THE EVALUATION OF SURROGACY’S LEGAL SYSTEM IN INDONESIA AS COMPARISON TO INDIA’S LEGISLATION

Mega Dewi Ambarwati, Ghina Azmita Kamila
Master’s Program in Law, Faculty of Law, Airlangga University Surabaya
mega10meggy@gmail.com

Abstract

Nowadays, in marriage life, spouse often dealing with big problem as like infertility which make them unable to have offspring. However, due to infertility, the spouse has obtained some efforts to solve their problems. One way to solve the problem is by obtaining surrogacy with the help of surrogate mother. Nevertheless, in Indonesia, especially, surrogacy as well as surrogate mother is still considered to be taboo things and no legal system which regulate the surrogacy and/or surrogate mother. Yet other countries have allowed or legalize the surrogacy practice as well as surrogate mother. Hence, this study aimed to reveal a comparison of legal system on surrogate mother and surrogacy law in Indonesia and India. This study used comparative legal research methodology through the functional method since Indonesia has the same function over the purpose of law establishment on the surrogate mother in India. The result reveals that it needs a legal system on surrogacy and surrogate mother as the legal certainty for any individual especially spouse who could not have offspring along with some reasons such as minimalize prostitution and unregistered marriage, prevent dispute, and to develop scientific field.

Keywords: Surrogate Mother; Surrogacy; Legal Certainty; Indonesia; India

1. Introduction

Spouse has their own right to have offspring in order to continue the generation through legal marriage. Unfortunately, some spouse have problem with having child because either husband or wife is infertile. The common way that can be taken as a solution to overcome this problem is to do artificial insemination. If the husband or wife is infertile, then conception can be done in the womb of another woman or by renting someone’s womb or known as surrogate mother.1

Indonesia has no legal certainty yet on both the surrogacy and surrogate mother. But the regulation indirectly implied surrogate mother could be seen from such provisions; the law on health; regulation of ministry of health Number 039.Menkes/SKS/2010 on the Implementation of Assisted Reproduction Technology Services; Government Regulation No. 61/2014 on Reproductive Health; Fatwa of the Indonesian Ulama Council (MUI) on May 26, 2006.

Thus, the law implies that the implementation of surrogate mother is rally prohibited, but in practice many people are interested to become surrogate mother. For instance, on the internet source are found many young mothers from Indonesia who register to become surrogate mother.

Tata Taofikurrahman as a judge in religious court in Bandung, add his own assumption that it necessary to make guidelines so that there are procedures should be carried out on the surrogacy process, thus the implementation of surrogate mother will be orderly work on. Afterward, he also adds that surrogacy and/or surrogate mother must have a marital relation, provided that the husband and wife are preceded by marriage settlement, if it was violated then surrogacy is forbidden.

In comparison, since 2002, India became the first country which legalized the surrogacy. Throughout 10 years, there are more than 3000 children born through surrogacy process. Most of them are the family member that brings the embryo from out of India. The surrogacy industry in India had influenced by the provisions contained in Assisted Reproductive Technology Regulation Bill 2010. These provisions state that: “The surrogacy process can be carried out by single parents or married couples, the process of Intended Parents must pay all costs used during pregnancy until the birth of the baby, Surrogate Mother is permitted to receive compensation, but does not mention a specific number, the name listed in the child’s birth certificate is the name of Intended Parents and therefore automatically considered as legitimate parents of the child.”

The rush development in clinical technology has found the newest method on birth that is artificial insemination, or it known as in vitro fertilization. This technology firstly introduced in 1970 and has been developed as the problem solution for any sterile couple those desired to have a child. Dealing with the rapidly the increasing conception of in VitroFertilization (IVF), then the idea of Surrogate Mother (gestational agreement) emerged. It described as a woman who is willing to be hired by her womb, with an agreement to conceive, give birth, and surrender her baby in return for some material.  

