

RESEARCH ARTICLE

Transnational Surrogacy: Vietnam's Deliberate Choice of a Separate Path

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Abstract: Many developing Asian countries are known as promising transnational commercial surrogacy markets for infertile foreign couples. Although there have been recent reports stating that transnational surrogacy is surreptitiously taking place in Vietnam, this country has never taken the path to become an ideal destination for foreigners looking for surrogacy. By comparing and analyzing the economic, demographic, medical, and legal aspects of some Asian countries, along with the survey of over 166 rural women in Vietnam, this article aims to explain why Vietnam, while sharing various similarities with the typical countries such as India and Thailand, has not been a transnational surrogacy center. The research shows that legal policy and psychosocial factors are the barriers preventing this service from being popularized in Vietnam. The results give some implications for controlling the reproductive service industry in developing Asian countries.

Keywords: transnational surrogacy, assisted reproductive services, commercial surrogacy, altruistic surrogacy, surrogacy in Vietnam

Introduction

Developing countries in Asia are often portrayed as the world's factories (Kam, 2017) that provide laborers for performing hard and dangerous jobs (Baram, 2009). In recent years, Asia has become a hub of the trade in health services for foreigners. Residents of developed countries such as Germany, Australia, and the United Kingdom have come to Asia for facelifts, preimplantation sex selection, orthopedic surgery, assisted reproductive services, and especially surrogacy (Horowitz et al., 2007; Rahman, 2019; Whittaker, 2008). Similar to the process of becoming the factories of the world, developing countries in

Asia are devoting human resources and facilities to provide surrogacy services (Whittaker, 2011), in which women utilize a part in their bodies instead of labor power to fulfill the wishes of other people (Twine, 2011). The process of producing goods for developed countries has raised concerns about workers' serious health problems (Chang, 2009). In the same way, after preordered children are "produced" and quickly sent to the "customers", transnational surrogacy service poses the threat of being exploited in terms of physicality and dignity of low-income women (Jaiswal, 2012; Stasi, 2017).

Recent studies have suggested that developing countries are the answer to the search for a promised

land where transnational surrogacy can be conveniently located (Deonandan, 2015; Rudrappa, 2016). The arrival of this service, in turn, in developing countries in South and Southeast Asia has even been concretized into a map the direction of which headed toward countries having loopholes in the legislation (Attawet, 2021). The research projects of India, Thailand, and recently Malaysia or Laos may create a deep impression of low- and middle-income Asian countries that prioritize the development of private clinics for profits from foreigners rather than investing in the public health system (Whittaker, 2011). They seem to be focusing on the overall picture of the Asian market but missing the descriptions of other countries that go against the trend, one of which is Vietnam. Despite the favorable medical, demographic, and economic conditions, Vietnam does not become a market supplying human resources for transnational surrogacy, which is a deliberate choice. Ignoring the attractive benefits derived from the service, the Vietnamese government has maintained a consistent policy prohibiting commercial surrogacy. Besides the law, the psychosocial factors give the service a slim chance of developing in Vietnam.

This article analyzes why Vietnam has not become the center of transnational surrogacy from two perspectives: the legislation and the psychosocial. By delving into the lawmaking process and the specific provisions on surrogacy, this article evaluates the impact of the legislation on the foreigners who intend to ask for surrogacy in Vietnam. At the same time, this research sheds light on the psychological barriers that prevent cross-border surrogacy from being popular in Vietnam. Through the current situation of Vietnam, the author wants to explore the topic of surrogacy from a different angle of Asian developing countries, which have refused to be a destination during the journey of cross-border surrogacy of the intended parents.

In the context of the Asian market, the research on surrogacy in Vietnam has raised the following questions: (1) compared with countries famous for transnational surrogacy, such as India and Thailand, what similar conditions does Vietnam have to develop this service? (2) In contrast to the advantages, what are the key factors that prevented cross-border surrogacy from infiltrating into Vietnam? And (3) can the strict Vietnamese regulations on surrogacy be maintained in the future?

A Visualization of the Surrogacy Market in Developing Asian Countries

Studies of Asian countries' surrogacy markets are generally about the typical representatives such as India or Thailand and occasionally expanded to countries like Nepal, Cambodia, Laos, Malaysia, or Israel (Deonandan, 2015; Whittaker, 2019; Zafran & Hacker, 2019). Among these countries, India and Thailand frequently seem to be the main focus of surrogacy studies (Cohen, 2015; Twine, 2011; Whittaker, 2011). India was famous for the reproductive tourism industry worth 500 million USD (Krawiec, 2009). This country had become the world's leader in the cross-border surrogacy market when it competed for first place with the United States (Rudrappa, 2016). Although Thailand did not have such remarkable achievements in comparison with India, the country has quickly become a famous destination for assisted reproduction in the world (Hibino & Shimazono, 2013).

