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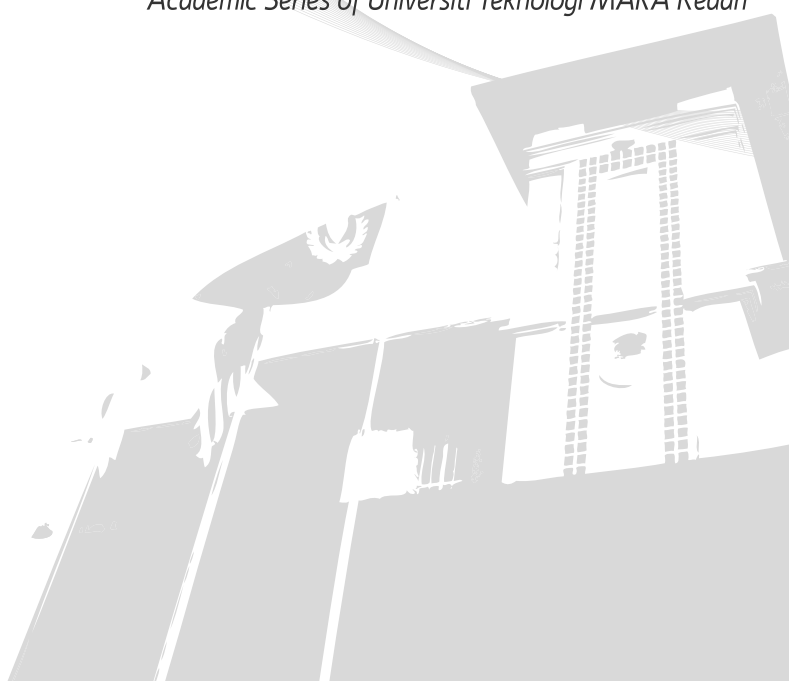
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Surrogate Mother Makes Money By Making Baby: Do we need a clear law on this?

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ABSTRACT

Commercial surrogacy is a form of surrogacy in which a woman is paid to carry a child to maturity in her womb and is usually resorted to by well off infertile couples who can afford the cost involved in order to fulfill their dream of being parents. This procedure is legal in several countries due to high international demand. For women who are unable to conceive, this is one of the alternatives for them to have their genetic offspring. Aside from several advantages, surrogacy in fact, invites highly controversial issues. There are numerous cases where the surrogate mother has refused to hand over the child because the process of surrogacy itself involves emotional and psychological issues. Moreover, the infertile spouses will have to worry about legal complications of a contract with the surrogate mother since the consideration of 'buying a child' cannot create a binding contract. There is also a possibility that child's emotional development will be affected because of this surrogacy process. This paper will be focusing on commercial surrogacy in Malaysia; on whether it should be banned or regulated by Malaysian Law. The Writers will look at other countries' law pertaining to this issue by taking into consideration its regulation, advantages, disadvantages, ethics and religious perspective. At the end of this discussion, the writers will come out with suggestion either commercial surrogacy should be legally allowed or banned in Malaysia.

Keywords: Illegal, Surrogacy, Malaysian law.

1. Introduction

Surrogacy is defined by Warnock (1985) as “the practice whereby one woman carries a child for another with the intention that the child should be handed over after birth” (p.42). It is a way of reproduction whereby a woman gives her consent to be conceived and deliver the baby for a spouse in return the surrogate mother is paid a sum of money for bearing and delivering the child. Despite the great advances in science and technology which have helped minimized the age old problem of infertility, the uterus of a woman remains irreplaceable. Hence, surrogacy is seen as an alternative to allow women with uterus complications to overcome their incapability of bearing a child themselves. Nevertheless, a distinction had been made with regard to partial and full surrogacy. In partial surrogacy, the ovum of the commissioning mother is fertilized and then implanted into the surrogate mother, whereas in full surrogacy, the surrogate mother’s ovum is used and in this situation, she is both the gestational carrier as well as the genetic mother of the child.

