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Surrogacy Law: Iran's Framework and Structural Constraints in Indonesia

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ABSTRACT

Surrogacy has been legalized in Iran, the only Muslim-majority country to formally accommodate the practice within its healthcare and legal systems. In contrast, despite a high prevalence of infertility, the Indonesian legal order remains closed to surrogacy due to persistent juridical, ethical, and theological contestation. Existing scholarship has largely examined these jurisdictions in isolation or has focused predominantly on theological prohibition, leaving limited comparative analysis of the structural limits of legal transplantation. Addressing this gap, this study employs a normative-comparative legal method to analyze primary legal materials, including Iran's Civil Code and Indonesian health and family laws. The findings demonstrate that Iran validates surrogacy through Article 10 of its Civil Code and flexible Jaʿfari jurisprudence. Conversely, the study shows that surrogacy in Indonesia is structurally precluded by three interlocking dimensions: civil-contractual incompatibility with the requirement of a lawful cause, restrictive medical-administrative regulations grounded in *mater semper certa est*, and a dominant Sunni legal consensus classifying surrogacy as *zina*, thereby threatening the preservation of lineage (*hifz al-nasl*). This study concludes that Iran's framework cannot be transplanted into Indonesia without fundamentally restructuring civil, medical, and religious legal norms, underscoring the contextual limits of legal transplantation in comparative Islamic bioethics and Indonesian legal reform discourse.

Keywords: Surrogacy; Comparative Islamic Law; *Hifz al-Nasl;* Islamic Bioethics.

A. INTRODUCTION

As Assisted Reproductive Technology (ART) evolves, surrogacy has garnered increasing global attention. Surrogacy is a specific method within In Vitro Fertilization (IVF) where an embryo—fertilized outside the body—is implanted into the uterus of a woman (surrogate) other than the intended mother.[1] Thus, a surrogate mother is defined as a woman who enters into a gestational agreement with a married couple facing pregnancy constraints, in exchange for specific compensation.[2]

Surrogacy generally emerges as an alternative for couples experiencing infertility.[3] Surrogacy is often viewed as both a medical and social solution that can offer hope to couples unable to conceive naturally. Surrogacy practices have been implemented and legalized in several countries, such as India, the United States, the United Kingdom, and Iran, as a medical solution for infertility.[4] Iran presents a compelling case for study as it is the only Muslim-majority country that legalizes and even accommodates surrogacy within its legal and healthcare systems. Based on Ja'fari jurisprudence, which offers greater flexibility in establishing laws for new cases (*nawāzil*), Iran has developed a legal framework permitting surrogacy under judicial and medical supervision.[5] This practice has become an integral part of reproductive health services in various fertility clinics in Iran, thereby providing a relatively established implementation model. Thus, Iran provides an important precedent for analyzing the transplantability of surrogacy regulations to other Muslim jurisdictions.

Unlike Iran, Indonesia has yet to open legal space for surrogacy. Yet, Indonesia experiences a considerably high rate of infertility. Data from the Ministry of Health of the Republic of Indonesia indicates that the prevalence of infertility in Indonesia reaches 10–15% among reproductive-age couples, equating to approximately 4 to 6 million couples.[6] While this statistic signals an urgent need for advanced reproductive solutions, the Indonesian legal system remains restrictive. However, unlike in countries that have legalized it, the discourse on implementing surrogacy in Indonesia

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[1] Cindy Yulia Putri and Sulhi M. Daud Abdul Kadir, "Perspektif Hukum Islam Terhadap Anak Yang Dilahirkan Melalui Ibu Pengganti (Surrogate Mother)," *Zaaken: Journal of Civil and Business Law* 4, no. 2 (2023): 258–72, https://doi.org/10.22437/zaaken.v4i2.26051.

[2] Mimi Halimah, "Pandangan Aksiologi Terhadap Surrogate Mother," *Jurnal Filsafat Indonesia* 1, no. 2 (2018): 51–56, https://doi.org/10.23887/jfi.v1i2.13989.

[3] Orit Chorowicz Bar-Am, "The 'Natural' in the Artificial: Surrogates' Reproductive Literacy in Navigating the Health Care System," *Social Science & Medicine* 384 (November 2025): 118579, https://doi.org/10.1016/j.socscimed.2025.118579.

[4] Made Dinda Saskara Putri and Marzyadiva Camila Mashudi, "Komparasi Praktik Sewa Rahim di Indonesia Dan Iran Dalam Perspektif Hukum Perdata Dan Hukum Islam," *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 4 (2025): 2424–33, https://doi.org/10.38035/rrj.v7i4.1542.

[5] Amir Samavati Pirouz, "Legal Issues of a Surrogacy Contract Based on Iranian Acts Continuation", *Journal of Family and Reproductive Health* 5, no. 2 (June 2011): 41-50.

