

The Human Rights Aspects Involved in the Implementation of Pregnancy Programs Through Non-Natural Methods

Stephanie Salim^{1*}, Tauchid Noor², Adriano³

Universitas Hang Tuah, Indonesia

Email: stephanie5drg@gmail.com¹, tauchidnoor1951@gmail.com², adriano@hangtuah.ac.id³

Correspondence: stephanie5drg@gmail.com*

KEYWORDS	ABSTRACT
Human Rights; Reproductive Rights; Assisted Reproductive Technology; Patient Autonomy	This research aims to analyze the human rights aspects involved in the implementation of pregnancy programs beyond natural methods. The focus is on understanding the legal and ethical implications of assisted reproductive technologies (ART), such as in vitro fertilization (IVF), sperm and egg donation, and surrogacy. These technologies offer solutions for couples facing infertility but raise significant human rights and ethical issues, particularly regarding patient autonomy and the legal framework surrounding their use in Indonesia. The research methodology used in this thesis is normative juridical and the research approach utilizes a statutory, conceptual and comparative approach to examine national and international legal instruments, including the Indonesian Health Law and human rights conventions, to evaluate the extent to which they protect the rights of individuals undergoing ART procedures. The study found that while existing laws provide some level of protection, there are gaps and inconsistencies that may hinder the effective realization of reproductive rights. Recommendations include improving legal clarity and regulatory oversight, raising public awareness on reproductive rights, and ensuring that ART services are accessible and ethically implemented. By addressing these issues, this thesis aims to contribute to the development of a stronger legal framework that supports individual reproductive autonomy and upholds human rights in the context of assisted reproduction.

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Introduction

Autonomy can be used for a state of an individual that has various meanings, such as the right to be free, to govern oneself, to make personal choices, the freedom to have desires and to be oneself. The main meaning of individual autonomy is the personal or individual rule of oneself that is free, both free from interference from others and from limitations, which can prevent correct choices, for example, due to insufficient understanding (Sofia, 2021).

Autonomy can also be interpreted as a person's ability to act based on values and for their own interests. From a psychological perspective, autonomy consists of a set of attitudes and skills.

Relevant skills include the ability to reason, appreciate different points of view and debate with others. To do these things, the autonomous person/individual must have a sense of self-worth and self-esteem. Self-knowledge is also very important, as well as a well-developed understanding of what is important to him/her. The medical profession recognizes moral ethical principles, one of which is the principle of autonomy, which is a moral principle that respects *the rights of patients*, especially the *rights of patient autonomy (the rights to self determination)* (Sofia, 2021).

The principle of patient autonomy means that patients can make their own medical decisions, which means they have the right to make medical decisions independently. These medical decisions are closely related to the patient's competence (Pujiyono, 2017).

Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law) Article 1 defines marriage as "Marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty". From the statement in Article 1, it can be defined that to achieve the goal of a complete and happy marriage, getting offspring or children is a goal that every married couple wants to achieve.

The World Health Organization (WHO) stated in 2021 that infertility is a disease of the reproductive system characterized by the failure / inability of a couple to achieve pregnancy after the couple has had sexual intercourse without protection or contraception for 12 months or one year. Infertility is divided into 2, namely primary infertility and secondary infertility. Primary infertility occurs when a couple has never had children or never experienced pregnancy at all. While secondary infertility is when a married couple who already have children but have difficulty getting pregnant again or getting the next child (WHO, 2024).

By 2020, the *World Health Organization* states that between 8 and 10 percent of couples of childbearing age experience fertility-related problems. Infertility affects millions of people of reproductive age worldwide, affecting their families and communities. According to the WHO, between fifty and eighty million married couples, or one in seven couples, experience infertility problems, and about two million new couples arise each year.

Currently, infertility affects women in Indonesia with a prevalence of between 12-15% of the 40 million couples of childbearing age who have fertility problems. There are many couples who are unable to have children in Indonesia, where there are many women who have been married but do not have children. According to the population census, 12% of the population in the entire country of Indonesia are couples who experience infertility or around 3 million couples (Mulyani et al., 2021).

