



THE LEGAL DILEMMA OF SURROGATE MOTHERHOOD: A COMPARATIVE PERSPECTIVE ON THE PROTECTION OF WOMB RENTAL IN INDONESIA AND THAILAND

Nadya Sandrina Kusuma¹, Atikah Rahmi²

^{1,2}Universitas Muhammadiyah Sumatera Utara, Indonesia

Article Info

Keywords:

Agreement,
Child Status,
Indonesian Law,
Surrogacy,
Thai Law

ABSTRACT

The practice of surrogacy is one of the implications of reproductive technology developments that raises complex legal issues, particularly regarding the validity of agreements and the legal status of children born as a result. In Indonesia, this practice is not specifically regulated in legislation, creating legal uncertainty for the parties involved. This study aims to analyze the legal status of surrogacy agreements and their legal implications for the status of the child born according to the perspectives of Indonesian and Thai law. The research method used is normative legal research with a legislative and comparative law approach. Data were obtained through a literature study of primary, secondary, and tertiary legal materials, which were then analyzed qualitatively. The results show that in the Indonesian legal system, surrogacy agreements are considered contrary to the valid requirements for agreements in the Civil Code, the provisions of the Health Law, and the norms of morality and public order, and are therefore considered null and void. As a result, the legal status of children born from such practices is uncertain and they tend to be recognized only as the children of the woman who gave birth. In contrast, Thailand, through the Protection for Children Born through Assisted Reproductive Technologies Act B.E. 2558 (2015), has provided specific regulations that recognize surrogacy agreements under strict conditions and guarantee the legal status of children as legitimate children of the couple undergoing surrogacy. This study concludes that comprehensive legal regulations are needed in Indonesia to provide legal certainty and protection for the rights of children born through surrogacy practices.

This is an open access article under the [CC BY-SA](https://creativecommons.org/licenses/by-sa/4.0/) license.



Corresponding Author:

Nadya Sandrina Kusuma
Universitas Muhammadiyah Sumatera Utara
nadyasandrinakusuma@gmail.com

1. INTRODUCTION

The legal system in Indonesia regulates marriage through Law No. 1 of 1974, which explains the definition, requirements, procedures, and legal consequences of marriage. Marriage is defined as a legal relationship between a man and a woman for a long period of time that is recognized by the state or law, and gives rise to rights and obligations for both parties as husband and wife. According to K. Wantjik Saleh, marriage is not only a physical or spiritual bond, but both at the same time. The physical bond refers to the formal aspect, while the spiritual bond encompasses things that are not physically visible. These two aspects are important foundations in the formation of a family [1].

Islamic teachings state that the purpose of marriage is to produce children who are legally and religiously legitimate, which is important for maintaining the family line and the honor of the children. Children born from a legal marriage have certain rights, such as inheritance and guardianship rights that are recognized by law. Meanwhile, according to the Marriage Law, the main objective is to build a lasting and happy marriage in accordance with divine values. This is in line with Article 3 of the Compilation of Islamic Law (KHI), which states that marriage aims to create a household that is *sakinah*, *mawaddah*, and *rahmah*. However, in practice, not all married couples can easily have children.

One of the technologies in the field of reproduction is In Vitro Fertilization (IVF), which is a health technology that involves retrieving eggs from a wife and sperm from a husband, which are then brought together outside the body in a laboratory container for the fertilization process. After the embryo (zygote) is formed, it is then implanted into the wife's uterus. This process, known as test-tube baby, has been legalized in Article 127 Paragraph (1) of Law Number 36 of 2009 concerning Health. In addition to the widely known test-tube baby (in vitro fertilization/IVF) method, there is now another more complicated method, namely fertilization outside the woman's uterus, and then the resulting embryo is implanted into the uterus of another woman who is willing to carry the fetus until birth. This method is called surrogate motherhood, and in practice, it is often known as uterus rental or surrogacy. This method is an alternative for married couples who have fertility problems, especially women who do not have a uterus, have uterine abnormalities, or have certain medical conditions that make pregnancy high risk [2].

