



IN-VITRO FERTILIZATION AND THE *ISLĀMIC* LAW OF INHERITANCE

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ABSTRACT

The advent of In-Vitro Fertilization (IVF) and the great strides made by the medical profession in Assisted Reproductive Technology (ART) raises serious concerns. These concerns include the legality of the procedure, the lineage of the children produced through IVF, and their inheritance, if at all they have inheritance rights. One uniqueness of the *Sharī'ah* is that it provides solutions to every problem or situation. The Islamic law of inheritance is so comprehensive to the extent that it does not neglect any possible case that might arise till the last day, including the issue of how IVF children inherit. This article discusses the different scenarios that might arise concerning the inheritance of a fetus from IVF. Several assumptions need to be addressed depending on the circumstances based on whether the child was born dead or alive, the gender of a single child and more than one child with similar or different genders in multiparity cases, whether identical or fraternal from a single pregnancy. The article addresses each one of these and gives examples of how the distribution would be conducted. A brief literature review is also included on how other authors have addressed the issue and the research gap thus identified. The is non-empirical qualitative research reliant on secondary data for its analysis.

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1. INTRODUCTION

Islāmic Sharī'ah puts much weight on the preservation of progeny. Anything that contributes to ruining honor, dignity, integrity, lineage and family life is prohibited and rejected by *Islām*. The *Qur'ān* commanded both males and females to lower their gaze (*Qur'ān*, 24,

Āyah: 30-31). Other *Sharī'ah* guidelines included: observing hijab in one's dress and behavior, no free mixing between genders, prohibition of women travelling without their *mahrams*, seeking permission before entering people's territories and the prohibition of *al-khalwah*.

The advent of In-Vitro Fertilization (IVF) and the great advances in terms of Assisted Reproductive Technology (ART), however, raises serious concerns. Besides the legality issue, whether or not the *Sharī'ah* recognizes it, another pressing matter is the inheritance of those involved in 'successful' IVF procedures: the question is, who inherits who in the different scenarios of IVF as practiced in the medical profession?

One uniqueness of the *Sharī'ah* is that it provides solutions to every problem. This is manifested in the saying of Allāh 'azza wa jalla: "And We have explained everything (in detail) with full explanation" (*Qur'ān*, 17, *Āyah*: 12). Thus, IVF like any other issues arising in the community, is included in the details mentioned by this verse. The *Islāmic* law of inheritance is so comprehensive to the extent that it did not neglect any possible case that might arise till the Last Day. However, this issue is one of the most sensitive matters and the *Qur'ān* has paid great attention to it. Negligence in this matter leads to instability in the family system. In this contemporary era the breaking of family ties due to enmity and hatred, which in some instances led to lost lives and wealth, are rampant. All these negative consequences are the result of wrong *fatwas* that are given by unqualified people because of absence of *taqwā* in their lives. For this reason, the *Qur'ān* is very strict on this matter and has laid down laws to govern it. It says, after discussing some of the matters of inheritance: "These are the limits (set by) Allāh 'azza wa jalla, and whosoever obeys Allāh 'azza wa jalla and His Messenger, will be admitted to Gardens under which rivers flow, to abide therein, and that will be the great success. And whosoever disobeys Allāh 'azza wa jalla and His Messenger, and transgresses His (set) limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment (*Qur'ān*, 4, *Āyah*: 13-14). In the last *āyah* of the same *Sūrah* the *Qur'ān* concluded the *Sūrah* with: "(Thus) does Allāh 'azza wa jalla make clear to you (His Law) lest you go astray. And Allāh 'azza wa jalla is the All-Knower of everything" (*Qur'ān*, 4, *Āyah*: 176).

IVF is a phenomenon from the West that was introduced to *Muslim* communities. An explanation has been given in another work by this author on how it is carried out and the *Sharī'ah* legal ruling concerning the matter (Tahir, 2023) In this article the researcher will focus on how to deal with children conceived through IVF. What will

be the best mechanism in detecting the status of their life? What will be the nature of their inheritance and which child among them inherits since not all types of IVF are legal?

