

## A Prophetic Law Approach to Reconciling Indonesia's Uneasy Relationship with Cross-border Surrogacy

Dodik Setiawan Nur Heriyanto\* 

Faculty of Law, Universitas Islam Indonesia, Yogyakarta, Indonesia

Ulvi Gasimzadeh 

Center for Legal Examination and Legislative Initiatives of the Republic of Azerbaijan

(\*) corresponding author, email: 094100404@uii.ac.id

Submitted: 30 April 2024 | Reviewed: 18 May 2024 | Revised: 1 June 2024 | Accepted: 27 June 2024

### Abstract

*The modernization of reproductive technology has made things easier for couples who are not yet blessed with children. Currently, the practice of surrogacy has been successful in providing children through surrogate mothers. Abroad, this practice can cross national borders, where the surrogate mother can come from a different nationality than the child's prospective parents. This practice is done to get good genes or offspring according to their hopes, especially if the couple rents a womb from a European or East Asian race. Two legal issues are studied in this research, namely those related to the legal status of the practice of surrogacy, which is cross-border according to private international law and Prophetic Law. Apart from that, this research also examines the urgency of regulating the practice of surrogacy in Indonesian law. This research, using a normative legal research methodology, concludes that even though the practice of surrogacy is considered legal based on private international law, from an Islamic Law perspective, this practice is strictly prohibited (Haram) because it obscures the child's lineage status. The law in Indonesia really needs to regulate the legal vacuum related to the surrogate mother practice both domestically and across national borders to ensure legal certainty.*

**Keywords:** Surrogate Mother, Prophetic Law, Private International Law

### INTRODUCTION

The goal of many couples in Indonesia is to bear children to continue their family lineage.<sup>1</sup> However, not all married couples are blessed with the ability to have

---

<sup>1</sup> Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakabat dan Undang-Undang Perkawinan*, 1st ed. (Jakarta: Kencana, 2009), 30–36; Umar Haris Sanjaya and Aunur Rahim Faqih, *Hukum Perkawinan Islam di Indonesia* (Yogyakarta: Gama Media, 2017), 17–20.



children, owing to several factors.<sup>2</sup> This has encouraged the development of healthcare technology to address infertility, such as in vitro fertilization<sup>3</sup> and gestational surrogacy.<sup>4</sup>

Surrogate motherhood has been around since 1978, with the first successful birth of Louise Brown.<sup>5</sup> In vitro fertilization can include implantation to the original mother (who supplied the egg) or a surrogate<sup>6</sup>. LGBTQ groups have benefitted from this procedure, making it easier for them to have children, even though the process is more complicated when implanting an embryo in a surrogate's womb.<sup>7</sup> Of course, the costs involved are very high to have a child through gestational surrogacy, considering the technology and legal costs.<sup>8</sup>

---

<sup>2</sup> Ika Indarwati, Uki Retno Budihastuti, and Yulia Lanti Retno Dewi, "Analysis of Factors Influencing Female Infertility," *Journal of Maternal and Child Health* 2, no. 2 (2017): 151, <https://doi.org/10.26911/thejmch.2017.02.02.06>.

<sup>3</sup> Zahrowati, "Bayi Tabung (Fertilisasi In Vitro) dengan Menggunakan Sperma Donor dan Rahim Sewaan (Surrogate Mother) dalam Perspektif Hukum Perdata," *Halu Oleo Law Review* 1, no. 2 (March 14, 2018): 200–202, <https://doi.org/10.33561/holrev.v1i2.3642>; Wiryawan Permadi, *Hanya 7 Hari Memahami Fertilisasi In Vitro* (Bandung: Refika Aditama, 2008), 1; Jennifer Choe and Anthony L. Shanks, "In Vitro Fertilization," in *StatPearls* (Treasure Island (FL): StatPearls Publishing, 2024), 1, <http://www.ncbi.nlm.nih.gov/books/NBK562266/>; Ita Djuwita et al., "In Vitro Fertilization and Embryo Development of Vitrified Ovine Oocytes Stressed in Sucrose," *HAYATI Journal of Biosciences* 12, no. 2 (June 2005): 74, [https://doi.org/10.1016/S1978-3019\(16\)30328-X](https://doi.org/10.1016/S1978-3019(16)30328-X).

<sup>4</sup> Marjan Goli et al., "Reproductive and Sexual Health of Surrogate Mothers, Developing a Care Program: A Protocol for Mixed Methods Study," *Reproductive Health* 16, no. 1 (December 2019): 2, <https://doi.org/10.1186/s12978-019-0687-8>; L. Van Zyl, "Interpretations, Perspectives and Intentions in Surrogate Motherhood," *Journal of Medical Ethics* 26, no. 5 (October 1, 2000): 404–9, <https://doi.org/10.1136/jme.26.5.404>; Shir Dar et al., "Assisted Reproduction Involving Gestational Surrogacy: An Analysis of the Medical, Psychosocial and Legal Issues: Experience from a Large Surrogacy Program," *Human Reproduction (Oxford, England)* 30, no. 2 (February 2015): 345–52, <https://doi.org/10.1093/humrep/deu333>.

<sup>5</sup> World Wide Surrogacy Specialists, "The History of Surrogacy: A Legal Timeline," April 12, 2021, <https://www.worldwidesurrogacy.org/blog/the-history-of-surrogacy-a-legal-timeline>.

<sup>6</sup> Francois Shenfield et al., "ESHRE Task Force on Ethics and Law 10: Surrogacy," *Human Reproduction* 20, no. 10 (October 1, 2005): 2705, <https://doi.org/10.1093/humrep/dei147>; B. M. Baker, "A Case for Permitting Altruistic Surrogacy," *Hypatia* 11, no. 2 (1996): 34.; Pedro Brandão and Nicolás Garrido, "Commercial Surrogacy: An Overview," *Revista Brasileira de Ginecologia e Obstetrícia / RBGO Gynecology and Obstetrics* 44, no. 12 (December 2022): 1142, <https://doi.org/10.1055/s-0042-1759774>.

<sup>7</sup> Vasanti Jadva et al., "Parents' Relationship with Their Surrogate in Cross-Border and Domestic Surrogacy Arrangements: Comparisons by Sexual Orientation and Location," *Fertility and Sterility* 111, no. 3 (March 2019): 562–63, <https://doi.org/10.1016/j.fertnstert.2018.11.029>; Scott C. Mackenzie, Dita Wickins-Drazilova, and Jeremy Wickins, "The Ethics of Fertility Treatment for Same-Sex Male Couples: Considerations for A Modern Fertility Clinic," *European Journal of Obstetrics & Gynecology and Reproductive Biology* 244 (January 2020): 71–75, <https://doi.org/10.1016/j.ejogrb.2019.11.011>; Julie Bindel, "Surrogacy: Human Right, or Just Wrong?," *Al Jazeera*, September 8, 2023, <https://www.aljazeera.com/opinions/2023/9/8/surrogacy-human-right-or-just-wrong>.

<sup>8</sup> Pedro Brandão and Nicolás Garrido, "Commercial Surrogacy: An Overview," *Revista Brasileira de Ginecologia e Obstetrícia / RBGO Gynecology and Obstetrics* 44, no. 12 (December 2022): 1142, <https://doi.org/10.1055/s-0042-1759774>.

To evade the Indonesian law, the practice of gestational surrogacy is now possible to be done across national borders.<sup>9</sup> Apart from being aimed at obtaining genetic guarantees and the quality of the offspring produced, this practice could be considered human trafficking, especially in Indonesia, where children resulting from gestational surrogacy have the potential to violate the basic rules of marriage law, whether through Law No. 1 of 1974. Article 42 of Marriage Law mentioned that a legitimate child is a child born in or as a result legal marriage. Then, article 43 of the same law regulated that an illegitimate child is a child born outside of marriage and only has a civil relationship with his mother and his mother's family. An illegitimate child may be children who are seeded and born outside of a legal marriage or children who are seeded outside of marriage but are born after their parents marry.<sup>10</sup>

This research examines the issue of legal status for children resulting from gestational surrogacy across national borders, both from the perspective of Indonesian private international law and prophetic law. The prophetic legal perspective is the dominant study in this research, considering that most Indonesian people are Muslims and gestational surrogacy is still debated ethically and morally. Apart from that, this research also examines the readiness of laws and regulations in Indonesia to regulate gestational surrogacy.

