

Surrogate Mother in Polygamous Families: Analyzing Islamic Scholars' Perspectives on Using the Second Wife's Womb

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Abstract: This article examines the legal status of surrogate motherhood in Islamic law, particularly when the surrogate mother is the second wife or another wife of the same husband. Although the embryo originates from a legally married couple, the practice raises significant legal and ethical questions regarding lineage, maternal status, and reproductive relations within a polygamous family. This study aims to analyse the views of Islamic scholars on this issue using a qualitative library research approach. Data were collected from books, scholarly journals, fatwas, and decisions of Islamic institutions, including the International Islamic Fiqh Academy (Majma' al-Fiqh al-Islami), Muhammadiyah, and Nahdlatul Ulama's Bahtsul Masail, and analysed through content analysis and thematic reading. The findings reveal that Shi'a scholars generally permit surrogate motherhood if the genetic material belongs to a legally married couple, whereas Sunni scholars predominantly prohibit it due to concerns over lineage confusion, maternal identity, and the exclusivity of reproduction within marriage. The prohibition is even stronger when the surrogate mother is the second wife. This article concludes that surrogate motherhood in such circumstances constitutes a contemporary fiqh issue that directly affects the protection of lineage, motherhood, and the integrity of Islamic family law.

Keywords: surrogate motherhood, surrogate mother, second wife, Islamic law, lineage.

Introduction

The development of modern reproductive technology has fundamentally changed the way human beings respond to infertility. Whereas in the past the inability to have children was often understood as a condition to be accepted naturally, biomedical advancement now offers various forms of assisted reproduction, ranging from artificial insemination to in vitro fertilisation (IVF).¹ In practice, these technologies were initially

¹ Radhey Shyam Sharma, Richa Saxena, and Rajeev Singh, "Infertility & Assisted

developed to assist married couples who biologically faced obstacles in conceiving naturally, so that the presence of assisted reproductive technology was viewed as a form of medical progress that offered new hope to families longing for children. Among these various technologies, surrogate motherhood has become one of the most complex issues because it concerns not only reproductive success, but also raises legal, ethical, lineage-related, maternal, and familial-structural questions.² In this context, the issue of surrogate motherhood is no longer confined solely to the medical domain, but has moved into the social, legal, and religious spheres, requiring a deeper reading.

This complexity becomes even more apparent when surrogate motherhood is no longer understood merely as the renting of the womb of an unrelated woman by a couple unable to have children, but also when it emerges within a family configuration that is formally bound by a valid marriage. In this context, the issue becomes far more complicated when an embryo originating from the husband's sperm and the wife's ovum is implanted into the womb of another wife of the same husband. At first glance, this model appears different from the form of commercial surrogacy commonly debated, since all parties involved are within valid marital relationships. Yet it is precisely at this point that the issue becomes increasingly sensitive in Islamic law, because the debate no longer lies only in whether the use of another woman's womb is permissible, but in a more fundamental question: whether the validity of marriage among all parties automatically removes the *shar'i* problem in such a practice, or whether the womb of another wife must still be regarded as a legally distinct entity in reproductive terms. Accordingly, the issue of surrogate motherhood in cases where the surrogate mother is the second wife presents a more specific and more complex problem than the general debate on IVF or womb renting.

In the context of Islamic law, this issue is important because surrogate motherhood is not explicitly recognised in the primary sources of classical fiqh. It is a product of scientific and technological development that emerged long after the formative period of classical Islamic law. As a result,

Reproduction: A Historical & Modern Scientific Perspective," *The Indian Journal of Medical Research* 148, no. Suppl (December 2018): S10-14, doi:10.4103/ijmr.IJMR_636_18.

² Paul R. Brezina and Yulian Zhao, "The Ethical, Legal, and Social Issues Impacted by Modern Assisted Reproductive Technologies," *Obstetrics and Gynecology International* 1 (2012): 686253, doi:10.1155/2012/686253.

responses to this issue depend on the *ijtihad*-based construction of scholars in reading the relationship between texts, the objectives of Sharia, and changing realities. On the one hand, there is a need to respond to infertility as a real problem in family life. On the other hand, Islamic law also emphasises the protection of clear lineage, the sanctity of marital relations, and the orderliness of family structure. It is this tension between two interests that makes the practice of surrogate motherhood, especially in cases where the surrogate mother is the second wife, a far from simple field of *ijtihad*. Therefore, differences among scholars in responding to this issue cannot be read merely as technical legal differences, but as a reflection of how they weigh reproductive need, the protection of progeny, and the potential harms that may arise.

A number of previous studies on surrogate motherhood can generally be grouped into several tendencies. The first group focuses on the legality of surrogate motherhood from the perspective of civil law and Indonesian positive law, particularly in relation to the validity of agreements, the status of the child, and the absence of clear national legal norms. Studies in this category generally position surrogacy as a contractual and juridical issue, with primary attention given to the lack of clear regulation in Indonesian positive law.³ The second group discusses surrogate motherhood from the general perspective of Islamic law, highlighting whether womb renting is permissible or prohibited, the lineage status of the child, and the position of both the biological mother and the birth mother. In this group, the discussion still tends to move at a general level, so that it has not sufficiently addressed more specific and more problematic forms of cases.⁴ The third

³ Yogi Yasa Wedha et al., "Analisis Yuridis Surrogate Mother Menurut Hukum Di Indonesia," *Jurnal Yusthima* 5, no. 2 (2025): 464-76, <https://e-journal.unmas.ac.id/index.php/yusthima/article/view/12714>; Danu Arya Fikri, "Fenomena Surrogate Mother Dan Hak Privasi Data Genetik Anak Menurut Hukum Positif Di Indonesia," *RIGGS: Journal of Artificial Intelligence and Digital Business* 4, no. 4 (2026): 4510-18, doi:10.31004/riggs.v4i4.4298; Vicky Chrisna Vorty and Kartika Dewi Irianto, "Perlindungan Hukum Terhadap Para Pihak Dalam Perjanjian Sewa Rahim (Surrogate Mother) Ditinjau Dari Perspektif Hukum Positif," *INNOVATIVE: Journal of Social Science Research* 5, no. 2 (2025): 1129-42, doi:10.31004/innovative.v5i2.17719.

