International Journal of Educational Review, Law & Social Sciences (IJERLAS)

International Journal of Educational Review, Law And Social Sciences (IJERLAS Journal) | ISSN (e): 2808-487X
Volumes 5 No. 3 (2025)

THE URGENCY OF CRIMINALIZING SURROGATE MOTHER PRACTICES REVIEWED FROM INDONESIAN CRIMINAL LAW

Putri Carera Santi Romauli Simamora[1]*, Prija Djatmika [2], Setiawan Noerdajasakti[3]
[1]Master of Law program, Faculty of Law / Universitas Brawijaya, Malang
[2]Faculty of Law / Universitas Brawijaya, Malang
[3]The Agency for Legal and Judicial Policy Strategy and Training / Supreme Court of Indonesia, Jakarta
E-mail: putricsimamora@student.ub.ac.id[1]*, prija.djatmika@ub.ac.id[2], setiawan.sakti@ub.ac.id[3]

Received	: 17 March 2025	Published	: 02 May 2025
Revised	: 29 March 2025	DOI	: https://doi.org/10.54443/ijerlas.v5i3.2868
Accepted	: 11 April 2025	Publish Link	: https://radjapublika.com/index.php/IJERLAS

Abstract

The advancement of science goes hand in hand with the development of increasingly varied community needs, requiring the law to continue to be dynamic in order to keep pace with these developments. So that with the advancement of technology and the development of science in the health sector, it is hoped that it can help support the welfare and health of mankind. But in this case, the question arises whether Indonesian law has accommodated technological advances in the health sector, especially in terms of the implementation of surrogate mothers. In Indonesia, the regulation regarding the inability of surrogate mothers is still not explicitly regulated in the law so that it still seems vague, both in terms of its regulation and in terms of its sanctions. Using a normative legal research method, this study analyzes whether according to Indonesian positive law, the practice of surrogate mother can be criminalized.

Keywords: ***criminalization, Indonesian law, surrogate mother.***

INTRODUCTION

One of the rights protected and supported by the Indonesian state is that every human being can form a family and continue their lineage through a legal marriage. But in terms of continuing lineage, of course there are problems so there is a possibility that not everyone can get a descendant easily. These problems arise from various causes including infertility on the part of women or men, diseases of the reproductive organs, and can also be caused by unhealthy lifestyles.

In terms of overcoming these problems, science and technology are present to open new ways for parents who wish to continue their lineage but face various problems in their health. With the development of science and the advancement of medical technology, some of the causes of infertility on both the female and male sides can be treated through medication or surgery. However, infertility caused by the failure of fertilization can be overcome by artificial means such as artificial insemination, fertilization in tubes, then fetal transfer or fetal implantation. One of the developments in medical technology in the health sector that is currently often a way to overcome infertility is the method of fertilization carried out outside the body called “in vitro fertilization (IVF)”.

But then the method of assisted fertilization carried out outside the body has evolved, not only then the result of fertilization is implanted into the uterus of the mother from whom the egg was taken, but the embryo can also be implanted in the uterus of another woman who has an agreement to rent out her uterus to conceive in place of the woman from whom the embryo was originally taken. This event is known surrogate mother.

Indonesian law in terms of regulating the health sector has been accommodated through Law Number 17 of 2023 concerning Health which has just been formed using the omnibuslaw method by combining many laws relating to health but also at the same time revoking by declaring invalid 11 health-related laws. In short, the latest Health Law regulates the health sector from all aspects, which basically discusses health administration, which regulates health service governance that is more integrated by involving the central and regional governments, then regarding health education which encourages the improvement of education and training of health workers to meet the needs of the community, then discussing access and quality of health, which guarantees community access to quality health services, including for vulnerable groups, then also regulates disease prevention and control, namely strengthening

efforts to prevent diseases and overcome epidemics. Regarding assisted reproduction in terms of aiding in solving infertility problems, in Indonesia it has been regulated in Article 58 of the Health Law which has mentioned assisted fertilization which states: "assisted reproduction can only be carried out by a legal married couple under the condition that the results of fertilization of sperm and ovum from the husband and wife involved are implanted in the womb of the wife from which the ovum originated, then the action to implant the results of fertilization is carried out by Medical Personnel who have the expertise and the authority as well as carried out at a certain Health Service Facility."

