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ORIGINAL PAPER

Non-commercial Surrogacy in Thailand: Ethical, Legal, and Social Implications in Local and Global Contexts

Yuri Hibino[1]

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Abstract

In this paper, the ethical, legal, and social implications of Thailand's surrogacy regulations from both domestic and global perspectives are explored. Surrogacy tourism in Thailand has expanded since India strengthened its visa regulations in 2012. In 2015, in the wake of a major scandal surrounding the abandonment of a surrogate child by its foreign intended parents, a law prohibiting the practice of surrogacy for commercial purposes was enacted. Consequently, a complete ban on surrogacy tourism was imposed. However, some Thai physicians and surrogate mothers cross into neighboring countries to provide foreign clients with the commercial surrogacy services that are forbidden in Thailand. Under this legislation, the needs of Thai couples who are unable to conceive are accommodated by legally accessible, non-commercial surrogacy services; however, there is currently no provision in place aimed at protecting the rights and interests of surrogate mothers and children. It is widely believed that the abolition of surrogacy tourism, an industry that give rise to several major scandals, and legal access to surrogacy by Thai couples were the Thai government's primary goal in implementing this legislation.

Keywords Surrogacy · Thailand · Global · Local · ELSI

Introduction

Thailand is known as a major destination in the medical tourism phenomenon, and its robust tourism industry with excellent infrastructure and a reputation for hospitality has attracted numerous foreign patients. Services offered in the field of reproductive medicine have proven particularly attractive to foreign clients (Whittaker 2015). With

✉ Yuri Hibino
hibino@staff.kanazawa–u.ac.jp

[1] Department of Medical Science, Environmental and Preventive Medicine, Kanazawa University, Kanazawa City, Japan

regard to assisted reproductive technologies (ART), in the absence of binding statutory regulation, some private hospitals have advertised and provided reproductive technologies on a commercial basis to foreign clients, including those involving a third-party agent. Among these services, non-medical gender selection using preimplantation genetic diagnosis/screening PGD/PGS was a particular feature of the medical and reproductive services that attracted overseas clients to Thailand (Whittaker and Speier 2010; Whittaker 2011).

In the commercial surrogacy market, however, India had long been a significantly more favorable destination than Thailand since, in India, the clients who pay for the fertilized embryo automatically become that child's legal parents (ICMR 2005). Moreover, surrogacy was available in India at extremely competitive prices. However, since India imposed restrictions on surrogacy tourism in 2012, foreign clients in search of surrogacy services began to travel to Thailand. Consequently, Thailand's commercial surrogacy market underwent rapid growth.

Shortly thereafter, during the summer of 2014, a number of significant scandals concerning surrogacy tourism in Thailand were exposed. A wealthy, single man of Japanese national obtained a number of children via surrogacy, and a disabled boy born from surrogacy was abandoned by his Australian biological parents (widely known as the "Baby Gammy" case) (Schover 2014; Whittaker 2016). Immediately following the exposure of these scandals, the commercial surrogacy industry was shut down and a new law was enacted in 2015. Under the new legislation, commercial surrogacy is prohibited and only non-commercial surrogacy between relatives is permitted.

The purpose of this paper is to explore the ethical, legal, and social implications of Thailand's surrogacy regulation measures in both domestic and global contexts. The remainder of the paper is structured as follows: first, the changes in legislation regulating surrogacy in Thailand are outlined; second, domestic surrogacy case studies are presented and examined in terms of the problems they present; third, the impact of the ban on commercial surrogacy, in both Thailand and globally, is evaluated; and, finally, implications of the new surrogacy regulations for concerned parties are explored.

Methods

The results presented in this paper are based on published documents and fieldwork. The documents include a variety of materials, including articles in academic journals, legal documents, guidelines, government documents, and media reports. Fieldwork was conducted on several occasions between 2010 and 2018 in Bangkok, Thailand. Data were also gathered from fieldwork performed in Phnom Penh, Cambodia, in 2015. Cambodia was a temporary destination for commercial surrogacy before and after the market in Thailand was closed. Interviews with numerous local informants, including doctors, brokers, policymakers, surrogate mothers, egg donors, and prospective parents, were carried out during the fieldwork.