⁴ Cindy Yulia Putri and Sulhi M Daud Abdul Kadir, "Perspektif Hukum Islam Terhadap Anak Yang Dilahirkan Melalui Ibu Pengganti (Surrogate Mother)," *Zaaken: Journal of Civil and Business Law* 4, no. 2 (2023): 258-72; Mohammad Fikrul Islam and Moh Sirojuddin, "TINJAUAN HUKUM ISLAM TERHADAP STATUS HUKUM ANAK HASIL SURROGATE MOTHER," *Mabahits: Jurnal Hukum Keluarga Islam* 5, no. 2 (2024): 36-50, doi:10.36835/mabahits.v5i02.1872.

group examines fatwas issued by religious institutions, including the Indonesian Ulama Council, particularly in relation to assisted reproductive technology, IVF, and embryo transfer.⁵ Such studies have made an important contribution to explaining the normative position of fatwa institutions, yet most of them remain limited to presenting the content of the fatwas or their basic arguments, without specifically concentrating on the configuration of cases in which the surrogate mother is the second wife within a valid polygamous marriage.

Although previous studies have provided an important foundation for understanding surrogate motherhood from legal, ethical, and religious perspectives, there remains a field of inquiry that has not been explored in sufficient detail, namely how Islamic scholars view the legal status of surrogate motherhood when the surrogate mother is not an unrelated woman, but the second wife or another wife of the same husband. This issue is important because it lies in a grey area. On the one hand, it appears to contain an element of permissibility because the sperm and ovum originate from a legally married couple and the woman who carries the pregnancy is also bound in marriage to the same husband. On the other hand, it still raises serious problems concerning maternal status, clarity of lineage, inheritance rights, and the legitimacy of reproductive relations within a polygamous family. In other words, this issue cannot be adequately explained only through the general approach concerning the prohibition of sperm donation, ovum donation, or womb renting, because this case presents a different relational configuration and therefore requires a more specific reading. It is this gap in the literature that this article seeks to address.

Based on these issues, this article focuses on Islamic scholars' views regarding the legal status of surrogate motherhood, particularly when the surrogate mother is the second wife. This focus is important not only for mapping the legal positions of scholars, but also for examining how their arguments are constructed, where their views converge and diverge, and how the womb, lineage, and motherhood are understood within the

⁵ Taufiq Hidayat and Muhammad Yunus, "Hukum Sewa Rahim Perspektif Jurnalis Uddin Dihubungkan Dengan Fatwa MUI Nomor: KEP-952/MUI/XI/1990," *Jurnal Riset Hukum Keluarga Islam* 3, no. 1 (2023): 19-24, doi:10.29313/jrhki.vi.1878; Endah Saputri and Abdullah Syarofi, "Status Nasab Dan Kewarisan Anak Hasil Sewa Rahim Perpektif Fatwa Majelis Ulama Indonesia Dan Kompilasi Hukum Islam," *The Republic: Journal of Constitutional Law* 3, no. 1 (2025): 7-16, doi:10.55352/htn.v3i1.1705.

framework of Islamic family law. By concentrating on this specific case, this article does not treat surrogate motherhood merely as an issue of modern reproduction, but as a contemporary fiqh problem that brings together technology, family, and Islamic legal authority within a highly complex field of discussion. Therefore, the main question addressed in this article is: how do Islamic scholars view the legal status of surrogate motherhood, particularly when the surrogate mother is the second wife?

Research Methods

This study employs a qualitative approach in the form of library research to address the conceptual and normative issue of Islamic scholars' views on the legal status of surrogate motherhood, particularly when the surrogate mother is the second wife. This approach was chosen because the issue under examination is not an empirical field phenomenon requiring data collection through observation or interviews, but rather a debate in Islamic law constructed through religious argumentation, fatwas, and fiqh reasoning on contemporary reproductive issues. In this context, library research enables a more in-depth exploration of sources that record the ijihad-based constructions of Islamic scholars, while also providing space to examine the differences in their arguments in a highly specific case, namely when an embryo derived from a legally married husband and wife is implanted into the womb of another wife of the same husband.

In terms of its character, this study is descriptive-analytical. The descriptive aspect is used to map the genealogy of the emergence of surrogate motherhood, the development of its terminology and practice, and the various views of Islamic scholars that have developed in response to this issue. The analytical aspect is used to examine the foundations of the arguments employed by scholars, both those who tend to permit the practice and those who reject it, with particular attention to lineage, motherhood, reproductive exclusivity within marriage, and the legal status of the second wife's womb in the practice of surrogate motherhood. In addition, this study also contains a limited comparative dimension, as it compares patterns of argumentation between two major currents of Islamic legal thought, namely *Shi'a* and *Sunni* thought, before narrowing the discussion to the views of several religious authorities that specifically address the case in which the surrogate mother is the second wife.

The research data consist entirely of secondary data obtained from literature relevant to the theme of the study. The main sources in this

research include books, scholarly journal articles, fatwas, and decisions of religious institutions that discuss surrogate motherhood, assisted reproductive technology, and the views of Islamic scholars on cases involving the use of another woman's womb in the process of pregnancy. These sources were selected based on their proximity to the focus of the research, particularly literature that directly discusses the views of scholars in the Muslim world on surrogate motherhood and literature that specifically refers to the practice of embryo transfer into the womb of another wife of the same husband. Thus, the selection of sources was not directed towards covering the entire debate on modern reproductive technology in general, but was focused on materials that have direct relevance to the research question of this article. Among the primary sources utilized are the fatwas (legal rulings) of the International Islamic Fiqh Academy (Majma' al-Fiqh al-Islami), the decrees of Muhammadiyah, and the resolutions of Nahdlatul Ulama's (NU) Bahtsul Masail.

Data were collected through a systematic review of literature containing discussions of the genealogy of surrogate motherhood, the views of *Shi'a* and *Sunni* schools of thought, decisions of international fiqh institutions, and the opinions of religious organisations relevant to the case in which the surrogate mother is the second wife. In this process, the sources were read, classified, and grouped into several main themes, namely the history and development of surrogate motherhood, the construction of Islamic law regarding the practice of surrogate motherhood in general, differences between *Sunni* and *Shi'a* perspectives, and the opinions of scholars or religious institutions concerning the use of the womb of another wife of the same husband. This classification is important so that the discussion does not stop at an inventory of opinions, but is able to reveal the pattern of argumentation that develops from the general level to a more specific level.

Data analysis was carried out using content analysis combined with thematic reading. Content analysis was used to identify, interpret, and compare the substance of the arguments contained in each source, particularly those relating to the reasons for permitting or prohibiting the practice of surrogate motherhood. Thematic reading was used to organise the interconnections between arguments within the major themes that emerged in the discussion, such as infertility, the protection of lineage, maternal status, the role of the womb in reproduction, and the position of a

third party within marital relations. Through this technique, the study not only describes what Islamic scholars have stated, but also explains how and why differences of opinion arise in response to the case of surrogate motherhood when the surrogate mother is the second wife.