Generally, transnational surrogacy studies in Asia are chronologically divided into two phases: (i) before the prohibition of transnational commercial surrogacy and (ii) after the bans had taken effect. The studies of the first phase tend to highlight how transnational surrogacy has developed in South or Southeast Asia (Sills, 2016; Whittaker, 2008), the impact of transnational surrogacy on poor women's lives (Jaiswal, 2012; Palattiyil et al., 2010), the quality of private healthcare systems (Saravanan, 2015; Stasi, 2017), and even the national economy (Ahmad et al., 2016; Rudrappa, 2016). Saravanan (2013) pointed out why surrogacy service in India was especially attractive to foreign intended parents: the liberal law, the low cost, and the willingness of Indian women demanding fewer rights than in some other countries. Munjal-Shankar (2014) and Pande (2014) also espouse this statement. Through these studies, South Asia and Southeast Asia are visualized as surrogacy markets with abundant human resources, modern facilities, and suitable state policies.

After the explosion of surrogacy in Asia, the bans in India and Thailand led to the second stage of the underground surrogacy industry. When the bans were enacted, surrogacy services quickly moved to other countries without specific regulations. However, developments in alternative centers such as Nepal or Cambodia suggest that those successive countries also issued prohibitions shortly afterward

(Attawet, 2021). The result of Whittaker's (2019) research was similar to those of Jaiswal (2012) and Allison (2016) in prediction about the "underground industry."

It is not surprising that to evade the law's restriction, the whole transnational surrogacy process is divided into several stages implemented in many countries instead of just taking place within one country as before (Attawet et al., 2021; Stasi, 2017). The results of the interviews with 15 women in 2020 (Attawet et al., 2021) have revealed that since the ban on commercial surrogacy, fertility clinics in Thailand have tended to separate the surrogacy process into three stages, including embryo transfer, pregnancy, and childbirth. First, Thai women must travel to Laos or Cambodia for embryo implantation. They then return to their home country to get pregnant. Finally, before the flight restriction period is applied to pregnant women, surrogates will move to the intended parents' countries to give birth, deliver the children, and end the contracts (Attawet et al., 2021). Nowadays, *transnational surrogacy* is not only a term referring to fertility tours of the intended parents but also the process in which surrogates cross the borders of many countries to complete the work of surrogacy.

Regardless of the phases, India and Thailand are considered typical countries in the Asian surrogacy market (Attawet, 2021; Whittaker, 2011). Before the bans were officially enacted, these two countries were important centers of the region's and the world's surrogacy markets (Hibino & Shimazono, 2013; Jaiswal, 2012). Even after the bans have existed, studies have continued to show the impact of India and Thailand on the Asian surrogacy market in leading to the emergence of a series of alternative countries (Attawet, 2021). The frequent appearance of India and Thailand in the studies of Asia, South Asia, or Southeast Asia (Attawet, 2021; Hibino & Shimazono, 2013; Macer, 2014; Whittaker, 2011) calls into question whether the overfocusing on the two mentioned countries creates a default presumption for other countries in the same region. In fact, besides prominent countries like Thailand and India, many developing countries in Asia are rarely mentioned because they have no scandals that attract attention or do not benefit from this service because of the early ban on commercial surrogacy. From this angle, Vietnam is taken as an example of following its own path of surrogacy issue.

Some research projects mentioned the event of a ban on commercial gestational surrogacy in Vietnam in 2015 (Hibino, 2015; Ullah & Nawaz, 2020), which may easily cause the misunderstanding that the state follows the trend of many countries in the region to make a similar decision. From an overview of the surrogacy policy's history, it can be seen that Vietnam is still cautiously going on its own path. In 2003, Vietnam had legal documents banning surrogacy. It was not until 2011 that a famous cross-border surrogacy case involving Vietnam occurred. Specifically, 14 Vietnamese women were rescued by Thai police while being detained by a Taiwanese company (namely, "Baby 101") to create "designer babies" (Chatterjee, 2014; Whittaker, 2011). Since 2015, when the Marriage and Family Law 2014 came into effect, Vietnam has only allowed altruistic surrogacy and has continued to ban commercial surrogacy. While the ban can neither completely prevent commercial surrogacy activities in the country (Lao Dong, 2020) nor make Vietnamese women give up the idea of becoming transnational surrogates (Tien Phong, 2019), the existence of illegal surrogacy does not mean that transnational commercial surrogacy will potentially develop within Vietnam's territory as a service welcomed by the government.

Research Methodology

The main objective of this paper is to explain why Vietnam has never been a transnational surrogacy center like some other Asian countries, even though it has many favorable conditions. To explore the reasons, the author conducted the research using various methods.

First, the comparison method is used to identify the similarities and differences that make Vietnam's advantages or its own path separate from the transnational surrogacy trend of many Asian countries. The author compares Vietnam's population structure, per capita income, medical level, legal policy, and related social factors with those of India and Thailand—the two Asian countries famous for the surrogacy service. The comparison also extended to several countries in the same region and the developed countries whose citizens regularly use surrogacy service in Asia. The research mainly uses statistics in 2019, when the economic situation, population, and the

need to conduct reproductive tourism have not been affected by the Covid-19 pandemic.