[6] Kementrian Kesehatan Republik Indonesia, "Establishing Standardized IVF Care in Indonesia," n.d., https://lms.kemkes.go.id/courses/b6bf99b9-cc11-445a-be16-a1941489ffe7.

is heavily contested. Although within the national legal framework and fatwas of the *Majelis Ulama Indonesia (MUI)*—including the Marriage Law, Health Law, and various medical regulations—In Vitro Fertilization (IVF) is permitted, it is restricted to legally married couples using their own genetic materials (sperm and ova), categorically excluding the involvement of a third-party uterus.[7] Consequently, the potential introduction of surrogacy faces multilayered resistance. It is not merely a medical issue but is perceived as a potential disruption to established legal and ethical norms, raising fundamental questions about whether the current Indonesian legal system possesses the structural capacity to regulate such complex arrangements without causing more harm (*mudarat*) than good (*maslahat*).

Several recent studies have examined surrogacy from various perspectives, yet a comprehensive structural comparison remains absent. Regarding the Iranian model, literature reveals a unique legal flexibility grounded in Shi'i jurisprudence. Tavakkoli (2022)[8] provides a profound analysis of how Iranian law redefines "motherhood" based on genetic contribution rather than gestation—a progressive ijtihad that serves as the theological backbone for surrogacy legalization. However, the Iranian model still faces internal challenges. Recent research by Haddadi et al. (2025)[9] highlights that despite legalization, the system is still plagued by significant regulatory gaps, particularly regarding commercialization and the lack of explicit legal protection for surrogate mothers, suggesting that while the framework exists, it is functionally imperfect.

In the Indonesian context, scholars have extensively mapped the normative and theological objections. Sujadmiko et al. (2023)[10] scrutinized the practice through the lens of *Maqasid al-Shari'ah* principles, focusing on how surrogacy interacts with the principle of lineage protection (*hifz al-nasl*). Similarly, Putri and Mashudi (2025)[11] examined the prohibition within the framework of normative Islamic law and the *fatwa* of *Majelis Ulama Indonesia* (MUI), specifically analyzing the issues of lineage (*nasab*) and the potential commodification of the human body. From a civil law standpoint,

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[7] Nasiri Nasiri, "Analysis of Sperm Donor Insemination Based on Perspective of Islamic Criminal Law," *Syura: Journal of Law* 1 (February 2023): 1–11, https://doi.org/10.58223/syura.v1i1.35.

[8] Saeid Nazari Tavakkoli, "The Status of 'Mother' in Gestational Surrogacy: The Shiʿi Jurisprudential Perspective," *Asian Bioethics Review* 14, no. 4 (2022): 337–348, https://doi.org/10.1007/s41649-022-00217-2.

[9] Mohammad Haddadi et al., "Challenges and Prospects for Surrogacy in Iran as a Pioneer Islamic Country in This Field," *Archives of Iranian Medicine* 28, no. 4 (2025): 252–254, https://doi.org/10.34172/aim.33920.

[10] Bayu Sujadmiko et al., "Surrogacy in Indonesia: The Comparative Legality and Islamic Perspective," *HTS Teologiese Studies / Theological Studies* 79, no. 3 (2023), https://doi.org/10.4102/hts.v79i1.8108.

[11] Made Dinda Saskara Putri and Marzyadiva Camila Mashudi, "Komparasi Praktik Sewa Rahim di Indonesia dan Iran Dalam Perspektif Hukum Perdata Dan Hukum Islam," *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 4 (2025): 2424–2433, https://doi.org/10.38035/rrj.v7i4.1542.

Suryadi et al. (2025)[12] analyzed the validity of surrogacy agreements *vis-à-vis* the requirements of the Indonesian Civil Code, specifically questioning the legality of the object of the contract. However, these existing studies tend to address surrogacy in a fragmented manner, focusing either on theological permissibility, ethical considerations, or doctrinal analysis within a single legal system. They have not yet sufficiently examined how the interaction between civil, medical, and religious legal regimes shapes the feasibility of surrogacy regulation across different Muslim-majority jurisdictions.

By observing developments in Iran, Indonesia can obtain a more comprehensive overview of how surrogacy can be regulated, supervised, and executed within a Sharia-based legal system. The concept of potential implementation in comparative legal studies extends beyond mere black-and-white legality, examining instead legal gaps and legal culture. Iran, despite being a theocratic state, has discovered this 'space' through progressive contemporary ijtihad and the flexibility inherent in its Civil Law. Conversely, Indonesia, as a state based on the Pancasila rule of law, demonstrates regulatory rigidity in responding to this biotechnology. The emerging academic question is: Is the closure of the space for surrogacy in Indonesia absolute due to religious dogmatic, or is it procedural, stemming from the absence of a specific civil legal framework comparable to Iran's Embryo Donation Act? This article will dissect these legal interstices.

