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RECONSTRUCTING SURROGACY REGULATION IN MUSLIM-MAJORITY JURISDICTIONS: A COMPARATIVE ISLAMIC FAMILY LAW AND MAQASID AL-SHARI'AH ANALYSIS

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ABSTRACT

The rapid development of assisted reproductive technologies has created complex legal and ethical challenges for Muslim-majority jurisdictions, particularly concerning surrogacy, lineage, parentage, and child welfare. Existing studies often examine the permissibility of surrogacy from particular jurisprudential perspectives, while less attention is given to how divergent Islamic positions are translated into national regulatory frameworks and how legal gaps affect vulnerable parties. This study reconstructs surrogacy regulation through a comparative analysis of eight Muslim-majority jurisdictions: Iran, Saudi Arabia, Indonesia, Malaysia, Pakistan, Egypt, Turkey, and Lebanon. Employing qualitative doctrinal and comparative legal methods, the study examines legislation, fatwas, judicial decisions, and relevant scholarly literature. The findings reveal a fundamental divergence between Iran's regulated permissive model, rooted in Shia jurisprudence, and the predominantly prohibitory approaches of Sunni-majority jurisdictions. Despite these differences, all jurisdictions face regulatory challenges concerning legal parentage, child registration, inheritance, surrogate protection, and enforcement. The study argues that Maqasid al-shari'ah, particularly the protection of lineage, dignity, and child welfare, provides a normative basis for developing context-sensitive regulatory frameworks. It proposes a balanced approach that preserves Islamic family-law principles while ensuring legal protection for children, surrogate mothers, and intended parents, including through clear parentage rules, informed consent, enforceable safeguards, and interdisciplinary governance.

Keywords: *Surrogacy; Assisted Reproductive Technology; Islamic Family Law; Maqasid al-shari'ah; Nasab; Comparative Law.*

ABSTRAK

Perkembangan teknologi reproduksi berbantu menimbulkan persoalan hukum dan etika yang kompleks di negara-negara mayoritas Muslim, khususnya terkait surrogacy, *nasab*, status keperdataan, dan perlindungan anak. Kajian terdahulu cenderung membahas kebolehan surrogacy dari perspektif fikih tertentu, sementara perhatian terhadap bagaimana perbedaan pandangan hukum Islam diterjemahkan ke dalam kerangka regulasi nasional serta dampak kekosongan hukum terhadap pihak rentan masih terbatas. Penelitian ini merekonstruksi regulasi surrogacy melalui analisis komparatif terhadap delapan negara mayoritas Muslim, yaitu Iran, Arab Saudi, Indonesia, Malaysia, Pakistan, Mesir, Turki, dan Lebanon. Penelitian menggunakan metode yuridis doktrinal dan komparatif dengan menganalisis peraturan perundang-undangan, fatwa, putusan pengadilan, dan literatur ilmiah terkait. Hasil penelitian menunjukkan adanya perbedaan mendasar antara model regulasi Iran yang permisif dan terkontrol berdasarkan fikih Syiah dengan pendekatan yang dominan melarang di negara-negara mayoritas Sunni. Meskipun demikian, seluruh yurisdiksi menghadapi persoalan terkait status hukum anak, pencatatan kelahiran, hak waris, perlindungan ibu pengganti, dan penegakan hukum. Penelitian menunjukkan bahwa Maqasid al-shari'ah, khususnya perlindungan *nasab*, martabat, dan kemaslahatan anak, dapat menjadi dasar normatif bagi pembentukan regulasi yang kontekstual. Penelitian menawarkan pendekatan yang menjaga prinsip hukum keluarga Islam sekaligus memberikan perlindungan hukum bagi anak, ibu pengganti, dan orang tua yang menghendaki anak melalui pengaturan *nasab*, persetujuan yang diinformasikan, perlindungan kontraktual, dan tata kelola interdisipliner.

