

# Inheritance Rights of a Child Born From a Surrogate Mother According to Indonesian Law

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## Abstract

Throughout the lives of human beings, starting from one's birth to their death, one may see that rights and obligations are always present. The issue of inheritance comes up at the end of a person's life. The division of one's inheritance is a complex matter, especially when it comes to the right to inherit for a child that is born from a Surrogate Mother. Surrogacy procedures are a form of Assisted Reproductive Technologies that aids married couples who are unable to have an offspring naturally due to health issues or abnormalities, and therefore must be assisted by these treatments. There are two different types of Surrogacy, namely Traditional Surrogacy and Gestational Surrogacy. Traditional Surrogacy is legally allowed in Indonesia, but there are no laws that specifically regulate Gestational Surrogacy; there are however, laws that imply the prohibition of it being practiced as a method of Assisted Reproductive Technologies. According to Indonesian laws, a child born from Gestational Surrogacy is considered either an illegitimate child or a child born from adultery, thus creating a problem regarding their inheritance, for the child will be unable to receive inheritance from their parents, even though the intent of Gestational Surrogacy is to have a child for the intended parents to raise as their own. This article will discuss the legality of Gestational Surrogacy as well as the issue of inheritance for a child born by the procedure; this includes regulations that tackle the issue and hopeful solutions for the issue at hand.

**Keywords:** Inheritance; Rights; Child; Surrogacy.CC BY: [Creative Commons Attribution License 4.0](https://creativecommons.org/licenses/by/4.0/)

## 1. Introduction

Essentially, a family as the basic unit in society traditionally consists of two parents and their children. A family could also consist of various social units and still be regarded as an equivalent to the traditional family (such as a single-parent family), though this article will focus on the traditional family consisting of a father, a mother, and a child and/or children. In a marriage, having children is usually something that brings happiness. According to Act No. 1 Year 1974 on Marriage: "A Marriage is a whole-hearted and sincere bond between a man and a woman as husband and wife whose purpose is to build a happy and eternal family based on the belief in one Supreme God" (Arnas, 2016; Iryani and Murtiwiidayanti, 2017; Lin and Yang, 2017; Mai and Thuy, 2015; Naeem and Hameed 2018; Republik Indonesia, 1974; Wanninayake, 2016). This law states that the purpose of a marriage is to "build a happy and eternal family," where if we were to link this to the definition of a traditional family, the presence of a child is usually involved. In reality though, not all married couples are able to have children on their own; either caused by infertility, health abnormalities or surgeries such as hysterectomy. In this article, we will specifically discuss Surrogacy with married couples where the wife is proven unable to bear and give birth to her own children but still has the ability to produce egg cells. The couples from these cases could be helped through advanced medical technologies such as Assisted Reproductive Technologies (ART) that makes it possible for them to have children.

Assisted Reproductive Technologies (ART), also referred as Assisted Reproductive Treatment, are treatments that are used to assist people in achieving pregnancy. One of the types of treatments is Surrogacy, which is a form of Assisted Reproductive Treatment (ART) where a woman (the Surrogate Mother) agrees to carry and give birth to a child on behalf of another person or couple, referred to as the "commissioning parent(s)" or "intended parent(s)" (Victorian Assisted Reproductive Treatment Authority VARTA, n.d). In this article, we will specifically discuss about Gestational Surrogacy, where a Surrogate Mother is only responsible for carrying and giving birth to the child, thus having no genetic relations to the child at all. A Surrogate Mother is a term referring to the woman who agrees to carry and give birth to a child of a couple (the intended parents), in which the sperm and egg cell was retrieved. In other words, the Surrogate Mother "rents" her uterus to be implanted with the embryo that came from the sperm and egg cell of the intended parents. This agreement is referred to as a Gestational Agreement. Usually, an In Vitro Fertilization (IVF) procedure is done for Surrogacy treatments. In Vitro Fertilization (IVF) is the

process of fertilization by extracting eggs, retrieving a sperm sample, and then manually combining the egg and sperm in a laboratory dish. The embryo is then transferred to the uterus of the Surrogate Mother.

