



Analysis Of Independence Law Of Children Born From Rent Of Women In The Study Of Civil Law

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ABSTRACT

Ideally in marriage is the fulfillment of the objectives of the marriage itself, one of which is to obtain legal offspring. Children are the most beautiful gift from God Almighty which is highly coveted by all married couples. But in reality today, not all couples can form a family or give birth to children. This can be due to several things, such as a disease that causes a married couple to be unable to produce offspring. This of course can cause despair for married couples who want to have children. Many married couples are willing to do anything to have a child, not even a few of them adopt children. So with such circumstances, a husband and wife's desire arises to perform artificial insemination by borrowing another woman's womb, then after success they will get a baby or child from the artificial insemination. The surrogate mother program with the correct procedures and the uterus being used for economic needs is very unethical. Although this surrogate mother is quite promising in overcoming several cases of infertility, but because this process is still constrained by laws and regulations due to the absence of legal rules that clearly regulate the practice of surrogate mothers, this of course creates legal uncertainty so that the practice of surrogate mothers it is still questionable what its legal status is. The purpose of this study is to examine the Legal Status of Inheritance and Lineage of Surrogate Mothers in the Civil Law Perspective and to analyze the legal protection of children resulting from the practice of Surrogate Mothers in the Civil Law View. This type of research is included in the category of normative legal research, because in its analysis it uses library materials as a source of research data.

ABSTRAK

Idealnya dalam perkawinan adalah terpenuhinya tujuan-tujuan dilangsungkannya perkawinan itu sendiri yang salah satunya adalah memperoleh keturunan yang sah, Anak merupakan anugerah terindah dari Tuhan Yang Maha Esa yang sangat didambakan oleh semua pasangan suami istri. Namun pada kenyataannya sekarang, tidak semua pasangan dapat membentuk sebuah keluarga atau melahirkan anak. Hal ini dapat dikarenakan beberapa hal seperti adanya penyakit yang mengakibatkan pasangan suami istri tidak dapat menghasilkan keturunan. Hal tersebut tentu saja dapat menimbulkan keputusan bagi pasangan suami istri yang ingin mempunyai keturunan. Banyak pasangan suami istri yang rela melakukan apapun demi memperoleh seorang anak, bahkan tidak sedikit dari mereka sampai mengadopsi anak. Sehingga dengan keadaan yang demikian, timbul keinginan dari pasangan suami istri untuk melakukan inseminasi buatan dengan meminjam rahim wanita lain, kemudian setelah berhasil mereka akan mendapatkan bayi atau anak dari hasil inseminasi buatan tersebut. Program surrogate mother dengan prosedur-prosedur yang benar maupun rahim dimanfaatkan untuk kebutuhan ekonomis sangatlah tidak etis. Meskipun surrogate mother ini cukup menjanjikan terhadap penanggulangan beberapa kasus infertilitas, tetapi karena proses ini masih terkendala pada peraturan perundang-undangan yang disebabkan belum adanya aturan hukum yang secara jelas mengatur tentang praktek surrogate mother, hal tersebut tentu saja menimbulkan ketidakpastian hukum sehingga praktek surrogate mother ini masih dipertanyakan bagaimana status hukumnya. Tujuan penelitian ini adalah untuk mengkaji Status Hukum Kewarisan dan Nasab Anak Hasil Sewa Rahim (Surrogate Mother) dalam Perspektif Hukum Perdata dan untuk menganalisis Perlindungan hukum terhadap anak hasil praktek Surrogate Mother dalam Pandangan Hukum Perdata. jenis penelitian masuk ke dalam katagori penelitian hukum normatif, karena

dalam analisisnya menggunakan bahan-bahan kepustakaan sebagai sumber data penelitian..

