



## THE LEGAL STUDY OF INHERITANCE RIGHTS FOR CHILDREN OF SURROGATE MOTHER

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### Abstract

#### ARTICLE INFO

#### ABSTRACT

##### **Keywords:**

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*A surrogate mother is an agreement between a woman who binds herself with a biological parents to instill of the fertilization on her womb. When the baby borned, must be handed over. According to Indonesian law, surrogacy is prohibited, it causes problems such as inheritance rights. The aims of the research are to examine the inheritance rights of children of a surrogate mother, with normative juridical research approach to examine research objects based on positive law, examining secondary data sources such as primary legal materials such as laws, secondary legal materials such as journals and results of previous research, tertiary legal materials are dictionaries and encyclopedia. descriptive analytical is used to describing phenomena and identifying patterns and relationships. This research was supported by interviewed competent informants. The qualitative analysis was used by analyzing information that cannot be measured. The results are the child is the heir of the surrogate mother because she gave birth to him viewed from a sharia perspective but from the lineage, the child is the heirs of their biological parents. The Civil Code regulates that inheritance rights will be determined by the status of the child, whether an illegitimate child or a legitimate child.*

### A. INTRODUCTION

The presence of a child is a gift in married life, because in essence one of the goals in marriage is to have offspring as contained in the Qur'an

and Sunnah.<sup>1</sup> There are several purposes of marriage contained in the Quran and Sunnah,<sup>2 3</sup> including carrying out the commands of Allah SWT and the Prophet PBUH, because marriage is also part of worship for every Muslim in accordance with Q.S An-Nuur: 32 avoiding adultery in accordance with QS Al Isra:32 and HR Bukhari, Muslim, Tirmidhi, it said "Whoever among you is capable of marrying, then marry, for marriage is more subdued than the gaze, and more fortified than *the farji* . And whoever is not able to do so, let him be shaum (fasting), for it can fortify him." Meaning that marriage is a solution to channel sexual desire that is legal and justified in religious provisions (especially Islam). Marriage is also purposed to getting offspring as mentioned in QS An-Nahl:72, that it said "*Allah made you wives of your own kind and made for you your wives, children and grandchildren, and gave you good sustenance. So why do they believe in the wicked and deny the favor of Allah?.*" "*Allah made you wives of your own kind, and made for you your wives, children and grandchildren, and gave you good sustenance. So why do they believe in the wicked and deny the favor of Allah?.*"

The presence of a child in a marriage is an important thing in Islam<sup>4</sup>, as Rasulullah Saw said "*If a person dies, then his charity is cut off, except for three things: charity, useful knowledge, and the prayer of a righteous child.*" And in Hadith narrated by Ad Dailami, Rasulullah Saw said "*the four kinds of happiness of man are a righteous wife, a devoted child, his friends are good people, and his livelihood is in his own country.*" In the Islamic religion, the presence of a child is important because children are the successors of their parents' descendants and are the heirs of their parents' assets.<sup>5 6</sup>

In reality, a household is not always blessed with the birth of a child and this can happen for various reasons. The problem of infertility in women and men is different. To overcome this problem, technology in the field of medicine has developed to be able to overcome the problem of a child's absence in a marriage. There are several known programs in realizing pregnancy, namely: In vitro fertilization (IVF), Sperm Injection (ICSI), Artificial insemination (intrauterine insemination or IUI) and Falopian tube surgery. Of the four (4) methods of the pregnancy program, the one that

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1 Mahamad Bin Arifin and Magaji Chiroma., Quality Versus Quantity of Children; Towards Achieving the Objectives of Marriage in Islamic Family Law, *International Journal of Humanities and Social Science Invention* 3, No. 6 (2014).

2 Muhammad Hori and Eliva Sukma Cipta., The Purpose of Marriage in Islamic Philosophical Perspective, *Journal of Islamicate Studies* 2, No. 1 (2019): 18–25.

3 Meraj Ahmad Meraj., The Importance of Marriage in Islam, *International Journal of Research Granthaalayah* 6 No. 11 (2018): 1–6.

4 Dawoud El-Alami and Doreen Hinchcliffe., *Islamic Marriage and Divorce Laws of the Arab World*, (Brill, 2023).

5 Fadloli Fadloli et al., Islamic Inheritance Law: A Comprehensive Examination of the Principles and Status of Successor Heirs in the Division of Inheritance in Indonesia, *Alfiqh Islamic Law Review Journal* 2, No. 1 (2023): 52–65.

