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Civil Law Implications for Children Born Through Surrogacy (Surrogate Mother)

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Abstract: This study analyzes the legal status of children born from surrogacy in Indonesia, a practice considered illegal yet a potential solution for infertility, creating a serious rechtsvacuüm. The research objective is a juridical analysis of this issue under Indonesian civil law using a normative juridical method. The findings indicate that surrogacy agreements are legally invalid and considered null and void (van rechtswege nietig) because they fail to meet the "lawful cause" requirement stipulated in Article 1320 in conjunction with Article 1337 of the Civil Code. This legal void creates uncertainty for the child. Based on the principle of mater semper certa est, the surrogate is legally recognized as the mother, disregarding genetic parentage. This situation infringes upon the child's fundamental rights to identity and inheritance, undermining the principle of pro bono infantis. The study concludes that there is an urgent need for definitive state regulation, either through a strict prohibition or by permitting altruistic surrogacy under rigorous judicial oversight, to provide legal certainty and paramount protection for the child.

Keyword: Surrogate Mother, Civil Law, Regulations

INTRODUCTION

The Marriage is understood as a legal and emotional bond between a man and a woman that aims to form a harmonious, stable, and sustainable family life. This concept is juridically regulated in Law Number 1 of 1974 concerning Marriage. In the social and cultural context of Indonesia, children are seen as an important part of the family because their existence not only complements domestic life but also strengthens emotional bonds. This view is in line with the thinking of Soerjono Soekanto, who stated that a child is a person who is in the growth phase, so he needs direction, supervision, and protection from their parents. However, not all marriages produce offspring due to various factors such as infertility or reproductive disorders. This situation often gives rise to psychological pressure and social stigma, given that in the traditional view, children are considered the benchmark of marital success.

In the rapid advancement of medical technology development, various assisted reproductive techniques have been discovered, one of which is In Vitro Fertilization (IVF). This method then paves the way for new innovations for couples who have healthy eggs but

have difficulty conceiving naturally, namely through the use of a surrogate mother known as surrogate mother (Ariyanti & Rahayu, 2022). This method is based on an agreement between a husband and wife and a woman who is willing to have a pregnancy with an embryo derived from the in vitro fertilization (IVF) process and then hand over the baby according to the agreement contained in the *gestational agreement* (Putri, 2024*).* (The practice *of surrogate motherhood* creates a shift in maternal relationships and poses challenges in determining maternal status, as there are components of genetic motherhood, gestational motherhood, and social motherhood that must be considered, thus creating legal confusion.

Basically, this practice has been legally recognized and strictly regulated by countries such as the United States, the United Kingdom, and Australia through various regulations, but in Indonesia the practice *of surrogate mothers* is still considered illegal and taboo. Applicable regulations, such as Law Number 17 of 2023 concerning Health, implicitly only recognize the practice of IVF by implanting embryos in the wife's uterus that is legally valid. Although considered to be contrary to customary, religious, and ethical values, the practice *of surrogacy* still occurs secretly, as in the 2009 case in Mimika, Papua, which involved the wife's sibling as a surrogate mother (Khairunnisa, 2024, p. 16). This shift in the meaning of the practice, from originally as a medical effort to realize the right to have offspring to a potential economic exploitation, is often used as a fundamental reason for the Government of Indonesia to ban it, as a form of protection for moral values and to prevent the commercialization of women's bodies and the unclear legal status of children. However, this total ban approach is considered not entirely relevant, as it has the potential to conflict with human rights, especially regarding the right to establish a family and obtain offspring, which has been expressly regulated in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Qintarawati, 2023, p. 32).

