

A Review of Islamic Law on the Practice of "*Tumpang Rahim*" Based on *Maqāṣid al-Syarī'ah* and Contemporary Scholars

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Abstract

The practice of *Tumpang Rahim* (surrogacy) is one of the innovations in reproductive technology that has caused ethical and legal controversy in Islam, especially in the review of *maqāṣid al-syarī'ah*. This study aims to analyze the validity of *tumpang rahim* wombs based on the principles of *maqāṣid al-syarī'ah*, especially *ḥifẓ al-nasl* (nurturing offspring), as well as the views of contemporary scholars. The research method used is normative juridical with a literature study approach. The results of the study show that the majority of contemporary scholars reject the practice of *tumpang rahim* because it involves a third party in the reproductive process, which results in confusion in *nasab*, guardianship, and inheritance rights. This practice is also considered to bring more *maḍarrah* than *maṣlahat*, so it is contrary to the principle of *maqāṣid al-syarī'ah* which emphasizes the preservation of offspring. From the perspective of *maqāṣid al-sharī'ah*, the desire to have a child through intercession is not an emergency need. In addition, this practice can trigger various problems, including psychological burdens for husbands, wives, and women whose wombs are rented. Therefore, the practice of intercession is considered haram and is not following the purpose of *sharī'ah* in preserving offspring and avoiding damage.

Keywords: *Tumpang Rahim*; Surrogacy; Islamic Law; *Maqāṣid Al-Syarī'ah*; Contemporary Scholars

Introduction

Marriage can be understood as a spiritual and physical commitment between a man and a woman to establish a common domestic life, which is ratified through an agreement under the provisions of *Sharī'ah* Islam. From the perspective of Islamic law, marriage is seen as a very strong bond or firm agreement, which in the Islamic tradition is often referred to as *mīṣāqan ghalīẓān*. This concept describes the sacred relationship between man and Allāh SWT., as exemplified by the Rasūlullāhs Ṣaw. Performing marriage is considered a form of obedience to the commands of Allah Swt. and is therefore seen as a form of worship (Afiati et al., 2022). From marriage, a married couple will have children and make it a family which is in line with the goal of *Sharī'ah* Islam, that is, maintaining human offspring (*ḥifẓ Al-Nasl*) (Nafiah & Kuncoro, 2023). However, in reality, not all married couples can easily get offspring.

Having children is something that every married couple desires the most. Like the benchmark of happiness in a marriage, the presence of children is an important thing in a family. However, God's destiny in testing His servants by making it difficult for married couples to have children (Hairunisa, 2021; Istiqomah et al., 2022). Various factors can affect this, such as infertility experienced by one or both partners. On the other hand, health problems are also the cause of difficulty in having children, including sperm problems that cannot fertilize eggs optimally, as well as various other factors that hinder the fertilization process (Mu'in & Yanti, 2023).

Along with the development of technology, especially in the field of medicine, there are now various innovations available to overcome reproductive and pregnancy problems, such as IVF technology (Nasikhin et al., 2022), uterine overlap, and various other methods. One of the developments that has attracted attention is the practice of *Tumpang Rahim* (surrogacy), where a woman is willing to conceive and give birth to a child for another partner. However, this practice raises a variety of ethical and legal questions, especially in the perspective of Islam, especially in the review of *Maqāṣid al-syarī'ah*.

Many studies in Indonesia have discussed this issue. Hashi (2019) In his research, he concluded that the practice of *tumpang rahim* or surrogate mother is prohibited in Islam because of the involvement of third parties. Next Viqria (2022) stated that the practice of renting or *tumpang rahim* is not allowed in Islamic law, based on Law No. 23 of 1992 and the Fatwa of the Indonesian Ulema Council (MUI) on May 26, 2006. Even in civil law, a uterine lease agreement can be considered valid as long as it meets the requirements stipulated in Articles 1313, 1233, and 1320 of the Civil Code (Civil Code). This was also emphasized by Puspitasari (2022), which states that surrogacy contracts in Indonesia are considered null and void because they are contrary to Article 1320 of the Civil Code, as well as violating Article 284 of the Criminal Code from the perspective of criminal law. In addition, this practice causes controversy because it also contradicts the beliefs of the majority of religions adhered to, such as Islam, Protestant Christianity, Catholicism, Hinduism, and Buddhism.