As social creatures living in a society where lives are interconnected to one another, people are understood to have rights and obligations towards themselves and other people. A person's birth will also automatically give birth to rights and obligations of that individual; these rights and obligations are tied to their parents and families. Even after death these things will affect others as well, in this case the people they leave behind, which could either be parents, children, or other family members. The death of an individual will raise issues about inheritance and the legal heirs for it. For children that are born through Surrogacy, dividing their part of inheritance is much more complex than for children born from traditional families. The problem comes from whether the child is considered as the legal child of the intended parents or the Surrogate Mother. Being able to categorize the child from a legal aspect will make it easier to determine from whom the child has the right to inherit. Understanding the legality of Gestational Surrogacy is also crucial in determining the child's right to inherit.

In Indonesia, Traditional Surrogacy is allowed while Gestational Surrogacy is prohibited. One of the reasons why Gestational Surrogacy is not allowed is because it would cause confusion and complexity when it comes to inheritance, and that it is not in accordance with Indonesia's point of view in morality, ethics and norms. In addition, the act of "renting" a uterus is viewed as unnatural and that a uterus cannot be considered as an object of rent. Moreover, the prohibition also exists as a prevention for commercialization of the uterus, which is a fear that is deemed to happen if Gestational Surrogacy is to be allowed (Thamrin, 2014). These issues are what keeps the Indonesian government from legalizing Gestational Surrogacy. While these issues are concerning, it does not mean that it would be impossible to construct a solution for Gestational Surrogacy to actually work. Article 72 (b) of Act No. 36 Year 2009 on Health states that: "Every individual has the right to determine their own reproductive lives with freedom from discrimination, force, and/or violence and that which respects noble values that do not demean human dignity in accordance with religious norms" (Masuo and Cheang 2017; Nuchso et al., 2016; Republik Indonesia, 2009; Yildiz and Kayili, 2015). This article reinforced the right that every individual should be free and are under no pressure or discrimination to make their own choices about their reproductive lives, thus providing opportunities for married couples to have a chance to have their own children.

## 2. Method and Materials

In this article, the method we use is academic library research, in which we systematically study and investigate the information through written literatures that are related to the topic at hand. For the sake of this research, our primary sources of information that we use are the relevant governing regulations in Indonesia and literatures that discuss the topic at hand. In addition, journals and websites that correspond to our research are also read and analyzed. With the gathered data and information, a process of discussion is then done to find possible solutions to the issue. Finally, through the discussion we will form a conclusion that contains the result of our research.

## 3. Theory

There are different types of Surrogacy but it can be classified into four categories based on the point of view, which are:

- 1) the genetic relationship;
- 2) payment for the Surrogate;
- 3) where it's completed; and
- 4) who you work with.

Regarding the genetic relationship, it is divided into two different types: the Traditional Surrogacy and the Gestational Surrogacy. The Traditional Surrogacy as defined by Black's Law Dictionary 8th Edition is "A pregnancy in which a woman provides her own egg, which is fertilized by artificial insemination, and carries the fetus and gives birth to a child for another person" (Garner and Black, 2004). As for Gestational Surrogacy, it is defined by Black's Law Dictionary 8th Edition as "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 a child" (Garner and Black, 2004). In Traditional Surrogacy, the Surrogate's egg is used to create the embryo of the child she is going to carry. In Gestational Surrogacy, the intended parents create an embryo using their own egg and sperm or using donated egg or sperm. An online article explains about types of Surrogacy as such:

*While Traditional Surrogacy was the only way to carry out a Surrogacy throughout most of history, over the past 30 years Gestational Surrogacy has become the more popular of the two types of Surrogacy. Not only does it allow both parents of a heterosexual couple to be biologically related to their child, but it also helps eliminate some of the legal and emotional struggles that come with a Surrogate being genetically related to the child she's carrying.* (Surrogate, n.d.)

Gestational Surrogacy brings about its own advantages as stated above, as it helps eliminate some of the legal and emotional problems that may arise. This is a possible solution for married couples in which the wife is unable to bear the child on her own, for in Indonesia, the only possible way of Surrogacy is the Traditional Surrogacy, which would require the wife to bear the child, as well as using her own egg cell for the fertilization process.

Another factor that differentiate the types of Surrogacy is the payment for the Surrogate. This is also divided into two, which are Compensated Surrogacy (also called Commercial Surrogacy) and Altruistic Surrogacy. Commercial Surrogacy refers to any Surrogacy arrangement in which the Surrogate Mother is compensated for her

services beyond reimbursement of medical expenses (Surrogate, n.d.). As for Altruistic Surrogacy, it is to act as a Surrogate Mother by agreement with the intended parents without receiving any form of profit from the act, but may still receive payment to cover certain expenses for the Surrogate Mother, such as travel expenses, healthcare, etc. These two types are differentiated by the willingness to undergo the procedure, either by doing it selflessly and not wanting payment or by doing it with a compensation and being paid for it.

