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Maqāṣid al-Sharī'ah and the Ethics of Surrogacy: A Critical Appraisal of Lineage and Legal Certainty in Contemporary Islamic Law

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Abstract

The growing application of Assisted Reproductive Technologies (ARTs) in Muslim contexts suggests the need to examine the legal and ethical implications of surrogacy in the framework of *Maqāṣid al-Sharī'ah* (the objectives of Islamic law). Therefore, this study aims to assess the compatibility of surrogacy, both traditional and gestational forms, with the core objectives of *Sharī'ah*, particularly the preservation of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), lineage (*ḥifẓ al-nasl*), and wealth (*ḥifẓ al-māl*). The methodology was based on a comprehensive textual analysis of Islamic legal sources, including the Qur'an, Sunnah, classical juristic writings, contemporary fatwas, and modern bioethical debates. By examining the materials, the analysis explored how surrogacy introduced legal and moral disruptions, particularly concerning lineage (*nasab*), maternal identity, inheritance, and the sanctity of the marital relationship. The results showed that surrogacy practices contradicted essential objectives of Islamic law by generating uncertainty in family structures, severing the connection between biological and legal motherhood, as well as undermining principles critical to Islamic family jurisprudence. These concerns were affirmed by the near-consensus among major Islamic juristic bodies, which categorized surrogacy as impermissible (*ḥarām*). The originality of this study is grounded in the systematic application of *Maqāṣid al-Sharī'ah* to a contemporary bioethical issue, showing the depth and coherence of Islamic legal reasoning in regulating modern reproductive technologies. In conclusion, enacting clear legislative prohibitions is recommended in Muslim-majority countries as well as continuous *ijtihād* to evaluate future biomedical developments in *maqāṣid* framework.

Keywords: Preservation of Lineage (*ḥifẓ al-nasl*); *Maqāṣid al-Sharī'ah*; Surrogacy; Assisted Reproductive Technologies ARTs; Islamic Family Law.

Abstrak

Peningkatan dalam penggunaan Teknologi Reproduksi Berbantu (*Assisted Reproductive Technologies/ART*) dalam konteks umat Muslim menunjukkan adanya kebutuhan untuk mengkaji implikasi hukum dan etika dari ibu pengganti dalam kerangka *Maqāṣid al-Sharī'ah* (tujuan-tujuan hukum Islam). Oleh karena itu, penelitian ini bertujuan untuk menilai kesesuaian antara surrogacy, baik bentuk tradisional maupun gestational, dengan tujuan utama syariat, khususnya pelestarian agama (*hifz al-dīn*), kehidupan (*hifz al-nafs*), keturunan (*hifz al-nasl*), dan harta (*hifz al-māl*). Metodologi ini didasarkan pada analisis tekstual yang komprehensif terhadap sumber-sumber hukum Islam, termasuk Al-Qur'an, Sunnah, tulisan-tulisan hukum klasik, fatwa-fatwa kontemporer, dan perdebatan bioetika modern. Dengan memeriksa materi-materi yang ada, analisis ini mengeksplorasi bagaimana ibu pengganti menimbulkan gangguan hukum dan moral, terutama terkait garis keturunan (*nasab*), identitas ibu, warisan, dan kesucian hubungan pernikahan. Hasil penelitian menunjukkan bahwa praktik ibu pengganti bertentangan dengan tujuan utama hukum Islam dengan menimbulkan ketidakpastian dalam struktur keluarga, memutuskan hubungan antara keibuan biologis dan hukum, serta merusak prinsip-prinsip yang sangat penting dalam yurisprudensi keluarga Islam. Kekhawatiran ini ditegaskan oleh konsensus yang hampir terjadi di antara badan-badan hukum Islam utama, yang mengkategorikan ibu pengganti sebagai sesuatu yang tidak diperbolehkan (*ḥarām*). Keaslian penelitian ini didasarkan pada penerapan sistematis *Maqāṣid al-Sharī'ah* untuk masalah bioetika kontemporer, yang menunjukkan kedalaman dan koherensi penalaran hukum Islam dalam mengatur teknologi reproduksi modern. Sebagai kesimpulan, memberlakukan larangan legislatif yang jelas direkomendasikan di negara-negara mayoritas Muslim serta ijtihād yang berkelanjutan untuk mengevaluasi perkembangan biomedis di masa depan dalam kerangka kerja *maqāṣid*.

Kata Kunci: Pelestarian Keturunan (*hifz al-nasl*); *Maqāṣid al-Sharī'ah*; Ibu Pengganti; ART; Hukum Keluarga Islam.

