

## Between Nasab and Heirs: Examining the Status of the *Surrogate Mother's* Child in Contemporary Islamic Law

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### Abstract

The practice of surrogate motherhood raises legal issues in Islam, particularly regarding the validity of lineage and the inheritance rights of the child born. When the pregnancy process involves a woman who is not the legal wife or uses the ovum and uterus of a third party, the lineage becomes unclear and results in the loss of the child's inheritance rights. This study aims to explore the legal status of children born through surrogacy from the perspective of contemporary Islamic jurisprudence, using a normative approach. The research employed a qualitative approach with a legal-normative and theological framework. The findings indicate that Islamic scholars and modern Islamic legal institutions generally reject the legality of this practice as it contradicts the principle of *hifz al-nasl*. Children born through surrogacy only have a blood relationship with the biological mother who gave birth to them and do not have inheritance rights from the biological father unless there is a valid marriage. In Indonesia itself, there are no specific regulations governing this matter, so legal reforms are needed to address the challenges posed by modern reproductive technologies.

**Keyword:** Inheritance, Surrogate Mother, Contemporary Islamic Law.

### Abstrak

Praktik ibu pengganti (*surrogate mother*) menimbulkan persoalan hukum dalam Islam, khususnya terkait keabsahan nasab dan hak waris anak yang dilahirkan. Ketika proses kehamilan melibatkan perempuan yang bukan istri sah atau menggunakan ovum dan rahim dari pihak ketiga, hubungan keturunan menjadi kabur dan berdampak pada hilangnya hak waris anak. Penelitian ini bertujuan untuk menelusuri status hukum anak hasil *surrogacy* dalam perspektif fikih Islam kontemporer, dengan pendekatan normatif. Penelitian yang digunakan adalah penelitian kualitatif dengan pendekatan yuridis-normatif dan teologis. Hasil penelitian menunjukkan bahwa para ulama dan institusi hukum Islam modern umumnya menolak legalitas praktik ini karena bertentangan dengan prinsip *hifz al-nasl*. Anak hasil ibu pengganti hanya memiliki hubungan nasab dengan ibu yang melahirkannya dan tidak memiliki hak waris dari ayah biologis apabila tidak terdapat pernikahan yang sah. Di Indonesia sendiri, belum ada regulasi khusus yang mengatur hal ini, sehingga diperlukan pembaruan hukum yang responsif terhadap tantangan teknologi reproduksi modern.

**Kata Kunci:** Waris, Surrogate Mother, Hukum Islam Kontemporer.

### Introduction

One of the goals of marriage is to have children. However, not all married couples have the opportunity to have children due to several reasons. The main factor a person cannot have children is health problems, namely problems in the reproductive organs of both or one of the partners. This problem is not a dead end to having children, therefore with the development of

artificial insemination technology by renting a surrogate mother's uterus which is used as a solution to this problem.<sup>1</sup>

Typically, these pregnancies involve assisted reproductive technology, such as in *vitro fertilization*, in which eggs and sperm, both from the couple and from the donor, are processed in a laboratory before finally implanted into the surrogate mother's womb. This agreement covers various legal and ethical aspects, including the rights and obligations of both parties, as well as the provision of certain compensation as a form of appreciation for the important role played by surrogates throughout the pregnancy until the delivery process is complete.<sup>2</sup>

Advances in reproductive technology today present various methods to help couples who experience fertility disorders, one of which is the practice of *surrogate mothers*. In this practice, a woman conceives children from another partner, either using eggs from her wife (*gestational surrogacy*) or from herself (*traditional surrogacy*). In some countries, this practice has become a popular choice, but in the context of Muslim communities, especially in Indonesia, *surrogacy* is still a matter of debate, especially in the realm of Islamic law and family law.<sup>3</sup>

This phenomenon raises serious problems related to the determination of the legal status of children, especially in two important aspects, namely *nasab* (lineage) and inheritance rights. In Islam, clarity of *nasab* is the basic principle that is the basis for the rights of children in the family, including the right to inheritance. Children who do not have a clear *nasab* according to *shari'i* are worried that they will not be able to obtain inheritance rights, or even have no legal relationship with the parents who donate sperm or eggs.<sup>4</sup>

