

## Legal Protection of Children Born Through Surrogacy: A Comparative Legal Analysis

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**Abstract.** *This study aims to examine the legal protection and recognition of children born through surrogacy by comparing the legal frameworks of three countries: Indonesia, Iran, and Australia. The objective is to analyze how each country regulates the civil status, identity, and inheritance rights of children born through assisted reproductive technologies, with a specific focus on surrogacy arrangements. The research method used in this study was normative legal research with a comparative approach. It utilizes secondary legal materials such as statutory laws, judicial decisions, and religious doctrines to assess the extent of legal certainty and child protection provided under each national legal system. The novelty in this research lies in its integrative comparative analysis of countries with differing legal traditions, Australia with its positivist legal framework, Iran with its reliance on Shi'a Islamic jurisprudence and religious fatwas, and Indonesia which currently lacks specific regulations governing surrogacy. This research also proposes the adoption of a Parentage Order mechanism in Indonesia, inspired by Australia's legal model, to ensure the recognition of genetic parenthood without requiring adoption procedures. Based on the research, it is concluded that Indonesia presents the weakest legal protection due to the absence of specific legislation, resulting in legal uncertainty for children born through surrogacy. In contrast, Iran provides legal clarity through religious and judicial mechanisms, while Australia offers a well-regulated system grounded in the best interests of the child. The findings suggest that Indonesia urgently needs legal reform to recognize surrogacy and ensure comprehensive protection of children's rights in accordance with international human rights standards.*

**Keywords:** Adoption; Children; Rights; Status; Surrogacy.

### 1. INTRODUCTION

The advancement of assisted reproductive technologies has significantly transformed how individuals address infertility (Indarwati et al., 2025). One such innovation is surrogacy. Surrogacy typically involves an agreement in which a woman carries a child conceived using the reproductive cells of another couple

and, after birth, relinquishes parental rights to the intended parents (Siregar, 2021). In this arrangement, the surrogate mother carries and delivers a child for another couple who are biologically related to the child (Nabila et al., 2023). A surrogate mother generally refers to a woman who consents, through a contractual agreement, to bear a child on behalf of the intended couple.

When the agreement includes financial compensation beyond reimbursement for medical expenses, ethical concerns often arise. These include perceptions of commodifying the female body and reproductive function, which may conflict with moral values and the public interest (Desriza Ratman, 2012). Although medically promising for couples unable to conceive naturally, surrogacy raises complex legal, social, and ethical issues particularly concerning the legal status and protection of children born through such arrangements (Makatika et al., 2023).

Across different countries, there are fundamental differences in the legal recognition of children born through surrogacy. In Australia, comprehensive regulations recognize these children as the legitimate offspring of the intended parents, thereby granting them full legal rights (Kneebone et al., 2024). In contrast, Iran legitimizes surrogacy through religious fatwas within the framework of Islamic law, and children born through such arrangements are granted legal protections equivalent to those of biological children, including inheritance rights (Ebrahimi & Ghodrati, 2025). Meanwhile, Indonesia lacks clear regulations governing surrogacy (Akbar et al., 2024). In fact, under Law No. 17 of 2023 on Health, surrogacy is considered a deviation from acceptable ethical and medical standards (Vorty & Irianto, 2025).

The absence of specific legal norms means that, under Indonesian law, the child is considered the legal offspring of the woman who gives birth—not of the genetic parents (Zahra et al., 2022). This situation severely impacts the child's legal protection and civil status, including inheritance rights, identity, and other civil entitlements. To legally recognize the child as belonging to the intended parents, an adoption process is required—one that confers a different legal status than that of a biological child. This regulatory gap creates a legal vacuum that risks undermining the rights of the child and contradicts the universal principle of the best interests of the child, as enshrined in the Convention on the Rights of the Child (C.Pontoh et al., 2023). Every child, regardless of the circumstances of their birth, is entitled to legal protection, identity, affection, and inheritance rights.

The problem formulation of this study centers on the comparative legal framework governing the status of children born through surrogacy in Indonesia, Iran, and Australia. Specifically, this research aims to address two key issues. First, it examines the extent to which Indonesia's national legal system provides legal certainty, identity recognition, and civil rights protections for children born through surrogacy arrangements. Second, it analyzes the comparative legal frameworks regarding the recognition and protection of the rights of children born via surrogacy in the three countries, highlighting both similarities and differences within their respective normative structures.