Introduction

The advancement of Assisted Reproductive Technologies (ARTs) has reshaped the traditional mode of human reproduction, introducing a range of practices that challenge long-standing moral, legal, and theological norms. Among these technologies, surrogacy is distinct as one of the most ethically complex and legally contentious developments (Alon et al., 2023). Basically, surrogacy is an arrangement in which a woman agrees to carry and deliver a child for another individual or couple, with the intention of relinquishing parental rights upon birth (Olaye-Felix et al., 2023). The practice has evolved from traditional surrogacy, where the surrogate is genetically associated with the child, to gestational surrogacy, in which there is no genetic association (Olaye-Felix et al., 2023). These arrangements offer hope to individuals and couples experiencing infertility, but raise fundamental ethical, legal, and theological concerns about identity, parenthood, and legal continuity, specifically in Islamic law.

In recent years, there has been a discernible increase in the recourse to surrogacy in several Muslim-majority and minority societies, which has ignited debates about the compatibility with Islamic law (Trimmings et al., 2024). Surrogacy, particularly in cases of third-party reproductive contributions, presents significant challenges to the foundational

principles of *Sharī'ah* (Shabana, 2015). Unequivocally, Islamic conception of family is premised upon the clear and legitimate establishment of lineage (*nasab*), which serves as the basis for rights of inheritance, guardianship, and social identity, among other rights (Maulana et al., 2024; Mohadi, 2023). This clarity is regarded as essential for the preservation of family structure and the implementation of various legal obligations under *Sharī'ah*. The contribution of a third party in the reproductive process, whether through egg donation, sperm donation, or gestation, introduces legal and moral ambiguities (Ezeome, 2022; Salazar et al., 2023). These arrangements risk obscuring *nasab*, thereby threatening the sanctity of marriage and the integrity of familial relations as ordained by *Sharī'ah* (Alvi & Rizwan, 2023; Dubagari & Umar, 2025)

Recognising the above threats, supreme Islamic juristic authorities have adopted generally prohibitive positions. International Islamic Fiqh Academy (IIFA) has categorically ruled against forms of surrogacy on the grounds of violating the objectives of *Sharī'ah* (Academy, 2000). Al-Azhar's Fatwa Committee also condemned the concept as inconsistent with Islamic ethical and legal norms, warning against the implications for family cohesion and the disruption of divine boundaries in procreation (Staff Reporter, 2001). A small but significant minority of scholars, particularly in Twelver Shī'ī School, have adopted a more permissive approach to surrogacy under strict conditions. In Iran, for example, Ayatollah 'Alī Khamenei issued *fatwas* allowing gestational surrogacy and certain forms of third-party reproductive assistance, provided that the genetic material originates from the legally married couple (Farid, 2024; Shestak et al., 2023; Yassari, 2022). In some cases, jurists and fertility clinics have invoked the legal device of temporary marriage (*nikāḥ al-mut'ah*) to legitimize reproductive arrangements (Margalit, 2018), including a surrogate or egg donor, maintaining formal compliance with *Sharī'ah* requirement of marital procreation (Kooli, 2019). However, this line of reasoning remains contentious because the surrogate gestational role introduces ambiguity in maternal identity (*umm*) even without a genetic link, which classical jurisprudence treats as legally significant. The permissibility of temporary marriage (*mut'ah*) used to legitimize certain arrangements is also not accepted in Sunni jurisprudence, making the rulings inapplicable in broader Islamic law.

Given the complexity of ARTs and growing prevalence, there is a need to examine surrogacy through the normative lens of *Maqāṣid al-Sharī'ah*, focusing on the permissibility and implications. *Maqāṣid al-Sharī'ah* framework, developed by classical scholars, offers a structured method for assessing contemporary issues in light of Islam overarching legal and ethical aims. The objectives include the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), lineage (*ḥifẓ al-nasl*), property (*ḥifẓ al-māl*), and, in some formulations, honour (*ḥifẓ*

al-ʿird). Applying this framework allows for a principled evaluation of surrogacy, transcending rigid literalism while maintaining fidelity to Islamic moral philosophy.

This study asserts that a comprehensive evaluation of surrogacy must extend beyond the often cited concerns of lineage and wealth to incorporate broader *maqāṣid* such as the protection of religion, life, and honour. Surrogacy arrangements implicate these values by potentially undermining religious frameworks on procreation, creating psychological and cognitive confusion regarding parental identity, as well as raising questions about modesty, dignity, and bodily autonomy. Therefore, this study aims to examine the permissibility and consequences of surrogacy in *Maqāṣid al-Sharī'ah* framework. It addresses the following central questions: *To what extent does surrogacy align or conflict with the objectives of Islamic law? How have contemporary Muslim jurists articulated their rulings, and what principles underlie their consensus or divergence? What ethical challenges emerge when reproductive technologies are subjected to a maqāṣid-oriented analysis?* The results will contribute to ongoing legal and ethical deliberations across Muslim world, where ARTs continue to challenge established frameworks and demand holistic, principled responses grounded in the enduring values of *Sharī'ah*.