2. IN-VITRO FERTILIZATION: BACKGROUND

In-vitro fertilization (IVF) is a type of Assisted Reproductive Technology (ART). It involves retrieving eggs from a woman's ovaries and fertilizing them with sperm in the lab. This fertilized egg is known as an embryo. The embryo can then be frozen for storage or transferred to a woman's uterus (Martel, 2016)

2.1 A BRIEF BACKGROUND ON IN-VITRO FERTILIZATION

The medical profession achieved a significant milestone in 1978 when Louise Joy Brown, the first IVF or "test-tube baby" was born. This was a culmination of efforts in different areas related to fertility and the human reproductive system. Some major events include: the discovery that the combination of sperm and egg was the cause of pregnancy in the 1800s, the first attempt of intrauterine insemination from the husband's sperm and when doctors learnt how oocyte fertilization occurs in the 1960s and 1970s. The use of IVF to treat infertility has made it a popular option for individuals unable to conceive with around 1-3% of children born across the globe being a result of IVF (RMA, 2022; Eskew and Jungheim, 2017). Other spin-off developments include: use of donor gametes, surrogacy and the testing of embryos for morbidity causes/factors (Eskew and Jungheim, 2017) Although the field was heavily influenced by moral and ethical opinion in the beginning, science has generally taken the lead in deciding what is acceptable and what is not as voices of dissent have significantly reduced.

2.2 ARTIFICIAL INSEMINATION AND THE RULINGS

This section describes the seven methods of Artificial Insemination (Al-Salus, 2008). They are as follows:

- a. Where the seed/sperm of the man is taken in a syringe and placed within the correct position in the vagina of his wife or her womb, as internal insemination. This is in order for the sperm to meet with the egg that is naturally produced by his wife's ovary. Fertilization will then take place between them and then its product blastocyst attaches to the uterine wall by the will of Allāh *'azza wa jalla*, almost similar to that which

happens through normal sexual intercourse (Al-Salus, 2008). This is the usual insemination which does not happen as “in-vitro” as the sperm are only inseminated into the uterus. Fertilization then occurs naturally.

- b. Where the sperm and an egg are taken from a couple, inseminated externally in the medical Test-Tube and then later (the fertilized egg is) planted in the womb of the wife (who is the owner of the egg), where it will attach itself to uterus. It will be implanted there and continue to develop until the end of the pregnancy duration, where she will give birth to a child by the will of Allāh *'azza wa jalla* (Al-Salus, 2008).
- c. Where the insemination takes place externally in the medical test-tube between the seeds of a couple, then later (the fertilized egg) will be planted in the womb of the husband's other wife (who volunteers to carry it) (Al-Salus, 2008).
- d. Where the insemination takes place between the seeds of a couple, then the fertilized egg is planted in the womb of a strange woman who volunteers to carry it (Al-Salus, 2008).
- e. Where the insemination takes place externally between the seeds of two alien (not married) persons and then later (the fertilized egg) is planted in the womb of a wife of another man (Al-Salus, 2008).
- f. Where the sperm is taken from a man, which will be injected in the appropriate place of the wife of another person, so that fertilization between the sperm of a man and an egg of the other person's wife will take place internally and then attaches to the wall of the uterus by the will of Allāh *'azza wa jalla*. This is almost similar to what happens as a result of normal sexual intercourse (Al-Salus, 2008).
- g. Where the insemination is done externally in the medical lab between the sperm of a husband and an egg taken from the ovary of a woman other than his wife (who is known as a volunteer), and then later the fertilized egg is planted in the womb of his wife (Al-Salus, 2008).

IVF is one of the contemporary issues causing great concern among scholars. Some scholars say that IVF should be considered impermissible to be on the safe side. This is also reported to be the view of the Standing Committee of Saudi Arabia (Al-Munajjid, 2007).

Ibn Uthaimin was reported to have said concerning IVF: (... This is a very serious issue. Who can be certain that the doctor will not put the sperm of one man in the uterus of someone else's wife?!

