



Surrogacy Laws in Indonesia, Iran, and India: A Comparative Analysis of Legal Protections for Surrogate Mothers and Children

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Abstract

This study investigates Indonesia's absence of a comprehensive surrogacy framework, a gap that leaves surrogate mothers and children in legal limbo and social precarity. By contrast, Iran authorizes surrogacy through Shia jurisprudence and enforceable contracts, while India governs the practice via the Surrogacy (Regulation) Act 2021, allowing only altruistic arrangements and banning commercial transactions. Using normative legal research and a comparative approach, the analysis synthesizes statutory provisions, religious edicts, and judicial precedents and evaluates enforcement mechanisms alongside socio-ethical implications across the three systems within diverse cultural, religious, and regulatory environments and illustrates divergent policy rationales. Findings show that Indonesia's outright prohibition, unaccompanied by detailed implementing rules, denies parties any legal protection, whereas Iran and India offer more structured, coherent safeguards. The study therefore urges Indonesia to draft a rights-based, culturally responsive regulatory framework that harmonizes domestic values with international human rights standards. Such legislation is essential to secure legal certainty, uphold ethical principles, encourage transparent medical practice, and protect the most vulnerable actors, especially surrogate mothers and the children born through surrogacy arrangements.

Keywords: Surrogacy, Legal protection, Children's right, Family law

Abstrak

Penelitian ini mengkaji ketidakhadiran kerangka surrogasi yang komprehensif di Indonesia, sebuah kesenjangan yang menyebabkan ibu pengganti dan anak-anak berada dalam ketidakpastian hukum dan ketidakstabilan sosial. Sebagai perbandingan, Iran mengizinkan surrogasi melalui hukum Syiah dan kontrak yang dapat diterapkan, sementara India mengatur praktik ini melalui Undang-Undang Surrogasi (Regulasi) 2021, yang hanya memperbolehkan pengaturan altruistik dan melarang transaksi komersial. Dengan menggunakan penelitian hukum normatif dan pendekatan komparatif, analisis ini menyintesis ketentuan perundang-undangan, fatwa agama, dan preseden yudisial serta mengevaluasi mekanisme penegakan bersama implikasi sosial-etik di tiga sistem hukum yang berbeda dalam lingkungan budaya, agama, dan regulasi yang beragam serta menggambarkan rasionalisasi kebijakan yang berbeda. Temuan penelitian menunjukkan



bahwa larangan mutlak Indonesia, yang tidak disertai dengan aturan pelaksanaan yang rinci, mengabaikan perlindungan hukum bagi pihak-pihak terkait, sementara Iran dan India menawarkan perlindungan yang lebih terstruktur dan koheren. Oleh karena itu, penelitian ini mendorong Indonesia untuk menyusun kerangka regulasi berbasis hak yang responsif terhadap budaya yang mengharmoniskan nilai-nilai domestik dengan standar hak asasi manusia internasional. Undang-undang semacam itu sangat penting untuk memastikan kepastian hukum, menjunjung prinsip etika, mendorong praktik medis yang transparan, dan melindungi pihak yang paling rentan, terutama ibu pengganti dan anak-anak yang lahir melalui pengaturan surrogasi.

Kata Kunci: Surrogasi, Perlindungan hukum, Hak anak, Hukum keluarga

Introduction

The advancement of assisted reproductive technologies (ART) has significantly reshaped the global landscape of infertility treatment.¹ Among its innovations, surrogacy has emerged as one of the most debated and ethically complex methods. Surrogacy is a reproductive arrangement in which a woman, known as a surrogate mother, carries and delivers a child. She does so on behalf of another individual or couple. This practice offers renewed hope for couples who cannot conceive naturally. However, it also raises serious legal, ethical, and social challenges, particularly in countries without clear regulations.

Although closely related to in vitro fertilization (IVF), surrogacy is distinguished by the involvement of a third-party uterus, making the surrogate the gestational carrier. This arrangement creates medical and biological complexities. It also raises legal uncertainties, especially when examined under Indonesia's Law No. 17 of 2023 on Health.² A surrogate mother is generally understood as a woman who enters into a gestational agreement with an intended couple, undertaking to carry and give birth to a child for them. When such agreements include financial compensation beyond medical costs, they raise concerns. These include the commodification of the human body and reproductive functions, which may conflict with societal morals and public interest.³ Surrogacy is typically characterized by an arrangement in which a woman becomes pregnant using gametes from another couple and, upon birth, transfers parental rights to the commissioning parents.⁴ As global demand for alternative reproductive methods increases, surrogacy has become the subject of intense legal and ethical scrutiny. Legal responses vary widely across countries. In Iran, surrogacy is permitted under the auspices of Shia jurisprudence and legitimized through enforceable contractual arrangements. In contrast, India regulates surrogacy under a strict statutory regime, the Surrogacy (Regulation) Act of 2021, which allows only altruistic and domestic arrangements, explicitly prohibiting commercial and international surrogacy.

¹ Ridwan Abdullah Putra et al., "Infertilitas , Teknologi Reproduksi Berbantu, dan Penggunaan Kecerdasan Buatan : Suatu Tinjauan Etika Kedokteran," *Jurnal Etika Kedokteran Indonesia* 9, no. 1 (2025): 23–28, <https://doi.org/10.26880/jeki.v9i1.87>.

² Vicky Chrisna Vorty and Kartika Dewi Irianto, "Perlindungan Hukum Terhadap Para Pihak Dalam Perjanjian Sewa Rahim (Surrogate Mother) Ditinjau Dari Perspektif Hukum Positif," *INNOVATIVE: Journal Of Social Science Research* 5 (2025): 1129–42.