The urgent urgency for Indonesia is to fill this legal vacuum (*rechtsvacuüm*) through a clear legal construction. This issue has been studied by previous researchers, the first in her 2023 article, Anindya Ratri Widyadari examined the legal aspects related to children born through the surrogate mother process. with a comparative focus on India, it provides advantages in comprehensive regulatory analysis in other countries, but is less applicable to Indonesia's specific solutions (Widyadari, 2023). Furthermore, Gustian Pratiwi (2022) focuses on recording the administration of children resulting from *surrogacy* and their civil rights, the advantage is the specificity of the procedural aspect, but it is a shortcoming because it does not touch the root of the problem of the validity of material agreements (Pratiwi, 2022). Meanwhile, in 2024, Muhammad Akbar, Muhammad Ali, and Pratiwi Dwi Marku conducted a juridical study on uterine lease contracts based on the perspective of Civil Law, the advantage is an in-depth analysis of the validity of the contract and the responsibilities of the parties, but it does not place the child status crisis as a central issue (Akbar, Ali, & Markus, 2024, pp. 109–119).

The novelty of this study (*state of the art*) lies in the synergistic effort to overcome these limitations by not only testing the validity of the legal status of the uterus lease agreement based on Article 1320 jo. 1337 of the Civil Code, but also explicitly linking the invalidity of the agreement to the crisis of the legal status of the child it causes, as well as its implications for the principle *of pro bono infantis* and the fundamental rights of the child.

Based on the existing problems, two main questions arise that must be answered and solutions are found, namely about the validity of the legal status of uterine rental agreements according to Indonesian civil law and related to the legal status of children born from uterine rental agreements according to Indonesian civil law, and how this implicates the protection of children's fundamental rights. This research is included in the category of normative legal research that adopts a juridical-normative approach, by examining laws and regulations and applicable legal principles as a basis for analyzing the problems studied. Therefore, the purpose

of this study is to analyze and test the validity of the legal status of the uterine lease agreement based on the terminology of the Indonesian Civil Law, as well as to examine the legal status of children born from the agreement, in order to formulate progressive and firm legal policy recommendations in order to realize legal certainty and protection of the fundamental rights of children in accordance with the principle of pro bono infantis.

METHOD

This research uses a normative juridical approach that focuses on an in-depth analysis of legal norms, principles, and theories related to this issue. Through this approach, the research will comprehensively examine relevant laws and regulations (statute approach), such as Law No. 1 of 1974 concerning Marriage and the Civil Code (KUHPerdata). Research data is collected through library research which involves reviewing legal documents, scientific journals, and related literature to identify and understand legal provisions regarding the status of surrogate children. The data that has been collected is then analyzed qualitatively and descriptively. This analysis process is inductive, starting from the collection of relevant data, classification, to drawing conclusions that offer juridical solutions to the uncertainty of the legal status of surrogacy children in Indonesia.

RESULTS AND DISCUSSION

The Legal Validity of Surrogacy Agreements from the Perspective of Legal Construction

In the systematics of civil law, an agreement and an agreement are two concepts that are very closely related, but not identical. The relationship between the two can be analogized as the relationship between effect and cause. An alliance is a broader concept that is usually interpreted as a legal consequence while an agreement is one of the main sources of the legal cause that gave birth to the alliance (Purba, 2022, p. 23). Any legally valid agreement will inevitably give rise to an agreement, but not all agreements are born out of an agreement. This understanding is fundamental because it is the basis of almost all transactions in public traffic.

In Indonesian civil law, it is important to distinguish conceptually between an engagement (*verbintenis*) as an abstract legal relationship and an agreement (*overeenkomst*) as the concrete event that gave birth to it. An agreement is a legal relationship in the field of wealth between the creditor who has the right to an achievement and the debtor who is obliged to fulfill it. Based on Article 1233 of the Civil Code, this relationship can be formed either through an agreement or based on the provisions of the Law. Meanwhile, an agreement is a special legal action born from an agreement between the parties, which aims to produce legal consequences in the form of rights and obligations (Wahid, Rohadi, & Badriyah, 2022, p. 45). The relationship between the two is causal, namely a sale and purchase agreement, as a concrete event, will give birth to several abstract engagements at once, namely an engagement for the seller to hand over the goods and an agreement for the buyer to pay the price. Thus, the agreement serves as one of the main sources that concretizes the birth of an alliance.