## METHODOLOGY

This research uses a doctrinal research method (often known as normative research methodology), which uses basic norms that are binding and authoritative.<sup>11</sup> This method is used to analyze two problem formulations proposed by researchers, namely: (1) what is the legal status of cross-border surrogacy, where the two

---

<sup>9</sup> Kerry Petersen, "Cross Border Commercial Surrogacy: A Global Patchwork of Inconsistency and Confusion," in *Law and Global Health*, ed. Michael Freeman, Sarah Hawkes, and Belinda Bennett (Oxford University Press, 2014), 209, <https://doi.org/10.1093/acprof:oso/9780199688999.003.0014>.

<sup>10</sup> "Law of Republic of Indonesia Number 1 on Marriage" (1974) Art. 42-43.

<sup>11</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, 2nd ed. (Jakarta: Penerbit Universitas Indonesia (UI-Press), 2006); Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Rajawali Pers, 2015); Soetandyo Wignjosebroto, *Hukum: Konsep dan Metode*, 1st ed. (Malang: Setara Press, 2013); Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Rajawali Pers, 2018); Munir Fuady, *Metode Riset Hukum: Pendekatan Teori dan Konsep*, 1st ed. (Depok: Rajawali Pers, 2018).

countries (one of the biological parents and the other from the surrogate) have different laws on surrogacy?; and (2) How urgent it is for the surrogacy procedure to be regulated within Indonesian legal framework?

This research uses two approaches for a more in-depth analysis: a conceptual approach, a comparative approach, and a statutory approach. The concept of ethics and morals here uses the perspective of prophetic law with three basic parameters: humanization, liberation, and transcendence.<sup>12</sup> A comparative approach is used to analyze other countries' best practices in regulating surrogacy. A statutory approach is used to analyze existing laws and regulations in Indonesia, especially those relating to gestational surrogacy.

This research uses primary and secondary legal materials. The primary law comes from the 1945 Constitution, Law No. 1 of 1974 on Marriage and its Amendments, Law No. 36 of 2009 on Health, Government Regulation No. 61 of 2014 on Health Reproduction, Regulation of the Ministry of Health No. 43 of 2015 on Providing Assisted Reproductive Services or Pregnancy Through Other Than Natural Means, and the related compilation of Islamic law in Indonesia. The legal materials will be studied, analyzed qualitatively, and presented descriptively.<sup>13</sup>

## RESULT AND DISCUSSION

### Cross Border Practices of Gestational Surrogacy: between Vested Rights or Public Policy

In 1980, Noel Keane, a lawyer from Michigan, became the first lawyer to draft and introduce contracts regarding surrogacy.<sup>14</sup> Since then, the movement to establish

---

<sup>12</sup> Lukman Santoso, "Towards Religiosity-Based Legal Science: Critical-Constructive Prophetic Law on Positivism Paradigm," *Prophetic Law Review* 2, no. 2 (December 1, 2020): 221, <https://doi.org/10.20885/PLR.vol2.iss2.art6>.<https://doi.org/10.20885/PLR.vol2.iss2.art6>; M.Syamsudin, ed., *Ilmu Hukum Profetik: Gagasan Awal, Landasan Kefilsafatan, dan Kemungkinan Pengembangannya di Era Postmodern*, 1st ed. (Yogyakarta: Pusat Studi Hukum (PSH) FH UII kerja sama dengan FH UII Press, 2013).

<sup>13</sup> Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2021).; Michael McConville and Wing Hong Chui, eds., *Research Methods for Law*, 2nd ed., Research Methods for the Arts and Humanities (Edinburgh: Edinburgh University Press, 2017), 18.

<sup>14</sup> NayanaHitesh Patel et al., "Insight into Different Aspects of Surrogacy Practices," *Journal of Human Reproductive Sciences* 11, no. 3 (2018): 213, [https://doi.org/10.4103/jhrs.JHRS\\_138\\_17](https://doi.org/10.4103/jhrs.JHRS_138_17).

regulations regarding surrogacy has spread in the United States, and approximately ten states support this practice.<sup>15</sup> Under California law, paying a surrogate mother to carry a child is legal as long as a surrogacy agreement existed before conception.<sup>16</sup> Apart from the United States, several other countries have also legalized the practice of gestational surrogacy, including the United Kingdom and India.

In Indonesia, the practice of gestational surrogacy is carried out in secret, considering that most Indonesians are against this practice.<sup>17</sup> The law in Indonesia does not provide clear regulations regarding the practice of gestational surrogacy. To date, no surrogacy agreement has openly existed and has become the object of dispute in court.<sup>18</sup> No public notary dares to do a notarial deed to support the surrogacy process.

According to Article 1320 of the Indonesian Civil Code,<sup>19</sup> a surrogacy agreement cannot fulfill one of the conditions for validity. To be valid, cumulatively, a surrogacy agreement must fulfill four elements: consent between the parties, skill of the parties, a certain and clear object, and legally permissible under Indonesian law. A surrogacy agreement only fulfills the first three conditions except for the fourth, namely the permissible clause. The parameters of this 'permissible clause' illustrate that the goals to be achieved by the parties must not conflict with legal provisions and even morality values in Indonesia.

The practice of surrogacy violates the provisions in Law No. 36 of 2009 on Health. Article 127, paragraph (1) of this provision states that "legally married couples are the only ones who can carry out attempts to conceive outside of natural means with the following provisions: (a) the wife's womb receives implantation of the fertilized ovum and sperm from the husband and herself; (b) the procedure is carried out by

---

<sup>15</sup> "Surrogacy Laws By State, Surrogate.Com," April 8, 2016, <https://surrogate.com/intended-parents/surrogacy-laws-and-legal-information/surrogacy-laws-by-state/>.

<sup>16</sup> However, if a woman is pregnant and wants to give her up for adoption, it is illegal to pay for her on top of her medical expenses. See "California Code, Family Code," 7960 FAM § (n.d.).

<sup>17</sup> "Sewa Rahim di Indonesia Dilakukan Diam-diam," detikhealth, June 5, 2010, <https://health.detik.com/ibu-dan-anak/d-1370505/sewa-rahim-di-indonesia-dilakukan-diam-diam>.

<sup>18</sup> Desrizza Ratman, *Surrogate Mother Dalam Perspektif Etika Dan Hukum: Bolehkan Sewa Rahim Di Indonesia?* (Jakarta: Elex Media Komputindo, 2012), 147.

<sup>19</sup> "Indonesian Civil Code" (n.d.) Art. 1320.

health workers with the expertise and authority; and (c) the procedure is performed only at designated healthcare facilities.”<sup>20</sup> Moreover, Government Regulation No. 61 of 2014 on Health Reproduction regulates the legal procedure for the possibility of in vitro fertilization. Article 40 of this Law affirms that assisted reproduction or pregnancy outside of natural means can only be carried out by married couples who are legally married and experiencing infertility or infertility to obtain offspring.<sup>21</sup> The same provision also highlights that assisted reproduction or pregnancy outside of natural means is carried out using the fertilization results of sperm and ovum originating from the husband and wife concerned and implanted in the wife's womb from which the ovum originates.<sup>22</sup> This later provision, the norm that the embryo has only allowed to be implanted to the wife’s womb, obstructs the practice of surrogacy.

In vitro fertilization in Indonesia cannot be done in any hospital. Only hospitals with permission from the Minister of Health can conduct this procedure. The entire licensing process, service standards, and process flow for administering in vitro fertilization are carried out based on the Regulation of the Ministry of Health No. 43 of 2015 on Providing Assisted Reproductive Services or Pregnancy Through Other Than Natural Means. Article 14 of this Regulation stipulates that, apart from requiring informed consent from the legal husband and wife, the process of transferring excess embryos must be carried out by the legal wife and not anyone else. Article 14, paragraph (3) of the Regulation of the Ministry of Health No. 43 of 2015 on Providing Assisted Reproductive Services or Pregnancy with Other Than Natural Means clearly mentions that the embryo developed by the technology of reproduction only to be transferred into the wife's womb within a maximum of 2 years.

Those existing provisions under Indonesian law reflect the public policy in Indonesia. At the same time, the culture deeply rooted in Indonesian society places

---

<sup>20</sup> “Law No. 36 of 2009 on Health” (n.d.) Art. 127, Par. 1.

