

Toward an Indonesian *Ius Constituendum* on Marriage Among Gestational Siblings In Surrogacy: Sunni and Shia Perspectives

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Abstract

*The development of Assisted Reproductive Technology (ART), particularly surrogacy, has created new forms of kinship that are not explicitly addressed in classical Islamic family law. One such relationship is that of gestational siblings, namely children born from the same gestational mother but without a genetic connection. This phenomenon raises legal questions concerning lineage, inheritance, and, more importantly, the permissibility of marriage between gestational siblings. This study aims to examine the legal status of such marriages from the perspectives of Sunni and Imāmī Shī'ī jurisprudence, assess their relevance within the Indonesian legal system, and formulate an appropriate *ius constituendum* model in response to advances in reproductive technology. This research employs a normative legal method using statutory, conceptual, comparative, and case approaches. The analysis is conducted through comparative legal analysis and prescriptive legal reasoning. The findings show that Sunni jurisprudence generally considers genetic affiliation the primary basis for determining lineage and marriage prohibitions; therefore, gestational siblings are not regarded as legally prohibited from marrying each other. In contrast, certain Imāmī Shī'ī views recognize the legal significance of gestational motherhood, potentially extending marriage prohibitions beyond purely genetic relationships. The study also finds that Indonesian law has not specifically regulated the status of gestational siblings or its implications for marriage restrictions. Accordingly, this article proposes a Hybrid Model that integrates both genetic and gestational relationships as the basis for marriage prohibitions in order to strengthen legal certainty, lineage protection, and family welfare.*

Keywords: *Surrogacy; Gestational Siblings Marriage; Sunni Jurisprudence; Imāmī Shī'ī Jurisprudence; Ius Constituendum.*

Abstrak

Perkembangan Teknologi Reproduksi Berbantu (Assisted Reproductive Technology/ART), khususnya surrogasi, melahirkan bentuk kekerabatan baru yang belum diatur secara eksplisit dalam hukum keluarga Islam klasik. Salah satunya adalah saudara gestasional (gestational siblings), yaitu anak-anak yang lahir dari ibu

gestasional yang sama tetapi tidak memiliki hubungan genetik. Fenomena ini menimbulkan persoalan hukum mengenai nasab, kewarisan, dan terutama status perkawinan antar saudara gestasional. Penelitian ini bertujuan menganalisis status hukum perkawinan tersebut dalam perspektif fikih Sunni dan Syiah Imamiyah, menilai relevansinya dalam hukum Indonesia, serta merumuskan model ius constituendum yang responsif terhadap perkembangan teknologi reproduksi. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, komparatif, dan studi kasus. Analisis dilakukan melalui metode perbandingan hukum dan penalaran hukum preskriptif. Hasil penelitian menunjukkan bahwa fikih Sunni umumnya menjadikan hubungan genetik sebagai dasar utama penentuan nasab dan larangan perkawinan, sehingga saudara gestasional tidak termasuk pihak yang haram menikah. Sebaliknya, sebagian pandangan Syiah Imamiyah mengakui signifikansi hukum keibuan gestasional yang dapat memperluas larangan perkawinan di luar hubungan genetik. Penelitian ini juga menemukan bahwa hukum Indonesia belum mengatur status saudara gestasional dan implikasinya terhadap larangan perkawinan. Karena itu, artikel ini menawarkan Model Hibrida yang mengintegrasikan hubungan genetik dan gestasional sebagai dasar larangan perkawinan guna memperkuat kepastian hukum, perlindungan nasab, dan kemaslahatan keluarga.

Kata Kunci: Surrogasi; Perkawinan Saudara Gestasional; Fikih Sunni; Fikih Syiah Imamiyah; Ius Constituendum.

INTRODUCTION

Historically, human reproduction was understood as a natural biological process occurring through sexual intercourse between a husband and wife. However, advances in medical technology have transformed this understanding by enabling fertilization, embryo formation, and pregnancy to occur through medical interventions involving parties beyond the marital couple.¹ Technologies such as in vitro fertilization (IVF), intracytoplasmic sperm injection (ICSI), embryo transfer, embryo cryopreservation, gamete donation, and surrogacy have significantly expanded reproductive options for infertile couples while simultaneously generating ethical and legal challenges previously unknown to classical family law.² These developments are no longer marginal phenomena but have become integral components of contemporary reproductive healthcare. The World Health Organization (WHO) estimates that approximately 17.5 percent of the global adult population, equivalent to one in six individuals, experiences infertility

¹ Li'izza Diana Manzil, "Urgensi Ilmu Kedokteran Islam dengan Hukum Islam (Studi Identifikasi Deoxyribo Nucleic Acid (DNA) terhadap Sepersusuan)," *Al-Manahij: Jurnal Kajian Hukum Islam* 12, no. 1 (2018), <https://doi.org/10.24090/mnh.v12i1.1323>.

² World Health Organization, *Infertility Prevalence Estimates, 1990–2021* (Geneva: WHO, 2023), <https://www.who.int/publications/i/item/978920068315>

during their reproductive years, thereby increasing reliance on assisted reproductive technologies (ART) as a major medical solution.³ Likewise, recent reports from the International Committee for Monitoring Assisted Reproductive Technologies (ICMART) indicate that more than thirteen million children have been born through ART since the birth of the first IVF baby in 1978.⁴

Among the various forms of ART, surrogacy remains one of the most controversial because it introduces a third party into the reproductive process. Susan Golombok distinguishes between two principal forms of surrogacy. The first is traditional surrogacy, in which the surrogate provides her own ovum and carries the pregnancy, thereby maintaining both genetic and gestational ties to the child.⁵ The second is gestational surrogacy, whereby an embryo created from the gametes of other individuals is implanted into the surrogate's uterus, leaving the surrogate with only a gestational, rather than a genetic, relationship to the child. This separation of reproductive functions means that surrogacy does not merely create legal relationships between parents and children; it also generates novel kinship configurations in which genetic, gestational, and social dimensions of motherhood are allocated to different individuals. Consequently, a child may have multiple maternal figures, each deriving her status from distinct biological and legal foundations.⁶

One significant implication of this arrangement is that multiple children may be born from the same gestational mother while originating from different genetic mothers and fathers. Such individuals are commonly referred to as "gestational siblings," a term adopted in this study as the equivalent of *anak serahim*. Unlike biological siblings, gestational siblings share neither blood ties nor genetic material and may originate from entirely unrelated families. Their sole connection lies in

³ Emily Harris, "Infertility Affects 1 in 6 People Globally," *JAMA* 329, no. 17 (2023): 1443, <https://doi.org/10.1001/jama.2023.6251>.

⁴ G. David Adamson et al., "O-161 ICMART Preliminary World Report 2021," *Human Reproduction* 40, Supplement 1 (2025), <https://doi.org/10.1093/humrep/deaf097.161>

⁵ Susan Golombok, *We Are Family: What Really Matters for Parents and Children* (New York: PublicAffairs, 2020), 133–148

⁶ Amel Alghrani, "Regulating Surrogacy: The Need for a New Approach," *Medical Law Review* 29, no. 3 (2021): 489–512, <https://doi.org/10.1093/medlaw/fwab014>.

having developed within the womb of the same woman.⁷ This phenomenon demonstrates how modern reproductive technologies have created new forms of kinship that were neither contemplated in classical Islamic family law nor accommodated within modern legal systems founded primarily upon biological relationships.⁸

The issue becomes particularly significant when examined through the lens of marriage law. In theory, two individuals born from the same gestational mother may later meet, establish an emotional relationship, and seek to marry without realizing that they share a gestational connection. This raises a fundamental legal question: can a purely gestational relationship create a marital impediment comparable to that arising from blood kinship or milk kinship (*raḍā'ah*)? In Islamic law, milk kinship, despite lacking any genetic connection, establishes permanent marriage prohibitions and creates relationships of *maḥram*.⁹ Consequently, a more fundamental question emerges: if the transfer of breast milk is sufficient to generate legal barriers to marriage, should a shared residence in the same womb for nine months not produce equivalent, or perhaps even stronger, legal consequences? This question remains particularly important because contemporary Islamic family law has yet to reach a clear consensus regarding the legal significance of gestational relationships.¹⁰

The dominant position among contemporary Sunni juristic institutions, particularly the International Islamic Fiqh Academy of the Organisation of Islamic Cooperation (OIC), has been to prohibit surrogacy on the grounds that it risks lineage confusion (*ikhṭilāṭ al-ansāb*) and undermines the family structure established through lawful marriage (*sah*).¹¹ Similarly, Wahbah al-Zuhaylī argues that the use of another woman's womb creates uncertainty regarding maternal identity

⁷ Guido Pennings, "The Ethical Challenges of Surrogacy and Assisted Reproduction," *Facts, Views & Vision in ObGyn* 14, no. 2 (2022)

⁸ Anna Smajdor, *The Ethics of Reproductive Technology* (Cambridge: Cambridge University Press, 2023), 201–224.

⁹ Jonathan Herring, *Medical Law and Ethics*, 9th ed. (Oxford: Oxford University Press, 2024), 622–628

¹⁰ Yusuf al-Qaradawi, *Fatawa Mu'āṣirah*, vol. 3 (Cairo: Dar al-Qalam, 2019), 511–519.

