

A New Phase in the Regulation of Assisted Reproductive Technology in Japan

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I. INTRODUCTION

In Japanese, *seishoku hojo iryō* (literal translation: auxiliary reproductive medicine) often refers to treatment involving extra-corporeal fertilization such as IVF-ET (In vitro fertilization and embryo transfer), ICSI (intracytoplasmic sperm injection) and other techniques. In addition, in publications of the government assisted insemination (AI) using either a donor's sperm or the sperm of a woman's partner is included in the term *seishoku hojo iryō*. According to the Glossary on ART Terminology 2009,¹ the term "assisted reproductive technology, ART" does not include assisted insemination, so the expression "ART and AI" indicates *seishoku hojo iryō* in this paper.

Concerns over the practice of ART and AI, as well as its regulation, have arisen in Japan. ART and AI using the partners' gametes are widely accepted and put to use. In terms of numbers of babies born by ART, Japan ranks second to the US.² The number of

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1 F. ZEGERS-HOCHSCHILD/G. D. ADAMESON/J. DE MOUZON/O. ISHIHARA/R. MOUSOUR/K. NYGREN/E. SULLIVAN/S. VAN DER POEL on behalf of ICMART and WHO, The International Committee for Monitoring Assisted Reproductive Technology (ICMART) and the World Health Organization (WHO) Revised Glossary on ART Terminology, Human Reproduction 24 (11) (2009) 2683–2687.

2 In 2006, 22,080 babies were born by ART in Japan. R. MANSOUR/O. ISHIHARA/G. D. ADAMSON/S. DYLE/J. DE MOUZON/K. G. NYGREN/E. SULLIVAN/F. ZEGERS-HOCHSCHILD, In-

treatment cycles and patients continues to grow. However, there is a lack of specific laws in this field, and the necessity of creating regulations has been recently pointed out.

At the end of 2013, the Liberal Democratic Party (LDP), the ruling government party,³ set up a project team (LDP-PT) to introduce a private member's bill on ART and AI using donated gametes and surrogacy. Its contents were supposed to cover a broad range of ART and AI using donated gametes, but according to newspaper coverage,⁴ only a section on filiation between the intended parents and a child born by ART and AI involving donation is expected to be submitted in August 2015.

This article reports on the current situation surrounding ART and AI in Japan and it discusses whether the LDP-PT's draft bill tackles this situation.

II. ART AND AI IN JAPAN

1. Regulations

As previously mentioned, the number of treatment cycles using partners' gametes and the number of babies born by these techniques in Japan are large and increasing. In contrast to these treatments, the number of donor conceptions is small. In particular, egg donation and surrogacy are regarded as controversial, so clinics have not implemented them.

We do not have specific laws concerning ART. Therefore, the Japan Society of Obstetrics and Gynecology (JSOG) plays an important role in ART regulation. Notably, its ethics committee gives opinions on ART that are regarded as equivalent to guidelines for doctors. Apart from JSOG, doctors also refer to opinions expressed by another association called the Japan Society for Reproductive Medicine (JSRM).

According to these associations, married couples can have recourse to IVF, ICSI, and other techniques involving egg collection, using their own gametes⁵ and/or donor insemination.

ternational Committee for Monitoring Assisted Reproductive Technologies World Report: Assisted Reproductive Technology 2006, *Human Reproduction*, 29 (7) (2014) 1537–1540.

3 It is a coalition government formed with its partner Kōmeito.

4 T. FUKUYAMA, *Dairi shussan unda josei ga haha* [Surrogacy “The woman who delivers is the mother”], *Asahi Shinbun*, 27 June 2015, 1. T. FUKUYAMA/M. GŌDA, *Kodomo no hogo yūsen* [The protection of the child take's priority], *Asahi Shinbun*, 27 June 2015, 7.

5 JSOG, *Taigai jusei, hai'i-shoku ni kansuru kenkai* [Statement on IVF-ET] (2006, revised in 2014), http://www.jsog.or.jp/ethic/taigaijusei_201406.html. JSOG, *Kenbi jusei ni kansuru kenkai* [Statement on ICSI] (2006), http://www.jsog.or.jp/about_us/view/html/kaikoku/H18_4_kenbi.html. JSOG, *Hitohai oyobi ranshi no tōketsu hozon to ishoku ni kansuru kenkai* [Statement on freezing and transfer of human embryos and eggs] (2006, revised in 2014), http://www.jsog.or.jp/ethic/hitohai_201406.html.

ination.⁶ In cases of unmarried couples, they can employ IVF, ICSI, and other techniques involving egg collection only when they use their own gametes.⁷

The “couples” according to these associations are always heterosexual. However, the JSRM ethics committee is now considering whether to present their opinions concerning ART and AI as used by same-sex couples.

Oocyte donation is also in place, but this practice is not widely recommended, so the numbers are still very few. In 1998, the first twins born through domestic egg donation were reported.⁸ In that case, the donor was a sister of the intended mother. At the time, two cases of IVF in the same clinic, using sperm donated by the father or brother of the intended father, was also revealed. JSOG reproved this ob-gyn and disaffiliated him.⁹

According to JSOG, the thawed egg and embryo have to be implanted into the woman from whom these eggs were collected.¹⁰ In 2009, the JSRM Ethics Committee published a recommendation about reproductive medicine involving third parties' gametes.¹¹ In this recommendation, JSRM concluded that it is rational to implement the treatment involving third parties' gametes under certain conditions, because of the need for these treatments, and the government has promptly to address the creation of an official institution on information management as well as a regulation on filiation. Besides these associations, there is a group of fertility clinics that forwards treatments using donor's gametes, the Japanese Institution for Standardizing Assisted Reproductive Technology (JISART), whose aim is to “achieve high standards of practice in infertility management by implementing a quality management system in Japan, with the ultimate aim of improving the quality of patient care.”¹²

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- 6 JSOG, *Teikyō seishi o mochi'ita jinkō jusei ni kansuru kenkaï* [Statement on artificial insemination with donor's semen] (2006, revised in 2015), http://www.jsog.or.jp/ethic/teikyōseishi_20150620.html.
 - 7 JSOG, “*Taigai jusei, hai'i-shoku ni kansuru kenkaï/Hitohai oyobi ranshi no tōketsu hozon to ishoku ni kansuru kenkaï*” ni okeru “Kon'in” no sakujo ni tsuite [Deletion of the expression “married” in Statement on IVF-ET and in Statement on freezing and transfer of human embryos and eggs] (2014), http://www.jsog.or.jp/ethic/rinri_kaikoku_201406.htm. JSRM, *Jijitsu-kon ni okeru honnin dōshi no seishoku saibō o mochi'ita taigai jusei jissshi ni kansuru nihon funin gakkai no kenkaï* [Statement on IVF using couple's own gametes in the case of an unmarried couple] (2006), http://www.jsrm.or.jp/guideline-statem/guideline_2006_01.html.
 - 8 “*Ranshi teikyō uke taigai jusei 'tsuma igai no josei kara'. Kokunai-hatsu sakushun, futago o shussan*” [IVF using egg donated “by woman who is not the wife”. First case in Japan, twins born last spring], *Yomiuri Shinbun*, 6 June 1998, 1.
 - 9 “*Sanka fujin-ka gakkai ga Nedu inchō no jomei kettei. Fūfu-gai no taigai jusei, seishoku iryō kentō-i o shinsetsu*” [JSOG decide to disaffiliate Dr. Nedu and set up a new committee for IVF involving donors], 26 June 1998, 2. This donor re-enrolled at JSOG in 2004.
 - 10 JSOG, Statement on freezing and transfer of human embryos and eggs, *supra*, note 5.
 - 11 JSRM, *Dai-san-sha haigū-shi o mochi'iru seishoku iryō ni tsuite no teigen* [Recommendation about reproductive medicine involving third parties' gametes], http://www.jsrm.or.jp/guideline-statem/guideline_2009_01.html#05.
 - 12 JISART, *Un'ei hōshin* [Policy] (in English), <http://www.jisart.jp/about/policy>.