Normatively, Islam emphasizes the importance of maintaining offspring as part of the five goals of *sharia* (*maqashid al-shari'ah*), namely *hifz al-nasl*.<sup>5</sup> In the Qur'an, Allah SWT says: "*Their mothers are none other than women who give birth to them...*" (QS. Al-Mujadilah: 2). This verse is the basis that a legal mother according to the *sharia* is the woman who gives birth to the child, not just a genetic donor. Therefore, the practice of surrogate motherhood can cause chaos of the *nasab*, due

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<sup>1</sup> Sonny Dewi Judiasih dan Susilowati S. Dajaan, "Aspek Hukum Surrogate Mother dalam Perspektif Hukum Indonesia," *Jurnal Bina Mulia Hukum* 1, no. 2 (29 Maret 2017), h. 142, <https://doi.org/10.23920/jbmh.v1n2.14>.

<sup>2</sup> Mimi Halimah, "Pandangan Aksiologi Terhadap Surrogate Mother," *Jurnal Filsafat Indonesia* 1, no. 2 (7 Mei 2018): 51, <https://doi.org/10.23887/jfi.v1i2.13989>.

<sup>3</sup> Muhammad Randhy Aditya Putra Pratama, dkk. "Pengaturan dan Etika Dalam Praktik Sewa Rahim," *Civilia: Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan*, Vol 2, No. 6, (2023).

<sup>4</sup> Muhamad Wahyudin, "Aspek Bayi Tabung dan Sewa Rahim Ditinjau Perspektif Hukum Islam dan Hukum Positif," *Formosa Journal of Sustainable Research* 1, no. 3 (30 Agustus 2022): 299–316, <https://doi.org/10.55927/fjsr.v1i3.943>.

<sup>5</sup> Hamidi and Moh Abdul Latif, "Surrogate Mother In Islamic Law Perspective," *Al-Fikrah* Vol. 4, No. 2, December 2021:197-214.

to the involvement of two women in the process of child creation: egg donors and surrogates (surrogate uterus).

Meanwhile, in Islamic inheritance law, inheritance rights can only be given to heirs who have a valid nasab relationship.<sup>6</sup> The basis is found in: The Qur'an Surah An-Nisa verses 11 and 12, which explain the distribution of inheritance to children, parents, and spouses. In the context of Indonesian national law, the regulation of inheritance is found in: The Civil Code (KUHPerdara), especially Articles 832-1130, which regulates inheritance rights based on blood relations. Complications of Islamic Law (KHI) Article 171 letter c, which states that an heir is a person who at the time of death has a blood or marital relationship with the heir and is a Muslim.<sup>7</sup>

Thus, juridically formal, both according to Islamic law and national law, the clarity of a blood relationship or legal marriage is an absolute requirement for a person to obtain an inheritance. The phenomenon of children of surrogate mothers poses a problem: who becomes the legal mother? Does the child have a legal relationship with the biological father? And does he have the right to inherit from his genetic parents? These questions are becoming increasingly important because Indonesia does not yet have explicit regulations on *surrogacy*, even though this practice is becoming known and practiced secretly by certain couples, especially those undergoing fertility treatment abroad.

Several studies have tried to examine this issue, including: Nur Chamim, et al. (2021) in the journal "*Civil Law Analysis of the Use of Surrogate Mother for In-Vitro Fertilisation*" states that children resulting from IVF with husband sperm are legally recognized, including inheritance rights. However, the child of a surrogate mother is not legal according to the Civil Code and laws and regulations in Indonesia.<sup>8</sup> Cindy Yulia Putri and M. Daud Abdul Kadir (2023) in the journal "*Perspectives of Islamic Law on Children Born Through Surrogate Mothers*" according to Islamic law, the children of surrogate mothers are considered adulterers or surrogate children, so their fate is based on the mother who gave birth.<sup>9</sup> Khairunnisa, Hamdani, Arif Rahman (2024) in the journal "*Legal Analysis of Surrogate Mother Rental Agreements Reviewed Based on the Perspective of*

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<sup>6</sup> Nurul Alifah Rahmawati and Hirma Susilawati, "The Surrogate Mother Phenomenon in Islamic Perspectives Reviewed From HadiS," *Nuansa: Journal of Islamic Social and Religious Sciences Research* 14, no. 2 (March 1, 2018): 405–22, <https://doi.org/10.19105/nuansa.v14i2.1641>.