Beyond its academic relevance, this study carries practical implications for both lawmakers and religious authorities in Muslim-majority jurisdictions. For legislators, the findings clarify that the feasibility of regulating surrogacy is not merely a matter of legislative choice, but is structurally conditioned by underlying civil-law doctrines and medical-administrative frameworks. For religious authorities, the analysis highlights how differing jurisprudential orientations directly shape the legal treatment of assisted reproductive technologies and the protection of lineage (*hifz al-nasl*). By making these structural constraints explicit, this study underscores the importance of doctrinal coherence and institutional alignment in responding to contemporary bioethical challenges.

This article offers three original contributions to the existing scholarship on surrogacy in Muslim jurisdictions. First, unlike studies that examine surrogacy primarily through theological permissibility or ethical debate, this article employs a structural comparative legal analysis to assess the feasibility of legal transplantation between two Muslim-majority legal systems. Second, while existing literature often treats Iran's surrogacy framework as an exceptional model within Islamic law, this

[12] Yohanes I Wayan Suryadi et al., "The Legality of the Surrogate Mother Agreement Reviewed from Indonesian Civil Law," *Lex Publica* 12, no. 1 (2025): 90–117, https://doi.org/10.58829/lp.12.1.2025.279.

study demonstrates that its functionality is contingent upon specific civil-contractual doctrines and Jaʿfari jurisprudential flexibility that are absent in Sunni-based legal systems such as Indonesia. Third, this article advances Indonesian legal discourse by showing that the incompatibility of surrogacy regulation is not merely moral or religious, but structurally embedded in Indonesia's civil, medical, and administrative legal regimes. By doing so, the article reframes surrogacy from a question of ethical debate to a problem of structural legal impossibility within the current Indonesian legal order.

B. RESEARCH METHODS

This research employs a normative-comparative legal method to examine the regulation and practice of surrogacy in Iranian and Indonesian law. This method is considered the most suitable for the present study because the core legal problem concerns the structural compatibility of legal norms, doctrinal principles, and jurisprudential foundations, rather than empirical behavior. The selection of Iran and Indonesia is deliberately restricted to capture a critical legal dichotomy. Iran represents the sole Muslim-majority jurisdiction that has formally integrated surrogacy into its legal and healthcare framework, while Indonesia provides a contrasting prototype where the practice is structurally precluded despite comparable religious demographics. This limitation allows for a focused assessment of structural legal divergence, prioritizing deep institutional analysis over broad regional comparison. Accordingly, this study adopts a structural comparative legal analysis to assess the limits of legal transplantation by examining how civil, medical, and theological fatwas in both jurisdictions interact to either enable or block the practice.

Primary legal materials include: (1) Indonesian legislation such as Law No. 1 of 1974 concerning Marriage, the Health Law, Minister of Health Regulation No. 39 of 2010, the Population Administration Law, and the Compilation of Islamic Law; (2) the Civil Code of Iran 1928, the Embryo Donation Act 2003, and regulations regarding reproductive services; and (3) Islamic legal sources covering the Qur'an, Hadith, jurisprudential maxims, and fatwas from the *Majelis Ulama Indonesia (MUI)* as well as Shiite scholars such as Ayatollah Ali Khamenei and Ayatollah Ali Al-Sistani. Secondary legal materials are sourced from scientific journals, books, research reports, and academic publications discussing surrogacy, lineage, Islamic bioethics, and assisted reproductive practices in Muslim-majority countries. Data collection is conducted through in-depth library research, encompassing the tracing of regulations, court decisions, *fiqh* literature, and empirical studies regarding surrogate mothers in Iran.

All data are analyzed using a structural comparison model, which proceeds in three stages: (1) inventorying and systematizing the regulatory hierarchy in both jurisdictions; (2) interpreting the legal texts through *Maqasid al-Shari'ah* and civil law principles; and (3) evaluating the transplantability of the Iranian model by identifying the specific civil, medical, and theological constraints within the Indonesian legal system.

C. RESULTS AND DISCUSSION

1. Regulation and Practice of Surrogacy in Iran

Although surrogacy in Iran has been openly practiced as a medical service, it is not explicitly regulated within the Civil Code of Iran.[13] However, it deemed admissible under Article 10 of the 1928 Civil Code of Iran, which states: "Private contracts will be effective to those who conclude them if they are not in contrast with the law". This provision establishes a legal basis for private contracts not specifically governed by legislation, provided their substance does not contravene positive law or public order.[14] Given the absence of prohibitive laws, surrogacy agreements are considered valid civil contracts. Zandi and Vanaki (2016) confirm that in the absence of prohibitory laws, both commercial and altruistic surrogacy flourish in Iran, shifting the practice from altruistic assistance to a transactional medical service.[15]

Furthermore, Iran —predominantly adhering to Ja'fari Shi'ism—refers to the fatwas of scholars like Ayatollah Khamenei and Al-Sistani. They declare surrogacy permissible by distinguishing between the concept of an embryo and sperm.[16] They maintain that the use of donor sperm in the fertilization process is invalid if the sperm originates from a male who is not in a marital relationship with the recipient female. Conversely, they legitimize the practice of embryo donation—including the transfer of an embryo into a third-party uterus—provided the embryo is formed from the sperm and ovum of a lawfully married couple.[17] Consequently, grounded in these interpretations and the Embryo Donation Act of 2003, surrogacy is

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[13] Syarif Hidayatullah, *Thesis Submitted to Fulfill One of the Requirements for Obtaining a Bachelor of Laws Degree (S.H.)*, n.d.

