



Equitable Assisted Reproductive Technology Service Regulation Reform

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Abstract. Assisted reproductive technology services are a form of reproductive health services for the community that have developed at this time. One form of implementation of this service is in vitro fertilization (IVF). IVF is a solution for married couples to get children, but the process of implementing IVF often fails. This is due to the age factor of married couples over 35 years so that the quality of egg and sperm cells decreases with age, and other reproductive hormone disorders can also affect the fertilization process in IVF. The purpose of this study is to analyze and reformulate the regulation of assisted reproductive technology that is just as an effort to fulfill the right to reproduction to produce children. This research method is focused on legal studies that are not in accordance with the times, so empirical juridical research is needed. The data analysis technique used is descriptive qualitative analysis to create the concept of regulatory formulation derived from the results of field research and literature studies. From this research, the results are in the form of the concept of the formulation of article changes in assisted reproductive technology services through IVF and article proposals for judicial review discussions to the Constitutional Court regarding assisted reproductive technology services through Conditional surrogates. It aims to fulfill the right to reproduction for married couples who want to have children.

Keywords: Fair · Infertility · Reproduction health

1 Introduction

A person's state of health both physically, spiritually, mentally and socially used for productive activities both economically and socially is the definition of health which is part of one of the elements of community welfare in the 2nd and 5th precepts of Pancasila and is also part of the right human rights. In Article 28H of the 1945 Constitution of the Republic of Indonesia which explains that health services are part of the rights of the community. Specifically regarding health services, it is also regulated in Article 4 of Law Number 36 of 2009 concerning Health, which explains that every human being has the right to obtain the right to health through the fulfillment of health services. One of the most important parts of human health is reproductive health.

Reproductive health is a state of reproductive health in women and men who are mentally, physically and socially healthy, and are not contaminated with diseases related to reproductive function and system.

Reproductive health is needed to produce children and is supported by effective, safe and affordable reproductive health services, one of which is assisted reproductive technology services. This service helps the problems of married couples who experience infertility. The problem of infertility is an important problem in the provision of assisted reproductive technology services, where this infertility is experienced by both men and women (Nagórska et al., 2019). The cause of infertility is caused by several factors, such as problems with ovulation, sperm cell formation, and other medical problems (SK, 2018). Besides being caused by medical problems, infertility is also caused by age, physical burden due to work and unhealthy habits, such as smoking, drinking alcohol, and others ("Female Age-Related Fertility Decline," 2014).

This assisted reproductive technology service must be preceded by the approval of the doctor's action and counseling in the management of excess embryos in married couples. If the husband and wife do not extend the storage period of the excess embryo, the embryo must be destroyed. In the provision of assisted reproductive technology services, there are two different methods, namely the conventional method and the Intra Cytoplasmic Sperm Injection (ICSI) method. The conventional method is a simple method by bringing together the husband's spermatozoa and the wife's oocytes in a tube to be transferred into the wife's uterus, while ICSI is done by injecting the husband's spermatozoa directly into the wife's oocytes. Along with the times, reproductive technology services have helped create several changes that can help married couples to have children, one of which is the IVF method (T. Mailensun et al., 2021).

IVF is used as an alternative step in dealing with married couples who experience infertility to get children. The success rate of IVF depends on the age factor of the husband and wife. The older the age, the lower the quality of sperm and egg cells owned by a married couple. On the other hand, if the age of the husband and wife is younger, the quality of sperm and egg cells is still in good condition (Hamdani, 2020). In addition to the age factor, the success of IVF is also caused by factors that cause infertility, both embryonic conditions and lifestyle factors. The expectation of the success of the IVF program has a percentage of 20–30%. This percentage can raise the hope of married couples to have children, but this IVF procedure still has a non-small chance of failure (Syamsuddin, 2020).