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I. INTRODUCTION

Ideally in marriage is the fulfillment of the objectives of the marriage itself, one of which is to obtain legal offspring, meaning that the lineage is clear, both seen from Islamic law and in positive law. The presence of a child in a family will strengthen the relationship between the two husbands and wives concerned, there will be feelings of mutual love that are more than a husband to his wife, when the wife can give a child or offspring, and vice versa. The presence of children in a family can be used as a separate consideration for married couples when something unexpected happens, for example divorce and so on. (Choirul Anam, 2010)

Article 1 of Law Number 1 of 1974 concerning Marriage states that "marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Godhead". Meanwhile, the purpose of marriage is to form a happy and eternal family. The family in this sense is a unit consisting of father, mother, and children. (R. Soetojo Prawirohamidjojo, 1998)

Children are the most beautiful gift from God Almighty which is highly coveted by all married couples. But in reality today, not all couples can form a family or give birth to children. This can be due to several things, such as a disease that causes a married couple to be unable to produce offspring. This of course can cause despair for married couples who want to have children. Many married couples are willing to do anything to have a child, not even a few of them adopt children. So with such a situation, a husband and wife desire arises to perform artificial insemination by borrowing another woman's womb, then after success they will get a baby or child from the artificial insemination.

Another problem arose, namely a situation where the wife could not conceive because her uterus was forced to be removed due to suffering from certain diseases, but this husband and wife desperately yearned for a child. There is one method of developing the IVF program, if the wife cannot conceive but the eggs are still good, then there is still the possibility that the couple will have offspring, namely by fertilization outside the wife's womb and implanting the eggs and sperm into another woman's womb. with an agreement in which the woman must be willing to conceive, give birth, and give back her baby in exchange for a number of materials. This is what is called a surrogate mother.

The surrogate mother program with the correct procedures and the uterus being used for economic needs is very unethical. Although this surrogate mother is quite promising in overcoming several cases of infertility, but because this process is still constrained by laws and regulations due to the absence of legal rules that clearly regulate the practice of surrogate mothers, this of course creates legal uncertainty so that the practice of surrogate mothers it is still questionable what its legal status is.

However, in practice, surrogate mother has become another alternative for some couples who have not or cannot have children through IVF, namely by renting the womb of another woman who is not his wife. Surrogate mothers have not specifically been regulated in Indonesian positive law, but

if you use the argumentum a contrario method (reverse legal interpretation), then we can apply Article 1548 of the Civil Code and Article 1320 of the Civil Code. The rental of the womb is closely related to the lease agreement. According to Article 1313 of the Civil Code which states that "an agreement is an act in which a person binds himself to one or more other people".

The birth of an agreement, if there are two or more people The legal basis for the uterine rental agreement has not been regulated in detail in the legislation, but juridically there are several articles in the Civil Code that can be used to examine the substance of the uterine rental agreement, namely Article 1320. Civil Code. If it is related to the terms of the agreement according to Article 1320 of the Civil Code, there are several things that must be questioned.

In contract law, it adheres to the principle of freedom of contract. This is also regulated in Article 1338 which states that "all agreements made legally valid as law for those who make them". This means that the parties to an agreement are free to determine the material or the contents of the agreement. Apart from being seen through the laws and regulations, the issue regarding this uterine rental agreement must also be viewed from an ethical and religious perspective. In Indonesia, where most of the population adheres to Islam, the teachings of Islam also explain that Islam does not recognize fetal care for other women. In addition, the birth of a baby as a result of a uterine rental agreement will cause problems such as determining the lineage of the child and who is the real mother so that it becomes problematic in demanding the inheritance rights of children outside of marriage and biological outcomes considering the need for blood ties in terms of inheritance.

Based on the description of the child resulting from a surrogate mother, it should be a problem in this study considering that a woman carries a fetus outside of a legal marriage even though the child conceived is a child or a legitimate fetus from a husband and wife marriage. So this research was chosen, as the title in this study which made the authors interested in further researching and discussing this matter, namely: "Analysis of Inheritance Law on Children Born from Uterus Rental Results in Civil Law Studies".

II. RESEARCH METHOD

Types of research

From the background and problem formulation described above, this type of research is included in the category of legal research because the analysis uses materials. library as a source of research data. Normative research here on the comparison of Islamic law and positive law regarding the inheritance status of children resulting from a womb rental. This research is classified as literature research or literature. In legal research, this type is included in the category of normative legal research or library law research, therefore in this study library materials are basic data which in research science is classified as secondary data.

