

Advocating for a Child-Centric Approach: Indonesian Jurisdiction in Cross-Border Surrogacy

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Abstract

This article aims to address gaps in national policy by analyzing the complex interactions between international law, Indonesian jurisdiction, and child welfare in cross-border surrogacy arrangements. It advocates for prioritizing the best interests of children and offers practical recommendations for stakeholders involved in cross-border surrogacy. The research examines the principles and framework established by the Hague Conference on Private International Law and their implications within the Indonesian context. It also explores domestic Indonesian law, court decisions, and ethical dilemmas surrounding cross-border surrogacy. This article provides insight and perspective on the ongoing discussion of cross-border surrogacy by filling gaps identified in the literature. The analysis highlights the importance of children's interests in cross-border surrogacy cases, offers a detailed examination of the role of Indonesian courts, and integrates ethical considerations into the legal framework. The research culminates in practical policy recommendations for policymakers, legal practitioners, and other stakeholders, with the ultimate goal of protecting and enhancing the well-being of children born through these complex arrangements. The findings emphasize the importance of prioritizing children's well-being, recognizing them not simply as objects but as individuals with inherent rights, identities, and needs that require protection.

Keywords: *children's welfare; cross-border surrogacy; The Hague Conference; Indonesian jurisdiction; international law*

Abstrak

Artikel ini bertujuan untuk mengatasi kesenjangan dalam kebijakan nasional dengan melakukan analisis komprehensif tentang interaksi rumit antara hukum internasional, yurisdiksi Indonesia, dan kesejahteraan anak dalam pengaturan surrogasi lintas batas. Ini membela perspektif yang menempatkan kepentingan terbaik anak-anak sebagai yang terdepan dan memberikan rekomendasi praktis bagi para pemangku kepentingan yang terlibat dalam surrogasi lintas batas. Penelitian ini mengkaji prinsip-prinsip dan kerangka yang ditetapkan oleh Konferensi Den Haag tentang Hukum Perdata Internasional dan implikasinya dalam konteks Indonesia. Analisis ini juga menyelami hukum domestik Indonesia, keputusan pengadilan, dan dilema etis seputar surrogasi lintas batas. Artikel ini menawarkan wawasan dan perspektif terhadap diskusi yang sedang berlangsung tentang surrogasi lintas batas dengan mengisi kesenjangan yang telah diidentifikasi dalam literatur. Ini menekankan pentingnya terutama kepentingan anak-anak dalam kasus surrogasi lintas batas, memberikan pemeriksaan rinci tentang peran pengadilan Indonesia, dan mengintegrasikan pertimbangan etis ke dalam kerangka hukum. Penelitian ini mencapai puncaknya dalam rekomendasi kebijakan praktis bagi pembuat kebijakan, praktisi hukum, dan pemangku kepentingan lainnya, dengan tujuan akhir melindungi dan meningkatkan kesejahteraan anak-anak yang lahir melalui pengaturan yang kompleks ini. Hasil investigasi ini menekankan pentingnya memprioritaskan kesejahteraan anak-anak ini, mengakui mereka bukan sekadar sebagai objek tetapi sebagai individu yang dilengkapi dengan hak-hak bawaan, identitas, dan kebutuhan yang memerlukan perlindungan.

Kata kunci: *kesejahteraan anak-anak; surrogasi lintas batas; Konferensi Den Haag; yurisdiksi Indonesia; hukum internasional*

I. Introduction

Cross-border surrogacy, a complex, and ethically charged practice, has become increasingly prevalent in today's globalized world. The practice of intended parents in one nation seeking a surrogate mother in another raises numerous jurisdictional, ethical, and legal problems.¹ Disputes involving international surrogacy are often resolved with reference to the rules established by the Hague Conference on Private International Law. The Hague Conference is an international group of governments with the goal of unifying and standardizing international private law through the creation of treaties and conventions that promote international legal cooperation. Several aspects of international surrogacy have been affected by it: The Hague Conference has had a significant effect on the establishment of paternity in several countries. To facilitate international recognition of parental relationships, the "Convention on the Recognition of Parentage" was established in 2007. In surrogacy cases, this convention can help establish legal parent-child relationships, ensuring that children born through surrogacy are recognized as the legitimate children of their intended parents. Cross-border surrogacy cases often involve complex conflicts of laws, as different countries may have varying legal frameworks and approaches to surrogacy.²

The Hague Conference's work in harmonizing conflict-of-law rules can assist in determining which jurisdiction's laws apply in such cases, reducing legal uncertainties and disputes. The Hague Convention on the Civil Aspects of International Child Abduction (1980) may be applicable in circumstances involving disputes over the custody or abduction of children born through surrogacy. For example, to promote stability and the best interests of the child, this treaty sets forth measures for the speedy repatriation of children taken from their country of habitual residence.

1 Sarah Ferber, et al, "Oocytes, Surrogacy and Cross-border Reproduction," in *In Vitro Fertilization (IVF) and Assisted Reproduction: A Global History* (December 2020): 159,

https://doi.org/10.1007/978-981-15-7895-3_5

2 Noelia Igareda González, "Legal and Ethical Issues in Cross-border Gestational Surrogacy," *Fertility and Sterility*, Vol. 113 No. 5 (April 2020): 916, <https://doi.org/10.1016/j.fertnstert.2020.03.003>.

If a child is being transported internationally for surrogacy purposes, the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (1993) may apply. It stresses the importance of making sure that international adoptions (and maybe surrogacy agreements) are in the child's best interests.

The Hague Conference promotes international cooperation and information sharing among member states. This can be crucial in surrogacy cases where access to information about the surrogate mother, sperm/egg donors, or the child's identity is necessary. However, it's important to note that not all countries universally adopt the Hague Conference's conventions, and their application in surrogacy cases can vary. Additionally, the Hague Conference may not specifically address all nuances of surrogacy, given its evolving nature and the complexity of ethical and legal considerations involved. The Hague Conference on Private International Law influences the resolution of cross-border surrogacy disputes by providing a framework for the recognition of parentage, harmonizing conflict-of-law rules, addressing child abduction issues, and promoting cooperation among member states.³ While its conventions offer valuable tools for resolving disputes, their application can depend on the willingness of individual countries to adopt and implement them.