Khairunnisa et al. (2024) added that from the perspective of Indonesian civil law, a uterine lease agreement is invalid and null and void because it does not meet the legal requirements of the agreement under Article 1320 of the Civil Code. In addition, this practice also raises legal problems, such as negative stigma against surrogate mothers, uncertainty about the status of the child, and potential conflicts if the surrogate mother is reluctant to hand over the child. Furthermore, Putri & Kadir (2023) conclude that the child born to the surrogate mother (*surrogate mother*) is considered an illegitimate child or an adulterous child according to Islamic law.

However, previous research has not specifically examined the practice of *tumpang rahim* from the perspective of *maqāṣid al-syarī'ah*. This is a gap that needs to be filled, given that *maqāṣid al-sharī'ah* plays an important role in assessing whether a

practice is in line with the principles of *sharī'ah*. *Maqāṣid al-sharī'ah* refers to the purposes of *sharī'ah* and the intentions set by Allāh SWT. in each of His laws.

The essence of *Maqāṣid al-syarī'ah* is to realize the ability of human beings and eliminate the existence of the human body, while the basic principles (*mabadi'*) that must be considered include the basic values of Islam, such as justice, equality, and freedom. *Maqāṣid al-syarī'ah* has an important role in achieving prosperity both in religious and world aspects. If this goal is not achieved, damage will arise that can threaten the existence of life and life. Five main aspects included in *Maqāṣid al-syarī'ah* are maintaining religion (*ḥifẓ al-dīn*), keeping the soul (*ḥifẓ Al-Nafs*), maintaining reason (*ḥifẓ Al-'Qal*), maintaining offspring (*ḥifẓ Al-Nasl*), and safeguarding assets (*ḥifẓ Al-Māl*) (Busyro, 2019).

In the context of inter-ferocity, the consideration of *maqāṣid al-syarī'ah* can serve as an important guide, especially concerning the purpose of protecting offspring (*ḥifẓ al-nasl*). On the one hand, this practice can help couples who are experiencing fertility problems to have children. However, on the other hand, there are concerns related to legal and ethical implications, such as the legal status of the child, the relationship of *descent*, and the potential exploitation of the surrogate mother. Therefore, further analysis of this practice based on *maqāṣid al-sharī'ah* is needed to provide clarity in determining its legal status.

The views of contemporary scholars are also very important to provide enlightenment and direction related to the law of interference. Taking into account the postulates of *shar'ī* and *maqāṣid al-syarī'ah*, scholars strive to compile a comprehensive and wise fatwa in dealing with new problems that arise with the times. This research aims to fill this gap by examining the practice of intercession from the perspective of Islamic law, using the approach of *maqāṣid al-syarī'ah* and the views of contemporary scholars.

This research is formulated to answer the question: What is the view of contemporary scholars regarding the law of interference in the modern context? Is the practice of *tumpang rahim* in line with the principle of *maqāṣid al-sharī'ah*? The purpose is to analyze and identify the application of *maqāṣid al-syarī'ah*, especially in safeguarding offspring (*ḥifẓ al-nasl*) to the practice of *tumpang rahim*, as well as to present a comprehensive perspective on the validity of this practice in Islam. Thus, this study can provide clear and wise recommendations for Muslims on how to respond to the issue of interuterine intersection following the guidance of *sharī'ah*. This research is important because it can provide in-depth insights into how *maqāṣid al-syarī'ah* and the views of contemporary scholars can be used as a basis for establishing laws that are relevant to the practice of *tumpang rahim* in the modern era.

Research Methods

This research is included in the type of normative juridical research, which focuses on the study of applicable legal norms related to the practice of interferocity.

The normative juridical approach is carried out by analyzing various laws and regulations, ulama fatwas, and principles *Maqāṣid al-syarī'ah* relevant to this topic (Marzuki, 2013). After that, this research was also supported by a literature study (*library research*), which is done by collecting data from books, scientific articles, documents, and other related literature. The data collection process aims to strengthen legal analysis and provide a more comprehensive understanding of contemporary scholars' views regarding *tumpang rahim*. The collected data is then analyzed qualitatively to understand how this practice is viewed from the perspective of Islamic law, as well as its conformity with the principles of *Maqāṣid al-syarī'ah* (Nasution, 2023).