The population structure studies focus on 20- to 40-year-old women. According to the results published by the General Statistics Office in Vietnam, on average, Vietnamese women start giving birth from the age of 20 (Government Electronic Newspaper, 2020). In addition, several studies have shown that women over 40 face certain disadvantages when performing in vitro fertilization (IVF; Gleicher et al., 2014, 2016). Thus, the study focused on the group of women of the appropriate age for reproduction and the application of IVF techniques—an essential technique in surrogacy (Phillips et al., 2019). The selection of such study subjects also creates a similarity to the group of women who have appeared in surrogacy studies in many other countries (Attawet, 2021; Pande, 2010), which makes the comparison process more favorable.

Second, the author uses doctrinal legal research methodology to understand Vietnamese law thoroughly. Many scholars consider that the law plays an integral part in making surrogacy thrive in Thailand and India (Ryznar, 2010; Whittaker, 2011). Based on these results, the author believes that understanding the law is necessary to clarify the reasons Vietnam does not become an ideal destination appealing to the foreign intended parents. The research focuses on the relevant provisions of the Marriage and Family Law of 2014 and other legal areas, such as criminal and administrative. The author also learns about the process of approving surrogacy regulations of the Marriage and Family Law of 2014 to comprehend the attitude of legislators towards transnational surrogacy services.

Third, the author conducts the qualitative empirical research method to have better insight into the perceptions and attitudes of the rural Vietnamese women on surrogacy and the current legal framework. The qualitative research method is considered suitable to grasp human emotion, feeling, and cognizance (Bhat, 2019). Therefore, a survey combined with the analysis of some cases of transnational surrogacy related to Vietnamese women has helped the author better understand the psychosocial aspects that influence the decision of Vietnamese women about surrogacy. The survey is used as a supplement to support the author's arguments that the law is not the sole reason making Vietnam not become a transnational surrogacy center and the discussion on the possibility of long-term maintenance of the current strict regulations. In

addition, some typical cases of transnational surrogacy involving Vietnamese women are briefly described. Through the cases, the author approaches not only women's psychology but also their family members' thoughts by using the results of the interviews published by newspapers.

The rural women have long become the center subject of surrogacy research in India (Jaiswal, 2012; Pande, 2010), which prompted a similar study in rural areas of Vietnam. A random survey of 200 Kinh and ethnic minority women living in the Iaphin Commune, Chu Prong District, Gia Lai Province, Vietnam, was conducted in August 2020. The Iaphin Commune is the place of residence of both the Kinh people and ethnic minorities. Thanks to this, ethnic minorities were somewhat influenced by the Kinh people, which makes their lives less backward and isolated compared to other ethnic minorities living concentratively and separately from the outside world. The surveys in this area will provide more diverse responses than in areas where only Kinh people or ethnic minorities reside. The subjects of inquiry are women between the ages of 20 and 40 who could be potential surrogate mothers. In addition, the survey focused on the women who are not trained in law to assess whether the legal understanding they have obtained is correct or not.

The women were informed of the right to participate in the survey or not, to stop answering the survey whenever they wanted, or to choose only to answer some specific questions. Only 166 people out of 200 interviewees were willing to answer. The rest refused to participate in the survey for main reasons such as being illiterate, worrying that answering the questions would cause them legal troubles, or simply because they felt pretty embarrassed to express their views on the issue they considered sensitive.

The survey is designed with two separate parts. The first part examines the basic understanding of surrogacy, including questions such as whether the respondents have ever known about surrogacy, what is surrogacy, and is surrogacy a legal act? The second part explores the respondents' attitudes towards commercial surrogacy. The respondents can choose a suitable answer or state their own opinions. However, only nine people expressed their views, and the answers were relatively similar.

In the first part of the survey, there were 91 (55%) women who knew about surrogacy; the remaining respondents had never heard about that way of

reproduction. Ninety-four (57%) women properly understood or guessed the definition of surrogacy in accordance with the law, while 34 (20%) women thought that surrogacy was the act of engaging in sexual intercourse with a married man to get pregnant and giving birth in place of his wife. Thirty-eight (23%) other women did not provide clear answers or did not choose any option. Some survey participants said that “surrogacy is the pregnancy of another person’s child,” and others gave the same answers: “surrogacy is pregnancy and childbirth for others.” In the third question, only 53 (32%) people correctly answered the law banning commercial surrogacy and allowing altruistic surrogacy. Thirty-one (19%) people believed that surrogacy was outright forbidden. On the contrary, the rest supposed that the law did not prohibit surrogacy. The results show that many surveyed women are still unaware of surrogacy regulations, especially the prohibitions and sanctions on commercial surrogacy. This leads to speculation that the law may not be the only barrier preventing the women from becoming pregnant for the intended foreign parents.