Kata Kunci: *Surrogacy; Teknologi Reproduksi Berbantu; Hukum Keluarga Islam; Maqasid al-shari'ah; Nasab; Hukum Komparatif.*

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INTRODUCTION

The emergence and proliferation of assisted reproductive technologies (ART) in the late twentieth century has fundamentally transformed the landscape of human reproduction, presenting unprecedented challenges to legal systems worldwide. For Muslim-majority jurisdictions, these developments are particularly complex, as reproductive practices are deeply embedded in religious jurisprudence, ethical frameworks, and centuries-old conceptions of family, lineage, and marriage. Surrogacy—whether traditional or gestational—sits at the intersection of medical innovation, family law, constitutional rights, and Islamic ethics, generating diverse regulatory responses across the Muslim world (Inhorn, 2006; Saniei & Kargar, 2021).

Globally, over 48 million couples experience infertility, with prevalence rates particularly high in parts of the Middle East and South Asia where marriage and parenthood carry profound social and religious significance (Schlegel et al., 2021). ART—including in vitro fertilization (IVF), gamete donation, embryo transfer, and surrogacy—has offered medical solutions for infertile couples. However, the permissibility of these technologies under Islamic law varies significantly depending on the jurisprudential school (madhhab), national legal tradition, and the degree to which state institutions incorporate religious guidance into formal law (Al-Bar & Chamsi-Pasha, 2015; Fadhilah et al., 2025).

Surrogacy encompasses arrangements in which a woman (the surrogate) carries a pregnancy on behalf of intended parents, transferring the resulting child to them upon birth. In traditional surrogacy, the surrogate's own ovum is fertilized, making her the genetic mother; in gestational surrogacy, an embryo formed from the gametes of the intended parents (or donors) is implanted in the surrogate's uterus. From an Islamic perspective, both forms raise distinct concerns about *nasab* (filiation/lineage), the inviolability of marriage (hifz al-'ird), and the commodification of the human body—concerns that are resolved differently by Sunni and Shia jurists (Aramesh, 2009a; Zehi et al., 2025).

The scholarly consensus among Sunni jurists—codified through influential fatwas from Al-Azhar University and reinforced by Fiqh councils in Saudi Arabia, Malaysia, Pakistan, Egypt, Turkey, and Indonesia—prohibits surrogacy in all its forms, viewing the introduction of a third-party womb as analogous to adultery and a disruption of the patrilineal kinship system (Al-Bar & Chamsi-Pasha, 2015; Inhorn, 2006). In contrast, the Shia jurisprudential tradition, particularly as developed in Iran under Ayatollah Khamenei

and other senior marjas, permits gestational surrogacy under certain conditions, leading Iran to become the only Muslim-majority country to enact explicit legislation permitting and regulating such arrangements—its 2003 Gamete and Embryo Donation Act being the landmark legislative text (Aramesh, 2009a; Haddadi et al., 2025a; Saniei & Kargar, 2021).

Despite growing academic attention to Islamic bioethics and ART, there remains a significant gap in comparative legal scholarship that systematically examines how different Muslim-majority legal systems translate theological prohibitions or permissions into operational national law. This article addresses that gap through a structured comparative analysis of eight jurisdictions, situating each country's regulatory approach within its broader Islamic jurisprudential tradition, constitutional framework, and socio-legal context. The central research questions are: *first*, How do Muslim-majority jurisdictions legally regulate or proh(Zweigert & Kötz, 1998)ibit surrogacy, and what Islamic jurisprudential principles underpin these positions?; *second*, What legal lacunae arise in the absence of explicit surrogacy legislation?; third, What convergences and divergences exist across jurisdictions that may inform the development of harmonized regulatory standards?

