

Modern Criminological Measures to Counteract Child Substitution in accordance with Islamic Law

 [10.15408/ajis.v25i2.42154](https://doi.org/10.15408/ajis.v25i2.42154)

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Abstract

This article analyzes the criminological aspects of child substitution, with a particular focus on preventive measures and punishment mechanisms under sharia and modern law. Special attention is given to the protection of the rights of newborns and their mothers in accordance with Islamic legal principles. The study underscores the importance of creating a safe, and supportive environment for women in labour and their newborns within maternity hospitals. The methodological basis of the article is the dialectical method of cognition, which ensures an objective and comprehensive analysis of legal issues in obstetric-related offences. The study also applies system analysis, comparative-legal, and other relevant methods. This article examines the legal, criminological, and Islamic approaches to preventing child substitution in Indonesia and Kazakhstan. The findings indicate that child substitution remains a significant issue in Indonesia and Kazakhstan due to gaps in existing legislation and insufficient procedural safeguards for newborn identification. The article highlights the need for modern criminological measures to prevent child swapping, including improved technical equipment in maternity hospitals and accurate identification of newborns to prevent abduction or substitution. Based on these findings, the article recommends improving national legislation, establishing specialized child protection authorities, and implementing comprehensive measures to counteract child substitution.

Abstrak

Artikel ini menganalisis aspek kriminologis dari substitusi anak, dengan fokus khusus pada tindakan pencegahan dan mekanisme hukuman berdasarkan syariah dan hukum modern. Perhatian khusus diberikan pada perlindungan hak-hak bayi baru lahir dan ibunya sesuai dengan prinsip-prinsip hukum Islam. Studi ini menekankan pentingnya menciptakan lingkungan yang aman dan mendukung bagi wanita dalam persalinan serta bayi baru lahir di rumah sakit bersalin. Dasar metodologis artikel ini adalah metode dialektis, yang menjamin analisis yang objektif dan komprehensif terhadap masalah hukum terkait pelanggaran dalam kebidanan. Penelitian ini juga menggunakan analisis sistem, perbandingan hukum, dan metode relevan lainnya. Artikel ini mengkaji pendekatan hukum, kriminologis, dan Islam untuk mencegah substitusi anak di Indonesia dan Kazakhstan. Temuan menunjukkan bahwa penggantian anak tetap menjadi masalah signifikan di Indonesia dan Kazakhstan akibat adanya kekurangan dalam legislasi yang ada dan jaminan prosedural yang tidak memadai untuk identifikasi bayi baru lahir. Artikel ini menyoroti perlunya tindakan kriminologis modern, termasuk peningkatan peralatan teknis di rumah sakit bersalin dan identifikasi bayi yang akurat untuk mencegah penculikan atau penggantian. Berdasarkan temuan tersebut, artikel ini merekomendasikan perbaikan undang-undang nasional, pembentukan otoritas perlindungan anak khusus, dan penerapan langkah-langkah komprehensif untuk melawan substitusi anak.

Keywords:

Substitution; Child; Opposition; Sharia.

How to Cite:

Abulkairova, B. (2025). Modern Criminological Measures to Counteract Child Substitution in accordance with Islamic Law. AHKAM: Jurnal Ilmu Syariah, 25(2). <https://doi.org/10.15408/ajis.v25i2.42154>

Introduction

Today, the life and health of children are among the most important values that society is obligated to protect. Legislation should fully safeguard the life of every individual, regardless of their social status or religion. Given that a child, due to its physical and mental immaturity, requires special protection and care, it is crucial to provide enhanced legal protection for children both before and after birth. Consequently, it is necessary to ensure stronger criminal and criminological safeguards for newborns, pregnant women, and those who have recently given birth. This article highlights the need for criminal and criminological protection for these vulnerable groups, with particular emphasis on the risks of offences such as abduction, trafficking, and child substitution in obstetric facilities. My intent is to explore this issue not only within the context of present-day Muslim countries but also on a global scale. Since my thesis focused on the offence of child substitution, this article reflects my ongoing commitment to addressing this critical issue.

One of the most important tasks today is the protection of human rights, particularly children's rights, from criminal activities within the framework of both Islam and customary law. It is important to recognize that the birth of a child is the most significant event for any family. Along with the joy of welcoming a new life, parents bear a great responsibility before the Almighty to care for the child and ensure its proper upbringing and safety. Islam has clearly established guidelines governing the actions of parents and their relatives in relation to the birth of a child within the family. The observance of these rules is an important condition within the Islamic tradition to ensure the safety of newborns by their parents. From an Islamic perspective, every human being is considered the noblest of the Almighty's creations; their speciality lies in the universality, complexity and uniqueness of creation.

Although the abduction of newborns from maternity hospitals and baby-swapping is not widespread, it is an issue of concern to parents around the world. It also attracts the attention of doctors, police, community organisations and other civil society actors. The National Centre for Missing and Exploited Children (NCMEC), after studying such cases, has concluded that such incidents can be significantly reduced if stricter security measures are implemented (Rabun, 2003). The vast majority of abductions and child swapping, namely 80 per cent, take place in the mother and child unit. In this regard, it has been found that there have been cases of violence against the mother of switched and abducted children.