³ Desriza Ratman, *Surrogate Mother Dalam Perspektif Etika Dan Hukum* (Jakarta: Elex Media Komputindo, 2012): 38.

⁴ Rospita Adelina Siregar, *Hukum Kesehatan Jilid II*, ed. Ani Wijayati, II (Jakarta: UKI PRESS, 2021): 108.

Indonesia, however, remains without specific legislation governing surrogacy, creating a legal vacuum that leaves surrogate mothers and the children born through such arrangements exposed to exploitation and uncertainty regarding legal status. This lack of explicit legal protection raises serious human rights concerns. Legal protection in this context involves safeguarding the inherent dignity and rights of all individuals, particularly children, who must be protected under all circumstances, whether in institutional, formal, or informal settings.⁵ As inherently vulnerable individuals, children must be protected at all times, regardless of whether they are in institutional, formal, or informal environments.⁶

This statement emphasizes the importance of having a strong and comprehensive legal framework that is tailored to their specific vulnerabilities.⁷ Some jurisdictions have general legal norms. However, surrogate mothers and children still face serious barriers when seeking justice and legal remedies.⁸ This indicates that simply having legislation is not enough. Genuine protection demands not only clearly defined legal provisions, but also strong institutional oversight, reliable enforcement mechanisms, and accessible channels for redress. In the absence of these critical components, the risks of exploitation and legal ambiguity persist, ultimately undermining the core principles of justice, human dignity, and the rule of law in the context of reproductive arrangements.⁹

Numerous prior studies have examined surrogacy from legal, ethical, and sociocultural perspectives. Mohammad Haddadi et al. (2025), for instance, analyzed the legal status of surrogacy in Iran, emphasizing the country's formal recognition of the practice in 2003 through a legal framework rooted in Shia jurisprudence.¹⁰ Their findings reveal that contractual agreements between intended parents and surrogate mothers are legally valid under both religious and civil law, positioning Iran as a pioneering case among Muslim-majority nations. However, the scope of the study is limited to Iran's domestic context and does not extend to a comparative examination of other legal systems.

Similarly, Yuri Hibino (2023) investigated India's transition from commercial to altruistic surrogacy, culminating in the enactment of the Surrogacy (Regulation) Act of

⁵ Kadek Mahadewi, I Wayan Rideng, and Ida Ayu Putu Widiati, "Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Dari Perspektif Kemerdekaan Pers," *Jurnal Konstruksi Hukum* 2, no. 2 (2021): 233–37, <https://doi.org/10.22225/jkh.2.2.3212.233-237>.

⁶ Dani Krisnawati and Ria Restu Wikansari, "Addressing the Challenges in Protecting Child Victims of Sexual Violence within Non-Formal Education Institutions," *Sriwijaya Law Review* 8, no. 2 (2024): 249–68, <https://doi.org/10.28946/slrev.Vol8.Iss2.2987.pp249-268>.

⁷ Kadek Januarsa Sudharma, Ida Artami, and Baby Rachella, "Tinjauan Yuridis Perlindungan Hukum Hak Cuti Haid Dalam Undang-Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan," *Vyavahara Duta* 16 (March 31, 2021): 1, <https://doi.org/10.25078/vd.v16i1.2068>.

⁸ A. H. Asari Taufiqurrohmah, Dwi Edi Wibowo, and Ong Victoria, "The Regulation on Sexual Harassment in ASEAN Workers: Evidence from Several Countries," *Journal of Human Rights, Culture and Legal System* 4, no. 2 (2024): 538–68, <https://doi.org/10.53955/jhcls.v4i2.198>.

⁹ Nurani Ajeng Tri Utami et al., "Evaluation of Legal Aid Service Quality and Supervision in Indonesia and Malaysia," *Journal of Human Rights, Culture and Legal System* 5, no. 1 (2025): 187–216, <https://doi.org/10.53955/jhcls.v5i1.502>.

¹⁰ 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): 252–54, <https://doi.org/10.34172/aim.33920>.

2021.¹¹ His research offers valuable insights into the legislative rationale behind this shift and its implications for key stakeholders. Nonetheless, the study remains confined to national developments and does not address cross-jurisdictional legal frameworks or comparative protections.

In his article "*Pandora's Box in Surrogacy: The Paradox of Legal Altruism and the Threat of Human Trafficking*," Najib A. Gisymar draws attention to the potential risks posed by altruistic surrogacy, particularly its vulnerability to exploitation and human trafficking in developing countries. He advocates for stronger legal safeguards for both surrogate mothers and the children born through such arrangements. While the article raises important ethical and legal concerns, it is constrained by several limitations: the absence of empirical data, insufficient discussion of differing legal systems, and a lack of concrete policy proposals. Despite these limitations, the study contributes meaningfully to the global debate on the legal regulation of surrogacy.¹²

From an Islamic legal standpoint, Cindy Yulia Putri and Sulhi M. Daud Abdul Kadir (2023) examined the status of children born through surrogacy in Indonesia. Drawing upon the Indonesian Ulema Council (MUI) Fatwa No. KRP-952/MUI/XI/1990, they conclude that children born to surrogate mothers who are not legally married to the biological father are deemed illegitimate (*anak zina*).¹³ While this study offers important insights into Islamic jurisprudence, it does not engage with broader legal protections or provide a comparative analysis across legal systems.

Niken Amalya Putri and Mahlil Adriaman (2024) investigated the legal validity of surrogacy contracts under Indonesian civil law. Their analysis suggests that such agreements may be deemed void *ab initio*, as their object contravenes the provisions of the Indonesian Civil Code (KUHPerduta).¹⁴ While the study contributes to discussions on contract enforceability, it does not address child protection mechanisms nor engage in cross-jurisdictional legal comparisons.

