

RINGKASAN

KHAIRUNNISA : Analisis Hukum Terhadap Perjanjian Sewa Rahim (Surrogate Mother) Ditinjau Berdasarkan Perspektif Hukum Perdata Indonesia (Dr. Hamdani, S.H., LL.M dan Arif Rahman, S.H., M.H)
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Perkembangan teknologi di bidang kedokteran telah berhasil menciptakan program - program yang menjadi jawaban bagi pasangan suami istri yang kesulitan mendapatkan keturunan dengan cara alamiah. Salah satunya yaitu dengan menggunakan ibu pengganti atau yang kerap disebut perjanjian sewa rahim (*surrogate mother*). Namun seiring perkembangan zaman perjanjian sewa rahim mulai mengalami perubahan makna, juga menimbulkan banyak permasalahan sehingga menjadi topik perdebatan yang dikaitkan dengan keberadaan perempuan, etika, hukum, dan sosial.

Penelitian ini bertujuan untuk mengetahui dan menganalisis terkait keabsahan hukum perjanjian sewa rahim jika ditinjau berdasarkan perspektif hukum perdata Indonesia dan akibat - akibat yang ditimbulkan. Jenis penelitian yang digunakan adalah yuridis normatif dengan menggunakan pendekatan kualitatif dan pendekatan perundang - undangan. Penelitian ini bersifat deskriptif dengan bentuk penelitian preskriptif. Menggunakan teknik pengumpulan bahan hukum berupa tinjauan pustaka (*library research*) dan dianalisis menggunakan teknik analisis data kualitatif.

Hasil penelitian menunjukkan bahwa berdasarkan perspektif hukum perdata Indonesia, perjanjian sewa rahim tidak sah sebagai suatu perjanjian dan harus batal demi hukum karena tidak memenuhi syarat sah perjanjian sebagaimana diatur dalam ketentuan Pasal 1320 KUHPperdata. Hal ini dikarenakan rahim tidak bisa menjadi objek perjanjian serta bertentangan dengan Undang - Undang, ketertiban umum dan kesusilaan, sehingga tidak mungkin dilakukan di wilayah hukum Indonesia. Perjanjian sewa rahim juga menimbulkan akibat dan permasalahan hukum bagi para pihak yang terlibat, seperti ibu pengganti yang dicap buruk di masyarakat, tidak adanya kepastian status anak, serta terjadi konflik jika ibu pengganti tidak mau menyerahkan anak tersebut.

Disarankan kepada pemerintah agar merumuskan dan membuat peraturan perundang- undangan yang secara khusus dan tegas mengatur terkait larangan, sanksi dan antisipasi terhadap perjanjian sewa rahim di Indonesia. Diharapkan bagi masyarakat terkhususnya pasangan suami istri yang tidak bisa memiliki anak secara alamiah, maka dapat mengambil solusi dengan melakukan program bayi tabung, mengadopsi anak, atau tetap melanjutkan kehidupan rumah tangga dengan damai dan cinta meskipun tanpa seorang anak di dalamnya.

***Kata Kunci:* Perjanjian, Sewa Rahim, Peraturan Hukum**

SUMMARY

KHAIRUNNISA : *Legal Analysis of Surrogate Mother Rental Agreements
200510175* *Viewed Based on Perspective Indonesian Civil Law
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The advancement of technology in the medical field has successfully given rise to programs designed to address the challenges faced by married couples experiencing difficulties in conceiving naturally. One such solution involves the use of surrogate mothers, commonly referred to as surrogacy. However, this practice has undergone a transformation in its meaning and has given rise to numerous issues, making it a subject of confusion within the realms of ethics, law, and society.

This study seeks to assess and analyze the validity of the implementation of surrogacy arrangements from a legal perspective within the context of Indonesian law, examining the resulting consequences and proposing potential measures. The research employs a normative juridical approach, utilizing a qualitative approach and statutory framework. Descriptive and prescriptive research methods are employed. The technique employed involves gathering legal materials through a literature review (library research) and subsequently analyzing them using qualitative data analysis techniques.

Upon evaluating the research findings from the standpoint of Indonesian civil law, it becomes evident that surrogate mother agreements are deemed invalid and null and void. This conclusion is drawn based on the failure of such agreements to meet the legal conditions stipulated in Article 1320 of the Civil Code. This is because the uterus cannot be the object of an agreement and is contrary to law, public policy, and morality, making it impossible to do so within Indonesian jurisdiction. Furthermore, this invalidity gives rise to legal consequences and challenges for the involved parties. Surrogate mothers may face societal stigmatization, uncertainty surrounds the legal status of the child, and conflicts may arise if the surrogate mother refuses to relinquish custody of the child.

It is recommended that the government formulate comprehensive laws and regulations explicitly addressing the prohibitions, sanctions, and preventive measures related to surrogate mother agreements in Indonesia. This regulatory framework should aim to provide clarity and legal certainty while safeguarding the rights and well-being of all parties involved. It is strongly recommended that individuals, particularly married couples unable to conceive children naturally, explore options such as undergoing an IVF program, adopting a child, or nurturing their domestic life with peace and love even in the absence of children.

Keywords: *Agreement, Surrogate Mother, Legal Regulation*