[14] Amir Samavati Pirouz, *Legal Issues of A Surrogacy Contract Based on Iranian Acts Continuation*, n.d.

[15] Mitra Zandi and Zohreh Vanaki, "Reproductive Surrogacy in Iran," in *Handbook of Gestational Surrogacy*, 1st ed., ed. E. Scott Sills (Cambridge University Press, 2016), https://doi.org/10.1017/CBO9781316282618.021.

[16] Khamenei A, "KHAMENEI.IR" accessed 27 November 2025, https://farsi.khamenei.ir/treatise-index

[17] Behjati-Ardakani Z, Karoubi MT, Milanifar A, Masrouri R, Akhondi MM. "Embryo Donation in Iranian Legal System: A Critical Review" *J Reprod Infertil* 16, No. 3 (2015): 130-7. PMID: 26913231; PMCID: PMC4508351.

permitted but strictly confined to cases of necessity, primarily infertility. According to Ayatollah Al-Sistani, this restriction exists because the implantation process involves touching and viewing intimate parts of the body. Therefore, surrogacy is only permissible if the married couple faces unavoidable life hardships resulting from said infertility.[18] Farid (2024) elaborates that this permissibility is unique to the Shi'a interpretation which separates "genetic parenthood" from "gestational parenthood". However, he critiques the Embryo Donation Act for failing to explicitly stipulate the surrogate's rights and responsibilities, leaving a significant regulatory gap.[19] Tavakkoli (2022) further notes that Shi'i jurists have developed three theories regarding motherhood, but the dominant view favors the genetic mother (ovum provider), providing the jurisprudential backbone for validating surrogacy contracts.[20]

Several legal rules regarded as requirements for surrogacy in Iran are as follows: (1) Only heterosexual married couples may apply for surrogacy; (2) the signing of a legal contract is mandatory for intended parents and the surrogate mother; (3) upon completion of the surrogacy agreement, the Iranian judicial system recognizes the intended parents as the child's legal guardians; (4) surrogacy is prohibited for single parents, same-sex couples, or unmarried individuals ; and (5) foreign nationals must comply with Iranian legal procedures to secure custody and travel documents for their infants.[21]

Meanwhile, the requirements and criteria for surrogate mothers are specifically regulated as follows: (1) aged between 21 and 35 years; (2) married and having had at least one prior healthy pregnancy; (3) in good physical and mental health; (4) free from chronic health issues or conditions that could complicate pregnancy, and must undergo screening for infectious diseases such as HIV, hepatitis, syphilis, and others; (5) possessing a healthy uterus, confirmed via ultrasound and gynecological examination; and (6) mentally sound, having undergone psychological consultation prior to agreeing to the surrogacy arrangement.[22]

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[18] Al-Sayyid Ali Al-Husseini Al-Sistani, "Question & Answer Artificial Insemination" *The Official Website of the Office of His Eminence*, accessed 27 November 2025, https://www.sistani.org/english/qa/01128/?utm_source=

[19] Md Shaikh Farid, "Ethical Issues in Sperm, Egg and Embryo Donation: Islamic Shia Perspectives," *HEC Forum* 36, no. 2 (2024): 167–85, https://doi.org/10.1007/s10730-022-09498-4.

[20] Nazari Tavakkoli, "The Status of 'Mother' in Gestational Surrogacy."

[21] "Virtual Mentor," n.d., accessed December 20, 2025, https://journalofethics.ama-assn.org/sites/joedb/files/2018-05/ecas2-1401.pdf.

[22] Adrian Ellenbogen et al., "Surrogacy - a Worldwide Demand. Implementation and Ethical Considerations," *GREM - Gynecological and Reproductive Endocrinology & Metabolism*, no. Volume 2 (June 2021): 066–073.

The widespread availability of clinics indicates that surrogacy in Iran has expanded from a niche practice to a medically-based public service accessible even to international patients. The typical clinic process involves: (1) medical evaluation to determine the eligibility of the sperm and egg providers; (2) signing of legal agreements regarding the parties involved, responsibilities, payment structures, and the intended parents' rights regarding the child; (3) fertility treatment to produce embryos via IVF techniques; (4) pregnancy and delivery; (5) legal documentation to confirm the preparation of a birth certificate with the intended parents' names and potential cooperation with embassies requiring travel documents for foreign patients ; and (6) returning home with the baby one week after birth.[23] These all demonstrate the seriousness of Iranian medical institutions in addressing IVF developments.