Result and Discussion

An Overview of *Tumpang Rahim* and Its Legality According to Islamic Law and Positive Law in Indonesia

Surrogacy, or uterine *tumpang rahim*, is a continuation of the IVF program known as a uterine rental. According to Desriza Ratman, as quoted in Susila & Morgan (2022), *surrogacy* is a covenant in which a woman is willing to conceive and give birth to a child for the other party. After the child is born, custody is given to the party who wants the child. Term *surrogacy* itself comes from the Latin "*Surrogacy*," which means 'substitute.' Patel et al., as quoted by Sujadmiko et al. (2023) added that *surrogacy* is an agreement in which a woman agrees to conceive and give birth to a child for her biological parents, with the agreement that after the baby is born, she will be handed over to them.

In other words, a woman lends her womb to conceive someone else's child, and after the birth of the child, custody is handed over to the woman who has the embryo as well as her biological father. This process is also known as surrogate mother (*surrogate mother*), where pregnancy occurs unnaturally. Another term for this practice is *tumpang rahim* or 'uterine rental,' as couples who want to have children usually compensate surrogate mothers who agree to conceive their embryos. This technique is generally used when a wife is unable to conceive or give birth. In practice *surrogacy*, the embryo is raised in the womb of a woman who is not the wife, even though the baby is the biological child of a couple who hired the services of a surrogate mother (Puspitasari, 2022; Sujadmiko et al., 2023; Susila & Morgan, 2022).

According to *Blacks Law Dictionary*, a surrogate mother is: 1) A woman who conceives a child to be married on behalf of another woman and then assigns her custody to the bridegroom and then transfers her custody to the woman and her father; and 2) People who perform the role of mothers (Puspitasari, 2022). Meanwhile, according to Yendi in Puspitasari (2022) and Susila & Morgan (2022), the causes or intentions of surrogate mothers vary, among which are:

1. A woman who has no chance of becoming pregnant because of a disease or disability that prevents her from conceiving and giving birth.
2. A woman who has undergone uterine removal surgery.

3. Women who want to have children without having to go through pregnancy, childbirth, and breastfeeding, and want to keep their body shape.
4. Women who want to have children but have gone through menopause.
5. A woman who wants to earn an income by renting her womb to others.

The practice of intercession is common in several countries, including India, Pakistan, Bangladesh, China, and Thailand, for a variety of reasons, including challenging economic conditions. Meanwhile, the main reason for choosing surrogate mothers who are on average from wealthy communities is the fear of poor physical appearance after childbirth (Susila & Morgan, 2022). According to Frati et al. (2021), lack of regulation on *surrogate mothers* in low-income countries can undermine women's dignity and rights. International efforts should be aimed at creating an international regulatory framework from which guidelines useful to national governments are derived. International agreements will provide a strong legal basis for the protection of surrogate women.

In addition to the countries already mentioned, in Greece (Piersanti et al., 2021) United States (Bridges, 2020), Ukraine, and Uruguay, this practice is also legalized (Sujadmiko et al., 2023). In Canada, the practice of *surrogate mother* is legitimate but limited to the federal level (Santhi, 2019). In the absence of an agreement on international standards, many countries such as the United Kingdom, the Republic of Ireland, New Zealand, Denmark, and others feel the need to revise their national laws, which are now under consideration, to improve the rules (Brandão & Garrido, 2022; Horsey, 2024; Jeffrod, 2023). Meanwhile, Indonesia does not have a special legal instrument that regulates *surrogate mother* Ini (Ambarwati & Azmita, 2019; Diani, 2020).

Some Indonesian legal instruments implicitly state that the practice of *surrogacy* is forbidden. They refer to several legal provisions. Among them are Law No. 36 of 2009 concerning Health (Health Law) and Government Regulation No. 61 of 2014 concerning Reproductive Health (PP 61/2014) which are legal provisions regarding health perspectives. Regulation of the Minister of Health No. 039/Menkes/SK/I/2010 concerning the Implementation of Assisted Reproductive Technology Services only recognizes traditional surrogate mothers, namely sperm cells and eggs of legally married couples, otherwise, surrogate mothers are illegal (Puspitasari, 2022; A. P. Putri & Ramadhani, 2021; Sujadmiko et al., 2023; Susila & Morgan, 2022). This is in line with Article 43 paragraph (3) letter b of PP 61/2014 which emphasizes that it is not allowed to entrust embryos to the uterus of another woman (*Surrogate Mother*) (Viqria, 2022).

