

**THE VIEW OF NAHDLATUL ULAMA'S SCHOLAR IN MALANG
ABOUT CHILD'S NASAB FROM SURROGATE MOTHER as
PERSPECTIVE OF JASSER AUDA'S MAQASID SHARIA**

Thesis

By :

Santi Ayuningtiyas

16210145



ISLAMIC FAMILY LAW DEPARTMENT

SHARIA FACULTY

MAULANA MALIK IBRAHIM

STATE ISLAMIC UNIVERSITY MALANG

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2020

STATEMENT OF THE AUTENTICITY

In the name of Allah (swt),

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled :

**THE VIEW OF NAHDLATUL ULAMA'S SCHOLAR IN MALANG
ABOUT CHILD'S NASAB FROM SURROGATE MOTHER as
PERSPECTIVE OF JASSER AUDA'S MAQASID SHARIA**

It is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.



Malang, 9 March 2020

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APPROVAL SHEET

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THE VIEW OF NAHDLATUL ULAMA'S SCHOLAR IN MALANG ABOUT CHILD'S NASAB FROM SURROGATE MOTHER as PERSPECTIVE OF JASSER AUDA'S MAQASID SHARIA

The supervisor states that this thesis has met the scientific requirements to be proposed and to be tested by the thesis board of examiners.

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THE VIEW OF NAHDLATUL ULAMA'S SCHOLAR IN MALANG ABOUT
CHILD'S NASAB FROM SURROGATE MOTHER as PERSPECTIVE OF JASSER
AUDA'S MAQASID SHARIA

Has passed and certified with grade : A

Malang, 14 Mei 2020



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DEDICATION SHEET

This thesis is dedicated to the State Islamic University Maulana Malik Ibrahim Malang for the best educations. This thesis is dedicated to my beloved mother and father who teaches me every time and always gives motivations for me.



MOTTO

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا
وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۚ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۚ إِنَّ

اللَّهُ كَانَ عَلَيْكُمْ رَقِيبًا

*“O mankind, fear your Lord, who created you from one soul and created from it
its mate and dispersed from both of them many men and women. And fear Allah,
through whom you ask one another, and the wombs. Indeed Allah is ever, over
you, an Observer.”*

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All Praises due to Allah, the Cherisher and sustainer of all the worlds. There in neither might nor power but with Allah the Great, the Exalted. With only His Grace and Guidance, this thesis entitled “Nahdlotul Ulama’s Scholars Malang Views About Child’s Nasab Of Surrogate Mother On The Jaser Auda’s Maqashid Sharia Perspective” could be completed, and also with His benevolence and love, peace and tranquility of the soul. Peace be upon the Prophet Muhammad (saw) who had brought us from darkness into the light, in this life. May we be together with those who believe and receive intercession from Him in the day of judgment. With all of the support and help, discussion, guidance and directions from all parties involved during the process of completing this thesis, the writer wishes to express his utmost gratitude to the following :

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9. And the unforgettable, to My beloved Mother who support me for never give up struggling. And thanks to all of you for immeasurable spirit given to me.

Hopefully, by imparting what has been learned during the course of study in the Faculty of Sharia State Islamic University of Maulana Malik Ibrahim Malang. It will be benefit all leaders and the authors himself. Realizing the fact that error and weakness is impartial to being human, and that this thesis is still far from perfection, the author appreciates constructive critics and suggestions for the improvement and betterment of this years.

Malang, 20 February 2020

TRANSLITERATION GUIDANCE

A. Consonant

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	'
ث	Ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	Sy	ء	'
ص	Sh	ي	Y
ض	Dl		

B. Vocal, long-pronounce and diphthong

Vocal fathah = a

Vocal kasrah = i

Vocal dlommah = u

Long-vocal (a) = Â e.g. â قال become Qâla

Long-vocal (i) = Î e.g. î قيل become Qîla

Long-vocal (u) = Û e.g. û دون become Dûna

Diphthong (aw) = نو e.g. قول become qawlun

Diphthong (ay) = يي e.g. خير become khayrun

C. Ta' marbûthah (ة)

Ta' marûthah transliterated as “*ġ*” in the middle of word, but if *Ta'*

marbûthah in the end of word, it transliterated as “h” e.g. become *al-*

risalat li al-mudarrisah, or in the standing among two word that in the form of *mudlaf* and *mudlaf ilayh*, it transliterated as *t* and connected to the next word, e.g. become *fi rahmatillâh*.

D. Auxiliary Verb and Lafdh al-Jalâlah

Auxiliary verb “al” () written with lowercase form, except if it located in the first position, and “al” in lafadh jalâlah which located in the middle of two or being of become *idhafah*, it remove from writing.



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ABSTRAK

Santi, Ayuningtiyas, 2020. Pandangan Ulama Nu Kota Malang Tentang Penentuan Nasab Anak Dari Ibu Pengganti Perspektif Maqasid Syari'ah Jasser Auda. Skripsi, Program Hukum Keluarga Islam, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Pembimbing : Raden Cecep Lukman Yasin, MA. PhD.

Kata Kunci : Pernikahan, Ibu Pengganti, *Maqasid Syari'ah*

Pernikahan merupakan salah satu media untuk memperoleh kebahagiaan dan melestarikan keturunan. Pasangan yang telah menikah pasti mendambakan kehadiran seorang anak untuk melengkapi keluarga kecilnya. Namun tidak semua pasangan bisa mendapatkan seorang anak secara mudah. Sebagian pasangan membutuhkan usaha yang lebih untuk mendapatkannya. Seiring perkembangan teknologi, muncullah metode ibu pengganti sebagai solusi untuk pasangan yang belum dikaruniai anak dikarenakan seorang istri tidak dapat hamil sebab adanya penyakit atau kelainan yang dialami dalam rahimnya.

Penelitian ini akan membahas bagaimana penentuan nasab anak dari ibu pengganti menurut pandangan Ulama NU Kota Malang, kemudian bagaimana perspektif maqasid syari'ah Jasser Auda mengenai penentuan nasab tersebut. Penelitian ini merupakan jenis penelitian empiris dengan menggunakan pendekatan kualitatif. Adapun sumber data yang digunakan adalah sumber data primer dari hasil wawancara, dan sekunder bersumber dari buku-buku atau jurnal lainnya. Selanjutnya data yang diperoleh dari hasil wawancara akan dianalisis menggunakan *Maqasid Syari'ah* Jasser Auda.

Hasil penelitian menunjukkan bahwa : 1) Penentuan nasab anak dari ibu pengganti menurut pandangan Ulama NU kota Malang sebagian besar berpendapat bahwasannya nasab anak tersebut jatuh kepada ibu yang mengandung dan melahirkan. Dan satu dari empat narasumber mengatakan nasab anak tersebut tetap kepada ayahnya akan tetapi jalan yang ditempuh untuk memperoleh keturunan dengan menggunakan ibu pengganti adalah salah dan tidak diperbolehkan. 2) Hasil analisis menggunakan Maqasid Syari'ah Jasser Auda berkesimpulan bahwa sewa rahim boleh dilakukan jika keadaan darurat, dan nasab anak tersebut tetap kepada ibu yang mengandung dan melahirkan. Kemudian, status anak tersebut dengan orangtuanya adalah sebagai anak adopsi.

ABSTRACT

Santi, Ayuningtiyas, 2020. The View Of Nahdlatul Ulama's Scholar In Malang About Child's Nasab From Surrogate Mother as Perspective Of Jasser Auda's Maqasid Sharia. Thesis, Department of Islamic Family Law, Maulana Malik Ibrahim State Islamic University, Malang, Advisors : Raden Cecep Lukman Yasin, MA. PhD.

Keywords: Weddings, Surrogate Mothers, *Maqasid Sharia*

Wedding is a way to get happiness and preserve offspring. A married couple certainly crave the presence of a child to complete their small family. Unfortunately, not all couples can get a child easily. Some couples need more effort to have children. As technology develops, there is a surrogate mother method as a solution for couples who have not been blessed with children because the wife cannot get pregnant because of an illness or disorder experienced in their womb.

This study discussed about the way of child's Nasab from surrogate mother viewed from Ulama NU of Malang city, then, how the perspective of Jasser Auda's *maqasid sharia* about child's Nasab of surrogate mother. This study is an empirical study with qualitative approach. The data sources used are primary data sources from interviews, and secondary sources from books or other journals. Furthermore, the data obtained from the results of the interview will be analyzed using Jasser Auda's *maqasid sharia*.

The results of this study shows that: 1) based on the view of Ulama NU of Malang city, the child's Nasab of surrogate mother is on the mother who give birth them. Then, one of the four interviewees said that the child's advice remained with his father but the way to get offspring by using surrogate mothers is wrong or not allowed. 2) The results of the analysis using Jasser Auda's *maqasid sharia* concluded that surrogate mother is allowed, and the child's nasab of surrogate mother is to a woman who who is pregnant and giving birth. Then, the child's status with his parents is as an adopted child.

مستخلص البحث

سانتي، أيونينجتاس، 2020. رأي العلماء من نهضة العلماء مدينة مالانج عن تقرير نسب الولد من الأم البديلة عند المقاصد الشريعة ياسر عودة. البحث العلمي، برنامج الأحوال الشخصية، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج، المشرف: رادين جيغيف لقمان يس الماجستير.

الكلمات المفتاحيات: النكاح، الأم البديلة، المقاصد الشريعة.

النكاح هو واحد البواسطة لنيل الفرح وحفظ النسب. زوجان الذان زوجان طبعاً يريد ان يحضر الولد ليتم الأسرة صغيرته. بل، ليس جميعه لنيل الولد ساهلاً. بعض منهم يحتاج المحاولة الزيادة لنيله. تمشى مع التنمية التكنولوجية، تطلع الطريقة الأم البديلة محلولا لزوجين الذين لم ينال الولد لأن الزوجة لاتستطيع حاملا بسبب وجود المرض أو تشوية التي تكابد رحمها.