<sup>21</sup> “Government Regulation No. 61 of 2014 on Health Reproduction” (n.d.) Art. 40.

<sup>22</sup> Government Regulation No. 61 of 2014 on Health Reproduction Art. 40, Par. 2 Hence, there is no possibility of implanting the embryos into the other woman’s womb (outside the marriage).

the sanctity of the marriage bond.<sup>23</sup> Women who commit acts of adultery (or promiscuity), including women who agree to rent their wombs, have the potential to be rejected and expelled from society.<sup>24</sup> The practice of gestational surrogacy is contrary to the basic norms of decency in Indonesia.

Furthermore, Article 27 of Law No. 35 of 2014 on the Amendment of Law No. 23 of 2002 on Children's Protection regulates that each child's identity must be provided from birth.<sup>25</sup> This identity is stated in the birth certificate issued by the Civil Registrar's Office. Making a birth certificate is based on a certificate from the person who witnessed and/or assisted in the birth process, which, in practice, will be given officially by the hospital. The child's identity must include the names of the biological father and mother. The other law, particularly Law No. 1 of 1974 on Marriage, regulates that a legitimate child is born in or as a result of a valid marriage. This law also regulates that children born outside of marriage only have a civil relationship with their biological mother and their mother's family.<sup>26</sup> Hence, both the law on marriage and the law of child protection in Indonesia have substantially regulated the fact that children under legal marriage were born in their biological mother's womb<sup>27</sup> can receive their document status from the state. This law could be challenging to apply to children who were born under a surrogacy contract.

---

<sup>23</sup> Wasman and Wardah Nuroniyah, *Hukum Perkawinan Islam di Indonesia: Perbandingan Fiqih dan Hukum Positif*, 1st ed. (Yogyakarta: Teras, 2011), 6–9.; Yaswirman, *Hukum Keluarga: Karakteristik dan Prospek Doktrin Islam dan Adat dalam Masyarakat Matrilineal Minangkabau*, 1st ed. (Jakarta: Rajawali Pers, 2011), 7.

<sup>24</sup> Vanya Karunia Mulia Putri, "Akibat Melanggar Norma yang Berlaku di Masyarakat," [www.kompas.com/skola](https://www.kompas.com/skola), January 5, 2023, <https://www.kompas.com/skola/read/2023/01/05/090000869/akibat-melanggar-norma-yang-berlaku-di-masyarakat>.

<sup>25</sup> "Law No. 35 of 2014 on the Amendment of Law No. 23 of 2002 on Children Protection" (n.d.) Art. 27.

<sup>26</sup> "Law No. 1 of 1974 on Marriage" (n.d.) Art. 43; "The Constitutional Court Decision No. 46/PUU-VIII/2010" (2012) This Constitutional Court provides a new interpretation of the article 43 as "Children born out of wedlock have a civil relationship with their mother and their mother's family and with a man as their father which can be proven based on science and technology and/or other evidence according to law have blood relations, including civil relations, with their father's family; Achmad Irwan Hamzani, "Nasab Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010," *Jurnal Konstitusi* 12, no. 1 (May 20, 2016): 61–63, <https://doi.org/10.31078/jk1214>.<https://doi.org/10.31078/jk1214>; "MK Beri Status Hukum Anak di Luar Nikah," February 17, 2012, <https://www.mkri.id/index.php?page=web.Berita&id=6507&menu=2>.

<sup>27</sup> Law No. 1 of 1974 on Marriage Art. 42.

For this reason, gestational surrogacy is often conducted in secret and through unlicensed hospitals or doctors.<sup>28</sup> This practice is challenging to trace because it is carried out neatly and covertly. The contract between the surrogate mother and the intended or commissioning parents is also made anonymously.<sup>29</sup> This contract ensures that the surrogacy process runs well and that the commissioning parents can cover the required costs in full and on time. If a dispute occurs, this contract cannot be brought to an Indonesian court because it would contradict the rules of law and public policy. Hence, it has the potential to be null and void if brought to court.

Apart from being carried out secretly, the practice of surrogacy has been carried out across national borders.<sup>30</sup> Wealthy individuals and couples can carry out an evasion of the law by practicing surrogacy abroad. Surrogate motherhood can be done by people who are not Indonesian citizens. There are many reasons this cross-border practice is carried out, some of which are to circumvent the law in Indonesia, get the best genes, get the best technological treatment abroad, and avoid public shame. Hence, the lack of sufficient domestic law to regulate cross-border surrogacy will open opportunities for this practice to be carried out in other countries that have given it recognition in their domestic law.<sup>31</sup>

Some Indonesians may perform evasion of law because it is carried out in countries that recognize surrogacy practices, such as the United States. Gautama stated that evasion of law is an act that aims to avoid the application of national law so that the person concerned obtains certain benefits according to his wishes because, for him,

---

<sup>28</sup> “Sewa Rahim di Indonesia Dilakukan Diam-diam,” detikhealth, June 5, 2010, <https://health.detik.com/ibu-dan-anak/d-1370505/sewa-rahim-di-indonesia-dilakukan-diam-diam>; “Apakah Surrogate Mother Solusi bagi Pasangan Sulit Memiliki Anak?,” detikhealth, July 28, 2023, <https://health.detik.com/berita-detikhealth/d-6846526/apakah-surrogate-mother-solusi-bagi-pasangan-sulit-memiliki-anak>.

<sup>29</sup> Salim H.S., *Perkembangan Hukum Kontrak Innominaat Di Indonesia*, 1st ed. (Jakarta: Sinar Grafika, 2003).

<sup>30</sup> Margaret E. Swain and Colin James Rogerson, “Addressing Legal Issues in Cross-Border Gestational Surrogacy: Current Topics and Trends,” *Fertility and Sterility* 115, no. 2 (February 2021): 272, <https://doi.org/10.1016/j.fertnstert.2020.11.031>; Noelia Igareda González, “Legal and Ethical Issues in Cross-Border Gestational Surrogacy,” *Fertility and Sterility* 113, no. 5 (May 2020): 917, <https://doi.org/10.1016/j.fertnstert.2020.03.003>.

<sup>31</sup> Martin Engel, “Cross-Border Surrogacy: Time for a Convention?,” in *Family Law and Culture in Europe*, ed. Katharina Boele-Woelki, Nina Dethloff, and Werner Gephart, 1st ed. (Intersentia, 2014), 199, <https://doi.org/10.1017/9781780685274.016>.



foreign law applies.<sup>32</sup> For this reason, evasion of law across national borders is carried out to obtain legal status abroad. Later, when the child is born, it will receive recognition in Indonesia based on continued legal status principle.

The principle of continuing legal status is often referred to as vested rights. This recognized legal situation or relationship includes legal relationships, capacities, disabilities, and powers granted or imposed by any law system.<sup>33</sup> Legal conditions that have received recognition in other countries can, as far as possible, also be recognized and implemented in Indonesia. However, this recognition must be done through a 'public policy' check because the legal system in the recipient country has an obligation to ensure whether the practice of surrogacy contradicts public policy in Indonesia.

The practice of cross-border surrogacy carried out across national borders potentially violates the provisions of public policy in Indonesia. When foreign law has been used to provide recognition for surrogacy practices carried out abroad and requires domestic law to recognize them, the Court is given the authority to exercise discretion and reject them despite forum conflict with rules under public policy<sup>34</sup>. This public policy includes the provisions of laws and regulations in Indonesia and the basic norms of decency and appropriateness that exist and are inherent in Indonesian law. Thus, surrogacy carried out across national borders with the aim of evasion of law is not acceptable under Indonesian law.

### **The Prophetic Law Approach of Surrogacy**

Professors at Universitas Islam Indonesia have recognized and are advancing the concept of prophetic law as a new paradigm in legal science.<sup>35</sup> They have developed

---

<sup>32</sup> Sudargo Gautama, *Pengantar Hukum Perdata Internasional Indonesia* (Bandung: Binacipta, 2012), 148.

<sup>33</sup> Wirjono Prodjodikoro, *Asas-Asas Hukum Perdata Internasional* (Bandung: Sumur, 1992), 27.

