

THE LEGAL STATUS OF CHILDREN PRODUCED FROM SURROGACY IN THE PERSPECTIVE OF INDONESIAN CIVIL LAW

**Sisminarnohadi, Rafadi Khan Khayru, Adi Herisasono,
Novritsar Hasitongan Pakpahan, Tri Susandhi Juliarto**

Universitas Sunan Giri Surabaya

correspondence: rafadi.khankhayru@gmail.com

Abstract - This study aims to analyze the legal status of children resulting from surrogacy from the perspective of civil law in Indonesia. Using the literature study method and juridical analysis, this study examines various relevant laws and regulations. The results of the study show that there is a legal gap regarding the legal status of children resulting from surrogacy. Existing regulations have not specifically regulated surrogacy, resulting in legal uncertainty regarding the status of the child. This study provides recommendations for the government to clarify regulations related to surrogacy to provide legal certainty and protection for these children.

Keywords: surrogacy, legal status of children, civil law of indonesia, child protection, regulation, legal certainty.

INTRODUCTION

The development of reproductive technology has opened up many new opportunities in the medical world, one of which is the practice of surrogacy. Surrogacy is a practice in which a woman carries and delivers a baby at the request and for the benefit of another person. It allows couples who cannot have children biologically to have offspring with the help of another woman who is willing to carry and give birth to the child. Although medically this practice has given new hope to many couples, from a legal perspective, the practice of surrogacy still leaves various problems, especially regarding the legal status of the resulting child. This practice has become a hotly debated topic in Indonesia, especially in relation to the legal status and rights of children born from the practice.

Surrogacy, according to Amelen (1991), is a form of agreement in which a woman agrees to become pregnant after the union of a male seed cell and a female seed cell is performed outside her womb. The woman will then give birth to a baby according to the agreement that has been made, and the baby will be handed over to the husband and wife who have rented it. In return for her services, the woman will receive a pre-agreed material compensation. Surrogacy is a complex and controversial phenomenon, involving various legal, ethical and social aspects. In some cases, the practice can provide couples who are unable to have children naturally with the opportunity to have biological children. However, on the other hand, it also raises questions and debates regarding women's rights, the rights of children born through renting, and the potential exploitation and commercialization of women's bodies (Sclater & Kaganas, 2003).

The practice of surrogacy has long been debated in Indonesia. Although it has not been comprehensively regulated, the fact is that many married couples choose to rent wombs abroad. They make a surrogacy agreement with a surrogate mother secretly, in order to get a child that is highly coveted (Judiasih et al., 2016).

There are actually many cases of surrogacy in Indonesia, but they are not exposed to the public because they are considered not to cause problems. Problems will arise if the surrogate mother does not want to give up the baby she conceived and gave birth to in accordance with the agreement. The surrogate mother may cancel giving up the child because of the instinctive maternal urge that arises during the pregnancy process, even though the child is not her biological child. In Indonesia, civil law has not specifically regulated surrogacy. This raises various questions regarding the legal status of children resulting from the practice, including the child's civil rights, inheritance rights, as well as the legal relationship between the child and the biological parents and surrogate mother. In addition to problems related to defaults by surrogate mothers, a more important issue is the status of children born to surrogate mothers. The regulatory vacuum creates legal uncertainty and potential violations of children's rights. Therefore, a comprehensive regulation is needed to provide legal certainty and optimal protection for children born from surrogacy practices in Indonesia. The absence of clear regulations leads to legal uncertainty and potential conflicts that can harm children and the parties involved in the practice of surrogacy.

This study aims to identify and analyze the existing regulations related to the practice of surrogacy in Indonesia, examine the legal status of children resulting from the practice of surrogacy in the perspective of civil law in Indonesia, and provide recommendations for the improvement of regulations related to surrogacy in order to provide legal certainty and optimal protection for these children. By conducting an in-depth study of the legal framework governing the practice of surrogacy, this study is expected to contribute to fulfilling the need for legal certainty and protection of the rights of children resulting from surrogacy in Indonesia. The results of the study are expected to be valuable input for efforts to formulate comprehensive regulations related to the practice of surrogacy in Indonesia.

RESEARCH METHODS

This study uses the method of literature study and juridical analysis. Literature study is conducted by collecting and reviewing various sources such as laws, government regulations, books, journals, and articles relevant to the research topic. Juridical analysis was conducted by interpreting and analyzing the applicable legal provisions to identify the legal status of children resulting from uterine rental and propose the necessary recommendations.

Based on the results of legal interpretation and analysis, recommendations are made to provide adequate legal certainty and protection for the children of hired wombs. Recommendations include special legal arrangements, birth registration, determination of legal relationships, protection of children's rights, and strict law enforcement.