سيبحث هذا عن كيف تقرير النسب الولد من الأم البديلة عند رأي العلماء من نهضة العلماء مدينة مالانج، ثم كيف فكرة المقاصد الشريعة ياسر عودة عن ذلك تقرير النسب. هذا البحث هو البحث التجريبي باستخدام النهج النوعي. أما المصادر البيانات التي تستخدم هي المصادر البيانات الرئيسية من حاصل المقابلة، والثانوية من الكتب أو السجل الأخر. وبالتالي، البيانات التي تنال من حاصل المقابلة ستحلل ان تستخدم المقاصد الشريعة ياسر عودة.

يدل حاصل البحث أن: 1 { تقرير نسب الولد من الأم البديلة عند العلماء (NU) مدينة مالانج، يرى أعظمهم أن نسب ذلك الولد ينزل إلى الأم التي تحمله. وقال واحد من 4 الأشخاص الموارد أن نسب ذلك الولد إلى أبيه. بل، السبيل الذي يؤخذ لنيل النسب باستخدام الأم البديلة خطأ ولايجوز. 2 { يستخدم حاصل التحليل مقاصدا شريعة ياسر عودة ان يستنتج أن ذلك يمكن تنفيذ إيجار الرحم إذا كانت هناك حالة طارئة ، نسب الولد إلى يُخبر الأم الحامل والولادة. ثم ، يكون وضع الطفل مع والديه كطفل بالتبني.



CHAPTER I

INTRODUCTION

A. Background of Research

Children are the most beautiful gift for a married couple. Generally, a married couple wants a child to supplement their little family. However, not all married couples can get children easily. Some couples need additional effort to have children, due to fertility, disease, or reproductive organ disorders.¹

Surrogate mother's term has appeared due to modernization in the field of medical technology. The medical experts have found various

¹ Firdaus Anwar. *Mengapa Pasangan Memilih Sewa Rahim Daripada Mengandung Anaknya Sendiri?*. Dalam detik.com, last accessed 22 September 2019.

methods to help couples who cannot get a child, starting with using vitamins, fertility therapy, utilizing reproductive technology like an IVF.

In fact, medical technology can help women who have uterine problems or who don't have a uterus, but still has ovum to get a child. The way is using the help of surrogate mother's uterus through IVF fertilization technic. This method is often referred to as surrogacy, surrogate mother, and others.²

In 2009, the practice of surrogacy has taken place in Indonesia. It has been reported by media that the artist named Zarima Mirafsur has rented out her uterus to a businessman couple from Surabaya in return for some money, a car and a house.³

Mother initials EY, from Surakarta, has done surrogacy. Married in 1999, she only had a child in 2004. Fertilization occurs naturally, but she gave birth by cesarean section. After the birth of the first child, she tried for years to get a second child. And then, in 2011 she tried IVF method in Surabaya, but to no avail. In 2014, she tried IVF method again in Bandung, but still failed. Finally, EY and her husband decided to use the service of surrogate mother to conceive her second child, and gave birth in 2017.⁴

In 2015, dr. Samuel Widiasmoko from Semarang who is obstetrician in Telogorejo Semarang Hospital claimed to have helped a

² Richard Kennedy. *Ibu Pengganti : Hak Perempuan Atas Tubuhnya*. (Semarang : Universitas Katolik Soegijapranata, 2019). Vii.

³ Adinda Akhsanal. *Analisis Hukum Sewa Rahim Menurut Hukum Islam*. (Universitas Lampung : Bandar Lampung), 2018.

⁴ EY, *Hasil Wawancara*. See book at Richard Kennedy. *Ibu Tumpang*. 15.

mother give birth. He said that surrogacy process by surrogate mother was carried out abroad, only for her birth happened in Indonesia. Based on experience, he also suggested a married couple with the condition of a wife who could not conceive and give birth to do surrogacy abroad, because Indonesian Law does not regulate surrogacy.⁵

This gives an indication that the practice of surrogate mother has occurred in Indonesia, the largest Muslim country. And, it does not rule out the possibility of the illegal practice surrogate mother, although now MUI has banned it.

Furthermore, this practice will bring up many problems, not only in regulation and health, but also in the legal status of the child from the surrogate mother. So, what is the status of the child? Does the nasab remain to his biological father or to surrogate mother? In this case, we are mostly Muslims in this country and adhere to NU's scholars, so we will ask about it to NU's Scholar. And to clarify research, I am a researcher use perspective Jasser Auda's *Maqasid Sharia* that has a contemporary to this problem.

Based on the explanation above, to answer the questions from this problem, the researcher interested to do the research.

⁵ Samuel Widiasmoko, Hasil Wawancara. See book at Richard Kennedy. *Ibu Pengganti*. 15.

B. Statement of Problem

Based on the background above, the statement of problems are:

1. What are the view of *Nahdlatul Ulama*'s scholars in Malang about child's nasab of surrogate mother?
2. What is the analysis of *Nahdlatul Ulama*'s scholars views in Malang about child's nasab of surrogate mother with Jasser Auda's *Maqhasid Sharia* perspective?

C. Objective of Research

Based on the problems that have been formulated above, the research objectives are:

1. To explain the view of *Nahdlatul Ulama*'s scholars in Malang about child's Nasab from Surrogate mother.
2. To explain the analysis of *Nahdlatul Ulama*'s scholars views about child's Nasab from surrogate mother with Jasser Auda's *Maqhasid Sharia* perspective.

D. Significance of Research

1. Theoretical Significance

This research is expected to be able to make a significant contribution as knowledge or scientific literature that can be used as study for students who are studying Islamic Law. Especially, a child of the surrogate mother according to *Nahdlatul Ulama*'s Scholar View with using analysis of Jasser Auda's *Maqasid Sharia*.

2. Practical Significance

- a. This research is expected to make a contribution and suggestion for Indonesian legal experts to handling cases about the child of surrogate mother to give of justice, benefits, legal certainty, and effective legal protection for this case.
- b. This research is expected to make contribution thoughts for students who are studying. Especially, students of Islamic Family law department about the child of surrogate mother.
- c. This research is expected to benefit for all parties and provide to law enforcement and legislators to refine regulations about the child of surrogate mother, in order to create the legal justice in society.

E. Operational Definition

To facilitate understanding this research, we will explain some main words are very closely related to this research. Among others:

Nasab: Descent/ offspring (especially from fathers)⁶ or a rope that connect family and other blood relations.

Surrogate Mother: Women who rent out her uterus to conceive a child from a husband and wife by using sperm and ovum from this couple.

Jasser Auda Maqhasid Sharia: The thought of Jasser Auda about the concept of Maqashid Sharia.

⁶ KBBI

F. Structure of Discussion

Structure of discussion is a very important aspect in writing of a research problematic, because the systematic writing is intended to facilitate the reader in knowing the flow of discussion contained in the thesis. The systematic writing of this thesis is as follows:

CHAPTER I: the content is an introduction the background of research regarding child of surrogate mother, and then the statement of problem, objective of research, significance of research, operational definition and structure of discussion.

CHAPTER II: the content is library reviews. This chapter contains two sub-chapters, namely previous research and theoretical study. First, the previous research that contains research relating to the determination of the child of surrogate mother. And then, theoretical study contains the material to be examined in order to facilitate research that is about child of surrogate mother and also Jasser Auda's *Maqasid Sharia*.

CHAPTER III: the content is research method that will be used by researcher to complete this research. Includes type of research, approach of research, research location, resources, method of collecting data, and method of processing and data analysis, which serve to obtain a description of the problems in the object of this research, that is regarding child of surrogate mother.

CHAPTER IV: The content is findings and discussion, in this chapter will describe and explain the exposure and analysis based on data

obtained by researcher in the field. Start from the description of *Nahdlatul Ulama's* Scholar view about child of surrogate mother. And then, the opinion is analyzed using the perspective of Jasser Auda's *Maqasid Sharia*.

CHAPTER V: The content is conclusions, includes conclusions as answers to problems that are formulated and also suggestions related to the topic of discussion in this studies as a whole.





CHAPTER II

REVIEW OF RELATED LITERATURE

A. Previous Research

The results of previous research are a reference for researchers to conduct this study. In this research, there are similarities in research problems:

1. The research by Adinda Akhasanal Viqria, student id number 1412011010, student of Lampung University, Law Faculty, Family Law Department in 2018 entitled “*Analisis Hukum Sewa Rahim (Surrogate Mother) menurut Hukum Islam*”.⁷ This

⁷ Adinda Akhsanal Viqria, *Analisis Hukum Sewa Rahim (Surrogate Mother) menurut Hukum Islam* (Lampung : Universitas Lampung, 2018).

research is a normative study by using a normative juridical approach. This research discusses the analysis of Islamic law regarding the rent of the uterus. The purpose of this research is to determine the uterine rental law and also the legal consequences of the child from surrogate mother results under Islamic law. The equation from this research is about the uterine rent and also the legal consequences of the child. However, the difference is that this study is still using Islamic law, while the research will be done, that is to examine the determination of the child of a surrogate mother's nasab by the views of the *Nahdlatul Ulama's* Scholar, and then analyzed using the Jasser Auda's *Maqasid Sharia*.

2. The research by Choirul Anam, student Id Number 05210020, students of Maulana Malik Ibrahim Islamic State University Malang, Sharia Faculty, Islamic family Law department in 2010 entitled "*Kewarisan Anak Hasil Inseminasi Buatan dan Akibat Hukum terhadap Kewarisan Anaknya, menurut Hukum Islam dan Hukum Positif*".⁸ This research is a normative study by using a normative juridical approach. This study discusses about the legal consequences of inheritance arising from child of surrogate mother according to Islamic law and Positive law. The purpose is to know the consequence of Islamic law and

⁸ Choirul Anam, *Kewarisan Anak Hasil Inseminasi Buatan dan Akibat Hukum Terhadap Kewarisan Anaknya, Menurut Hukum Islam dan Hukum Positif* (Malang: Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2010).

positive law regarding the inheritance of child from surrogate mother. The similarity of this research is to both examine the status of child by using the uterus (surrogate mother). However, this research examines the status of inheritance, while the research that will be conducted by the researcher is about the nasab of the child. The difference also lies in the research method, besides this research uses positive law analysis and Islamic law, while the research will be done, that is analyze the views of the *Nahdlatul Ulama's* Scholar, and then analyzed using the Jasser Auda's *Maqasid Sharia*.

