

**LEGAL PROBLEMS ON COMMERCIAL SURROGACY IN THAILAND UNDER
THE PROTECTION OF CHILDREN BORN FROM ASSISTED REPRODUCTIVE
TECHNOLOGIES ACT, B.E. 2558***

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ABSTRACT

Thailand is one of the destination countries for Assisted Reproductive Technologies process and surrogacy arrangements. Today, Childless couples are increasingly looking for Thailand and elsewhere to allow them to have children through Assisted Reproductive technologies available where there are no laws prohibiting this and it is also affordable. The demand for surrogacy and other artificial conception procedures is rapidly increasing throughout the world. Thailand's reputation as a place where surrogate mothers can be found is growing. As a result of Surrogate Thai mothers being well regarded for their healthy lifestyle and, combined with Thailand's first class hospital services, surrogacy has become popular among both Thais and foreigners.

The controversy of concerning surrogacy occurred in August 2014. At that time, in the baby Gammy case, an Australian utilized a Thai surrogate mother through surrogacy arrangement in Thailand and then abandoned one of twins, called Gammy who was born severely handicapped (Down Syndrome). The couple took only the child's twin sister, called Pipah, back to Australia. The problem is who should be responsibility for the baby Gammy. The law in Thailand at that time could not be applied to this situation properly. However, commercial surrogacy was officially banned by the Medical Council of Thailand. Subsequently, shortly afterwards, it was discovered that a Japanese man was the father of a large number of children utilizing surrogate mothers through surrogacy in Thailand. The whole issue was sensitive to the society. The assumption of human trafficking via commercial surrogacy is of great important issue to be investigated. Later, a specialist in Assisted Reproductive technologies had been charged with a number of serious offences. The thing that should be considered in this case is properly legal regulation to solve this problem. That commercial surrogacy should be banned or not is considered upon the public order and morality. The expression of "commercial surrogacy" should be profoundly defined

In November 2014, Thailand's National Legislative Assembly approved the draft surrogacy law. In February 2015, the Thai Parliament passed the legislation of prohibiting commercial surrogacy, called Protection of Children Born from Assisted Reproductive Technologies Act, B.E.2558. However, the provision of the Act concerned about commercial surrogacy is not clear enough for the foreigners to search for surrogacy arrangements through

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Assisted Reproductive Technologies in Thailand where is very famous in these kinds of treatment of infertility.

This thesis mainly studies commercial surrogacy in Thailand through Protection of Children Born from Assisted Reproductive Technologies Act B.E.2558 according to the theories and conceptual framework for Assisted Reproductive Technologies, analyzes this Act compared to the international surrogacy arrangement in some countries with legislation permitting commercial surrogacy and no legislation permitting commercial surrogacy, and provides some suggestions of this Act relating to prohibiting commercial surrogacy for foreigners who have infertility to search for Thailand where is famous for Assisted Reproductive Technologies in terms of high success rate and least complications.

Keywords: Assisted Reproductive Technologies process, surrogacy arrangements, commercial surrogacy law

บทคัดย่อ

ประเทศไทยนับได้ว่าเป็นประเทศจุดหมายปลายทางแห่งหนึ่งสำหรับการรับบริการทางด้านเทคโนโลยีช่วยการเจริญพันธุ์ทางการแพทย์และการตั้งครรภ์แทน ทุกวันนี้ภาวการณ์มีบุตรยากเพิ่มขึ้น คู่สมรสที่มีบุตรยากที่กำลังมองหาประเทศไทยและที่อื่นๆที่กฎหมายอนุญาตให้มีการตั้งครรภ์แทนด้วยเทคโนโลยีช่วยการเจริญพันธุ์ทางการแพทย์มีเพิ่มขึ้นเช่นกัน ความต้องการเช่นนี้มีมากขึ้นทั่วโลก เนื่องจากประเทศไทยนับได้ว่ามีชื่อเสียงในการหาหญิงที่มีสุขภาพอนามัยดีที่รับตั้งครรภ์แทนได้โดยทั่วไปและยังเป็นประเทศที่มีลำดับแรกๆในการให้บริการทางสุขภาพจากโรงพยาบาล จึงส่งผลให้การตั้งครรภ์แทนในเมืองไทยมีชื่อเสียงทั้งกับคนไทยและชาวต่างชาติ

