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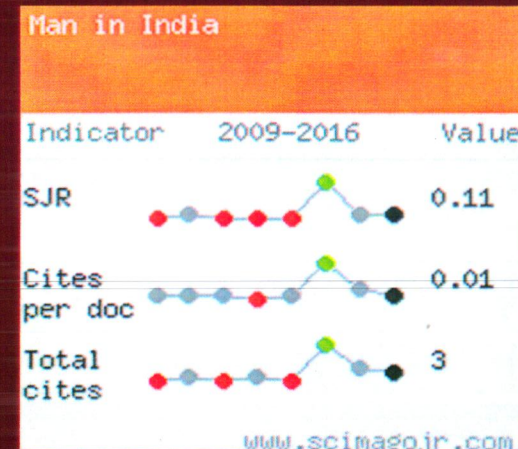
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SURROGATE MOTHER DEVELOPMENT IN PERSPECTIVE OF LAW AND GLOBALIZATION

* Endeh Suhartini, I Gusti Ayu Ketut Rachmi Handayani and Hartiwiningsih

The development of science and technology hereinafter called science and technology cannot be avoided by humans, because science and technology as a means of modernization that continues to grow and cannot be avoided by anyone both nationally and International. The development of science and technology (IPTEK) is currently growing In the field of health and medicine is the Surrogate Mother (Mother Substitute / Rental). The presence of Mother Surrogate in society nationally and internationally raises a very important problem as part of the era of globalization in the field of medicine. Some implementation of surrogate mother agreement has been done for the parties according to the provisions of the applicable regulations, but in fact not all can be accepted by society in religious law, national and international. The Mother Surrogate Agreement has been committed as part of Science and Technology but has also had an impact on the economic and legal consequences of the child's separation from mother and childbirth, causing a different problem of settlement of each State.

A. BACKGROUND

The development of science and technology (Science and Technology) is increasingly increasing. The sophistication of technology in the field of science produced by human is the gift of Allah S.W.T., to be grateful, because humans are given a mind that should be used as possible and as much as possible with the intention of worship, in accordance with the needs and the rapid development of the age.

One of the developments that is currently developing is the advancement in the field of health, especially in medical technology that helps couples to get descendants with rocks of medical technology. The sophistication of medical technology is very helpful couples who want to have children with the help of technology and some countries already provide facilities Hospital or clinic that will help couples who want to have offspring.

One of the countries providing facilities to obtain offspring is the Akansha Clinic in India by providing Surrogate Mother facility (Rental Rewards). The growing uterine custody in the community is not supported by official regulation of the Government, and its execution is mostly done by agreement of the parties who will enter into a welfare rental agreement. Only a few countries such as India The government permits Renting of the Womb with reasons to help the economy of its citizens.

One of the countries forbidding to rent a uterus is Thailand, because Thai citizens have a Reward Covenant with Australia and are more detrimental to Thai

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citizens when a child is born out of proportion to expectations of inadequate conditions. The development of science and technology hereinafter called science and technology cannot be avoided by humans, because science and technology as a means of modernization that continues to grow and cannot be avoided by anyone both nationally and internationally. The development of science and technology is an era of globalization that is very helpful to human in determining all activities that cannot be denied as a gift of God S.W.T., to humans who have been given a mind.

Al-quran SuratThaaha verse 114 that:

"And Say: O my Lord, Add to me the Sciences of Knowledge".

Q.S. Az-Zumar verse 9:

"Verily, the one who receiveth can receive Lesson."

Al-Quran Surah Al-Mujaadilah verse 11:

"O ye who believe! If ye are spoken unto thee in the assembly, then lay it down, Allah will give the field to you, and if it be said "Stand ye, "then stand, Allah will exalt the believers amongst you and People who are given science a few degrees. And Allah knows what you do "

Based on the above paragraph clearly can be understood that human beings are given a high degree by Allah SWT. When it has science, and science is given to humans with minds that are constantly used for the benefit, by developing the mind which is the Gift of Allah S.W.T.

