



SURROGACY AND ITS CHALLENGES DURING COVID-19

Lintang Wistu Malindi
Faculty of Law, Sebelas Maret University

Prof. Dr. I Gusti Ayu Ketut R.H., S.H, M.M
Faculty of Law, Sebelas Maret University
(Email)

Abstract

This article aims to analyze the challenges of surrogacy in the middle of COVID-19 pandemic. In order to achieve the goal of this legal study, the writer used normative legal research by using secondary data. Based on the research, it shows that surrogacy has its challenges in its own practice. The opposing arguments of surrogacy usually relates to moral issue and its legality of such practice. The challenges even get worse when such practice needs to be conducted during COVID-19 pandemic. The COVID-19 pandemic which has been hitting the world makes the surrogacy risks even worse especially for transnational surrogacy. The risks even worsen due to some regulations in order to suppress the virus rate, such as lockdown, travel ban, and other regulations which could impact the conduct of surrogacy practice for its parties. The dark sides of surrogacy shown even clearer when the surrogate-born children potentially being abandoned and neglected cause they need to wait for longer period to be taken home by their intended parent who have been blocked to travel and also the bigger risks for the surrogate during COVID-19 pandemic.

Keyword: Surrogacy, Challenge, Pandemic, COVID-19.

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INTRODUCTION

Marriage in our society has been considered, not only as private matter, intimate, or emotional connection which is created by two individuals in order to gain private objectives such as prosperity or financial security, however it has become public legal act which relates reproduction to gain offspring, family, and society (Gallagher, 2002). In the matter of reproduction, it is used to create family by having offspring, but it appears that not all of

married couples have the opportunity to gain offspring easily due to many factors and one of them may be related to infertility issue. This infertility may happen to approximately 10 % of couples, even to young and healthy couples. They may have some difficulties to conceive offspring due to the probability of conception in one reproductive cycle is usually ranges from 20 %-25 % (Van Voorhis, 2007). The difficulties of conceiving offspring have become a huge



problem for most couples that will lead them to feel pressure and depression which further may lead to divorce due to the absence of children. However this problem may be solved by the advance of reproductive technology which is capable of helping infertile-couples to conceive offspring. One of the methods that is offered by reproductive technology is surrogacy. Surrogacy is a method which includes an agreement of a woman to conceive a child for other parties that will become the parents of the newborn. The other parties that are mentioned here usually involves couples who have difficulties to conceive offspring on their own (Rao & Khan, 2017) . Surrogacy has two types which consists of Full Surrogacy and Partial Surrogacy whereby they both use In Vitro Fertilization (IVF) technology that has been available since 1978 (Spivack, 2010). Then these two types of surrogacy have been designed as two different models which are Altruistic Surrogacy and Commercial Surrogacy (Del Savio & Cavaliere, 2016).. The existence of surrogacy as alternative in reproduction grows even bigger and becomes top option for most couples who seek alternative. It is proven by the growing practice of surrogacy and the commodification of the practice in many part of the world especially in Eastern Europe, India, and many states of USA (Kristiana Brugger, 2012). The growth of surrogacy that is commodified has created new industry in reproduction world by the rise of Commercial Surrogacy in many parts of the world till it creates new trend so-called “ reproductive tourism”. This trend has grown in the last few decades, proven by the growing practice of Transnational Surrogacy or also known as International Surrogacy. It is not a surprise considering we live in globalization era that helps human population to mobilize easier and faster. This convenience to mobilize may ease the parties of surrogacy to choose where they want to conduct such practice as the practice creates debate regarding morality issue and exploitation, the difference of regulations in

each countries, and the socio-economic inequality of the parties in surrogacy. These issues make surrogacy become a long debate that lead to different attitudes from each countries. Thus, the parties usually will choose the countries with friendly-surrogacy regulations. However, it seems that the practice especially for Transnational Surrogacy that faces bigger and even more complex challenges due to pandemic COVID-19 that has been hitting the world. It cannot be denied that this pandemic has brought huge impact to many aspects of the world as social, economy, and politic, The emerge of this pandemic has brought impact to mobility slope globally due to policy from each countries for example lockdown and International flight ban. This attitudes need to be taken by each countries to suppress the spread of the virus. This mobility ban has brought significant impact for surrogacy procedure that may lead to bigger risks for the surrogacy parties. Therefore, this article aims to display the challenges and potential risks even the dark sides from surrogacy during COVID-19 pandemic for the surrogacy parties which includes Intended Parent, Surrogate Mother, and Surrogate-born Child.