Indonesian society has a very strong Eastern culture where having children is a social responsibility and a choice to have offspring. So when faced with infertility problems, married couples will try to find various ways using the help of simple medical technology to modern and sophisticated medical technology in order to solve the infertility problems they face

This modern medical technology in Indonesia is referred to as assisted reproduction or pregnancy programs outside of natural ways as outlined in the Regulation of the Minister of Health

of the Republic of Indonesia Number 43 of 2015 concerning the Implementation of Assisted Reproductive Services or Pregnancy Outside of Natural Ways in Article 1 which contains:

"Assisted Reproductive Services or Pregnancy Outside Natural Means, hereinafter referred to as Assisted Reproductive Technology Services, are efforts to obtain pregnancy outside the natural way without going through the process of intercourse (coitus) if the natural way does not produce results, by bringing together the husband's spermatozoa with the wife's egg in a tube."

Assisted reproduction or pregnancy programs outside of natural means have various types of treatments depending on what infertility problems the couple has. The problem will determine the choice of pregnancy program that will be taken.

Enobong Mbang Akpambang and Olufunmilayo Esther Rotimi-Aremu (2023) in their journal wrote that:

"Advancements in medical science and technology over recent decades have enabled individuals once considered unable to conceive naturally to fulfill their dreams of having children. This has been made possible through assisted reproductive technology (ART). ART refers to various methods used to achieve pregnancy without the need for traditional sexual intercourse between a man and woman. These methods include in vitro fertilization (IVF), gamete donation, donor insemination, intracytoplasmic sperm injection (ICSI), and intrauterine insemination (IUI). Surrogacy is another technological solution helping couples to conceive."

The development of medical science and technology over the past few decades has made it easier for those who are considered unable to conceive naturally and fulfil their dreams of having offspring, to finally realize their dreams. This is made possible through *Assisted Reproductive Technology (ART)*. ART is a term commonly used to refer to various methods applied to achieve pregnancy through means other than the normal, conventional male-female intercourse. *In Vitro Fertilisation (IVF)* or better known as IVF, egg or sperm donation, donor insemination, intracytoplasmic sperm injection and intrauterine insemination. Another form of medical and technological innovation used in helping couples to reproduce is through *Surrogacy procedure / surrogate mother* or better known as womb rental / *surrogate mother*.

Indonesia also follows the development of medical technology and has a law that regulates the implementation of assisted reproduction, namely in the Law of the Republic of Indonesia Number 17 of 2023 concerning Health (hereinafter referred to as the Health Law) Article 58 which states:

"Assisted reproduction can only be carried out by a legal husband and wife provided that the results of fertilization of sperm and ovum from the husband and wife concerned are implanted in the womb of the wife from which the ovum comes, carried out by Medical Personnel who have the expertise and authority carried out at certain Health Service Facilities"

Followed by Government Regulation of the Republic of Indonesia Number 28 of 2024 concerning Regulations for the Implementation of the Health Law in Article 111 paragraph (1) and paragraph (2) that:

"Assisted reproductive health services as referred to in Article 100 letter c shall be provided to legitimate married couples who, as a result of medical examination, experience infertility in order to obtain offspring. Paragraph (2) Assisted reproduction as referred to in paragraph (1) is

carried out by using the results of fertilization of sperm and ovum originating from the husband and wife concerned and implanted in the womb of the wife from which the ovum originated.

According to the explanation provided by Government Regulation of the Republic of Indonesia Number 28 of 2024 on the Implementation Regulation of the Health Law and Minister of Health Regulation of the Republic of Indonesia Number 43 of 2015 on the Implementation of Assisted Reproductive Services or Pregnancy Outside Natural Means, assisted reproductive services or pregnancy programs outside natural means have become a solution to solve infertility problems.

This technology was originally designed to help couples who desperately needed help to conceive. However, as advances in medicine and science have supported it, assisted reproduction is now not only a process of bringing sperm and ovum together for fertilization and embryo transfer. Assisted reproduction or pregnancy outside of natural means is now not only the process of bringing sperm and ovum together for fertilization and embryo transfer, but also several processes that must be ethically considered, such as sperm donors, ovum donors, *surrogate mothers*, and sex or gender selection. Human reproductive technology, known as human *cloning* techniques, is even now known.

Law of the Republic of Indonesia Number 39 of 1999 on Human Rights (hereinafter referred to as the Human Rights Law) considers that human rights are basic rights that are inherently inherent in humans, are universal and lasting, therefore they must be protected, respected, defended, and may not be ignored, reduced, or deprived by anyone.

The state is responsible for ensuring the fulfillment of the human rights of its citizens. This includes reproductive rights. The guarantee of the fulfillment of people's human rights, including reproduction is regulated in the Health Law Articles 56 and 57 which state that "The Central Government, Regional Governments, and the community are responsible for the implementation of reproductive health efforts that are in accordance with standards, quality, safe, and affordable. Including assisted reproduction".