Regulations on surrogacy in Indonesia according to Law Number 23 of 1992 concerning Health, Law Number 36 of 2009 concerning Health, Government Regulation Number 61 of 2014 concerning Reproductive Health, Regulation of the Minister of Health of the Republic of Indonesia Number: 73/Menkes/PER/II/1999 concerning the Implementation of Artificial Reproductive Technology Services, Decree of the Director General of Medical Services of the Indonesian Ministry of Health of 2000 concerning Guidelines for In Vitro Fertilization Services in Hospitals prohibits the implantation of embryos in the wombs of women other than the mother of the egg, whether commercially or voluntarily. Regulations in Indonesia do not allow mothers who want to have children other than through in vitro fertilization or adoption. Indonesia strictly prohibits surrogacy because it violates many norms, namely legal, religious, moral, and ethical norms. Surrogacy contracts in Indonesia are considered invalid because they violate one of the principles of agreement, namely lawful cause, resulting in the surrogacy agreement being null and void or invalid and never having existed. Surrogacy in Indonesia can be legalized if it is used correctly for women who cannot conceive. Public education must be improved so that surrogacy is not viewed negatively by society. The government must conduct supervision if it wants to impose special sanctions on surrogate mothers who violate the rules. Medical examinations are required to prove that a person cannot conceive due to health problems [3].

Surrogacy is practiced based on an agreement or contract between a married couple and a woman who is willing to lend her womb to carry their fertilized embryo. The agreement usually stipulates the rights and obligations of each party, including compensation for the surrogate mother as a reward for her services in carrying and giving birth to the child. Therefore, the term "womb rental" means borrowing another woman's womb to implant the embryo resulting from the fertilization of a married couple, while providing material and non-material compensation as a form of appreciation for the woman's services and sacrifices.

In terms of regulation, Indonesia does not yet have a specific law governing surrogacy; a number of studies have concluded that surrogacy in Indonesia is legally a contract that violates reproductive health laws and is considered null and void [4]. This creates a legal vacuum that could have implications for the legal status of children born through surrogacy, the rights of surrogate mothers, the rights of couples who use these services, and the potential exploitation of women and babies.

Meanwhile, in the international context, one country that has attracted attention is Thailand. This country was once a center for commercial surrogacy (rent-a-womb) for couples from abroad until it finally implemented strict regulations [5]. In Thailand, the main regulation governing surrogacy is the Protection of a Child Born by Medically Assisted Reproductive Technology Act, B.E. 2558 (2015), which, among other things, prohibits commercialization, requires the surrogate mother to be a Thai citizen, and restricts access for foreign couples [6].

Recent studies show that even though regulations have been put in place, there are still loopholes in implementation and risks for those involved, such as surrogate mothers and the children born. However, even though regulations have been established, their implementation in Thailand also faces various problems. Research shows that illegal transnational surrogacy activities are still taking place under the radar, the protection system for surrogate mothers and children born from the process is not yet fully adequate, and there are still gaps in protected rights.

Surrogacy services exist in Thailand. In 1997, the Thai Medical Council issued Circular Letter No. 1/2540, which was amended to Regulation No. 21/2544 concerning Service Standards of Assisted Reproductive Technologies to ensure that pregnancy services outside of natural means by medical practitioners are in accordance with standards and protect service recipients. Article 4, section 2 stipulates that if a couple wishes to have a child through surrogacy, medical practitioners may provide such services if the embryo is derived from

the couple's sperm and egg. In addition, the surrogate mother of the couple must be a blood relative of one of the partners, and financial compensation must be provided to the surrogate mother. Thailand does not yet have specific regulations regarding surrogacy; existing regulations only refer to medical practitioners. Thailand's regulations on surrogacy are contained in the Protection of Children through Assisted Reproductive Technology (ART) Act. Surrogacy agencies are allowed to operate without legal interference. Due to the prevalence of exploitation cases, such as those occurring in India, the Thai government decided to regulate surrogacy in Thailand through the Protection of a Child Born by Medically Assisted Reproductive Technology Act in 2015. The requirements for surrogacy are:

- a. Thai nationality couple, or one of the couples has Thai nationality and the marriage registration is more than 3 years old.
- b. The wife is unable to conceive.
- c. As a surrogate mother, she must already have children.
- d. The surrogate mother must obtain consent from her husband or live with a man as husband and wife.
- e. The surrogate mother must be a close relative, but not a blood relative or sibling.
- f. The surrogate mother's eggs may not be used.