6 Siah Khosyi'ah and Ayi Yunus Rusyana., Inheritance Settlement of Descendants of Children and Siblings in Islamic Law with Local Wisdom in Indonesia, *Cogent Social Sciences* 8, No. 1 (2022): 2126615.

was talked about was in vitro fertilization (IVF). IVF is a human attempt to carry out fertilization, by uniting or bringing together a female egg (ovum) with a male spermatozoa in a glass tube.<sup>7 8</sup>

In practice, the concept of IVF consists of various forms.<sup>9 10</sup> The concept of IVF such as IVF using sperm and ovum from a legal married couple and embryos implanted in the uterus of the legal wife, IVF that uses sperm and ovum from a legitimate partner, but the embryo is transplanted into the surrogate mother's uterus, IVF from the results of the husband's sperm and ovum from the donor, then the embryo is implanted in the uterus of the legal wife, IVF from donor sperm and ovum from the legal wife, embryo implanted in the uterus of the legal wife, IVF from donor sperm and ovum from the legal wife, but the embryo is implanted in the surrogate mother's uterus, IVF from the legitimate husband's sperm and ovum from the donor, embryo implanted in the surrogate mother's uterus, IVF from sperm and ovum donors, but embryos implanted in the uterus of the legal wife, IVF from sperm and ovum donors, as well as embryos implanted in the surrogate mother's uterus.

The first IVF program was successfully carried out by Dr. P.C. Steptoe and Dr. R.G Edwards on the married couple John Brown and Leslie. Leslie gave birth to her baby weighing 2.7 kilograms in Oldham, England in 1978.<sup>11</sup> Meanwhile, in Indonesia, the success of the IVF program was the first time with the birth of an IVF baby in 1988 (coinciding with National Education Day), namely the son of Markus and his wife, Chai Ai Lian. The baby was named Nugroho Karyanto. Followed by a second IVF named Stefanus Geovani who was born on November 6, 1988, the son of the married couple Jani Dipokusumo and Angela. The third IVF was born on January 22, 1989 and was named Graciele Chandra. Furthermore, on March 27, 1989, triplet babies named Melati, Suci and Mentari were born. On July 30, 1989, an IVF named Azwar Abimoto was born. All of the IVF were born at the Harapan Kita Children's and Maternity Hospital. The hospital is the first hospital to develop an IVF program in Indonesia.<sup>12</sup> The practice of renting a uterus with a surrogate mother (*surrogate mother*) in several countries such as Germany, France, Switzerland and Italy are explicitly ban the practice of *surrogate mothers*. However, this kind of uterine rental practice is legal in a number of countries, such as the United States, the United Kingdom, India, Thailand, Ukraine and Russia.<sup>13</sup> In Muslim countries on the Middle East

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7 Sarah Ferber, Nicola J Marks, and Vera Mackie., *IVF and Assisted Reproduction* (Springer: 2020).

8 Hend Abd El-halim Mansour., Infertility Diagnosis and Management, *Beni-Suef University Journal of Basic and Applied Sciences* 12, No. 1 (2023): 81.

9 Michel De Vos et al., The Definition of IVM Is Clear—Variations Need Defining," *Human Reproduction* 31, No. 11 (2016): 2411–15.

10 Habib Kholilulloh et al., Hukum Inseminasi Buatan Dan Bayi Tabung Serta Implementasinya, *Anwarul* 3, No. 1 (2023): 152–77.

11 Husni Thamrin., *Hukum Sewa Rahim Dalam Bayi Tabung*, (Yogyakarta: Aswaja Pressindo, 2015).

12 *ibid.*

13 Sonny Dewi Judiasih et al., *Aspek Hukum Sewa Rahim: Dalam Perspektif Hukum Indonesia*, (2016).

generally prohibit the practice of renting a uterus. The only Muslim country that has legalized the practice of womb rental is Iran.<sup>14</sup> It was mentioned in an article titled *"Ta'jir al-Rahim bi Irān Jadal Ijtima'i Raghma al-Ibāḥah al-Fiqhiyyah"* that Ayatollah Al-Musawī Al-Khumainī has issued a fatwa allowing the practice of renting a uterus since 30 years ago and the fatwa has been incorporated into the law in force in Iran.<sup>15</sup>

To overcome the validity of the *nasab* of children born from IVF, based on the MUI Fatwa in 1979, it was determined that IVF with sperm and ovum from a valid married couple is legally *mubah* (permissible), because this right includes efforts based on religious rules.<sup>16</sup> IVF from a married couple with the womb of another wife (for example, from the second wife entrusted to the first wife) is *haram* according to the law *Sadd az-zari'ah*, Because this will create complicated problems in relation to inheritance issues (especially between a child born to a mother who has an ovum and a mother who conceives and then gives birth to it, and vice versa).<sup>17</sup> IVF from sperm frozen from a deceased husband is *haram* according to the rule *Sadd az-zari'ah*, Because this will cause complicated problems, both in relation to the determination of *nasab* and in relation to inheritance matters.<sup>18</sup> And last, the IVF whose sperm and ovum are taken from other than a legal married couple is *haram*, therefore its status is the same as sexual relations between the opposite sex outside of a valid marriage (adultery), and based on the rules *Sadd az-zari'ah*, that is to avoid the occurrence of real adultery.<sup>19</sup>