Reviewed from the technological and economic aspects, surrogacy process is quite promising for the handling of several cases of infertility, but it turns out that this process is yet constrained by the Indonesian prevailing laws and ethical considerations. Likewise, with the agreement made, it hope that it can apply based on the national engagement law, moreover the object that is agreed upon is very unusual, namely the womb, both as an object and function as a service.

Surrogate Mother practice classified as a method or attempt at pregnancy outside the natural way. Indonesian law implicitly prohibited the practice, it is written in Article 127 of Health Act Law Number 36 of 2009 that stipulates the pregnancy efforts outside the natural way

---

can only be carried out by a lawful couple with the following provisions: a) The result of both sperm and ovum fertilization from the concerned couple should be implanted in the womb of the wife from which the ovum originates; b) Carried out by health workers who have the expertise and authority for it; c) It should be done in certain health care.

Hence, regarding with the rapid development of surrogate mother practices either in Indonesia or cross the world, it is crucially need a legal system related to it. The function of surrogate mother in India answers the needs of its citizens for the problem of having children due to health problems that do not support the wife to pregnant her own biological child. Based on this function, the Indonesian government also has responsibilities related to the function of legal certainty for the practice of surrogate mother in Indonesia.

As the basic common function such in India, Indonesia also needs to establish legal rules related to surrogate mother in order to protect the people’s need for legal certainty for substitute mothers and married couples who want to have offspring through a surrogacy system, this is the government’s obligation to provide umbrellas law against citizens for the sake of public order.

Thus, it is deemed necessary to establish a legal regulation on surrogate mother as a form of legal certainty so that the law in Indonesia can develop according to the needs of the society. The specific objective to be achieved by this research is to understand and examine how legal certainty is related to the surrogate mother process, surrogacy and its legal regulations, which can later be applied in Indonesia by comparing laws in India that have rules regarding with surrogate mother. This has become the state of the art in this study.

The method applied in this study is comparative method in which involving the micro comparison with the legal institution approach. Furthermore, functional method also used as the legal comparative method due to the early relation of law between Indonesian and India on surrogate mother goals and functions within the legal system process.

2. **Discussion**

2.1. **Legal System of Surrogate Mother and Surrogacy in Indonesia**

In Indonesia, surrogacy considered merely as phenomenon. Otherwise, in other country, especially in America, Europe and India, the phenomenon of surrogacy and surrogate mother has become a common matter. The current need for a surrogate mother keep increased due to the request of married couples who are being desperate wanting an offspring.
Surrogacy procedures can be done if the wife does not allow to become pregnant or to give birth. Embryos or prospective children will be raised and born from the womb of other women. Legally, a baby born from a surrogate mother's womb belongs to the spouse who has done the surrogacy procedure.

In return for the “service”, the surrogate mother receive rewards which has been agreed prior the surrogacy agreement, and a surrogate mother is required to sign an agreement to immediately hand over the baby into the family that has been hired. As its development there have been two types of surrogacy: a) Gestational surrogacy: the embryo taken from a husband’s sperm with the ovum from the wife will be met through IVF (In Vitro fertilization) technology, and then it will be implanted in the womb of a surrogate mother; b) Genetic surrogacy: The ovum cell that participates in forming an embryo is the surrogate mother’s cells while sperm is taken from the husband. Even though the surrogate mother also participates in being the owner of the ovum, she still has to surrender the child she conceived and gave the baby to the husband and wife who performed the surrogacy procedure.

The practice of transferring embryos into other uterus was illegally reported by the Indonesian Ulama Council (MUI) on 26 May 2006, “All jurists do not allow the womb to be rented in various forms.” According to jurists and medicine’s experts has issued a fatwa that allows husband and wife or one of them in an effort to have offspring with the help of science technology in order to help the couple to have offspring. However, provided that the embryos must belong to the spouse, there is no third party among them such as the process of IVF.