RESEARCH METHOD

This study adopts a qualitative doctrinal legal methodology combined with comparative law analysis, a well-established approach in Islamic legal studies and international comparative family law research (Smits, 2006). Doctrinal methodology focuses on the systematic analysis of legal texts, including statutes, judicial decisions, fatwas, and scholarly legal opinions (fiqh), to understand how law is structured, interpreted, and applied (Smits, 2006). The comparative dimension involves placing multiple legal systems in dialogue to identify patterns, divergences, and explanatory frameworks (Zweigert & Kötz, 1998).

The selection of jurisdictions was purposive, designed to ensure representativeness across: (a) Islamic legal tradition—Sunni-majority (Saudi Arabia, Egypt, Malaysia, Pakistan, Indonesia, Turkey) and Shia-majority (Iran) as well as a mixed tradition (Lebanon); (b) geographic region—covering the Middle East, South Asia, and Southeast Asia; and (c) regulatory approach—explicitly prohibiting, implicitly prohibiting through absence of law, or explicitly permitting surrogacy. This selection aligns with the framework proposed by Inhorn (2006) and Saniei & Kargar (2021) for comparative analysis of ART policies in Muslim societies.

Primary sources analyzed include: national legislation (Iran's 2003 Gamete and Embryo Donation Act; Saudi Arabia's Royal Decree No. M/76; Malaysia's Islamic Family Law Act; Indonesia's Law No. 36/2009 on Health; Pakistan's Muslim Family Laws Ordinance); official fatwas from national fatwa councils; constitutional provisions on the family and religion; and selected judicial decisions where available. Secondary sources consist of peer-reviewed articles from Scopus-indexed and PubMed/PMC journals in the fields of Islamic law, comparative family law, bioethics, and medical anthropology, sourced through systematic database searches (Scopus, Web of Science, PubMed) using terms such as 'surrogacy + Islamic law', 'ART + Muslim jurisdictions', '*nasab* + assisted reproduction', and 'maqasid al-shariah + surrogacy'.

A minimum of 30 peer-reviewed sources were reviewed and synthesized using thematic analysis. Themes were identified inductively and deductively, guided by the conceptual framework of maqasid al-shariah (higher objectives of Islamic law) as developed by scholars such as Ibn Ashur (2006), and the bioethical considerations relevant to surrogacy in Islamic contexts (Al-Bar & Chamsi-Pasha, 2015; Fadhilah et al., 2025; Saniei & Kargar, 2021). Limitations of the study include the reliance on published English-language sources for some jurisdictions where primary legal texts are available only in Arabic, Farsi, Bahasa Indonesia, or Urdu, which may introduce translation gaps. Additionally, rapidly evolving jurisprudential discourse may not be fully captured in published academic literature.

FINDINGS AND DISCUSSION

Conceptual Framework: Islamic Jurisprudence, Maqasid al-Shariah, and Reproductive Technology

Islamic law (Shariah) is derived from four main sources: the Quran, the Sunnah (Prophetic traditions), ijma (scholarly consensus), and qiyas (analogical reasoning). In matters not explicitly addressed by the Quran or Sunnah—such as modern ART—jurists employ ijtihad (independent reasoning) guided by these sources and the broader objectives of Islamic law (Fadhilah et al., 2025). The foundational Quranic principle most relevant to surrogacy is found in Surah Al-Mujadila (58:2): 'None can be their mothers except those who gave them birth,' which many Sunni scholars interpret as establishing a strict biological-gestational definition of motherhood that precludes surrogacy (Inhorn, 2006; Saniei & Kargar, 2021).

The concept of *nasab*—filiation or lineage—is central to Islamic family law, governing marriage eligibility, inheritance, custody, and social identity. *Nasab* is established through the presumption of legitimacy within marriage (the child belongs to the husband), through acknowledgment (iqrar), or through DNA-equivalent scientific evidence in contemporary fiqh. Surrogacy, by involving a third-party womb, creates ambiguity about the child's *nasab* because the gestational mother is distinct from either the genetic mother or the intended social mother—a tripartite division of maternity that classical Islamic jurisprudence did not contemplate (Zawawi et al., 2024; Zehi et al., 2025).