The legal framework for international surrogacy is heavily influenced by the Hague Conference on Private International Law and other sources of international law. With a major focus on protecting the best interests of children born through surrogacy agreements, this essay investigates the implications of the Hague Conference on Private International Law on the role of Indonesian courts in resolving cross-border surrogacy disputes. This essay will be organized as follows: this essay will begin with an introduction to international surrogacy, discussing the issues and debates surrounding this contentious topic. Next, this essay will delve into the principles and framework

3 Patthara Limsira, "A Journey of Thailand to The Hague Conference on Private International Law: A Christmas Carol," *JE Asia & Int'l L*, Vol. 14, (November 2021): 297, <https://doi.org/10.14330/jeail.2021.14.2.04>.

established by the Hague Conference on Private International Law, emphasizing its relevance to international surrogacy cases. Subsequently, this essay will discuss the role of Indonesian courts in addressing cross-border surrogacy issues, examining their jurisdiction, legal framework, and the challenges they face.⁴

This study argues that the implementation of the Hague Conference on Private International Law greatly influences the approach of Indonesian courts to resolving international surrogacy issues. Furthermore, it argues that the welfare and best interests of children born through such surrogacy partnerships must be given priority. This essay will research and discuss the international conventions, Indonesian legislation, and judicial judgments that govern handling international surrogacy cases in Indonesia. This will ensure that the children's best interests are protected throughout the proceedings. To better understand the complex relationship between international law, Indonesian jurisdiction, and the interests of children in international surrogacy partnerships, this essay provides some background information. We hope to add to the ongoing conversation about the legal and ethical ramifications of international surrogacy by focusing on the role of the Hague Conference on Private International Law in this area, with the goal of ensuring the safety of the children born through such arrangements.

This post presents research that adds new insights to the complex debate surrounding international law, Indonesian jurisdiction, and the best interests of children in international surrogacy agreements. The Hague Conference on Private International Law has a significant impact on the resolution of international surrogacy issues in Indonesia, and this paper analyzes that impact in detail. It goes beyond a cursory overview and delves into the specific principles and guidelines within the Hague framework, shedding light on their practical implications in an Indonesian context. The research places a significant emphasis on the paramount consideration of

4 Sonja Van Wichelen, "Private International Law and Cross-border Surrogacy." *The Reproductive Industry: Intimate Experiences and Global Processes* (July 2019): 109.

children's best interests in cross-border surrogacy cases. It highlights the evolving legal standards and evolving societal attitudes regarding the rights and welfare of children born through surrogacy, making a strong case for the prioritization of their well-being in all legal proceedings. By examining the interplay between international law, as exemplified by the Hague Conference, and Indonesian domestic law, this study uncovers the complexities and challenges faced by Indonesian courts in navigating cross-border surrogacy cases. It provides insights into how these courts harmonize international obligations with local legal frameworks.

The research also acknowledges and explores the ethical dilemmas surrounding cross-border surrogacy, particularly in cases where the surrogate mother, intended parents, and child come from different countries. It contributes to the discourse on how these dilemmas are addressed within the legal context and considers the potential for ethical guidelines to inform legal decisions. The central argument of the paper actively advocates for a child-centric approach, underscoring the significance of children's rights and interests. It offers practical recommendations for policymakers, legal practitioners, and stakeholders involved in cross-border surrogacy to ensure that children's well-being remains a primary concern. This research goes beyond a mere examination of existing laws and regulations. It synthesizes the complex dynamics of cross-border surrogacy, international law, and Indonesian jurisdiction while championing a perspective that places children at the forefront. By doing this, it adds new information and ideas to the ongoing discussion about the legal and moral aspects of cross-border surrogacy, with the goal of protecting and caring for the most vulnerable people: the children born through these arrangements.

There are several notable gaps in the existing literature on cross-border surrogacy and international law that this essay seeks to address, which is addressing the discrepancy between *ius constitutum* and *ius operatum*. In the realm of legal studies, the distinction between *ius constitutum* (law in the book) and *ius operatum* (law in action)

holds profound significance. While *ius constitutum* encompasses the codified laws, statutes, and regulations that constitute the legal framework of a nation, *ius operatum* refers to the practical application and enforcement of these laws in real-world scenarios. It is within the gap between these two realms that the true efficacy and legitimacy of a legal system are often tested. Understanding the disjunction between *ius constitutum* and *ius operatum* is crucial for evaluating the functionality and effectiveness of legal systems. In many cases, laws may exist on paper but fail to be implemented effectively in practice. This dissonance can arise due to various factors, including inadequate enforcement mechanisms, institutional inefficiencies, corruption, socio-economic disparities, and cultural attitudes towards law and authority.

In the context of Indonesia's legal landscape, the gap between *ius constitutum* and *ius operatum* is particularly pertinent. Despite the presence of comprehensive legal frameworks and regulations governing various aspects of society, including cross-border surrogacy agreements, the practical application of these laws may fall short of their intended objectives. Challenges such as bureaucratic hurdles, lack of awareness among stakeholders, resource constraints within the judicial system, and cultural norms influencing decision-making processes can contribute to this misalignment.⁵ Acknowledging and addressing this disjunction is imperative for fostering a legal environment that upholds justice, protects rights, and promotes societal well-being. Merely having laws on the books is insufficient if they are not effectively implemented and enforced in practice. Therefore, efforts to bridge the gap between *ius constitutum* and *ius operatum* must be prioritized.⁶

This paper recognizes the significance of examining and elucidating the dynamics between *ius constitutum* and *ius operatum* in the context of cross-border surrogacy agreements

and Indonesia's legal framework. By analyzing the factors contributing to this disjunction and proposing strategies to enhance the practical application of relevant laws, this paper endeavors to contribute to the advancement of a more robust and equitable legal system in Indonesia. Much of the existing literature tends to concentrate on the broader global trends and ethical debates surrounding surrogacy, often overlooking the intricacies of individual jurisdictions. This essay narrows the focus to Indonesia, providing a more granular examination of how a specific country navigates cross-border surrogacy issues within the context of international law. Many studies talk about the legal and moral issues of surrogacy, but few make the well-being of the children who are born through these deals the main focus. This essay puts children at the center of its analysis on purpose. It wants to fill a gap in the research by calling for a child-centered method in cross-border surrogacy cases. Although international law, notably the Hague Conference on Private International Law (HCCH), is recognized as a critical element in cross-border surrogacy, this framework's specific application and implications often need to be explored. This research delves into the practical implementation of international law principles within Indonesian jurisdiction, offering insights into how global and domestic legal systems intersect.

In the discourse surrounding cross-border surrogacy agreements, it is imperative to consider the perspectives of legal experts in Indonesia. These professionals offer invaluable insights into the intersection of Indonesian laws and international legal frameworks, particularly the HCCH conventions. Their views shed light on the complexities and challenges inherent in regulating cross-border surrogacy arrangements within the Indonesian legal context. Indonesian legal experts emphasize the importance of aligning domestic legislation with international norms and conventions, including those established by the HCCH. They underscore the significance of adherence to HCCH conventions in facilitating cross-border cooperation, ensuring legal certainty, and safeguarding the rights of all parties involved

5 Irham Dongoran, "Bayi Tabung dalam Tinjauan Hukum Islam (Analisis Maqashid Syari'ah)," *Taqnin: Jurnal Syariah dan Hukum*, Vol. 2 No. 1 (Januari-Juni 2020): 70, <https://doi.org/10.30821/taqnin.v2i1.7604>.