Although the process is medically well-regulated, the details of the agreement/contract between the intended parents (owners of the gametes) and the surrogate mother are not regulated by the state at all.[24] Surrogacy contracts are drafted by IVF clinics using their own versions and subsequently legalized by a notary public; however, they take the form of personal lease contracts.[25] Potential consequences arising from this legal uncertainty include ambiguity regarding legal protection in disputes, compensation, the surrogate mother's rights in the event of complications, the extent of the intended parents' liability for the surrogate's medical risks.

2. Implications of Surrogacy in Iran on Law and Social Ethics

In the Iranian legal system, the status of a child born through surrogacy is recognized as the legitimate child of the legally married couple, rather than that of the woman who carried the child.[26] This principle derives from the provisions of Articles 1158–1167 of the Civil Code of Iran, which stipulate that a child born within a marriage is considered the legitimate child of said couple.[27] This recognition is subsequently recorded in official civil registration documents, thereby granting the child equal rights regarding lineage, inheritance, education, and social protection.

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[23] FlyToTreat Medical Tourism, accessed 27 November 2025, https://flytotreat.com/article/surrogacy-in- iran?utm_source

[24] Ehsan Shamsi Gooshki and Neda Allahbedashti, "The Process of Justifying Assisted Reproductive Technologies in Iran," *Indian Journal of Medical Ethics*, ahead of print, April 1, 2015, https://doi.org/10.20529/IJME.2015.027.

[25] Sonny Gondo Hudaya and Habib Adjie, "Surrogate Mother "Rental Agreement Made In The Presence Of A Notary," *Iblam Law Review* 4, no. 1 (2024): 562–75, https://doi.org/10.52249/ilr.v4i1.308.

[26] I Wayan Suryadi et al., "The Legality of the Surrogate Mother Agreement Reviewed from Indonesian Civil Law."

[27] Nadjma Yassari, "Iran," in *Filiation and the Protection of Parentless Children: Towards a Social Definition of the Family in Muslim Jurisdictions*, ed. Yassari (T.M.C. Asser Press, 2019), https://doi.org/10.1007/978-94-6265-311-5_4.

Oversight of surrogacy practices is conducted by religious courts and health institutions to ensure compliance with Sharia principles and the protection of child rights.

From the perspective of Ja'fari jurisprudence (*fiqh*), a child born through surrogacy is not considered a child of adultery (*zina*) provided the sperm and ovum used originate from a lawful couple. Surrogacy is deemed religiously permissible when undertaken to address unbearable marital hardships caused by infertility. However, the determination of lineage presents complex legal-ethical dimensions, particularly regarding the determination of the maternal relationship between the egg owner (genetic mother) and the womb owner (gestational mother). Regarding *mahram* (kinship) status, the sperm owner is the legitimate father, and the egg owner is a *mahram* to the child as she is the father's wife. Meanwhile, the womb owner is also a *mahram* to the child because she is akin to a mother.[28]

The social ethical implications of surrogacy in Iran cannot be understood merely as a technical aspect of reproduction, but also as a practice that shifts the moral boundaries between family, religion, and the female body. Ethnographic studies on surrogate mothers in Yazd, Iran, indicate that some surrogates interpret their experience as charity (*amal*), worship (*ibadah*), and a source of lawful income (*halal*), even deriving a sense of pride from helping infertile couples obtain offspring. Simultaneously, however, they live with significant social burdens: fear of negative labeling, societal stigma, lack of understanding from their environment, and the risk of being misunderstood as engaging in immoral acts or the commodification of the female body.[29] This experience highlights an ethical tension between Islamic values emphasizing mutual aid and family sanctity, and the reality that surrogacy introduces "dual motherhood" (genetic and gestational), which can generate confusion regarding the child's identity and destabilize the traditional concept of the Iranian family, which heavily emphasizes the biological mother-child bond as the family's moral foundation.

Surrogacy also transforms a previously deeply private process—pregnancy—into the public-medical sphere, subjecting the female body to regulation, moral judgment, clinical decisions, and contractual transactions, thereby opening risks of objectification and commodification of the womb. Lee (2025) argues that such assisted gestation through incentivization and

[28] Al-Sayyid Ali Al-Husseini Al-Sistani, "Question & Answer Artificial Insemination" *The Official Website of the Office of His Eminence*, accessed 27 November 2025, https://www.sistani.org/english/qa/01128/?utm_source=

[29] Zahra Ghane-Mokhallesouni et al., "Representation of a `positive Experience' of Surrogacy in Yazd, Iran: A Qualitative Study," *International Journal of Reproductive Biomedicine* 20, no. 9 (2022): 769–78, https://doi.org/10.18502/ijrm.v20i9.12067.