When faced with the problem of child substitution or abduction, many parents are concerned that there is nothing they can do to prevent this anti-social phenomenon. In developing countries, the problem is most acute because of overcrowding and lack of medical equipment in maternity hospitals. The consequences of the offense of child substitution are very serious. As a result, the child is deprived of the right to know his parents. The Quran correctly says: 'Call them [birth children or adopted children] by their fathers [i.e., keep their patronymics]. This is most just before Allah (God, the Lord). And if you do not know their fathers, then they are your brothers in faith and protectors (helpers)' (al-'Aḥzāb, 2024).

From the above, it is clear that the right of every child to know their parents and origin is guaranteed by Islamic law. Therefore, to prevent child exchange and abduction, it is essential for both the state and civil society to systematically implement appropriate countermeasures. As the Messenger of Allah stated, since children are the "butterflies of paradise," it is crucial to uphold the inviolability of their rights.

In Muslim states, legislation must be based on the injunctions of Allah. In other words, 'decision-making belongs to Allah alone' (Asghar, 2008). Muslim legal doctrine refers to the sources of law in the formal sense, particularly the texts of the Qur'an and the Sunnah, which constitute the foundation for the legal norms that regulate human conduct. It should be emphasised that the Qur'an holds a higher authority than any constitution and is regarded as an immutable and eternal source of guidance. Undoubtedly, Islamic law represents one of the major legal systems of the modern world. It originated in the Middle Ages, has undergone a complex process of historical evolution and development, and is distinguished by its deeply rooted religious foundation. A defining feature of Muslim law is its religious basis, which is inextricably linked to its legal provisions, resulting in a unique fusion of spiritual and legal principles.

The theory of offence in Islamic legal doctrine is grounded in the belief that all actions and intentions of a Muslim are predetermined by the will of Allah. Absolute authority belongs solely to Allah, who is the all-powerful and perfect source of goodness and justice. At the same time, every human being is endowed with the right to freedom, which is regarded as an essential component of human dignity. Islamic religious literature consistently underscores the significance of human freedom and the serious consequences associated with its violation or deprivation. This perspective reflects the balance in Islamic thought between divine predestination and human responsibility, forming the basis for the moral and legal evaluation of human behaviour. All human beings are free; in the book *Nahj-ol-Balagheh*, Imam Ali (peace and blessings be upon him) says, 'never be a slave of another because Allah has made you free' (Asghar, 2008).

In this regard, the interests of the newborn child must be fully protected and must not be compromised under any circumstances. The child must not be unlawfully transferred to other individuals. According to Shariah law, it is strictly prohibited to substitute, sell, abduct, or unlawfully deprive a newborn of liberty. Such acts are unequivocally forbidden under Islamic law, as they violate both the sanctity of human life and the legal and moral obligations of society toward the most vulnerable. According to Islam, the rights of the child are specially protected and it is forbidden to commit any unlawful act against the child.

In the consciousness and behaviour of Muslims, children are regarded as the primary source of joy and the highest value within the family. The absence of a child is often perceived as a misfortune or social disadvantage for a woman. Beyond the moral and emotional suffering, childlessness can also give rise to serious social challenges. It is important to note that factors such as infertility, financial hardship, social stigma, and other pressures may contribute to offences committed in maternity wards. These may include child substitution, abduction, trafficking, illegal adoption, and other related crimes.

Thus, practice shows that children are most often switched or abducted and trafficked at an early age, when young children do not yet have distinct individual characteristics. However, this can also happen later, when children can be distinguished from each other. At present, there is an alarming trend whereby criminals resort to acts such as child substitution, abduction, and illegal adoption in maternity hospitals for the purpose of harvesting organs and tissues from infants. A maternity hospital is intended to be a place of safety and care, where parents entrust medical professionals with their most precious asset—the health and life of their newborn child. However, it must be acknowledged that medical personnel do not always

demonstrate full responsibility in the performance of their duties. Unfortunately, incidents of baby swapping still occur and raise serious concerns, undermining public trust in the healthcare system and highlighting the urgent need for stronger preventive and legal measures.

Therefore, the primary objective of this article is to examine the range of measures aimed at preventing crimes against children in maternity hospitals, as well as to highlight the necessity of introducing advanced technologies and legislative reforms to combat such unlawful acts. Particular attention is given to practical preventive tools, such as the use of identification bracelets, emergency alert systems (e.g., special buttons), and enhanced cooperation among medical staff, law enforcement agencies, and civil society to ensure the safety of mothers and newborns.

The research reveals that the primary victims of such crimes are women and newborn babies. Consequently, their protection, both criminal and criminological, must be implemented at the highest level. Every individual responsible for committing a criminal offence against children, pregnant women, or women who have recently given birth must be held accountable and subjected to appropriate legal punishment.

The article also emphasises the importance of safeguarding the rights of expectant mothers under the canons of Islam, especially during childbirth, a moment of great physical and emotional vulnerability. The consequences of child substitution are undeniably severe, both legally and emotionally. Each confirmed case of child swapping typically provokes significant public outrage and demands thorough investigation and justice.

Indonesia and Kazakhstan are implementing measures to improve child protection systems, establishing accountability for negligence, substitution, and abduction of newborns. Such provisions correspond to the Islamic requirement to safeguard a child's life and dignity and to prevent interference with their freedom and lineage identity.

The author examines this issue not only from the perspective of Islamic law but also highlights certain legislative gaps in child protection. However, it is noteworthy that in many such cases reported in the media, the root cause often lies in the negligent performance of duties by medical personnel. This assertion is supported by available statistics and scientific research. Although data from various sources may differ slightly in detail, they consistently reflect the growing concern and the clear trend of such offences occurring in healthcare institutions. We believe that this research work is relevant and necessary at the present time! We would like to emphasise the fact that such a study taking into account the norms of Islamic law has not been conducted.

