

# Research Horizon

ISSN: 2808-0696 (p), 2807-9531 (e)

## Research Horizon

Volume: 05

Issue: 03

Year: 2025

Page: 911-920

## Citation:

Sudistina, S., Hidayat, E., & Miswanto. (2025). Review of the Theory *Maṣlaḥah* of Program In Vitro Fertilization Through Surrogacy. *Research Horizon*, 5(3), 911-920

## Article History:

Received: April 21, 2025

Revised: April 30, 2025

Accepted: May 16, 2025

Online since: June 30, 2025

## Review of the Theory *Maṣlaḥah* of Program In Vitro Fertilization Through Surrogacy

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## Abstract

Knowledge and technology in the field of medicine are developing rapidly and have a significant impact on humanity. One of these advancements is the discovery of a new method to address the issue of couples who are unable to conceive naturally, known medically as in vitro fertilization. This study analyzes the in vitro fertilization program through surrogacy from the perspective of the *maṣlaḥah* theory in Islamic law. The aim of this research is to assess the compatibility of this practice with *maqāṣid al-syarī'ah*, particularly in preserving lineage (*ḥifẓ al-nasl*). Using a literature review method with a qualitative approach, the study finds that surrogacy offers benefits for couples who cannot have children naturally. However, the practice also carries significant risks to the clarity of lineage (*nasab*), which could lead to negative consequences within the Islamic family law system. Based on the *maṣlaḥah* theory, surrogacy is more likely to fall under the category of *maṣlaḥah mulghāh* (rejected benefit), because, although it has potential advantages, its negative impacts outweigh the benefits. Therefore, in the context of Islamic law, this practice is not acceptable as it contradicts the principles of *maqāṣid al-syarī'ah* in preserving the purity of *nasab*.

## Keywords

Islamic Bioethics, Law System, Islamic Law, Surrogacy.

## 1. Introduction

Scientific progress and technological innovations in the field of medicine are evolving rapidly, bringing profound effects on human life. Among these developments is the emergence of In Vitro Fertilization (IVF), a medical solution designed to assist couples who are unable to conceive naturally (Isnawan, 2019; Pulungan & Musthofa, 2021; Viqria, 2022; Sugian, 2024). One of the primary prerequisites for undergoing IVF treatment is that the woman must have a healthy uterus and viable eggs. As a result, women lacking either condition are generally ineligible for participation in IVF procedures. However, since the fertilization process in IVF occurs outside the human body, it enables medical professionals to implant the fertilized embryo into a healthy uterus, even if it does not belong to the egg donor. This medical advancement has paved the way for surrogacy a method in which the egg and sperm from the intended couple are combined in a laboratory setting and then implanted into the uterus of another woman who consents to carry the pregnancy under a formal agreement or contract. The term "surrogacy" refers to this arrangement, in which the surrogate mother provides her womb temporarily to carry the child conceived by another couple. She nurtures the fetus until delivery, after which the newborn is returned to the biological parents and is regarded as their legal child (Arifin, 2020; Rosanti, 2021; Viqria, 2022; Makatika, 2023).

The theory of *maṣlahah* is based on the principle of achieving benefits and avoiding harm. When discussing the theories of *maṣlahah*, it also includes the principles of *maqāṣid al-syarī'ah*, and vice versa, creating a close relationship of penetration and relevance between the two. The purpose of this category is to ensure the welfare of Muslims, both in this world and in the hereafter (Hallaq et al., 2000; Hasan, 2020; Zuhdi & Nasir, 2024).

Based on the verse in Ash-Shura 49-50, infertility is a provision from Allah SWT. A married couple who cannot have children face a hardship as a destiny that Allah has determined. However, efforts to eliminate this hardship through a surrogacy program actually contradict one of the objectives of Islamic teachings (*maqāṣid al-syarī'ah*), namely maintaining and protecting the purity of lineage. Lineage in Islam is a fundamental foundation that determines family structure, civil rights such as guardianship, maintenance, inheritance, and the concept of *mahram* in marriage law. The use of surrogates has the potential to cause greater harm related to the mixing of lineages. This is in accordance with the *ushuliyah* principle *Adh-dhararu lā yuzālu bidh-dharar*, which means that harm cannot be eliminated by causing other harm, especially when the harm concerns the issue of lineage, which is the primary basis for determining Islamic family laws (LPMQ, 2012; Irfan & Nuroh, 2013; Amalia & Sudistina, 2024). Therefore, the IVF program through surrogacy needs to be studied in more depth regarding the benefits and harms it produces, to determine whether this program aligns with the objectives of sharia or is actually contradictory.