compensation inevitably creates a market for "waged reproductive labour", which raises questions about the autonomy of the surrogate versus the financial power of the intended parents. This aligns with the reality in Iran where surrogacy transforms a private process into a public contractual transaction.[30] Legal uncertainty regarding lineage, inheritance, and the status of biological versus gestational parents further amplifies ethical ambiguity, causing society to continue rejecting openness about this practice due to social pressure.[31]

3. Structural Constraints on Surrogacy Implementation in Indonesia

Indonesia exhibits the characteristics of a legal system that tends to firmly preclude any opportunities for the implementation of surrogacy. the analysis demonstrates that the implementation of surrogacy in Indonesia is structurally precluded at least through three interlocking dimensions: the civil-contractual dimension, the medical-administrative dimension, and the theological-sociological dimension.

a. The Civil-Contractual Constraints and Human Rights Concerns

The Indonesian civil law system recognizes the principle of freedom of contract, as stipulated in Article 1338 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*), which states that all agreements legally concluded apply as law to those who made them.[32] If applying the same logic as Article 10 of the Civil Code of Iran, which validates "private contracts", married couples in Indonesia should theoretically have the potential to enter into gestational agreements with third parties. However, this potential implementation is automatically nullified when confronted with the requirements for the validity of an agreement under Article 1320 of the Indonesian Civil Code, specifically the fourth requirement: the existence of a "lawful cause". Prastiyo and Swardhana (2023) strongly argue that legalizing such contracts in Indonesia would not only violate civil norms but could also open a loophole of trafficking. They emphasize that without strict legal barriers, surrogacy could be exploited as a new form of human trafficking, targeting vulnerable women in a developing economy like Indonesia.[33]

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[30] Ji-Young Lee, "Uterus Transplants or Surrogacy? Exploring the Ethics of Assisted Gestation through Incentivization and Compensation," *Monash Bioethics Review*, ahead of print, November 21, 2025, https://doi.org/10.1007/s40592-025-00277-8.

[31] Gooshki and Allahbedashti, "The Process of Justifying Assisted Reproductive Technologies in Iran." *Indian Journal of Medical Ethics*, https://doi.org/10.20529/IJME.2015.027

[32] Kementerian Kesehatan Republik Indonesia, *Peraturan Menteri Kesehatan Republik Indonesia Nomor 39 Tahun 2010 tentang Penyelenggaraan Teknologi Reproduksi Berbantu* (Jakarta: Kementerian Kesehatan Republik Indonesia, 2010).

[33] Wawan Edi Prastiyo and Gde Made Swardhana, "The Opportunities for Surrogacy Legalization Between the Right to Have Children and A Loophole of Trafficking," *Padjadjaran Journal of Law* 10, no. 2 (2023): 194–213, https://doi.org/10.22304/pjih.v10n2.a3.

Article 1337 of the Indonesian Civil Code elucidates that a cause is prohibited if it is contrary to the law, morality, or public order.[34] This is where the primary structural barrier to surrogacy in Indonesia lies. The object of the agreement in surrogacy is the female uterus and the human reproductive process. Within the legal and moral construction of Indonesia, the human body is not a commodity or a material object that can be leased or traded. Agreements that position reproductive function as an object of transaction are deemed to violate the principles of morality and public order.

This stands in diametrical contrast to Iran, where the absence of specific prohibitions renders such contracts valid. In Indonesia, the absence of specific regulations regarding surrogacy contracts is instead interpreted as an absence of legitimacy, because public moral principles reject the commodification of the body. Article 5 of the Manpower Law also asserts that work must not degrade human dignity; thus, an "employment agreement" that turns the womb into a means of production or an object of work cannot be legally justified. Consequently, although the principle of freedom of contract exists, its potential implementation is blocked by the thick wall of moral norms that view surrogacy as a form of degradation of women's dignity.

b. Medical and Administrative Paradigms

The potential implementation of surrogacy narrows further when examining the restrictive health regulations and population administration laws. The Government of Indonesia, through the Ministry of Health, has established firm limitations within Minister of Health Regulation Number 39 of 2010 concerning the Administration of Assisted Reproductive Technology.[35] This regulation explicitly permits assisted reproductive techniques (such as IVF) only if the sperm and ovum originate from a legally married couple and, most crucially, the embryo must be implanted into the wife's own uterus. This rule underscores that the medical paradigm in Indonesia views reproductive technology merely as an "aid" to natural processes within the framework of an intact marriage, rather than as reproductive engineering involving a third party. Unlike Iran, which has institutionalized surrogacy to the extent that it has become a public medical service in various fertility clinics, Indonesian health law precludes the possibility of clinics or medical personnel facilitating this practice. Violations of this provision not only carry administrative implications for health professionals but may also be deemed ethical malpractice.

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[34] Subekti, *Kitab Undang-Undang Hukum Perdata Pasal 1337*, (Jakarta: Pradnya Paramita, 2009).