Maqasid al-shariah—the higher objectives of Islamic law—provides the overarching evaluative framework through which contemporary jurists assess the permissibility of biomedical innovations. The five classical objectives are: preservation of religion (hifz al-din), life (hifz al-nafs), lineage/progeny (hifz al-nasl), intellect (hifz al-'aql), and property (hifz al-mal). Reproduction and the preservation of lineage are directly encompassed within hifz al-nasl, making surrogacy's impact on *nasab* central to its Islamic legal evaluation (Fadhilah et al., 2025; Ibrahim et al., 2019).

Contemporary Islamic bioethicists argue that maqasid al-shariah permits treatment of infertility—since procreation is among the highest objectives—but restricts permissible means to those that do not violate other objectives, particularly hifz al-nasl through confusion of lineage and hifz al-'ird (honor) through the introduction of non-marital third parties into reproduction (Al-Bar & Chamsi-Pasha, 2015; Fadhilah et al., 2025; Saniei & Kargar, 2021). The debate, therefore, is not whether infertility treatment is permissible (it is unanimously encouraged), but whether surrogacy as a means to overcome infertility crosses the threshold of prohibition.

The most significant jurisprudential divide on surrogacy lies between Sunni and Shia Islamic traditions. The landmark 1980 Al-Azhar fatwa, widely accepted across the Sunni world, established that ART is permissible only when the sperm, ovum, and uterus all belong to a legally married couple, explicitly prohibiting any third-party involvement including donor wombs (surrogacy) (Inhorn, 2006). Subsequent Sunni fatwas from the Islamic Fiqh Academy of the Organisation of Islamic Cooperation (OIC) reinforced this position, and Sunni-majority states have codified it in various forms.

Shia jurisprudence, by contrast, operates through the principle of ijtihad applied by senior marjas (religious authorities), allowing individual jurists to reach different conclusions. Ayatollah Khamenei of Iran issued a pivotal fatwa permitting gestational

surrogacy for legally married infertile couples on the grounds that the embryo transfer is not analogous to fornication (zina), which requires coitus, and that treating infertility as a medical necessity aligns with Islamic values (Aramesh, 2009b; Saniei & Kargar, 2021). This opened the path for Iran's 2003 legislation. Lebanon's Shia community similarly reflects greater tolerance, though without formal legislation.

Comparative Legal Analysis Across Muslim-Majority Jurisdictions

Iran stands as the only Muslim-majority country with explicit legislation permitting and regulating gestational surrogacy. The Gamete and Embryo Donation Act, ratified by the Iranian Parliament on July 20, 2003, and approved by the Guardian Council, authorized embryo donation and gestational surrogacy for infertile married couples (Haddadi et al., 2025b; Tavakkoli, 2017). This legislative achievement was premised on fatwas from leading Shia marjas, including Ayatollah Khamenei and Ayatollah Sistani, who sanctioned gestational surrogacy by distinguishing it from adultery—no sexual intercourse is involved—and framing embryo transfer as a medical intervention that does not disrupt lineage in the same manner as traditional surrogacy (Aramesh, 2009b; Saniei & Kargar, 2021).

Under Iranian law, only gestational surrogacy using the biological material (sperm and egg) of the married intended parents is explicitly sanctioned; donor gametes introduce additional legal and religious complexity. Following birth, Iranian law initially records the gestational surrogate as the legal mother on the birth certificate—reflecting the traditional Islamic principle that the woman who gives birth is the mother—but intended parents may seek court orders to establish their legal parenthood (IranianSurgery.com, 2025). Approximately 70 infertility clinics in Iran currently offer gestational surrogacy services, reflecting the scale of institutionalized practice (Haddadi et al., 2025b).