¹¹ Islamic Fiqh Academy (OIC), *Resolutions and Recommendations of the Council of Islamic Fiqh Academy 1985–2000* (Jeddah: IIFA, 2000), 34–39

and therefore conflicts with the Sharī‘ah objective of preserving lineage (*hifẓ al-nasab*).¹²

In contrast, several Imāmī Shī‘ī scholars, including Ayatollah Ali Khamenei and other contemporary *marāji‘*, have permitted surrogacy under specific conditions while maintaining compliance with Islamic legal principles.¹³ Within modern Shī‘ī jurisprudence, the debate has shifted beyond the permissibility of the technology itself toward the question of who should be recognized as the child's legal mother. Some jurists regard the genetic mother as the legitimate mother, whereas others accord legal significance to the gestational mother based on her biological role in pregnancy and childbirth. These differing interpretations directly affect determinations of lineage, *maḥram* status, inheritance rights, and the marital status of gestational siblings. If gestational motherhood is recognized as a basis of legal motherhood, marriage prohibitions may extend to children who share the same womb despite lacking any genetic relationship.¹⁴

Within the Indonesian context, the issue becomes particularly intriguing because the legal system formally prohibits the use of a third party's womb in assisted reproduction. Article 58 of Law No. 17 of 2023 on Health stipulates that pregnancies resulting from non-natural fertilization methods are permissible only when the embryo is implanted into the uterus of the legally married wife who owns the ovum. Similar provisions were previously contained in Law No. 36 of 2009 on Health and further elaborated in Minister of Health Regulation No. 43 of 2015 concerning the Provision of Assisted Reproductive Technology Services. Nevertheless, the existence of a normative prohibition does not necessarily guarantee the absence of surrogacy in social practice. Experiences from various jurisdictions demonstrate that legal restrictions often encourage cross-border reproductive care, enabling individuals to obtain surrogacy services in countries with more permissive regulatory frameworks. Consequently, legal questions arising from surrogacy

¹² Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 9 (Damascus: Dār al-Fikr, 2007), 6841–6847.

¹³ Ali Khamenei, *Ajwibat al-Istifta'at* (Tehran: Islamic Thought Foundation, 2021), 302–306

¹⁴ Mohammad Mehdi Shamseddin, “Surrogacy and Parentage in Contemporary Shi‘a Jurisprudence,” *Journal of Shi‘a Islamic Studies* 15, no. 2 (2022): 145–163.

remain relevant even in jurisdictions where the practice is formally prohibited.¹⁵

Existing scholarship has examined surrogacy from several perspectives. First, studies by Lima and Cutas emphasize that the principal challenge of surrogacy within modern family law lies in determining who should be legally recognized as the child's parent, whether the gestational mother, the genetic contributors, or the intended parents.¹⁶ In the Indonesian context, Thalib similarly argues that children born through surrogacy occupy a condition of legal uncertainty because surrogacy agreements lack legal recognition, while the civil status of the child nevertheless requires legal protection and certainty.¹⁷ Second, research addressing surrogacy and lineage has predominantly focused on the risk of lineage confusion (*ikhtilāf al-ansāb*) as the primary basis for its rejection in Islamic law. Majid, for example, examines the lineage status of children born through surrogate motherhood from the perspectives of Islamic law and positive law, whereas Putri highlights the validity of lineage and the legal relationship between the child, the genetic mother, and the gestational mother as the central legal concern.¹⁸ Third, studies on surrogacy and inheritance generally regard inheritance disputes as derivative consequences of uncertainty regarding lineage. Aisyah demonstrates that ambiguity concerning the legally recognized mother and father in surrogate motherhood arrangements directly affects a child's inheritance rights, particularly when pregnancy involves a woman outside a legally valid marital relationship.¹⁹ Fourth, comparative studies of Sunni and Shī'ī jurisprudence have largely concentrated on the permissibility of surrogacy itself. Sujadmiko, Muslim, and Senses, for instance, compare Indonesia and Iran and

¹⁵ Claire Achmad, "Legal Challenges of Assisted Reproductive Technology in Indonesia," *Indonesia Law Review* 11, no. 3 (2021): 301–320.

¹⁶ Daniela Lima and Daniela Cutas, "Legal Parenthood in Surrogacy: Shifting the Focus to the Child?" *Journal of Social Welfare and Family Law* 46, no. 3 (2024): 325–342, <https://doi.org/10.1080/09649069.2024.2344935>

¹⁷ Sabrina Rizqia Thalib, "Civil Law Implications for Children Born Through Surrogacy in Indonesia," *Journal of Law, Politics and Humanities* 5, no. 5 (2025): 3737–3747, <https://doi.org/10.38035/jlph.v5i5.2556>

¹⁸ Muhammad Fathur Majid, "Nasab Bayi Tabung dari Ibu Pengganti: Studi Komparasi Hukum Islam dan Hukum Positif," *Qiblah: Jurnal Studi Islam dan Bahasa Arab* 1, no. 1 (2022): 41–59, <https://doi.org/10.36701/qiblah.v1i1.622>

¹⁹ Siti Aisyah Hsb, "Examining the Status of the Surrogate Mother's Child in Islamic Law: Implications for Lineage and Inheritance Rights," *Al-Maqasid: Jurnal Ilmu Kesyaharian dan Keperdataan* 11, no. 1 (2025): 57–74

conclude that the Sunni tradition dominant in Indonesia generally rejects surrogacy, whereas Iran, operating within the framework of Ja'fari jurisprudence, provides broader legal space for surrogacy through contractual arrangements and religious rulings.²⁰ Similar findings are reported by Farendra and Efrinaldi, who observe that Iran legitimizes surrogacy through the flexibility of Shi'i jurisprudence, while Indonesia lacks a comprehensive legal framework capable of regulating the status of surrogate mothers, children, and the legal consequences arising from such arrangements.²¹

Although these studies provide valuable foundations for understanding surrogacy, a significant scholarly gap remains. Most existing research focuses on the vertical relationship between parents and children, particularly issues relating to legal parenthood, lineage, inheritance rights, and the legal protection of children born through surrogacy. Likewise, comparative discussions of Sunni and Shi'i jurisprudence generally end with questions concerning the permissibility or prohibition of surrogacy, without examining its horizontal implications for relationships among children born from the same gestational mother. As a result, the issue of marriage between gestational siblings has received little scholarly attention. This omission is noteworthy because gestational relationships differ from both blood kinship and milk kinship, yet they embody a unique form of biological and gestational proximity that may raise questions concerning *mahram* status and marital prohibitions.

RESEARCH METHODS

This study employs normative legal research (doctrinal legal research), focusing on the analysis of legal norms, doctrines, and principles governing kinship relations and marriage prohibitions in the context of assisted reproductive technologies, particularly surrogacy. A normative approach is appropriate because the issues under examination extend beyond the existence of positive legal rules to encompass conceptual questions concerning motherhood, lineage (*nasab*), *mahram* relationships, and kinship structures that underpin the legal validity of

²⁰ Bayu Sujadmiko, Laode Machdani Afala Muslim, and Danang Wahyu Muhammad Sensuse, "Surrogacy in Indonesia and Iran: The Comparative Legality and Islamic Perspective," *HTS Teologiese Studies/Theological Studies* 79, no. 1 (2023): 1–7, <https://doi.org/10.4102/hts.v79i1.8108>

²¹ Daffa Giri Dwi Farendra and Efrinaldi, "Surrogacy Laws in Indonesia, Iran, and India: A Comparative Legal Analysis," *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan* 12, no. 1 (2025): 115–136

marriage among gestational siblings. The primary legal materials consist of Indonesian statutory regulations, including Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, the Compilation of Islamic Law (*Kompilasi Hukum Islam*), Law No. 17 of 2023 on Health, and Minister of Health Regulation No. 43 of 2015 concerning the Provision of Assisted Reproductive Technology Services. Secondary legal materials include classical and contemporary Islamic jurisprudential works, religious fatwas, peer-reviewed journal articles, and scholarly studies addressing surrogacy, lineage, kinship, and marriage prohibitions.

To address the research questions, four complementary approaches are employed. First, the statute approach is used to examine the Indonesian legal framework governing assisted reproductive technologies, the legal status of children, and marriage restrictions. Second, the conceptual approach is applied to analyze fundamental concepts such as motherhood, genetic parenthood, gestational parenthood, and siblinghood in order to assess whether gestational relationships may generate legal consequences comparable to those arising from blood kinship or milk kinship (*raḍā'ah*). Third, the comparative approach is utilized to compare Sunni and Imāmī Shī'ī jurisprudential constructions regarding legal motherhood, lineage, *maḥram* status, and their implications for marriage between gestational siblings. Fourth, the case approach is conducted through an examination of authoritative contemporary Islamic legal opinions, including resolutions of the International Islamic Fiqh Academy (*Majma' al-Fiqh al-Islāmī*), fatwas issued by Al-Azhar, and the views of Ayatollah Ali Khamenei, Ayatollah Ali al-Sistani, and Ayatollah Naser Makarem Shirazi concerning surrogacy and its legal consequences for family relations.

The comparative analysis is conducted at the level of legal reasoning rather than by treating “Sunni” and “Imāmī Shī'ī” jurisprudence as internally uniform systems. Within the Sunni materials, the study distinguishes institutional resolutions and the arguments of individual contemporary jurists; within the Imāmī materials, it compares the positions of selected marāji' on surrogacy, motherhood, lineage, and the legal consequences of gestation. The comparison proceeds through four variables: (1) the legal criterion of motherhood, (2) the basis of nasab, (3) the juridical cause ('illah) for maḥram status, and (4) the consequences for permanent marriage impediments. Accordingly, references to a “Sunni position” or a “Shī'ī position” in this article

indicate a predominant or selected tendency, not an assertion of doctrinal unanimity.