The legal responsibility of the state to guarantee the human rights of its citizens is absolute liability. *Absolute* liability is "responsibility without fault and in the absence of exceptions." This is in accordance with the 1945 Constitution of the Republic of Indonesia Article 28I which states that "The protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the government." It is also supported by a statement in the Human Rights Law Article 71 which states: "The government is obliged and responsible for respecting, protecting, upholding, and promoting human rights stipulated in this law, other laws and regulations, and international human rights law accepted by the Republic of Indonesia."

The explanation in the Marriage Law Article 1, the Decree of the People's Consultative Assembly (MPR) Number XVII of 1998 concerning Human Rights in Chapter II concerning the Right to have a family and continue offspring and the Human Rights Law Article 10 paragraph (1) shows that having offspring and forming a family is a right for every legitimate married couple is guaranteed by the state. It can be interpreted that the state has an obligation to provide protection and facilitate the widest possible health services so that every married couple can obtain health care

facilities that can support them in the process of getting offspring / children, including reproductive health services and reproductive health services with the help or pregnancy programs outside the natural way.

The right to reproduce and assisted reproduction service programs or pregnancy outside natural means in Indonesia are basically regulated in the Health Law, Government Regulation No. 28 of 2024 on the Implementation Regulation of the Health Law and Minister of Health Regulation No. 43 of 2015 on the Implementation of Assisted Reproduction Services or Pregnancy Outside Natural Means. However, assisted reproductive technology services in Indonesia are only limited to the fertilization of ovum by sperm from a legal married couple and only by using the uterus of the wife or only limited to *In Vitro Fertilization* (IVF) technology or IVF and Insemination (Fitriana, 2024).

The regulation has not yet solved some infertility problems, such as in women who, due to problems with their uterus, cannot conceive and or have a high risk of pregnancy and childbirth, so the appropriate program option is *surrogacy mother* or surrogate mother. In women with no or very low and poor quality ovum, they need an ovum donor or *egg donor* procedure. Then in cases where the man has sperm problems, the couple needs a sperm donor procedure.

The implementation of *surrogate* mother/uterine leasing begins with an agreement that has principles that must be fulfilled. Although this agreement can be made based on the principle of freedom of contract, which means that they can make any agreement, such an agreement can be considered unusable in Indonesia because it does not meet the requirements of a valid agreement according to Article 1320 BW (*Burgelijk Wetboek*), namely a lawful reason (Aprillia, 2023).

This may conflict with Marriage Law Article 1, People's Consultative Assembly (MPR) Decree No. XVII of 1998 and Human Rights Law Article 10 paragraph (1) which clearly states that "Every person has the right to form a family and continue offspring through legal marriage."

The first country to legalize commercial *surrogacy* since 2002 was India. In the last ten years, 3,000 babies were born through *surrogacy* in the country (Judiasih & Dajaan, 2017). In 2016, the Indian government introduced the Surrogacy Regulation Bill 2016, which aims to regulate the practice of surrogacy in the country. Apart from India, several countries, such as the United States, United Kingdom, Russia, and Ukraine, have also legalized *surrogacy* (Aprillia, 2023).

Thailand is known as a country that values and upholds human rights. The 2007 Constitution of Thailand lists rights and freedoms in Chapter III, including equality before the law, personal rights and freedom of religion, rights and freedoms to work, rights and freedoms to education, rights to health and welfare services, rights to information and complaints, freedom of association and assembly, and community rights (Bangun, 2019).

The Medical Council of Thailand Circular No. 1/2540 in 1997, later updated to Regulation No. 21/2544, was passed to regulate the implementation of surrogacy services in Thailand. As per Article 4 Section 2, *surrogacy* services can be provided if the embryo produced is the result of a meeting between the couple's sperm and ovum (Stasi, 2015).

In recent decades, technological and biomedical developments have paved the way for potential medical benefits. This development raises quite a lot of ethical and legal issues that were never thought of before. One of them is technology in the field of reproduction (Stasi, 2015).

Based on the background that the author has described, it arises the author's interest to examine aspects of human rights in the implementation of pregnancy programs outside the natural way and the rights of patient autonomy from the perspective of a married couple who have been legally married and want to continue offspring but have infertility problems, while the program to be chosen is prohibited in Indonesia. The author will also make comparisons with other countries regarding how these countries regulate the implementation of pregnancy programs outside of natural means.

