

DISCUSSING THE CONTENTS OF THE SURGICAL REGULATION IN VIETNAM**Nguyen Tuan Anh¹****Nguyen Mong Cam²***¹Department of academic quality assurance and testing, Nam Can Tho University**²Faculty of law, Nam Can Tho University*

Summary: *From practice to the need for surrogacy, solving the infertility situation of many couples who have all the biological conditions to wish to have a child of the same bloodline as themselves. . Besides, to ensure the legal rights and obligations of the parties and the child born in the case of surrogacy for humanitarian purposes. The author compares the provisions on the rights and obligations of the parties in the law on marriage and family as well as analyzes and clarifies the time to determine parents for a child, thereby pointing out unreasonable points and limitations. The legal mechanism contributes to perfecting the regime of surrogacy for humanitarian purposes in Vietnamese law*

Keywords : *surrogacy; humanitarian purposes, infertility, maternity*

1. Ask the question:

In fact, for many different reasons, many couples are married to each other but cannot get pregnant. Biological factors of one of them make conception difficult and infertile, causing many couples to become pregnant. Husband and wife cannot carry out their "natural duties" as parents. Currently, under the impact of many objective factors such as complex changes in climate, environmental pollution, damaged ecosystems, poor quality foods and the working environment. On the other hand, weak awareness, limited life skills along with social development promote the rapid increase in abortion, which is the cause of infertility for many couples. According to statistical results, Vietnam has a fairly high domestic infertility rate (about 7.7%), equivalent to about 1 million infertile couples in the country [1].

Surrogacy is considered a practical need to solve the above problems. When other technical measures are unsuccessful, there needs to be openness to allow surrogacy in some cases. certain compared to the previous ban on surrogacy [2]. Because according to common sense, the desire to have a child born of the same bloodline as yourself is a legitimate wish of

any individual. Therefore, once the woman herself - the wife - cannot get pregnant (for reasons such as having a serious illness, not having a uterus, the uterus is not capable of holding the fetus...) but still meets the conditions For other conditions to create embryos to give birth, finding a surrogacy method is inevitable and superior. However, to ensure the rights and obligations of the parties as well as the rights of the child at birth, the law needs to improve regulations on the rights and obligations of the parties, ensuring harmony and unity. understanding and implementation is an urgent issue in the current period.

2. Current legal status on the content of surrogacy regulations in V iet Nam

The content of the regulations on surrogacy includes issues on conditions for surrogacy for humanitarian purposes (MTHVMĐND), including conditions on the subject (surrogate party, the party requesting the surrogacy and the facility). health), conditions on content and form of the agreement and conditions on MTHVMĐND procedures; Rights and obligations of the parties implementing MTHVMĐND, including rights and obligations in related legal fields such as marriage and family, social insurance, civil status...; Determine the relationship between father, mother and child in the case of MTHVMĐND; Resolve disputes in cases of surrogacy; Handling violations of childbirth using assisted reproductive technology and surrogacy.

According to the Vietnamese dictionary, condition is understood as "something stated as a requirement before doing something"[3]. Thus, surrogacy is the minimum requirements prescribed by law for relevant entities to ensure the rights and obligations of the parties to each other, of the parties to the surrogate child and not contrary to social ethics. This is considered an important regulation on surrogacy for humanitarian purposes, preventing organizations and individuals from taking advantage of the surrogacy regime to perform illegal surrogacy, changing the nature of the regulation. On the other hand, it also gives couples who satisfy the conditions for surrogacy the opportunity to have children, demonstrating the humanity of the State in regulating marriage and family relationships. Thus, the conditions for performing surrogacy are determined by law for the surrogate mother, the surrogate mother, and other factors that are considered an important basis for determining and protecting rights and interests. of the parties.

Legal regulations on surrogacy revolve around and regulate issues related to the legal rights and obligations of the parties. In particular, the creation, change, or termination of rights

and obligations in this relationship must first be built and formed from the agreement of the parties, including: the rights and obligations of the surrogate mother. and the surrogate mother, the rights and obligations of the parties towards the born child; between the medical facility performing MTHVMND techniques and the parties requesting surrogacy and surrogacy on the principle of ensuring harmony in the rights and interests of the parties and being recognized and protected by law. However, the author finds that there are still inconsistencies between the rights and obligations of the surrogate mother and the surrogate mother in the MTHVMND regulations, thereby not ensuring uniformity in the scope of rights enjoyed. and the scope of performance of the parties' obligations.

For example, in the obligation to ensure payment for reproductive health care of surrogate mothers for humanitarian purposes. Consider the correlation between the right to request the surrogate mother to provide support and care for the surrogate's reproductive health in Clause 4, Article 97 of the 2014 Law on Marriage and Family and the obligation to pay the costs. expenses to ensure reproductive health care according to regulations of the Ministry of Health of the surrogate mother in Clause 1, Article 98 of the 2014 Law on Marriage and Family. The author believes that, throughout the pregnancy and giving birth, the pregnant woman will have many needs arising on the basis of best ensuring the development of the fetus, according to the law, the right to request reproductive health care and support. from the surrogate mother's side is unlimited, including both material requirements and mental requirements, but currently it is difficult to determine which factors will decide whether or not Ensuring good fetal development has not yet been clarified. In other words, support for fetal development still depends on the will of the surrogate mother. Compared to the provisions in Clause 1, Article 98 of the Law on Marriage and Family 2014, the obligation to pay reproductive health care costs for the surrogate mother is limited to actual health care costs. reproductive health according to regulations of the Ministry of Health. Thereby, the author finds that there are inconsistencies in the right to request and the obligation to pay health care costs. The question is whether the surrogacy fee when exercising the right to request is necessary to prove. ddoiiss with that request before the surrogacy requesting party and when realizing that the requested expenses are not within the scope of obligations, can the surrogacy requesting party refuse to pay? This incompatibility leads to inadequacies in understanding and implementing the rights and obligations of the parties in the MTHVMND relationship.