ประเด็นข้อโต้เถียงที่เกี่ยวกับการตั้งครรภ์แทนเกิดขึ้นที่เมืองไทยเมื่อเดือนสิงหาคม พ.ศ. 2557 ในเวลานั้นมีปัญหาเกิดขึ้นเมื่อคู่สมรสชาวออสเตรเลียจ้างหญิงไทยเป็นแม่รับตั้งครรภ์แทนแล้วเกิดเด็กแฝด เด็กคนหนึ่งชื่อแอมมีเกิดมาพิการเป็น Down Syndrome ถูกทิ้งไว้ คงรับกลับไปแต่คู่แฝดอีกคนที่ชื่อพิพา ปัญหาคือใครจะเป็นผู้รับผิดชอบเลี้ยงดูแอมมาผู้พิการ เนื่องจากกฎหมายขณะนั้นยังไม่สามารถนำมาปรับใช้กับสถานการณ์เช่นนี้ได้อย่างเหมาะสม ต่อมาไม่นานมีเหตุการณ์ที่ชายชาวญี่ปุ่นคนหนึ่งเป็นพ่อของเด็กจำนวนหนึ่งที่เกิดจากการรับจ้างตั้งครรภ์ของหญิงไทยหลายคนที่ยังตั้งครรภ์แทนในเมืองไทย เหตุการณ์เหล่านี้สร้างความตระหนักให้กับสังคมไทยเป็นอย่างยิ่งโดยอาจเข้าใจว่าเป็นขบวนการค้ามนุษย์จึงมีการตรวจสอบจากทางการอย่างใกล้ชิดในเวลาต่อมา เทคโนโลยีช่วยการเจริญพันธุ์ทางการแพทย์จึงถูกกล่าวหาว่าเป็นการกระทำที่ผิดกฎหมาย สิ่งที่ควรได้รับการพิจารณาสำหรับกรณีนี้ก็คือการควบคุมโดยกฎหมายที่เหมาะสม

การรับจ้างตั้งครรภ์ในเชิงพาณิชย์เป็นข้อห้ามตามกฎหมายหรือไม่ควรได้รับการพิจารณาโดยคำนึงถึงความสงบเรียบร้อยและศีลธรรมอันดีของประชาชนเป็นสิ่งสำคัญยิ่ง การอธิบายถึงคำว่าตั้งครรภ์ในเชิงพาณิชย์ต้องได้รับนิยามโดยกฎหมายอย่างท่องแท้

ในเดือนตุลาคม พ.ศ. 2558 สภานิติบัญญัติแห่งชาติได้เห็นชอบกับร่างกฎหมายตั้งครรภ์แทน ต่อมาในเดือนกุมภาพันธ์ พ.ศ. 2558 รัฐสภาได้ออกกฎหมายที่บัญญัติเกี่ยวกับการห้ามการรับจ้างตั้งครรภ์แทน โดยออกเป็นพระราชบัญญัติคุ้มครองเด็กที่เกิดจากเทคโนโลยีช่วยการเจริญพันธุ์ทางการแพทย์ออกมาใช้บังคับอย่างไรก็ตามบทบัญญัติในพระราชบัญญัติดังกล่าวที่เกี่ยวข้องกับการรับจ้างตั้งครรภ์ในเชิงพาณิชย์ยังไม่ชัดเจนเพียงพอโดยเฉพาะสำหรับชาวต่างชาติที่ต้องการมารักษาการมีบุตรยากในเมืองไทยเพราะได้ชื่อว่ามีความเสี่ยงทางเทคโนโลยีช่วยการเจริญพันธุ์ทางการแพทย์และต้องกำหนดชัดเจนว่าเป็นการรักษาไม่ใช่เป็นการรับจ้างตั้งครรภ์เชิงการค้า