Article 1338 of the Civil Code states related to the principle of freedom of contract, where the parties who are bound in the contract are free to make and determine the contents of the agreement. Article 1338 of the Civil Code mentioned that “All agreements made legally apply to the laws for those who make them.” However, the existing principle of freedom of contract must not violate the legal requirements of the agreement in Article 1320 of the Civil Code: a) Agreements of all parties; b) Competence of all parties; c) Concern with the certain things; d) Lawful.

Here, lawful is one of the validity agreements that should be well considered, in which does not be in conflict with the laws, regulations, morality, and public order. The rights of baby born by surrogate mothers in Indonesian law are related to Article 27 of Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection Article 27 on “Identity Rights”:

---

a) Each child’s identity must be given from birth; b) The identity as referred to paragraph (1) is set forth in the birth certificate; c) The making of birth certificates is based on a statement from the person who witnessed and/or assisted the birth process; d) A child whose birth process is unknown and whose parent is unknown, the birth certificate for the child is based on the information of the person who found it and is equipped with the police investigation report.

In Article 127 of Law Number 36 of 2009 on Health has stipulated that pregnancy efforts outside the natural way only be carried out by a legal married couple with the following provisions: a) The results of the conception of sperm and ovum from the concerned husband and wife are implanted in the womb of the wife from which the ovum originates; b) Carried out by health personnel who have the expertise and authority for the procedure; c) On the facilities of certain health services.4

The method or effort of pregnancy outside the natural way other than those provisions, including surrogate mothers, legally cannot be obtained in Indonesia. Therefore, there is no legal protection for the parties in the surrogacy agreement or leasing a womb related to surrogate mother.

2.2. The Implementation of Surrogacy in India

The procedure of surrogacy practice must be carried out alongside with the purpose and reasonable criteria. Paragraph 4 (ii) of Indian bill stipulated that there is no right claim for surrogacy practices, and it has to follow some purposes such below: a) One or both spouse suffer infertility which officially has been proven by a doctor's statement; b) Merely for the altruistic surrogacy; c) Not for commercial purposes; d) Not in purpose to sale the baby, use for prostitution or other forms of exploitation; e) Any other conditions or diseases that may be determined by regulations made by the representative board.

Paragraph 4 (iii) of Indian bill stipulated: a feasibility license for spouse who are intending to do surrogacy is issued by the appropriate authority and should fulfil the following conditions: a) The age of the spouse is between 23 to 50 years for a woman and 26 to 55 years for man; b) The spouse have been married for at least five years and are citizens of India; c) Spouse who intend to no longer have a living child (biologically or adopted or substitute), with the exception of children who experience mental, physical or threatening mental disorders, and have been

---

certified by the District Medical Council; d) For other conditions will be determined in the regulations.

Paragraph 48 (a) of the Bill: The National Prize Collection Agency with the prior approval from the central government can make regulations to provide fulfilment of other conditions where a certificate of eligibility for a spouse who intends to do surrogacy, can be issued by the appropriate authority.

Clause 4 of the Bill stipulates that the objectives that become a surrogacy procedure can be carried out and the eligibility requirements must be fulfilled by the couple who intend to perform surrogacy.\(^5\) Likewise, the bill was made to determine health conditions or other diseases suffered by a spouse as a basis for conducting surrogacy procedures, as well as other conditions that must be met by couples who will undergo national surrogacy procedures. Qualification requirements for surrogacy should be determined in the bill and not regulated.

Paragraphs 4 (iii) (b) (II) of the Bill: no one but a close relative of a spouse who will do surrogacy and act as a surrogate mother and be permitted to undergo surrogacy procedures in accordance with the provisions of this Law. The bill also stipulates that surrogate mothers and couples who will conduct surrogacy are required to obtain a feasibility and essentiality certificate from the relevant government authority at the central or state prior the process. However, the bill does not specify the period of time the relevant government authority will provide this certificate.\(^6\)

Thus, the bill will stipulate various conditions must be met by surrogate mothers as an initial requirement to fulfil the surrogacy procedure. After fulfilling these conditions, a surrogate mother can obtain a certificate of eligibility from the authority appointed by the government. So, one of the conditions that the surrogate mother must be qualified is that she is a ‘close relative’ of the couple who will carry out the surrogacy process.