This study will analyze the IVF program through surrogacy comprehensively using the theory of *maṣlahah* in Islamic law. Therefore, this research aims to explore and examine the practice of the IVF program through surrogacy and analyze it from the perspective of *maṣlahah* theory as well as its relation to maintaining *maqāṣid al-syarī'ah*. Through this study, it is hoped that it can enrich the study of Islamic law with a new perspective on the relationship between surrogacy practices and the objectives of sharia, as well as provide recommendations for developing regulations that are more in line with Islamic principles.

## 2. Methods

This study adopts a qualitative research approach, concentrating on a literature-based analysis to investigate the legal and ethical implications of In Vitro Fertilization (IVF) through surrogacy within the framework of Islamic law (Sugiyono, 2010). The research is classified as descriptive-analytical, aiming to explain and critically evaluate the phenomenon using the theory of *maṣlahah* (public interest) as a guiding framework. This approach enables a comprehensive exploration of how Islamic legal principles address modern reproductive technologies, particularly those involving third-party assistance like surrogacy. The data sources employed in this study consist of both primary and secondary materials. Primary sources include the *Qur'an*, *hadith*, and classical texts of *uṣūl al-fiqh* (principles of Islamic jurisprudence) that directly relate to procreation, lineage (*nasab*), and the use of reproductive technology. These foundational texts provide the basis for evaluating whether IVF with surrogacy is permissible (*ḥalāl*), discouraged (*makrūh*), or forbidden (*ḥarām*) under Islamic law. Meanwhile, secondary sources include contemporary scholarly articles, books, fatwas, and discussions on bioethics and Islamic jurisprudence, which present diverse and evolving perspectives on reproductive interventions.

The method of data collection involves an extensive literature review, systematically identifying, organizing, and interpreting texts using a textual criticism approach. This method seeks to uncover the deeper meanings and jurisprudential reasoning behind various legal opinions, including those from different schools of thought (*madhāhib*). Once collected, the data are analyzed using deductive reasoning grounded in the theory of *maṣlahah*, which assesses the benefits (*maṣāliḥ*) and harms (*maḥāsib*) of surrogacy in the context of Islamic ethics and law. This theoretical framework aligns with the broader objective of *maqāṣid al-sharī'ah*, namely the protection of religion (*dīn*), life (*naḥs*), intellect ('*aql*), lineage (*nasab*), and property (*māl*). The analysis ultimately aims to determine whether IVF via surrogacy upholds or contradicts these objectives, and to what extent the practice can be accommodated within Islamic legal thought. The findings are presented to offer clear, scholarly-based conclusions regarding the permissibility and implications of this practice in modern Muslim societies

## 3. Results

Couples choose the surrogacy method for various reasons, one of which is infertility in women, which prevents the egg from being fertilized. In such cases, the method that is often used is traditional surrogacy. Additionally, surrogacy serves as an alternative for women with medical conditions that make pregnancy high-risk, such as complications due to advanced age or heart disease. The risks for elderly pregnant women, such as gestational diabetes, hypertension, and miscarriage, are the main reasons for using this method (Subu, 2021; Channel, 2025). Scholars have different opinions regarding the legality of surrogacy. Some scholars, such as Ali Akbar, Salim Dimiyati, and Husein Yusuf from Indonesia, permit it, equating it with the permissibility of a nursing mother compared to a mother who carries a child in trust. They argue that the child born is only a foster child, and the woman who provides the ovum is the actual mother (Kumala, 2020; Honainah et al., 2023; Fitriya, 2024). However, the majority of scholars forbid this practice. They argue that a woman does not have the right to rent her womb, as determining lineage is a Shariah right. Using a surrogate womb is considered equivalent to inserting sperm and ovum into someone else's womb, which is not permitted. Additionally, this practice can result in the mixing of lineages and damage the family's honor (Nasikhin et al., 2022). This prohibition also applies to polygamous families, as the womb of