Methods

This study adopted a Doctrinal Legal Research Methodology, anchored in the analysis of authoritative Islamic legal sources. Primary references included the Qur'an, the Sunnah, and classical juristic texts from the four major Sunni *madhāhib*, as well as recognized legal maxims (*qawā'id fiqhīyyah*). These classical sources were selected based on jurisprudential authority, interpretive relevance to questions of lineage and reproduction, as well as influence across various Sunni legal traditions.

Supplementary materials included *fatwas* issued by prominent contemporary Islamic legal bodies, comprising IIFA and al-Azhar's Fatwa Committee, as well as peer-reviewed academic literature on Islamic bioethics and assisted reproductive technologies. The selection of these *fatwas* was guided by institutional credibility, thematic relevance to surrogacy, as well as geographic and denominational representativeness in Muslim world.

The analytical framework was structured around the theory of *Maqāṣid al-Sharī'ah*, with particular emphasis on preservation of lineage (*ḥifẓ al-nasl*) and wealth (*ḥifẓ al-māl*), while also engaging other objectives such as the protection of religion (*ḥifẓ al-dīn*) and life (*ḥifẓ an-nafs*). This framework enabled a normative and holistic assessment of surrogacy, measuring the permissibility against the higher objectives of Islamic law.

The selection of this method was justified by the nature of the inquiry, which comprised interpreting open texts, classical juristic positions, and contemporary scholarly

consensus. It enabled a prescriptive legal analysis grounded in Islamic epistemology and ethics, rather than empirical or sociological observation.

Result and Discussion

Conceptual and Regulatory Typologies of Surrogacy: From Biology to Contractual Practice

Surrogacy is a contemporary method of ARTs in which a woman, referred to as the surrogate, agrees to carry and give birth to a child on behalf of another person or couple, called the intended or commissioning parent(s) (Patel et al., 2018). Basically, it is a concept in which a woman carries a child for the benefit of another, usually a childless couple, for an agreed-upon fee (Peterson, 2018). The process starts with introducing the biological father sperm into the surrogate mother uterus, who goes through a natural period of pregnancy. A contract is drawn in which the surrogate forgoes all claims to the child (Barač, 2023; Jones, 2018). Eventually, delivery is carried out under the supervision of the medical experts in the process, and the couple takes custody of the child (Al-Misriyyah, 2015). The practice has become increasingly visible due to advancements in ARTs and shifting family dynamics. It is recognized, regulated, or contested in varying degrees across legal systems worldwide. Surrogacy arrangements are typically categorized into two primary biological forms:

- a. Traditional Surrogacy: In this arrangement, the surrogate uses the egg, which is fertilized with the sperm of the intended father or a donor, usually through artificial insemination. The resulting child is genetically related to the surrogate. This form of surrogacy includes a dual role for the surrogate as both biological and gestational mother (Zubaedah, 2024). Traditional surrogacy tends to raise more complex legal, ethical, and emotional questions due to the genetic association.
- b. Gestational Surrogacy: Gestational surrogacy is a reproductive method where the surrogate mother has no genetic connection to the child. The process starts with the in vitro fertilization (IVF) method, where the egg from the intended mother (or an egg donor) and the sperm from the intended father (or a sperm donor) are combined in a laboratory. This fertilized egg, called an embryo, is then implanted into the uterus of the surrogate, who will carry the pregnancy until birth (Mulligan, 2024). There is no biological relation in gestational surrogacy as the surrogate only provides a physical space for the embryo to develop and grow. The distinctive feature of this method is that the surrogate serves purely as a gestational carrier. This means the surrogate is not the biological mother of the child, but carries and delivers the baby on behalf of the intended parents (Mulligan, 2024). The custody

of the child after birth belongs to the intended parents who provided the genetic material.

Beyond biological distinctions, surrogacy is differentiated based on financial arrangements, which often influence both legal frameworks and public perception:

- a. **Commercial Surrogacy:** This form entails a binding agreement where the surrogate is compensated not only for medical and pregnancy-related expenses but also receives additional payment for the role in the reproductive process (Brandão & Garrido, 2023).
- b. **Altruistic Surrogacy:** Altruistic surrogacy is typically premised on goodwill, with the surrogate agreeing to carry the child without any financial gain beyond reimbursement for medical and related costs (Hibino, 2023). It is usually arranged in close family circles or among trusted acquaintances, with an emphasis on emotional bonds and shared values rather than financial incentives.

