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### Regulatory Reform of prevalence Assisted Reproductive Technology Services

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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 IVF. IVF is a solution for married couples to get offspring, but the process of implementing IVF often fails. This is caused by the age factor of married couples over 35 years, so the quality of egg and sperm cells decreases with age and other reproductive hormone disorders that can also affect the fertilization process in IVF. The purpose of this study is to analyze and reformulate the regulation of assisted reproductive technology, which is just an effort to fulfil the right to reproduce to produce offspring. This research method is focused on legal studies that are not by 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. This research results in the formulation of article change on assisted reproductive technology services through IVF and article proposals for *judicial review* to the Constitutional Court regarding assisted reproductive technology services through Conditional Substitutes. It aims to fulfil the right to reproduction for married couples who want to have children.

**Keywords:** prevalence; Infertility; Reproduction health.

#### INTRODUCTION

A person's health condition, both physically, spiritually, mentally and socially, used for productive economic and social activities is the definition of Health, which is part of one of the elements of community welfare in the 2nd and fifth precepts of Pancasila and is also part of human rights. Article 28H of the 1945 Constitution of the Republic of Indonesia explains that health services

are part of the community's rights. Specifically, health services are 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 fulfilment of health services. One of the most critical parts of human Health is reproductive Health.

Reproductive Health is a state of reproduction in which women and men are healthy mentally, physically and socially and are not contaminated with diseases related to reproductive functions and systems. Reproductive Health is needed to produce offspring and is supported by adequate, 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 infertility problem is vital in implementing assisted reproductive technology services, where both men and women experience infertility. (Nagórska et al., 2019) The cause of this infertility is caused by several factors, such as problems with ovulation, the formation of sperm cells, and other medical problems. (SK, 2018) Besides being caused by medical problems, infertility is also caused by age, the 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 a doctor's action and counselling in managing excess embryos in married couples. If the husband and wife do not extend the storage period of excess embryos, then the embryos must be destroyed. In providing assisted reproductive technology services, there are two different methods: the conventional method and the *Intracytoplasmic Sperm Injection (ICSI)*. The conventional method is a simple method of bringing together the husband's spermatozoa and the wife's oocytes in a tube to be transferred into the wife's uterus. At the same time, 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 produce offspring, one of which is the IVF method. (T. Mailensun et al., 2021)

IVF is an alternative step in dealing with married couples who experience infertility. To have 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 the condition of the embryo and lifestyle. Expectations for the success of the IVF program have a percentage of 20-30%. This presentation can raise the hope of married couples to get offspring, but this IVF procedure still has a non-small chance of failure. (Syamsuddin, 2020)

There is 95 per cent of IVF failures due to pregnancy failure in the embryo capture phase caused by a genetic abnormality in the embryo, so it is weak to continue normal development. This case of IVF failure makes a married couple have to try repeatedly to be able to conceive successfully. 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. Given these problems, married couples who experience infertility cannot fulfil their right to reproduction to have children, so it is necessary to fulfil IVF services by reconstructing regulations related to assist reproductive technology services through IVF. In addition, the case of IVF failure requires a breakthrough in assisted reproductive technology services through surrogate mothers.

A surrogate mother is a form of development of the IVF method by inserting the results of fertilization from a husband and wife into another woman's womb. (Lahia, 2017) Assisted reproductive technology services through this surrogate mother are used so married couples over 35 years old and experiencing infertility get the right to justice in obtaining offspring. This is by the embodiment of the second and fifth 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. It 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 surrogate mothers in Indonesia is mainly done secretly and secretly and has become a new phenomenon in 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 Regulation of the Minister of Health Number 43 of 2015 concerning Implementation of Reproductive Services with Assistance or Pregnancy Out of Natural Ways. These 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 of age, 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 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 do not fulfil the rights of married couples who experience infertility and the implementation of surrogate mothers who do not yet have a definite legal umbrella and are by current developments in Indonesia. Therefore, there is a need for legal reformulation of the regulation of assisted reproductive technology services so that the community 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 are the current regulations for assisted reproductive technology services?
3. How is the regulatory reformulation for assisted reproductive technology services fair?

## RESEARCH METHODS

This research focuses on advancing assisted reproductive technology services that are not by current legal advances. Health services must be balanced to provide services to the community to realize a sense of justice. The paradigm used in this study is the constructivist paradigm which defines *law* as contextual and as construction for human life.