DISCUSSION

Surrogacy refers to the process whereby a woman intentionally decides to conceive a baby whom she will not raise herself, instead she carries the baby for intended parent who is usually unable to do so without her help (Deane & Stark, 2011). Surrogacy is typically started with an agreement. Surrogacy agreement is an agreement which is made by intended parent and a surrogate who will become pregnant for intended parent whereby she will hand over the baby whom she gives birth to intended parent (Ciccarelli & Beckman, 2005). A woman who ties herself into surrogacy agreement is usually called as Surrogate and the couple who seeks help from a surrogate is usually called as Intended Parent. Meanwhile surrogacy divides into several types. On the basis of embryos, surrogacy is divided into two models which are

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Full Surrogacy and Partial Surrogacy. Full Surrogacy also known as Gestational Surrogacy or non-genetic. In the case for non-genetic surrogacy, the conception takes place through In Vitro Fertilization by using the eggs and the sperm from intended parent then the embryo is placed into surrogate's uterus so there is no biological relation between the baby and the surrogate. Meanwhile in the case of Partial Surrogacy also known as Traditional Surrogacy, the embryos come from the insemination between surrogate's eggs and a father's sperm then the embryo is placed into surrogate's uterus so there is biological relation between the baby and the surrogate (Golombok et al., 2006). Meanwhile on the basis of selection of surrogate, there are two types of surrogacy which are Altruistic Surrogacy and Commercial Surrogacy. Altruistic Surrogacy is type of surrogacy where surrogate does not gain financial rewards for conceiving and delivering the baby except necessary medical expenses. In this case, surrogate usually motivates by her compassion to help other. Meanwhile in the case of Commercial Surrogacy, the surrogate gains financial rewards from intended parent for her service to conceive and to bear the baby (Rao & Khan, 2017). Surrogacy has grown from time to time as the rise of globalization drift appears not only as good news for reproductive technology to help couples in order to have a child, but it also creates new polemic in reproductive field. Despite being an alternative in reproductive field, surrogacy seems to bring many problems surrounding its practice. Criticism against this practice has been stated by those who against such practice with their arguments that decline surrogacy practice.

CRITICS AGAINST SURROGACY PRACTICE

Immoral and Exploitation

The word "surrogate" has similar meaning as "substitute" or "replacement", therefore a surrogate mother in surrogacy can be interpret as someone who is motivated by financial or compassionate reason, willing to bear a child

for another woman because that woman is unable or unwilling to do so herself (Van Niekerk & Van Zyl, 1995). Although a surrogate is willing to tie herself in surrogacy practice for financial gain or compassionate reason, however it seems that surrogacy these days is more motivated by financial reason. Therefore it is not a surprise that Commercial Surrogacy is growing each days so it creates "reproductive tourism" in several countries. The growing practice of surrogacy that has been commercialized apparently sparks problematic whereby a woman as if she is contracted to conceive and to bear a child for another woman or couples, then she will be compensated for her service. This type of practice depicts a picture that a woman who is so-called "surrogate mother" that willing to rent her uterus for another parties will get paid for her service. Therefore it is no difference by placing the value of uterus or reproductive organ merely as "environment" or "human incubator" for one's child (Van Niekerk & Van Zyl, 1995). This commodified reproduction service then being criticized by experts who strongly against the existence of surrogacy. They make analogy that this commercialized practice as "prostitution". Mary Warnock cited a rejection for such practice from a doctor by expressing "surrogacy is described as 'a form of exploitation' similar to prostitution". Then an opinion by Andrea Dworkin, an American feminist expressed "motherhood is becoming new branch of female prostitution with the help of scientists who want access to the womb for experimentation and poor women can sell their reproductive the same way old-time prostitutes sold sexual ones but without the stigma whoring because is no penile intrusion. It is the womb, not vagina, that is being brought". (Van Niekerk & Van Zyl, 1995). These analogy depict a narrative that the value of uterus or reproductive labour has no difference with sex prostitution due to their physical service, and then surrogate will gain compensation. Therefore it makes surrogacy