Surrogate mother practice or *surrogate mother* is considered an act of adultery according to the broad interpretation of Article 284 of the Criminal Code. The article states that adultery perpetrators are threatened with a maximum prison sentence of nine months, including in cases where married men or married women are involved in sexual relations outside of legal marriage (Puspitasari, 2022). In addition, the

practice of *surrogacy* hampered by the provisions of civil law, especially Article 1320 of the Civil Code, which requires that the agreement must have a halal cause.

Because the object of the agreement *surrogacy* involves the rental of a uterus, which is considered invalid and contrary to morality, then the agreement does not meet the legal requirements in civil law (Khairunnisa et al., 2024; Puspitasari, 2022; A. P. Putri & Ramadhani, 2021; Susila & Morgan, 2022). In addition, if we look at it from the perspective of human rights, this practice of intercession is also contrary to Law No. 39 of 1999. This is following Article 56 paragraph (1) which states that every child has the right to know who his or her original parents are, to be raised, and to be cared for by their parents (Permata Press Team, 2018).

According to Islamic law in Indonesia, a child born through a surrogate mother is considered an out-of-wedlock child. Based on the Compilation of Islamic Law (KHI), Article 100, which has similar provisions to Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage, children out of wedlock only have a legal relationship with their mother and their mother's family. Therefore, children born to surrogate mothers are only entitled to inheritance from their mothers (A. P. Putri & Ramadhani, 2021). Then, in the MUI fatwa, the MUI Leadership Council stipulated the following fatwa:

1. IVF using sperm and ovum from a legitimate married couple is allowed (*mubāh*), as this is considered an attempt based on religious principles.
2. IVF that involves the entrustment of another woman's womb (for example, from the second wife to the first wife) is considered haram, following the rules of *Saddu Az-Zarī'ah*. This is because it can cause legal problems, especially in terms of inheritance and child status between the biological mother and the pregnant mother.
3. The use of sperm that has been frozen from a deceased husband is also declared haram based on the rules of *Saddu Az-Zarī'ah*, because it triggers problems related to *destiny* and inheritance rights.
4. IVF produced from sperm and ovum that comes from a party outside the legal couple is considered haram because this act is equated with adultery, which is a relationship between a man and a woman outside of a legal marriage, and to prevent adultery. This is also based on the rules of *Saddu Az-Zarī'ah*.

Based on the MUI fatwa above, it can be seen that the MUI considers the practice of transferring embryos to the entrusted uterus (not the uterus of the wife who has the ovum) or the overlapping of the uterus is prohibited by the MUI on May 26, 2006 (Kumala, 2020; A. P. Putri & Ramadhani, 2021; Viqria, 2022).

It is important to know that in the practice of interuterine intercession (*surrogate mother*), several different types are important to understand. *First* is traditional *Surrogacy*, which is the process of insemination in which a surrogate mother uses her eggs to conceive a child for another partner. *Second*, *Gestational Surrogacy*, where the surrogate mother's uterus is only used to contain embryos derived from eggs and

sperm from the married couple who rented the uterus. This is a type of *surrogacy* the most common. *Third*, an *Intended Mother* is a woman, whether single or married, who rents a uterus from another woman who agrees to conceive a fetus through the mother's eggs that are rented or the proceeds of egg donation, under the agreed agreement (Viqria, 2022).

