

ABSTRACT

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LEGALITY OF CONTRACT AND POSITION OF A CHILD IN THE CASE OF BABY M IN NEW JERSEY REVIEWED FROM INDONESIAN LAW

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In article of Law no.1 of 1974 concerning “Marriage” is said to be a marriage between a man and a woman as husband and wife with the aim of forming a happy and internal family based on the Supreme Lordship. Not all couple can have descendant caused by defects in husband or wife cells. For this reason, there are technological advances in the field of medicine, which are called In Vitro Fertilization. Then In Vitro Fertilization only guarantees 30%-40% of the amount and the expensive cost. Then In Vitro Fertilization develops into Surrogacy as another alternative. In Indonesia the rules and regulations are not specifically regulated and the practice is prohibited in Law No.36 of 2009 because it contradicting to value and norm and also it can cause legal problems, such as child status and legality of gestational agreement. So that in this study the data collection was carried out using case of the the Baby M from New Jersey where there were legal issues regarding child custody and the validity of the surrogacy agreement that occurred between the Stern and Whitehead families. The validity of the gestational agreement in the Baby M case, is cancel by the law because it contradicts the provisions of article 1320 of the Civil Code and Baby M is the child of Mrs. Whitehead, cause she is legally married accordance with the provisions of Law no 1 of 1974 and article 250 of the Civil Code.

Reference: 20 (1996)

Keyword: Children, Gestational agreement, Indonesian Law, Surrogacy