



**The effects of legalizing commercial surrogacy on the shortage of
supply of surrogate mothers in the Netherlands: A systematic
review of the literature on surrogacy**

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Abstract

Because of a high demand for surrogates that can currently never be met by its respective supply, this study has tried to analyze what the effect is of legalizing commercial surrogacy on the supply of surrogates in the Netherlands. Since the Dutch government maintains strict laws on surrogacy and prohibits commercial surrogacy entirely, people in search of a surrogate seek one across the border of their own country, which could bring along problems.

A systematic review was carried out with articles included through Google Scholar and Scopus, resulting in the inclusion of 18 articles. The information found in these articles was sub-divided into categories and combined with economic theory on supply and demand to answer the research question.

This study has shown that the overall effect of offering remuneration in surrogacy arrangements is positive on the supply of surrogates, even though a lot is still unknown and the effect can sometimes be ambiguous. Whether or not the effect on supply is positive, depends on the height of the remuneration offered in surrogacy arrangements. Even when legalizing commercial surrogacy has a positive effect on the supply of surrogates, the ethical issues arising in surrogacy should be taken into account, depending on the norms and values of society.

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Chapter 1 – Introduction

People that have difficulties with becoming parents through natural means generally have two main options: adoption or surrogacy (Cheney, 2021). This could be the case for either couples with fertility problems, same-sex couples or singles (Blazier & Janssens, 2020). While adoption has been the primary way to get a baby or young child for a long period of time, this changed after the introduction of the Hague Convention on adoption, introduced in 1993. In 2004, the number of adoptions was at its peak-height, namely 45.000, but this number dropped by 70% and a rise could then be seen in the number of babies born through commercial surrogacy arrangements (Rotabi et al., 2017). Due to a small global adoption market, (commercial) surrogacy arrangements appear between different countries, creating a cross-border surrogacy market. There is, however, currently no international regulation of cross-border surrogacy arrangements and the law on surrogacy differs greatly around the world (Blauwhoff & Frohn, 2016).

The Netherlands maintains strict laws regarding surrogacy, which can be inferred from the fact that only altruistic surrogacy is allowed, exclusively under strict conditions. Commercial surrogacy is prohibited entirely (Blazier & Janssens, 2020). Worldwide there is a shortage in supply of surrogate mothers, while at the same time a rise in the demand for surrogates can be seen, which is expected to continue even further in the coming years (Leibowitz-Dori, 1997). This shortage can be seen in the Netherlands as well, since Dutch intended parents seek for surrogates elsewhere (Blazier & Janssens, 2020).

The rising demand for surrogates can be explained by several factors. First of all, new techniques have been developed related to infertility treatment, which makes it possible for couples to make use of a surrogate. Secondly, there has been a change in perception of what family life should look like, this perception has become more modern. A family is not always the ‘standard’ man, woman and children anymore. Thirdly, the rise in demand for surrogates can be explained by the fact that there are less babies up for adoption. This of course leads to intended parents seeking an alternative (Posner, 1989). This, however, does not explain the rise in demand fully, because most people still prefer to have their own genetic offspring and adoption of course does not fulfil this preference (Leibowitz-Dori, 1997). Lastly, the age at which women start trying to get pregnant is shifting, women are generally older when they start a family. This can lead to women needing a surrogate, because they cannot get pregnant anymore due to their age (Veselá, 2018). This rising demand is expected to never be met, as long as possible surrogates are not given an incentive to become a surrogate or are coerced to do so (Spar, 2005).

This rising demand, shortage in supply and strict laws on surrogacy combined, have led to intended parents being forced to seek a surrogate across the border of their own country (Blauwhoff & Frohn, 2016), as is also the case in the Netherlands (Curry-Sumner & Vonk, 2013). Their journey logically

leads them to countries where the law on (commercial) surrogacy is lenient and where there are limited legal boundaries. But this internationally created market for surrogates, without proper regulation, is likely to cause abuse of women and children (Leibowitz-Dori, 1997). To counterpart this cross-border surrogacy movement, the Dutch government is discussing to make the laws regarding surrogacy less strict. The government is, however, reluctant when it comes to legalizing commercial surrogacy. In 2016, a report has been made up by the Government Committee on the Reassessment of Parenthood (GCRP), which stated a plan to reimburse surrogates with a maximum of 500 euros each month, instead of only reimbursing medical costs due to the pregnancy. This report has been rejected by the Dutch minister of Legal Protection, showing the disapproving attitude towards commercialising surrogacy contracts (Blazier & Janssens, 2020). This shows the ongoing debate whether or not surrogates can be remunerated for their services and the trade-off to be made with cross-border surrogacy in the Netherlands.

1.1 Research objective

My research therefore aims to study the expected effect of allowing commercial surrogacy on the shortage in supply of surrogates in the Netherlands. If legalizing commercial surrogacy has a positive effect on the supply of surrogate mothers, this could give the Dutch government an incentive to reconsider their laws. Since then, people do not have to go abroad anymore in search for a surrogate. But of course, this raises a lot of ethical concerns that should be taken into account.

1.2 Research question

The research question this thesis aims to study is: “**What effect does legalizing commercial surrogacy have on the shortage of supply of surrogate mothers in the Netherlands?**”, which can be answered through answering the following sub-questions:

- What is meant by (commercial) surrogacy?
- What is the law on surrogacy in the Netherlands?
- What is the effect of remuneration on the supply of surrogates?

While other factors may still give reason not to change the law, the answer to this question will contribute to the debate on surrogacy law in the Netherlands, since it will provide an insight whether or not the shortage in supply will be, at least partly, resolved by legalizing commercial surrogacy.

1.3 Organization of the paper

This thesis will be organized as follows. Chapter 2 will provide a theoretical framework and contains relevant data on surrogacy. Chapter 3 discusses the methodology used for finding literature, including the in- and exclusion criteria and quality assessment. Chapter 4 will again provide a literature review,

this time of the literature retrieved through a search in the databases Google Scholar and Scopus. This chapter will also combine the literature from chapter 2 and chapter 4 for a clear overview. Chapter 5 starts with a summary of the findings, states the limitations of the study and provides recommendations for future research. Finally, chapter 6 will conclude this thesis.

Chapter 2 – Theoretical framework

2.1 Definitions

Some definitions are important to create a better understanding of my research subject. Surrogacy is the act of a woman carrying a foetus in her body for someone else, “giving” the baby to the intended parent(s) after giving birth. The intended parents could be a couple with fertility problems, singles or same-sex couples (Blazier & Janssens, 2020). This follows after a contract has been made between the surrogate and the intended parent(s) and the surrogate agrees to let go of her rights regarding the child (Blauwhoff & Frohn, 2016).

There are two types of surrogacy, namely traditional surrogacy, where an egg of the surrogate herself is used, and gestational surrogacy, where an egg of the intended mother is used. So, in traditional surrogacy, the surrogate has a genetic link to the child, which is not the case in gestational surrogacy (Blazier & Janssens, 2020).

Furthermore, a distinction can be made between high-technology surrogacy and low-technology surrogacy. High-technology surrogacy is established through in vitro fertilisation (IVF) treatment and thus needs intervention of a doctor. Through IVF, the genetic material of both intended parents can be used. In low-technology surrogacy, the surrogate is the biological mother of the child and the intended father is usually the biological father. Fertilisation can be established either through artificial insemination, self-insemination or by natural means (Curry-Sumner & Vonk, 2013).

Besides this, a distinction can be made between altruistic, or non-commercial, surrogacy and commercial surrogacy. The difference being that in altruistic surrogacy the surrogate is not remunerated for her ‘service’, while she is in commercial surrogacy (Blazier & Janssens, 2020). The remuneration excludes medical, legal or psychological expenses (Drabiak et al., 2007). More specifically, the main aim of the surrogate in altruistic agreements is helping the intended parents, while the main aim of commercial surrogacy is mostly about making a profit (Curry-Sumner & Vonk, 2013).

2.2 History of surrogacy

Surrogacy as we know it today has only been around for about 30 years. The principle of surrogacy, however, has been around since ancient times. Records can be found in the book of Genesis and in the Middle Ages women with money gave their baby to a wet nurse to take care of their child for the first year of their lives. In these times, surrogates were mostly coerced to bear the children of other people. A change happened in the last decades of the twentieth century, when a market for motherhood was created through technological improvements, commercial enterprise and shifting moral norms (Spar, 2005).

The first time commercial surrogacy arrangements were created was in 1976, by attorney Noel Keane. He functioned as a broker for surrogates and this led to the start of a surrogacy market. However, since selling babies was illegal, he switched from offering commercial surrogacy arrangements to offering non-commercial surrogacy arrangements. He then found out that the supply of surrogates decreased significantly, showing that the main incentive for women to become surrogates was not altruism, but money (Spar, 2005).

Another big change occurred in 1978 when the first baby was born through IVF. Before the existence of this treatment, the surrogate was always the biological mother of the child, resulting in a stronger bond with the child than the intended mother who was not at all linked to the child. With IVF, eggs from the intended mother could now be used, so that she would be the biological mother of the child that the surrogate would carry (Spar, 2005).