<sup>34</sup> Kent Murphy, "The Traditional View of Public Policy and Ordre Public in Private International Law," *Georgia Journal of International & Comparative Law* 11, no. 3 (1981): 591, <https://digitalcommons.law.uga.edu/gjicl/vol11/iss3/9>; J.Kosters, "Public Policy in Private International Law," *The Yale Law Journal* 29, no. 7 (May 1920): 750, <https://doi.org/10.2307/786607>; Anthony E Cassimatis, "Public Policy Under The New York Convention - Bridges Between Domestic and International Courts and Private and Public International Law," *National Law School of India Review* 31, no. 1 (2019): 32.

<sup>35</sup> In 2013, academics at the UII Faculty of Law and academics at other universities began discussing prophetic legal approach. Syamsudin, *Ilmu Hukum Profetik: Gagasan Awal, Landasan Kefilsafatan, dan Kemungkinan Pengembangannya di Era Postmodern*.

the prophetic paradigm promulgated by Kuntowijoyo, an Islamic scholar from Yogyakarta, Indonesia, which tries to contextualize Islamic truth in society.<sup>36</sup> Prophetic law is a tangible form of viewing social problems objectively through a lens based on the ultimate truth. This paradigm is very different from the values of secularism developing in Western countries which have been based on unconditional freedoms.

Kuntowijoyo formulated three approaches to prophetic social science. All three are sourced from the Al-Qur'an, Surah Ali-Imran, paragraph 110, which emphasizes the historical mission of Islam to uphold good, prevent evil, and believe in Allah SWT.<sup>37</sup> We now know these three values as humanization, liberation, and transcendence values. These three pillars are fundamental and were used by Kuntowijoyo to build the significance of Islam in the social sciences.<sup>38</sup>

Looking at the Kuntowijoyo three-pillar structure above, we can see that the foundation focuses on humanity. From a religious point of view, the concept of humanization is the creative meaning of *Amal Ma'ruf* (enjoining good), who originally encouraged the maintenance of virtue. Humanization focuses on ridding mankind of substance addiction, violence, and hatred. Liberation, on the other hand, aims to free its people from the cruelty of poverty, the arrogance of technology, and the pressures of prosperity. Transcendence aims to add a transcendental dimension.<sup>39</sup>

In connection with the philosophy provided by Kuntowijoyo, surrogacy basically deviates from truth and human nature. This practice has gone far beyond the boundaries clearly outlined in religion, so we humans must return to the ultimate truth. This truth can be sourced from the Al-Qur'an, Sunnah, and ijtihad of Ulama.

---

<sup>36</sup> Kuntowijoyo, *Islam Sebagai Ilmu: Epistemologi, Metodologi, dan Etika*, 1st ed. (Jakarta: Ujung Berung, Bandung: Teraju ; Didistribusikan oleh Mizan Media Utama, 2004), 52–57.

<sup>37</sup> *Al-Qur'an*, n.d. Chapter 3: Ali-imran, par. 110. In this paragraph Almighty God stated that: You are the best community ever raised for humanity—you encourage good, forbid evil, and believe in Allah. Had the People of the Book believed it would have been better for them. Some of them are faithful, but most are rebellious.

<sup>38</sup> Khusni Arum, "Pengembangan Pendidikan Agama Islam Berbasis Sosial Profetik (Analisis Terhadap Pemikiran Kuntowijoyo)," *Millah: Journal of Religious Studies*, April 28, 2018, 177, <https://doi.org/10.20885/millah.vol17.iss2.art2>.

<sup>39</sup> Husnul Muttaqin, "Menuju Sosiologi Profetik," *Jurnal Sosiologi Reflektif* 10, no. 1 (September 9, 2016): 225–28, <https://doi.org/10.14421/jsr.v10i1.1147>.

The position of a surrogate mother will damage a child's birth status. In this case, the person entitled to status as a mother is the woman who gives birth to her child, not the woman who entrusts her egg cells to be fertilized.<sup>40</sup>

The Qur'an also confirms that "Allah created man from one person, and from him God created his wife, and from the two of them God created many men and women".<sup>41</sup> It also states that "their mothers are none other than the women who gave birth to them".<sup>42</sup> Chapter 26 of Al Ahqaf also mentions, "We command humans to do good to both parents. Their mothers conceived them with difficulty and gave birth to them with difficulty (also). Conceiving her until weaning her is thirty months".<sup>43</sup> Moreover, the chapter of Al Luqman also mentioned that "We commanded humans (to do good) to their parents and parents; his mother had conceived him in a state of increasing weakness and weaned him in two years. Be thankful to Me and your parents. Only to Me is your return".<sup>44</sup>

From all the verses in the Qur'an, it is clear that a true mother is a mother who conceives and gives birth.<sup>45</sup> For this reason, lineage is important in determining the status of blood ties between children and their parents. Islam has placed a firm emphasis on this, as has also been stated by Ash-Shabuni that blood ties can legalize family relationships, both as a result of a valid marriage, fasid marriage, or adultery.<sup>46</sup> Nasab is the relationship between a child and his father so that the child has legally protected rights such as inheritance, marriage, and guardianship rights.

Qardhawi also argued that all Fiqh experts agree not to allow womb use in any form.<sup>47</sup> While Ulama and medical experts have issued fatwas that allow husband

---

<sup>40</sup> Lintang Wistu Malindi and Mochammad Najib Imanullah, "Kedudukan Surogasi dan Status Hukum Anak dalam Perspektif Hukum Perdata," *Privat Law* 9, no. 1 (2021): 125, <https://doi.org/10.20961/privat.v9i1.28926>.

<sup>41</sup> *Al-Qur'an* Chapter 4: An-Nisa', Par. (1).

<sup>42</sup> *Al-Qur'an* Chapter 28: Al-Mujadilah, Par. (2).

<sup>43</sup> *Al-Qur'an* Chapter 26: Al-Ahqaf, Par. (5).

<sup>44</sup> *Al-Qur'an* Chapter 21: Luqman, Par. (14).

<sup>45</sup> Said Aqil Husin Al Munawar, Hasan M. Noer, and Musyafaullah, *Hukum Islam & Pluralitas Sosial*, 2nd ed. (Jakarta: Penamadani, 2005), 109.

<sup>46</sup> Mohammad Fahrudi Noer Farida Ulvi Na'imah, "Nasab Bayi Tabung dalam Perspektif Hukum Islam dan Maqasid Syari'ah," *Al-Adalah: Jurnal Syariat dan Hukum Islam* 4, no. 2 (December 10, 2019): 152, <https://doi.org/10.31538/adlh.v4i2.550>.

<sup>47</sup> Yusuf Qaradawi, As'ad Yasin, and Abdul Hayyie Kattani, *Fatwa-fatwa Kontemporer Jilid 3*, 3rd ed. (Jakarta: Gema Insani Press, 2001), 660.

and wife, or one of them, to take advantage of advances in science to help them realize the birth of a child, they require that the sperm belong to the husband and the egg cells to the wife; there is no third party between them.<sup>48</sup> For this reason, births from surrogacy are considered offspring of the surrogate rather than the biological mothers, mainly based on the literal meaning of the Qur'an, particularly Chapter 2 of Al-Mujaadilah.

Most importantly, in the compilation of Islamic Law<sup>49</sup>, it is regulated that legitimate children are children born in or because of a valid marriage and children resulting from the legitimate actions of a husband and wife. This provision refers directly to the primary source of Islamic law, the Quran.<sup>50</sup> This provision also aligns with Law No. 1 of 1974 on Marriage. Apart from that, the rules in the Compilation of Islamic Law emphasize that children born through surrogate mothers cannot be the legitimate children of the biological parents who formed the embryo. This is because a child was born through a fertilization process outside the womb and was not born by the biological mother but by another woman who was not his wife.

For this reason, if viewed from Islamic law, a child born through a surrogate mother, considering the basis of Islamic law sources including the Quran, is the pregnant mother who is most appropriate to be the mother because she is the one who feels the burden when carrying and giving birth. In this way, the child has a family relationship with the pregnant mother, and legal consequences arise therefrom. The presence of a surrogate mother has a negative impact, especially in providing the best care and protection for the child.<sup>51</sup> By emphasizing the prophetic value, it is essential to provide legal firmness so that surrogacy is prohibited by considering upholding the truth and restoring the fundamental dignity of human beings.

---

<sup>48</sup> Qaradawi, Yasin, and Kattani, 659.