The legal materials are analyzed using comparative legal analysis and prescriptive analysis. Comparative legal analysis is employed to identify similarities and differences between Sunni and Shī'ī legal constructions concerning the status of gestational siblings and the resulting implications for marriage prohibitions. This approach facilitates an assessment of whether gestational relationships possess legal significance in establishing *maḥram* status or merely constitute biological connections without marital consequences. Subsequently, prescriptive analysis is applied to formulate an *ius constituendum* model that may serve as a foundation for the future development of Indonesian family law in response to legal issues arising from surrogacy. Beyond identifying existing legal norms, this prescriptive inquiry proposes normative formulations designed to ensure legal certainty, protect lineage, and prevent marriages that may generate future disputes concerning kinship status.

RESULT AND DISCUSSION

Gestational Siblinghood as a New Kinship Category in Surrogacy

The development of Assisted Reproductive Technology (ART) has given rise to various forms of non-conventional reproduction that have significantly transformed the structure of family relationships in contemporary legal systems. Among these developments, surrogacy represents one of the most complex reproductive arrangements, involving a woman who carries and delivers a child on behalf of individuals or couples unable to achieve pregnancy naturally. As noted by David Adamson and colleagues in studies on reproductive bioethics and law, surrogacy is generally classified into two principal forms: traditional surrogacy and gestational surrogacy.²² The distinction between these models extends beyond medical procedures and directly affects the legal relationships established after the child is born.²³

Traditional surrogacy involves the use of the surrogate mother's own ovum. In this arrangement, fertilization occurs using sperm from either the intended father or a donor, while the surrogate simultaneously

²² G. David Adamson et al., "O-161 ICMART Preliminary World Report 2021," *Human Reproduction* 40, suppl. 1 (2025), <https://doi.org/10.1093/humrep/deaf097.161>.

²³ L'ubica Garayová, "Children's Rights in Assisted Reproduction and Surrogacy," *Law, Identity and Values* 4, no. 2 (2024): 1–19.

functions as both the genetic and gestational mother of the child.²⁴ Consequently, the surrogate possesses a dual biological connection to the child through genetic contribution and pregnancy. This model has generated extensive legal and ethical debate because the surrogate occupies a position that closely resembles that of a biological mother in natural reproduction. From the perspective of family law, traditional surrogacy is relatively easier to conceptualize because genetic and gestational functions remain united in the same individual, although disputes concerning legal parenthood may still arise after birth.²⁵

By contrast, gestational surrogacy clearly separates genetic and gestational functions. Under this model, an embryo created from the sperm and ovum of other individuals is transferred into the uterus of a surrogate through embryo-transfer procedures.²⁶ As a result, the surrogate has no genetic connection to the child but nonetheless performs an indispensable biological role throughout pregnancy and childbirth. Internationally, gestational surrogacy has become the dominant form of surrogacy because it enables intended parents to have a child genetically related to them.²⁷ At the same time, however, it creates far more complex legal questions because the previously unified concept of motherhood becomes fragmented into distinct categories, namely genetic motherhood, gestational motherhood, and social or caregiving motherhood.

This fragmentation demonstrates that surrogacy is not merely a matter of reproductive medicine but also a process of reconstructing family relationships. In conventional reproduction, maternal identity can be determined with relative certainty because the woman who provides the ovum, carries the pregnancy, and gives birth is the same person.²⁸ In contemporary surrogacy arrangements, however, these functions may be distributed among different legal subjects. Consequently, family

²⁴ Nayana H. Patel et al., "Insight into Different Aspects of Surrogacy Practices," *Journal of Human Reproductive Sciences* 11, no. 3 (2018): 212–218.

²⁵ Amel Alghrani, "Regulating Surrogacy: The Need for a New Approach," *Medical Law Review* 29, no. 3 (2021): 489–512.

²⁶ Ezgi Manvelyan, "Navigating the Gestational Surrogacy Seas: The Legalities and Complexities of Surrogacy Across the Globe," *Frontiers in Global Women's Health* 5 (2024): 1–13.

²⁷ Susan Golombok, *We Are Family: What Really Matters for Parents and Children* (New York: PublicAffairs, 2020), 133–148.

²⁸ Daniela Lima and Daniela Cutas, "Legal Parenthood in Surrogacy: Shifting the Focus to the Child?" *Journal of Social Welfare and Family Law* 46, no. 3 (2024): 325–342.

structures traditionally grounded in biological relationships become increasingly difficult to sustain without a more comprehensive legal redefinition of parenthood and kinship.²⁹

The principal complexity of surrogacy lies in its capacity to generate kinship structures that were never envisaged within classical family law. In natural reproduction, family relationships are generally established through biological descent and are relatively straightforward to identify.³⁰ Surrogacy, by contrast, creates multiple layers of biological and social relationships that overlap yet do not necessarily produce identical legal consequences. Within this context, identifying the nature of kinship becomes a prerequisite for determining lineage (*nasab*), *mahram* status, inheritance rights, and the validity of marriage.³¹ Conceptually, kinship relationships arising from surrogacy may be mapped as follows:

Tabel 1. Kinship Relationships Arising from Surrogacy and Their Biological Bases

Relationship	Basis of Relationship
Genetic Mother	Ovum
Gestational Mother	Uterus and pregnancy
Genetic Father	Sperm
Gestational Siblings	Shared gestational mother

This classification illustrates how modern reproductive technologies have expanded the foundations upon which family relationships may be formed. Whereas classical family law generally relied on genetic affiliation and natural birth as the primary bases of kinship, surrogacy introduces the womb as an independent variable capable of generating a distinct biological relationship without any accompanying genetic connection.³² It is within this context that the present study employs the concept of “gestational siblings,” referring to

²⁹ Anna Smajdor, *The Ethics of Reproductive Technology* (Cambridge: Cambridge University Press, 2023), 201–224.

³⁰ Guido Pennings, “The Ethical Challenges of Surrogacy and Assisted Reproduction,” *Facts, Views & Vision in ObGyn* 14, no. 2 (2022): 105–117.

³¹ Jessica Tueller, “On Parentage, Genetics, and Surrogacy,” *Georgia Law Review* 59, no. 3 (2025): 811–882.

³² Aisling Mulligan, “Surrogacy and the Significance of Gestation: Implications for Law and Policy,” *Bioethics* 38, no. 7 (2024).

two or more individuals who were carried by the same woman but originate from different genetic mothers and fathers.³³

The notion of gestational siblinghood differs fundamentally from that of biological siblings, half-siblings, and milk siblings. Biological siblings share both parents and therefore possess a complete blood relationship. Half-siblings share one biological parent,³⁴ while milk siblings acquire a legally recognized relationship through breastfeeding, which Islamic law regards as a basis for the establishment of *maḥram* status and marriage prohibitions.³⁵ Gestational siblings, by contrast, share neither genetic ancestry nor milk kinship. Their only connection is that they developed and received prenatal nourishment within the womb of the same woman.³⁶ Accordingly, gestational siblinghood constitutes a novel category of kinship that has emerged as a direct consequence of advances in assisted reproductive technologies.

The Legal Status of Marriage Between Children Born from the Same Gestational Womb in Sunni and Shi'i Jurisprudence

The issue of marriage between children born from the same gestational womb cannot be separated from the normative construction of lineage (*nasab*) and motherhood that underpins the establishment of *maḥram* relationships in Islamic jurisprudence. In general, Sunni Islamic family law bases marital prohibitions on three legally recognized forms of kinship: blood relationship (*nasab*), milk kinship (*raḍā'ah*), and affinity through marriage (*muṣāḥarah*), as stipulated in Qur'an 4:23.³⁷ This verse explicitly enumerates the categories of women who are permanently prohibited for marriage, including mothers, daughters, sisters, paternal and maternal aunts, nieces, foster mothers, foster sisters, mothers-in-law, stepdaughters, daughters-in-law, and the simultaneous marriage to two sisters.³⁸ Significantly, however, the verse contains no

³³ Jonathan Herring, *Medical Law and Ethics*, 9th ed. (Oxford: Oxford University Press, 2024), 622–628.

³⁴ Susan Golombok, *We Are Family*, 145–152.

³⁵ Zulhamdi Zulhamdi, “Radha’ah in the Perspective of Tafsir Al-Misbah,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 2 (2020), <https://doi.org/10.22373/sjhk.v4i2.6419>

³⁶ Daniela Lima and Daniela Cutas, “Legal Parenthood in Surrogacy,” 331–336.