In the second part of the survey, after being informed that commercial surrogacy is illegal, the women were asked about their thoughts on the unlawful service of commercial surrogacy happening stealthily in reality. Sixty-six (40%) out of 166 women think this service should be allowed in the future to assist infertile couples. Thirty-eight (23%) people said that commercial surrogacy should be banned because of ethical issues. Thirty-seven (22%) people said that commercial surrogacy should not be performed because of the law’s prohibition. The remaining women gave no specific answer because they thought the issue was too complicated. In the “other opinion” section, some of them wrote, “the matter is too new and complex that I have not thought about it yet.” It can be seen that if the legal barrier is removed, a majority of women surveyed do not have a negative view of commercial surrogacy.

What Makes Vietnam Have the Potential to Become an Ideal Destination for Transnational Surrogacy?

In general, transnational surrogacy service requires certain conditions to develop. Compared to some Asian countries such as Thailand and India, Vietnam meets

essential requirements to become a promising station for intended parents.

Vietnam’s Population Structure

Undeniably, young and healthy women are suitable for performing the surrogacy cycle. Therefore, densely populated countries with a high proportion of women of reproductive age have an advantage in providing the surrogacy service. In this respect, Vietnam has not only a large population but also a high proportion of young people. In 2019, Vietnam was the 15th most populous country in the world, with 96,462,106 people (Worldometers, 2019). The ratio of women accounts for 50.6%, and nearly 32% of women were from 20 years old to 39 years old (The World Bank, 2019b), which is the age group described as the “reproductive age” in Vietnam (Anh, 2021; Cao et al., 2017). This suggests a potential force of women to become surrogates, which is similar to many countries in the region, such as India or Thailand. India is the second most populous country globally, with 1,366,417,754 people, of whom 48.4% are females. About 32% of Indian women are from 20 to 39 years old, whereas Thailand has the 20th ranked population in the world with 69,625,582 people, of whom 51.3% are females, and the proportion of females aged from 20 to 39 is 29% (The World Bank, 2019b; Worldometers, 2019).

The Income and Poverty in Vietnam

The next factor lies in Vietnam’s poverty and the income gap between Vietnam and developed countries. The attraction of compensation may encourage the impoverished women to become human resources for transnational surrogacy services, which has been taking place in some other developing Asian countries such as India and Thailand. Remuneration from surrogacy helps feed the children or support the whole family and helps the women settle debts that their current job cannot do (Attawet et al., 2021; Jaiswal, 2012).

In 2016, nearly 9.8% of the population in Vietnam (about nine million people) lived in poverty (Ngo, 2019). This number exceeded the whole population of some countries such as Laos, Libya, and Israel (Ngo, 2019). Although the poverty rate has decreased (The World Bank, 2021), compared to Vietnam’s total population, the number of the poor is still significant. According to the Prime Minister’s Decision No. 59/2015, applicable in the period 2016–2020, the rural people categorized as poor have an income of

700,000 VND per month (equivalent to 30.2 USD per month and 362.4 USD per year). It can be seen that the surrogacy remuneration from 4,000 USD–8,000 USD (Saravanan, 2015) is far greater than the poor's meager income of many Vietnamese women.

Besides, the income gap between Vietnam and developed countries is notable. In 2019, Vietnam's GDP per capita was 2,715.3 USD (classified as a lower middle-income country). Meanwhile, Thailand's GDP per capita was 7,817 USD (upper middle-income), and that of India was 2,100.8 USD (lower middle-income; The World Bank, 2019a). Compared with the GDP per capita of some developed countries with regular customers using the transnational surrogacy service in Asia, such as Australia (55,057.2 USD), the USA (65,279.5 USD), Japan (40,113.1 USD), and Germany (45,723.6 USD; Rudrappa, 2016; The World Bank, 2019a), there is an unbridgeable gap between the developed and developing countries. Therefore, the cost of transnational surrogacy service is not too expensive for many Western clients, while for the low-income women in Asia, that is the desirable earnings.

Vietnam's Medical Level

Vietnam's medical technology level in assisted reproduction is suitable for performing the surrogacy cycle. IVF is an important technique used in the surrogacy process. Vietnam's first IVF case was conducted in 1997 and successfully gave birth to three babies in 1998 (Pashigian, 2012). Since its successful implementation at Tu Du Hospital, fertility techniques have continued to be applied in more than 20 other hospitals nationwide (The Ministry of Health, 2018). Although Vietnam performed IVF 20 years later than other countries worldwide (Hartshorne, 2008), this technique has been quickly developed and gained more achievements than many other countries in the region (Pashigian, 2009, 2012). Each year, approximately 30,000 IVF cases are performed in Vietnam, with the cost per IVF cycle about a quarter of the average cost of IVF in the United States (Institute for Tourism Development Research, 2020). While some studies revealed that surrogacy occurred earlier (Kodama, 2013; Pashigian, 2009), Vietnam officially announced the first legal surrogacy case in 2016 (Vietnam News, 2019). In terms of medical achievements, Vietnam can fully help infertile couples, whether they are foreigners or not, have children by surrogacy.

