



## Juridical review of womb renting in the realm of civil law (comparation study of Indian and Indonesian countries)

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### ABSTRACT

*This piece of work aims to go more into the rules and laws of India and Indonesia as they pertain to the practice of renting a woman's womb. Research in descriptive normative juridical law is used in the writing process. Through library and document studies, legal material analysis procedures utilizing the syllogism approach, which employs a deductive mentality, and other ways, both primary and secondary legal resources are consulted. Since surrogacy is often a couple's final resort for starting a family, this piece concludes that infertility is the primary motivation for using it. An agreement is necessary for womb renting to commence. Womb rental is quite similar to in vitro fertilization (IVF), with the main exception being that the embryo is transported to the uterus of another person. Indonesian health standards do not permit womb renting, and contracts for such services are void according to Indonesian law because they do not adhere to one of the requirements for contract validity outlined in the Civil Code. Commercial womb rental was formerly legal in India, but the country outlawed the practice because to the high number of surrogate moms who were abandoned. However, surrogacy could still be done voluntarily under certain circumstances.*

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### 1. Introduction

An increasing number of long-term married couples in today's more interconnected world are struggling with infertility, often known as barrenness. Worldwide, infertility is a major public health concern right now, and Indonesia is no exception. The majority of infertility cases are women (64% vs. 36%), according to data compiled by the Indonesian Hospital Association (PERSI) in Jakarta. Female infertility affects around 15% of reproductive-aged women, 30% of those between the ages of 35 and 39, and 64% of those between the ages of 40 and 44, according to other studies (Gaziansyah et al., 2019). Within the first year of marriage, with frequent and healthy sexual relations, around 80% of married couples will become parents. Extra testing should be done on any couple who has not been able to conceive during this time. In general, couples who are concerned about infertility should begin a basic prenatal screening before this period. For the couple's mental health, this is a huge boon in getting through this tough time.

The recommendation to return after a year of marriage is often misread by patients, who may see it as a rejection (rsudmangusada.badungkab.go.id, tt)

The process of fertilization in in vitro fertilization (IVF) takes place in a glass dish or tube rather than in a woman's uterus or fallopian tube. Article 127, Paragraph (1) of Law No. 36 of 2009 concerning Health has approved this in vitro fertilization procedure. One alternative to in vitro fertilization is a process known as "womb rental," in which the reproductive cells of the intended parents are implanted into another woman's uterus. While the idea of "renting a womb" is commonplace in other countries, it is completely foreign to Indonesia. Womb rental is common in Indonesia, but many keep it a secret since it goes against Indonesian tradition and is still seen as taboo.(Son, 2021).

Rental housing is now permitted in a number of nations, including the US, UK, Russia, and Ukraine. (Judiasih & Dajaan, 2017). Married couples who want to have a family but lack the means to do so often choose this option. They choose to have the procedure done in another nation and then bring the baby back to their native country if their own country does not permit or approve the practice. The practice of renting a woman's womb for the purpose of bearing her child was formerly common in India, but new surrogacy legislation in 2019 make it clear that only women who have been married before and are not considered "virgins" may be used as surrogates.(Yadav, 2018). This procedure is no longer available to gay couples in India. ("Thailand Bans Commercial Surrogacy for Foreigners," 2015).

Womb rental begins with making an agreement and there are principles and conditions that must be fulfilled and obeyed, however an agreement can be made with the principle of freedom of contract (Yadainy, 2019) that is, you are free to make any contract, but the contract for renting a womb can be said to be invalid in Indonesia because it does not fulfill one of the elements of the conditions for the validity of an agreement in accordance with Article 1320 of the Civil Code, namely a lawful reason because in this case there are no regulations governing legality regarding renting a womb in Indonesia. This writing discusses and examines how law in Indonesia responds to or responds to the womb rental program and provides a juridical comparison with the country of India which has regulated womb renting.