3. The research by Raudlatul Khasanah, student id number 09210082, student of Maulana Malik Ibrahim Islamic State University Malang, Sharia Faculty, Islamic Family Law Department in 2013 entitled "*Status Kemahraman Anak Hasil In-Vitro Fertilization Melalui Rahim Orang Lain*".⁹ This research includes library research and included in the verification normative research. This study discusses the status of childhood as a result of in-Vitro Fertilization through a surrogate mother. The purpose of this research is to determine the status of childhood resulting from in-Vitro Fertilization through the surrogate mother. The equation from this research equally examines the child born to a surrogate mother who uses

⁹ Raudlatul Khasanah, *Status Kemahraman Anak Hasil In-Vitro Fertilization melalui Rahim Orang Lain* (Malang : Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2013).

ovum and sperm from a married couple who are fertilized by In-Vitro Fertilization. Meanwhile, the first difference is the research method. Secondly, this study about the status of marital affairs, while the researcher will research about the nasab of a child.

To find out the differences and similarities of this study, the researcher made it a table, as follows:

No	Name	Title	Differences	Similarity
1.	Adinda Akhsanal Viqria	Analisis Hukum Sewa Rahim (Surrogate Mother) menurut Hukum Islam	This thesis uses normative research methods, while the research to be conducted uses empirical research methods. And then, this thesis focuses on researching the surrogate mother law. While the research to be carried out is to researched the determination of the child's nasab from surrogate mother.	This thesis has a similarity that is researching about surrogate mother.
2.	Choirul Anam	Kewarisan Anak Hasil Inseminasi Buatan dan Akibat Hukum terhadap Kewarisan Anaknya, Menurut Hukum Islam dan Hukum Positif.	This thesis uses normative research methods, while the research to be conducted uses empirical research methods. Furthermore, this thesis discusses the inheritance	This thesis has a similarity that is researching about child of surrogate mother.

			status of children from the results of artificial insemination with surrogate mother. Meanwhile, research to be conducted is to discuss about the nasab of children from surrogate mother.	
3.	Roudlatul Khasanah	Status Kemahraman Anak Hasil In-Vitro Fertilization melalui Rahim Orang Lain	This thesis uses normative research methods, while the research to be conducted uses empirical research methods. This thesis examines the marital status of children of surrogate mothers. whereas, this study discusses about nasab determination of child from surrogate mother.	This thesis has a similarity that is researching about child of surrogate mother.

B. Theoretical Framework

1. General Review of Nasab

a. The Definition of Nasab

The Nasab means from Arabic Language, that is نسب-ينسب-

وصفه وذكر نسبه , if there is sentence نسب الرجل the means is

give characteristics and mention their descent. The nasab is

singular and the plural form *nisab*, like the word سِدْرٌ to be سِدْرٌ and also can be *nusab*.¹⁰ The nasab is the patronymic and starts with *bin* or *ibn*, which means “son of”, acknowledges the father of the child.¹¹ Besides that the plural of nasab is *ansâb* as the word of Allah:

فَإِذَا نُفِخَ فِي الصُّورِ فَلَا أَنْسَابَ بَيْنَهُمْ يَوْمَئِذٍ وَلَا يَتَسَاءَلُونَ

The meaning: “So when the Trumpet is blown on the Day of Permission, there shall be no ties of relationship (lineage), nor shall they greet each other”. (*Q.S Al-Mu'minun* (23): 101)¹²

Besides the above paragraph, in surah As-Shaffat verse 158:

وَجَعَلُوا بَيْنَهُ وَبَيْنَ الْجَنَّةِ نَسَبًا ۚ وَلَقَدْ عَلِمَتِ الْجِنَّةُ إِنَّهُمْ لَمُحْضَرُونَ¹³

The meaning: “and they have claimed between Him and the jinn a lineage, but the jinn have already known that they (who made such claims) will be brought to (punishment).”

The above verse is discussing the characteristics of the Mecca polytheists which among their assumptions is that the jinn has a nasab relationship with Allah.

¹⁰ Nurul Irfan, *Nasab dan Status Anak dalam Hukum Islam* (Jakarta : Amzah, 2012), 27.

¹¹ Beth Notzon and Gayle Nesom, *The Arabic Naming System* (Journal : Science Editor, 2005, Vol.28 No 1). Last accessed 6 October 2019

¹² Al-Qur'an Al-Kareem, Surah Al-Mu'minun verse 101

¹³ Al-Qur'an Al-Karim, Surah As-Saffat verse 158.

Al-Qurthubi, when interpreting the above verse, says that the word *nasab* is general which includes kinship between people.¹⁴ It can be concluded that the word *nasab* means offspring or kinship. Even explicitly Su'di Abu Habib said that the meaning of *nasab* is the same as relatives. However, both the word descendants, relatives, and *nasab* themselves have become official and recognized Indonesian.¹⁵

In the Indonesian Encyclopedia, *nasab* is defined as a family lineage as a blood relation, either due to blood relations above (father, grandfather, mother, grandmother, and so on), downward (children, grandchildren, etc.) or later (siblings, uncles, aunts, and others).¹⁶

At the same time, in the Encyclopedia of Islamic Law, a *nasab* is a kinship based on blood relations as a result of a legal marriage. It can be concluded, that the *nasab* is a kinship based on blood relations, both upward, downward and sideways, all of which are one of the consequences of legal marriages, *fasid* marriages, and bodily relations.

¹⁴ Al-Qurthubi, *Al-Jami' li Ahkam Al-Qur'an*. Lihat dibuku Nurul Irfan, *Nasab dan Status Anak dalam Hukum Islam*, 28.

¹⁵ Nurul Irfan, *Nasab dan Status Anak dalam Hukum Islam*, 29.

¹⁶ Tim Penyusun, *Ensiklopedi Indonesia* (Jakarta : Ichtiar Baru Van Hoeve, 1990), 337.

b. The Causes of Nasab Provisions

1) Legal Marriage

The *Fuqaha* scholars agree that a child born from a woman's uterus by a legal marriage is returned to her husband.

As the hadith below:

حدثنا يحيى بن قزعة حدثنا مالك عن ابن شهاب عن عروة بن الزبير عن عائشة رضي الله عنها قالت : ثم قال النبي صلى الله عليه و سلم الولد للفراش و للغاهر الحجر... (المتفق عليه).

The meaning: “*Having narrated the hadith to us, Yahya bin Qaz'ah, was narrated to us, Malik from Ibn Syihab from Urwah bin al-Zubair of Aisha, she said: ... then the Prophet said: The child is the property of the person who wrestles on a blanket and for those who commit adultery are stones.*” HR. Bukhari & Muslim.¹⁷

The text of the hadith has several qiyas meanings which can be understood that the obedience of a child to his father occurs after sleeping in one bed, and it does not happen except after the two have intercourse or intercourse within a legal or fasid frame of marriage.

¹⁷ Abu Abdillah Al-Bukhari, *Shahih al-Bukhari Hadits* 1912 (Beirut: Dar al-Kutub al-Ilmiyyah).

2) *Fasid* Marriage

Fasid marriage according to Hanafiyah is marriages that take place with situation of lack elements in marriage.¹⁸ The determination of a child born in a *fasid* marriage is the same as the determination of a child in a legal marriage. There are three conditions in the determination of a child's nasab in a *fasid* marriage, that are:

- a) The husband is considered capable of impregnating his wife because he is baligh according to Malikiyah and Syafi'yyah. Or it's baligh and murāḥiq according to Hanafiyah and Hanabilah. And does not have a disease that can cause his wife get not pregnant (infertility / reproductive disorders).
- b) Have had intimate relations or really fell ill with him according to Malikiyah, or really doing dukhul according to Hanafiyah,
- c) Children are born within six months or more after an intimate relationship (according to Madzab Hanafi). if the child is born before six months, then it cannot nasab to his father.

3) Intimate Relationships Doubt

Intimate Relationships doubt consists of two words, namely intimate relationship and doubtfulness between the two

¹⁸ Wahbah Al-Zuhaili, *Fiqh Islam wa Adillatuhu* (Darul Fikr).

separated by the additional word "in". In a general sense, doubt is something that is not clear whether true or not, or the contains still possibility of right or wrong.¹⁹

While according to the term is intercourse between a man and a woman outside the marriage contract, whether marriage legally or fasid, but it is not called zina which is prohibited by Sharia and the law is not clear and it is not clear whether haram or halal absolute.²⁰

The doubt (*syubhat*) there are two kinds: first, doubtful agreement is accompanied by intercourse, that means is the contract has been conducted by one of partner and evidently the contract is failed for a reason. Second, doubtful intercourse without a contract is intercourse done by a partner without a contract. However, they consider it legal. For example: crazy person, drunk person, and etcetera.²¹

Therefore, that need to be considered to determine the child's nasab from the relationship doubtful that is²²:

- Fiqh experts agree that women must do iddah.
- Women who have been screwed up, she have rights like wives in matters of dowry, iddah, nasab.

¹⁹ Nurul Irfan, Nasab dan Status Anak dalam Hukum Islam, 96.

²⁰ Nurul Irfan, Nasab dan Status Anak dalam Hukum Islam, 96.

²¹ Avid Arvany, *Vertilisasi In Vitro (Analisis Fiqih terhadap Proses Fertilisasi In Vitro Pasca Kematian Suami dan Status Nasab Anak)* (Malang : Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2010), 60.

²² Avid Arvany, *Vertilisasi In Vitro (Analisis Fiqih terhadap Proses Fertilisasi In Vitro Pasca Kematian Suami dan Status Nasab Anak)*, 62.