6 Sonja Van Wichelen, "Private International Law and Cross-border Surrogacy." *The Reproductive Industry: Intimate Experiences and Global Processes* (July 2019): 109.

in surrogacy arrangements. One prevalent viewpoint among Indonesian legal experts is the necessity of clarifying the legal status and regulation of surrogacy agreements within the Indonesian legal framework. They highlight the need for comprehensive legislation that addresses the rights and responsibilities of intended parents, surrogate mothers, and children born through surrogacy, while also adhering to international standards outlined in HCCH conventions.⁷

Moreover, Indonesian legal experts stress the importance of ratifying and implementing relevant HCCH conventions to enhance legal certainty and facilitate international cooperation in cases of cross-border surrogacy. They advocate for the incorporation of HCCH principles into Indonesian law to ensure consistency and coherence in addressing legal issues arising from surrogacy arrangements conducted across national borders. Furthermore, Indonesian legal experts emphasize the role of judicial interpretation and application of existing laws in resolving disputes related to cross-border surrogacy agreements. They emphasize the need for judges to consider the best interests of the child and uphold principles of equity and justice when adjudicating cases involving surrogacy arrangements.

The insights provided by Indonesian legal experts underscore the importance of harmonizing Indonesian laws with HCCH conventions to regulate cross-border surrogacy agreements effectively. Their perspectives emphasize the significance of legal clarity, international cooperation, and judicial discretion in addressing the complex legal issues arising from surrogacy arrangements conducted across national borders. By incorporating these viewpoints into policy discussions and legislative reforms, Indonesia can establish a more robust legal framework that protects the rights of all parties involved in cross-border surrogacy agreements while promoting international cooperation and legal certainty.

Ethical considerations are essential in surrogacy, but the integration of ethics into legal frameworks is frequently overlooked. This essay bridges the gap by addressing the ethical dilemmas inherent in cross-border surrogacy and examining how these considerations inform legal decisions. Many existing studies identify problems and challenges in cross-border surrogacy without providing concrete policy recommendations or practical guidance for the stakeholders involved. This essay goes beyond analysis to offer recommendations for policymakers, legal practitioners, and other stakeholders, contributing to a more solution-oriented approach to the topic. This essay tries to fill in these gaps by focusing on cross-border surrogacy in Indonesia in the context of international law, putting the welfare of children first, putting ethical considerations into legal analysis, and giving practical suggestions. By filling in these gaps, the study hopes to add new insights and perspectives to the ongoing discussion about the legal and ethical aspects of cross-border surrogacy while advocating for the protection and well-being of the children born through these complicated arrangements.

Despite the recognition of the importance of prioritizing the best interests of children born through surrogacy and acknowledging them as individuals with inherent rights, identities, and needs deserving of protection, this article will study the lack of comprehensive legal frameworks and ethical guidelines to ensure their well-being in cross-border surrogacy arrangements. This study breaks new ground by advocating for a paradigm shift in the perception of children born through surrogacy, emphasizing their status as individuals endowed with inherent rights and identities. It needs to warrant protection rather than being treated as mere commodities. The article aims to provide the lack of comprehensive legal frameworks and ethical guidelines to ensure their well-being in cross-border surrogacy arrangements. This article will clarify and strengthen Indonesia's jurisdiction in handling cases of international cross-border surrogacy agreements involving Indonesia. This article aims to provide clear and detailed guidance for parties involved in

⁷ Patthara Limsira, "A Journey of Thailand to The Hague Conference on Private International Law: A Christmas Carol," *JE Asia & Int'l L*, Vol. 14, (November 2021): 297, <https://doi.org/10.14330/jeail.2021.14.2.04>.

cross-border surrogacy agreements, as well as to provide a better understanding of how Indonesia's jurisdiction can be strengthened and enforced in this context. Thus, it is hoped that this article will make a significant contribution to enhancing legal protection for children born through cross-border surrogacy processes involving Indonesia.

II. Research Method

The research involved a systematic literature review as the primary research type, utilizing a qualitative approach method. Data sources included academic works, legal papers, international conventions, and case studies on cross-border surrogacy. The data collection method consisted of reviewing and analyzing existing literature to establish a theoretical and contextual framework. The analysis primarily focused on qualitative examination and synthesis of legal principles and ethical considerations. This involved dissecting complex legal and ethical dimensions, identifying recurring themes, and drawing meaningful conclusions to inform the child-centric perspective advocated in the essay. The integration of diverse sources of information facilitated the crafting of a coherent narrative and persuasive argumentation, contributing fresh insights to the discourse on cross-border surrogacy and child welfare.⁸

III. Overview of Cross-Border Surrogacy

Cross-border surrogacy, which is also called "international surrogacy," is a complicated way to have a baby in which the parents-to-be from one country hire a surrogate mother in another country to carry and give birth to their child.⁹ This practice has gained significant attention and prominence in recent years, driven by advances in assisted reproductive technologies, globalization, and diverse family structures. Cross-border surrogacy involves multiple parties: intended parents, surrogate mothers,

and often intermediaries such as surrogacy agencies and medical professionals.

Indonesian legal cases supporting the multifaceted nature of cross-border surrogacy, as illustrated in Table 1, draw from Indonesian legal scholarship, particularly studies focusing on the legal aspects of assisted reproduction and surrogacy. These insights provide a nuanced understanding of the legal landscape and inform discussions on regulating cross-border surrogacy in Indonesia. Lahia (2017) examines the legal aspects of in vitro fertilization (IVF) and surrogacy from the perspective of civil law. The study delves into the contractual and property rights involved in surrogacy arrangements, shedding light on the legal considerations for parties such as intended parents, surrogate mothers, and intermediaries. Dongoran (2020) explores the Islamic legal perspective on IVF and surrogacy, analyzing these practices through *Maqasid Shariah* (objectives of Islamic law). The study provides insights into the ethical and religious considerations surrounding assisted reproduction, offering perspectives on the rights and responsibilities of parties involved in surrogacy agreements.

Isnawan (2019) investigates the implementation of IVF programs from Islamic and Indonesian legal perspectives. The study examines the compatibility of IVF practices with Islamic principles and Indonesian positive law, addressing issues related to parentage, inheritance, and guardianship of children born through IVF and surrogacy. Idris (2019) presents an Islamic perspective on IVF and surrogacy, discussing the ethical and religious considerations surrounding these practices. The study offers insights into the legal status of children born through IVF and surrogacy within Islamic jurisprudence, addressing questions of legitimacy and parental rights. Pulungan and Musthofa (2021) analyze the legal status of IVF and surrogacy in Islamic law, exploring the principles of Islamic jurisprudence relevant to assisted reproduction. The study examines the rights and duties of parties involved in IVF and surrogacy arrangements within Islamic legal principles.