In connection with the development of science and technology and according to the development of society it cannot be released the era of globalization with the applicable law that will regulate human beings to achieve the objectives of law and the creation of justice, peace and legal certainty that regulate the association of human life in society.

One of the development of science and technology (IPTEK) which is currently developing is in the field of Health and medicine is the Surrogate Mother (Mother Substitute / Rental). The development of science Knowledge and technology is getting better and very rapid progress. This is because humans are always innovating to produce a better work in developing science according to the field of science owned and occupied so useful.

The development of science and technology is also very beneficial for the medical world one of the success of the development of science and technology is medical technology. The presence of Mother Surrogate in the society nationally and internationally raises a very important problem as part of the globalization era in the field of medicine. Surrogate Mother currently still cause problems that cannot be overcome well in various countries because of the lack of legal certainty that can be explicitly used as the basis for consideration to be implemented.

B. PROBLEM IDENTIFICATION

The subject matter of the author of the paper is:

1. What is the development of surrogate mother in legal perspective and globalization?
2. What legal consequences arise from the surrogate mother agreement for the parties?

C. PURPOSE OF WRITING

The purpose of writing a paper is as follows:

1. To examine and analyze the development of surrogate mother in legal perspectives and globalization;
2. To review and analyze the legal consequences arising from the surrogate mother's agreement to the parties.

D. WRITING PURPOSES

The usefulness of the paper-writing is as follows:

1. Theoretical Uses.

The theoretical usefulness of writing this paper is for the development of science and technology especially in relation to Medical Law, Health Law, Child and Women Protection Law, Law and Globalization and the Law of Contract.

2. Practical Usefulness.

Practical usefulness of the writing of this paper are:

To provide input, consideration advice for the Community, Government and all parties wishing to implement the surrogate mother as a useful consideration.

E. FRAMEWORK FOR THINKING

The Qur'an Surah Al-Hujuraat: verse 13 specifies that:

"O mankind, we created you from men and a woman and made you nation and tribe so that you may know one another. Verily the most honorable among you by Allah is the one who is most devoted to you. Allah is the Knower, the Knower".

Based on that verse many meanings that can be taken that from knowing each other will arise ties of relationship and introduction that is very useful and can be enhanced with marriage braid. Marriage is an obligation required in Islamic Law to continue the offspring as the next generation for families and mankind on earth for the mature and capable.

Article 1 of Law Number 1 Year 1974 on Marriage determines: Marriage is the inner birth bond between a man and a woman as a spouse with the aim of forming a happy, everlasting family or household based on the One Supreme Head.

Couples who have done marriage expect the child as a successor to his family and as amanah Allah S.W.T. Which must be maintained and protected. Understanding the child according to Article 1 paragraph (1) Law Number 35 Year 2014 on Child Protection that: Child is a person who has not attain the age 18 (eighteen) years, including children who are still in the womb.

Article 1 paragraph (3) of Law Number 35 Year 2014 on Child Protection that: Family is the smallest unit in society consisting of husband and wife, or husband and wife and child or father and child, or mother and child, or family of blood in the Straight up or down to third degree.

Based on the above provisions of the couple who have done Marriage would expect the offspring or children in the family. Relating between Marriages in the family with a Child is a dream for every human being who has made a marriage and as a binder of the couple husband and wife. But not all married couples have a child or more than one child in marriage. This is the thought of health and medical law experts who examine more deeply in the field of science study and analyze and use his mind as a gift of Almighty God, to examine more in science, especially in the field of health and medicine supported by technological sophistication.

Science and technology continues to evolve with human needs and the times that are often called modernization and globalization.