[35] Kementrian Kesehatan Republik Indonesia, *Peraturan Menteri Kesehatan Republik Indonesia Nomor 39 Tahun 2010 Tentang Penyelenggaraan Teknologi Reproduksi Berbantu*, (Jakarta: Kementrian Kesehatan Republik Indonesia, 2010).

Barriers to implementation also arise from the aspect of population administration, which adheres to the principle of *mater semper certa est* (the mother is always certain; i.e., the woman who gives birth). Article 27 paragraph (1) of Law Number 24 of 2013 concerning Population Administration stipulates that birth registration is based on a birth notification from the hospital or birth attendant, which records the woman who gives birth as the legal mother.[36] The legal consequences are fatal for the potential implementation of surrogacy: if this practice were undertaken, the child would be legally registered by the state as the child of the surrogate mother, not the child of the intended parents.

Articles 42 and 43 of Law Number 1 of 1974 concerning Marriage reinforce this by stating that a legitimate child is a child born within a lawful marriage, and a child born out of wedlock possesses a civil relationship only with its mother.[37] This implies that there is no legal mechanism in Indonesia permitting the automatic transfer of the child's civil rights from the birth mother to the genetic mother, as occurs in Iranian courts. Klitzman (2025) points out that in the absence of comprehensive regulations (as seen in many countries), the practice of gestational surrogacy creates complex ethical and legal voids regarding parentage.[38] The absence of mechanisms for prenatal adoption or the transfer of lineage renders the position of the intended parents highly vulnerable and devoid of any legal protection.

c. The Construction of *Nasab* and *Hifz al-Nasl*: A Theological-Sociological Review

The majority of Indonesian society, adhering to Sunni Islam (Shafi'i school), holds a view distinct from the Ja'fari jurisprudence followed in Iran. In Iran, scholars distinguish the legal ruling between sperm and embryos, rendering embryo donation legally valid. Conversely, in Indonesia, the *Majelis Ulama Indonesia (MUI)*, through Fatwa No: KEP-952/MUI/XI/1990, has effectively closed the door to this ijtihad by declaring that artificial insemination using donor sperm or ova, or the use of a surrogate uterus, is religiously forbidden (*haram*).[39]

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[36] Republik Indonesia, *Undang-Undang Nomor 24 Tahun 2013 tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan, Pasal 27 ayat (1)*, (Jakarta: Republik Indonesia, 2013).

[37] Atikah Nagib, *The Legal Consequences of Serial Marriage For Wives And Children Are Reviewed From The Constitutional Court Decision Number 46/Puu-Viii/2010 And The Compilation Of Islamic Law On The Civil Of Children Against Fathers In Serial Marriages*, 3, no. 1 (2023): 119–27.

[38] Robert Klitzman, "Gestational Surrogacy, the Pope, and Needs for Regulations," *Journal of Law, Medicine & Ethics* 53, no. 2 (2025): 221–26, https://doi.org/10.1017/jme.2025.66.

[39] Majelis Ulama Indonesia, "Fatwa MUI tentang Bayi Tabung/Inseminasi Buatan" *Fatwa MUI No. 952*, (1990).

The theological foundation employed is robust, specifically the Hadith of the Prophet Muhammad Saw. as follows.

لَا يَحِلُّ لِامْرِئٍ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ يَسْقِيَ مَاءَهُ زَرْعَ غَيْرِهِ

"It is not lawful for a man who believes in Allah and the Last Day to water the crop of another man with his water (sperm)."

The MUI and the majority of Islamic organizations in Indonesia classify surrogacy as an act tantamount to adultery (*zina*), as it involves the introduction of a male's genetic material into the womb of a woman who is not his wife, even without sexual intercourse. The consequence of this fatwa is that a child born of surrogacy is regarded as an illegitimate child (child of *zina*) who possesses no lineage relationship, legal guardianship for marriage (*wali*), or inheritance rights with the biological father.[40] Within classical *maqāṣid al-sharīʿah* theory, al-Shāṭibī identifies the protection of lineage (*hifẓ al-nasl*) as a fundamental legal objective aimed at preserving the clarity and certainty of parentage in order to prevent social and legal harm.[41] From this perspective, the involvement of a third-party womb in surrogacy arrangements is viewed as undermining the certainty of nasab, which helps explain the persistent resistance to surrogacy within Sunni-based legal frameworks. Fadhilah et al. (2025) reinforce this by highlighting that Sunni jurisdictions, including Indonesia, enforce stringent bans to maintain clear parental lineage and protect the sanctity of marriage. They argue that in the Sunni ethical framework, the introduction of a third party in reproduction is fundamentally incompatible with Islamic family law, as it disrupts the exclusive marital bond required for legitimate procreation.[42] In a society that highly upholds *hifz al-nasl* (preservation of progeny) as one of the primary objectives of Sharia, the status of an illegitimate child constitutes a severe social stigma and serves as the greatest cultural barrier to the implementation of surrogacy.