Materials and Methods

This study used legal and library research. This type of research examines legal norms in applicable legislation related to the subject matter in this study (Marzuki, 2017).

This research uses a *statute* approach, *conceptual* approach and *comparative* approach. The statutory approach is carried out by examining the principles of law, legal norms and laws and regulations. The collection and processing of legal materials aims to obtain legal materials in this research. The collection and processing of legal materials used are literature study and identification of legislation. The research refers to the legal norms contained in various laws and regulations. Collecting legal materials, processing and then analyzing the legal materials that have been collected to produce research findings.

Results and Discussion

Human Rights in the Implementation of an Unnatural Pregnancy Program

Infertility is a common condition and can be caused by a female, male or both. Infertility can also have an unknown cause, known as idiopathic infertility. The problem of infertility can have a major impact on couples who experience it. Infertility, also known as primary infertility, is the inability of a couple to have a child or maintain a pregnancy after having regular sexual intercourse without contraception for 12 months. Secondary infertility is the inability of a couple to get pregnant after having a child previously. Infertility can happen to anyone regardless of gender, age, race and economic conditions. Some factors that can affect reproductive health conditions and cause infertility, such as a bad lifestyle, namely consuming alcohol, smoking, consuming caffeine, having a body weight that is not ideal, and often taking certain drugs in the long term, can also cause infertility disorders and excessive stress will affect hormones, including reproductive hormones. The imbalance of reproductive hormone regulation causes infertility disorders (Hendarto et al., 2019).

The Ministry of Health of the Republic of Indonesia (2024), together with Dr. Kariadi Central General Hospital, also emphasized that lifestyle, namely daily diet and an environment that contains many pollutants, contribute to infertility (Ministry of Health). In addition to lifestyle, organic and non-organic factors can also affect infertility. Organic factors include age, which is an

important factor in determining pregnancy; chances of pregnancy and frequency of sexual intercourse show an inverse correlation with increasing age of the wife; while couples have intercourse 2-3 times a week (Dillasamola, 2020).

In general, infertility experienced by a woman is caused by early menopause, damaged eggs in the tubes, polycystic ovary syndrome (PCOS), Endometriosis, ovarian scarring, pelvic adhesions, thyroid problems, to a person's lifestyle can also affect their fertility, both in a man and a woman. Common infertility events in men and the most common factors are low hormones, varicocele, congenital abnormalities such as undescended testicles, tumors, blocked sperm ducts and other diseases (Abhimantara, 2018).

Infertility is one of the clinical symptoms commonly found in women with endometriosis. Endometriosis causes chronic inflammation that can lead to changes in the anatomy of the pelvic organs and disruption of the processes of folliculogenesis, fertilization and implantation which have an impact on increasing female infertility. Infertility is experienced by 30 - 50% of women with endometriosis and is one of the clinical symptoms of endometriosis. However, abnormalities in reproductive organs such as uterine myoma, *polycystic ovarian syndrome* (PCOS) and obstruction of the Fallopian tubes can also affect female fertility (Nengsih et al., 2021).

Polycystic ovarian syndrome (PCOS) is a polygenic condition with multiple phenotypic manifestations that is common among women of reproductive age. Women suffering from PCOS do not ovulate regularly due to impaired production of the hormone estrogen by the ovaries, which affects their ability to conceive. Menstrual cycle irregularities occur due to poor ovulation. In addition, elevated levels of hormones such as testosterone can reduce egg quality and inhibit ovulation (Sirait, 2019).

External factors, including exposure to lead, smoking, alcohol and certain medications cause male infertility. Pharmacological factors also play a role in causing infertility, where some medications are known to interfere with the fertilization process. Some drugs with antiandrogenic properties, such as spironolactone (e.g., spiroterone), ketoconazole, cimetidine, as well as the tetracycline group, are reported to reduce testosterone levels by up to 20%. Exposure to substances. Other influencing factors include age, the length of time couples have been trying to have children, and exercise habits (Akbar et al., 2021).

Reproductive health is the overall healthy state of a person, which includes physical, mental and social life related to reproductive organs, functions and processes (Ariyani et al., 2024). Government Regulation No. 28 of 2024 on the Implementation Regulations of the Health Law discusses Reproductive Health in Article 96, which states that reproductive health is a state of physical, mental, and social health as a whole related to the reproductive system, functions, and processes, not merely free from disease or disability.