MUI Decree No. 952/MUI/XI/1990 also provides that artificial insemination/IVF is allowed if the sperm and egg (ovum) come from a legal married couple in the marriage bond. This is also affirmed in Article 99 of the KHI and the same is the case in the regulation of Article 127 (1) of Law No. 36 of 2009 concerning Health. These two legal rules stipulate that attempts to conceive outside of natural means can only be carried out by a legal husband and wife and the provisions.<sup>20</sup>

The results of making sperm and ovum from the husband and wife concerned are implanted in the wife's uterus from which the ovum comes from it is carried out by health workers who have the expertise and authority to do so and at certain health care facilities. Based on the explanation of Article 127 paragraph (1) of Law No. 36 of 2009 concerning

14 Sahar Parvizi and Fatemeh Ghodrati., A Comparative Approach to the Legitimacy of Uterine Surrogacy in Jurisprudence in Iran and Some Muslim Countries in the Middle East, A Systematic Review, *Current Womens Health Reviews* 21, No. 2 (2025): E190124225884.

15 Judiasih et al., *Aspek Hukum Sewa Rahim: Dalam Perspektif Hukum Indonesia*.

16 Ridha Amalia and Sillah Sudistina, Examining Ushul Fiqh Principles on the Surrogacy-Based In Vitro Fertilization Program, *KnE Social Sciences*, (2024):664–77.

17 Mohammed Ali Al-Bar et al., Assisted Reproductive Technology: Islamic Perspective, *Contemporary Bioethics: Islamic Perspective*, (2015): 173–86.

18 I Made Dermawan., The Legal Certainty Surrounding the Status of Children Born Through In-Vitro Fertilization With a Deceased Biological Father Is A Subject of Discussion, *Sinergi International Journal of Law* 2, No. 1 (2024): 27–37.

19 Nasiri Nasiri., The Analysis of Sperm Donor Insemination Based on Perspective of Islamic Criminal Law, *Syura: Journal of Law* 1, No. 1 (2023): 1–11.

20 Adinda Akhsanal Viqria., Analisis Sewa Rahim (Surrogate Mother) Menurut Hukum Perdata Dan Hukum Islam, *Dharmasisya Jurnal Program Magister Hukum FHUI* 1, No. 4 (2022): 3.

Health, the method or program to have offspring outside the natural way can only be done through IVF which is then reaffirmed in Article 2 paragraph (3) of the Regulation of the Minister of Health Number 039/Menkes/SK/1/2010 concerning the Implementation of Artificial Reproductive Technology Services which states that artificial reproductive technology services can only be provided to related married couples legal marriage and as a final effort to obtain offspring and based on a medical indication.

Slightly different from the view put forward above, according to Shaykh Rajab Bayūd al-Tamīmī, the search for offspring must be done in a normal and natural way, as stated in the words of Allah SWT. in Surah al-Baqarah: 223: meaning "Your wives are your farm. So come to your farm the way you want."<sup>21</sup> While Shaqrah argues that the rules of *Sadd al-Dhari'ah* can be applied in this problem. According to him, the IVF process is carried out in a way that is not *shar'i*, namely by opening the woman's awrah, touching it, and looking at the parts of the woman's body that must be closed.<sup>22</sup>

The development of efforts to overcome infertility of married couples eventually introduced the technology of using another woman's uterus as a surrogate mother as a place to accommodate the embryos of married couples. Uterine rental is the process of obtaining offspring other than through IVF, namely by using another woman's uterus to carry ovum seeds and sperm (embryo) from the married couple, until the child is born. After the child is born, it is given back to the married couple who have the seed to nurture and consider the child as their child. Women who are willing to be hired by their womb to conceive seeds and give birth to children are referred to as surrogate mothers.<sup>23</sup> In the community, this practice has occurred, in South Africa, a mother gave birth to triplets as a result of embryo transplantation of her daughter and her husband. This is because the princess has not had a pregnancy since birth.<sup>24</sup> In Indonesia itself, this practice has occurred in Mimika, Papua, where married couples have no children due to disturbances in their wives who are unlikely to conceive. However, the egg (*ovum*) from the wife is still produced. Based on the advice of a doctor on duty at a hospital in Surabaya, the practice of renting a uterus was carried out. In this case, the wife's brother is the surrogate mother.<sup>25</sup>

The practice of renting a uterus with this surrogate mother can occur due to various factors, such as an alternative for wives who cannot

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21 Soediro Soediro., *Hukum Bank Asi Dan Bayi Tabung Dalam Pandangan Islam*, (2023).