Unlike previous studies, this research uses a holistic and comparative approach. It focuses on the legal systems of Indonesia, Iran, and India, particularly on how they protect surrogate mothers and children as vulnerable legal subjects. Utilizing a normative-comparative methodology, this study integrates elements of positive law, Islamic jurisprudence, and theories of social justice, particularly those advanced by Philipus M. Hadjon, John Rawls, and Roscoe Pound. This research is novel in its mapping of surrogacy regulations across three legal traditions: spiritual (Iran), civil (India), and hybrid (Indonesia). It also emphasizes the urgent need for Indonesia to adopt a human rights based legal framework. This study seeks to address a critical gap in the existing literature, as neither

¹¹ Yuri Hibino, "The Advantages and Disadvantages of Altruistic and Commercial Surrogacy in India," *Philosophy, Ethics, and Humanities in Medicine* 18, no. 1 (2023): 1-10, <https://doi.org/10.1186/s13010-023-00130-y>.

¹² Najib A Gisymar et al., "Pandora ' s Box in Surrogacy : The Paradox of Legal Altruism and the Threat of Human Trafficking," *LEGAL BRIEF* 14, no. 1 (2025): 34-40.

¹³ 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 (June 26, 2023): 258-72, <https://doi.org/10.22437/zaaken.v4i2.26051>.

¹⁴ Niken Amalya Putri and Mahlil Adriaman, "Tinjauan Yuridis Perjanjian Sewa Rahim Dilihat Dari Perspektif Hukum Perdata Di Indonesia," *Sakato Law Journal* 2, no. 2 (2024): 84.

Indonesian national legislation nor prevailing religious fatwas provide comprehensive legal safeguards for the parties involved in surrogacy arrangements.

In practice, children born through surrogacy are living individuals whose rights to identity, lineage, inheritance, and general well-being must be legally recognized and protected. The absence of explicit legal provisions concerning their legal status within Indonesia's national framework has created serious legal and social challenges. These include ambiguity regarding civil registration, the risk of abandonment, and potential violations of core child rights. Although Law No. 35 of 2014 on Child Protection guarantees equal rights for all children, it does not explicitly regulate complex legal issues arising from assisted reproductive technologies (ART), including surrogacy. As emphasized by Philipus M. Hadjon, legal protection is vital for vulnerable groups, including women, children, the poor, and minorities to ensure their rights are respected and upheld in the pursuit of dignity and justice.¹⁵

This concern is echoed in the Regional Strategic Framework for Accelerating Universal Access to Sexual and Reproductive Health in the WHO South-East Asia Region (2020–2024), where the World Health Organization (WHO) raises alarm over the ethical and legal consequences of surrogacy and other ART practices. The WHO encourages member states to review and revise existing laws, guidelines, and clinical standards, and to establish dedicated regulations governing surrogacy. This directive is explicitly stated under the section “Priority Actions for WHO,” which recommends: “Review and revise or develop laws related to ART and regulations related to surrogacy.”¹⁶

The absence of a dedicated regulatory framework significantly heightens the risk of human rights violations, particularly affecting women and children involved in surrogacy arrangements. In Indonesia, the Indonesian Ulema Council (Majelis Ulama Indonesia, MUI), through Fatwa No. 4 of 2006, has declared surrogacy *haram* (forbidden) under Islamic law. Nevertheless, there remains a lack of comprehensive normative legal research that systematically compares the legal protection mechanisms available to surrogate mothers and children across the jurisdictions of Indonesia, Iran, and India.

This research adopts a normative legal methodology combined with a comparative legal analysis. Normative legal research conceptualizes law as a system of written norms derived from statutory instruments, legal doctrines, and judicial precedents. Unlike empirical legal studies, the doctrinal method aims to examine legal systems, interpret legal principles, and construct theoretical and prescriptive arguments within an established conceptual framework. It is particularly suited to addressing legal uncertainties and formulating policy recommendations based on normative consistency and doctrinal coherence. In this context, law is treated as a normative system that governs social conduct and functions as a standard-setting mechanism within society. As articulated by Soerjono Soekanto and Sri Mamudji, normative legal research primarily relies on secondary legal

¹⁵ Kornelis Antonius Ada Bediona et al., “Analisis Teori Perlindungan Hukum Menurut Philipus M Hadjon Dalam Kaitannya Dengan Pemberian Hukuman Kebiri Terhadap Pelaku Kejahatan Seksual,” *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 2, no. 01 (2024): 1–19, <https://doi.org/10.11111>

¹⁶ Sakinah Pokhrel, *Regional Strategic Framework For Accelerating Universal Access To Sexual And Reproductive Health In The WHO South-East Asia Region 2020–2024*, vol. 15 (World Health Organization, 2020): 15.

materials, including legislation, scholarly commentary, religious fatwas, and judicial rulings, which serve as core references for legal analysis and interpretation.¹⁷

This study addresses a significant gap in the current body of literature by conducting a comparative examination of legal protection mechanisms for surrogate mothers and children in Indonesia, Iran, and India. It aims to identify deficiencies in Indonesia's existing legal regime and offer practical, context-sensitive policy recommendations for legal reform. By placing surrogate mothers and children at the center of legal inquiry as vulnerable subjects in need of protection, this research contributes a novel perspective to the academic discourse. It does so by integrating positive legal norms, religious legal values, and theories of social justice within a cross-jurisdictional analytical framework.

Comparison of Surrogacy Regulations

The legal regulation of surrogacy, and the corresponding protections for surrogate mothers and children, varies considerably across Indonesia, Iran, and India. This study draws on H. Patrick Glenn's comparative law framework, which emphasizes that comparative legal analysis is a critical tool for national legal reform. It provides strategic insights into diverse legal traditions and contributes to the development and renewal of domestic legal systems.¹⁸ In Indonesia, there is currently no specific legislation addressing surrogacy. Although existing regulations effectively prohibit the practice, they create a legal vacuum. This absence of clear legal provisions leads to uncertainty regarding the legal status of children born through surrogacy and leaves surrogate mothers vulnerable to exploitation.