Method

The dialectical approach is used as the methodological basis of this study, which allows for a comprehensive and objective analysis of the legal aspects of offences committed in the field of midwifery practice. The work also uses the methods of system analysis, comparative legal research, historical and formal-logical analysis, as well as statistical and other scientific methods. The historical method made it possible to trace the key stages of formation and development of criminal legislation aimed at protecting the rights of pregnant women and newborns. The application of the formal-logical method made it possible to identify the main problems and existing gaps in the system of counteraction to these offences.

The comparative-legal approach helped to analyse the norms of foreign and Islamic criminal legislation regulating infringements on the interests of newborn children and the family. The statistical method was used to interpret empirical data obtained by analysing official statistics and judicial practice. This research also applies data collection methods that include analysis of scientific literature and qualitative study of case studies reflecting criminological features of crimes against newborns. Reliance on relevant sources - including scholarly articles, Islamic legal provisions and academic writings - contributes to an in-depth understanding of the legal aspects of offences committed in obstetric facilities. The main legal sources used in this study include the Quran, international law, criminal and family law provisions, and court practice in cases involving the substitution of newborns. Islamic legal resources considered include a range of specialized academic journals and other scholarly publications. Among the researchers who have contributed to the study of this topic should be highlighted Mann Ammar Abdul Karim, A. V. Petrovsky, G. B. Sayfutdinov. Undoubtedly, the works of these scientists have significant scientific and practical value, but despite this, the issues of child substitution have not found a separate comprehensive study.

Protection of Children's Rights under Sharia & Modern Law

The study of child protection is inextricably linked to the broader discourse on human rights, as children are individuals who require special care and protection. According to international standards, a child is defined as any person under the age of 18, including those still in the womb. Thus, the protection of children represents a direct manifestation of the implementation of human rights, since the rights of children are an integral and inseparable component of the universal system of human rights.

Islam, in its moral and legal doctrine, pays particular attention to the protection of future generations, emphasising the importance of the family as a foundational institution of society. Within this framework, Islamic teachings promote the safeguarding of children not from the moment of birth, but from the moment of conception. This perspective underscores the holistic approach of Islam toward human dignity and life.

During the early years of life, an infant lacks the cognitive ability to recognise and respond to the dangers of the external world. Accordingly, the primary duty of parents is to provide comprehensive protection and support for the child, ensuring physical safety, emotional security, and the conditions necessary for healthy development. The main tasks of parents are to provide all the needs of children and an environment favorable to them. Verse 233 of Q.S. Baqarah indicates that breastfeeding is most favorable for infants, saying that it should be provided for two years ([Quran.com](https://www.quran.com/), 2024).

Thus, we see that a child cannot be given away to anyone; the harm of bringing up in another family without the blood mother's involvement is also stated in the Quran. Accordingly, according to Islamic law, it is not allowed to take a child away from its mother if there is no reason for it. That is, trafficking in a newborn child, illegal adoption, or changing a child is not allowed. The father of a child is also obliged to assist in the mental and physical development of his child.

Previous research by the author indicates that protecting children's rights is a central aspect of modern state policy in many countries, including Kazakhstan and those governed by

sharia norms, and that the development of this institution directly affects the effectiveness of state actions and societal well-being.

Every parent must bring up their children with love. After all, a child who does not grow up surrounded by love is often timid and unable to fully express his or her thoughts. In this regard, if we talk about the duties of a father towards his child, the first is to give him a beautiful name at his birth; secondly, to teach the child to read the Quran; and thirdly, to choose a suitable spouse for the child when he reaches the age of marriage and is ready to start a family. In this regard, Islamic norms attach special importance to the education of children. Nowadays, many parents and children are unaware of their responsibilities and neglect them. This is a global problem. In turn, it is important to be able to leave virtuous offspring, whose upbringing can be rewarded in both worlds.

According to the Child Protection Commission, reports of child abuse are also on the rise in Muslim countries. All Quranic verses and hadiths emphasise the need to protect and nurture children. In this regard, it is unacceptable in Islamic countries to (Bariah, 2018). As a general rule, a newborn baby should be given a name within the first three days after birth or on the first Friday. During this time, the child could potentially be replaced by another child. Early naming and timely legal documentation are ways of preventing offences against the child. In the context of Islam, any child is recognised as a special gift and trust from Allah to the parents (Sayfutdinova, 2011). It is crucial to recognise that Allah is the only giver and taker of life and therefore crimes against children are unequivocally condemned.

Legislative bodies should take these points into account when enhancing laws that protect children's rights. Safeguarding children from crime requires a comprehensive approach that combines effective legislation, social policy, and ethical principles.

To further improve child protection policies in Kazakhstan and Indonesia, it is advisable to establish hotlines and online reporting platforms, create a dedicated child protection authority with a clear legal mandate, and adopt policies that assign parents, guardians, and society shared responsibility for ensuring children's well-being. These measures would enhance legal protection and foster a safer environment for children's development.

Legal Protection of Women during and after Childbirth

It is important to emphasise the necessity of protecting the rights of women during childbirth. In Islam, women's rights are afforded particular attention and protection. A Muslim woman is entrusted with key social and familial responsibilities, including being a supportive spouse, bearing and raising children, and managing the household. Imposing additional financial or social burdens on her—especially during such a vulnerable period as childbirth—constitutes a clear violation of her rights.