There are 95 percent of IVF failures due to pregnancy failure in the embryo capture phase caused by genetic abnormalities in the embryo so that it is weak to continue normal development. This case of IVF failure makes a husband and wife have to try repeatedly to be able to successfully conceive. The failure of IVF is also caused by the age factor above 35 years which has only a 6.4% chance of success because the fertility of sperm and egg cells begins to decline as the age of the husband and wife increases. With these problems, married couples who experience infertility cannot fulfill their right to reproduction to have children, so it is necessary to fulfill IVF services by reconstructing regulations related to assisted reproductive technology services through IVF. In addition, with the case of IVF failure, new breakthroughs in assisted reproductive technology services through surrogate mothers are needed.

A surrogate mother is a form of IVF method development by inserting the results of the fertilization of a husband and wife into the womb of another woman (Lahia, 2017). Assisted reproductive technology services through surrogate mothers are used so that

married couples who are over 35 years old and experiencing infertility get the right to justice in obtaining children. This is in accordance with the embodiment of the 2nd and 5th precepts of Pancasila which explain the value of justice for the community. This surrogate mother service will not change the genetic relationship for married couples. The surrogate mother process promises to overcome cases of married couples who do not have children and is recommended for married couples who experience medical disorders in their reproductive organs, so that they will not repeat the IVF method repeatedly.

The practice of surrogacy in Indonesia is mostly done secretly and secretly and has become a new phenomenon for the medical world. The surrogate mother becomes the pros and cons for the community, because there is no regulation or legal umbrella that specifically regulates the surrogate mother. Other regulations related to surrogacy are regulated in Government Regulation Number 61 of 2014 concerning Reproductive Health and Minister of Health Regulation Number 43 of 2015 concerning Provision of Reproductive Services with Assistance or Pregnancy Out of Natural Ways. The two regulations fully and comprehensively accommodate assisted reproductive technology services, causing the implementation of IVF to fail because there is no accommodation for reproductive rights for married couples over 35 years old and there is no accommodation for services through surrogate mothers. The regulation does not accommodate reproductive rights equally to the community and married couples who experience infertility, so the regulation does not provide full justice for reproductive rights through assisted reproductive technology services.

Along with the development of technology and science in the field of assisted reproductive technology services, it is often not balanced with the laws governing its implementation. This causes researchers to be interested in examining the problems of assisted reproductive technology services that have not fulfilled the rights of married couples who experience infertility, and the implementation of surrogate mothers who do not have a definite legal umbrella and are in accordance with current developments in Indonesia. Therefore, there is a need for legal reformulation of the regulation of assisted reproductive technology services so that people can access assisted reproductive technology services effectively and efficiently both through IVF and surrogate mother methods. Therefore, the researcher created an article entitled "Regulation of Equitable Assisted Reproductive Technology Services Regulation".

The problems formulated in this study consist of 3 problems, namely:

1. What are the factors that assisted reproductive technology services are inadequate in Indonesia?
2. What is the current regulation on assisted reproductive technology services?
3. How is the regulatory reformulation for assisted reproductive technology services fair?

2 Research Method

This research focuses on the advancement of assisted reproductive technology services that are not in accordance with current legal advances. Health services must be balanced with the aim of providing services to the community in order to realize a sense of justice.

The paradigm used in this study is a constructivist paradigm which means that law is contextual and as a construction for human life.

The approach to this research uses a normative and empirical juridical approach. The normative juridical approach is an approach that puts the law as a system of norms, both the rules of legislation, principles, doctrines and agreements. This research approach is also carried out by examining secondary data or library materials through library research. In addition, the empirical juridical approach is an approach that is based on secondary data by examining concepts, principles, legal theories and statutory provisions relating to research and primary data based on the facts that arise (Ishaq, 2017). Based on primary data from an empirical juridical approach, obtained directly from people's lives by interviewing informants.

The informants who were used as participants in this study were married couples who experienced infertility, doctors, religious leaders and legal practitioners. The results of the interviews with the informants were then analyzed in a qualitative descriptive manner, which is a data analysis that selects and categorizes the data obtained from the field, then relates it to the principles, theories and legal rules obtained through a literature study in order to obtain solutions to the problems formulated in this research.