<sup>7</sup> Adinda Akhsanal Viqria, "Analisis Sewa Rahim (Surrogate Mother) Menurut Hukum Perdata Dan Hukum Islam" *Dharmasisya*, Vol. 1 No. 4 (Desember 2021).

<sup>8</sup> Nur Chamim dkk., "*Civil Law Analysis of the Use of Surrogate Mother for In-Vitro Fertilisation*" *Studi Ilmu Sosial Indonesia*, Vol. 3, No.1 (2023), 49-62.

<sup>9</sup> Cindy Yulia Putri and Sulhi M. Daud Abdul Kadir, "Islamic Law Perspectives on Children Born Through Surrogate Mothers," *Zaaken: Journal of Civil and Business Law* 4, no. 2 (June 26, 2023): 258–72, <https://doi.org/10.22437/zaaken.v4i2.26051>.

Indonesian Civil Law" concluded that the practice of usury rental in Indonesia is illegal according to civil law and is prohibited in Islamic law.<sup>10</sup>

However, there have not been many studies that specifically highlight the relationship between the status of the nasab and the inheritance rights of *surrogacy children* in a single frame of contemporary Islamic legal analysis, especially considering the dynamics of modern medical technology and the challenges of jurisprudence to these developments. Based on this background, this paper attempts to examine and analyze how contemporary Islamic law views the status of the nasab and inheritance rights of the surrogate mother, as well as the extent to which existing regulations are able to answer this problem in the context of modern society.

### **Research Methods**

This research is a qualitative research with a juridical-normative and theological approach. Data was obtained through literature studies on primary sources of Islamic law such as the Qur'an, hadith, fatwa of scholars, as well as classical and contemporary jurisprudence literature. The analysis was carried out in a descriptive-analytical manner to examine the status of the nasab and inheritance rights of children from surrogate mothers in the perspective of contemporary Islamic law.

### **Research and Discussion Results**

#### **Fenomena *Surrogate Mother* of Indonesia**

The phenomenon of surrogate mothers is a form of *Assisted Reproductive Technology (ART)* that continues to grow rapidly in various parts of the world. Surrogacy is an alternative for married couples who experience fertility disorders, especially on the part of wives who are unable to conceive. In practice, another woman borrows her uterus to conceive embryos from another partner until the birth process is complete, *surrogate mothers* one of the variations of IVF technology that shows advances in the world of medicine.<sup>11</sup> Surrogate mothers are carried out as a solution for women who experience fertility disorders or do not have a uterus. The goal is for couples to still be able to have biological offspring even though the wife cannot conceive.<sup>12</sup>

According to *the International Federation of Fertility Societies (IFFS)*, there are two main types of surrogacy: *traditional surrogacy*: a tenant woman donates an egg and conceives her own child to

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<sup>10</sup> Khairunnisa, Hamdani, and Arif Rahman, "Legal Analysis of Surrogate Mother Rental Agreements Reviewed Based on the Perspective of Indonesian Civil Law," *Student Scientific Journal (JIM-FH)* Volume VII, Number 3, (2024).

<sup>11</sup> Mukhamad Bahrul Ulum, "The Inheritance of Children From Rented Wombs in Indonesia Reviewed from the Aspect of Nasab," *UNES Law Review* 6, no. 2 (2024), <https://doi.org/10.31933/unesrev.v6i2>.

