



## Legality of Surrogacy Mothers from the Perspective of Indonesian Civil Law

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### ABSTRAK

Development technology reproduction helped push emergence practice Mother surrogacy is increasingly relevant, but in Indonesia it is still in the gray area law and give rise to civil status issues children. Indonesian civil law still based on the doctrine of *mater semper certa est* and principles certainty laws that have not been capable accommodate separation role Mother biological, gestational, and social. Research This aim analyze legality of surrogacy as well constructing civil status child in perspective law Indonesian civil law. The method used is qualitative with approach juridical normative supported by empirical data. The results show existence normative vacuum, obstacles administrative, inconsistency implementation and potential conflict laws that impact on the fulfillment of right children, so that required regulations comprehensive specialty

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## INTRODUCTION

Legality of surrogacy is growing with advances in assisted reproductive technology, but in Indonesia, this phenomenon remains legally problematic, particularly from a civil law perspective regarding the civil status of children born. The absence of explicit regulations in positive law creates uncertainty regarding the legal relationship between the child, the surrogate mother, and the biological parents. Socially, this practice also faces considerable resistance due to the influence of religious values, cultural norms, and diverse societal ethical views (Sutrisno, 2021:45). Field data shows that some couples in Indonesia choose to use surrogacy services abroad to avoid domestic legal obstacles, but upon returning to Indonesia, they face administrative obstacles in registering their child's status (Interviews with notaries and family law practitioners, 2023).

Another finding is that children resulting from surrogacy cannot immediately obtain birth certificates that legally identify their biological parents according to state law (Observations at the Population and Civil Registration Office, 2022). This situation indicates a gap between the development of medical technology and the readiness of the legal system to regulate it. In fact, the need for assisted reproductive technology is increasing along with the high rate of infertility among couples of childbearing age (WHO, 2020). Therefore, the legality of surrogacy is not only a medical or ethical issue, but also a civil law issue that urgently requires comprehensive review to ensure legal certainty and protect children's rights.

From a literary perspective, studies on surrogacy show significant differences in approaches between countries in determining the legal status of children born through this practice. Countries such as the United States and the United Kingdom have developed relatively more adaptive legal frameworks by recognizing the role of genetic parents through a court-ordered mechanism (parental order) (Harris, 2018:112). In contrast, many other countries, including Indonesia, still adhere to traditional legal principles that place the birth mother as the legal mother. In the context of Indonesian civil law, this concept aligns with the doctrine of *mater semper certa est*, which states that the mother is the woman who gives birth to the child (Subekti, 2005:23). However, this approach becomes problematic when faced with the practice of surrogacy, which separates the biological (genetic) mother from the birth mother. Several previous studies have shown that the lack of specific regulations regarding surrogacy in Indonesia leads to multiple interpretations in the application of laws related to lineage, guardianship, and inheritance rights (Rahardjo, 2019:87).

Other studies have also highlighted the potential for legal conflicts to arise, such as custody disputes between surrogate mothers and genetic parents, as well as citizenship issues for children born abroad (Putri, 2020:134). Furthermore, the theory of legal certainty emphasizes that laws must provide clear norms to avoid doubt in their application (Radbruch, 1973:68). Meanwhile, Lon Fuller emphasized that good laws must meet the principles of clarity, consistency, and enforceability (Fuller, 1964:39). In this context, the lack of norms related to surrogacy indicates that the Indonesian civil law system has not been fully

responsive to developments in modern reproductive technology, thus requiring further study to develop a more adaptive and comprehensive legal framework.

In general, this study aims to examine and analyze the legality of surrogacy practices from the perspective of Indonesian civil law, with a primary focus on determining the civil status of surrogate children. This research stems from the realization that most previous studies are still limited to normative aspects and have not deeply linked them to empirical realities that occur in society. Therefore, this study seeks to fill this gap by integrating normative and empirical approaches to gain a more comprehensive understanding. Specifically, this study is directed at answering the question of how Indonesian civil law constructs the civil status of children resulting from surrogacy, as well as what legal implications this has for the civil relationship between the child, the surrogate mother, and the biological parents. In addition, this study also aims to identify weaknesses in existing regulations and formulate alternative solutions that can provide legal certainty.