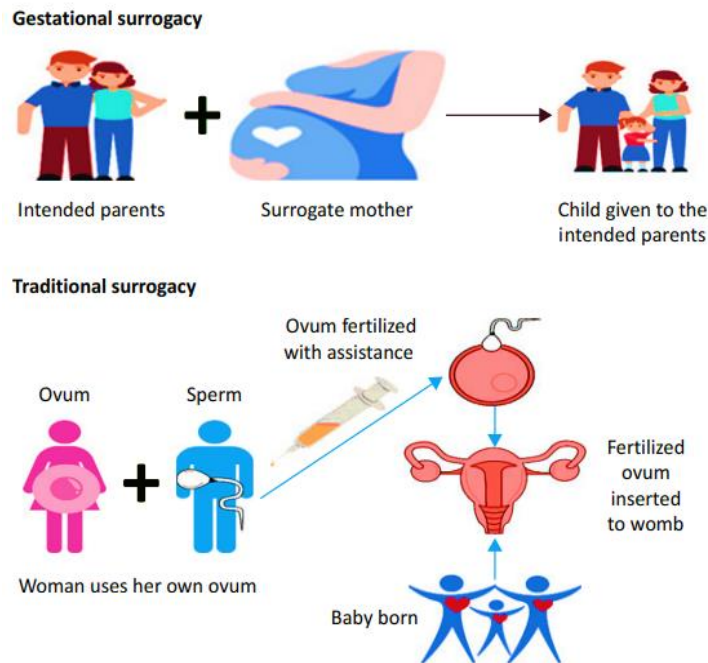


Figure 1. *Traditional illustration of surrogacy and gestational surrogacy*
Source: Sujadmiko et al. (2023).

Although the practice of *tumpang rahim* has been accepted and legalized in several countries, in Indonesia the practice of *tumpang rahim* is still considered illegal from a legal point of view. In addition to being contrary to the provisions of morality, this practice also collides with human rights related to the right of children to know their biological parents. In addition, no law specifically regulates the practice of *surrogacy* or *surrogate mothers*. Therefore, this practice of *tumpang rahim* not only violates the law but also has the potential to cause conflicts related to the legal status of children and the protection of their rights in the future.

Although in Indonesia there are no clear regulations regarding the practice of *tumpang rahim*, in fact, this has been done secretly for family reasons. As explained in the research of Khairunnisa et al. (2024), several cases have documented this practice, one of which was in Surakarta in 2004, where a mother chose to rent a uterus after failing several attempts at IVF programs. In addition, in 2009, in Mimika, Papua, there was a similar case carried out by a married couple, where the intercession agreement was carried out on a familial basis, with the wife's brother acting as a surrogate mother (*surrogate mother*).

Views of Contemporary Scholars on the Practice of *Tumpang Rahim*

Even though the Qur'ān and *Ḥadīṣ* It does not explicitly discuss this, but there are general principles that can be used as guidelines related to the practice. The Islamic perspective on surrogacy begins with the Islamic concept of the role of motherhood. A mother is a woman who gives birth to a fertilized egg, gives birth to a child, and then raises the child to adulthood, according to the Qur'ān. The Qur'ān states in Surah Al-Mujādalah (58) verse 2 that maternal status can only be obtained by giving birth (Sujadmiko et al., 2023). Another type of motherhood that is recognized in Islam is the adoptive mother, as in the tafsir At-Ṭabani against the Qur'ān surah Al-Aḥzāb (33) verse 4. However, because of his status as an adopted child, he cannot be a child like a biological child (Mu'in & Yanti, 2023; Winda & Firdausiyah, 2023).

Furthermore, in the Qur'ān surah Al-Aḥqāf (46) verse 15 describes the process and nature of motherhood according to which in pain her mother gives birth to her, and in pain she gives birth to her. Carrying (the child) until weaning is thirty months. In Surah Luqmān (31) verse 14, the Qur'ān commands that people should do good to their parents, especially mothers (Hashi, 2019).

Problem surrogate mother This was first discussed at the seventh session of the meeting of the Islamic Fiqh Council of the Muslim World League in 1404 AH (1985). The following year, the Council issued a regulation that this modern technology should be used '*only to give legitimate treatment to husbands and wives who want to have legitimate children and build a family*' thus, prohibiting the use of modern technology. the role of surrogate mothers. Similarly, the Fiqh Council of the Organization of the Islamic Conference (OIC) in 1986 concluded that surrogate mothers are haram and are only allowed between married couples and even under certain conditions (Sujadmiko et al., 2023).

The complexity of the problem of *surrogacy* This is increasingly caused by several factors, including the rate of infertility, massive commercialization, differences in national legal policies, ethical-cultural conflicts, and social aspects. The foundation is different, and the Islamic perspective on this has not changed. Research conducted by Hathout Maher in 1989 as quoted by Sujadmiko et al. (2023) has noticed the phenomenon of a new technique of implantation of fertilized eggs, implanted in *Vitro*, which has been developed as an 'alternative reproduction' method, and concludes that surrogacy is not allowed. However, this is acceptable in limited circumstances.