The third factor that categorizes types of Surrogacy lies on where it is completed. This factor mainly classifies where the procedure is done: domestically or internationally. A domestic location could be chosen by the intended parents who live in a country with thorough and clear regulations about Surrogacy. When living in a country with no regulations for Surrogacy or in one that prohibits such act, the intended parents would have no choice but to carry out the procedure internationally, meaning it would be in another country altogether. If the intended parents were to do it internationally, it is important to learn about the Surrogacy regulations in the chosen country before proceeding.

Lastly, the “who you work with” factor is mainly about doing the procedure through an agency or independently. In some countries, agencies that specialize in Surrogacy will have their own legal advisors or lawyers to take care of the legal matters such as the contents of the agreement. With Surrogacy that is done independently, the intended parents and the Surrogate usually only work with a Surrogacy lawyer and a fertility clinic to complete their Surrogacy process. Independent Surrogacy usually costs a lot less than an agency specializing in it, but it requires much more work and legal and/or health risks for the intended parents since they have to handle all the aspects of Surrogacy themselves without the professional guarantee of an agency.

In Indonesia itself, there are no regulations that address Gestational Surrogacy specifically. There are, however, a few regulations that imply that the practice of it being prohibited. Article 127 of Act No. 36 Year 2009 on Health states that:

*Efforts of achieving pregnancy aside from natural methods are only allowed for a legally married couple with the following conditions:*

- 1) *the result of fertilization of the sperm and egg cell from a husband and wife is implanted into the uterus of the wife, from which the egg cell is retrieved from;*
- 2) *is carried out by health professionals with expertise and authority for it;*
- 3) *done in specific service facilities intended for it. (Republik Indonesia, 2009).*

In this act, it is not clearly stated that the practice of Gestational Surrogacy is prohibited, but it states certain conditions that allow efforts to achieve pregnancy aside from natural methods. The conditions are set so that only couples that are legally married are allowed and includes limitations that only allow Traditional Surrogacy; also that the procedure must be done by health professionals and done in service facilities that are specifically made for the purpose. Another regulation is from Minister of Health Act No. 039/Menkes/SK/I/2010 on Implementation of Assisted Reproductive Technology Services, which states:

- 1) *Artificial technology services can only be done with the egg cells of the wife and sperm cells of the husband.*
- 2) *Artificial reproduction services are part of infertile services, thus the service framework is part of the overall management of infertility services.*
- 3) *An embryo that can be moved at one time into the uterus of a wife is no more than three, but may be increased to four embryos if:*
  - a) *the hospital has three levels of Newborn Baby intensive care;*
  - b) *previous spouses had experienced at least 2 failed reproductive technology procedures; or*
  - c) *the wife is more than 35 years old.*
- 4) *It is forbidden to carry out any form of Surrogacy.*
- 5) *It is forbidden to buy and sell embryos of ovum and spermatozoa. (Republik Indonesia, 2010)*

We can see that the regulation is only referring to the Traditional Surrogacy where the embryo is implanted into the wife after her egg cell is fertilized with her husband's sperm cell through the IVF procedure. This implies that only the method of Traditional Surrogacy is allowed. Even so, on point four it states that “it is forbidden to carry out any form of Surrogacy”; this statement raises confusion because Traditional Surrogacy is also a form of Surrogacy. This regulation prohibits any forms of Surrogacy, but allows a certain type of Surrogacy, which is the Traditional Surrogacy. This provides a legal loophole for another type of Surrogacy, such as Gestational Surrogacy.

The legal status of a child in Indonesia can be seen in Article 42 of Act No. 1 Year 1974 on Marriage Law, which states that: “A legitimate child is a child that is born within or as a result of a legal marriage” (Republik Indonesia, 1974). If we were to put this into perspective, a child that is given birth to by a Surrogate Mother would be considered an illegitimate child of the Surrogate Mother, if the Surrogate Mother is not in a legal marriage. This is because no legal marriage exists between the Surrogate Mother and the father of the child (from whom the sperm cell is retrieved from). The child was not born “within or as a result of a legal marriage between the Surrogate Mother and the father,” which is then considered as illegitimate. Article 43 of Act No. 1 Year 1974 on Marriage Law states: “A child that is born outside of marriage only retains civil relations with the mother and her relatives” (Republik Indonesia, 1974). According to this law, this would mean that the child only has the right to inherit from their mother and her relatives. Now, if the Surrogate Mother was to be in a legal marriage, then the child would be considered a child that was born as a result of adultery between the Surrogate Mother and the intended father. This certainly creates a problem.