Taking advantage of demographic, economic, and medical factors, Vietnam can potentially become a surrogacy market on par with other countries in Southeast Asia. However, the reality is that Vietnam has never been famous as an ideal destination for transnational surrogacy. What has encouraged a developing country to resist the lure of huge profit and not to transform itself into a baby factory for developed countries around the world? The following sections shall set out to clarify several aspects of this matter.

Legal Framework as a Shield to Protect Vietnam Against the Trend of Transnational Surrogacy in Developing Countries

The Process of Surrogacy Legal Framework Development in Vietnam

The first time that the term *surrogacy* appeared in Vietnamese legal documents was in 2003. Article 6 of Decree No.12/2003/ND-CP on *childbirth by scientific methods* stipulated that "the following acts are strictly prohibited (1) Surrogacy (2)...." About 10 years later, the report on the amendment of the Marriage and Family Law of 2000 suggested the necessity of supplements to make the law align with the development of social relationships, especially the issue of surrogacy. The report outlined two options concerning surrogacy. *The first option* was that the law must ensure a reasonable adjustment to minimize the adverse effects of surrogacy and create chances for infertility couples to fulfill their aspiration to become parents. Specifically, the law should allow surrogacy for the altruistic purpose but not for commercial one. In contrast, *the second option* suggested that surrogacy must be banned entirely as this was a sensitive and complex issue. In addition, from the second point of view, surrogacy is incompatible with Vietnamese moral standards and can negatively impact society. After considering the actual situation, the Ministry of Justice agreed with the first option.

When it came to the voting to pass the new law (Marriage and Family Law of 2014), approximately 79.52% of delegates agreed with the content of the bill. Since there were many contradictory opinions, the voting on surrogacy must be made separately. The result indicated that 39.9% of delegates disagreed, and 59.1% of delegates agreed (Thu Hang, 2014),

which meant that the regulation allowing altruistic surrogacy was officially effective. Nevertheless, the way regulations on surrogacy were passed and the percentage of votes in favor reflected the wavering of lawmakers on that issue.

Transnational Surrogacy Is Prevented From Developing in Vietnam by Regulations in Different Sectors

It should be noted that the Marriage and Family Law of 2014 banned commercial surrogacy but allowed altruistic surrogacy. According to Article 95 of the Marriage and Family Law of 2014, only spouses have the right to ask for gestational surrogacy. In addition, the spouses must fully meet the following conditions: (a) the wife has not been able to get pregnant and give birth even by using assisted reproductive technology, (b) having no common child, and (c) having received health, psychological, and legal counseling already before the process. Surrogacy is not a medical solution that can be chosen freely by any infertile couple. Strictly speaking, this is the last method they can rely on when other assisted reproductive techniques are still unable to help them have babies.

Not stopping there, the infertile couple needs to find a woman who volunteers to be a surrogate mother without calling for any economic benefits in return. This woman must have had at least a child and be permitted to become a surrogate only once. Most difficult of all, the gestational surrogate is required to be “next of kin of the same line” with the spouse of the infertile couple. Decree No. 10/2015/ND-CP explains the term as follows: next of kin of the same line of a spouse includes his or her full sisters, maternal half-sisters, and paternal half-sisters; children of his or her paternal or maternal aunts or uncles; and sisters-in-law of his or her full sisters or paternal or maternal half-sisters. The above provisions have greatly restricted the subjects of altruistic surrogacy. Clearly, the legislative view is that only the woman with a close family relationship is ready to carry a baby for another one without the desire to receive any compensation. At the same time, the rule that the surrogate shall be “next of kin of the same line” of the intended parents helps maintain the family order because in terms of hierarchy, not letting the child technically have seniority over his parents, the gestational surrogacy could only be performed by family members who are in the same line with the baby’s intended parents.

Besides the provisions of Marriage and Family Law, other laws such as administrative law or criminal law also have sanctions for the acts of surrogacy and the organization of surrogacy. According to Decree No. 82/2020/ND-CP, the woman who carries and gives birth to a child for another person or couple for a commercial purpose is fined from 5,000,000 VND to 10,000,000 VND (216 USD to 432 USD) and must return the total amount received due to the act of surrogacy. Article 187 of the Criminal Code of 2015 stipulates that a person who organizes surrogacy for the commercial purpose shall be liable for a fine of 50,000,000 VND to 200,000,000 VND (2,156 USD to 8,623 USD) and a penalty of up to 2 years’ probation or 3 to 24 months’ imprisonment. In fact, when compared with the money received from transnational commercial surrogacy, these fines are not deterrent. However, the existence of penalties, along with regulations that only allow altruistic surrogacy, has shown an apparent attitude of the state in preventing the development of commercial surrogacy services. This has created a substantial legal and psychological barrier for foreigners who intend to come to Vietnam for surrogacy.