In gestational surrogacy, a woman becomes pregnant through implantation of an embryo from the commissioning couple or the biological mother. She may have made an arrangement to relinquish it to the biological mother or father or to a parent who is unrelated to raise a baby. The surrogate mother is also called the gestational carrier. In the words of Roberson (1995), “gestational surrogacy allows woman with intact ovaries who lack uterine capacity or the ability to gestate to have or rear biologically related offspring” (p. 216).

Although many ethical questions have been raised about surrogacy and society has not yet given a clear approval on the practice, gestational surrogacy is not legally prohibited. In India, commercial surrogacy had been legalized since 2002 (The Associated Press, December 30th, 2007). Surrogacy happens to be well known in India. Indian surrogates have become increasingly popular because of the low cost incurred. Indian clinics are at the same time becoming more competitive in the pricing as well as in the hiring and retention of Indian females as surrogates. In some other countries, for example Canada and Japan, they had prohibited the arrangement of commercial surrogacy and participation in surrogacy arrangements is a criminal offence. However, in most countries including Malaysia, the law governing surrogacy remains unclear and thus, surrogacy

remains the most controversial area in the use of assisted reproductive technologies. As such, it is firmly believed that surrogacy should be made illegal due to maternity confusions, psychological harm and human exploitation.

In Malaysia, there is still no specific statutory provision governing the law of surrogacy. Legislation is currently being drafted in order to regulate the Assisted Reproductive Technology by the Ministry of Health and considering the religious and moral values of the country, it will most probably be unlawful to contract into surrogacy arrangement (Zulkifle, 2006)

1.1 Impact of Commercial Surrogacy

1.1.1 Surrogacy create maternity confusions

The problem in surrogacy is not due to the unnatural means of getting a child but its impact on the mother and child relationship. The legal definition of “mother” as stated in Section 27 of Human Fertilisation and Embryology Act 1990 of the English Law, states “The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child”. It is clear from the law that a mother is the woman who gives birth to a baby.

Surrogacy can make things rather complicated because a child born as a result of a surrogacy arrangement could in fact end up with three mothers in certain instances. The legal mother could be the woman who gestates the pregnancy and gives birth to the child. If the surrogacy involved the surrogate mother as a mere carrier of the child, then legal motherhood could be the genetic mother, in which the woman whose egg was fertilized would be the resulting child’s mother. Finally, in extreme cases, if the commissioning mother is not able to provide her ovum and neither does she want the surrogate to use hers, then an ovum from a donor would have to be used, and matters would further worsen if the sperm was taken from a donor to be fused with the donated ovum (Jackson, 2001). In such a circumstance, the child will be having not only three potential mothers but also two potential fathers as well. In determining who will be the legal mother of the child, the court would normally prefer to conduct a genetic test on the baby. In full IVF surrogacy, a genetic test would vest motherhood to the ovum donor.

In the American case of *Johnson v Calvert* (1993), Mr. Calvert was white and his wife was a Phillipino. They provided both the ovum and the sperm and agreed to pay one Anna Johnson, who was black to carry their child. Although Anna Johnson had agreed that she would relinquish her parental rights, when she was 7 months pregnant, she indicated that she was having doubts and might try to seek custody for the baby. When she was 8 months pregnant, the Calverts sought and gained a declaration of legal parenthood. Using the results of blood tests, the California Appellate Court declared that Chrispina Calvert was the 'biological, natural and legal mother of the child'.

In another situation, in the case of *Buzzanca v Buzzanca*(1998), a child was born following the implantation of an anonymously donated embryo into a gestational surrogate, so the child was neither genetically related to the commissioning couple nor to the surrogate mother. The trial judge held that the baby had no legal parents but the decision was overturned on appeal. The Court of Appeal was anxious to avoid the conclusion that a parentless child had been created and found that although conventionally the parent and child relationship had been established through genetic ties, giving birth or adoption, the means through which parenthood is identified should not be closed and could therefore be expanded to keep up with new technologies. Hence, the court found that a parent-child relationship might also exist following medical procedures which were initiated and consented to by the intended parents, even there is no genetic relationship between them and the child.