So that in Indonesian Legislation, the regulation of surrogate mother is only regulated in one article and the conclusion that can be drawn using *a contrario* interpretation is that the results of fertilization of sperm and ovum of husband and wife cannot be implanted in the womb other than the wife from which the ovum originated. There is no single article that states clearly and in detail the restriction on implanting the result of fertilization into the womb of another woman.

However, in addition to the law, there are regulations regarding surrogate mothers, namely in the implementing regulations from Article 111 to Article 113 of Government Regulation No. 28 of 2024 concerning the Implementation Regulations of Law No. 17 of 2023 concerning Health, hereinafter referred to as the Implementing Government Regulation of the Health Law and also more specifically regulated in Minister of Health Regulation No. 43 of 2015 concerning the Implementation of Assisted Reproductive Services or Pregnancy Outside Natural Means and Regulation of the Minister of Health Regulation No. 71 of 2014 concerning Procedures for Imposing Administrative Sanctions for Health Workers and Health Service Facility Operators in Abortion and Assisted Reproductive Health Services or Pregnancy Outside Natural Ways.

In Minister of Health Regulation No. 43 of 2015 and Minister of Health Regulation No. 71 of 2014 there are conditions that regulate the prohibition for every health worker and organizer of health service facilities not to implant excess embryos in the mother's womb if the embryo father dies or divorces or in the womb of another woman. Based on these provisions, Indonesia has a regulation that prohibits implanting excess embryos into the womb of another woman, so it can be seen that this surrogate mother has been mentioned in Implementing Government Regulation of the Health Law No. 28 of 2024 and Minister of Health Regulation No. 71 of 2014, but when compared to what is regulated in the Health Law, the regulation regarding implanting the results of fertilization in the womb of another woman is only implicitly regulated.

With the implied regulation in the Law, the practice of renting a womb or surrogate mother is still rarely heard of. However, even though it is rarely heard of, in Indonesia the practice of surrogate mother (renting a womb) has been carried out in a hidden and closed manner within the family. The case of renting a womb that had surfaced was a famous artist who was reported to have rented a womb for a married couple against the couple's IVF and then received a reward in the form of material and a luxury car.[1]

With the regulation of surrogate mother in Indonesian legislation which is only implied but then regulated in the implementing regulations, but because it is only regulated in the implementing regulations, the consequences of these actions are administrative penalties against health workers who practice surrogate mother. Then the question arises why the implementation of surrogate mother is not regulated in detail and clearly in the Health Law and is only regulated to the extent of implementing regulations, namely in Government Regulations and Minister of Health Regulation as explained above. Thus, with such arrangements the question arises whether the current law of Indonesia has accommodated the times against the practice of surrogate mother.

LITERATURE REVIEW

The literature review generally involves analyzing previous research or scientific literature. Based on a literature search, several studies have examined the practice of surrogate mothers, both in terms of human rights as well as in terms of civil law, namely the agreement agreed by both parties. However, this research specifically examines the practice of surrogate mother from the criminal side whether according to the norms the practice of surrogate mother can be criminalized.

When reflecting on other countries, there is a fairly large gap regarding the regulation of surrogate mothers in Indonesia. In other countries, take for example India and Canada. India is one of the countries that legalized the practice of surrogate mother so that there is a separate law governing the implementation of surrogate mother in India, namely The Assisted Reproductive Technology (Regulation) Act, 2021 and the Surrogacy (Regulation) Act, 2021 which regulates the opening of clinics, the requirements for implementing clinics along with surrogate mothers

[1] Desriza Ratman, "Surrogate Mother dalam Perspektif Etika dan Hukum: Bolehkah Sewa Rahim di Indonesia?" (Jakarta: Elex Media Komputindo, 2012), page. 3

and married couples who want to do surrogacy, the implementation of surrogacy carried out by special agencies for it.[2] Meanwhile, in Canada, the Assisted Human Reproduction Act, 2004 clearly prohibits the practice of surrogate mothers to be carried out along with criminal sanctions if it is still carried out. [3] So that with the arrangements owned by Indonesia, which is not in the form of prohibition, then the sanctions provided are only in the form of administrative only, further research is needed whether the regulation of surrogate mother in Indonesia has followed the development and dynamic needs of society.