Therefore, it is imperative to guarantee the protection of Muslim women's rights at every stage of life: from birth, through pregnancy and childbirth, and into motherhood. Respecting and safeguarding these rights aligns not only with Islamic legal and ethical principles but also with broader international standards on maternal and reproductive health. During pregnancy, childbirth and breastfeeding, Muslim women are often modest and try to avoid crowded places. Pregnant women are highly respected in Muslim societies. Consequently, a woman's role during pregnancy, childbirth and breastfeeding is compared to

that of a *murabit*, one who takes a certain position during *jihad*. If she were to pass away during this period, she would be rewarded as a martyr ([Sunnah.com, 2024](#)).

In this context, it is important to note that women in such circumstances need special protection under religious and sharia law. The mother is fully responsible for the foetus in her womb, as this is her biological purpose for which she is accountable to Allah. However, once the child is born, the father also shares the responsibility of caring for the child. Under Muslim law, the care and upbringing of a child is a joint responsibility of both the father and the mother ([Badissy, 2016](#)). Islam places special emphasis on ensuring the safety of pregnancy and childbirth and the birth of a healthy child. According to Islamic norms, a man is primarily responsible for providing for his wife and children, even if the wife is rich and capable. Moreover, it is the husband's responsibility to ensure his wife's health, including regular visits to the doctor, taking medication, adequate nutrition and other necessities.

Pregnancy in Islam is considered an honourable duty of a woman and a sacred destination leading to paradise. According to the Prophet, women who carry, bear and nurse their children, and show them care and love, provided they fulfil their prayers and respect their husbands, will indeed attain paradise ([al-Tirmidhī, 2002b](#)). Furthermore, pregnancy is viewed as a means of atonement for sins, as it often involves discomfort and suffering, which, in accordance with Islamic teachings, aids in purification ([Bakanova, 2021](#)).

For Muslim women, pregnancy is equated with a holy struggle in the path of Islam, similar to *jihad* for men. According to the Prophet, a woman who dies during pregnancy or childbirth is considered a *shahid* ([Abū Dāwūd, 1999](#)). Pregnancy and breastfeeding are also grounds for exemption from obligatory fasting in the month of Ramadan. A woman who goes through the ordeal of pregnancy, childbirth, and child-rearing is rewarded with Paradise, for as the prophecy says, 'Paradise is located under the feet of mothers' ([Rajabov, 2014](#)).

In Islam, the details of the birthing process are not as in-depth. However, the basic principle is that a woman in labor should be protected as much as possible, just as with any other illness that requires diagnosis with the opening of the body. The doctor delivering the baby should be female as far as possible. The same applies to the performance of a cesarean section ([Alyautdinov, 2019](#)).

According to a fatwa issued by Mufti Muhammad ibn Adam al-Qawsari, an esteemed Islamic scholar in the field of medicine and Islamic ethics, it is recommended that, in the context of medical treatment and surgical procedures, patients seek healthcare providers of the same sex, preferably of the Muslim faith. However, if a qualified doctor of the same sex is not available in the locality or if their competency is reasonably in doubt, it is permissible to consult a doctor of the opposite sex, again preferably a Muslim ([Darul Ifta of Jordan, 2021](#)). This guidance reflects the broader Islamic principle of modesty while also prioritising access to effective medical care.

According to the Universal Declaration of Human Rights (1948), every woman has the right to the necessary care and a standard of living that supports her own health as well as the health of her family. In addition, it is essential that women are adequately protected by law. We argue that each state should implement legal norms that specifically regulate the rights of pregnant women and new mothers. It is crucial that women in labor receive appropriate prenatal and intranatal care ([Renaudin et al., 2007](#)).

It is important to emphasise that women's rights during childbirth are frequently violated in many countries around the world. As a result, women often hesitate to entrust not only their own lives but also the lives of their future children to medical professionals. Unfortunately, numerous cases have demonstrated that the consequences of inadequate medical services can lead to long-term psychological and emotional harm. All unlawful acts committed against women and children are subject to regulation by Islamic law. In this context, it is essential to highlight the main sources of Islamic law that address issues related to family, reproductive health, pregnancy, and other pertinent matters. These sources, which guide religious rulings, include: the Quran and its interpretations—several verses of the Quran discuss reproductive matters; the Sunnah (collections of hadith)—these texts contain sections that address reproductive practices; *ijmā'* (unanimous consensus among Muslim scholars)—this principle is applied to issues on which there is widespread scholarly agreement; *qiyās* (analogical reasoning)—this method is often used in cases where a particular event is not explicitly addressed in the life of Prophet Muhammad (Bakanova, 2021).

Sharia derives from the Arabic word 'sharia', meaning the right path. This term refers to a set of legal norms, rules of behavior, and postulates of a Muslim, the strict observance of which should lead a Muslim to paradise. Sharia consists of laws communicated to people through the sacred texts of the Quran and Sunnah (Bushuyeva, 2021).

From a sharia perspective, laboring women adhere to halal delivery methods. The substitution of newborns also occurs in Muslim countries. A distinctive feature of Islamic states is that only female midwives and health workers attend to women in labor.