ในวิทยานิพนธ์เล่มนี้ได้ศึกษาถึงการรับจ้างตั้งครรภ์แทนในเมืองไทยตามพระราชบัญญัติคุ้มครองเด็กที่เกิดจากเทคโนโลยีช่วยการเจริญพันธุ์ทางการแพทย์ พ.ศ. 2558 ตามแนวคิดทฤษฎีทางกฎหมายของเทคโนโลยีช่วยการเจริญพันธุ์ทางการแพทย์ วิเคราะห์พระราชบัญญัติฉบับนี้โดยการเปรียบเทียบกับต่างประเทศบางประเทศทั้งที่มีข้อห้ามและไม่มีข้อห้ามการรับจ้างตั้งครรภ์แทนและเสนอแนะเกี่ยวกับการแก้ไขเพิ่มเติมบทบัญญัติของกฎหมายที่เกี่ยวข้องกับข้อห้ามในการรับจ้างตั้งครรภ์แทนในเชิงพาณิชย์สำหรับชาวต่างชาติที่มารับการ

รักษาการมีบุตรยากในเมืองไทยที่ได้ชื่อว่าเป็นประเทศที่เทคโนโลยีช่วยการเจริญพันธุ์ทางการแพทย์มีชื่อเสียงในการรักษาที่ประสบความสำเร็จ และเกิดภาวะแทรกซ้อนน้อยที่สุดจนเป็นที่ยอมรับทั่วโลก

คำสำคัญ: เทคโนโลยีช่วยการเจริญพันธุ์ทางการแพทย์, การจัดการตั้งครรภ์แทน, กฎหมายการรับจ้างตั้งครรภ์แทนเชิงพาณิชย์

Introduction

Thailand is one of the destination countries for Assisted Reproductive Technologies process and surrogacy arrangements. The controversy of concerning surrogacy occurred in August 2014. At that time, in the baby Gammy case, an Australian utilized a Thai surrogate mother through surrogacy arrangement in Thailand and then abandoned one of twins, called Gammy¹ who was born severely handicapped (Down Syndrome). The couple took only the child's twin sister, called Pipah, back to Australia. The problem is who should be responsibility for the baby Gammy. The law in Thailand at that time could not be applied to this situation properly. That commercial surrogacy should be banned or not is considered upon the public order and morality. The expression of “commercial surrogacy” should be profoundly defined

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Assisted Reproductive Technologies (ART)

¹ LR Schover, “Cross-border surrogacy : the case of Baby Gammy highlights the need for global agreement on protection for all parties”, Fertility and sterility, 2014 fertstert.org, <http://www.ncbi.nlm.nih.gov/pubmed/25241370>

Assisted reproductive technologies (ART)² are all treatments or procedures that include the in vitro handling of both human oocytes and sperm, or embryos, for the purpose of establishing a pregnancy. The technologies are used to achieve pregnancy in the procedures as follows.

1) Fertility Medication (better known as fertility drugs) is concerned drugs which enhance reproductive fertility. It is used to stimulate follicle development of the ovary. There are currently very few fertility medication options available for men.

2) Artificial Insemination ³(AI) is the introduction of sperm into a female's uterus or cervix for the purpose of achieving a pregnancy through in vivo fertilization by means of other than sexual intercourse. It is a fertility treatment for humans, and is a common practice in animal breeding, including dairy cattle and pigs.

3) In Vitro Fertilization (IVF) is a process by which an egg is fertilized by sperm outside the body. The process involves monitoring and stimulating a woman's ovulatory process, removing ovum or ova (egg or eggs) from the woman's ovaries and letting sperm fertilizes them in a liquid in a laboratory. The fertilized egg (zygote) is cultured for 2–6 days in a growth medium and is then implanted in the same or another woman's uterus, with the intention of establishing a successful pregnancy.

The Definition of Surrogacy

Surrogacy is the practice by which a woman (called a surrogate mother) becomes pregnant and gives birth to a baby in order to give it to someone who cannot have children⁴.

“Surrogacy” refers to the process through which a women intentionally becomes pregnant with a baby that she does not intent to keep. Moreover, she is carrying the baby for its intended parent or parents, usually because the parent is unable to do so without her. Surrogacy motherhood is defined as an arrangement under which a surrogate mother agrees to breed a child for commissioning parents.

“Surrogacy arrangement” refers to the process of a surrogacy pregnancy and birth and the organization of the process between the parties to the surrogate agreement. The

² The International Committee for Monitoring Assisted Reproductive Technology

(ICMART)andtheWorldHealthOrganization(WHO),*RevisedGlossaryonARTTerminology*,2009,
http://www.who.int/reproductivehealth/.../art_terminology2.pdf.