### 2.3. Legal Position of Surrogacy Agreement in India

The surrogacy agreement that has been applied in India is written below: a) Voluntary Surrogacy, depicted as surrogacy which is obtained voluntary; b) Paid Surrogacy, depicted as commercial agreement between commissioning and the women who obtain as surrogate mother; c) Altruistic Surrogacy, occurs in which the surrogate mother do not accept commission.


\(^6\) *Ibid.*
In India, surrogacy was socially permitted because of a lack of legislation for surrogacy itself. Although the Indian Council of Medical Research (ICMR) in 2005 have established “national guidelines” for regulating surrogacy, but this is merely a guideline in which regulates assisted reproductive technology (ART) procedures. The Guidelines are yet limited within scope of ART, and the surrogate mothers must sign a “contract” with a childless spouse. There is no provision in case if the “contract” is violated against the rights of a born child in later.

2.4. Legal Cases

Indian supreme court was issued on official review on its agreement of surrogacy act, such it was applied within the case of Manji Yamada vs Union of India (2018) 13 SCC 518. Manji Yamada is a subtitler child from the Japanese couple those find some obstacles on handing a legal letter for a baby born in Gujarat, India. The Indian supreme court legally gave the child care to the surrogate grandmother. Furthermore, Indian supreme court also allowed the commercial surrogacy around the country, then it brings up the international trust into India on surrogacy act.

In another case, Jan Balaz vs Anand Kota 2010 GUJ 21, the German spouse signed a contract with a surrogate mother and two children were born. Then, the question emerged is that if the child born in India toan Indian surrogate mother but biological father is a foreign whether or not the child will be acknowledged as India citizen based on the birthplace. Gujarat High Court, bearing in mind the Supreme Court’s findings on the baby Manji case, stated the case was primarily related to the relationship of a child with a surrogate mother, and with the donor mother from the ovum. In the absence of legislation, the Court of Appeal is more likely to recognize the position of children who have been born from the results of surrogate mothers.

This is not a common case since the applicant (biological parents of two babies) were a German citizen, but the surrogate mothers is an Indian citizen. The applicant and his wife worked in England and lived there. The applicant and his wife have signed a surrogacy agreement with a surrogate mother.

Furthermore, the surrogate mother has agreed that she will have no responsibility for the prosperity of the child. Both biological parents would have a legal obligation to accept the child given by the surrogate mother, the child will have all inheritance rights from biological parents based on applicable law.
Then, when the surrogate mother gave birth of the two baby boys, the applications for passports are made in India. The name of the applicant was displayed as father and the name of the surrogate mother was displayed as the mother. The Regional Passport Office requests a passport again and issues an identification certificate. The father said that Germany would never recognize the babies as a citizen, so the father submitted a petition letter stating that the refusal of passports to children violated Article 21 (the right to life) of the Indian Constitution. The High Court stated that this case was primarily related to child relations with gestational surrogate mothers and with donors from ovum.

Due to the absence of provisions, the Court is more likely to recognize a substitute for pregnancy that has given birth to a child as a natural mother. He has the right to privacy which is part of the right to life and freedom guaranteed under Article 21 of the Indian Constitution. Nothing can force him to reveal his identity.

Any baby born was not in a position to know who donates the ovum, but they only know who are the surrogate mother is. The wife of a biological father, who does not donate ovum, does not conceive or give birth to babies, cannot be treated as a legitimate mother and she can never be a natural mother except stated in the law. The Gujarat High Court stated that, by providing ovum, a woman would not become a natural mother, because life does not occur in her womb, nor does she receive sperm for conception.