While DNA test may be accurate in determining a paternity dispute, the division between the genetic and the gestational contribution of motherhood makes identifying the mother in surrogacy arrangement less clear (Jackson, 2001). There are perhaps two women who have a legitimate claim to be considered the child's mother because in the United Kingdom, the gestational mother like Anna Johnson will always be considered the legal mother unless and until a parental order or an adoption order is made, but the opposite result was reached by the Californian Court. The dispute arose in determining who will be the legal mother of the child will remain abated unless and until a formal law governing surrogacy is enacted by the government.

1.1.2 Bad psychological effect on the children

There is also a possibility that the surrogate children may be scarred by the knowledge that their gestational mother ‘sold’ them to another person shortly after their birth (Warnock, 1985). Being given away in return for money by one’s gestational mother is assumed to be qualitatively worse than learning that your genetic father was a sperm donor, or that you were conceived out of your mother’s body. However, according to Steinbock (1988) and Jackson (2001), any claim that surrogacy creates psychological problems in the children is purely speculative. Even so, it is possible such children may develop inner feelings of worthlessness upon learning that their natural mothers deliberately created them with the intention of giving them away? The feelings of worthlessness are harmful as it affects the psychological wellbeing of the children. This can prevent people from having happy and fulfilling lives. Furthermore, it is felt that surrogacy is degrading to the child who is to be the outcome of it since for all practical purposes; the child will have been bought for money.

It is also argued that the relationship between mother and child is itself distorted by surrogacy. As Warnock (1985) put it: “In such arrangement, a woman deliberately allows herself to become pregnant with the intention of giving up the child to whom she will give birth, and this is the wrong way to approach pregnancy. It is also potentially damaging to the child, whose bonds with the carrying mother, regardless of genetic connections, are held to be strong and whose welfare must be considered to be of paramount importance.” (p.45)

In the case where the child was born perfectly healthy, we can see from the above cases that both the gestational mother and the genetic mother wish to claim custody of the child. Nevertheless, the opposite will happen if the child was born handicapped or mentally incapable. In *Stiver v Mallahoff* (1988) case in the United State, after entering a surrogacy arrangement with the Mallahoffs, Mrs. Stiver gave birth to a child who was mentally retarded. In this case, neither the Stivers nor the Mallahoffs wanted the child; however, the court granted the custody of the child to the Stivers.

We can see from the case that the problem of an unwanted child is obviously not uncommon in surrogacy relations. In cases where the handi-

capped child is unwanted by neither the surrogate nor the genetic parents, it will cause more harm to the child. The fact that he is to be sold by his gestational mother for a sum of money and later no one wishes to claim him upon knowing that he is not perfect will only make the matters worse. If a child is conceived in the normal way, legal responsibilities to the children lay with the biological parents whether they like it or not.

In cases where the status of the children is unknown, they will be declared as illegitimate and an illegitimate person might lose certain rights under the law; for example, they have no right to inherit property. Hence, surrogate children can be unjustifiably deprived if brought into existence and then they are deprived of minimal basic to which all humans are entitled.

Even though the psychological harm that might be caused to the surrogate children is merely speculative, the surrogate children will somehow be disturbed by the fact that they were treated like a product, to be created and then sold to another person for a sum of money. If an adopted child can never stop thinking about the fact that he was adopted, the same thing can happen to a surrogate child and worse still because he is 'bought' from another parent. The psychological effect might not be huge but it will affect the child in one way or another. Other than that, it may also be detrimental to the surrogate mother's children. One woman reported that her daughter is still having problems with what she did because her child had developed a bond with the baby that she gave away to another family (Steinbock, 2002). Besides, if one day the surrogate child which has been given away to his genetic parents were to fall in love with his gestational mother's child, then, what will be the status of the relationship? Did he fall in love with his own sister and can they be married or not? This will only add to the confusion that people have with regard to the status of the child. Therefore, it is better to make such 'selling' or arrangement to be illegal because of the negative effects it brings to the child.