2.3 Numbers

2.3.1 (Commercial) surrogacy arrangements

The exact numbers concerning (commercial) surrogacy arrangements are unclear, because a lot of these arrangements go unreported. An estimate by the International Social Service shows that about 20.000 babies are born through surrogacy each year (Wells-Greco, 2016). An estimation by the Hague conference on International Law shows a rise of 1162% in international surrogacy cases from 2009 to 2013 (Armstrong, 2021). This is a relatively small time interval for such a high rise. Once a surrogacy arrangement has been established and the child has been born, 0,25 to 1% of the surrogates refuse to 'hand over' the baby to the intended parents (Armstrong, 2021).

In the Netherlands, approximately 20 intended parents file their request for surrogacy to the Medical Centre of Vrije Universiteit Amsterdam each year. Of these 20 requests, only 10 result in an actual treatment. There are also published numbers to be found of the first surrogacy expert centre in the Netherlands, where, between 1997 and 2004, 500 intended parents wanted to apply for surrogacy treatment. Of these, eventually only 35 couples actually received the treatment and 16 babies were born through these surrogacy arrangements (Wells-Greco, 2016).

More recent numbers (from 2021) show that, due to the strict requirements for undergoing surrogacy treatment in the Netherlands, only 1 to 5 high-technology surrogacy arrangements are currently carried out each year. Stichting Wensouders, who focus on helping intended parents from the Netherlands who want to enter into surrogacy arrangements in the USA, has thus far helped 60 intended parents (Stichting Wensouders, 2021).

Some numbers are known about cross-border reproductive care, in which not all cases concern surrogacy. Reproductive care also includes couples that are fertile but do need some help getting pregnant. An estimate by the European Society for Human Reproduction and Embryology showed that 12.000-15.000 people each year travel to other European countries in search for fertility treatment. Additionally, this number is expected to rise even more (Van Hoof & Pennings, 2015).

2.3.2 Surrogacy remuneration

Because most countries ban commercial surrogacy, it is difficult to establish what would be proper remuneration for a surrogate (Blazier & Janssens, 2020). There are, however, some numbers available from countries where commercial surrogacy is legalized, which can be found in Table 1.

	Remuneration to the surrogate
United States	\$40.000 - \$60.000
Ukraine	\$16.000
Kenya	\$12.000
Georgia	\$13.000
India	\$5900

Table 1: Surrogacy remuneration.

As can be seen from table 1, the highest remuneration to surrogates is seen in the United States. In addition, the surrogacy agencies here have to be paid as well, leading to a total amount to be paid by the intended parents of \$100.000 to \$150.000. The lowest remuneration can be found in India (Cooperman, 2018). In India alone, the reproductive tourism industry is worth between \$500 million and \$2.3 billion. The fact that surrogates get paid less in India than, for example, in the USA, does not automatically mean that surrogates in India are being exploited. This difference in price shows that there is a difference between nominal wage and real wage rates (Ramskold & Posner, 2013).

Blazier & Janssens (2020) argue that in the Netherlands, if surrogacy would be perceived as a job, then a minimum wage should be applied. The minimum wage in the Netherlands is €1600 per month and would thus result in a payment to the surrogate of at least €16.000 in total for the entire process of conception, pregnancy and giving birth (Blazier & Janssens, 2020).

2.4 Surrogacy law

The law on surrogacy differs greatly around the world. Frati et al. (2020) argue that three distinguishing frameworks can be seen throughout the world, namely: explicit prohibition of surrogacy arrangements, legal legitimacy of surrogacy in the context of assisted reproduction technology and lack of specific

rules for surrogacy (Fрати et al., 2020). So, there are countries where surrogacy is not permitted and where it is treated as a crime if you do make a surrogacy arrangement, like in Germany and France. Most countries, however, do allow surrogacy in general, but not commercial surrogacy specifically. In these countries only altruistic/non-commercial surrogacy is permitted, like in the United Kingdom and the Netherlands. And lastly, there is the group of countries where all forms of surrogacy are legal, including commercial surrogacy, like in Russia and Israel (Fрати et al., 2020).

The law on surrogacy, or actually the law on assisted reproductive techniques (ART) in particular, tells people, amongst other things, what procedures may be undertaken and who may have access to them. When these laws are strict, this can cause the phenomenon most often referred to as ‘cross-border reproductive care’ (CBRC). This means that intended parents travel to countries other than their own, to avoid the strict laws regulating surrogacy arrangements. Previous studies show that law is indeed the most important stimulant for CBRC. An important role in the laws on ART is fulfilled by the European Court of Human Rights (ECtHR). They usually consider these cases under Article 8 of the European Convention on Human Rights (ECHR) – the right to private and family life (Bioethics, human rights, and their interplay in the legal reasoning of ECtHR’s case law on artificial reproduction).

International surrogacy arrangements bring along several problems, namely: the citizenship of children, the rights of intended parents and the rights and protection of surrogates. There are presently three treaties, already in place, that should make sure that surrogacy arrangements are protected. These are the Convention on the Elimination of All Forms of Discrimination Against Women, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Cooperman, 2018).

An important principle when regarding family law is “mater semper certa est”, which translates to “it is always certain who is the mother”. Applied to surrogacy law, this means that the surrogate mother is seen as the legal mother of the child, being the one that gives birth to the child. Because of this, intending parents will always need to go to court to transfer the parental rights from the surrogate to themselves (Van Beers & Bosch, 2020).

Countries that prohibit surrogacy or certain aspects of it do this for several reasons. They mainly aim to protect the well-being of the surrogate and the child. Most importantly, it should at all times be avoided that surrogates and children are used only as an instrument to please the intended parents entering into the agreement or that they are to be used as commodities. Furthermore, it should be avoided that only women with financial issues, who might not oversee the risks of becoming a surrogate, enter into surrogacy agreements, who could be prone to exploitation and abuse (Van Beers & Bosch, 2020).

Despite of all these threats, more and more countries are reviewing the restrictions they have imposed on surrogacy laws. Even though intending parents sometimes have not behaved in accordance with the current surrogacy laws and have actually not acted in the best interest of the child or surrogate mother, national authorities are increasingly fulfilling requests of these intending parents. The child has, after all, already been born, the childbirth is a *fait accompli*, and national authorities feel an obligation to act in accordance with the best interests of the child in question (Van Beers & Bosch, 2020).

In trying to avoid the strict regulations regarding surrogacy law, people are travelling to other countries in search of a surrogate, thus creating an international surrogacy market. In order to counterpart this cross-border surrogacy movement, a proposal has recently been developed describing pre-conception authorization of surrogacy agreements (PASA) through a national system. As the name already mentions, the potential surrogacy agreements are examined “pre-conception”. When applying this method, authorities are already involved before the conception of the child, instead of after the child is already born. You could say that here, the conception of the child is no *fait accompli* yet. This form of regulation has already been proposed in the Netherlands. This will be further explained in the next section, *2.4.1 Surrogacy law in the Netherlands*.

2.4.1 Surrogacy law in the Netherlands

In the Netherlands, there is only one hospital you can visit if you want to engage in a high-technology surrogacy arrangement, namely the Medical Centre of Vrije Universiteit Amsterdam. The intended parents should then arrange for a surrogate themselves, which is usually a family member (Stichting Wensouders, 2021). Curry-Sumner & Vonk (2013) state the requirements that have to be met by the surrogate mother, which are the following: an age of 44 years or lower, good current health state, already have given birth once or more, should regard her own family as complete, should have had uncomplicated pregnancies and deliveries in the past, must have a strong desire to become a surrogate and must be capable to give up the baby (Curry-Sumner & Vonk, 2013).

At this Medical Centre, only women who cannot become pregnant themselves or for whom a pregnancy is life threatening can apply for surrogacy treatment. So, for example, same-sex couples are not able to apply for treatment here (Stichting Wensouders, 2021).

As already mentioned before, in the Netherlands only altruistic surrogacy is legal, commercial surrogacy is prohibited (Piersanti et al., 2021). The only costs that may be reimbursed are medical expenses which the surrogate mother makes due to her pregnancy. In addition, it is illegal to promote commercial surrogacy, which is stated in Articles 151b and 151c of the Dutch Criminal Code. The Criminal Code, however, does not particularly state what the problem with paying a surrogate is, but contains information about the prohibition of surrogacy brokers (Curry-Sumner & Vonk, 2013).

Because commercial surrogacy could be the result of force or could lead to exploitation, it could fall under the Dutch human trafficking article. The person forcing the woman to become a surrogate could then be seen as a human trafficker. In practice, however, this is usually not the case, since all known cases of forced commercial surrogacy do not happen in the Netherlands, but in different countries (National Rapporteur on Trafficking in Human Beings, 2012).

In the second part of the Dutch surrogacy bill, it is stated that intended parents and surrogates who enter into a commercial surrogacy agreement, either cross-border or within the Netherlands, will be penalized with imprisonment or a fine of maximum €21.750. However, this provision is impaired by the family law provisions in this same bill of rights, which causes the intended parents who have entered into the commercial surrogacy agreement to still be accepted as the legal parents of the child (Van Beers & Bosch, 2020). After all, the child has already been born and courts then look at the best interests of this child. One of the parents being imprisoned is, according to the court, not in the best interest of the child. This leaves imposing a fine, but, as commercial surrogacy agreements are usually very expensive, the intended parents engaging in these agreements could probably afford this fine and the question is whether they would actually let this fine stop them from entering into a commercial surrogacy agreement (Van Beers & Bosch, 2020).