another wife cannot be used to carry embryos. In the context of IVF, if the sperm and ovum come from a legitimate husband and wife, it is permissible, but if not, it is considered disguised adultery (Junaidi & Syafi'ie, 2022). The permissibility of IVF for a legal husband and wife is based on the significant benefits, but there is also a greater mafsadah related to artificial insemination (Nasikhin et al., 2022).

Based on the Islamic social structure, the application of In Vitro Fertilization (IVF) is allowed with clear conditions. First, this procedure can only be performed by a legally married couple according to Islamic law, to maintain the purity of lineage and prevent the mixing of *nasab* (lineage). The sperm used must come from the husband, and the egg from the wife, to ensure that the child born has a clear *nasab* relationship with the parents. The use of gametes from a third party is considered invalid, as it could create issues in determining *nasab* and the legal status of the child. This procedure is only allowed within the time frame of a valid marriage, as long as the couple is still bound by a lawful marital contract according to Islamic law, to ensure that the child produced has a clear *nasab* status. Additionally, IVF procedures must be conducted under the guidance of competent medical practitioners to reduce medical risks for both the mother and the child. The use of gametes from the lawful couple is a key focus to ensure legal and social validity. Finally, the number of fertilized eggs transferred must be carefully regulated to avoid the risks of multiple pregnancies, miscarriages, or preterm births, while prioritizing the safety of both the mother and child in accordance with Islamic principles (Nasikhin et al., 2022; Amalia & Sudistina, 2024). The presence of benefits within this practice is the main consideration in determining its permissibility.

Couples often choose surrogacy due to infertility or medical conditions that make pregnancy risky, such as advanced maternal age or heart disease. Traditional surrogacy is commonly used in these cases (Subu, 2021; Channel, 2025). Scholars differ on its legality. Indonesian scholars like Ali Akbar, Salim Dimiyati, and Husein Yusuf permit it, likening it to a nursing mother, with the ovum provider seen as the true mother (Kumala, 2020; Honainah et al., 2023; Fitriya, 2024). However, most scholars forbid it, arguing that renting a womb violates Shariah principles by risking *nasab* confusion and dishonoring the family (Nasikhin et al., 2022). They also reject surrogacy in polygamous families and consider IVF involving third-party gametes as disguised adultery (Junaidi & Syafi'ie, 2022). IVF is only permitted when the sperm and ovum are from a lawful couple, as its benefits are outweighed by potential harms from artificial insemination (Nasikhin et al., 2022). Islam allows IVF under strict conditions: it must involve a legally married couple, use only their gametes, and be conducted within the valid marriage period to maintain *nasab* clarity. It must also be supervised by competent medical professionals and avoid excessive embryo transfers to ensure the safety of mother and child (Amalia & Sudistina, 2024). The potential benefits of IVF are the main basis for its conditional permissibility. This is in accordance with the rules fiqh:

الْحَاجَةُ تَنْزِلُ مَنْزِلَةَ الصَّرْوَرَةِ وَالصَّرْوَرَةُ تُبِيحُ الْمَحْظُورَاتِ

*Al-ḥājatū tanzilu manzilata ḍ-ḍarūratī wa-ḍ-ḍarūratu tubīḥu al-mahẓūrāt.*

“*Hajat* (an essential requirement) is applied as if in a state of necessity, and such an emergency situation permits actions that would initially be prohibited.”