In Muslim countries, birth mothers often express gratitude to the Almighty, as the ability to have children is not granted to everyone. They demonstrate patience and offer prayers for the safe birth of a healthy child. During childbirth, women typically listen to the Quran and pray, if possible. In the case of partner births, the spouse or other close relatives, along with female medical personnel, may assist. The husband, being the closest person to his wife, often participates in the childbirth process as a means of protecting his family. Islam neither prohibits nor mandates joint childbirth; rather, it emphasizes the importance of mutual initiative. Emotional support during childbirth is considered essential, as it strengthens the bond between the couple and makes the experience less overwhelming. The birth of a child is regarded as the most joyous and significant event in a family's life (Islamtoday, 2021).

After the birth of the baby, the postpartum period begins and typically lasts until the mother's reproductive organs have fully recovered, usually taking about six weeks (Wijayarini, 2005). During this period, many mothers experience fatigue, which can impact their daily lives, mental health, and ability to care for their newborn. The arrival of a new family member presents significant challenges for parents, especially in terms of their relationships within the family unit. Social support plays a crucial role in helping mothers care for their children and adjust to the new family dynamic. According to Dzubati (2016), family care involves the active participation of all family members in providing support for the mother and newborn baby (Dzubaty, 2016).

Research shows that parents require practical assistance, supervision, and care, all of which are vital to the health and well-being of both the mother and the child. Comprehensive services, such as home visits by healthcare professionals, can significantly support families in managing their daily lives and meeting their needs (Kurth et al., 2016). Postnatal support

involves offering attention, listening, understanding, and acknowledging the feelings of others. Emotional support is crucial for women in labor, as it ensures they feel cared for by their loved ones. Husbands and family members can demonstrate their care by paying attention and helping mothers rest. Instrumental support, on the other hand, provides tangible assistance in the form of material resources from loved ones, husbands, and in-laws. Family involvement in providing support aids mothers in recovering both physically and emotionally after childbirth. This not only fosters a sense of fulfillment and care but also enables mothers to enjoy their time. Social support should come from spouses, family, and medical staff.

In summary, postpartum support includes informational, emotional, and instrumental support that benefits mothers by offering care, love, and promoting breastfeeding. Healthcare professionals conducting postnatal check-ups must recognize the importance of social support during this period. Therefore, they should educate and sensitize spouses and family members to meet the needs of mothers and improve maternal and child health after childbirth. Expectant mothers are also advised to seek legal counsel during pregnancy to understand their rights and avoid situations that may not align with the law.

It is important to highlight that offences occurring in maternity hospitals against recently delivered women and their children are highly dangerous. Every woman should be safeguarded by both international and Islamic law. In this context, child substitution must be recognized as a crime with severe consequences. This offence impacts multiple families and alters numerous lives. We argue that preventing and swiftly detecting such offences requires the implementation of new legal and technical measures. Therefore, it is crucial to consider actions aimed at preventing child substitution.

Prevention of the Crime of Child Substitution

Let us consider the main measures for countering the offence of child substitution. In the current context, it is essential to implement innovative and non-standard methods of combating criminal activity within maternity hospitals, including offences related to the substitution of newborns. It is our view that specialists in information technology should be actively engaged in developing methods that harness the potential of social media platforms to aid in the prevention, detection, and investigation of such crimes. The integration of technological solutions, particularly in the digital sphere, can significantly enhance the effectiveness of preventive strategies and law enforcement efforts.

The recognised methods of combating crime encompass prevention, suppression, preliminary investigation, trial, the application of criminal law to offenders, and the mitigation and reduction of the adverse consequences of individual criminal acts and crime in general (Timko, 2021). Among these, prevention remains the most effective, especially at early stages. However, equally important is establishing clear criminal liability and punishment for *taghyīr al-awlād*. Islamic jurisprudence (fiqh) regards the unlawful substitution of children as a severe offence against the integrity of family lineage (*hifz al-nasab*), and prescribes sanctions that aim to protect the child, uphold social order, and deter future violations.

In Islamic jurisprudence (fiqh), *taghyīr al-awlād*—the act of substituting or misrepresenting a child’s identity—is considered a serious violation because it directly undermines the protection of lineage (*hifz al-nasab*), one of the primary objectives of Sharia

(*maqāṣid al-sharī'ah*). The establishment and preservation of a child's true parentage are fundamental in Islamic law, affecting inheritance, the permissibility of marriage, and family rights. Any deliberate action to alter or conceal lineage is therefore treated as a breach of both moral and legal obligations.

Criminal liability in fiqh for *taghyīr al-awlād* is based on the perpetrator's intentionality (*qaṣd*), with deliberate acts of child substitution or misrepresentation constituting key grounds for culpability. Even negligent actions that lead to child substitution may incur liability, though the severity of the punishment can vary. The offense directly violates protected values such as life (*ḥifẓ al-nafs*), lineage (*ḥifẓ al-nasab*), and family integrity, making it a serious crime under Islamic law. Punishments are typically categorized as *ta'zīr*, discretionary sanctions determined by a judge, which may include fines, imprisonment, or community service depending on the harm caused. Additionally, Islamic law mandates restorative obligations to restore the child's true identity, recognize correct lineage, and safeguard the rights of parents and family members.

In the Indonesian context, where sharia principles influence certain aspects of family law, acts of child substitution are additionally addressed through statutory regulations. Indonesian law criminalizes the substitution, trafficking, and illegal adoption of children, complementing fiqh's moral and legal framework. Courts may consider both civil and Sharia-based principles when assessing liability, particularly in cases where lineage and family rights are contested.