Data used in the domestic surrogacy case studies conducted between 2010 and 2015 were analyzed. Field interviews were conducted in Thailand with 10 prospective surrogates, three ex-surrogates, one local intended mother, and one ex-surrogate's friend; these data were also included in the analysis. Data obtained in January 2018

were used in the noncommercial surrogacy case studies under the new surrogacy law in 2015 and in cross-border commercial surrogacy case studies. Data from interviews conducted during the fieldwork in January 2018, which included information from one lawyer, two academic researchers, one doctor, two government employees, and one local agent were also used in the analysis. Citations of interview data are presented without identifying information to protect the privacy of participants. More detailed information about the fieldwork and interviews is presented in the Appendix.[1]

Interviews were conducted in Thai or English, with most conducted in Thai with the assistance of a native interpreter. Interviews were audio-recorded, and the transcripts were generated and subsequently translated. Interview data were accordingly cited to illustrate the major findings of the present study.

Results

Surrogacy in Thailand prior to the "Baby Gammy" case

In this section, the changes in legislation regulating surrogacy in Thailand are outlined. The first child born in Thailand as a result of in vitro fertilization (IVF) was born at Chulalongkorn University in August 1987. Subsequently, the first child born from a surrogate mother was born at the same university in 1991. In 1994, it was reported that a Thai actress gave birth to a child on behalf of her sister-in-law. In 2000, an intended parent, a member of the University staff working in the public sector, requested a benefit for a child born through surrogacy. This ultimately became a lawsuit about parentage, but the claim was dismissed since women who successfully procured surrogacy services were not legally mothers and therefore were ineligible to apply. Guidelines on ART were issued by the Medical Council of Thailand in 1997 and 2001 (Medical Council of Thailand 1997, 2002). These guidelines prohibited medical practitioners from becoming involved in commercial activities pertaining to gamete donation and surrogacy as well as from practicing pre-implantation embryo sex selection. However, these guidelines did not have mandatory power (Whittaker 2016); there was no statutory law concerning ART, including surrogacy, and various reproductive services were provided on a commercial basis for clients, including foreign clients, until 2015. Subsequently, since 2012, when the Indian market was restricted, Thailand's surrogacy tourism market has expanded.

The first draft legislation, titled "Pregnancy by medically assisted reproductive technology Act, bill number 167/2553," was formulated in 1997, and a process of public consultations took place throughout 2000 (Whittaker 2016). However, it was not until 11 May 2010, that the Thai cabinet formally approved the draft (Adams 2010). In 2010, a bill proposed by the Ministry of Social Development and Human Security, titled "Protection of children born though assisted reproductive technologies," was submitted. This bill allowed for noncommercial surrogacy and for the infertile couples

[1] (Appendix) Fieldwork was performed in Bangkok, Thailand, in September 2010, December 2010, May 2011, January 2012, January 2013, October 2013, February–March 2014, August–September 2016, and January 2018. Fieldwork in Phnom Penh, Cambodia, was performed in November 2015 and January 2018. Most basic demographic data (age, marital status, family structure, income, and educational background) were obtained from semi-structured interviews with the surrogates (Hibino and Shimazono 2013).

to have legal custody of children who were born from this practice. However, the draft (167/2553) was never completed because of political instability (Whittaker 2016).

In 2011, it was reported that a Taiwanese agent (from a company named Baby 101), who had been complicit in 14 Vietnamese women giving birth to children from surrogacy in Thailand, was arrested (Kowitwanji 2011). Although a large-scale trafficking case was brought up, the legal system had no power at that time to regulate commercial and international surrogacy in Thailand (Whittaker 2016). Therefore, despite growing activity in the realm of ART and surrogacy and numerous attempts to legislate, the regulatory arena in Thailand was left open until 2015.

Domestic surrogacy in Thailand in the absence of official regulations

In this section, two cases wherein both the client and the surrogate mother are Thai nationals will be introduced, and the problems that are embedded in domestic surrogacy practices will be explored. Generally, the prospective parents enlist the surrogate mother privately, without the assistance of a commercial agency. Primarily, the infertile couples may recruit prospective surrogates from among their relatives and acquaintances; if this proves unfeasible, they may rely on online message boards that match intended parents with potential surrogate mothers. The majority of domestic surrogacy transactions between the Thai parties may be conducted without the involvement of any agency; when they avail themselves of surrogacy message boards, both parties are responsible for organizing in-person meetings and negotiating the conditions of their transactions. Although investigating domestic surrogacy cases involving only Thai citizens, the implication of the new surrogacy regulation enacted in 2015 for local society can be obtain.