More information on surrogacy law can be found in the Dutch Civil Code, especially in articles in book 1 and 10. These articles of law are mostly about parental rights after surrogacy (Wetsvoorstel kind, draagmoederschap en afstamming, 2020). Furthermore, there are no specific laws which regulate surrogacy arrangements in the Netherlands, but there are some general rules. You can only become a surrogate if you already have at least one child of your own. When the child is born, the surrogate, who at that point is still the legal mother of the child, has to transfer her parental rights to the intended parents through an adoption procedure (EU Parliament, 2013). There also consists a guideline for IVF treatment, namely the Guidelines on IVF-surrogacy, which is made up by the Dutch Society for Obstetrics and Gynaecology and reads some obligatory features of both the surrogate and the intended parents (Curry-Sumner & Vonk, 2013). This, of course, is only applicable if the surrogacy arrangement is based on IVF treatment.

The Dutch law on surrogacy is based on the fact that intended parents can only make use of a surrogate when the intended mother has medical problems that make her incapable of gestating the baby herself. In other words, people who seek a surrogate 'just because they want to' are actually not allowed to enter into any form of surrogacy arrangement (Van Beers & Bosch, 2020).

As mentioned in paragraph 2.2, the PASA system has been proposed in the Netherlands as well. Here, it is proposed that the court should give their permission for the surrogacy agreement in advance. When

PASA is applied, the intending parents do not have to go to court anymore for a transfer of parental rights from the surrogate to themselves, because this will then happen automatically.

A few requirements have to be met for PASA:

- Commercial surrogacy arrangements are not accepted
- The process should also be open to same-sex couples and singles
- At least one of the intended parents should be genetically related to the future child (exceptions possible)
- Intended parents should be recognized as the child's legal parents from the moment of birth

The Dutch proposal is, however, not likely to be implemented in practice since there is a risk that international commercial surrogacy agreements will still be approved, even though the Dutch government is strictly against this form of surrogacy. Additionally, the system is not expected to decrease the amount of cross-border surrogacy arrangements and it will impair the importance of the medical necessity criterium mentioned before (Van Beers & Bosch, 2020).

2.5 Model for surrogacy contracts

According to the model for supply of surrogacy contracts by Hewitson (1997), two types of contracts can be distinguished: type II, which is characterized by a profit for the surrogate mother and type A, which is based on an altruistic agreement. Two types of altruists are distinguished, namely 'true' altruists, who do not receive any utility from remuneration and therefore will never accept a profit, and 'potential' altruists, whose utility depends on the level of remuneration. The supply of surrogacy contracts is determined by the following utility function of potential surrogates:

$$U_i = (\alpha_i + \beta_i + \gamma_i)(II_i + A_i) - Mq * (\theta + \varepsilon R)(II_i + A_i) + \delta \mu A_i + PII_i$$

In which:

α = utility of gestating the foetus

β = utility derived from the birth

γ = utility derived from giving up the baby

Variable II can either be one or zero, depending on whether the contract is profitable (one) or not (zero).

Variable A can also be either one or zero, depending on whether the contract is altruistic (one) or not (zero).

M = price of a unit of expected baby quality	} So Mq^* is the expenditure made by the intended parents to monitor the surrogate's activities
q = baby quality	
θ = utility the surrogate gains from privacy	

R = whether or not the surrogate takes part in 'dangerous' activities, such as smoking.

R = 1 if she does, R = 0 if she does not.

ε = disutility of casting aside 'dangerous' activities during the pregnancy

μ = the part of the population that says contracts regarding surrogacy should never be profitable.

δ = utility gained from improving the well-being of others

P = all expenses paid to the surrogate other than the costs related to her pregnancy, in other words the profit made off the surrogacy contract

(Hewitson, 1997).

Taking into account the fact whether surrogates take part in 'dangerous' activities or not, at the end four groups can be formed:

- Population I Altruists who like to undertake dangerous activities
- Population II Altruists who do not like to undertake dangerous activities
- Population III Potential altruists who like to undertake dangerous activities
- Population IV Potential altruists who do not like to undertake dangerous activities

Demand and supply for surrogates can be illustrated by a supply and demand function, depicted in figure 1.

Before going into detail and describing the different demand curves given, a few things are good to know:

- $n(S_0)$ depicts the supply of altruistic contracts when R = 1 and P=0
- $n(S_1)$ depicts the supply of altruistic contracts when R = 0 and P=0
- $n(A) = n(S_0) + (n(S_1) - n(S_0)) + (n(A) - n(S_1))$, and thus represents the total amount of surrogate supply of population I + II + III + IV when P=0
- $n(S_0) < n_0$, because $n(S_0)$ is the group of altruistic surrogates that like to undertake dangerous activities, and who should thus be monitored more often (which brings along costs) and who have to be compensated by the fact that they have to give up these dangerous activities during the pregnancy.

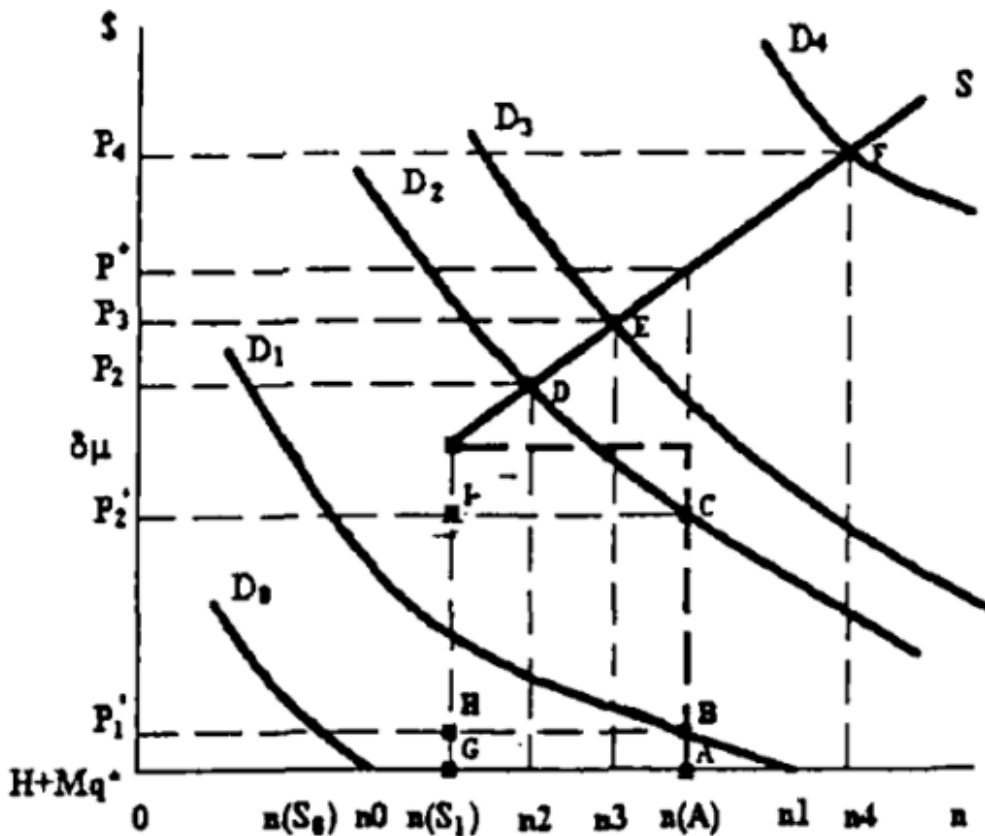


Figure 1: Demand and supply function for surrogates (Hewitson, 1997)

Demand curve D0

In this case, the equilibrium price P is 0. So, surrogates are not compensated for their services, which gives an excess supply of altruistic surrogacy contracts of $n(A) - n_0$. This outcome, however, is unlikely to happen in markets with an excess demand for adoptable babies and a low supply of surrogates, since then total demand for babies will be very high. The demand curve D_0 depicts a very low demand and does not represent the current situation regarding surrogacy well.

Demand curve D1

When price $P=0$, the demand for surrogacy contracts is excess, since n_1 lies beyond the total amount of surrogacy contracts $n(A)$. When there is an excess demand, the price will go up, in this case until point B with price P_1 . When this happens, the altruists from population I and II are still offering their services, without accepting the fee. Population III and IV, however, would rather not accept a price of P_1 and retract their services altogether. Population III and IV consists of women who derive utility from an altruistic surrogacy contract, until a certain level of remuneration is reached and they would rather offer their services for this remuneration. Price P_1 is too low for them to compensate for the loss of utility they get from offering their services altruistically. This causes a shift of the equilibrium from point B to point H (leaving out the women in population III and IV) and then to point G, where the price is 0 again.

Because the price is 0 again, women in populations III and IV start offering their services again. As can be seen, this causes a loop in which market failure arises.

Demand curve D2

Depending on the starting position of price, demand curve D2 can result in either a stable or an unstable equilibrium. In figure 1, it can be seen that point D is the stable equilibrium. If the initial price is above the equilibrium price, with respect to $D=D2$, then this stable equilibrium can be reached. When the price is starting below the equilibrium price, an English auction will occur, not resulting in an equilibrium.

