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## The Concept of Surrogate Mother and its Practice in Some Selected Countries

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### Abstract

Every married couple definitely wants to have offspring but not all couples are blessed with children in a normal way. There are some couples who have to choose to use the test tube baby technique or IVF, which is fertilization outside the womb. Meanwhile, there are also mothers who are unable to conceive for a baby due to the uterus problem. Finally, with the development of science and technology, the concept of surrogacy was introduced by mixing the husband's sperm and his wife's ovum in a tube then it was placed into the womb of a woman with a rental agreement. The objective this article is to clarify the meaning of surrogacy, the implementation process, the forms of surrogacy, the factors that cause surrogacy and its practice in some selected countries. This conceptual study uses content analysis methods from secondary data. These secondary data are obtained from scientific books, articles in journals, authoritative websites, papers, seminar papers, proceedings and others. Hopefully by writing an article this concept will give understanding to the community regarding surrogacy.

**Keywords:** Concept, Surrogate Mother, Practice.

### Introduction

The discovery of artificial reproduction methods for humans are the most useful discovery of science and technology in medical field. The meaning of artificial reproduction is that an artificial pregnancy is done to a woman not by natural means, but by putting a man's seed into the woman's womb with the help of a doctor. Similar terms are injection marriage, artificial pregnancy and artificial semen (Hasan, 2000). This method is very useful for human, especially for a married couple who cannot get offspring through natural means.

This artificial reproduction developed into the form of womb rental where is the sperm from husband and his wife's ovum were mixed into a tube and after it fertilized, it was put into other woman's womb with a rental agreement. Thus, it caused the emergence of a love feeling between surrogate mother with the child in her womb. The method is implemented either with a business contract or through an agreement based on the conditions that have been determined or voluntarily (Amka, 2015).

### **Definition of Surrogate Mother**

The meaning of surrogacy is the use of another woman's womb who is not the wife of her husband to contain a female seed (ovum) that has been fertilized with a male seed (sperm) which is usually from a married couple, and the fetus is carried by the woman until the baby is born. After that, the child will be given back to the married couple to be taken care of and the child is considered as their legitimate child in terms of Indonesian law (Hasan, 2007).

This method is known as surrogacy which is womb rental. This is because the married couples who want to have children will pay a certain amount of money to the mother who is able to conceive a child from their seed and on the condition that the surrogate mother will hand over the child after birth or at the promised time (Zayd, 1995).

#### **(a) Surrogate Mother in terms of Language**

In English, a surrogate mother is known as a Surrogate Mother (Nabahah, 2007). The word surrogate comes from the Latin subrogare (to replace) which means a woman was chosen to act as a surrogate mother. Parents who choose a surrogate mother are individuals who will take care of the child after birth. There is also a tendency to limit the term "surrogacy" as only meaning "gestational surrogacy".

#### **(b) Surrogate Mother in terms of Modern Medical**

A surrogate mother is a woman who is willing to rent her womb based on a contract to a married couple to be pregnant for nine months with fertilization result of this married couple which will be transplanted into her womb. After giving birth, the baby should be handed over to the married couple based on the agreement that has been agreed between both parties. This agreement is usually referred to as a gestational agreement (Ratman, 2012) or surrogacy contract. In addition, surrogate mother is a term used to refer to a woman who receives mixed seeds from a husband and wife and is expected to give birth to a child from the womb rental process. In other words, it called as 'guardian mother" (Ratman, 2012).

According to Black's Law Dictionary, the meaning of Surrogate mother is: First, a woman who carries a child to term on behalf of another woman and then assigns her parental rights to that woman and the father. Second, a person who carries out the role of a mother. It is mean that a surrogate mother is a woman who uses her womb to conceive while the fetus in her womb belongs to another woman and after the baby is born, the right of ownership or custody of the baby is given to the other woman and the father of the baby (Garner et al., 1999).

Next, according to the traditional surrogacy term, a surrogate mother conceives her own biological child, but the child will be handed over to other parents after birth and adopted as a child by the biological father himself, and possibly for his partner (biological father's partner) either female or male (gay). While according to the gestational surrogacy term, a surrogate mother who becomes pregnant through the embryo transfer process means that she is not the biological mother of the child. The surrogate mother can make an agreement with the biological mother or father of the baby that she is carrying to make the child as her own or an adopted child, or with parents (married couple) who do not have any relationship with the child, for example the child that was conceived through the transfer of embryos taken from an ovum and a sperm donor.

In addition, according to the altruistic surrogacy term, the surrogate mother does not receive wages for her pregnancy or for the child she will hand over, however medical funding throughout the pregnancy and childbirth must be borne by the married couple or prospective parents who will nurture the baby. But the concept of commercial surrogacy is quite opposite, where the surrogate mother receives a monetary reward for her pregnancy and for the child that will be handed over to the adoptive parents.