The law itself does not explicitly set the boundaries of definition for a child born outside of legal marriage. Even so, from Article 272 of Indonesian Civil Code we can conclude that for a child born outside of legal marriage

to be acknowledged, they have to be borne by a mother who is fertilized by a man she is not married to, and is not born from an adulterous or incestuous relationship (Republik Indonesia). According to Paul Scholten, children that are born outside of marriage are children who are seeded and born outside of a legal marriage. Therefore, a child born outside of legal marriage may be widely defined as:

- 1) children born from an adulterous relationship;
- 2) children born from an incestuous relationship;
- 3) other children that are born outside a legal marriage. (Hartanto, 2015).

By complying to the meaning of the term “a child born outside of marriage” according to Paul Scholten’s definition, it would mean that a child born outside of marriage is one that is conceived outside of the legal bonds of marriage, but does not include those born from an adulterous or incestuous relationship, which would cause a legal binding between the child and the parents. While a child born from an adulterous or incestuous relationship still count as a child born outside of marriage, they cannot be acknowledged by their parents. (Hartanto, 2015) This is to follow the rule set by Article 867 of Indonesian Civil Code, which states that: “The aforementioned stipulations are not applicable to children conceived through adultery or incest. The law shall only grant those children the required living support” (Republik Indonesia).

According to Indonesian laws and regulations, a child born outside marriage is set to receive a different amount of inheritance when compared to a child born from a legal marriage, which is smaller in portion. As stated in Article 863 of Indonesian Civil Code:

*If the deceased has left any legal descendants or a spouse, the children born outside of the marriage shall inherit one third of the share they would be entitled to if they were legal; they shall inherit one half of the estate, if the deceased does not have any descendants or spouse, but has blood relatives in the ascending line, or brothers and sisters or their descendants; and three quarters if the only remaining family is related in a more distant degree. If the legal heirs of the deceased are related in unequal degrees, the closest relative in one line shall stipulate the amount of the share to which the natural child shall be entitled, even with respect to those who are in the other line. (Kitab Undang-Undang Hukum Perdata)*

A Surrogate Child will only receive a fraction of their supposed share as an heir of an inheritance if they were to be categorized as a legal child born in that marriage due to their legal status. There is however another article that one must consider, which would be Article 285 of Indonesian Civil Code:

*Acknowledgment which takes place in the course of the marriage by one of the spouses, in order to benefit the child born outside of a legal marriage, which he, prior to his marriage has conceived with a person other than his spouse, shall not jeopardize that spouse nor shall it be detrimental to the children born of that marriage. Such acknowledgment shall however have consequences after the dissolution of that marriage, if there are no remaining descendants from the marriage. (Kitab Undang-Undang Hukum Perdata)*

With the existence of this article, one may see that the Surrogate Child still may not receive their inheritance share even with the parents’ acknowledgment, if the spouse or child/children are the legitimate heirs. Even worse, if the circumstances of the subjects in the Surrogate Agreement are aligned, the child would be considered as one born from adultery. Indonesian laws do not take kindly to such cases, as seen on Article 867 of Indonesian Civil Code, therefore fully crippling the Surrogate Child’s right to inherit from their parents, and may only rely on basic financial support for their daily life.

A child born outside of marriage may still have the opportunity to inherit from their parents, provided that they are acknowledged by their father; while the right to inherit the mother's property by law is already determined automatically without the need for recognition. In contrast with a child born outside of marriage, a child born as a result of adultery or incest does not have a legal relationship with their parents, so they do not have the right to inherit their parents' assets. According to the provisions stipulated in Article 867 of Indonesian Civil Code above, it may be concluded that they are not entitled to inherit from their parents at all.