The approach to this research uses a normative and empirical juridical approach. A *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, an empirical juridical approach is an approach that is based on secondary data by examining the concepts, principles, legal theories and statutory provisions relating to research and primary data carried out with 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 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 descriptively qualitatively, which is a data analysis that selects and categorizes the data obtained from the field, and 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.

## RESEARCH RESULTS

### 1. Research Results 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 hospital 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* and is not recommended. This differs from the Telogorejo Hospital Semarang, which already has assisted reproductive technology services and has been accredited by the Indonesian In Vitro Fertilization Association (perfitri).

In order to realize reproductive rights as universal human rights, 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 impact the quality and quantity of services that will be provided to be

better and fulfilled. They will also get support from organizations or institutions related to assist reproductive technology services, such as Perfitri.

**Table 1.** Results of Informants' Questions in Hospitals regarding Assisted Reproductive Technology Services with Substitute Mothers

Results of Questions	Premier Jatinegara	Hospital Jakarta Telogorejo Hospital Semarang
In vitro fertilization Services	Have	Have
Substitute Mother Services	not have and are not recommended to be implemented	Not Have

**Source:** Data Screening of Interview Results by Researchers Research

## 2. Results from the View of Religious

Figures Religious figures who became informants in this study were Muhammad S.Niam, Ferry Sutrisna Widjaja, Andik Wijaya, and Kasan Susilo. There are many contradictions in 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 not having children is not a problem in marriage because the purpose of marriage is not only to have children but to worship or self-approach God and obtain happiness. Religious leaders disputed fertilization outside the womb, which usually used several fertilized eggs and then inserted into the womb. In addition, some things are not a problem if the sperm and egg cells come from a husband and wife legally married in a marriage bond. Many religious leaders are against the IVF program with surrogate mothers because it will impact the emergence of inner bonds between surrogate mothers and children. The surrogate mother is also not related to the lives of married couples who are surrogate mothers.

## 3. Research Results from the View of Legal Practitioners

The surrogate mother method has been widely used but secretly (Illegal). Assisted reproductive technology with a surrogate mother can be a helping tool (technology) for married couples. Even though it is considered a helper, the device must be certified, and the baby must still have its civil rights regulated, and if the baby is born with a disability, the right to His life must be guaranteed. In the future, there will need to be 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 regulate it, so they do not have legal certainty.

Damanik, a Legal Practitioner who works in Jakarta, believes that the Substitute Mother method, which does not yet have a law, should have a legal guarantee so that the practice is legalized. There is a 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 the efforts of recipients, providers and providers of assisted reproductive technology services that are fair require regulations governing the parties related to assist reproductive technology services. This is used to obtain benefits and legal certainty in its implementation and justice services for all circles of society.

## 4. Research Results from Couples Experiencing Infertility in Boyolali

Informants are a married couple named Suparmin (aged 39 years) and Julaeha (aged 38 years), who live in Boyolali and provide 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 standard but has problems with the quality of the eggs and sperm.

This couple has repeatedly done IVF programs five times. However, they never give up and have the desire to follow the baby program with other methods. Suparmin and Julaeha believe that having children requires more significant effort, determination and 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.

## **DISCUSSION**

### **1. Definition of Fair-Law**

A just law, is an orderly law without oppressing every citizen's human dignity. In other words, a law always serves the interests of justice, order, order and peace to support the realization of a physically and spiritually prosperous society. Law is the principal means to realize the welfare of society. Law is also applicable as a controlling tool to maintain social order and control changes in society in the desired direction. If the law is implemented relatively based on the values that live in society, it can be ascertained that welfare can be realized. Then the law is no longer sovereign and away from the fundamental values of the Pancasila ideology.

Government administrators' justice activities to provide community health services include 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, a regulation that regulates assisted reproductive technology services must be based on justice so that reproductive rights can be fulfilled for couples experiencing infertility. (Islamiyati, 2018)

### **2. Definition of Infertility**

The inability to conceive within one year without using contraception and having a normal sexual relationship is the meaning of infertility. Infertility is not only experienced by women but also experienced by men. Infertility is divided into two types: primary infertility, which occurs in 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 factors such as production, lifestyle, and age. 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. In contrast, men experience abnormal sperm movement and shape problems, low sperm concentration, undescended testes, testicular cancer, and other problems. In addition to reproductive factors, infertility also occurs due to unhealthy lifestyle factors carried out by married couples daily, 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 of the fewer reserves of eggs that are released. The quality of egg cells in women over 35 will continue to decline. This also happens to men over 35, who will produce sperm cells of lower quality than those under 35. With the problem of infertility, it can make government administrators fulfil health services through assisted reproductive technology services with IVF or surrogate mothers. (Anggraini & Damayanti, 2018)

### **3. Definition of Reproductive**

Reproductive health is essential for a human being to get offspring. The meaning of reproductive health is a perfect state of mental, physical, and prosperity in the reproductive system. Reproductive health is related to reproductive organs and systems and 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, some factors 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 development.