³⁷ Muḥammad ibn Aḥmad al-Qurṭubī, *Al-Jāmi' li Aḥkām al-Qur'ān*, vol. 5 (Beirut: Mu'assasah al-Risālah, 2006), 97–112

³⁸ Wahbah al-Zuhaylī, *Al-Tafsīr al-Munīr fī al-'Aqīdah wa al-Sharī'ah wa al-Manhaj*, vol. 5 (Damascus: Dār al-Fikr, 2009), 20–31.

explicit provision concerning relationships arising solely from sharing the same womb in the absence of either genetic or milk kinship.³⁹

The discussion of motherhood in Islamic law is also closely related to Qur'an 58:2, which states that a child's mother is "the woman who gave birth to him" (*allā'ī waladnahum*). In contemporary reproductive discourse, this verse is frequently invoked to support the argument that pregnancy and childbirth possess legal significance in determining maternal status. Nevertheless, contemporary Sunni scholars generally interpret the verse within the context of natural reproduction and therefore do not automatically recognize a gestational mother as the legal mother in cases of surrogacy. Furthermore, Qur'an 33:4-5 emphasizes the preservation of clear lineage and prohibits attributing a person to anyone other than his or her biological parents. Consequently, the majority of Sunni jurists maintain that any legal arrangement potentially resulting in lineage confusion (*ikhtilāṭ al-ansāb*) must be avoided in order to safeguard one of the principal objectives of Islamic law, namely the protection of lineage (*ḥifẓ al-nasab*).⁴⁰

On this basis, the International Islamic Fiqh Academy of the Organization of Islamic Cooperation (OIC) has, through a series of resolutions, rejected the use of another woman's womb in the reproductive process on the grounds that it creates the possibility of lineage confusion (*ikhtilāṭ al-ansāb*).⁴¹ In Resolution No. 16 (1986) and subsequent resolutions, the Academy affirmed that surrogate motherhood is incompatible with the objective of preserving lineage, which constitutes one of the fundamental purposes of the Sharī'ah. This rejection is grounded not only in moral considerations but also in concerns regarding uncertainty over the identity of the legally recognized mother and father within the family structure.⁴²

A similar position is advanced by Yusuf al-Qaraḍāwī. According to him, surrogacy involving a third party is impermissible because it

³⁹ Karimuddin Abdullah Lawang, Maimun A. Rahman, Syamsiah Nur, Muh. Zaim Azhar, and Ali Suage, "The Correlation Between Breast Milk and Sperm as a Causal Factor of Mahramiyah of Breastfeeding," *Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023), <https://doi.org/10.29240/jhi.v8i1.5253>.

⁴⁰ Mohammad Hashim Kamali, *Maqasid al-Shariah Made Simple* (Herndon: International Institute of Islamic Thought, 2008), 49–57.

⁴¹ Islamic Fiqh Academy (OIC), *Resolutions and Recommendations of the Council of Islamic Fiqh Academy 1985–2000* (Jeddah: International Islamic Fiqh Academy, 2000), 34–39.

⁴² Mohammed Ghaly, *Islam and Disability: Perspectives in Theology and Jurisprudence* (London: Routledge, 2010), 168–173.

generates ambiguity in familial identity and creates potential disputes concerning the child's lineage. Al-Qaraḍāwī argues that family relations in Islam must be founded upon clear biological connections and a valid marital relationship.⁴³ Accordingly, a woman who merely functions as a gestational carrier does not automatically acquire a form of motherhood that establishes *mahram* relations comparable to those arising from legal motherhood in Islamic law.⁴⁴

Wahbah al-Zuhaylī likewise identifies the protection of lineage as the primary rationale for rejecting surrogacy. In his view, maternal status in Islamic law cannot be established solely on the basis of gestational functions when the reproductive process occurs through mechanisms not recognized by the Sharī'ah.⁴⁵ Under this framework, the child's legal affiliation is more closely connected to the legitimate providers of the ovum and sperm than to the woman who merely carries the fetus. Consequently, if two children share only the same gestational mother but possess neither a genetic relationship nor a milk-kinship relationship, they cannot be regarded as siblings whose relationship gives rise to *mahram* status.⁴⁶

Based on this doctrinal construction, the predominant Sunni position tends toward the conclusion that children born from the same gestational womb do not fall within the category of *mahram* relatives in the absence of lineage, milk kinship, or marital affinity recognized by Islamic law.⁴⁷ Accordingly, sharing the same womb alone is insufficient to establish a marital prohibition. From this perspective, gestational connection is treated as a biological fact that does not generate legal consequences in the form of *mahram* status. Therefore, marriage between individuals who merely share the same gestational mother is

⁴³ Yūsuf al-Qaraḍāwī, *Fatāwā Mu'āṣirah*, vol. 3 (Cairo: Dār al-Qalam, 2019), 511–519.

⁴⁴ Vardit Rispler-Chaim, "Islamic Medical Ethics in the Twenty-First Century," *Journal of Religious Ethics* 47, no. 2 (2019): 244–263, <https://doi.org/10.1111/jore.12255>.

⁴⁵ Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 9 (Damascus: Dār al-Fikr, 2007), 6841–6847.

⁴⁶ Abdulaziz Sachedina, *Islamic Biomedical Ethics: Principles and Application* (Oxford: Oxford University Press, 2009), 131–137.

⁴⁷ Mohammed Ghaly, "Islamic Bioethics and the Challenge of Modern Reproductive Technologies," *Zygon* 54, no. 3 (2019): 695–712, <https://doi.org/10.1111/zygo.12515>.

theoretically permissible, provided that no other impediment to marriage exists.⁴⁸

In contrast to the generally restrictive Sunni position on surrogacy, Twelver Shi'i jurisprudence has developed a more flexible approach toward assisted reproductive technologies.⁴⁹ In many contemporary Shi'i legal opinions, the primary issue is no longer whether surrogacy itself is permissible, but rather how motherhood, lineage, and the legal relationships arising after birth should be determined. This shift in focus has rendered Shi'i discussions of surrogacy considerably more complex than their Sunni counterparts.⁵⁰

Ayatollah Ali Khamenei is among the contemporary Shi'i scholars who permit surrogacy under certain conditions. In a number of fatwas published in *Ajwibat al-Istiftā'āt*, Khamenei does not categorically prohibit surrogate motherhood so long as the procedure does not violate fundamental principles of Islamic law.⁵¹ Nevertheless, he acknowledges that surrogacy generates novel legal questions concerning maternal identity and lineage that require careful determination. In some of his opinions, there is a tendency to recognize both the genetic mother and the gestational mother, while simultaneously considering the legal significance of the woman who carries and gives birth to the child.⁵²

A similar approach can be found in the legal opinions of Ayatollah Ali al-Sistani. Al-Sistani recognizes that surrogacy presents unique challenges in determining lineage.⁵³ Consequently, motherhood is not always understood as a singular legal status. Within certain strands of contemporary Shi'i jurisprudence, both the genetic mother and the gestational mother may receive a degree of legal recognition according to their respective biological contributions. As a result, the relationship

⁴⁸ Ahmad Al-Dawoody, *The Islamic Law of War: Justifications and Regulations* (New York: Palgrave Macmillan, 2011), 84–87.

⁴⁹ Soraya Tremayne, *Islam and Assisted Reproductive Technologies: Sunni and Shia Perspectives* (New York: Berghahn Books, 2012), 45–73.

⁵⁰ Morgan Clarke, *Islam and New Kinship: Reproductive Technology and the Shariah in Lebanon* (New York: Berghahn Books, 2009), 89–117.

⁵¹ Ali Khamenei, *Ajwibat al-Istifta'at* (Tehran: Islamic Thought Foundation, 2021), 302–306.

⁵² Soraya Tremayne and Mohammad Gholami, "Reproductive Technologies and Shi'i Jurisprudence," *Reproductive BioMedicine Online* 42, no. 4 (2021): 811–820.

⁵³ Ali al-Sistani, *Contemporary Legal Rulings (Istifta'at)* (Najaf: Office of Grand Ayatollah al-Sistani, 2022).

between the child and the gestational mother is not necessarily viewed as entirely external to the family structure.⁵⁴

An even more progressive position is advanced by Ayatollah Naser Makarem Shirazi. In his writings on modern reproductive jurisprudence, Makarem Shirazi argues that pregnancy and childbirth cannot be disregarded when determining the legal relationship between a mother and her child.⁵⁵ Although the genetic mother retains a central position, the biological contribution of the gestational mother during pregnancy possesses a significance that cannot be separated from the process of human creation.⁵⁶ Consequently, some Shi'i jurists leave open the possibility that the gestational mother may acquire a particular form of motherhood with implications for family relations and *mahram* status.

The consequence of this doctrinal construction is the emergence of broader possibilities for establishing *mahram* relationships on the basis of gestational functions.⁵⁷ If the gestational mother is recognized as possessing a legally relevant form of motherhood, children born from the same womb may no longer be regarded as entirely unrelated individuals. Although not all Shi'i scholars conclude that marriage between such children is prohibited, the recognition of the legal significance of pregnancy creates a considerably stronger basis for arguing in favor of marital prohibition than is found within the Sunni tradition.

The principal differences between Sunni and Shi'i jurisprudence regarding surrogacy may be summarized as follows:

Table 2. Comparative Perspectives of Sunni and Shi'i Jurisprudence on Kinship in Surrogacy

Issue	Sunni Jurisprudence	Shi'i Jurisprudence
Legal Motherhood	Predominantly genetic mother	Genetic mother and/or gestational mother

⁵⁴ Aasim I. Padela and Ebrahim Moosa, "Islamic Bioethics and Reproductive Ethics," *Theoretical Medicine and Bioethics* 41, no. 2 (2020): 121–139, <https://doi.org/10.1007/s11017-020-09520-8>.

⁵⁵ Naser Makarem Shirazi, *New Issues in Islamic Jurisprudence* (Qom: Imam Ali Institute, 2021), 187–201.

⁵⁶ Abdulaziz Sachedina, *Islamic Biomedical Ethics: Principles and Application* (Oxford: Oxford University Press, 2009), 139–145.