3 Findings and Discussion

1. Research Result from Hospital Services

Assisted reproductive technology services have not been fully spread in various regions and have not been fully supported by doctors in Indonesia. One of the hospitals that does not yet have assisted reproductive technology services through surrogate mothers is Premier Jatinegara Hospital, Jakarta. This hospital believes that the practice of surrogacy is genetic engineering and is not recommended. This is different from the Telogorejo Hospital Semarang which already has assisted reproductive technology services and has been accredited from the Indonesian In Vitro Fertility Association (perfitri).

In order to realize the right to reproduce as a universal human right, the regulation of assisted reproductive technology should also accommodate the interests of women with reproductive health disorders who are likely to have problems during pregnancy and childbirth. If there are arrangements, it will also have an impact on the quality and quantity of services that will be provided to be better and fulfilled, and will get support from organizations or institutions related to assisted reproductive technology services such as Perfitri (Table 1).

Table 1. Results of Questions to Informants at Hospitals regarding Assisted Reproductive Technology Services with Surrogate Mothers

Question Result	RS Premier Jatinegara Jakarta	RS Telogorejo Semarang
IVF Service	Have Service	Have Service
Surrogate Mother Service	Not Recommended for Implementation	Dont Have Service

Source: Screening Data Interview Result by Researchers

2. Research Result from the views of religious leaders

The religious figures who became informants in this study were Muhammad S.Niam, Ferry Sutrisna Widjaja, Andik Wijaya, and Kasan Susilo. There are many contradictions from the views of religious leaders regarding assisted reproductive technology services through IVF or surrogate mothers because they contradict the word of God regarding the purpose of marriage and many hospitals have not implemented these services. Every religious figure means that the purpose of having children is not an obligatory thing. Every religion teaches that marriage aims to worship and seek happiness on both sides, not to seek or have children. Descendants are used as a complement to this happiness.

Religious leaders argue that in marriage not having children is not a problem, because the purpose of marriage is not only to have children, but as worship or self-approach to God and obtain happiness. Religious leaders disputed about fertilization outside the womb, which usually used several fertilized eggs and then inserted into the womb. In addition, there are things that are not a problem if the sperm and egg cells come from a husband and wife who are legally married in a marriage bond. Many religious leaders oppose the IVF program with surrogate mothers because it will have an impact on the emergence of inner bonds between surrogate mothers and children. The surrogate mother is also not related to the lives of married couples who do surrogate mothers.

3. Research Results from the Perspective of Legal Practitioners

The surrogate mother method has been widely used, but secretly (Illegal). Assisted reproductive technology with a surrogate mother can be categorized as an assistive tool (technology) for married couples, even though it is considered a helper, the device must be certified and the baby born must still have its civil rights regulated and if the baby is born with a disability, the right His life must be guaranteed, in the future it is necessary to have rules about this so that it is not carried out in secret. However, assisted reproductive technology with surrogate mothers does not yet have regulations that clearly regulate so that they do not have legal certainty.

According to Damanik as a Legal Practitioner who works in Jakarta, he is of the opinion that the problem of the Substitute Mother method which does not yet have a law, should have a legal guarantee so that the practice is legalized and there is liability in case of malpractice. Therefore, it is necessary to reformulate the regulation because it does not regulate assisted reproductive technology with surrogate mothers. It aims to obtain benefits, justice and legal certainty for the community (partners or service recipients), health workers (service providers) and hospitals (service providers). In an effort to receive, provide and provide assisted reproductive technology services with justice, it requires regulations or regulations governing the parties related to assisted reproductive technology services. This is used in order to obtain benefits and legal certainty in its implementation, and justice services for all circles of society.