being criticized because it opens a chance for surrogate to commodify her reproductive organ which is considered as immoral doing and destroying her honor and dignity as a woman. Moreover commercial surrogacy appears to spark exploitation concern. This concern exists when a surrogate mostly comes from middle and lower class background. For instance in India, surrogacy becomes interesting alternative for poor surrogate to gain financial benefit from intended parent who are longing for a child presence. Moreover the country is able to gain devisa income from surrogacy industry. However the fact says different story when surrogacy placing a woman to be exploited and most of profit goes to commercial surrogacy agency because there is no transparent system in India's surrogacy. (Rao & Khan, 2017) It will place surrogate mother with lower socio-economic background, both financial and education can be utilized by those who being benefited from the practice cause there is a chance that the compensation is not comparable with the risks for surrogate. Lisa Ikemoto, an bioetic and law expert expressed her concern for such practice because woman would not under protection systematically by expressing " *interplay between biological essentialism and commodification of women who are means to the end may permit a laxness in minimalizing risks to those women*". It is no longer surprise since woman potentially has bigger risk to be marginalized and to be exploited, especially in conservative and poor neighborhoods (Kristiana Brugger, 2012). It is most likely a woman actually being forced to be a surrogate due to economic pressure, lacking of education, and also the difficulty of finding a job can be powerful motivation for becoming a surrogate mother , resulting woman to be surrogate, out of necessity and failing to give truly informed consent (Kristiana Brugger, 2012). The narrative of surrogacy becoming reproductive industry with exploitation tendency was mentioned by Judith Warner in her blog entitled " *Outsourced Women*" in 2008

for *The New York Times*. In her writing, Warner gave reference to two dystopic-fiction novels by Aldous Huxley's *Brand New World* and Margareth Atwood's *A Handmaid's Tale* where both novels imagining reproduction as " *industrial*" or " *outsourced procedure*" (Winddance, 2015). Both novels depict how fertile woman being used as subject to be baby-making machine for the regime which mostly controlled by man. They lost their fundamental rights, losing identity, or even being separated from their families to become baby machine in order to raise population and sovereignty of the regime. This story seems to be perfect picture for surrogate mother when she must rent her womb and bearing a child for other due to other motives against her own willing. As surrogate mother, she needs to lose some of her rights such as freedom or being separated from her own family. Furthermore she is put in weaker position compared to other parties so-called "tenant" of her womb. It happens because a surrogate mother put herself as someone who offers her service so she needs to fulfill every " *terms and conditins*" in agreement which it is more likely to benefit the other parties than the surrogate herself She needs to lose her rights although the practice relates her own body, so it seems there is inequality in benefit distribution of the agreement that feels quite unfair to surrogate mother (Wertheimer, 2021). This depiction eventually shows reality that surrogacy seems to be immoral and exploitative practice which harms the life of surrogate.

Legality Issue of Surrogacy

The other concern regarding surrogacy practice which stated by many critics maybe relates to its legal issue. Criticism regarding surrogacy perhaps includes legality concern other than its controversy or moral issue. Regarding this issue, each states have their own attitude and perspective towards surrogacy. There are different attitudes by each states, from prohibiting all forms of surrogacy, allowing certain type of surrogacy, or allowing every