Alongside a strict set of regulations on surrogacy, hospitals in Vietnam that can perform assisted reproduction techniques are also closely monitored. At the early stage, only three hospitals were qualified to perform the surrogacy process. Up to 2019, under Decree No. 96/2016/ND-CP, only five hospitals are allowed to implement the surrogacy process, of which only one is a private hospital (Vietnam News, 2019). This seems to be in contrast with India’s situation at the time commercial surrogacy was booming. The number of 3,000 clinics performing surrogacy across India was considered the result of inefficient management and the priority of the private sector’s economic benefits underpinned by the Assisted Fertility Technology Bill (Saravanan, 2015). It can be seen that the modest number of medical facilities in Vietnam that have been allowed to perform surrogacy cycle is also a barrier making foreign couples not choose this country.

In essence, Vietnam’s laws aim not only to restrict transnational surrogacy but also to prevent commercial surrogacy in general. Since surrogacy was first recognized in Vietnam, lawmakers have to act with discretion. This leads to the fact that strict regulations eliminate commercial surrogacy but at the same time make it difficult for Vietnamese intended parents to find the women who are simultaneous “the next of

kin of the same line” with the spouse and willing to be altruistic surrogate mothers. Meanwhile, other women may voluntarily carry babies for someone else without profit but do not belong to the group of women who are legally allowed. Domestic scholars suggest that in the future, the law should expand the subjects who can be surrogate mothers, so that more people can access this method of assisted reproduction (Nguyen, 2016; Nguyen Van, 2016).

Regulations on Surrogacy in Vietnam—A National Policy Based on International Experience

The issue that has been raised is whether Vietnam’s law on surrogacy is the result of choosing a separate path from the beginning or a combination of other countries’ experiences. Actually, when the first Vietnamese regulation on banning surrogacy came into effect in 2003, both Vietnam and many other developing Asian countries almost had no governing experience of the matter. In 1997 and 2001, the Thai Medical Council issued a *guideline* for assisted reproduction involving third parties (Hibino & Shimazono, 2013). However, the guideline is not a law, and its enforcement does not seem highly effective. Until the promulgation of the law controlling surrogacy activities, the service was still widespread in practice. In 2002, when the surrogacy service began to appear popularly in India (Whittaker, 2011), scandals relating to the ethics and rights of women and children had not acrimoniously taken place. Undeniably, in the past, the ban on surrogacy had created a separate direction in Vietnam’s policy compared with many developing Asian countries.

As mentioned above, the introduction of IVF techniques in Vietnam is somewhat later than in other countries in the region and worldwide. This can be a disadvantage in the scientific aspect. However, looking from the angle of the legislative process, Vietnam has had more chances to learn considerable experiences from other countries’ situations. Vietnam’s current surrogacy law is based on its own characteristics of social relations and the lessons of controlling sensitive services of many neighboring countries. Regardless of the huge economic benefits of allowing transnational surrogacy (Burke, 2011), the problems of social order and moral instability that the previous countries have had to confront have prevented Vietnamese lawmakers from permitting domestic and transnational commercial surrogacy.

In short, although commercial surrogacy and brokerage organizations still exist stealthily as a negative phenomenon in society (Giang Chinh, 2021; Kodama, 2013), the transparency of law is an essential factor that makes a difference in the policies between Vietnam and many other developing countries in Asia. By the law, the state prohibits commercial surrogacy and controls the development of health organizations providing this service. For the intended parents, looking for opportunities in a country that forbids commercial surrogacy does not make any distinction in the legal framework compared to the country where they are citizens. In other words, legislation is a shield protecting Vietnam from becoming a low-cost market of transnational surrogacy in the past, present, and potentially in the future.

Psychosocial Factors—The Barrier Preventing Vietnamese Women From Transnational Surrogacy

The coercion of the law has led to the rejection of transnational surrogacy in Vietnam. The question is whether the nondevelopment of the service in Vietnam only comes from the sanctions of the law, which causes Vietnamese women to refrain from being transnational surrogate mothers. By looking at the fact that the fine imposed on commercial surrogacy is only about 1/18 of the amount they can receive for each successful transnational surrogacy cycle, it is clear that the punishment has insufficient deterrence for those who want to be surrogates for the commercial purpose.

In addition, a survey in 2020 of over 166 women led to a somewhat surprising result that while a large number of women in other countries were familiar with surrogacy, many Vietnamese rural women still considered surrogacy as a new way of reproduction and even regarded this as contrary to ethical tradition. The legal knowledge of a part of rural women is rather limited; therefore, the impact of the sanctions for surrogacy on these women is not significant. Besides the law, other invisible barriers make Vietnamese women quite reserved regarding the transnational surrogacy service.

There Is No Caste Distinction, but There Are Occupation and Gender Stereotypes in Vietnam

There is no denying that in India, many women from different castes may become surrogates (Bailey, 2011). However, most surrogates come from impoverished families (Jaiswal, 2012). The majority of needy and low-caste women are said to be inclined to participate in surrogacy, regardless of whether the work, according to social prejudice, is unclean (Varada, 2014). Honor or respect does not help if their families are starving (Pande, 2010). Moreover, even without doing this work, belonging to the low caste itself makes the women feel stigmatized (Gopal, 2012; Verma et al., 2018).