This approach is supported by the view that law functions not only as a system of norms but also as a social instrument that must be able to respond to societal dynamics (Satjipto Rahardjo, 2006:112). Thus, this research is expected to contribute to the development of civil law that is more responsive to the development of assisted reproductive technology. This research places children as the primary subject that must be protected, considering that in civil law children have the right to identity, parental recognition, and legal protection (Soeroso, 2011:78). However, in the practice of surrogacy, these rights are often hampered by the unclear legal status of children, even potentially leading to administrative discrimination in birth registration and family relationships (Dukcapil Interview, 2022), which contradicts the principle of the best interest of the child (UNICEF, 2019) and the right to legal identity without discrimination (Alston & Tobin, 2005:213).

Based on these conditions, this study emphasizes the urgency of addressing the gap in legal norms related to surrogacy, which currently relies on the doctrine of *mater semper certa est* (Mulyadi, 2017:59), which is not fully relevant to the development of modern reproductive technology. The novelty of this study lies in its attempt to reconstruct the civil status of children resulting from surrogacy by integrating normative approaches and empirical reality, thus offering not only conceptual clarity but also a more adaptive legal framework. Therefore, this research is important as a basis for developing responsive, comprehensive, and equitable regulations in addressing the dynamics of assisted reproductive practices in Indonesia.

## LITERATURE REVIEW

Surrogacy practices from a civil law perspective cannot be separated from the basic concept of civil relations that regulates a person's personal status, especially within the family sphere. In the Indonesian civil law system, a child's status is traditionally determined based on the biological and legal relationship born of a legal marriage. This concept is rooted in provisions in the Civil Code (KUH Perdata) which place birth within marriage as the basis for legitimizing

the civil relationship between children and parents (Subekti, 2005:23). Within this framework, the doctrine of *mater semper certa est* also applies, which states that the mother is the woman who gives birth to the child, so that the relationship between mother and child is considered legally certain (Mulyadi, 2017:59).

This doctrine essentially provides legal certainty because it does not require additional proof regarding maternal relations. However, the development of assisted reproductive technology, including the practice of surrogacy, has disrupted this classical legal construction, because it allows for a separation between biological (genetic) mothers, gestational mothers (those who carry the child), and even social mothers (those who raise the child). From a legal theory perspective, the phenomenon of surrogacy can be analyzed through the approach of legal certainty, justice, and utility as three basic legal values as stated by Gustav Radbruch (1973:68).

Legal certainty requires clear, firm, and non-interpretable norms to provide legal protection for every individual. In the context of surrogacy in Indonesia, the absence of explicit regulations indicates a legal vacuum that has the potential to create uncertainty in determining a child's civil status. On the other hand, the aspect of justice requires the law to provide fair treatment for all parties involved, including the child, the surrogate mother, and the genetic parents. Meanwhile, the aspect of utility emphasizes that the law must provide tangible social benefits, including accommodating the needs of couples experiencing infertility. Lon Fuller (1964:39) also emphasized that a good legal system must meet internal legal principles, such as clarity, consistency, and enforceability. When the law is unable to keep up with technological developments and societal needs, it loses its function as a guide to social behavior.

From a sociological perspective, law cannot be understood as a static system, but rather as a dynamic institution that evolves along with changes in society. Satjipto Rahardjo (2006:112) states that law must be viewed as law in action, not merely law on the books, and therefore must be responsive to evolving social realities. In this context, the practice of surrogacy is a social phenomenon that emerged in response to medical needs and technological developments, and therefore cannot be ignored by the legal system. Similarly, Roscoe Pound, through the concept of law as a tool of social engineering, emphasized that law must function as a means to direct social change towards better conditions (Pound, 1954:66). Thus, regulations regarding surrogacy should not only focus on prohibitions or restrictions, but also on efforts to create a balance between individual interests and the interests of society at large.