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form of surrogacy. The countries which apply total ban of surrogacy includes Austria, Bulgaria, Saudi Arabia, France, Germany, Norway, Sweden, Iceland, Turkey, Pakistan, and China (Winddance, 2015). Meanwhile the countries which apply partial surrogacy such as Altruistic Surrogacy may includes Australia, Canada, Greece, Hungary, Israel, Spain, South Africa, and United Kingdom, while the countries which permit all types of surrogacy both Altruistic Surrogacy and Commercial Surrogacy for instance Russia and Ukraine (Winddance, 2015). Various regulations is also shown by United States of America where there is no Federal Law regarding surrogacy and the decision is in the hands of each states with their own approach. These attitudes by states towards surrogacy agreement both judicial or legislative will impact surrogacy practice because most surrogacy practices are written in contract. States can decide either the contract 'enforceable, void, unenforceable, or enforceable if noncommercial'. However there are some states that have decided to abstain from taking action and leaving the problem to the courts instead. (Ryznar, 2011) Meanwhile other state legislatures have been active taking measure on the matter, for example Florida, New Hampshire, and Virginia. They have statutorily allowed the enforceable of surrogacy contract, but not for the compensation of surrogate. Another state like Illinois has allowed the enforceable of contract and reasonable compensation. Meanwhile other jurisdictions have tried to ban the conduct of surrogacy entirely for instance Indiana, Nebraska, Utah, Louisiana, and North Dakota (Ryznar, 2011). This various regulations of each states perhaps become the reason for the rise of transnational surrogacy. It happens because there are many couples who desire to have a child through surrogacy but their country ban surrogacy, therefore they choose to travel abroad where statutorily more liberal for example United States of America, India, Ukraine, and United Kingdom where surrogacy is permitted. (Del

Savio & Cavaliere, 2016) This increase of transnational surrogacy which has become global phenomenon potentially creates new legal problem. It happens where usually law lags behind medical technology advances and social developments. Unfortunately this case cannot be avoid in transnational surrogacy due to the absence of International regulation regarding transnational surrogacy (Trimming & Beaumont, 2012). The absence for both International regulation and global response regarding surrogacy sparks legal concern which usually relates the questions about who will be the rightful parents of surrogate-born children and their nationality (Trimming & Beaumont, 2012). These questions may appear not only for transnational surrogacy, but also for domestic surrogacy. These questions appear because surrogacy is different from conventional pregnancy whereby the baby is born by biological mother. Based on International law, a mother is the one who gives birth to the child (Benshushan & Schenker, 1997). This case may be different for surrogacy practice whereby the woman who gives birth is a surrogate who is contracted to conceive and to bear a child for other couples. This ambiguous relationship potentially creates legal problem for the parties regarding the legal status of surrogate-born child. In fact, several legal disputes have been held in trials for example in USA (Benshushan & Schenker, 1997). One of them is *The Baby M* case which is so well-known in USA. This Baby M case first brought widespread attention to surrogacy practice and the possible legal problem from the practice (Spivack, 2010). In this case, New Jersey Supreme Court decided based on its statutory, a compensation for surrogate was illegal, even criminal and potentially degrading a woman. The court emphasized that it was woman's right to change her decision after giving her consent under the contract to be inseminated with man's sperm and later she would surrender the baby to the man and his wife. However, the court decided to grant the

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custody for the intended parent as it was in the best interest of the baby and the surrogate had visitation right (Ryznar, 2011). In the other words, the intended parent had higher custody right than the birth mother.(Brinsden, 2003) Another famous surrogacy case in USA would be *Johnson versus Calvert*. This case was in the hands of The California Supreme Court where Calvert who happened to be the biological parents of the baby, stated as the legal parents and received custody over the surrogate-born child. These two cases show the various decisions made by the courts due to their different statutes. As a result of autonomy of each states in USA, specific regulations regarding surrogacy differ from each states, even some are more specific than others regulating the rights of biological parents over surrogate(Brinsden, 2003)or specific regulations which recognize surrogacy contract so the surrogate will have robust potential custody right over the biological parents which is shown by Michigan(Deonandan et al., 2012). These surrogacy cases in USA show how complex the legal problem created by surrogacy, either it is about parenthood, legal status of the child, or custody right. This complexity seems to be the case for transnational surrogacy as well, even it maybe ,looks more complex than the domestic ones, paericularly when it comes to the nationality of surrogate-born child. According *Article 7.2 CRC*“the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire nationality, and as far as possible, the right to know and be cared for by his Thus or her parents”. This provision maybe will be difficult to be implemented since it relates the national law regarding surrogacy by each states. In case the law recognizes a mother as someone who gives birth, the child’s status is unclear. Meanwhile, if the law provides the surrogate-born child cannot acquire the nationality of the intended parents, it will also put the child in precarious situation as well(Deane & Stark, 2011). In fact some states that ban surrogacy