Demand curve D3

When the demand curve lies at $D=D3$, there is an excess demand for surrogates when $P=0$. When allowing prices to be above $P=0$, the equilibrium will be found at point E, which in this case is the only possible equilibrium for this demand curve. When this equilibrium is reached, $P < P^*$. P^* stands for the switching point, where all potential altruists will offer their services in exchange for remuneration. This demand curve is consistent with the literature on blood, by Richard Titmuss, in which it is stated that the occurrence of a positive price reduces the total supply due to a reduction in altruistic supply (Hewitson, 1997). Titmuss studied the blood donation system in the UK and compared this system to that of the USA. In the UK, blood donation was purely voluntary, so the donors received no compensation for donating, contrary to the system in the USA, where part of the donors were volunteers and part of the donors received a remuneration. Maybe you would expect that when people receive money for donating, the number of donors would be higher than when people would not receive anything. Titmuss concluded however, that the supply of blood donors was lower in a system of compensated donation than in a system of altruistic donation (McLean & Poulton, 2021). Following this theory, altruistic surrogacy would cause a higher supply of surrogates than commercial surrogacy.

Demand curve D4

In this case, price $P4 > P^*$, so the resulting supply is greater than when $P=0$, since then women will offer their services in exchange for remuneration. Equilibrium when $D=D4$ can be found at point F.

In surrogacy, the baby born through these arrangements can be considered a 'good' with a strongly inelastic demand curve. This means that the demand is not sensitive to price, so even when the price gets really high, demand will stay high. The supply of surrogates, however, is lower. This is because there are not a lot of women wanting to 'lease their wombs'. The women who do supply their services in surrogacy usually do this because of a need for money. In most cases the intended parents have far more economic resources than the surrogate they contract with. From this it could be concluded that there is an imbalance in the surrogacy market and a risk of the exploitation of women (Spar, 2005).

2.6 Ethical considerations

Previous empirical studies show different results when it comes to the ethics of commercial surrogacy. There are studies that conclude that legalizing commercial surrogacy and properly regulate it could benefit all parties involved, while other studies conclude that commercial surrogacy should be forbidden.

The biggest issue when regarding commercial surrogacy is whether surrogate mothers are coerced or are acting voluntarily. Surrogates could be influenced by several factors, like poverty, debt, a vulnerable social position or illiteracy. They could also be pressured by other people. Thus, commercial surrogacy could lead to women being forced into a role of surrogate and exploitation can come into play (National Rapporteur on Trafficking in Human Beings, 2012).

Blazier & Janssens (2020) argue that paying surrogates is widely viewed as exploitation, which would be an argument against commercial surrogacy. They provide some insights as to why this argument does not always apply. Exploitation in this context means that a surrogate is used “as a means unjustly or under conditions such that the surrogate does not consent” (Blazier & Janssens, 2020). Firstly, to be unjustly used as a means could indicate harm being done to the surrogate, or the fact that she does not benefit the agreement enough. However, if this were the problem, then altruistic surrogacy should be illegal as well. Secondly, it could indicate that the surrogate receives a remuneration which is too low, which occurs when the risks to the surrogate are not in accordance with the benefit to the intended parents. This point would actually plea in favour of payment and thus of commercial surrogacy.

They continue to explain that the problem lies in the fact that if payments are too high, women without money, in poor countries would become surrogates just for the money, not overthinking the possible risks. So, commercial surrogacy is not the cause of exploitation, but exploitation is caused by women living in an unequal society. Payment itself is not wrong per se, since a woman voluntarily deciding to become a surrogate and getting paid for this does not automatically mean she is being exploited (Blazier & Janssens, 2020).

There are a couple of problems that are seen to arise in commercial surrogacy arrangements. One of these is that a commercial contract between the surrogate and the intended parents would treat the baby as an object or commodity. A child or the reproductive labour from the surrogate are being priced, while actually these two things are priceless. One way to refute this, is that presently there is no evidence that intended parents treat the baby as a good, they do not consider themselves buying a baby, but buying the reproductive labour of the surrogate mother (Van Zyl & Walker, 2013).

Chapter 3 – Methodology

To answer the research question, I have conducted a systematic review to find relevant literature concerning commercial surrogacy and the effects of allowing market forces on the supply of surrogates in the Netherlands.

A systematic review is a form of literature review and can be used to locate, appraise and synthesize answers to a research question, using previously conducted research (Boland, Cherry & Dickson, 2014). The results can then be used for decision-making or policy changes.

The aim of a systematic literature review is to minimize the chance of bias, by using a replicable, scientific and transparent process of reviewing existing literature (Tranfield, Denyer & Smart, 2003). Furthermore, it aims at collecting all available literature on a certain topic and draw conclusions out of this (Dakduk & González, 2018). A systematic review, when conducted properly, should make sure that researchers investigating the same research question, find similar results. The search process should be conducted systematically, so that all studies, concerning the research topic, are found and analysed. The aim of a systematic review is to eventually form a new theory or build on existing theory (Siddaway, Wood & Hedges, 2019).

To perform my systematic review, I have used 5 steps, according to the procedure mentioned in Dakduk & González (2018). These steps can be found in Figure 2 and will be discussed in more detail below.

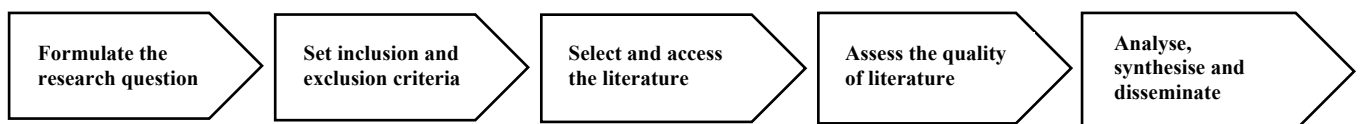


Figure 2: Protocol for systematic review

3.1 Research question

The first step of every research project is formulating the research question, which should clearly state the objectives and should be empirically verifiable (Dakduk & González, 2018). According to these criteria, the research question of this thesis will be: “What effect does legalizing commercial surrogacy have on the shortage in supply of surrogate mothers in the Netherlands?”

3.2 Inclusion and exclusion criteria

These criteria should be established, which is an important aspect of a systematic literature review. These criteria decide reliability, validity and replicability of the study (Dakduk & González, 2018). The criteria should be explicit and implemented in such a way that readers and other researchers clearly know which ones are used (Siddaway, Wood & Hedges, 2019).

For this thesis, only papers written in the period between 1994 and 2021 were included, since 1994 is the year that altruistic surrogacy became legal in the Netherlands (Dermout et al., 2010). Only papers written in English and Dutch will be analysed. Furthermore, only peer-reviewed articles will be included in the analysis, since these papers guarantee quality (Jesson, Matheson & Lacey, 2011). The most important inclusion criteria is whether or not the information in the article could be of relevance to answer the sub-questions and research question.

3.3 Literature selection

Searches have been conducted through Google Scholar, since this database offers the possibility to search for keywords not only in the title, subject heading and abstract, but throughout the entire article (Jesson, Matheson & Lacey, 2011). Scopus was chosen since this database only publishes peer-reviewed journal articles. To search these two databases, the following search string has been used:

Law OR legal* AND Dutch OR Netherlands AND “commercial surrogacy”

3.4 Quality assessment

Assessing the quality of the included literature was not necessary, since peer-reviewed articles guarantee quality. However, I have included the number of times the included articles were cited. This says something about the scientific impact of a specific article (Waltman, 2016). The average times that an article is cited, in general, is below 10 and 44% of the published articles are never cited at all. When a publication has 10 or more citations, it can be considered to be cited many times (Beaulieu, 2015).

3.5 Analysis

The last step of the review is the analysis, synthesis and dissemination of the included literature. The literature found will be divided into sub-categories, based on the sub-questions. This will be done to provide a clearer overview and will make it easier to summarize the literature and draw conclusions. Conclusions will mainly be based on the article on surrogate motherhood contracts by Hewitson (1997) and the utility function for supply and interaction between supply and demand of surrogates mentioned in this article.

3.6 Quality and reliability

When conducted properly, literature reviews are less prone to measurement error, publication bias and other biases, that could have an effect on the replicability, compared to an individual study. Systematic reviews are most likely of higher quality and more comprehensive, compared to a ‘normal’ literature review (Siddaway, Wood & Hedges, 2019).

The quality and reliability of a systematic review, like done in this study, are dependent on the quality of the articles that were included, and the quality of the methods used in carrying out the systematic review (UKEssays, 2018). For this study, only peer-reviewed articles were included, so that quality of included articles is assured. For a systematic review, the search criteria and search process used should be stated clearly, to avoid biased results. The search terms used for my search can be found in 3.3 *Literature selection*.

The use of peer-reviewed journals, in combination with only using electronic databases, could lead to publication bias, since these articles are always published. Furthermore, because only articles written in English and Dutch will be included, language bias could occur (O'brien & Mc Guckin, 2017).

Chapter 4 - Results

In this chapter, I will first discuss the results of the search with the search terms mentioned in chapter 3. After this, an overview will be provided of all included studies and their number of citations. A literature review will be carried out to summarise the findings of the included studies. Finally, the information found in chapter 2 and the information found in this literature review, will be combined to answer the research question.