#### **4. Factors of Inadequate Assisted Reproductive Technology Services in Indonesia**

##### **a. Internal**

Factors of inadequate assisted reproductive technology services in Indonesia are due to the inadequacy of 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 differs from hospitals in Singapore, which have a population of around 10 million people, but 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 to guarantee 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 is unable to 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 this fertility clinic facility has not been reached by the local community, due to the unequal placement of clinics and only concentrated in big cities. These internal factors can influence patient choices to determine health services that meet patient needs. (Manzoor et al., 2019)

##### **b. External**

Factors External Factors Inadequate assisted reproductive technology services in Indonesia are due to ethical, social and legal problems in technology services. Assisted reproduction. Ethical problems occur during sex selection, use of frozen embryos, genetic engineering cloning, exploitation, commodification, and coercion of 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 many people still 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 social problems, such as the practice of surrogacy in secret. (Halimah, 2018)

In addition to these problems, assisted reproductive technology services are not yet adequate. Influenced by divorce cases due to female reproductive infertility, one of which is the case of a barren divorce in the Jantho Syar'iyah Court Decision. In this case, the husband filed for divorce from his wife due to not being able to have children for several years. This is contrary to the right of women to have children, and no regulation 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 fundamental 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 permissible, so this regulation supports divorce on the grounds of being infertile or experiencing infertility.

#### **5. 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 explains that the results of fertilization will be implanted in the wife's womb. More specifically, assisted reproductive technology services are regulated in Article 40 of Government Regulation 61 of 2014. The service still uses the womb of the original wife, so this regulation does not explicitly regulate surrogate mothers. It must comply with several applicable regulations in carrying out assisted reproductive technology services.

In addition to these regulations, assisted reproductive technology services are also regulated in the Minister of Health Regulation 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 counselling and doctor's actions, as well as mentioning the success of taking home baby.

## 6. Equitable Assisted Reproductive Technology Service Regulation Reform

A reformulation is a form of reformulation of existing provisions, aiming to provide a concept of provisions that the community can accept. 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 has become a change in life and requires legal protection to ensure the welfare of people. *Regulatory reformulation* is a rule that has not achieved the aspired goal, so it requires a change of the rule. Every applicable rule will have obstacles and other weaknesses that can cause the regulation to be ineffective and inappropriate.

In order to fulfil 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 reform that is useful for changing or revising regulations to suit the needs of people's lives to achieve justice. Reproductive health justice manifests in the form of regulatory reformulation of assisted reproductive technology services that fulfil reproductive rights for married couples who experience infertility and wish to have children.

This is to the theory of justice put forward by David Hume, which says that justice determines what is due to a person and does not give everyone 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, as the executor of estate administrators, the government should regulate and provide legal protection by fulfilling the rights of married couples who experience infertility. The existence of regulations that clearly and systematically regulate assisted reproductive technology services through IVF aims to fulfil the right to reproduction for married couples who want to have children.

The scope of just assisted reproductive law reformulation, as with legal reform in general, is not only limited to reformulating laws or legal *substance* (*legal substance reformulating*) but also reforming legal structures (*legal structure reformulating*) and reforming legal culture (*legal culture 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 conflict with assisted reproductive laws must be carried out by considering their condition as women with 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 human dignity and status.

For this reason, the authors initiated efforts to reformulate the regulation of assisted reproductive technology services through IVF against Government Regulation Number 61 of 2014 concerning Reproductive Health and Regulation of the Minister of Health Number 43 of 2015 concerning Implementation of Assisted Reproductive Services or Pregnancy Outside Natural Ways through the description in the table as follows:

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

No	Article	Changes in	Reason for Amendment
1	Article 42 paragraph (1) PP No. 61 of 2014 concerning Reproductive Health (PP on Reproductive Health)	Adding the phrase <b>"to husband and wife"</b> Article 42 paragraph (1) of 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 <b>"except married couples aged 35 years and over using assisted reproductive technology services."</b> , in Article 43 paragraph (2) PP Reproductive Health  <b>Addition of paragraphs in Article 43</b> (5) If a husband and wife do not agree to extend the storage of embryos, 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)	Addition of the phrase <b>"to husband and wife"</b> in Article 14 paragraph (1) of PMK No. 43 of 2015	In an agreement for medical treatment, it is necessary to have a contribution from a husband and wife so that they can find out what actions should be taken when providing assisted reproductive technology services.
4	Article 16 PMK No. 43 of 2015	Changes in percent from the previous 10% to 5% in Article 16 paragraphs (1) and (3)	In that article, causing many hospitals to have their licenses revoked to administer IVF due to the problem of <i>taking home</i> which are at least 10% of 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%.