Through this method, the study is directed not towards establishing a new legal ruling, but towards systematically explaining the map of Islamic scholars' views on a specific contemporary fiqh issue. Therefore, the main contribution of this study lies in its effort to clarify the field of Islamic legal debate concerning surrogate motherhood in the case where the surrogate mother is the second wife, while also showing the points of convergence and divergence in the arguments used by scholars in understanding the relationship between reproductive technology, lineage, motherhood, and the structure of the Islamic family.

Results and Discussion

The Genealogy of the Emergence of Surrogate Motherhood

The early emergence of surrogate motherhood in a simple sense can be traced to the story of Prophet Ibrahim, peace be upon him, and his wife, Sarah, who had not had children even in old age. In that situation, Prophet Ibrahim later married Siti Hajar, and from that marriage Ismail, peace be upon him, was born.⁶ In a broader historical context, efforts to obtain offspring through the involvement of another woman were also known in ancient societies, particularly in the Middle East, through the practice of polygamy. At that time, polygamy became one of the traditional ways to address infertility while maintaining the continuity of lineage. A similar practice was also found in the royal circles of ancient Egypt, where Pharaohs preserved the male line of descent and succession to the throne through children born to concubines who were still recognised as legitimate descendants. A more or less similar pattern was also practised in other kingdoms, including those of Greece and Rome.⁷ Nevertheless, these forms cannot, of course, be fully equated with surrogate motherhood in the modern sense. The similarity lies in their basic purpose, namely to enable couples who had not yet had offspring to obtain children through the

⁶ Waqas Ali Haider et al., "Surrogacy as A 'Womb-On-Hire': A Religious Analysis of Its Approach to Infertility," *Journal of Population and Therapeutics and Clinical Pharmacology* 30, no. 18 (November 22, 2023): 2615–27, doi:10.53555/jptcp.v30i18.3451. 2617.

⁷ Memona Maqsood, Farhana Mehmood, and Hafsa Abbasi, "Shariah Perspective on Surrogacy: Legislation in Pakistan Regarding Protection of Woman's Right," *Acta Islamica* 10, no. 2 (2022): 15–29.

assistance of another woman.

The development of surrogate motherhood in its modern form began to take a more concrete shape when the world's first surrogate motherhood contract was recorded in 1976 by Elizabeth Keane, with a value of USD 10,000. At this stage, the practice was still classified as traditional surrogacy, namely through artificial insemination by injecting the husband's sperm from the couple wishing to have a child into the womb of the surrogate woman. This experience later encouraged Elizabeth Keane to establish an infertility centre in the United States, which subsequently handled thousands of pregnancies through surrogate motherhood arrangements.⁸ This event marked the point at which surrogate motherhood was no longer understood merely as a traditional social means of obtaining offspring, but began to shift into part of reproductive services based on medical technology.

A more decisive transformation occurred on 25 July 1978, when the first baby conceived through an IVF procedure, Louise Brown, was born in Manchester, England.⁹ This birth became an important milestone in the history of modern reproductive technology, particularly through the method of in vitro fertilisation (IVF). As one of the modern solutions to infertility, IVF enables fertilisation to occur outside the body when the husband's sperm is unable to reach the egg naturally due to certain obstacles. In this procedure, an egg is retrieved from a woman's ovary during ovulation and then brought together with the husband's sperm in vitro to allow fertilisation to occur. The fertilised ovum is then maintained in a laboratory vessel until it develops into an embryo, before finally being implanted into a woman's womb. Through this technique, couples who previously faced obstacles in obtaining offspring naturally have the opportunity to have a biological child.¹⁰ From this development, the idea of surrogate motherhood later emerged in a more advanced form, namely the use of another woman's womb to carry an embryo resulting from artificial fertilisation.

⁸ Haider et al., "Surrogacy as A 'Womb-On-Hire': A Religious Analysis of Its Approach to Infertility." 2618.

⁹ Remah MA Kamel, "Assisted Reproductive Technology after the Birth of Louise Brown," *Gynecology & Obstetrics* 03, no. 03 (2013): 96-109, doi:10.4172/2161-0932.1000156.

¹⁰ Aref Abu-Rabia, "Infertility and Surrogacy in Islamic Society: Socio-Cultural, Psychological, Ethical, and Religious Dilemmas," *The Open Psychology Journal* 6, no. 1 (September 30, 2013): 54-60, doi:10.2174/1874350101306010054.

Along with the development of this practice, several terms came to be used to explain the position and role of each party involved in the procedure. The term surrogacy refers to the procedure involving the use of a surrogate mother itself. Meanwhile, surrogate mother refers to the woman whose womb is used to carry the foetus. The couple or individual who uses another woman's womb to carry their child is referred to as the intended parents.¹¹ This terminological clarification is important because legal, ethical, and religious debates concerning surrogate motherhood essentially rest on the relationship between the parties involved in the entire process.

Islamic Scholars' Views on the Legal Status of Surrogate Motherhood

The phenomenon of surrogate motherhood is not explicitly found in the primary sources of Islamic law, either in the Qur'an or the Sunnah, nor is it found in the secondary sources of classical Islamic law. The absence of such discussion is understandable because this practice is a product of modern reproductive technology, which was unknown at the time of the revelation of the texts and had not yet become a legal issue discussed in classical fiqh works. Therefore, this issue requires the capacity for *ijtihad* among *mujtahids* to determine its legal status in order to respond to a new problem faced by the Muslim community. In such a context, the determination of the law cannot be carried out through a purely textual approach alone, but must involve intellectual reasoning that considers necessity, public benefit, and efforts to prevent harm. These considerations are then strengthened by the views of biomedical experts at the time the fatwa is issued. For this reason, the practice of surrogate motherhood remains a subject of continuing debate, not only among Muslims, but also within other religious communities.¹²

In responding to the legal status of surrogate motherhood, at least two major views have developed in the Muslim world, namely the *Shi'a* view and the *Sunni* view. This difference shows that advances in reproductive technology have encouraged the emergence of diverse forms of legal reasoning, especially when such technology touches upon sensitive issues such as lineage, marriage, motherhood, and the legitimacy of offspring. On the one hand, *Shi'a* scholars tend to allow room for the permissibility of

¹¹ Viveca Söderström-Anttila et al., "Surrogacy: Outcomes for Surrogate Mothers, Children and the Resulting Families – a Systematic Review," *Human Reproduction Update* 22, no. 2 (2016): 260–76, doi:10.1093/humupd/dmv046.