With any luck, this study will help shed light on the topic of womb renting in India, lead to more informed policymaking, and strengthen existing ethical and legal safeguards.

## **2. Method**

This work employs normative juridical legal research as its methodology. This type of legal research places an emphasis on secondary sources of information, such as legal regulations and theories. It also examines scientifically theoretical legal rules that can be applied to analyze and study real-world problems (Soekanto, 2007). The research methodology used in this study is analytical descriptive research. The legal materials utilized for this project come from a variety of primary and secondary sources. Primary sources include laws and regulations pertaining to health, such as Law Number 23 of 1992 and Law Number 36 of 2009, as well as regulations pertaining to assisted reproductive technologies, such as the Assisted Reproductive Technologies (Regulation) Bill and Government Regulation Number 61 of 2014. The method used to get the data is research in libraries. In data analysis, a syllogism using a deductive procedure is used.

### **3. Analysis and Results**

When a woman enters into a contract with another party – often a husband and wife – to bound herself throughout the process of in vitro fertilization, which takes place outside of the womb, the woman is engaging in what is known as a womb leasing agreement, or gestational agreement. The baby is given to the parents-to-be in exchange for something that was already discussed and agreed upon (Viqria, 2022). When a female relative agrees to carry her sister's seed without financial remuneration, the agreement itself serves as a reward for her labor, but it is not based on money; rather, it is based on kinship. This is the case in another version of the agreement (Ratman, 2012)

It was in 1987 in South Africa when the practice of renting out wombs was first implemented. As a consequence of an embryo transfer involving her daughter Suzanne and her husband, Edith Jones became a mother to triplets. We did this since Suzanne hasn't been pregnant since the day she was born. Fertilization was place in the Nottingham region at BMI Park Hospital. Suzanne, a daughter, hired her mother Edith Jones's womb so that she and her husband might be born. This is the origin of the practice of womb leasing. In the Indonesian province of Papua, a similar incidence has taken place. A nephew who becomes pregnant by renting his aunt's womb. Womb rental is a popular practice in the United States and Europe. Kanye West and Kim Kardashian pulled off the latest stunt. Prior to it, they had rented a womb for their third kid, and he considered doing the same for their fourth child (Princess, 2019).

There were several cases of womb renting in Europe and the US from 1976 to the beginning of 1988; 600 infants were born as a consequence. The practice is illegal in certain US states, while others do not have any laws against womb rentals at all. Because womb rentals are not governed by federal law in the US, each state has the authority to establish its own regulations on the conditions and procedures for this kind of rental (Judiasih & Dajaan, 2017).

For those who are interested in womb rental services but are unable to do so domestically because to financial constraints or regulatory hurdles, they often go to countries outside of their own for this service. India was the pioneer in establishing laws for commercial surrogacy in 2002. Over the last decade, surrogacy has been instrumental in the delivery of over three thousand kids in India. They originate from places other than India, and some of them are parents who bring seeds from other countries (Judiasih & Dajaan, 2017). Because surrogacy services in India are less expensive than in the US and UK, an increasing number of international couples are considering traveling there to rent a womb via surrogacy agencies (10-20 lakh) (Saxena et al., 2012). Womb leasing companies in India may earn 400,000 to 1.2 million rupees (US\$ 5,628 to 16,885) every infant delivery, so it's no surprise that many individuals in the country do it for a living (Aprilia, 2023).

Without any kind of legal counsel, the Indian Medical Council drew up the "National Guidelines for Accreditation, Supervision and Regulations of ART Clinics in India" in 2005. Birth certificates should include the names of the tenant or donor as the biological parents, surrogate mothers are obliged to have life insurance, and everyone involved – the surrogate, the kid, and the donor – has the right to privacy (Dubey, 2012).