Contemporary Sunni Islamic scholars have discussed the IVF method with legal considerations in mind *Shar'ī* which allows if the sperm and egg come from a man and a woman who are legally married, and fertilization occurs during their marriage. These opinions state that IVF is legal if the fertilized ovum placed in the woman's uterus is an egg taken from her ovaries, so no surrogate mother is used. It is haram for a couple to give sperm and ovum but 'rent' or 'hitchhike' the surrogate mother's uterus, and the embryo is implanted in the surrogate mother's womb. In other words,

involving a third party in a surrogate mother can be considered adultery (Sujadmiko et al., 2023).

The issue of IVF and uterine rental is a new problem that is not clearly outlined in the books *Fiqh* Classical. Especially related to uterine rental or *tumpang rahim*, various opinions from contemporary scholars have emerged. Some scholars argue that this practice is haram because it is considered to violate the principles of Islamic law, while others view it as halal with certain conditions. This variety of opinions shows that there is a dynamic in *ijtihad* scholars related to issues that have not been regulated in detail in the literature *Fiqh* classical (Kumala, 2020). However, most Sunni Muslims around the world adhere to the fatwa that surrogacy in the practice of surrogacy is not allowed in any form (Sujadmiko et al., 2023). Here are some opinions of contemporary scholars who prohibit the practice of *tumpang rahim*:

1. According to Maḥmūd Shaltūt in Kumala (2020), if insemination is carried out with sperm from a man who is not bound by marriage to the woman, this is considered to degrade human dignity to the level of animal or plant life. The practice ignores the noble values contained in the marriage bond, which should be the basis of dignified social relations. If artificial insemination occurs without the use of the husband's sperm, this is seen as a very reprehensible act and is even considered worse than the practice of adoption which is not in accordance with the rules.
2. Ibrāhīm Ḥusayn, who is the former chairman of the MUI fatwa stated that artificial insemination using sperm from the husband and eggs from the wife, but then implanted into the uterus of another woman, is considered unjustifiable under Islamic law. This is because it involves a third party in the reproductive process, which is contrary to the principles of marriage in Islam. Shaykh 'Alī Aṭ-Ṭhaṇṭāwī It is also held that IVF involving the use of another woman's uterus is not allowed, because the pregnant woman's uterus is considered to play an important role in the formation and development of the fetus. This confirms that the involvement of a third party in the pregnancy process is contrary to the principles of Islam (C. Y. Putri & Kadir, 2023).
3. According to the opinion of Mu'tamar Tarjih Muhammadiyah in 1980, renting a uterus is not allowed in Islamic law. This is because planting seeds into the womb of another woman is considered haram. This opinion is based on ḥadīṣ narrated by Abū Dāwūd number 2158, where Rasūlullāh Ṣaw. said: "*It is not permissible for a person who believes in Allah and the Last Day to sprinkle his water on another's field,*" (Al-Sajasthani, n.d.).
4. The opinion of the National Conference (Munas) of Alim Ulama Nahdlatul Ulama (NU) in Sukorejo Situbondo in 1983 stated that renting a uterus for a married couple is haram. It is based on ḥadīṣ Prophet Muḥammad Ṣaw. which is listed in tafsīr Ibn Kaṣīr Juz 3/326, where the Prophet Ṣaw. Said: "*There is no greater sin after shirk than a person who puts his sperm in the womb of another woman*

who is not halal for him." In this situation, according to the Munas participants, *Nasab*, guardianship, and custody rights cannot be attributed to the owner of the sperm, according to the opinion of Imam Ibn Hajar, because the entry of sperm is not recognized in a *Shar'ī*. Sperm is only considered *Muhtarom* (respected) at the time of expulsion, in the view of Imam Ramli, and become dishonorable when entering the womb of a woman who is not halal (Kumala, 2020).