³ M Curie-Cohen, L Luttrell, S Shapiro, “*Current practice of artificial insemination by donor in United States of America*,”*The New England journal of Medicine* 1979,
<http://www.nejm.org/doi/full/10.1056/NEJM197903153001103>

⁴ <http://www.merriam-webster.com/dictionary/surrogacy>

arrangement commences with the planning and entering into of the surrogacy agreement and concludes with the delivery of the surrogate-born child to the commissioning parents.

“Commercial surrogacy” refers to the process in which an individual or couple pays a fee to a woman in exchange for her carrying and delivering a baby. At birth, the child is turned over to the individual or couple, either privately or through a legal adoption process. Couples with fertility problems, same-sex couples, and single people who wish to be parents are the most common types of people who seek surrogate mothers

Conceptual Framework for Surrogacy Law to Protect Children Born from Assisted Reproductive Technology

The Baby M case is a stimulant for many lawmakers to urge various legislative regulation of surrogacy⁵. In 1988 the New Jersey Supreme Court declared surrogacy contracts void against state public policy but then determined that the best interests of the child born to the surrogate mother required that custody of that child be awarded to the biological father and his wife, with liberal visitation rights later being granted to the biological mother⁶.

There are several different theories concerning with surrogacy legislation.

A. Parenthood by Intend

The important surrogacy case that established the theory of parenthood by intend was *Johnson v. Calvert*⁷. The Calverts went to court and sought a declaration that they were the parents of the child. Johnson filed a petition to be declared the mother, and the cases were consolidated. The trial court ruled that the Calverts were the genetic, biological and natural father and mother. They were found the contract enforceable and denied Anna’s claim to maternity. Anna appended. The Supreme Court of California conceded that both gestation and genetic ties can give rise to a presumption of motherhood under the Uniform Parentage Act.

B. Parenthood by Contract

Other courts in U.S.A. uphold surrogacy agreements on the contract principles. The Minnesota Court of Appeals, for example, applied tradition contract analysis to a surrogacy contract that the surrogate claimed, after childbirth, was invalid⁸. It affirmed that the District Court’s finding that the parties had entered into a valid agreement that reflected the intentions

⁵ Child, Court, *Whitehead, and Surrogacy* - **JRankArticles** , <http://law.jrank.org/pages/4604/Baby-M-in-Re.html#ixzz3cMAAZNWf>

⁶ *In the Matter of Baby M*, 109N.J. 396, 537 A.2d 1227 (N.J. 1988)

⁷ *Johnson v. Calvert* , 5 Cal.4th 84, 19 Cal.2d 494,851 P.2d 776 (1993).

⁸ *P.G.M.v.J.M.A.*, 2997 WL 4304448 Minn.App.

of the parties, had not been coerced, and did not contravene state public policy. While Minnesota had no law sanctioning such agreements, it also lacked laws against them, and had other laws protecting the rights of those who used Assisted Reproductive Technologies.

C. Parenthood by Genes

Some courts in U.S.A. enforce surrogacy contracts under the theory that the parents are the ones with a genetic tie to the child. For example, in *Clark v. Belsito*, the Ohio Court of Appeals ruled that the law requires that those who provide the child with its genetic must be designated as the legal and natural parents⁹. The surrogate had no parental rights under Ohio law which provides that the individuals who provide the genes of that child are the natural parents.

D. Parenthood by Gestational

Some States such as North Dakota and Arizona statute that declare surrogacy contracts void in effects employ the doctrine of motherhood by gestation, refusing to grant a commissioning mother parental rights over the objection of the gestational mother. This approach employs the ancient common law presumption that the woman who gives birth is the mother, and also recognizes the bond established during the nine months of pregnancy. Many commentators note in this theory is that it interferes with private ordering and the right to enter voluntarily into contracts, as well as invading the constitutionally protected area of privacy to make decisions about reproduction and child.

LEGAL REGULATION ON SURROGACY ARRANGEMENT UNDER FOREIGN LAWS

1) Countries with legislation permitting commercial surrogacy such as United States of America (in some States such as California, Florida, Arkansas) Russia, Ukraine, Georgia (Country).