Data Sources

The data source is the object from which the data was obtained because this research is classified as library research, so the overall data is secondary data consisting of legal materials. Therefore, this research is a normative research in which library materials is the basis of (science) research classified as secondary data.

a. Primary Material

This study obtained from original sources regarding the subject matter that is the discussion in this author. Data sources can be obtained through: Civil Law Code, Law Number 1 of 1974 concerning Marriage, Law no. 4 of 1979 concerning General Welfare, Law Number 23 of 2002 concerning Child Protection.

b. Secondary Material

Secondary materials are data obtained from library materials contains information about primary materials by conducting a study bibliography regarding expected data such as books, scientific works, journals, articles, and others.

c. Data Collection Techniques

In a study, data collection is one of the stages in the research process that absolutely must be done. Thus, this study aims to obtain secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. The secondary data in this study were obtained through:

- a) Literature study, namely by using a study of legislation, and legal books related to the problems to be studied in this research, also through the internet, magazines, and legal dictionaries related to the problems to be studied in this research.
- b) Documentation study is to find and collect materials in the form of literature and official government documents in the form of court decisions and other documents that can support this research.

d. Data Analysis Techniques

The analysis carried out in this thesis research is through manager of legal materials that have been collected in advance then arranged in a systematic and directed manner. Steps in conducting legal research above is an analysis of materials law against a legal research that has used the type normative juridical research. The purpose of the analysis of the legal material is to find answers to the main problems discussed. In the analysis related to the problem of this thesis by analyzing books, scientific works, newspapers, articles, magazines, and others regarding the views related to this thesis. The last one is the result of the author's analysis regarding the guardianship status of the child resulting from a womb rental in the view of Islamic law and positive law.

III. RESULT AND DISCUSSION

Legal Status of Child Inheritance Resulting from Uterus Lease Agreement in Civil Law Study

In the view of the Civil Code, the position of children in inheritance has a top priority. However, in the Civil Code there are no provisions that specifically regulate the inheritance rights of children born through blind insemination by means of uterine rental, but only regulates the inheritance rights of children born naturally, such as the inheritance rights of legitimate children, and the inheritance rights of children outside of wedlock. recognized. The inheritance system in Civil Law regarding the child's position is called the absolute part or legitime portie which is stated in Article 913 of the Civil Code "absolute part or legitime portie, is a part of the inheritance that must be given to the heirs in a straight line according to the law. the law, which part of the deceased is not allowed to stipulate something, either as a gift between the living, or as a will". There are 4 (four) kinds of child status regulated in Civil Law.

- a. Legitimate child is a child born in a legal marriage who has a husband as his father as stated in Article 250 of the Civil Code. Then based on Article 42 of Law no. 1 of 1974 concerning Marriage "A legitimate child is a child born in or as a result of a legal marriage".
- b. Recognized illegitimate children, namely acknowledgment of children against illegitimate children, this acknowledgment can be made by the father or mother with the intention that there is a legal relationship between the child and his parents as stated in Article 280 of the Civil Code.
- c. Foster children, based on Article 1 point 10 of Law No. 23 of 2002 concerning Child Protection "Foster Children are children who are cared for by a person or institution to be given guidance, care, care, education, and health because their parents or one of the parents are not able to guarantee the child's growth and development naturally".
- d. Adopted children, based on Article 1 point 9 of Law No. 23 of 2002 concerning Child Protection "Adopted children are children whose rights are transferred from the family environment of their parents, legal guardians, or other people who are responsible for the care, education, and raise the child into the family environment of his adoptive parents based on a decision or court order".

What is meant by heirs are those who have rights to the property of the person who left the inheritance. Thus the heirs are relatives of the deceased who according to law there is a share of inheritance for the heirs, including children who under inheritance law are the main group. Basically, those who are entitled to become heirs are people who have blood relations with the heir and the wife/husband of the heir who is still alive when the testator dies, this is regulated in Article 832 of the Civil Code which reads "According to the law, those who are entitled to become heirs are family members. blood, both legal under the law and outside of marriage, and the husband or wife who has lived the longest, according to the following regulations. If the blood family and husband or wife who have lived the longest are not present, then all the inheritance becomes the property of the state, which is obliged to pay off the debts of the deceased person, as long as the price of the inheritance is sufficient for that." If the woman whose womb is rented is not bound in a legal marriage or does not have a husband, then the child's inheritance rights only relate to the pregnant mother. It is set in.