METHOD

This research uses normative judicial methods to formulate arguments, theories and concepts from secondary data to find solutions to problems. This research will examine laws and regulations regarding health, especially Law Number 17 of 2023 concerning Health. This research uses a statutory approach by analyzing the 1945 Constitution, the Health Law, and the Criminal Code (KUHP). In addition, a conceptual approach is used to explore and test theoretical frameworks relating to conflict resolution in surrogacy cases. And also using a comparative approach, to make comparisons with other countries how the application of surrogate mothers in that country. Furthermore, the primary legal materials collected came from statutory provisions, while secondary legal materials included scientific literature and legal commentaries. This research uses the method of literature study and documentary study. The analysis method used is descriptive qualitative so that legal materials are organized according to legal provisions into coherent arguments and can be scientifically accounted for. The research then integrates legal concepts and statutory frameworks to systematically examine the research problem, ultimately formulating a reasoned legal solution.

RESULTS AND DISCUSSION

Term and Definition of Surrogate Mother Conception

The practice of surrogate mother in Indonesia is known as womb rental, which means lending the womb of a woman who is willing to become a surrogate mother, so that later the woman who is willing to become a surrogate mother binds herself (gestational agreement) with a husband and wife to be willing to carry a child whose embryo comes from the sperm and ovum of the husband and wife.

In general, there are various reasons for deciding to do surrogacy, including:[4]

a. A woman who is unable to conceive due to an illness or disability that renders her incapable of bearing a child;
b. A woman who has undergone surgical removal of the uterus;
c. A woman who wants to have a child but does not want to go through the phases of pregnancy, pregnancy, childbirth and breastfeeding, so she wants to maintain her body shape;
d. A woman who wants to have a child but has entered menopause;
e. A woman who earns income by renting out her womb to women who have the problems mentioned in the previous point;

Although major advances in science and technology have helped minimize the long-standing problem of infertility, a woman's womb remains irreplaceable. Therefore, surrogate mothers are seen as an alternative to allow women with uterine complications to overcome their inability to carry a child in their own womb. In terms of types, there are two classifications of surrogate mother practices:[5]

1. Traditional surrogacy

   Traditional surrogacy is categorized as a pregnancy when the woman provides her egg to be fertilized by artificial insemination, then carries the fetus and gives birth to her child for someone else or a pregnancy that comes from an artificial insemination when the ovum (egg) comes from the woman who becomes pregnant and carries the baby for a period of pregnancy, then gives birth to a child for another couple. From this definition, an understanding can be drawn that in traditional surrogacy, the baby born from the surrogate mother carries the genes of the surrogate mother because the ovum comes from the surrogate mother who is

[2] India Law, The Assisted Reproductive Technology (Regulation) Act, 2021 access through https://www.indiacode.nic.in/bitstream/ 123456789/ 17031/1/A2021-42%20.pdf

[3] Canada Law, Assisted Human Reproduction Act, 2004, access through Website Canada Justice Laws https://laws-lois.justice.gc.ca/eng/acts/A-13.4/page-1.html

[4] Prof. Dr. Sonny Dewi Judiasih, S.H., M.H., C.N. dkk., Aspek Hukum Sewa Rahim dalam Perspektif Hukum Indonesia, PT Refika Aditama, Bandung, 2024, hlm 14

[5] *Ibid.*, hlm 15

fertilized by sperm from a man who is not the surrogate mother's partner, but after the surrogate mother gives birth, the baby is handed over to be raised by the man and his partner. Thus, the biological father and mother are clearly the man who provided the sperm to fertilize the ovum and the surrogate mother from whom the ovum came.

Generally, this type of surrogacy is done when the wife is no longer producing eggs. Overseas, especially in countries where same-sex relationships are legal, this can also be done by homosexual couples who wish to have a lineage. Since it is impossible for the (male) partner to produce eggs and conceive, they rent a woman's womb and use her eggs for fertilization.