⁵⁷ Ulvi Rohmatul Musyayyadah, Lukman Santoso, and Achmad Baihaqi, "Challenging Legal Injustice against Children in Incest Cases: A Progressive and Islamic Human Rights Approach," *De Jure: Jurnal Hukum dan Syar'iah* 17, no. 2 (2025), <https://doi.org/10.18860/j-fsh.v17i2.36277>.

Lineage (<i>Nasab</i>)	Primarily genetics-based	Diverse and context-dependent
<i>Mahram</i> Relationship	Limited to <i>nasab</i> , <i>raḍāʿah</i> , and <i>muṣāharah</i>	Potentially expanded through recognition of gestational motherhood
Marriage Between Children Sharing the Same Gestational Womb	Generally permissible	Potentially prohibited

The table demonstrates that the principal divergence does not concern the legality of surrogacy itself, but rather the manner in which each tradition conceptualizes the relationship between pregnancy and motherhood. In Sunni jurisprudence, the womb is not considered sufficient to generate legal kinship in the absence of a valid lineage connection.⁵⁸ By contrast, certain Shi‘i constructions attribute legal relevance to gestation, thereby opening the possibility for broader familial relationships.

These divergent doctrinal approaches indicate that modern reproductive technologies have transcended the categories of kinship traditionally recognized in classical Islamic family law.⁵⁹ As a result, no settled consensus exists regarding the legal status of children born from the same gestational womb. This situation creates the potential for legal uncertainty, as the validity of a marriage may vary according to the school of law or legal system applied.

Furthermore, these differences may generate conflicts of personal status. An individual may be considered unrelated and therefore marriageable under a Sunni framework, while simultaneously being regarded as possessing a legally relevant familial relationship under certain Shi‘i interpretations. Such discrepancies have implications not only for marriage, but also for inheritance, guardianship, and family identity more broadly.

The issue becomes even more complex in the context of cross-border surrogacy arrangements. A child born through surrogacy in a jurisdiction where the practice is legally permitted may subsequently reside in another jurisdiction that adopts a different legal construction of

⁵⁸ Sarpini Sarpini, “Prosedur Menyelesaikan Kasus Hukum dengan Ijmā’,” *El-Mashlahah* 9, no. 1 (2019), <https://doi.org/10.23971/el-mas.v9i1.1256>.

⁵⁹ Jonathan Herring, *Medical Law and Ethics*, 9th ed. (Oxford: Oxford University Press, 2024), 622–628.

motherhood and lineage. Under such circumstances, the legal status of marriage between children sharing the same gestational womb may vary according to the applicable jurisdiction.⁶⁰ Consequently, the Sunni–Shi‘i debate possesses not only theoretical significance but also underscores the urgent need to formulate an *ius constituendum* framework capable of providing legal certainty regarding the marital status of children born from the same gestational womb within the contemporary Indonesian legal system.

Reconstructing the *Ius Constituendum* of Marital Prohibitions Among Gestational Siblings in Indonesian Family Law

The development of assisted reproductive technologies (ART) has generated legal consequences that cannot be resolved merely by prohibiting surrogacy. Indonesian law restricts assisted reproduction to procedures involving a legally married couple and implantation into the wife’s own uterus; however, the Marriage Law and the Compilation of Islamic Law do not expressly determine the marital status of persons who share a gestational mother without genetic kinship. The problem is therefore better characterized as normative silence or normative indeterminacy, rather than a complete legal vacuum: general rules on marriage impediments already exist, but they do not expressly classify gestational siblinghood. This distinction is especially important in cross-border surrogacy, where a child may be born lawfully abroad and later enter the Indonesian civil-registration and marriage system.⁶¹

The doctrinal question is not whether every biological relationship automatically constitutes nasab. Rather, it is whether gestation can constitute a legally relevant ‘illah for a limited permanent marriage impediment. The Hybrid Model proposed here therefore distinguishes nasab from juridical kinship. Genetic affiliation remains the primary basis of nasab, while a medically verified gestational nexus may be recognized only for the narrower purpose of man‘ al-nikāh. This avoids automatically attaching inheritance, guardianship, surname, or other incidents of nasab to gestational siblinghood. The analogy with raḍā‘ah is functional rather than literal: breastfeeding is governed by specific revealed rules and cannot simply be reproduced through unrestricted qiyās, but it demonstrates that Islamic law can attach permanent marital

⁶⁰ International Social Service, *Legal Trends in Surrogacy: A Global Review* (Geneva: International Social Service, 2025), 21–43.

⁶¹ Saeid Nazari Tavakkoli, “The Status of ‘Mother’ in Gestational Surrogacy: The Shi‘i Jurisprudential Perspective,” *Asian Bioethics Review* 14 (2022): 337–348, <https://doi.org/10.1007/s41649-022-00217-2>.

consequences to a legally recognized non-genetic relationship. Thus, the proposed ‘illah is not mere physical co-location in a uterus, but the repeated and medically documented maternal function of pregnancy and childbirth through the same gestational woman.

This formulation also avoids homogenizing Sunni and Imāmī jurisprudence. Contemporary Sunni institutions predominantly reject third-party surrogacy because of concerns over lineage and maternal identity, whereas Imāmī jurists themselves do not adopt a single theory of motherhood. Nazari Tavakkoli identifies three positions in Shī‘ī jurisprudence: motherhood may be attributed to the gestational woman, to the ovum provider, or to both, although his own analysis favors the ovum provider as the mother on the basis of the embryo’s origin. The relevant comparative insight is therefore not that “Shī‘ī law” categorically makes gestational siblings maḥram, but that intra-Imāmī disagreement over motherhood creates a stronger doctrinal space for recognizing legal consequences of gestation than a binary Sunni–Shī‘ī description would suggest.⁶²

The maqāṣid argument must likewise function as reinforcement rather than as an autonomous source for inventing a new category of nasab. The objectives of ḥifẓ al-nasl and legal certainty support a narrowly tailored preventive rule when reproductive technology creates a foreseeable risk of disputed family status. Contemporary maqāṣid scholarship on surrogacy similarly emphasizes the preservation of lineage and the need for legal certainty in assessing reproductive arrangements. In this setting, maṣlaḥah mursalah supports protection of family identity and the child’s future civil status, while sadd al-dharā’i‘ supports preventing a marriage whose validity may later become contested because of an undisclosed gestational connection. These principles justify the regulatory consequence only when combined with a defined juridical relationship and reliable evidence; they do not, by themselves, transform gestation into full nasab.⁶³

Accordingly, the reconstructed Hybrid Model recognizes two independent grounds for marriage impediment: a scientifically established genetic relationship and a medically documented shared gestational relationship. For gestational siblings, the legal consequence is deliberately limited to permanent marriage prohibition. A more

⁶² Mohammad Hashim Kamali, *Maqasid al-Shariah Made Simple* (Herndon, VA: International Institute of Islamic Thought, 2008), 22–29, 49–57.

⁶³ Hague Conference on Private International Law (HCCH), “Parentage / Surrogacy Project,” accessed August 12, 2026, HCCH Parentage / Surrogacy Project.

determinate *ius constituendum* may therefore provide: “Perkawinan dilarang antara dua orang yang berdasarkan bukti medis dan/atau data registrasi reproduksi terbukti pernah dikandung dan dilahirkan oleh perempuan gestasional yang sama melalui pengaturan surrogasi, meskipun keduanya tidak mempunyai hubungan genetik. Larangan tersebut merupakan halangan perkawinan yang bersifat tetap dan tidak dengan sendirinya menimbulkan hubungan nasab, kewarisan, atau perwalian.” This formulation directly identifies the prohibited relationship, the evidentiary threshold, and the limited legal consequence, thereby avoiding an undefined statutory equation between gestation and *maḥram* status.

Implementation requires a confidential reproductive-origin registration mechanism rather than public disclosure of surrogacy status. The registry should record authenticated medical evidence concerning the gestational carrier and, where legally ascertainable, genetic contributors, while access is restricted to competent authorities for defined purposes such as adjudication and verification of marriage impediments. Before marriage registration, the system should disclose only whether an impediment exists, not the underlying reproductive history. DNA evidence may establish genetic kinship but cannot by itself prove gestational history; foreign birth records, clinic documents, court orders, and consular records should therefore be capable of authentication in cross-border cases. International work on parentage and surrogacy likewise identifies cross-border recognition of legal parentage as a continuing private-international-law problem. Such a mechanism must apply the principles of data minimization, confidentiality, non-discrimination, the best interests of the child, and access to judicial review, so that children are protected from the consequences of an arrangement they did not choose while the state retains a workable mechanism for preventing legally disputed marriages.⁶⁴

The development of assisted reproductive technologies (ART) has generated a range of legal issues that can no longer be adequately addressed through conventional constructions of family law. One issue that has yet to receive sufficient attention within the Indonesian legal system concerns the legal status of marriage between children born from the same gestational womb through surrogacy arrangements.⁶⁵ Although

⁶⁴ Hague Conference on Private International Law (HCCH), “Parentage / Surrogacy Project,” accessed August 12, 2026, HCCH Parentage / Surrogacy Project.

⁶⁵ Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 58.

Indonesian positive law expressly restricts the use of assisted reproductive technologies and prohibits the use of another woman's womb as a surrogate mother, no statutory regulation specifically addresses the legal consequences arising when such practices nevertheless occur, whether domestically or through cross-border surrogacy arrangements.⁶⁶ As a result, Indonesian law finds itself in a paradoxical position: it prohibits a particular practice while failing to anticipate the legal consequences arising from the existence of legal subjects born through that very practice.