United States of America

Under the provision of The Ten Amendment to the United States Constitution and the theory of State Sovereignty, a state has the power to establish and regulate parentage, not a federal. Each state determines which law will treat surrogacy arrangement and the parentage of the children¹⁰.

Russian Federation

⁹ *Belsito v. Clark*, 644 N.E.2d 760,762 (Ohio 1994).

¹⁰ Usha Rengachary Smerdon, “*Crossing Bodies, Crossing Borders: International Surrogacy between the United States and India*,” **39 Cumb. L. Rev.** 15 (2008-2009), <http://www.docin.com/p-62194344.htm>

Russia is one of the most favorable countries for human reproduction in Europe and allows almost everybody who wants to have a child of their own through assisted reproduction treatment to fulfill their dream. The legal situation about assisted reproduction treatment in Russia is famous. Surrogacy, gamete and embryo donation are permitted, even on a commercial level. Gestational surrogacy is an option for heterosexual couples and single women, although a court decision might be needed to register a surrogate child born to a couple who are not officially married or a single woman. However, it is neither explicitly allowed nor prohibited for single men¹¹.

Gestational surrogacy, even commercial, is legal in Russia, being available to practically all adults willing to be parents. There must be one of several medical indications for surrogacy such as absence of uterus, deformity of the uterine cavity or cervix, uterine cavity somatic diseases contraindicating child bearing, or repeated failure of IVF despite high-quality embryos.

2) Countries with legislation permitting ART for non-commercial purposes such as United Kingdom, Australia, Netherlands, Hungary, Israel, United States of America (in some States such as New York, Nebraska)

United Kingdom

Commercial surrogacy arrangements are not legal in the United Kingdom. Such arrangements were prohibited by the Surrogacy Arrangements Act 1985 in section 2. While it is illegal in the UK to pay more than expenses for a surrogacy, the relationship is recognized under section 30 of the Human Fertilization and Embryology Act 1990. Regardless of contractual or financial consideration for expenses, surrogacy arrangements are not legally enforceable so a surrogate mother¹²

Australia

In all jurisdictions of Australia, altruistic surrogacy has been the only recently recognized surrogacy that has become legal. However, in all states and the Australian Capital Territory arranging commercial surrogacy is a criminal offense, although the Northern Territory has no legislation governing surrogacy at all and there are no plans to introduce laws on surrogacy into the Northern Territory Legislative Assembly in the near future. Moreover

¹¹ Konstantin Svitnev, "Legal regulation of assisted reproduction treatment in Russia, *Reproductive BioMedicine*" **Online, Volume** 20, Issue 7, June 2010, (p. 892–894),

<http://www.sciencedirect.com/science/article/pii/S1472648310001744>

¹² Brazier, it is noteworthy however that independent studies conducted by COTS indicate that even with the provision of compensation, there is no evident that women view surrogacy as a form of employment even in instance where is provide, Childless Overcome Through Surrogacy COTS) , *Surrogacy: A workable solution, In Response to the review Team's Report* (1999), <http://www.surrogacy.org.uk>.

New South Wales, Queensland and the Australian Capital Territory have made it an offence for residents to enter into international commercial surrogacy arrangements with potential penalties extending to imprisonment for up to one year in Australian Capital Territory, up to two years imprisonment in New South Wales and up to three years imprisonment in Queensland.

3) Countries with no legislation permitting commercial surrogacy such as France, German, Belgium, Spain, Switzerland, Italy and Japan.

France

The Assisted Reproductive Technology in France develops continuously. In the past, this technology which helps the infertility was operated by private sector according to the ethical standard of physicians and the state did not take care of this technology.

However, in 1987 the government decided to sue the private sector who arranged surrogacy and the Supreme Court of Appeals judged that surrogacy is illegal. The surrogacy contract is void and contrary to public order and good morals¹³.

In France, since 1994, any surrogacy arrangement that is commercial or altruistic, is illegal or unlawful and is not sanctioned by the law (art 16-7 of the Code Civil).