As for surrogacy, JSOG recommends its being avoided¹³ because the welfare of the resulting children has to take priority, the surrogacy may cause burdens and strains, it may complicate the family relationship, and society does not accept this practice ethically.

Semba¹⁴ described a controversy around donor conception, especially surrogacy in Japan. I will refer throughout the following discussion to some official opinions along with Semba's article. As a result of the first IVF using a donated egg, the Assessment Subcommittee for Advanced Medical Care within the Ministry of Health and Welfare's Health Science Council was set up and presented some basic principles;¹⁵ based on its report, the ART committee in the Ministry of Health, Welfare and Labor was established. The ART committee determined in 2003 that ART and AI involving donors should be allowed and the right to know of one's biological origins should be guaranteed.¹⁶ This committee did not agree to the practice of surrogacy. In the same year, the subcommittee on filiation-related ART and AI in the Legislative Council of the Ministry of Justice presented a tentative proposal on special provisions of the Civil Code concerning offspring born through ART and AI using donor gametes and embryos.¹⁷ This tentative proposal designated the woman who gives birth as the mother and the husband who consented to obtaining donor sperm as the father, and it did not allow for a donor filiation in respect of the resulting child. In 2006 the Science Council of Japan set up the assisted reproductive technology committee, and in 2008 this committee reported its conclusion that surrogacy should be legally prohibited but that its trial as an exception under rigorous conditions might be accepted.

In terms of filiation, if a couple undergoes an IVF or ICSI procedure using their own gametes, it is the same as natural reproduction. According to our current law and judicial precedent, the woman who gives birth to the child is the mother (by a judicial precedent¹⁸) and her husband is presumed to be the father (Civil Code, art. 772-1). Because of the absence of laws on ART, there is no specific rule on donor conception. When a mar-

13 JSOG, *Dairi kaitai ni kansuru kenkai* [Statement on surrogacy] (2003), http://www.jsog.or.jp/about_us/view/html/kaikoku/H15_4.html.

14 Y. SEMBA/C. CHANG/H. HONG/A. KAMISATO/M. KOKADO/K. MUTO, Surrogacy: Donor conception regulation in Japan, *Bioethics* 24 (7) (2010) 348–357.

15 SEMBA, *supra* note 14, 349.

16 SEMBA, *supra* note 14, 349–350; The Committee on ART Treatment in the Ministry of Health, Welfare and Labor, *Seishi, ranshi, hai no teikyō-tō ni yoru seishoku hojo iryō seido no seibi ni kansuru hōkoku-sho* [Report on the development of a system for assisted reproductive technology treatment using donor sperm, eggs and embryos] (2003), <http://www.mhlw.go.jp/shingi/2003/04/s0428-5.html>.

17 The subcommittee on filiation-related ART and AI in the Legislative Council of the Ministry of Justice, *Seishi, ranshi, hai no teikyō-tō ni yoru seishoku hojo iryō ni yori shusshō shita ko no oyako kankei ni kansuru minpō no tokurei ni kansuru yōkō chūkan shian* [Tentative proposal on the special provisions of the Civil Code concerning offspring born through ART and AI using donor gametes and embryos] (2003), <http://www.moj.go.jp/content/000071864.pdf>.

18 Supreme Court, 27 April 1962, *Minshū* 16 (7) 1247.

ried couple has a baby as a result of having a sperm donor, the husband of the mother is presumed to be the father.¹⁹

The cost of ART is not covered by national insurance. Therefore, a couple has to undertake ART at their own expenses, which can be very expensive. The costs of an average ART procedure are as follows: insemination using the husband's sperm costs 6,000–25,000 yen (43 to 180 euros), IVF-ET costs 200,000 to 600,000 yen (1,440 to 4,320 euros), and ICSI costs 350,000 to 600,000 yen (2,520 to 4,320 euros). A donor insemination costs around 30,000 yen (215 euros). In 2003, the Basic Act for Measures to Cope with a Society with a Declining Birthrate²⁰ called for the government to take necessary steps to facilitate sterility treatment, and, consequently, financial aid for ART became available from 2004. Couples who fulfill given conditions can now receive financial aid from local governments, and the Ministry of Health, Labor and Welfare subsidizes a part of these costs. In order to receive financial aid (maximum 150,000 yen (1,100 euros)), the couple must fulfill the following conditions: the couple is married; their need of ART is diagnosed by a doctor; and the couple's total annual after-tax income is less than 7,300,000 yen (52,600 euros). From 2016, an age limit will be put in place. Women over 43 years old cannot receive this financial aid; women who are 39 and younger when they start to get treatments can receive this aid a maximum of six times; and women who are 40 and older can receive this aid a maximum of three times.

Therefore, to be eligible for ART and AI in Japan, the mother has to have a legal husband or at least a stable partner. Single women and same-sex couples are not considered as legitimate ART patients.

2. Current Situation

Every year, the JSOG committee also gathers and reports statistical data on the number of clinics, as well as on IVF, ICSI, and donor insemination. In 2012,²¹ among 589 registered clinics, 555 clinics were practicing ART. Figure 1 shows the number and the result of IVF-ET, ICSI, and other techniques involving egg collection achieved in 2012 [Figure 1]. There were 207,337 treatment cycles for these techniques. Egg collection was conducted for 202,396 cycles. 70,522 embryo transfers were completed, resulting in 14,650 pregnancies reported, which led to 10,238 babies born. With regard to frozen embryos, 118,960 cycles were treated, among which 116,108 embryo transfers were achieved, resulting in 39,100 pregnancies reported, which led to 27,711 babies born. Freezing eggs is also practiced. Here, 129 cycles were treated, leading to 28 transfers, 6

19 There is a case where paternity was not presumed when the husband was transsexual. This couple sued to correct the family register, and the Supreme Court ruled in this couple's favor. M. TANAMURA, *Sei-dōitsu sei-shōgai to oyako kankei* [Gender identity disorder and filiation], *Iji-hō hanrei hyakusen*, Bessatsu Jurisuto 219 (2014) 190–191.

20 *Shōshi-ka shakai taisaku kihon-hō*, Law No. 133/2003, <http://law.e-gov.go.jp/htmldata/H15/H15HO133.html>.

21 JSOG, *Acta obstetricia et gynecologica japonica*, 66 (9) 2014, 2445–2481.

pregnancies, and 4 babies. As for donor insemination, 15 clinics conducted DI for 1,090 patients in 2012. 3,700 cycles were treated, resulting in 226 pregnancies and 120 babies. 64 pregnancies were discontinued.

The numbers are rising. The number of clinics increased from 1985 to 2005, remaining stable over nearly a decade [Figure 2]. As regards treatments, the numbers for IVF [Figure 3] and ICSI cycles [Figure 4] have been on the rise with embryo freezing in particular displaying a remarkable increase [Figure 5].