22 Z A Salamah., *Atfāl Al-Anabīb Bayna Al-ʿIlm Wa Al-Sharī'ah*, (Beirut-Lebanon: Dār al-Bayāriq. Cetakan Pertama, 1996).

23 Radin Seri Nabahah and Ahmad Zabidi., *Penyewaan Rahim Menurut Pandangan Islam*, (Jakarta: Gema Insani, 2007).

24 Luthfi Assyaukanie and H A M Politik., *Isu-Isu Teknologi Dalam Fiqh Kontemporer*, (Bandung: Pustaka Hidayah, 1998).

25 *ibid.*

conceive/experience abnormalities in their uterus,<sup>26</sup> the wife as a tenant has health problems that make it impossible to get pregnant,<sup>27</sup> the wife experiences a disease that endangers herself or her future pregnancy, the wife has had a hysterectomy, the Wife can't produce eggs, Married couples who want to have children but the wife does not want a pregnancy.<sup>28</sup>

Moving on from the use of another woman's uterus as a surrogate mother based on various causal factors, this is an interesting thing when viewed from the perspective of the rights of the child who is born, especially the child's right to inheritance. The aims of this article is to provide an overview and analysis of how the position of children born from this surrogate mother will be as heirs. By basing on the *haram* of the method of renting a uterus according to Sharia provisions, which was also reaffirmed in the MUI Fatwa in 2006 which basically strongly opposed and prohibited the practice of renting a uterus on the grounds that the practice would actually have an impact on new complicated problems, both inheritance issues and others (in this case between the surrogate mother and the mother who has the ovum and her child). So this article should be a form of prevention so that you should think long and hard to apply the use of the uterus rental program even though from the perspective of civil law, it is still possible that there are opportunities that allow inheritance rights for children born through this uterus rental method.

## B. RESEARCHES METHODS

This article is based on normative juridical research, which is research based on legal materials and to examine research objects based on positive law. The legal materials used come from various legal materials, namely *the first* primary legal materials in the form of various laws and regulations, *the second* legal materials in the form of supporting materials obtained from various journals, magazines and others, and the third tertiary legal materials in the form of dictionaries, encyclopedia and others. The data collection technique was carried out by document study techniques. And also in this research is supported by interviewed competent informants And the data analysis in this article uses a qualitative analysis method by analyzing information that cannot be measured. The purpose of the paper is none other than descriptive, analytical (a description of a legal problem) and precautionary (providing a solution or solution to the problem of inheritance rights of children born from the rental of the womb).

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26 Desriza Ratman., *Surrogate Mother Dalam Perspektif Etika Dan Hukum: Bolehkan Sewa Rahim Di Indonesia?* (Elex Media Komputindo, 2012).

27 Valentia Berlian Ayu Febrianti and Budiarsih Budiarsih., Rekomendasi Kebijakan Sewa Rahim Dari Perspektif Ham Di Indonesia, *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 2, No. 2 (2022): 870–82.

28 Fika Aufani Kumala., Sewa Rahim Antara Pro Dan Kontra, *El-Mashlahah* 10, No. 2 (2020): 26–42.

## C. RESULTS AND DISCUSSION

### 1. Renting a Womb in Shariah Studies

Uterine and IVF rental is a similar activity but not the same, the similarities and differences between uterine and IVF rental can be seen as follows:<sup>29</sup> Uterine rental is usually done through certain agreements or conditions from both parties, either the agreement is based on mutual willingness (free), or the agreement is in the form of a contract, while IVF or artificial insemination is generally not carried out based on certain agreements or conditions. Uterine rental usually uses another woman's uterus to deposit sperm and ovum from a warm-married couple, while IVF usually uses the wife's own uterus as a place to deposit sperm and ovum from the husband and wife. Uterine rental usually involves a third party (another woman who is entrusted with sperm and ovum from the married couple) in the birth procession of the child, while IVF can only involve the married couple in the birth of the child. Uterine rental can be done either by using the Intratubal Gamete Transfer Plantation technique (*Gamette Intra Fallopian Transfer*) or by using the *Fertilisasi in Vitro (In Vitro Fertilization)*.

The increasing popularity of surrogate motherhood is closely linked to the dynamics of supply and demand. On the demand side, various motivations can be identified. First, there are individuals or couples who experience infertility but desire offspring with their genetic lineage. Second, some women fear the physical and psychological consequences of pregnancy but still wish to have children. Lastly, homosexual couples, particularly male partners, may seek surrogacy as a pathway to parenthood. These factors illustrate how societal and personal circumstances drive the demand for surrogacy.