<sup>49</sup> "Kompilasi Hukum Islam dalam Perspektif Politik Hukum Indonesia oleh : Saiful, S. Ag. MH (2/4) – Direktorat Jenderal Badan Peradilan Agama," n.d., <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/kompilasi-hukum-islam-dalam-perspektif-politik-hukum-indonesia-oleh-saiful-s-ag-mh-24> The Compilation of Islamic Law is the first codification of Islamic law in Indonesia whose existence was based on Presidential Instruction No. 1 of 1991. This Presidential Instruction was then followed up with a joint decision by the Chief Justice of the Supreme Court and the Minister of Religion, dated March 21, 1985.

<sup>50</sup> *Al-Qur'an* Chapter 3: Ali-Imran, par. 110.

<sup>51</sup> Duden K, "International Surrogate Motherhood — Shifting the Focus to the Child," *Zeitschrift Für Europäisches Privatrecht*, No. 3 (2015): 23.

Even though the practice of surrogacy is considered technologically successful, there are still negative impacts. For this reason, according to the prophetic approach, the practice of surrogacy, primarily commercial surrogacy, will open social problems.<sup>52</sup> Children are a gift from God that must always be looked after and cared for. They are not transactional commodities for human greed. A child has the fundamental right to have clear blood ties primarily to support their growth and development.

### **The Need to Regulate the Gestational Surrogacy under Indonesian Statutory Law**

Even though Indonesia regulates gestational surrogacy in Government Regulation No. 61 of 2014 on Health Reproduction and Regulation of the Ministry of Health No. 43 of 2015 on Providing Assisted Reproductive Services, this provision is still only technical. It lacks criminal sanctions and there is only a limited deterrent effect. Based on Law No. 12 of 2011 on Legal Drafting, legal norms regulated in government regulations and the ministry's regulations are generally technical to elaborate existing provisions in enacted law and may not contain criminal provisions. This legal results in weak implementation. Even though it is only permissible to regulate administrative sanctions, legal culture and legal awareness in Indonesia have not been able to prevent illegal acts carried out in health units at the regional level.

Even though Law No. 36 of 2009 on Health is used as the essential reference for Government Regulation No. 61 of 2014 on Health Reproduction and Regulation of the Ministry of Health No. 43 of 2015 on Providing Assisted Reproductive Services, the frame of reference is still very limited to only one article, Article 127 of Law No. 36 of 2009. This article is still minimalist, and no "prohibition" provisions would provide legal certainty preventing the practice of surrogacy.

For this reason, this study emphasizes the need for a legal framework through statutes enacted by the legislature regulating. This must include law regarding whether Indonesia recognizes vested rights under foreign law, especially in

---

<sup>52</sup> M. P. Riddle, "The Role of Religion and Spirituality in Conceptualizing Reproductive Loss: Clinical Implications of the Narratives of Gestational Surrogates in the USA," *Journal of Religion and Health* 60, no. 1 (February 2021): 282, <https://doi.org/10.1007/s10943-020-01076-7>.

obtaining children through the practice of surrogacy. Issues with citizenship, nationality, motherhood, parentage, and child rights arise from cross-border surrogacy.<sup>53</sup> Apart from that, this practice still has a negative impact not only on the child being born but also on the surrogate mother. These negative impacts range from depression, anxiety, abnormalities at birth, or even death, as well as other impacts caused by unsuccessful surrogacy.<sup>54</sup>

This very urgent and vital need in the presence of Anti-Surrogacy into a statutory law needs to be pursued shortly, whether it is a proposal from the executive and/or legislative to present Indonesia's genuine efforts in providing exclusive protection for families. The practice of surrogacy has been ethically contradictory and will later obscure the child's fate. This law will reflect the morality of Indonesian society.

On the one hand, the practice of surrogacy is seen as beneficial for both commissioning parents and surrogate mothers. Those who can prepare more financially will be guaranteed that their child will have a healthy and stress-free pregnancy and birth process. In the United States, provisions regarding profits between both parties are regulated in the surrogacy contract<sup>55</sup>. The rights and obligations of the parties are regulated in detail to ensure the continuity of the pregnancy and birth process. If necessary, the contract also clearly regulates the status of the post-born child, who will become the absolute commissioning parent's child, and there will be no lawsuits in the future.

On the other hand, the practice of surrogacy is seen as inconsistent with the ethics and morality of Indonesian society,<sup>56</sup> considering the fact that commercial surrogacy

---

<sup>53</sup> Pikee Saxena, Archana Mishra, and Sonia Malik, "Surrogacy: Ethical and Legal Issues," *Indian Journal of Community Medicine* 37, no. 4 (2012): 211, <https://doi.org/10.4103/0970-0218.103466>.

<sup>54</sup> Adriana Milazzo et al., "Depression and Anxiety Outcomes Associated with Failed Assisted Reproductive Technologies: A Systematic Review and Meta-Analysis," ed. Cornelis B Lambalk, *PLOS ONE* 11, no. 11 (November 11, 2016): 1–19, <https://doi.org/10.1371/journal.pone.0165805>; Ken Daniels and Karyn Taylor, "Surrogacy: The Private Troubles and Public Issues," *Community Mental Health in New Zealand* 6, no. 2 (1991): 28–50; Sarah Earle, Carol Komaromy, and Linda L. Layne, *Understanding Reproductive Loss: Perspectives on Life, Death and Fertility* (Farham, Surrey, England ; Burlington, VT: Ashgate, 2012).

<sup>55</sup> Caitlin Conklin, "Simply Inconsistent: Surrogacy Laws in the United States and the Pressing Need for Regulation," *Women's Rights Law Reporter* 35 (2014 2013): 67.

<sup>56</sup> Michael J. Sandel, *What Money Can't Buy: The Moral Limit of Market* (London New York, New York Ontario: Penguin Books, 2013); Peter Singer and Deane Wells, *Making Babies: The New Science and Ethics of Conception* (New York: C. Scribner's Sons, 1985), 96.

is carried out by exploiting women. Generally, women who become surrogate mothers come from the lower classes and are poor and less educated. They are in a situation where they need high financial support, so they are forced to accept the surrogacy offer. In India, for example, many people practice surrogacy because of the promise of good economic support.<sup>57</sup> Not a few surrogate mothers become victims due to failures in the surrogacy process.<sup>58</sup> Anderson highlighted that children are used as commodities in surrogacy practices.<sup>59</sup> This action is identical to the practice of buying and selling babies. Most surrogate mothers practice surrogacy for the sake of monetary advantages. She is willing to give her baby without thinking about what the baby's future will be like. Monetary advantages receive priority over the future and survival of the baby she is carrying. In fact, during the pregnancy process, she has an emotional and psychological bond with the baby she is carrying.

Even though technology guarantees that there will be no genetic ties between the surrogate mother and the child she gives birth to, the practice of surrogacy harms the child and the surrogate mother because they have an emotional bond during the pregnancy process. After giving birth, the surrogate mother can experience depression because she may not be ready to be separated from the child she is carrying, and this can even result in depression, especially in terms of breastfeeding, which is naturally needed by a child who has just been born from the womb. Not all

---

<sup>57</sup>Amrita Pande, "Not an 'Angel', Not a 'Whore': Surrogates as 'Dirty' Workers in India," *Indian Journal of Gender Studies* 16, no. 2 (June 2009): 141, <https://doi.org/10.1177/097152150901600201>; Amrita Pande, "Commercial Surrogacy in India: Manufacturing a Perfect Mother-Worker," *Signs: Journal of Women in Culture and Society* 35, no. 4 (June 2010): 969, <https://doi.org/10.1086/651043>; Laura M. Purdy, "Surrogate Mothering: Exploitation or Empowerment," *Bioethics* 3, no. 1 (January 1989): 18, <https://doi.org/10.1111/j.1467-8519.1989.tb00324.x>; C. Paul Vincent and Alene D. Aftandilian, "Liberation or Exploitation: Commercial Surrogacy and the Indian Surrogate," *Suffolk Transnational Law Review* 36 (2013): 671.