Regarding the rights of the parties, the law not only recognizes and protects the rights of the relevant subjects in the law on Human Resources and Family, but also when the relationship between father, mother and child born in the case of MTHVMĐND is established according to regulations. In Article 94 of the Law on Marriage and Family 2014, the law still recognizes and protects the rights and interests in the marital relationship between parents and children with respect to civil rights such as guardianship between parents and children; Civil status rights such as birth registration, property management and inheritance; Social insurance rights such as maternity benefits, sickness benefits, leave to care for sick and deceased children and other rights in the criminal field. In general, the law does not differentiate between children born naturally and children born in cases of MTHVMĐND, demonstrating fairness in the rights and obligations of parents towards their children before the law in the representation regime. The child's natural law according to the 2015 Civil Code, while ensuring that the rights of the child born in the case of MTHVMĐND are treated fairly, ensuring the best development for the child through the responsibilities of the father. mothers to their children in relevant legal regulations.

In the Jurisprudence dictionary, the issue of determining parents for a child is *"determining one person as the father or one person as the mother for the child on the basis of the provisions of law"* [4] . On the other hand, if considered from the perspective of a legal institution in marriage and family law, the determination of parents for children is understood as *"a synthesis of legal norms promulgated by the State, regulations on the rights and the obligations of the subjects, grounds and legal procedures to identify a father, a mother, a child with a direct blood relationship"* [5] . Accordingly, the law recognizes and ensures the implementation of the obligations of parents to their children on the basis of determining the parents of their children according to regulations. When a person is determined to be the father or mother of a child, in principle, he or she automatically incurs obligations towards the child. They do not have the right to refuse or waive those obligations as prescribed by law. Therefore, subjects must be responsible for fulfilling all obligations according to the law, and be legally responsible for their actions in performing or not performing the above obligations towards their children. is the basis for competent state agencies to apply sanctions in handling violations, ensuring law enforcement.

Pursuant to the provisions of Clause 1, Article 97 of the 2014 Law on Marriage and Family, it is stipulated: *"The surrogate mother and the surrogate husband have the same rights*

and obligations as parents in taking care of their reproductive health and care. , raising the child until the time of handing the child over to the surrogate mother; must give the child to the surrogate mother." This regulation is uniform and consistent on the time of transfer of rights and obligations between the surrogate mother and the surrogate mother, specifically with regard to the regulations on determining the father and mother of a child in the case of surrogacy. for humanitarian purposes in Article 94 of the Law on Marriage and Family 2014. Accordingly, the child born in the case of surrogacy for humanitarian purposes is the common child of the surrogacy couple from the time the child is born. go out. In other words, before the child is born, the surrogate mother and her husband have the same rights as parents over the child. After the child is born, those rights and obligations will be transferred to the surrogate mother through legal procedures to determine the child's parents, but it is necessary to determine that the surrogate, her husband, The surrogate mother terminates the above rights and obligations only when the surrogate mother has actually received the child. The author believes that this regulation is not reasonable, because it is considered that the surrogate and the surrogate's husband have the same rights and obligations as parents in taking care of their reproductive health and caring for and raising their children. At the time of handing over the child to the surrogate mother, it is completely reasonable to ensure that the surrogate mother is responsible for taking care of the fetus and ensuring that she fulfills her responsibilities for the child's development throughout. maternity cycle such as examination, rest, nutrition, etc. However, it is necessary to determine that the surrogate mother must also be identified as the child's parent during the maternity period, not simply responsible for commitments to the surrogate mother. This, on the one hand, increases responsibility and creates legal obligations from the maternity period to the child's legal parents (the surrogate), and on the other hand, forms and strengthens the parental relationship. baby during pregnancy

3. Conclude

In short, MTHVMĐND is inseparable from the rights and obligations of the parties during pregnancy because it only ensures consistency in the scope of rights and obligations, as well as uniformity in the implementation of obligations and obligations. Enjoying the rights of the parties is a solid basis to ensure the rights and interests of the child in the case of MTHVMĐND throughout the maternity period and after birth and carry out procedures to determine the child's parents according to regulations.

In addition, the implementation of legal procedures to determine the parents of the child is the basis for giving rise to the legal responsibilities of the parents according to the law, ensuring the rights and interests of children of MTHVMĐND in the Law on Human Resources and Family and Other relevant regulations and also the legal basis for terminating and giving rise to new rights and obligations in the MTHVMĐND relationship. Ultimately, surrogacy will lead to the birth of a child, inevitably leading to the determination of the child's parents to ensure the exercise of rights to the child through legal procedures. Because the pregnant person is not legally the child's mother, the person identified as the child's parent is blood related to the child but not directly born, so determining the child's parents is not the same as in normal childbirth cases. Due to their complex nature, marital relationships between father, mother and child need separate regulations with specific criteria in determining father and mother of child in case of pregnancy for humanitarian purposes. protect the rights and interests of relevant individuals.

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