Treaty law in Indonesia is built on three fundamental principles that work synergistically to ensure autonomy, validity, and legal certainty. *Freedom of contract* or the principle of freedom of contract is the main pillar that gives the parties as legal subjects the freedom to independently determine their will in the process of forming an agreement, including the choice to make or not to make an agreement, choose a contractual partner, and formulate its substance. Although this freedom is recognized, it is not absolute because it must be subject to the provisions of laws and regulations, public order norms, and moral values. Moving from this freedom, the principle of consensualism applies, which emphasizes that an agreement is born and legally binding since the consensus *or consensus ad idem* is reached between the parties, in accordance with the mandate of Article 1320 of the Civil Code, without relying on certain formalities (Kusumaatmadja, 2017). Once a valid agreement is formed by mutual agreement,

its legal force is guaranteed by the principle of pacta sunt servanda (agreement must be obeyed). In Article 1338 of the Civil Code, this principle emphasizes that a valid agreement has the binding force of law for the parties to it, so it must not be canceled unilaterally and must be implemented in good faith. Thus, these three principles, namely freedom of contract as the initiator, consensualism as the validator, and *pacta sunt servanda* as the guarantor of legal certainty form a complete systemic unity in the realm of treaty law in Indonesia.

The main element on which the validity of a contract is based lies in the mutual agreement between the parties involved. From a civil law perspective, a contract only has legally binding force if it meets four main conditions. First, the contract must be born from the free will of both parties. Second, the parties involved must have adequate legal capacity. Third, the agreement must concern a clear object. And fourth, the content of the contract must not conflict with the provisions of applicable law. These four conditions are in line with the provisions of Article 1320 of the Civil Code, which stipulates that an agreement is considered valid if there is agreement between the parties, legal competence, certain objects, and causes that do not conflict with the law (Zaharnika, 2024). The elements of the agreement require that there be a meeting point between the will of the parties or the giving of agreement on the principles that become the substance of the agreement so that there is no coercion, error, or fraud. The element of proficiency emphasizes that everyone who is basically an adult or has reached the age of puberty and has a healthy mental condition, in principle is considered capable according to the law to carry out legal acts in the form of agreements.

Article 1320 of the Civil Code divides provisions regarding the validity of an agreement into two main groups of basic conditions, namely subjective terms and objective conditions, each of which has different juridical implications for the validity of the contract (Saloga, 2023). Subjective conditions, which include the free agreement and legal proficiency of the parties, are directly related to the legal subject involved. If this condition is not met, for example due to a defect in will or incompetence, the agreement is *vernietigbaar*, meaning that its validity can be cancelled through a court decision at the request of the interested party. On the other hand, objective requirements concern the substance of the agreement itself, namely the existence of a clear object and reasons that do not conflict with the law. If this objective condition is violated, then the consequences are serious, namely the agreement is declared null and void (nietig), which means that the agreement is considered to have never been born in the first place and does not require a court decision to declare it invalid. Thus, this distinction essentially asserts that the validity of an agreement is determined not only by the parties making it (subjective aspect), but also by the legality of the content or substance of the agreement itself (objective aspect).

In the civil law system in Indonesia, lease as an agreement is explained through the provisions of Article 1548 of the Civil Code which is also a valid consensual agreement since the agreement was reached on its essential elements, namely goods and prices. Through this agreement, the lessee acquires the right to use or enjoy an object for a certain period of time, with the obligation to make a certain amount of payment in return. Although the phrase "specific time" is included in the definition, the doctrinal view, as put forward by Prof. Subekti, S.H., clarifies that the absence of an explicit determination of a period does not invalidate the agreement, but only affects the mechanism of its termination which must be subject to local customs. This flexibility is in line with the principle of freedom of contract embraced by the Civil Code, which allows the parties to form anonymous agreements (*onbenoemde overeenkomsten) even (onbenoemde overeenkomsten*). Both named agreements such as lease-lease and unnamed agreements, both remain subject to the general provisions of Book III of the Civil Code and function as sources that give birth to the agreement, as long as the content of the agreement does not violate the provisions of the law, moral norms, or principles of public order.

