



## Process and problems of the international adoption in surrogacy cross-border practices in India<sup>☆</sup>



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### KEYWORDS

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### Abstract

**Objective:** To identify the problems associated with the international adoption process of the cross-border surrogacy practice and to describe its problems.

**Methods:** The research employed secondary data, which was related to cross border surrogacy industry, international adoption data and regulation, and baby trade data. The data collected was related to Indian countries. The time period for the data collected started from 2010–2017.

**Results:** There are many problems in each phase of the international adoption process in the practice of cross border surrogacy. They are adoption goals, adoption procedures, the role of national adoption institutions, as well as general rules of adoption regulations. There are also many problems experienced by the resultant child in the future.

**Conclusion:** The international adoption in the practice of cross border surrogacy occurs in the overall procedure of adoption and that the biggest threat faced by the resultant child is being stateless.

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### Introduction

The surrogacy practice that was first reported by the media occurred in 1985 and continues to this day.<sup>1</sup> Surrogacy is a

practice where a woman is willing to get pregnant with the aim of giving the child to another person after birth. Women who are borrowed by their wombs are then called surrogate mothers, while other couples who have babies are called prospective parents or intended parents. Surrogacy clinics are mediators that bridge the relationship between the two objects above as well as implementing health procedures in surrogacy.

Surrogacy implementation has increased. One of the biggest factors that underlie is the increase in same-sex marriage. The first country to legalize same-sex marriage was the Netherlands in 2000, which was then followed by

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other countries. At present, there are 27 countries that legalize marriage throughout the world.<sup>2</sup> Surrogacy then becomes the choice to get children compared to the adoption of children because they still have genetic relations with these same-sex partners. In addition to same-sex marriage, another factor that supports the improvement of surrogacy practices is the disruption of the health of the female uterus.

Today, surrogacy practices are carried out by involving several countries in it. Surrogacy above is then named as cross border surrogacy. Cross-border surrogacy is a surrogacy arrangement that involves surrogate mother and intended parent from different countries of origin. This practice is considered as an option for individuals who want to avoid strict surrogacy legal arrangements in their home countries and those with financial constraints. In addition, the development of communication media and information technology is very helpful as a promotional media for this cross-border surrogacy business.

Countries in the Asian Continent are destination countries for conducting surrogacy, such as Cambodia, Thailand, India, and Laos. This is because surrogacy costs are cheaper compared to other countries. The implementation of surrogacy in the US, for example, reached USD 100 thousand. In Thailand, around USD 53 thousand, while Ukraine and Georgia USD 49 thousand. One of the countries with the cheapest rates in India, with a tariff of around USD 47 thousand.<sup>3</sup> Apart from cost reasons, the lack of strict regulation on surrogacy in Asian countries is also another supporting factor of why this business is very fertile in Asia. Even in some countries in Asia still, do not have surrogacy regulation.

There are many problems that arise in each practice, especially those relating to children resulting from surrogacy or known as the resultant term child. This research focuses in analysing the problems that occur from a series of resultant child displacement processes from India towards the intended parents. The process is known as international adoption. Therefore, this research focuses on answering two questions, which are (1) what the problems of international adoption in cross-practice border surrogacy are, and (2) what the threats and problems are faced by the resultant child cross border surrogacy.

## Method

### Type of research

The type of research used for this research is descriptive. Descriptive type of research is utilized to explain what problems arise in the process of international adoption in the practice of cross border surrogacy. In addition, threats and problems will be faced by the resultant child in the future.

### Data collection technique

The Data collection technique used by the authors to attain the data needed is library research. The data obtained are secondary data in accordance with the subject matter discussed, originating from the literature in the form of books, electronic books, journals, electronic journals, documents

and articles originating from the website, as well as newspapers or online news. Meanwhile, the research focuses on attaining secondary data, which are related to cross border surrogacy industry, international adoption data and regulation, and baby trade data. The data collected is related to Indian countries. The time period for the data collected starts from 2010 to 2017.

### Data analysis technique

The data analysis technique that is used by the authors is qualitative analysis technique, which analyses the problems studied through depictions based on existing facts and then linking these facts with other facts, thus producing an appropriate argument. While the existing quantitative data serves as a support in strengthening the qualitative analysis.

### Writing methodology

The writing method used by the authors in this study is the deductive method. The author first describes, in general, the problems that occur, then draw conclusions specifically at the end of writing.

