



Pandora's Box in Surrogacy: The Paradox of Legal Altruism and the Threat of Human Trafficking

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Abstract: The practice of surrogacy is now an international debate, colored by the tension between the legal policies that regulate this practice and the potential for exploitation and human trafficking. Some countries, such as Italy, prohibit this practice with severe sanctions, while others, such as India and Thailand, legalize it with certain restrictions, prioritizing the altruistic dimension. This article explores the paradox contained in surrogacy, considering it as a Pandora's box that contains both hope and serious potential risks, especially related to the threat of exploitation and human trafficking. This study adopts a normative legal approach by comparing the regulation of surrogacy in countries that allow and prohibit this practice. The methodology used is a socio-conceptual approach, where data is collected through a review of literature and related international conventions, and analyzed with a teleological interpretation to understand the purpose of the rules and the developing legal phenomena. The research findings show that although surrogacy can offer reproductive solutions, this practice often gives rise to ethical and legal dilemmas that threaten the human rights of both surrogate mothers and the children born. Therefore, it is important to find a middle ground that ensures the protection of all parties involved, both those who support or oppose this practice.

Keywords: Womb Rental, Altruism, Exploitation, Law, Human Trafficking, Surrogacy, Legal Protection

1. Introduction

The practice of womb rental has recently become rampant. Various media in various countries are busy photographing the practice of womb rental and the problems surrounding it. (Solihin, 2021), (Febrianti & Budiarsih, 2022). The case faced by two gay couples in Italy, for example, they had just finished renting a woman's womb in the United States to give birth to their first son. It was recorded that until March 2025, they did not dare to return to Italy because they would be threatened with a criminal penalty equivalent to the crime of pedophilia, terrorism, and war crimes, namely carrying out the practice of renting a womb. The Italian government is suspected of having just passed a regulation related to the prohibition of the practice of renting a womb (Fitraya, 2024), (FAHMI AHMAD, 2024). A more or less similar case occurred with a gay couple who had two twins from renting a woman's womb in Cyprus. This gay couple came from the United Kingdom (UK) and until today they are still stuck in Cyprus because of problems with processing their children's citizenship in their passports. (Noble, 2024), (Yuniarti, nd).

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Based on the two examples above, this article clearly attempts to explore further-what actually happens in the theoretical and practical debates related to the implementation of womb rental and the middle ground of the tensions that result. This study argues that the practice of womb rental contains many dilemmas like a Pandora's box that contains both hope and problems that cannot be underestimated like the practice of human trafficking (ROSADA, 2023), (Azizi, 2023). This opinion differs from most scholars who support or reject the practice of womb rental. This opinion seeks to mediate the tension by ensuring that every policy, whether it allows or completely prohibits this practice, has the awareness and responsibility to provide protection for both the basic human right to reproduce offspring and protect the basic rights of those involved in the legalized womb rental practice rather than just showing the advantages and disadvantages (Hibino, 2023) or the consequences caused. (Wibowo, 2023), (Mira, 2024).

2. Materials and Methods

This study is a normative legal study by comparing legal regulations related to uterine rental between countries that prohibit and allow the practice of uterine rental. The approach used is a conceptual social approach. Data were collected by reviewing primary data sources such as international conventions and secondary data in the form of research from literature related to uterine rental. (Maysura, Amboro, & Nurlaily, 2025) The collected data is then analyzed by conducting a teleological interpretation or interpretation aimed at finding the purpose of the rules and legal phenomena that are developing. (Muhaimin, 2020) Finally, the data that has been analyzed is then concluded.

3. Results and Discussion

It is not clear when the main origin of womb rental was known among the community, however, several scholars have at least tried to record the long history of the practice of womb rental which is currently widely found. Albertus Purnomo in his book entitled *Torah Tuhan Sempurna: Kumpulan Essai tentang Torah* explains that the practice of borrowing a womb has at least been told in the Bible, precisely in the time of Pharaoh in 2000 BC, when Abraham, who was married to Sarah, was not blessed with children. Sarah, who had a slave girl named Hagar, asked her husband Abraham to approach the slave so that Sarah could have a child from her slave Hagar. This tradition has been ingrained in the Mesopotamia region if the master is infertile then he can use his slave to bear children for him. Meanwhile, during the Babylonian era around 1800 BC, King Hammurabi had created Hammurabi's Code of Law, the oldest written collection of laws that ever existed. (Albertus Purnomo, Jehadut, & Tjen, 2023). Hammurabi's Law also regulates the matter of womb rent as written: "a childless wife might give her husband a maid (who was no wife) to bear him children, who were reckoned hers." or a wife who does not have children can give her husband a maid (who is not his wife) to bear his children, who are considered hers. (Friends, 2016).