<sup>12</sup> Nurul Alifah Rahmawati and Hirma Susilawati, "The Surrogate Mother Phenomenon in Islamic Perspective Reviewed from Hadith," *Nuances: Journal of Islamic Social and Religious Sciences Research* 14, no. 2 (March 1, 2018): 405–22, <https://doi.org/10.19105/nuansa.v14i2.1641>.

be delivered to someone else and gestational surrogacy: the tenant woman provides only the uterus, while the eggs and sperm come from the tenant's partner (more common and considered more ethical).<sup>13</sup>

Surrogacy practices have become a global industry. Countries such as India, Ukraine, Georgia, and the United States (California) are becoming major centers of commercial surrogacy due to more open regulations. According to a report by Global Market Insights, the surrogacy industry is expected to reach a value of \$27.5 billion by 2025, with thousands of children born each year through this method. In India, before 2015, surrogacy became a huge industry with about 25,000 foreign couples renting uterus each year.<sup>14</sup> However, since the passage of the Surrogacy (Regulation) Bill 2019, India has banned commercial surrogacy and only allows altruistic surrogacy for its own citizens.

In Indonesia, there are no specific regulations that explicitly regulate the practice of *surrogate mothers*. However, various provisions in Law No. 36 of 2009 concerning Health, Law No. 1 of 1974 concerning Marriage, and the Compilation of Islamic Law show that this practice is not in line with national and religious legal values. Article 127 of the Health Law states that the use of assisted reproductive technology must be carried out by married couples legally and is limited within the framework of medical ethics and religious norms. In practice, uterine borrowing (surrogacy) is not allowed because it does not meet the elements of the validity of marriage and can damage the structure of the child's inheritance.<sup>15</sup>

In Dr. Harkristuti Harkrisnowo's opinion, surrogacy in Indonesia is considered to violate the principles of decency and public order, and has the potential to open up the practice of exploitation of women and covert human trafficking. The phenomenon of the practice of renting a womb in Indonesia once occurred in Surakarta by a married couple in 2017.<sup>16</sup>

### **The Law of Inheritance in Islam**

In Islamic law, inheritance is the property and property of the heir that is left in a clean (pure) state. Before being inherited, the inheritance's estate must first be used to pay off debts and

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<sup>13</sup> R. Febrina Andarina Zaharnika, "Legal Analysis of the Implementation of Surrogate Mother Rental Agreement Reviewed from a Positive Legal Perspective," *Mimbar Justitia 7 Law Journal*, no. 2 (December 30, 2021): 105, <https://doi.org/10.35194/jhmj.v7i2.1873>.

<sup>14</sup> "Surrogacy Market Share, Growth Analysis Report 2025-2034," Global Market Insights Inc., diakses 24 Juni 2025, <https://www.gminsights.com/industry-analysis/surrogacy-market>.

<sup>15</sup> Dewi Astika Tandirerung, "Analysis of Innominate Agreements on Surrogate Mother Borrowing in Indonesia," *Amanna Gappa*, Vol. 26 No. 1 March 2018.

<sup>16</sup> Hanan Khasyrawi Abrar and Bayu Pratama Putra, "Surrogate Mother: A Review of Medical, Bioethic, Humanities and Professionalism," *Scientific Journal of Ecosystem* 23, no. 3 (December 30, 2023): 610–23, <https://doi.org/10.35965/eco.v23i3.3897>.

fulfill other obligations due to the death of the heir. After the obligation is fulfilled, then the remaining property is inherited to the heirs.<sup>17</sup> In Islamic inheritance law, there are several important terms, including:<sup>18</sup>

1. Heirs are people who obtain inheritance rights based on blood relations (nasab) or marriage.
2. A beneficiary is a person who leaves an inheritance due to death, either due to an apparent death or based on a court decision in the situation of a missing person whose whereabouts are unknown.
3. Tirkah includes all assets left by a deceased person, before a portion of the property is used for funeral expenses, debt payments, and the execution of a will.
4. Al-Irs is an inheritance that will be distributed to the heirs after part of it is used for funeral needs, debt repayment, and the execution of the will.
5. Warasah is property that has been received by each entitled heir in accordance with the specified distribution.