refuse to grant nationality for the surrogate-born child because doing so will only encourage the banned practice(Deane & Stark, 2011). This problematic had ever created transnational surrogacy legal disputes, one of the most celebrated one was *Baby Manji* case. The Baby Manji case demonstrated dilemma created by transnational surrogacy. Baby Manji made controversy on how to decide the parentage and whether commercial surrogacy should be allowed without any regulations. Baby Manji was given birth by Pritiben Mehta, a surrogate from India who was contracted by Japanese couple, Ikufumi Yamada and Yuki Yamada. However in the journey, this couple got divorce a month before the birth of Baby Manji which created a complex problem regarding the legal parents of the baby. Nevertheless, Ikufumi decided to remain willing to keep Baby Manji so he came to Japan Embassy to attange Baby Manji’s citizenship. However, Japan refused to grant citizenship and passport for Baby Manji because Japan entified the birth in Japan to have its citizenship. As a result, Ikufumi decided to ask India Embassy, but the national law refused to recognize Ikufumi’s legal status as single adoptive father. India also refused to grant passport for Baby Manji since according to its national law, a passport of a child was based on the nationality of the mother. Either the surrogate, the intended mother, or the eggs donor refused to acknowledge Baby Manji as their child. Nevertheless, in the end Anand city finally granted the birth certificate for Baby Manji where Ikufumi Yamada was declared as the biological father with the name of mother remained vacant. However, Ikufumi and Baby Manji were still in legal dispute since the adoption law in India did not permit an unmarried man to adopt female children(Mohapatra, 2012). The same case had also happened to surrogate-born twins who were born in Ukraine. They were commissioned by Patrice and Aurelia Le Roch, a French couple. In this case, both France and Ukraine refused to grant nationality for the twins, hence both



countries did not give passport to the twins. (Mohapatra, 2012) These two transnational surrogacy cases show depiction of such dilemma and problematic from surrogacy practice regarding parenthood rights, the nationality of surrogate-born child, or adoption rights.

THE CHALLENGES FOR SURROGACY DURING COVID-19 PANDEMIC

COVID-19 first found in Wuhan China back in December 2019. This virus has spread rapidly hence by mid-February 2020, it had killed people more than SARS and MERS combined. As a result, World Health Organization (WHO) by March 11, 2020 declared this virus as pandemic (Fronek & Rotabi, 2020). This pandemic has marked huge impact almost in every aspects of life, started from health, economy, even social connection in society. This virus has created a change of attitude and social connection where society has lost both physical and emotional touch among each other as a result of social distancing or isolation in order to stop the spread of COVID-19. It has made people losing valuable connection which leads to some psychological intrusions for instance panic, attack depression, loneliness, and other mental problems that may impact individuals and society as a whole. Furthermore, the situation has become more critical since it has also impacted world's economy. There is big shift in world economic market and share market have suffered crashes day by day because the limitation of activities and mobilities (Singh & Singh, 2020). The businesses were shut down for example restaurants, supermarkets, hotels, malls, or multinational businesses as a result of restriction policies during pandemic. One of the business which has been impacted by COVID-19 is Internationality fertility business, particularly surrogacy procedure. Surrogacy indeed has become a new global trend in reproduction field along with its pros and cons surrounding the practice. Criticisms and challenges cannot be avoid from this practice in many parts of the world. The

challenges have become clearer and problematic during this pandemic, especially for transnational surrogacy since this pandemic has marked a huge impacts and changes in almost every countries in the world.