Vietnamese society is not divided into different castes; therefore, there is no discrimination based on the social hierarchy. The choice of work is often influenced by gender prejudice, ability, interest, or even family opinions (Quy Hien, 2019; Tran & Dang, 2020). Like women in India and Thailand, jobs that offer significant remunerations such as surrogacy will be able to appeal to poor Vietnamese women.

Studies show that the Vietnamese poor women group involved a large number of ethnic minorities (Ngo, 2019; The World Bank, 2018). The report on multilateral poverty in Vietnam published in 2016 showed that ethnic minorities with high poverty rates (i) concentrate in the Central Highlands; (ii) live far from markets, schools, and clinics; (iii) have a high rate of inbreeding and child marriage; (iv) have a low average number of years of schooling and labor-to-training ratio; and (v) lack interest in reproductive health. In reality, some ethnic groups maintain outdated methods of reproduction and childcare, such as giving birth at home or in the woods or near the stream, without requesting assistance from healthcare workers to cut the umbilical cord, and taking cold showers (Phung et al., 2016). In other words, under the current circumstances, because of the outdated and self-contained life, many poor women in Vietnam are not suitable for surrogacy—a job requiring them to move to advanced medical centers and accept the application of modern medical technology.

From a different angle, Vietnamese society is prejudiced against those whose works are considered sensitive, and commercial surrogacy is one of those. Many people have been confusing commercial surrogacy with having sex to have children (Pashigian, 2009). Occupational prejudice may be one of the

factors preventing women from becoming surrogate mothers for profit but damaging their honor and that of their family. As a result, transnational surrogacy has a faint chance to develop in Vietnam as popular work.

In practice, surrogacy work is considered vague and controversial (Pashigian, 2009), and the surrogates, because of that, are subject to detractors (Tien Phong, 2014). Therefore, the decision to become a transnational surrogate mother is difficult and almost cannot be public, even with the surrogate mother's family. An interview conducted by the People's Public Security newspaper (2011) with the parents of the young women who went to Thailand as surrogates in a case involving a company called "101 Baby" showed that the parents of surrogate mothers did not know of their daughters' actual works. Some women lied to their families that they were working in Ho Chi Minh City, while others fabricated about participating in the labor export programs. When discovering the truth, their parents were extremely shocked and sorrowful. Despite the poverty, the families still cannot accept the work as the surrogate mothers of their daughters.

Besides, according to Vietnamese tradition, the man is the "pillar of the household" and associated with the role of breadwinner (Hoang & Yeoh, 2011). Meanwhile, women have long been known for jobs such as small trade and housework (Hoang & Yeoh, 2011). When the economic role of husband and wife is interchanged, the wife has a higher income, and the husband easily feels a loss of self-esteem, which may even be a threat to harmony and unity in the family (Hoang & Yeoh, 2011). It is uncomfortable to accept for a woman to support the whole family, especially when the job she does is considered vague, controversial, and easily misunderstood as a sex-related job like "renting the uterus." This situation is somewhat different from Thai culture. In the Thai family, the women have a vital financial role; the daughters even play a more active role in caring for elderly parents than the sons (Hibino & Shimazono, 2013). To fulfill their roles, a small number of Thai women accept surrogacy to create the primary source of income for the family (Attawet et al., 2021). Studies in Thailand and India have shown that many women who are surrogates have married while also receiving their husband's consent for the work they perform (Attawet et al., 2021; Pande, 2011).

Transnational Surrogacy Is Often Mentioned Along With Other Dangerous Crimes

The media have always played an essential role in forming the public's perception of surrogacy (Riggs & Due, 2014; Teman, 2018). In Vietnam, the news has frequently described transnational surrogacy as an unlawful act relating to other crimes such as women trafficking and children trafficking (Ho Chi Minh City police newspaper, 2021; Nhan dan, 2019) and sometimes involving Chinese brokers or organizations (Bao Ha, 2019; Minh Cuong, 2019). The media also regularly warn about cases of Vietnamese women being tricked and sold to China (Desmond et al., 2019; Minh Nga, 2019; Van Tinh, 2021). As a result, the women themselves feel vague and apprehensive when participating in the cross-border surrogacy process.

In a recent incident, a Vietnamese woman agreed to be a surrogate but then traveled across many countries to evade the law and feared becoming a victim of human trafficking. She called the police herself to be freed (Bao Ha, 2019). This case is reminiscent of the case in 2011; Thai police investigated a Taiwanese brokerage company named "Baby 101" and discovered 14 Vietnamese women. While the media tended to describe the scandal as purely human trafficking (Hibino & Shimazono, 2013), some women admitted that from the start, they had agreed to go to Thailand to carry the pregnancy for 5,000 USD (Whittaker, 2019). On the positive side, the media have highlighted the risks and dangers of crossing the border for surrogacy. The lesson in the past from the case "Baby 101" has potentially made Vietnamese women more cautious or hesitant in deciding to become transnational surrogate mothers. In other words, the ban causes the women not to perform the actions reluctantly, while self-perception of danger makes them voluntarily not do the job.