Through this juridical-normative research method, it is hoped that a comprehensive analysis can be obtained regarding the legal status of children from uterine leases as well as recommendations needed to overcome existing legal problems.

RESULTS AND DISCUSSIONS

1. Regulations Related to Surrogacy in Indonesia

In Indonesia, there is no law that explicitly regulates surrogacy. Law No. 1/1974 on Marriage states the validity of marriage and legitimate offspring. Article 42 states that a legitimate child is a child born in or as a result of a legal marriage. The status of the child can be debated because the birth may not be directly related to the marital bond between the surrogate mother and the renting couple. According to Article 42 of Law Number 1 Year 1974 on Marriage, a legitimate child is a child born in or as a result of a legal marriage. Therefore, in the case of surrogacy, the child is considered an illegitimate child because it was not born out of a legal marriage. In Indonesian civil law, the issue of renting a womb or surrogacy has not been specifically regulated.

Articles 45 and 47 of the Marriage Law state that parents are obliged to maintain and educate their children until the child becomes independent. However, in the case of surrogacy, the legal relationship between the child and the parents is unclear so the obligation of maintenance and education can become ambiguous. This will become a problem when there is a birth registration of the child. In cases of surrogacy, birth registration can cause problems because there is no clear legal relationship between the child and the parents.

Law No. 23/2002 on Child Protection regulates the rights of children, including the right to know and be cared for by their parents. Article 4 states that every child has the right to know their parents, be raised and cared for by their own parents. However, in the case of surrogacy, the child may experience confusion regarding the identity of his or her parents.

Law Number 36 Year 2009 on Health regulates reproductive health and assisted reproductive technology. Article 127 states that the use of assisted reproductive technology must be in accordance with religious norms, ethics, and applicable laws and regulations. However, there are no specific provisions regarding surrogacy.

As such, there is no specific law on surrogacy. Until now, Indonesia does not have a law that specifically regulates the practice of surrogacy or surrogate motherhood. This has led to legal uncertainty in practice. Although there is no specific law, some related regulations can be found, for example: Law No. 36 of 2009 on Health, which prohibits the buying and selling of babies; Law No. 23 of 2002 on Child Protection, which regulates the rights of children; Law No. 1 of 1974 on Marriage, which regulates the legal status of children. However, these regulations have not specifically regulated the practice of surrogacy and its legal consequences.

In addition, the practice of surrogacy is still viewed as controversial in Indonesia from both a religious and cultural perspective. This is also a challenge in the effort to establish clear regulations. Although the practice of surrogacy occurs in Indonesia, the current legal vacuum creates legal uncertainty that needs to be addressed through the creation of comprehensive regulations.

2. Legal Status of Children Resulting from Surrogacy in the Perspective of Civil Law

a. Right of Inheritance

According to Indonesian civil inheritance law, a legitimate child is a child born in or as a result of a legal marriage. In the practice of surrogacy, the child is biologically the offspring of the couple who rented the womb, but its birth from a surrogate mother creates confusion about its legal status. This can affect the child's inheritance rights (Chamim et al., 2023).

In the perspective of civil law in Indonesia, the inheritance rights of children resulting from the practice of surrogacy have not been clearly regulated. Based on the Marriage Law, a legitimate child is a child born in or as a result of a legal marriage. While children from the practice of renting a uterus do not fall into this category so that their status is considered as illegitimate children (Alvi, 2023).

Regarding inheritance rights, Article 863 of the Civil Code (KUHPerdata) states that only legitimate children are entitled to inherit from their parents. Meanwhile, illegitimate children are only entitled to inherit from their mother.

Thus, a child resulting from surrogacy does not have a clear legal relationship with his or her biological father. Therefore, the child is not entitled to inherit from his biological father, but is only entitled to inherit from his biological mother (surrogate mother).

Given the growing practice of surrogacy, there needs to be a legal reform that specifically regulates the legal status of children resulting from surrogacy, including their inheritance rights. This is important to provide legal certainty and protection for these children. This legal reform effort can be carried out, either through the establishment of a special law or revision of existing regulations, such as the Marriage Law and the Civil Code.

b. Legal Relationship with Biological Parents and Surrogate Mothers

In the context of civil law, the legal relationship between children and parents is very important, especially in relation to custody, maintenance, and child identity. In the practice of renting a uterus, there are two parties who act as parents: the biological parents (the couple who rented the uterus) and the surrogate mother, which has not been clearly regulated in Indonesian law. Biologically, a child resulting from renting a uterus has a relationship with its biological parents (the party using the sperm and ovum). However, in Indonesian civil law, the legal status of the child is unclear.