By employing a comparative approach, this study seeks to contribute to the development of family and child law and to offer policy recommendations on the necessity of establishing a national legal framework in Indonesia that is responsive to surrogacy practices while upholding the principle of the best interests of the child.

Despite the growing prevalence of assisted reproductive technologies in many jurisdictions, there remains a significant normative disparity in how surrogacy and the rights of surrogate-born children are legally addressed. Most notably, Indonesia has not yet responded with a comprehensive legal framework to regulate such practices. This gap creates a critical legal vacuum that exposes children to the risk of identity loss, uncertain parentage, and denial of inheritance rights. While Iran accommodates surrogacy through religious rulings and judicial practices, and Australia through structured family law mechanisms, Indonesia lags behind, lacking both statutory clarity and administrative procedures.

This research is therefore crucial in addressing this gap by offering a comparative legal analysis aimed at identifying best practices and proposing appropriate legal reforms. By highlighting how each country constructs legal parentage and protects the child's rights, this study seeks to contribute to the broader discourse on child welfare, legal identity, and family law reform in Indonesia. The aim is not only to reveal the normative shortcomings within the Indonesian legal system but also to formulate academic and policy recommendations grounded in human rights principles and comparative jurisprudence.

## **2. RESEARCH METHODS**

This study aimed to analyze and compare the legal protection of children born through surrogacy in Indonesia, Iran, and Australia, focusing on the recognition of their legal status and civil rights. The research sought to identify normative gaps in Indonesian law, propose appropriate legal reform by adopting international best practices, and assess the applicability of legal theories including Philipus M. Hadjon's theory of legal protection, John Rawls's theory of justice, and Roscoe Pound's theory of law as a tool of social engineering.

## **3. RESULTS AND DISCUSSION**

### **3.1. Legal Status of Children Born Through Surrogacy in Indonesian Law**

Indonesia's legal framework does not provide explicit regulation concerning the status of children born through surrogacy. This regulatory gap has created a significant legal vacuum, especially in the context of assisted reproductive technologies (ART). Without specific statutory guidance, matters related to the civil status, legal identity, and inheritance rights of surrogate-born children remain uncertain and unprotected (Qintarawati, 2023). Law No. 17 of 2023 on Health does not recognize surrogacy as a lawful reproductive method. Article 127(2) of the law states that pregnancy must occur within a legally recognized marriage and involve the legal wife. This provision implies that reproductive arrangements involving third

parties, such as surrogate mothers, are prohibited, even if the genetic material belongs to a married couple (Nashwa Rifda Agustina et al., 2024).

As a result, the determination of legal parentage in surrogacy cases defaults to the general principles of family and civil law. In the Indonesian Civil Code (KUHPerdata) and the Compilation of Islamic Law (KHI), the legal mother is the woman who gives birth to the child. Article 250 of the Civil Code defines a legitimate child as one born within a lawful marriage, while Article 99 of the KHI reinforces this by recognizing legitimacy only when the child is born within a marriage and has lineage with both parents. This means that in surrogacy situations, the surrogate mother is considered the legal mother under Indonesian law, even if the child is genetically related to the commissioning couple. Indonesian law does not recognize the ovum donor or the genetic mother as having legal maternity. Consequently, the child's legal identity is disconnected from its biological origin, and this leads to broader legal and civil complications (Zahra et al., 2022).

To be legally recognized as the child of the intended parents, a formal adoption process must be undertaken under Law No. 35 of 2014 on Child Protection and Government Regulation No. 54 of 2007. Although the genetic link between child and intended parents may exist, the law still classifies the child as an adopted child, not a biological one (Putra, 2021). This adoptive classification has serious implications, particularly in the realm of inheritance. According to Article 209 of the KHI, adopted children are not entitled to inherit as legal heirs but may only receive a bequest (wasiat) limited to one-third of the total estate (Mahardhika Budi Putrantia & Setiyowati, 2023). Thus, children born through surrogacy, even when genetically related to the intended parents, are deprived of automatic inheritance rights under Indonesian Islamic inheritance law.

