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Inheritance Rights of Children Leased by Womb in Civil Law Perspective

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Abstract

This study aims to determine the legitimacy of children born due to renting a uterus according to civil law and the legal basis for inheritance rights for children born as a result of renting a uterus according to civil law. This study uses a type of normative legal research. Using a statutory approach (statute approach), the types and sources of legal materials use primary, secondary, and tertiary legal materials. Analysis of legal materials uses deductive logical reasoning, which is studied from a qualitative perspective. The results showed that children born through uterine rent are considered born out of wedlock because obtaining offspring utilizing artificial reproduction is only permitted by IVF medical treatment. The inheritance rights of a child born from the rental of the uterus are considered not entitled to inherit from the father as the heir because the legal basis is Pasal 852 KUHPerdata. However, to protect the child's soul, the father, as the heir, can provide his wealth employing a mandatory testament with the distribution of assets as much as 1/3 of the heir's inheritance following 209 ayat 2 Kompilasi Hukum Islam, where the status of orphans and children born out of wedlock are equally the same is not a relative of the heir by assuming orphans and children born out of wedlock.

Introduction

In general, it is said that a child is someone who is born from a marriage between a man and a woman; a child is also part of the younger generation, as one of the human resources that has the potential and is the successor to the ideals of the nation's struggle which has a strategic role and has the characteristics and characteristics who need guidance, protection to guarantee the growth and development of physical, mental and social as a whole.

Children are the nation's assets and the future of the nation and state; the better the child's personality, the better the future life of the nation and state. And vice versa, if the child's personality is wrong, the life of the nation and state will be wrong in the future.[1]

Parents are men and women bound by marriage and are ready to assume responsibility as the father and Mother of the children they give birth to.[2] Parents are also two different individuals entering life together by bringing views and daily habits. The understanding of parents explains

[1] Kum, S, Penegakan Hukum Tindak Pidana Anak Berdasarkan Undang-Undang Nomor 11 Tahun 2012. (2021) LC, 10 (3)
[2] Nurul Saniah, S, & Ma, I, Peran Orang Tua Terhadap Kesuksesan Pendidikan Anak, (2016) JII Vol, 2(1)

that in carrying out their responsibilities, of course, they must fulfill the rights and obligations of a child so that the child feels that the needs and wants have been fulfilled.

One example of granting children's rights and obligations from parents is the distribution of inheritance by parents, in this case, as the giver of the inheritance and the child as the recipient of the inheritance or heirs. Inheritance is the transfer of rights and obligations over assets and dependents from a person who has died to his family who is still alive.[3]

The definition of inheritance explains that what is meant by inheritance is inheritance, dependents, and the gift of assets given by the heir, in this case, the parents, to carry out their obligations to the heirs as the owner of the inheritance rights. Of course, children as recipients of inheritance or heirs have rights from the obligations that their parents have given them. However, in some cases or events, the child as the heir cannot always get the inheritance because there are legal requirements for the heir so that he can or cannot get the inheritance.

By looking at the aspects of the problems that occur in the community, especially in the family environment, who want to have children but in practice, it is challenging to get offspring, so the medical method of renting a uterus is present.

A situation where a husband and wife cannot have a child is called infertility. Infertility is a condition in which a husband and wife are unable to have a child even though they have had sexual intercourse 2-3 times a week within one year or more using contraception or without using any form of contraception.[4]

Medical technology related to the IVF program was discovered in the 1970s and was developed to solve problems for married couples who could not conceive (*mandul*).[5] In line with the rapid development of in vitro fertilization (IVF), the idea of a surrogate mother (surrogate mother/surrogate mother/gestational agreement) emerged, namely a woman who is willing to rent her womb, with an agreement to conceive, give birth in exchange for a certain amount of material and then return the baby to married couples who cannot have children because the wife cannot conceive. Still, in its development, this raises many ethical and legal issues that were not considered before.