Each type of surrogacy, whether traditional or gestational, commercial or altruistic, presents a distinct set of legal considerations. These include questions of parentage, custody, contractual enforceability, and the legal recognition of the intended parents at birth. Jurisdictions differ considerably in the approach towards these matters. Some countries provide legislation that clearly defines the legal rights and responsibilities of all parties, while others operate in grey areas, relying on judicial interpretations or piecemeal regulations.

Bioethical Gaps and Juristic Innovation: Surrogacy in the Absence of Precedent

Classical Islamic jurisprudence does not contain explicit rulings on surrogacy, primarily due to the non-existence of these biomedical technologies in pre-modern times. The idea of a third-party carrying a child for another couple was entirely beyond the conceptual and legal scope of traditional *fiqh*, which was firmly based in natural conception and childbirth in the bounds of lawful marriage (*nikāḥ*) (Ismail & Mohamad, 2024; Muhsin et al., 2024). Consequently, the canonical manuals of *Sharī'ah* across the four major Sunni schools, Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī, do not offer direct rulings or legal analogies concerning surrogate motherhood. This doctrinal silence should not be construed as tacit permissibility but serves to be a catalyst for renewed *ijtihād*. Contemporary jurists have navigated uncharted bioethical terrain using the established objectives (*maqāṣid*) and legal maxims (*qawā'id fiqhiyyah*) of Islamic law, leading to divergent fatwa positions (Moosa, 2021). These include outright prohibition grounded in the protection of lineage and marital integrity. Meanwhile, a more permissive view,

particularly among minority juristic circles such as in Twelver Shī'ī tradition, allows gestational surrogacy under strict ethical and marital conditions.

The absence of historical precedent has necessitated the contribution of contemporary *ijtihād*, prompting the engagement of jurists in interpretive innovation to respond toward trending bioethical complexities. This development has simultaneously illuminated tensions in contemporary Islamic legal discourse, specifically, the challenge of reconciling adherence to classical jurisprudential frameworks with the imperative to address the evolving realities of modern ARTs. The resulting divergence in *fatwa* positions carries significant legal, social, and moral ramifications, particularly concerning the integrity of Muslim family structure, the governance of biomedical interventions, as well as the conceptualization of parenthood and kinship in the broader Islamic legal and ethical tradition.

Modern Islamic Legal Responses to Surrogacy: Between Prohibition, Necessity, and Juristic Pluralism

The modern Islamic discourse on surrogacy has been shaped predominantly by national and transnational juristic institutions responding to the challenges posed by ARTs. Among the most prominent bodies are:

Table 1: Summary of Juristic Responses to Surrogacy

Juristic Body/School	Position on Surrogacy	Reasoning/Legal Basis	Notes
International Islamic Fiqh Academy (IIFA)	Prohibited	Requires third-party; disrupts <i>nasab</i> and maternal identity	Permits IVF in marriage only
Al-Azhar Fatwa Committee (Egypt)	Prohibited	Unlawful to introduce sperm/fetus into unrelated womb; confusion of lineage	Includes ban after husband's death
Malaysia's National Fatwa Council	Prohibited	Concerns over <i>nasab</i> , specifically affecting inheritance rights	Applies even when using couple own gametes
Pakistan's Federal Shariat Court	Prohibited	Violates <i>Sharī'ah</i> , causes legal and social complications	Recommends criminalization
Twelver Shī'ī Jurisprudence (Iran)	Conditionally Permissible	Allowed if sperm and egg come from a married couple; <i>mut'ah</i> used to formalise surrogacy	Civil contracts recognized by Iranian courts

Source: Author interpretation

a. International Islamic Fiqh Academy (IIFA)

IIFA, in the 1986 resolution, categorizes seven methods of artificial insemination into two distinct rulings under *Sharī'ah*, namely five prohibited and two permissible in cases of necessity. The primary *Sharī'ah* concerns underlying these rulings include *ḥifẓ al-nasl* (*nasab*), the sanctity of marital relations, and the protection of maternal identity ([al-Islāmī, 2000](#)). The five prohibited methods of artificial insemination all include the introduction of a third-party into the reproductive process, either through donor gametes or the use of the surrogate womb. These practices lead to potential confusion in parentage and disrupt maternal bonds. The following are the prohibited methods ([Persekutuan, 2016](#)):

