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| Research Article |

Islamic Family Law and Assisted Reproductive Technology: *Fiqh*, Bioethics, and Institutional Disruption in Comparative Perspective

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Abstract: Rapid advances in assisted reproductive technology (ART) have raised legal questions in contemporary Muslim societies about the determination of lineage (*nasab*), the evidentiary scope of the marital bed (*al-firāsh*), inheritance entitlements, and maternal identity in third-party reproduction. This study examines how classical Islamic jurisprudence and contemporary fatwa councils evaluate ART procedures and how these technologies reshape kinship and social norms across Muslim jurisdictions. Using descriptive qualitative documentary analysis, the study examines 27 purposively selected sources, including five classical juristic treatises, seven institutional rulings from the Indonesian Ulema Council, Egypt's Dār al-Iftā' al-Miṣriyyah, Saudi Arabia's al-Lajnah al-Dā'imah, the International Islamic Fiqh Academy, the Muslim World League, Malaysia's JAKIM, and Iran's Ayatollah Khamenei, alongside statutory instruments from Iran and Nigeria. The analysis codes and compares these sources using Islamic bioethics, the Social Construction of Technology, and an adapted institutional disruption framework. The findings show that Sunni authorities permit homologous in vitro fertilization (IVF) within a legally valid marriage while prohibiting donor gametes, surrogacy, and postmortem fertilization under *ḥifẓ al-nasl* (preservation of progeny) and *sadd al-dharā'i'* (blocking the means), whereas Iranian Twelver Shi'i legislation permits regulated ovum and embryo donation. The study develops a matrix that links classical juristic doctrines, specifically *al-mā'* (reproductive fluid) and the marital bed, with socio-technical closure. The findings draw on documentary sources, and the study did not conduct ethnographic fieldwork.

Keywords: Islamic Family Law, Assisted Reproductive Technology, Islamic Bioethics, Social Construction of Technology, Institutional Disruption.

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Introduction

Assisted reproductive technology (ART) has generated legal disputes and exposed statutory gaps across contemporary Muslim societies concerning lineage determination (*nasab*), the scope of the maxim (*al-walad lil-firāsh*, the child belongs to the marital bed), inheritance entitlements, and permanent impediments to marriage. Clinical interventions such as homologous in vitro fertilization (IVF) ('Azhim Al As'hal & Fauzi, 2025; Inhorn, 2022; Muhsin et al., 2024), third-party gamete donation (Bokek-Cohen et al., 2022; Inhorn, 2025; Shabana, 2022), and gestational surrogacy (AlJahsh, 2024; Chandran, 2022; Obadina, 2025) decouple genetic contribution, gestation, and social parenthood. While homologous IVF within an existing valid marriage is widely permitted across Muslim jurisdictions (Aufieri & Mastrocola, 2025; Monroe, 2024; Scott, 2024; Takahashi, 2025), documented cases of cross-border reproductive travel and clandestine use of donor gametes among Sunni patients raise legal disputes over birth registration, paternity denial (*li'ān*), and intestate succession (Bokek-Cohen et al., 2022; Salazar et al., 2023). A comparison of statutory records shows that Iran has enacted legislation specifically governing embryo donation (Rahbari, 2022). Indonesia and Nigeria face regulatory gaps concerning clinic audit trails, postmortem cryopreservation, and the protection of children's identities (Obadina, 2025; Yusuff, 2016). Evaluating ART therefore requires classical Islamic legal reasoning, bioethical analysis, and attention to the social consequences of regulation.