**Table 1.** Comparative Legal Aspects of Biological and Adopted Children in Indonesia

Aspect	Biological Child	Adopted Child
Basis of Legal Relationship	Basis of Legal Relationship	Basis of Legal Relationship
Lineage (Nasab)	Recognized	Not Recognized
Inheritance Rights	Full rights (according to the Civil Code and Islamic Law)	Not automatic (may inherit through a will)
Status in the Family	Recognized under both civil and religious law	Legally recognized, but not under Islamic law (syariah)
Birth Certificate	Lists biological parents	Administratively regulated with notations indicating adoptive status

This legal framework highlights a significant disconnect between biomedical realities and legal constructions in Indonesia. While assisted reproductive technologies have enabled new forms of parenthood, the law continues to prioritize formal definitions of legal status over the substantive principles of justice and child

protection. As a result, children born through surrogacy are excluded from full legal recognition, despite their biological ties to the commissioning parents. This situation contradicts the core tenets of the “best interests of the child” principle, as articulated in the Convention on the Rights of the Child (CRC)—an international human rights instrument ratified by Indonesia through Presidential Decree No. 36 of 1990. The CRC affirms that every child has the right to identity, family, and legal protection without discrimination, including those born through non-traditional means such as reproductive technologies (Andi Tenri Padang & Sofyan, 2023).

In the absence of a clear legal framework, surrogate-born children in Indonesia face structural discrimination. They are often denied basic civil recognition, excluded from automatic inheritance rights, and left without proper legal identity. These normative gaps present not only a legal challenge but also a human rights concern, as they violate the international obligations Indonesia has committed to uphold. Therefore, it can be concluded that the lack of regulation on the legal status of children born through surrogacy in Indonesia creates a serious risk of legal uncertainty and systemic violations of children's rights. Urgent legal reform is necessary to explicitly regulate surrogacy and to guarantee that all children receive equal legal recognition, protection, and dignity under the law.

### **3.2. Comparative Regulation of Child Rights in Iran**

Iran stands out among Muslim-majority countries for its progressive approach to surrogacy, which is legally accommodated through a dynamic interpretation of Shia Islamic law (Dinda et al., 2025). While many Islamic countries categorically prohibit surrogacy, Iran provides legal space for the practice by relying on religious fatwas, enforceable contracts, and judicial mechanisms. This integration between religious jurisprudence and state law allows for comprehensive protection of children born through surrogacy, particularly in matters of legal status, identity, and inheritance.

Infertility in Iran affects a significant proportion of married couples—estimated between 17% and 20%. Given the strong cultural value placed on parenthood, assisted reproductive technologies (ART) such as IVF, egg and sperm donation, and surrogacy have become widely accepted. Iran has been a pioneer in promoting ART in the Islamic world, particularly after the issuance of a fatwa by Ayatollah Ali Khamenei in 1990 that permitted the use of third-party genetic material to address infertility (Ghodrati, 2023). Though the 2003 Embryo Donation to Infertile Spouses Act explicitly regulates embryo donation, its interpretation by religious scholars and legal practitioners has extended to surrogacy as well (Haddadi et al., 2025).

Fatwas by leading Shia clerics such as Ayatollah Khamenei and Ayatollah Sistani have legitimized surrogacy, provided it is governed by a clear contract that respects Islamic principles. These contracts are often formalized before notaries and are enforceable under Articles 10 and 512 of the Iranian Civil Code, which recognize freedom of contract and legal obligations. Surrogacy arrangements in Iran may be either altruistic or commercial in nature, although the latter remains controversial due to the risk of economic exploitation (Ebrahimi & Ghodrati, 2025). Typical contracts specify responsibilities for medical costs, pregnancy care, child custody, and the legal relinquishment of the child to the commissioning couple after birth.

Despite the genetic parentage of the child belonging to the commissioning couple, Iran's civil registration system initially lists the surrogate mother on the birth certificate, as it follows the legal presumption that the woman who gives birth is the legal mother. However, this designation can be amended through judicial petition. The intended parents must submit a valid surrogacy contract, medical documentation confirming embryo origin, and a signed declaration from the surrogate relinquishing maternal rights. Once approved, the birth certificate is revised to recognize the biological parents.