Reproductive health is not only a state where we are free from a disease or disability related to reproductive functions and systems, but also involves the reproductive aspects of women and men. Reproductive rights are also related to the right to have offspring and the right not to have offspring, the right to get pregnant and the right not to get pregnant, and also related to the right to decide how many children will be born (Tarmizi, 2024).

The Health Law is present to ensure the fulfillment of the reproductive health rights of men or women based on the life cycle, maintain and improve the health of the reproductive system, so as to form a healthy and quality generation. Reproductive rights include human rights recognized in Indonesian national law, international human rights documents, and other consensus documents. One of the core of these rights is the basic right of every couple and individual to decide freely and responsibly on the number, spacing, and timing of their children, as well as the right to obtain information and the means to do so. these rights also include the right to obtain the best sexual and reproductive health services (Ekawati, 2021).

The 1994 *International Conference on Population and Development* (ICPD) in Cairo introduced a new paradigm in reproductive health which emphasized that reproductive health is a human right. Basic rights in reproductive health include the right of every individual, both couples and individuals, to decide freely and responsibly about the number of children, the timing, and duration of having children. Everyone, regardless of whether they are male or female, deserves quality reproductive medical education and services (Tarmizi, 2024).

Article 56 of the Health Law on reproductive health states that the Central Government, Local Government, and the community are responsible for the implementation of reproductive health efforts that are in accordance with standards, safe, quality, and affordable. Followed by Pasal 57 paragraph (1) which explains that every reproductive health service, including assisted reproduction, is carried out in a safe and quality manner by taking into account the unique aspects, especially women's reproduction. The implementation of reproductive health services as referred to in paragraph (1) is carried out by not contradicting religious values and the provisions of laws and regulations.

Patient Autonomy Rights in Determining Pregnancy Program Beyond Natural Means

The formulation used in Article 1 Point 7 of the Minister of Health Regulation Number 290 of 2008 contains 2 aspects in measuring and determining the competence of the patient. These aspects can be seen from objective aspects and subjective aspects. The patient's right to autonomy as seen from the age of maturity is a measure of the objective aspect. Meanwhile, a situation where there is no physical disturbance and awareness and is able to communicate reasonably and does not experience mental developmental deterioration and does not have mental illness so that it is able to make free consent (Chandra, 2019).

One of the rights in the Human Rights Law which is a basic human right is the right to have a family and continue offspring, namely in the 1945 Constitution Article 18B paragraph (1) and Article 10 paragraph (1) of Law Number 39 of 1999 concerning Human Rights that "Everyone has the right to form a family to continue offspring and through legal marriage". Therefore, the use of IVF technology in the aspect and view of human rights is acceptable with clear limitations, namely through legal marriage (Pratama et al., 2022).

Modern reproductive technologies researched and developed to help couples who experience infertility in order to obtain children have been widely recognized for their success. This technology is called Assisted Reproductive Technology or pregnancy programs outside the natural

way. There are various kinds of pregnancy programs outside the natural way that have been developed, among others

1. Insemination and IVF Programs.

In Vitro Fertilization (IVF) technology or in Indonesia known as IVF and artificial insemination has a fairly high success rate. The completion of the fatwa dated 1 Safar 1401 / December 9, 1980 M concerning Artificial Insemination is called Fatwa Number 23 / Fatwa / MUI-DKI / 2000, in which it is written that artificial insemination carried out using the husband's sperm and then inserted into the wife's womb by means of direct injection is allowed (halal) (Chandra, 2019). IVF implementation procedures are also regulated in Minister of Health Regulation Number 43 of 2015 concerning the Implementation of Assisted Reproductive Services or Pregnancy Outside Natural Means in Article 13 paragraph (1) which states that:

"Assisted Reproductive Technology Services can be carried out by means of: a. conventional and b. *Intra Cytoplasmic Sperm Injection* (ICSI). In paragraph (2) Assisted Reproductive Technology Services by conventional means as referred to in paragraph (1) letter a are carried out by bringing together the husband's normal spermatozoa and the wife's oocytes in a tube, then the embryo formed is transferred into the wife's uterus. Paragraph (3) Assisted Reproductive Technology Services by means of *Intra Cytoplasmic Sperm Injection* (ICSI) as referred to in paragraph (1) letter b is carried out by directly injecting the husband's spermatozoa into the wife's oocytes. (4) Assisted Reproductive Technology services by means of *Intra Cytoplasmic Sperm Injection* (ICSI) as referred to in paragraph (3) shall be carried out in the event that the quality of spermatozoa is very poor for embryo formation."