The obligations of the surrogate couple in these regulations mean that the surrogate is not exempt from responsibility and the welfare of the child resulting from the surrogacy is guaranteed, because if the surrogate dies, there is still a legal guardian to accompany the child.

The issue of surrogacy is certainly a legal issue that must be addressed immediately. Thus, Thailand's experience offers an interesting framework for study in Indonesia: on the one hand, the regulations are relatively clearer than in Indonesia; on the other hand, there are still implementation challenges and the rights of related parties are not yet fully protected in Indonesia, which currently does not have specific regulations and still faces legal uncertainty in this area. Conducting a comparative study with Thailand can help explore alternative arrangements and more comprehensive policy recommendations. Thus, considering the issue of surrogacy in Indonesia and Thailand, it is very important to study this further. It is urgent to conduct research with the aim of analyzing the legal status of surrogacy agreements from the perspective of Indonesian and Thai law and to determine the legal implications of surrogacy on the status of the child born.

2. RESEARCH METHODS

The type and approach used in this research is known as normative legal research, which is legal research conducted by examining secondary data or library sources. Legal research that studies law understood as social norms or guidelines that serve as a guide for individual behavior is known as normative legal research. The nature of the research used in completing this study is descriptive, which is research that merely describes the circumstances of the object or event without the intention of drawing general conclusions using a normative juridical approach that systematically describes data on the issues to be discussed. This research uses a legislative research approach, namely the term literature study refers to a research methodology that uses existing sources, such as books, journals, scientific papers, and other materials, to collect data and information. The data sources used in conducting legal research in this study are revelatory data from Surah al-Furqan: 54 and secondary data from three legal materials, namely:

- a. Primary legal materials: Law No. 23 of 1992 concerning health, Law No. 36 of 2009 concerning health, Government Regulation No. 61 of 2014 concerning reproductive health, Regulation of the Minister of Health of the Republic of Indonesia No. 73/Menkes/Per/II/1999 concerning the implementation of artificial reproductive technology services, and the Decree of the Director General of Medical Services of the Indonesian Ministry of Health in 2000 concerning guidelines for IVF services.
- b. Secondary legal materials using law books, law journals, research results, and scientific works related to the issues being studied [7].
- c. Tertiary legal materials, namely legal dictionaries or encyclopedic dictionaries, the internet to explain the meaning or definition of terms that are difficult to interpret.

Because the data sources for this study were obtained from secondary data, the data collection tools used in this study were conducted through library research. The data analysis used in this study was qualitative analysis, which presented the data as a whole in a well-stated, complete, clear, systematic, accurate, and effective manner.

3. RESULT AND ANALYSIS

Legal Analysis of the Status of Surrogacy Agreements from the Perspective of Indonesian and Thai Law

A surrogacy agreement is a contract between prospective parents and a woman to conceive and give birth to a child using an embryo implanted in the woman's womb. Terminologically, this agreement is often referred to as a 'uterus rental' agreement or surrogate mother service, because the surrogate mother will receive compensation for carrying and giving birth to a child for another party [8]. In the context of general contract law,

a surrogacy agreement is referred to as a form of contract that is legally binding if it meets the requirements for a valid contract according to the Civil Code (KUHPerdata). However, specific regulations on surrogate motherhood have not been found in Indonesian legislation, so the legal status of this contract has always been the focus of civil law and contract ethics studies.