Regarding egg donation, JISART has experience with egg donation under its own guidelines²² and reports that there have been 55 egg donations from 2007 to 2015, with the result of 24 live births as well as 5 ongoing pregnancies as of the end of June 2015.²³ In 2012, the Oocyte Donation NET work (OD-NET) started to facilitate domestic egg donation for women who suffer infertility caused by medical reason such as premature ovarian failure or Turner syndrome.²⁴ OD-NET reports that its first IVF procedure was performed in July 2015.²⁵

What about people who seek treatment rarely conducted in Japan, such as egg donation or surrogacy? The ob-gyn who disclosed the first domestic egg donation in 1998 announced that he would practice surrogacy although it was against JSOG's policy. In 2001, he made public that the sister of an intended mother gave birth.²⁶ This was the first surrogacy case reported in Japan. From 2006, it became possible for a birth mother of the intended mother to become a surrogate mother in his clinic. Although this ob-gyn no longer accepts surrogacy, there were 21 surrogacy cases in this clinic, and 16 babies were born (14 pregnancies), including 10 babies by birth mother surrogacy.²⁷

Some Japanese couples are said to travel abroad to seek surrogacy or oocyte donation.²⁸ In 2007, the Supreme Court decided not to accept the birth registration of twins born through surrogacy in the US, in which the Japanese intended parents signed as the father and the mother. This is the first and only disclosed lawsuit for surrogacy before

22 JISART, *Seishi, ranshi no teikō ni yoru hi-haigū-sha-kan taigai jusei ni kansuru JISART gaidorain* [JISART Guidelines for IFV involving gamete donation] (2008, revised every year), <http://www.jisart.jp/common/pdf/external/guideline/1.pdf>.

23 JISART, *Ranshi teikyō jisseki* [Egg donation proven], <http://www.jisart.jp/about/external/proven/>.

24 OD-NET, *OD-NET ni tsuite* [About OD-NET], <http://od-net.jp/about.html#>.

25 M. GŌDA, *Tokumei ranshi de taigai jusei* [IVF using anonymous eggs], *Asahi Shinbun*, 27 July 2015, evening edition, 1.

26 "Dairi-bo." *Kokunai de shussan. Shimai-kan yōbō uke higashi-nihon no san-fujin-ka* ["Surrogate mother." First childbearing in Japan. Between sisters in a clinic in eastern Japan], *Asahi Shinbun*, 19 May 2001, 1.

27 Suwa Maternity Clinic, *Tokushu seishoku, dairi shussan. Torikumi to ayumi* [Special reproductive medicine – Surrogacy. Our approach], <http://e-smc.jp/special-reproduction/sr/surrogate/history.php>.

28 "Ranshi teikyō de 60-dai no ninshin" [Sexagenarian's pregnancy by egg donation], *Asahi Shinbun*, 14 November 2007, 29; "Dairi shussan indo tai de" [Surrogacy in India and in Thailand], *Asahi Shinbun*, 19 February 2011, 1.

the Supreme Court.²⁹ According to the study done by Hibino, in 2012, 60% of university hospitals and maternity specialist hospitals answered that they had cases of pregnancy by overseas oocyte donation. However, from 2007 to 2012, only 163 cases were reported. This implies that there are many women who do not reveal when they give birth, leading to a lack of statistical data. Some studies suggest that the destinations of these couples are mainly the United States, including Hawaii. In recent years, Asian countries like India, Thailand, and Malaysia have also become popular.³⁰

Infertility due to aging is considered one of the major reasons for seeking overseas oocyte donation.³¹ Of course, there are other reasons such as premature ovarian failures or ovarian resections. As late marriage is widely observed in contemporary Japan, and as Japanese tend to avoid having children outside of marriage,³² the trend of late marriage leads to childbirth at later ages. Therefore, when a woman starts to think about having a child, it may be too late to conceive a baby naturally, in which case the couple will need to rely on oocyte donation.

According to Senda,³³ in the 1950s–1970s, which were marked by steep economic growth, nuclear families increased significantly in Japan. During this period, typical gender roles – the husband as primary wage earner with the wife looks after the home and the family – solidified. Thus, men were expected to earn substantial sums of money as full-time employees, so-called “salary-men”, to maintain their families, while women, as part-time employees, continued to receive low salaries.

However, our society is changing: today, more women are working full-time, and gendered roles are not as rigid as they used to be.

The labor rate for women in the “White Paper on Gender Equality 2013”³⁴ shows that younger generations are working more than older generations.

According to the statistics³⁵ on women’s employment changes before and after having their first child, 60% of women having or expecting their first child still quit their jobs. And

29 M. ISHII, *Dairi kaitai* [Surrogacy], in: Iji-hō hanrei hyakusen, Bessatsu Jurisuto 219 (2014) 188–189.

30 Y. HIBINO, *Seishoku tsūrizumu no ajia ni okeru tenkai to kokunai kaiketsu-hō* [Reproductive tourism in Asia and its domestic solution], in: Hibino (ed.), *Gurōbaru-ka jidai ni okeru seishoku gijutsu to kazoku keisei* [Reproductive technology and family formation in the globalization era] (Tōkyō 2013) 247–268.

31 Y. HIBINO, *supra* note 30, 248–254.

32 The birth rate of such children remains very low: 2.3% in 2014. Jinkō dōtai chōsa 2014. [Demographics 2014], http://www.e-stat.go.jp/SG1/estat/GL08020101.do?_toGL08020101_&tstatCode=000001028897&requestSender=dsearch

33 Y. SENDA, *Nihon-gata kindai kazoku – Doko kara kite doko e ikunoka* [The Japanese modern family – Where does it come from and where will it go] (Tōkyō 2011).

34 Gender Equality Bureau Cabinet Office, *Danjo kyōdō sankaku hakusho* [White Paper on Gender Equality 2013] (2013) 71, http://www.gender.go.jp/about_danjo/whitepaper/h25/zentai/index.html#pdf.

after spending some years as full-time mothers, it becomes difficult to find regular full-time jobs, which leaves no choice for mothers but to work as part-time employees.

In addition, our society expects the “mother” to prioritize her children over literally everything in her life. With such heavy burdens, having children and becoming a mother means quite a significant change to a woman’s life. Therefore, there are many women who hesitate to have children.

Also, in Japan, married women are expected to have children. Thus, married women without children had long been considered as a misfortune. It is in such a cultural context that ART was developed and popularized in Japan. These new technological solutions may be perceived as having saved women from such a misfortune, as infertility can now be diagnosed and treated. It needs to be asked whether infertility is or should be regarded as an illness, and in order to find answers we have to really understand why having children is considered so important in our society.³⁶

III. THE LDP-PT DRAFT BILL

1. *Background*

In this section, I give a little bit of background on the LDP-PT’s draft bill by use of press material. After the ART Review Committee of the Science Council of Japan concluded in 2008 that a specific law should ban surrogacy, legislation has not proceeded. In 2009, the ob-gyn in Nagano who reported the first egg donation in Japan in 1998 announced a domestic surrogacy.³⁷ In that case, the biological mother for the intended mother became pregnant using the intended couple’s embryo. In 2011, a rapid rise of Japanese couples seeking surrogacy in India and Thailand was reported.³⁸ According to this article, more than 20 couples sought surrogacy in India and more than 10 couples in Thailand, with more than 10 babies being born by surrogacy in these two countries. According to another article in 2012, beginning in 2010 there was a surge of Japanese clients seeking egg donations in Thailand instead of South Korea.³⁹ Japanese recipients of egg donation numbered 133 people in 2010 and 231 in 2011, in contrast to 20 on

35 National Institute of Population and Social Security Research, *Dai 14-kai shusshō dōkō kihon chōsa. Kekkon to shussan ni kansuru zenkoku chōsa* [The 14th national survey on marriage and childbirth in 2010], <http://www.ipss.go.jp/ps-doukou/j/doukou14/doukou14.pdf>.

36 A. TSUGE, *Seishoku gijutsu – Funin chiryō to saisei iryō ha shakai ni nani o motarasuka* [Reproductive technology – How fertility treatment and regenerative medicine effect society] (Tōkyō 2012).

37 “*Dairi shussan mimamotte*” [Please watch over surrogacy with care], *Asahi Shinbun*, 26 November 2009, 37.

38 “*Dairi shussan indo tai de*” [Surrogacy in India and in Thailand], *Asahi Shinbun*, 19 February 2011, 1.