In India, the surrogate mother and the unborn child are disrespected when a womb is rented out without following the proper protocols and making the necessary legal preparations. A famous case in point is the case of Manji, a kid who was left behind after his or her parents split and Japan still did not permit the practice of "womb renting," hence the child could not be returned to Japan (Points, 2009). To address the lack of regulation or legislation surrounding the commercial leasing of uteruses and other reproductive technologies, the Indian Health Council (ICMR) or similar entity introduced a legally enforceable bill in 2008 called The Assisted Reproductive Technologies (Regulation) Bill (Thapa, 2012).

The first outcome of the Draft Law is that individuals who are married or unmarried, single parents, or members of a gay pair may engage in womb renting operations (although only one member of a homosexual couple can be recognized as having the right to have children). This is different from heterosexual couples who are not married, since they both have the legal right to procreate and may provide their informed permission to ART (Thapa, 2012).

A bill to regulate the leasing of wombs in India was introduced in 2016 as part of the Surrogacy (Regulation) Bill. After first proposing an amendment to this bill in 2018, it has since undergone a number of revisions. Following the dissolution of the 16th Lok Sabha, generally known as the Lower House of India, this measure was re-submitted in 2019 under the name Surrogacy (Regulation) measure 2019. It was intended to replace the 2016 Surrogacy Bill and included many modifications, including (Srivastava, 2021): a) Every couple renting a womb must have certification as required for Indian citizenship; age around 23-50 for wives and 26-55 for husbands; do not have living children, does not include children who have mental or physical disabilities, suffer from mental disorders or fatal diseases. b) Submission of unwillingness to become a surrogate mother must be accompanied by a written agreement to the competent authority and be carried out before the embryo is implanted in the womb. c) A divorced woman or a widow can become a surrogate mother.

To be a surrogate mother, you need to meet certain criteria. You must be a married woman between the ages of 25 and 35, a close family of a renter, a widow, or someone who already has children. Additionally, you must have an agreement to participate in this kind of arrangement. The measure aims to outlaw the commercial leasing of wombs while allowing their voluntary or non-coercive rental. Choosing a child's gender is illegal in the context of womb renting. For surrogate moms, there is insurance and protection for 36 months. Imprisonment may result from your violation of these requirements. (Correspondent, 2020).

Protecting the rights of surrogate mothers, children, and couples who rent a womb puts moral and social principles at the forefront of this law. If a husband and wife are unable to produce a child for medical reasons, this measure may nevertheless preserve their rights to do so. Before a couple may rent a womb, they need to show they can't have children via certification.

Womb leasing in India is legal because to a number of factors, including a shortage of mothers who are able to have children. However, the voluntary nature of the practice ensures that it does not degrade women's dignity. The Indian government has passed laws that provide surrogate mothers and infants born via womb rental special protections. Being a surrogate mother is completely voluntary and supported by official records, namely a woman's infertility, so there is zero pressure to become one.

The following laws and regulations form the basis of Indonesia's regulations on womb renting: Law Number 23 of 1992 concerning health, Law Number 36 of 2009 concerning health, Government Regulation Number 61 of 2014 concerning reproductive health, Regulation of the Minister of Health of the Republic of Indonesia Number: 73/ Minister of Health/PER/II/1999 concerning the Implementation of Artificial Reproductive Technology Services, Decree of the Director General of Medical Services, Ministry of Health of the Republic of Indonesia in 2000 concerning Guidelines for Test Tubes, and several others. It is against the law, whether done for profit or out of one's own free will, to implant embryos into the uteruses of anyone other than the mother from where the egg cells originally came. For moms seeking a method of procreation other than in vitro fertilization or adoption, the legal framework in Indonesia does not provide any options. The Surrogacy (Regulation) Bill 2019 governs the practice of renting a womb with a minimum of 5 years of marriage, which is beneficial for families in India. In addition to fines, the Indian state imposes criminal penalties for those who break these restrictions. Medical professionals in Indonesia are the only ones who may face administrative penalties according to Article 51 of Government Regulation No. 61 of 2014 on Reproductive Health.