4. Results of Research from Married Couples who Experience Infertility in Boyolali

The informants, who are a married couple named Suparmin (39 years old) and Julaeah (38 years old) who live in Boyolali, gave their views on assisted reproductive technology services. At the age of 10 years of their marriage, they have not had children during their marriage. The couple has made various efforts, such as IVF

(IVF) and Artificial Insemination (IUI). In addition, they have also gone through screening which results in problems with the uterus, fallopian tubes, ovaries, sperm motility and sperm count. The uterus in the wife is normal and the sperm in the husband is also normal, but has problems with the quality of the eggs and sperm.

This couple has repeatedly done IVF program 5 times. However, they never give up and have the desire to follow the baby program with other methods. Suparmin and Julaeah are of the view that having children requires greater effort and determination and more patience, so they will continue to strive to have children through IVF and other methods. They also have no problem with the IVF method with a surrogate mother because of their strong desire to have children.

5. The Meaning of Fair Law

A just law is a law that is orderly and without suppressing the human dignity of every citizen or in other words is a law that always serves the interests of justice, order, order and peace in order to support the realization of a physically and spiritually prosperous society. Law is the main means to realize the welfare of society. Law is also useful as a controlling suggestion to maintain social order and control changes in society in the desired direction. If the law is implemented fairly based on the values that live in society, it can be ascertained that welfare can be realized. On the other hand, if the law is carried out only to realize the interests of the elite and leave a sense of justice, then the law is no longer sovereign and moves away from the basic values of the Pancasila ideology (Pahlevi, 2016).

Justice law is associated with the value of Pancasila justice which is used as an operational and actual element for the activities of government administrators to provide health services for the community, one of which is assisted reproductive technology services. The service must be based on justice, because many married couples expect to have children even though they experience infertility. Therefore, in a regulation that regulates assisted reproductive technology services, it must be based on justice so that reproductive rights can be fulfilled for couples experiencing infertility (Islamiyati, 2018).

6. Meaning of Infertility

The inability to conceive within one year without the use of contraception, and have a normal sexual relationship is a sign of infertility. Infertility is not only experienced by women, but also experienced by men. Infertility is divided into 2 types, namely primary infertility that occurs by married couples who have not yet had a pregnancy, in contrast to secondary infertility which is an unsuccessful pregnancy repeatedly even without using contraception and having normal sexual relations (Oktarina et al., 2014).

Infertility is caused by several factors, such as reproductive factors, lifestyle factors and age factors. Reproductive factors are caused by several problems, such as in women experiencing problems with the vagina, cervical problems, uterine problems, ovarian problems and tubal problems, while men experience problems with abnormal sperm movement and shape, low sperm concentration, undescended testicles, testicular cancer, and other problems. In addition to reproductive factors, infertility also occurs due to unhealthy lifestyle factors that are carried out by married couples on a daily basis, such as alcohol consumption, smoking, eating disorders, and other unhealthy habits.

The age factor can also affect the occurrence of infertility in married couples. A woman's reproductive ability will decline after the age of 35 years, because the fewer reserves of egg cells are released. The quality of egg cells in women aged over 35 years will decrease. This also happens to men over 35 years old, who will produce sperm cells with lower quality compared to those under 35 years old. With the problem of infertility, it can make government administrators to fulfill health services through assisted reproductive technology services with IVF or surrogate mothers (Anggraini & Damayanti, 2018).

7. Reproductive Health Definition

Reproductive health is something that is important for a human being to be able to get children. With a perfect state of mental, physical and prosperous in the reproductive system is the meaning of reproductive health. Reproductive health is not only related to reproductive organs and systems, but also related to health services provided by the government to the community (Ahmad et al., 2021).

The scope of reproductive health services consists of midwifery services, family planning services, sexually transmitted disease services, and adolescent reproductive health services. Some of these reproductive health services are guaranteed in Article 72 of Law Number 36 of 2009 concerning Reproductive Health (Lestari, 2017). In this study, there are factors that influence knowledge of reproductive health in assisted reproductive technology services, namely biological, social, psychological and economic factors. Biological factors are related to the reproductive organs and systems of married couples. Social and economic factors relate to the public's view of the necessity of having children, so that married couples who experience infertility can carry out assisted reproductive technology services. Psychological factors are related to the emotions of married couples who experience infertility and do not have children, thus affecting their mental and emotional.