Within the current legal framework, Indian Supreme Court stated that the court had no choice except to state that any baby whose born in India from Indian women are citizens of their country and therefore are entitled to receive passports. This directs the Passport Authority to immediately release the passport.

It is clear that in the Jaz Balaz case, the contract proved to be insufficient in demarcating the rights of the parties and also issued residual issues such as citizenship and identity which were very important for children but did not have a place in the surrogacy agreement. In both cases above (Manji and Jan Balaz), Indian courts have taken a very pre-contractual position, perhaps as a way of encouraging commercial surrogacy, which contributed millions of dollars to the Indian economy.  

What actually defines a surrogacy agreement breach is not provided anywhere in the Indian Contract Act, making it easier for certain parties to avoid accountability, which will make an innocent child unprotected and vulnerable.

---

The Evaluation of Surrogacy’s Legal System in Indonesia as Comparison to India’s Legislation

This is also a human rights problem because of the narrow and controlled living conditions of surrogate mothers. Problems such as whether the parent country of the commissioning partner recognizes and accepts the nationality of the surrogate child are very important because the Indian Citizenship Law does not give citizenship to a child born to a surrogate mother and such things can leave a stateless child where citizenship is denied from both countries. For example, both Japan and Germany do not recognize surrogacy and therefore will not give citizenship to substitute children born in India. This is evidenced in the case of Manji Yamada and the Jan Balaz case, it should be noted that the decision on the Jan Balaz case was filed by the Supreme Court of India.8

Thus, the aforementioned cases can be considered alongside formulating surrogacy and surrogate mother rules which will later be made into positive law of Indonesia. In this case, it does not mean that it must be the same, but things that have the same function can be taken without violating the 1945 Constitution, morality, religion and law of the Indonesian people.

2.5. Legal Instrument of Surrogacy in India

There are series of legal instruments of surrogacy law in India; Indian Council of Medical Research (ICMR) Guidelines on 2005 which were later considered as Assisted Reproductive Technologies (Regulations) of the 2008 Bill throughout the required revision of design modifications of Assisted Reproductive Technologies (Regulation) 2010 Bill and later Assisted Reproductive Technologies (Regulations) 2013 Draft Bill. The 2005 Guidelines stipulate that surrogate mothers cannot be genetically related to children. She counselled either legally or psychologically that she would not have any rights to the child. All the rights and obligations concern with the intended parent and child that have been formulated in the surrogacy agreement will be considered as the legal child of the intended parent and the intended parent has all legal rights for parental support, inheritance and all other privileges that a child is born naturally to the intended parent will have.

The 2016 Bill (Regulation) have been introduced into the Indian Parliament, which proposed to completely eliminate commercial surrogacy. The bill approved by the cabinet has not been ratified. The 2016 bill defines commercial surrogacy as “surrogacy or related procedures carried out for profits or prize money (in the form of cash or the like) beyond basic medical costs and insurance coverage” and is intended to crack down on uterine leasing business

8 Ibid.
which potentially encourages exploitation. The bill intends to only allow altruistic surrogacy, where the surrogate mother is a close relative of the parent who will do surrogacy. The couple must also prove their infertility. Under the bill, all surrogacy clinics must be registered, surrogate mothers cannot be paid directly and there will be a National and State Council of Substitutes who will become regulatory authorities for the practice. Commercial surrogacy, leaving substitute children, exploiting surrogate mothers and selling/importing human embryos are listed as violations that can be punished by law.