As is known, Law No. 36 of 2009 on Health has not accommodated "Substitute Mothers". The "surrogate mother" embodies reproductive and women's rights over their wombs. However, the regulation regarding surrogate mothers has not been expressly 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 of women's wombs hostage. It has not fully accommodated reproductive rights for married couples who experience infertility and fail in IVF due to age over 35 years.

The existence of a contradictory norm regarding the phrase the result of fertilization of 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, causes limited reproductive rights for married couples who experience infertility and limited rights for married couples who fail to conceive. Implementing IVF because the age factor is above 35 years, a breakthrough is needed in the form of a Conditional Substitute. The current regulations prohibit or do not specifically regulate Conditional Substitutes, 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 Substitutes. With *the Judicial Review*, the regulation regarding Conditional Substitute 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 offspring.

The author proposes a change in the name of a surrogate mother to a conditional surrogate mother and an assisted reproductive technology service carried out by a husband's or wife's sister of the same age. For this reason, the author initiated a proposal for amendments to articles that will be used as material for judicial review by the Constitutional Court, which consists of several regulations, such as:

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

No	Article	Changes in	Reasons for Changes
1	Article 4 of Law no. 1 of 1974 concerning Marriage (Marriage Law)	<p>Addition of Paragraph (3) which reads "The wife may use a Conditional Substitute.</p> <p>Addition of Elucidation to Article 4 paragraph (3) regarding the definition of Conditional Substitute. Conditional surrogate mothers are assisted reproductive technology services carried out by husband's or wife's sisters who are of the same birth.</p>	<p>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 due to women having no choice when giving permission to their husbands to have more than one wife. This is a manifestation of the value of justice in the 2nd and 5th Precepts of Pancasila.</p>
2	Article 127 of Law Number 36 Year 2009 concerning Health (Health Law)	<p>Addition of a phrase in paragraph (1) letter a, namely "and/or Conditional Substitute Mother"</p> <p>Adding an explanation to Article 127 paragraph (1) letter regarding the meaning of Substitute Mother Conditional.</p>	<p>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.</p>
3	Article 40 PP on Reproductive Health	<p>Addition of the phrase "Conditional Substitute Mother's womb" in Article 40 paragraph (2) of PP on Reproductive Health</p> <p>Adding an explanation regarding the meaning of Conditional Substitution of Mother in Article 40 paragraph (2) PP on Reproductive Health</p>	<p>Can accommodate the implementation of reproduction with assistance or pregnancy outside the natural way by using the fertilization of sperm and ovum originating from the husband and wife concerned to be implanted into the husband's or wife's biological sisters who are blood relatives.</p>
4	Article 13 paragraph (2) PMK No. 43 of 2015	<p>Addition of the phrase "conditional surrogate uterus" in Article 13 paragraph (2) of the PP on Reproductive Health</p> <p>Addition of explanation regarding the definition of conditional surrogate mother in Article 13 paragraph (2) of PP on Reproductive Health.</p>	<p>Accommodating married couples who want to provide assisted reproductive technology services in the conventional way, namely by bringing together <i>spermatozoa</i> normal husband's <i>oocytes</i> in a tube, then <i>embryo</i> of fertilization is then transferred into the womb of the husband or wife's siblings who are the surrogate</p>

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, 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.

## CONCLUSION

Assisted reproductive technology services consisting 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 of couples experiencing infertility. Infertility is caused by several factors, both the 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 offspring.

The first way is IVF, part of the assisted reproductive technology service. IVF has a low success rate. This is caused by several factors, such as age over 35 and reproductive hormone factors. Therefore, it is necessary to reformulate the regulation of assisted reproductive technology services to fulfil the right to reproduction through IVF services. In addition, services with the latest breakthrough are needed, namely Conditional Substitutes. 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 prerequisites 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 reform of assisted reproductive technology services, it can provide legal certainty and fulfil the right to health through IVF services and Conditional Substitute Mothers.

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

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