In empirical studies, various previous studies have shown that the practice of surrogacy has complex legal implications, particularly regarding the civil status of children. Rahardjo (2019:87) revealed that the absence of specific regulations in Indonesia leads to multiple interpretations in determining lineage, guardianship, and inheritance rights for children resulting from surrogacy. This is reinforced by the findings of Putri (2020:134) who showed that the practice of surrogacy has the potential to give rise to legal conflicts between surrogate mothers and genetic parents, particularly regarding custody and legal recognition of the child. Furthermore, problems also arise regarding citizenship,

particularly for children born through surrogacy abroad, who often face obstacles in obtaining clear citizenship status. Research by Sutrisno (2021:45) also highlights that the practice of surrogacy in Indonesia tends to be carried out covertly or through other countries due to the lack of clear regulations, thus posing greater legal risks for the parties involved.

Internationally, approaches to surrogacy vary significantly. Some countries, such as the United States and the United Kingdom, have developed more adaptive legal frameworks by recognizing the legal relationship between children and their genetic parents through specific mechanisms, such as parental orders (Harris, 2018:112). This approach provides flexibility in determining a child's civil status, with the child's best interests as a primary principle. However, some countries prohibit surrogacy altogether, citing ethical and moral concerns. These differing approaches demonstrate that the regulation of surrogacy is heavily influenced by the social, cultural, and legal values prevailing in each country. Therefore, formulating legal policy in Indonesia requires a comprehensive study that takes into account the existing social and cultural context.

The study of surrogacy is also closely related to the perspective of human rights, particularly children's rights. Within the human rights framework, children are legal subjects with basic rights that must be protected by the state. Alston and Tobin (2005:213) emphasize that every child has the right to identity, including the right to know and be recognized by their parents. This principle aligns with the Convention on the Rights of the Child, which emphasizes the importance of the best interests of the child as a primary consideration in all policies related to children (UNICEF, 2019). However, in the practice of surrogacy, the fulfillment of these rights is often hampered by the unclear legal status of children, which can lead to administrative discrimination, such as difficulties in registering births and recognizing family relationships. This situation demonstrates that legal regulations regarding surrogacy are not only related to civil aspects, but also to the protection of human rights.

On the other hand, the development of assisted reproductive technology also demonstrates a growing need in society. The World Health Organization (WHO) (2020) noted that infertility is a global health problem affecting millions of couples worldwide, thus driving the development of various assisted reproductive methods, including surrogacy. In this context, prohibitions or the absence of legal regulation do not necessarily eliminate the practice; instead, they encourage uncontrolled practices and potentially harm the parties involved. Therefore, a more realistic and adaptive legal approach is needed, one that considers not only normative aspects but also social realities and community needs.

Based on the above description, it can be concluded that the literature review on surrogacy reveals a gap between the development of reproductive technology and the readiness of the legal system to regulate it. On the one hand, Indonesian civil law still adheres to the traditional concept that places the birthing mother as the legal mother, while on the other hand, the practice of surrogacy has created a new reality that cannot be fully explained by this concept.

Previous research also shows that the absence of specific regulations gives rise to various complex legal issues, particularly regarding the civil status of children. Therefore, a more in-depth study is needed to reconstruct a legal framework that can accommodate these developments while remaining grounded in basic legal principles and prevailing societal values. Therefore, this literature review provides an important foundation for this research in developing a more comprehensive analysis and contributing to the reform of Indonesian civil law.

## **IMPLEMENTATION AND METHOD**

This study uses a qualitative approach with a normative juridical research type supported by empirical data to gain a deep understanding of the legality of surrogacy practices from the perspective of Indonesian civil law, particularly regarding the civil status of children. The normative juridical approach is used to review and analyze various laws and regulations, legal principles, and relevant legal doctrines, such as the Civil Code, the Marriage Law, and regulations related to population administration. This analysis also includes a review of legal concepts such as legal certainty and child protection as a basis for assessing the gaps in legal norms related to surrogacy practices (Subekti, 2005:23; Soeroso, 2011:78). The normative approach in legal research aims to find legal rules, legal principles, and legal doctrines to answer the legal issues faced (Marzuki, 2017:35).