¹² Luvithaa Veerasamy et al., "Surrogacy: A Legal Analysis from Religious Perspective in Malaysia" (Selangor, 2023).

surrogate motherhood, but only within the context of a legally married couple as an effort to overcome sterility or infertility. This position can be seen in the practice of surrogacy that has developed among *Shi'a* communities in Iran, Lebanon, and several other Muslim countries. According to *Shi'a* theology, an embryo cannot be equated with sperm. Therefore, the implantation of an embryo into the womb of a surrogate mother is regarded as different from inserting the sperm of a man who is not the husband into a woman's womb. At this point, surrogacy is understood more as the transfer of a foetus from one womb to another, rather than as a form of sexual violation, so they do not see any element of sin in the procedure.¹³

This view gained stronger legitimacy when Ayatollah Ali Hussein Khomeini, as the Supreme Leader of Iran, approved all forms of third-party contribution in procreation, whether in the form of sperm, ova, or a womb, on the basis of a temporary marriage contract, or *mut'ah*, and then issued a religious fatwa concerning it. Nevertheless, support among *Shi'a* scholars themselves is not absolute. To date, only a small number of *Shi'a* scholars fully support the practice because others continue to harbour concerns regarding the certainty of lineage and the determination of the legitimate father or parents, especially in cases involving sperm donation.¹⁴ Even so, womb renting or genetic gestational surrogacy continues to take place and has even received social and religious support within certain communities. This indicates that, in *Shi'a* theology, the embryo is positioned as an independent entity, namely as a prospective baby at an early stage of development composed of gametes without direct sexual contact that could be categorised as adultery. From this perspective, there is no violation of religious provisions or confusion of lineage, since the intended husband and wife are clearly known and can still be regarded as the real parents.¹⁵

A view tending towards permissibility is also expressed by Ali Akbar. He argues that entrusting the result of an IVF procedure to a woman who

¹³ Ayesha Alvi and Mohammed Rizwan, "Retracing the Islamic Prohibition on Genetic Gestational Surrogacy (Uterine Service) for Married Couples: Scientific and Analogical Perspectives," *Australian Journal of Islamic Studies* 8, no. 1 (2023): 62-89.

¹⁴ Marcia C. Inhorn and Soraya Tremayne, "Islam, Assisted Reproduction, and the Bioethical Aftermath," *Journal of Religion and Health* 55, no. 2 (April 24, 2016): 422-30, doi:10.1007/s10943-015-0151-1.

¹⁵ Alvi and Rizwan, "Retracing the Islamic Prohibition on Genetic Gestational Surrogacy (Uterine Service) for Married Couples: Scientific and Analogical Perspectives." 76.

is not the biological mother may be considered lawful if the biological mother is unable to become pregnant due to a disorder of the womb. In his argument, he analogises this practice with the permissibility of breastfeeding a baby by another woman, which in Islam is not only permitted, but may also be compensated. On the basis of this analogy, payment to a woman who lends her womb is considered justifiable.¹⁶ This pattern of reasoning shows that some scholars who permit surrogacy seek to place the issue of the surrogate womb within the framework of reproductive assistance, rather than within the framework of sexual violation or the destruction of the family institution.

Another argument supporting permissibility is based on the interpretation that Qur'anic verses prohibiting adultery cannot automatically be used as an obstacle to the implantation of exogenous DNA into the womb of a surrogate mother. In surrogacy, the ovum is fertilised outside the body without any physical relationship between the prospective father and the surrogate mother. After fertilisation has occurred, the embryo is then implanted into the surrogate mother's womb in order to receive nutrition and develop further. At this stage, what is implanted into the surrogate mother's body is not the sperm of an unrelated man, but an embryo that already contains its own group of cells and DNA as genetic material from the intended father. On this basis, the practice is viewed as different from adultery. In certain arguments, it is even compared to a woman receiving an organ donation from a man to whom she is not married. Blood and organ donation in Islam are not only regarded as good deeds, but also receive strong moral protection.¹⁷ Therefore, for those who permit it, the use of a surrogate womb can be understood as a form of biological assistance that does not automatically contradict religious principles.

In fundamental contrast to the *Shi'a* view, *Sunni* scholars show a highly cautious attitude and tend to reject surrogate motherhood firmly. This caution arises from the effort to safeguard the basic principles of Sharia, especially those related to the clarity of lineage, the sanctity of marital relations, and the protection of family structure. One scholar who explicitly

¹⁶ Nurul Mujahidah et al., "The Legality of Surrogate Mothers From The Islamic Law Perspective," *Al-Risalah Jurnal Ilmu Syariah Dan Hukum* 22, no. 1 (April 1, 2022): 42-51, doi:10.24252/al-risalah.vi.27944. 44.

¹⁷ Muhammad Tayyeb Nadeem, Fouzia Ayub, and Ihsanullah Chisti, "Exploring The Status of Surrogacy: An Islamic Juridical Review," *Acta Islamica* 10, no. 1 (2022): 1-18. 12.

prohibits womb renting is Al-Syaikh Ali al-Thanthawi. He rejects the practice of IVF using a surrogate woman because, in his view, a woman's womb is not a neutral container whose contents can be transferred at will from one woman to another. According to him, the womb plays a highly important role in the formation of the foetus, since the foetus grows by consuming nutrients from the blood of the mother who carries it.¹⁸ Thus, pregnancy cannot be reduced merely to the question of where an embryo grows, but involves a more complex biological relationship between the foetus and the woman who carries it.

In line with this, *Sunni* scholars have developed a number of normative arguments to reject the involvement of third parties in the reproductive process. In their view, marriage is a sacred contract between a man and a woman, and throughout the duration of that marriage, no third party may interfere in the primary functions of marriage, namely sexual relations and procreation. Therefore, reproduction is only justified when it takes place between a legally married husband and wife, without the intervention of a sperm donor, an egg donor, or the lending of a womb. The presence of a third party in the reproductive process is regarded as having the potential to create disorder within the family structure and confusion over lineage. One form of such confusion appears in the fundamental question of who should be recognised as the mother of a child: the woman who carries and gives birth to the child, or the woman who owns the egg.¹⁹ To strengthen this view, *Sunni* scholars refer to a number of Qur'anic verses that emphasise the importance of safeguarding reproductive honour within the limits of a valid marriage.

وَالَّذِينَ هُمْ لِأَعْتَابِهِمْ حَفِظُونَ^{١٨} إِلَّا عَلَىٰ أَزْوَاجِهِمْ^{١٩} أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ^{٢٠} فَمَنِ ابْتَغَىٰ
وَرَاءَ ذَلِكَ فَأُولَٰئِكَ هُمُ الْعَادُونَ^{٢١}

And those who guard their private parts, except with their wives or those whom their right hands possess, for indeed they are not blameworthy. But whoever seeks beyond that, it is they who are transgressors (Qur'an, al-Mu'minun [23]: 5-7).

¹⁸ Mujahidah et al., "The Legality of Surrogate Mothers From The Islamic Law Perspective." 45.

¹⁹ Mujibu Yahaya, "Modern Surrogacy As A Solution To The Infertile Couples: An Islamic Perspective," *International Journal of Innovative Legal & Political Studies* 11, no. 1 (2023): 73-79. 75.