4.1 Results of the search

A search of Google Scholar yielded 1190 results, after excluding searching for the search terms used in the citations. When selecting relevant literature, the most important criterium was whether or not the article could be of relevance to answer the research question. To see if this is the case, I looked at the title of the article first. Based on this, 99 articles were selected for further inspection. A lot of articles could already be excluded based only on the title, since there were, for example, a lot of articles about countries other than the Netherlands, children's rights, about adoption or assisted reproductive technologies in general. These topics are not particularly relevant for answering the research question of this thesis and thus have been excluded right away. The remaining 99 articles were studied by reading the abstract. Out of these 99 articles, 14 articles were excluded right away based on the fact that they were not accessible. After having done this, 28 articles were selected. The last step was reading the entire paper and judging whether or not to include the article. The article was included when it was perceived able to provide an answer to one of the sub-questions and/or maintained relevant information regarding the research question. At the end, this resulted in the inclusion of 23 articles.

A search of Scopus yielded 75 results. When only including articles written in English there were 69 results left. Removing 11 duplicates that had already been found in Google Scholar, I judged the titles of 58 articles to see which articles needed further inspection. This yielded 10 results. After reading the abstract and/or full article, 5 articles were included.

This resulted in the inclusion of 28 articles. As described in chapter 3, only articles that are peer-reviewed were included. Based on this criterium, of the 28 articles, 7 articles have been excluded, leaving 21 included articles. 2 more articles had already been used in the literature review of chapter 2, and have thus been excluded at this stage, since in the end both literature reviews will be combined to answer the research question. Eventually, 18 articles in total were included.

4.2 Included studies

Nr.	Author(s)	Year	Subject	Cited*
1	McLachlan & Swales	2000	Make a case for the legislation of commercial surrogacy	48
2	Ramskold & Posner	2013	Argue that the ethical and legal issues on commercial surrogacy could be resolved by international laws and regulations	48
3	Dermout et al.	2010	Gives results from non-commercial surrogacy in the first Dutch Centre for IVF surrogacy	36
4	Van Beers	2014	Reproductive tourism in Europe	35
5	Holcomb & Byrn	2010	Argue that surrogates can be seen as professionals and surrogacy compensation should be reported as income	33
6	Rotabi et al.	2017	International law should be developed to prevent violation of children's rights in commercial surrogacy arrangements	18
7	Peters et al.	2018	Results of 10 years of non-commercial surrogacy in the Netherlands	15
8	Fronek	2018	Current perspectives on the ethics of commercial surrogacy in developing countries	12
9	Curry-Sumner & Vonk	2011	Aspects of surrogacy law in the Netherlands and cross-border surrogacy	7
10	Cheney	2016	Results from the International Forum on Intercountry Adoption and Global Surrogacy in 2014	7
11	Vijay	2014	Ethical issues regarding surrogacy and legal issues on cross-border surrogacy	5
12	Iliadou	2018	Implications of Paradiso and Campanelli v Italy for cross-border surrogacy	5
13	Tang	2016	Legal protections for surrogates	4
14	Piersanti et al.	2021	Ethical and legal issues in surrogacy	4
15	Florescu & Nielsen	2017	Dutch and South-African approach to surrogacy, specifically the child's right to know his origin	2
16	Mansoor	2014	Dutch and English law on contracts that commercialise the human body	1
17	Cheney	2021	Commercial surrogacy and its possibility for exploitation	0
18	Armstrong	2021	Should commercial surrogacy be considered as a job	0

Table 2: Summary of dataset of papers after selection.

*Cited implies the number of times the respective papers are cited in other research.

As can be seen in table 2, some articles have been cited a limited amount of times. However, some of these articles have been published only recently (e.g. 2021) and could thus not have been cited in the work of other researchers yet. Because all the articles have been peer-reviewed, quality is assured. However, the statements in the articles that have been cited only a few times should in itself be considered less confirmed, unless other literature supports these arguments.

4.3 Literature review

This section will provide an overview of the included literature shown in table 2. To do this in a clear way, the articles included will first be divided into the following sub-categories: law, surrogacy in the Netherlands, commercial surrogacy and ethical concerns. This division is shown in table 4. Some articles are mentioned more than once, since these articles discuss multiple subjects. Based on this, a clear overview of the literature surrounding commercial surrogacy, the effects of remuneration on surrogacy supply and surrogacy in the Netherlands will be created, to answer the research question. The following sections will now provide a literature review of the included articles.

Law	Van Beers – Is Europe ‘giving in to baby markets?’ Reproductive tourism in Europe and the gradual erosion of existing legal limits to reproductive markets
	Rotabi et al. – Regulating Commercial Global Surrogacy: The Best Interests of the Child
	Iliadou – Surrogacy and the EctHR: reflections on Paradiso and Campanelli v Italy
	Tang – Setting Norms: Protections for Surrogates in International Commercial Surrogacy
	Piersanti et al. – Surrogacy and “Procreative Tourism”. What Does the Future Hold from the Ethical and Legal Perspectives?
Commercial surrogacy	McLachlan & Swales – Babies, Child Bearers and Commodification: Anderson, Brazier et al., and the Political Economy of Commercial Surrogate Motherhood
	Ramskold & Posner – Commercial surrogacy: how provisions of monetary remuneration and powers of international law can prevent exploitation of gestational surrogates
	Holcomb & Byrn – When Your Body is Your Business
	Cheney – Discordant Expectations of Global Intimacy: Desire and Inequality in Commercial Surrogacy

	Vijay – Commercial surrogacy arrangements: the unresolved dilemmas
	Armstrong – Surrogacy: time we recognized it as a job?
Surrogacy in the Netherlands	Dermout et al. – Non-commercial surrogacy: an account of patient management in the first Dutch Centre for IVF Surrogacy, from 1997 to 2004
	Peters et al. – Gestational surrogacy: results of 10 years of experience in the Netherlands
	Curry-Sumner & Vonk – National and international surrogacy: An Odyssey
	Florescu & Sloth-Nielsen – Visions on surrogacy – from North to South: the approach of the Netherlands and South Africa to the issue of surrogacy and the child’s right to know his origin
	Mansoor – Contracts Contrary to Public Policy under English and Dutch Law
	Van Beers & Bosch – A Revolution by Stealth: A Legal-Ethical Analysis of the Rise of Pre-Conception Authorization of Surrogacy Agreements
Ethical concerns	Fronek – Current perspectives on the ethics of selling international surrogacy support services
	Cheney – Preventing exploitation, promoting equity: findings from the International Forum on Intercountry Adoption and Global Surrogacy 2014
	McLachlan & Swales – Babies, Child Bearers and Commodification: Anderson, Brazier et al., and the Political Economy of Commercial Surrogate Motherhood
	Ramskold & Posner – Commercial surrogacy: how provisions of monetary remuneration and powers of international law can prevent exploitation of gestational surrogates

Cheney – Discordant Expectations of Global Intimacy: Desire and Inequality in Commercial Surrogacy

Vijay – Commercial surrogacy arrangements: the unresolved dilemmas

Table 3: Division of included articles into categories

4.3.1 Law

National legal prohibitions on using assisted reproductive technologies (ARTs) do not seem to stop inhabitants of these countries from going abroad and getting access to ARTs there, thus creating cross-border reproductive care. The internet has shown to be a great source of finding reproductive materials and services. Even though the commercialisation of body parts is prohibited ('the human body and its parts shall not, as such, give rise to financial gain', Article 21 of the Convention on Human Rights and Biomedicine), there has been a growing commercialisation of human reproduction. The rise in cross-border reproductive care thus shows that this prohibition is not very effective and is not the solution to the problem. In Europe, agreement is reached on the fact that cross-border reproductive care has negative effects and thus currently new legal strategies are being explored. Introducing the same laws on ART throughout Europe is not feasible, since different countries have differing bioethical and religious traditions that should be taken into account (Van Beers, 2014).

In commercial surrogacy arrangements, the rights of the child play an important role. The rights that are most at risk in these arrangements are the right to a nationality and to know one's parents or origin and the right to preserve one's identity and not to be sold or trafficked. The opinions on whether the child born through surrogacy is being sold differ. Some argue that children are indeed being sold and that this constitutes trafficking. Others argue that the surrogate's service is being bought, not the child itself (Rotabi et al., 2017).

Prohibiting commercial surrogacy leads to the possibility that surrogacy arrangements are transferred to the black market, which could give rise to sketchy businesses (Ramskold & Posner, 2013). When this happens, women in need of money will still want to take part in surrogacy arrangements, but the difference is they now have to do it illegally, which has great potential to harm the rights of the woman (Piersanti et al., 2021). However, a system which legalizes commercial surrogacy, but has no strict regulation, brings along the danger of exploitation, which is also not desirable (Ramskold & Posner, 2013). This leaves the option of partially permitting surrogacy, by allowing altruistic surrogacy but banning commercial surrogacy. This has shown, however, to give the same risks as banning surrogacy entirely, mostly because of the difficulties in defining what are 'reasonable expenses' and what exactly is commercial and non-commercial surrogacy (Vijay, 2014). Commercial surrogacy should thus ideally

be controlled by international regulations with rules and policies that can be enforced. To achieve this, however, is difficult and might still not resolve the problems surrounding the rights of the surrogate. Such an international convention might take over 5 years to realise and even the countries that would sign such a convention could still not follow all provisions. This would result in the countries that did not sign to become countries with a high inflow of intended parents seeking surrogacy arrangements (Ramskold & Posner, 2013; Tang, 2016). Allowing commercial surrogacy and applying strict regulations would limit the exploitation of vulnerable women (Piersanti et al., 2021).