8. The factor of assisted reproductive technology services is not sufficient in Indonesia

a. Internal Factors

Internal factors for assisted reproductive technology services are inadequate in Indonesia due to the lack of optimal assisted reproductive technology services in hospitals. Many hospitals in every region of Indonesia do not yet have IVF services. Hospitals that have IVF services are found in hospitals in big cities in Indonesia. This is different from hospitals in Singapore, which has a population of about 10 million people, but has 40 hospitals spread throughout Singapore with adequate IVF services.

Hospitals that previously had IVF services eventually closed their services, due to the small number of patients and the absence of health insurance coverage that guaranteed the implementation of IVF programs. In addition, the high cost of running an IVF program with little guarantee of success is also an obstacle for married couples, so many married couples choose to go abroad to run the IVF program (Huppelschoten et al., 2012). The implementation of IVF in government hospitals cannot compete with private hospitals, making it difficult to develop effective and adequate assisted reproductive technology services. This has an impact on the provision of reproductive health services to

the community which has not been adequate so that people cannot fulfill their rights to reproductive health in full (Mosadeghrad, 2014)

By 2020, Indonesia will have 20 competent and trusted fertility clinics. The clinic has IVF and insemination services. However, the use of fertility clinic facilities has not been reached by local communities, due to the unequal placement of clinics and only concentrated in big cities. The existence of these internal factors can influence the patient's choice to determine health services that can meet the patient's needs (Manzoor et al., 2019)

b. External Factors

External factors assisted reproductive technology services are inadequate in Indonesia due to ethical, social and legal problems in assisted reproductive technology services. Ethical problems occur during sex selection, use of frozen embryos, genetic engineering cloning, exploitation, commodification, and coercion to surrogate mothers. These ethical problems make people's views on assisted reproductive technology services become bad and make husband and wife couples not want to do it.

Social problems also affect, when the practice of surrogate mothers is carried out secretly or in a family manner. This practice is considered illegal because there are no regulations governing the practice of surrogacy, so there are still many people who do it secretly. In addition to ethical and social issues, there are legal issues that result in inadequate assisted reproductive technology services. The legal problem is when assisted reproductive technology services with surrogate mothers do not yet have regulations that regulate, thus allowing for various kinds of social problems, such as the practice of surrogacy in secret (Halimah, 2018)

In addition to these problems, inadequate assisted reproductive technology services are affected by divorce cases due to female reproductive infertility, one of which is the case of divorced barren in the Jantho Syar'iyah Court Decision. In this case, the husband filed for divorce from the wife due to not being able to have children for several years. This is contrary to the right of women to have children and there is no regulation that protects women from being sued for divorce due to women experiencing infertility. However, in Article 19 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, it is explained that the basic reason for allowing divorce is that one party gets a physical disability or disease with the result that he is unable to carry out his rights and obligations as a wife or husband. . The article mentions the phrase allowed, so this regulation supports divorce on the grounds of being infertile or experiencing infertility.

9. Current Regulations for Assisted Reproductive Technology Services

One part of health is reproductive health. Reproductive health essentially describes the state of human health in the reproductive systems, processes and functions of both men and women. This is stated in Article 71 of Law Number 36 of 2009 concerning Health (Health Law). Furthermore, Article 127 of the Health Law also regulates assisted reproductive technology services, which in the article explains that the results of fertilization will be implanted in the womb of the wife.

More specifically regarding assisted reproductive technology services are also regulated in Article 40 of Government Regulation No. 61 of 2014. The service still uses the womb of the original wife, so this regulation does not specifically regulate surrogate mothers. In carrying out assisted reproductive technology services, it is necessary to comply with several regulations stated in the applicable regulations.