In essence, the notion of modernization includes a total transformation of traditional or pre-modern coexistence in the sense of technology and social organization to modern society. The process of modernization is not only present in developing countries, but also in developed countries, such as European countries.⁴

Modernization is increasingly influential in the world nationally and internationally, modernization and globalization is an incessant progress in human life. Since the last few decades, globalization as a process has accelerated. Therefore, it is conditioned to relate and build relationships with one another. Such circumstances suggest that the relation between the powers of the nation in the world will greatly color social, economic, law and law enforcement. In addition to the rapid flow of goods and services, there is also a rapid flow of information flowing so fast from one hemisphere to another hemisphere. The information dissemination and receiver is developing so rapidly with its easy use that it helps accelerate the spread to remote areas. This in turn leads to very serious problems, such as the emergence of new values contrary to old values so that their own implications for people's lives.

Surrogate Mother is very helpful to married couples who have longed descendants for the successor will come, surrogate mother is needed to overcome the wishes of married couples who crave children in marriage, and the sophistication of medical technology can help realize the couple in the doctor's diagnosis that his wife can not Childbirth and / or condition of husband cannot give her offspring, or other with many considerations in terms of health of husband and wife.

Surrogate mother if done should be with good and right consideration, according to religious law, ethics, norms, and legal provisions in force in society. Several executions of the mother's commitments have been made in parties in accordance with the provisions of the applicable regulations, but in fact not all can be accepted by society in religious law, national and international. The Mother Surrogate Agreement has been committed as part of Science and Technology but has also affected the economic and legal consequences of the child's separation from mother and childbirth.

Some countries that have been conducting Surrogate Mother openly are India, Thailand and America. India is one of the most committed States of the Surrogate Mother Agreement where the outcome of the treaty is responded nationally and internationally positively and negatively by the world community.

The development of science and technology is also very beneficial for the medical world one of the success of the development of science and technology is medical technology related to medical service provided to patients who want to get offspring by way of new discovery and raises new problems in the field of health law and Medical law.

The development of medical technology on the handling of reproduction in humans begins with the discovery of one of the sperm cells and egg cells (ovum) called donor gametes. Gametes, material genetic material consisting of sperm cells or eggs/ovum cells thus distinguished donors of sperm cells and ovum cells.¹

The finding of storage of sperm cells and egg cells (gametes) gives way and opportunity for married couples to obtain offspring by way of invention of in vitro fertilization is often called surrogate mother (Rent womb). One of the countries that openly practice the rental of the womb (Surrogate mother) is India. In India there is a very famous clinic and openly opened Surrogate Mother clinic with one reason to help the economy, where the substitute mother is made from the poor and the poor and uneducated, where they are interested and signed the contract without understanding the contents.

A clinic in India that helps couples who want to have offspring is the Infertility Clinic Akansha is very famous throughout the world. People call it "Baby Factory", because there is a baby tube program that rent surrogate mother (surrogate mother). And it is the poverty that makes the Indian woman willing to do anything to survive and finance her family including renting the womb.

The Akansha Clinic prepares 500 women who are ready to rent their uterus to accommodate the results of sperm and egg cell fertilization for couples who crave children. After childbirth, the woman's task is completed, she has no right over the baby, and even though she has been 9 months 10 days she resides in her life.² The regulation of the surrogate mother itself was validated in India in 2002, aged 21-35 years, and once giving birth in her life. Until now this policy is still reaping controversy, such as surrogate mother must be severe must be separated from the baby they contain, even though the baby tube from the original parents.

These surrogate mothers are recruited by contracting systems, staying in the clinic during pregnancy, and they must be willing to distance themselves from their families and leave their husbands and children during this work. The Akansha Clinic is managed by Nayna Patel, a renowned fertility specialist doctor. His name stuck out to the public after successfully helping a British woman become a surrogate mother, because her daughter could not conceive.

These surrogate mothers are recruited by contracting systems, staying in the clinic during pregnancy, and they must be willing to distance themselves from their families and leave their husbands and children during this work. The Akansha Clinic is managed by Nayna Patel, a renowned fertility specialist doctor. His name stuck out to the public after successfully helping a British woman become a surrogate mother, because her daughter could not conceive. His clients are spread over 34 States and each set at a price of US \$ 28,000 or approximately Rp.310 million. That includes the cost of finding a surrogate mother, medical treatment, caring, providing healthy meals and accommodation for surrogate mothers during pregnancy.