In cases where there is a legal or statutory vacuum, Indonesian judges are bound by the principle of *ius curia novit*, the presumption that the court knows the law. Judges are not permitted to decline adjudication due to legal ambiguity or the absence of specific statutory provisions. Legal scholar Paul Scholten argues that when normative gaps arise, judicial authorities must rely on legal reasoning, fundamental principles, and interpretive jurisprudence to resolve the issue.¹⁹ In the context of surrogacy, Indonesia's legal uncertainty underscores the urgent need for clear statutory regulation. Without a comprehensive legal framework, both policymakers and legal practitioners must turn to broader legal principles, particularly those grounded in human rights, and look to comparative legal experiences from other jurisdictions. Such an approach is essential to promote legal certainty and to protect the rights of vulnerable parties involved in surrogacy arrangements.

Under Indonesia's national health law, surrogacy is explicitly prohibited. Although the term "surrogacy" is not always directly stated, the underlying provisions clearly reflect a legislative intent to ban the practice. Law No. 17 of 2023 on Health permits assisted reproductive technologies (ART) only for legally married couples. Furthermore, it mandates

¹⁷ Iman Jalaludin Rifa'i, *Merupakan Jenis Penelitian Hukum Normatif*, ed. Anik Iftitah (Serang: Sada Kurnia Pustaka, 2023): 6.

¹⁸ Patrick Glenn, *Aims of Comparative Law in Jan Smits, Encyclopedia of Comparative Law* (New York: Edward Elgar Publishing, 2006): 9.

¹⁹ Shidarta, "In Search of Scholten's Legacy: The Meaning of the Method of *Rechtsvinding* for the Current Indonesian Legal Discourse," *In Search of Scholten's Legacy DPSP Annua* (December 1, 2020): 197-237.

that embryos created using the couple's own gametes must be implanted exclusively into the uterus of the wife.²⁰

Article 58(a) of the Health Law explicitly prohibits the involvement of any third party, such as a surrogate mother, by requiring that embryo implantation must occur solely in the uterus of the lawful wife. This restriction is further reinforced by Government Regulation No. 28 of 2024, which serves as an implementing regulation for the Health Law. Article 111(2) of the regulation confirms that ART procedures may use only the sperm and ovum of a legally married couple and that implantation must occur in the wife who provided the ovum. Likewise, Article 112(3)(b) explicitly prohibits implanting embryos into the uterus of any woman who is not the legal wife. Finally, Article 112(5) provides a legal basis for administrative sanctions, including written warnings, monetary fines, and the revocation of medical licenses or facility permits, against those who violate these provisions.

Article 734(1)(c) of the Health Law affirms that healthcare professionals have the right to refuse requests from patients or third parties if those requests conflict with professional standards, service protocols, ethical codes, or existing legal norms. This includes surrogacy-related requests, even when made by legally married couples. This provision reflects the government's stance that surrogacy is not only legally prohibited but also ethically unacceptable within Indonesia's medical profession. The prohibition is reinforced by Minister of Health Regulation No. 2 of 2025, which explicitly bans the practice of "womb lending" as part of assisted reproductive technology (ART) services. The regulation also prohibits the donation of sperm, ova, embryos, ovarian tissue, and testicular tissue. Specifically, Article 5 forbids all forms of reproductive material donation, while Article 45(5) categorizes surrogacy as a prohibited medical procedure under Indonesian law. The deliberate use of the term "womb lending" in the regulation reflects the state's clear framing of surrogacy as both a legally and ethically impermissible practice.

Taken together, these three regulatory instruments establish a rigid and multi-layered legal framework that unequivocally prohibits surrogacy in Indonesia. The prohibition outlined in Article 58 of the Health Law carries significant legal implications. Any contractual agreement between intended parents and a surrogate mother is deemed invalid under Indonesian civil law. In cases involving rights violations, such as exploitation of the surrogate mother, failure to provide agreed compensation, or abandonment of the child, there are no specific legal remedies or institutional mechanisms available to address such harm. As a result, surrogate mothers remain legally unprotected, lacking safeguards under both contract and labor law. Despite the formal ban, surrogacy continues to occur covertly in Indonesia, particularly among women struggling with infertility. According to women's rights activist Agnes Widiyanti, some infertile women arrange surrogacy privately with close relatives in order to avoid legal consequences. This practice reflects the absence of lawful reproductive alternatives in the country.²¹

²⁰ I Gede Taruna Santosa, Fakultas Hukum, and Universitas Udayana, "Keabsahan Perjanjian Sewa Rahim (Surrogacy) Dalam Perspektif Hukum Positif Di Indonesia," *Jurnal Kertha Semaya* 13, no. 03 (2025): 360-371, <https://doi.org/https://doi.org/10.24843/KS.2025.v13.i03.p06>.

²¹ Bayu Sasongko, Sulis Mariyanti, and M Safitri, "Hubungan Dukungan Sosial Dengan Resiliensi Pada Perempuan Yang Mengalami Infertilitas," *JCA Psikologi* 1 (2020): 114-123.