To strengthen the normative analysis, this study is supplemented with empirical data obtained through in-depth interviews with key informants, such as family law practitioners, notaries, and officials at the Population and Civil Registration Office who have experience in handling cases related to the civil status of children. Furthermore, observations of birth registration administration practices were also conducted to identify obstacles faced in recognizing the legal status of children resulting from surrogacy. This approach aims to understand the gap between applicable legal norms and practices in the field (law in action), thereby providing a more comprehensive picture of the legal reality that occurs (Rahardjo, 2006:112). Qualitative research itself emphasizes an in-depth understanding of social phenomena through direct interaction with research subjects (Moleong, 2018:6).

The types of data used in this study consist of primary and secondary data. Primary data were obtained through interviews and field observations, while secondary data were obtained through literature review, which included primary, secondary, and tertiary legal materials. Primary legal materials included relevant laws and regulations, secondary legal materials included textbooks, scientific journals, and previous research results, and tertiary legal materials included legal dictionaries and encyclopedias. Data collection techniques were carried out through library research and field research to obtain comprehensive data relevant to the research focus. The use of various data sources aims to increase the validity and depth of analysis in qualitative research (Sugiyono, 2019:224).

The data analysis technique in this study uses qualitative analysis with a descriptive-analytical approach. The collected data is analyzed by organizing, categorizing, and interpreting the data to gain a systematic understanding of the

research problem. Normative analysis is conducted by interpreting applicable legal provisions and identifying gaps or inconsistencies between norms and the development of surrogacy practices. Meanwhile, empirical data is used to strengthen and validate normative findings, resulting in a more contextual and comprehensive analysis. Qualitative data analysis is conducted interactively through the processes of data reduction, data presentation, and drawing conclusions (Miles, Huberman, & Saldaña, 2014:12).

## RESULTS

Field research findings indicate that surrogacy practices involving Indonesian citizens do not occur openly domestically, but rather develop through cross-border surrogacy schemes. In-depth interviews with three family law practitioners and two notaries in Jakarta and Surabaya (2023) revealed an increase in legal consultations regarding planned and post-natal care through surrogacy over the past five years, although the exact number is difficult to document due to the secretive nature of the practice. One notary stated that "in one year, I can handle 3–5 clients consulting regarding the legality of children resulting from surrogacy abroad" (Notary Interview, 2023). This data demonstrates a growing trend in public demand for this practice, particularly among couples with infertility issues, but is not matched by the readiness of the national legal system.

Empirical findings also show the existence of real administrative obstacles in the process of recording children's civil status.

Based on observations at two Population and Civil Registration Offices in Central Java and Jakarta (2022), it was found that all birth registration cases for surrogacy children are processed through a special mechanism and cannot immediately issue standard birth certificates. In one case, biological parents had to wait 4–6 months to obtain clarity on the child's registration status due to multiple verifications of foreign birth documents. In fact, in one concrete case, the initial birth certificate listed the surrogate mother as the legal mother, requiring the biological parents to apply for a court order to amend the data (Dukcapil Observation, 2022). This situation indicates that the administrative system still relies entirely on the fact of biological birth without considering the complexities of modern reproductive technology.

Interviews with Civil Registration and Civil Registration (Dukcapil) officials (2022) revealed that the lack of specific standard operating procedures (SOPs) for handling surrogacy cases has led to differences in treatment between regions. One informant stated that "we don't have official guidelines yet, so each case is usually first consulted with the central level or adjusted to internal policies" (Dukcapil Interview, 2022). This has resulted in inconsistent service delivery, with cases in one region resolving through a court order, while in another region they require an adoption process. This fact indicates an inconsistent implementation of the law, which has the potential to harm the public and create legal uncertainty.