This agreement essentially attempts to treat the womb as the object of the agreement, so that legally it is subject to the legal regime of obligations in the Civil Code (KUHPerdata). However, from the outset this concept has been controversial because the human body, including the womb, is not an object that can be traded or leased under Indonesian civil law. In Indonesian contract law theory, the principle of freedom of contract is a fundamental principle that allows parties to enter into agreements as long as they do not conflict with the provisions of the law, public order, and morality. This principle is enshrined in the Civil Code and serves as a general reference in assessing the validity of an agreement. However, legal researchers in Indonesia have found that conventional surrogacy agreements do not meet the requirements for a valid contract because the object of the contract—a woman's womb—cannot be categorized as an object that can be traded or agreed upon according to Articles 1320 and 1332 of the Civil Code. This means that such contracts are potentially void *ab initio* (*nietig van rechtswege*), as they do not fulfill the requirement of a lawful cause (*causa*) and are contrary to public order [9].

Article 1320 of the Civil Code stipulates four requirements for a valid agreement, namely the agreement of the parties, legal competence, a specific object, and a lawful cause. In the practice of surrogacy, the first two conditions can generally be met because it is done on the basis of the consent of legally competent parties. However, the main legal issues lie in the third and fourth conditions, namely the object of the agreement and lawful *causa* [10]. According to Article 1332 of the Civil Code, the object of the agreement must be something that can be traded and falls within the scope of property law. The womb, as part of the human body, cannot be classified as an object in the civil law sense, and therefore does not qualify as the subject matter of a contract. Thus, a womb rental agreement contains a legal defect in the subject matter of the agreement and could potentially be declared null and void [11].

In addition to the defect in the object of the agreement, surrogacy agreements are also considered contrary to the principles of public order and morality as referred to in Article 1337 of the Civil Code. This practice is seen as potentially reducing the dignity of women by commodifying reproductive functions, which is contrary to the moral, social, and cultural values of Indonesian society [12].

A number of legal studies emphasize that Indonesian contract law is not only economically neutral, but also imbued with ethical and social values. Therefore, even if the parties agree, a contract can still be considered invalid if its substance conflicts with the public interest and moral norms that exist in society. In this context, surrogacy is considered a contract that substantially violates the limits of freedom of contract [13].

The principle of freedom of contract is a fundamental principle in Indonesian civil law, but this principle is not absolute. The freedom of the parties is limited by law, public order, and morality. In surrogacy agreements, freedom of contract cannot be used as legal justification because the object and purpose of the agreement are contrary to these values [16]. Recent research clearly shows that surrogacy agreements in Indonesia are considered contrary to positive law and moral norms, and are therefore unlawful and void. This is based on several relevant regulations:

- a. Law No. 36 of 2009 concerning Health and its implementing regulations, such as Government Regulation No. 61 of 2014 concerning Reproductive Health and Minister of Health Regulation No. 43 of 2015, which implicitly prohibit the practice of surrogacy in the context of medically assisted reproduction because they only allow medically assisted reproduction without a third party as a surrogate mother.
- b. Recent normative research confirms that surrogacy agreements are “against the law” and therefore void and cannot be enforced as valid agreements in Indonesia [14].

The absence of explicit provisions in Indonesian legislation regarding surrogacy agreements means that such contracts are often informal or verbal. This situation creates legal uncertainty and the potential for conflict as a result of the absence of clear legal provisions. Several authors emphasize that without a strong legal basis, surrogacy contracts in Indonesia tend to be considered invalid and unenforceable, and can cause serious problems, especially regarding the legal status of children born through such agreements [15]. The consequences of the invalidity of surrogacy agreements in Indonesia are extensive, mainly:

- a. The contract is considered null and void and has no legal effect between the parties.
- b. There is no legal recognition of the status of interested parties (e.g., biological parents) with regard to the child born. This means that the child's legal status follows the legal status of the birth mother according to Indonesian family law because there is no basis for the transfer of rights in the contract [16].

Thus, legally Indonesia places surrogacy agreements outside the scope of valid contracts in civil law, so they are not recognized in the national legal system.