These social realities highlight the limitations of existing legal frameworks in addressing the complex and deeply human dimensions of surrogacy.²² This underscores the urgent need for a comprehensive and context-sensitive legal framework, one that recognizes the multifaceted nature of surrogacy while providing meaningful protections for surrogate mothers and children as vulnerable legal subjects. Such a framework must extend beyond mere prohibition. It should offer clear regulations, enforceable safeguards, and accessible legal remedies to uphold the principles of justice and human dignity.²³

In Indonesia, surrogacy is considered legally indefensible because it contradicts prevailing laws and regulations. The legal validity of surrogacy agreements is particularly problematic under Article 1320 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or *KUHPerdata*), which sets out four essential elements for a valid contract: (1) mutual consent of the parties, (2) legal capacity, (3) a specific subject matter, and (4) a lawful cause.²⁴ The third and fourth elements, the object and the cause, are classified as objective requirements. If either is not met, the contract is considered *null and void* (*batal demi hukum*).²⁵ In the context of surrogacy, the object of the agreement, a woman's womb, fails to meet these objective criteria. According to Article 499 of the Civil Code, an "object" (*benda*) refers to tangible or intangible goods that may be subject to legal transactions.

The object of a contract must be clearly identifiable and legally permissible, while the cause must not contravene public order or morality. Accordingly, surrogacy agreements are regarded as having no legal effect under Indonesian contract law.²⁶ A human womb does not fall within the legal classification of "object," rendering any agreement involving it legally invalid. This legal position is further reinforced by Islamic legal opinion. According to the resolution of the 2nd National *Ijtima'* of the Fatwa Commission of the Indonesian Ulema Council (*Majelis Ulama Indonesia*, or MUI) in 2006, the transfer of a fertilized embryo into the womb of another woman, commonly referred to as a "borrowed womb" or "rented womb" is explicitly deemed *haram* (forbidden). The fatwa applies even when the sperm and ovum originate from a legally married couple but are implanted into the womb of a woman who is not the legal wife. From both a legal and religious standpoint, the child born from such an arrangement is considered the offspring of the woman who gives birth, not of the genetic parents who provided the gametes.²⁷

²² Utami et al., "Evaluation of Legal Aid Service Quality and Supervision in Indonesia and Malaysia."

²³ Nabeel Mahdi Althabhwawi, Zinatul Ashiqin Zainol, and Parviz Bagheri, "Society 5.0: A New Challenge to Legal Norms," *Sriwijaya Law Review* 6, no. 1 (2022): 41-54, <https://doi.org/10.28946/slrev.Vol6.Iss1.1415>, pp41-54.

²⁴ Khairunnisa, "Analisis Hukum Terhadap Perjanjian Sewa Rahim Ditinjau Berdasarkan Perspektif Hukum Perdata Indonesia," *Jurnal Ilmiah Mahasiswa (JIM-FH)* 19, no. 5 (2024): 1-23.

²⁵ Dewi Oktoviana Ustien and Umar Marhum, "Perspektif Hukum Terhadap Suatu Perjanjian," *Lakidende Law Review* 1, no. 2 (2022): 85-92, <https://doi.org/10.47353/delarev.v1i2.11>.

²⁶ Kanti Rahayu Maulida Salma, Soesi Idayanti, *Surrogate Mother Dalam Perspektif Hukum Perdata Indonesia*, ed. Tiyas Vika Widyastuti, 1st ed. (Semarang: PT Nasya Expanding Management, 2024).

²⁷ Bunga Annisa, Ahmad Syafi'i SJ, and Diyan Putri Ayu, "Analisis Hukum Nafkah Anak Hasil Sewa Rahim Menurut Ulama Mazhab," *Social Science Academic* 1, no. 1 (2023): 71-77, <https://doi.org/10.37680/ssa.v1i1.2630>.

In contrast to Indonesia's explicit prohibition, Iran offers a more permissive legal environment for surrogacy, even though it lacks a comprehensive statutory framework.²⁸ In the Iranian legal system, the absence of codified legislation does not make surrogacy illegal. Instead, Islamic jurisprudence and religious edicts (*fatwas*) function as legitimate sources of law to address legislative gaps. This principle is established in Article 167 of the Constitution of the Islamic Republic of Iran, which requires judges to refer to Sharia law and authoritative religious rulings when no relevant statutory provisions exist.²⁹ Since 2003, Iran has recognized the legality of surrogacy based on Shia jurisprudence, allowing the practice through enforceable agreements under both religious and civil law.

The legal and social legitimacy of surrogacy in Iran has been further reinforced by influential *fatwas*, particularly those issued by high-ranking clerics such as Supreme Leader Ayatollah Ali Khamenei, who permits surrogacy under specific medical circumstances. Nevertheless, theological debates persist, especially regarding the legal maternal identity of children born through such arrangements. In Iran, spiritual values rooted in Shia legal traditions form the moral foundation for protecting dignity, responsibility, and human rights in a culturally diverse society.³⁰

At the institutional level, the Royan Institute, one of Iran's leading fertility clinics, enforces strict screening guidelines for surrogate candidates. Eligibility requirements include being legally married, having previously given birth to a healthy child, and being in good physical and mental health. In addition, spousal consent is mandatory and must be documented in a formal written declaration. Widows and divorced women are excluded from participation, primarily due to concerns about social stigma and psychological vulnerability.³¹

In contrast, India has undergone a dramatic legal transformation in its approach to surrogacy. Once known as a global hub for commercial surrogacy, India enacted the Surrogacy (Regulation) Act of 2021, marking a decisive shift toward an altruistic and strictly regulated model. The legislation seeks to align surrogacy practices with prevailing ethical and social norms while ensuring legal protections for both surrogate mothers and the children born through such arrangements. The Act prohibits commercial and international surrogacy and permits only altruistic surrogacy among Indian nationals. It also outlines specific eligibility criteria for both intending parents and surrogate candidates. This regulatory shift reflects India's broader effort to combat exploitation and promote reproductive justice through comprehensive legislative reform.

²⁸ 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/https://doi.org/10.38035/rrj.v7i4>.