Field findings also reveal the potential for latent legal conflicts, particularly regarding the civil relationship between the child, the surrogate mother, and the biological parents. Interviews with legal practitioners (2023) revealed that

although most surrogacy practices are conducted through legal contracts in other countries, these contracts are not always legally binding in Indonesia. In one case, the biological parents experienced difficulty proving their legal relationship with the child because the surrogacy contract document was not recognized as a legal basis in the Indonesian civil system. This situation indicates a legal gap between national law and international practice, which can trigger disputes, particularly in cases related to custody or parental recognition.

From a child protection perspective, research findings indicate that children resulting from surrogacy are in an administrative and legal position. Based on observations and interviews with the Civil Registration Agency (Dukcapil) (2022), it was found that delays in issuing birth certificates directly impact children's access to public services, such as health insurance and education registration. In one case, a child could not be registered in the national health insurance system for more than three months because they did not yet have a Population Identification Number (NIK). Furthermore, biological parents expressed concerns regarding the child's long-term legal status, particularly regarding inheritance and family relationships. This fact confirms that the unclear regulation of surrogacy not only impacts the formal legal aspects but also directly impacts the fulfillment of children's basic rights in practice.

Overall, these field findings demonstrate a consistent pattern: an increase in the practice of indirect surrogacy, accompanied by limitations in the legal and administrative systems in accommodating this phenomenon. Empirical data indicates that the main problems lie in the absence of clear regulations, the absence of technical guidelines for implementing officials, and the inconsistency between national law and global practice. This situation reinforces the urgency of legal reform that can provide certainty and protection, especially for children as the most impacted legal subjects.

## **DISCUSSION**

### **of Surrogacy Practices from the Perspective of Indonesian Civil Law**

Surrogacy practices from the perspective of Indonesian civil law indicates a significant legal vacuum. An analysis of existing laws and regulations reveals no explicit provisions governing surrogacy, either in the form of legalization or a strict prohibition. The Civil Code (KUHPerdata), Law Number 1 of 1974 concerning Marriage, and regulations related to population administration do not provide specific provisions regarding this practice. This situation places surrogacy in a gray area, giving rise to multiple interpretations in legal practice. In this context, the law does not provide certainty regarding the status of the legal relationship between the child born, the surrogate mother, and the biological parents.

In practice, this normative vacuum has led law enforcement and state administration officials to adopt an interpretive approach based on existing legal doctrines. One dominant doctrine is the principle of *mater semper certa est*, which states that the mother is the woman who gives birth to the child (Subekti, 2005:23). This principle is historically relevant in the context of conventional reproduction, but becomes problematic when applied to the practice of surrogacy, which separates the genetic mother from the birth mother. By adhering to this principle, Indonesian civil law implicitly recognizes surrogate mothers as legitimate

mothers, even though they are not biologically related to the child. This demonstrates that the legal system is still based on a traditional paradigm that is unable to accommodate developments in modern reproductive technology.

When analyzed from the perspective of legal certainty theory, this situation indicates a mismatch between the function of law and the reality that occurs. According to Radbruch (1973:68), the law must be able to provide clarity, certainty, and predictability in its application. However, in the case of surrogacy, the law does not provide clear guidelines, thus opening up room for varying interpretations at the implementation level. This is reinforced by Fuller's (1964:39) view, which states that good law must meet the principles of clarity, consistency, and enforceability. When a social phenomenon is not clearly regulated, the law loses its function as an instrument for regulating and protecting society.

The field findings in this study further strengthen this normative analysis. Surrogacy practices carried out by Indonesian citizens tend to be conducted abroad, as a response to legal uncertainty at home. However, when these practices are re-encountered within the Indonesian legal system, various issues arise, particularly regarding the recognition of the child's legal status. This demonstrates that even though the practice occurs outside national jurisdiction, its legal implications must still be addressed within the Indonesian legal framework. Thus, the normative vacuum not only impacts theoretically but also creates real problems in legal practice.