Japan¹⁴

Japan has no current law that regulates surrogacy. The relevant government committee (Health, Labor and Welfare Ministry) as well as the Japan Society of Obstetrics and Gynecology have opposed surrogacy on the grounds that “people should not be used as a means of reproduction.” However, there are known cases where doctors have handled surrogate births, including one doctor in the Nagano Prefecture that has performed more than a surrogate births. A much larger number of Japanese couples are believed to have had children through surrogacy in Thailand and other countries. There is a bill on assisted reproductive technologies. It would allow donations of sperm and ova from third parties for the purpose of having babies but also conditionally allow surrogate births. The bill allows a surrogate mother to carry a fetus to term for the intended parents if the woman cannot become pregnant for medical reasons. But the draft legislation does not fully regulate the practice, and leaves many aspects uncertain.

4) Countries have no surrogacy legislation such as New Zealand, Singapore

New Zealand

¹³ Laurabertilotti, “*The prohibition of surrogate motherhood in France*”, on January 31,2012, <http://www.nyujilp.org/the-prohibition-of-surrogate-motherhood-in-france>.

¹⁴ <http://www.sensiblesurrogacy.com/japan-considers-conflicting-surrogacy-laws/>

In New Zealand, there is no legislation covering surrogacy. There are, however, several provisions of the ADOPTION ACT 1955¹⁵ that may be relevant to surrogacy arrangements.

Singapore

Surrogacy is illegal in Singapore¹⁶. It is also unlawful for local doctors to help in surrogacy. Singapore has proposed new laws on parentage of children born through ART process since 2012. The new laws to clarify the legal parentage and status of children born through assisted reproductive technologies (ART) have been proposed in Singapore. The Status of Children (Assisted Reproduction Technology) Bill 2011, which will be introduced to the Singapore Parliament next year, has been published for public comment. ART process should only have a single set of parents, that is, a legal mother and legal father.

CONCLUSIONS AND SUGGESTIONS

Conclusions

In the past, there was no law governing surrogacy in Thailand. It means that surrogacy was neither permitted nor prohibited by law. Under the Thai Civil and Commercial Code, it indicates that a woman who gives birth to a child is the sole person who has legal rights in respect of that child and the father of a child who is not married to the mother at the time of birth has no parental rights even if he is recorded on the birth certificate and /or can prove that he is the biological father with DNA testing. From this point of view, the surrogate mother and husband in law had the right to take care of a child. It tends to dispute between the commissioning parents and the surrogate mother. Consequently, to attempt to reduce such problems, Section 29 of the surrogacy law provides that a child born from a surrogate mother under the Protection of Children Born from Assisted Reproductive Technologies Act is considered to be the legitimate child of the commissioning parents who intend to have the child through ART process not the child of the surrogate mother or any persons who provide genetic material.

Under Section 25 and 26 provide some protections for the Thai surrogate mother. The law gives the Medical Council the right to stipulate requirements and condition concerning with expenses for maintaining health of surrogate mother before and during the period of pregnancy.

The provision in Section 24 prohibits commercial surrogacy. Without the definition of this term, it is doubtful how to enforce the prohibition for payment of expenses of the surrogate mother and for health maintenance.

¹⁵ Jeanne Snelling, University of Otago, *Implications for Providers and Patients: A Comment on the Regulatory Framework for Preimplantation Genetic Diagnosis in New Zealand*, Ranking: 2013 SJR (SCImago Journal Rank) Score: 0.137 | 340/458 Law | 1205/1827 Medicine (Miscellaneous) (Scopus®)

¹⁶ <http://pregnant.sg/articles/surrogacy-in-singapore/#ixzz3d7QN20vr>

Under the new surrogacy law, there are provisions which are not suitable to enforce it. Consequently, it is of great importance to study the principles and reasons of the law, the problems of the law and the analysis comparatively legal mechanism on surrogacy arrangement for seeking the model to revise and to implement of legal measures on surrogacy law in Thailand to promote, support the assisted reproductive technologies and to protect the children born from these technologies.

Suggestions

From the study, this Act provides some suitable legal regulation i.e. a baby is legitimate child of legitimate spouse desiring to have a child to be related to the gene of the spouse. The child has the right and duty according to Thai Civil and Commercial Code on Family and Succession. Later, commercial surrogacy is prohibited. The qualification of the physician and medical services for surrogacy are controlled by public organizers. As well as there are criminal penalties in this Act for those who violate this Act.