²⁹ F Erlina, "Pengaruh Agama Terhadap Konstitusi: Studi Komparasi Lembaga Konstitusi Negara Iran Dan Indonesia," *Jos.Unsoed. Ac.Id* 3, no. 2 (2021): 167–82, <http://jos.unsoed.ac.id/index.php/matan/article/download/4599/2532>.

³⁰ Yusna Zaidah and Raihanah Abdullah, "The Relevance of Ihdad Regulations as a Sign of Mourning and Human Rights Restriction," *Journal of Human Rights, Culture and Legal System* 4, no. 2 (2024): 422–48, <https://doi.org/10.53955/jhcls.v4i2.229>.

³¹ Saber Ghol Anbari, "Commercial Surrogacy in Iran: A Growing Phenomenon," *The New Arab*, 2021, <https://www.newarab.com/features/commercial-surrogacy-iran-growing-phenomenon>.

Altruistic surrogacy refers to an arrangement in which the surrogate mother receives no financial compensation beyond reimbursement for medical expenses and insurance coverage. This model aims to prevent human trafficking and shield women from economic exploitation. However, the implementation of altruistic surrogacy is subject to strict legal eligibility requirements for both surrogate mothers and intending couples. Under Indian law, a surrogate mother must be a close relative of the intending couple, legally married, aged between 25 and 35, and must have at least one biological child. She may act as a surrogate only once in her lifetime and is prohibited from using her own ovum in the surrogacy process. As for the intending couple, only Indian heterosexual married couples who have been married for at least five years and who do not have any living biological or adopted children are eligible to access surrogacy services. This legal framework explicitly excludes single women, same-sex couples, and foreign nationals from participating in surrogacy arrangements in India.³² A study by Yuri Hibino (2023) notes that despite these legal safeguards, significant risks of exploitation remain at the practical level. Many surrogate mothers continue to be driven by financial hardship, underscoring the urgent need for robust legal enforcement and the development of culturally sensitive policies.³³

A comparative analysis of surrogacy legal frameworks in Indonesia, Iran, and India reveals significant differences in both regulatory approaches and the extent of legal protections offered. Among the three countries, India stands out as the only one that permits altruistic surrogacy under formal legislation, specifically, the Surrogacy (Regulation) Act of 2021. This Act establishes a structured legal framework that includes mandatory medical screening, health insurance coverage, and reimbursement of related expenses for surrogate mothers. It also guarantees that children born through surrogacy are granted full civil rights and are recognized as legitimate under the law. In contrast, Iran permits surrogacy based on religious fatwas and civil contracts. However, it lacks comprehensive codified legislation to govern the practice. Legal protection in Iran primarily depends on the interpretations of religious scholars and the protocols followed by institutions such as the Royan Institute. While these practices introduce some level of consistency, they remain context-specific and subject to varying interpretations of Islamic jurisprudence. The legal status of children born through surrogacy in Iran can also vary, depending on the contractual arrangements and religious rulings involved. This leads to inconsistencies in both legal recognition and the granting of civil rights. Meanwhile, Indonesia adopts a strictly prohibitive approach to surrogacy, offering no legal framework or protections for those involved in such arrangements.³⁴

The practice is explicitly prohibited under multiple legal instruments, including the Health Law (Law No. 17 of 2023), Government Regulation No. 28 of 2024, and Minister of Health Regulation No. 2 of 2025, all of which ban womb lending in any form. Additionally, the Indonesian Ulema Council (Majelis Ulama Indonesia, MUI) issued Fatwa No. 4 of 2006,

³² Gaurang Narayan et al., "The Surrogacy Regulation Act of 2021: A Right Step Towards an Egalitarian and Inclusive Society?," *Cureus* 15, no. 4 (2023): 1–8, <https://doi.org/10.7759/cureus.37864>.

³³ Hibino, "The Advantages and Disadvantages of Altruistic and Commercial Surrogacy in India."

³⁴ Desy Rosanti et al., "Pengaturan Pelaksanaan Sewa Rahim (Surrogacy) Berdasarkan Hukum Di Indonesia," *Privat Law* 9, no. 1 (2021): 6–11.

declaring surrogacy *haram* (forbidden) under Islamic law. As a result, any contractual agreement between a surrogate mother and an intending couple is deemed legally invalid. The lack of legal recognition for such arrangements means that surrogate mothers receive no formal protections, whether medical, psychological, or civil.

Likewise, children born through surrogacy lack legal identity. This includes barriers to birth registration, recognition of lineage (*nasab*), and the enjoyment of civil rights. The absence of a legal framework places both surrogate mothers and children, arguably the most vulnerable parties in these arrangements, at significant risk of rights violations. Laws concerning custody and guardianship should be guided by the best interests of the child, taking into account their physical, psychological, and emotional development.³⁵

Table 1. Comparative Legal Status of Surrogacy

Negara	Surrogacy Status	Surrogate Mother Protection	Child Protection
Indonesia	Illegal	No formal legal protection	No legal recognition or lineage
Iran	Legal based on a fatwa	Based on the contract, screened by the institution	Relies on the contract & fatwa
India	Legally permitted, altruistic	Expense reimbursement: medical screening, contract	Recognized as a legitimate child, a birth certificate guaranteed

Source: Author's Research Findings, 2025

Among the three countries examined, India offers the most structured and comprehensive legal framework for surrogacy, although it remains highly restrictive and exclusionary. Iran follows a semi-formal model rooted in Shia jurisprudence, where religious fatwas and civil contracts form the legal basis for surrogacy arrangements. By contrast, Indonesia lacks any formal regulation or legal protection related to surrogacy. This sharp contrast in regulatory approaches underscores the urgent need for Indonesia to establish a comprehensive legal framework that not only aligns with international human rights norms but also respects the country's religious and cultural values. In all three jurisdictions, religious perspectives play a significant role in shaping the legal position on surrogacy. In Indonesia, surrogacy is unequivocally declared *haram* (forbidden) by the Indonesian Ulema Council (MUI) through Fatwa No. 4 of 2006, reflecting the dominant Sunni interpretation. In contrast, surrogacy is generally regarded as *halal* (permissible) under Shia jurisprudence in Iran, granting it both legal recognition and broad social acceptance. India presents a more religiously plural society. While Hinduism does not explicitly prohibit surrogacy, support for the practice is often conditional on ethical considerations and adherence to traditional family values.