Contrastingly, those in support of surrogacy claim that in cases where pregnancy would be impossible, surrogacy will assist a couple to have children that carries their genetics. Normally, the main reason for a couple to opt for surrogacy is that a woman has no uterus or pregnancy may deteriorate her health. Instead of adopting, the couple can somehow 'create' children that inherit their good traits. People who engage in surrogacy

arrangements only do so because they have a strong desire to have a child, thus, these children may have the psychological advantage of knowing that their birth was planned and desired.

Many humanitarian groups, for example in Australia and some parts in Western Europe assert that there is an important need to look at the intention of the parties signing the contract for surrogacy (Posner, 1989). The parties must be fully aware with the nature of the contract that they entered into and the woman being the surrogate mother has agreed to bear the child willingly, and as such there should be no reason for surrogacy to be prohibited.

Some feminists even argued that a woman should be allowed to do whatever she wishes with her body. After all, if a man could sell his sperm, why should a woman be stopped from using her reproductive organs for a certain payment? She is trying to help an unfortunate couple and does not cause any difficulty to anyone but herself (Mahoney, 1988).

Nevertheless, this argument seems inadequate considering the exploitation of the surrogate mother. The Warnock Committee, for example strongly condemned surrogacy made for financial profits and treat her uterus as the mere incubator for someone else's child (Warnock, 1985). According to Freeman (1989) in his article 'Is surrogacy exploitative': "Simply offering woman money to bear a child for someone else creates the possibility of exploitation" (para. 3).

2. Law Governing Surrogacy

Under the common law, Surrogacy Arrangement Act 1985 was created to govern laws pertaining to surrogacy and surrogacy is not illegal under the common law. However, there are certain offences in connection with surrogacy. Section 2 of the Surrogacy Arrangement 1985 makes it unlawful for the surrogate mother or the commissioning parents to negotiate or arrange a surrogacy arrangement on a commercial basis, but it does not prevent non-commercial groups facilitating surrogacy arrangement. Thus, if the surrogacy arrangement is made under any organization, then it will be allowed. Under Section 3, it is unlawful for anyone to advertise surrogacy services and based on the case of *Re C* (Application by Mr. and Mrs. X) it is also unlawful to make an offer that amounts to a profit for the gestational carrier, though she can be offered payment of expenses incurred during the

pregnancy period. Consequently, any surrogacy arrangement made by an individual or a non-commercial body must be made voluntarily without any fees being paid to the gestational mother.

A recent provision which was inserted by Human Fertilisation and Embryology Act 1990 under Section 1A of the Surrogacy Arrangement Act made it clear that no surrogacy arrangement is enforceable by or against any of the persons making it.

Meanwhile, the Human Fertilisation and Embryology Act 1990 provides a scheme regulating assisted reproduction and research on human embryos outside the human body; *inter alia*, the licensing of human fertility treatment, regulating research on embryos and protection for the embryo donors. Any clinic that wishes to assist in the surrogacy arrangement must obtain a license under this Act which they have to follow the rules and regulation strictly. Section 13 of the Act provides that a treatment shall not be conducted unless all the circumstances of the case have been taken into consideration including the welfare of the child and the physical incapability of the commissioning mother.

In the United States, there are some states which allow the surrogacy arrangement. For example in Florida, it allows both partial and full surrogacy arrangement but it is prohibited in the case of the same sex couple who has not yet legalize their relationship. Although there is no statutory provision with regard to surrogacy, the decision of the court in several cases seems to be in favour of these surrogacy arrangements [Lofton v. Kearney, 358 F. 3d 804 (11th Cir. 2004); Lowe v. Broward County, 766 So. 2d 1199 (Fla. Dist. Ct. App. 2000)] . Similarly, in California, the court in Johnson v. Calvert (1993) had also recognized the practice of surrogacy arrangement made between the parties. Other states like New Jersey, Nebraska, North Carolina and Oregon suggest that surrogacy arrangement shall be allowed only in a case where the arrangement is made voluntarily between the parties and without involving any payment to the gestational mother. States like Illinois and Louisiana only allow gestational surrogacy to be made between the commissioning couple and the gestational mother as opposed to the other forms of surrogacy.