5. argue that renting or *tumpang rahim* is prohibited. This opinion is because it can confuse, such as questions "*Who is the mother of the baby? Is it the woman who supplies her eggs, who carries heredity, or the woman who conceives and gives birth to them, who experiences suffering and pain during pregnancy and childbirth?*" In addition, the woman did not become pregnant and gave birth on her own accord (Al-Qardāwī, 2002).
6. Mūsā Ṣaḥīḥ Sharaf stated that all methods other than IVF are considered haram according to *Sharī'ah*. If a husband is barren and uses sperm from another man to fertilize his wife who is still able to give birth, it is haram. Similarly, if the barren wife and her husband use sperm from another man to have offspring, this is also clearly haram. If a woman becomes pregnant by this kind of insemination, the child born is not considered valid according to the *Shar'ī*, especially since the act is seen as a very reprehensible behavior of the wife (Syāraf, 1977).
7. Sa'īd 'Aqīl Ḥusayn al-Munāwar argue that although uterine rental has some benefits, however, the negative impact or *mafsadah* that it causes is much greater. One of the main problems is confusion in determining the status of children. In addition, there is a potential for disputes between the two mothers involved. Therefore, he concluded that renting a uterus is not allowed and the law is haram (Al-Munāwar, 2004).
8. According to the results *Ijtimā'* According to the 2nd Indonesian Fatwa Commission in 2006, the transfer of embryos to another woman's uterus, either through rental or custody, which comes from artificial insemination between the sperm and eggs of a married couple, is punished as haram. If artificial insemination is carried out and the embryo is implanted in the womb of another woman because the married couple does not want to get pregnant, the law is also still haram. Children born from this process *Sharī'ah* considered the child of the woman who conceived and gave birth to him (Annisa et al., 2023).

Some scholars who allow interference, as quoted by Kumala (2020), among others:

1. Journalist Udin argued that if the wife's uterus in the *in vitro fertilization program* is still able to conceive a baby until birth, then uterine rental is punished as haram. However, if the wife's uterus is deformed, technology has not yet allowed the embryo to develop until birth without the help of the

uterus, and uterine intercropping is the only way for couples to have children from their seed, then the law becomes *mubāḥ* or permissible. The situation is considered an emergency, especially because of the couple's strong desire to have children.

2. 'Alī Akbar stated that it is permissible to leave the baby in the womb of another woman because the biological mother cannot conceive it. He compared it to the practice of breastfeeding children by other women, which is allowed in Islam and can even be wage. Therefore, giving a reward to a woman who lends her womb is considered legal and permissible.
3. Sālim Dimyātī and Ḥusain Yūsuf argue that a child born to a surrogate mother is only considered an adopted child, who has no right to inherit or inherit. Because they are not biological children, their status cannot be equated with biological children in terms of these rights.

Based on the explanation above, the majority of contemporary scholars view the practice of *tumpang rahim* as something prohibited in Islamic law. This prohibition is based on ethical reasons, heredity or *descent* issues, as well as potential conflicts between the surrogate mother and the partner renting the uterus. Although some scholars allow it in emergencies, the general view still rejects this practice, as involving a third party in the reproductive process is considered to disturb order in family law and is contrary to the principles of motherhood in Islam. Therefore, this practice is still a complex issue from a legal and moral perspective.

Analysis of the Practice of *Tumpang Rahim* Based on *Maqāṣid al-Syarī'ah*

As discussed earlier, *Maqāṣid al-syarī'ah* or the main objectives of Islamic law, including *ḥifẓ al-dīn* (maintaining religion), *ḥifẓ al-nafs* (keeping the soul), *Ḥifẓ al-'aql* (keeping common sense), *ḥifẓ al-nasl* (preserving offspring), and *ḥifẓ al-māl* (Protecting Property) (Busyro, 2019). In this context, the practice of *tumpang rahim* has a direct relationship with *ḥifẓ Al-Nasl*, which means maintaining or maintaining the continuity of the family lineage in accordance with the purpose of *Sharī'ah* Islam.

The scholars illustrate the form and practice of surrogate mothers (*surrogate mother*), and discuss current and possible moral and legal problems. Because all forms of surrogacy are contrary to the principle *ḥifẓ Al-Nasl*. The main reason for its ban is because of all forms of *surrogate mother* causing the mixing of family lineages, thus violating *Maqāṣid al-syarī'ah*. This is because ethical and Islamic legal concerns regarding intergenerations stem from concerns about the source of sperm and eggs. Among the main objectives of Islamic law is the protection of the family lineage (*ḥifẓ Al-Nasl*) (Hashi, 2019).