The Challenges of Travelling Ban

There are few reasons that make couples choosing transnational surrogacy as alternative to have offspring for example because transnational surrogacy service considered to be more affordable and even in some cases, the expenses can be reimbursed by the patient's insurance, specific care may only be found overseas, personal preferences for example race, ethnicity, gender of the newborn can be chosen through the procedure overseas, and also its legality matter so majority couples decide to conduct the procedure overseas since their destination legalizes such practice (Deharo & Madanamoothoo, 2020). These reasons what make transnational surrogacy becomes so popular among its parties. However due to COVID-19, the journey of couples to have a child through transnational surrogacy being obstructed since there are many restriction policies during pandemic for example many countries decide to close their borders. This borders closure was taken by many countries in order to stop the spread of COVID-19. The actions taken by each countries varied and gradually taken, from lockdown, area quarantine, self-quarantine, International flights ban, and also closure of borders by each countries in order to control the spread of virus. The closure of borders has effected the surrogacy procedure overseas. Due to overseas flights ban or entry restriction may worsen the situation for the couples since the surrogacy treatment becomes more inconvenience and ineffective. The couples receive no clues when the travel ban will be lifted, hence they must reschedule their flights to do the procedure with unclear time period due to many restriction policies that may be changed anytime. As a result, the couples could not visit their surrogates or even could not present

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during the birth of their longing newborn which led them to despair and frustration. This travel ban were shown by United States of America and Ukraine which known surrogacy-friendly countries decided to apply travel restrictions. USA decided to ban flights for both immigrants or non-immigrants to enter USA which made the intended parent unable to enter the country for doing surrogacy procedure and for some cases they must wait until the birth of the child first so they could re-apply their travel visa. Meanwhile, Ukraine took an action by laying out *anti-coronavirus policy* that brought consequences to limitation and entry ban into the country. which led hundreds of surrogate-born babies to wait their intended parents who came from many different countries such as UK, US, Germany, France etc (Deharo & Madanamoothoo, 2020). This closure of borders and flights ban made intended parents and their babies could not receive access to manage their required documents to return home or even meeting the babies. The intended parent must experience many obstacles in their surrogacy journey from mobility or reproductive obstacle such as the limitation of fertility care in the hospitals since the services have been focused for handling the COVID-19 cases (Keaney & Moll, 2020). As example Australia where COVID-19 policies turning IVF to be "*non-essential*" services in hospital services (Keaney & Moll, 2020). Furthermore the challenge faced by intended parent may relates surrogacy expenses. They must spend extra expenses from its original plan due to the longer period of surrogacy procedure during COVID-19. For example they must spend extra money for medical bills which become more expensive because the economic conditions during pandemic, insurances, legal consultation fees, extra fees for surrogate to replace her time and her earning, or other fees such as the intended parent's living cost in their destination country since they could not return home or they need to spend extra fees for clinic staffs or caregivers just in case the intended parent could

not visit their babies due to travel ban (Benshushan & Schenker, 1997). These obstacles have made the intended parent to experience such psychological effects. They have invested their emotion and time to undergo surrogacy procedure as their hope to have a child that they have been longing for. long time Their psychological state could be worsen since they must face many difficulties due to pandemic (Edelmann, 2004). The situation may be even harder and difficult for them if eventually they end up being "*childless parents*" since they could not meet their longing child and also they must be worried about their babies conditions who perhaps do not get proper care since they are under someone else's care such as surrogates, clinic staffs, or caregivers who do not receive proper and basic training (Goswami et al., 2021).

The Challenges for Surrogate Mother

A surrogate mother is probably the main actor who holds key role in succeeding surrogacy procedure as alternative for the couple to have a child. However, appears to be an angel and becomes an answer for those who have been longing for a child do not come without risks. It is because becoming a surrogate mother is such long and tough journey, even it is not surprising anyone when we hear from the media regarding the suffering and the pain that a surrogate mother must go through. Perhaps the suffering and the pain may be worsen during COVID-19 pandemic which apparently brings more challenges and risks for surrogate. Like any pregnancies in general, a surrogate mother carries the same risks that any pregnant woman carries. The higher risks she gets, the harder it takes for pregnant woman to make decision regarding her own health and the baby she carries. This difficult decision seems often to be faced by surrogate mother and it is more likely to put surrogate mother in harder situation since she must face the contract she created with intended parent especially when it comes to her own safety. It is necessary to be known that surrogate mother is faced by health



issues which may put her in danger both medical and psychological risks, or even legal problem and moral dilemma.