On the supply side, there are women willing to act as surrogate mothers for different reasons. Some women are motivated by the experience of pregnancy itself, finding fulfillment in the process. Others view surrogacy as a financial opportunity, accepting compensation in exchange for carrying a child. Additionally, certain women are driven by altruism or a desire to express maternal care, feeling a sense of purpose in helping others achieve parenthood. This interplay of motivations on both the demand and supply sides highlights the complex social, ethical, and economic factors surrounding surrogacy.

Medically, surrogacy is implemented through two primary methods. Gestational surrogacy involves implanting an embryo created using the intended parents' or donors' egg and sperm into the surrogate's womb, meaning the surrogate has no genetic link to the child. In contrast, traditional surrogacy uses the surrogate's egg, which is fertilized by the intended father's sperm, making the surrogate the biological mother. Additionally, individuals seeking surrogacy, often referred to as "intended parents," may include single women or couples of any gender orientation

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29 Fitri Fuji Astuti Ruslan., Status Kewarisan Anak Hasil Sewa Rahim (Surrogate Mother) Dalam Perspektif Hukum Islam, *Skripsi, Fakultas Syari'ah Dan Hukum Uin Alauddin Makassar* 14, No. 2 (2017): 3.



who contract surrogates to bear children under a formal agreement. Despite the intended mother or parents assuming legal and parental responsibilities after birth, societal debates and legal complexities often arise due to the surrogate's biological or emotional ties to the child.<sup>30 31</sup>

Renting a uterus using a surrogate mother in Sharia studies is a contemporary problem so the solution offered must be based on the results of the *ijtihad* method, so that a law can be found that is in accordance with the provisions of the Quran and Sunnah.<sup>32</sup> The implementation of uterine rental also raises pros and cons among Muslims.

The scholars agree that the following three forms of 'surrogate mother' practices are prohibited that the fertilization uses the eggs and sperm of foreigners (not husband and wife).<sup>33</sup> The eggs and sperm are obtained from the donor with certain material compensation. As a result, it is then placed in the womb of a woman who has been shown for the benefit of the third person. It is forbidden that sperm is taken from the husband of a legitimate partner, while eggs and uterus belong to a woman who is not his wife. Babies born from the womb in question will be handed over to the legal couple. The egg comes from the legal wife, but the sperm used for fertilization does not belong to her husband, but to the donor of another man. The uterus used was not the wife's uterus, but another woman. After birth, the baby is then handed over to the owner of the egg.

However, until now, there is still a debate among Muslim scholars, on the issue of uterine rental which is contained in 2 (two) forms of practice whose laws are not agreed upon by today's scholars about the first form is related to the source of both eggs and sperm taken from a legitimate married couple. After the fertilization process outside, the result of the fertilization is inserted into the uterus of another woman who does not have any relationship and the second form is to deal with the problem where eggs and sperm are taken from a legitimate married couple, and then placed in the womb of their second wife, for example, or their other legitimate wife. Most of the *fiqh* scholars have stated that it is unlawful for both forms of uterine rental, including the opinion of Yusuf Qordhowi, he said that it is not permissible according to Sharia for a woman to rent her uterus to conceive a fetus. Because in this case there is the insertion of sperm from a foreign man (which enters his uterus). And in this case there is also the mixing of *nasab*. Because with her birth, she became a mother to her, as Allah SWT said, which means:

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30 Mimi Halimah., *Pandangan Aksiologi Terhadap Surrogate Mother*, *Jurnal Filsafat Indonesia* 1, No. 2 (2018): 51–56.

31 Fitri Fuji Astuti Ruslan., *Status Kewarisan Anak Hasil Sewa Rahim (Surrogate Mother) Dalam Perspektif Hukum Islam*, *Skripsi, Fakultas Syari'ah Dan Hukum Uin Alauddin Makassar* 14, No. 2 (2017): 3

32 Setiawan Budi Utomo and Abu Hanifah., *Fiqh Aktual: Jawaban Tuntas Masalah Kontemporer*, (2003).

33 H Khūlī., *Ta'jir Al-Arhām Fī Al-Fiqh Al-Islāmī*, *Majallah Jāmi'ah Dimashqa Li Al-'Ulum Al-Iqtisadiyah Wa Al-Qanūniyah* 27, No. 3 (2011).



"Indeed, it is their mothers who give birth to them," (QS. Al-Mujadalah [58]: 2). Even if the fetus does not come from her egg that has been fertilized by her husband, and this is not analogous to the case of a woman who breastfeeds another child, for the fact that she breastfeeds another person's child is stated in the texts of its legitimacy in the Qur'an and the Sunnah. Meanwhile, Abdul Muthi Al Bayyumi who still allows the two forms of uterine rental practices is Abdul Muthi Al Bayyumi who expressed his opinion that the two uterine rental practices are still permissible with the presence of an element of strengthening in determining the conditions. The strict requirements are the existence of strong recommendations from doctors, strict periodic examinations and treatments, the age of the 'rental mother' must be sufficient and suitable for pregnancy, and the need for emotional stability of the owner of the rental uterus. In addition, the statement from the 'rental mother' that the child she will give birth to belongs to A and B (a legal married couple) as tenants of the uterus.