Based on the principle *of Freedom of Contract* or known as freedom of contract which underlies this, a *surrogate mother* agreement can be constructed as a form of *onbenoemde overeenkomst*. The agreement between the intended *parents* and the surrogate mother can be stated in a private contract that is completely governed by their will. However, although it is theoretically possible within the framework of freedom of contract, an agreement does not automatically have legally binding force, but must first fulfill all the provisions of the validity of the agreement as stipulated in Article 1320 of the Criminal Code (Arifin, 2023).

Although theoretically the principle *of Freedom of Contract* regulated in Article 1338 paragraph (1) of the Civil Code provides space for the creation of an anonymous agreement (*onbenoemde overeenkomsten*) such as *a surrogacy agreement*, its validity in Indonesian law is still questionable due to constraints on the objective terms of the agreement. In contrast to named agreements such as lease-leases whose cause and object are clearly recognized as valid, *surrogacy* agreements are in gray area.

In Indonesia, there are no regulations that explicitly legalize the practice *of surrogacy*. In fact, the provisions in the Health Law and moral norms have the potential to interpret the practice as an unjustified act. Consequently, *surrogacy* agreements cannot be equated with legally valid contracts, such as lease-lease agreements. Although the anonymous covenant is recognized, its validity is still limited by positive law, morality, and public order.

The principle of freedom of contract does allow the parties to make agreements according to their will and from the point of view of willautonomy, a *surrogacy agreement* can be considered valid as long as it meets the subjective conditions. However, this freedom is not infinite (Martiana, 2024, pp. 295–316). Article 1337 of the Civil Code expressly states that a cause is considered prohibited if it is contrary to the law, morality, or public order. In the Indonesian context, the absence of clear regulations on *surrogacy* coupled with potential violations of moral norms and public order (related to the status of children, reproductive rights, and the risk of commercialization of women's bodies) make the agreement fail to meet the objective requirements (Rhumaisha, 2024). Therefore, although freedom of contract allows the birth of *surrogacy* agreements, failure to meet the objective requirements of Article 1320 of the Civil Code results in its null and void status. This emphasizes that freedom of contract is not an absolute right, but freedom that is limited by moral, social, and legal values in the public interest. This then raises critical questions about whether Indonesia should revise its laws to legalize *surrogacy* with clear regulations, or maintain its ban in order to protect ethical values and the rights of women and children.

Attempts to analogize *surrogacy* agreements with lease-lease agreements within the framework of the Civil Code are fundamentally flawed arguments, both juridically and ethically. The main weakness lies in the object of the agreement, which is based on Article 1548 of the Civil Code, which expressly requires that the rental object be "goods", while the womb is an integral part of the human body which doctrinally cannot be reified or made into a commercial object because it degrades the dignity and dignity of humanity (Rahayu, 2022, p. 4). Furthermore, even if the constraints of this object are ignored, the *surrogacy* agreement is still unjustifiable because the reason (*oorzaak*) of the agreement has the potential to violate morality and public order as prohibited by Article 1337 of the Civil Code. This is because the practice has very complex legal and social implications, such as the legal status of children and the potential for exploitation of women that go far beyond the simple scope of renting goods (Qintarawati, 2023, p. 32). Thus, such an agreement will be *null* and void because it violates the essential principles of halal objects and causes in Indonesian treaty law.

However, the determination of null and void status for the sake of law actually opens a new chapter of juridical problems that are much more precarious. The absence of laws and regulations that explicitly sanction the perpetrators creates a legal vacuum (*rechtsvacuüm*). This practice falls into the gray zone or can be called illegal in principle, but there are no

enforceable legal consequences for the violators. This condition gives birth to urgency, where the destructive impact is not only felt in the civil realm, but also spreads to various other legal sectors.