From the meanings that have been mentioned, it can be concluded that there are several variables that can be classified as womb rental, namely

- a. Making the womb of another woman as a place to place or mix male semen and female egg cells either using the In Vitro Fertilization (IVF) technique or through the Intra Tubal Gamete Transfer (TAGIT) technique in which the fetus is conceived by a woman until the baby was born.
- b. The surrogacy method is basically done on an agreement or with certain conditions from both parties, whether the agreement is voluntary (free), or the agreement is in the form of a contract.
- c. The baby who was born from this surrogacy process is usually handed back to the parents or couple who requested the child and the baby is considered as their child from a legal point of view.
- d. Surrogate mother received payment on her pregnancy and handed over the baby to the married couple that requested for that child.

### **The Implementation Process of Surrogacy**

Parents who want to use a surrogate mother, can take the first step to carry out the process by doing a fertility consultation to evaluate the pros and cons of the method. After agreeing to use surrogacy services, the next step is to find a surrogate mother. The surrogate must meet the following prerequisites:

- a. The surrogate mother must be at least 21 years old, because age greatly affects the success rate of pregnancy (Gaither, 2015).
- b. Surrogate mother should have at least once given birth to a healthy baby and understand the health and emotional impact of the pregnancy and childbirth process (Gaither, 2015).
- c. Her family gives support.
- d. The surrogate mother must have a healthy physical and mental condition.

After that, both parties will undergo a check up, but the surrogate mother will be checked on both psychologically and physically. Then, a written contract will be prepared to clarify all aspects of the agreement (Gaither, 2015). The contract must include the following (<https://www.docdoc.com>, 2016)

- a. Personal roles and responsibilities from involved parties.
- b. Ensuring that the baby gets good care while in the womb.
- c. Custody and legal rights over children.
- d. Compensation for surrogate mothers.
- e. Place to give birth.
- f. The relationship between both parties in the future.
- g. Medical cost for all processes.
- h. Surrogate mothers obtain health insurance during the pregnancy until giving birth.

i. Be prepared for various possibilities such as the unexpected birth of twins or triplets.

In addition, the problem of surrogacy is in the form of a written agreement which is an agreement involving all parties who perform the surrogacy method in written (Alela, 2017). A health law expert from the Netherlands, Leenen, explained that the contract that must be contained in the contract between the surrogate mother and the biological parents must touch the following items (Salim, 2006).

- a. Willingness of surrogate mother to accept and perform artificial reproduction.
- b. Willingness of the surrogate mother to give a name to the baby.
- c. The surrogate mother must be ready to hand over the baby she is carrying to the baby's biological parents immediately after giving birth.
- d. The surrogate mother's willingness to fully assist in completing the procedures regarding family matters related to the legal status and on the change of her child's surname.
- e. The surrogate mother must be prepared to always take care of her pregnancy and act well to the fetus.
- f. Willingness of biological parents to pay all necessary costs during pregnancy and childbirth.
- g. Willingness of biological parents to pay and give wages to surrogate mothers.

Once a suitable surrogate mother has been found and an agreement has been signed, the test tube baby process will begin. The process begins by equating the medical cycle of the surrogate and the biological mother, this is done to ensure that the womb of the surrogate mother is able to carry the embryo after the ovum from the biological mother is taken and fertilized. When the cycle of the biological and the surrogate mother are the same, the biological mother will take medication to stimulate the production of ovum at a high rate. When the ovum is suitable for mixing, the ovum will be taken and fertilized after the husband produces a sperm sample. Then, the ovum and sperm will be mixed in a laboratory cup. When the mixing process is successful, the embryo will be transferred into the womb of the surrogate mother.

The collection of sperm and the placement of seeds in the surrogacy process, which is to obtain sperm from men can be obtained through *istimna* (masturbation), *'azl* (interrupted intercourse), taken or coated directly from the male genitalia (testicles), sexual intercourse using condoms, semen men who are inserted into the coated vagina quickly through a syringe, as well as night dream sperm (Institute for Islamic Studies and Society, 1997).

Once the sperm is obtained, purification process will be carried out to separate the functioned and dead sperm. After that, the ovum and sperm will be mixed in tube based on the *vitro* technique. This is different from the *Intra Tubal Gamete Transfer (TAGIT)* method where the sperm will be injected directly into the uterus.

The process of transferring the embryo into the wife's uterus sometimes does not work as expected or cannot be done because of some constraints that cause the wife's uterus is not able to accept it. Among the causes that are factors in this failure are the wife having an illness that endangers her life when she continues to conceive, the wife's uterus that is no longer capable of producing ovum, the wife's uterus that has been removed, the wife is afraid of pregnancy or the wife does not want to be burdened with pregnancy. The way that can be



used to overcome all those problems is to use the womb of a surrogate mother to grow and carry the zygote or embryo until the baby is born (Paria et al., 2001).

