natural biological function. Surrogate mothers are readily accessible in a nation like India, and the whole cost of the surrogacy procedure is far lower than in other countries, which has contributed to the flourishing surrogacy sector in India. In India, the surrogate motherhood industry is now worth around \$445 billion. In 2002, India was the only nation in the world to legalize commercial surrogacy. During the process of surrogacy, the majority of surrogate moms in India are paid in instalments over the course of nine months. In the last several years, there has been a significant spike in the number of surrogacy cases, with the increase possibly exceeding 150 percent.

Anand in Gujarat, Indore in Madhya Pradesh, Pune and Mumbai in Maharashtra, Delhi, Kolkata, and Thiruvananthapuram are the locations in India where surrogates are readily accessible. Childless couples from all over the globe flocked to India in quest of a surrogate mother since the availability of surrogate mothers in India is greater and the cost is far lower than in other nations. Generally, the arrangements of the surrogacy procedure are made arbitrarily and may be deceptive, particularly considering that the majority of surrogates are from the socioeconomically disadvantaged segment of Indian society. According to the Human Organs Act of 1994, the commercial trading of human organs is prohibited.

The Rights of the Child, the Surrogate, and the Intended Parents in India

The Assisted Reproductive Technologies (ART) Act of 2010 includes further surrogate child rights in its provisions. To begin, according to Section 62(1) of the Act passed in 2010, the surrogate child has the right to learn and be informed about everything once they reach the age of majority. The only exception to this right is the surrogate child's right to know the personal identification of the biological or surrogate mother. According to the provisions of Section 62, only the child's legal guardian is permitted to get the child's personal identifying information in the event of a life-threatening or medical emergency. Second, the Act makes it clear that a child born in another country to a non-Indian parent who has Indian ancestry would not be eligible for Indian citizenship.

The Surrogacy (Regulation) Bill, 2016, on the other hand, places limitations on the use of surrogacy for commercial purposes while preserving its use for ethical and charitable purposes. In addition, it is only open to Indian couples who have been legally married for at least five years and who are sterile. It prohibits and places restrictions on the practice of surrogacy for homosexual couples, unmarried couples, single parents, foreigners, and couples who live together but are not married.

The rights of surrogate children in India are not just severely restricted but also inconsistent. As was mentioned before, laws and studies authored by the Law Commission are devoted entirely to addressing the rights of the surrogate child with regard to citizenship and the legality of the kid. On the one hand, the Regulation of 2010 recognizes foreigners and even divorces as legitimate parents of the child born via surrogacy. On the other hand, the most current surrogacy regulation places further restrictions on it. If the couple who are parties to the surrogacy agreement later divorce or separate for any reason, the surrogate mother is required to give up all rights to the surrogate child upon the child's birth. Since the spouse who is no longer together with the other person is also unable to claim the child, the legitimacy of the child and custody of the child are considered to belong to no one. As a result, this goes against the intention of the Bill that was passed in 2016, which was to safeguard the welfare of children. In addition, from the point of view of the law, it is considered to be a contract, which means that even if the couple who wants the child later breaks up, the contract will still be valid.

Although commercial surrogacy is prohibited in a number of other nations, it may soon be authorized in India. Nonetheless, I have a few suggestions. Section 36 of the ART Bill merely addresses the legality of the child and her genetic parents. It makes no mention of the child's physical, mental, or social rights. The measure must also address the rights of surrogates. Clause 3 of Section 26 specifies that the surrogate must be at least 21 years old, which contradicts Regulation 4.7.1, which indicates that the donor must be at least 18 years old. The Bill does not address the remuneration of a surrogate mother in the contract, nor does it address the medical insurance that protects surrogates against health risks. Section 34 (12) of the ART Bill suggests that the identity of the surrogates should remain confidential, while section 34 (13) of the ART Bill suggests that the identity of the surrogates should remain confidential. The requirement of Section 34 (17) that the surrogate acquires a certificate from the commissioning parents undermines the concept of secrecy.¹⁸

Surrogacy from the Perspective of Medical Ethics

The idea of a surrogate mother came into being in connection with the development of in vitro fertilization (IVF). Surrogacy cannot occur via natural insemination since this method does not involve the surrogate mother and biological father having sexual contact with one another. A process that makes use of recent advancements in biological technology and is carried out outside of the uterus is known as surrogacy. After the insemination process is over, the embryo is transferred into the uterus of the surrogate mother so that it may grow in a manner that is more similar to that of a

¹⁸ ART (Regulation) Bill- 2010/ <http://www.surrogacyindia.com/LegalNotifications.html>.

typical pregnancy. In this particular situation, the surrogate mother's role is limited to that of a facilitator; she is not considered to be the child's biological mother. The baby that is born is the biological child of the parents who hired the uterus, and the surrogate mother's DNA will not be present in the newborn. The parents who rented the uterus are known as the "genetically bonded" parents.