In 1970, the modern womb rental practice began to be introduced, John Hunter, the inventor of artificial insemination with George's Hospital London, first practiced womb lending by injecting a husband's semen into another woman which ended with the woman's pregnancy. In 1976, the legalized womb rental agreement was first introduced by an American lawyer named Noel Keane. He made this legal womb rental agreement to provide protection for his client, a woman who rented her womb traditionally to get compensation for her services. Keane is believed to have helped more than 600 women in this womb rental contract (Pawlak, Sami, & Thomas, 2025).

There are many countries that prohibit the practice of womb rental, but many also legalize it. Countries that legalize the practice of womb rental even provide womb rental practices for foreigners outside their citizens. (Nonell and Rodriguez, 2025). In Ni-

geria, the practice of womb rent is still carried out traditionally where women who cannot have children will ask their husbands to marry another woman. The woman can be impregnated by her husband or someone else so that the child will be the child of the first wife. Uniquely, women whose husbands have died but want to have children are allowed to marry another woman to bear children for them as a surrogate mother. While elderly couples who want to have children, the wife is allowed to marry another woman to provide offspring for them and the woman is impregnated by their closest relatives (Agugua & Agu, 2025).

India is one of the countries that is quite serious about regulating the practice of womb rental. The Indian government regulates the practice of womb rental through the Womb Rental Act which was legalized in 2021. This regulation emphasizes that the Indian government only allows womb rental in altruistic cases, namely that women who lend their wombs will not benefit from this practice other than receiving medical expenses and insurance during pregnancy. (Dogra & Chawla, 2021). With this new regulation, the government is trying to prevent the practice of commercialization and exploitation of women that used to be rampant. A similar case occurred in Thailand, the Thai government has made new regulations regarding the practice of legal womb rental only as an altruistic activity. (Charan, Xin, Zezhuang, & Yao, 2020). Through the regulation of The Protection of Children Born from Assisted Reproductive Technologies Act, only female couples with medical conditions that cannot have children can have a surrogate mother and must be from their closest family including being prohibited from providing payment outside of the necessary costs. (Buchitchon, 2016).

In a country that is considered developed, the practice of womb rental has better facilities compared to developing countries. In Canada, for example, the practice of surrogacy gets more serious attention. Several agencies that directly connect prospective parents and surrogate mothers who rent their wombs work professionally. These agencies are responsive in meeting the needs of both parties where when the surrogate mother needs emotional support they can provide full support when the prospective parents of the child cannot do so for 24 hours. Dubbed as a country that is friendly to surrogate mothers, not only health facilities, California is the country that has the most laws related to womb rentals (Carsley, 2024). Protection for children born from surrogacy also gets special arrangements. In many cases of disputes over child rights, the courts in California really take into account the decision that is in the best interests of the child. The cost of the surrogate mother process in California ranges from \$70,000 to \$120,000 or equivalent to one billion fifty million to one billion eight hundred million, while the surrogate mother will receive around \$2,700 per month or Rp. 40,500,000/month (Dorfman, 2016). After a positive pregnancy is confirmed, those numbers are added to the cost of medical treatment, as well as insurance, clothing, transportation, and other things that the pregnant mother may need during the nine months of pregnancy. As another comparison, in Georgia the compensation to the surrogate mother is around \$10,000-\$30,000 dollars or equivalent to Rp. 140,000,000 - Rp. 150,000,000 rupiah (Aznar & Martínez Peris, 2019).

3.1 *Legal Altruism and Ethical Dimensions in Surrogacy Practice*

Altruism in the Indonesian dictionary means a trait that prioritizes the interests of others over oneself. In the case of the practice of womb rental or surrogate motherhood, this dimension of altruism is the basis for many countries to allow womb rental. In India, for example, after a long time involved in the commercialization of womb rental practices (Jana & Kotiswaran, 2025) the government made the latest regulations on the prohibition of the commercialization of womb rental and only allows womb rental for altruistic purposes in family groups. This policy is marked by the creation of the Surrogacy (Regulation) Bill 2016 and most recently the Lower House as the Surrogacy (Regulation) Bill of 2019. (Hibino, 2023) In practice, womb rental supported by the spirit of altruism makes

the state establish a policy that only allows the provision of a certain amount of money for the costs required for childbirth and health insurance. Meanwhile, paying for the fatigue and services of bearing a child from prospective parents is prohibited. (Hibino, 2023)