39 “*Ranshi teikyō tai tokō kyuzō*” [Thailand surges as destination for egg donation], 2 Mai 2012.

average until 2009. In 2012, a documentary on egg aging⁴⁰ shocked a Japanese society in which delayed marriage and childbirth at a later age are widely observed. In addition, amid mounting social concern over egg freezing, two reasons are given for preservation. One reason is to preserve the fertility of a woman who is facing certain forms of therapy that may result in her infertility. The other is to prolong the biological time limit for procreation. JSOG reported that it was preparing two statements on egg freezing, one with medical indication and the other without medical justification,⁴¹ and in 2014 JSOG issued a statement on egg freezing proceeded by medical indication.⁴² Under these circumstances, some policy on ART, especially egg donation and surrogacy, is deemed necessary.

The pros and cons of surrogacy have divided the LDP-PT. The LDP-PT was established at the end of 2013,⁴³ and it presented its first draft bills as material for discussion in March 2014.⁴⁴ There was a conflict of opinion about surrogacy within the LDP-PT, with the result that three drafts were advanced. These three drafts permit egg donation and surrogacy, as well as sperm donation for married couples, and ban the buying and selling of gametes. A sperm donor cannot establish filiation with a child born via donation, and a husband who consents to procuring a sperm donation cannot deny his paternity as to children born through this donation. The three drafts differ in the conditions for surrogacy. Draft A permits surrogacy involving egg donation in addition to its use with a couple's gamete, and it designates the woman who gives birth as the mother. Draft B allows surrogacy only when using the couple's embryo, and, as with the Draft A, the mother under Draft B is the woman who delivers a baby conceived through this technique. Draft C permits surrogacy using a couple's embryo with authorization by the Family Court. In contrast to Draft A or B, Draft C designates the intended couple as parents. In April 2014, five groups concerned with the practice of ART and AI submitted written demands to the chair of the LDP-PT, appealing that offspring should have a right to know their biological origin as contained in donor information.⁴⁵ Some days later, it

40 NHK, "*Umitai noni umenai – ranshi rōka no shōgeki*" [I want to give birth, but I can't – The impact of egg aging], 14 February 2012, http://www.nhk.or.jp/gendai/kiroku/detail_3158.html.

41 M. SUDA, *40-sai ijō suishō sezu* [Don't recommend egg freezing for women over 40], *Mainichi Shinbun*, 14 September 2014, 3.

42 JSOG, *Igaku-teki tekijō ni yoru mi-jusei ranshi oyobi ransō soshiki no saishu, tōketsu, hozon ni kansuru kenkai* [Statement on the collection, freezing, and conservation of egg and ovarian tissue by medical indication] (2014), http://www.jsog.or.jp/ethic/mijyuseiranshi_20140417.html.

43 "*Seishoku iryō meguri jimin PT hatsu kaigō*" [First meeting of LDP-PT on procreative medicine], *Asahi Shinbun*, 19 November 2013, 4.

44 Y. ABE, *Dairi shussan gentei yōnin-an* [Bill allows surrogacy with conditions], *Asahi Shinbun*, 7 March 2014, 5.

45 "*Shutsuji o shiru kenri yōbō*" [Ask: "Right to know donor information"], *Asahi Shinbun*, 12 April 2014, 7. "*Shutsuji shiru kenri kodomo ni mitomete*" [Please allow offspring to know donor information], *Nihon Keizai Shinbun*, 12 April 2015, evening edition, 6. The

was reported that the LDP-PT would present two drafts.⁴⁶ One is pro surrogacy with conditions the same as Draft A; the other⁴⁷ prohibits surrogacy and calls for the punishment of the doctors, intended parents, and onerous agents. The LDP-PT said that the project team developed the pro surrogacy approach; however, it could not represent members' preferences in a simple way because of a spate of opinions pointing out the risks for surrogate mothers. In October 2014, the final version of the draft, which permits surrogacy, was publicized.⁴⁸ According to this text, when a couple has a medical reason preventing them from conceiving babies through their own gametes, this couple can resort to ART and AI using donated gametes. The final version allows a couple in which the female partner lacks a uterus either congenitally or by reason of hysterectomy to seek surrogacy using their own gametes. Payment and the receipt of benefits of any kind for the gamete donation as well as for surrogacy is prohibited. As regards surrogacy, it is said that opposition remains; therefore the LDP-PT has the intention to allow LDP's lawmakers the choice of supporting or voting against this bill. In June 2015, the LDP was reported to have accepted the LDP-PT's bill on the existence of filiation in connection with ART and AI by donated gametes in contrast with former drafts on surrogacy.⁴⁹ The chair of the LDP-PT, an upper house member of LDP, T. Furukawa, said that this bill proposing special Civil Code provisions would be presented in the current Diet session.

2. General Meaning and Contents of the Draft Bill

a) General Meaning

As previously mentioned, the actual draft bill that is to be presented in the current Diet session in August 2015 covers filiation in respect of donor conception. Furukawa, the chair of the LDP-PT, published a brief summary of the initial draft bill in May 2015,⁵⁰ based on his presentation at the symposium of the Japan Medical Association at the end of 2014. In this section we discuss the general meaning and contents of the draft bill based on this article.

five groups are the NPO group OD-NET, the NPO group Fine, and the parent groups SMILE, DOG (DI offspring group), and Finrrage. These names of the groups derive from *Dai-san-sha no kakawaru seishoku gijutsu ni tsuite kangaeru-kai* (Study group on reproductive technology involving a third party), <http://daisansha.exblog.jp/21796553/>.

46 A. ITŌ/ M. GŌDA, *Dairi shussan kahi ryōan o teishutsu e* [Surrogacy pros and cons bills presented], *Asahi Shinbun*, 16 April 2014, 7.

47 "*Dairi shussan no kinshi hōan teiji*" [Bill on prohibition of surrogacy presented], *Nihon Keizai Shinbun*, 16 April 2014, 38.

48 "*Dairi shussan yōnin e saishū-an*" [Final version toward acceptance of surrogacy], *Asahi Shinbun*, 1 November 2014, 7.

49 T. FUKUYAMA, *supra*, note 4. T. FUKUYAMA/M GŌDA, *supra* note 4.

50 T. FURUKAWA, *Dai-san-sha ga kanyo suru seishoku hojo iryō ni kansuru hō-seibi ni tsuite* [Legislation on assisted reproductive technology with donors], *The Journal of the Japan Medical Association*, 144 (2) (2015) 289–292.

According to Furukawa,⁵¹ there are three reasons why legislation is needed. First, the fertility tourism by Japanese couples seeking an egg donation is increasing. Second, the female population who resort to ART and AI is aging because of the tendency of later marriage. And third, uncertainty of filiation is observed when a child is born through donor conception. Regarding the first reason, Furukawa explains that reproductive tourism offers the hope of egg donation to only a limited number of people because of its costliness. In addition, according to Furukawa, it is thought that treatment abroad is not always necessarily safe, e.g. treatment for woman past reproductive age, because of the lack of guidelines. Therefore, “it is the government’s primary responsibility to facilitate the domestic and safe treatment needed by the public, meaning that prompt legislation is required”.⁵² Concerning the second reason, Furukawa says that currently in Japan woman over 40 are having to repeat costly domestic treatments with their own eggs despite the very low success rate, since securing egg donation is difficult in the country. As countermeasures to the falling birth rate are one of the most important policies, we need to modify these irrational situations.⁵³ As to the third reason, Furukawa mentions the case of AI, which saw donated sperm used by a transsexual who was initially biologically female but changed her sex from female to male in the family register. He and his wife obtained their baby through AI using donated sperm. However, the Ministry of Justice did not recognize this offspring as his legitimate child because of the obvious lack of genetic filiation, and this baby was described as an illegitimate child in the family register in 2012. He and his wife sued for rectification of the family register. Subsequently, the Supreme Court allowed this couple to correct the record in 2013.⁵⁴ According to Furukawa, ambiguous filiation issues result from donor conception and that causes a legal as well as a social problem since “the existing Civil Code cannot cope with reproduction via gametes donation or surrogacy because it could not foresee the incidence of ART or DNA examination.”⁵⁵

b) Contents

Based on these 3 reasons, the LDP-PT draft bill targeted ART and AI involving a donor. This draft bill is explained in terms of the following six points: (1) ART and AI related donor gametes, (2) Surrogacy, (3) The right to know donor information, (4) Penalties, (5) Draft amendment, (6) Special provisions of the Civil Code.