- If doubt comes from both, then the child is his descendant.

4) The Status of Adultery and The Concept of Nasab in Islam

Adultery is a sexual relationship between men and women outside of marriage. Adultery is very possible the occurrence of pregnancy and birth of child. If adultery gives birth to a child, then the scholars agree, that the nasab of child will fell to his mother.²³

2. Surrogate Mother

a. The Definition of Surrogate Mother

Surrogacy is the process whereby a woman carries and gives birth to a baby for a couple who cannot conceive naturally.²⁴ That said, surrogate mothers are women who keep agreements with married couples. In essence, the surrogate mother is willing to contain the seeds of the husband and wife partner, by receiving a certain prize.²⁵

Initially the surrogate mother happened because the wife could not pregnant, because of something that happened to her uterus. So that the wife's role was transferred to another woman to replace her as a mother to pregnant and childbirth, by getting rewarded or voluntarily. The technology of surrogacy is usually

²³ Nurul Irfan, *Nasab dan Status Anak dalam Hukum Islam*, 114.

²⁴ Susan Imrie, *The Long-Term Experiences of Surrogates : Relationships and Contact with Surrogacy Families in Genetic and Gestational Surrogacy Arrangement* (Inggris : Reproductive BioMedicine Online, 2014) Journal Online. Last accessed 25 September 2019, 425.

²⁵ Deviana Yuanitasari, *Aspek Hukum Sewa Rahim* (Bandung : Refika Aditama, 2016), 2.

done when the wife is incapable and cannot pregnant or childbirth. The embryo is raised and born from the uterus of another woman, even though the baby belongs to a married couple, who want to have a child. For this service, the surrogate mother usually receives a fee from the family who wants to rent the uterus, and the woman must sign an agreement to hand over immediately the baby to the family who is renting.

b. Legal Status of Surrogate Mother

In the Islamic view, based on the MUI fatwa about IVF dated June 13, 1979 directors of MUI deciding that which is permitted in assisted reproductive services by utilizing the ovum of the wife fertilized by the sperm of the husband and the results of fertilization implanted back into the uterus where the ovum originated. This means that it is only limited to the IVF method. As for the surrogate mother, the Indonesian Ulama Council refused and forbade it. The reasons of prohibition, that is because of concern on complication about determining inheritance. And also there is concern about the mixing of nasab in surrogate mother's child.

Yusuf Qardhawi argues as his answer to the question posed as follows, what is the opinion of Islamic Sharia about renting a woman's womb by a married woman, which (sperm) did she take from the woman's husband as well as the ovum from his wife and

then implanted in the womb of a foreign woman ?. If the sperm of a man other than a husband is known or not, it is *haram* without doubt. Likewise eggs from other women besides the wife, it is also forbidden without doubt. Likewise if the egg is from a wife but the uterus from another woman, this is also not permissible *haram* because of the confusing question here who is the mother? Does the owner of the ovum carry offspring characteristics or does it feel the pain of getting pregnant and giving birth with difficulty? Even though the foreign woman is her honey (another wife of the man), it must not be *haram* because of the loss of motherhood between husband and wife. Then who is the real mother? To whom does the child become a prophet? To the owner of the ovum or to the owner of the uterus.²⁶

From the above opinion it can be understood that Yusuf Qardhawi forbids the rent of the womb in various forms. If some women have been tested by not being able to produce ovum then the condition is the same as women who do not have a uterus or men who can't produce sperma but the sperm are dead or like dead. They are those who are tested by God with infertility.

As for Yusuf Qardhawi, his opinion is based on the word of God in the Letter of Shura verse 49-50:

²⁶ Yusuf Qardhawi, *Fatawa Mu'asirah*. Juz III. 513.

لِلَّهِ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ ۖ يَخْلُقُ مَا يَشَاءُ ۚ يَهَبُ لِمَن يَشَاءُ إِنَاثًا وَيَهَبُ لِمَن يَشَاءُ الذُّكُورَ ۖ أَوْ يُزَوِّجُهُمْ ذُكْرَانًا وَإِنَاثًا ۚ وَيَجْعَلُ مَن يَشَاءُ عَقِيمًا ۚ إِنَّهُ عَلِيمٌ قَدِيرٌ

The Meaning: " To Allah belongs the dominion of the heavens and the earth; He creates what he wills. He gives to whom He wills female [children], and He gives to whom He wills males. Or He makes them [both] males and females, and He renders whom He wills barren. Indeed, He is Knowing and Competent."

There is what God wants Almighty to be infertile and no one can refuse His will, there is no cure for this disease (infertility) except to be patient with Allah's test and be pleased with God's provisions. The practice of renting out the womb will only lead to disputes in the future between a married couple who has seeds with another woman who is hired by the womb, and the child is born.

Prof. Dr. Journalist Udin, PAK. His opinion is the womb's wife of a participant in vitriol transfers embryo fertilization program is eligible to contain the embryo until it is born, the organization of IVF which is the process of pregnancy in the womb of another woman (surrogate mother) is haraam. Conversely if; (a) his wife's uterus is damaged and cannot contain the embryo, (b) a technology has not been found that can hold the embryo in the tube until birth, (c) and therefore the only way to get a child from his

own seed is only through the path surrogate mother then the law of conducting IVF reproduction by using another woman's womb (surrogate mother) is legal, because it is done besides in an emergency also because the desire to have children is very big.²⁷

This opinion emphasizes the concept of emergency, which is a condition where the desire to get offspring is very large, whereas there has not been found a way other than to rent the uterus. The second opinion is permissible because the content of the wife cannot conceive, this opinion equates with being allowed to breastfeed a child to another woman, even by giving a salary. While the last opinion states that it is possible to do uterine rent, but the resulting child is still not like a biological child, even his status is like an adopted child.

Based on regulations in Indonesia, The Act number 23 of 1992 article 16 verse (2) and article 127 verse (1) the act number 36 of 2009 explain that Assisted reproductive services can only be provided to legitimate married couples. That means can only for legal marriage couple based on the act number 1 of 1974.

Assisted reproductive service with using ovum's wife dan sperm's husband, that means is not allowed with donor ovum or sperm.²⁸ And then, the results of fertilization of ovum and sperm

²⁷ Salim HS, *Bayi Tabung Dalam Bidang Pengobatan*, (Jakarta : Sinar Grafika, Cet-1, 1993), 114.

²⁸ Article 16 verse (2) latter a The Act No 23 of 1992 and Article 127 verse (1) letter a The Act No 36 of 2009.

from a married couple are reinvested in the wife's uterus where the ovum come from.²⁹ From the rules above, we can conclude that the rule does not mention the prohibition of surrogate mother.

3. Jasser Auda's *Maqasid Sharia*

a. The Definition of *Maqasid Sharia*

The term “*maqsid*” (plural: *maqasid*) refers to a purpose, objective, principle, intent, goal, end, telos (Greek), *finalité* (French), or *Zweck* (German). *Maqasid* of the Islamic Law are the objectives/purposes behind Islamic rulings.³⁰

Jasser Auda said that *Maqasid* as one of today's most important intellectual means and methodologies for Islamic reform. It is a methodology from “within” the Islamic scholarship that addressees the Islamic mind and concerns. This approach is radically different from projects for Islamic “reform” and “renewal” that come from “without” the Islamic terminology and scholarship.³¹

Maqasid Sharia can be understood as a purpose the goal of Islamic law in the formation of justice and the benefit of society, not only a series of rules that lead to the destruction of social order.

The legal decisions of a leader must be this way, in one of the rules

²⁹ Article 16 verse (2) latter a The Act No 23 of 1992 and Article 127 verse (1) letter a The Act No 36 of 2009.

³⁰ Jasser Auda, *Membumikan Hukum Islam melalui Maqasid Syariah*, terj. Rosidin dan Ali abd el-Mun'im, (Bandung: PT Mizan Pustaka, 2008), 32.

³¹ Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law A Systems Approach* (London: The International Institute of Islamic Thought, 2007), 36.

of *usul al-fiqh* it is revealed "*Tasharruf Al-Imam Manuthun Bi Al-Maslahah*" that means is the policy of a leader (must) refer to the benefit they leads. After all, realizing the justice and benefit of a legal product in the midst of society is an effort that is not easy and must involve interrelated components.³²

b. The Six Systems of Jasser Auda's *Maqasid Sharia*

There are six system features that are optimized by Jasser Auda as a knife for analysis, namely cognitive nature, wholeness, openness, interrelated hierarchy, multi dimensionality and purposefulness.³³

1) **Cognitive nature**³⁴

From a systems theory perspective, "correlation", as explained previously, is the systems philosophical middle ground between realists' identity and nominalists duality, in order to best describe the relationship between mentally hypothesized systems and reality. The cognitive nature of systems is another expression of this correlation. A hypothesized system of the Islamic law, in our case, is a construction in the jurist's cognitive faculty, or *fi dhihn al-faqih* to use Ibn

³² Syukur Prihantoro, *Maqasid al-Syariah dalam pandangan Jasser Auda (sebuah Upaya Rekonstruksi Hukum Islam Melalui Pendekatan Sistem)*, (Yogyakarta; Jurnal At-Takfir Vol X), 122.

³³ Jasser Auda, *Membumikan Hukum Islam melalui Maqasid Syariah*, 11.

³⁴ Retna Gumanti, *Maqasid al-Syariah menurut Jasser Auda* (Gorontalo : Jurnal Al-Himalayah, 2018), 109.

Taymiyah's expression of the same concept.³⁵ The purpose is to open the validation of all cognitions (knowledge of the text), Auda impressed the importance of separating the text (al-Qur'an and as-Sunnah) from people's understanding of the text. It must be distinguished between sharia, fiqh, and fatwa.

2) Wholeness

Jasser Auda said, systems theory views every cause-and-effect relation as one part of a whole picture, in which groups of relations result in new emerging properties and combine to form a 'whole' that is more than a simple 'sum of the parts.'