This process demonstrates Iran's unique blend of religious authority and legal pragmatism. While the initial registration reflects traditional civil definitions of maternity, religious fatwas strongly support the view that genetic lineage determines parenthood. Accordingly, children born through surrogacy are ultimately attributed to the biological parents, and they receive full legal recognition, including inheritance rights, citizenship, and family identity.

Iran's regulatory approach offers a compelling model for countries like Indonesia, which currently lacks legal certainty in this area. The combination of religious endorsement, contractual enforceability, and procedural clarity reflects an adaptive legal culture that respects both tradition and medical innovation. In the broader context of child protection and legal identity, Iran provides valuable lessons in reconciling religious law with human rights norms and international standards such as the Convention on the Rights of the Child.

### **3.3. The Comparative Regulation of Child Rights in Australia**

Australia is one of the countries with a well-established and progressive legal framework for regulating surrogacy, including the protection of children born through such arrangements. Although there is no single, uniform national law on surrogacy, each state and territory in Australia has its own detailed legislation governing the procedures and legal status of children. Despite these jurisdictional differences, all legal approaches are grounded in shared principles, particularly the best interests of the child and the need for legal certainty regarding parentage.

Representative regulatory models can be found in the *Surrogacy Act 2010* of New South Wales and Queensland. Under the prevailing legal framework, surrogacy is permitted only in altruistic form—that is, without commercial compensation. In this model, surrogate mothers may only receive reimbursement for medical and pregnancy-related expenses, with no financial profit involved. This approach aims to prevent the commercialization of surrogacy as a form of livelihood, as noted by Australian sociologist Catherine Waldby at the Asia-Pacific Science, Technology and Society Network Conference in Brisbane in December 2009 (Honainah et al., 2023).

While there is no national-level regulation, each state and territory enforces its own surrogacy laws. Nonetheless, common legal principles apply throughout Australia—for example, commercial payments to surrogates are strictly prohibited. Compensation is only permitted for legitimate and documented expenses, such as prenatal checkups, insurance, and delivery costs.

Legally, the surrogate is considered the mother of the child at birth, even if the embryo was created using the gametes of the intended parents. Consequently, the commissioning parents do not automatically acquire legal parenthood. To gain legal recognition, they must apply for a *Parentage Order* in the relevant family court (Kneebone et al., 2023).

In practice, the legal status of the child is not automatically transferred to the intended parents, despite any biological connection. By default, the surrogate mother is recognized as the legal parent at birth, necessitating a formal mechanism to transfer parental rights. This is achieved through the submission of a *Parentage Order* or *Parenting Order* in the family court of the relevant jurisdiction.

Under Australian law, a child born through surrogacy is initially considered the legal child of the surrogate mother—that is, the woman who carries and delivers the baby. If the surrogate is married, her husband is also listed as the father on the initial birth certificate issued by the civil registry. This reflects the traditional principles of family law, which base parentage on childbirth rather than on intent or genetic contribution. However, the legal system provides a pathway for commissioning parents, referred to as intended parents, to gain legal recognition as the child's parents through a *Parentage Order*.

A *Parentage Order* is a court-issued directive that transfers legal parentage from the surrogate to the intended parents. This application can only be made after the child is born. The intended parents must file a petition with the family court, supported by documentation including the surrogacy agreement and written consent from all involved parties. In evaluating the application, the court considers several critical factors: whether all parties, including the surrogate and her spouse, gave informed and voluntary consent; whether a meaningful social and biological relationship exists between the child and the intended parents; and, most importantly, whether the order serves the best interests of the child. If approved, the court issues a legally binding *Parentage Order* directing the civil registry to cancel the original birth certificate that lists the surrogate and her spouse, and to issue a new birth certificate naming the intended parents as the legal mother and father (Kneebone et al., 2024). The revised birth certificate reflects the intended parents as the child's legal guardians, with the surrogate's name removed.