This legal altruism is driven by the motivation of women who feel a calling and self-awareness to become surrogate mothers and help others. The attitude of altruism in women who voluntarily bear children for others tends to be driven by intrinsic motivation. The feeling of causality that results after carrying out an act of sincere concern for others has an impact on self-satisfaction and pleasure after being a generous person. Psychologically, those who have an altruistic attitude tend to want to give a crown of happiness, well-being or pleasure to others even at the expense of themselves. (Bălan, 2024) In a recent study, in the United States, for example, women who voluntarily become surrogate mothers referred to their attitude as a “labor of love” or “working for love”. They see themselves as givers of the gift of life and create positive power for others. What is even more surprising is that Lopez found in his research that those who were willing to become surrogate mothers out of altruism had good backgrounds starting with quality education to doctoral level, working as career women, and having good incomes. (Martínez-López & Munuera-Gómez, 2024)

Countries that implement legal altruism or where the law validates a woman's empathy and kindness to give a child to a couple who are unable to have children are in line with the spirit of legal positivism. (Campbell, 2006) Auguste Comte believed that in order to create a society with good order and balance, laws were created to support the value of altruism—that is, they must prioritize the common welfare and not just individual profit. Thus, Comte believed that good law is a law that supports the common interest in order to create a just and harmonious society. (Prassadi et al., 2023) This view is not much different from Darwin who saw altruism as a natural and very necessary behavior in social life. Altruism is believed to be a deep cultural value that fosters mutual cooperation, cooperation, and the development of communal life. (Her, 2024).

The dimension of legal altruism also means that the state is present to provide protection amidst the developing social phenomena, especially protecting its citizens who have acted altruistically to help others. (Kay & Granfield, 2023) In this case, legal altruism towards the practice of renting a womb aims to ensure that the good intentions of the parties involved can be protected as equal legal subjects and ensure that there is no potential for violence, discrimination, persecution, or abuse of rights.

3.2 Commercialization of Women, Children, and the Threat of Criminal Acts of Human Trafficking

Commercialization of womb rental is a controversial term that is also commonly heard. Commercial womb rental means that the surrogate mother receives compensation outside of medical expenses and other childbirth needs. (Attawet et al., 2024) With the increasing commercialization of womb rental practices, another problem that has increased is that the position of surrogate mothers and their babies has become equivalent to a trade commodity that has entered the international market. (Shastra, 2024) At this point, poor women are exploited for the sake of rich couples. The imbalance in status and asymmetric position between wealthy prospective adoptive parents and poor surrogate mothers worsens the situation where womb rental practices occur. (Law et al., 2025) Commercial womb rental is considered different from altruistic womb rental, where the main goal of this practice is to obtain economic benefits. However, Bracken in his research found that countries that implement altruistic womb rental are not entirely altruistic. They still allow the provision of surrogate mother service payments through the term compensation to soften the term paying for pregnancy services. (Law et al., 2025).

Commercialization of womb rental opens the floodgates of exploitation of women. (Rudrappa, 2018) Many women experience oppression and violence during the com-

mercial womb rental practice. (Attawet et al., 2024) Women who become pregnant after renting their wombs cannot escape the medical risks that threaten their lives. Their pregnancies are always monitored and if necessary they must receive various supplement injections, preconception immunizations, and obey all the prohibitions given because prospective adoptive parents want the quality of their babies to be the best and healthiest. (Brandão & Garrido, 2022) These women are also forced to eat excessively in order to give birth to babies of a more desirable and larger weight. It is not uncommon for the embryos chosen to be implanted into surrogate mothers to be embryos that are not safe from disease, this causes abortions to be carried out at any time including cesarean sections. In developing countries, they are also exploited to receive wages at a lower price than the payment for womb rental practices in developed countries. (Wilkinson, 2016) In addition, the children who are born are not always well-fed. If the child born is a disabled child or a child with an unwanted gender, the children will be thrown into an orphanage. (Gatson et al., 2022) Meanwhile, children who are fortunate enough are like goods that must be handed over after payment is made, the child must be given to their prospective parents.