The absence of clear regulations regarding this legal relationship can lead to uncertainty and conflict. The Marriage Law only recognizes legitimate children born in or as a result of a legal marriage. While children born as a result of surrogacy are not included in this category, so there is no clear legal relationship between the child and its biological parents.

Legally, the surrogate mother who gave birth to the child is considered the biological mother. However, in practice, surrogate mothers do not always have the desire to raise and care for the child. As a result, legal uncertainty arises regarding the surrogate mother's rights and obligations towards the child she gave birth to. Whether the surrogate mother remains responsible for the child or not (Kumala, 2020).

Given the complexity of legal relationships in the practice of surrogacy, clear and comprehensive arrangements are needed to provide legal certainty for all parties, especially children born from surrogacy. This regulation can include the legal status of the child, the rights and obligations of biological parents and surrogate mothers, and all legal consequences. Thus, the rights of the child can be well protected.

c. Children's Right to Know the Identity of Their Parents

One of the fundamental rights of children is the right to know the identity of their parents. In cases of surrogacy, the child may experience confusion as to who is the real parent. This can affect the child's psychological development as well as their right to know their origins.

Every child has the right to know the identity of their parents. This is stated in the Convention on the Rights of the Child which has been ratified by Indonesia through Presidential Decree Number 36 of 1990. However, in the practice of surrogacy, children are not always able to know the identity of their biological parents. This is because there is no clear regulation regarding the recording and disclosure of the identity of biological parents.

In any resolution of legal issues related to children, the main priority is the best interest of the child. This means that all decisions and actions must be oriented towards the protection and fulfillment of children's rights.

In the context of surrogacy, the best interest of the child can be in the form of providing access for children to know the identity of their biological parents, as long as this does not have a negative impact on the child (Sills, 2016).

In order to guarantee children's right to know the identity of their parents in the practice of leasing, clear legal arrangements are needed. These arrangements may include the obligation to record the identity of biological parents in the child's birth certificate, the procedure for disclosing the identity of biological parents to the child by considering the best interests of the child, and legal protection for the child and biological parents regarding identity disclosure. With a comprehensive regulation, the child's right to know the identity of their parents can be guaranteed and protected.

3. Legal Protection for Children from Surrogacy

To provide legal certainty for children resulting from uterine renting, clear and firm regulations are needed regarding the legal status of the child. These regulations must regulate the rights and obligations of all parties involved, including the couple surrogacy, the surrogate mother, and the child (Diani, 2020). Clear regulations will help avoid conflict and provide optimal legal protection for the child.

A child from a leased womb is entitled to the same protection as other children. These rights include the right to be cared for and raised by their parents, the right to identity, the right to know their origins, and the right to legal protection from all forms of discrimination or unfair treatment. The government and relevant institutions need to ensure that these rights are well protected through existing regulations.

Legal institutions and health professionals have an important role to play in ensuring legal protection for hired children. Legal institutions must be prepared to handle cases involving illegitimate children in a fair and transparent manner. Health professionals, including doctors and legal experts, must understand the legal implications of the practice and provide appropriate information and support to couples engaged in this practice.

CONCLUSIONS

In Indonesian civil law, the issue of uterine leasing or surrogacy has not been specifically regulated. Overall, it can be concluded that the legal status of children from uterine leases in Indonesian civil law has not been clearly regulated. This can lead to legal uncertainty and problems related to the rights and obligations between children and parents. More specific regulations are needed to regulate this issue.

Regarding the legal status of children resulting from uterine leasing, there are several potential problems that need to be considered. First, there is uncertainty regarding the legal relationship between the child and the biological parents as well as the parents who have the contract of uterine leasing. In addition, there is uncertainty regarding the rights of the child, such as inheritance rights, alimony rights, and the right to know the identity of their biological parents. Furthermore, there are also potential disputes over ownership and guardianship of the child between the parties involved in the contract. These legal issues need to be addressed through clear and comprehensive regulation of the practice of uterine leasing in Indonesia.

The practice of uterine leasing in Indonesia still faces various legal challenges, especially regarding the legal status of the resulting children. Existing regulations have not specifically regulated uterine leasing, leading to legal uncertainty and potential conflict. Children produced by renting a uterus are entitled to the same protection as other children, including the right to identity, the right to know their origins, and the right to legal protection.

The government needs to clarify regulations related to uterine leasing to provide legal certainty for all parties involved, especially the resulting children. It should also conduct socialization and legal education related to uterine leasing to improve the understanding of the community and the parties involved in this practice.

Legal institutions should be able to handle cases involving leased children in a fair and transparent manner and provide adequate legal assistance to couples and children involved in the practice.

Health professionals should understand the legal implications of renting and provide appropriate information and support to couples involved. They can encourage further research into the legal and social impacts of renting to provide better recommendations to the government and society.

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