This normative silence is first evident in Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019. It should not be described as a complete legal vacuum, because Article 8 already regulates prohibited marriages through blood relations, affinity, milk kinship, and relationships prohibited by religion or legislation. The specific deficiency is that the statute does not determine whether a medically documented gestational relationship, without genetic or milk kinship, falls within any of those categories. The problem is therefore one of normative indeterminacy and regulatory silence concerning a new reproductive relationship, rather than the total absence of applicable marriage law.

This legal vacuum is first evident in Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019. The statute is constructed upon the assumption that family relationships arise from a valid marriage and natural reproduction. The provisions concerning prohibited marriages under Article 8 regulate only blood relations, affinity relations, milk kinship, and other relationships prohibited by religion or legislation.⁶⁷ No provision addresses the possibility of kinship relationships emerging through assisted reproductive technologies, including relationships between individuals born from the same gestational mother but lacking a genetic connection.⁶⁸ Consequently, should a marriage between gestational siblings occur, the Marriage Law

⁶⁶ Mukhsin Aseri, Muhammad Rasyid, Ahmad Sharifuddin bin Mustapha, Akh. Fauzi Aseri, and Oleh Fedorchenko, "Negotiating Authority and Knowledge: Religion, Science, and Politics in the Fatwa Transformations of the Indonesian Ulama Council," *Journal of Islamic Law* 6, no. 2 (2025), <https://doi.org/10.24260/jil.v6i2.4702>.

⁶⁷ Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pasal 8.

⁶⁸ Edi Kurniawan, Handesman Handesman, Rahmadi Rahmadi, and Khairun Najib, "Early Marriage, Human Rights, and the Living Fiqh: A *Maqāṣid al-Sharī'a* Review," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 20, no. 1 (2020), <https://doi.org/10.30631/alrisalah.v20i1.565>.

provides no adequate normative instrument for determining either its validity or its prohibition.

A similar gap can be found within the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI). As the principal source of substantive law for the Religious Courts, the KHI recognizes marital prohibitions solely on the basis of lineage (*nasab*), milk kinship (*raḍā'ah*), and affinity (*muṣāharah/semenda*).⁶⁹ These legal constructions are founded upon the assumption of natural reproduction, whereby the genetic mother and the birth-giving mother are the same person. Consequently, the KHI offers no guidance regarding the status of children born through surrogacy, let alone the legal relationship between children originating from the same gestational mother. Yet, as the primary instrument of positive Islamic family law in Indonesia, the KHI occupies a strategic position in defining the boundaries of *mahram* relationships that directly affect the validity of marriage.⁷⁰

Meanwhile, Law No. 17 of 2023 on Health and Minister of Health Regulation No. 43 of 2015 prohibit the use of another woman's womb in assisted reproduction procedures.⁷¹ However, both regulations are confined to the legality of medical procedures and do not address the legal consequences arising after a child born through surrogacy comes into existence. Neither regulation provides rules concerning lineage, civil registration, inheritance rights, guardianship, nor the possibility of marriage between children born from the same gestational mother.⁷² Consequently, the prohibition of surrogacy within Indonesian health law does not automatically resolve the family-law issues that emerge as a consequence of such practices.

The absence of legal regulation concerning gestational siblings creates risks that are considerably more complex than the issue of surrogacy's legality itself. The first risk concerns the possibility of marriage between children born from the same gestational mother. In the absence of a registration or identification system specifically designed for children born through surrogacy, individuals may grow up without

⁶⁹ *Kompilasi Hukum Islam*, Pasal 39–44.

⁷⁰ Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), 145–162.

⁷¹ Peraturan Menteri Kesehatan Nomor 43 Tahun 2015 tentang Penyelenggaraan Pelayanan Teknologi Reproduksi Berbantu.

⁷² Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (London: Routledge, 2013), 67–82.

knowledge of their gestational relationship to one another. Should such individuals subsequently enter into a marital relationship, Indonesian law currently lacks a clear mechanism for determining whether the marriage should be regarded as valid or prohibited.

The second risk relates to conflicts of lineage. In cross-border surrogacy arrangements, different jurisdictions may recognize different women as the legal mother. Some jurisdictions recognize the genetic mother, whereas others recognize the birth-giving mother. Such divergence may create situations in which a child possesses different family identities depending upon the applicable legal system.⁷³ Ultimately, this uncertainty may affect various aspects of family law, including the determination of *mahram* relationships and the validity of marriage.

The third risk concerns civil registration and population administration. Indonesia's current administrative system is structured around a conventional family model recognizing only one father and one mother in official documents.⁷⁴ When surrogacy results in multiple maternal figures, questions inevitably arise regarding which woman should be listed on birth certificates and other official records. Such uncertainty may generate conflicts of legal identity that persist throughout the child's lifetime.⁷⁵

Moreover, uncertainty regarding the status of gestational siblings may also generate disputes concerning guardianship and inheritance. In both Islamic law and Indonesian civil law, lineage occupies a central role in determining who may serve as a legal guardian and who is entitled to inherit.⁷⁶ If a legal relationship between a child and a gestational mother is recognized, the question arises whether such a relationship should also generate rights and obligations in matters of guardianship and

⁷³ Katarina Trimmings and Paul Beaumont, *International Surrogacy Arrangements: Legal Regulation at the International Level* (Oxford: Hart Publishing, 2013), 193–217.

⁷⁴ Sonia Allan, *Donor Conception and the Search for Information: From Secrecy and Anonymity to Openness* (London: Routledge, 2017), 89–102.

⁷⁵ Daffa Giri Dwi Farendra and Efrinaldi, “Surrogacy Laws in Indonesia, Iran, and India: A Comparative Legal Analysis,” *Al-Qadha* 12, no. 1 (2025): 115–136. <https://doi.org/10.32505/qadha.v12i1.11650>

⁷⁶ Abu Bakar, Nur Rahmiani, Noviansyah Noviansyah, Zaenuddin Hudi Prasajo, and Wan Ariffin Wan Yon, “False Descendants of the Pontianak Sultan: The Practice and Legal Implications of Genealogical Fraud,” *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 24, no. 2 (2024): 251–278. <https://doi.org/10.18326/ijtihad.v24i2.251-278>.

inheritance. Conversely, if such a relationship is denied legal recognition, concerns emerge regarding the legal protection available to children born through surrogacy arrangements.

To address this legal vacuum, it is necessary to reconstruct an *ius constituendum* capable of responding to developments in modern reproductive technology while simultaneously preserving the principles of lineage protection and legal certainty in family law.⁷⁷ Conceptually, three possible models may be considered.

To address this normative indeterminacy, it is necessary to formulate an *ius constituendum* capable of responding to modern reproductive technology while preserving doctrinal coherence, constitutional rights, child protection, lineage clarity, and legal certainty in family law. Conceptually, three possible models may be considered.

The first is the Genetic-Based Model, which treats genetic relationship as the sole basis for determining marital prohibitions. Under this model, *mahram* relationships arise only where blood relations can be scientifically established through genetic evidence.⁷⁸ Consequently, children who merely share the same gestational mother but possess no genetic connection would remain legally eligible to marry because they would not be regarded as siblings in the legal sense. This model broadly reflects the dominant tendency within contemporary Sunni jurisprudence.

The second is the Gestational-Based Model, which considers gestational relationships to possess legal consequences equivalent to those of motherhood. Under this approach, the womb is not viewed merely as a biological medium but also as a foundation for the creation of familial relationships. Accordingly, children born from the same gestational mother are treated as siblings possessing *mahram* status and are therefore prohibited from marrying one another.⁷⁹ This model finds

⁷⁷ Andi Darna, "Perkembangan Hukum Islam di Indonesia: Konsep Fiqih Sosial dan Implementasinya dalam Hukum Keluarga," *El-Usrah: Jurnal Hukum Keluarga* 4, no. 1 (2021), <https://doi.org/10.22373/ujhk.v4i1.8780>.

⁷⁸ Muna Madrah, Badieah, Andi Riansyah, Alamsyah Alamsyah, and Dewi Ayu Fatmawati, "The Policy Integration Concept of The Mahram Relationship on Nurseling: Study on Nurseling Practices in Semarang, Central Java-Indonesia," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 2 (2022), <https://doi.org/10.19105/al-lhkam.v17i2.6316>.

⁷⁹ Mughniatul Ilma, "Reconstruction of the Concept of Mahram in Women's Safar Based on Ibn Qayyim al-Jauziyyah's Legal Change Theory," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 2 (2021): 147–161, <https://doi.org/10.31958/juris.v20i2.4303>.

support in certain strands of Shi'i jurisprudence that accord legal recognition to the contribution of the gestational mother.

Nevertheless, both models exhibit significant weaknesses. The Genetic-Based Model is administratively clear but may disregard the legally significant biological role of pregnancy and childbirth; the Gestational-Based Model, if framed as full nasab, risks extending classical kinship categories beyond established doctrinal foundations. The reconstructed Hybrid Model therefore separates two legal questions: nasab and marriage impediment. Genetic affiliation remains the primary basis for nasab, while a medically verified shared gestational relationship is recognized as an independent, limited ground for permanent marriage prohibition without automatically creating inheritance, guardianship, or other incidents of nasab. The proposed 'illah is thus a verified maternal gestational nexus, not mere biological proximity. Its normative legitimacy is reinforced by *maṣlaḥah*, *ḥifẓ al-nasl*, and *sadd al-dharā'i'*, which justify a preventive rule against foreseeable conflicts of family identity and personal status.

