

ABSTRAK

Membentuk keluarga dan melanjutkan keturunan merupakan salah satu hak asasi manusia yang dijamin dan dilindungi oleh negara. Namun ada kalanya dalam melanjutkan keturunan terdapat berbagai kendala, salah satunya yaitu infertilitas. Kemajuan teknologi di bidang kedokteran telah menjadi jawaban bagi pasangan suami istri yang belum mampu mempunyai keturunan, kemajuan teknologi tersebut adalah *surrogate mother* (sewa rahim). Indonesia masih belum memiliki aturan yang spesifik mengenai *surrogate mother*, meskipun di Indonesia sudah banyak dilakukan praktik *surrogate mother* secara diam-diam. Berbeda dengan India yang sudah melegalkan *surrogate mother* sejak tahun 2002 dan telah menyusun aturannya secara spesifik. Adapun isu hukum yang dikaji adalah terkait pengkualifikasian tindak pidana *surrogate mother* di Indonesia.

Penelitian ini termasuk jenis penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan, pendekatan konseptual dan pendekatan perbandingan. Sumber bahan hukum yang digunakan yakni sumber bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Metode pengumpulan bahan hukum menggunakan studi kepustakaan (*library research*) dan melalui pencarian di media *online* (*online research*). Sementara itu, metode analisis bahan hukum yang digunakan adalah deskriptif normatif dengan model penarikan kesimpulan secara deduktif.

Hasil dari penelitian ini yaitu : (1) Dengan menggunakan penafsiran ekstensif, tindakan medis *surrogate mother* dapat dikualifikasikan sebagai tindak pidana berdasarkan Pasal 284 KUHP tentang perzinahan (*overspel*), dan (2) Di Indonesia pengaturan terkait *surrogate mother* masih belum spesifik, Sedangkan di India praktik *surrogate mother* sudah diatur secara spesifik, lengkap dan rinci dalam *Assisted Reproductive Technology Regulation Bill 2010*, dengan demikian perlu adanya evaluasi aturan terkait *surrogate mother* di Indonesia demi terwujudnya suatu kepastian hukum.

Kata Kunci: Tindak Pidana, sewa rahim

ABSTRACT

Forming a family and continuing descendants is one of the human rights guaranteed and protected by the state. But there are times when in continuing the offspring there are various obstacles, one of which is infertility. Technological advances in the medical field have become the answer for married couples who have not been able to have children, such technological advances are surrogate mothers. Indonesia still does not have specific rules regarding surrogate mothers, although in Indonesia many practices of surrogate mothers have been carried out secretly. In contrast to India, which has legalized surrogate mothers since 2002, and has compiled specific rules. The legal issues studied are related to the qualification of surrogate mother crimes in Indonesia.

This research is a type of normative legal research using a statutory approach, a conceptual approach, and a comparative approach. The sources of legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. The method of collecting legal materials uses library research and online research. Meanwhile, the legal material analysis method used is descriptive normative with a deductive model of concluding.

The results of this study are: (1) By using an extensive interpretation, medical actions for surrogate mothers can be qualified as criminal acts based on Article 284 of the Criminal Code regarding adultery (overspel), and (2) In Indonesia, the regulations regarding surrogate mothers are still not specific, while in India The practice of surrogate mothers has been regulated specifically, completely and in detail in the Assisted Reproductive Technology Regulation Bill 2010, thus it is necessary to evaluate regulations related to surrogate mothers in Indonesia for the realization of legal certainty.

Keywords: Criminal Act, Surrogacy