In the Thai legal system, surrogacy agreements are not positioned as ordinary civil agreements that are fully subject to the principle of freedom of contract. Since the enactment of the Protection for Children Born through Assisted Reproductive Technologies Act B.E. 2558 (2015), the practice of surrogacy has been placed under a special mandatory legal regime, meaning that the validity of agreements is highly dependent on compliance with this law. Thus, the legal status of surrogacy agreements in Thailand is limited and conditional. [17]. This approach shows that Thai law views surrogacy as an activity that touches on the public interest, not merely a private relationship between individuals. Therefore, the validity of an agreement is not only measured by the fulfillment of the element of consensualism, but also by compliance with the values of child protection, public morality, and the prevention of exploitation of women [18].

Unlike legal systems that completely prohibit surrogacy, Thai law does not classify surrogacy agreements as absolutely prohibited agreements. However, the legal status of such agreements cannot be equated with ordinary civil contracts, as Thai lawmakers have deliberately limited their scope of application in order to protect the interests of children and prevent the commercialization of women's bodies [19]. From a Thai legal perspective, surrogacy agreements are subject to public and family law, not merely private contracts. The ART Act explicitly requires that surrogacy agreements be made before the pregnancy process begins and must meet the criteria specified by law, including the legal subjects permitted to enter into such agreements [20].

Thai law expressly prohibits commercial surrogacy, namely womb rental agreements accompanied by financial compensation or economic gain for the surrogate mother or intermediary. This prohibition has direct implications for the legal status of the agreement, as any contract aimed at profiting from surrogacy practices is classified as an agreement with an unlawful cause. (From the perspective of Thai contract law, agreements that are contrary to the law or public morals are considered invalid and do not give rise to legal consequences. Thus, commercial surrogacy agreements are not only void by law, but may also be classified as unlawful acts that open the door to criminal and administrative sanctions.

Unlike commercial surrogacy, Thai law still recognizes altruistic surrogacy, which is a womb rental agreement made without financial gain. However, this recognition is not absolute, but is limited by very strict requirements, both in terms of legal subjects and procedures. The agreement is only valid if it is made by a legally married heterosexual couple and meets certain requirements as stipulated by law. One of the most important aspects of the legal status of surrogacy agreements in Thailand is their impact on family law, particularly regarding the status of the child born. The ART Act stipulates that if a surrogacy agreement is valid under the law, the child born from the agreement is considered the legitimate child of the couple who made the agreement, not the child of the surrogate mother. This provision strengthens the position of surrogacy agreements as legal instruments recognized by the state, not merely private agreements. Thus, the legal status of surrogacy agreements in Thailand not only determines the contractual relationship between the parties, but also creates direct legal consequences in the areas of family law and the personal status of the child.

Unlike Indonesia, Thailand provides a legal framework for surrogacy agreements, as long as they are carried out in accordance with the provisions of the ART Act. According to these provisions:

- a. A surrogacy agreement can be made in writing between the surrogate mother and the legally married couple before the pregnancy begins. This agreement must state that the child born will be the legal child of the couple.
- b. The surrogacy process is only permitted when certain requirements are met, such as: the couple is legally married, there is a medical need (e.g., the wife's inability to conceive), and the husband of the surrogate mother gives his consent if she is married.
- c. The law also prohibits commercialization and commercial intermediaries in surrogacy practices. Commercial agreements or agreements aimed at obtaining profits beyond reasonable costs are considered invalid. (Protection for Children Born through Assisted Reproductive Technologies Act B.E. 2558 (2015))

Thus, Thailand considers surrogacy agreements to be legally valid, but with strict conditions and restrictions. Contracts drawn up in accordance with the provisions of the ART Act will be valid and produce legally recognized effects, especially regarding the legal status of the child born.

Legal Implications of Womb Rental on the Status of Children Born According to Indonesian and Thai Law

Indonesian law does not explicitly regulate surrogacy agreements in legislation, creating legal uncertainty. According to normative research, surrogacy agreements contradict Article 127 paragraph (1) of Law No. 36 of 2009 concerning Health, which states that pregnancy outside of natural means can only be carried out by a legally married couple without involving a third party. Implicitly, if an embryo is implanted in the womb of a woman who is not the biological wife, the practice is prohibited by existing health regulations [21].