وَالَّذِينَ هُمْ لِأَعْيُنِهِمْ هُمْ حَافِظُونَ إِلَّا عَلَىٰ أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ فَمَنْ ابْتغى
وَرَاءَ ذَلِكَ فَأُولَٰئِكَ هُمُ الْعَادُونَ

Among those who are saved from punishment are those who guard their private parts, except with their wives or those whom their right hands possess, for indeed they are not blameworthy. But whoever seeks beyond that, it is they who are transgressors (Qur'an, al-Ma'arij [70]: 29-31).

وَاللَّهُ جَعَلَ لَكُم مِّنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُم مِّنْ أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً وَرَزَقَكُمْ مِنَ الطَّيِّبَاتِ
أَقْبَالِ الْبَاطِلِ يُؤْمِنُونَ وَبِنِعْمَتِ اللَّهِ هُمْ يَكْفُرُونَ

Allah has made for you spouses from among yourselves, and has made for you, from your spouses, children and grandchildren, and has provided you with good things. Do they then believe in falsehood while denying the favour of Allah? (Qur'an, al-Nahl [16]: 72).

Based on these verses, scholars who reject surrogate motherhood affirm that the Qur'an has set clear boundaries regarding legitimate reproductive relations, namely that they must take place only within the bond of marriage. Therefore, producing a child through the involvement of a party outside the legally married couple is viewed as contrary to this basic principle. Surah al-Nahl verse 72, for instance, is understood as an indication that reproduction is one of the important purposes of marriage, so the process must not involve anyone outside the husband and wife. In the practice of surrogate motherhood, another woman is involved in carrying the child of the couple, and according to this view, this disrupts the boundary of reproductive exclusivity within marriage. On this basis, the argument equating a surrogate mother with a wet nurse is considered weak. A wet nurse does have a caregiving relationship, but she has no biological relationship with the child she breastfeeds and no biological relationship whatsoever with the child's father. By contrast, in cases of surrogacy, the surrogate mother carries a foetus derived from the father's sperm or from an embryo fertilised by the father's sperm, making her biological involvement far more complex than a mere breastfeeding relationship.²⁰

This rejectionist view has also been reinforced through collective forums of Muslim scholars from various religious institutions that

²⁰ Nadeem, Ayub, and Chisti, "Exploring The Status of Surrogacy: An Islamic Juridical Review." 8.

specifically discussed the suitability of modern reproductive technology from the perspective of *Sunni* Islam. One important forum took place at Dar al-Ifta in Cairo in 1980. At that meeting, the majority of *Sunni* scholars categorically prohibited all forms of assisted reproduction involving third parties, including sperm donation, egg donation, and womb donation.²¹ This prohibition was based on the assumption that the surrogate mother would carry a baby originating from the sperm of a man to whom she was not married. For this reason, the union of an egg and sperm that do not originate from a legally married husband and wife was regarded as a form of zina. Thus, the forum affirmed the strong tendency among *Sunni* scholars to close all reproductive avenues that could potentially lead to confusion over lineage and violations of the boundaries of marriage.

Nevertheless, the dynamics of *ijtihad* among *Sunni* scholars did not come to a complete halt with this initial rejection. At the meeting of *Majma' al-Fiqh al-Islami* in 1984, the scholars reviewed their previous fatwa prohibiting third-party assisted reproduction.²² This review was undertaken as a form of sympathy towards the psychological and social pressures faced by infertile couples, and as an effort to ease the burden on families threatened by conflict and divorce due to the absence of children. Within this framework, a very limited space of permissibility briefly emerged, namely for genetic gestational surrogacy within a valid bigamous marriage, where the egg of a lawful wife who was unable to become pregnant was fertilised by the husband's sperm, and the resulting embryo was then implanted into the womb of another lawful wife of the same husband.²³ This development shows that the legal debate on surrogate motherhood was not entirely linear, but moved dynamically between the consideration of safeguarding Sharia principles and responding to the real needs of infertile couples.

However, this highly limited openness did not last long. In 1985 and 1986, *Majma' al-Fiqh al-Islami* withdrew its approval of the practice of surrogate motherhood. At the Second Conference held in Jeddah, Saudi

²¹ G.I. Serour, M. El Ghar, and R.T. Mansour, "In Vitro Fertilization and Embryo Transfer in Egypt," *International Journal of Gynecology & Obstetrics* 36, no. 1 (September 1991): 49-53, doi:10.1016/0020-7292(91)90178-8.

²² Gamal I. Serour, "Islamic Perspectives of Ethical Issues in ART," *Middle East Fertility Society Journal* 10, no. 3 (2005): 185-90.

²³ Alvi and Rizwan, "Retracing the Islamic Prohibition on Genetic Gestational Surrogacy (Uterine Service) for Married Couples: Scientific and Analogical Perspectives." 64.

Arabia, on 10 to 16 *Rabi' al-Awwal* 1406 AH, corresponding to 22 to 28 December 1985, through Decision/Resolution No. 5 (5/2) on In Vitro Fertilisation (IVF), the *Majma'* stated that the issue still required more in-depth medical and legal study. After examining various studies by scientists and physicians from medical, technical, and jurisprudential perspectives, the members of the *Majma'* considered that the issue of IVF and surrogate motherhood could not yet be decided definitively without a more complete understanding of all its implications. Therefore, the issuance of a definitive resolution was postponed until the next session, and the President of the Academy at that time, H.E. Sheikh Dr Bakr bin Abdullah Abu Zayd, was requested to conduct a comprehensive study covering all legal and medical aspects before the matter was discussed again at the following session.²⁴

A firmer decision was only reached at the Third Conference of the Council of the International Islamic Fiqh Academy of the Organisation of the Islamic Conference in Amman, Jordan, on 8 to 13 Safar 1407 AH, corresponding to 11 to 16 October 1986. Through Resolution No. 16 (4/3) on In Vitro Fertilisation, the Academy finally established its position after examining the submitted research papers and listening to the explanations of experts and physicians. The resolution explained that there were seven methods of artificial insemination known at that time. The first five methods were declared absolutely prohibited, either because of their intrinsic nature or because of the consequences they produced, such as confusion of lineage (*ikhtilāṭ al-ansāb*), the loss of clarity regarding the role of the mother, and various other consequences that contradict Sharia. The five prohibited methods are as follows:

1. Fertilisation that takes place in vitro between sperm taken from the husband and an egg taken from a woman who is not his wife, after which the fertilised egg is implanted into his wife's womb.
2. Fertilisation that takes place in vitro between sperm taken from a man who is not the husband and an egg taken from the wife, after which the fertilised egg is implanted into the wife's womb.