Ramskold & Posner suggest the establishment of a Hague Convention on Inter-country Surrogacy Agreements, which would ‘provide increased security, predictability and transparency, as well as establish minimum standards, guarantee best surrogacy practices, and provide a guide to good medical practice’ (Ramskold & Posner, 2013). Another proposal for regulating international surrogacy is that of a ‘fair trade’ regulatory framework. This framework would make sure that all parties involved benefit from the surrogacy arrangement. Furthermore, a system of internationally recognised accreditation of surrogacy clinics would harmonise international surrogacy rules (Vijay, 2014) and would encourage these clinics to get a higher rating, thus improving their quality in favour of the surrogate and intended parents (Tang, 2016).

The ECtHR has dealt with cases over the protection of children and their intended parents over the last years, thereby applying Article 8 of the European Convention on Human Rights: the right to respect for private and family life. This article, however, does not imply a guarantee for everyone to start a family or adopt children. The ECtHR has argued that, when intended parents bring home their child conceived through surrogacy in a different country, it is undesirable to separate the intended parents from the child. Specifically in cases where the surrogacy arrangement took place in a country that allows surrogacy (Iliadou, 2018).

4.3.2 Surrogacy in the Netherlands

Surrogacy was illegal in the Netherlands until 1994. From this year forward, only commercial surrogacy has been illegal. After the legalization of altruistic surrogacy, a Dutch Centre for Non-commercial IVF Surrogacy was established, at that time the only centre for surrogacy in the Netherlands. The main finding during a ten-year period was that there were benefits to both the intended parents as the surrogate mother in non-commercial surrogacy (Dermout et al., 2010). In the Netherlands, the intended parents have to arrange for a surrogate mother themselves. Percentage-wise, the relationship between the surrogates and the intended mothers is as follows: 32% friends, 29% sisters-in-law, 28% sisters and 11% other family members (Peters et al., 2018).

In the Netherlands there are multiple steps to be completed before the surrogacy arrangement is established. First of all, a medical check is performed of both the intended parents and the surrogate by a gynaecologist. Secondly, a psychological screening is performed to determine what motivates the surrogate and what is her current mental health state (Peters, 2018).

The transfer of parental rights after the surrogate has given birth to the child, can happen in two different ways. When the surrogate is married, then the surrogate is automatically the legal mother and her husband the legal father. The intended parents then both have to adopt the child to become the legal parents. When the surrogate is unmarried, the intended father can recognise the child during pregnancy, with consent of the surrogate. This makes the intended father a legal parent and the surrogate can then be excluded. The intended mother should in this case still adopt the child, which can be done once she has taken care of the child with the intentional father for a year (Curry-Sumner & Vonk, 2011).

Children born through surrogacy arrangements abroad can be recognized in the Netherlands through two processes. The first situation appears when the intended parents and the child are both abroad and the intended parents want to have the child recognized as their own by the Dutch Embassy abroad. In the second situation, the intended parents and the child have already arrived in the Netherlands and then want to have their child recognized as their own. In some cases, the Dutch authorities could refuse an application to recognize a child. This would happen when the recognition would go against fundamental principles and values of the Dutch system (Florescu & Sloth-Nielsen, 2017).

As mentioned before, the only costs for surrogacy that may be reimbursed in the Netherlands are medical expenses. However, it is difficult to establish up until which point the costs for a surrogate are not conceived as profit. Imagine, for example, that a surrogate cannot work anymore due to her pregnancy. Should her wage then be reimbursed (Mansoor, 2014)? The costs that the procedures included in the surrogacy arrangement bring along are the responsibility of the intended parents. Three IVF cycles and the costs of pregnancy and labour are reimbursed by health insurance. Additional costs include, for example, an obligatory life insurance for the surrogate (Peters, 2018).

In 2010, eight European countries that prohibit commercial surrogacy (including the Netherlands) wrote warning letters to surrogacy clinics in India in an attempt to ban people from these European countries from entering into surrogacy arrangements here. This was done to avoid the custody and citizenship issues that arise from cross-border surrogacy (Vijay, 2014). When the government in the Netherlands would maintain strict regulations regarding surrogacy and when they would make use of a method that would make the transfer of parental rights easier, then probably less couples should have to go abroad in search of a surrogate (Curry-Sumner & Vonk, 2011).

4.3.3 Commercial surrogacy

Surrogates in commercial surrogacy arrangements are typically remunerated by a base sum for their services, to which more money is added for expenses such as maternity clothes, wages lost and travel costs (Holcomb & Byrn, 2010). In a commercial surrogacy contract, it should be stated what happens to the remuneration to the surrogate once the intended parents do not receive custody or parenthood of the baby (McLachlan & Swales, 2000). Holcomb & Byrn (2010) argue that surrogacy is a business and that surrogates should be perceived as professionals that earn money through performing a unique job, which is hard and consumes a lot of time.

McLachlan & Swales (2000) argue that commercial surrogacy as well as commercial surrogacy agencies should be legal. They argue that rooting for this legalization is not the same as saying that it should be unregulated. Mostly it is the illegal commercial surrogacy agreements that cause problems. They also argue that promoting and advertising by these agencies should be legal and that these agencies should be allowed to make a profit. These agencies can be rather important, since they match intended parents with potential surrogates, which without these agencies would probably not have happened. And paying these agencies for this provided service is quite logical (McLachlan & Swales, 2000).

Remuneration for surrogates has potential beneficial effects. Firstly, it could empower surrogates and enhance their economic opportunities, which, in patriarchal societies, could strengthen their position. Secondly, payment can help the process of a surrogate distancing herself from the foetus, thus detaching herself emotionally. This could make the process of giving up the child that the surrogate carried for nine months easier. Self-help groups in the USA, for example, advice surrogates to look at being pregnant as a job that is paid and that has a time limit, to weaken the emotional bond the surrogate has with the child (Ramskold & Posner, 2013). Most surrogates do not feel a strong maternal bond with the baby and do not have difficulty giving up the baby (Holcomb & Byrn, 2010). In most surrogacy contracts it is determined that the surrogate will no longer play a role in the life of the intended parents and the child after the child has been born. Sometimes they do stay in touch for the first couple of years after the birth, but this usually stops after a while. Studies show, however, that most surrogates favour to maintain a certain connection with the child (Cheney, 2021).

Studies show that altruistic surrogacy agreements lead to the surrogate taking less care of herself and providing less effort in making sure the baby is born in a good health state. When the surrogate mother is paid, however, she has an economical interest in making sure that the child she carries will come out healthy. This is favourable for the intended parents as well as the child itself (Ramskold & Posner, 2013).

4.3.4 Ethical considerations

When discussions on commercial surrogacy arise, they are mainly about the protection of the autonomy of the surrogate and the balance struck between beneficence and non-maleficence. (Ramskold & Posner, 2013). Concerns also arise regarding fundamental freedoms, self-determination, privacy, confidentiality and informed consent (Fronek, 2018). If surrogates are paid more than the amount of money that is needed to cover medical expenses, a few concerns appear: paying surrogates could cause women to do this without free and informed consent, the danger that the baby is being commodified and that paying surrogates does not align with current social norms, since other body parts cannot be sold either. In their article, however, McLachlan & Swales (2000) argue that commercial surrogacy is not the buying and selling of children. Intended parents pay the surrogate for her service and do not pay for the baby itself. They do not 'own' the child born through surrogacy as well, since babies are not anybody's property and can thus not be treated this way. They state that: "commercial surrogate motherhood does not imply that parties to the agreement will treat it as an object for their own use any more than if parents had a child in the conventional way" (McLachlan & Swales, 2000). In addition, the economic definition of a commodity is: 'a unit that can be substitute for another at all points, so each unit has no special intrinsic value'. This, of course, is not applicable to children and thus children cannot be seen as commodities (Vijay, 2014).

A few main arguments can be distinguished against commercial surrogacy. The commodification argument reasons that women are handled as commodities and that surrogacy harms families' traditional values. While you cannot put a value on human life, surrogacy in a way does this by acting like reproduction is a trade. The exploitation argument argues that surrogacy could amount to exploitation when intended parents with money pay a poor woman a large amount of money to act as their surrogate, thus leading to exploitation by the wealthy of the poor. This could particularly happen in developing countries, where surrogates are paid 1/10th of what the intended parents would pay in their own country. It can then be said that the intended parents gain a lot from the agreement, while the surrogate is compensated too little for the risks she puts herself through (Vijay, 2014). In addition, the externality accompanying international commercial surrogacy has the potential to make certain inequalities worse, like race, class, geography and access to the technology that is used in surrogacy (Cheney, 2021).

Besides this, a few arguments in favour of surrogacy can be given as well. First of all, surrogacy can provide couples who are infertile or homosexual with children. Surrogacy could be beneficial for all parties involved. The intended parents would get a child that they obviously wanted, and the surrogate would be glad she did it, either out of altruism or commercialism. Finally, the child would benefit by being raised by parents who went through a lot of trouble getting him/her (Vijay, 2014). This benefit could of course also arise for children not born through surrogacy.