Based on the principles of the Civil Code and Marriage Law No. 1 of 1974, legitimate children are those born in or as a result of a legal marriage. In surrogacy practices, the biological mother may not necessarily be the wife of the child's genetic father. Therefore, from the perspective of current positive law, the child's lineage status is more likely to be associated with the physical mother, not the couple who implanted the embryo, because civil law still refers to biological relationships and marriage as the basis for recognizing lineage. As a result, the child has the potential to be considered a child born out of wedlock if the surrogate mother is not legally married, thus making the child an illegitimate child according to positive law. This has implications for legal recognition and protection of rights, including family relationships, custody, and parental recognition [22].

One of the most obvious implications of the legal uncertainty surrounding children born through surrogacy is inheritance rights. According to a normative article in the *Journal of Sharia and Law*, because Indonesian positive law does not recognize an automatic relationship between a child and their biological parents in the context of surrogacy, the child's inheritance rights still depend on the legal status given. If, legally, the child is only recognized as the child of the birth mother, then their inheritance rights will follow the provisions that apply to the child towards the surrogate mother and her husband, not towards their genetic parents. In Indonesia's dual legal system (positive law and Islamic law), each system has different consequences. In Islamic law, as reviewed in the article *al-Mawarid Jurnal Syariah dan Hukum*, the status of the child and their inheritance rights still consider the birth mother as the basis for inheritance, while the relationship with the biological father is not automatically recognized without additional legal processes such as recognition of lineage [23].

Another issue that arises is the citizenship status of children born through surrogacy. Research shows that even though the child basically obtains Indonesian citizenship if born in Indonesian territory to Indonesian citizen parents, positive law still stipulates his or her status as a child born out of wedlock under civil administration law because the civil law relationship with the genetic parents is unclear. This has implications for the child's civil rights in identity documents, civil registration, and legal recognition of family relationships [24].

This legal uncertainty has serious consequences for the protection of children's rights. According to research examining the legal protection of children born through surrogacy agreements, because this practice does not yet have a strong legal basis, these children face the risk of limited rights to identity, family relationships, inheritance, and social and other legal guarantees that should apply to all children as guaranteed by the Child Protection Law. In the context of human rights, this uncertainty has the potential to open up loopholes for discrimination because these children are placed in a less favorable legal status compared to children born through legal marriage. This shows the urgency of legal reform that provides full protection of children's rights regardless of how they were born.

In the Indonesian context, the legal status of children born through surrogacy is still uncertain in positive law, as there are no clear regulations and children are often only recognized as the children of the woman who gave birth, without any automatic connection to their genetic parents. In contrast, Thailand has explicitly regulated that children born through medical procedures, including legal surrogacy, are recognized as the legitimate children of the couple who intended to have them, providing immediate legal certainty [25]. This difference has an impact on civil aspects, including inheritance rights, family identity, citizenship, and civil administrative order. Indonesia faces a major challenge in recognizing inheritance rights because there is no legal basis for surrogacy; while in Thailand, this right is legally regulated through birth certificates and automatic recognition of married couples who desire surrogacy.

Thailand officially regulates the practice of surrogacy through the Protection for Children Born Through Assisted Reproductive Technologies Act, B.E. 2558, which came into effect in 2015. This law was created in response to various legal uncertainties and social problems arising from the previously unregulated practice of surrogacy, such as custody disputes and the exploitation of women as surrogate mothers.

One of the most important points in this regulation is the provision regarding the legal status of children born through assisted reproductive technology (including surrogacy): Children born through surrogacy are legally recognized as legitimate children of the husband and wife who intended to have the child. This means that Thailand automatically designates the parents of the child as the "intended parents" (the couple who initiated the surrogacy procedure), not the surrogate mother. In legal terms, the essence is as follows:

"Children born through medically assisted reproductive technology are considered legitimate children of the lawful husband and wife intending to have a child, regardless of the method of conception." This provision removes the traditional principle of family law ("mater semper certa est" or the birth mother is the legal mother) from Thai civil law and replaces it with the recognition of parental status based on a valid contract under this law.