As a result, the child acquires full legal status as the child of the commissioning couple, including rights to identity, inheritance, custody, and protection. This system demonstrates Australia's strong legal commitment to child welfare and legal certainty in surrogacy arrangements. In addition to securing the child's legal status, it also protects the surrogate mother from financial coercion and potential commercial exploitation. By centering the surrogacy process on the best interests of the child, Australia's legal framework serves as a model for other countries—particularly Indonesia, which currently lacks clear regulation in this area. Adopting a similar model is essential to prevent children born through surrogacy from falling into a legal vacuum and to ensure they enjoy their fundamental rights as equal legal subjects.

### **3.4. The Comparative Protection of the Rights of Children Born Through Surrogacy in Indonesia, Iran, and Australia**

Legal protections for children born through surrogacy vary significantly across jurisdictions, shaped by each country's legal traditions, religious norms, and policy frameworks on assisted reproductive technologies (ART). This diversity underscores the need for comparative legal studies to evaluate how effectively national systems uphold the principle of the best interests of the child, as outlined in the Convention on the Rights of the Child (CRC).

In Indonesia, there is a substantial legal vacuum surrounding surrogacy. Although not explicitly regulated, the practice is implicitly prohibited under Article 127(2) of Law No. 17 of 2023 on Health, which mandates that pregnancy must occur within a lawful marriage and by the legal wife. Consequently, children born through surrogacy are not granted formal legal status. According to the Indonesian Civil Code and the Compilation of Islamic Law, legal motherhood is attributed to the woman who gives birth. Intended parents must undergo an adoption process pursuant to Law No. 35 of 2014 on Child Protection to be legally recognized. However, adopted children are treated differently from biological children in terms of lineage and inheritance. Under Islamic law in Indonesia, adopted children are not entitled to inheritance except by a will, limited to one-third of the estate. This leaves surrogate-born children in a legally vulnerable position, lacking clear identity, civil status, and automatic inheritance rights.

In contrast, Iran acknowledges and supports surrogacy through authoritative Shia clerical fatwas, which carry the force of law in personal and family matters. Although Iran has no codified statute specifically on surrogacy, religious courts validate surrogacy contracts and recognize the child as the legitimate offspring of the commissioning couple. This is further strengthened through judicial approval and civil registration, enabling the child to receive a birth certificate naming the biological parents. As a result, the child is granted full legal rights, including lineage (*nasab*), citizenship, and inheritance. Iran's approach reflects a successful integration of Islamic jurisprudence with contemporary reproductive practices, achieving legal certainty and social legitimacy for surrogate-born children.

Australia, on the other hand, employs a positivist legal framework that emphasizes children's rights and legal certainty. Governed by state-based laws such as the Surrogacy Act 2010 and overarching principles in the Family Law Act 1975, Australia allows only altruistic surrogacy while prohibiting commercial arrangements. Intended parents can apply for a Parentage Order after birth, which, once granted, transfers full legal parentage from the surrogate mother to the commissioning couple. The child is then issued a new birth certificate recognizing the intended parents. This system ensures that children born through surrogacy have equal rights to identity, custody, and inheritance, and are treated under the law as biological children. Australia's emphasis on the best interests of the child as the core principle provides a progressive model that upholds both legal clarity and child protection.



**Table 2.** Comparative Aspects of Surrogacy Law: Indonesia, Iran, and Australia.

Aspect	Indonesia	Iran	Australia
Legal status of surrogacy	Not regulated; implicitly prohibited	Permitted through Shia religious fatwas	Permitted in altruistic form
Child's legal status	Child of the birth mother	Child of the biological (commissioning) parents	Child of the biological parents (with a Parentage Order)
Legal recognition	Through adoption	Through decisions of religious courts	Through Parentage Order issued by family court
Lineage and identity rights	Not automatic; dependent on adoption	Legally recognized and protected	Recognized and reflected in revised birth certificate
Inheritance rights	Not automatic; only through a will (limited to one-third of the estate)	Equal to biological children	Equal to biological children
Primary legal sources	Health Law, Civil Code, Compilation of Islamic Law	Religious fatwas, Shia Islamic family law	<i>Surrogacy Act, Family Law Act</i>