Bringing these arguments together, it can be concluded that when intended parents and the surrogate are informed and when there are enough regulations in place to protect all parties involved, then surrogacy can be practiced in a safe and beneficial way (Vijay, 2014). Still considering women who are well-informed, either rich or poor, incapable of making the decision whether or not to engage in surrogacy, could be viewed as degrading and exploitative. However, the possibility that women are coerced should still be taken into account (Ramskold & Posner, 2013).

When international laws are in place prohibiting surrogacy, some people argue that this prohibition takes away a certain amount of the woman's liberty. Some also argue that surrogacy should be considered a job and that other forms of employment could sometimes even be more harmful and abusive. One could argue that not paying a surrogate would actually amount to exploitation. This is certainly the case in any other employment. However, in surrogacy it is considered exploitation if the surrogate *is* paid for her services (Ramskold & Posner, 2013).

Physically, any woman who is fertile and who has a functioning uterus could become a surrogate. However, it is not just the physical ability that should be taken into account. Being a surrogate can impose mental difficulties, because it is a very emotional process. Having the skill to emotionally distance herself from the child and handing the child over to the intended parents after the birth, is not universally recognized as professional, but it is critical in surrogacy arrangements (Armstrong, 2021).

Most arguments concerning ethics are related to the surrogate and the child, while the intended parents play an important role as well. As already said before, few surrogate mothers change their mind during the surrogacy process. There are, however, more intended parents that change their mind, thereby abandoning the child due to a change in their own situation or the fact that the child does not live up to their expectations. This cannot be prevented through the screening of the intended parents (Fronek, 2018).

An important aspect to consider is whether it is in the best interest of children that they are conceived through surrogacy. The discussion surrounding commercial surrogacy focused on this subject only since recent years. Surrogacy arrangements bring along health risks for the child, due to the immediate transfer to the intended parents and not being nursed and a lacking connection with the birth mother (Cheney, 2016).

4.4 Interpretation of the literature

This section will include the interpretation of both the theoretical framework and the literature review and will evaluate the arguments made and the connection between these arguments and their potential effects on supply of surrogates. Arguments in favour and their counterarguments will be summarized and an analysis of the results will be made.

Based on the theoretical framework and the literature review, conclusions can be drawn concerning the effect of legalizing commercial surrogacy on the supply of surrogates in general and in the Netherlands. Hewitson (1997) describes the process where potential altruists stop supplying their service as a surrogate when remuneration for surrogacy is offered. Some potential altruists will potentially stop supplying their services when commercial surrogacy is allowed, as, for example, the disutility suffered from the negative perception of others who think that the service is provided for monetary gains can be greater than their respective utility of providing the purely altruistic service. The literature does not concretely support this view with numerical results and the extent of the effect this has on the supply of surrogates, but the reasoning is in line with Hewitson (1997). Applying this to the Netherlands, however, all surrogates currently offering their services are altruists and since intended parents have to arrange for a surrogate themselves, this is always someone in a close relationship with the intended parents (Peters et al., 2018). Given this close relationship, it is less likely that these altruists will stop providing their services if commercial surrogacy is legalized. Therefore, the fear of being (incorrectly) judged by others to be a paid surrogate is expected to have a limited effect on the supply of surrogates in the Netherlands. The remuneration process related to commercial surrogacy does not necessarily imply the exclusion of potential altruistic surrogates.

Hewitson (1997) concludes her article with a situation sketch of the current situation of the surrogate motherhood market. The market can be characterized by demand curve D_4 , shown in figure 1. This means that equilibrium supply of surrogates when price is P_4 , exceeds the equilibrium supply of surrogates when price $P=0$. This shows a situation in which the supply in a commercial surrogacy market exceeds the supply of a truly altruistic surrogacy market.

Predictions can be made on the expected effect of legalizing commercial surrogacy on the supply of surrogates with help of the formula for supply of surrogates, mentioned in chapter 2.5 *Model for surrogacy contracts*. Ramskold & Posner (2013) show that commercial surrogacy arrangements lead to the surrogate taking better care of herself and the baby she carries, because of an economical interest she then has. You could thus conclude that commercialization provides, on average, a higher baby quality. This causes monitor costs to go down and that the disutility which the surrogate receives from having less privacy, due to the monitoring, will also go down. Furthermore, the remuneration in commercial surrogacy agreements will compensate for the surrogate not being permitted to undertake

‘dangerous’ activities like smoking. When this remuneration is higher (lower) than the costs made by the surrogate to give up these ‘dangerous’ activities, the supply of surrogates will be predicted to go up (down).

Several arguments can be found in the literature that advocate that surrogacy should be perceived as a job for which surrogates should get paid. Adding the element of payment, surrogates overall have less difficulty giving up the baby, according to Holcomb & Byrn (2010) and Ramskold & Posner (2013). It could also benefit the economic opportunities of surrogates and eventually strengthen their position in society. Furthermore, in most jobs it would be perceived exploitation when someone is not paid. In surrogacy, however, the opposite is true and getting paid is usually seen as exploitation. This argument of somewhat ‘consensual exploitation’, implying that the surrogates agree to be paid for the services they provide whilst being fully aware of the agreement they partake in, can be seen as degrading; which is in accordance with the reasoning of Ramskold & Posner (2013). The perception regarding whether or not surrogate motherhood can be seen as a job can highly influence the potential of surrogates. Differences in perception can matter with respect to the supply, as some surrogates can derive (dis)utility from social reactions. When society values surrogacy as a job this can be seen as both a positive and a negative view by surrogates, depending on the individual surrogate. Consequently, the linkage between exploitation and surrogacy can only be seen to have negative effects on the supply of surrogates. Therefore, the actual effect of the societal perception on surrogacy is important in order to fully understand the directional effect this has on the supply of surrogates.

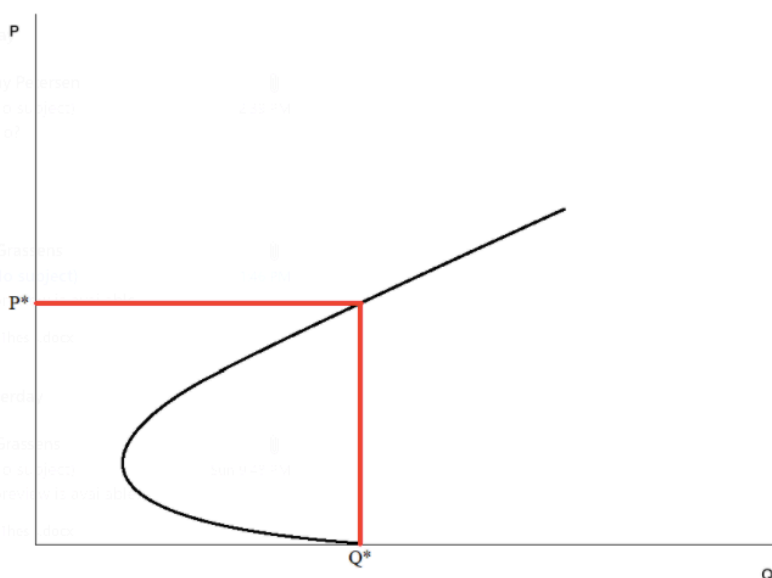


Figure 3: Supply of surrogacy contracts

The question is how well paid of a job surrogacy should then become, in order to have a positive effect on supply. Hewitson (1997) argued that the number of surrogates supplied is partly dependent on the price paid for surrogacy arrangements. This is depicted in figure 3, which is a simplified interpretation

of the potential supply curve of surrogate mothers. Point Q^* shows the supply of surrogates when price $P=0$. There is a certain price level up until which point potential altruists would rather retrieve their services altogether, than offer their services for a small remuneration. This is represented by point P^* and causes the supply to decrease. Once the price rises above P^* , potential altruists will re-enter the market and start offering their services for money instead of altruistically, which causes an increase in supply. The supply will then exceed initial supply of point Q^* , where price $P=0$. The loss of supply of potential surrogates when remuneration is offered will have to be overcome with a high enough price in order to convince the potential surrogates to join the supply side again, whilst this pay has to also attract other non-altruistic surrogates to counter the loss of potential surrogates demanding a higher pay. So, the effect of remuneration, legalizing commercial surrogacy and perceiving it as a job would have on surrogacy, is dependent on the salary surrogates would receive for it.

When considering arguments related to the best interests of the child, it has been said that children born through surrogacy have more health risks. This is attributed to the immediate transfer from the birth mother to the intended parents, which brings along a lack of connection with the birth mother and deprives the child of being nursed. However, babies that are adopted or babies of whom the mother has died during or shortly after giving birth, would probably have these same health risks. Adoption is not illegal and a mother dying during or after the birth cannot always be prevented. This argument against surrogacy is made with the aim of setting the most perfect circumstances for the child, which is of course desirable, but when comparing this with 'normal' births is not always realistic. Births without surrogates can also not include practices such as breast feeding, and the bonding process with the birth mother which following this reasoning is imperfect. Paid surrogates take the health of the child more into account than unpaid surrogates (Ramskold & Posner, 2013), which could imply that the most perfect circumstances surrounding the birth of the child would be an argument which can decrease the supply of surrogates when remuneration is in place. Whether the motivation to avoid 'dangerous' activities to promote the health of the child is found before or after the surrogacy agreement is important when reasoning the direction of effect this has on the supply of surrogates. When this motivation is found *a priori*, supply could decrease due to surrogate mothers taking disutility from the less than perfect moments following shortly after the birth of the child. When this motivation is found during gestation the effect is logically zero as the service related to supply has already been provided. However, the previous reasoning is countered by the findings of Holcomb & Byrn, 2010 that show that most surrogates do not have an emotional connection to the child and thus have little difficulty to give up the child. Thus, making the effect on the supply of surrogate mothers unknown.