The process of *fertilization* that is carried out using technology and carried out outside the human body or a woman or *In Vitro Fertilization* (IVF) technology is a technology that was created and developed to be able to solve the problem of infertility or infertility with the aim of producing pregnancy. The use of IVF technology reflects significant advances in science and technology that affect human life. This technology was created by the intellect bestowed by Allah SWT to humans, given that humans are creatures of reason and knowledge. These advancements are highly valued because humans are able to make good use of Allah's gifts, going beyond the limitations that some people believe. It is important to ensure that the development of these technologies is done with sincere intentions for Allah SWT (Dewi et al., 2022).

By considering some of the views and opinions above, it can be concluded that IVF technology does not cause problems, as long as the IVF program is developed and carried out using sperm and ovum from the husband and wife themselves, then the embryo is transplanted into the wife's womb. As a result, the child born to the wife is a legitimate child and can be equated with a child born naturally (biological child) and has the same rights and obligations.

2. Womb Rental / *Surrogate Mother*.

In its development, the IVF program can be carried out using a *surrogate mother*. A *surrogate mother* is a woman who enters into a *gestational* agreement with a married couple in which the woman is willing to conceive from the seed of a couple experiencing infertility with certain rewards in accordance with the agreement. The implementation of this technology has also

been directly regulated in the Health Law, Government Regulations and Minister of Health Regulations in Indonesia, where the embryos resulting from this program must be returned to the wife's womb. In Government Regulation No. 28 of 2024 concerning Regulations for the Implementation of the Health Law in Article 734 paragraph (1) reveals that there is a right for medical personnel to refuse the wishes of patients or other parties that are contrary to professional standards, service standards, standard operating procedures, codes of ethics, or provisions of laws and regulations, where requests to find surrogate mothers or conduct assisted reproductive leasing programs that are carried out by legal married couples are prohibited.

The Indonesian Ulama Council (MUI) has also issued a MUI Fatwa on the process of transferring embryos to the entrusted womb, where the process of transferring embryos resulting from artificial insemination between the husband's sperm and the wife's ovum placed in the womb of another woman is not allowed and is considered a haram action. Then regarding the transfer of embryos resulting from artificial insemination between the husband's sperm and the wife's ovum which is placed in the womb of another wife or woman, the law is also not allowed. Embryo transfer from artificial insemination using husband's sperm and wife's ovum placed in another woman's womb, because the husband and/or wife do not want to undergo pregnancy, is also not allowed (Majelis Ulama Indonesia, 2011).

Based on the statement emphasized by the MUI Fatwa, it can be clearly concluded that Islam strongly rejects the implementation of uterine leasing or *Surrogate Mother* as a solution to continue offspring for married couples who experience infertility and is called a prohibited or haram act. Not only MUI strictly prohibits the act of renting a uterus, but in civil law, the act will also be able to cause many problems in the future if it is done.

Surrogate mothers are subject to legal sanctions because they contravene the provisions of Indonesian law. Article 127 of the Health Law prohibits medical treatment of *surrogate mothers* who are not related to a legal marriage. Article 10 paragraph (1) of the Human Rights Law also emphasizes that efforts to continue offspring must be through legal marriage. These statutory provisions explain that the medical action of *Surrogate Mother* is not allowed, especially because the object of the agreement, namely the uterus, is considered unusual both as objects and services (Komalawati & Hakim, 2019).

3. Sperm and Ovum donation.

Artificial insemination is the process of meeting an egg with sperm through artificial or non-natural methods to assist fertilization. With the rapid advancement of science, the types of artificial insemination are increasingly diverse, both in terms of the reproduction process, the media used, and the eggs and sperm used (Paramita & Hariyanto, 2023).

Donor is defined as the act of giving or contributing. In this context, a sperm donor is someone who knowingly and without coercion donates his sperm to help others to have offspring. Sperm are male reproductive cells that contain genetic material. Sperm are produced in the testicles and expelled during ejaculation. When sperm meets a woman's egg (ovum), fertilization occurs resulting in pregnancy. So, sperm donation is where a man donates his sperm cells to help a couple or woman who wants to have offspring. There are various processes of sperm donation where

sperm donation can be done directly to the recipient or through a sperm bank, then the sperm is stored in a tube filled with liquid nitrogen to maintain its fertility, this action is carried out at a sperm bank. This technique is called *cryopreservation* (Mariso et al., 2018).