﴿ نِسَاؤُكُمْ حَرْثٌ لَكُمْ فَانْتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ ۖ وَقَدِّمُوا لِأَنفُسِكُمْ ۗ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّكُمْ مُلْقَوَةٌ ۗ وَبَشِّرِ  
الْمُؤْمِنِينَ ۚ ﴾ (البقرة/2: 223)

*(Nisāukum ḥarthun lakum, fatū ḥarthakum annā syi'tum, waqaddimū li-anfusikum, wattaqūllāha walamū annakum mulāqūh, wa basy-syiril-muminīn).*

“Your wives are a place of sowing for you, so come to your place of sowing as you wish, but do good for yourselves, and fear Allah, and know that you will meet Him. And give good tidings to the believers.” (Al-Baqarah [2]:223)

(قُلْ لِلْمُؤْمِنِينَ يَعْضُوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ ذَلِكَ أَزْكَى لَهُمْ إِنَّ اللَّهَ خَبِيرٌ بِمَا يَصْنَعُونَ ۝ ٣٠ وَقُلْ لِلْمُؤْمِنَاتِ يَعْضُنَّ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ) (النور/24: 30-31)

(*Qul lil-mu'mināna yagħuddū min abṣārihim wa yaḥfazū furūjahum; dhālika azkā lahum, inna Allāha khabīrun bimā yaṣna'ūn. Wa qul lil-mu'mināti yagħudna min abṣārihinna wa yaḥfazna furūjahunna*).

“Tell the believing men to lower their gaze and guard their private parts. That is purer for them. Indeed, Allah is All-Aware of what they do. And tell the believing women to lower their gaze and guard their private parts...” (An-Nur [24]:30-31)

عَنْ رُوَيْفِعِ بْنِ ثَابِتِ الْأَنْصَارِيِّ ، قَامَ فِيْنَا حَظِيْبًا ، قَالَ : أَمَا إِنِّي لَا أَقُولُ لَكُمْ إِلَّا مَا سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ : يَوْمَ حَنْيْنٍ ، قَالَ لَا يَجِلُّ لِأَمْرِي يَوْمَئِذٍ بِإِلَهِهِ وَالْيَوْمِ الْآخِرِ أَنْ يَسْقِيَ مَاءَهُ زَرْعَ غَيْرِهِ

*An Ruwā'ifī ' bin Thābit al-Anṣārī, qāma fīnā khātibān, qāla: "Amā innī lā aqūlu lakum illā mā sami'tu rasūlallāh ﷺ □ yaqūlu yarwam Ḥunaynīn, qāla: Lā yaḥillu li-imri'in yu'minu billāhi wal-yarwmi l-ākhirī an yasqīya mā'ahu zara'a ghayrihi.*

“Rufai' bin Sabit al-Ansari said: A speaker once said: "Indeed, I will not say anything except what I heard from the Messenger of Allah (peace be upon him). He said during the Battle of Hunayn: 'It is not permissible for anyone who believes in Allah and the Last Day to irrigate the land of another with his water.'” (Narrated by Abu Dawood, Hadith No. 2158) (Abu Daud, 1994)

The prohibition of sperm and ovum donation, and insemination involving one or both, is clearly supported by Quranic three verses and hadith above, as such acts are deemed adultery and major sins despite occurring outside sexual intercourse. This view is reinforced by the 1979 The Indonesian Ulema Council (*Majelis Ulama Indonesia/MUI*) Fatwa on test-tube babies. Gestational surrogacy, where the embryo is implanted into a surrogate using the couple's gametes, is preferred over traditional surrogacy as the surrogate has no genetic link to the child (Dewi & Atmaja, 2020; Clinic, 2025). The MUI permits IVF using gametes from a legally married couple, but forbids it if a surrogate mother is involved, citing the *Sadd az-zari'ah* principle due to potential lineage and inheritance complications. IVF using sperm from a deceased husband or from non-married couples is also prohibited. From the *maslahah* perspective, rejecting surrogacy supports the objectives of Islamic law, especially in preserving lineage, life, and reason. Despite potential benefits, IVF through surrogacy is classified as *maṣlahah* mulghāh because its harms lineage confusion, ethical and familial violations outweigh the benefits, particularly in cases involving third-party donors. Artificial pregnancy through surrogacy is seen as more harmful than adoption, especially if involving non-marital sperm, which is morally and legally unacceptable in Islam. In contrast, while adopted children have different legal rights, their lineage remains clear. The Islamic Organization for Medical Sciences also asserts that IVF is only permissible if both gametes come from a legally married couple, with third-party involvement strictly forbidden (Shaltūt & Sayis, 1973; Al-Qaradawi, 2001).