Chapter 5 – Discussion

5.1 Summary of findings

The data show that legalizing commercial surrogacy certainly has an effect on the supply of surrogates. The direction of this effect is somewhat ambiguous, but most findings indicate a positive effect. Besides this, the results of this thesis show that to decide whether or not it is effective and ethically responsible to legalize commercial surrogacy, a lot of different things have to be taken into account. Strict legal regulation of commercial surrogacy would potentially limit the exploitation of vulnerable women, contrary to prohibiting commercial surrogacy altogether. This regulation would also be desirable to counterpart problematic cross-border surrogacy arrangements. Furthermore, when these commercial arrangements are regulated, there is no need to take part in these agreements illegally, thus avoiding sketchy businesses and potentially the coercion of women to become surrogates.

5.2 Limitations

This thesis has a number of limitations. The results are based on a literature review and no concrete numbers have been used. Primarily because these numbers are not well documented and hard to get by. Because of this, the process of selecting relevant information has been free to interpretation, which in turn could cause biased results. Limited information has been found regarding the hypothetical situation and potential effect that legalizing commercial surrogacy would have in the Netherlands specifically. This thesis has thus given a more general theoretical overview of the effect of legalizing commercial surrogacy on the supply of surrogates, which could be applied to the Netherlands as well. The question remains, however, how generalizable the results of this study are. For the biggest part the results are based on standard economic theory, but cultural factors that could play a role have not been taken into account.

The information found concerning the ethical aspects of surrogacy differ greatly and are somewhat contradictive. A lot of arguments that are given against surrogacy in general and commercial surrogacy in particular can be refuted based on the literature. I think, however, that the way an individual looks at these particular issues can differ based on someone's cultural background and norms and values.

Most of my results are based on an article written in 1997. Insights of course change over the years, but this article is based on standard economic theory. These theories have not changed recently, so the information in this article is still relevant today and could thus be used to answer my research question.

For my search I have used only two databases, namely Google Scholar and Scopus. This was primarily done due to time constraints. Even though these databases contain a lot of literature, not everything

written on the subject can be found here. So, the possibility exists that other relevant information has been missed. Furthermore, I have excluded 14 potentially relevant articles due to inaccessibility.

The results of my thesis are theoretical. The only ways to find out what would happen when commercial surrogacy would be legalized in the Netherlands is implementing it in practice or by performing a behavioural experiment. This of course is, respectively, not feasible and costly. Therefore, I have tried to answer the research question as good as possible through a systematic review.

As mentioned in chapter 3 *Methodology*, the fact that only peer-reviewed journals have been used, in combination with only using electronic databases, could have led to publication bias, since these articles are always published. Furthermore, because only articles written in English and Dutch were included, language bias could have occurred.

5.3 Advice to the Dutch government

Based on my study, my advice to the Dutch government would be to at least reconsider the law on surrogacy, since commercializing surrogacy could potentially have a positive effect on the supply of surrogates. The demand for surrogates has been rising for several decades and is not expected to decline in the coming years. In fact, it is expected to rise even further. To avoid an additional rise in problematic cross-border surrogacy arrangements, the Netherlands could consider legalizing commercial surrogacy and strictly regulating it. The ethical aspects of legalizing commercial surrogacy, mentioned in this study as well, should be taken into account and weighted against the norms and values of society. This implies a balanced decision between ethics and economics.

5.4 Future research

Interesting to include in future research on the subject of surrogacy, is how much potential surrogates would be willing to accept to quit dangerous activities. This could help give an indication of the height of the salary that should be paid to surrogates so that it would have a positive effect on the supply of surrogates. Research related to the willingness to accept prices of dangerous activities are useful to better estimate the compensation needed for surrogates to quit their respective dangerous activities. For example, research on the willingness to accept prices of women who smoke on a regular basis to give up on smoking.

Next, future research from a policy making point of view should try to discover what the market price for surrogate services would become when it is given that surrogacy becomes commercial. Questions thereafter could arise whether or not market intervention related to price ceilings or fixed remunerations could result in more supply whilst also maintaining access to the service at reasonable prices.

Lastly, more research on the topic of surrogacy and the potential benefits and shortcomings of commercial surrogacy is recommended in order to achieve more knowledge of the mechanics driving demand and supply for surrogates. The increased knowledge can help the political debate on commercial surrogacy.

Chapter 6 - Conclusion

What this research has tried to answer is whether legalizing commercial surrogacy would have a positive effect on the supply of surrogates in the Netherlands. To answer this, a systematic review has been conducted with articles included through Google Scholar and Scopus. Once the literature was combined and reviewed, conclusions could be drawn concerning the research question.

Cross-border surrogacy has become a worldwide problem in recent years. The combination of high demand, low supply and strict surrogacy regulations in some countries, including the Netherlands, causes this cross-border component of surrogacy. To counterpart the cross-border component, new regulations have been proposed in the Netherlands, like the PASA system, but thus far these have not been implemented successfully. The main reason being that these proposed regulations still have a lot of downsides. This brings along several issues and it should at all times be avoided that surrogates and/or the children born through surrogacy arrangements are treated as commodities, or that women entering into surrogacy arrangements are exploited. It can be argued that commercial surrogacy is not the cause of exploitation, but that exploitation is caused by these women living in an unequal society. When considering exploitation, this usually indicates harm being done to the surrogate. If this would be the case, then altruistic surrogacy should be illegal as well. So, based on the argument of exploitation, counterarguments can be given as well as to why commercial surrogacy does not amount to exploitation.

Different sources show that prohibiting commercial surrogacy entirely, like is currently the case in the Netherlands, has several drawbacks and is not desirable. It leads to commercial surrogacy arrangements still being entered into, but on the black market and thus illegally. This brings along greater incentives for exploitation than coming up with international regulations on commercial surrogacy, like a Convention on Inter-country Surrogacy Agreements. Implementing these kinds of regulations could limit the exploitation of vulnerable women but are difficult to implement in practice.

Commercial surrogacy itself has some potential beneficial effects as well. It could strengthen the position of surrogates and enhance their economic opportunities. Receiving a payment for surrogacy has been shown to make the process of giving up the child easier for the surrogate, because the surrogate can emotionally distance herself easier. Furthermore, adding the element of payment causes the surrogate to be economically invested and thus taking better care of herself and the baby she carries. This causes baby quality to go up.

Regarding the effect of remuneration in surrogacy arrangements on the supply of surrogates, multiple conclusions can be drawn but overall it will create a greater supply of surrogates, even though a lot is still unknown, and the effect can sometimes be ambiguous.

It is argued that some potential altruists stop offering their services once payment is being offered, which would cause a decrease in supply. The main cause of this decline being the potential judgement by society. I have argued, however, that this will most likely not be the case in the Netherlands, since altruists currently offering their services are always people in a close relationship with the intended parents. This shows that the remuneration process in surrogacy does not necessarily imply the exclusion of altruistic surrogates, and thus not always a decline in surrogacy supply.

As mentioned, baby quality will, on average, go up when surrogates are remunerated for their services. This could also influence the supply of surrogates, since baby quality is part of the supply function for surrogates. Reasoning shows that when remuneration for surrogacy is higher than the costs made by the surrogate to give up 'dangerous' activities during pregnancy, and thus increasing baby quality, the supply of surrogates will be predicted to go up, and vice versa.

Multiple studies show that surrogacy should be considered a job for which surrogates should receive a salary. The question then remains how well paid of a job surrogacy should become, in order to have a positive effect on supply. When remuneration is offered, a threshold price should be passed for surrogacy supply to increase compared to the purely altruistic surrogacy situation. The price to be paid for surrogacy supply to increase is an interesting topic for further research.

The immediate transfer from the child to the intended parents, contrary to bonding with the birth mother first, could lead to health risks for the child. This would imply a 'a less than perfect' situation for the child, which could decrease the supply of surrogates that take the interests of the child serious. However, I have argued that this 'less than perfect' situation is the case in adoption or the birth mother dying shortly after giving birth as well. Furthermore, research has shown that most surrogates do not have trouble giving up the child, thus weakening this argument.

Concluding, legalizing commercial surrogacy will potentially increase the supply of surrogates in the Netherlands. This is partly dependent on the amount of money offered to surrogates. Even though the supply will rise when surrogacy will be legalized, the ethical considerations mentioned should at all times be taken into account, depending on the norms and values of society. However, to counterpart problematic cross-border surrogacy arrangements, the Dutch government could reconsider their strict laws concerning commercial surrogacy, since legalizing commercial surrogacy has shown to create a greater supply of surrogates and in doing so make a balanced decision between ethics and economics.

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