In addition to these regulations, assisted reproductive technology services are also regulated in Regulation of the Minister of Health Number 43 of 2015 which explains how to provide assisted reproductive technology services, excess embryos and arrangements regarding preparation for the implementation of assisted reproductive technology services through counseling and doctor's actions, and mentions the success of taking home baby.

10. Regulatory Reformulation for Equitable Assisted Reproductive Technology Services

Reformulation is a form of reformulation of the existing provisions, aiming to provide a concept of provisions that can be accepted by the community. Regulations are always followed by the times in society, and people will follow the form or content of these regulations. The existence of the times is a change for life and requires legal protection to ensure the welfare of people's lives. Regulatory reformulation is a rule that has not achieved the aspired goal so that it requires a change of the rule. Every applicable rule will have some obstacles and other weaknesses that can cause the regulation to be ineffective and inappropriate.

In order to fulfill the rights and improve reproductive health services, it is necessary to reformulate the regulation of assisted reproductive technology services in a just manner. The word justice is intended as a form of regulatory reformulation that is useful for changing or revising regulations to suit the needs of people's lives to achieve justice. Justice in reproductive health is manifested in the form of regulatory reformulation of assisted reproductive technology services that are used to fulfill reproductive rights for married couples who experience infertility and wish to have children.

In accordance with the theory of justice put forward by David Hume which says that justice establishes what is a person's right and does not give everyone what is his or her right. Rights that arise naturally, such as the right to reproduction, who experience infertility, cause injustice for married couples who want to have children. Therefore, the government as the executor of state administrators should regulate and provide legal protection in the form of fulfilling the rights of married couples who experience infertility. The existence of regulations that clearly and systematically regulates assisted reproductive technology services through IVF, aims to fulfill the right to reproduction for married couples who want to have children.

The scope of equitable assisted reproduction law reformulation, like legal reform in general, is not only limited to reformulation of laws or legal substance (legal substance reformulating), but also legal structure reformulating and legal culture reform. Reformulating) which includes the reformulation of legal ethics and legal science/education (legal ethics and legal science/education reformulating). The reformulation policy is the most strategic stage of efforts to prevent and

overcome abuse or violations through a just assisted reproductive law reformulation policy. The government (executive institution) treatment of women who are in conflict with assisted reproductive laws must be carried out by considering their condition as women who have different characteristics from men. Gender justice in executive policy is a form of protection from the state for women to avoid and be free from injustice and treatment that degrades the degree and dignity of humanity.

For this reason, the author initiated an effort to reformulate the regulation of assisted reproductive technology services through IVF against Government Regulation Number 61 of 2014 concerning Reproductive Health and Minister of Health Regulation Number 43 of 2015 concerning Provision of Assisted Reproductive Services or Pregnancy Outside the Natural Way through the description in Table 2.

As is known, Law No. 36 of 2009 on Health has not accommodated “Substitute Mothers”. In fact, it is clear that the “surrogate mother” is the embodiment of reproductive rights and women’s rights over their wombs. However, the regulation regarding surrogate mothers has not been specifically regulated and there are still prohibitions in terms of ethics, religion and law. By not accommodating assisted reproductive technology services through “surrogate mothers”, the state has taken the reproductive rights and rights to women’s wombs hostage, and has not fully accommodated reproductive rights for married couples who experience infertility and fail in IVF due to the age factor above 35 years.

The existence of contradictory norms regarding the phrase the result of fertilization of the sperm and egg from the husband and wife concerned which will then be implanted in the womb of the wife from which the ovum comes from, causes limited reproductive rights for married couples who experience infertility and limited rights for married couples who fail to reproduce. Implementing IVF because the age factor is above 35 years, so a new breakthrough is needed in the form of a Conditional surrogate. The current regulations prohibit or do not specifically regulate Conditional surrogates, so to find out whether or not a law contradicts the Indonesian constitution (the 1945 Constitution of the Republic of Indonesia), the mechanism that must be used to examine the regulation is Judicial Review, on regulations regarding assisted reproductive technology services through Conditional surrogates. By conducting a Judicial Review, the regulation regarding Conditional surrogate Mothers can be more secure with various proposals that can support and assist married couples who experience infertility and failure in IVF services due to the age factor of 35 years to be able to produce children.