For a child to obtain this status, several formal requirements must be met:

- a. Couples who wish to engage in surrogacy must be legally married and meet the requirements set forth by the law.
- b. There must be an assessment and approval from a special committee under this law to ensure that the procedure is carried out in accordance with the provisions.

After that, the birth of the child is recorded in the civil registry as the child of the couple in question, not as the child of the surrogate mother. This is important for the recognition of civil rights such as citizenship, access to public services, parental obligations, and inheritance rights.

This law not only determines who the legal parents are, but also regulates the rights of these children so that they are equal to children born naturally to a legitimate couple. This includes:

- a. Legal recognition of identity and family relationships, which is important for civil rights and official documents such as birth certificates.
- b. The application of family and inheritance law, where provisions regarding parent-child relationships apply in the same way as in traditional families.
- c. Equal protection of children's rights under the Child Protection Act and other family laws in Thailand [26].

Academic research also shows that this law aims to provide full protection of the rights of children born through surrogacy, including the right to know their biological origins, if necessary, as well as the right to receive proper medical and social care after birth. To protect children and prevent exploitation, Thailand prohibits commercial surrogacy, the involvement of third parties for financial gain, and the trade of reproductive material (sperm, ovum, embryos) as commodities. This is to ensure that surrogacy practices are carried out for valid medical reasons and not purely for business.

In Indonesia, the Civil Code requires recognition to create civil relations that affect certain rights, including inheritance rights. This recognition can be done by deed or other valid forms of recognition. Once a legal relationship exists due to recognition, a child born out of wedlock can inherit from the parent who recognizes them [27]. Without recognition, the civil relationship between the child and their biological father is not recognized, so inheritance rights from that father are not automatic. Meanwhile, in Thailand, the ART Act stipulates that children born through surrogacy can be immediately recognized as the legal children of the couple who entered into the surrogacy agreement before the birth. This creates a strong parent-child legal relationship and generally includes the right to inherit as if the child were the legitimate child of the couple, provided that the procedure complies with legal requirements

4. CONCLUSION

In Indonesia, surrogacy agreements do not have a strong legal basis in the Indonesian civil law system and are considered null and void because they contradict the valid requirements of an agreement as well as public order and morality values. This ambiguity creates legal uncertainty, especially regarding the status of the child born. Meanwhile, in Thailand: Through the Protection for Children Born through Assisted Reproductive Technologies Act (ART Act), Thailand recognizes surrogacy agreements as valid if they meet strict legal requirements, including a ban on commercial surrogacy and a list of criteria for participants. These contracts provide legal certainty for the status of the child and family relationships for the couples involved.

The legal implications of womb rental on the status of children in Indonesia and Thailand show a significant contrast. In Indonesia, the legal status of children born from this practice remains uncertain because womb rental is not specifically regulated in positive law; as a consequence, children are often only recognized as children of the woman who gave birth without any automatic legal relationship with their genetic parents unless they go through the adoption process. In contrast, Thailand already has an adequate legal framework through the Protection for Children Born through Assisted Reproductive Technologies Act B.E. 2558, which explicitly stipulates that children born through such procedures are the legitimate children of the couple who engaged in surrogacy and provides legal protection for the civil rights of these children. This comparison highlights the urgent need for the Indonesian legal system to develop specific regulations to provide legal certainty and protect the rights of children born through surrogacy practices.