Since blood ties are an important basis of marriage and inheritance in Islam, any behavior that could damage family relationships or create uncertainty about bloodline

is prohibited. Because of its role as *surrogate mother* It is considered the same as adultery, then this is considered a violation of the marriage contract and the honor and dignity of the intended family. Therefore, it is not allowed, as surrogate mothers create uncertainty *Nasab* in children born by *surrogate mother*, then contemporary scholars decided that surrogate mothers in the practice of *tumpang rahim* are haram. All forms of surrogacy cause confusion about family lineage (*Nasab*), which violates one of the objectives *Maqāṣid al-syarī'ah*, that is, protecting the family lineage. Because surrogate mothers violate the protection of offspring. As stated by the OIC Fiqh Council which concludes that all forms of surrogacy are haram in Islam (Sujadmiko et al., 2023).

Based on the opinion of contemporary scholars who allow the practice of *tumpang rahim* in emergency situations, Wahbah al-Zuhayli in his book explains that emergency (*ḍarūriyyāt*) is something that cannot be avoided in human life or religion. If this is not fulfilled, the life of this world will be ruined, the enjoyment will be lost, and in the hereafter there will be punishment (Aprilianto et al., 2022). The scholars agree that the emergency must meet five conditions: 1) A major danger has occurred or is very likely to occur; 2) There is no other way that is allowed in a halal way; 3) Violations are only committed to the extent necessary; 4) Violations must be stopped immediately when the emergency situation ends; and 5) The violation must not pose a greater risk or danger (Busyro, 2019).

Scholars make exceptions to this rule in some conditions. *First*, if eliminating the event has the potential to bring about other events of the same level, then such action is not allowed. For example, a person who is hungry takes food belonging to another person who is also experiencing a state of hunger, even though he is in need. *Second*, if the elimination of the *maḍarrahan* causes the occurrence of a greater *maḍarahan*, then this is more forbidden. *Last*, to eliminate the necessity, it is not allowed to exceed the necessary limit, it is only allowed if there is no other option (Djazuli, 2021).

As explained earlier, the purpose of the practice of *tumpang rahim* is to obtain offspring from one's seed with the help of medical technology, because the wife's uterus is not able to undergo the pregnancy process. However, in the practice of *tumpang rahim*, it is necessary to distinguish between needs and emergencies. Renting a uterus cannot be considered an emergency, so it should not be done without disregarding of the principles *Shari'ah* fundamentals, such as safeguarding the rights of others, upholding justice, maintaining trust, and staying away from corruption (Busyro, 2019).

One of the rules *Fiqh* related to the prevention of accidents, namely, "*Daf' al-mafāsid muqaddam 'alā jalb al-maṣāliḥ*," which means 'preventing damage takes precedence over taking action.' This rule applies when there are *maṣlaḥat* and *mafsadah* at the same time, then what must take precedence is *maṣlaḥat* the bigger one or the stronger one. If *maṣlaḥat* and *mafsadah* have the same weight. Therefore, it is better to

prioritize *maṣlaḥat* and prevent *mafsadah*, because rejecting or prevent *mafsadah* itself is already considered to be a (Djazuli, 2021).

Based on the principle of *maqāṣid al-syarī'ah* that has been described, the author argues that the practice of intercropping is not included in the emergency needs, but only a human desire to have children. If this wish is not fulfilled, there will be no significant harm. However, if this practice is carried out, various problems will arise such as unclear status of the child's destiny, guardianship, inheritance, and psychological burden for the parties involved, including husbands, wives, and women who rent out their wombs. Because this practice has the potential to cause greater complications, it is considered haram.

Conclusion

Based on the study of the law of interfertility in the context of modern Islamic law, the majority of contemporary scholars agree that this practice is prohibited in Islam. The reason is the involvement of a third party in the reproductive process, which is considered to violate the principles of marriage and cause confusion in *the nasab*, guardianship, and inheritance rights of the child. Although some scholars allow this practice in certain emergencies, the general view still considers the practice of intercession to be an unlawful act. From the perspective of *maqāṣid al-sharī'ah*, this practice is also not in line with the main purpose of *sharī'ah*, especially in maintaining offspring (*ḥifẓ al-nasl*). Intrauterine intercropping has the potential to confuse the status of the child and psychological problems for the parties involved and is considered to bring more *maḍarrah* than *maṣlaḥat*. Therefore, this practice is contrary to the principle of *maqāṣid al-syarī'ah* which emphasizes the maintenance of offspring and the avoidance of damage.

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