Nonetheless, significant legal lacunae persist in Iran's regulatory framework. There is no comprehensive standalone surrogacy law; the 2003 Act deals primarily with embryo donation and is supplemented by ministerial regulations. Issues of compensation for surrogates, insurance coverage, medical liability, and the rights of surrogate-born children in cases of intended parent death or divorce remain inadequately addressed, generating ongoing legal uncertainty and calls for comprehensive surrogacy legislation (Haddadi et al., 2025b; Saniei & Kargar, 2021; Wang & Levinson, 2016a).

Saudi Arabia's position on surrogacy is unequivocally prohibitory, grounded in both official state religious rulings and formal legislation. The Islamic Fiqh Academy—the highest fiqh institution in the Kingdom—has issued repeated fatwas prohibiting all forms of third-party reproductive assistance, including donor sperm, donor eggs, and surrogate wombs. Saudi Arabia's Royal Decree No. M/76 (2004) on assisted reproduction units explicitly prohibits the implantation of a fertilized egg in a womb other than the wife's womb, effectively banning surrogacy (Kooli, 2019). Additionally, the law mandates that IVF be limited to legally married couples during the subsistence of their marriage; divorce or death terminates all treatment.

The prohibition is philosophically rooted in the concern for lineage integrity (*nasab*) and the Quranic injunction against mixing lineages. Saudi jurists view surrogacy as introducing an element of ambiguity (shubha) into the parentage of the resulting child and as potentially resembling adultery (zina) in its social consequences—even if there is no sexual act—by allowing an unrelated woman to bear a married man's child (Al-Bar & Chamsi-Pasha, 2015; Inhorn, 2006). This total prohibition has meant that Saudi couples facing intractable infertility have no domestic legal recourse to surrogacy and may seek treatment abroad, raising issues of medical tourism and the recognition of foreign surrogacy-born children's parentage upon return (Inhorn et al., 2017).

Egypt occupies a uniquely influential position in the Islamic world as the seat of Al-Azhar University, whose 1980 fatwa on ART has been the most authoritative Sunni ruling on reproductive technology. Egypt does not have specific surrogacy legislation, but the Al-Azhar fatwa—which prohibits any third-party donation of sperm, eggs, embryos, or uteruses—effectively establishes the legal and ethical standard for medical practice (Clarke, 2022; Inhorn, 2006). Egyptian medical practitioners and ART clinics operate within this framework, and surrogacy arrangements are not legally performed or recognized.

Egypt's national legislation on ART is fragmented; the Ministry of Health regulates IVF clinics through administrative guidelines that reflect Al-Azhar's prohibitory positions. There is no constitutional or statutory provision explicitly addressing surrogacy, creating a situation where prohibition is effectively enforced through medical professional regulation and social consensus rather than criminal law. The practical effect is similar to jurisdictions with explicit legislative bans: no surrogacy services are offered, and surrogate-born children from abroad face uncertain legal status (Inhorn, 2006).

Indonesia, home to the world's largest Muslim population, does not have specific surrogacy legislation. Law No. 36 of 2009 on Health implicitly prohibits surrogacy by providing in Article 127 that pregnancy through ART may only use sperm and ovum from the husband and wife concerned, and that the pregnancy may only be implanted in the wife—leaving no space for a surrogate carrier (Solihah et al., 2026; Sujadmiko et al., 2023). However, the absence of explicit penalties and the lack of a comprehensive regulatory framework creates legal uncertainty, particularly regarding the parentage and rights of children born through informal surrogacy arrangements.

The Indonesian Ulama Council (Majelis Ulama Indonesia, MUI) has issued fatwas against surrogacy, aligning with the broader Sunni prohibition. Indonesian civil law (the Civil Code) traces maternity to the gestational mother who gives birth, meaning that in a surrogacy arrangement—even if informal and unenforceable—the surrogate would be treated as the legal mother (Solihah et al., 2026) (Solihah, 2026). This creates a profound tension between genetic parenthood and legal parenthood, underscoring the need for comprehensive legislation. Scholars have argued that Indonesia's legal vacuum violates the principle of child protection (perlindungan anak) guaranteed by Law No. 35 of 2014 on Child Protection (Solihah et al., 2026; Sujadmiko et al., 2023).