It should be stressed that bioethical values are crucial for the multidisciplinary study of concerns arising from medical advancements. However, these values evolve with time and need fresh responses. Therefore, ethics is not static but dynamic; it evolves through time, fluctuates, and is not fixed.¹⁹ Thus, something that is now problematic and unethical may be justified and accepted in the future. On the other hand, ethics are neither universal nor uniform around the globe. There are several perspectives and beliefs that vary from state to state, and we do not even use the same terminology everywhere. Despite these discrepancies, a consensus exists on several matters. Likewise, this is the situation here.

The objective of this section is to highlight some significant bioethical issues and to facilitate the resolution of these dilemmas, as opposed to promoting certain opinions about the problematic bioethical aspects of surrogate motherhood. First and first, we must approach the surrogate motherhood examination with a serious, rigorous, and interdisciplinary approach, recognizing that it is impossible to establish a completely clear and uncontroversial picture of the whole subject. It is difficult to reach total ethical excellence and moral acceptability in a real-world occurrence, but one should attempt to keep obscurity and controversy to a minimum.²⁰

Dr. Sarojini Nadimpally, a public health researcher and social scientist affiliated with the Delhi-based non-profit SAMA – Research Group for Women and Health, said that the sublime and heavenly urge of motherhood could not be judged by the ability to procreate. "Surrogacy is not sinful; it is not sexual labor. After preserving the rights of surrogates and unborn children, we should consider surrogacy an ethical practice and promote it to everyone, she said.²¹ Prof. S. Shanthakumar, director of the GNLU, said that infertility in India is a societal shame. Through Assisted Reproductive Technology and surrogate treatments, science gives assistance to infertile couples today. He described the evolution of the legislation in India pertaining to ART and surrogacy, he noted.²²

From a technological and economic standpoint, surrogate mothers have the potential to cure several instances of infertility. However, this process is hampered by constraints such as Indonesia's legal system, ethical considerations, and social standards. Regarding bioethics, it is the responsibility

¹⁹Roksandić Vidlička, S., Hrčić, D. and Kirin, Z., 2012. Bioethical and legal challenges of surrogate motherhood in the Republic of Croatia. [online] Core.ac.uk. Available at: <<https://core.ac.uk/download/pdf/14453989.pdf>> [Accessed 29 July 2022].

²⁰Frati P, La Russa R, Santurro A, Fineschi B, Di Paolo M, Scopetti M, Turillazzi E, Fineschi V. Bioethical issues and legal frameworks of surrogacy: A global perspective about the right to health and dignity. *Eur J Obstet Gynecol Reprod Biol.* 2021 Mar; 258:1-8. doi: 10.1016/j.ejogrb.2020.12.020. Epub 2020 Dec 15. PMID: 33387981.

²¹Ahmedabad Express news service, "Surrogacy not an immoral activity, should consider it as an ethical practice,' doctors say' (The Indian Express, 23 March 2022) <<https://indianexpress.com/article/cities/ahmedabad/surrogacy-not-an-immoral-activity-should-consider-it-as-an-ethical-practice-doctors-say-7832606/>> accessed 29 July 2022.

²²Ahmedabad Express news service, "Surrogacy not an immoral activity, should consider it as an ethical practice,' doctors say' (The Indian Express, 23 March 2022) <<https://indianexpress.com/article/cities/ahmedabad/surrogacy-not-an-immoral-activity-should-consider-it-as-an-ethical-practice-doctors-say-7832606/>> accessed 29 July 2022.

of bioethics to bridge the gap between knowledge and humanity, notably in the medical area. If the relationship between technology and medicine has detrimental effects, it cannot be compelled to be applied in accordance with bioethical principles. Moreover, the finding indicated that technological advancement is in conflict with culture. In this instance, people's thoughts and the expert's thoughts diverge significantly. It will create a chasm between society and experts and force society to follow technical advancements. Currently, bioethics and the law serve as "the Guardian" for humanity's side.

From the standpoint of bioethics, all concerns associated with surrogate mothers may be resolved so long as the rights of human beings are respected. It may be shown through tolerating one another's differences and respecting their decisions without causing anybody harm. The most significant consideration, however, is that the ruling should not limit the provisions or legal system. Since, as previously said, one of the law's functions, along with ethics, is to serve as the guardians who will protect the human being as the truthful human being and not as the target of technological advancement.²³

CLOSING

The practice of surrogacy has been legalized in many countries, including India. India has allowed surrogacy long time ago based on some viewpoints. Surrogacy brings about some positive impacts such as reducing prostitution and unregistered marriage, preventing disputes, and fostering scientific advancement. Furthermore, following the commercialization of surrogacy in India, surrogacy has developed into a promising industry. In contradiction, surrogacy remains unlawful in Indonesia although its illegal practices are also found among Indonesian society. It is true that exercising unnatural reproduction method is possible, nevertheless both ethical and legal framework are not favorable for practicing surrogacy. Moreover, the practice of surrogacy is also prohibited according to Islamic values that are adhered by the majority of citizen, therefore surrogacy will have no a good prospect in this Moslem-populated country

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