In short, pregnancy programs outside of natural means can also use some variation of donors. Donation can be done by taking sperm from another person or from a sperm bank or through sperm donation from a known or unknown person. The sperm is then mixed with the egg and after fertilization, it is immediately implanted or inserted in the woman's uterus (Mariso et al., 2018).

The Civil Code (KUH Perdata) is one of the most important legal instruments that still applies as positive law in Indonesia today. The Civil Code is a codification that includes regulations from the colonial period before Indonesia's independence. Given this background and the lack of adjustment to the provisions contained in the Civil Code, there is an impact that the provisions contained therein have not been able to keep pace with current developments, including issues related to sperm donation or fertilization outside of other natural means. Therefore, it is important for Indonesia to address this, so that every action is well regulated so that problems that arise can be legally accounted for (Ramadhani et al., 2020).

Chapter XII of the Civil Code regulates fatherhood and the origin of children, and Article 250 stipulates that a husband is considered the father of a child if the child is born or raised during the marriage period. There is no provision requiring the origin of the egg or sperm used (Lahia, 2017).

Islamic law prohibits artificial insemination with sperm donors because it is considered a form of adultery and is not in accordance with Islamic moral and religious values. The law also emphasizes the importance of maintaining the sanctity of marriage and offspring and allows artificial insemination with husband's sperm through the husband's artificial insemination technique (homologous) with certain terms and conditions (Fadilah et al., 2024).

There are exceptions to the permissibility of sperm donation in emergency conditions in Islamic law, such as the husband cannot produce sperm but the wife is desperate to have a child in the context of a legally married couple. The sperm donation process is carried out under medical supervision and Islamic law. The child born must be recognized as the legitimate child of the married couple (Fadilah et al., 2024).

From the explanation above, the conclusion that can be made is that patients who are allowed to use pregnancy programs outside of natural ways are legal married couples according to the Marriage Law and the Health Law because Law Number 1 of 1974 concerning marriage has been explained, that legitimate children are children born in or as a result of a legal marriage. It is emphasized that the Indonesian state is based on Pancasila, where the Almighty God is the main principle that underlies every action of the Indonesian people, so every individual in this case is a married couple in accordance with the religion they adhere to must carry out every action including in conducting pregnancy programs outside of natural according to the rules set by each religion which means not contrary to religious values.

Comparison with Other Countries Regarding the Implementation of Programs Beyond

Natural Means

In several countries such as India, Pakistan, Bangladesh, China, Thailand, and the United States, there have been many cases of leasing a woman's womb due to difficult economic factors (Abimantara, 2018). The issue of *surrogate motherhood* is a controversial topic that involves women-related, ethical, legal, and social issues. In India, *surrogate motherhood* is a strategy to escape poverty and therefore, moral issues are sidelined. Today, India is a major destination for women who wish to undergo commercial *surrogacy*. India was the first country to act on the development of the commercial *surrogacy* industry both nationally and internationally.

The countries of India and Thailand allow the practice of renting wombs based on several considerations, mainly due to a shortage of women willing to bear children. However, this practice does not dehumanize women as it is done voluntarily.

The practice of leasing in India is for family purposes, as stipulated in the *Surrogacy Regulation Bill* 2019, which requires a minimum marriage age of 5 years for couples who wish to use leasing services. India and Thailand apply criminal sanctions and fines for violators of this rule. Thailand uses the *Protection of a Child Born by Medically Assisted Reproductive Technology Act* as the basis for its regulation of surrogacy, which requires the practice to be voluntary and prohibits commercial surrogacy. The surrogate mother must be a relative of the renting couple, and the couple wishing to use the services of a surrogate must be Thai citizens, both or either of them must be a Thai citizen both or either of them (Aprilia, 2023).