Malaysia's regulatory landscape on surrogacy is shaped by the country's dual legal system—civil law applicable to non-Muslims and Islamic family law applicable to Muslims—administered at the state level. The National Fatwa Council of Malaysia has prohibited surrogacy for Muslims, finding it inconsistent with Islamic principles of lineage preservation. State Islamic family law enactments do not recognize surrogacy contracts as enforceable under Muslim family law (Katiman et al., 2022; Kooli, 2019).

Malaysia's Code of Medical Ethics and the Malaysian Medical Council's guidelines restrict ART to married couples using their own gametes, without a surrogate carrier. There is no specific legislation on surrogacy, meaning that it falls into a legal gray area where contracts may be unenforceable and parentage disputes must be resolved through existing civil law frameworks—which may not align with Islamic family law norms. Scholars have recommended developing harmonized federal legislation that accommodates both the civil law and Shariah dimensions of ART regulation in Malaysia (Katiman et al., 2022; Kooli, 2019).

Pakistan's regulatory approach to surrogacy is primarily implicit, derived from the application of Islamic family law through the Muslim Family Laws Ordinance 1961 and the

broader Islamization of law under the Objectives Resolution. There is no legislation explicitly addressing surrogacy or ART in Pakistan. The Pakistani Council of Islamic Ideology has consistently opposed any form of third-party reproductive assistance, and the medical profession operates without formal ART regulations, creating a significant governance gap (Fadhilah et al., 2025; Maqsood et al., 2022).

In practice, this means that surrogacy—if it occurs informally in Pakistan—is legally unrecognized, contracts are unenforceable, and the resulting child's legal status and inheritance rights are uncertain. The application of Islamic principles of *nasab* would designate the surrogate as the legal mother and the husband of the intended couple as the father (based on the presumption of legitimacy from the marriage bed—the Quranic principle of '*al-walad lil-firash*'), generating complex parentage outcomes inconsistent with the intentions of the parties (Zawawi et al., 2024).

Turkey presents a distinctive case among Muslim-majority jurisdictions in that it is constitutionally secular (laik), with family law governed by a civil code modeled on Swiss law rather than Islamic jurisprudence. Nonetheless, Turkey's Regulation on ART Centers (2005, amended subsequently) explicitly prohibits surrogacy, establishing criminal penalties for those who arrange or participate in surrogacy agreements. Turkey's prohibition is framed in secular human rights terms—protecting women from exploitation and ensuring children's rights—though it aligns substantively with the positions taken by Islamic jurisprudence on third-party involvement in reproduction (Review of Muslim Jurists, 2021).

Turkey's experience illustrates how secular legal frameworks in Muslim-majority societies can arrive at the same prohibitory outcomes as Shariah-based systems through different normative pathways—protecting family integrity, avoiding commodification of reproduction, and ensuring the child's right to know their origins. This convergence suggests that the prohibition on surrogacy in Muslim-majority contexts may have both religious and secular-social foundations that reinforce each other, making reform politically and legally difficult regardless of the jurisprudential tradition involved.

Lebanon's multi-confessional legal system—under which personal status law, including family law, is administered by each religious community through its own courts—means that surrogacy regulation varies by religious affiliation. Lebanon has no national legislation on surrogacy, but Shia religious courts may be more receptive to gestational surrogacy arrangements under the influence of Shia jurisprudence (Clarke, 2022). Lebanese IVF clinics have been reported to perform surrogacy for Shia Muslim couples who receive

fatwa-based religious sanction, operating in a legal vacuum where no explicit prohibition or permission exists in national law (Inhorn, 2006).