- 1) The sperm and ovum of the couple are fertilized in a lab before being transferred to the womb of another woman who is not the wife.
- 2) The sperm and ovum of the couple are fertilized in a lab before being transferred to the womb of the husband's other wife (in polygamy cases).
- 3) The sperm and ovum are taken from a different man and woman, then transferred to the womb of another woman, and after delivery, custody is given to any couple who wants a child.
- 4) The sperm of the husband is fertilized with the ovum of another woman, and the woman will carry the child. After delivery, the child will be handed to the couple, and money will be given to the woman as compensation.
- 5) The ovum of the wife is fertilized with another man sperm and then transferred to the womb of another woman. After delivery, custody is handed to the couple who want the child, and payment is made to the surrogate mother.

The two permissible methods are strictly confined to the reproductive participation of a lawfully married couple. The first entails IVF using the husband sperm and wife ovum, followed by implantation into the same wife. The second requires direct intrauterine insemination using the husband semen. Importantly, these are only sanctioned when natural conception is unviable, and after duly observing all ethical and procedural safeguards ([Persekutuan, 2016](#)).

b. Al-Azhar Fatwa Committee (Egypt)

Al-Azhar official stance on surrogacy is unequivocally prohibitive. Islamic Research Academy at Al-Azhar University, a leading authority in Sunni Islamic jurisprudence, issued a fatwa on 29 March 2001 explicitly banning all forms of surrogacy. This includes both traditional and gestational surrogacy arrangements. The fatwa states that the practice is illegal, whether by placing a spermatozoid, a fertilized egg, or a fetus in the uterus. It also bans insemination of a woman after the death of the husband ([Persekutuan, 2016](#)). The

primary concerns emphasized in this ruling pertain to the introduction of a third party into the reproductive process, which can lead to confusion in lineage (*nasab*).

c. National Fatwa Bodies (e.g., in Malaysia and Pakistan)

These institutions have largely followed the consensus of the aforementioned juristic assemblies.

- 1) Malaysia: The National Fatwa Council of Malaysia issued a fatwa in 2008 declaring surrogacy forbidden under Islamic law. The decision was based on concerns that engaging another woman in the reproductive process creates confusion in lineage, particularly affecting inheritance rights. The fatwa specifies that even when the sperm and egg are from a married couple, implanting the embryo into another woman womb is impermissible (Tribune, 2011).
- 2) Pakistan: The Federal Shariat Court of Pakistan, in a landmark judgment in 2017, declared surrogacy un-Islamic and against the injunctions of the Holy Qur'an and Sunnah. The court held that surrogacy leads to social problems, including discrimination against the child and complications in inheritance. It directed the government to amend the Pakistan Penal Code to make surrogacy a punishable offence (Asad, 2017).

d. Twelver Shī'ī Jurisprudence (e.g., Iran)

Contrary to the prevailing prohibitive rulings in Sunni-majority legal institutions, a minority but significant view in Twelver Shī'ī jurisprudence, particularly as institutionalized in Islamic Republic of Iran, adopts a more permissive stance on certain forms of surrogacy (Nazari Tavakkoli, 2022). Top Shī'ī jurists, including Ayatollah 'Alī Khamenei, have issued fatwas allowing gestational surrogacy, provided the genetic material (sperm and egg) is sourced exclusively from the legally married couple (Yassari, 2022). According to the view, surrogacy does not violate the core principles of Islamic law, provided the biological contributors are husband and wife (Amalia & Sudistina, 2024). It also requires that the arrangement occur in the framework of a valid marriage, whether permanent (*nikāḥ*) or temporary (*mut'ah*).

This position is grounded in a distinctive Shī'ī legal methodology that offers interpretive space to *ijtihād* and allows the use of temporary marriage (*mut'ah*) to formalize the surrogate relationship with the husband, thereby legitimizing the reproductive act and protecting lineage (Iqbal, 2023). The underlying rationale includes the preservation of the marital bond, fulfilment of the human desire for procreation, as well as the alleviation of psychological and social hardship associated with infertility (Thoma et al., 2021). Importantly, Iranian family courts have also operationalized these fatwas in

practice, with surrogacy contracts legally recognized and regulated through civil mechanisms (Dashtizadeh et al., 2019).