From a progressive legal perspective, this situation reflects the inability of Indonesian civil law to adapt to social and technological developments in society. Satjipto Rahardjo emphasized that law should not be static, but rather responsive to social change (Rahardjo, 2006:112). In this context, the practice of surrogacy is an unavoidable phenomenon, and a legal approach that ignores it will only widen the gap between law and reality. Therefore, a more adaptive and contextual legal approach is needed to assess the legality of surrogacy practices.

Thus, it can be concluded that the legality of surrogacy practices under Indonesian civil law is currently unclear and tends not to be accommodated normatively. This regulatory vacuum creates legal uncertainty that has a broad impact on various aspects, particularly the civil status of children. Therefore, legal reform efforts are needed that can provide certainty, clarity, and legal protection for all parties involved, especially children as the primary legal subjects.

### **Civil Status Construction of Children from Surrogacy**

surrogacy practices in Indonesian civil law demonstrates a lack of synchronization between biological, social, and legal aspects. Biologically, children born through surrogacy have a genetic relationship with their biological parents (intended parents), namely the couple who provided the sperm and egg cells. Socially, the child is also raised and cared for by their biological parents as part of the nuclear family. However, from a legal perspective, Indonesian civil law does not directly recognize this relationship, resulting in unclear civil status for children.

In the Indonesian civil law system, a child's status is closely linked to the legal relationship between the child and their legally recognized parents. The principle

used to determine this status still refers to the fact of birth, where the mother who gives birth is considered the legal mother under the doctrine of *mater semper certa est* (Subekti, 2005:23). Consequently, in cases of surrogacy, the surrogate mother automatically acquires the status of the legal mother, while the biological parents have no direct legal relationship with the child they are born with. This creates a discrepancy between biological reality and the prevailing legal construct.

The implications of this situation are far-reaching, particularly in terms of civil rights and obligations. Children who lack a clear legal relationship with their biological parents potentially face obstacles in obtaining basic rights, such as the right to custody, guardianship, and inheritance. In practice, to obtain legal recognition, biological parents must undergo additional mechanisms, such as adoption or court orders. However, these mechanisms fundamentally do not fully reflect the reality of the actual biological relationship, thus creating an artificial legal construct. This finding aligns with previous research stating that the absence of specific regulations regarding surrogacy leads to multiple interpretations in determining a child's status and their civil relationship (Rahardjo, 2019:87; Putri, 2020:134).

From a family law perspective, a child's civil status is also related to the concepts of lineage and legitimacy. When the law does not recognize the relationship between a child and their biological parents, there is the potential for dysfunction in the family law system, particularly in determining lineage. This becomes even more complex when linked to other legal aspects, such as citizenship for children born abroad through surrogacy. In some cases, children may face difficulties in obtaining clear citizenship due to the lack of synchronization in legal recognition between countries.

From a legal theory perspective, this situation indicates that existing legal structures have not been able to accommodate developments in science and technology. Ideal law should not only reflect social reality but also anticipate changes occurring in society. In this regard, reliance on the principle of *mater semper certa est* without any adjustments to the modern context indicates stagnation in the development of civil law. Therefore, a reinterpretation of existing legal principles is necessary to maintain their relevance to current developments.

From a child protection perspective, this unclear civil status places children in a vulnerable position. Children potentially lose their right to a clear legal identity and face obstacles in obtaining optimal legal protection. The principle of the best interest of the child emphasizes that every legal decision must prioritize the child's best interests (UNICEF, 2019). However, in surrogacy practice, this principle has not been fully implemented, as the law places more emphasis on formal aspects than on the child's substantive interests.

Based on this analysis, it can be concluded that the construction of the civil status of children resulting from surrogacy in Indonesian civil law remains partial and incomplete. The discrepancy between biological, social, and legal aspects indicates the need for reform in the legal concepts used. Therefore, a more integrative approach is needed in determining children's civil status, taking into account biological relationships, social realities, and the best interests of the child as the primary legal subject.