³⁵ Putra Halomoan Hasibuan and Sumper Mulia Harahap, "Islam, Adat, and State: Examining the Phenomenon of Child Custody After Divorce in Padang Lawas Regency," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 2 (2024): 192–206.

Table 2. Legal and Religious Comparison of Surrogacy

Aspect	Indonesia	Iran	India
Legal status of surrogacy	Not formally regulated; prohibited under national law and religious fatwa	Permitted through religious fatwa and enforceable civil contracts	Legally restricted (altruistic)
Legal protection for surrogate mothers	None	Regulated by contract	Regulated by law
Legal protection for the child	No clear legal status	Recognized as a legitimate child	Registered as a biological child
Type of surrogacy	Not recognized	Commercial and altruistic	Altruistic only
Religious view	Prohibited (haram) under Sunni Islamic jurisprudence	Permitted (halal) under Shia Islamic jurisprudence	Mixed, while Hinduism broadly accepts surrogacy

Source: Author's Research Findings, 2025

Legal Protection for Surrogate Mothers and Children

When it comes to the legal protection of surrogate mothers and children born through surrogacy, India currently offers the most comprehensive and structured framework among the three jurisdictions examined. The Surrogacy (Regulation) Act of 2021 mandates that all surrogacy arrangements must be altruistic and subject to strict eligibility and procedural conditions. Surrogate mothers are required to undergo thorough medical and psychological evaluations. They may serve as surrogates only once in their lifetime and are entitled to medical expense reimbursements and health insurance. Legal safeguards are formalized through binding contracts, which serve to prevent exploitation and ensure that children born through surrogacy are fully recognized as legitimate, with full civil rights, including inheritance. By contrast, Iran's approach is based on religious fatwas and private contractual practice. While surrogacy is both legally and socially accepted within this framework, the absence of formal legislation has led to inconsistencies, particularly in determining maternal identity, custody, and the civil rights of the child.

Indonesia, on the other hand, maintains a strictly prohibitive stance. All forms of surrogacy are explicitly banned. As a result, any agreements between intended parents and surrogate mothers are considered legally void. This leaves both the surrogate mother and the child without formal legal recognition or protection. This comparative analysis reveals a critical gap in legal protections for vulnerable parties. India provides a robust statutory model. Iran relies on a semi-formal system grounded in religious authority and private contracts. Indonesia, however, lacks any legal framework to govern surrogacy. This study also builds on prior research, including the work of Cindy Yulia Putri and Sulhi M. Daud

Abdul Kadir (2023), which primarily explored the status of children under Islamic law.³⁶ While their study offers valuable insight into religious norms, it does not address broader legal mechanisms, such as enforceable contracts, procedural safeguards, or access to remedies, that are essential to protect both surrogate mothers and children.

Similarly, the study by Niken Amalya Putri and Mahlil Adriaman (2024) focuses on the legal validity of surrogacy agreements under Indonesian civil law, emphasizing core principles of contract law.³⁷ While their legalistic analysis provides useful insights into the enforceability of such contracts, it does not explore the broader ethical or human rights dimensions of surrogacy. It also overlooks the need to protect vulnerable parties, particularly surrogate mothers and children, as legal subjects deserving of special safeguards. In contrast, this study adopts a comparative and cross-jurisdictional perspective. It integrates elements of positive law, religious norms, and human rights-based civil protections. As such, it goes beyond earlier works by offering a more holistic analytical framework that can inform future legal reforms. The findings underscore the urgent need for Indonesia to develop adaptive legal policies that address not only legal certainty but also the complex ethical, social, and medical realities of surrogacy. Any reform efforts must be rooted in the principles of social justice and the legal protection of vulnerable populations.³⁸

The World Health Organization (WHO) plays a pivotal role in promoting legal protections for surrogate mothers and children born through surrogacy. In its *Regional Strategic Framework on Assisted Reproductive Technology (ART) 2020–2024*, the WHO explicitly identifies the review and development of laws and regulations related to ART, including surrogacy, as a priority action for member states. Despite the growing prevalence of surrogacy as a reproductive option in the region, only three countries, India, Nepal, and Thailand have adopted specific legal regulations governing the practice. However, the implementation of these laws continues to face significant challenges. Most member states still lack clear national policies or official guidelines to regulate ART and surrogacy comprehensively.

Despite the existence of such legislation, effective enforcement remains a persistent challenge. Moreover, most member states have yet to establish or adopt clear national policies and regulatory guidelines regarding assisted reproductive technologies (ART) and surrogacy. This has resulted in a regulatory vacuum that undermines ethical oversight and equitable access to reproductive services.³⁹ The situation reflects a broader global concern over the unchecked expansion of ART. In the absence of adequate legal frameworks, these technologies can pose serious risks to the rights and well-being of women and children involved.

³⁶ Yulia Putri and M. Daud Abdul Kadir, “Perspektif Hukum Islam Terhadap Anak Yang Dilahirkan Melalui Ibu Pengganti (Surrogate Mother).”

³⁷ Putri and Adriaman, “Tinjauan Yuridis Perjanjian Sewa Rahim Dilihat Dari Perspektif Hukum Perdata di Indonesia.”