The comparative analysis of juristic responses shows a dominant consensus against surrogacy among Sunni institutions, unified by the objective of safeguarding lineage and preserving the sanctity of marital reproduction (Ansari & Saeed, 2023). The consistent emphasis on avoiding third-party participation reflects a shared concern over potential legal confusion in matters of inheritance and guardianship, as well as moral apprehensions surrounding the commodification of the womb. These rulings affirm a maqāṣid-driven approach, prioritizing the protection of family structure as a foundational unit in Islamic law. However, the outlier position adopted by Twelver Shī'ī scholars shows an alternative pathway of *ijtihād*, where the permissibility of gestational surrogacy is framed as a response to infertility-related hardship, formalized through legal innovations in the form of *mut'ah* marriage. This divergence reflects broader methodological differences between Sunni and Shī'ī jurisprudence in approaching bioethical novelty, emphasizing both the dynamic capacity and the doctrinal limits of Islamic law in regulating emergent technologies. Although minority allowances exist, the prevailing juristic view firmly prohibits surrogacy based on the threat to lineage certainty, legal coherence, and ethical integrity in family law.

Fragmented Motherhood and Legal Ambiguity: The Incompatibility of Surrogacy with Maqāṣid al-Sharī'ah Principles

The practice of surrogacy is fundamentally incompatible with the objectives of *Maqāṣid al-Sharī'ah*, particularly those concerning the preservation of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), lineage (*ḥifẓ al-nasl*), and wealth (*ḥifẓ al-māl*) (Ibrahim et al., 2018, 2019). This incompatibility originates from the ethical, legal, and spiritual contradictions that surrogacy introduces into Islamic family law (Farooqi et al., 2022). Surrogacy undermines *ḥifẓ al-dīn* by dissolving the sanctity and exclusivity of marital procreation, transforming a divinely governed act into a contractual exchange. It also misrepresents *ḥifẓ al-naḥs*, as the desire for children, which is emotionally valid but does not meet the doctrinal threshold for life preservation in Islam. More critically, surrogacy disrupts *ḥifẓ al-nasl* by creating fragmented maternal identities that Islamic jurisprudence is unequipped to resolve, threatening legal certainty in matters of inheritance, *maḥramiyyah*, and lineage. Finally, it endangers *ḥifẓ al-māl*, as inheritance laws depend on undisputed maternal and paternal identities. The Qur'an assigns specific shares based on clear *nasab*, and contractual surrogacy arrangements create ambiguity in the rights, violating the immutability of divine ordinances (Padela et al., 2021; Zawawi et al., 2024). These violations not only pose

doctrinal inconsistencies but also produce tangible legal risks, rendering surrogacy *ḥarām* in the framework of Islamic law.

Thematic Table of Findings with Coding

Theme	Maqṣad Affected	Description of Conflict	Key Source/Textual Support
Fragmented Motherhood	<i>ḥifẓ al-nasl</i>	Dual maternal claims (egg donor vs. gestational carrier) introduce ambiguity in nasab	Qur'an 58:2; Tafsir Ibn Kathir; al-Qurṭubī
Violation of Marital Bounds	<i>ḥifẓ al-dīn</i>	Surrogacy violates exclusivity of procreation within lawful marriage	Hadith: <i>al-walad li-l-firāsh</i> ; Qur'anic ethics of chastity
Misuse of Life Principle	<i>ḥifẓ al-nafs</i>	Using <i>ḥifẓ al-nafs</i> to justify surrogacy for psychological relief misrepresents its purpose	Qur'an 42:49–50; Maqāṣid scholarship
Inheritance Ambiguity	<i>ḥifẓ al-māl</i>	Legal uncertainty in mother-child identity disrupts fixed inheritance shares.	Qur'an 4:11; <i>al-farā'id</i> jurisprudence; Oniye (2001); Dupret et al. (2023)
Risk to Maḥram Boundaries	<i>ḥifẓ al-nasl</i>	Inability to confirm maternal lineage may result in unlawful marriages	Qur'an 4:23; Legal maxim: <i>al-yaqīn lā yazūl bi-l-shakk</i>
Commodification of Womb	<i>ḥifẓ al-'ird</i>	Turning gestation into a paid service contradicts Islamic values of dignity and honour	Ethical principle of <i>karāmah</i> in <i>Sharī'ah</i>

Source: The authors

Surrogacy fundamentally contradicts the objective of *ḥifẓ al-dīn* (preservation of religion), as it undermines the sanctity and exclusivity of marital and reproductive relationships, which are core Islamic values. Islamic law mandates that procreation occur solely in a lawful marital bond, not only to fulfill a biological function but also to uphold the spiritual, legal, and ethical dimensions of family formation. By introducing third-party reproductive contributors, surrogacy arrangements violate this exclusivity, disrupting the moral and legal order enshrined in Islamic teachings. Moreover, when a woman womb is contracted and compensated in exchange for bearing a child, it leads to the commodification of human reproduction, which stands in stark opposition to Islamic values of dignity, modesty, and divine purpose. These arrangements reduce the religious dimension of family to a procedural formality and also disregard the spiritual and moral essence. Surrogacy threatens the maqṣad of *ḥifẓ al-dīn* by compromising religious form and corroding the core principles upon which Islamic family law is founded.