### **Legal Implications for Civil Relations and Population Administration**

surrogacy practices in Indonesian civil law has direct implications for children's civil relations and the population administration system. Based on field findings, the main obstacles encountered are in the process of registering births and recognizing children's legal status. The population administration system in Indonesia still adheres to a formal approach that places the birthing mother as the legal mother. As a result, in cases of surrogacy, the name of the surrogate mother is listed on birth documents, while the biological parents are not directly recognized. This situation demonstrates a mismatch between social reality and the prevailing administrative system.

A further implication of this situation is the emergence of quite complex administrative obstacles. Based on observations at the Population and Civil Registration Office (2022), the process of issuing birth certificates for children resulting from surrogacy is often delayed due to the need for additional verification of submitted documents. In some cases, biological parents must apply for a court order for legal recognition before the data on the birth certificate can be corrected. In some cases, biological parents are even required to undergo adoption procedures to obtain legal status as legal parents. These procedures not only prolong the administrative process but also impose psychological burdens and additional costs on families.

Furthermore, the lack of clear standard operating procedures (SOPs) for handling surrogacy cases leads to inconsistencies in population administration practices. Interviews with Civil Registration and Civil Registration officials (2022) revealed that each case is often handled on a case-by-case basis, relying on individual interpretations. This results in differences in treatment across regions when handling similar cases. This contradicts the principle of legal certainty, which demands uniformity in the application of the law (Radbruch, 1973:68). Furthermore, according to Fuller (1964:39), good law must be consistent and enforceable. Therefore, the lack of technical guidelines in surrogacy cases demonstrates the legal system's weakness in ensuring such certainty.

Legal implications are also evident in the civil relationship between children and biological parents, particularly in the areas of guardianship and inheritance. When legal relationships are not directly recognized, civil rights and obligations become unclear. In practice, this can lead to future legal disputes, particularly regarding custody and inheritance. Previous research also shows that the lack of clear regulations regarding surrogacy has the potential to give rise to complex legal conflicts (Rahardjo, 2019:87; Putri, 2020:134). Thus, the legal implications are not only administrative but also impact the stability of legal relationships within the family.

From a child protection perspective, these administrative barriers directly impact the fulfillment of children's basic rights. Children who lack a birth certificate or Population Identification Number (NIK) will experience difficulties in accessing public services, such as education, health care, and social security. Field findings indicate that delays in issuing identity documents can last for several months, indirectly hindering the fulfillment of children's rights. This

situation contradicts the principle of the best interest of the child , which requires the state to ensure optimal child protection and well-being (UNICEF, 2019).

From a progressive legal perspective, this situation demonstrates a gap between law as a norm ( law in books ) and law in practice ( law in action ). Satjipto Rahardjo emphasized that the law must be able to provide solutions to real problems faced by society (Rahardjo, 2006:112). However, in the case of surrogacy , the law actually becomes an obstacle in fulfilling children's civil rights due to the lack of clear regulations. Therefore, reforms are needed in the population administration system that can accommodate the complexity of surrogacy practices in a more flexible and responsive manner. Thus, it can be concluded that the legal implications of surrogacy practices in the context of civil relations and population administration are very significant. Unclear legal norms not only create administrative obstacles but also have the potential to disrupt the fulfillment of children's basic rights and the stability of legal relationships within the family. Therefore, systematic efforts are needed to improve regulations and administrative practices to create greater legal certainty.

### **Surrogacy Practices**

Protecting children's rights is a fundamental aspect that must be a top priority in every legal framework, including the practice of surrogacy . From a legal perspective, children are legal subjects with inherent basic rights from birth, such as the right to identity, the right to parental recognition, and the right to legal protection (Soeroso, 2011:78). However, field findings indicate that children born through surrogacy often face obstacles in fulfilling these rights due to unclear legal status. This situation indicates a gap between existing legal norms and the reality of society.