Based on theological and rational arguments, the juridical authority of what jurist called 'the holistic evidence' is considered one of the fundamentals of Islamic Law. Which jurist had given priority over single and partial rulings. Developing systematic and holistic thinking for the fundamentals of Islamic Law (*usul al-fiqh*) will be useful for Islamic philosophy of law, in order to develop the semantics of causes-and-effects into a more holistic language. A holistic approach will also be useful for Islamic philosophy of religion (*'ilm*

³⁵ Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law A Systems Approach*, 73.

al-kalam), in order to develop its language of cause-and-effect into a more systematic language, including proofs for the existence of God, as outlined earlier.³⁶

3) Openness

System theorists differentiated between open and closed systems. Living systems must be open system, they maintained. This applies to living organism as well as any system that is to survive. It was mentioned above that Bertalanffy linked the features of openness and purposefulness with his system feature of 'equifinality', which means that open systems have the ability of reaching the same objectives from different initial conditions via equally valid alternatives. These initial conditions come with the environment outside the system, unlike closed systems which are isolated from the environment. Thus, the fundamental methodology of Islamic law has developed certain mechanisms for dealing with new events or in systems theoretical terminology, interacting with the environment.³⁷

4) Interrelated

The fourth feature of a system is to have a hierarchical structure. In the system is built and smaller

³⁶ Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law A Systems Approach*, 74-75.

³⁷ Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law A Systems Approach*, 75.

sub-systems under it. Interrelation relationships determine the goals and functions to be achieved. The effort to divide a whole system into small parts is a process of sorting between differences and similarities among the many parts that exist. The smallest part becomes a representation of a large part, and otherwise.

5) Multi Dimensionality

A system is not a single thing. However, it consists of several interrelated parts of one another. In the system, there is a coherent structure. Because a system consists of quite complex parts, it has a non-singular spectrum of dimensions. Islamic law can be analogous to a system. Islamic law is a system that has various dimensions.

6) Purposefulness

Every system has an output. This output is called the destination generated from the network system. In system theory, the aims are can be divided into goals and purpose (intent). A system will produce a purpose (intent) if he can produce the goal itself in different ways and the same thing, or produce various goals and in various situations. While a system will produce goals if it is only in a constant situation; and more

mechanistic; it can only give birth to one goal. In this context, Maqasid is in a sense of purpose (*al-gayah*). Maqasid sharia is not monolithic and mechanistic, but it can be varied according to situation and condition.





CHAPTER III

RESEARCH METHOD

A. Type of Research

The type research is empirical research. In other words is a type of field research, because the data collected includes words, behavior, and also the situation in the field. The research will be done in Malang, by hearing *Nahdlatul Ulama's* Scholar views about child's nasab of surrogate mother.

B. Approach of Research

The method of approach from this research is qualitative approach. Bogdan and Taylor said that qualitative research is one of research procedure that produce descriptive data include speech or writing and the

behavior of the people who observed. Qualitative approach is research that solves problems using empirical data. In this case, researcher interviewed the informant that is *Nahdlatul Ulama's* Scholar in Malang, like as KH. Marzuqi Mustamar, KH. Achmad Shampton, KH. Chamzawi, KH. Murtadlo.

C. Research Sites

The research location is in Malang. Especially, at the residence of *Nahdlatul Ulama's* Scholar will be interviewed about child of surrogate mother.

D. Data Source

The data sources that will be used in this research are taken from primary and secondary data.

1. Primary data is the data obtained directly from sources relating to the problem to be discussed. The data sources obtained from the field directly with interviewed *Nahdlatul Ulama's* Scholar , there are:
 - a) KH. Marzuqi Mustamar;
 - b) KH. Murtadlo;
 - c) KH. Chamzawi;
 - d) KH. Achmad Shampton.
2. Secondary data is the data obtained from the books as a complement to primary data. Secondary data from this research is the data obtained by conduction a literature review. The books

source is the books about nasab, the books of Jasser Auda's *maqasid sharia*, regulations, and Al-Qur'an *Hadits*.

E. Method of Collecting Data

1. Interview

The meaning of interview is gathering social facts as a material for empirical legal studies. The method means there is question and answer directly using questions that are arranged systematically, clearly and direct. The interview is intended to obtain true and accurate information from specified sources. All information obtained by interview, well written and recorded. The interview was conducted verbally to achieve competent objectives regarding *Nahdlatul Ulama's* Scholar View about child of surrogate mother.

2. Documentation Study

Documentation study is a data collection technique in the form of written data sources or images. The written sources or images include official documents, books, archives, personal documents, and picture that related to the research problem. The aims is to obtain and understand concept and provisions for child of surrogate mother with the perspective Jasser Auda's *Maqasid Sharia*.

F. Method of Processing and Data Analysis

1. Data Editing

Data editing is defined as the process involving the review and adjustment of collected survey data. The purpose is to control the quality of the collected data and reducing data that it is not accordance with the theme *Nahdlatul Ulama's* Scholar view about child's Nasab of surrogate mother.

2. Data Classification

Data classification is the process of sorting and categorizing data into various types, forms or any other distinct classes. Data classification enables the separation and classification of data according to data set requirements for various statement of problem there are how is the view of *Nahdlatul Ulama's* scholar about child of surrogate mother, and what is the reason of *Nahdatul Ulama's* scholar view about it, and the last how is the perspective of Jasser Auda's *Maqasid sharia* about child of surrogate mother. It is mainly a data management process.

3. Verification

Verification is the process of checking, confirming, making sure, and being certain. In qualitative research, verification refers to the mechanisms used during the process of research to incrementally contribute to ensuring reliability and validity and thus the rigor of study. This verification is done by listening and

matching back the result of the interviews that have been conducted with *Nahdlatul Ulama's* Scholar in Malang.

4. Data Analysis

Data analysis is a process of inspecting, cleansing, transforming, and modeling data with the goal of discovering useful information, informing conclusion and supporting decision-making.

The purpose of data analysis is to organize the data that has been obtained. After that, researchers will manage and analyze data that has been collected using perspective of Jasser Auda's *Maqasid Sharia*.

5. Conclusion

The conclusion is the result of a research process. After the steps above, the final step is to conclude from the data analysis to perfect this research, so that the answers to the formulation of the problem regarding Child's nasab of surrogate mother according to the NU's view with perspective Jasser Auda's *Maqasid sharia*.



CHAPTER IV

FINDINGS AND DISCUSSION

A. Profil Of *Nahdlatul Ulama*

Nahdlatul Ulama is a traditionalist Sunni Islam movement in Indonesia following the *Shafi'i* school of jurisprudence. NU was established on January 31, 1926 in Surabaya as a response to the rise of Wahabism in Saudi Arabia and Islamic modernism in Indonesia. The NU is the largest independent Islamic organization in the world with membership estimates ranging from 40 million (2013) to over 90 million (2019). NU also is a charitable body funding schools and hospitals as well as organizing communities to help alleviate poverty.

Some leaders of Nahdlatul Ulama are ardent advocates of Islam Nusantara, a distinctive brand of Islam that has undergone interaction, contextualization, indigenization, interpretation and vernacularization according to socio-cultural conditions in Indonesia. Islam Nusantara promotes moderation, compassion, anti-radicalism, inclusiveness and tolerance. However, other NU members, leaders, and religious scholars have rejected Islam Nusantara in favor of a more conservative approach.³⁸

1. History Of *Nahdlatul Ulama*

NU was Established on 31 January 1926 in Surabaya, East Java, by some prominent *kyais* like K.H. Abdul Wahab Hasbullah and K.H. Hasyim Asy'ari, the Nahdlatul Ulama was born in the culture of pesantren where "Traditional Islam" has been rooted and preserved. In this context, the Nahdlatul Ulama declared its religious ideology as "ahl al-sunnah wa al-jama'ah." This religious ideology has become important characteristics of the Nahdlatul Ulama that differentiate itself from Muslim "modernist" organizations. In its early movements, the Nahdlatul Ulama played a pivotal role by, for example, banning the Muslim youths from entering the Dutch military service, prohibiting the Muslims from supporting the Dutch army, and rejecting the Dutch aid which was offered to the Nahdlatul Ulama's madrasas. Furthermore, together

³⁸ https://en.wikipedia.org/wiki/Nahdlatul_Ulama. Last Accessed 17 February 2020.

with other nationalist movements, the Nahdlatul Ulama actively took part in the process of establishing the Indonesian State and in the war to defend the Indonesian independence against the Dutch who tried to re-establish their colonial rule in Indonesia. These facts, undoubtedly, proved that the *Nahdlatul Ulama* made a great contribution to the nation and state of Indonesia.³⁹

2. The Aims of *Nahdlatul Ulama*

The NU exists to spread Islamic teaching. As well as preaching, it undertakes educational activities through its network of 6,830 Islamic boarding schools, or Pesantren. It also owns 44 universities, and is involved in economic and agricultural studies, and social activities including family planning. Its goal is "to spread messages about a tolerant Islam in their respective countries to curb radicalism, extremism and terrorism," which, it claims, "often spring from a misinterpretation of Islamic teachings." In December 2014, NU have launched a global campaign against extremism and jihadism. Building a prevention center in Indonesia to train Arabic-speaking students, alongside NU theologians, to combat jihadist rhetoric. And it has created a joint program with the University of Vienna called VORTEX (Vienna Observatory for Applied Research on Radicalism and Extremism). The project is

³⁹ Faisal Ismail, *The Nahdlatul Ulama Its Early History and Contribution to Established of Indonesian State* (Yogyakarta : UIN Sunan Kalijaga) Journal of Indonesian Islam. Last Accessed 17 February 2020, 246.

funded by the Ministry of Internal Security. It also created an American nonprofit organization called Bayt ar-Rahmah in Winston-Salem, North Carolina. On the other hand, Nahdlatul Ulama had given a fatwa in favour of female genital mutilation (FGM). In 2019, NU called for the abolishment of the term “Kafir” to describe non-muslims.