Hence, we think that precautions must be taken and we should not issue *fatwas* except in specific cases where we know the man, the woman and the doctor. The matter is not to be taken lightly, because if any deceit takes place, it means that lineages will be mixed, and there will be chaos, which is something that *Shari'ah* has forbidden. Hence the Prophet (*ṣal-Allāhu 'alayhi wa sallam*) said: "One should not have intercourse with a pregnant woman until she gives birth." (Al-Sijistānī, 1969). Thus, I will not issue *fatwas* to this effect, unless a specific case is referred to me and I know the man, the woman and the doctor) (Al-Sulaimani, 1413).

Al-Bar (2021) quotes the position taken by the Islamic Fiqh Council of the Organization of the Islamic Conference: "There is nothing wrong with resorting to this in the case of need, but it is absolutely essential to take all necessary precautions." Al-Munajjid (2001) responded to a question on IVF with the following: "If a third party, other than the spouses, is introduced into the process of fertilization, such as eggs coming from another woman or another woman acting as a surrogate mother, or sperm coming from another man, then fertilization in such cases is *haram*, because it is counted as *zinā* (adultery). When a woman uses the sperm of a man, this comes under the same rulings as intercourse in terms of what is *halal* and what is *haram*. Regarding the child who is born as the result of such a process, he is to be attributed to the mother who bore him, and not to the man who produced the sperm, as is the ruling in the case of *zinā* (fornication or adultery). If that man claims to be the father and no one disputes that, then the child may be attributed to him, because the Lawgiver is keen that people should be named after their fathers. With regard to the *ḥadīth*, "The child belongs to the (marriage-)bed and for the adulterer is the stone" (Al-Bukhārī, 1987) it is to be interpreted as referring to cases where there is a dispute, as is clear from the incident which gave rise to this *ḥadīth* (Al-Munajjid, 2001). These are some of the different views expressed by contemporary scholars pertaining to IVF and its practice.

According to the researcher's findings, only two potentially permissible methods of IVF exist. The first method is where the seed of the husband is taken in a syringe and injected within the correct position in the vagina of his wife or her womb (internal insemination). The second method is where the gametes of the couple are taken from them and then inseminated externally in the medical lab and then later (the fertilized egg is) planted in the wife's uterus (she is the owner of the egg). Henceforth, it will be attached to the uterus wall where it will continue to develop until the end of gestation. If Allāh *'azza wa jalla*

wills, she will give birth to a child (Al-Salus, 2008). The second method of IVF is Islamically permitted, according to some scholars, if the stipulated conditions are met and the need of the couple to carry out IVF is established. They deem it permissible given that the gametes are from the married couple and planted in the wife's womb without a third party which resembles the process and results of natural reproduction. The general conditions laid down by the scholars who permitted the practice of IVF for a husband and his wife are mentioned by Tahir (2023).

The second method was initially tolerated but was later proven to have serious ethical and trust issues. These issues of ethics and trust stem from the fact that the process is conducted outside the wife's womb before it is placed in it which makes it exposed to manipulation or a mix up, even if unintentional. A *Muslim* should avoid this method unless it is absolutely necessary.

The third method is similar to the second method except in this case the fertilized egg is placed in the womb of a third party, another wife of the husband and not the wife who the egg is extracted from. The Committee of the Islamic Conference had initially considered this to be permissible in its third sitting but revoked this ruling in a subsequent meeting. They gave the following reasons for their revocation:

- a. It is risky as it might be difficult to determine the true mother as the surrogate wife might conceive due to a sexual relationship with their husband close to the implantation period before the womb seals itself. It is highly possible for her to then carry twins and not be able to determine which child is hers and which one is her co-wife's upon delivery of both.
- b. Similarly, the clot of blood or embryo of one of the pregnancies mentioned in the above point might die and remain in the womb till the time of the delivery where it comes out together with the baby when it is delivered (Al-Salus, 2008).