The author proposes a change in the name of a surrogate mother to a conditional surrogate mother, which is an assisted reproductive technology service carried out by the husband’s sister or wife who is of the same age. For this reason, the author has initiated a proposed amendment to the article which will be used as material for judicial review to the Constitutional Court which consists of several regulations, such as (Table 3):

The conditional surrogate mother must meet the criteria, namely the husband’s or wife’s biological sister by blood. This is because siblings have the same hormones and blood,

Table 2. Concept of Regulatory Reform of Assisted Reproductive Technology Services through IVF

No	Article	Change	Reason for Change
1	Article 42 paragraph (1) PP No. 61 of 2014 concerning Reproductive Health (PP on Reproductive Health)	Addition of the phrase “ <i>to husband and wife</i> ” in Article 42 paragraph (1) of the PP on Reproductive Health	An agreement should require contributions from husband and wife so that they can know the actions that must be taken when carrying out assisted reproductive technology services.
2	Article 43 paragraph PP on Reproductive Health	Addition of the phrase “ <i>except husband and wife aged 35 years and over using assisted reproductive technology services.</i> “, in Article 43 paragraph (2) of the PP on Reproductive Health Addition of paragraph to Article 43 (5) If the husband and wife do not agree to extend the storage of the embryo, it can be destroyed.	This regulation requires the age criteria for wives aged 35 years and over in using assisted reproductive technology services, because married couples aged 35 years and over have a high risk of failure in the IVF program, so criteria are needed for storing excess embryos for the needs of reproductive technology services. Which will then be carried out by the husband and wife.
3	Article 14 paragraph (1) Regulation of the Minister of Health Number 43 of 2015 concerning the Implementation of Reproductive Services with Assistance or Pregnancy outside the Natural Way (PMK No. 43 of 2015)	The addition of the phrase “ <i>in husband and wife</i> ” in Article 14 paragraph (1) PMK No. 43 Year 2015	In an agreement for medical action, it is necessary to have a contribution from a husband and wife so that they can find out what actions should be taken when performing assisted reproductive technology services.

(continued)

Table 2. *(continued)*

No	Article	Change	Reason for Change
4	Article 16 PMK No. 43 Year 2015	Change in percent from the previous 10% to 5% in Article 16 paragraphs (1) and (3)	In this article, it causes many hospitals to have their licenses for IVF administration revoked due to the problem of taking home babies, which is at least 10% of the embryos transferred, so that it is very detrimental to the community, especially married couples who want to have children. This causes limited opportunities to have children for married couples through IVF. Therefore, the number of take home is reduced to 5%.

so that married couples who want to have children can fulfill their reproductive rights by implanting the results of their fertilization into siblings. The similarity in this hormone has nothing to do with genetics between the surrogate mother and the child, because the surrogate mother only conceives and carries the child entrusted to her. In addition, fertilization is carried out outside, then the embryo is the result of fertilization of the mother's egg cell by her husband's sperm. So the baby's DNA remains linked to the seed mother and her husband. The surrogate mother is only pregnant and entrusted with the baby.

The addition of this conditional surrogate service provides reproductive rights for wives who experience infertility and hormonal disturbances in the uterus, so in this case the option is given to conditional surrogate mothers. This will provide legal certainty in the implementation of assisted reproductive services with conditional surrogates and reaffirm changes to other laws and regulations governing assisted reproduction. Therefore, the regulatory reformulation of assisted reproductive technology services is very useful to fulfill the reproductive rights of married couples in order to have children.