2. Gestational surrogacy

Gestational surrogacy is the most common type of surrogacy today, especially in countries where it is legally allowed, such as India. Gestational surrogacy is according to Black's Law Dictionary &Edition, "A pregnancy in which one woman (the genetic mother) provides the egg, which is fertilized and another woman (the surrogate mother) carries the fetus and gives birth to the child".

Based on this definition, an understanding can be drawn that in gestational surrogacy, the child born by a surrogate mother genetically carries the genes of another woman and man, so that the biological parents of the child born to the surrogate mother are the man from whom the sperm comes and the woman who has the ovum, not the woman who conceived and gave birth to the baby. Gestational surrogacy is the most common type of surrogacy. In this type, the surrogate mother conceives with another woman's eggs; eggs that have been fertilized with sperm from the man or another donor through a process called in vitro fertilization (IVF). As a result, the surrogate mother does not have a direct biological relationship with the baby.

Regulation of Surrogate Mother in Indonesian Positive Law

In Indonesian positive law, there are several provisions that allude to surrogate mothers, including the provisions of Article 58 of Law Number 17 of 2023 concerning Health regarding the results of embryo fertilization may only be carried out by a legal married couple provided that the results of fertilization of sperm and ovum from the husband and wife concerned are implanted in the womb of the wife from which the ovum comes. In the Health Act there is no article that explicitly regulates what is the impact if the result of fertilization of the embryo is implanted in the womb of another woman, so basically in the Health Act there is no explicit, clear and detailed prohibition on uterine rent. Only in Article 59 is it then said that further provisions will be regulated by Government Regulation.

When looking at Government Regulation Number 28 of 2024 concerning the Implementation Regulations of Law Number 17 of 2023 concerning Health, Article 112 explains the prohibition of planting embryos in another woman's womb which reads as follows:

> That in the case of the process of pregnancy in assisted reproduction leaving excess embryos resulting from fertilization outside the human body, there is a prohibition to implant in:
> a. the mother's womb if the father of the embryo dies or is divorced; or
> b. the womb of another woman.

In the event that Medical Personnel, Health Workers and/or Health Service Facilities violate the provisions on storage, implantation and destruction of excess embryos as previously described, Health Workers and/or Health Service Facilities are subject to administrative sanctions by the Minister, governor, or regent/mayor in accordance with their authority in the form of written warnings, administrative fines and/or revocation of business licenses. Regarding the procedure for imposing administrative sanctions in the form of revocation of business licenses, it is carried out in accordance with the provisions of laws and regulations stipulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 71 of 2014 concerning Procedures for Imposing Administrative Sanctions for Health Workers and Health Service Facility Operators in Abortion and Assisted Reproductive Health Services or Pregnancy Outside Natural Means.

The Regulation of the Minister of Health of the Republic of Indonesia No. 71/2014 on the Procedure for Imposing Administrative Sanctions on Health Workers and Health Care Facility Operators in Abortion and Assisted Reproductive Health Services or Pregnancies Outside Natural Means states that every Health Worker and every Health Care Facility Operator is prohibited from planting excess embryos in the womb of another woman. If a Health Worker commits the prohibition of planting excess embryos in another woman's womb, the Health Worker is subject to administrative sanctions in the form of a written warning and/or revocation of permanent license, while if the Health Service Facility Operator commits the prohibition, the Health Worker may be subject to administrative sanctions in the form of a written warning, administrative fines, temporary license revocation and/or permanent

license revocation. The administrative sanctions can be given by the Minister, provincial regional government, and regency/city regional government in accordance with their respective duties and authorities.

Alleged violations of the prohibition of planting excess embryos in other women's wombs can be carried out by reporters in the form of individuals, groups and / or institutions / agencies / organizations which can be in the form of the results of complaints and / or the results of monitoring and evaluation. The results of monitoring and evaluation are carried out by the relevant Ministries / institutions and / or Regional Governments.