Discussion

It may be challenging to develop a standard formula or model for all developing countries facing the problem of transnational surrogacy. Each country has a different economic level, social development policy, and cultural traditions. Commercial surrogacy in general and transnational surrogacy in particular should not be seen as an entirely negative phenomenon. There is no denying that surrogacy service has made the

desire of many infertile couples come true. Therefore, the question is not about "whether transnational surrogacy should be allowed"; instead, it should be "how will the transnational surrogacy be controlled?" In this regard, Vietnam can be a good example of controlling the surrogacy service by law without waiting until many scandals occur.

The legal clarity is a key factor that makes transnational surrogacy have a slim chance of developing in Vietnam. However, it has been seven years since the regulations on surrogacy took effect, and these strict ones have begun to reveal some shortcomings. The second part of the survey on 166 rural women showed that the domestically commercial surrogacy had received support from many respondents despite the ban. Moreover, as mentioned, the Vietnamese scholars propose loosening the conditions for applying the surrogacy method. A question has been raised whether the strict regulations on surrogacy meet the demand for childbirth by assisted reproductive technology in Vietnam and should be maintained.

The experiences from India and Thailand have demonstrated that a ban is not an optimal solution to prevent commercial surrogacy or transnational surrogacy. Regardless of the government's effort, the regulations unintentionally create an "underground industry" (Allison, 2016; Jaiswal, 2012). An explanation for this situation lies in the fact that the ban can make neither the need for children of infertility couples nor the desire to earn money of unemployed poor women completely disappear (Pande, 2014).

Recently, in Vietnam, people have begun encountering advertisements about surrogacy on Facebook (Lao Dong, 2020; Tien Phong, 2019). Commercial surrogacy still exists in Vietnam's underground society as a negative phenomenon despite the ban's existence. The infertile couples or single people who are not eligible to apply altruistic surrogacy in the country may surreptitiously ask for commercial surrogacy or undertake the long and expensive overseas trips to fulfill their desire for children. Although it is difficult to accept right now, loosening conditions of altruistic surrogacy or even allowing commercial surrogacy, on the positive side, brings precious opportunities for infertile couples or singles to have their babies. Balancing minority interests and social order, in this case, will be indeed a challenge for the Vietnamese government.

Conclusion

The way transnational surrogacy service is developing in Asia has created a path. When the former country enacts a ban, transnational surrogacy does not disappear but redirects and continues to form a new trail through other latter countries or becomes the underground activities. In every place where this service passes, the rights of women and children are raised besides profits and ethical issues. Transnational surrogacy scandals in Asia have created a negative impression of an Asian market that prioritizes profits and lacks the legal policy direction of the government. Cohen (2015) even commented that these scandals had damaged the national image.

Since assisted reproductive technology started to be performed in 1997, Vietnam, despite having many favorable conditions in terms of population structure, economy, or medical level, has never been considered as an ideal destination for foreign couples looking for surrogates. Undoubtedly, the legislation plays a vital role in creating a barrier to the Asian trend of transnational surrogacy. While neighboring countries have been open and potential markets in turn, Vietnam has consistently maintained the national policy of banning commercial surrogacy by law. In other words, the legal policy is the fundamental difference that makes Vietnam go on its own path, which foreigners cannot easily access. For Vietnamese women, in addition to the barrier of law, the psychological issues have caused transnational surrogacy to be not a job to be smoothly chosen. The future research may expand into not only the rural women. A large-scale survey, not limited by gender, occupation, education level, and place of residence, may be helpful to learn more about the perceptions and attitudes of Vietnamese society toward commercial surrogacy and the possibility of allowing this service in the future.

The situation in Vietnam creates a new perspective on the developing countries, which are often known as the human resources market of sensitive work for the developed countries. Facing a new and potentially out-of-control service, the Vietnamese government has chosen to impose prohibitions first. As the service sector was awoken more deeply and assessed the necessity to meet domestic demand for reproduction, the regulations began to be loosened. However, they are still ensured to be strictly controlled so that commercial activities relating to women's bodies can be significantly restricted.

The existence of commercial surrogacy or transnational surrogacy is an inevitable result of the resonance between the desire to have children, the need to earn money, and the development of medical achievements. Surrogacy is clearly not a completely negative phenomenon (Patel et al., 2018), especially when we can control it. It is essential that with every stage of this service's development, the direction of the government should always be given through the provisions of the law. Safe and careful government decisions have helped Vietnam avoid the trap of profit and not becoming the station of transnational surrogacy. In the future, to keep going on its own path, Vietnam needs to reform the law so that the barrier to foreign intended parents does not at once inadvertently prevent domestic subjects from accessing surrogacy services.

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Declaration of Ownership

This report is my original work.

Conflict of Interest

None.

Ethical Clearance

The study was approved by the institution.

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