Thus, in both Islamic jurisprudence and Indonesian practice, *taghyīr al-awlād* is considered a serious offense, with criminal liability and punishment determined by the combination of intentionality, harm caused, and the necessity to protect the child's lineage, rights, and societal stability. The integration of sharia principles into the legal system reinforces the moral imperative to prevent and punish child substitution effectively. In Kazakhstan, child substitution also refers to criminal offenses against the family.

In Indonesia, the substitution of newborns (*taghyīr al-awlād*) is considered a serious crime that violates children's rights protected by sharia, including *ḥifẓ al-nafs* (protection of life) and *ḥifẓ al-nasab* (preservation of lineage). From a criminological and fiqh perspective, preventing such crimes requires a comprehensive approach combining organizational, technological, and legal measures.

Theoretical works on Islamic law and the modern context emphasise that preserving lineage is one of the basic objectives of sharia (*maqāṣid al-sharī'ah*): violating lineage is a serious offence that must be punished, as it affects the rights of the child, inheritance rights, family structure and public order. Thus, child substitution violates family values and the nation's genealogy. Now, let us consider some criminological measures for the crime in question.

Preventive measures against child substitution in Indonesian maternity hospitals, grounded in Islamic jurisprudence, combine organizational controls like restricted ward access, staff monitoring, and parental presence; technological tools such as ID bracelets, biometric systems, and CCTV; legal and criminological accountability under *ta'zīr* principles; and educational initiatives for hospital staff and parents on child rights, nasab protection, and newborn safety.

Integrating organizational, technological, and legal measures with sharia principles of

protecting nasab and the child's life represents a key strategy for criminologically preventing newborn substitution in Indonesian maternity hospitals, ensuring compliance with Islamic law, preventing crime, and strengthening parental trust in medical institutions.

The fight against crime in Islamic jurisprudence involves not only state and local authorities but also the moral and social responsibility of the community to uphold sharia principles, particularly the protection of life (*hifz al-nafs*) and lineage (*hifz al-nasab*). Strategies to prevent child substitution in maternity hospitals must therefore align with fiqh, emphasizing both legal accountability and ethical obligations. DNA testing, though generally unnecessary under sharia's presumption of paternity, may be allowed in exceptional cases—such as natural disasters or a child's death—to confirm identity or parentage and protect the child's nasab. Crimes against newborns, including substitution by medical staff or organized groups, violate these protections by undermining the child's legal and social status. Because newborns lack developed physical features, they are especially vulnerable to abduction, trafficking, or illegal sale, underscoring the need for preventive measures that uphold both criminal law and Islamic principles. In such circumstances, DNA testing becomes a vital and reliable tool for identifying affected children (Petrova, 2017). Such offenders who substitute or abduct a child are typically characterized as females aged 20–39, often overweight, prone to manipulative behaviors and frequent dishonesty, and commonly married to a partner who desires to have children (Burgess et al., 1995).

Currently, incidents involving the swapping, abduction, and illegal adoption of infants are being reported with increasing frequency. In response, many hospitals have begun implementing measures such as registering the newborn's fingerprints and attaching an identification band to the ankle, which includes the date and time of birth. The consequences of child substitution constitute serious offences with profound emotional and legal implications. It is difficult to fathom the psychological toll on families who unknowingly raise another person's child for an extended period of time. Moreover, due to the covert nature of such crimes, it is virtually impossible to determine the exact number of child substitution cases that occur annually. To mitigate and prevent such violations, medical institutions should implement comprehensive identification systems that include fingerprinting, audio recognition, shape and feature analysis, and other advanced biometric technologies (Hug et al., 2019).

Baby swapping and abductions carry a highly negative connotation and are deeply feared by parents, who often feel that such events are beyond their control or prevention. When confronted with the possibility of such incidents, parents may experience a profound sense of helplessness, believing themselves unable to avert these tragic outcomes. In this context, numerous arguments support the use of biometric data to identify newborns as a means of addressing the problems of misidentification, substitution, and abduction. However, it should be noted that the retention of such biometric data in databases is justifiable only for a limited period, ensuring a balance between effective identification and privacy protection.

A mother of a newborn should pay close attention to her baby's physical characteristics, such as the amount of hair, presence of moles, and other distinguishing features (Skåre et al., 2018). Recognizing the facial features of newborns and maintaining vigilance over their safety are critical steps in preventing accidental substitution. A well-developed biometric identification system can significantly enhance the speed and accuracy of detecting and evaluating cases of child substitution. For example, in India, a case occurred in a healthcare

facility where two infants were inadvertently switched immediately after birth. The parents' suspicions proved to be well-founded due to the absence of biometric documentation. This error was only discovered through DNA testing nearly two years and nine months later (Pandey, 2018).

Similar cases have been reported in Russia, where adults discovered they had been victims of infant substitution 28 years after birth (Mailonline, 2018). It is important to emphasize that the substitution of a newborn can occur for a variety of purposes and motives, including replacing a deceased infant with a living one, substituting a female child for a male, or attempting to conceal a false pregnancy. Numerous such incidents have been documented globally, including in Muslim-majority countries (Sharma, 2018).

Thus, regardless of geographic location, the implementation of biometric evaluation systems-utilizing features such as ears, fingerprints, and facial recognition-could facilitate the rapid identification of cases involving the substitution of infants. The development and integration of these biometric systems are essential for ensuring the safety and accurate identification of newborns in healthcare settings. It should be noted that facial recognition is considered the simplest, most accurate, and reliable biometric method for identifying newborns. Many researchers have repeatedly observed that, despite the challenges, the facial features of newborns are sufficiently distinct from adults to allow effective recognition.