The phenomenon of uterine rent results from advances in biotech-medical technology in medicine. Of course, the phenomenon of renting a womb occurs a lot in parts of the world, especially in Indonesia; in Indonesia itself, there is a lot of the phenomenon of renting a uterus, but this practice is mainly carried out covertly within Indonesian society. Hire a uterus or Surrogate Mother is a medical program that is carried out when a man and a woman have problems getting pregnant or fertility in their uterus, and they can no longer get pregnant.

This method is carried out by combining the male and female seeds in a round glass in the form of a small and transparent cylinder and then implanting it in the uterus of another woman who has no relationship with the source of the seed. However, questions arise regarding whether a child is considered a legitimate child in civil law and whether the child has rights as an heir.

Method

The type of research used in this research is normative research. Normative research is an approach that is carried out by studying legislation, theories, and concepts related to the problem to be studied.[6] This research uses secondary sources by looking for related references, especially judge's decisions, as well as from reading materials available in libraries and websites that review

[3] Murniti, N W, Hak Waris Anak Luar Kawin Menurut Hukum Adat Waris Bali (Studi Kasus Di Desa Dukuh Kecamatan Sidemen Kabupaten Karangasem), (2020) P: JHAH, 3(1)

[4] Indarwati, I., Hastuti, U R B, & Dewi, Y L R, Analysis Of Factors Influencing Female Infertility. (2017) JMMCH, 2 (2), 150, 161

[5] Rahayu, D A, Surrogate Mother (Ibu Pengganti) Dalam Perspektif Hukum di Indonesia, (2022). JPH, 7(1), 1,11

[6] Sampara A, & Husen L O, *Metode Penelitian Hukum*, (Kretakupa Print, 2016)

their relation to the issues raised in this study. The approach used in this paper is the statute approach.

Results and Discussion

A. Legal Status of Children Born from the Lease of the Womb According to Civil Law

Marriage is a desire and an action considered holy/sacred in terms of religion and the rules that apply. Marriage means that two human beings of different genders, commonly referred to as men and women, who initially live their own lives, are brought together by a holy/sacred bond called marriage so that by their marriage, they are legally husband and wife.[7] Today's term is a soul mate who lives and lives or a life partner navigating the household.

The goal is to complement one another; among the many goals in marriage is the desire to have offspring (children), even though this is regulated in Article 1 of the Marriage Law.

Along with the development of technology in the medical world, there is a medical method that can obtain offspring outside the natural way. The medical method is known as IVF. Test tube baby is a term which basically to understand the process of obtaining offspring outside the natural way by taking a husband's sperm and a wife's ovum to put together in a dish (Petri) and then putting it in a tube (vitro) so that the seed will experience fertilization then put it in the wife's uterus.[8]

In Indonesia, it is miserable that there are still many married couples who wish to have a child but are constrained due to several health factors, as follows:

a. A woman experiencing menopause;
b. A woman who was sentenced to have a disease in her uterus causing the woman's uterus to no longer be able to conceive;
c. A woman who had her uterus removed.

These factors cause a feeling of hopelessness in married couples, and they can no longer get offspring (children) to form a small, happy family.

It is this problem factor that makes the husband and wife take the surrogate Mother's action by renting a woman's uterus that is considered fertile to accommodate the husband and wife's seeds.

Surrogate Mother is an act of leasing by entering into an agreement or contract, which is then agreed upon by the parties.[9] Or the meaning in terms of the rental of another woman's uterus to be used as a container containing the embryo until delivery, which is also known as a surrogate mother.

The process of renting a uterus itself has several divisions or classifications that must be known and explained, as follows:

a. Traditional Surrogacy is a woman who provides eggs, in this case, the ovum, to be fertilized by artificial insemination techniques.
b. The intended Mother is a woman who does not have a partner and wants to have children by renting a uterus.
c. Gestational Surrogacy is renting a uterus, which is generally carried out in various countries by combining the husband and wife's sperm and egg cells with artificial insemination techniques and then inserting the uterus of the woman who rented her uterus.