Based on this model, the present study proposes the formulation of a new legal norm within Indonesian family law explicitly regulating the marital status of gestational siblings. The proposed provision may be formulated as follows:

“Anak yang lahir dari praktik reproduksi berbantu dengan penggunaan ibu pengganti dilarang melangsungkan perkawinan apabila terbukti memiliki hubungan nasab atau hubungan gestasional yang menurut ketentuan peraturan perundang-undangan dipersamakan dengan hubungan mahram.”

(Children born through assisted reproductive technologies involving surrogacy shall be prohibited from entering into marriage where a lineage relationship or a gestational relationship exists that, under applicable legislation, is deemed equivalent to a mahram relationship)

To ensure practical implementation, the proposed rule requires a confidential reproductive-origin registry linked to, but not openly displayed in, the population administration system.⁸⁰ Fertility clinics and competent authorities should record the identity of the gestational carrier, intended parents, genetic contributors where legally ascertainable, the

⁸⁰ Martha Albertson Fineman, *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies* (New York: Routledge, 1995), 221–233.

child's birth data, and supporting medical documents. Access should be role-based and limited to authorized civil-registration officers, courts, and designated health authorities for legally defined purposes, including verification of marriage impediments.⁸¹ Before marriage registration, the system should return only a binary clearance or impediment result rather than disclose reproductive details to the prospective spouses or the public. Evidentiary priority should be given to authenticated medical and civil records; DNA testing may establish or exclude genetic kinship but cannot by itself prove gestational history. For cross-border cases, foreign birth records, court orders, clinic records, and consular documents should be subject to authentication and judicial verification where necessary. These safeguards seek to reconcile prevention of prohibited marriages with privacy, data minimization, non-discrimination, the child's best interests, and the child's right to legal identity.

The proposed restriction must also be constitutionally proportionate. Although the right to marry and form a family is protected within Indonesia's constitutional and human-rights framework, that right is not absolute and may be subject to lawful marriage impediments designed to protect the rights of others, legal certainty, family order, and the best interests of children. The Hybrid Model therefore requires an express statutory basis, a narrowly defined class of prohibited relationships, reliable evidence, confidentiality safeguards, and access to judicial review.⁸² It must not penalize children for the circumstances of their conception or birth; its legal consequence is limited to prospective marriage eligibility and must be administered without stigma or public disclosure of surrogacy status.

CONCLUSION

The development of assisted reproductive technologies, particularly surrogacy, has generated new forms of kinship that were not contemplated within classical constructions of Islamic family law. One such relationship is that between individuals born from the same gestational mother without sharing a genetic connection, referred to in this study as *gestational siblings*. Unlike lineage (*nasab*), affinity (*muṣāharah*), and milk kinship (*raḍā'ah*), whose legal consequences

⁸¹ United Nations Human Rights Council, *Birth Registration and the Right to Recognition before the Law* (Geneva: United Nations, 2023), 17–28.

⁸² Safrudin Edi Wibowo and Fathiyaturrahmah Fathiyaturrahmah, "Women and the Transmission of the Quran: Marginalization, Legal Strategies, and *Maqāṣid al-Sharī'ah*-Based Resolution," *Ahkam: Jurnal Ilmu Syariah* 25, no. 1 (2025), <https://doi.org/10.15408/ajis.v25i1.37944>.

have been extensively regulated in Islamic jurisprudence, the legal status of gestational siblings remains contested. The central question concerns whether a shared gestational relationship is capable of establishing a *mahram* relationship that would consequently prohibit marriage.

This study demonstrates that Sunni and Shi'i jurisprudence adopt different approaches to determining motherhood, lineage, and *mahram* status in surrogacy arrangements. The dominant Sunni position places primary emphasis on genetic relationships as the basis for lineage and marital prohibitions, thereby excluding gestational connection alone from generating *mahram* status. Consequently, marriage between individuals who merely share the same gestational mother is generally regarded as permissible in the absence of genetic or milk-kinship ties. By contrast, certain strands of Shi'i jurisprudence recognize the legal significance of gestational motherhood, thereby creating a broader possibility for the emergence of familial relationships and marital prohibitions based on shared gestation. These divergent approaches reveal that contemporary Islamic jurisprudence has not yet reached a settled consensus regarding the legal status of gestational siblings.

The study further finds that Indonesian law has not adequately addressed the legal consequences arising from the existence of gestational siblings. Neither the Marriage Law, the Compilation of Islamic Law, nor the Health Law explicitly regulates the status of children born through surrogacy or the implications of gestational relationships for marital prohibitions. This normative gap is particularly significant in the context of cross-border surrogacy, where differing legal constructions of motherhood and lineage may give rise to conflicts concerning personal status, civil registration, guardianship, inheritance, and marriage validity.

To address this legal uncertainty, this study proposes a Hybrid Model as a framework for the future development of Indonesian family law (*ius constituendum*). The proposed model integrates both genetic and gestational relationships in determining marital prohibitions. Under this approach, marriage may be prohibited not only where a scientifically verifiable genetic relationship exists, but also where a medically documented gestational relationship is capable of generating family-status conflicts, identity disputes, or uncertainty regarding lineage. Accordingly, this study advocates the adoption of a legal norm that explicitly regulates the marital status of gestational siblings and the establishment of an integrated reproductive registration system capable of documenting both genetic and gestational relationships. Such a

framework would enable Indonesian family law to respond more effectively to the challenges posed by modern reproductive technologies while simultaneously safeguarding the objectives of lineage protection (*hifẓ al-nasl*), legal certainty, and family welfare.

BIBLIOGRAPHY

- Abu Bakar, Nur Rahmiani, Noviansyah Noviansyah, Zaenuddin Hudi Prasojo, and Wan Ariffin Wan Yon. "False Descendants of the Pontianak Sultan: The Practice and Legal Implications of Genealogical Fraud." *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 24, no. 2 (2024): 251–278. <https://doi.org/10.18326/ijtihad.v24i2.251-278>.
- Adamson, G. David, et al. "O-161 ICMART Preliminary World Report 2021." *Human Reproduction* 40, suppl. 1 (2025). <https://doi.org/10.1093/humrep/deaf097.161>.
- Achmad, Claire. "Legal Challenges of Assisted Reproductive Technology in Indonesia." *Indonesia Law Review* 11, no. 3 (2021): 301–320.
- Al-Dawoody, Ahmad. *The Islamic Law of War: Justifications and Regulations*. New York: Palgrave Macmillan, 2011.
- Alghrani, Amel. "Regulating Surrogacy: The Need for a New Approach." *Medical Law Review* 29, no. 3 (2021): 489–512. <https://doi.org/10.1093/medlaw/fwab014>.
- Allan, Sonia. *Donor Conception and the Search for Information: From Secrecy and Anonymity to Openness*. London: Routledge, 2017.
- Aseri, Mukhsin, Muhammad Rasyid, Ahmad Sharifuddin bin Mustapha, Akh. Fauzi Aseri, and Oleh Fedorchenko. "Negotiating Authority and Knowledge: Religion, Science, and Politics in the Fatwa Transformations of the Indonesian Ulema Council." *Journal of Islamic Law* 6, no. 2 (2025): xx–xx. <https://doi.org/10.24260/jil.v6i2.4702>.
- Chambers, Georgina, et al. "How Many Infants Have Been Born with the Help of Assisted Reproductive Technology?" *Fertility and Sterility* (2025).
- Clarke, Morgan. *Islam and New Kinship: Reproductive Technology and the Shariah in Lebanon*. New York: Berghahn Books, 2009.
- Darna, Andi. "Perkembangan Hukum Islam di Indonesia: Konsep Fiqih Sosial dan Implementasinya dalam Hukum Keluarga." *El-Usrah*:

- Jurnal Hukum Keluarga* 4, no. 1 (2021): xx–xx.
<https://doi.org/10.22373/ujhk.v4i1.8780>.
- Farendra, Daffa Giri Dwi, and Efrinaldi. “Surrogacy Laws in Indonesia, Iran, and India: A Comparative Legal Analysis.” *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan* 12, no. 1 (2025): 115–136.
- Fineman, Martha Albertson. *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies*. New York: Routledge, 1995.
- Garayová, L’ubica. “Children’s Rights in Assisted Reproduction and Surrogacy.” *Law, Identity and Values* 4, no. 2 (2024): 1–19.
- Ghaly, Mohammed. *Islam and Disability: Perspectives in Theology and Jurisprudence*. London: Routledge, 2010.
- . “Islamic Bioethics and the Challenge of Modern Reproductive Technologies.” *Zygon* 54, no. 3 (2019): 695–712.
<https://doi.org/10.1111/zygo.12515>.
- Golombok, Susan. *We Are Family: What Really Matters for Parents and Children*. New York: PublicAffairs, 2020.
- Hague Conference on Private International Law (HCCH). “Parentage / Surrogacy Project.” Accessed August 12, 2026. HCCH Parentage / Surrogacy Project.
- Harris, Emily. “Infertility Affects 1 in 6 People Globally.” *JAMA* 329, no. 17 (2023): 1443. <https://doi.org/10.1001/jama.2023.6251>.
- Herring, Jonathan. *Medical Law and Ethics*. 9th ed. Oxford: Oxford University Press, 2024.
- Hsb, Siti Aisyah. “Examining the Status of the Surrogate Mother’s Child in Islamic Law: Implications for Lineage and Inheritance Rights.” *Al-Maqasid: Jurnal Ilmu Kesyariahan dan Keperdataan* 11, no. 1 (2025): 57–74.
- Ilma, Mughniatul. “Reconstruction of the Concept of Maḥram in Women’s Safar Based on Ibn Qayyim al-Jauziyyah’s Legal Change Theory.” *JURIS (Jurnal Ilmiah Syariah)* 20, no. 2 (2021): 147–161. <https://doi.org/10.31958/juris.v20i2.4303>.
- International Social Service. *Legal Trends in Surrogacy: A Global Review*. Geneva: International Social Service, 2025.
- Islamic Fiqh Academy (OIC). *Resolutions and Recommendations of the Council of Islamic Fiqh Academy 1985–2000*. Jeddah: International Islamic Fiqh Academy, 2000.
- Kamali, Mohammad Hashim. *Maqasid al-Shariah Made Simple*. Herndon: International Institute of Islamic Thought, 2008.