While the majority of the states in US are still ambiguous with regard to surrogacy law, states like New York and Michigan took a stricter

approach in which they had made surrogacy arrangement as void and unenforceable as it is claimed to be against the public policy. In Michigan, not only surrogacy is prohibited, anyone who enters into surrogacy arrangement will be punished with fines and imprisonment.

While many states in the US are silent regarding the law governing surrogacy, countries around the world, like Canada has made commercial surrogacy prohibited under the Assisted Reproduction Act (However, altruistic surrogacy is legal). The science council of Japan has proposed that surrogacy arrangement be made illegal in the country (The Japan Today, January 21st, 2008) In France, any surrogacy arrangement is declared as void and illegal since 1994 by the French Civil Code. Based on the survey conducted by American Society for Reproductive Medicine (2001), IVF surrogacy is not permitted in Austria, China, the Czech Republic, Denmark, Egypt, Germany, Italy, Jordan, Mexico, Norway, Poland, Portugal, Singapore, Spain, Sweden, Switzerland, Taiwan, Turkey, and some parts in the US.

However in India, surrogacy arrangement is widely practiced among the people where the surrogate mother is allowed to waive her rights over the child after birth. Commercial surrogacy is in fact recognized in India whereby the surrogate mother will be paid around USD 22,000 up to USD35,000. In certain circumstances, it could reach up to half a billion dollar (Medical Tourism Corporation, February 24th, 2008). People from all over the world who wish to opt for surrogacy arrangement will go to India in order to materialize their hope in having children that carries their genetics. In India, surrogacy can also be a mean to make some money for the less fortunate women in a way that they will 'rent out' their womb to any commissioning couple. There is yet a statutory provision in India to safeguard the interests of the surrogate mother as well as the baby even though there is a large number of a foreigner coming to India to rent wombs. In times, it will also increase the possibility that women who are capable to have children to enter into the surrogacy contract.

3. Islamic Perspective

Under Islamic law, the contract in which the surrogate mother and the married couple enter into is prohibited and it will be considered an invalid contract. The freedom given in forming commercial transactions must be exercised and any acts of selfishness or greed would not be allowed, for

example, the prohibition against abortion as stated in the Holy Quran. A child born under the surrogate contract would be illegitimate in the shariah since the contracting husband had not entered into matrimonial contract with the surrogate mother who gave birth to the child.

To commodify the human womb and later subject the resulting child as a form of commercial transaction would go against the dignity of man as promised by Allah s.w.t. He has mentioned in Surah Al-Isra’;

‘We have bestowed dignity on the sons of Adam ... and conferred on the special favours, above a great part of Our creation’ (17:70)

Surrogacy is prohibited under the Islamic law since the evils that would accrue from it will far outweigh any good. Acceptance of surrogate motherhood would tamper with the nature and power of Allah in the normal process of procreation. Moreover, it would attract women to resort to this technique in order to relieve themselves of the agony of going through the pain of pregnancy and childbirth. However, Islam does not consider pregnancy as a burden but as a blessing. If a mother dies during pregnancy or childbirth, she is given the status of shahidah (martyr) (Abul Fadl Mohsein, 1989). In addition to that, surrogacy may create confusion in blood ties and interferes with one’s parentage.

Biomedical science has made positive contributions in assisting infertile couples to fulfill their dreams of becoming parents. However, the methods used are sometimes ethically questionable and Islam only thinks of what is best for the people. In the Quranic verse in Surah Ash- shura;

“Or He bestows both males and females; and He leaves barren whom He will: For He is full of knowledge and power...” (42:50)

Commenting on this, Ibn Kathir in Abul Fadl Mohsein (1989) states that: It is He Who is the Creator of the heavens and earth, and that He alone decides what is to take place in them. He gives to whom He pleases and holds back His bounties from whom He pleases. He creates whatever He wishes. He may bestow to a couple only female children or to another male only, while to yet another, He may bless them with both males and females and he may even leave some of the people barren. (p.45)

Thus, it is clear that infertility in the Quran that some people may not be able to bear children but nevertheless can if it is the will of Allah SWT.