In addition, all registered clinics must keep surrogacy record for 25 years. One provision in the Bill 2016 (also in the 2010 ART Bill) is the prohibition of single parents, homosexuals and spouses of parents who performed surrogacy. The Bill 2016 also prohibits women who do not have children or unmarried women as surrogate mothers. While ART 2010 bill recognizes commercial surrogacy and is provided for its regulation, the 2016 Draft Law considers extensive exploitation which is a product of commercial surrogacy. Highlights of the Draft Surrogacy (Regulation) are as follows: a) Surrogacy is an arrangement where the couple will accept surrogate mothers to bring their children; b) The spouse is Indian citizens and married for at least five years with and one or both of them is infertile. Substitute mothers must be close relatives who are married and have their own children; c) There are no other fees but medical expenses that are made for surrogate mothers. Substitute children will be considered as biological children of married couples; d) National and state governments will receive certificates for future partners and surrogate mothers. The authorities will also arrange a surrogacy clinic; e) Carry out surrogacy for a fee, advertising it or exploiting a surrogate mother will be finished with a prison sentence of 10 years and a fine of up to 5 million USD.

The 102nd Parliament Committee Report, the 2016 Draft Bill (Regulations) made a number of recommendations for the Bill on Relation (Regulation). The recommendations are as follows: a) Altruistic commercial surrogacy should be done with no any compensation for surrogate mothers except medical and insurance costs related to pregnancy. The Parliamentary Committee recommends a surrogacy model based on compensation rather than altruistic surrogacy. Such compensation must pay attention to a number of things (including wages lost during pregnancy, counselling, psychological, and postpartum care). It is also noted by the Parliamentary Committee that the economic opportunities available for replacement through surrogacy services do not have to be completely dismissed. Under altruistic surrogacy, it is possible for women to provide reproductive employment for free without being paid unfairly and arbitrarily; b) The
implication of a substitute is "close relatives", surrogate mothers can only be close relatives of married couple. The Parliamentary Committee notes that altruistic seclusion by close relatives will always be out of force and not because of altruism; c) The Committee recommends that the criteria of being a close relative must be removed to enable related and unrelated women to become surrogate mothers. This recommends must clearly state that the surrogate mother will not donate her own ovum; d) Surrogacy services just limited for the Indian people who are legally married. The Committee then notes that there will be another part of society that might want a surrogate child, hence, the Committee recommends the eligibility criteria be widened and includes couples living at home, divorced women and widows. In addition, this facility must be extended to Indian Non-Residents, Indians, and Indian Foreign Citizens but not foreign nationals; e) Spouse intends to make surrogacy arrangements after an inability to become pregnant after 5 years due to unprotected coitus or other medical conditions prevent conception. The Committee recommends that the definition of “infertility” in the bill must be in accordance with the definition of the World Health Organization, where the inability to become pregnant after at least one year of unprotected coitus. He observed that the 5-year waiting period requirement violated the right to reproductive autonomy; f) Gamete donor (sperm and ovum). The couple who intend can only do replacement tests by proving infertility. Therefore, gametes from a partner can be made possible not because of infertility. In such cases, gametes will be asked to be donated by others. The Committee noted that there was no provision of Gamete donor in the bill. This recommends that provisions for gamete donations must be included in the bill; g) Abortion. The approval from the appropriate authority (appointed by the central or state government) is needed to carry out an abortion during surrogacy. The Committee recommends reviewing these requirements in light of the 1971 Medical Termination of Pregnancy Act which regulates abortion. He noted that time is very important in medical emergencies during pregnancy. In such cases, there may not be enough time to ask permission from the authorities to have an abortion to save the life of a surrogate mother. The Parliament Committee report is likely to lead to the current debate, in the Parliament Building.

Thus, based on this 2016 Bill, Indonesia can adopt several existing provisions, adapted to the needs of today's Indonesian society, by not violating the 1945 Constitution, morality, religion and customary law. Therefore, the right, specific, clear and complete law can be formulated as a guideline and foundation for couples who will do surrogacy with the surrogate mother system in Indonesia later.
2.6. The Reasons Surrogacy Must be Legal in Indonesia