The legal status *of gestational surrogacy* in Indonesia is currently in a legal vacuum, although the practice is indirectly limited by regulations regarding in vitro fertilization. The provisions in Article 58 of Law of the Republic of Indonesia Number 17 of 2023 concerning Health and its implementing regulations in Article 111 of Government Regulation of the Republic of Indonesia Number 28 of 2024 stipulate two main conditions that prevent this practice, namely the obligation to implant embryos in the womb of wives who are the owners of the ovum and the prohibition of conflicts with religious norms (Basqian, 2025). This requirement has been the subject of criticism because its academic foundation is considered weak, especially due to the lack of an interdisciplinary approach involving medical, genetic, comparative religion, and moral studies. The academic text of the law only mentions the goal of ensuring maternal health and reducing maternal mortality, without presenting a strong causal analysis of why the use of surrogate mothers would result in the opposite. Without in-depth justification, the applicable law risks becoming a forced order without a solid foundation, so it has the potential to be disobeyed by the community. Nevertheless, it can be drawn a common thread that the main principle of this regulation is the protection of the health and welfare of the mother. Therefore, any future discourse to regulate *gestational surrogacy* must be centered on rigorous testing of its impact on the health and well-being of surrogate mothers, and based on a new legal construct based on solid cross-disciplinary studies.

Filling the legal void (*rechtsvacuüm*) related to the practice *of surrogate mothers* in Indonesia puts the country on two fundamental policy options that are equally better than the current conditions of neglect. The first option is a prohibitive-punitive approach that completely prohibits all forms of *surrogacy* (both commercial and altruistic) through the formulation of criminal offenses with strict sanctions to provide maximum deterrent effect. The alternative is a regulative-facilitative approach that selectively permits the practice of altruistic surrogacy through a special law (*lex specialis*) under very strict state supervision, where the validation of the agreement is shifted from the private domain to the public domain through court determination.

The altruistic surrogacy *model* based on sincere intentions to help without financial motives beyond reasonable reimbursement, is a middle ground to avoid the commodification of women's bodies and exploitation. Implementation ideally requires a legal framework centered on judicial supervision, where the validity of the new agreement is valid after the stipulation of *an ex-ante* consent from a court verifying the limiting conditions (such as absolute infertility) and the legal status of the child is confirmed through a *Parental Order*) post-birth. Nevertheless, the model faces significant implementation challenges in Indonesia, especially from the socio-religious aspects related to the concept of lineage (*nasab*), as well as the complexity of legislation and the risk of covert commercial practices that demand a strong supervisory system.

Despite the challenges, the urgency to regulate this practice is based on three main pillars. First, to put an end to illegal practices that currently run without legal protection at all. Second, and most crucially, it is in the best interests of the child (*pro bono infantis*), namely ensuring the certainty of their legal status, identity, and basic rights from birth to prevent him from becoming a victim of disputes. Third, as a response to the state in providing a safe, legal, and dignified pathway for citizens facing conditions of absolute infertility, so that they do not have to take risky illegal routes.

Legal Status of a Child Born from a Surrogacy Contract under Civil Law

In the perspective of legal construction in Indonesia, marriage is not reduced to a mere civil contract, but is seen as a noble institution that combines legal, social, and spiritual aspects. Legal scholars have consistently described marriage as a bond of cohabitation that is innate and intrinsic and has sacred meaning, with profound legal consequences for both spouses and their offspring. This view is affirmed in Article 1 of Law Number 1 of 1974, which defines marriage as a bond of birth and mind based on belief in God Almighty. This juridical-religious dualism was then emphasized in Article 2 which requires that the validity of marriage must go through two cumulative stages: carried out according to the laws of their respective religions, and then recorded by the state in accordance with laws and regulations.

One of the fundamental purposes of the institution of marriage is the legal continuation of offspring, which is not only seen as a social function but also a manifestation of human rights. This right is constitutionally guaranteed through Article 28B paragraph (1) of the 1945 Constitution which affirms that every individual has the right to establish a family and pass on offspring through legally valid marriage, in line with Article 16 of the Universal Declaration of Human Rights. Thus, the state through its legal framework positions marriage as the only legal and dignified forum for citizens to exercise their constitutional right to have children, and affirms that this institution is a combination of religious, moral, and human rights protection principles.

In his paper entitled *Family Law on the Position of Children in the Law*, J. Satrio describes the legal difference between legal and illegitimate descendants. A legal child is a descendant born from a legally recognized marriage, while illegitimate descendant refers to a child born outside a legal marital bond, commonly referred to as an out-of-wedlock child.