Legal, religious, moral, and social standards are all breached or at odds with one another when it comes to the practice of renting wombs, which is why the Indonesian state does not permit it (Pralampita, 2023). In Indonesia, a womb rental contract is considered illegitimate if it contradicts or violates one of the agreement's principles, such as lawful grounds, rendering the agreement either null and void or nonexistent (null and void). Prakek If used appropriately, the practice of renting a uterus to infertile women in Indonesia has the potential to be authorized. In order to change people's perceptions about womb rental and the children born from it, there has to be a greater effort to educate the public and reach out to the community (Febrianti & Budiarsih, 2022). The government must exercise oversight if it intends to impose specific penalties on those who violate the rules on the rental of services. To prove that a person's infertility is related to medical issues, a medical evaluation is necessary.

#### **4. Conclusion**

With the passage of the Surrogacy Bill, a few key requirements will be placed on the practice of womb renting in India. Firstly, the party authorized to carry it out must be an Indian citizen. Secondly, commercial womb renting will no longer be allowed. Lastly, the surrogate mother must be a close relative, partner, or person who has already given birth. A surrogate mother's expenses are covered both during and after the delivery of the kid. In Indonesia, it is legal to have a child via in vitro fertilization, which involves using an egg from a married couple whose marriage is legally recognized. Because it goes against both national and regional standards as well as traditional practices, the practice of renting wombs in Indonesia is considered illegal.

In light of the aforementioned individuals, the Ministry of Health need to draft fresh legislation addressing the practice of womb rental in order to forestall unsavory outcomes, such as the abandonment of surrogate mothers and the birth defects that ensue from this practice. Justice and a deterrent impact are still lacking from the existing legal consequences for those who turn renting a womb into a kind of human slavery. Thus, the practice of uterus renting must be regularly supervised by the Ministry of Health, and a rule establishing punishments for those who breach this regulation must be in place. More public outreach and education on the practice of womb rental is necessary for it to be socially acceptable in today's world.

This study aids with our knowledge of the concepts and procedures that govern uterine rents differently in Indonesia and India by comparing their legal systems. Discussions on potential legal adjustments or harmonisation may be guided by this.

#### **References**

- Aprilia, A. A. (2023). STUDI KOMPARASI SEWA MENYEWA RAHIM ANTARA NEGARA INDIA DAN THAILAND DENGAN HUKUM DI INDONESIA DALAM ASPEK HUKUM PERDATA. *Jurnal Privat Law*, 11(1), Article 1. <https://doi.org/10.20961/privat.v11i1.44159>
- Correspondent, S. (2020, February 5). Surrogate mother need not be a close relative, Rajya Sabha committee recommends. *The Hindu*. <https://www.thehindu.com/news/national/surrogate-mother-need-not-be-a-close-relative-rajya-sabha-committee-recommends/article30744022.ece>
- Dubey, A. (2012). *INFERTILITY Diagnosis, Management and IVF*. JP Medical Ltd.
- Febrianti, V. B. A., & Budiarsih, B. (2022). REKOMENDASI KEBIJAKAN SEWA RAHIM DARI PERSPEKTIF HAM DI INDONESIA. *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance*, 2(2), Article 2. <https://doi.org/10.53363/bureau.v2i2.125>
- Gaziansyah, M. P., Wulan, A. J., & Djausal, A. N. (2019). Efek Rujak Polo (*Tribulus terrestris*) dan Ginseng India (*Withania somnifer*) Sebagai Terapi Mutakhir Terhadap Infertilitas Pria. *Jurnal Majority*, 8(2), Article 2. <https://joke.kedokteran.unila.ac.id/index.php/majority/article/view/2474>
- Judiasih, S. D., & Dajaan, S. S. (2017). ASPEK HUKUM SURROGATE MOTHER DALAM PERSPEKTIF HUKUM INDONESIA. *Jurnal Bina Mulia Hukum*, 1(2), Article 2. <https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/jbmh.v1n2.4>
- Points, K. (2009). Commercial surrogacy and fertility tourism in India. *The Keenan Institute for Ethics at Duke University*, 1-11. <http://thetarrytownmeetings.org/sites/default/files/BabyManji.pdf>