Thus, given the different aspects or components of the third method, it is possible to mix lineages due to uncertainty about actual parents of the child (Al-Salus, 2008). Furthermore, the removal of eggs from a woman's ovaries to her uterus is unethical. The rest of the other methods (from 4-7) are impermissible as they include or require the participation of a third party either by the use of their gametes or a strange woman's womb (Al-Salus, 2008).

3. THE *ISLĀMIC* LEGAL RULING

Ibn ‘Uthaymin (may Allāh *‘azza wa jalla* have mercy on him) asserted that if there is no need for IVF then it is not permissible as it involves uncovering the *‘awrah* unnecessarily. He stated that if it is deemed necessary then strict measures have to be in place to ensure that the husband’s sperms are taken in a permissible manner and only the gametes of the husband and his wife are fertilized and placed in the wife’s uterus with no storage of gametes for later use. The husband or someone he trusts should be present to ensure these measures are implemented (Al-Sulaimani, 1413).

4. ETHICAL CONSIDERATIONS AND POSSIBLE ALTERNATIVES

When tested, *Muslims* should be patient and seek reward from The Giver of everything. Similarly, they should intensify their *du‘ās* to Allāh *‘azza wa jalla* and ask for His forgiveness. They should understand that there is wisdom behind Allāh *‘azza wa jalla*’s decree. In addition, it is also permissible for those with access to Islamically acceptable means of getting children to pursue them. IVF is one of the practices that violates some of the restrictions that *Islām* placed in preserving the *‘awrah* and guarding modesty. In *Islām* having children is not obligatory upon everyone, thus, on what basis does a *Muslim* expose his/her private parts since IVF is not a medicine? It is not a medical treatment, rather, it is just an attempt to do the reproduction process manually. And if this is the case, there is no proper justification for the *awrah* to be shown to other than the spouse.

In *Islām* it is not necessary that whenever something is prohibited an alternative has to be provided. However, a possible alternative for IVF is to enhance the belief in the *Qadā’* and *Qadar* and to intensify dua’s to Allāh *‘azza wa jalla*. History has confirmed the effectiveness of this method of returning to Allāh *‘azza wa jalla* via du’a. Prophet Ibrahim and Zakariyyah are the best examples to support this fact. (*Qur’ān*, 51:28-30 and *Qur’ān*, 21: 89-90). Similarly, the use of natural and divinely given medicine such as authentic honey or black seed and many other tested and effective herbs could act as the best solution by the Grace of Allāh *‘azza wa jalla*. Finally, one of the most effective ways to gain children is to fix the relationship between a *Muslim* and The Creator. This could be done through a collective and sincere repentance, being dedicated and committed to practicing the religion as Prophet Nuh said when he was

inviting his people to worshipping Allāh ‘azza wa jalla alone (*Qur’ān*, 71: 10-13).

5. IVF AND INHERITANCE

The literature available generally discusses the question of whether a child from one of the methods of IVF is considered legitimate or not. Sudirman et al. (2022) are among the few writers who delve into the challenges presented by IVF in terms of determining lineage and inheritance. They also stated that the child born through a surrogate mother can only inherit the mother who gave birth to him. This is a different opinion from Pasaribu et al. (2019) who state that the child inherits from the biological parents and not the surrogate mother. Sudirman et al. (2022) assert that in the instance of a sperm donor being other than the birth mother’s husband, then he as a biological father does not have legal ties with the child and thus, they do not inherit each other. Abdulrasheed (2020) in his work has a chapter dedicated to discussing the consequences of IVF in terms of inheritance. He also raises the same concerns by Sudirman et al. (2022) concerning the lineage and thus inheritance of a child born through a surrogate mother. Regardless of the important issues raised by the different authors, none of them go into detail about how the inheritance of an IVF child would be distributed in the different circumstances where it is attributed to one or both of the parents. The only attempt made to go into a few details about the inheritance of the IVF child is Pasaribu et al. (2019). It seems that the authors, however, are insufficiently equipped with the knowledge of inheritance and their work can do more harm than good if the layman tries to distribute the inheritance by following their works.