In relation to the status of children, the Marriage Law and the Criminal Codestipulate the principle that legitimate offspring must come from a valid marriage. Article 42 of Law Number 1 of 1974 explains that a legitimate child is a child born in or as a result of a valid marriage. Meanwhile, Article 250 of the Civil Code states that every child born during the marriage is automatically recognized as a child of the husband. Although there is an editorial difference between Article 42 of the Marriage Law and Article 250 of the Civil Code, both provide two main criteria in determining the biological father of a child born in a legal marital bond, one of which is that the child was born during the period of the parent's marriage. Second, it is not a question of when conception occurs, whether before or after the marriage begins because the main benchmark is the birth of children during the marriage bond.

In addition to regulating legal children, the Marriage Law and the Civil Code also contain provisions on illegitimate children. Article 272 of the Civil Code, this term is divided into two definitions: broad meaning and narrow definition. In a broad definition, illegitimate children include adulterous children, incestuous children, and children born out of wedlock. Whereas in a narrow sense, illegitimate child refers to a child born not in or as a consequence of a valid marriage. Furthermore, the term *adulterous child* (*overspel*) in the Civil Code refers to a child born from an extramarital relationship between a man and a woman, where one or both are still bound by marriage with the other party.

Initially, the Marriage Law only recognized a *civil legal relationship* between a child born out of wedlock with their mother and the mother's family, based on the principle of maternal legal certainty. However, the legal framework underwent significant changes after the Constitutional Court Decision No. 46/PUU-VIII/2010, which revolutionarily allowed the recognition of legal *relationships* between children and biological fathers and their families through *scientific evidence* such as DNA tests or other relevant legal evidence (Puspitasari, 2022). However, the implementation of this ruling confirms that the legal relationship does not arise automatically. The main principle is that the blood bond on which a legal relationship is based must be one that is juridically recognized, not purely biological. As a consequence, the legal relationship between an out-of-wedlock child and their biological father is only formed

after there is an official recognition. Without such recognition, the child does not automatically obtain full civil rights, including inheritance, from the father (Yulistian, Budiartha, & Arthanaya, 2021, pp. 200–206).

After emphasizing that the rent of the womb as an agreement (*surrogate mother*) can be null and void because it is contrary to the objective requirement of "lawful cause" as stipulated in Article 1320 jo. 1337 of the Civil Code, the focus of juridical analysis shifts to the most vulnerable legal subject in this constellation, namely the child who is born. The absence of a legal umbrella or *rechtsvacuüm* related to this practice directly creates a crisis of civil status for the child whose identity and rights have become uncertain since he or she is born.

Family law in Indonesia fundamentally adheres to the Roman *adagium mater semper certa est*, which affirms that the mother of a child is the woman who gave birth to it, a principle affirmed in Article 42 of the Marriage Law. As a consequence, the legal construction in Indonesia does not recognize or distinguish between genetic, social, and gestational mothers. In the context of *surrogacy*, the *surrogate mother* is legally the only legal mother of the child she gave birth, while the genetic relationship with the applicant's mother (*intended mother*) does not have any legal force (Sudjono, Lambonan, & Dapu, 2025). The rigid application of this principle creates an anomaly, where the birth certificate will include the surrogate mother's name. This directly creates the status of a legally 'abandoned' child: he has no legal relationship with the parents who intend to care for him, while their mother-in-law has no such intention, which ultimately leads to significant legal uncertainty for the status and protection of the child's rights.

The legal vacuum (*rechtsvacuüm*) regarding the practice of *surrogacy* in Indonesia is directly contrary to the fundamental principle of the best interests of the child (*pro bono infantis*) mandated in the Child Protection Law. The absence of this regulation clearly harms children's fundamental rights, such as the right to identity that is blurred due to a birth certificate that does not match genetics, the right to be raised by their parents that is not legally guaranteed, and civil rights such as inheritance that become unclear. This anomaly arises because positive law, especially Article 42 of the Marriage Law, rigidly bases the legal status of a child on the marital bond of the woman who gave birth to it, not on the genetic relationship or intention of the parties, so that *the surrogacy child* inherently has the status of an out-of-wedlock child from the perspective of the applicant's parents (Swantari & Putri, 2024).