²⁴ Organization of Islamic Cooperation, *Resolutions and Recommendations of The International Islamic Fiqh Academy Sessions 2-24 Resolutions 1-238 1406-1441/1985-2019*, 2nd ed. (Jedah: International Islamic Fiqh Academy, 2021).

3. Fertilisation that takes place in vitro between sperm and an egg taken from a married couple, after which the fertilised ovum is implanted into the womb of a volunteer woman.
4. Fertilisation that takes place in vitro between sperm and an egg taken from two unrelated persons, after which the fertilised ovum is implanted into the wife's womb.
5. Fertilisation that takes place in vitro between sperm and an egg taken from a married couple, after which the fertilised egg is implanted into the womb of another wife of the husband.

By contrast, the Academy stated that there was no Sharia prohibition against the sixth and seventh methods, provided that they were genuinely necessary and that all required precautions were observed. The two permissible methods are as follows:

1. In vitro fertilisation of the wife's egg with her husband's sperm, followed by implantation of the fertilised egg into the womb of the same woman.
2. External insemination, namely by taking the husband's sperm and injecting it into the appropriate place in his wife's womb for internal fertilisation.

From the overall arguments that have developed regarding the legal status of using a surrogate mother to obtain offspring, it appears that *Shi'a* and *Sunni* scholars in fact share one point of convergence, namely that both restrict the legitimacy of reproductive technology to legally married couples. In other words, the sperm and egg used must come from that couple, not from a sperm donor or an egg donor, as is also found in practices in the Western world. However, this agreement ends when the discussion moves to the question of whose womb may be used as the place where the embryo grows and develops until birth. It is at this point that a fundamental difference emerges. *Shi'a* scholars tend to permit the use of another woman's womb to carry the embryo of another couple, whereas *Sunni* scholars reject it because it is viewed as opening the way to confusion of lineage and a violation of the principle of reproductive exclusivity within marriage.

Thus, the issue that remains at the centre of the debate is no longer merely whether modern reproductive technology may be used, but more specifically who, from a Sharia perspective, may serve as the site for embryo implantation. This debate becomes even more complicated when the womb

used is not that of an unrelated woman, but the womb of another wife of the husband whose sperm is used. This means that fertilisation is carried out outside the womb through laboratory assistance between the husband's sperm and the egg of his lawful wife, and after the embryo has formed, it is implanted into the womb of another wife who voluntarily carries the child of her husband and her co-wife, who is unable to become pregnant because of a disorder of the womb. It is precisely at this point that differences in legal argumentation become increasingly sharp, and from here the discussion needs to be directed more specifically towards the views of scholars on surrogate motherhood in cases where the surrogate mother is the second wife.

Islamic Scholars' Opinions on the Legal Status of Surrogate Motherhood Specifically in Cases Where the Surrogate Mother Is the Second Wife

After the general debate on the practice of surrogate motherhood among Islamic scholars has been mapped into two major currents, namely the view that tends towards permissibility and the view that tends towards prohibition, the discussion becomes increasingly specific when the issue is directed towards a narrower case, namely when the surrogate mother is not an unrelated woman, but the second wife or another wife of the same husband. At this point, the legal issue no longer revolves solely around whether the involvement of a third party in reproduction is permissible, but has moved into a more complex area, namely whether the womb of another wife within a polygamous marriage can be equated with the womb of the wife who owns the ovum, or whether it must still be regarded as a legally separate party in reproductive terms. Therefore, the views of scholars on this case are important to examine more specifically, because they reveal how fiqh arguments are constructed in response to a highly specific and complex development in reproductive technology.

Majma' Al-Fiqh al-Islami (IIFA-OIC)

As stated earlier, *Majma' al-Fiqh al-Islami*, at its Third Conference in Amman in 1986, established a prohibition against in vitro fertilisation involving sperm and an egg taken from a married couple, followed by the implantation of the resulting embryo into the womb of another wife of the same husband. This prohibition was not a decision reached in a simple manner, but was the result of a fairly lengthy process of consideration, including reference to the decision (*qarar*) of *al-Majma' al-Fiqhi al-Islami li Rabithah al-'Alam al-Islami* at its eighth session at the headquarters of

Rabithah al-'Alam al-Islami in Makkah, from 28 *Rabi' al-Akhir* 1405 AH to 7 *Jumada al-Ula* 1405 AH, corresponding to 19 to 28 January 1985 CE. Thus, the position of the *Majma'* on this issue was in fact built upon a collective process of study that considered both factual possibilities and their legal implications.

At that meeting, the scholars discussed in detail the various possibilities that could arise when the sperm and egg of a married couple are fertilised in a laboratory, and the resulting embryo is then implanted into the womb of another wife of the same husband. One possibility of particular concern was that the woman who receives the embryo originating from the ovum of the first wife could still become pregnant from her own ovum as a result of sexual relations with her husband around the time of embryo implantation. If the woman were then to give birth to twins, difficulty would arise in distinguishing which child came from the implanted embryo and which child came from the fertilisation of her own ovum. This concern becomes even more serious when one also considers the possibility that one of the two embryos may die at the *'alaqah* or *mudghah* stage, or that it may not be possible to ascertain whether the implanted embryo successfully attached to the womb or whether the embryo that developed was in fact derived from the woman who owned the womb herself. All these possibilities indicate the potential mixing of maternal lineage within a single pregnancy, which ultimately creates legal difficulties in determining lineage, maternal status, and other legal consequences.²⁵

For this reason, at the initial stage, the scholars did not immediately issue a final ruling on this case. They temporarily deferred the matter before finally deciding in 1986 that a woman was not permitted to carry a child belonging to her husband and her co-wife. This decision arose from the concern that such a pregnancy could create ambiguity when determining whether the baby being carried was the child of the husband and his co-wife, or instead her own child with that husband. In other words, the prohibition was closely connected to the protection of clear lineage. Within this framework, the use of one wife's womb to carry the embryo of another wife is positioned as a complex issue, because it opens the possibility of legal conflict in determining who the legitimate mother is, while also

²⁵ Endy Muhammad Astiwara, "Fikih Kedokteran Kontemporer (Analisis Produk Pemikiran Hukum *Majma'* al-Fiqh al-Islami 1985 - 2010 Dalam Bidang Kedokteran)" (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2014).

broadening the debate among scholars of Islamic law.