6. DISCUSSION

In inheritance, certain conditions must be fulfilled before an estate is distributed to the rightful heirs. Among these conditions are conditions related to the heirs. An heir cannot inherit the deceased unless the following conditions and causes are met: It must be confirmed that he is related to the deceased either through the lineage, marriage or guardianship over a slave, it must also be confirmed that the child survived the deceased, he must be alive after the death of the deceased or in the case of pregnancy, he must be in existence in the womb after his death and he has to be born alive (Tahir, 2015).

Finally, all the factors that deprive a person from inheritance (such as murder, disbelief, and slavery) must be absent (Tahir, 2015).

These are the areas of concern and attention before any distribution of an estate takes place. These are applicable in normal circumstances where the normal process in reproduction is followed. In the case at hand, the focus on detecting the life of a child will mainly depend on the information provided by the medical experts involved in that particular case. It is evident that there are many children, leading normal lives, who were born through IVF. This is a clear indicator that those sperms and eggs inseminated in the lab contain lives in them. But when does conception take place in the process of IVF? Based on the experts' experience, pregnancy occurs when the embryo implants in the lining of the uterus, and this may take about 7 to 10 days after the embryo is implanted in the uterus (al-Rays, 2022; Mayo Clinic, 2022) and the doctor constantly monitors its occurrence through ultrasound to ensure stability of the pregnancy. Then the pregnancy stages are completed naturally and with periodic follow-ups from the medical doctor. (al-Rays, 2022; Mayo Clinic, 2022) Thus, for us to know whether pregnancy exists during the death of the deceased in question, the focus should be on the time the injection of the inseminated eggs took place in the uterus. If the death happened 7-10 days after the injection, then the fetus fulfilled the first condition of inheritance which is to exist during the demise of the deceased; after that we wait for the second condition to take place which is to be born alive. If these two conditions are fulfilled, a baby born through this process can inherit. Regarding the issue of 7-10 days that are used to measure the existence of pregnancy, to be more certain on whatever action we are taking, it is necessary to conduct a pregnancy test to confirm whether or not pregnancy exists.

Based on the previous discussion, not all types of IVF practices are permissible. Thus, it is imperative to know when a child from IVF can inherit with consideration given to which type of practice or process was utilized. To answer this question, it could be said that the child in the first two types of IVF inherits from both parents (the father and the mother). This is because sperm and egg came from both of them without any intervention from others. Where the sperm is taken from a husband who has two wives, and the egg is taken from one of the wives and is later mixed and treated with the husband's sperm, and then eventually the inseminated egg is implanted in the other wife's uterus, in this case, the child will belong to the owner of the eggs together with the husband, the owner of the sperm. This is the safest opinion *in shaa Allah*, and more attached to the *musūṣ*, that a child is a result of a combination of sperm and eggs even though there are other opinions that say otherwise (Al-Najjar,

2022). To avoid any possible doubt, it would be better if a DNA examination could be conducted to determine the relation between both women and the new-born baby. In all the above-mentioned situations, the child can be attributed to the husband and the child can be referred to as his child. In situations where the insemination takes place between the seeds of a couple, then later the fertilized egg is planted in the womb of a woman who volunteers to carry it (a surrogate), in this case the new-born baby belongs to the couple after confirmation through a DNA test.

When the insemination takes place externally between the seeds of two alien (not married) persons and then later the fertilized egg is planted in the womb of a wife of another man, in this case, the newborn baby can only be attributed to the woman who is the owner of the egg. As for the man who is the owner of the sperm, the child cannot be attributed to him since there is no marriage relationship between him and the owner of the egg. Thus, the case is similar to that of *zinā*, where the child born out of wedlock can only be attributed to his mother. With regard to the alien donors whose fertilized egg was planted in the uterus of the wife, the child will not be attributed to the man since there is no legal marriage between him and the egg donor. Thus, the child will only be attributed to the egg donor. One opinion says that the *hadith* “The child belongs to the (marriage-) bed and for the adulterer is the stone,” (Al-Bukhārī, 1987) is also applicable here, where the child belongs to the one who bore him and her husband. (al-Haqq, 2022) However, this *hadith* clearly shows that it is applicable in cases of conflict between the husband and somebody else. Thus, the researcher does not see any justification for attributing the child in this case to the husband of the woman since we know with certainty the child is a result of sperm that was taken from somebody else. Allāh *‘azza wa jalla* knows best.