Over the course of my research, an online message board aimed at facilitating matches between intended parents and potential surrogate mothers came to attention in 2010 (Hibino and Shimazono 2013). Messages on this forum were posted in Thai, indicating that this service was targeting a local market. Most of the messages were posted by women offering their services as surrogate mothers. The tone of the messages indicated that these women were taking the pain to demonstrate their suitability to be surrogate mothers. For example, one message read as follows: "I am interested in becoming a surrogate mother for a childless couple. I am 26 years old and married. I have fair skin and am healthy; most importantly, I have a good personality. I won an award for excelling as a student while I was at university, and I am currently a graduate student." Intended parents who browse these message boards and find an offer that appeals may contact the woman by phone or e-mail.

For this study, interviews with several informants, including prospective surrogates, ex-surrogates, and a friend of an ex-surrogate who had been recruited via this website, were conducted. Most women who offered their services cited financial need as their primary motivation (Hibino and Shimazono 2013). For example, they wished to send money to their families or had debts to settle. However, several women reported being motivated by altruism and a desire to assist infertile couples (Hibino and Shimazono 2013). One of the tenets of Theravada Buddhism is that helping others confer virtue on the individual offering the help. This belief is widespread among Thai people, and in Thai, surrogacy is called *umbun*, which literally means "carrying the merit"; *um* refers to the physical act of carrying children, and the merit, or *bun*, refers to the Buddhist

notion of merit bestowed on women when they undergo pregnancy and birth (Whittaker 2016). Generally, *umbun* carries the connotation of being pregnant with virtue, thereby underscoring the altruistic aspect of the practice. In addition to the financial and altruistic motivations reported, various other reasons were cited. Among the 14 women who participated in the interview, one woman wished to become a surrogate mother since it constitutes work that she can do at home, some others because they enjoy pregnancy, and one woman wished to experience giving birth. One woman wished to become a surrogate mother to atone for past abortions (Hibino and Shimazono 2013).

Below is a testimonial offered by the friend of a woman who became a surrogate mother for a local couple:

> The couple who owned the hotel where she worked asked her to become a surrogate mother for them, and it was difficult for her to refuse her employers; moreover, she owed a debt of 200,000 baht at that time. While she was pregnant, she lived with the intended parents in their home. When the husband was away, the wife asked her to do the household chores and forbade her to meet anyone, including her boyfriend; while the husband was kind, the wife was not. Since she gave birth to twins, she expected that they would pay her 600,000 baht; however, they only paid her 300,000 baht in the end. The day of delivery was predetermined based on divination, and she gave birth by cesarean section. She was not sad at giving up the children, but the treatment that she had received from the clients did upset her. It was a hard time and a bad experience for her. Since she had trusted the couple, it was only after giving birth that the idea of a contract occurred to her (friend of the ex-surrogate mother, 2010).

In this example, there was clearly abuse on the part of the clients, and the compulsory cesarean section for non-medical reasons constituted a significant infringement of the surrogate mother's autonomy. Furthermore, she was dissatisfied with the compensation that she received. Overall, this was a very unfortunate experience for the surrogate mother.

The following testimonial comes from another surrogate mother, who received a gentler treatment.

> During the pregnancy I lived with my husband in a condominium owned by the client. I received living expenses of 20,000 baht a month and 400,000 baht after giving birth, so 600,000 baht in total. I wanted money to spend on my children. During the delivery, my client stood beside my bed and we both cried when the baby was born. It was very emotional. When I got pregnant, I was very happy and I felt even happier when I handed the baby to the client. It was after the birth that we signed a contract. I think I will be a surrogate mother once more for the same client (ex-surrogate mother, 2011).

During pregnancy, the mother quoted above was given an independent and comfortable space where she could continue living her normal life with her husband. The delivery of the baby was clearly very moving for both parties. The mother in this instance reported that she was satisfied with the remuneration that she received and that she

would become a surrogate mother for the same client a second time since she was so pleased to make them happy.