## 5. Discussion

In Vitro Fertilization (IVF) is a pregnancy method where fertilization occurs outside the body without intercourse (Nasikhin et al., 2022). It assists couples with fertility issues and includes several stages: ovarian stimulation, egg retrieval, fertilization (often using ICSI for low sperm quality), embryo culture, and embryo transfer into the uterus (Clinic, 2023; NHS, 2024; Association, 2025; Medicine,

2025). Islam classifies IVF into three types: using the husband's sperm and wife's egg in the wife's womb (permissible); in a surrogate's womb; and using donor sperm or eggs (Nasikhin et al., 2022). Surrogacy, often used by infertile couples, involves a woman carrying a child for others under a legal and compensated agreement (Latif, 2021; Viqria, 2022; Ameln, 1991). Surrogates must meet strict physical, mental, and legal criteria (IARC, 2025). Surrogacy has two forms: traditional, using the surrogate's egg and the man's sperm (creating a genetic link), and gestational, using both intended parents' gametes (no genetic link to the surrogate) (Subu, 2021; Qintarawati, 2023; Amalia & Sudistina, 2024). Islamic permissibility of IVF can be referred to in Q.S. al-Baqarah (2):223 and an-Nur (24):30.

The Maslahah theory, rooted in *Usul Fiqh*, supports the five objectives of Sharia (*maqāṣid al-syarī'ah*): protection of religion, life, reason, lineage, and wealth (Al-Syatibi, 1997). It emphasizes that law must adapt to changes in time, place, and society (Hermanto, 2021). Al-Syatibi asserts that *maslahah* aims to bring benefit (*jalb al-maṣāliḥ*) and prevent harm (*daf' al-mafāsid*), provided it stays within Sharia boundaries. Al-Ghazali classifies *maslahah* into *daruriyyat* (primary), *hajiyyat* (secondary), and *tahsinīyyat* (tertiary) (Al-Ghazali, 2009). Based on validity, *maslahah* is divided into *mu'tabarrah* (recognized), *mulghah* (rejected), and *mursalah* (without direct evidence) (Syarifudin, 2014; Riyawi, 2021). Only *mu'tabarrah* and *mursalah* are accepted, with *mursalah* valid if it is real, general, and aligned with the Qur'an, Hadith, and scholarly consensus (Khallaf, 2014).

In modern issues like surrogacy, *maslahah* helps assess alignment with *maqāṣid al-sharī'ah* by weighing harm and benefit (Al-Syatibi, 1997; Zuhdi & Nasir, 2024). Auda (2008) stresses that *ijtihād* must prioritize public interest and preserve lineage and family honor. Surrogacy, where IVF embryos are implanted in a surrogate, is problematic in Islam due to potential lineage confusion and dignity concerns (Al-Qaradawi, 2001; Shaltūt & Sayis, 1973). Though IVF is permissible between legal spouses in emergencies, involving a third party threatens *ḥifẓ al-nasl* and violates *al-dharar yuzal* (Al-Qaradawi, 2001; Shaltūt & Sayis, 1973). The risk of *mafsadah*, including legal and ethical conflicts, outweighs potential benefits, affirming Asy-Syatibi's principle that preventing harm takes precedence over attaining benefit (Ghaly, 2016).

Experts agree that in Surah Asy-Syûra (42): 50, the term *yuzawwajuhum* means *yaj'aluhum* (making them). The interpretation that it refers to pairing males and females is incorrect. Allah alone determines whom a person marries and whether they will have children. He may will that someone remains childless, whether male or female (Zaghlul, 2007; Muhammad & Al-Sheikh, 2008). According to Zaghlul (2007), Allah creates some people sterile to emphasize the blessing of offspring, encouraging gratitude and patience both rewarded in this world and the hereafter. Three Qur'anic verses illustrate Allah's justice in dividing His servants: some receive only daughters, only sons, both, or none, according to His wisdom. Some infertile couples pursue IVF with surrogacy, using donors or renting a womb, but Islamic jurisprudence prohibits this due to greater harm, violating the principle of *ḥifẓ al-nasl*. Based on *al-darar yuzāl* and *al-darar lā yuzāl bil-darar*, such practices are not acceptable in fiqh (Hermanto, 2021). Scholars differ on who the mother is: al-Qaradawi (2001) sees it as the egg donor, while others refer to the birth mother, in line with the Qur'an.