³⁸ Syahlan, “Effective and Efficient Synchronization in Harmonization of Regulations Indonesia,” *Journal of Human Rights, Culture and Legal System* 1, no. 1 (2021): 54–71, <https://doi.org/10.53955/jhcls.v1i1.7>.

³⁹ Pokhrel, *Regional Strategic Framework For Accelerating Universal Access To Sexual And Reproductive Health In The WHO South-East Asia Region 2020–2024*: 15.

The urgency of this issue is particularly evident in Indonesia, where the lack of specific legislation governing surrogacy leaves both surrogate mothers and children in a state of legal limbo. Without enforceable safeguards, these vulnerable groups face the risk of exploitation, social stigma, and fundamental rights violations. This regulatory absence is not merely a policy shortfall, it constitutes a systemic failure to uphold constitutional protections for marginalized populations. Drawing on Philipus M. Hadjon's theory of legal protection, the state bears a dual responsibility: first, to provide preventive protection through the establishment of clear legal norms and regulatory oversight; and second, to ensure repressive protection by enabling access to legal remedies when rights have been violated.⁴⁰

From this perspective, the lack of comprehensive and enforceable legal provisions on surrogacy in Indonesia reflects a broader failure to meet both constitutional duties and human rights obligations. The establishment of a transparent, rights-based legal framework is therefore not only urgent, it is essential. Such a framework is necessary to prevent continued harm and to ensure justice for those most vulnerable to exploitation. In the absence of clear and enforceable regulations, the risk of abuse against weaker parties will remain high. This reinforces the critical need for specific and effective legal provisions that uphold the rule of law and reflect the principles of a constitutional state (*rechtsstaat*).⁴¹

This normative foundation is further strengthened by John Rawls's theory of social justice, particularly his Difference Principle. This principle holds that social and economic inequalities are acceptable only if they result in benefits for the least advantaged members of society.⁴² In the context of surrogacy, surrogate mothers and the children born through such arrangements constitute these vulnerable groups. Rawls argues that justice is realized when everyone has equal access to rights and opportunities, free from discrimination and systemic disadvantage.⁴³ Based on this premise, legal frameworks regulating surrogacy must be specifically designed to safeguard surrogate mothers and children, ensuring they are not further marginalized by legal inaction. Furthermore, Roscoe Pound's concept of law as a tool for social engineering reinforces the imperative for legal systems to respond proactively to evolving social realities.⁴⁴

From this perspective, the state has an obligation to develop normative legal instruments that not only resolve legal ambiguities but also promote ethical relationships among intended parents, surrogate mothers, and the children born through surrogacy. Effective surrogacy legislation must extend beyond the protection of individual rights. It

⁴⁰ Vorty and Irianto, "Perlindungan Hukum Terhadap Para Pihak Dalam Perjanjian Sewa Rahim (Surrogate Mother) Ditinjau Dari Perspektif Hukum Positif."

⁴¹ Fiona Priscilla Kohar and Yetty Komalasari Dewi, "Abuse of Rights by Majority Shareholders in Indonesian Family-Owned Company: Is It Likely?," *Sriwijaya Law Review* 5, no. 1 (2021): 29–41, <https://doi.org/10.28946/slrev.Vol5.Iss1.603.pp29-41>.

⁴² Neneng Putri Siti Nurhayati Andra Triyudiana, "Penerapan Prinsip Keadilan Sebagai Fairness Menurut John Rawls Di Indonesia Sebagai Perwujudan Dari Pancasila," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 02, no. 01 (2023): 1–25, <https://doi.org/10.11111/>

⁴³ Wahyuni Retno Wulandari and Nadzriah Ahmad, *The Influence of Women's Leadership Policy on Challenges and Opportunities in the Digital Age*, *Journal of Human Rights, Culture and Legal System*, vol. 5, 2025, <https://doi.org/10.53955/jhcls.v5i1.503>.

⁴⁴ Tonny Andreas, Dominikus Rato, and Y.A. Triana Ohoiwutun, "Sumbangsih Roscoe Pound Terhadap Perkembangan Ilmu Hukum Sosiologis," *Jurnal Supremasi* 12, no. 013 (March 11, 2025): 135–47, <https://doi.org/10.35457/supremasi.v15i1.3968>.

should reflect broader societal values such as social morality, gender equality, and the best interests of the child. A truly comprehensive legal framework must strike a careful balance between individual autonomy and collective social interests. It should also fulfill the law's transformative role in advancing an inclusive, equitable, and rights-based society. Future surrogacy laws in Indonesia, therefore, should align with international human rights standards to ensure legal certainty, ethical governance, and social justice for all stakeholders involved.⁴⁵

Conclusion

This study concludes that the legal status and protections afforded to surrogate mothers and children vary significantly across Indonesia, Iran, and India. India offers a formal legislative framework, Iran relies on religious jurisprudence, while Indonesia's outright prohibition has created a legal vacuum that jeopardizes the rights of the most vulnerable. Accordingly, the study advocates for the urgent development of a rights-based and culturally contextual legal framework to regulate surrogacy in Indonesia. Theoretically, it contributes to the field of family law by illustrating how a comparative legal approach, when integrated with Hadjon's doctrine of legal protection, Rawls's theory of social justice, and Pound's concept of law as a tool of social engineering, can inform national legal reform. By framing surrogate mothers and children as legal subjects in need of special protection, the findings underscore the importance of adaptive legal systems that respond to evolving family structures while upholding human dignity.

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⁴⁵ Tareq Al-Billeh et al., "Digital Evidence in Human Rights Violations and International Criminal Justice," *Journal of Human Rights, Culture and Legal System* 4, no. 3 (2024): 842–871, <https://doi.org/10.53955/jhcls.v4i3.446>.

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