[7] Hasmawati, & Syahril, M A F, (2020), The Effectiveness of Mediation Process to Press Divorce Rates, ALJ, 1(2), 78, 84
[8] Manap, M C, Kewarisan Anak Hasil Inseminasi Buatan Persepektif Hukum Islam, (2019). I\, 1(1)
[9] Febrianti, V B A, & Budiarsih, B, Rekomendasi Kebijakan Sewa Rahim Dari Perspektif HAM di Indonesia. (2022) BI: IJLSPG 870, 882

In the end, in carrying out the process of contracting or renting a uterus occurs with the following conditions:

a. Surrogate Mother is done by involving two parties in this case, the party that owns the seed and the woman whose uterus will be used to conceive and give birth to the seed.

b. The occurrence of renting the uterus is carried out with a contractual agreement between the two parties.

c. There is a reward for the services of a woman who rents out her womb.

d. If the woman who rented out her womb gave birth to the seed, then the woman must hand over the baby she gave birth to to the partner who owns the seed.

Renting a uterus (surrogate Mother) is an artificial insemination program (IVF) and is also related to agreements or contracts in leasing. In Indonesia, the regulations governing artificial insemination are contained in Pasal 127 Ayat 1 Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan. This regulation means that efforts to produce offspring unnaturally can only be carried out through the IVF method by the Pasal 2 Ayat 3 regulations. This regulation implies that attempts to produce offspring unnaturally can only be carried out through IVF by Minister of Health Regulation No 039/Menkes/Per/I/2010 regarding the provision of assisted reproductive technology services.

From the explanation of the two rules governing artificial reproduction, it is permissible for husband and wife to obtain offspring outside the natural way only by the IVF method and being bound by a legal marriage.

If the uterus lease is reviewed from the approval aspect by Pasal 1313 KUHPerdata, it is closely related to consent. Because an agreement is agreed upon, a person will bind himself to another party to fulfill the agreement.

The legal basis for agreeing to rent a uterus has yet to be regulated in positive law in Indonesia; however, if it is examined in substance, Pasal 1320 KUHPerdata, which regulates the legal terms or conditions that must be met when agreeing.

Then, the agreement is made on renting this uterus if it is associated with Pasal 1320 KUHPerdata on the fourth condition, meaning that the agreement is made with lawful reasons or conditions that explain part of the objective conditions.

This raises the contra that the uterus of a woman who becomes a surrogate mother will implant embryos from the husband and wife to conceive and give birth. The cons arising from the 4th condition in agreeing are the uterus of the woman who will implant the embryo of the husband and wife, whether the uterus is considered an item or object in leasing, or an agreement in renting a uterus.

KUHPerdata Pasal 1332 confirms that the goods that can be traded in Article 1332 KHUPerdata are objects in making agreements, such as vehicles, electronic equipment, household furniture, and other goods. Meanwhile, in renting a uterus, the object of the agreement is the uterus of a woman whose uterus is rented.

In Pasal 1337, KUHPerdata affirms that the meaning of what is meant by lawful causes are the contents of the agreement, which give meaning to the things that the parties want to achieve from the agreement not contradicting law, decency, and public order, and because what are lawful means that the object being promised is not an object which is not in conflict with the law.

Then, on Pasal 1338, KUHPerdata stipulates that freedom in agreeing explains that the two parties agreeing are free to determine the agreement's contents.

On Pasal 1338 KUHPerdata, when associated with Pasal 1320 KUHPerdata, which regulates the legal terms of an agreement, both parties are willing or agree to carry out the agreement that both parties have determined.

In the case of renting a surrogate mother, it is inappropriate for the uterus to be considered or equated with objects or goods, let alone being the object of an agreement. Because the uterus is already attached to the legal subject, namely the woman whose uterus will be used as a place for storing the embryos of the husband and wife, even though in reality the uterus can be seen and touched, it is not the solid object referred to in Pasal 499 KUHPerdata, as well as Pasal 1332

KUHPerdata which explains the purpose of the object (object) that becomes in the contract or leasing is not a womb that is considered as goods or objects.