5. REFERENCES

- [1] Cahyani, T. D. (2020). Hukum perkawinan. UMM Press.
- [2] Khairatunnisa. (2020). Keberadaan sewa rahim dalam perspektif hukum perdata. *Lex Privatum*, (1).
- [3] Aprilia, A. A. (2023). Studi komparasi sewa menyewa rahim antara negara India dan Thailand dengan hukum di Indonesia dalam aspek hukum perdata. *Jurnal Privat Law*, 11(1).
- [4] Santosa, I. G. T., & Yanti, A. A. I. K. (2025). Keabsahan perjanjian sewa rahim (surrogacy) dalam perspektif hukum positif di Indonesia. *Kertha Semaya: Journal Ilmu Hukum*, (3).
- [5] Attawet, J. (2021). Mapping transnational commercial surrogacy arrangements in South and Southeast Asia. *Medico-Legal Journal*.
- [6] Limpawart, N. (2024). Legal measures to control an operation of surrogacy in Thailand. *Public Health Policy and Laws Journal*, (3).
- [7] Nugroho, S. S., dkk. (2020). Metodologi riset hukum. Oase Pustaka.
- [8] Martiana, A. A. (2021). Asas kebebasan berkontrak dalam perjanjian surrogacy di Indonesia. *Perspektif Hukum*, 22(2).
- [9] Erma, Z., Tulim, A., & Asmaiyan. (2022). Keabsahan perjanjian sewa rahim ditinjau dari Pasal 1320 KUHPperdata. *Jurnal Tekesnos*, 4(1).
- [10] Vorty, V. C., & Irianto, K. D. (2025). Perlindungan hukum dalam perjanjian sewa rahim. *Innovative: Journal of Social Science Research*, 5(3).
- [11] Maulida, M., & Barkatullah, A. H. (2023). Status hukum anak hasil sewa rahim. *Jurnal Kolaboratif Sains*, 6(2).
- [12] Nurhayati, S. (2020). Hukum perjanjian dan perkembangannya di Indonesia. Kencana.
- [13] Miru, A. (2021). Hukum kontrak dan perancangan kontrak. RajaGrafindo Persada.
- [14] Hamzah, A. (2022). Asas-asas hukum perdata. Sinar Grafika.
- [15] Maulida, M., & Barkatullah, A. H. (2025). Perlindungan hukum terhadap anak hasil perjanjian sewa rahim menurut hukum positif di Indonesia. *Jurnal Kolaboratif Sains*.
- [16] Suryadi, Y. I. W., et al. (2025). The legality of the surrogate mother agreement reviewed from Indonesian civil law. *Lex Publica*, 12(1).
- [17] Preechasilpa, S. (2020). Surrogacy law and bioethics in Thailand. Chulalongkorn University Press.
- [18] Prokati, K. (2021). Legal status of surrogacy agreements under Thai law. *Asian Journal of Comparative Law*, 16(2).
- [19] Sukonthasarn, P. (2021). Surrogacy agreements and child protection under Thai law. *Asian Journal of Comparative Law*, 16(2), 233-250.
- [20] Kanchanaporn, T. (2023). Equality of children in Thai inheritance law. *Journal of Southeast Asian Legal Studies*, 5(1).
- [21] Malindi, L. W., & Imanullah, M. N. (2026). Kedudukan surogasi dan status hukum anak dalam perspektif hukum perdata di Indonesia. *Jurnal Privat Law*.
- [22] Sisminarnohadi, S., Khayru, R. K., Herisasono, A., Pakpahan, N. H., & Juliarto, T. S. (2024). The legal status of children produced from surrogacy in the perspective of Indonesian civil law. *International Journal of Service Science, Management, Engineering, and Technology*, 5(1).
- [23] Illahi, N. W. (2024). Hak waris anak hasil surogasi dalam dualisme hukum Indonesia. *Jurnal Syari'ah dan Hukum*, 6(1).
- [24] Adi, A., & Aris, S. (2025). Status kewarganegaraan bagi anak (intended parents' embryo) warga negara Indonesia menggunakan mekanisme gestational surrogacy. *Jurnal Jurist-Diction*, 8(1).
- [25] Makatika, B. (2023). Akibat hukum sewa rahim ditinjau dari Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan. *Jurnal Lex Privatum*, 11(2).
- [26] Thailand. (2015). Protection for children born through assisted reproductive technologies act, B.E. 2558. Government of Thailand.
- [27] Rahmi, A., & Chairunnisa. (2024). Hukum waris perdata. UMSU Press.