<sup>58</sup>Anjeeta Lal, a 29-year-old Hazaribagh native, was coerced into being her sister-in-law's surrogate by her husband and in-laws. She passed away in Ranchi, Jharkhand, from a heart attack while giving birth to the child Meghna Borah, Arup Kumar Hazarika, and Unmilan Kalita, "Right to be a Surrogate: Biological, Constitutional and Economic Perspectives," *Space and Culture, India* 8, no. 1 (June 29, 2020): 80–86, <https://doi.org/10.20896/saci.v8i1.699>; Jaipurari Vishvendu, "Womb Rental Ends in Death - Telegraph India," July 28, 2014, <https://www.telegraphindia.com/jharkhand/womb-rental-ends-in-death/cid/164231>.

<sup>59</sup>Elizabeth S. Anderson, "Is Women's Labor a Commodity?," *Philosophy & Public Affairs* 19, no. 1 (1990): 71; Richard J. Arneson, "Commodification and Commercial Surrogacy," *Philosophy & Public Affairs* 21, no. 2 (1992): 132; Carmel Shalev, "Birth Power: The Case for Surrogacy," *Columbia Law Review* 90, no. 4 (May 1990): 1177, <https://doi.org/10.2307/1122931>.

commissioning parents are open to the history of the surrogacy process for their adult children.<sup>60</sup>

The lineage between mother and child will also be blurred, so the morality of the practice of surrogacy goes too far against the sacred values of the family. For this reason, Indonesia must have comprehensive regulations to prohibit surrogacy. This regulation needs to reflect from a substantive perspective the morality of Indonesian society, which prioritizes what is best for children and maintains the sacredness of the family lineage. It is necessary to emphasize the harm of the practice of surrogacy, which can threaten and hurt both the child being born and the surrogate mother. Indonesian society does not have similarities in culture and maturity of thought, so normative and written regulations are needed to avoid the practice of evasion of law, which is conducted across national borders.

Firmness in domestic legal regulations is essential. Indonesia can use the laws of other countries as a comparison. In the state of Arizona and the District of Columbia, surrogacy contracts are prohibited, and several other states in the United States consider surrogacy agreements to be null and void and subject to monetary fines and prison sentences.<sup>61</sup> The Netherlands and Belgium only allow altruistic surrogacy with stringent rules prohibiting commercial surrogacy.<sup>62</sup> Germany strictly prohibits both altruistic and commercial surrogacy.<sup>63</sup> According to the German Civil Code, the woman who gave birth to the child is always the child's legal mother.<sup>64</sup>

---

<sup>60</sup> Ansha Patel, Pratap Kumar, and P. S. V. N. Sharma, “‘The Miracle Mothers and Marvelous Babies’: Psychosocial Aspects of Surrogacy – A Narrative Review,” *Journal of Human Reproductive Sciences* 13, no. 2 (2020): 93, [https://doi.org/10.4103/jhrs.JHRS\\_33\\_20](https://doi.org/10.4103/jhrs.JHRS_33_20).

<sup>61</sup> The states of Michigan, New York, Indiana, Kentucky, Louisiana, and Nebraska

<sup>62</sup> “Belgian Ethics Body Asks for Legalisation of Surrogacy,” August 6, 2023, <https://cne.news/article/3174-belgian-ethics-body-asks-for-legalisation-of-surrogacy>; Ministerie van Justitie en Veiligheid, “Legislative Surrogacy Regulations,” nieuwsbericht (Ministerie van Algemene Zaken, June 30, 2023), <https://www.government.nl/latest/news/2023/06/30/legislative-surrogacy-regulations>.

<sup>63</sup> Sayani Mitra, Silke Schicktanz, and Tulsi Patel, eds., *Cross-Cultural Comparisons on Surrogacy and Egg Donation: Interdisciplinary Perspectives from India, Germany and Israel* (Cham: Palgrave Macmillan, 2018).

<sup>64</sup> Laurence Brunet et al., “A Comparative Study on the Regime of Surrogacy in EU Member States,” *European Parliament*, May 2013.



## **CONCLUSION**

Current developments in health technology contribute to providing solutions related to problems conceiving naturally. The practice of surrogacy has developed rapidly and is practiced by society both through altruistic surrogacy and commercial surrogacy. This practice still poses pros and cons from a legal and ethical perspective. The legal vacuum that exists in Indonesia means that the practice of surrogacy is carried out clandestinely or across national borders. From the perspective of private international law, the practice of surrogacy carried out across national borders, on the one hand, constitutes evasion of law. However, it will conflict with the principles of public policy.

The practice of surrogacy is contrary to the morality of society in Indonesia. Apart from that, the practice of surrogacy is contrary to the essential truth that a child has the right to obtain protection for a clear birth status and the right to receive attention from the mother who gave birth and breastfed him. For this reason, surrogacy has also deviated from the three pillars of prophetic law because of technological arrogance, which causes conflict with morality deeply rooted in society and religious rules. Moreover, the scientific practice of surrogacy has not yet provided perfect results, which still leaves adverse effects that will be borne by the surrogate mother and her child, which can trigger social problems.

Indonesia needs to have a legal framework to regulate and determine the prohibition on the practice of surrogacy. These rules can be based on public policy, morality, and religious principles believed by Indonesian society. Indonesia can compare with other countries with specific and detailed regulations regarding prohibitions and limits on surrogacy. This rule needs to be formed in statutory law, which hierarchically has more power than executive regulations or regional regulations.

## **ACKNOWLEDGMENTS**

The authors thank to Faculty of Law, Universitas Islam Indonesia for administrative support for the research on which this article was based.

## COMPETING INTEREST

There is no conflict of interest in the publication of this article.

## REFERENCES

- Al Munawar, Said Aqil Husin, Hasan M. Noer, and Musyafaullah. *Hukum Islam & Pluralitas Sosial*. 2nd ed. Jakarta: Penamadani, 2005.
- Al-Qur'an (n.d.).
- Amiruddin, and Zainal Asikin. *Pengantar Metode Penelitian Hukum*. Jakarta: Rajawali Pers, 2018.
- Anderson, Elizabeth S. "Is Women's Labor a Commodity?" *Philosophy & Public Affairs* 19, no. 1 (1990): 71-92. <http://www.jstor.org/stable/2265363>.
- Arneson, Richard J. "Commodification and Commerical Surrogacy." *Philosophy & Public Affairs* 21, no. 2 (1992): 132-64. <http://www.jstor.org/stable/2265230>.
- Arum, Khusni. "Pengembangan Pendidikan Agama Islam Berbasis Sosial Profetik (Analisis Terhadap Pemikiran Kuntowijoyo)." *Millah: Journal of Religious Studies*, April 28, 2018, 177-96. <https://doi.org/10.20885/millah.vol17.iss2.art2>.
- Baker, B. M. "A Case for Permitting Altruistic Surrogacy." *Hypatia* 11, no. 2 (1996): 34-48.
- "Belgian Ethics Body Asks for Legalisation of Surrogacy," August 6, 2023. <https://cne.news/article/3174-belgian-ethics-body-asks-for-legalisation-of-surrogacy>.
- Bindel, Julie. "Surrogacy: Human Right, or Just Wrong?" Al Jazeera, September 8, 2023. <https://www.aljazeera.com/opinions/2023/9/8/surrogacy-human-right-or-just-wrong>.
- Borah, Meghna, Arup Kumar Hazarika, and Unmilan Kalita. "Right to Be a Surrogate: Biological, Constitutional and Economic Perspectives." *Space and Culture, India* 8, no. 1 (June 29, 2020): 78-90. <https://doi.org/10.20896/saci.v8i1.699>.
- Brandão, Pedro, and Nicolás Garrido. "Commercial Surrogacy: An Overview." *Revista Brasileira de Ginecologia e Obstetrícia / RBGO Gynecology and Obstetrics* 44, no. 12 (December 2022): 1141-58. <https://doi.org/10.1055/s-0042-1759774>.
- Brunet, Laurence, Janeen Carruthers, Konstantina Davaki, Derek King, Claire Marzo, and Julie McCandless. "A Comparative Study on the Regime of Surrogacy in EU Member States." *European Parliament*, May 2013.
- California Code, Family Code, 7960 FAM § (n.d.).
- Cassimatis, Anthony E. "Public Policy Under The New York Convention - Bridges Between Domestic and International Courts and Private and Public