Surrogacy has been legalized in some countries such as USA, Brazil, and India. For instance, surrogacy in India has been patterned and legalized due to some conditions and regulations. Regarding with surrogacy policy, India is the most famoust country that legalized surrogacy. Surrogacy has been practiced since a long time ago in India. It has been developing until now. A survey on 2006 shows that there are 231 surrogate mother in India. This data implied that surrogacy is not a taboo thing in this modern world. Based on the facts as well as the explanation about surrogate mother’s law regulation in India, therefore it is necessary to consider the legal system of surrogate mother in Indonesia, along with several reasons, as follows:

a) Surrogacy Legalization is Better than Prostitution and Unregistered Marriage. The Legalization of Surrogacy in Indonesia is better than minimizing prostitution and unregistered marriage cases in Indonesia. In some cases, infertility has made a husband to deny his wife, and mostly the husband will choose to divorce, get married with another women under unregistered marriage, or even visit prostitution places. Hence, if surrogace is allowed by the legal system, it will decrease the number of divorce and prostitution. In case the aims of doing unegistered marriage merely to have offspring, then the husband does not require to divorce or doing such unregistered marriage. The husband just need to propose a surrogacy practice;

b) Surrogacy legalization will ensure surrogacy policy to prevent dispute. As it has known before that, several cases of surrogacy in Indonesia happened in secret, even between the member of its familiy or close relatives. Thus, because of the surrogacy practice no under control of legal system, it will made the dispute rise easily;

c) Surrogacy Legalization From Bioethics Perspective. Medical development has found the new method namely artificial insemination or known as in vitro fertilization. This method is found in 1970s which develop to solve the problem of infertile spouse who wanted to have offspring. In line with the insemination by in vitro fertilization (IVF), the idea of surrogate mother has arose.

From the perspective of technology and economy, surrogate mother has promised to solve several cases of infertality. However, this process is constrained due to some obstacles as like the legal system, ethics consideration, and norms in Indonesia.

In relation with bioethics, actually, bioethics has its own role to bridging knowledge and humanity, particularly, in the medical field. Based on bioethics principal, the relation between technology and medical cannot be forced to be implemented if the relation has negative influences. Moreover, the fact said that technological development is opposed with the culture.
In this case, the way people thought compared with the expert’s thought is quite different. It will cause gap between society and expert, and lead the society to follow with the technological development. In this point, bioethics has role along with the law as “the Guardian” for humanity side.

Surrogate mother from the perspective and bioethics principal as stated by Beauchamp and Childress can be seen in the following explanation: a) Principe of respect to autonomy; b) Principe of justice; c) Principe of Beneficence; d) Principe of non-maleficence.

The actions toward the decisions should not make loss or increase loss. Although, surrogacy practice seems to advantage the biological parents, but the decision should be give advantageous to the both side. The decision must be involving the whole aspects and factors.

All in all, from the perspective of bioethics, all of the problems dealing with surrogate mother can be solved as long as the rights of human being are fulfilled. It can be in form by tolerance the differences, respect the decision they have made without loss anyone. But, the most important thing is, the decision should not prohibit the provisions or legal system. Since, one of law function, as mentioned above, along with ethics, is as The Guardians that will look after the human being as the truth human being, not as the object of technological development.⁹

3. Conclusion

The practice of surrogacy as well as surrogate mother has been happened in some countries, in which the practice has been legal in law aspect. Indonesia itself has not been yet legalized the practice of surrogacy due to several obstacles. As a comparison, India is one of a country that has been legalized surrogacy since a long time ago. From the several law perspectives applied by India, hence Indonesia should use the legal aspect as references to legalize surrogacy. Seeing from some perspectives, surrogacy can provide good impacts such as minimalize prostitution and unregistered marriage, prevent dispute, as well as scientic development as long as human not as the technology development.

⁹ H. D. Ratman, Surrogate Mother dalam Perspektif Etika dan Hukum: Bolehkah Sewa Rahim di Indonesia?, (Jakarta: Kompas Gramedia, 2012).
The Evaluation of Surrogacy’s Legal System in Indonesia as Comparison to India’s Legislation

References


Child Protection Law No. 23 year 2002.


Health Act Law No. 36 year 2009.