The State of Indonesia in Government Regulation No. 28 of 2024 in Article 111 and Regulation of the Minister of Health of the Republic of Indonesia No. 71 of 2014 concerning Procedures for the Imposition of Administrative Sanctions for Health Workers and Organizers of Health Service Facilities in Abortion and Reproductive Health Services with Assistance or Pregnancy Outside Natural Means Articles 2 and 3 have explained that health workers and health service facilities that organize assisted reproduction or pregnancy programs outside natural ways may only carry out these services to legal married couples, not violating religious norms and with the ovum and sperm of the married couple, and must also be implanted back into the wife's womb, not the womb of another woman, as well as the excess embryo obtained may not be implanted in the womb of another woman, this provision clearly prohibits the act of *surrogate mother* / womb rental. There are sanctions given if these provisions are violated, this is regulated in Government Regulation No. 28 of 2024 Article 112, but the sanctions given to Medical Personnel, Health Workers, and / or Health Service Facilities that violate only in the form of administrative sanctions.

Government Regulation No. 28 of 2024 Article 111 paragraph (1) concerning assisted reproductive health services is carried out on a legal married couple, with the results of a medical examination experiencing infertility or infertility to obtain offspring. Assisted reproduction as referred to in paragraph (1) is carried out by using the results of fertilization of sperm and ovum originating from the husband and wife concerned and implanted in the womb of the wife from which the ovum originated. Paragraph (3) Assisted reproduction as referred to in paragraph (1) shall be carried out in accordance with the development of science and technology and shall not conflict with religious norms. Paragraph (4) Assisted reproduction as referred to in paragraph (1)

must be performed by Medical Personnel who have the expertise and authority. Paragraph (5) Assisted reproduction as referred to in paragraph (1) is prohibited for the purpose of selecting the sex of the child to be born, except to avoid genetic diseases associated with sex.

Government Regulation Number 28 Year 2024 Article 112 paragraph (5) regulates the sanctions that will be given if there are violations committed by medical personnel:

"Medical Personnel, Health Workers, and/or Health Service Facilities that violate the provisions as referred to in paragraph (3) and paragraph (4) are subject to administrative sanctions by the Minister, governor, or regent/mayor in accordance with their authority in the form of written warnings, administrative fines, and/or revocation of business licenses."

"The use of donor eggs in ART has significantly increased since the first successful birth following the use of this technology in 1983 for a woman with primary ovarian failure. In 2011, 18,530 ART cycles in India involved the use of donor eggs, accounting for 13.9% of all ART cycles, up from approximately 8% in 1995, the year such data were first collected. In the same year, 7,902 live births were achieved using donor eggs."

Although there are no laws governing assisted reproduction in India, there are guidelines created by the *Indian Council of medical Research (ICMR)* called the National Guidelines for Accreditation, Supervision & regulation of assisted reproduction clinics in India 2005. These guidelines contain regulations, licensing, and supervision of clinics involved in assisted reproductive technology or research on human embryos.

"In Germany, laws prohibit the creation of embryos using IVF for research purposes. In the United Kingdom, the legislation allows the destruction of unclaimed embryos after five years. Stem cell research, particularly involving embryos, has also become a controversial topic in both Europe and the United States." (Sangheeta, 2020).

German law prohibits the creation of embryos through IVF methods that have the sole purpose of conducting research. UK law has been enacted and allows the destruction of unused embryos after five years.

Around the world, countries have varying views on whether to allow anonymous sperm donation. In the United States, most sperm donation procedures performed are from anonymous donations. While some clinics disclose the identity of sperm donors at age 18 as part of an open identification program, there are no laws in place to require clinics to do so, and most communities do not use this program.

In contrast, in many parts of the world, there are significant laws that require the identity of sperm donors to be revealed to children after a certain age (usually when the child is 18 years old). In 1985, Sweden became the first country to attempt to ban anonymous sperm donation, requiring that the child born would receive identifying information about the sperm donor when the child was old enough. A number of jurisdictions, including Austria, Germany, Switzerland, the United States, Australia, Victoria and Western Australia, the Netherlands, Norway, the United Kingdom and New Zealand followed Sweden's efforts.

Conclusion

The right to reproductive health, including the use of pregnancy programs outside of natural methods for couples experiencing infertility, is a human right that has been recognized in various countries, including Indonesia. However, not all of the pregnancy programs outside the natural way can be implemented in Indonesia, although some foreign countries have implemented it. The right to patient autonomy is an important human right in determining health care choices, including in determining pregnancy programs outside of natural methods. Patients have the right to make free and responsible decisions regarding this program. However, due to regulations that prohibit an action, the application of the right to autonomy becomes weak because the application of the right to autonomy must consider the legal regulations, ethics and human obligations that apply in Indonesia. This is to ensure that every decision taken is not only based on personal wishes but also considers the impact on health, social welfare, and prevailing cultural norms.

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