## 2. Children's Inheritance Rights as a Result of Uterine Rental Babies

According to the views of scholars and Sharia provisions, the practice of renting a womb, or surrogacy, is considered *haram* based on the objectives of Islamic law (*Maqasid Shariah*). These objectives aim to protect five essential aspects: religion, intellect, life, lineage, and property. First and foremost, the practice of surrogacy violates religious principles, as outlined in the Qur'an and Sunnah. Human creation is described with sanctity, particularly in verses like QS Al-Mukminun 12-14, which emphasize the natural and divine process of creation within the womb. Additionally, QS An-Nisa:1 underscores the origin of human life through the natural union of man and woman. These verses collectively highlight the sacredness of human reproduction, making any artificial interference, such as surrogacy, contrary to divine design.

Furthermore, surrogacy contradicts the principle of protecting human intellect (*aqal*). Islam teaches that reason enables humans to differentiate between right and wrong, as seen in QS Al-Kahf: 29, where individuals are granted free will to either accept or reject the commands of Allah. By engaging in practices like surrogacy, which bypass natural law, individuals deviate from the moral and religious frameworks designed to safeguard intellect and soul. The act undermines the protection of lineage (*nasab*) as well, causing confusion in parental rights, inheritance, and *nasab* status—key elements Islamic law seeks to preserve.

From a standpoint of *maslahat* (benefit) and *mafsadat* (harm), the harms of surrogacy far outweigh its benefits. While it may offer infertile couples a chance at parenthood, it introduces significant ethical and social dilemmas. Issues such as the commodification of women's wombs, potential psychological trauma for surrogate mothers, and the risk of societal slander arise, especially in cases where surrogate mothers are unmarried women. Moreover, the act disrupts natural maternal bonds, as surrogate mothers are often required to hand over the child they carried,

which can conflict with inherent maternal instincts. Additionally, the mixing of genetic material outside of lawful marriage is close to *zina* (adultery), violating the sanctity of lineage and natural processes of reproduction. Based on these points, the practice of renting a womb cannot be justified under Islamic law, as it leads to greater harm than good, violating both religious principles and moral ethics.

The impact or *harm* that arises is in line with the opinion expressed by Dr. Al-Zuhaili on the issue of uterine rental, he argues that it means:<sup>34</sup>

"The practice of womb rental removes a woman's dignity and makes her like an animal hired for use on demand, and the trafficking of her body by renting out her womb becomes an insult, as well as disrespect for her chastity, exploitation of her femininity and restriction of her role as a mother. This issue of uterine rental deprives women of such innate rights as her right to her chastity, her right to protect her honor, her right to virtue, her right to defend her offspring"

The practice of renting a uterus approaches the act of adultery. Adultery is a behavior that is prohibited by Islam and is classified as a major sin. This behavior can be interpreted as the act of intercourse between a man and a woman who have reached puberty without a valid marriage bond. Ibn Rushd defined adultery as sexual intercourse that is not based on a valid marriage, not a *syubhat marriage* (abstract), and not in the slave owned. The act of adultery in Islam is divided into 2, namely adultery is adultery committed by two people of the opposite sex without a valid marriage bond, but both have the status of an official partner of a person (husband/wife) or have become a widower or widow and adultery committed by two people of the opposite sex, each of whom is single and unmarried.

In fact, the practice of renting a uterus is like the act of adultery in other forms, because in the practice of renting a uterus, sperm will be sown on another woman. This view is in accordance with QS An-nur: 30, which means: "*Say to the believing men, that they may keep their eyes, and guard their genitals; That is more holy to them. Truly, Allah knows what they are doing.*" In line with the Word Rasulullah SAW: "*There is no greater sin in the sight of Allah SWT after shirk than a man who puts his semen into the womb which is not halal for him.*" (HR Muslim) "*It is not permissible for a person who believes in Allah and the day of khamat to pour his water on other people's plants.*" (HR Abu Dawud).

Yusuf Qardhawi is of the opinion regarding this matter as his answer is as follows, which means: "*If the egg is from the wife but the uterus is from another woman, this is also not allowed (haram) because the confusing question here is who is the mother? Is it the owner of the egg that carries the characteristics of the offspring or who feels the pain of getting pregnant and giving birth with difficulty? Even if the foreign*

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34 H Khulī., Ta'jīr Al-Arhām Fī Al-Fiqh Al-Islāmī, *Majallah Jāmi'ah Dimashqa Li Al-'Ulum Al-Iqtisadiyah Wa Al-Qanūniyah* 27, No. 3 (2011).