For the surrogate mother is paid about US \$ 7,900 or Rp.78juta. Jika twin fetus, it will get an additional US \$ 1,500 to US \$ 2,000 or about Rp.17 - 22 Juta.³

In connection with the example of the case, the Surrogate mother is the new science in the world of medical science because of the sophistication of technology in medicine in the field of human reproduction as one form of procreation / reproduction to obtain offspring for married couples to get children.

The existence of this womb rental is one part of the modernization of globalization in the field of health and medicine that cause controversy where the rental of this uterus raises different opinions in various countries for both experts and *ulama* leaders and religious leaders including in Indonesia. Good intentions should always consider and pay attention to the applicable law, so bring goodness - goodness and benefit the world and the hereafter with still pay attention relation with the God (*hablumminnalloh*) and relation with human being (*hablumminannas*).

In relation to the above, the author is interested in writing a paper entitled: "Development of Surrogate Mother in Law and Globalization Perspective",

But is it so easy to apply a medical technology to its application in society that there is no obstacle in any form? It turns out that the average problem faced by the problem of the limitations of reproductive function is that the object of the technology is a living thing (human) is not limited to inanimate objects, but here the value of a human is not stopped at the value of an object (outward value) but he also has values as subjects (mental values at autonomy) that must be respected as being glorified and glorified by the Creator.

Surrogate mother is literally equated with the term "Substitute Mother" which is defined freely as A woman who bounds herself through a covenant tie with another party (usually husband and wife) to become pregnant after the inclusion of male seed cell union (Sperm) and female seed cells (ovum) which carry out its fertilization outside the uterus (In Vitro Fertilization) until delivery according to the agreement then the baby is submitted to the husband and wife by getting the reward in the form of material that has been agreed. But there is another variant that states that the engagement is not consciously based on reward but on the basis of kinship (although rarely), in which a female relative is willing to conceive the seed and the female relative without material reward so that by the nature of the engagement that gives a reward in return, Surrogate mother is also known as the womb rental / gestational agreement (although not in accordance with the etymological meaning of surrogate mother).²⁴

Surrogate mother cases have been rife in the last few decades since the introduction of a fertilization method outside the womb known as In-vitro Fertilization, which is a method of fertilization of sperm cells in a petri dish performed by medical personnel.²⁵ It may also be referred to as a concept outside the uterus that was first practiced in 1970 (early known as the IVF) after the discovery of a method of sperm preservation. Initially this method aims to help couples, where the wife there are abnormalities in both fallopian tubes²⁶ in the absence of no cavity at all.

Both due to congenital defects as well as the effects of adhesions due to infection (while the ovaries of the wife are normal and routinely produce eggs every month) so that the egg cannot reach the uterus, then on the next development of this method is widely used with some variation to the ability of storing Sperm and zygote (the result of fertilization) that can be used at any time according to his will, one of which is surrogate mother (IVF-Embryo Transfer Surrogate Mother). The surrogate mother's engagement initially occurs in countries where the legal system permits gametes cell donation, sperm cell and ovum cells so that surrogate mother cases are possible in those countries as described by Schenker&Frenkel, *Medico-Legal Aspects of IVT-ET Practice* USA, UK, Australia, Germany, Denmark, Finland, France, Israel, Japan,

Norway, Singapore (Sperm donations) and USA, UK, Austria, Australia, Israel (egg donation).²⁷

It can be seen in some cases that emerged from Surrogate Mother in the world, that India is one of the most printed countries of the Surrogate Mother agreement and is done because of economic needs or improve the economy of family and authorized by his country officially.