In a situation where the sperm is taken from a man and then injected in the appropriate place of the wife of another person, for internal fertilization to occur between the sperm of that man and an egg of the other person’s wife, and then attaches to the wall of the uterus by the will of Allāh *‘azza wa jalla* according to some scholars, the child can only be attributed to the wife, and the husband as well, except in situations where he denied the lineage of the child. This is based on the saying of the Prophet: “The child belongs to the (marriage-) bed and for the adulterer is the stone.” (Al-Bukhārī, 1987). Another existing opinion is almost similar to the first one with the exception of the last part of it. The opinion said: ‘the child who is born as the result of such a process, shall be attributed to the mother who

bore him, and not to the man who produced and donated the sperm, as the ruling will be similar to that of *zinā* (fornication or adultery). But if that man, the owner of the sperm, claims to be the father and no one disputes that, then the child may be attributed to him, because the Lawgiver is keen that people should be named after their fathers. With regard to the *hadeeth*, “The child belongs to the (marriage-) bed and for the adulterer is the stone” (Al-Bukhārī, 1987) it is to be interpreted as referring to cases where there is a dispute, as is clear from the incident which gave rise to this *hadith* (Al-Munajjid, 2007).

The first opinion is safer, however, since the case is judged to be similar to *zinā* since there is no legal marriage between the man and the owner of the egg. Thus, attributing the child to the mother is safer and he inherits only from her; Allāh ‘azza wa jalla knows best.

When the fertilization is done externally in the medical lab and between the sperm of a husband and an egg taken from the ovary of a woman other than his wife, (who is known as a volunteer), and then later the fertilized egg is planted in the womb of his wife, in this case the child can only be attributed to the strange woman, the owner of the egg. The husband will not get anything in terms of inheritance or attribution because there is no legal marriage between him and the owner of the egg. The same goes to the wife since the egg is not from her. However, the relationship between her and the child she gave birth to is exactly as the relationship between a foster mother and the child she breastfed. Having said that, it could be confirmed that inheritance is only applicable where the lineage (*Nasab*) is Islamically attributed. Whoever the child is *Islamically* attributed to, the inheritance can exist between them. (Al-Salus, 2008) As previously mentioned, the inheritance of a child born through IVF is similar to the inheritance of al-Ḥaml.

7. INHERITANCE OF AL-ḤAML

Al-Ḥaml literally means the fetus in the womb of the female. Technically, al-Ḥaml means the fetus in the womb of humans. (Al-Kātib, 2001) A fetus can only inherit when two conditions are met:

- a. Confirmation of its existence during the death of the deceased even in the form of *Nutfah* (zygote).
- b. Confirmation of him being born alive after the death of the deceased.

The first condition could be confirmed when the mother gave birth to the child within six months from the demise of the deceased.

This is because the minimum duration for pregnancy is six months. (Ibn Sālim, 2012) In the case of IVF, it must be confirmed by the experts that the conception took place before the demise of the deceased. If she gave birth to him after six months from the death of the deceased, in this case, the existence of the pregnancy cannot be confirmed except in two ways:

- a. If the pregnancy is very clear during the demise of the deceased.
- b. When it is confirmed that the sperm of another man did not reach the womb of the mother after the demise of the deceased. (Al-Kātib, 2001)

As for the second condition, it could be confirmed when the child gets out of the womb with what clearly shows signs of life in him, e.g. crying, breathing or movement that happens more than once. This is necessary because the child might come out dead, but at the same time, the body will stretch because it passed through a very narrow exit where some might think that the baby is alive. Thus, to avoid making mistakes in this regard, the movement of the newly born baby must be more than once. It is very important in this regard to contact experts in the field for confirmation to avoid mistakes. The possible scenarios in the case of pregnancy in relation to the inheritance of the rest of the heirs:

- a. Those who do not get affected by the fetus. In this case, they should be given their portion completely.
- b. Those whose inheritance is affected by the existence of the fetus, where the inheritance increases or decreases. In this case, they should be given the minimum.
- c. Those whose inheritance is affected by the existence of the fetus, where they inherit sometimes and sometimes do not. In this case, they will not be given anything until the time where the status (gender) of the pregnancy is clear (Ibn Sālim, 2012).