8 Irham Dongoran, "Bayi Tabung dalam Tinjauan Hukum Islam (Analisis Maqashid Syari'ah)," *Taqnin: Jurnal Syariah dan Hukum*, Vol. 2 No. 1 (Januari-Juni 2020): 70, <https://doi.org/10.30821/taqnin.v2i1.7604>.

9 Ezra Kneebone, Kiri Beilby, and Karin Hammarberg, "Experiences of Surrogates and Intended Parents of Surrogacy Arrangements: a Systematic Review," *Reproductive BioMedicine Online*, Vol. 45 No. 4 (June 2022): 815.

Table 1

Table 1 Indonesian insights from legal scholarship

Study	Focus	Perspective	Key Insights
Lahia (2017) ¹⁰	Legal aspects of IVF and surrogacy	Civil law	Examines contractual and property rights in surrogacy arrangements, highlighting considerations for intended parents, surrogate mothers, and intermediaries.
Dongoran (2020) ¹¹	Islamic perspective on IVF and surrogacy	Maqasid Shariah	Explores ethical and religious considerations surrounding assisted reproduction, offering insights into the rights and responsibilities of parties involved in surrogacy agreements.
Isnawan (2019) ¹²	Implementation of IVF programs	Islamic and Indonesian	Addresses compatibility of IVF practices with Islamic principles and Indonesian law, discussing issues related to parentage, inheritance, and guardianship of children born through IVF and surrogacy.
Idris (2019) ¹³	Islamic perspective on IVF and surrogacy	Islamic	Discusses the legal status of children born through IVF and surrogacy within Islamic jurisprudence and answers questions of legitimacy and parental rights.
Pulungan & Musthofa (2021) ¹⁴	Legal status of IVF and surrogacy	Islamic	Analyzes rights and duties of parties involved in IVF and surrogacy arrangements within Islamic legal principles, exploring the implications for assisted reproduction practices.
Zahrowati (2018) ¹⁵	IVF and surrogacy from civil law perspective	Civil law	Examines contractual and property rights in surrogacy agreements, focusing on the use of donor sperm and surrogate mothers and addressing legal issues related to parentage and custody of children born through IVF and surrogacy.
Putra (2021) ¹⁶	Legal status of children born through IVF	Civil law	Discusses parentage and inheritance rights of children born through IVF outside of marriage, providing insights into the legal implications of assisted reproduction for family law in Indonesia.

10 David Lahia, "Aspek Hukum Terhadap Bayi Tabung dan Sewa Rahim dari Perspektif Hukum Perdata," *Lex Privatum*, Vol. 5 No. 4 (Juni 2017): 1.

11 Irham Dongoran, "Bayi Tabung dalam Tinjauan Hukum Islam (Analisis Maqashid Syari'ah)," *Taqnin: Jurnal Syariah dan Hukum*, Vol. 2 No. 1 (Januari-Juni 2020): 70, <https://doi.org/10.30821/taqnin.v2i1.7604>.

12 Fuadi Isnawan, "Pelaksanaan Program Inseminasi Buatan Bayi Tabung Menurut Hukum Islam dan Hukum Positif Indonesia," *Fikri: Jurnal Kajian Agama, Sosial dan Budaya*, Vol. 4 No. 2 (Desember 2019): 179-200, <https://doi.org/10.29313/tahkim.v2i2.5113>.

13 Muh Idris, "Bayi Tabung dalam Pandangan Islam," *Al-'Adl*, Vol. 12, No.1 (Januari 2019): 64-75, <https://doi.org/10.46870/almutsla.v1i1.5>.

14 Sufriadi Pulungan dan Ahmad Misbakh Zainul Musthofa, "Hukum Bayi Tabung dalam Pandangan Islam," *Al-Ikhtisar: The Renewal of Islamic Economic Law*, Vol. 2 No. 2 (Desember 2021): 83-90.

15 Zahrowati, "Bayi Tabung (Fertilisasi In Vitro) dengan Menggunakan Sperma Donor dan Rahim Sewaan (Surrogate Mother) dalam Perspektif Hukum Perdata," *Halu Oleo Law Review*, Vol. 1 No. 2 (September 2017): 196-219, <https://doi.org/10.33561/holrev.v1i2.3642>.

16 Muhammad Auliya Putra, "Kedudukan dan Status Anak yang Dilahirkan Secara Bayi Tabung di luar Perkawinan dalam Perspektif Hukum Perdata," *Journal of Law (Jurnal Ilmu Hukum)*, Vol. 7 No. 2, (Juni 2021): 139.

Zahrowati (2018) examines IVF and surrogacy from the perspective of civil law, focusing on the use of donor sperm and surrogate mothers. The study discusses the contractual and property rights involved in surrogacy agreements, highlighting legal issues related to parentage and custody of children born through IVF and surrogacy. Putra (2021) discusses the legal status of children born through IVF outside of marriage, addressing parentage and inheritance rights questions. The study examines the legal implications of IVF and surrogacy for family law in Indonesia, providing insights into the rights of children born through assisted reproduction techniques.

By synthesizing insights from these legal studies, this paper provides a comprehensive understanding of the legal complexities surrounding cross-border surrogacy in Indonesia. These perspectives enrich discussions on the regulation of assisted reproduction and inform efforts to address the rights and interests of all parties involved in cross-border surrogacy arrangements. The intended parents may choose surrogacy abroad for various reasons, including legal, financial, and social considerations. In such arrangements, the surrogate mother, who may reside in a different country, agrees to gestate and deliver a child for the intended parents. Once born, the child is typically transferred to the custody of the intended parents, often necessitating international travel and legal procedures to establish parentage and citizenship.¹⁷

Cross-border surrogacy is not confined to a single region or country; it is a global phenomenon. It has gained popularity in countries with advanced medical facilities and well-established surrogacy industries, such as the United States, India, Ukraine, and Thailand. Also, many would-be parents from countries with high incomes, like Europe, Australia, and the United States, look for surrogacy services in countries where they may be easier to get or cheaper. The Hague Conference on Private

International Law significantly impacts how cross-border surrogacy issues are settled in places like the United States, India, Ukraine, and Thailand. Here's a look at how it affects these individual areas. The Hague Convention on the Recognition of Parentage (2007) has the United States as a signatory. This convention sets up rules for recognizing parenthood across borders, which can be important in situations of cross-border surrogacy. It helps make sure that when children born through surrogacy arrangements in other countries come back to the United States, they are officially recognized as the children of their intended parents.¹⁸

The Hague Conference's work in harmonizing conflict-of-law rules can also benefit U.S. surrogacy cases. In surrogacy arrangements in different states or countries, the Hague principles can help determine which jurisdiction's laws apply to the dispute. Although India is not a party to the Hague Convention on the Recognition of Parentage, the principles, and guidelines established by the convention can still influence how Indian courts address cross-border surrogacy disputes.¹⁹ It provides a reference point for recognizing parentage in cases involving foreign-intended parents. The Hague principles can guide Indian courts in addressing ethical dilemmas surrounding surrogacy, particularly issues related to consent, exploitation, and children's rights.