Beyond the theological aspect, social ethical and sociological aspects in Indonesia are also unsupportive. There are significant concerns regarding the potential exploitation and commercialization of the female body. Within Indonesia's disparate socio-economic structure, it is feared that surrogacy will create an unbalanced transactional relationship between wealthy women (commissioners) and poor women (surrogates). The womb is potentially

[40] Majelis Ulama Indonesia, "Fatwa MUI tentang Bayi Tabung/Inseminasi Buatan"

[41] Abū Isḥāq Ibrāhīm ibn Mūsā Al-Shāṭibī, *Al-Muwāfaqāt Fī Uṣūl al-Sharīʿah*, vol. 2 (Beirut: Dar al-Ma'rifah, 1996).

[42] Nur Fadhilah et al., "Reconciling Surrogacy with Islamic Ethics: Maqāṣid al-Sharīʿa, Ijtihad, and Contemporary Legal Debates," *Sakina: Journal of Family Studies* 9, no. 2 (2025): 165–86, https://doi.org/10.18860/jfs.v9i2.15157.

reduced to a mere means of production for financial gain, which contradicts the noble values of Pancasila and Eastern culture that place mothers in a highly revered position.[43] Unlike the narrative in Iran, where some surrogate mothers view it as an act of worship (*ibadah*) or charity to help others, the prevailing narrative in Indonesia tends to view it as a form of disgrace or self-commodification. Therefore, from the perspectives of bioethics and the sociology of law, the Indonesian socio-legal environment is not conducive to the implementation of this practice due to the magnitude of societal moral resistance.

D. CONCLUSION

The comparative study reveals that Iran has successfully institutionalized surrogacy by leveraging a unique combination of flexible civil law and progressive religious jurisprudence. The practice is legally grounded in Article 10 of the Civil Code of Iran, which validates private contracts not explicitly prohibited by law, effectively accommodating surrogacy agreements between commissioning couples and surrogate mothers. This legal framework is bolstered by Ja'fari Shiite fatwas, notably from Ayatollahs Khamenei and Al-Sistani, which distinguish between sperm and embryos, thereby permitting embryo transfer into a third-party uterus as a necessity for treating infertility. However, while the medical implementation is robust, the state's lack of specific regulation regarding the details of surrogacy contracts creates a legal gray area, leaving parties vulnerable to disputes regarding compensation and liability.

Regarding the implications within Iran, the legal system ensures the legitimacy of children born through surrogacy, attributing lineage to the intended parents rather than the gestational carrier, thus securing the child's rights to inheritance and social protection. While religiously cleared of adultery (*zina*) charges, the practice introduces significant ethical and social complexities. There exists a profound tension between the religious reframing of surrogacy as an act of worship (*ibadah*) or charity and the societal reality of stigma and potential commodification of the female body. The emergence of dual motherhood challenges traditional family structures and subjects the private sphere of pregnancy to public medical regulation and contractual transaction, raising concerns about the objectification of women.

In stark contrast, the analysis demonstrates that the implementation of surrogacy in Indonesia is structurally precluded by interlocking civil, medical, and theological barriers. Legally, surrogacy contracts violate Article 1320 of the Indonesian Civil Code regarding "lawful cause" as the commercialization of the womb contravenes public

[43] Angly Branco Ontolay, "Hak dan Kewajiban Orang Tua dan Anak Ditinjau dari Pasal 45 juncto 46 Uindang-Undang Nomor 1 Tahun 1974" *Lex Privatum* 7, No. 3 (March 2019): 111-118.

order and morality. Medically and administratively, regulations restrict IVF to married couples using their own genetic material and adhere to the principle of *mater semper certa est*, which denies legal recognition of the intended parents. Theologically, the Sunni consensus represented by the MUI fatwa classifies surrogacy as akin to adultery (*zina*), threatening the preservation of lineage (*Hifz al-Nasl*). Consequently, due to these legal impediments and the high magnitude of societal moral resistance against the exploitation of women, the Indonesian socio-legal environment remains fundamentally non-conducive to the adoption of surrogacy practices.

This study acknowledges several limitations. First, as a normative legal research, it relies primarily on statutes and fatwas, thus, it does not capture the clandestine practices of surrogacy that may exist in Indonesia's underground economy. Second, the comparison is strictly bilateral between Iran and Indonesia, without considering other Muslim countries that might offer different jurisprudential perspectives. Based on these findings and limitations, it is recommended that the Indonesian House of Representatives (*Dewan Perwakilan Rakyat*) and the Ministry of Health explicitly address surrogacy in future Health Law revisions to provide legal certainty, rather than leaving it in a regulatory vacuum. Furthermore, for future researchers, empirical studies on the psychological impact of infertility and the sociology of clandestine surrogacy in Indonesia are suggested to provide a broader basis for this. legal debate.

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