The inheritance-inheritance process acts as a liaison between the heirs and the heirs, which is based on the power of the trust and the mutual help between the two. The relationship between heirs and heirs is studied in depth in Islamic law, especially in faraid science. On the other hand, in the positive law that applies in Indonesia, the issue of inheritance is clearly regulated in the Compilation of Islamic Law (KHI).<sup>19</sup>

In Islamic Inheritance Law, heirs are one of the pillars of inheritance whose existence is determined by several reasons as follows:<sup>20</sup>

1. **Marriage:** the marriage in question is a marriage that is carried out according to Islamic law, creating a sharia relationship between husband and wife that gives each of them the right to obtain inheritance. This is based on the words of Allah SWT in surah An-Nisa' verse 12.

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<sup>17</sup>Ifitah Kurnia and Maisya Yusti Santosa, "Pluralism of Inheritance Law in Indonesia: The Influence of the Indigenous Peoples' Kinship System on the Pattern of Customary Inheritance Law in Indonesia", *Al-Qadhâ: Vol. 5, No. 1, July 20181, no. 2* (2024).

<sup>18</sup>Gisca Nur Assyafira, "Inheritance Based on Islamic Law in Indonesia," *Al-Mashlahah: Journal of Islamic Law and Islamic Social Institutions*, VOL : 08, NO : 1, May 2020, <https://doi.org/10.30868/am.v8i1.771>.

<sup>19</sup>Adji Pratama Putra and Moh. Rosil Fathony, "Analysis of Interreligious Inheritance in the Perspective of Islamic Law," *Mizanuna: Journal of Sharia Economic Law* 1, no. 1 (March 6, 2023): 1–15, <https://doi.org/10.59166/mizanuna.v1i1.29>.

<sup>20</sup>Gunawan Candra, Kleofas Ivan Gautomo, and M David Ade Pangestu, "Inheritance Law in Interfaith Marriage According to Pluralism of Inheritance Law in Indonesia" *Civilia: Journal of Legal Studies and Civic Education*, 12 Year 2022 Vol 1 , No2 .

2. Nasab or descendants: The blood relationship between the heirs and the heirs is the basis for obtaining inheritance rights. This includes children, parents, and other relatives who have a nasab relationship with the heir.

However, the inheritance rights of an heir can be lost due to the following: murder, i.e. an heir who kills the heir, whether intentionally or not, will lose his right to the inheritance. Religious differences, namely heirs and heirs of different religions. Slavery, i.e. slaves have no right of inheritance. Adultery, that is, children out of wedlock only inherit from the mother. Li'an, that is, the child of the li'an couple is only entitled to the mother's inheritance.

In classical Islamic inheritance law, there is no explicit regulation of *children born through* the surrogate mother process. This is natural because this kind of assisted reproductive technology was not known at the time of the formation of classical Islamic law. However, the general rules in inheritance fiqh can still be used as a basis for assessing the legal status of surrogate children. The most relevant rule is the principle: "*Al-walad lil firasy wa lil 'ahir al-hajar*" ("The child is consecrated to the owner of the bed [the husband of the woman who gave birth], and for adulterers there is no right of nasab.")

From this rule, fate and inheritance are determined based on the birth relationship in a valid marriage bond, not solely from genetic relationships. So, the surrogate child: If it is born to an unmarried surrogate mother, then the fate is set for *the surrogate mother*, not for the uterine tenant. If the surrogate mother is married, then the child is attributed to the surrogate mother's husband, not to the owner of the sperm and ovum cells. In both of these conditions, the child does not have inheritance rights to the uterine tenant partner, because there is no relationship between the shari'i and marriage between the parties.