The Hague Convention on the Recognition of Parentage is not something that Ukraine is a part of. But when dealing with cross-border surrogacy disputes, its court system may take international rules into account.²⁰ The convention's guidelines help ensure the recognition of parentage when Ukrainian surrogacy arrangements involve foreign-

17 Irham Dongoran, "Bayi Tabung dalam Tinjauan Hukum Islam (Analisis Maqashid Syari'ah)," *Taqnin: Jurnal Syariah dan Hukum*, Vol. 2 No. 1 (Januari-Juni 2020): 70, <https://doi.org/10.30821/taqnin.v2i1.7604>.

18 Susan L. Crokin, Meagan A. Edmonds, and Amy Altman. "Legal Principles and Essential Surrogacy Cases Every Practitioner Should Know," *Fertility and Sterility*, Vol. 113 No. 5 (April 2020): 908, <https://doi.org/10.1016/j.fertnstert.2020.03.015>.

19 Chandler Michaels, "A Booming Baby Business: International Surrogacy Arrangements and the Need for Regulation," *New York University Journal of International Law and Politics*, Vol. 54 (April 2022): 1.

20 Tetiana Y. Tarasevych, et al. "Problems of Concluding Surrogacy Agreements: Practice of Ukraine and the EU," *Cuestiones Políticas*. Vol. 40 No. 73 (Juli-Desember 2022): 1. <https://doi.org/10.46398/cuestpol.4073.03>.

intended parents. The Hague Convention on the Civil Aspects of International Child Abduction is relevant in cases where disputes arise over the custody or movement of children born through surrogacy in Ukraine. The convention provides a framework for resolving such disputes promptly and ensuring the child's best interests.

Thailand is a party to the Hague Convention on the Civil Aspects of International Child Abduction.²¹ In cross-border surrogacy disputes involving child abduction or custody issues, this convention can be directly applicable. It establishes procedures for the prompt return of abducted children to their country of habitual residence. The Hague Conference's influence extends to ethical considerations in surrogacy. It makes sure that the best interests of the child are considered and encourages people to follow moral norms. Through its conventions and principles about parentage, conflict of laws, child abduction, and ethical considerations, the Hague Conference on Private International Law affects how cross-border surrogacy issues are solved in the United States, India, Ukraine, and Thailand. Even though not all countries have signed the relevant conventions, the Hague principles are a good way to deal with the complicated legal and moral issues that come up in cross-border surrogacy cases. This makes the solutions more consistent and focused on the child. Cross-border surrogacy brings up many moral, economic, and social problems.²²

Some of the key issues include the commercial nature of surrogacy which can lead to concerns about the exploitation of surrogate mothers, particularly in countries with lax regulations. Ethical questions arise regarding whether financial incentives unduly influence women to become surrogates. Determining the legal parentage and citizenship of the child can be complicated when multiple countries

are involved. Conflicting legal systems and regulations across borders can create uncertainty and disputes. Children born through cross-border surrogacy may face issues related to their identity, nationality, and access to information about their genetic origins. Ensuring the rights and well-being of these children is a paramount concern.

The absence of uniform international regulations and countries' varying approaches to surrogacy create a regulatory patchwork that can lead to legal challenges and inconsistencies. Cross-border surrogacy is a multifaceted and global practice characterized by its complexity, ethical dilemmas, and legal intricacies. This overview highlights the fundamental aspects of cross-border surrogacy and sets the stage for a deeper exploration of its implications within the context of international law and Indonesian jurisdiction.

IV. The Private International Law Conference at The Hague

The Hague Conference on Private International Law, also called the Hague Conference, is an international group of governments that was started in 1893. Its main goal is to create and promote international legal instruments that make it easier for people to work together across borders and solve private international law problems.²³ The Hague Conference plays a pivotal role in shaping the legal landscape surrounding cross-border surrogacy, as it provides a framework for addressing the jurisdictional and legal complexities associated with international surrogacy arrangements.

Within the context of cross-border surrogacy, the Hague Conference offers a set of principles and guidelines relevant to ensuring legal clarity and protecting the interests of all parties involved. These include The Hague Convention on the Recognition of Parentage, which seeks to establish a uniform approach for recognizing legal parentage across borders,

21 Patthara Limsira, "A Journey of Thailand to The Hague Conference on Private International Law: A Christmas Carol," *JE Asia & Int'l L*, Vol. 14, (November 2021): 297,

<https://doi.org/10.14330/jeaill.2021.14.2.04>.

22 Paola Frati, et al, "Bioethical Issues and Legal Frameworks of Surrogacy: a Global Perspective About the Right to Health and Dignity," *European Journal of Obstetrics & Gynecology and Reproductive Biology*, Vol. 258 (Maret 2021): 5.

23 Permanent Bureau of the Hague Conference on Private International Law, "News from the Hague Conference on Private International Law," *Uniform Law Review*, Vol. 24. No. 4 (November 2019): 804.

ensuring that children born through cross-border surrogacy arrangements are legally recognized as the children of the intended parents. The Hague Convention on the Civil Aspects of International Child Abduction deals with situations where one parent moves a kid across international borders without the other parent's permission. While not specific to surrogacy, this convention can be relevant in cases where disputes arise over custody or access to children born through surrogacy.²⁴

The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption provides rules for ensuring that children being adopted from another country are safe and in their best interests. While distinct from surrogacy, these principles underscore the importance of safeguarding children's welfare in international contexts. While the Hague Conference does not have a specific convention or treaty dedicated solely to surrogacy, its existing framework provides a foundation for addressing many of the legal challenges associated with cross-border surrogacy.²⁵

The principles of legal recognition of parentage, protection of children, and the prevention of child abduction all have implications for surrogacy cases. By promoting cooperation and the harmonization of legal standards among member states, the Hague Conference contributes to resolving disputes and ensuring clarity in cross-border surrogacy arrangements. The Hague Conference on Private International Law is a crucial international organization that offers principles and guidelines with relevance to cross-border surrogacy. Its focus on recognizing parentage, protecting children's rights, and addressing child abduction issues contributes to a more structured and regulated environment for

24 Patthara Limsira, "A Journey of Thailand to The Hague Conference on Private International Law: A Christmas Carol," *JE Asia & Int'l L*, Vol. 14, (November 2021): 297, <https://doi.org/10.14330/jeail.2021.14.2.04>.