4. Conclusion and Recommendations

Surrogacy is not specifically prohibited in Malaysia. Despite the advantages of surrogacy in helping spouses to get their descendents, it is nevertheless inevitable for this country to have specific legislation governing surrogacy. The identified reasons provided in this article can be strongly supported a prohibition by law on surrogacy. Surrogate motherhood should be discouraged by all practicable legal and social means and entering a surrogacy agreement for money should be illegal in Malaysia.

It should be an offence for those who participate in, or facilitate a surrogacy arrangement or any part of a surrogacy arrangement. The prohibition should be extended not only to those who involved directly with surrogacy arrangement but also to the person who is responsible in soliciting surrogacy. A person should be guilty of a criminal offence if he publishes or causes to be published a statement or advertisement offering or soliciting participation in a surrogacy arrangement. Besides, it ought to be an offence to publish, advertise or cause to be advertised a statement that a person is willing to negotiate, arrange or obtain the benefit of a surrogacy arrangement on behalf of another.

Furthermore, according to contractual law in Malaysia, the surrogacy agreement is not valid and enforceable due to illegal consideration of buying a child. Recognizing the need to prohibit commercial surrogacy arrangement, it is hoped that within a short time, the legislator in Malaysia will take prompt action in legislating and passing the law on surrogacy in order to protect the dignity of women and the concept of neutrality of human process accepted by society as a whole.

References

Al-Qur'an, Surah al – Isra', 17 :70 ; Surah as-Shura, 42: 50

Abul Fadl Mohsin Ebrahim (1989). *Abortion, birth control and surrogate parenting: An Islamic Perspective*. Indianapolis: American Trust.

American Society for Reproductive Medicine, IFFS Suirvellanve
'01 (2001) 76 [Suppl 2] *Fertility and Sterility*.

Buzzanca v Buzzanca Sup Ct No.95D002992 (1998)

Freeman, M. (1989). *Is surrogacy exploitative?* in Shiela Mc Lean's Legal issues in human reproduction. Gower Publishing Co. Ltd. Aldershot. p. 166.

Human Fertilisation and Embryology Act 1990 (UK) Section 27

Jackson, E. (2001). *Regulating reproduction: Law, technology and autonomy*. Portland, Oregon: Hart

Johnson v Calvert 286 Cal Rptr 369 (1993)

Mahoney, J. (1988). An essay on surrogacy and feminist thought. *Journal of Law, Medicine & Healthcare*, 16(1-2), p.81.

Medical Tourism Corporation. (2008, February 24). Surrogate mothers in India –costs, laws, medical facilities & culture. Retrieved from <http://www.medicaltourismco.com>

Posner, R. (1989). The ethics and economics of enforcing contracts of surrogate mother. *Journal of Contemporary Health Law and Policy*, 5, p.23.

Roberson, J. (1995). Legal issues in human egg donation and gestational surrogacy in Steinbock's Legal and ethical issues in human reproduction, Aldershot, England: Dartmouth, p.210 – 218.

Steinbock, B. (2002). Legal and ethical issues in human reproduction. Aldershot, England: Dartmouth. Surrogacy Arrangement Act 1985.

The Associated Press. (2007, December 30). India's surrogate mother business raises questions of global ethics. Daily News. Retrieved from <http://www.nydailynews.com/news>

Warnock, M. (1985). *A question of life*. Oxford: Blackwell Publisher

Zulkifle Abd Rahman. (2006, 27 June). The star in Puteri Nemie Jahn Kassim, law and ethics relating to medical profession. Petaling Jaya, Selangor: ILBS 2007

[*Lofton v. Kearney*, 358 F. 3d 804 (11th Cir. 2004); *Lowe v. Broward County*, 766 So. 2d 1199 (Fla. Dist. Ct. App. 2000)]

The Japan Today, January 21, 2008