Although there is a stark contrast between the examples mentioned above, there are also some similarities. Both transactions were arranged without the involvement of any surrogacy agencies. None of the parties signed a contract in advance, leaving the conditions, such as the rights and duties of all involved ambiguous. This is risky for both sides, and particularly precarious in the absence of any binding legislation. For example, as the Baby Gammy case has highlighted, the surrogate mother must accept a disabled child if the client abandons them because Thai civil and commercial code says that a woman who delivers will be the legal mother of the child.

Since there is no guarantee that the surrogate mother will hand the child over to the intended parents after delivery, clients may experience significant anxiety during the entire process. The intended parents would be well advised to subordinate themselves to the surrogate mother's will since the birth mother is legally entitled to keep the baby. One client's testimony documented that she felt threatened and exploited by the surrogate mother, "The surrogate mother made repeated requests from us. If I refused her requests, I was very anxious that she would exert a bad influence on my unborn baby, and thus I felt threatened by her" (Thai SMC News 2010).

The data suggest that when surrogacy takes place on good terms, an intimate relationship is engendered between the client and surrogate mother, and the altruistic aspirations of the surrogate mother are realized. These experiences are unique to surrogacy, and some women may wish to experience it a second time. Thus, there are undoubtedly some positive aspects of surrogacy. However, in some cases, the surrogacy experience may be fraught with abuse, since surrogate mothers have little bargaining power or recourse and may find themselves vulnerable to the behavior of the intended parents (Nilsson 2015).

If a third-party agent is enlisted to manage the interaction between the surrogate mother and the client, there is a greater likelihood that the conflict between the two parties can be avoided. However, this route to surrogacy carries stronger commercial connotations, compromising the intimate relationship between the client and surrogate mother as well as the altruistic urge that makes the experience special for the surrogate mother. The two abovementioned examples show a sharp contrast in the relationship between the client and the surrogate mother. This is a key dilemma that must be negotiated with regard to the relationship between the client and the surrogate mother.

The rapid growth of surrogacy tourism and its eventual prohibition

In this section, cross-border surrogacy is discussed to clarify the detailed background of the legalization of noncommercial surrogacy in Thailand. As a destination for commercial surrogacy, India had distinct advantage over Thailand. In Thailand, civil and commercial legislations have held that the woman who bears a child is that child's legal mother, which was potentially problematic when the client brought the child to his or her own country of residence (Stasi 2017). However, in India, the client's name was listed on the birth certificate (ICMR 2005). Moreover, compared to the average compensation (8500 USD) offered to Thai surrogate mothers, the remuneration for Indian surrogate mothers (5000 to 6000 USD) was more affordable. For these reasons, India was overwhelmingly favored in the commercial surrogacy market.

However, shifts in attitude toward foreign clients led to the strengthening of regulations regarding medical visas in India in 2012. Consequently, foreign clients who had been legally married for 2 years or more and who were permitted to seek surrogacy in their home countries were permitted to enter India on medical visas to seek commercial surrogacy (Chaudhuri 2013). In practice, this restriction prohibited most foreign clients from requesting commercial surrogacy in India. In 2015, foreign clients were completely banned from procuring surrogacy in India, and the market was closed.

Thailand soon emerged as an alternative to India; the Thai government was heavily focused on medical tourism, and Thailand's IVF services are of a high international standard. Since the country already had an excellent and abundantly resourced tourism infrastructure, clients could be guaranteed a comfortable stay. The number of foreign clients seeking commercial surrogacy in Thailand has increased rapidly within a short time (Whittaker 2016), with same-sex couples accounting for a significant proportion of the clientele.

In 2013, 65 surrogate children of Israeli clients, most of whom were same-sex couples, were unable to leave Thailand. To resolve this problem, an agreement was reached between the Israeli and Thai governments, according to which only children who had already been born or contracted were permitted to accompany the clients' home. As of 30 November 2014, the Israeli government no longer provides assistance to couples who have procured surrogacy services in Thailand (Fiske 2014).