Convergences Across Jurisdictions

Notwithstanding significant differences in legal frameworks, several convergences are identifiable across all eight jurisdictions. *First*, all Muslim-majority states analyzed share a commitment to preserving *nasab* as a foundational principle of family law; the primary regulatory concern across jurisdictions is the integrity of lineage and the rights of children to know and be legally affiliated with their biological parents. Even Iran—the only permissive state—restricts surrogacy to gestational arrangements using the intended parents' gametes precisely to avoid genetic *nasab* ambiguity (Haddadi et al., 2025b; Saniei & Kargar, 2021).

Second, there is universal recognition that surrogacy involving donor gametes (sperm, eggs, or embryos from third parties outside the marriage) is more problematic than gestational surrogacy using the married couple's own embryo. This distinction, rooted in the Quranic principle that the child belongs to the husband's marital bed (al-walad lil-firash), appears across Sunni and Shia fiqh and is reflected in national regulatory distinctions (Inhorn, 2006; Zawawi et al., 2024; Zehi et al., 2025).

Third, all jurisdictions evidence significant legal lacunae—gaps between rapid technological advancement and legislative response. Even Iran's 2003 Act is acknowledged as incomplete, failing to address surrogate mothers' rights, compensation mechanisms, multi-party disputes, and posthumous reproduction scenarios comprehensively (Haddadi et al., 2025b; Wang & Levinson, 2016b). This legislative under-development reflects the global trend of law lagging behind biotechnology, compounded in Muslim-majority contexts by the additional layer of reconciling modern medicine with classical Islamic jurisprudential categories.

Divergences and Their Explanatory Factors

The most fundamental divergence—between Iran's permissive framework and the prohibitory stance of Sunni-majority jurisdictions—is explained by sectarian theological differences in the methodology of ijtihad and the scope of permissible analogy in Islamic legal reasoning. Shia marjas, operating through a living tradition of independent juristic reasoning, can issue rulings that diverge from historical consensus; this institutional feature of Shia fiqh allowed Ayatollah Khamenei to reason that gestational surrogacy, lacking any

sexual act, is distinct from adultery and does not violate the essence of lineage protection (Aramesh, 2009b; Fadhilah et al., 2025).

Sunni jurisprudence, by contrast, tends to privilege ijma (consensus) and exercises greater caution in departing from established positions, particularly on matters touching family structure. The Al-Azhar prohibition has effectively served as a binding consensus position that Sunni-majority states have been unwilling to challenge through legislative reform, even as demographic need for infertility treatment grows (Al-Bar & Chamsi-Pasha, 2015; Inhorn, 2006). This difference in jurisprudential methodology translates directly into divergent national laws, creating a situation in which the same medical procedure is legal and regulated in Iran but criminal (or at least unrecognized) in neighboring Saudi Arabia.

A secondary axis of divergence concerns the secular-religious dimension of law. Turkey's prohibition, grounded in secular civil law, demonstrates that Muslim-majority states can arrive at surrogacy prohibition through non-religious pathways. This suggests that the barriers to surrogacy reform in Muslim-majority contexts are not purely theological: social conservatism about family structure, concerns about women's exploitation, and the political economy of fertility medicine all play roles independent of religious jurisprudence (Fadhilah et al., 2025).

Legal Lacunae and Vulnerability of Affected Parties

The most pressing practical consequence of fragmented regulatory frameworks is the legal vulnerability of the parties involved in surrogacy arrangements. Surrogate-born children in jurisdictions without explicit legislation face uncertain legal parentage, potential statelessness when born to foreign intended parents, and ambiguous inheritance rights. In Indonesia, for example, the absence of legislative parentage rules means that a child born to a surrogate would legally be the child of the surrogate mother and her husband (if married), regardless of genetic parentage—a result inconsistent with both intended parenthood and the child's best interests (Solihah et al., 2026; Sujadmiko et al., 2023).