51 FURUKAWA, *supra* note 50, 289–290.

52 FURUKAWA, *supra* note 50, 289.

53 FURUKAWA, *supra* note 50, 290.

54 TANAMURA, *supra* note 19, 190–191.

55 FURUKAWA, *supra* note 50, 290.

*Brief summary of the LDP-PT's initial draft bill as presented by the chair*⁵⁶

1) ART and AI involving a donor

The necessity of legislation is emphasized. The legislation may facilitate: Japanese couples obtaining domestic egg donations; egg donors being dealt with appropriately in regard to the strain, burden and risks they face and also in regard to informed consent; and gamete donation being a non-profit activity.

- Institutions that practice ART and AI using donated gametes, as well as institutions that provide donated gametes, are subject to certification.
- Intermediate institutions are designated. Institution that practice ART and AI involving donors receive, in principle, donated gametes via the intermediate institution. The donor is anonymous as a general rule.
- Provisions on informed consent to ART and AI involving a donor as well as informed consent to gamete donation.
- Facultativity for gamete donation and sufficient consideration of the donor's health.
- Provisions on submitting documents – such as the consent form for ART and AI as well as for gamete donation – to the National Center for Child Health and Development.
- Provisions on proper management of information, the confidentiality obligation, recording equipment, and the implementation report.

2) Surrogacy

There is a strong opposition to surrogacy that argues for its prohibition in principle, this by reason of ethical problems such as the instrumentalization of pregnant women, the enhanced risk to a pregnant woman's body, and the uncertainty of offspring filiation. These concerns are more substantial than under other forms of donor conception. However, according to Furukawa, domestic surrogacy would be acceptable as a trial under rigorous conditions for women who cannot have babies medically in other way because of a congenital lack of the uterus or because of hysterectomy.

- An institution that practices surrogacy is designated from among certified institutions as a specially designated institution.
- Facultativity for surrogacy and sufficient consideration of the surrogate's health.
- Informed consent to surrogacy. Following the sufficient advisement of the intended couple about (i) surrogacy, (ii) the legal relationship between this couple and the surrogate, and (iii) the filiation of offspring, a husband and a wife give consent in writing. Regarding the surrogate, after the sufficient advisement of the surrogate and her husband about (i) the strain, burden, and impact of surrogacy, (ii) the legal relationship between the surrogate and the intended couple, and (iii) the filiation of offspring, the surrogate and her husband give consent in writing.
- Provisions on submitting documents such as the consent form to the National Center for Child Health and Development.

56 FURUKAWA, *supra* note 50, 290–292.

- Provisions on proper management of information, the confidentiality obligation, recording equipment, and the implementation report.

3) *Right to know donor information*

The most controversial question is whether to give the offspring the right to learn of donor information in cases when gamete donation is permitted. In light of the welfare of the offspring, identifying his/her genetic parents is necessary when offspring want to know this information. However, such a right would portend difficult consequences between a donor and the offspring, such that the number of donors would decrease. As a realistic approach, non-identifiable information about the genetic parents has to be accessible as much as possible. More discussion is needed.

In case the right to learn of donor information is allowed in the future, a system is needed whereby an official institution (National Center for Child Health and Development) has centralized control over donor conception. This information management institution is also required regarding problems such as genetic disease in children resulting from donor conception or consanguineous marriage. In a related move, additional discussion is necessary for examining how to inform offspring of the fact that he/she was born by the means of donor conception: should an obligation be imposed on the intended parents to inform offspring or to arrange another way in case of the death of the intended parents?

- Provisions on the consent form requiring preservation of information for 80 years at the National Center for Child Health and Development.
- The discussion is to continue as to the best system for advising the offspring of donor assisted conception of original information, this including information relating to a genetic disease and a family record to avoid consanguineous marriage; the best way to inform offspring is also being reviewed. Necessary measures would be implemented based on these discussions.

4) *Penalties*

The commercial incentives involved in for-profit making donation and surrogacy as well as in its intermediation are not ethically permissible given that they exact a sacrifice on the body and the health of the involved individuals, and they therefore have to be prohibited by punishment. However, as a surrogate already takes risks, it would be cruel to additionally punish her in that situation. In addition, information leaked regarding an ART or AI donor may inflict intolerable damage on the concerned parties. Therefore, all of the involved parties who have access to the related information must fully preserve confidentiality, and punishment is needed in the case of a leak.

- Prohibition on paying and receiving benefits of any kind for gamete and embryo donation as well as surrogacy.
- Prohibition on paying and receiving benefits of any kind for intermediation of gamete and embryo donation as well as surrogacy.
- Punishment (applies also to treatment abroad)
- Punishment of a doctor who practices surrogacy except as under this act
- Punishment for paying and receiving benefits of any kind for surrogacy and its intermediation (the surrogate may be exempt)

- Punishment for paying and receiving benefits of any kind for gamete and embryo donation as well as its intermediation
- Punishment for the violation of a termination order
- Punishment for the violation of confidentiality

5) *Draft amendment*

This draft bill touches upon bioethics deeply; therefore, the pros and cons of surrogacy or the right to learn of donor information depends on the individual ethical views and values of every lawmaker. Consequently, we are in favor of allowing LDP lawmakers to decide whether to support or vote against the bill. Hereafter, amendment bills that absolutely prohibit surrogacy and that allow donor conception offspring to learn of their genetic parents may be presented.

6) *Special provisions of the Civil Code*

Regarding the definition of mother, a judicial precedent of the Supreme Court of Japan exists. However, it left room for alternatives such as legislative politics and ultimately called for a legislative solution. Given the diversity of surrogacy and egg donation, the mother-child relationship has to be definite. Therefore, there is considerable merit to the argument that the woman who delivers a child should be designated as its mother. Regarding surrogacy in Japan, the mother is designated by the Family Court, through a special adoption system, after the birth of the resulting baby. When a surrogate declines to yield her offspring to an intended couple or when an intended couple does not take the baby in because of a handicap suffered by the child, the special adoption system is limited in its ability to resolve the situation, so we have to discuss a new, more secure system.

Additionally, as to the definition of a father, uncertainty is observed for offspring born through sperm donation, such as in the previously mentioned judicial precedent involving a transsexual. As the currently controlling Art. 772 of the Civil Code (the presumption of paternity) seems to not contemplate reproductive medicine involving a third party, some deny the presumption of paternity in the 15,000 cases of sperm donation that have been estimated to date. The provision for designating the father in the Civil Code has to be promptly revised so as to avoid a situation where a judgment may override the father-child relationship, namely the most basic of social relations. When a wife gestates through sperm donation with the consent of her husband, it should be adequate to designate the husband who consented to donated sperm as the father in light of the family relationship formed by the concerned parties.

In this case, it is necessary to enact a provision serving to prohibit both filiation by the donor and offspring paternity claims (seeking to establish the paternity of the donor) to avoid a possible reversing of the father-child relationship.

- When woman gestates and gives birth by ART using eggs of another woman (including embryos obtained from these eggs), the woman who gives birth is designated as the mother of this offspring.
- When a wife, with her husband's consent, gestates by ART or AI using the sperm of a man other than her husband, the husband cannot deny the legitimacy of this offspring.