Some countries are interested in doing Surrogate Mother in India and China, because the cost is cheaper than America. As for the Government of Thailand prohibits its citizens from renting a womb or having a foreign spouse after a cessation of a uterine lining that arises and harms a surrogate mother of an Australian foreign partner, and the Government of Thailand issued a new law banning ransacking the uterus and impose sanctions.

The implementation of surrogate mother continues to evolve in various countries and creates legal uncertainty for the state that has not had its law, causing harm to the parties if something happens that is not in accordance with the agreement.

The sophistication of Science and Technology of Surrogate Mother is preceded by the existence of IVF baby, the sophistication of medical technology is finally causing controversy from some countries because there is no legal provisions to officially regulate in some countries. Indonesia itself for the case of Surrogate Mother there are many who do, but done secretly not open and not finished.

CONCLUSION

In the discussion of the previous chapters as for the conclusions of this chapter follows:

The development of Surrogate Mother in the perspective of Law and Ethical Balization as follows:

Nationally: The implementation of Mother Indonesia Surrogate Indonesia is not as good as in other developing countries. Surrogate Mother in Indonesia has done but closed its implementation:

Internationally: The implementation of Surrogate Mother is mostly done, especially India, there are regulations that allow Surrogate Mother to be implemented. Some countries come to India to implement Mother Surrogate which is often called "Baby Plant", because India has most implemented Mother Surrogate Agreement and is assisted Economy of the poor. While the Government of Thailand prohibits its citizens to conduct Surrogate Mother in connection preceding the existence of cases that are detrimental to its citizens after the Mother Surrogate Agreement with the Australians;

It can be concluded that in general some countries in the world including Indonesia there is no official regulation governing the Surrogate Mother Agreement as a positive law binding on the parties and protecting citizens who will do so, to this day cause controversy in some countries in the world so there is no legal certainty which will provide protection for the parties that will implement the Surrogate Mother Agreement.

2. The legal consequences of the Surrogate Mother Agreement for the parties

The absence of a Positive Law in various countries of the World governing the Implementation of Surrogate Mother raises the legal uncertainty of the Parties that do so. This is feared, causing great disagreement and debate opposed to the aims and intentions of the parties, and in the Islamic Shari'ah the form of creating stability, peace and eliminating disputes or limiting them to the smallest possible scale. The Mother Surrogate Agreement in some Harah Islamic States is to be conducted as it relates to *Hablumminauloh* and *HablumMinanas* specially the relationship of mother and child born and its impact on the law of the treaties executed by the parties.

The Mother that Surrogate Treaty is forbidden is the sperm taken from the husband of a legitimate partner, while the egg and uterus belong to a woman who is not his wife. Babies born from the womb in question will be handed over to the legitimate couple.

The Mother that Surrogate Agreement not allowed in religion is when the egg comes from a legitimate wife, but the sperm used for conception does not belong to her husband, but the result of a donor from another man. The uterus used is not the womb of the wife, but the other woman. After birth, the baby is then handed over to the owner of the egg cell, in this case is the wife and her husband, who barren.

The prohibited and prohibited Surrogate Mother Agreement in religion is when the egg comes from a legitimate wife, but the sperm used for conception is not his / her husband, but the result of a donor from another man. The uterus used is not the womb of the wife, but the other woman. After birth, the baby is then handed over to the owner of the egg cell, in this case is the wife and her husband, who barren

J. SUGGESTIONS

The suggestions from the Implementation of Surrogate Mother are:

1. The Surrogate Mother Agreement as part of the Development of Science and Technology Globalization, it is advisable to the Government to immediately follow up with the Positive Law Regulation that will apply to the society nationally and internationally with due regard to the Law of

Religion as a first step to create the Law Applicable in the Mother Surrogate Agreement;

Surrogate agreement Mother is basically good to do to help couples who want to have children as a binder and successor in the household. For those who will conduct Surrogate Mother it is advisable to pay attention to the provisions of Religious Law as it relates directly to *HablumMinauloh* and *HablumMinanas* and Positive Laws applicable nationally and internationally.

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