- International Law." *National Law School of India Review* 31, no. 1 (2019).
- Choe, Jennifer, and Anthony L. Shanks. "In Vitro Fertilization." In *StatPearls. Treasure Island (FL): StatPearls Publishing, 2024.* <http://www.ncbi.nlm.nih.gov/books/NBK562266/>.
- Conklin, Caitlin. "Simply Inconsistent: Surrogacy Laws in the United States and the Pressing Need for Regulation." *Women's Rights Law Reporter* 35 (2014 2013): 67. <https://heinonline.org/HOL/Page?handle=hein.journals/worts35&id=75&div=&collection=>.
- Daniels, Ken, and Karyn Taylor. "Surrogacy: The Private Troubles and Public Issues." *Community Mental Health in New Zealand* 6, no. 2 (1991): 28–50.
- Dar, Shir, Tal Lazer, Sonja Swanson, Jan Silverman, Cindy Wasser, Sergey I. Moskovtsev, Agata Sojecki, and Clifford L. Librach. "Assisted Reproduction Involving Gestational Surrogacy: An Analysis of the Medical, Psychosocial and Legal Issues: Experience from a Large Surrogacy Program." *Human Reproduction (Oxford, England)* 30, no. 2 (February 2015): 345–52. <https://doi.org/10.1093/humrep/deu333>.
- detikhealth. "Apakah Surrogate Mother Solusi bagi Pasangan Sulit Memiliki Anak?," July 28, 2023. <https://health.detik.com/berita-detikhealth/d-6846526/apakah-surrogate-mother-solusi-bagi-pasangan-sulit-memiliki-anak>.
- Djuwita, Ita, Arief Boediono, Srihadi Agungpriyono, Iman Supriatna, Mozes Toelihere, and Yuhara Sukra. "In Vitro Fertilization and Embryo Development of Vitrified Ovine Oocytes Stressed in Sucrose." *HAYATI Journal of Biosciences* 12, no. 2 (June 2005): 73–76. [https://doi.org/10.1016/S1978-3019\(16\)30328-X](https://doi.org/10.1016/S1978-3019(16)30328-X).
- Earle, Sarah, Carol Komaromy, and Linda L. Layne. *Understanding Reproductive Loss: Perspectives on Life, Death and Fertility*. Farham, Surrey, England ; Burlington, VT: Ashgate, 2012.
- Engel, Martin. "Cross-Border Surrogacy: Time for a Convention?" In *Family Law and Culture in Europe*, edited by Katharina Boele-Woelki, Nina Dethloff, and Werner Gephart, 1st ed., 199–216. Intersentia, 2014. <https://doi.org/10.1017/9781780685274.016>.
- Farida Ulvi Na'imah, Mohammad Fahrudi Noer. "Nasab Bayi Tabung Dalam Perspektif Hukum Islam Dan Maqasid Syari'ah." *Al-Adalah: Jurnal Syariah Dan Hukum Islam* 4, no. 2 (December 10, 2019): 149–76. <https://doi.org/10.31538/adlh.v4i2.550>.
- Fuady, Munir. *Metode Riset Hukum: Pendekatan Teori Dan Konsep*. 1st ed. Depok: Rajawali Pers, 2018.
- Gautama, Sudargo. *Pengantar Hukum Perdata Internasional Indonesia*. Bandung: Binacipta, 2012.
- Goli, Marjan, Ziba Farajzadegan, Zeinab Heidari, and Shahnaz Kohan. "Reproductive and Sexual Health of Surrogate Mothers, Developing a Care

- Program: A Protocol for Mixed Methods Study." *Reproductive Health* 16, no. 1 (December 2019): 23. <https://doi.org/10.1186/s12978-019-0687-8>.
- Government Regulation No. 61 on Health Reproduction (2014).
- Hamzani, Achmad Irwan. "Nasab Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010." *Jurnal Konstitusi* 12, no. 1 (May 20, 2016): 57. <https://doi.org/10.31078/jk1214>.
- H.S., Salim. *Perkembangan Hukum Kontrak Innominaat Di Indonesia*. 1st ed. Jakarta: Sinar Grafika, 2003.
- Igareda González, Noelia. "Legal and Ethical Issues in Cross-Border Gestational Surrogacy." *Fertility and Sterility* 113, no. 5 (May 2020): 916–19. <https://doi.org/10.1016/j.fertnstert.2020.03.003>.
- Indarwati, Ika, Uki Retno Budihastuti, and Yulia Lanti Retno Dewi. "Analysis of Factors Influencing Female Infertility." *Journal of Maternal and Child Health* 2, no. 2 (2017): 150–61. <https://doi.org/10.26911/thejmch.2017.02.02.06>.
- Indonesian Civil Code (n.d.).
- Jadva, Vasanti, Natalie Gamble, Helen Prosser, and Susan Imrie. "Parents' Relationship with Their Surrogate in Cross-Border and Domestic Surrogacy Arrangements: Comparisons by Sexual Orientation and Location." *Fertility and Sterility* 111, no. 3 (March 2019): 562–70. <https://doi.org/10.1016/j.fertnstert.2018.11.029>.
- K, Duden. "International Surrogate Motherhood – Shifting the Focus to the Child." *Zeitschrift Für Europäisches Privatrecht*, no. 3 (2015).
- "Kompilasi Hukum Islam Dalam Perspektif Politik Hukum Indonesia Oleh : Saiful, S. Ag. MH | (2/4) - Direktorat Jenderal Badan Peradilan Agama," n.d. <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/kompilasi-hukum-islam-dalam-perspektif-politik-hukum-indonesia-oleh-saiful-s-ag-mh-24>.
- Kosters, J. "Public Policy in Private International Law." *The Yale Law Journal* 29, no. 7 (May 1920): 745. <https://doi.org/10.2307/786607>.
- Kuntowijoyo. *Islam Sebagai Ilmu: Epistemologi, Metodologi, Dan Etika*. 1st ed. Jakarta : Ujung Berung, Bandung: Teraju ; Didistribusikan oleh Mizan Media Utama, 2004.
- Law No. 1 of 1974 on Marriage.
- Law No. 35 on the Amandment of Law No. 23 of 2002 on Children Protection.
- Law of Republic of Indonesia Number 36 on Health (2009).
- Mackenzie, Scott C., Dita Wickins-Drazilova, and Jeremy Wickins. "The Ethics of Fertility Treatment for Same-Sex Male Couples: Considerations for A Modern Fertility Clinic." *European Journal of Obstetrics & Gynecology and Reproductive Biology* 244 (January 2020): 71–75. <https://doi.org/10.1016/j.ejogrb.2019.11.011>.