Medical risks faced by surrogate may not only be nausea, swelling on her body, backache, hypertension, diabetes, or in some extreme cases may lead to death. One of medical problems faced by surrogate during her pregnancy that may risk her health and safety is potential birth defect on the baby. Although it is mentioned that babies and infants to be at lower risk of getting contaminated by COVID-19, in fact this virus is able to bring such risks on pregnancy. This COVID-19 contamination can bring higher risk of severe illness on infant who still unborn due to immature systems and smaller airways that may lead to birth defect (Deharo & Madanamoothoo, 2020). This higher risks put surrogate in such critical and difficult situation. In most birth defect cases, it leads to the decision by intended parent for terminating the pregnancy. This matter often being discussed in surrogacy arrangement between surrogate and intended parent where there is alignment of will from both sides. However, although being discussed already, sometimes there is a change of will from surrogate to not abort the baby and decides to keep the baby instead although it against intended parent's will. This may leads to lawsuit towards surrogate since her action may be considered as breach of contract and it is more likely to bring financial loss for her. However the lawsuit is not the only concern for her cause there is such health issues that she must face if she decides to undergo extensive surgeries for terminating her pregnancy. Beside birth defect, other pregnancy obstruction that probably can happen to surrogate is multiple pregnancies which is common for IVF procedure, particularly during pandemic which makes intended parent to desire more than one child in one pregnancy. The intended parent may do so in order to avoid such risks from travel ban and limited hospital services especially for surrogacy that will obstruct their journey to get

a child. Multiple pregnancies actually is not recommended giving consideration that it will bring medical risks for both surrogate and the baby she is carrying. The transfer of multiple embryos that leads to multiple pregnancies brings such medical consequences such as preterm labour, low birth weight for the babies that will affect the babies for instance birth defect, diabetes, placental problem, and the possibility of caesarean (Deharo & Madanamoothoo, 2020) and this condition is more likely to be worsen due to the limitation of hospital services for IVF and surrogacy which makes surrogate unable to receive proper medical treatments.

Other than higher medical risks due to pandemic, surrogate also must endure such heavy moral dilemma which may affects psychological state. Surrogacy brings huge moral burden for surrogate when she is often treated as mere commodity which leads surrogate to feel losing her dignitas a woman. Surrogate must experience losing her rights such as freedom and also negative stigma from her society (Wertheimer, 2021). Her psychological state will be more affected when she faces such confusion and dilemma regarding her relationship with the baby she is carrying. The surrogate must neglect her maternal feeling towards the baby since the connection she has for the baby is beyond physical connection, but there seems to be emotional connection between them (Del Savio & Cavaliere, 2016). Knowing the psychological damages the surrogate must face, therefore it is highly recommended for having psychology counseling for the surrogate. This had ever been recommended by NASM Group, a group of former surrogates who suggested counseling duty for surrogate since the contract being made until six months after giving birth (Reame, 1991). However the accompaniment should not only be from doctors or psychologists but also intended parent's presence and support is highly needed by surrogate since they are in reproductive journey together. This is often

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being included in surrogacy arrangement where there is obligation from intended parent for engaging such good communication and good relationship with surrogate by visiting her periodically as one of the examples. However, this is may not be easy due to COVID-19 pandemic. This pandemic creates many policies which may impact surrogacy procedure for instance lockdown or travel ban for both domestic and international travel that makes it hard for surrogate to get accompaniment from doctor, psychologist or even intended parent because they cannot meet in person, even after the birth of the baby. This makes many of the surrogate babies have to wait their intended parent. As an example, there were approximately 500 surrogacy babies being abandoned in Ukraine due to pandemic policies (Fronek & Rotabi, 2020). As a result, it is not seldom that surrogate-born baby must be placed under supervision and care of hospital, caregiver, or even surrogate herself. Surrogate who is obligated to take care of the baby may bring emotional damage since there will be strong emotional attachment that may be created. This matter will be worrisome since it potentially creates inner conflict for surrogate for keeping the baby. As a consequence there will be legal dispute between surrogate and intended parent regarding custody right battle just like Baby M case which took public attention widely. This legal dispute will only increase psychological burden for the surrogate since this legal dispute is more likely to be last longer.