- Those who donate sperm for ART and AI undertaken by others at an institution certified to provide gametes, can't affiliate the child gestated through this donation. The paternity claim provided by the Art. 787 of the Civil Code can't be brought to the donor.
- The discussion continues on the system to establish adequately and certainly the parent-child relationship between child born through the surrogacy and intended couple. Necessary measures would be implemented based on these discussions.

This draft bill agrees in some points with published assessments and statements. The acceptance of ART and AI involving donor gametes was proposed by the ART committee in the Ministry of Health, Welfare and Labor in 2003 and by JSRM in 2009. Regarding filiation in the case of donor conception, in 2003 the Legislative Council of the Ministry of Justice's subcommittee on filiation-related ART and AI submitted that the woman who gives birth should be designated as the mother and that the husband who consented to obtaining donor sperm should be assigned as the father; they also proposed that there should be no filiation between the donor and the resulting child. Regarding surrogacy, in 2008 the Assisted Reproductive Technology Committee generally prohibited the practice by law but allowed its trial as an exception under rigorous conditions, this being in contrast to the statement of JSOG or the report of the ART committee in the Ministry of Health, Welfare and Labor.

As previously mentioned, only the portion containing the special provisions of the Civil Code is going to be submitted. This part of the Civil Code draft bill is presented in Figure 6. An attached schedule mentions that discussions are to continue on the following points and that necessary measures will be implemented based on these discussions within two years. First, on the regulation of ART and AI as well as on donation; second on provisions on donation and its intermediation; and, third, on the control of information related to donor conception. It seems to be an important step toward the realization of legislation, because it is widely pointed out that the parent-child relationship in donor conception needs to be legislated.

This practical move to set up a draft bill may be better received in general, but opinions about what area would be the most adequate for ART legislation differ in accordance with specialists. According to Ishihara⁵⁷ (ART and AI specialist, chair of the Ethics Committee of JSRM, and a member of the Ethics Committee of JSOG), it is indeed necessary that the regulation be capable of protecting existing children and permitting domestic treatment that is more secure and controllable.⁵⁸ It is pointed out that the legislation of filiation in the Civil Code takes top priority; the creation of an official institution for information control is also important as well as guidelines that may deal with

57 O. ISHIHARA, *Seishoku hojo iryō no genjo to hōsei-ka e no negai* [Current situation of assisted reproductive technology and expectation for legislation], *The Journal of the Japan Medical Association*, 144 (2) (2015) 300–303.

58 ISHIHARA, *supra*, note 57, 302.

ART in general. Contrary to what is suggested by Ishihara, Nudeshima (policy specialist regarding bioethical questions) advocates general legislation that includes ART and AI using a couple's gametes.⁵⁹ The clinical application of ART is the manipulation of human life, and how society accepts this technology is a significant ethical issue. The definite formation of a consensus is thus necessary. It is pointed out that there are many ethical problems surrounding egg donation and surrogacy. As the social consensus seems to be insufficient at this point, especially about the criteria for egg donation and surrogacy, it is too soon to legally permit these treatments. In addition, it is mentioned that legislation on filiation is needed such as discussed by the LDP-PT. In contrast to these specialists, Mizuno (civil law scholar specialized in family law) warns that legislating the determination of filiation based on the wishes of those individuals who want to be "parents" may be seen as affirming the practice of ART itself."

It is also mentioned that the legal regime governing the parent-child relationship should be conceived so as to facilitate complicated and delicate adjustments and so as to be capable of determining appropriate responses to possible conflicts or other cases that arise.

Regarding legislation in the area other than filiation in respect of donor conception, these points should be mentioned. First, the LDP-PT's draft bill has a tendency to accept the desire of those who have the intention to be parents. We need more discussion on donor conception from the point of view of offspring and donors, especially egg donors, regardless of the extent our society accepts these treatments. We can learn from children born through sperm donation who are currently filing claims to learn donor information.⁶⁰ Second, the basic principles of ART and AI in general should be discussed in Japan and covered in the law. The reasoning behind the legislation proposed by the LDP-PT – that domestic ART and AI should be guaranteed to eliminate the disparities in costly treatment abroad – is comprehensible. However, for the time when our society chooses to accept surrogacy or egg donation officially, discussing and defining the social and political position of ART and AI becomes necessary. In this respect, the discussion as to how to facilitate the formation of family in Japanese society, as well as on how to ameliorate the adoption system, should be imperative. Third, the specific law on ART and AI should cover treatment using a couple's gametes as mentioned by Nudeshima; as an example, for medical and social reasons we need to decide how to control the private freezing of eggs.

59 J. NUDESHIMA, *Seishoku hojo iryō hōsei-ka no arikata to seimei rinri* [The legislation of assisted reproductive technology and bioethics], *The Journal of the Japan Medical Association*, 144 (2) (2015) 297–299.

60 DOG (DI OFFSPRING GROUP)/S. NAGAOKI, *AID de umareru to iukoto. Seishi teikyō de umareta kodomotachi no koe* [Born through AID – The voice of sperm donation offspring] (Tōkyō 2014).

IV. CONCLUSION

In Japan, where childbirth at a later age is broadly observed, ART and AI using a couple's gametes are widely accepted. The number of treatments as well as the number of resulting children is increasing. Sperm donation has been proceeding from 1949. In contrast, egg donation and surrogacy have rarely been practiced, with the result that those who seek these treatments go abroad. There is no law on ART or AI, and JSOG statements play a role as guidelines. Facing these circumstances, the necessity of creating regulations has been recently pointed out.

At the end of 2013, LDP set up a project team to prepare a draft bill on ART and AI. The draft bill proposed by the LDP-PT chair covers donor conception, surrogacy, the right to know donor information, penalties, and the parent-child relationship in respect of donor conception. However, given the pros and cons of surrogacy as drafted by the LDP-PT, it was reported in July 2015 that only a limited portion of the amended Civil Code provisions will be submitted to the Diet.

It seems to be an important step toward legislation, but this draft bill on filiation may represent a response to only a small part of the current controversy around ART in Japan. We have to continue with further discussion in order to advance to the next step of legislation, especially from the point of view of the resulting child and the donor.

V. LIST OF FIGURES

Figure 1: The number of treatments in 2012⁶¹

	fresh embryo (couple's gametes)	frozen embryo (couple's gametes)	frozen oocyte (couple's gametes)	donor insemination (donated sperm)
Cycles	207,337	118,960	129	3,700
embryo transfer	70,522	116,108	28	—
Pregnancies	14,650	39,100	6	226
Babies	10,238	27,711	4	120