- Malindi, Lintang Wistu, and Mochammad Najib Imanullah. "Kedudukan Surogasi dan Status Hukum Anak dalam Perspektif Hukum Perdata." *Privat Law* 9, no. 1 (2021). <https://doi.org/10.20961/privat.v9i1.28926>.
- McConville, Michael, and Wing Hong Chui, eds. *Research Methods for Law*. 2nd ed. Research Methods for the Arts and Humanities. Edinburgh: Edinburgh University Press, 2017.
- Milazzo, Adriana, George Mnatzaganian, Adam G. Elshaug, Sheryl A. Hemphill, Janet E. Hiller, and on behalf of The Astute Health Study Group. "Depression and Anxiety Outcomes Associated with Failed Assisted Reproductive Technologies: A Systematic Review and Meta-Analysis." Edited by Cornelis B Lambalk. *PLOS ONE* 11, no. 11 (November 11, 2016): e0165805. <https://doi.org/10.1371/journal.pone.0165805>.
- Mitra, Sayani, Silke Schicktanz, and Tulsi Patel, eds. *Cross-Cultural Comparisons on Surrogacy and Egg Donation: Interdisciplinary Perspectives from India, Germany and Israel*. Cham: Palgrave Macmillan, 2018.
- "MK Beri Status Hukum Anak Di Luar Nikah," February 17, 2012. <https://www.mkri.id/index.php?page=web.Berita&id=6507&menu=2>.
- Moleong, Lexy J. *Metodologi Penelitian Kualitatif*. Bandung: Remaja Rosdakarya, 2021.
- Murphy, Kent. "The Traditional View of Public Policy and Ordre Public in Private International Law." *Georgia Journal of International & Comparative Law* 11, no. 3 (1981). <https://digitalcommons.law.uga.edu/gjicl/vol11/iss3/9/>.
- Muttaqin, Husnul. "Menuju Sosiologi Profetik." *Jurnal Sosiologi Reflektif* 10, no. 1 (September 9, 2016): 219. <https://doi.org/10.14421/jsr.v10i1.1147>.
- Pande, Amrita. "Commercial Surrogacy in India: Manufacturing a Perfect Mother-Worker." *Signs: Journal of Women in Culture and Society* 35, no. 4 (June 2010): 969-92. <https://doi.org/10.1086/651043>.
- — —. "Not an 'Angel', Not a 'Whore': Surrogates as 'Dirty' Workers in India." *Indian Journal of Gender Studies* 16, no. 2 (June 2009): 141-73. <https://doi.org/10.1177/097152150901600201>.
- Patel, Ansha, Pratap Kumar, and P. S. V. N. Sharma. "'The Miracle Mothers and Marvelous Babies': Psychosocial Aspects of Surrogacy - A Narrative Review." *Journal of Human Reproductive Sciences* 13, no. 2 (2020): 89. [https://doi.org/10.4103/jhrs.JHRS\\_33\\_20](https://doi.org/10.4103/jhrs.JHRS_33_20).
- Patel, NayanaHitesh, YuvrajDigvijaysingh Jadeja, HarshaKarsan Bhadarka, MolinaNiket Patel, NiketHitesh Patel, and NilofarRahematkhan Sodagar. "Insight into Different Aspects of Surrogacy Practices." *Journal of Human Reproductive Sciences* 11, no. 3 (2018): 212. [https://doi.org/10.4103/jhrs.JHRS\\_138\\_17](https://doi.org/10.4103/jhrs.JHRS_138_17).
- Permadi, Wiryawan. *Hanya 7 Hari Memahami Fertilisasi In Vitro*. Bandung: Refika Aditama, 2008.
- Petersen, Kerry. "Cross Border Commercial Surrogacy: A Global Patchwork of

- Inconsistency and Confusion." In *Law and Global Health*, edited by Michael Freeman, Sarah Hawkes, and Belinda Bennett, 209–22. Oxford University Press, 2014. <https://doi.org/10.1093/acprof:oso/9780199688999.003.0014>.
- Prodjodikoro, Wirjono. *Asas-Asas Hukum Perdata Internasional*. Bandung: Sumur, 1992.
- Purdy, Laura M. "Surrogate Mothering: Exploitation or Empowerment." *Bioethics* 3, no. 1 (January 1989): 18–34. <https://doi.org/10.1111/j.1467-8519.1989.tb00324.x>.
- Qaradawi, Yusuf, As'ad Yasin, and Abdul Hayyie Kattani. *Fatwa-fatwa Kontemporer Jilid 3*. 3rd ed. Jakarta: Gema Insani Press, 2001.
- Regulation of Ministry of Health No. 43 on Providing Assisted on Reproductive Services or Pregnancy with other than Natural Means (2015).
- Riddle, M. P. "The Role of Religion and Spirituality in Conceptualizing Reproductive Loss: Clinical Implications of the Narratives of Gestational Surrogates in the USA." *Journal of Religion and Health* 60, no. 1 (February 2021): 282–94. <https://doi.org/10.1007/s10943-020-01076-7>.
- Sandel, Michael J. *What Money Can't Buy: The Moral Limit of Market*. London New York, New York Ontario: Penguin Books, 2013.
- Sanjaya, Umar Haris, and Aunur Rahim Faqih. *Hukum Perkawinan Islam Di Indonesia*. Yogyakarta: Gama Media, 2017.
- Santoso, Lukman. "Towards Religiosity-Based Legal Science: Critical-Constructive Prophetic Law on Positivism Paradigm." *Prophetic Law Review* 2, no. 2 (December 1, 2020). <https://doi.org/10.20885/PLR.vol2.iss2.art6>.
- Saxena, Pikee, Archana Mishra, and Sonia Malik. "Surrogacy: Ethical and Legal Issues." *Indian Journal of Community Medicine* 37, no. 4 (2012): 211. <https://doi.org/10.4103/0970-0218.103466>.
- "Sewa Rahim Di Indonesia Dilakukan Diam-Diam," n.d. <https://health.detik.com/ibu-dan-anak/d-1370505/sewa-rahim-di-indonesia-dilakukan-diam-diam>.
- Shalev, Carmel. "Birth Power: The Case for Surrogacy." *Columbia Law Review* 90, no. 4 (May 1990): 1177. <https://doi.org/10.2307/1122931>.
- Shenfield, F., G. Pennings, J. Cohen, P. Devroey, G. De Wert, and B. Tarlatzis. "ESHRE Task Force on Ethics and Law 10: Surrogacy." *Human Reproduction* 20, no. 10 (October 1, 2005): 2705–7. <https://doi.org/10.1093/humrep/dei147>.
- Singer, Peter, and Deane Wells. *Making Babies: The New Science and Ethics of Conception*. New York: C. Scribner's Sons, 1985.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. 2nd ed. Jakarta: Penerbit Universitas Indonesia (UI-Press), 2006.
- Soekanto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif*. Jakarta: Rajawali Pers, 2015.

- Surrogate.com. "Surrogacy Laws by State," April 8, 2016. <https://surrogate.com/intended-parents/surrogacy-laws-and-legal-information/surrogacy-laws-by-state/>.
- Swain, Margaret E., and Colin James Rogerson. "Addressing Legal Issues in Cross-Border Gestational Surrogacy: Current Topics and Trends." *Fertility and Sterility* 115, no. 2 (February 2021): 268–73. <https://doi.org/10.1016/j.fertnstert.2020.11.031>.
- Syamsudin, M., ed. *Ilmu Hukum Profetik: Gagasan Awal, Landasan Kefilsafatan, Dan Kemungkinan Pengembangannya Di Era Postmodern*. 1st ed. Yogyakarta: Pusat Studi Hukum (PSH) FH UII kerja sama dengan FH UII Press, 2013.
- Syarifuddin, Amir. *Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakahat Dan Undang-Undang Perkawinan*. 1st ed. Jakarta: Kencana, 2009.
- The Constitutional Court Decision No. 46/PUU-VIII/2010 (2012).
- Van Zyl, L. "Interpretations, Perspectives and Intentions in Surrogate Motherhood." *Journal of Medical Ethics* 26, no. 5 (October 1, 2000): 404–9. <https://doi.org/10.1136/jme.26.5.404>.
- Veiligheid, Ministerie van Justitie en. "Legislative Surrogacy Regulations." Nieuwsbericht. Ministerie van Algemene Zaken, June 30, 2023. <https://www.government.nl/latest/news/2023/06/30/legislative-surrogacy-regulations>.
- Vincent, C. Paul, and Alene D. Aftandilian. "Liberation or Exploitation: Commercial Surrogacy and the Indian Surrogate." *Suffolk Transnational Law Review* 36 (2013): 671. <https://api.semanticscholar.org/CorpusID:141276959>.
- Vishvendu, Jaipuriar. "Womb Rental Ends in Death - Telegraph India," July 28, 2014. <https://www.telegraphindia.com/jharkhand/womb-rental-ends-in-death/cid/164231>.
- Wasman, and Wardah Nuroniyah. *Hukum Perkawinan Islam di Indonesia: Perbandingan Fiqh dan Hukum Positif*. 1st ed. Yogyakarta: Teras, 2011.
- Wignjosoebroto, Soetandyo. *Hukum: Konsep Dan Metode*. 1st ed. Malang: Setara Press, 2013.
- World Wide Surrogacy Specialists. "The History of Surrogacy: A Legal Timeline," April 12, 2021. <https://www.worldwidesurrogacy.org/blog/the-history-of-surrogacy-a-legal-timeline>.
- Yaswirman. *Hukum Keluarga: Karakteristik Dan Prospek Doktrin Islam Dan Adat Dalam Masyarakat Matrilineal Minangkabau*. 1st ed. Jakarta: Rajawali Pers, 2011.
- Zahrowati. "Bayi Tabung (Fertilisasi In Vitro) Dengan Menggunakan Sperma Donor dan Rahim Sewaan (Surrogate Mother) dalam Perspektif Hukum Perdata." *Halu Oleo Law Review* 1, no. 2 (March 14, 2018): 196. <https://doi.org/10.33561/holrev.v1i2.3642>.