The Urgency of Criminalizing Surrogate Mother Practices Reviewed from Indonesian Criminal Law

In Indonesia itself, the practice of renting a womb is still considered taboo because it has legal and ethical implications that should be heeded. These implications include the status of the child and the possibility of commercialization, which can potentially lead to exploitation. Although exploitation has been mentioned in Article 1 point 7 of Law Number 21 Year 2007 on the Eradication of Trafficking in Persons which states that exploitation is an act with or without consent which also includes reproductive organs for material or immaterial benefit. So that actually utilizing reproductive organs to obtain material or immaterial benefits in our Law falls into the category of exploitation, but there is no article in the Law on the Crime of Trafficking in Persons whose criminal elements are suitable for criminalizing the practice of surrogate mothers. Then what is accommodated in Indonesian regulations through the Law is the provision that the results of fertilization outside the womb can only be implanted in the womb from which the ovum cell originated with no further implications if the results of fertilization are implanted in the womb of another woman. The prohibition on implanting embryos in other women's wombs is only regulated in the Implementing Regulations.

In fact, the ongoing practice of renting a womb secretly and undetected is a form of ineffectiveness of the existing law. When looking at the purpose of the formation of law, the purpose of the formation of legislation is to regulate and organize the lives of a country so that the people governed by the law obtain certainty, usefulness and justice in the life of the state and society. Therefore, one of the main pillars in the administration of a state of law is the formation of laws and regulations that are good, harmonious, and easy to apply in society.[6]

Simons states that criminal law is all acts of necessity (*gebod*) and prohibition (*verbod*) made by the state or other public authorities which are threatened with special suffering: namely punishment.[7] Meanwhile, Moeljatno states that criminal law is part of the law that establishes basic rules to determine which acts may not be committed with the threat of sanctions in the form of a certain penalty, for those who violate these prohibitions, when and in what cases those who violate these prohibitions can be imposed or sentenced as threatened and in what way the imposition of punishment can be carried out if there are people who violate these prohibitions.[8]

The regulation in criminal law is a reflection of the political ideology of a nation where the law develops. This means that the social and cultural values of the nation have a place in the regulation of criminal law. The measure to criminalize an act depends on the values and collective views found in society about what is good, right, beneficial or otherwise. Thus, society's view on decency and religion is very influential in the formation of law, especially criminal law.[9] This is in line with the theory of cultural relativism in human rights which postulates that culture is the only source of validity of rights or moral rules. Therefore, human rights are considered necessary to be understood from the cultural context of each country. All cultures have the same right to life and dignity that must be respected.[10]

The function of criminal law with its sanctions is first of all as a means of overcoming crime or as a means of social control (community control). In this case, criminal law is part of criminal politics, which is a rational effort from society to overcome crime. This primary function is reasonable and relatively unproblematic, in the sense that there is no way a society can live without criminal law. The distinctive feature of criminal law is its secondary function with the regulation of social control as implemented and made by the state with its equipment. The function of criminal law as social control relates to criminal law sanctions that have a preventive influence on the occurrence of violations of legal norms. This influence does not only exist if the criminal sanctions are actually applied to

[6] Maria Farida Indrati S., Ilmu Perundang-Undangan: Proses dan Teknik Pembentukannya (dikembangkan dari Perkuliahan Prof. Dr. A. Hamid S. Attamimi, SH.), Kanisius, Yokyakarta, 2018

[7] Erdianto Effendi, Hukum Pidana Suatu Pengantar, Rafika Aditama, Bandung, 2011, hlm. 6-7

[8] Ibid

[9] Dr. Maroni, S.H., M.Hum, "Pengantar Politik Hukum Pidana", AURA Publishing:Perpustakaan Nasional RI: Katalog Dalam Terbitan (KDT) hlm. 17

[10] Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia (PUSHAM UII) Yogyakarta, "Hukum Hak Asasi Manusia", hlm. 20

concrete violations, but it already exists because it is stated in the legal regulations (Theorie des psychischen zwanges = teaching of physical coercion).[11] Thus, criminal law has two aspects, namely: (a) it is expected to protect society and individuals against crimes and criminals; (b) it protects citizens from interference by the authorities who use crime as a means of improperly, thus ensuring the rights and legitimate interests of citizens. [12]

Criminal law policy is related to the issue of criminalization, namely what actions are made into criminal acts and penalization, namely what sanctions should be imposed on the perpetrators of criminal acts. Criminalization and penalization are central issues that require a policy-oriented approach to handle. When connected with Law Number 1 Year 2023 on Criminal Code, criminalization covers the scope of unlawful acts (actus reus), criminal liability (mens rea) and sanctions that can be imposed either in the form of punishment or treatment. Criminalization must be done carefully, so as not to create a repressive impression that violates the ultimum remedium principle (ultima ratio principle) and backfire in social life in the form of over criminalization, which actually reduces the authority of the law. Criminalization in material criminal law will also be followed by pragmatic steps in formal criminal law for the purposes of investigation and prosecution.