7.1 THE PROCESS

When we withhold for the fetus, the maximum portion inherited by two males or two females, the following six assumptions must be addressed:

- a. To be delivered dead
- b. To be delivered alive and a male
- c. To be delivered alive and a female

- d. To be delivered alive but two males
- e. To be delivered alive but two females
- f. To be delivered alive but a male and a female.

Based on these assumptions, it is imperative to have six cases at once, each in its own column, and after resolving all of the cases the bases will all be placed and analyzed through what is known as *Al-Nisab al-Arba'ah*. The result will be the final merger of all the cases. The *Juz' al-Sahm* (*Juz' al-Sahm*: this is the smallest amount used to be placed on top of a base which will eventually be multiplied by the base in order to know the portion of an heir without a fraction.) of every case will be the result generated from dividing the final merger by the base of every case. And for us to know the lowest portion an heir can inherit, we have to multiply the portion of every heir by the *juz' al-Sahm* of his, or her, or their case. The result will be placed in front of the heir. After all of these calculations there shall be a balance which will be kept until the status of the fetus is clear. The detained portion shall be distributed once again based on the status of the fetus after the delivery (Al-Kātib, 2001).

Example no. 1

A person died, leaving behind his wife, his daughter, his consanguine brother, and the pregnancy of the wife.

TABLE 1

Juz' al-Sahm	180	60	60	36	20	45	Final merger (1440)	Distribution of the detained portion						
Heir/ Case	8	24	24	40	72	32								
W	1	3	3	5	9	4	180	-	-	-	-	-	-	-
D	4	7	8	7	16	7	252	468	168	228	-	68	63	
CB	3	×	5	×	15	×	×	540	-	300	-	300	×	
Wife's pregnancy	-	14	8	28	32	21	-		840	480	1008	640	945	
	Dead	M	F	MM	FF	FM	1008	Dead	M	F	MM	FF	FM	
	Detained													

The base of the case of the death of the fetus is (8), and the base of the case where the fetus is assumed to be male or female is (24). The base of the case where the fetus is assumed to be two males is (40). The base of the case where the fetus is assumed to be two females is (72). The base of the case where the fetus is assumed to be a male and a female is (32). The final merger which is (1440) is the result of looking into the bases of the cases through the *Nisab al-Arba'ah*. The final merger will then be divided by the base of every case among the six cases, the result will be the *juz' al-Sahm* of that particular case.

The portion of every heir will be multiplied by its juz' al-Sahm so that we will be able to know the worst-case scenario in his case, where he takes that one. Every heir will receive their portion according to the worst-case scenario, and the balance will be kept until the status of the fetus is clear.

Example no. 2

A person died leaving behind his father, his mother, and the pregnancy of the mother.

TABLE 2

Juz' al-Sahm	2			1			Final merger	Distribution of the	
Heir/Case	3	3	3	6	6	6	6	detained portion	
F	2	2	2	5	5	5	4	×	1
M	1	1	1	1	1	1	1	1	
Mother's pregnancy	×	×	×	×	×	×	×	×	MM
	Dead	M	F	M	F	M	1	Dead	FF
				M	F	F	Detained	M	F/M
								F	

The base of the case of the death of the fetus is three and the base of the case where the fetus is assumed to be male or female is three. The base of the case where the fetus is assumed to be two males is six. The base of the case where the fetus is assumed to be two females is six. The base of the case where the fetus is assumed to be a male and a female is six. The final merger which is six is the result of looking into the bases of the cases through the Nisab al-Arba'ah. The final merger will then be divided by the base of every case among the six cases, the result will be the juz' al-Sahm of that particular case. The juz' al-Sahm of the first three cases is two, and the juz' al-Sahm of the rest of the cases is one. The portion of every heir will be multiplied by its juz' al-Sahm so that we will be able to know the worst-case scenario in his case, where he takes it. Every heir will receive their portion according to the worst-case scenario, and the balance will be kept until the status of the fetus is clear.