### **Types of Surrogate Mothers**

Among the types of surrogacy are

- a. The wife's ovum is fertilized with her husband's sperm, after which it is placed in another woman's womb. The use of this method is when the wife is in good condition and has good ovum, but her uterus has been removed due to surgery, severe disability, due to chronic disease or for other reasons.
- b. The second form is similar to the first, but the fertilized sperm and ovum will be frozen and placed in the womb of the surrogate mother after the death of the married couple.
- c. The wife's ovum is fertilized with the sperm of another man and placed in the womb of another woman. This condition occurs if the husband experiences infertility and the wife has restrictions or defects in her uterus but has good ovum.
- d. The husband's sperm is fertilized with the ovum of another woman, then placed in the womb of the other woman. This situation occurs if the wife is afflicted with an ovarian disease and her uterus is unable to carry the task throughout the pregnancy, or the wife has reached menopause.
- e. The husband's sperm and the wife's ovum are fertilized, then placed in the womb of another wife from the same husband. This is because the other wife is able to conceive her husband's child than the wife who cannot conceive (La'bah, 2012).

There are two types of womb rental that are identified

#### **a. Womb rental only (Gestational surrogacy)**

Embryos that usually come from the husband's sperm and the wife's ovum are brought together through IVF technology, transferred into the womb of a surrogate mother.

#### **b. Ovum and Womb rental (Genetic Surrogacy).**

The ovum that forms the embryo is the ovum of the surrogate mother while the sperm comes from the husband. Even though the woman who owns the womb is the owner of the ovum, she still has to hand over the child she conceives and gives birth to the couple who rents her womb. This follows the agreement that she is not the mother of the baby that she gave birth to. The fusion of sperm and ovum can be done through artificial reproduction or through direct intercourse between the husband and the surrogate mother who is the owner of the ovum (La'bah, 2012).

### **Factors the Occurrence of Surrogacy**

The surrogacy was implemented due to certain problems that cannot be avoided such as when the wife who has an ovum is unable and cannot conceive or give birth, her uterus is not good for pregnancy, does not have a uterus, or a woman who has an ovum but wishes to taking care of the health of her womb and the beauty of her body and many other reasons. Therefore, there are various purposes for this surrogacy method, among which are:

- a. A woman who does not have hope of conceiving naturally because she is afflicted with a very severe illness or disability that prevents her from conceiving and giving birth to a child (Manuaba, 1998).
- b. A woman who does not have a uterus because it has been removed due to uterine surgery.

- c. The woman who really wants to have a child but does not want to be affected with the pregnancy such as the burden during pregnancy, the pain of giving birth and breastfeeding process. This is because she wants to maintain her beauty and health.
- d. Women who want to have children but have menopause.
- e. Women who want to earn income by renting out their wombs to others as a commodity tool to meet their economic needs (Jamdin, 2011).

### **The Practice of Surrogacy in Some Selected Countries**

In the beginning, surrogacy happened because a wife could not conceive and give birth due to something that happened to her womb, so it was transferred to another woman to replace her role as a mother in pregnancy and childbirth, either with a monetary reward or for free but the voluntary transactions are very rare. Along with the development of this surrogacy method, there is a change in terms of purpose which the original purpose was only as a medical alternative, now changes to lead to social value and take advantage of the value of a womb where the tenant no longer carries out the implementation of surrogacy for medical reasons, but has changed to reasons of beauty and aesthetics which she does not want her body to be deformed and ugly due to giving birth (Ratman, 2012). Surrogacy is a hotly debated issue in many countries in the world reject or oppose the method of surrogacy. However, there are many countries that agree and allow the practice of surrogacy such as the United States, India, China, Bangladesh and others. There is also a Surrogate Mother organization that involves countries such as England, the United States, Austria, Germany, Denmark, Finland, France, Israel, Japan, Norway, Singapore (sperm cell donors) while the ovum cell donor countries are such as the United States, England, Austria, Israel (Ameln, 1991).

#### **A. Surrogacy in India**

Demand for surrogate mothers from countries around the world is increasing. India is one of the countries that has a high demand for surrogate mothers. Many women in India become surrogate mothers to help their family's economic situation. In India, surrogacy is a challenging job for Indian women because it is a new job for Indian women that is not well accepted in society. India is one of the regions where surrogacy is found the most where the burden is little but the wages are very high (Khawli, 2011).