61 This figure is based on JSOG, *Acta obstetricia et gynecologica japonica*, 66 (9) (2014) 2450–2454.

Figure 2: The number of IVF centers⁶²

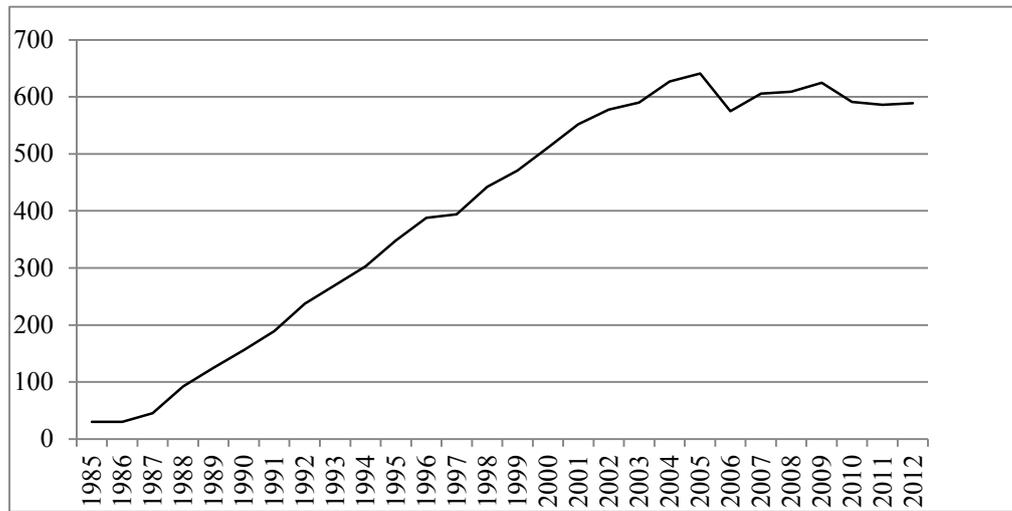
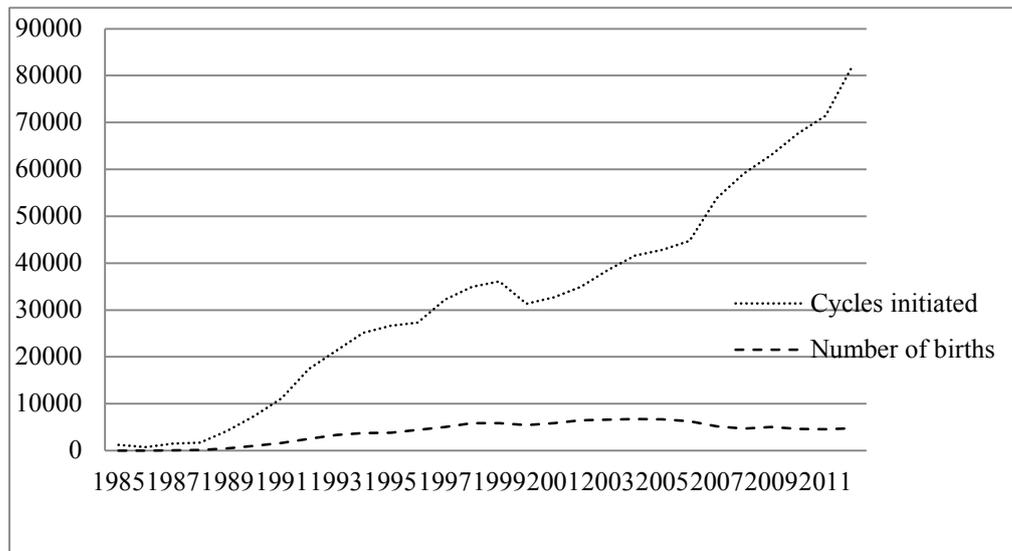


Figure 3: The number of treatment cycles with fresh embryos and live births⁶³



62 This figure is based on JSOG, *Acta obstetricia et gynecologica japonica*, 42 (1990) 393–397; 43 (1991) 470–476; 44 (1992) 499–511; 45 (1993) 397–410; 46 (1994) 929–933; 47 (1995) 444–448; 48 (1996) 365–271; 47 (1997) 697–702; 50 (1998) 267–277; 51 (1999) 361–394; 52 (2000) 962–987; 53 (2001) 1462–1493; 55 (2003) 1272–1287; 57 (2005) 118–146; 57 (2005) 1601–1629; 58 (2006) 1554–1579; 59 (2007) 1717–1739; 60 (2008) 1230–1253; 61 (2009) 1853–1880; 62 (2010) 1821–1849; 63 (2011) 1881–1911; 64 (2012) 2119–2140; 65 (2013) 2083–2115; 66 (2014) 2445–2481.

63 This figure is based on JSOG, *Acta obstetricia et gynecologica japonica*, 66 (9) 2014, 2455.

Figure 4: The number of treatment cycles of ICSI and live births⁶⁴

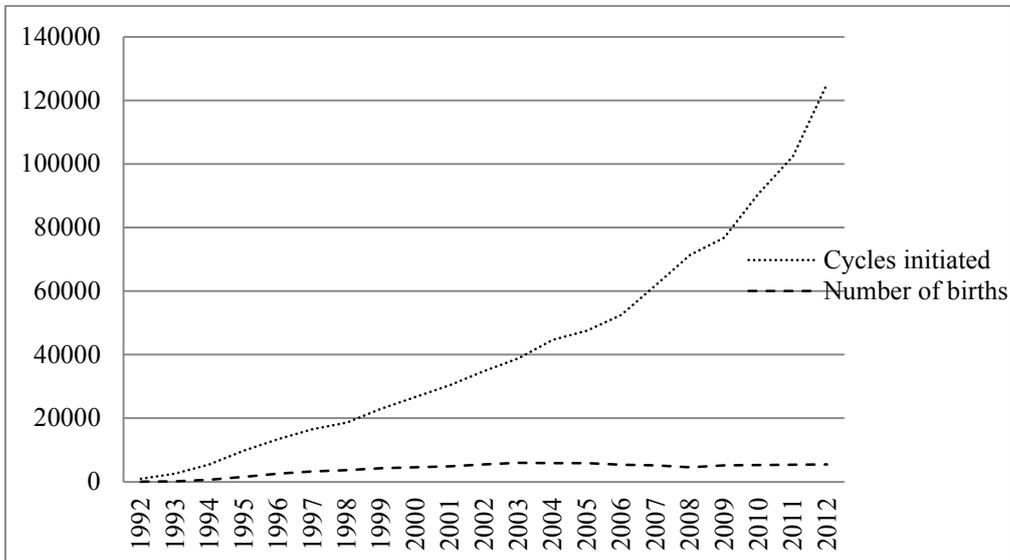
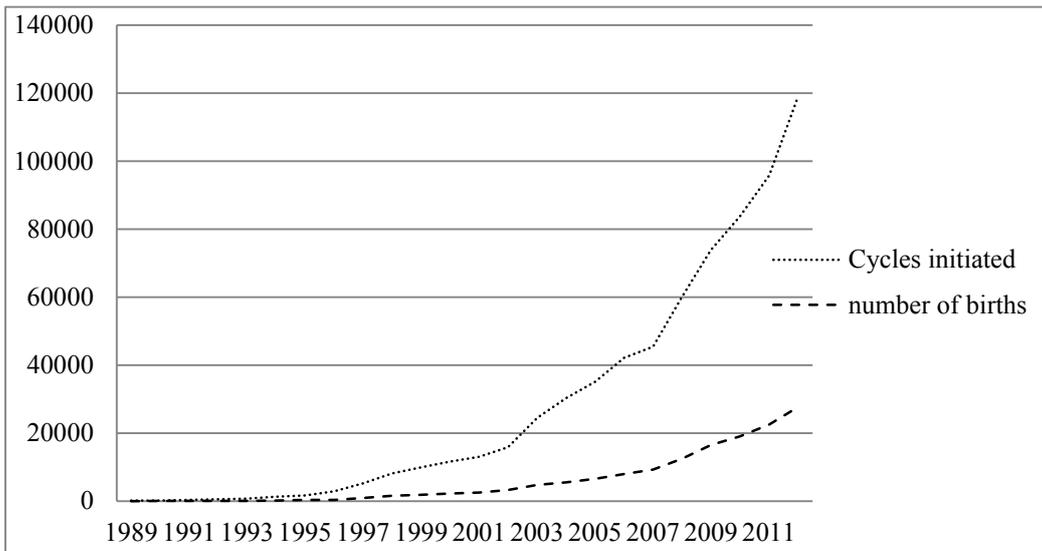


Figure 5: The number of treatment cycles with frozen embryos and live births⁶⁵



64 This figure is based on JSOG, *supra* note 63, 2455.

65 This figure is based on JSOG, *supra* note 63, 2455.

Figure 6: *Act on Special Provisions of the Civil Code concerning Children Born by Assisted Reproductive Technology and Assisted Insemination (draft bill)*

Act on Special Provisions of the Civil Code concerning Children Born by Assisted Reproductive Technology and Assisted Insemination (draft bill) (*Seishoku hojo iryō ni yori shushō shita ko no oyako kankei ni kansuru minpō no tokurei ni kansuru hōritsu an*)

Purpose

Provide the special provisions of the Civil Code (Law No. 89 of 1896), concerning the filiation of offspring born through Assisted Reproductive Technology (ART) and Assisted Insemination (AI), using eggs of a woman other than who gestates, and sperm of man other than the husband of the woman who gestates.