*woman is honey (the other wife of the man), it should also not be (haram) because of the loss of the maternal essence between husband and wife.*"<sup>35</sup>

The *haram* of the practice of renting a uterus will be related to the rights of the child who is born, especially related to the study of the child's inheritance rights, whether to inherit his biological parents or his surrogate mother. The determination of inheritance rights is highly dependent on the issue of *nasab* or blood lineage of the child, because the occurrence of the inheritance relationship is caused by 3 (three) things, namely there is a *nasab* relationship (blood descent relationship), the existence of marital relations (*jauziyah*) and the existence of a relationship *wala'*. To determine the inheritance rights for children born based on the process of renting a uterus when viewed from the relationship of *nasab* (blood descent relationship), there are 2 (two) different points of view, namely If it is based on Q.S Luqman: 14, which means: "And We commanded man to do good to his parents. His mother had conceived him in an increasingly poor state, and weaned him at the age of two. Be thankful to Me and to your parents. Only to Me is your place of return." And also based on the Word of Allah SWT contained in QS Al Mujaadilah: 2, which means: "Their mothers are nothing but women who give birth to them."

Based on QS Lukman and QS Al-Mujaadilah; 2, the child born from the rental of the uterus is analogous to having a nursery to the husband of the *surrogate mother* because the mother has been pregnant for 9 (nine) months and the surrogate mother is also in pain from the time the baby is in the womb until giving birth, then postulating the child from the surrogate mother's birth to the husband of the surrogate mother who rents her womb. Therefore, if the child is declared to be *nasab* to the husband of the surrogate mother, then the child from the uterus rental will only inherit from the husband and also the surrogate mother along with the family of the husband and surrogate mother. Another view of the inheritance rights of children from womb rental is because it is based on the act of renting a uterus is an act that is *haram* or prohibited (*Al Muharram li dzatihi*) by Sharia, in accordance with the rules of *istishab*, if a child is born from the uterine rental relationship, then the child's destiny is linked to the sperm and ovum donor, not to the surrogate mother. Therefore, the right of inheritance of the child from uterine rental is to the donor of sperm and ovum (biological parents). This thinking is based on the original norms of human events contained in several surahs in the Quran, including: QS An Nahl: 4, which means ; "He (Allah) has created man from mani..." and QS Al Hajj: 5, which means."O people, if you doubt the resurrection, then indeed We have made you from the ground, then from a drop of semen, then from a clot of blood, then from a lump of

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35 Ahmad Faridz Anwar<sup>1</sup> Faridz Anwar., Review of Islamic Law on the Advancement of IVF Reproductive Technology in a Positive Legal Perspective, *Jurnal Legisci* 1, No. 2 (2023): 67–80.

*flesh that is perfect and imperfect, so that We may explain to you; And We set you in the womb according to Our will until a predetermined time, then We bring you out as a baby, then (gradually) you reach adulthood.....” also QS Al Ghafir: 67, which means: “He is the one who created you from the ground, then from a drop of semen, then from a clot of blood, then you are born as a child, then left until you grow up, then grow old..”*

### **3. Heir Rights of Children Derived from Uterine Lease in Civil Law Studies**

The provisions of the Civil Code actually do not specifically regulate the status of the child or the position of the child born to a surrogate mother. In the Civil Code, children based on their legal status are divided into 2 (two), namely legal child, a legal child is a child born from a legal marriage (Article 250 of the Civil Code) and the child is illegitimate, illegal children consist of 3 (three) types, namely child adultery is a child born is based on a relationship between a man and a woman who each or one of them has been legally married, Incested children are children born from a relationship between a man and a woman who are not allowed to marry because they are related by blood or consensual relationships and also Out-of-wedlock children is an illegitimate child is a child born to a man and a woman who are not bound by a legal marriage.<sup>36</sup>

Based on the provisions of the above article, the inheritance rights of children born through the IVF process in civil law studies are divided into 3 (three), namely the inheritance rights of children resulting from the IVF process using the husband's sperm, the position of a child born through the IVF process using the husband's sperm is a legitimate child and his position is the same as that of a biological child. Therefore, based on the provisions of Article 852 of the Civil Code, this child has the right to be the heir of his biological parents. The share of inheritance that he must receive is the same among the heirs, both male and female. Inheritance rights of children resulting from IVF processes using donor sperm, that is the position of the child born from the process is not natural, but by using donor sperm will be seen from 2 (two) sides if sperm donation is done with the permission of the legal husband, then the child born is considered a legitimate child if the husband gives recognition. For this child, the provisions of Article 280 of the Civil Code will apply which stipulates that with the recognition made against an illegitimate child, a civil relationship will arise between the child, the mother and the father. But if the child is in the position of a child resulting from adultery, if the use of donor sperm is without permission from the husband. Based on the provisions of Article 283 of the Civil Code, it is determined that a child who is seeded in incest, must not be confessed. However, based on the provisions in article 867 of the

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36 Siska Lis Sulistiani., *Kedudukan Hukum Anak Hasil Perkawinan Beda Agama Menurut Hukum Positif Dan Hukum Islam* (Refika Aditama, 2015).