B. The View of *Nahdlatul Ulama*’s Scholar in Malang about Child’s Nasab of Surrogate Mother

The following description of the interview results with NU scholars about their views about children of surrogates mother :

a. KH. Achmad Shampton, M.Ag.

He was born in Malang on April 23, 1972. After junior high school, he was a boarding student at Hidayatul Mubtadiin Lirboy Islamic Boarding School, Kediri graduated in 1995. Alumni of Madrasah Aliyah Miftahul Huda Ngreco, Kandat, Kediri in 1994 continued his studies at STAIN Malang (now Maulana Malik State Islamic University). Ibrahim Malang), obtained his bachelor's degree in sharia department in 2002. Currently he is the head of Salafiyah Islamic Boarding School Salafiyah Syafiiyah Nurul Huda, Malang and is involved in the field of ta'lim diniyyah. His daily activities are as section head of the PD Pontren Ministry of Religion in Malang, he has also served as head of the KUA. Then, the interview process with the researcher was conducted on December 13, 2019 at the Ministry of

Religion in Malang City, after which the researcher asked about his views on determining the nasab children of surrogate mothers. He said:

"The first thing I have to say is to leave the child in someone else's womb that cannot or can be said to be haram, and therefore cannot intisab to the husband or man who has the sperm. And there must be rejection from the husband who states that it is not his child. Because that ummah can't appear. Prophet's hadith: who has faith in Allah and the last day not to splash water on plants. From the medical side, it can be done by DNA testing, when viewed from the side of fiqh the child belongs to who has a bed. The point is that if you enter seminal into a person who is not halal, it is a problem, but if you enter seminal into a halal person, it is OK, so idholul seminal is not a problem. Nasab was in a body to the father, the spirit of nasab from the mother. then, the solution is to remarry, and that is permissible in Islam. And in essence, the advice of the child is to the mother who gave birth. The child of the Surrogate mother remains mahram to the father of the sperm owner and cannot inherit. We know that one of the goals of marriage is hifdun nasl, but we still cannot justify any means to get children who are not justified in Islamic teachings. "

The results of the above interview explained that he was of the opinion in determining the Nasab of children of Surrogate mothers ie unable to breathe to the father of the sperm owner, but to the mother giving birth. Because the concept of "umamah" is a mother who gives birth and conceives, although on the medical side it can be done by means of DNA testing, but on the Fiqh side the child is breathed to the mother who gave birth because he argues in inserting sperm and ovum into the womb of another person is haram with the hadith of the prophet who says who has faith in Allah and the last day not to splash water on plants. The purpose of these plants are plants that do not belong to him. Even though he is incapable of sperm owner's father,

he is still mahram with his father. The child also cannot inherit property from the father of the sperm owner.

b. Drs. KH. Moh. Murtafdo, MHI

He is a graduate of the Lirboyo Islamic Boarding School. He is currently the caretaker of Ma'had Sunan Ampel Al-Aly UIN Maulana Malik Ibrahim Malang as well as Rais Syuriah PCNU Malang. He is also an MUI Scholars in Malang. The process of interviewing researchers with him was carried out on December 16, 2019, at his residence. After that, the researcher asked about his views on determining the Nasab of children of surrogate mothers. He said :

"Before deciding on the parents of children who are Surrogate mothers, we must first know that the law of renting the womb itself is unlawful, it can be said that it is an improper way according to Shari'ah. Then for the essence itself, we see from the beginning of the IVF process that fertilization occurs outside and has become zygote, then just put in the mother who rents out her uterus, then it is said to only entrust her child to be raised as a baby, in conclusion, the baby is still breathing to her husband-wife, but the path taken to get the child is haram. therefore, Islam recommends to married couples who do not have children with tabbanni (adopted children) or can also be with the husband to remarry. Hurrimat alaikum ummahatukum is that piece of ahkam verse on which the legal basis is not permitted to marry a mother who has given birth which can be a reference in determining the text."

The results of the above interview explained that he was of the opinion in determining the Nasab of a child of a surrogate mother, namely breathing to the mother who gave birth, despite the ovum and sperm cells of a married couple. Because the mother who is pregnant and giving birth has a big influence on the growth of the fetus, that is

when the spirit is blown at the age of 40 x 3 days in the womb, just as Siti Maryam was blown by the fetus by God, so that it contains the Prophet Isa. In the case of Hifdzun Nasl, it is not to multiply offspring in a variety of ways not permitted in Islam, for married couples who do not have children, religion allows polygamy. For wives who do not have children, they can devote themselves to their husbands by taking care of their other wife's children.

c. KH. Marzuqi Mustamar, M.Ag.

He was born in Blitar on September 22, 1966. He now serves as Chairman of the Tanfidiyah Regional Board of East Java NU. After graduating from Aliyah Madrasah he boarded at Nurul Huda Mergosono Islamic Boarding School, he also continued his S1 at IAIN Malang, then S2 at the Lamongan Islamic University (UNISLA). For non-formal education, he studied at various Islamic boarding schools and the Kyai. The process of interviewing researchers with him was carried out on December 16, 2019, at his residence. After that, the researcher asked about his views on determining the Nasab of children of Surrogate mothers. He said:

"The law of the uterine lease itself is prohibited / unlawful. because husband and wife only donate eggs and sperm cells which, if analyzed, contain only 46 chromosomes, 23 chromosomes from sperm cells and 23 chromosomes from the ovum, and the remaining billions of chromosomes obtained to become a baby come from a pregnant mother, therefore intisab the child falls to the mother who conceives and gives birth, and so in the case of inheritance, the child cannot inherit the property from the father of the sperm owner. This problem

has nothing to do with hifdzun nasl, because hifdzun nasl itself means to keep not multiply. "

The interview results above explain that he believes in determining the Nasab of children of Surrogate mothers, namely breathing to mothers who are pregnant and giving birth because in fetal development, obtaining billions of chromosomes and looking after the baby is from a pregnant mother, not a mother who has an ovum that only donates 23 chromosomes. And in terms of inheritance, the child does not have inheritance rights to the father of the sperm owner.

d. Drs. KH. Chamzawi

He is a graduate of the Lirboyo Islamic Boarding School. He is one of director on Ma'had Sunan Ampel Al-Aly UIN Maulana Malik Ibrahim Malang and Rais Syuriah PCNU Malang. He is also a MUI Scholar in Malang. The process of interviewing researchers with him was carried out on December 16, 2019 at his residence. After that the researcher asked about his views on determining about children Nasab of surrogate mothers. He said:

"Before deciding on the parents of children who are surrogate mothers, we must know that the law of renting the womb itself is unlawful, it can be said that it is an improper way according to Shari'ah. Then for the essence itself, we see from the beginning of the IVF process that fertilization occurs outside and has become zygote, then just put in the mother who rents out her uterus, then it is said to only entrust her child to be raised as a baby, in conclusion, the baby is still breathing to her husband-wife, but the path taken to get the child is haram. therefore, Islam allows married couples who do not have children with tabbani (adoption of children) or also with the husband to remarry reference in determining the text. "

The results of the interview explained that he was of the opinion in determining the nasab of a child of a Surrogate mother, that is, the child continues to breathe on a father who has sperm, because when sperm and ovum cells are inserted into the womb of another person is already fertilized outside, then it is punished as if it was entrusted. But the road is haram, not justified by religion. The solution for wives who do not have children is to be able to do tabbani (raise children) and the husband can also remarry.

C. The Analysis of *Nahdlatul Ulama's* Scholars View in Malang about Child's Nasab of Surrogate Mother as Jasser Auda's Maqhasid Sharia Perspective

The problem regarding the problem of determining child's nasab from surrogate mothers is a problem that must be solved. Because, we know for a Muslim that determining nasab is a serious problem with regard to mahram, guardianship and also inheritance.

In Indonesia, the problem of Surrogate mothers has been done a lot even though in this country it has been banned. As I mentioned in the chapter on the study of legal theory from the Surrogate mother herself. In Indonesian law only allows IVF. The scholars also argue that the law of Surrogate mothers is haram or not allowed, especially the results of interviews conducted by researchers, NU scholars emphasized the prohibition of uterine rent, because it would later cause many problems

and in the process of inserting fertilized eggs and sperm cells into the the womb of another woman is not *muhtaram*.

After discussing the surrogate mother law, the next discussion of the child's nasab. From the results of interviews that researchers have conducted from four NU scholars in Malang. NU Scholars opinion has a difference, first from the results of an interview with Kyai Ahmad Shampton, he said that the child's nasab could not cause sperm to the father, because the entry was not Muhtaram and there must be a refusal from his father that it was not his child, then breathed to the mother who was pregnant and give birth.

Furthermore, the second interview result with Kyai Murtadho argues that the child cannot breath to the father of the sperm owner because the entry is not muhtaram, then to the mother who is pregnant and giving birth because in the Qur'an An-Nahl verse verse 78 as well as the resource persons third Kyai Marzuqi he argues that the child has a bearing on the mother who is pregnant and giving birth because in creating billions of chromosomes it occurs in the womb of the person who is pregnant and giving birth. In contrast to the Kyai Chamzawi, he said that the Nasab of the child is breathing to parents who have eggs and sperm because when inserted in someone else's womb the ovum has been fertilized so that in the womb of the other person only entrusts it, but he does not justify that the uterine lease is permissible.

Furthermore, researchers will analyze using Maqasid Shari'ah Jasser Auda with six systems:

a. Cognitive Nature

In this feature, as Jasser offered about the methodology in the Islamic legal system is to separate revelation from its logic. That means separating Fiqh from claims as a field of divine knowledge to the field of cognition (understanding ratio) of a human (*Fakih*) to divine knowledge. The NU scholars who have been interviewed by researchers, he believes that it is forbidden to rent the womb, because the entry is not muhtaram and will later eliminate the maternal nature that should be owned by the wife.