### **Position of *Surrogate Mother's* Children in Contemporary Islamic Law**

Heirs in Islamic law is the law of transferring ownership of the heir's property to the heirs divided according to Islamic law to all those who are entitled to it and according to the specified share.<sup>21</sup> The position of a child from the womb in Islamic law is enshrined in Article 100 of the KHI and is in line with Article 43 paragraph (1) of the Marriage Law No. 1 of 1974 which stipulates that children born outside the marriage bond only have a hereditary relationship with the mother and the mother's family.<sup>22</sup>

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<sup>21</sup>Nadia Septi Pratiwi and Muhammad Habib, "Nasab Status and Inheritance of Children from the Rental of the Uterus from the Perspective of the Indonesian Ulema Council and the Compilation of Islamic Law," *Journal Smart Law* Vol.2, No. 1 (September 2023).

<sup>22</sup>Shanaz Ruby Harland, "Surrogacy of Surrogation Children According to Laws and Regulations in Indonesia", *Journal Evidence Of Law*, Vol. 2, No. 3 September-December 2023, p. 21. <https://jurnal.erapublikasi.id/index.php/JEL>.

This provision is also in line with fatwa No: KEP952/MUI/XI/1990 and the results of the Ijtima Ulama MUI dated May 26, 2006 stating that IVF babies carried out using the uterus of other people's wives are haram according to the rules of *sadd aẓ-ẓari'ah*, because they can cause complicated problems, especially in terms of inheritance (for example, between a child born to a mother who gives an egg and a mother who conceives and gives birth to it, and vice versa). IVF babies that use sperm and eggs from parties who are not legally married are also haram, because the same is true for relationships outside of marriage (zina).

The explanation of the hadith is also found in the hadith narrated by Al-Turmudzi explaining that Amr bin Shu'aib RA., on the advice of his father and grandfather, conveyed the words of the Prophet PBUH: "*A child born of adultery, whether with a free person or a slave, is considered the result of adultery and has no right of inheritance and cannot inherit.*" (H.R. Al-Turmudzi).<sup>23</sup>

One of the conditions for getting an inheritance is the existence of a marriage bond. The relationship between heirs and heirs is influenced by the existence of a valid marriage, because this has a direct impact on the status of the birth of the child. Therefore, the determination of the status of children must be carefully analyzed based on Islamic law and state law. In the case of *surrogacy*, the child is born to a surrogate mother who is not the owner of the egg. If the surrogate mother is married, then the child is legally considered the child of the surrogate mother and her husband. However, if the surrogate mother is not married, then the child is considered an out-of-wedlock child. In this condition, the surrogate mother and the child born can inherit each other.

However, the child cannot inherit from the uterine tenant spouse because there is no marriage bond between the biological father (tenant) and the surrogate mother. The tenant spouse can only give an inheritance to the child through a will, which of course must comply with the provisions and rules that apply in religious law and state law.<sup>24</sup> Judging from the opinion of scholars, there is an effort in the issue of inheritance rights of children born through IVF with the *surrogate mother* method, including the following:<sup>25</sup>

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<sup>23</sup>Ahmaf Fuzail Sukur, Barzah Latupono, and La Ode Angga, "The Inheritance Rights of Children from Surrogate Mothers Reviewed from Islamic Law," *Tatohi: Journal of Law* 4, no. 6 (August 30, 2024): 455, <https://doi.org/10.47268/tatohi.v4i6.2452>.

<sup>24</sup>Mohammad Fikrul Islam and Moh. Sirojuddin, "A Review of Islamic Law on the Legal Status of Surrogate Mothers," *Mabahits : Islamic Family Law Journal* 5, no. 02 (November 26, 2024): 36–50, <https://doi.org/10.62097/mabahits.v5i02.1872>.

<sup>25</sup>Rudi Adi, "Protection of Children's Rights from Surrogate Mothers Perspectives on Positive Law and Islamic Law," *el-Bait: Journal of Islamic Family Law* 1, no. 1 (January 23, 2022): 57–67, <https://doi.org/10.53515/ebjhki.v1i1.5>.