According to Moeljatno regarding criminalization, there are measures or criteria to determine which illegal acts deserve to be criminalized, namely by considering: First, criminalized acts are acts that cause harm in society, both large and small. An act is criminalized because it "hinders or obstructs the ideals of the Indonesian nation, which is to create a fair and prosperous society", so that the act is a "danger to the safety of society". Secondly, according to Moeljatno, criminalization is the main way to prevent the commission of prohibited acts. Third, whether the government through state instruments is really able to carry out the criminal threat if it turns out that someone is committing the prohibited act.[13]

So that based on the criteria for criminalization according to Moeljatno, it is necessary to examine in advance whether this action causes harm and endangers the community. The practice of surrogate mother, when examined in terms of ethics, can trigger exploitation of children and women. This is because it will dehumanize children and women by turning them into contract objects and commodities. The purpose of surrogacy is not for the benefit of the child, but to fulfill the desire of adults to have lineage. In addition, for irresponsible people, this practice can be used as a camouflage for human trafficking, namely deliberately taking young women to be commoditized as surrogate mothers for a small fee, while the fee from the parents who carry the seeds is actually higher than that given to the surrogate mother. This business is utilized by a handful of irresponsible people by exploiting women. Therefore, despite many debates, the practice of surrogacy in most countries is ethically and morally prohibited because it contradicts human nature as a creature of reason and virtue as well as a creature that has a mind compared to other creatures. Furthermore, the practice of surrogacy is not in accordance with human values even in the European Center for Law and Justice in 2012 stated that Surrogate motherhood: A Violation of Human Rights, and the most vulnerable of this practice is that there are irresponsible people who take advantage of the misfortune of some people in having lineage to get the maximum profit without regard to human values.[14]

The question then arises whether a woman's womb can be equated with an object so that it can be rented out and used as a tool to obtain profit. A woman's womb is a reproductive organ whose value cannot be measured in material terms and is also part of an organ that cannot be transplanted or donated to another person. Thus, a woman's womb, which is an organ created by God Almighty as a means of reproduction, is not an object that can be traded for its function, thus making women an object of contract. Legalizing this act will result in the exploitation of women, even though the act is desired or done voluntarily. Therefore, the practice of surrogate mother does not reflect the values contained in Pancasila, especially in the first principle of God Almighty and the second principle of Fair and Civilized Humanity. So if it is associated with the criteria for criminalization according to Moeljatno, then the practice of surrogate mother can cause harm in society because of the potential for exploitation and these actions hinder or obstruct the ideals of the nation which are guided by Pancasila.

Then when looking at the second criterion, namely criminalization efforts are the main way to prevent prohibited acts. So far, the sanctions regulated in terms of implanting the results of fertilization into another woman's womb are only mentioned in the implementing regulations in the form of administrative sanctions imposed on health workers and organizing facilities, but what about the parties who take the initiative to do surrogate mother, both the

[11] *Ibid.,* hlm. 51
[12] Sudarto. 1986. Hukum dan Hukum Pidana, Alumni, Bandung, hlm. 150-151
[13] Dion Valerian, Kriteria Kriminalisasi: Analisis Pemikiran Moeljatno, Sudarto, Theo De Roos, Dan Iris Haenen, Jurnal Unpar Vej Volume 8, Nomor 2, hlm. 420-422
[14] Mimi Halimah, "Pandangan Aksiologi Terhadap Surrogate Mother", Jurnal Filsafat Indonesia, Vol 1 No 1 2018, hlm. 53

married couple and the surrogate mother, there is no regulation governing sanctions against them. Whereas criminalization is not solely imprisonment, there are fines that can be imposed. If the prohibition of surrogacy is clearly formulated, it is hoped that it can prevent the exploitation of women as well as a legal effort to cope with the dynamics of community development. Regarding the third criterion, whether the government through the state apparatus is actually able to carry out criminal threats if it turns out that someone is committing the prohibited act. Just like other health crimes such as narcotics that require laboratory reports, then malpractice crimes that must first get recommendations from the assembly, such as the Medical Ethics Honor Council (MKEK) or the Indonesian Medical Discipline Honor Council (MKDKI), the practice of surrogate mothers if they want to be criminalized certainly cannot be done alone by law enforcement officials like ordinary crimes such as theft, embezzlement, etc. However, knowledge from other fields of science is needed that could support the fault that made in this deed.