The application of *ḥifẓ al-nafs* (preservation of life) as a justification for surrogacy reflects a fundamental misinterpretation of the principle scope in *Maqāṣid al-Sharī'ah*

framework. Although this objective prioritizes the protection of life, the intended function is to prevent harm, safeguard existing life, and uphold human dignity in the face of danger or neglect. It does not extend to authorizing proactive biomedical interventions aimed at creating new life, particularly when such efforts introduce ethical and legal complexities. Some proponents of surrogacy argue that the procedure serves infertile couples who are emotionally and psychologically distressed, framing it as a form of preserving life. However, this justification collapses under scrutiny when measured against the Qur'anic ethos, particularly in Surah Ash-Shūrā (42:49–50), stating that fertility and barrenness are manifestations of divine will and beyond human entitlement. This implies that equating emotional longing for children with life-threatening conditions dilutes the doctrinal precision of *ḥifẓ al-nafs* and ignores the theological imperative of submitting to divine decree.

Surrogacy profoundly threatens the *maqṣid* of *ḥifẓ al-nasl*, a foundational objective in Islamic law that ensures clarity in legal, familial, and ethical matters. Islamic rulings concerning inheritance, guardianship, marital eligibility, and parental responsibilities all depend on an unequivocal understanding of biological lineage (Gillani et al., 2024; Padela et al., 2020). The introduction of surrogacy, particularly gestational surrogacy, results in dual claims to motherhood by the egg donor and birth mother. This bifurcation of maternal identity directly contradicts the Qur'anic verse in Surah Al-Mujādilah (58:2) (Kathīr, 1999), stating that “mothers are none but those who gave birth to them.” Classical exegetes such as Ibn Kathīr and al-Qurṭubī affirm that childbirth, not genetic contribution, determines maternal status under Islamic law. Consequently, surrogacy introduces unprecedented ambiguity into the legal determination of *nasab*, making it incompatible with the theological and legal certainty demanded by *Sharī'ah*.

The ambiguity generated by surrogacy arrangements extends beyond theoretical concerns, posing real and significant legal risks, most significantly in determining *maḥramiyyah* (permanent non-marriageability) (Gunnarsson Payne et al., 2020; Lozanski & Shankar, 2019). Under Islamic law, marriage is strictly prohibited between individuals with specific blood relationships, as outlined in Surah al-Nisā' (4:23) (Al-Qurṭubī, 2006), and these prohibitions assume the certainty of lineage. However, in a surrogacy case, the child may remain unaware of the identity of the gestational mother, potentially leading to situations where marriage occurs among close relatives. This possibility violates the legal maxim *al-yaqīn lā yazūl bi-l-shakk* (certainty is not removed by doubt) and contradicts the Prophet command to avoid doubtful matters. Surrogacy is not merely a matter of theological debate as it produces practical risks that undermine the social and moral safeguards enshrined in the *maqṣid* of *ḥifẓ al-nasl*.

The practice of surrogacy challenges the objective of *ḥifẓ al-māl* (preservation of wealth), particularly in the realm of inheritance, which in Islamic law depends on clear and indisputable lineage. Inheritance rules (*al-farā'id*) are divinely prescribed, with each family member receiving a specific share based on well-defined blood relations (Khatun et al., 2022). The duality introduced by surrogacy, between the genetic mother and the gestational mother, creates uncertainty about the rightful legal mother. This uncertainty has cascading effects, making it difficult for the child to claim or pass on inheritance rights. The Qur'an is explicit in assigning shares to a legally recognized mother, such as "for his mother, one-sixth" (Q. 4:11), a ruling that presupposes the identity of the mother as singular and legally certain. Surrogacy disrupts this clarity and creates legal doubt in areas where *Sharī'ah* demands absolute precision (Dupret et al., 2023). As Islamic law prohibits any alteration of divinely mandated inheritance shares through private contracts, the contractual arrangements in surrogacy cannot override the Qur'anic framework. Therefore, the concept compromises personal identity and also jeopardizes financial justice in Islamic system of wealth distribution, making it incompatible with the objective of *ḥifẓ al-māl*.