- a. Article 862 of the Civil Code which states "If the deceased leaves children out of wedlock who have been legally recognized according to law, the inheritance shall be divided in the manner as determined in the following articles";
- b. Civil Code Article 863 which states "If the deceased leaves a legal offspring or a husband or wife, then the children outside of wedlock inherit 1/3 of the share that they should receive if they were legitimate children. If the deceased does not leave offspring or husband or wife, but leaves a blood family, in the upward line (mother, father, grandmother, etc.) or brothers and sisters or their descendants, the recognized children inherit 1/2 of the inheritance. However, if there are only relatives in a more distant degree, then the recognized children get ."
- c. Article 864 of the Civil Code which states "The share of children out of wedlock must be given first. Then the remainder will be divided between the legal heirs.
- d. Civil Code Article 865 which states "If the deceased does not leave a legal heir according to the law, then the children outside of marriage inherit the inheritance entirely". The outline regarding the inheritance rights of a child born from a rented womb is determined from the legal status or position of the child based on the marital status of the woman who rents the womb (who gives birth to a child), namely: in a marriage bond or do not have a husband, then Law No. 1 of 1974 concerning Marriage Article 43 paragraph (1) stipulates "a child born outside of marriage only has a civil relationship with his mother and his mother's family"; 2. Legitimate child, if the status of the woman who rents out her womb is a woman who is in a legal marriage or has a husband, then Article 250 of the Civil Code which states "every child born or raised during marriage, gets the husband as his father. ", then Law No. 95 1 of 1974 concerning Marriage Article 42 "a legitimate child is a child born in or as a result of a legal marriage", then the child is entitled to a share of the inheritance in accordance with the applicable inheritance law from the husband of the woman who rents it out. her womb.

Status of children born from the results of a uterine rental agreement in the study of civil law

In positive Indonesian law, the status of children is divided into two (2) namely, legal children and outside children whose provisions are regulated in the Civil Code and Law Number 1 of 1974 as follows:

- a. Legal child, Article 42 of Law Number 1 of 1974: "A legitimate child is a child born in or as a result of a legal marriage." Article 250 of the Civil Code: "A child who is born or raised during a marriage, gets the husband as his father.
- b. Out-of-Marriage Children
Article 43 paragraph (1) of Law Number 1 of 1974: "Children born outside of marriage only have a civil relationship with their mother and their mother's family.

Based on the description above regarding the regulation on the status of the child, to determine the status of the child as a result of the uterine rental agreement, it is necessary to first look at the

marital status of the woman as a surrogate mother or surrogate mother because it is the surrogate mother who gave birth to the child:

- a. If the status of the surrogate mother or surrogate mother is already bound by a legal marriage relationship, then the child born from the practice of renting a womb is the legal child of the surrogate mother and her husband. Until the husband of the surrogate mother says no, based on Article 44 paragraph (1) of Law Number 1 of 1974 "a husband can deny the legality of the child born to his wife if he can prove that his wife has committed adultery and the child is the result of that adultery." And also based on Article 251, Article 252, and Article 253 of the Civil Code with a blood or DNA examination and a permanent court decision, so that the child changes his status to an illegitimate child.
- b. If the status of the surrogate mother or surrogate mother is still a girl or not yet married or has a widow status, then the child born from the womb rental agreement is an illegitimate child

IV. CONCLUSION

The position of the child resulting from the rental of a uterus when viewed from the legal aspects of the Civil Code, it can be concluded that the child resulting from the rental of a uterus in Indonesia is a legitimate child because the child only has a legal relationship with the mother who conceived him, and the child from the rental of the womb is a child. illegitimate with the ordering parent but as long as the biological father recognizes the child, the child's status becomes a legal child through recognition and is entitled to inherit from the parents who acknowledge it.

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