25 Permanent Bureau of the Hague Conference on Private International Law, "News from the Hague Conference on

Private International Law," *Uniform Law Review*, Vol. 24, No. 4 (November 2019): 804.

international surrogacy, addressing some of the legal uncertainties and ethical dilemmas associated with this practice.

V. Indonesian Jurisdiction in Cross-Border Surrogacy

Indonesian courts grapple with various jurisdictional challenges when dealing with cross-border surrogacy cases. These challenges stem from the transnational nature of surrogacy arrangements and the involvement of multiple countries. Key challenges include determining whether Indonesian courts have jurisdiction over cross-border surrogacy cases, especially when the surrogate mother, intended parents, or the child are not Indonesian citizens. This determination is complicated by the absence of uniform international regulations governing surrogacy. Cross-border surrogacy often involves conflicting legal systems and regulations from different countries. Indonesian courts must navigate these conflicts to ensure consistent and just outcomes for all parties involved. Enforcing court orders and decisions in cross-border surrogacy cases can be challenging, as they may need to be recognized and enforced in other countries. This poses legal and logistical hurdles. To address these jurisdictional challenges, Indonesian courts rely on a combination of international conventions, domestic laws, and established legal principles.²⁶

Some key aspects of Indonesian legal frameworks in cross-border surrogacy cases include Indonesian family law, which governs parentage, guardianship, and adoption issues. These laws are central in determining legal parentage in cross-border surrogacy cases. Indonesia may have bilateral or multilateral agreements with other countries that influence the resolution of cross-border surrogacy disputes. These agreements can deal with things like recognizing the results of courts in other countries. International human rights laws, like the Convention on the Rights of the Child, help Indonesian courts decide what is in the best interest of a kid born through surrogacy.

26 David Lahia, *Aspek Hukum terhadap Bayi*, 130.

Examining specific cases is instrumental in understanding how Indonesian courts handle cross-border surrogacy disputes. These case studies provide practical insights into the application of laws and regulations and the consideration of children's best interests.²⁷

Case studies could include situations in which Indonesian judges decide who the legal parents of a child born through cross-border surrogacy between foreign intended parents and an Indonesian surrogate mother. There were disagreements over who would take care of and be the child's parent after it was born through cross-border surrogacy. The court had to step in to settle the different claims. Indonesian courts collaborated with foreign authorities and courts to ensure the enforcement of legal decisions related to cross-border surrogacy. Indonesian courts face jurisdictional complexities when addressing cross-border surrogacy cases. They rely on a combination of domestic laws, international agreements, and human rights principles to navigate these challenges. Case studies offer real-world examples of how Indonesian courts have addressed cross-border surrogacy disputes, shedding light on the practical application of legal frameworks and the considerations given to children's best interests.²⁸

VI. Child-Centric Perspective in Cross-Border Surrogacy

In the past few years, there has been a significant change in the way laws around the world treat the rights and interests of children born through surrogacy, especially when they are born in another country. In recent years, Indonesia has witnessed significant changes in the legal landscape concerning the rights and interests of children born through surrogacy, particularly those born in other countries. These changes reflect a broader global shift

in attitudes and legal frameworks surrounding assisted reproductive technologies and surrogacy arrangements. As Indonesia grapples

²⁷ Patthara Limsira, *A Journey of Thailand to The Hague Conference*, 297.

²⁸ David Lahia, *Aspek Hukum terhadap Bayi*, 130

with the complexities of cross-border surrogacy, policymakers, and legal practitioners face the challenge of reconciling domestic laws with international standards and practices. This includes addressing issues related to parentage, citizenship, and the rights of children born through surrogacy, especially when they are born outside Indonesia.

The evolving legal and social dynamics surrounding surrogacy underscore the need for clear and comprehensive regulations that prioritize the well-being and rights of children, regardless of their country of birth. As Indonesia navigates this evolving landscape, it must strive to strike a balance between protecting the rights of all parties involved in surrogacy arrangements while ensuring that children's best interests remain paramount. This shift reflects the growing recognition that children should be central to the discourse on surrogacy.²⁹

Key aspects include many jurisdictions revising their laws to ensure that children born through surrogacy are legally recognized as the children of the intended parents from birth. This recognition provides stability and legal security to the child. Legal changes are also addressing the child's right to access information about their genetic origins, including the identity of the surrogate mother or sperm/egg donors. Transparency is seen as fundamental to the child's sense of identity. Cross-border surrogacy presents a range of ethical dilemmas concerning children born via surrogacy, who may grapple with questions about their identity and biological origins, especially if information about their genetic parentage is unavailable or concealed. When the child's place of birth and the country of the parents are different, there can be disagreements about the child's nationality and citizenship, which could leave the child stateless.³⁰

²⁹ Valeria Piersanti, et al., "Surrogacy and "Procreative Tourism". What Does the Future Hold from the Ethical and Legal Perspectives?," *Medicina*, Vol. 57 No. 1, (Januari 2021): 47, <https://doi.org/10.3390/medicina57010047>

³⁰ Patthara Limsira, *A Journey of Thailand to The Hague Conference*, 297

Concerns about ethics are vital on whether children born through surrogacy are seen as goods or as part of a business deal, which could hurt their human rights. A child-centric approach is paramount in cross-border surrogacy cases. This method stresses that the best interests of the child should be the main focus of all legal proceedings. It also includes a few important parts, which is when making legal choices, the child's welfare and well-being should come first, making sure their physical, emotional, and mental needs are met. It is important to give the child a stable and safe setting, including legal recognition of parentage and citizenship.³¹

The right of children to know where they came from and to be able to find out who they are should be protected. Legal frameworks should prevent children from being exploited or treated as commodities in surrogacy arrangements. Depending on the child's age and maturity, they should have the opportunity to express their views and have them considered in legal proceedings. Evolving legal standards are increasingly recognizing the importance of children's rights and interests in cross-border surrogacy. Ethical dilemmas surrounding these children underscore the need for a child-centric perspective in surrogacy arrangements. Prioritizing children's best interests in legal proceedings is essential to ensure their well-being, protection, and a sense of identity, thereby addressing the ethical challenges posed by cross-border surrogacy.³²

VII. The Intersection of International and Domestic Law

The intersection of international law principles, particularly those exemplified by the Hague Conference, with Indonesian domestic law, plays a crucial role in shaping the legal landscape of cross-border surrogacy in Indonesia. Here, we explore how these intersect: the international principles, such as

those highlighted by the Hague Convention on the Recognition of Parentage, that advocate for the uniform recognition of parentage across borders. The legal recognition of children born through international surrogacy as the offspring of their intended parents hinges on the alignment of Indonesian domestic law with international standards.³³