﴿...إِنَّ أُمَّهَاتُهُمْ إِلَّا اللَّيْءُ وَلَدْنَهُمْ ...﴾ (المجادلة/58: 2)

(...In ummahatuhum illa alladhī wladnahum...)

"Their mothers are nothing but the women who gave birth to them." (Al-Mujadalah [58]:2)

Islamic scholars agree that uterus rental is prohibited. Women without eggs are like those without a womb, and infertile men are seen as tested by Allah. Surah Ash-Syûra (49–50) affirms Allah's power over offspring. Qaradhawi (2002) says caring for orphans brings great reward from Allah.

أَنَا وَكَافِلُ الْيَتِيمِ فِي الْجَنَّةِ هَكَذَا، وَأَشَارَ بِالسَّبَّابَةِ وَالْوَسْطَى

*Ana wa kāfilu al-yaṭīmi fī al-jannati hakadhā, wa asyāra bīs-sabbābahī wal-wuṣṭā.*

"I and the one who cares for an orphan are like these two (fingers) in Paradise." (And he gestured with his index and middle fingers.)"

Surrogacy contradicts *maqāṣid al-syarī'ah* as it causes more harm (*mafsadah*) than benefit (*maslahah*), violating the principle of prioritizing harm prevention. Though IVF helps infertile couples, involving a third party leads to lineage confusion, inheritance and mahram issues, and resembles zina, disrupting family norms and Islamic values (Nasikhin et al., 2022; Shaltūt & Sayis, 1973).

## 6. Conclusion

Based on the analysis in this study, the practice of in vitro fertilization (IVF) through surrogacy raises significant legal and ethical implications when viewed through the lens of the theory of *maṣlahah*, especially in relation to preserving the objectives of Islamic law (*maqāṣid al-syarī'ah*). While surrogacy aims to help couples struggling with infertility, it conflicts with the principle of *ḥifẓ al-nasl* (preservation of lineage), a core objective in Islamic jurisprudence. The theory of *maṣlahah* highlights the necessity of maximizing benefits (*jalb al-maṣāliḥ*) and minimizing harms (*daf' al-mafāsid*). In this case, the potential harms such as lineage confusion, legal status ambiguity, and violations of moral and religious boundaries are considered to outweigh the benefits, rendering surrogacy as *maṣlahah mulghāh* (a rejected benefit). Additionally, the legal maxim *al-ḍarar lā yuzāl bi al-ḍarar* (harm should not be eliminated by causing another harm) reinforces this stance.

The implication of this study is that Islamic law strongly upholds the sanctity of family lineage and prohibits practices that may lead to uncertainty in determining paternity or legal inheritance. This calls for careful ethical considerations and legal regulations regarding reproductive technologies in Muslim societies. However, this study is limited by its reliance on qualitative literature sources and lacks empirical data from affected individuals, such as infertile couples, medical practitioners, or legal experts. Future research is encouraged to incorporate multidisciplinary approaches combining Islamic legal analysis with medical, psychological, and sociological perspectives to offer more holistic solutions. Comparative studies across different Islamic schools of thought or Muslim-majority countries can also provide broader insights into how surrogacy and reproductive technology are approached in diverse Islamic legal frameworks. Such research could help shape policies that are both medically effective and religiously compliant.

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### ***Acknowledgment***

We gratefully acknowledge the contributions of individuals who supported the completion of this article.

### ***Funding Information***

This research did not receive any funding.

### ***Conflict of Interest Statement***

The authors declare that there is no conflict of interest.

### ***Ethical Approval and Originality Statement***

Ethical approval was obtained for this study. The manuscript represents original work and has not been previously published, nor is it under consideration by another journal.

### ***Data Disclosure Statement***

The data that support the findings of this study are available from the corresponding author upon reasonable request.



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