Across many jurisdictions, surrogacy laws require post-birth adoption to establish legal parentage, especially when third parties are involved. Despite legal variations, a common presumption persists: the woman who gives birth is the legal mother. Therefore, even a genetic mother must adopt the child to gain legal recognition. This traditional view creates challenges in modern surrogacy, particularly where legal reforms have not kept pace with biomedical advances. (Abrar & Putra, 2023) Legal protections for children born through surrogacy vary significantly across countries, influenced by differing legal systems, religious doctrines, and policy orientations toward assisted reproductive technologies (ART). Iran and Australia have developed structured legal mechanisms to protect surrogate-born children, while Indonesia continues to face a substantial legal vacuum. Comparative analysis is essential to evaluate how effectively these countries uphold the best interests of the child, as mandated by the Convention on the Rights of the Child (CRC).

In terms of legal status, Indonesia does not explicitly regulate surrogacy. Article 127(2) of Law No. 17 of 2023 on Health implies prohibition by mandating that pregnancy must occur within a legal marriage and involve the lawful wife. This implicit exclusion of third-party reproductive arrangements results in legal uncertainty and a lack of enforceable protections. In contrast, Iran legitimizes surrogacy through Shia Islamic jurisprudence. Authoritative fatwas issued by senior clerics, particularly Ayatollah Khamenei, provide a normative basis for both altruistic and commercial surrogacy, despite the absence of a specific statute. Australia adopts a more positivist approach, where altruistic surrogacy is permitted under state-level laws such as the Surrogacy Act 2010 in New South Wales and

Queensland. Commercial surrogacy is strictly prohibited and may attract criminal penalties.

Regarding the legal status of the child, Indonesia considers the surrogate as the legal mother, regardless of genetic ties. The commissioning couple must adopt the child to gain parental recognition. In Iran, the child is legally recognized as the offspring of the commissioning couple from birth, based on religious court rulings and the principle of genetic lineage. In Australia, legal parentage is not automatic. A Parentage Order must be obtained through the family court after the child's birth, transferring parental status to the intended parents and enabling full legal recognition.

Different mechanisms are employed to establish legal parentage. Indonesia relies solely on adoption, regulated under Law No. 35 of 2014 and Government Regulation No. 54 of 2007. This process creates a legal distinction between adopted and biological children, particularly in matters of inheritance. Iran uses a judicial declaration process based on religious fatwas and surrogacy contracts, which are enforceable under civil law. Civil registration follows upon approval, listing the intended parents. Australia's approach requires submission of the surrogacy agreement, medical documentation, and consent from all parties. Upon approval by the court, the intended parents are listed on the child's birth certificate.

Lineage and identity rights also vary. In Indonesia, the surrogate mother is listed on the initial birth certificate, and any amendment depends on the adoption process. Without adoption, the child lacks a legally recognized *nasab* with the genetic parents. In Iran, the child's lineage and legal identity are established from birth through a combination of religious and civil mechanisms. The commissioning couple's names appear on the birth certificate following judicial validation. In Australia, a new birth certificate is issued after the Parentage Order is granted, ensuring that the child's identity reflects the intended family structure.

Inheritance rights further illustrate disparities. In Indonesia, adopted children are not recognized as heirs under Islamic law unless included in a will, and even then, only up to one-third of the estate, as stated in Article 209 of the Compilation of Islamic Law (KHI). Iran, through judicial and religious mechanisms, grants full inheritance rights to children born through surrogacy once they are legally recognized as legitimate offspring. In Australia, surrogate-born children enjoy equal inheritance rights as biological children once the Parentage Order is finalized.

In conclusion, the legal status and protections afforded to surrogate-born children are closely tied to each country's recognition of surrogacy itself. Iran and Australia provide coherent legal pathways that prioritize the child's best interests through recognition of legal parentage, identity rights, and inheritance. Indonesia, however, lacks clear regulation, leaving children born through surrogacy in a position of legal vulnerability and uncertainty.

To address this gap, Indonesia must enact a comprehensive surrogacy law that provides legal certainty for all involved parties. Such legislation should harmonize

ethical, religious, and legal perspectives while fulfilling Indonesia's constitutional and international human rights obligations to protect the best interests of the child.