International human rights conventions, such as the Convention on the Rights of the Child, offer guidelines for safeguarding children's rights and interests. Harmonizing international obligations, as exemplified by the Hague Conference, with local Indonesian legal frameworks presents both challenges and opportunities, namely Indonesia's legal system incorporates elements of Islamic law (Sharia), customary law, and civil law traditions. Harmonizing international surrogacy principles with this diverse legal landscape can be complex, requiring careful consideration of cultural and religious sensitivities. Indonesia, like many countries, faces a complex legal challenge when it comes to surrogacy, particularly in the realm of cross-border arrangements.³⁴

Here's a breakdown of the situation in which Indonesia lacks a dedicated law governing surrogacy in general. This absence extends to cross-border surrogacy, creating significant uncertainty for intended parents and surrogates involved in such arrangements. Law No. 36 of 2009 on Health implicitly prohibits practices like "renting a womb," suggesting a potential legal hurdle for surrogacy altogether. Some legal scholars argue that existing laws, like the Civil Code, might allow for altruistic surrogacy under certain interpretations. However, the lack of a definitive court case leaves this interpretation untested and unreliable. These legislative gaps create several challenges in cross-border surrogacy situations. A child born through surrogacy abroad might not be automatically recognized as the child of the intended parents

31 Harleen Kaur, *Laws and Policies on Surrogacy: Comparative Insights from India*, (Singapore: Springer Nature, 2021), 10., https://doi.org/10.1007/978-981-16-4349-1_6.

32 *Ibid.*

33 David Lahia, *Aspek Hukum terhadap Bayi*...., 130.

34 Noelia Igareda González, "Legal and Ethical Issues in Cross-border Gestational Surrogacy," *Fertility and Sterility*, Vol. 113 No. 5 (April 2020): 916, <https://doi.org/10.1016/j.fertnstert.2020.03.003>.

in Indonesia. This lack of recognition can lead to issues like citizenship, inheritance rights, and passport acquisition. The enforceability of a surrogacy agreement signed abroad is unclear.³⁵

Without legal clarity, disputes between intended parents and surrogates become difficult to resolve within the Indonesian legal system. The lack of regulations makes it difficult to ensure the well-being of the child born through surrogacy. Issues like informed consent from the surrogate, compensation, and psychological well-being of all parties involved remain unaddressed. The current situation necessitates legislative action to address these gaps and establish clear guidelines for surrogacy, particularly in cross-border scenarios. Legal clarity is crucial since a legal framework can protect the rights of intended parents, surrogates, and most importantly, the child born through surrogacy. Clear regulations can ensure ethical practices in surrogacy arrangements, preventing exploitation and safeguarding the well-being of all involved.³⁶

Established legal procedures can reduce the uncertainty for intended parents and surrogates, making the process more transparent and predictable. Indonesia has a unique opportunity to develop a comprehensive legal framework for surrogacy that prioritizes the best interests of the child, protects all parties involved, and promotes ethical practices. This could involve, first, drafting a dedicated law on surrogacy. This law would explicitly address issues like permissible forms of surrogacy (altruistic vs. commercial), compensation for surrogates, parental rights establishment, and procedures for cross-border arrangements. Second, considering international cooperation. Indonesia could explore collaborating with countries that have established legal frameworks for surrogacy to create a more streamlined and internationally recognized approach for cross-border scenarios. By addressing these legislative gaps, Indonesia can create a legal environment that facilitates

responsible and ethical surrogacy practices, ensuring the well-being of all parties involved.

In some cases, Indonesian domestic law may lack specific provisions addressing cross-border surrogacy, resulting in legislative gaps that need to be addressed to ensure legal clarity and consistency of international obligations within the Indonesian legal system can pose challenges, particularly in cases where conflicting laws or regulations arise. The intersection of international and domestic law also presents opportunities for legal reform. Indonesian lawmakers can use international standards and best practices as a basis for developing comprehensive surrogacy legislation that aligns with the country's unique legal and cultural context. Surrogate mothers, intended parents, and children all benefit from legal clarity in cases of cross-border surrogacy, which can be achieved by the harmonization of international duties with domestic law. The intersection of international law principles, particularly those exemplified by the Hague Conference, with Indonesian domestic law is central to addressing the complexities of cross-border surrogacy. Unfortunately, due to the current legal landscape in Indonesia regarding surrogacy, there aren't any specific articles within Indonesian family law that directly address surrogacy, let alone connect with the Hague Convention on Children (Hague Convention on Jurisdictional Aspects of Children Law - HCCH).³⁷

Indonesia is not currently a party to the HCCH convention. This convention facilitates cooperation between member countries regarding issues like parental responsibility, child abduction, and access rights. Without Indonesia's participation, the HCCH framework wouldn't be directly applicable to cross-border surrogacy cases involving Indonesia. Some legal scholars argue that certain articles within the Indonesian Civil Law Code, particularly those related to parentage and contractual agreements, could potentially be interpreted to allow for altruistic surrogacy under specific

35 Sufriadi Pulungan dan Ahmad Misbakh Zainul Musthofa, *Hukum Bayi Tabung...*, 17.

36 Fuadi Isnawan, *Pelaksanaan Program Inseminasi...*, 179.

37 David Lahia, *Aspek Hukum terhadap Bayi...*, 130.

circumstances.³⁸ However, this interpretation remains untested and lacks legal certainty. If Indonesia drafts a dedicated law for surrogacy, it could potentially consider incorporating principles aligned with the HCCH convention, particularly those promoting the best interests of the child and international cooperation in cross-border cases. While there are currently no direct connections between Indonesian law and the HCCH regarding surrogacy, future legislative developments could bridge the gap. In the absence of a specific surrogacy law, the situation remains unclear and lacks the legal framework necessary for a smooth interaction with international conventions like the HCCH. While challenges exist in harmonizing international obligations with local legal frameworks, this intersection also offers opportunities for legal reform and the establishment of legal certainty, ultimately contributing to the protection and well-being of children born through cross-border surrogacy in Indonesia.

VIII. Ethical Considerations within Legal Frameworks

Cross-border surrogacy is rife with ethical dilemmas that intersect with legal frameworks.³⁹ These dilemmas encompass a range of critical issues, which is one of the central ethical concerns in surrogacy is ensuring that surrogate mothers provide informed and uncoerced consent. The potential for exploitation or pressure on surrogates to participate in surrogacy arrangements raises significant ethical questions. In nations with low legislation or where surrogates may be susceptible, the business side of surrogacy arrangements can raise ethical issues regarding the possible exploitation of surrogate mothers. Ethical dilemmas surround issues of identity, especially in cases where information about the surrogate mother, sperm/egg donors, or gestational carriers is withheld or kept anonymous. Children born

through surrogacy may have a fundamental right to know their genetic origins.