Mother of children born by ART using a third party's eggs

When a woman gestates and gives birth by ART using the eggs of another woman (including embryos obtained from these eggs), the woman who gives birth is regarded as the mother of this offspring.

Prohibition of denial of legitimacy

When a wife gestates by ART and AI using the sperm of a man other than her husband (including embryos obtained from these sperms) with her husband's consent, the husband cannot deny the legitimacy of this offspring notwithstanding the provisions of Civil Code Art. 774.

SUMMARY

This paper reports on the current situation surrounding ART and AI in Japan and discusses the draft bill of the LDP-PT (the Project Team on ART and AI in the Liberal Democratic Party).

In Japan, where childbirth at a later age is broadly observed, ART and AI using a couple's gametes are widely accepted. The number of treatments as well as the number of children born through ART is increasing. Donor insemination has proceeded from 1949 and recent statistics show around 100 babies are born every year by DI. In contrast, egg donation and surrogacy have rarely been practiced with the result that those who seek these treatments go abroad. There is no specific law on ART or AI; therefore statements from JSOG (the Japan Association of Obstetrics and Gynecology) and JSRM (the Japan Society for Reproductive Medicine) play a role as guidelines. According to these statements, married couples can have recourse to IVF, ICSI, and other techniques involving egg collection, using their own gametes and/or donor insemination. In cases of unmarried couples, they can employ IVF, ICSI, and other techniques involving egg collection, only when they use their own gametes. Those who seek to obtain egg donation or employ surrogacy go abroad. Facing this situation, the necessity of creating regulations has been recently pointed out.

At the end of 2013, LDP set up a project team (LDP-PT) to prepare a draft bill on ART and AI. The draft bill proposed by the LDP-PT chair covers donor conception, surrogacy, the right to know donor information, penalties, and the parent-child relationship in respect of donor conception. However, given the pros and cons surrounding surrogacy as drafted by the LDP-PT, it was reported in July 2015 that only a limited portion of Civil Code provisions will be submitted to the Diet. These provisions state that regarding the mother, the woman who gives birth is designated as the mother of this offspring; regarding the father, when a husband consents to obtaining a sperm donor, and his wife gives birth to a child via this donation, he cannot deny the legitimacy of this offspring; in addition, the donor cannot establish filiation in respect of offspring born through his/her gamete donation.

Regarding these draft bills, the following points should be mentioned. First, the LDP-PT's draft bill has a tendency to accept the desire of those who have the intention of becoming parents. Second, the basic principles of ART and AI in general should be discussed in Japan and covered in the law. Third, the specific law on ART and AI should cover treatment using a couple's gametes; as an example, for medical and social reasons we need to decide how to control the private freezing of eggs.

It seems to be an important step toward legislation, but this draft bill on filiation may represent a response to only a small part of the current controversy surrounding ART in Japan. We have to continue with further discussion in order to advance to the next step of legislation, especially from the point of view of the resulting child and the donor.

ZUSAMMENFASSUNG

Der Beitrag stellt die gegenwärtige Situation der ART (assisted reproductive technology, assistierte Reproduktionstechnologie) und AI (assisted insemination, assistierte Befruchtung) in Japan vor und nimmt Stellung zum Gesetzentwurf der LDP-PT (Arbeitsgruppe der Liberaldemokratischen Partei zu ART und AI).

In Japan sind Geburten im fortgeschrittenen Alter weit verbreitet und ART sowie AI mithilfe der Geschlechtszellen des Paares werden allgemein akzeptiert. Die Zahl der Behandlungen nimmt ebenso zu wie die Zahl der durch ART geborenen Kinder. Die Befruchtung mit Spenderzellen (donor insemination, DI) hat seit dem Jahr 1949 zugenommen, und jüngeren Statistiken zufolge werden jedes Jahr etwa 100 Kinder durch DI geboren. Im Gegensatz dazu sind das Spenden von Eizellen und Leihmutterschaft selten, weshalb diejenigen, die ein solches Verfahren wünschen, dafür ins Ausland gehen. ART und AI sind nicht speziell gesetzlich geregelt. Den Stellungnahmen der JSOG (Japan Association of Obstetrics and Gynecology) und der JSRM (Japan Society for Reproductive Medicine) kommt daher die Bedeutung von Richtlinien zu. Ihnen zufolge können verheiratete Paare von IVF (in vitro fertilization, In-vitro-Fertilisation), ICSI (intracytoplasmic sperm injection, intrazytoplasmatische Spermieninjektion) oder anderen Techniken, welche die Eizellentnahme beinhalten, Gebrauch machen und dabei auf eigene

Geschlechtszellen und/oder auf die Befruchtung mit Spenderzellen zurückgreifen. Unverheiratete Paare können von diesen Techniken nur Gebrauch machen, wenn sie auf ihre eigenen Geschlechtszellen zurückgreifen. Diejenigen, welche den Gebrauch von gespendeten Eizellen oder eine Leihmutterschaft in Betracht ziehen, gehen dafür ins Ausland. In Anbetracht dieser Situation wurde in jüngerer Zeit die Notwendigkeit angemahnt, ein passendes Regelwerk zu schaffen.

Ende des Jahres 2013 hat die LDP eine Arbeitsgruppe (LDP-PT) eingerichtet, welche einen Gesetzentwurf zu ART und AI erarbeiten sollte. Der vom Vorsitzenden der LDP-PT vorgelegte Entwurf umfasst die Schwangerschaft durch Spenderzellen, die Leihmutterschaft, das Recht auf Informationen über den Spender, Sanktionen sowie die Eltern-Kind-Beziehung im Fall der Schwangerschaft durch Spenderzellen. Allerdings wurde im Juli 2015 bekannt, dass in Anbetracht der Vor- und Nachteile einer Leihmutterschaft in der von der LDP-PT entworfenen Fassung lediglich ein begrenzter Teil an Vorschriften des Zivilgesetzes diesen Sommer in das Parlament eingebracht werden soll. Diesen Vorschriften zufolge ist Mutter des Kindes diejenige Frau, welche es gebiert; ein Ehemann, welcher der Verwendung von Spenderzellen zustimmt und dessen Ehefrau ein Kind gebiert, kann die Ehelichkeit dieses Kindes nicht anfechten; darüber hinaus kann ein Spender bezüglich des Kindes, welches durch seine Spende geboren wird, nicht die Vaterschaft feststellen lassen.

Im Zusammenhang mit dem Entwurf sollen die folgenden Punkte angesprochen werden. Erstens tendiert der Entwurf der LDP-PT dazu, den Wunsch derjenigen, welche Eltern werden wollen, anzuerkennen. Zweitens sollten die grundlegenden Prinzipien von ART und AI in Japan grundsätzlich diskutiert und gesetzlich geregelt werden. Drittens sollte das Gesetz zu ART und AI auch die Behandlung mit den Geschlechtszellen des Paares umfassen; zum Beispiel ist es aus medizinischen wie gesellschaftlichen Gründen erforderlich zu entscheiden, wie das private Einfrieren von Eizellen geregelt werden soll.

Der Gesetzentwurf zur Abstammung scheint ein wichtiger Schritt in Richtung einer gesetzlichen Regelung zu sein. Allerdings gibt er nur Antwort auf einen kleinen Teil der gegenwärtigen Kontroverse rund um ART in Japan. Wir müssen die Diskussion fortsetzen, um die Gesetzgebung voranzubringen, insbesondere mit Blick auf die Interessen des Kindes und des Spenders.

(Die Redaktion)