Nevertheless, not all religious authorities adopt the same position. Only a small number of scholars allow the possibility of surrogacy between wives. One of them is Mustafa al-Zarqa'. He argues that the foetus implanted into the womb of another wife is still fertilised by the sperm of the husband himself, who is the owner of the *firash*. In this context, the owner of the *firash* is both the husband of the woman who owns the egg and the husband of the woman who owns the womb. Therefore, the child born remains the biological child of that husband. Based on this logic, as long as the wife who owns the egg is indeed unable to become pregnant, he sees no sufficient reason to prohibit another wife of the same husband from carrying a child who is biologically derived from the husband and her co-wife.²⁶ This argument shows that a small number of scholars attempt to place the issue within the scope of a valid marriage, so that the involvement of another wife is not regarded as equivalent to the involvement of an unrelated woman.

A similar view was also expressed by 'Abd al-Mu'ti al-Bayumi, Dean of the Faculty of Theology at al-Azhar University and a member of a religious council, who issued a fatwa permitting womb renting within the family environment, whether between mother and daughter or between wives of the same husband. This fatwa was controversial and was even discussed in the Egyptian parliament. This reality shows that the issue of surrogacy has not only generated debate at the level of Islamic legal theory, but has also reached the public sphere and political institutions. In subsequent developments, the debate on surrogacy among *Sunni* scholars reopened. Some religious authorities argued that surrogate motherhood could be practised under certain conditions, while others continued to reject it due to the many social, cultural, and legal problems it may generate.²⁷

However, upon closer examination, this debate also shows that some of the reasons for prohibition advanced by earlier scholars were strongly influenced by the technological limitations of their time. Concerns regarding confusion of lineage and the difficulty of determining the mother of a child born through such a process were indeed highly reasonable when

²⁶ Endy Muhammad Astiwara, *Halal Haram Kedokteran Kontemporer* (Jakarta: Pustaka Al-Kautsar, 2015).

²⁷ Abu-Rabia, "Infertility and Surrogacy in Islamic Society: Socio-Cultural, Psychological, Ethical, and Religious Dilemmas." 58.

tools for biological verification had not yet developed. In the context of contemporary medical science, however, the biological identity of a child can in fact be determined more accurately through DNA testing. For this reason, this issue opens space for reconsidering the decision of the *Majma'*, particularly in the case of surrogate motherhood carried out by the second wife. In other words, recent technological developments raise a new question: whether the reasons once used to reject the practice remain fully relevant in the present context, or whether they need to be reread in light of the scientific and social changes that have taken place.

Muhammadiyah

In contrast to the space for debate that still appears open in some individual opinions, the Majelis Tarjih of Muhammadiyah adopts a firmer position. At its congress in 1980 in Klaten, Muhammadiyah only permitted an IVF procedure carried out using the husband's sperm and the wife's egg within a valid marriage, with the resulting embryo then implanted into the womb of the wife who owned the egg herself.²⁸ This permissibility was based on the fact that the IVF programme is used to assist married couples who wish to have children but face obstacles when the husband's sperm is unable to meet the wife's egg naturally inside the womb, even though both are biologically healthy and are in fact capable of fertilisation. In such circumstances, the physician retrieves the husband's sperm and the wife's egg, brings them together in a laboratory vessel, and then places the fertilised result back into the wife's womb until pregnancy and birth occur. This technique is considered permissible in Islam because the husband's sperm remains placed in the womb of the woman to whom he is lawfully married.²⁹

This view is further strengthened by the interpretation of Surah al-Baqarah verse 223, which describes the wife as a field in which seed is planted in order to produce offspring for the husband and wife. Allah, the Exalted, says:

نِسَاؤُكُمْ حَرْثٌ لَّكُمْ فَاتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ وَقَدِّمُوا لِأَنفُسِكُمْ^ط وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّكُمْ مُلْقَوُهُ^ط وَبَشِّرِ

الْمُؤْمِنِينَ

²⁸ Majelis Tarjih Muhammadiyah, *Keputusan Mukhtamar Muhammadiyah Ke-21 Di Klaten: Bayi Tabung Dan Pencangkokan Dalam Sorotan Hukum Islam*. (Yogyakarta: Persatuan, 1980).

²⁹ Fatwa Tarjih, "Hukum Bayi Tabung Dan Kloning Menurut Islam," 2019, <https://fatwatarjih.or.id/hukum-bayi-tabung-dan-kloning-menurut-islam/>.

Your wives are a field for you. Therefore, come to your field as and when you wish, in a proper and lawful manner. Send forth good deeds for yourselves, fear Allah, and know that you will meet Him. Give glad tidings to the believers (Qur'an, al-Baqarah [2]: 223).

From this verse, it is understood that the IVF procedure may still be viewed as one way for the husband to "approach" his wife for the purpose of obtaining offspring, as long as the entire reproductive process remains within the scope of a legally married husband and wife. The limitation set by Muhammadiyah is very clear, namely that this practice may only be carried out within a valid marital relationship and is prohibited when involving a woman who is not the lawful spouse. To strengthen this limitation, Muhammadiyah also refers to hadiths that affirm the child's attachment to a valid marriage and the prohibition against placing semen in a womb to which one has no lawful right.

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ الْوَلَدُ لِلْفِرَاشِ وَالْعَاهِرِ الْحَجَرُ (متفق عليه)

"It was narrated from Abu Hurairah, may Allah be pleased with him, that the Prophet, peace and blessings be upon him, said: 'The child belongs to the bed, meaning to the husband and wife who are bound by a valid marriage contract, and for the adulterer is stoning.'" [Muttafaq 'Alayh].

عَنْ رُوَيْفِعِ بْنِ ثَابِتِ الْأَنْصَارِيِّ قَالَ كُنْتُ مَعَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حَيْثُ افْتَتِحَ حَدِيثُنَا فَقَامَ فِينَا خَاطِبًا فَقَالَ لَا يَحِلُّ لِأَمْرٍ يُؤْمِنُ بِاللَّهِ وَلِيَوْمِ الْآخِرِ أَنْ يَسْقِيَ مَاءَهُ زَرْعَ غَيْرِهِ (رواه أحمد)

"It was narrated from Ruwayfi' ibn Thabit al-Ansari that he said: I was with the Prophet, peace and blessings be upon him, during the Battle of Hunayn. He stood and delivered a sermon among us, in which he said: 'It is not permissible for anyone who believes in Allah and the Last Day to pour his water, meaning his semen, into the field of another.'" (Narrated by Ahmad).

On this basis, Muhammadiyah firmly rejects cases of IVF in which the fertilised embryo is placed in the womb of a second wife or another wife who is not the owner of the egg. According to this view, such a practice cannot be justified. This rejection is further emphasised by referring to the words of Allah, the Exalted, in Surah al-Nisa verse 21:

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

How could you take it back, when you have gone in unto one another as husband and wife, and they, your wives, have taken from you a solemn covenant, namely the bond of marriage? (Qur'an, al-Nisa [4]: 21).