## 4. Discussion

Solving this issue will require the creation of a regulation that excludes those limitations. Limiting the child’s rights because there are no specific rules about the case would be equal to ignoring the fact that the child actually has the right of inheritance from their parents. In Article 21 of Act No. 35 Year 2014 on Amendments to Act No. 23 Year 2002 on Child Protection, it states that “The State, Government and Regional Government is obliged and responsible in respecting the fulfillment of the Rights of the Child without differentiating their tribe, religion, race, class, sex, ethnicity, culture and language, legal status, birth order, and physical and/or mental condition” (Republik Indonesia, 2014). The definition of Rights of the Child is stated in Article 1 point 12 of the same act: “Rights of the Child is a part of human rights which must be guaranteed, protected, and fulfilled by Parents, Family, the community, country, government, and local government” (Republik Indonesia, 2014). If we were to look at this regulation, the child should have their rights without the limitations of whatever legal status they have, and their rights should also be guaranteed, protected, and fulfilled.

Tackling the issue about commercialization of the uterus, there is a need for specific rules that adhere to specific cases, as well as a prohibition to commercialize it to be specially stated; instead, using an altruistic approach would be more suited. There are a few countries that allow the act of Surrogacy, either by Commercial Surrogacy or Altruistic Surrogacy. In Canada, it is illegal to pay for the services of a Surrogate Mother or to purchase human sperm and egg cells. Federal law allows only Altruistic Surrogacy in Canada; agencies that match



Surrogates with parents are restricted, and commercial services that support either the parents or the Surrogate are prohibited (Sensible Surrogacy, n.d). In UK, the intended parents must apply post-birth for a parental order which is similar to adoption, in that it will extinguish the parental status of the Surrogate Mother (considered as the birth mother) and her husband (if applicable), and reassign it to the intended parents fully and permanently. The parental order goes one step further than adoption since the General Register Office will, on receipt of the court order, issue a new birth certificate for the Surrogate Child naming the intended parents as the legal parents. This will supersede the previous version and will not feature any details of the Surrogacy context (Scott, 2016).

Article 261 of Indonesian Civil Code states: "A child's legality as an offspring can be proven with their birth certificate, simply by having it registered in the civil registration. In terms of the absence of such certificates, if the child is able to continuously benefit in the position of a legal child, then their position is considered as a sufficient proof" (Kitab Undang-Undang Hukum Perdata). With this in mind, it could be arranged so that the civil registration would issue a birth certificate in which the child is stated as a legal child of the intended parents. If the government finds it necessary, then the Ministry of Health may keep a register of the names and backgrounds of the married couples and their Surrogates that have been, are, and will be undergoing the Gestational Surrogacy procedure.

This means that for a regulation like this to work, there is a requirement for service facilities that provide assistance and treatment in a way that is similar to professional counselling that are done per case by case and individually treated. This way, it would be much easier to determine if these couples are eligible for the treatment or not. This type of professional counselling is stated on Article 42 of Government Regulation No. 61 Year 2014 on Reproductive Health:

- 1) *Services regarding Reproduction with Assistance or Pregnancy Outside of Natural Methods require counselling done in advance and approval of medical actions (informed consent).*
- 2) *Counselling and approval of medical actions as stated in point (1) include further management of excess embryos.*
- 3) *Counselling as stated in point (1) should be done before and after gaining services regarding Reproduction with Assistance or Pregnancy Outside of Natural Methods.*
- 4) *Counselling as stated in point (1) is done by personnel with the competence and authority to do so.*
- 5) *Approval of medical actions (informed consent) as stated in point (1) is done in accordance to laws and regulations. (Republik Indonesia, 2014).*

It is also crucial that a Gestational Agreement binds the Surrogate Mother to the intended parents. The definition of Gestational Agreement is an agreement or a mutual commitment between the intended parents (husband and wife) and the Surrogate Mother to obtain an offspring. The agreement then will give rise to the rights and obligations of each party: the right of intended parents is to receive the child from the Surrogate Mother; the obligation of the Surrogate Mother is to give the child to the intended parents immediately after giving birth to them; the right of Surrogate Mother is to receive finance during pregnancy until the birth process from the intended parents; and the obligation of the intended parents is to finance and take care of all the needs of the Surrogate Mother until she gives birth to the child. Therefore, a Gestational Agreement has to include the basic principles of contract, such as:

- 1) freedom of contract;
- 2) principle of consensus;
- 3) binding force of contract;
- 4) goodwill/good intentions. (Hernoko, 2010),

Freedom of contract in its core is that the contract should be able to be formed without restrictions, meaning that it is based on mutual agreement and freedom of choice. The principle of freedom of contract can be seen on Article 1338 of Indonesian Civil Code, which states that: "All agreements that are made legally are considered as the law to the parties that made them" (Kitab Undang-Undang Hukum Perdata). This principle gives the freedom for the parties involved to:

- 1) make or not make an agreement;
- 2) make an agreement with anyone;
- 3) determine the contents of the agreement, its implementation, and its requirements; and
- 4) determine the form of agreement whether written or oral. (Judiasih *et al.*, 2016),

The principle of mutual consensus means that the agreement should be based on the consensus of the parties. The parties involved must have consent on the agreement that they are making, while the principle of binding force of contract illustrates how an agreement has a force that binds the parties involved into whatever agreement it is that they made. The parties are tied to the agreement they made and therefore must submit to it. As for the principle of goodwill, it is stated on Article 1338 point 3 of Indonesian Civil Code: "An agreement must be carried out with goodwill" (Republik Indonesia). This means that an agreement has to be based on good intentions or goodwill of the parties.

Other than the basic requirements above, one must remember when making an agreement that the most important requirement for an agreement to be considered legal is for it to fulfill the legal elements of the legitimacy of an agreement contained in Article 1320 of the Indonesian Civil Code, namely:

- 1) mutual agreement from those who bind themselves;
- 2) the party involved are legally capable of making an agreement;
- 3) the agreement is of a certain matter;
- 4) the agreement is based on a allowed cause.

If the Gestational Agreement is to be constructed to abide to Indonesian contract-making regulations, then renting one's uterus would include: the parties of the agreement, which is a husband and wife as the intended parents and a Surrogate Mother; an agreement that contains the consensus from the parties; a clear objective that is not contrary to the law and order in general; and is publicly decent and not prohibited by law. Such construction is a series of legal terms and conditions of an agreement. The option for this agreement is to take the "middle way" between illegality and enforceability of the agreement. With this option, if the party enters the agreement, and all parties agree to continue the agreement, then there is no legal obstacle to its implementation (Judiasih *et al.*, 2016).

Article 1313 of Indonesian Civil Code states that "An agreement is an act in which one or more persons bind themselves to one another" (Republik Indonesia). With the case of Surrogate Mother, if we were to view it as an agreement between two parties, then it can be considered as a legal agreement; but it is stated as one of the conditions of a legal agreement is for the agreement to be of a legal cause that is not prohibited by law, and a uterus is not an applicable object of an agreement. The uterus does not fall into the category of object; the reason is that in Article 499 of Indonesian Civil Code states that the definition of an object is "any item and any right which can be controlled by property rights" (Republik Indonesia). In this definition, the uterus is not an object because it cannot be considered as a property that fits into the definition. In a Gestational Agreement, the object of the agreement is the usage of the uterus as a service, and not the uterus itself. As long as the agreement does not cause any dispute or loss to the parties involved and also third parties, the agreement will remain and be considered as the law to the parties involved, in accordance to Article 1340 point 1 of Indonesian Civil Code, which states, "An agreement only applies to the parties who made it" (Republik Indonesia), and if the agreement is based on the goodwill of the parties involved and does not infringe the boundaries set by Article 1338 point 3 of Indonesian Civil Code, which is: "An agreement must be carried out with goodwill" (Republik Indonesia).

## 5. Conclusion

The regulations in Indonesia only caters to couples where the wife is able to bear a child on her own, but completely disregards couples where the wife has no ability to bear a child on her own. This regulation makes it impossible for these couples to experience the joy of having a child. A regulation could be made with limitations where a Surrogate Mother is only responsible for bearing and giving birth to the child, therefore the Surrogate Mother has no genetic and legal relations with the born child. Only the child's intended parents – from whom the egg and sperm cell was retrieved from – has genetic and legal relations with the child, thus removing the confusion of inheritance; it would be as though there was never a Surrogate Mother to begin with, and therefore will follow the present regulations for inheritance in Indonesia as though the Surrogate Child is conceived by the intended parents. In addition, the regulation should include a base contract as a reference for the agreements.

All the terms and conditions of the agreement ideally should be stated clearly in the standard contract itself to reduce the chances of dispute that may happen in the future. The agreement and the parties involved should also be reviewed and approved by the Ministry of Health case by case to see if the intended parents are eligible to have a child through Gestational Surrogacy procedure. To sum it up, ideally the child should have the right to inherit from their intended parents, because fundamentally the cells from which has formed into the child was retrieved from these two individuals with the intent of building a happy and eternal family.

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