

ABSTRAK

Praktik sewa rahim merupakan salah satu bentuk teknologi reproduksi berbantu yang berkembang seiring kemajuan ilmu pengetahuan dan teknologi di bidang kesehatan. Praktik ini melibatkan seorang perempuan yang mengandung dan melahirkan anak bagi pasangan lain berdasarkan suatu perjanjian. Namun demikian, praktik sewa rahim menimbulkan berbagai permasalahan hukum, khususnya terkait keabsahan perjanjian serta kedudukan status hukum anak yang dilahirkan. Di Indonesia, praktik tersebut belum memiliki pengaturan hukum yang jelas sehingga menimbulkan ketidakpastian hukum bagi para pihak yang terlibat. Sementara itu, Thailand telah memiliki pengaturan khusus mengenai praktik sewa rahim. Namun negara Iran yang merupakan salah satu Negara Islam yang justru memperbolehkan adanya praktik sewa rahim melalui Fatwa dari Negara Iran. Oleh karena itu, penelitian ini bertujuan untuk menganalisis keabsahan perjanjian dan kedudukan status hukum anak hasil sewa rahim di Indonesia dan Thailand, serta pengaturan hukumnya di kedua negara.

Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perUndang-Undang (*statute approach*), pendekatan perbandingan (*comparative approach*). Bahan hukum primer Kitab Undang-Undang Hukum Perdata, Kompilasi Hukum Islam, Fatwa MUI, Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, *Protection of a Child Born by Medically Assisted Reproductive Technology Act* pada tahun 2015, *The Thailand Civil and Commercial Code*, *The Civil Code Of The Islamic Republic Of Iran*. Dan Bahan Hukum Sekunder Pendapat para ahli tentang sewa rahim, Jurnal dan artikel ilmiah terkait sewa rahim di Indonesia, Buku hukum keluarga dan sewa rahim.

Hasil penelitian menunjukkan bahwa praktik sewa rahim di Indonesia pada dasarnya tidak memiliki dasar pengaturan yang jelas dan tidak memenuhi syarat sah perjanjian sebagaimana diatur dalam Pasal 1320 KUHPerdata serta tidak diakomodasi dalam Pasal 58 Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan. Kondisi tersebut menimbulkan ketidakpastian hukum terhadap status anak yang dilahirkan. Sebaliknya, Thailand telah mengatur praktik sewa rahim melalui Undang-Undang khusus yang memperbolehkan praktik tersebut secara terbatas dan non-komersial serta memberikan kepastian hukum mengenai status anak yang dilahirkan.

Kata kunci: sewa rahim, teknologi reproduksi berbantu, status hukum anak, perbandingan hukum, Indonesia, Thailand, dan Iran.

ABSTRACT

Surrogacy is a form of assisted reproductive technology that has evolved alongside advances in science and technology in the field of health. This practice involves a woman carrying and giving birth to a child for another couple based on a contract. However, surrogacy raises various legal issues, particularly regarding the validity of the contract and the legal status of the child born. In Indonesia, this practice does not yet have clear legal regulations, creating legal uncertainty for the parties involved. Meanwhile, Thailand has specific regulations regarding surrogacy. However, Iran, an Islamic country, actually permits surrogacy through a fatwa issued by the Iranian government. Therefore, this study aims to analyze the validity of the agreement and the legal status of children born through surrogacy in Indonesia and Thailand, as well as the legal regulations in both countries.

This study employs a normative legal research method using the statutory approach, the case approach, and the comparative approach. Primary legal sources include the Civil Code, Compilation of Islamic law, Fatwa MUI, Law No. 17 of 2023 on Health, Law No. 1 of 1974 on Marriage, the Protection of a Child Born by Medically Assisted Reproductive Technology Act of 2015, and the Thailand Civil and Commercial Code, The Civil Code Of The Islamic Republic Of Iran. Secondary legal sources include expert opinions on surrogacy, journals and scientific articles related to surrogacy in Indonesia, and books on family law and surrogacy.

The research findings indicate that the practice of surrogacy in Indonesia essentially lacks a clear regulatory framework and does not meet the legal requirements for a valid contract as stipulated in Article 1320 of the Civil Code, nor is it accommodated under Article 58 of Law No. 17 of 2023 on Health. This situation creates legal uncertainty regarding the status of the child born. In contrast, Thailand has regulated the practice of surrogacy through a special law that permits the practice on a limited and non-commercial basis and provides legal certainty regarding the status of the child born.

Keywords: surrogacy, assisted reproductive technology, legal status of the child, comparative law, Indonesia, Thailand, and Iran.