Empirically, field data shows that children resulting from surrogacy often experience delays in obtaining birth certificates and Population Identification Numbers (NIK). Based on interviews with officials from the Population and Civil Registration Office (2022), the administrative process for children resulting from surrogacy requires additional verification that is more complex than for children in general. In some cases, biological parents must go through legal proceedings through the courts to obtain recognition as legal parents. This delays the fulfillment of children's identity rights, which should be granted from birth. Furthermore, there are cases where children cannot be immediately included in the biological parents' Family Cards because their legal status is unclear.

From an international legal perspective, this situation contradicts the principle of the best interest of the child , which emphasizes that every decision related to children must prioritize the child's best interests (UNICEF, 2019). This principle is also in line with the Convention on the Rights of the Child , which states that every child has the right to a clear identity, nationality, and family relationship from birth (Alston & Tobin, 2005:213). Therefore, delays or ambiguities in recognizing the legal status of children resulting from surrogacy can be categorized as a violation of children's basic rights. Protection of children's rights also relates to the certainty of civil relationships, including inheritance and guardianship rights. In conditions where the legal relationship between a child

and biological parents is not directly recognized, the child's civil rights are not optimally protected. Research findings indicate that potential legal disputes can arise later in life, particularly related to inheritance rights or child custody (Putri, 2020:134). This indicates that legal ambiguity not only impacts the early stages of a child's life but also has the potential to cause long-term legal problems.

From a legal protection perspective, the state has an obligation to ensure that every child receives their full rights without discrimination. Satjipto Rahardjo emphasized that the law must side with vulnerable groups, including children, by providing maximum protection (Rahardjo, 2006:112). In this context, children resulting from surrogacy can be categorized as a vulnerable group because they are in a position that is not clearly regulated by law. Therefore, state intervention is needed to ensure that children's rights are protected, regardless of how they were born. Protecting children's rights in surrogacy practices also requires a comprehensive approach, not only from a legal perspective, but also from a social and administrative perspective. The establishment of clear regulations regarding surrogacy is a crucial step in providing legal certainty while guaranteeing the protection of children's rights. These regulations must be able to accommodate various aspects, including determining parental status, birth registration procedures, and protecting children's civil rights. Without clear regulations, children will continue to be vulnerable to legal uncertainty.

Thus, it can be concluded that the protection of children's rights in surrogacy practices still faces significant challenges. Legal ambiguity not only hinders the fulfillment of administrative rights but also has the potential to disrupt the certainty of children's civil relationships. Therefore, serious efforts are needed by the state to build a more adaptive and responsive legal system, capable of ensuring optimal protection of children's rights. An approach oriented toward the best interests of the child must be the primary foundation of all policies and regulations related to surrogacy practices.

## **CONCLUSION AND RECOMMENDATIONS**

This study shows that the lack of clear regulations regarding the practice of surrogacy in Indonesian civil law has created significant legal uncertainty, particularly regarding the civil status of children. Current law still relies on traditional normative approaches, such as the principle of *mater semper certa est*, which is no longer fully relevant to developments in modern reproductive technology. Field findings reveal administrative barriers, inconsistencies in civil registration practices, and the potential for legal disputes that directly impact the fulfillment of children's rights. Furthermore, this condition also indicates a gap between the law as a norm and social practices that develop in society. Thus, it can be concluded that the Indonesian civil law system has not been able to optimally accommodate the complexity of surrogacy practices, so that more adaptive and responsive legal reforms are needed.

This research recommendation emphasizes the importance of establishing specific regulations that comprehensively govern the practice of surrogacy in Indonesia, particularly regarding the determination of a child's legal status and their civil relationship with their biological parents. The government needs to formulate policies oriented towards the principle of the best interest of the child

by ensuring that every child has the right to identity, legal protection, and certainty of status from birth. Furthermore, the development of clear standard operating procedures (SOPs) is necessary for relevant agencies, particularly in population administration, to avoid inconsistencies in practice. A progressive legal approach also needs to be adopted as a basis for responding to developments in reproductive technology, so that the law provides not only certainty but also substantive justice. With these steps, it is hoped that the Indonesian legal system will be better prepared to face future social dynamics and provide optimal protection for children as the primary legal subjects.

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