In Islamic law, the institution of inheritance (*al-mirāth*) is not merely a social mechanism for distributing wealth but a divinely mandated legal system rooted in the principles of *nasab* (lineage) and familial certainty. The disruption caused by surrogacy to the objective of *ḥifẓ al-māl* (preservation of wealth) is most acutely felt in this domain. The Qur'an explicitly stipulates fixed inheritance shares based on lawful marital and blood relations, as in the verse: "Allah commands you regarding your children: to the male, a portion equal to that of two females" (Q. 4:11). These divine prescriptions rest on the assumption of an undisputed, singular maternal and paternal identity. Furthermore, the foundation of Islamic inheritance law (*al-farā'id*) is grounded upon two critical pillars. The first pillar is the establishment of legitimate lineage through childbirth in a valid marriage, as indicated in the prophetic tradition *al-walad li-l-firāsh* ("the child belongs to the marital bed"). The second pillar is the immutability of the Qur'an apportionment of shares, which Islamic jurisprudence prohibits from being altered by private contract or discretionary redistribution.

Surrogacy introduces an unprecedented legal dilemma by splitting the role of motherhood between two individuals, namely the genetic (egg donor) and the gestational carrier (surrogate) (Oniye, 2001). Classical Islamic jurisprudence, particularly across the four Sunni *madhāhib*, recognizes the mother as the woman who gives birth (*wilādah*), or, in contested cases, based on the husband acknowledgment (*iqrār*) in a valid marital context. The novel fragmentation introduced by surrogacy does not fit in these

established categories, thereby creating legal ambiguity over who qualifies as the child legitimate mother under *Shari'ah*. This ambiguity directly impacts the child and the mother inheritance rights. It raises critical questions such as whether the surrogate may be excluded from inheritance despite physically giving birth, or whether the genetic mother has any legal claim despite biological contribution.

The Qur'anic inheritance shares are explicitly assigned to "the mother" (e.g., "and for his mother, one-sixth" – Q. 4:11), and these assume the presence of a clearly identified, lawful maternal figure. The introduction of doubt into this identity renders the application of such shares uncertain and potentially unjust. Furthermore, when *nasab* is unclear, the child may be prevented from inheriting from maternal relatives, or vice versa, resulting in a deprivation of divinely guaranteed rights. As Islamic law prohibits any contractual arrangement that can alter the divinely prescribed shares, surrogacy agreements cannot legally override the Qur'an mandates. Consequently, surrogacy violates the dual imperatives of inheritance law, namely the certainty of lineage and the inviolability of fixed shares, placing it in direct contravention (*mukhālafah*) of *Shari'ah*. From a juristic standpoint, surrogacy is impermissible (*ḥarām*), as it endangers both the clarity of family structure and the rightful distribution of wealth, two core components safeguarded under *ḥifẓ al-māl*. Upholding the integrity of these institutions necessitates the categorical rejection of reproductive practices that introduce ambiguity into areas where Islamic law demands absolute clarity.

Conclusion

In conclusion, this study emphasizes that surrogacy, particularly in the context of Islamic law, poses significant legal and ethical dilemmas, primarily due to the disruptive impact on the principle of *ḥifẓ al-nasl* as one of the essential objectives of *Shari'ah* (*Maqāṣid al-Shari'ah*). The concept undermines the epistemic clarity of *nasab* (lineage), which forms the basis for numerous family-related rulings in Islamic jurisprudence, such as inheritance (*farā'id*), marital guardianship (*wilāyah*), custody (*ḥaḍānah*), and maintenance (*naḥaqah*). This disruption arises from the ambiguity introduced when two women share biological and gestational roles in reproduction, making it impossible to identify the legal mother with certainty. Applying the legal maxim *al-ḥukm yaṭūfu ma'a 'illatihi wujūdān wa 'adaman*, stating that a ruling follows the effective cause, surrogacy must be deemed impermissible when the 'illah (legal cause) for prohibition is present, as found in cases of *taḍādd al-nasab* (conflicted lineage). This position is consistent with the dominant views of leading Islamic juristic bodies such as the OIC Fiqh Academy, Al-Azhar, and the Saudi Permanent Committee, all of which categorically forbid surrogacy not out of conservatism, but in

pursuit of preserving the divine order and legal harmony of Islamic family law. Although a minority of scholars, particularly among some Shī'ī authorities, have explored conditional permissibility, these views remain marginal and unresolved in terms of doctrinal consistency. Based on the results, surrogacy represents a structural threat to Islamic legal coherence and should be prohibited in Muslim-majority contexts. Further studies are needed to address evolving ARTs through the lens of *Maqāṣid al-Sharī'ah*.

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