CONCLUSION

The conclusion that can be obtained from the study above is that the practice of surrogate mother has an urgency to be criminalized. This is because first, the practice of surrogate mother does not reflect the values of Pancasila, especially in the first and second principles. The practice of surrogate mother by renting out the uterus is a form of exploitation of women's reproductive organs that were created and bestowed by God Almighty but are used for rent and commercialized. Second, the practice of surrogate mother, if criminalized, can prevent exploitation of women. Third, the government through state apparatus can carry out criminal threats if it turns out that someone has committed the prohibited act supported by experts from other fields of science, namely health science. Therefore, because it meets the criteria for criminalization, it is necessary to renew Indonesian law regarding the practice of surrogate mother. There needs to be an affirmation and strict prohibition if Indonesia is a country that does not support the practice of surrogate mother. Because if you look at the current regulations regarding surrogate mother, it is not yet expressly prohibited and is only administrative in nature.

REFERENCES

Undang-undang Nomor 17 Tahun 2023 tentang Kesehatan

Peraturan Pemerintah Nomor 28 tahun 2014 tentang Peraturan Pelaksanaan Undang-Undang Nomor 17 tahun 2023 tentang Kesehatan

Peraturan Menteri Kesehatan Republik Indonesia Nomor 71 Tahun 2014 Tentang Tata Cara Pengenaan Sanksi Administratif Bagi Tenaga Kesehatan dan Penyelenggara Fasilitas Pelayanan Kesehatan Dalam Tindakan Aborsi dan Pelayanan Kesehatan Reproduksi Dengan Bantuan atau Kehamilan di Luar Cara Alamiah

India Law, The Assisted Reproductive Technology (Regulation) Act, 2021 access through https://www.indiacode.nic.in/bitstream/ 123456789/ 17031/1/A2021-42%20.pdf

Canada Law, Assisted Human Reproduction Act, 2004, access through Website Canada Justice Laws https://laws-lois.justice.gc.ca/eng/acts/A-13.4/page-1.html

Desriza Ratman. 2012. "Surrogate Mother dalam Perspektif Etika dan Hukum: Bolehkah Sewa Rahim di Indonesia?". Jakarta: Elex Media Komputindo

Prof. Dr. Sonny Dewi Judiasih, S.H., M.H., C.N. dkk., 2024 "Aspek Hukum Sewa Rahim dalam Perspektif Hukum Indonesia" Bandung: PT Refika Aditama

Maria Farida Indrati S. 2018. Ilmu Perundang-Undangan: Proses dan Teknik Pembentukannya (dikembangkan dari Perkuliahan Prof. Dr. A. Hamid S. Attamimi, SH.), Kanisius, Yokyakarta,

Erdianto Effendi. 2011. "Hukum Pidana Suatu Pengantar" Bandung: Rafika Aditama

Dr. Maroni, S.H., M.Hum. "Pengantar Politik Hukum Pidana", AURA Publishing: Perpustakaan Nasional RI: Katalog Dalam Terbitan (KDT)

Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia (PUSHAM UII) Yogyakarta, "Hukum Hak Asasi Manusia"

Sudarto. 1986. Hukum dan Hukum Pidana, Alumni, Bandung
Dion Valerian, "Kriteria Kriminalisasi: Analisis Pemikiran Moeljatno, Sudarto, Theo De Roos, Dan Iris Haenen", Jurnal Unpar Vej Volume 8, Nomor 2
Mimi Halimah, "Pandangan Aksiologi Terhadap Surrogate Mother", Jurnal Filsafat Indonesia, Vol 1 No 1 2018