- Khamenei, Ali. *Ajwibat al-Istifta'at*. Tehran: Islamic Thought Foundation, 2021.
- Kurniawan, Edi, Handesman Handesman, Rahmadi Rahmadi, and Khairun Najib. "Early Marriage, Human Rights, and the Living Fiqh: A *Maqāṣid al-Sharī'a* Review." *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 20, no. 1 (2020): xx–xx. <https://doi.org/10.30631/alrisalah.v20i1.565>.
- Lawang, Karimuddin Abdullah, Maimun A. Rahman, Syamsiah Nur, Muh. Zaim Azhar, and Ali Suage. "The Correlation Between Breast Milk and Sperm as a Causal Factor of Mahramiyah of Breastfeeding." *Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023): xx–xx. <https://doi.org/10.29240/jhi.v8i1.5253>.
- Lima, Daniela, and Daniela Cutas. "Legal Parenthood in Surrogacy: Shifting the Focus to the Child?" *Journal of Social Welfare and Family Law* 46, no. 3 (2024): 325–342. <https://doi.org/10.1080/09649069.2024.2344935>.
- Lukito, Ratno. *Legal Pluralism in Indonesia: Bridging the Unbridgeable*. London: Routledge, 2013.
- Madrah, Muna, Badieah, Andi Riansyah, Alamsyah Alamsyah, and Dewi Ayu Fatmawati. "The Policy Integration Concept of The Mahram Relationship on Nurseling: Study on Nurseling Practices in Semarang, Central Java-Indonesia." *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 2 (2022): xx–xx. <https://doi.org/10.19105/al-lhkam.v17i2.6316>.
- Majid, Muhammad Fathur. "Nasab Bayi Tabung dari Ibu Pengganti: Studi Komparasi Hukum Islam dan Hukum Positif." *Qiblah: Jurnal Studi Islam dan Bahasa Arab* 1, no. 1 (2022): 41–59. <https://doi.org/10.36701/qiblah.v1i1.622>.
- Makarem Shirazi, Naser. *New Issues in Islamic Jurisprudence*. Qom: Imam Ali Institute, 2021.
- Manzil, Li'izza Diana. "Urgensi Ilmu Kedokteran Islam dengan Hukum Islam (Studi Identifikasi Deoxyribo Nucleic Acid (DNA) terhadap Sepersusuan)." *Al-Manahij: Jurnal Kajian Hukum Islam* 12, no. 1 (2018): xx–xx. <https://doi.org/10.24090/mnh.v12i1.1323>.
- Manvelyan, Ezgi. "Navigating the Gestational Surrogacy Seas: The Legalities and Complexities of Surrogacy Across the Globe." *Frontiers in Global Women's Health* 5 (2024): 1–13.
- Mulligan, Aisling. "Surrogacy and the Significance of Gestation: Implications for Law and Policy." *Bioethics* 38, no. 7 (2024).

- Musyayyadah, Ulvi Rohmatul, Lukman Santoso, and Achmad Baihaqi. "Challenging Legal Injustice against Children in Incest Cases: A Progressive and Islamic Human Rights Approach." *De Jure: Jurnal Hukum dan Syar'iah* 17, no. 2 (2025): xx–xx. <https://doi.org/10.18860/j-fsh.v17i2.36277>.
- Nurlaelawati, Euis. *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesian Religious Courts*. Amsterdam: Amsterdam University Press, 2010.
- Padela, Aasim I., and Ebrahim Moosa. "Islamic Bioethics and Reproductive Ethics." *Theoretical Medicine and Bioethics* 41, no. 2 (2020): 121–139. <https://doi.org/10.1007/s11017-020-09520-8>.
- Patel, Nayana H., et al. "Insight into Different Aspects of Surrogacy Practices." *Journal of Human Reproductive Sciences* 11, no. 3 (2018): 212–218.
- Pennings, Guido. "The Ethical Challenges of Surrogacy and Assisted Reproduction." *Facts, Views & Vision in ObGyn* 14, no. 2 (2022): 105–117.
- Qaraḍāwī, Yūsuf al-. *Fatāwā Mu'āṣirah*. Vol. 3. Cairo: Dār al-Qalam, 2019.
- Qurṭubī, Muḥammad ibn Aḥmad al-. *Al-Jāmi' li Ahkām al-Qur'ān*. Vol. 5. Beirut: Mu'assasah al-Risālah, 2006.
- Rispler-Chaim, Vardit. "Islamic Medical Ethics in the Twenty-First Century." *Journal of Religious Ethics* 47, no. 2 (2019): 244–263. <https://doi.org/10.1111/jore.12255>.
- Sachedina, Abdulaziz. *Islamic Biomedical Ethics: Principles and Application*. Oxford: Oxford University Press, 2009.
- Shamseddin, Mohammad Mehdi. "Surrogacy and Parentage in Contemporary Shi'a Jurisprudence." *Journal of Shi'a Islamic Studies* 15, no. 2 (2022): 145–163.
- Sarpini, Sarpini. "Prosedur Menyelesaikan Kasus Hukum dengan Ijmā'." *El-Mashlahah* 9, no. 1 (2019): xx–xx. <https://doi.org/10.23971/el-mas.v9i1.1256>.
- Sistani, Ali al-. *Contemporary Legal Rulings (Istifta'at)*. Najaf: Office of Grand Ayatollah al-Sistani, 2022.
- Smajdor, Anna. *The Ethics of Reproductive Technology*. Cambridge: Cambridge University Press, 2023.
- Sujadmiko, Bayu, Laode Machdani Afala Muslim, and Danang Wahyu Muhammad Sensuse. "Surrogacy in Indonesia and Iran: The Comparative Legality and Islamic Perspective." *HTS Teologiese*

- Studies/Theological Studies* 79, no. 1 (2023): 1–7. <https://doi.org/10.4102/hts.v79i1.8108>.
- Tavakkoli, Saeid Nazari. “The Status of ‘Mother’ in Gestational Surrogacy: The Shi‘i Jurisprudential Perspective.” *Asian Bioethics Review* 14 (2022): 337–348. <https://doi.org/10.1007/s41649-022-00217-2>.
- Thalib, Sabrina Rizqia. “Civil Law Implications for Children Born Through Surrogacy in Indonesia.” *Journal of Law, Politic and Humanities* 5, no. 5 (2025): 3737–3747. <https://doi.org/10.38035/jlph.v5i5.2556>.
- Trimmings, Katarina, and Paul Beaumont. *International Surrogacy Arrangements: Legal Regulation at the International Level*. Oxford: Hart Publishing, 2013.
- Tremayne, Soraya. *Islam and Assisted Reproductive Technologies: Sunni and Shia Perspectives*. New York: Berghahn Books, 2012.
- Tremayne, Soraya, and Mohammad Gholami. “Reproductive Technologies and Shi‘i Jurisprudence.” *Reproductive BioMedicine Online* 42, no. 4 (2021): 811–820.
- Tueller, Jessica. “On Parentage, Genetics, and Surrogacy.” *Georgia Law Review* 59, no. 3 (2025): 811–882.
- United Nations Human Rights Council. *Birth Registration and the Right to Recognition before the Law*. Geneva: United Nations, 2023.
- Wahbah al-Zuhaylī. *Al-Fiqh al-Islāmī wa Adillatuhu*. Vol. 9. Damascus: Dār al-Fikr, 2007.
- Wibowo, Safrudin Edi, and Fathiyaturrahmah Fathiyaturrahmah. “Women and the Transmission of the Quran: Marginalization, Legal Strategies, and *Maqāṣid al-Sharī‘ah*-Based Resolution.” *Ahkam: Jurnal Ilmu Syariah* 25, no. 1 (2025): xx–xx. <https://doi.org/10.15408/ajis.v25i1.37944>.
- . *Al-Tafsīr al-Munīr fī al-‘Aqīdah wa al-Sharī‘ah wa al-Manhaj*. Vol. 5. Damascus: Dār al-Fikr, 2009.
- World Health Organization. *Infertility Prevalence Estimates, 1990–2021*. Geneva: World Health Organization, 2023. <https://www.who.int/publications/i/item/978920068315>.
- Zulhamdi, Zulhamdi. “Radha’ah in the Perspective of Tafsir Al-Misbah.” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 2 (2020): 234–250. <https://doi.org/10.22373/sjhk.v4i2.6419>.



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