### **3.5. Evaluation and Recommendations on Indonesia's Legal System in Ensuring the Rights of Children Born Through Surrogacy**

The absence of explicit legal provisions regulating surrogacy in Indonesia has created a legal vacuum with serious implications for the legal status and rights protection of children born through assisted reproductive technologies.(Ayu Rahayu, 2022) Under current conditions, the national legal system fails to adequately ensure legal certainty, identity, and civil rights for children born via surrogacy. Therefore, a critical evaluation and constructive legal reform are necessary to establish a framework that is responsive to social realities and advancements in reproductive technology.(Sylkina et al., 2020)One of the principal shortcomings of Indonesia's legal framework is the lack of specific regulation addressing surrogacy practices. Law No. 17 of 2023 on Health only recognizes assisted reproductive technologies within the confines of a lawful marriage between a husband and wife and explicitly prohibits the involvement of third parties such as surrogate mothers. The absence of legal norms recognizing the status of children born in such contexts results in ambiguity regarding their legal standing and exposes them to the risk of being denied essential civil rights, including legal identity, birth registration, and inheritance. In response to this legal gap, it is imperative to enact a specific regulation on surrogacy. This could take the form of a standalone statute or implementing regulations under the Health Law—such as a government regulation outlining technical procedures, ethical boundaries, and legal protections. The regulation should define the permissible type of surrogacy (e.g., altruistic only), procedural safeguards, eligibility criteria for participants, and the legal rights of both the child and the surrogate mother. Such a legal framework would ensure legal certainty for all parties involved while preventing exploitative practices.

Additionally, a judicial mechanism should be established to enable commissioning couples to obtain legal parentage without resorting to adoption a route that is contextually inappropriate for surrogacy. This mechanism could adopt the *Parentage Order* model used in Australia, whereby a court declares the commissioning couple as the legal parents based on genetic evidence and a valid surrogacy agreement. (Baglietto et al., 2022) This would guarantee the child's legal status and facilitate accurate and lawful registration of their identity in the civil registry system. Regarding identity rights, Indonesia's civil registration system should be revised to allow for birth certificates that reflect the biological relationship between the child and their genetic parents. This would align with Article 27 of the Child Protection Law, which affirms every child's right to identity and legal status from birth. The failure to record biological parentage in official documents not only creates administrative challenges but also constitutes a violation of the principle of non-discrimination.

If adoption remains the only available pathway, then legal reform must distinguish between adoption by genetic parents and adoption by third parties.(Adi & Syaiful Aris, 2025) Treating both scenarios identically contradicts the principle of fairness

and undermines the biological rights of the child. A child born through surrogacy using the sperm and ovum of a legally married couple should not be legally categorized as an adopted child, but rather as a biological child provided that a formal and transparent transfer of parentage has occurred.(Khairunnisa et al., 2024)

Furthermore, legal reform must be grounded in international principles of child protection, particularly the Convention on the Rights of the Child (CRC), which Indonesia ratified through Presidential Decree No. 36 of 1990. The best interests of the child must serve as the guiding principle in all legal policies concerning children born through surrogacy. The legal approach should also be integrative, reflecting both international human rights norms and the familial values embedded in Pancasila, so that legal policies are not merely formalistic but also culturally and socially contextualized. In light of the growing prevalence of surrogacy, Indonesia's legal system must shift from a passive stance to a more progressive, responsive, and equitable approach. This transformation is not only necessary to address the existing normative vacuum but is also essential to ensure that every child, regardless of the circumstances of their birth, is granted legal recognition, protection, and equal justice under the law.

#### **4. CONCLUSION**

The absence of explicit legal provisions governing surrogacy in Indonesia has resulted in serious legal uncertainty for children born through such arrangements, particularly concerning their identity, legal status, and civil rights. Unlike Iran and Australia, which have established coherent legal and institutional frameworks, Indonesia lacks mechanisms to ensure adequate legal recognition and protection. Therefore, urgent national legal reform is required. This should include the enactment of comprehensive legislation on surrogacy and the development of judicial procedures to formally determine legal parentage. Such measures are essential to protect the rights of surrogate-born children and to fulfill Indonesia's obligations under international human rights law, particularly the principle of the best interests of the child.

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