1. Ali Akbar has the view that entrusting embryos to other women is allowed because the biological mother is unable to conceive. Just as breastfeeding is permissible in Islam, giving wages to women who lend her uterus is also considered legal.
2. Husen Yusuf argued that a child born from another woman's womb remains married to the couple who gives the seeds. Women who are pregnant with it are equated with breastfeeding mothers. According to these two opinions, children born in IVF through uterine rental still have a nasab with their biological parents and are entitled to their inheritance.
3. According to H. Salim Dimiyati, IVF babies that come from the eggs and sperm of a legal married couple, but whose embryos are entrusted to another woman's womb, are only considered as adopted children. The child does not have inheritance rights, because an adopted child cannot be equated with a biological child in Islamic law.
4. Yusuf al-Qaradawi stated that uterine rental in Islam is a prohibited act in all forms. He explained that if there is a woman who is tested by Allah SWT with the inability to produce eggs, then it is considered equivalent to a woman who does not have a uterus. Similarly, men who cannot produce sperm or who can produce sperm but die or do not function, they also include people who are tested with infertility.<sup>26</sup>

The phenomenon of children born through the process of *surrogate mother* raises complex legal issues, especially in terms of inheritance. In Islamic law, one of the main conditions for obtaining an inheritance is the existence of a legal nasab relationship between the heirs and the heirs. The child from the uterus is not born in a marriage bond between the surrogate mother and the biological father, thus casting doubt on the validity of his fate.

If analyzed from the point of view of Islamic law, a child born to a surrogate mother cannot be dependent on the uterine tenant's partner, even though the egg and sperm come from them. This is because Islamic law stipulates that children are assigned to the woman who gives birth (*al-walad lil firsasy*), not to the genetic owner alone. Thus, surrogacy children under Islamic law cannot inherit from a uterine tenant spouse. Except, in the context of a *mandatory will*, where an adopted child or out-of-wedlock child can be given a maximum of one-third of the heir's property in accordance with the provisions of Article 209 paragraph (2) of the Compilation of Islamic Law.

From the perspective of positive Indonesian law, Article 43 paragraph (1) of Law Number 1 of 1974 states that children born outside the marriage bond only have a legal relationship with

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<sup>26</sup>Hamidi dan Latif, "Ibu Pengganti dalam Perspektif Hukum Islam Surrogate Mother In Islamic Law Perspective."

the mother and the mother's family. This reinforces the legal position that the child from the womb rental does not have the legal standing to inherit from the biological father or tenant spouse, unless the child has been legally recognized or adopted through the applicable legal mechanism.

Meanwhile, when viewed from the aspect of customary law, in general, indigenous peoples in Indonesia highly value blood relations and the sanctity of the lineage. In customary cultures, children born out of wedlock or by a third party without a legal bond are generally not recognized as part of the lineage. Therefore, in the context of custom, children from uterine rentals are more likely to be treated as adopted children, not legal heirs.

Through these three approaches, Islamic law, positive law, and customary law, it can be concluded that the position of the inheritance of the *surrogate mother's* child is in a legally unstrong position. The child can only inherit from the surrogate mother who gave birth to him, or through alternative means such as the giving of a will by the uterine tenant. Therefore, it is important to have clarity on the law that regulates this practice so as not to create legal gaps and social conflicts in the future.

## **Conclusion**

The practice of *surrogate mothers* in the perspective of Islamic law raises serious problems related to the clarity of the child's destiny and inheritance rights. Islamic law stipulates that the mother who gives birth is a legally legal mother according to shari'i, as explained in the Qur'an surah Al-Mujadilah verse 2. If the child is born outside the legal marriage bond between the sperm donor and the pregnant woman, then the status of the nasab to the father cannot be legally determined, which ultimately has an impact on the loss of the child's right to inherit property from the father. Thus, *surrogacy children* can only be attributed to the mother who gave birth, and do not have inheritance rights except through other mechanisms such as mandatory wills if regulated in national law. Most contemporary scholars and international fatwa institutions such as Majma' al-Fiqh al-Islami reject this practice because it is contrary to the principle of *hifz al-nasl* (protection of posterity) as one of the main goals of Islamic law. On the other hand, positive law in Indonesia has not specifically regulated this practice, so it has the potential to create a legal vacuum and uncertainty about the status of children. Ijtihad and regulations that are in line with sharia principles are needed to answer these challenges.

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