Taken from the story of Siti Maryam, who was put by the embryo by Jibril in her womb at the command of Allah SWT. then gave birth to the Prophet Isa. So, the Prophet Isa was nasab to his mother because without her husband can conceive with the permission of Allah. Although this womb rent cannot be called adultery, because it does not meet the category of adultery, but in the Qur'an, it has been clearly stated that the mother of the child is the mother who gave birth. In this problem, we can not only look at the verses of the Qur'an contextually, but we need to look at the concept of human rights and the law to solve the problem so that it is in accordance with the current development. Because the law

will continue to develop in accordance with the development of wisdom and the purpose of the Maqasid Shari'a of a law.

b. Wholeness

The solution offered by this system applies the principle of exhaustion through a thematic interpretation method which is no longer limited to the verses of the law only, will make all the verses in the Qur'an to be questioned in accordance with Islamic laws.⁴⁰

From the explanation above, it is very important to formulate the rent of the uterus using maudhu'I interpretation, namely to gather verses of the Qur'an in various verses and surahs that relate to a theme, both in terms of verse editions and the contents of the contents with the aim explore the contents of verses that have relevance to the above theme.

First, the verses of the Qur'an regarding the determination of child's Nasab:

1) Surah Al-Mujadalah Verse 2

الَّذِينَ يُظَاهِرُونَ مِنْكُمْ مِنْ نِسَائِهِمْ مَا هُنَّ أُمَّهَاتُهُمْ ۖ

إِنَّ أُمَّهَاتُهُمْ إِلَّا اللَّائِي وَلَدْنَهُمْ ۚ وَإِنَّهُمْ لَيَقُولُونَ

مُنْكَرًا مِنَ الْقَوْلِ وَزُورًا ۚ وَإِنَّ اللَّهَ لَعَفُوفٌ غَفُورٌ

⁴⁰ Jasser Auda, *Membumikan Hukum Islam melalui Maqasid Syari'ah*, hlm 12-13.

The Means:

Those who pronounce thihar among you (to separate) from their wives they are not their mothers. Their mothers are none but those who gave birth to them. And indeed, they are saying an objectionable statement and falsehood. But indeed, Allah is pardoning and forgiving.⁴¹

From the verse above, we can conclude that the mother of the child is the mother who gives birth. it is explained in this verse that a husband cannot equate his wife with his mother.

2) Surah An-Nahl 78

وَاللَّهُ أَخْرَجَكُم مِّن بُطُونِ أُمَّهَاتِكُمْ لَا تَعْلَمُونَ شَيْئًا
وَجَعَلَ لَكُم السَّمْعَ وَالْأَبْصَارَ وَالْأَفْئِدَةَ ۚ لَعَلَّكُمْ
تَشْكُرُونَ

The Means:

And Allah has extracted you from the wombs of your mothers not knowing a thing. And he made for

⁴¹ Al-Qur'an Al-Kareem

you hearing and vision and intellect that perhaps you would be grateful.⁴²

From the verse above, we can conclude that when a child is born from the stomach of his mother, he does not know anything and God gives him hearing, vision and also a heart to give thanks. in this verse it is written clearly, the mother referred to is the mother who conceives and gives birth.

3) Surah An-Nisa' verse 23

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ
وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ
وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضَاعَةِ
وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِكُمُ اللَّاتِي فِي حُجُورِكُم مِّنْ
نِّسَائِكُمُ اللَّاتِي دَخَلْتُم بِهِنَّ فَإِنْ لَّمْ تَكُونُوا دَخَلْتُم بِهِنَّ
فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ
أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ
﴿٢٣﴾ إِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

⁴² AL-Qur'an Al-Kareem

The Means:

Prohibited to you (for marriage) are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your (milk) mothers who nursed you, your sisters through nursing, your wives' mothers, and your step-daughters under your guardianship (born) of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And (also prohibited are) the wives of your sons who are from your (own) loins, and that you take (in marriage) two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever Forgiving and Merciful.⁴³

Second, the verses of the Qur'an that explain the purpose of marriage to multiply offspring:

- Al-Baqarah Verse 187

أَحِلَّ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ إِلَى نِسَائِكُمْ ۖ هُنَّ

لِبَاسٍ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ ۗ عَلِمَ اللَّهُ أَنَّكُمْ كُنْتُمْ

تَخْتَانُونَ أَنْفُسَكُمْ فَتَابَ عَلَيْكُمْ وَعَقَا عَنْكُمْ ۖ فَالآنَ

⁴³ Al-Qur'an AL-Kareem

بَاشِرُوهُنَّ وَابْتَغُوا مَا كَتَبَ اللَّهُ لَكُمْ ۚ وَكُلُوا وَاشْرَبُوا

حَتَّىٰ يَتَبَيَّنَ لَكُمُ الْخَيْطُ الْأَبْيَضُ مِنَ الْخَيْطِ الْأَسْوَدِ مِنَ

الْفَجْرِ ۚ ثُمَّ أَتَمُّوا الصِّيَامَ إِلَى اللَّيْلِ ۚ وَلَا تُبَاشِرُوهُنَّ

وَأَنْتُمْ عَاكِفُونَ فِي الْمَسَاجِدِ ۚ تِلْكَ حُدُودُ اللَّهِ فَلَا

تَعْرِبُوهَا ۚ كَذَلِكَ يُبَيِّنُ اللَّهُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ

يَتَّقُونَ

The Means:

It has been made permissible for you the night preceding fasting to go to your wives (for sexual relations). They are clothing for you and you are clothing for them. Allah knows that you used to deceive yourselves, so He accepted your repentance and forgave you. So now, have relations with them and seek that which Allah has decreed for you. And eat and drink until the white thread of dawn becomes distinct to you from the black thread (of night). Then complete the fast until the sunset. And do not have relations with them as long as you are staying for worship in the mosques. These are the limits (set by) Allah, so do not approach

them. Thus does Allah make clear His ordinances to the people that they may become righteous.⁴⁴

- Surah An-Nisa Verse 1

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ

وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا

وَنِسَاءً ۖ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۚ

إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

The Means:

O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs.

Indeed Allah is ever, over you, an Observer.⁴⁵

Third, the verses of the Qur'an that explain the necessity of trying:

⁴⁴ Al-Qur'an AL-Kareem

⁴⁵ Al-Qur'an AL-Kareem

- Ar-Ra'du Verse 11

هُ مُعَقَّبَاتٌ مِنْ بَيْنِ يَدَيْهِ وَمِنْ خَلْفِهِ يَحْفَظُونَهُ مِنْ أَمْرِ

اللَّهِ ۚ إِنَّ اللَّهَ لَا يُعَيِّرُ مَا بِقَوْمٍ حَتَّىٰ يُعَيِّرُوا مَا

بِأَنفُسِهِمْ ۚ وَإِذَا أَرَادَ اللَّهُ بِقَوْمٍ سُوءًا فَلَا مَرَدَّ لَهُ ۚ

وَمَا لَهُمْ مِنْ دُونِهِ مِنْ وَالٍ

The Means:

For each one are successive (angels) before and behind him who protect him by the decree of Allah. Indeed, Allah will not change the condition of a people until they change what is in themselves. And when Allah intends for a people ill, there is no repelling it. And there is not for them besides Him any patron.

c. Openness

This feature offers two mechanisms towards the expected openness and self-renewal of Islamic law. In the first, changes in the law by looking at the worldview and cognitive nature of a Fakiḥ. Second, philosophical openness is offered as a method of self-renewal in Islamic law.⁴⁶

In the Maqasid Shari'ah Jasser Auda tries to respond to the challenges and demands of the global era by reforming the maqasid

⁴⁶ Jasser Auda, *Membumikan Hukum Islam melalui Maqasid Syari'ah*, hlm 262.

towards a maqasid that is honored with human rights and develops human resources to be prepared to bring benefit and social justice in the present and beyond. How to realize the above objectives so that they must agree with the concept of the size of the target agreements or ijma 'United Nations involved in this matter is protected by conversion. Related to these ideas the development of the times and contrary to norms in society can change as long as it does not deviate from the basic values of the law itself. Surrogate mother in the medical world has proven its success and safety. Proven from various countries that have legalized the way to get children, and it has been proven that the DNA of the child is the DNA of his own parents from which sperm and ovum originated, there is no DNA mixture from the mother who pregnant.

Because, in this case, the mother who is pregnant or who is renting out her womb is only a person entrusted with an embryo that has been fertilized outside. In this case, can assume as well as people who suckle their children to others.

Based on the explanation above, the surrogate mother is the same as entrusting the embryo to be raised, because actually this embryo comes from ovum cells and sperm of a married couple partner. However, NU scholars are of the opinion that the process is not permissible, because the mother is actually a mother who is pregnant and giving birth.

d. Interrelated Hierarchy

For the analysis of the dimensions of the first interrelated hierarchical feature, namely improvement of the reach of the Maqasid, the authors divide it to the Maqasid Ammah, Maqasid Khassah, Maqasid Juz'iyah. Maqasid Ammah is a Maqasid which includes all Maslahah obtained in shari'a which are general and universal such as justice, equality, tolerance, convenience and others included in this category are the Doruriyat aspects as in traditional maqasids. According to the author, applying surrogate mothers to obtain offspring is allowed, provided that the reasons are corroborating. Because the purpose of marriage itself is to preserve the offspring and maintain the religion. If the surrogate mother is the best way to get offspring and that harmony will be achieved by a family, then according to the author it can be done. As said by the guest speaker Kyai Chamzawi who stated that the surrogate mother process only entrusts the embryo to be raised.

Maqasid khassah, is maqasid which includes maslahah in a particular problem in a chapter of knowledge, in this case, is to achieve a harmonious marriage. Meanwhile, if the family they build is not complete with a child, then the possibility in his life can not be peaceful, and calm. In the Ar-Rum 21 verse explained that one of the purposes of marriage is to increase offspring.