The Challenges for Surrogate-Born Child

This COVID-19 pandemic has challenged many actors in surrogacy practice from intended parent, surrogate, and even surrogate-born child. It seems that the main victim of this whole situation is actually the babies themselves. This COVID-19 appears to bring significant impact in surrogacy which may leads to put the babies into jeopardy, as a result of many COVID-19 policies such as lockdown or travel ban for both domestic and overseas, even

the limitation of IVF particularly surrogacy service in hospitals since it is considered to be non-essential services that makes the procedure being obstructed. These travel policies bring obstacles for intended parent to meet their newborn. It would impact the surrogacy babies for sure since these innocent babies must wait their intended parent for unclear period of time after their birth, hence they are neglected just like the 500 surrogacy babies in Ukraine who were neglected since they could not meet their intended parent after their birth due to overseas travel ban during COVID-19 (Fronek & Rotabi, 2020). This condition would only put the babies in "stateless" or left without clear nationality status. It contradicts the provision of Universal Declaration of Human Right article 15 (1) and CRC article 7 which provide that every child which is born into this world entitled with their citizenship status or their nationality. This stateless condition is the condition where the born child do not get recognize as citizen according to their national laws. This often becomes problematic of surrogacy, particularly for transnational surrogacy where each countries have their own laws. As an example, in most cases regarding transnational surrogacy, the intended parent may not be considered as the rightful parents of the child (Deharo & Madanamoothoo, 2020). As a result, a favor by intended parent to receive citizenship status for their surrogacy babies cannot be granted by their country so it put the babies into critical situation since their birth. For instance unable to receive their fundamental rights like citizenship status or nationality therefore the intended parent cannot bring them home since there is no passport nor citizenship status. The difficulty of receiving passport had ever been shown by Baby Manji case where Ikufumi Yamada found himself in such difficulties to get the passport for Baby Manji since both Japan and India rejected to grant passport for Baby Manji according to both national laws. Japan requires the birth on Japan's land and Japan only recognizes the



rightful mother as the one who gives birth to the child, meanwhile according to the national law of India, the citizenship of child is based on the mother's nationality. Beside the national laws, another problems may be created by mobility issue faced by intended parent. This mobility obstacle may obstructs the intended parent to administer any required documents for taking their babies home. This obstacle leads the babies to be neglected in surrogacy destination countries. It would makes the babies as if they are parentless since the absence of their parents. Therefore in most cases, the surrogate-born child who being neglected must be under supervision and care from hospitals, caregivers, even surrogates . It becomes concern since the situation will affect the development of the babies especially their psychological state, or the concern regarding emotional attachment between the surrogate and the baby which may leads the surrogate to change her mind and unwilling to surrender the baby to the intended parent if the baby under the care of surrogate for long period (Edelmann, 2004) that leads to legal dispute between surrogate and intended parent.

CONCLUSION

Surrogacy may appears as an answer from despair of those couples who have been longing for offspring presence, but in reality the presence of surrogacy brings some problems for instance morality issue and legality issue. Its presence may be considered as immoral and exploitative for placing woman as commodity for being surrogate. Furthermore, some legal issues appear as a result of such practice for instance the surrogate-born child's legal status, their nationality, parentage rights, custody rights which can lead to legal dispute for its parties. The dark side of surrogacy may be worsen due to COVID-19 pandemic which increases its challenges and its risks. The challenges and risks may includes some regulations during pandemic such as lockdown and travel ban that make it more difficult to conduct surrogacy practice may lead to

jeopardize its parties which includes intended parent, surrogate, and surrogate-born child, not only physical risk but it also may impacts some psychological damages for its parties. For example a medical damage for the surrogate due to medical disruption during pregnancy, or some abandoned or neglected- babies or "stateless babies" which need to be faced by surrogate-born children, or even may leads to place them in such difficult legal battle.

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