Furthermore, the nasal region of the face constitutes a primary focal point in facial architecture (Bharadwaj et al., 2016). observed that the nasal area in newborns is shallower than in adults. They also noted that the faces of infants lack noticeable features like those of adults. This underscores the critical importance of reinforcing security measures within maternity hospitals to prevent such violations. Nursing staff must maintain thorough awareness of all pertinent details regarding both mothers and their newborns. In addition, robust security protocols must be implemented within these facilities.

The selection and deployment of security systems for newborns are vital, and their proper implementation is a key factor in effectively addressing the issue of infant substitution and abduction (Geller, 2000). The principal advantage of integrated security systems lies in their capacity to prevent incidents of "baby swapping" and to enhance confidence in the accuracy of prescribed medications and medical procedures for infants (Rusting, 2001). Therefore, controlling access to and from the maternity hospital is of paramount importance. In addition to hospital staff, a range of visitors, including support personnel from various departments, such as laboratory technicians, radiologists, maintenance staff, doctors, therapists, medical students, volunteers, and couriers delivering flowers, food, and other services, frequently enter the facility. To mitigate the risks of infant substitution and abduction, it is essential to install panic buttons in every health facility. Vigilance and competence on the part of the medical staff are imperative. Video surveillance should be implemented across all areas of the facility to further enhance security.

As some scholars have noted, the use of baby identification bracelets is becoming an increasingly popular and effective method for preventing infant abduction (Shuman, 1999). While some healthcare professionals argue that childbirth is a natural process that does not necessitate the presence of a birth partner, we contend that the support of loved ones is crucial in ensuring the safety of both the mother and the newborn, especially during difficult labor.

From an Islamic perspective, many women feel safer giving birth at home due to the growing concerns over the negligence and irresponsibility of medical personnel in hospitals.

Additionally, some scientists argue that foot and ear prints, as well as the collection of umbilical cord blood and photographing the newborn, can help prevent the transfer and abduction of a baby (Kearns, 1996; Stephenson, 1995). In this regard, it is necessary for healthcare workers to conduct regular training sessions aimed at identifying and recognizing child abductors, including addressing liability issues. Nurses and parents should receive training at medical centers to ensure the child's safety. Therefore, periodic training sessions for healthcare workers aimed at identifying and recognizing child abductors, as well as addressing issues of liability for negligent staff, are necessary (Hale & Incao, 2002).

The Islamic Code of Medical Ethics, which is rooted in the principles of sharia, asserts that the sanctity of human life remains inviolable at every stage, from conception to old age. Preserving the life of an unborn child is of paramount importance, except in cases of extreme medical necessity, which must be approved by Islamic law. Any action by medical personnel that endangers the life or health of a patient, especially when performed without the patient's consent, contradicts the religious tenets of Islam and incurs appropriate criminal liability. Furthermore, to enhance security and ensure the safety of women in labor and their newborns, it is essential that medical workers wear uniforms in a standardized color scheme, specific to their shifts, and carry identification badges displaying their full names. This measure is considered vital for maintaining an orderly and secure environment within healthcare facilities.

According to Islamic teachings, criminal behavior is linked to an individual's low spiritual state. As affirmed by all monotheistic faiths, it is only through a deep spiritual connection that an individual can adhere to the law, even when external circumstances may tempt them to act otherwise. A believer, who is consistently aware of being under the omnipotent gaze of Allah, experiences a dual form of protection. The recognition that Allah observes all actions instills a profound sense of shame before Him, which serves as a deterrent from engaging in sinful behavior. If this sense of shame is insufficient, the fear of divine punishment in the afterlife further discourages immoral actions. In light of the above, this section outlines the main criminological measures necessary for preventing the crime in question.

Criminal Law Measures

Criminal law measures against offenses such as child substitution include the imposition of appropriate penalties, as outlined in Islamic legal principles. The Criminal Code categorizes offenses into three main categories: *hudūd*, *qiṣāṣ*, and *ta'zīr*. *Hudūd* offenses are considered the most serious and carry the most severe penalties, which may include the death penalty, stoning, fines, and forced labor (Fadl, I. A. T., 2018). The institution of punishment is integral to crime prevention in Muslim countries, serving as both a deterrent and a means of maintaining public order.

For instance, under Article 38 of the Criminal Code of the Republic of Yemen, the principal types of punishment for various offenses include capital punishment, stoning to death, amputation of limbs, corporal punishment (such as flogging), imprisonment, *diyat* (blood money), *ursh* (forfeiture of property), fines, crucifixion, and compulsory labor (Turgumbaev,

2014). These severe measures reflect the seriousness with which crimes, particularly those related to family and life, are treated under Islamic law. According to sharia law, a person is criminally liable only if they are aware of the consequences of their unlawful actions. This responsibility exists only in the presence of *taklīf*, a concept that requires certain conditions: intelligence, adulthood, and legal capacity.

In accordance with the teachings of the Prophet Muhammad, responsibility for criminal actions does not apply to individuals who are sleeping, minors, or those suffering from mental illness. The determination of majority age, as outlined in sharia, also takes into account the individual's awareness of their actions and behavior (Petrovsky, 2013).