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- Pralampita, L. A. (2023). *Perlindungan Hak Dalam Melanjutkan Keturunan Melalui Praktek Ibu Pengganti Di Tinjau Dari Aspek Hukum Kesehatan*. <https://dspace.uui.ac.id/handle/123456789/44416>
- Putra, R. M. (2021). *Analisis Terhadap Hak Waris Anak Yang Dilahirkan Dari Perjanjian Inseminasi Buatan Melalui Sewa Rahim Ditinjau Menurut Hukum Positif Indonesia Dan Hukum Islam*. <https://dspace.uui.ac.id/handle/123456789/37689>
- Putri, F. A. W. (2019, January 4). *Sewa rahim – Kim Kardashian kembali sewa rahim untuk anak keempat*. <https://id.theasianparent.com/sewa-rahim>
- Ratman, D. (2012). *Surrogate mother dalam perspektif etika dan hukum: Bolehkan sewa rahim di Indonesia?* Elex Media Komputindo.
- rsudmangusada.badungkab.go.id. (n.d.). *Evaluasi Kesehatan Reproduksi Pada Pasangan Infertil*. Retrieved January 11, 2024, from <https://rsudmangusada.badungkab.go.id/promosi/read/29/evaluasi-kesehatan-reproduksi-pada-pasangan-infer>
- Saxena, P., Mishra, A., & Malik, S. (2012). Surrogacy: Ethical and Legal Issues. *Indian Journal of Community Medicine: Official Publication of Indian Association of Preventive & Social Medicine*, 37(4), 211–213. <https://doi.org/10.4103/0970-0218.103466>
- Soekanto, S. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat*. Raja Grafindo Persada.
- Srivastava, A. (2021). The Surrogacy Regulation (2019) Bill of India: A Critique. *Journal of International Women's Studies*, 22(1), 140–151. <https://vc.bridgew.edu/jiws/vol22/iss1/8>
- Thailand bans commercial surrogacy for foreigners. (2015, February 20). *BBC News*. <https://www.bbc.com/news/world-asia-31546717>
- Thapa, J. D. (2012). *Analysing the status of the surrogate mother under The Assisted Reproductive Technologies (Regulation) Bill, 2010*. NUJS Working Paper Series, The West Bengal National University of Juridical .... <https://www.academia.edu/download/63194177/analysing-the-status-of-the-surrogate-mother-under-the-assisted-reproductive-technologies-regulation-bill201020200504-75087-1tug4yd.pdf>
- Viqria, A. (2022). ANALISIS SEWA RAHIM (SURROGATE MOTHER) MENURUT HUKUM PERDATA DAN HUKUM ISLAM. "Dharmasisya" *Jurnal Program Magister Hukum FHUI*, 1(4). <https://scholarhub.ui.ac.id/dharmasisya/vol1/iss4/3>
- Yadainy, F. A. A. (2019). *PERJANJIAN SURROGATE MOTHER/SEWA RAHIM DAN PENGARUHNYA TERHADAP STATUS ANAK [FAKULTAS SYARIAH DAN HUKUM UNIVERSITAS ISLAM NEGERI WALISONGO]*. <http://eprints.walisongo.ac.id/10324/1/1.%20Naskah%20Skripsi%20%28FULL%29%20Filda%20Achmad%20Al%20Yadainy%20%281502056049%29%20Ilmu%20Hukum%20FIKK.pdf>
- Yadav, P. (2018). Law and Policy on Surrogacy: A Comparative Study of India And Other Countries. *IJRST*, 4(2). <https://www.academia.edu/download/57066470/2309.pdf>