There are some suggestions as follows;

1) Thailand is famous for the innovation technique in Assisted Reproductive Technology. People around the world desire to enter into surrogacy arrangement in Thailand. However, the new law prohibits the foreigner couple and some kinds of people who need to be aided for having their own child through ART process. In Section 21(1) of the Act, these medical technologies should be served for any person who has infertility regardless of any nations or any status because this problem is concerned with medical health care to treat like other medical health cares. If someone has the problems in health care of infertility, it should be treated by physicians. Moreover, the research and treatment of ART is very advanced. The more patients Thai medical services are provided for, the more experience in ART are increased in favor of dissolving the infertility without medical complications. These technologies ultimately will serve Thai citizen who have infertility effectively and successfully without complications of genetic disorders such as chromosome abnormalities (Down Syndrome), single gene disorder (sickle cell anemia), multifunctional disorders (Alzheimer's disease) etc.

2) In Section 24 should be revised for clearer definition of commercial surrogacy. It is prohibited to perform a surrogacy for commercial purposes. It means that commercial surrogacy is absolutely prohibited. Consequently, It may affect the surrogacy arrangement of assisted reproductive technologies which are developed rapidly whereas Thailand is considered as one of the world in surrogacy. The law should promote and support the innovation technology in surrogacy. However, the definition of commercial surrogacy in the law is not clear enough for the limitation of the term. Moreover, the surrogacy law should be deemed correspondence with moral and social circumstance in Thailand. Owing to the innovation of technology, the regulation is inevitably brought to control the proper process not to interfere the society. On the one hand, protecting public order and morality are of great significance issues to be concerned. On the other hand, human right is also acclaimed into the constitutional law in almost sovereignty countries. It means that the law should not ban the

foreigner, or any persons who actually have infertility to bear their own child and cannot be cured through any means of medical methods except ART procedure. The provision of section 24 should be revised as follows.

In Section 24, it is prohibited to perform commercial surrogacy.

“Commercial surrogacy” refers to the process in which an individual or couple pays a fee to a woman in exchange for her carrying and delivering a baby. Any persons excepted in section 21(1) who need to perform surrogacy must be examined, investigated and diagnosed according to the surrogacy arrangement prepared by medical council approving of the committee. The Ministry of Health reviews and approves gestational surrogacy on a case-by-case basis.

There should be some criteria choose both commission couples and surrogate mother to avoid commercial surrogacy.

Even though it is prohibited of commercial surrogacy the law does not define this term. It is not clear how this prohibition will be enforced given a provision in Section 25 for not only payment of expenses of the surrogate but also for her support and maintenance. The Section 27 made it an offence to act as an intermediary or broker for surrogacy arrangements or to accept financial or other benefits in consideration for the engagement or management of surrogacy. The proposed Section 28 prohibited advertisements seeking women wishing to act as surrogates whether for commercial purposes or otherwise.

Foreign couples should not be eligible to use surrogates under Section 21. In my point of view, ART processes are advanced and developed for medical technology and Thailand is classified as world –class in Surrogacy. The surrogacy law ought to provide suitable regulation for foreigners to use surrogates.

In this Act, it is prohibited to perform a surrogacy for commercial purposes, to advertise the surrogacy arrangement, and to perform a media or broker for surrogacy arrangement. The advertisement is one of opportunity to search the information about the surrogacy before getting involved in this procedure. If the law prohibits the advertisement and the broker strictly, it will be difficult to some other surrogate mother, exception for the relatives. The advertisement should be permitted but controlled by the organizer in form of the volunteer women to the infertility couple. These women should register in the public or private hospital. These hospitals must inform the surrogacy arrangement clearly.

3) Doctors and health service centers for surrogacy

Medical Council should prepare the regulation for surrogacy arrangements practically and comprehensively which will apply to surrogacy in Thailand. There may be wrong doing in ART Procedures. The doctors who breach the surrogacy law should be considered penalty according to the law and gives the reimbursement to the related persons at the same time.

4) Surrogacy is considered as human trafficking

Thailand has the Anti-Trafficking in Persons Act B.E 2551 (2008) . This Act contains certain provisions in relation to the restriction of rights and liberties of persons.

In the future, there may be human trafficking from commercial surrogacy by deceiving neighborhood country women to enter into the ART process. The best way to protect human trafficking through commercial surrogacy is to create the legal mechanism on assisted reproductive technology to solve the problems of enforcement on commercial surrogacy in Thailand.

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