Muslim jurists generally identify two primary objectives of punishment: general prevention and personal prevention. Punishments for *ḥudūd* and *qiṣāṣ* offenses serve the purpose of general prevention, deterring the broader population from committing similar offenses. On the other hand, punishments for *ta'zīr* offenses are aimed at personal prevention, specifically to reform the individual perpetrator and deter future offenses. Modern theories of Islamic criminal law perceive punishment not as a form of vengeance against the offender, but as a preventive measure to safeguard society from harmful behavior and reduce recidivism.

The primary goal of punishment in this context is to align with Islamic moral values, aiming not only to control crime but also to positively influence the offender's behavior. In Islamic thought, committing an offense is seen as a form of disobedience to the will of Allah. Muslim legal scholars regard unlawful behavior not merely as a violation of legal statutes but also as a religious sin, with consequences that extend beyond the legal realm (Manna, 2004).

It is necessary to improve the criminal laws of Indonesia and Kazakhstan in order to prevent the substitution of children. Indeed, every nation, including those guided by the principles of sharia, should strive to enhance its legislation while adhering to the foundations of Islamic law, in which honor, dignity, family, and the well-being of children are regarded as paramount values.

The concept of an offense under Islamic criminal law, as articulated by Al-Mawardi, underscores that an offense, in its legal sense, refers to actions that contravene the prohibitions set forth by Allah (Al-Mawardi, 1973). Sin, in this framework, is considered a violation of both moral and legal principles, with the law itself being an objective manifestation of Islamic moral order. Substitution and abduction of a newborn baby, as well as the child's parents, also have a profound impact on health care workers. They experience fear, anxiety and long-term psychological consequences. Islam does not encourage causing pain or disappointment to others. In cases of child substitution, health care workers may try to avoid responsibility, which leads to the crime going undetected for many years.

Therefore, parents must take extra precautions to ensure that the child they take home from the hospital is indeed their own. The discovery of a child substitution many years later creates a serious moral and legal dilemma for the affected individual, who may be forced to choose between their biological parents and the parents who raised them. Child substitution constitutes a criminal offense characterized by several key elements: harm to society, as it causes profound suffering to parents and families; violation of the law, since such acts are explicitly prohibited by legal statutes; the presence of guilt, demonstrated by evidence that the perpetrator knowingly carried out the substitution; and punishability, meaning that the act is subject to criminal sanctions.

Some researchers interpret the concept of crime in Islamic law as a violation of the norms of sharia, enshrined in the legislative acts of a particular state. In other words, the state included the sharia regulations in its legal documents and established earthly punishment for their violation (Djamali, 2021). The Quran is the holy book of Muslims and the main source of Muslim law, prescribing certain rules of behavior in particular situations intended for Muslims.

In Muslim law, guided by the Quran as the primary source, offenses are classified into three categories: those infringing on the rights of Allah, offenses with fixed penalties, and offenses without fixed penalties (Abdukarimova, 2010). To effectively prevent crimes such as child substitution in maternity hospitals, the implementation of a multi-faceted approach is crucial.

Crime prevention requires a comprehensive approach combining economic measures, such as stabilizing the economy, reducing unemployment, and compensating crime victims, with political actions, as seen in Kazakhstan and Indonesia, including democratization, anti-corruption reforms, countering illegal corporate lobbying, strengthening political regimes, and promoting international cooperation. Legal measures play a key role through the adoption of comprehensive legislation, harmonization of laws, and ensuring stability in law enforcement and crime prevention. Psychological, pedagogical, and cultural-educational initiatives aim to raise legal literacy, encourage preventive behavior, build public trust in law enforcement, and demonstrate successful examples of crime control. Additionally, criminological and organizational measures, including preventive talks, victim-focused strategies, warnings, and improved management, enhance the overall effectiveness of crime prevention at both general and individual levels.

In conclusion, a multi-faceted approach that combines legal, economic, political, social, and organizational measures is the key to preventing child substitution and ensuring the safety and well-being of both mothers and newborns. This approach should include legal reforms, a strong healthcare security system, and comprehensive public awareness campaigns to reduce the occurrence of this crime.

Conclusion

In conclusion, child substitution is a serious global crime that causes lasting harm to children and families. Preventing it requires identifying its causes and strengthening legal, medical, and social protections. Effective measures include reliable identification of newborns, strict maternity ward protocols, and continuous public education to safeguard children's rights. Islamic teachings emphasize that strong faith and moral conduct protect society from wrongdoing. In Islamic jurisprudence, *taghyīr al-awlād* is a grave violation of *ḥifẓ al-nasab* and is punished through discretionary *ta'zīr* sanctions—such as fines, imprisonment, or corrective measures—for both intentional and negligent acts, along with mandatory restoration of the child's true identity. Ensuring safety in maternity hospitals requires implementing measures such as ID bracelets, DNA and biometric verification, video surveillance, updated laws, harsher penalties. Promoting awareness among parents, healthcare professionals, and the wider community about their rights and responsibilities further enhances prevention. By integrating legal reforms, modern technologies, public education, and Islamic ethical

principles, society can safeguard its most vulnerable members-mothers and newborns-and foster a secure and reliable healthcare environment.

As a recommendation, it is essential to strengthen national legislation on child protection, implement unified biometric and DNA-based identification systems in maternity hospitals, improve staff training in ethics and security, raise public awareness of parental rights and child safety, and establish independent oversight bodies to ensure compliance and investigate violations.

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