Australian sociologist Catherine Waldby from the University of Sydney stated in a conference in Brisbane that India can beat the United States as a place for surrogacy practices, especially the potential demand from developed countries. "Rental of reproductive organ has become a job for women in some places", these are the words of Waldby in his speech at an Asia-Pacific Science, Technology and Society Network Conference event, organized by Griffith University from ABC, Saturday (12/12/2009). Married couples in several countries now choose India to place their fetuses that were fertilized from the method of test-tube babies and then transferred into the wombs of Indian women that is known as surrogacy. Waldby stated, the government in India allowed the practice of surrogacy by creating a center for the model of surrogacy. The India government also created special visas or medical visas to make it easier for people who come for medical needs, including hiring a surrogate mother. India is the choice to do surrogacy because the cost of surgery, experts and fertility clinics are much cheaper than in the United States. Surrogacy in India is only US\$ 50,000 to 60,000 or Rp 50 to 60 million (exchange rate 10,000/US\$) per baby. This is different from the cost of a surrogate mother for a foreign couple from the west which is around US\$ 15,000 to 20,000 or Rp 150

to 200 million. This cost is much lower than the cost of surrogacy in the United States which reaches US\$ 100,000 or Rp 1 billion (Ratman, 2012).

Waldby also noted that India is very competitive in its pricing compared to the United States. He predicted that the surrogacy industry in India will increase more rapidly. The country of India earned an income from the womb rental amounting to US\$ 445 million or Rp 4.456 trillion in the past 2 to 3 years. The demand for surrogacy is huge and many cannot be fulfilled as most countries in the world do not allow commercial surrogacy. Many people are willing to practice surrogacy despite the high cost of it. Waldby states that for Indian women being a surrogate mother is one way to increase income, without considering the risks involved in the practice of surrogacy.

Despite being able to provide a decent return, Indian women's activist Preetie Nayak stated that this practice of surrogacy continues to spark debate among the public. An Indian woman will be looked at as contempt when society knows that she rents a womb. Therefore, these surrogate mothers will give birth to their babies far away from their place. When there is a question about the baby, they are more willing to say that the baby has died than admit to having received payment as a surrogate mother (Gustia, 2009). One of the married couples who practice surrogacy in India is Chris and Susan Morrison from England. By paying a cost of up to 8,000 pounds or Rp 116 million (exchange rate 14,500/pounds) to a 24-year-old Indian woman, this couple got twin baby boys who were born in Mumbai on March 1, 2009, named Louis and Freya. Mrs. Morrison chose to use a surrogate mother's womb because she suffered from a blood disease that made her unable to conceive for a complete nine months of pregnancy (Gustia, 2009).

## **B. Surrogacy in America**

In Europe and the United States, renting a uterus in its popular language term womb rental that has been practiced for a long time. In fact, women who want to become surrogates will usually be paid up to USD 40,000 for a period of nine months. In today's era of Globalization or Business Outsourcing, couples from Europe and America can rent women's wombs from India, China or Africa with a financing cost of less than US\$ 5,000 (Jamdin, 2011). In America, in the late of 1970s to early 1980s a lawyer named Noel Keane established the first surrogacy institution. He continued by creating more surrogate mother agencies that comply with surrogacy regulations (womb rental agreements). Since then, there have been more than 30,000 births that comply with surrogacy regulations. Society is increasingly clear that the surrogacy method is one of the solutions for barren women and gay men (Lane & Brick, 1994).

However, Noel Keane is recognized as a pioneer of surrogacy legislation. But it has not been an idea that has reached the same level as the doctor Warren J. Ringold in the city of Dearborn, Michigan. Dr. Ringold agreed to perform artificial reproduction and surrogacy clinics grew rapidly in early 1981. Although Keane and Ringold were criticized by some press and politicians, that did not stop them from continuing to fight for these surrogates to be protected by law (Lane & Brick, 1994). Legal recognition of surrogacy was first formalized in 1976 (Barry, 2012). Between 1976 and 1988, approximately 600 children were born in United States due to surrogacy. Since the late 1980s, surrogacy has become more popular. Between 1987 and 1992, approximately 5,000 surrogacy births occurred in the United States. The



number of babies born by surrogate mothers in the United States has steadily increased over the past two decades, with thousands of babies born each year.

### Conclusion

The practice of surrogacy does not cause problems if it is carried out in the right way. In fact, it can help wives who have womb problems and cannot give birth. In the case of a married couple who are unable to give birth naturally, and the wife's womb is unable to accommodate the fetus, then with the development of science and technology, sperm and ovum from the married couple, then the embryo is transplanted into the womb of another woman as the surrogate mother. Some scholars allow the implementation of this type of surrogacy among Muslims. But problem arise if a couple who does not have problem of giving birth to a child, but deliberately want to use a surrogate mother even though she herself is able to conceive and give birth to a child. The same goes for couples who are not married, but use sperm and ovum from their lovers to be fertilized and conceived by a surrogate mother. There are also other forms such as the wife's seed being fertilized with the seed of another man and placed into the womb of another woman. This situation is not allowed by Islamic scholars. Therefore, if Muslims want to practice this surrogacy, they must be careful because worried it becomes illegal and the occurrence of lineage confusion.

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