7.2 THE CONCEPT OF AL-NISAB AL-ARBA'AH

In the above discussion about the inheritance of the fetus, the term *al-Nisab al-Arba'ah* is mentioned, it is then imperative to shed light on how this term works. This principle of *al-Nisab al-Arba'ah* has four components:

Al-Mumāthalah is when you have numbers that are identical, for instance, you have two and two, or six and six. The ruling in this situation is to be sufficed with one of these numbers, (to take two in the first case and six in the second case) to use it as the denominator.

Al-Mudākhalah (also known as *al-Munāsabah*) is when you have two or more numbers, where the larger can be divided by the smaller without a remainder (where the smaller number is a factor of the larger number). For instance, you have six, two, and three. The ruling in this situation is to be sufficed with the biggest one among all the numbers (the highest factor). Thus, in our example we take six.

Al-Muwāfaqah is when you have two or more numbers and none of them is a factor for the other, but at the same time they have a common factor. For instance, six and four. The ruling in this situation is to look for their highest common factor and use it to divide each of them. The quotients are called *wafq* which will be cross-multiplied by the two numbers, which in this case are six and four.

Their highest common factor is two. When dividing six by two the answer is three and when dividing four by two we get two. We then multiply six with the quotient of $4 \div 2$ and multiply four with the quotient of $6 \div 2$. The answer is 12 for both, which confirms the accuracy of the calculation.

Al-Mubāyanah (also known as *al-Mukhālafah*). This is when you have two or more numbers, e.g., five and three, that cannot be divided by each other, and they do not have a common factor. The ruling in this situation is to multiply the first with the second, i.e. 5×3 . (Al-Kātib, 2001).

8. CONCLUSION AND RECOMMENDATION

It is evidently clear from the above discussion that IVF is now a widely practiced option to resolve fertility issues by many *Muslims*. Enough has been done by contemporary scholars in their efforts to reach a conclusion on how to deal with it and what could possibly be its ruling Islamically. The least that can be said about IVF is that it is doubtful. The ease of manipulation makes it even more sensitive when issues of lineage and inheritance arise. Unless stern precaution is taken, the sperms and eggs can be easily mixed up whether intentionally or by mistake. Furthermore, the violation of the *maqṣad* of preservation of lineage is a major point to note and it cannot be flouted under the guise of *Darūrah*. Besides the potential mixing of lineages, a woman undergoing IVF usually has to open up her *'awrah* to a *non-mahram*.

Although IVF did not exist for most of humankind's residence on earth, the comprehensiveness of the Islamic law of inheritance addresses any and all issues that may arise until the Last Day. Thus, the inheritance of a child born out of IVF is also part of that covered

by the *Shari'ah*. Since IVF deals with pregnancy upon the success of the process, the law governing it is the same as that governing the inheritance of the fetus in the wombs of the mothers which had been discussed earlier. The researcher advises the community to refrain from using IVF to resolve their fertility issues. It is also important for the authorities to discourage people from using it. They should provide an intensive program aimed at raising awareness and educating the community on the article of faith 'belief in *Qaḍā'* and *Qadar'*. The community should be educated to accept that everything has been decreed by Allāh '*azza wa jalla* and He is in control of everything. Thus, the family should always go back to Him in resolving their problem naturally. Natural and permissible alternatives include consuming black seeds or their oil as Rasoolullah said in a hadith reported by Abu Hurairah: There is no disease for which Nigella seed does not provide remedy (Sahih Muslim).

They should always remember that Allāh '*azza wa jalla* has the power over everything. This will increase the family's faith in Allāh '*azza wa jalla*'s ability to solve their problems. Allāh '*azza wa jalla* knows best.

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