Surrogate mothers themselves face risks of exploitation and inadequate legal protection in the absence of enforceable contracts and minimum standards. The international experience with commercial surrogacy industries in countries like India and Thailand—before those countries enacted prohibitory reforms—illustrates the exploitation risks that emerge when surrogacy is practiced informally without regulatory oversight (Flores, 2022). For Muslim-majority jurisdictions that currently prohibit surrogacy, the risk

is that informal arrangements occur in a regulatory vacuum, leaving surrogates without medical, legal, or financial protections.

Toward Harmonized Islamic Regulatory Frameworks

The findings of this comparative analysis suggest that the development of harmonized, Islamic-principles-grounded surrogacy regulation is both necessary and feasible. Several elements of such a framework can be identified from the literature. *First*, regulatory frameworks must clearly define the types of surrogacies permissible (if any), distinguishing gestational surrogacy using the married couple's gametes from donor surrogacy—a distinction that commands the broadest scholarly support even among restrictive jurisprudential traditions (Fadhilah et al., 2025; Zehi et al., 2025).

Second, child welfare provisions—including clear rules on legal parentage, birth registration, and inheritance—must be established regardless of the permissibility question, to protect children already born through surrogacy arrangements. This aligns with the universal Islamic obligation to protect children as 'amanah' (trust) from God, recognized across all jurisprudential traditions (Solihah et al., 2026). *Third*, surrogate mothers must be protected through enforceable contracts, informed consent requirements, insurance coverage, and prohibitions on exploitative commercial terms—concerns recognized by both secular and Islamic bioethics (Haddadi et al., 2025b; Saniei & Kargar, 2021).

Interdisciplinary collaboration between Islamic scholars, medical professionals, legal practitioners, and ethicists is identified consistently in the literature as essential for developing regulatory frameworks that are simultaneously religiously legitimate, medically sound, and legally coherent (Fadhilah et al., 2025; Saniei & Kargar, 2021). International Islamic organizations, including the OIC Islamic Fiqh Academy and the Islamic Medical Association of North America (IMANA), have roles to play in facilitating such collaborative frameworks.

CONCLUSION

This article has conducted a systematic comparative analysis of surrogacy regulation across eight Muslim-majority jurisdictions, revealing a complex mosaic of legal frameworks shaped by sectarian jurisprudential traditions, constitutional arrangements, and socio-political contexts. The fundamental divide between Iran's permissive regulatory model—rooted in Shia ijtihad—and the prohibitory consensus of Sunni-majority jurisdictions reflects deep divergences in Islamic legal methodology that are unlikely to be resolved

through simple harmonization. Nevertheless, common ground exists in the shared commitment to *nasab* protection, child welfare, and the principle that procreation must remain within the bounds of valid Islamic marriage.

The pervasive legal lacunae across all jurisdictions—including Iran—represent the most urgent practical challenge: children, surrogate mothers, and intended parents routinely navigate ambiguous legal terrain with inadequate protections. The construction of comprehensive regulatory frameworks, grounded in maqasid al-shariah and attentive to contemporary medical realities, is an ethical imperative for Muslim-majority states. Such frameworks need not require jurisdictions to abandon their jurisprudential prohibitions; even within a prohibitory regime, legislation is needed to address the de facto occurrence of surrogacy and protect its most vulnerable participants.

Future research should investigate the lived experiences of infertile couples, surrogate mothers, and surrogate-born children in Muslim-majority contexts, particularly in Iran where surrogacy is legally practiced, to generate empirical evidence for policy development. Comparative studies of emerging legislation in states currently undertaking regulatory reform, and the impact of international private law (such as the Hague Conference's work on surrogacy recognition) on Muslim-majority jurisdictions, represent productive avenues for further scholarship. The intersection of Islamic jurisprudence and reproductive technology will continue to generate profound legal and ethical questions as biotechnology advances—questions that demand rigorous, interdisciplinary, and culturally grounded scholarly attention.

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