Pasal 127 Ayat 1 Undang-Undang Nomor 36 Tahun 2009 tentang kesehatan which clearly states that it is only permissible to obtain or obtain offspring outside the natural way; it can only be done by a medical method called IVF, not by renting another woman's uterus, even though the technique in the process of artificial insemination in renting a uterus is like artificial insemination of IVF.

So that Pasal 42 Undang-Undang No. 1 Tahun 1974 tentang Perkawinan confirms and regulates the notion of a legitimate child, that the child is born due to a legal marriage bond between a man and a woman.

When it is related to the discussion of renting a womb, to discussing the meaning of a child to determine the legal or illegitimate status of the child as a child when the child is born as a result of renting a uterus or an agreement made by both parties can harm the child's survival because Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak letter A emphasized that children are human beings who are entrusted to husband and wife and human beings who are endowed with dignity by the one and only God.

B. Legal Basis for Inheritance Rights of Children Born from Surrogate Mother According to Civil Law

In the Pasal 280, KUHPerdata has a principle that states that a child born outside of a legal marriage can have a civil relationship with his father and Mother after receiving recognition. Outside of marriage, which is then recognized by their parents. As regulated in Pasal 280 KUHPerdata.The Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 material test Pasal 43 Ayat 1 Undang-Undang Nomor 1 Tahun 1974 tentang perkawinan sparking a legal breakthrough by deciding that an adulteress child has a civil relationship with the Mother and family of the Mother and father by proving technology or proving according to law.

Suppose this Constitutional Court decision is applied to a child born due to a Surrogate Mother agreement. In that case, the status of the child in obtaining inheritance rights is unclear because the child is born from the result of renting a uterus by the owner of the embryo (husband and wife) and the woman who rents out her womb to conceive and give birth. Without a marriage bond between a husband who has spermatozoa and a woman who rents out her womb, then from proof according to law, the child is not a legitimate child, who is confirmed in the Pasal 42 undang-undang Nomor 1 Tahun 1974 with Pasal 1320 KUHPerdata which aborted the Surrogate Mother agreement.

Children and their parents have a natural relationship with themselves. Because the parents instilled them and a blood relationship was established so that strong inner feelings emerged between them, this situation is a natural fit even though there is no legal recognition or legitimacy. However, it is different when civil relations are different. This relationship can be established without any previous binding rules, with an example of a relationship by the explanation above where the recognition and legal marriage have determined the relationship between the child and his father and then strengthened by law.

When a man and a woman get married, a child is born. Of course, the woman is considered the Mother, and the man breeds it is considered the father.[10]

It is different again when a man and a woman have never had a marital relationship between them, but a child is born, then that is what is meant as a child out of wedlock (child of adultery), which then still becomes the scope of family law rules.

Family law regulates the rights and obligations of parents and children by fulfilling the obligation to care for and provide education to their children so that parents have the right to be respected by their children.

[10] Firmansyah, A H, Martawati, E, & Jiwantara, F A, Kedudukan Hukum Anak Luar Nikah Pasca Putusan Makhamah Konstutusi Nomor 46/Puu-Viii/2010, (2022) UA: JIM, 1(8), 2383, 2391

The discussion of a child born through the process of renting a womb has uniqueness as a means that uniqueness is who can become the child's parents, then when it is associated with Pasal 42 and 43 Undang-Undang No 1 Tahun Tentang Perkawinan which discusses legitimate children as those children who are born outside of legal marriage and only have civil relations with their mothers and the families of their mothers and fathers.

When associated with a child born through the process of renting a uterus, the following two statuses will occur:

a. When the child is born by renting a uterus with a surrogate mother who already has marriage ties, the child has the status of a legitimate child of the woman who rented her womb and the husband of the woman who rented her womb.

b. When the child is born through Surrogacy with a surrogate mother who does not have marital ties, the status of the child is considered as a child out of wedlock and has a female lineage that is rented by her womb.

A child born from a rented uterus has a civil relationship with a woman who rents out her womb, regardless of whether the woman has a partner or not.