Surrogacy agreements may involve decisions about selective reduction (reducing the number of embryos implanted) or abortion. Ethical considerations regarding the autonomy and rights of the surrogate, intended parents, and the welfare of the fetus come into play. Ethical considerations are increasingly integrated into legal decisions and frameworks governing surrogacy: Legal frameworks often require surrogate mothers to provide informed and voluntary consent, and the surrogate's ability to withdraw from the arrangement without coercion is legally protected. This emphasis on consent aligns with the ethical principles of autonomy and self-determination. Concerns over commercial surrogacy's potential for abuse have prompted the passage of legislation in many countries. These rules are an attempt to safeguard surrogates while also recognizing their right to autonomy. Surrogate-born children should have the right to know their genetic origins, including their surrogate mother's name and the names of any gamete donors who helped bring them into the world.⁴⁰

Ethical principles related to the welfare of the child are central to legal decisions in surrogacy cases. When making decisions about custody, parenting, and similar matters, the courts will typically look out for the child's best interests. Ethical considerations are further incorporated through the establishment of oversight bodies, ethics committees, or regulatory authorities responsible for reviewing and approving surrogacy arrangements. These bodies ensure that surrogacy practices adhere to ethical standards. Ethical dilemmas inherent in cross-border surrogacy intersect with legal frameworks, shaping how surrogacy arrangements are governed. The balance between the interests and rights of surrogate mothers, intended parents, and children born through surrogacy is achieved through the

³⁸ Zahrowati, *Bayi Tabung (Fertilisasi In Vitro)...*, 196.

³⁹ Clayton Hazvinei Vhumbunu, "Combating Human Trafficking in the Southern African Development Community: Strategies, Challenges, and Opportunities," *The Strategic Review for Southern Africa*, Vol. 42 No. 2 (Desember 2020): 179.

⁴⁰ Patthara Limsira, "A Journey of Thailand to The Hague Conference on Private International Law: A Christmas Carol," *JE Asia & Int'l L*, Vol. 14, (November 2021): 297, <https://doi.org/10.14330/jetail.2021.14.2.04>.

incorporation of ethical principles relating to informed consent, protection from exploitation, identity rights, and the best interests of the child into legal decisions and frameworks.

IX. Advocacy for Child-Centric Approach

This essay argues that in international surrogacy arrangements, the needs and interests of the children must come first. The idea behind this child-centered strategy is that the safety and happiness of the children conceived through surrogacy are the most important considerations. Several assumptions form the basis of this argument: children have the right to be recognized as a person in the eyes of the law, to be safe from abuse, and to grow up in a secure and stable setting. All international surrogacy agreements must respect these rights. Because of ethical concerns, children conceived through surrogacy must not be viewed as property or bargaining chips. Recognizing their rights and best interests aligns with ethical principles of justice, autonomy, and dignity. To guarantee that all children get the care, support, and protection they require, understanding international and local laws should be vital and applied with their best interests in mind. Practical policy recommendations are essential to translate the child-centric approach into actionable steps.

These recommendations are intended for policymakers, legal practitioners, and all stakeholders involved in cross-border surrogacy: policymakers should develop and implement comprehensive surrogacy legislation that addresses the unique challenges of cross-border surrogacy. This legislation should prioritize the welfare of children and safeguard their rights. Establish independent ethics committees or regulatory authorities responsible for reviewing and approving surrogacy arrangements. These bodies should ensure that ethical standards are upheld and that all parties involved are well-informed. Ensure that informed and voluntary consent is obtained from all parties involved, particularly surrogate mothers, in a transparent and non-coercive manner. Surrogate children

should be afforded the same privacy protections as biological parents when seeking out information about their genetic background, including the surrogate mother and gamete providers.

In all legal matters involving international surrogacy, including paternity, custody, and immigration, the child's best interests should be prioritized. Cross-border surrogacy that prioritizes the needs of the child has the potential to alter the current surrogacy market. By prioritizing the welfare of children, a child-centric approach can provide stronger safeguards against potential harm, exploitation, or legal uncertainties that children might face in cross-border surrogacy arrangements. Applying consistent legal standards that prioritize children's interests can lead to greater legal clarity and consistency in surrogacy cases, reducing disputes and uncertainties. A child-centric approach encourages a more ethical and responsible practice of surrogacy, aligning with evolving societal values and ethical principles.

Prioritizing the well-being of children in cross-border surrogacy promotes international collaboration and alignment of legal and ethical norms, leading to more responsible and ethical surrogacy activities worldwide. Protecting and advancing the well-being of children born through international surrogacy arrangements requires a focus on the needs of the children themselves. Practical policy recommendations and the potential impact of this approach underscore the importance of prioritizing children's rights and interests, ultimately ensuring that they are not only recognized but also protected in the context of cross-border surrogacy.

X. Closing

A. Conclusion

In conclusion, amidst the intricate interplay of international law, national jurisdiction, and the welfare of children born through surrogacy arrangements, prioritizing a child-centric approach emerges as the beacon guiding our way. Throughout this discourse, we have explored

the impact of the Hague Conference on Private International Law, scrutinized Indonesian jurisdiction concerning cross-border surrogacy, delved into ethical quandaries, and advocated for the rights and well-being of these vulnerable children. In a world where children often bear the brunt of decisions made by adults, it is our ethical and moral duty to ensure their welfare takes precedence. The crux of this argument emphasizes the necessity of placing the best interests of these children at the forefront, acknowledging them not as commodities but as individuals with inherent rights, identities, and needs deserving of protection.

B. Recommendation

To translate this child-centric ethos into actionable policy directives, we implore policymakers, legal practitioners, and stakeholders involved in cross-border surrogacy to heed the following recommendations. **First**, comprehensive surrogacy legislation. Develop and enact comprehensive surrogacy legislation that prioritizes the welfare of children, embedding their rights and interests as paramount considerations in all legal, ethical, and practical facets of surrogacy arrangements. **Second**, ethical oversight. Establish independent ethics committees or regulatory bodies tasked with reviewing and sanctioning surrogacy agreements. These entities should ensure adherence to ethical standards and guarantee that all parties involved are fully informed and consenting participants. **Third**, informed consent. Ensure that informed and voluntary consent is obtained from all parties, particularly surrogate mothers, in a transparent and non-coercive manner. Afford children conceived through surrogacy can learn the identities of their surrogate mothers and gamete donors while safeguarding the privacy of all individuals involved. **Fourth**, the principle of best interests. Adjudicate parentage determinations, custody disputes, and immigration matters pertaining to international surrogacy with an unwavering focus on the best interests of the child. Upholding a child-centric approach

must remain our guiding principle, navigating us through the complexities of international legal frameworks, jurisdictional intricacies, and ethical dilemmas, thereby ensuring that the most vulnerable stakeholders—the children—emerge as the ultimate beneficiaries of our collective endeavors.

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