Criminal Code, adulterous children do not receive inheritance from their parents. However, the child gets the necessary maintenance from his parents.

Regulations regarding in-vitro fertilization (IVF) in different countries vary depending on the country's social, religious and legal views. In the United States and China, regulations regarding in vitro fertilization (IVF) show stark differences. In the United States, IVF procedures are legal and widely used with a more liberal approach. Sperm donors, egg donors and the use of surrogates are allowed, with regulation through specific legal contracts, especially for surrogacy, which is legally recognized in many states. There is no limit to the number of embryos that can be implanted, and the law also allows freezing of embryos for future use.<sup>37</sup> In contrast, in China, while IVF is legal, the procedure is highly regulated. Only married couples can access IVF services, and sperm and egg donors are allowed but must go through government-approved hospitals. However, the use of surrogacy is completely banned in China, marking a significant difference in the two countries' policies.<sup>38</sup>

Some countries in the Middle East, such as Iran, allow IVF and even egg donation with a religious fatwa, but surrogacy is severely restricted. Other countries, such as Saudi Arabia, allow IVF only for married couples, but sperm and egg donation is strictly prohibited as it is against Islamic law.<sup>39,40</sup> IVF regulations abroad reflect the different cultures, religions and health policies of each country. Some countries are liberal like the United States, while Middle Eastern countries tend to be more conservative. These regulations are important to protect the rights of the patient, the child to be born, as well as third parties such as donors and surrogates.

This study offers a novel interpretation of inheritance rights in cases involving children born through surrogacy, focusing on the interaction between genetic origin and civil law principles. It introduces the classification of a surrogate-born child as an "adopted child" based on the surrogacy agreement, where the surrogate mother relinquishes custodial rights in exchange for compensation. This perspective challenges the traditional understanding of adoption by emphasizing that the child retains genetic ties to the commissioning parents and should, therefore, inherit from them if their sperm and egg are used. This nuanced view bridges the gap between biological legitimacy and

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37 Luthfia Rizky Amanda Tjoei and Vika Jeny Putri Anastasya., Teknologi Reproduksi: Bayi Tabung Dan Peran Rahim Pengganti, *Detector: Jurnal Inovasi Riset Ilmu Kesehatan* 2, No. 4 (2024): 40–48.

38 Moh Abdul Latif., Ibu Pengganti Dalam Perspektif Hukum Islam, *Al-Fikrah: Jurnal Studi Ilmu Pendidikan Dan Keislaman* 4, No. 2 (2021): 197–214.

39 N ajib Junaidi., Penanaman Embrio Pada Rahim Istri Yang Lain (Analsis Kritis Terhadap Fatwa MUI Tentang Kehamilan Berbantu), *Jurnal Hukum Islam IAIN Pekalongan* 17, No. 2 (2019): 191–209.

40 Cindy Yulia Putri., Perpektif Hukum Islam Terhadap Anak Yang Dilahirkan Melalui Ibu Pengganti (Surrogate Mother), (Hukum Perdata, 2023).

the contractual nature of surrogacy, a relatively unexplored area in civil law.

The research also pioneers a distinction in inheritance rights depending on the source of genetic material. When genetic material originates from the commissioning parents, the child is deemed a legitimate heir, aligning with traditional civil law principles. Conversely, when donor material is used, the child is considered illegitimate and entitled only to inherit from the surrogate mother. This dual framework highlights inconsistencies in civil law's recognition of parentage and inheritance in surrogacy cases, offering a foundation for legal reform to address these complexities and better reflect advancements in reproductive technology.

#### **D. CONCLUSION**

The study on the legal perspective of inheritance rights for children born through surrogate mothers highlights significant complexities in determining parentage and inheritance entitlements under civil law. It concludes that a child's inheritance rights largely depend on the genetic and contractual relationships involved in the surrogacy process. When the genetic material originates from the commissioning parents, the child is recognized as their legitimate heir, ensuring inheritance rights. However, if donor material is used, the child's status becomes illegitimate, limiting inheritance rights to the surrogate mother as the gestational carrier. This research underscores the need for clearer legal frameworks to address ambiguities in surrogacy arrangements and to harmonize ethical, biological, and contractual considerations in modern reproductive technologies. By offering insights into these challenges, the study contributes to the ongoing discourse on legal reforms for surrogacy and inheritance rights.

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