This juridical problem is rooted in the legal framework of marriage and civil law that was designed before the advancement of assisted reproductive technology. Regulations such as Article 4 paragraph (2c) of the Marriage Law, which offers outdated solutions such as polygamy permits for infertile couples, show their incompatibility with the times (Nabila, Savitry, & Adam, 2023, p. 240). In fact, modern technologies such as in-vitro fertilization (IVF) or IVF allow couples to obtain biological offspring without having to go through polygamy or divorce. Therefore, a progressive legal reform, for example by amending the article to recognize IVF as a legitimate attempt to obtain offspring, is crucial. Such an amendment will not only provide legal certainty for couples who use assisted reproductive technology, but most importantly, it will be the foundation to ensure the protection and fulfillment of the rights of children born through these methods.

The practice *of surrogacy* in Indonesia creates a fundamental legal dilemma due to the clash between the genetic facts of the child and the juridical status based on who gave birth to it. The complexity of the legal status of the child is highly dependent on the marital status of the surrogate mother, which shows the rigidity of the positive law in accommodating reproductive technology. If the surrogate mother is married, the child born is automatically considered the legal child of the couple according to the Civil Code, ignoring their genetic origin (Maulida & Barkatullah, 2025). To overcome this anomaly, the only legal avenue available is through the denial of the child by the surrogate mother's husband (based on Articles

251-253 of the Civil Code) with biological evidence, which then paves the way for the biological parents to apply for the determination of a legal child to the court in accordance with Article 44 paragraph (2) of the Marriage Law.

The situation becomes much more complex and faces serious obstacles if the surrogate mother is single or widowed. In these conditions, the child born is categorized as an "unrecognized child out of wedlock" or commonly called an adulterous child, where Article 283 of the Civil Code expressly prohibits the biological father from recognizing it. As a result, legally children are only recognized as having a relationship with their biological mother, severing the total civil relationship with the biological father and their family. Other legal remedies such as child recognition under the Population Administration Act are also irrelevant, as they would lead to an absurd requirement that the biological father must marry the surrogate mother in order to legalize the child, which would be contrary to the original purpose *of surrogacy*.

Other legal avenues such as adoption have also proven to be not an ideal solution for *surrogacy cases*. According to Government Regulation No. 54 of 2007, adoption does not break the blood relationship, so if it is carried out by the biological parents (the applicant's spouse), the child's status paradoxically becomes an 'adopted child', not a 'legitimate child' as desired (Sudjono, Lambonan, & Dapu, 2025). The failure of these legal scenarios shows that the current system violates the fundamental principle of the best interests of the child (*pro bono infantis*), placing the child's rights to identity, custody by biological parents, and inheritance in vulnerability. Therefore, urgent legal reconstruction is needed, where the most appropriate step for biological parents is to submit an application for the determination of legal children to the court based on Article 44 paragraph (2) of the Marriage Law. This approach drives a paradigm shift in the legal paradigm: from a rigid determination of the status of a child based on 'who gave birth', to a fairer and more comprehensive approach that considers the biological evidence and the juridical will of the parties for the realization of legal certainty.

CONCLUSION

Indonesia's civil law analysis consistently concludes that the rental of the womb as an agreement (surrogate mother) can be declared null and void because it expressly violates the objective requirement of "halal cause" (Article 1320 jo. 1337 of the Civil Code), because the object of the contract cannot reduce the human womb to a commercial item and is contrary to public order. These findings highlight a serious juridical crisis in the form of legal vacuüm (rechtsvacuüm) that is most detrimental to the legal status of children. Adhering to the rigid principle of mater semper certa est, children born from this practice are legally alienated from their biological parents which directly harms the fundamental principle of pro bono infantis (the best interests of the child) and violates the basic rights of the child such as the right to identity and inheritance. Therefore, this study recommends a progressive legal reconstruction, urging the state to immediately make firm regulations, namely between a total ban with clear criminal sanctions, or strictly regulating with the altruistic surrogacy method through court determinations that prioritize genetic evidence and the legitimate intentions of the parties. This step is absolutely necessary to ensure legal certainty and provide fundamental protection for children as the main victims.

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