## Results

Cross border surrogacy in India has been a major issue in Asia. India exemplifies the free-market approach in surrogacy practice. Since commercial surrogacy was passed in India in 2002, non-binding advice from government-sponsored medical research councils has become the basis for a few existing regulations for surrogacy practices. This then made the growth of private surrogacy business agencies flourish in India, as well as increased surrogacy production. Because of this increase, India is known as the "world capital for surrogacy." Thanks to reproductive tourism, since its inauguration in 2002, India has made an income of 2.3 billion dollars every year.<sup>4</sup>

India then emerged as a global center for reproductive tourism, where the city of Anand became its main source center. Anand City is a metropolitan city located in the western region of Gujarat where the surrogacy clinic was first established. The first surrogacy clinic in the city of Anand was named Akankshya, which was founded by Dr. Nayla Patel.<sup>5</sup>

The Health Research Department records that there are 1035 surrogacy clinics registered with the Indian Council of Medical Research or ICMR. Based on data from the National Commission for Women, there are around 3000 clinics that serve surrogacy practices for the intended parents of America, Australia, Europe, and the like. Surely there are more surrogacy clinics operating in the field. From the many clinics above, there were only 11 problematic surrogacy clinics reported throughout the surrogacy until 2017 (Parliament of India Rajya). Also noted, the number of babies born from surrogacy practices from 2015 to 2017 in India is approximately 2000 babies.<sup>6</sup>

## Discussion

### International adoption problems in cross border surrogacy practice

The procedure of adoption is a major issue that needs to be outlined. Checks regarding data on prospective foster parents are not carried out. This happens because, in the cross-border surrogacy procedure, new children can be made after there is a request from the intended parents. That is, intended parents have been determined to be single foster parents who will care for the child after birth. There is no guarantee of positive identity, background, or environment for the growth of children from the intended parents. The important thing that is considered from the intended parents before doing surrogacy is their financial ability to finance the practice.

After the child is born, the surrogate mother and surrogacy clinic will immediately submit the resultant child as the intended parents. After being submitted, their obligations and duties are over. There is no later responsibility for further checking or supervision regarding the development and growth of children from surrogate mother and surrogacy clinics. Can be considered then the growth and development of children are left entirely to the will and desires of intended parents.

The requirements described above are only checking the physical condition of foster parents. At the Hague Convention checking parents' mental and personality conditions is done through counselling (Article 5). Of course, a person's routine life will change a lot with the presence of children. Sudden and sudden changes in the environment will certainly have an impact on one's psychology and can cause mental disorders in someone. Therefore, counselling must be given to give a description of the effects and consequences after deciding to do the consequences.

In surrogacy practice, before caring for the resultant child, the intended parents are not provided with counselling that will prepare them mentally to welcome new family members. The surrogacy clinic also does not provide counselling facilities. Mental preparation is fully carried out by the intended parents.

### Threats and problems faced by child resultant in cross-border surrogacy practice

All people around the world have the right to be guaranteed safety in their survival. Government security guarantees also apply to the age group of infants and children. What's more, these age groups still cannot maintain their own security, and still, depend on adults to carry out their lives.

Child resultant is the main goal of implementing cross border surrogacy. All surrogacy actors then try to produce a child for intended parents who will later be exchanged for compensation. The resultant presence of child later does not only play a role so that the intended parents can continue their lives, but also at the same time increase the credibility of the surrogacy clinic because they succeed in presenting it.

Since its inception, the resultant child is full of business. Making an agreement at the beginning of the resultant

'creation' procedure of the child along with its compensation then reinforces its position only as a commodity object. The resultant child is similar to commodity goods that pass the demand and supply phases. Even though in reality, humans are not object that can be traded freely.

From the explanation of surrogacy procedures from the beginning to the transfer process described in the previous chapter, the resultant child's interests have also never been a concern or consideration of all surrogacy actors. The Resultant child is only considered as an object that must be successfully created, for the financial benefit of surrogacy clinics and surrogate mother. In addition, preparation of mental intended parents is not well prepared to welcome the presence of the resultant child.

In fact, the resultant child whose age is still a baby is still dependent on adult humans. Fulfilling one's own nutrition alone cannot let alone maintain security and ensure that he gets his own rights. The baby's future and growth have never been well thought out and clear in this surrogacy process. Because it is not a new thing to predict the resultant future, the child will be full of various threats and problems.

The guarantee of survival is not obtained by the resultant child even since it is still a zygote. The resultant presence of a child is very dependent on the will and desires of the intended parents. If in the process of implementing a surrogacy a problem or a change in the intended intention of the parent where he wants the resultant child to be aborted, then the surrogate mother and surrogacy clinic must abort the resultant child who is in the form of a fetus. So not all fetuses from the IVF process can be born into the world. In some cases of surrogacy, changes in the intended intention of these parents are usually based on the problem of the separation of the intended parents.

## Conclusion

The issue of international adoption in the practice of cross border surrogacy occurs throughout the adoption procedure. Starting from the procedure to fulfil the requirements for the intended parents and resultant child to the procedure for transferring children. The role of national adoption institutions in each country is also not large to deal with various issues of international adoption in cross-border practices. This practice also violates various general provisions, one of which is the practice of international adoption in cross border surrogacy carried out for financial purposes.

Furthermore, the biggest threat faced by the resultant child is not having citizenship/stateless. A stateless condition then that delivers the resultant child to a condition that threatens its security as a human. The security elements that are threatened include personal security, economic security and food, health security, and political security.

## Conflict of interest

The authors declare no conflict of interest.

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