Even greater troubles were yet to emerge. In hindsight, it is perhaps clear that it was merely a matter of time before such difficulties arose, considering the explosive increase in foreign surrogacy clients. The best-known case is that of the Australian parents of twins who refused to take one of them, a disabled boy. The boy requiring expensive medical treatment was placed under the care of the surrogate mother. The incident was widely publicized and raised international criticism (Schover 2014). A further incident later came to light, where a wealthy Japanese man had repeatedly sought surrogacy and acquired seventeen children. Although the man's motives have not been elucidated yet, the incident came as a surprise to many since surrogacy is generally perceived as a service used almost exclusively by couples who are unable to conceive by any other means. Since Thailand had no laws in place restricting such actions at that time, the man's behavior was not illegal. A law that could provide eligibility criteria (i.e., regarding intended parents) for surrogacy was called for.

Legalization of noncommercial surrogacy and official surrogacy cases under the new law

In November 2014, the "Protection of Children Born Through Assisted Reproductive Technologies Act" (B.E. 2558) was approved by the Congress, promulgated in the Royal Gazette in May 2015, and took effect on 30 July 2015 (Whittaker 2016). Its contents are as follows:

> Trade of gametes/embryos and commercial surrogacy are prohibited.
> Brokering acts and promotion of third-party reproduction are prohibited.
> Export and import of gametes/embryos are prohibited.

> Only a heterosexual couple who is perceived as legally married in Thailand may seek surrogacy services (in cases of international marriage, a marriage period of at least 3 years is required).
> The child will be the legal child of the intended parents.
> In principle, surrogate mothers should be selected from among relatives.
> The surrogate mother should receive a reasonable amount of remuneration, as determined by the Medical Council of Thailand.
> Offenders are liable for imprisonment and/or a fine.

On the basis of this legislation, any couple wishing to procure surrogacy services must first submit an application to the committee of the Ministry of Health to obtain permission. The committee consists of seventeen individuals, including doctors, pediatricians, and child welfare experts (Stasi 2017).

After the committee was established in 2015, 76 cases were submitted in 2016, of which 72 were approved. As of January 2018, around 140 cases were approved and children were born to surrogate mothers under this legislation. The examination period is for around 1 month, and the majority of requests are approved. Around 30% of surrogate mothers are close relatives of the clients, such as sisters; other relatives account for around 30%, while another 30% constitute non-relatives (staff of Ministry of Health, 2018).

Regarding noncommercial surrogacy under the new regulations, a Thai physician testified as follows:

> In Thailand, foreigners can no longer request surrogacy, but Thai nationals can, and the conditions are not particularly strict. If a surrogate mother cannot be found among one's relatives, acquaintances may also fulfill the role. Regarding payment for surrogate mothers, although the medical council has yet to determine a specific amount, I personally think that since the surrogate mother is pregnant for nine months, she should be paid a reasonable amount. Overall, Thai couples have no need to seek surrogacy abroad; they can easily access it here (physician in reproductive medicine, 2018).

Under the new law, in principle, the surrogate mother should be selected from among the couple's relatives, although some exceptions are permissible. Furthermore, although in some other countries the remuneration that surrogate mothers receive is severely restricted in a bid to avoid over-commercialization of the process, in Thailand, there are currently no specifications attached to the compensation the surrogate mother receives, and therefore, the situation is extremely flexible. Therefore, Thai nationals may easily access legal surrogacy services. However, the situation may result in de facto commercial surrogacy,

> We approve if there are no particular defects in the document. If trouble arises at a later date and the arrangement is found to be commercial, the parties concerned will be punished. Therefore, while we assume that some applications might be commercial cases, we do not assess it. Regarding gamete donation, application to the ministry is not required and the service may be provided if permission has been granted by a doctor (staff of Ministry of Health, 2018).

This testimony indicates that the inspection is conducted for formal purposes only. Moreover, approval does not guarantee that the surrogacy process is safe and that the rights of all parties involved are protected. Although the law prohibits commercial surrogacy, it indicates that commercial cases are also accepted on the condition that "there is no problem in the document." Currently, there is no clear standard, although the Medical Council of Thailand will publish it in the future. As a minimum, the types of factors (e.g., medical expense including prenatal and postnatal care, living expenses during pregnancy, loss of wage, counseling) to be considered in assessing what if a reasonable or acceptable payment to a surrogate would include.