From this verse, it is understood that the husband's sperm may only be placed in the womb of the wife who owns the egg, and may not be placed in the womb of another wife. The reason is that each wife has her own independent marriage contract and covenant with her husband. Therefore, the womb of the second wife or another wife cannot be treated as an extension of the womb of the wife who owns the ovum. The practice is regarded as prohibited because the fertilised ovum does not belong to the second wife or the other wife. In other words, the sperm and ovum that have been brought together in a laboratory vessel may only be placed back into the womb of the wife who owns that ovum. Muhammadiyah's position thus demonstrates a very strong affirmation of the principle of biological and juridical exclusivity in the reproduction of a married couple.

Nahdlatul Ulama (NU)

In line with Muhammadiyah in safeguarding the boundaries of legitimate reproduction, Nahdlatul Ulama has also discussed the issue of IVF since a relatively early period, namely at the NU National Deliberation in Yogyakarta in 1981. The outcome of that forum shows that the legal status of IVF cannot be answered through a single ruling, whether merely permissible or prohibited, but must be detailed according to the case in question. In that forum, three classifications were used as the basis for legal assessment. First, if the semen stored and inserted into a woman's womb does not belong to a husband and wife, then it is prohibited. Secondly, if the semen stored belongs to a husband and wife but the manner of its extraction is not *muhtaram*, then it is also prohibited. Thirdly, if the semen stored belongs to a husband and wife, the manner of its extraction is *muhtaram*, and the semen is inserted into the womb of the wife herself, then it is permissible.³⁰ Thus, from the outset, NU provided fairly detailed limitations, namely that the permissibility of IVF depends on the origin of the semen, the manner of its extraction, and the place of its implantation.

What is meant by *muhtaram* semen is semen that exits or is extracted in

³⁰ Alhafiz Kurniawan, "Hukum Bayi Tabung," *NU Online*, 2020, <https://nu.or.id/bahtsul-masail/hukum-bayi-tabung-UotDz>.

a manner not prohibited by Sharia. The basis for the forum's consideration included reference to the following hadith:

عَنْ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُولُ اللَّهِ مَا مِنْ ذَنْبٍ بَعْدَ الشِّرْكِ مِنْ نُطْفَةٍ وَصَعَهَا رَجُلٌ فِي رَحِيمِ لَا يَحِلُّ لَهُ

"From Ibn 'Abbas, he said: The Messenger of Allah, peace and blessings be upon him, said: "There is no sin greater after shirk than the semen that a man places, through adultery, in the womb of a woman who is not lawful for him."³¹

مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَلِيَوْمِ الْآخِرِ فَلَا يُسْقِيَنَّ مَاءَهُ زَرْعَ أَخِيهِ

"Whoever believes in Allah, the Exalted, and the Day of Judgement must never pour his water, meaning his semen, into the field, meaning the wife, of his brother."³²

On this basis, NU later adopted a firmer position at the 29th Nahdlatul Ulama Congress in Cipasung, Tasikmalaya, on 1 Rajab 1415 AH, corresponding to 4 December 1994 CE. Through the Lajnah Bahtsul Masa'il (LBM) NU in Decision No. 400, it was stated that placing the husband's sperm and the wife's ovum in the womb of another woman is prohibited. This decision also affirmed that womb renting for the purpose of obtaining offspring for another couple is invalid and prohibited. Thus, NU not only rejects womb renting from the perspective of the process itself, but also extends the discussion to the legal consequences for the child born from such a practice.

In the details of its decision, LBM NU stated, first, that renting a womb to obtain offspring for another couple's husband is invalid and prohibited. Secondly, the status of a child born through womb renting, whether in matters of lineage, guardianship, inheritance, or *hadhanah*, cannot be attributed to the owner of the sperm according to Imam Ibn Hajar, because the entry of the semen did not occur in a *muhtaram* manner. Thirdly, the child is affiliated only to the mother. However, in determining who is meant by the legitimate mother according to Sharia, LBM NU provides further detail. If the sperm and ovum implanted cannot possibly mix with the ovum of the woman who owns the womb, then the woman who owns the ovum

³¹ Ibnu Katsir, *Tafsir Al-Qur'an al-'Azhim Juz 3* (Kairo: Darl Hadits, 2003), 50.

³² Ali Ahmad Al-Jurjawi, *Hikmatut Tasyri' Wa Falsafatuh Juz 2* (Beirut: Dar al-Fikr, 1998), 25.

is regarded as the mother of the child. Conversely, if mixing with the ovum of the woman who owns the womb is possible, then the child's mother is the owner of the womb, namely the woman who gives birth.³³

From all these opinions, it appears that *Majma' al-Fiqh al-Islami*, Muhammadiyah, and Nahdlatul Ulama are fundamentally cautious in responding to the practice of surrogate motherhood when the surrogate mother is the second wife. Although a small number of scholars allow room for permissibility, the main tendency of these three authorities remains directed towards rejection, especially because of considerations relating to lineage, maternal status, the validity of embryo placement, and the legal implications that may arise after the child is born. The difference lies in the emphasis of each argument: the *Majma'* highlights the potential for biological ambiguity and the legal difficulties that may arise; Muhammadiyah stresses the exclusivity of reproductive relations based on the marriage contract and ownership of the ovum; while NU provides a more case-based elaboration, particularly concerning the validity of the process, the status of the semen, and the legal consequences for a child born through womb renting. Thus, this subsection shows that the debate on surrogate motherhood involving the second wife is not merely a technical matter of reproduction, but also touches the very core of fiqh construction concerning marriage, lineage, and maternal authority in Islam.

Conclusion

This study finds that Islamic scholars' views on the practice of surrogate motherhood, particularly when the surrogate mother is the second wife, generally tend towards rejection or prohibition. Although a small number of scholars allow room for permissibility on the grounds that the sperm and ovum still originate from a legally married husband and wife, the more dominant view, as reflected in the decisions of *Majma' al-Fiqh al-Islami*, Muhammadiyah, and Nahdlatul Ulama, affirms that the implantation of an embryo into the womb of another wife still gives rise to legal problems, particularly concerning lineage, maternal status, and the clarity of familial relations. Therefore, within the framework of Islamic fiqh, this practice is better understood as impermissible.

This study also has limitations, particularly because its discussion focuses more on mapping scholars' opinions and has not yet provided a

³³ Tim Lembaga Ta'lif wan Nasyair (LTN-PBNU), *Ahkamul Fuqaha* (Surabaya: Khalista, 2019), 482.

more in-depth comparison of their arguments. In addition, this study has not expanded its discussion to the social context and contemporary practices that could enrich the reading of this issue. Nevertheless, the findings of this study still affirm that surrogate motherhood in which the surrogate mother is the second wife is a sensitive issue in Islamic law and requires caution in determining its legal status.

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