Table 3. Proposed Article Changes for Judicial Review materials on the Arrangement of Assisted Reproductive Technology Services with Conditional surrogates

No	Article	Change	Reason for Change
1	Article 4 of Law no. 1 of 1974 concerning Marriage (Marriage Law)	Addition of Paragraph (3) which reads <i>“The wife may use a Conditional surrogate.”</i> Addition of Elucidation to Article 4 paragraph (3) regarding the definition of Conditional surrogate. Conditional surrogate mothers are assisted reproductive technology services carried out by the husband’s or wife’s sisters who are of the same birth.	The role of assisted reproductive technology services with conditional surrogate mothers is a solution for wives unable to give birth to children and preventing discrimination because women do not have a choice when giving permission to their husbands to take more than one wife. This is a manifestation of the value of justice in the 2nd and 5th Precepts of Pancasila.
2	Article 127 of Law Number 36 of 2009 concerning Health (Health Law)	Addition of a phrase in paragraph (1) letter a, namely <i>“and/or Conditional surrogate”</i> Addition of explanation in Article 127 paragraph (1) letter a regarding the definition of Conditional surrogate.	Conditional surrogate mothers are the embodiment of reproductive rights and women’s rights over their wombs. By not accommodating conditional surrogates, the state has taken reproductive rights and rights to women’s wombs hostage. Of course this is inversely proportional to the respect and appreciation of Human Rights that is echoed by the Government.
3	Article 40 PP on Reproductive Health	Addition of the phrase <i>“Conditional surrogate Mother’s womb”</i> in Article 40 paragraph (2) of the PP on Reproductive Health Adding an explanation regarding the definition of Conditional surrogate in Article 40 paragraph (2) of the PP on Reproductive Health	Can accommodate the implementation of assisted reproduction or pregnancy outside the natural way by using the fertilization of sperm and ovum from the husband and wife concerned to be implanted into the husband’s or wife’s biological sisters who are blood relatives.

(continued)

Table 3. (continued)

No	Article	Change	Reason for Change
4	Article 13 paragraph (2) PMK No. 43 Year 2015	Addition of the phrase “ <i>Conditional surrogate Mother’s womb</i> ” in Article 13 paragraph (2) of the PP on Reproductive Health Addition of explanation regarding the definition of conditional surrogate mother in Article 13 paragraph (2) of PP on Reproductive Health.	Accommodating married couples who want to provide assisted reproductive technology services in the conventional way, namely bringing together normal husband’s spermatozoa and wife’s oocytes in a tube, then the fertilized embryo that has been formed is then transferred into the womb of the husband’s or wife’s blood relatives.

4 Conclusion

Assisted reproductive technology services which consist of IVF services and surrogate mothers raise several pros and cons in the community. This is because the service has not fully fulfilled the reproductive rights for couples experiencing infertility. Infertility is caused by several factors, both age and lifestyle of married couples. This infertility causes the husband and wife to be unable to have children. Married couples usually do everything they can to get children.

The first way is using IVF which is part of the assisted reproductive technology service. IVF has a low success rate. This is caused by several factors such as the age factor above 35 years and reproductive hormone factors. Therefore, it is necessary to reformulate the regulation of assisted reproductive technology services that aim to fulfill the right to reproduction through IVF services. In addition, services with the latest breakthrough are needed, namely Conditional surrogates. Conditional surrogate mothers are used as material for judicial review on changes to articles in regulations related to assisted reproductive technology services. Conditional surrogacy is the second method of assisted reproductive technology services. The conditional conditions referred to in the surrogate mother are the criteria for a surrogate mother, namely a husband’s or wife’s biological sister. With the regulatory reformulation of assisted reproductive technology services, it can provide legal certainty and fulfillment of the right to health through IVF services and Conditional surrogate Mothers.

Suggestions from this research, in the continuation of the formulation of regulations must be followed by an agreement regarding Conditional surrogates. This agreement is made after the child is born from the womb of a surrogate mother. In addition, there is an adoption agreement requirement that is used as a requirement for a married couple in raising and financing the pregnant mother, and does not eliminate the right of the pregnant mother to give love and care to the child.

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