The surrogacy market and Thai surrogate mothers after the "Baby Gammy" case

Both before and after the prohibition of commercial surrogacy in Thailand, the market transferred to the neighboring countries. Thai physicians and surrogate mothers traveled to neighboring countries where eggs were fertilized and transplanted. In September 2014, an IVF clinic was established in Phnom Penh, Cambodia. Foreign clients' embryos that had been stored in Thai clinics had to be transferred to another country prior to the new law's enforcement in Thailand. Therefore, embryos were urgently transferred to the clinic in Phnom Penh, to which Thai surrogate mothers traveled to undergo the transplantation procedure. Consequently, the Thai surrogate mothers gave birth in Cambodia, leading to difficulties when the clients (i.e., Japanese intended parents) sought to bring their surrogate children home with them (Interview with a staff of Japanese consulate in Phnom Penh in 2015).

In November 2014, the Cambodian government issued a warning that equated commercial surrogacy with human trafficking; in October 2016, ministerial orders from the Ministry of Health ("Blood, Ovum, Bone Marrow, and Cell Control Ordinance," Article 12) prohibited surrogacy completely. Following this ordinance, in November 2016, an Australian agent who had arranged commercial surrogacy in Cambodia was arrested (News Corp Australia Network 2016), and in June 2018 the arrest of a Chinese agent who had been involved in commercial surrogacy in Cambodia was reported (Cambodia Expats Online 2018). While surrogacy is currently prohibited in Cambodia, the Cambodian government is preparing a new law that will legalize altruistic surrogacy on a domestic basis (Meta 2017; International Human Rights Clinic 2019). Draft law on surrogacy will be discussed at the beginning of 2020 (Kijewski 2019).

In August 2016, an IVF clinic was established in Vientiane, Laos, shortly before the ban on surrogacy was implemented in Cambodia. Vientiane is closer to the border with Bangkok, making the Thai commercial surrogacy industry easier to sustain from Laos. The Thai law in 2015 does not mention whether Thai doctors can provide commercial surrogacy in Third World countries. The practice continued since doctors could easily cross into Laos from Thailand; however, in April 2017, it was reported that a male was stopped while attempting to enter Laos with a tank containing frozen gametes and was arrested close to the Lao border (BBC News 2017). In Thailand, the law has prohibited cross-border transport of gametes since 2015. It was also reported in June 2017 that surrogacy regulations were to be strengthened since it is equated with trafficking in Laos (Gerin 2017). Consequently, the industry has faced difficulties in Laos. Lao officials have ordered a clinic in Vientiane to shut down because the clinic provided

illegal surrogacy services involving Thai women in 2017 (Gerin 2017). At the time of writing, any legal provision about surrogacy had yet been passed in Laos.

In this way, foreign clients' options for procuring commercial surrogacy services in neighboring countries were gradually eliminated. Nonetheless, commercial surrogacy continues behind the scenes. For example, a Thai broker involved in the industry, both before and after the prohibitive measures were taken, testified as follows: "There are many Chinese clients now, and the Thai surrogate mother is transported to Russia and the embryos are implanted there. When pregnancy is confirmed, she is transferred to China, the client's home country, where she gives birth. If a bribe is offered, the birth certificate can be issued in the Chinese client's name, although that is illegal" (Interview with local Thai surrogacy broker in 2018).

The above-mentioned scandals including the Baby Gammy case have been widely reported in Thailand, and the surrogacy industry's reputation plummeted, in stark contrast to the notions that surrogacy might confer Buddhist merit to the surrogates. Nonetheless, some Thai women are willing to bear a child for others for financial gain, to give birth on behalf of another as a service in exchange for money. The current situation is that, given the tighter legislation in Thailand and neighboring countries, the unlocked for consequence is to drive the practice of commercial surrogacy to other countries. Thus, the ethical concerns not only remain but are in many ways heightened because women taking part in these practices do not benefit from any framework of legal protection.