Furthermore, the third maqasid is maqasid related to goodness or wisdom taken from a passage for a legal event. People often refer to this maslahah as wisdom. In this case, it is a matter of surrogate mother to obtain offspring is a way to obtain offspring for mothers who have health problems in her womb, so they cannot get pregnant. The purpose of surrogate mothers is to get household harmony.

e. Multidimensional

For analysis using this multidimensional feature, Jasser offers two dimensions as a method of the process of determining the law, the first by expanding the range of the Qath'i concept. And the second is to parse the contradictions between the propositions by using maqasid as the main reference. So as a form of expansion ushul fiqh is to use maqasid as a measure of the benefit in a decision that will be taken. The first concept is that the expansion of the qath'i range is related to the views of NU scholars regarding the determination of children from Surrogate mothers. To clarify the provisions of the discussion regarding children nasab of surrogate mothers can be seen from the following table:

NU Scholars	Child's Nasab of Surrogate Mother	Foundation of Reason
KH. Achmad Shampton, M.Ag.	Nasab the child to the mother who is pregnant and giving birth, and there	Surah An-Nahl verse 78

	must be rejection	
Drs. KH. Moh. Murtahdo, MHI	Nasab the child to the mother who has an egg cell, but if it is feared to be mixed with eggs from the surrogate mother, then child' nasab to the mother who gave birth.	Surah An-Nahl verse 78
KH. Marzuqi Mustamar, M.Ag.	The child's Nasab to the mother who is pregnant and giving birth.	Because who makes thousands of chromosomes is a pregnant mother.
Drs. KH. Chamzawi	The Child's Nasab is to the father and mother who has sperm and egg cells because the true rent of the uterus only entrusts the embryo to be raised. But the chosen way is wrong.	Surah An-Nisa' verse 23

Based on the above table, it is clear that the opinion of the NU Scholars related to the Child's Nasab of surrogate mothers mostly affects mothers who give birth. Along with the development of increasingly advanced technology, it is important to make efforts to bring up re-interpretation of the problem.

If we look at other verses in the Qur'an, surah an-Nisa verse 1 which explains one purpose of marriage is to multiply offspring. and if, a wife has a health problem that causes a wife can't get pregnant. The development of technology to answer these problems, according to researchers it is a progress and has been proven safe to do why it must be banned. Surrogate mother is also not classified as adultery because the embryo has been fertilized outside, so it can be said that surrogate mother only has a role to raise the embryo of a married couple.

f. Purposefulness

In this sixth feature, maqasid must be returned to the values of the Qur'an and the hadith, and induced from rational sources such as qiyas and maslahah mursalah. Without having to follow the texts of the results of ijtihad. The validity of the results of ijtihad is seen to what extent the manifestation of the maqasid is in it. Therefore maqasid in marriage, especially to get offspring by means of rent the womb which must be returned to the benefit in accordance with the teachings of Islam which is oriented towards family protection, care for the dignity of family members, maintaining the rights of husband and wife as creatures of God who have equality to make a choice by upholding human rights as a principle of justice. By making the last alternative to get

offspring, because of the reasons that can only be done by renting the uterus to get offspring.

Development and glorification of human rights are one of the main themes that are considered important for public benefit today. The benefit and glorification of human rights in the eyes of the international community by not eliminating universal rules and values that are generally known in Islamic laws. This uterus rental problem brings us into the needs compliance of rights a child and Mother who is pregnant also gives birth. Before renting out the uterus, there is an agreement made by a married couple who will rent the uterus and a woman who will rent her uterus. In the contract, the rights and obligations that will be obtained by both parties have been written. One of them is a child born will be given to a married couple whose true has the ovum and sperm. Meanwhile, mothers who conceive and give birth will receive an agreed reward.

According to researchers, the contract made and agreed from both parties is an equitable and accountable decision. Therefore, this surrogacy may be provided as long as it is an emergency, as long as it is permissible in Islam it is no longer possible to do, and the child's Nasab is woman who give birth as explained by NU's Scholars based on the verses of the Qur'an law. Then, this problem had already occurred so the child was like an

adopted child for his parents, as Prof. said. Dr. Journalist Udin,
PAK which confirms that the child is adopted.





CHAPTER V

CLOSING

A. Conclusion

After describing the results data of interviews with NU scholars regarding the determination of Child's Nasab of surrogate mothers and the perspective of Maqasid Shari'ah Jasser Auda about this problem.

Researchers concluded :

1. Rent of the womb has been banned in Indonesia, MUI also forbids it. It causes a variety of problems, one of which is the mixing of a child's nasab born by surrogate mothers. From the results of interviews with the NU Scholars, most of the opinion that the child's nasab was breathed to the mother who gave birth and not to

the father, who has sperm, on the basis of Surah An-Nahl verse 78 which states that the mother of the child is a mother who is pregnant and gives birth, although sperm and egg cells do not originate from surrogate mothers.

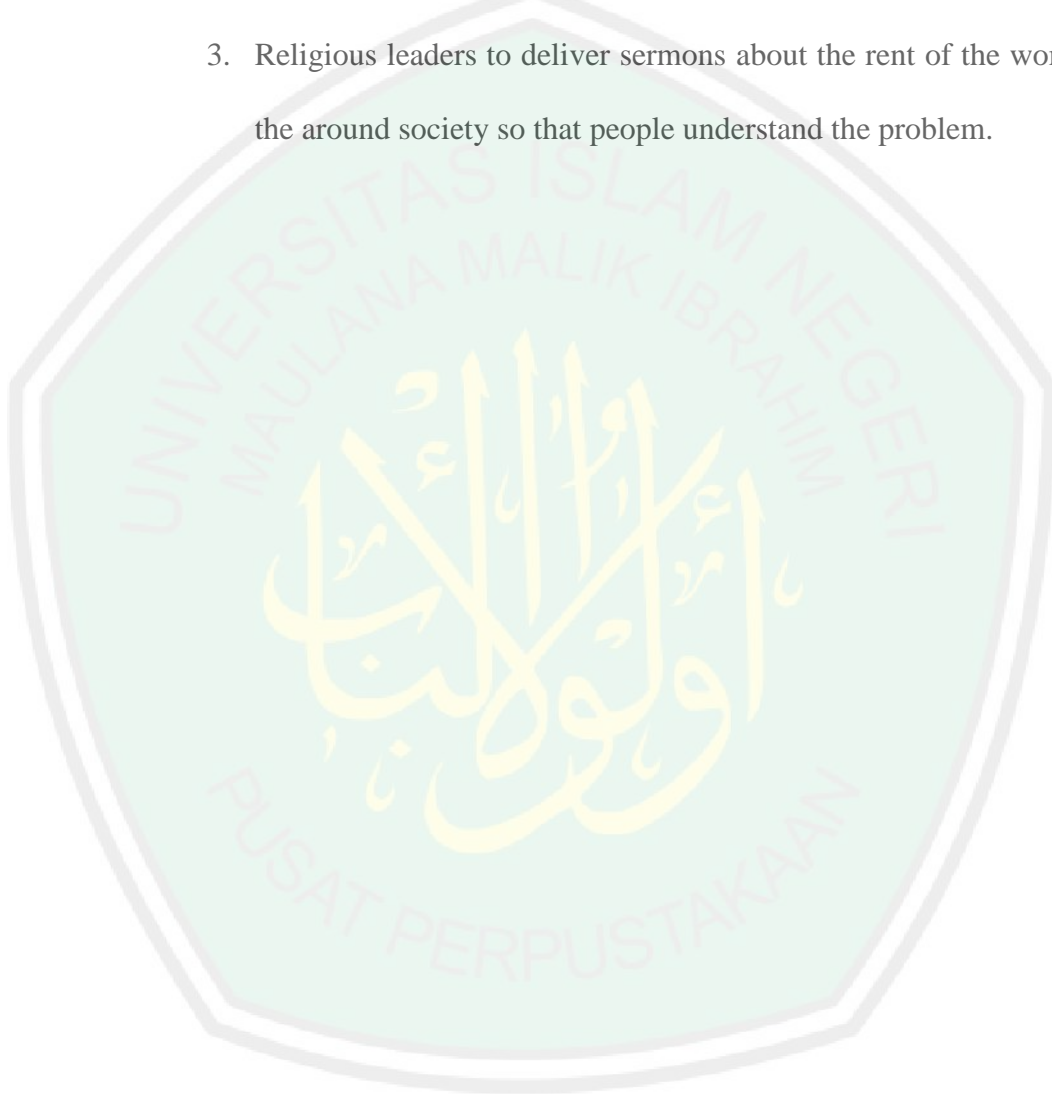
2. The author concludes in the determination of children from surrogate mothers who are analyzed by using the sharia maqasid Jasser Auda raises new legal. Not only seen from one or two sources, but from various sources and technologies that are developing at this time. By using the six features of the analysis system, it is concluded that uterine rent is possible if it is in an emergency by referring to various verses of the Qur'an and also other sciences, especially medical science, which have examined the success of uterine rental as a marriage partner solution. who can not have children because of disorders or diseases that cause a wife can not get pregnant. For the determination of the nasab itself, the child is entitled to the mother giving birth, and the status of the child with his parents is like an adopted child. Although, there will be no DNA mixing between the child and the pregnant mother.

B. Suggestion

Based on the results of the research that has been stated, the author would like to submit the following suggestions:

1. The government is expected to reinforce if uterine rent is banned in Indonesia so that the public knows the law.

2. For the Islamic community in Indonesia, uterine rent is the last way to obtain offspring. Because there are still many roads that can be taken, the NU Scholars suggested *tabbani* or adoption of children, and also do polygamy which is permissible in Islam.
3. Religious leaders to deliver sermons about the rent of the womb to the around society so that people understand the problem.



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Interview

KH. Achmad Shampton, M.Ag. was interviewed on December 13th, 2019.

Drs. KH. Moh. Murtafdo, MHI was interviewed on December 16th, 2019.

KH. Marzuqi Mustamar, M.Ag. was interviewed on December 16th, 2019.

Drs. KH. Chamzawi was interviewed on December 16th, 2019.



APPENDIXES

- Process of Interview with NU's Scholars



Picture with KH. Shampton



Picture with KH. Murtadlo



Picture with KH. Marzuqi Mustamar



Picture with KH. Chamzawi

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