Not only the exploitation of women and children, the possibility of being trapped in the practice of womb rental into human trafficking has also long been happening. The law cannot always protect womb rental practices that are within its jurisdiction. Moreover, in illegal womb rental practices that are clearly contradictory and carried out by individuals seeking profit (commercialization of womb rental). For example, the case experienced by three women from Thailand who were tempted by the offer of becoming surrogate mothers who rented their wombs with a compensation mode of twelve million or 25,000 baht per month. They were flown to Georgia and gathered with 70 other Thai women in one house. Instead of being in accordance with the advertisement they received, they faced threats to be injected with hormones, drugged, and have their eggs taken to be traded again. These women are confirmed to have become victims of human trafficking (Laraswati Ariadne Anwar, 2024) Another similar case is the practice of womb rental in Cambodia. Thirteen pregnant women of Filipino nationality were accused of acting illegally as surrogate mothers in Cambodia and were threatened with imprisonment after they gave birth. The Cambodian government believes that the women had colluded with the surrogate mother organizers to act as surrogate mothers and then sell their babies for money. Ultimately, the thirteen Filipino women are still considered victims of human trafficking (TPPO). (FT, 2024).

As explained above, the practice of renting a womb can turn into a crime of human trafficking if it has fulfilled the elements of transfer or control over a person in a vulnerable condition who is exploited and even experiences sexual exploitation and forced labor. This is in line with the text of article 3 of the UN Convention on Preventing, Suppressing and Punishing Trafficking in Persons, Especially Women and Children:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;” (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, nd)

This is further clarified by the Additional Protocol to the Convention on Human Rights and Biomedicine on Transplantation of Organs and Tissues of Human Origin, article 21, which states that the human body and its parts shall not be the object of trade for financial gain: “The human body and its parts shall not, as such, give rise to financial gain

or comparable advantage." Thus, conceiving and giving birth to a baby to be given to a partner or someone for economic gain alone is undignified behavior because it has mortgaged the basic human right not to be exploited, including the dignity of a human child who has the right to live as a happy child, not to be traded.

3.3 Demands for Reconciliation Amid Tensions

Many scholars have tried to answer the tension of whether to maintain the humanitarian values in womb rental or prohibit it. Various considerations are presented to strengthen the arguments that are built even by using interpretations of religious doctrine. Viqria, for example, states that the practice of womb rental is contrary to Islamic law, not only because it inserts the sperm of a non-mahram man into the womb of a foreign woman which is considered adultery but also the problem of unclear mixing of lineages due to the pregnancy process which includes medical practices such as inserting frozen sperm of a deceased husband raises further legal problems. (Viqria, 2022).

Each country that allows or prohibits the practice of surrogacy in their jurisdiction also has its own considerations. Austria, Germany, Italy, Finland, Hungary, Iceland, and Pakistan absolutely prohibit the practice of surrogacy in any form, whether altruistic or commercial. Severe sanctions will be given to doctors who are known to assist in this process, including the surrogate mother. These countries oppose human trafficking and the elimination of human dignity which is a human right. Countries that legalize and allow surrogacy such as Russia, India, Thailand, and Greece believe that by implementing strict prohibitions will only encourage their citizens to carry out similar practices abroad. (Isses & 2019, nd)

When reanalyzed, the demand for reconciliation between the existing tensions is indeed urgent. However, the debate in the theoretical and ethical levels regarding surrogacy will never end, as well as in the practical level. It will continue to develop dynamically along with the social phenomena that occur. As a result, the middle way to reconcile this tension is to ensure that countries that absolutely prohibit the practice of surrogacy are required to ensure that every citizen has the right to have a family including the child they dream of because this is an identity and characteristic of human dignity. Meanwhile, countries that allow the practice of surrogacy are required to provide protection to all parties including surrogate mothers and children born so as not to cause recurring problems. It is important for both countries to provide social education to all groups such as the risks that must be borne.

4. Conclusions

Renting a womb is like a Pandora's box that contains hope but also has the potential to bring misfortune, which is an endless debate. The debate among scholars, both pro and con, as well as at the application level in various countries, will not reach a peak of agreement. The middle way to reconcile this debate is that each party must ensure the provision of certainty and legal protection for surrogate mothers and the resulting children in countries that allow the practice of renting a womb, either altruistically or commercially. Countries that absolutely prohibit the practice of renting a womb must also ensure that the state is obliged to provide protection and legal certainty for basic human rights to have children and have a family by providing alternative mechanisms other than the practice of renting a womb.

The results of this study emphasize the importance of policies that not only protect the rights of couples who want to have children, but also prevent the exploitation of women and human trafficking through surrogacy. The government should implement strict regulations to limit or ban commercial surrogacy to prevent the exploitation of women, especially those from economically weak groups. Countries such as India and

Thailand have implemented policies that only allow altruistic surrogacy within close family circles.

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