Discussion

Until the new law was established in 2015 in Thailand, domestic couples could procure surrogacy services on the condition that the surrogate mother was selected from among their relatives, acquaintances, friends, or other networks. If a surrogate mother could not be selected from this pool, the prospective parents could turn to websites. Most women advertising to become surrogate mothers on these websites are financially motivated (Hibino and Shimazono 2013). According to the guidelines from the Medical Council of Thailand in 2001, commercial surrogacy is not allowed; however, the guidelines are functioning as soft law and do not have compulsory power. The authorities did not regard surrogacy tourism as a major problem until the major scandals associated with foreign clients came to light in 2014.

However, surrogacy as a contract between domestic parties without specific regulations is associated with potential risks. The intended parent may identify a prospective surrogate with financial motives from the website, but the risk is increased if the intended parent does not know the surrogate mother well and if there is a lack of mutual trust. Needless to say, both parties may converse with one another and agree to proceed only if they are satisfied, having met face-to-face. However, it appears that in Thailand there is no established practice of entering into a contract before the process begins; rather, the contracts are usually signed after delivery, as shown in domestic surrogacy cases in this study. Since no agency is involved, the client has the sole responsibility for the surrogate mother's care during her pregnancy. Therefore, the relationship between both the parties has a decisive influence on the surrogate mother's satisfaction level. If there is too much interference on the part of the client, there is a

risk of abuse to surrogate mothers. However, if the client is unable to establish a good relationship with the surrogate mother, he/she may be at risk. In this regard, there is at least one client who maintains that she experienced "unreasonable financial demands from surrogate mothers" (Thai SMC News 2010).

Even after the first surrogacy birth in 1991, there was an absence of any associated legislation; however, the situation changed drastically in response to the major scandals that came to light in the summer of 2014. The government established a bill with exceptional speed, and it came into effect in 2015. The government's primary aim in implementing this law was to restrict rampant commercial surrogacy and thus eliminate access to surrogacy for foreign clientele who were the source of the major scandals. Furthermore, the service is restricted to married heterosexual couples, preventing single clients and same-sex couples from gaining access to surrogacy in Thailand, where same-sex marriage is not legally recognized. It appears that the government wished to retain surrogacy options for heterosexual married couples who are Thai nationals and who are deemed legitimately eligible for the service.

The most striking feature of the 2015 law is that it clearly indicates the right of clients to become the children's legal parents. The flexibility of the law in practice is also remarkable. To eliminate commercialization, surrogate mothers are to be recruited from relatives; however, exceptions are also widely permitted. Couples may recruit women from a wide pool of options, including relatives and non-relatives. It is also implicitly accepted that couples will pay considerable amounts of money to surrogate mothers. If a commercialization of the process is revealed, there is a possibility that the parties involved will be punished; however, in practice, the regulations are extremely flexible and surrogacy is an attractive option for would-be parents. Generally, surrogate mothers have very little bargaining power and are inevitably at a disadvantage. Although commercial transactions involving gametes are also prohibited under law, a review by the Ministry of Health is not mandatory, and the decision as to whether treatment should be provided rests with the doctor. The remuneration due to the surrogate mother will be estimated by the Medical Council of Thailand but is yet to be determined. For these reasons, one scholar has highlighted the considerable power held by the doctor and the ambiguity of the law's operation (Hongladarom 2018). For example, the precise definition of infertility as it is used in the law is ambiguous and is likely to be open to multiple interpretations (Techagaisiyavanit 2016).

The introduction of the law did not stamp out the trade in commercial surrogacy. It continues to be practiced surreptitiously across borders into neighboring countries. The industry is largely concentrated in Southeast Asia, and many Thai women remain steadfast in their intention to act as surrogate mothers. In the wake of major scandals, commercial surrogacy carries negative connotations; however, for the middle- and lower-class women, the provision of pregnancy and childbirth services for others as a means of earning money has become a more well-known fact. The new law does not protect Thai women who provide surrogacy outside of Thailand. In this way, the prohibition of commercial surrogacy may have adverse effects on surrogate mothers' experiences (Zimmerman 2015), and they are placed in a very vulnerable position. They are brought into countries they are unfamiliar with, and with the compulsion to give birth in a foreign country, they have no right to refuse unwanted medical interventions such as Cesarean section; some measures should be taken to provide these women with legal protection (Rudrappa 2017).

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Compliance with ethical standards

Conflict of interest The author declares that she has no conflict of interest.

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