The KUHPerdata does not define the meaning of inheritance law but instead discusses the concepts of inheritance. This differs from the compilation of Islamic law, which defines the meaning of inheritance law in Book II Kompilasi Hukum Islam Pasal 171 letter A.

When discussing who has the right to become an heir, of course, there are inheritance requirements to get an inheritance from their parents by the inheritance law stated in Pasal 852 KUHPerdata, which stipulates that to obtain an inheritance, it is necessary to have the closest blood relationship with the heir which is divided into four groups, namely, his children, the husband and wife who have lived the most extended, parents, brothers, and sisters, grandparents, family in the lateral line and his relatives.

Based on the explanation above, the meaning of blood relations is a biological relationship between the heir and the heir, which then the blood relationship is obtained by carrying out a legal marriage.

According to the previous explanation that has been described, children born as a result of renting a uterus only have a biological relationship with the woman who rented her womb and the woman's partner. So, children born outside of legal marriage only have inheritance rights from women who rent out their wombs.

Then, for the sake of protecting and protecting the souls of children born from the rental of the womb or outside of a legal marriage, to obtain property from the heir can only be through a mandatory testament by using the comparative method, or in Islam, it is called qiyas, taking into account the position of orphans and children who born outside of legal marriage or children born from the rental of the womb.

Where orphans do not have a father due to death, while children born outside of legal marriage or children born from renting a womb are children who do not have a father legally.

Based on allocating orphans with children born out of wedlock or children born from the rental of a womb, they can inherit from the heir by dividing 1/3 of the heir's inheritance, by Pasal 209 Ayat 2 Kompilasi Hukum Islam. The position is that adopted children and children born outside of legal marriage have the same position, not as relatives of the heir. However, it is not based on the obligatory will. In that case, children born outside legal marriage or from renting a womb cannot become heirs because they do not have legal blood relations by dividing the four groups who can inherit from the heir.

Children born outside of legal marriage do not have rights as heirs because they do not have blood relations with partners who have seeds on a legal basis. Pasal 852 KUHPerdata, and the child is a legitimate child out of wedlock (child of adultery).

Decision Mahkamah Konstitusi Republik Indonesia Nomor 46/PUU-VIII/2010 about the material test Pasal 43 Ayat 1 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan which emphasizes that children born outside of legal marriage have the right to civil relations, but according to the author, this decision can lead to the legalization of adultery. When this decision is implemented for renting a womb, this matter is no longer relevant to the legislation, the decency

that exists in society, and public order; in particular, there is no legal marriage relationship between a man who has seeds and a woman who rents out her womb.

Children born as a result of renting a womb have no rights as heirs. Still, these children can get property from the heir by adopting this child as an adopted child with the distribution of assets by Pasal 209 Ayat 2 Kompilasi Hukum Islam, namely, the obligatory will which has the objective of safeguarding and protecting the souls of children born outside of legal wedlock. Then, figure out or consider that this child is an orphan where an orphan n does not have a father, while children born outside of legal marriage do not have a father according to law with a position as a child who has no kinship with the heir.

Conclusions

The status of a child born through renting a uterus is not a legitimate child. To obtain offspring using artificial reproduction is only permitted by medical IVF, not renting a uterus. Hives are also closely related to leasing agreements. Although the rules for renting a uterus have not been regulated in positive law in Indonesia, they can be examined in substance by Pasal 1320 KHUPerdata regarding the conditions that must be fulfilled in a contract, especially objective conditions regarding lawful causes, even though the principle of the free agreement determines the contents of the agreement and applies as a rule for those who make it. Still, the uterus is part of the legal subject even though it is solid, visible, and held, but not the solid objects referred to in Pasale 499 KHUPerdata and Pasal 1332 KUHPerdata, the meaning of goods or objects. Children born from the rent of the uterus do not have the right to inherit from inheritance because the legal basis is Pasal 852 KUHPerdata. However, to protect the child's soul, the father, as the heir, can provide his wealth using a mandatory will to distribute assets as much as 1/3 of the heir's inheritance per Pasal 209 ayat 2 KHI.

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