Scholarship on Islam and ART has largely approached the subject through doctrinal surveys of fatwas or medical anthropology. For instance, Ibrahim et al. (2018) integrate *maqāṣid al-sharī'ah* (objectives of Islamic law) with conventional bioethics in their analysis of Malaysian ART fatwas. Their model treats institutional rulings as settled outcomes and leaves the negotiations among clinicians, patients, and jurists unexplored. Inhorn's ethnographies (2022, 2025) show how Middle Eastern couples navigate IVF and restrictions on gamete donation in clinical practice. These ethnographies also leave open how contemporary fatwa councils apply classical juristic doctrines, such as *al-mā'* (reproductive fluid) and *sadd al-dharā'i'* (blocking the means), to define the limits of legally recognized kinship (Krawietz, 2016; Saniei & Kargar, 2021; Shabana, 2019). Existing commentaries on fatwas rarely explain why the same reproductive technologies yield different legal outcomes across Sunni and Shi'i jurisdictions (Rusli & Nurdin, 2022; Shabana, 2022). Comparative research on Indonesia and Saudi Arabia examines how the objectives of Islamic law inform family regulation (Fatahillah & Luhuringbudi, 2025). These gaps motivate an analytical framework that connects classical jurisprudential texts with the socio-technical processes reshaping family law.

To address this gap, the study examines how ART reconfigures lineage and kinship norms in Islamic family law by integrating Islamic bioethics, the Social Construction of Technology (SCOT), and an adapted theory of institutional disruption. Using descriptive qualitative documentary analysis, the study examines five

foundational classical treatises (Ibn Qudāmah's *al-Mughnī*, al-Kāsānī's *Badā'i' al-Ṣanā'i'*, al-Shāṭibī's *al-Muwāfaqāt*, Ibn Rushd's *Bidāyat al-Mujtahid*, and Ibn Qayyim al-Jawziyyah's *I'lām al-Muwaqqi'īn*) alongside contemporary fatwas from Indonesia's Majelis Ulama Indonesia (MUI), Egypt's Dār al-Iftā' al-Miṣriyyah, Saudi Arabia's al-Lajnah al-Dā'imah li al-Buḥūth al-'Ilmiyyah wa al-Iftā', the International Islamic Fiqh Academy (IIFA), the Muslim World League (MWL), Malaysia's JAKIM, and Iran's Office of Ayatollah Khamenei, together with statutory instruments from Iran and Nigeria. The study asks two questions. First, how do the classical Islamic legal concepts of *al-mā'*, the marital bed, and *ḥifẓ al-nasl* (preservation of progeny) define how Islamic jurists evaluate assisted reproduction? Second, how do institutional fatwas and state regulations respond to technological disruption across Sunni and Shi'i contexts?

This study argues that ART disrupts legal institutions by separating biological, gestational, and legal parenthood. Islamic jurisprudence allows for flexibility through secondary legal principles such as *istiḥsān* (juristic preference, used to permit therapeutic infertility treatment within marriage), *'urf* (customary practice, informing laboratory safety protocols), and *istiṣḥāb* (presumption of continuity, applied to marital status during ex vivo fertilization). The preservation of progeny remains a firm limit in Sunni jurisprudence. Consequently, Sunni institutions (including MUI, Dār al-Iftā' al-Miṣriyyah, al-Lajnah al-Dā'imah, and IIFA) permit homologous IVF only within an intact marriage and prohibit donor gametes and surrogacy, whereas Twelver Shi'i jurists in Iran permit regulated ovum and embryo donation under a different interpretation of lineage and subject to judicial authorization (Rahbari, 2022; Saniei & Kargar, 2021). Combining Islamic bioethics, SCOT, and institutional disruption helps explain why some Islamic legal principles endure while rulings differ across jurisdictions.

Method

This study uses descriptive qualitative documentary analysis to examine how Islamic legal authorities and state regulators govern assisted reproductive technology (ART). The study analyzes three types of material. The first comprises individual passages in classical juristic texts on lineage, reproductive fluid, the marital bed, *raḍā'* (milk kinship), and the principle of blocking the means. The second comprises operative clauses in contemporary institutional fatwas. The third comprises statutory and policy provisions governing clinical ART procedures and the legal status of children. These materials show the doctrinal bases on which different jurisdictions authorize or restrict ART procedures.

The documentary corpus comprises 27 sources in four categories: five classical juristic texts, seven institutional fatwas, five legislative and policy materials, and ten empirical, clinical, and sociolegal studies (Tables 1–4). The analysis distinguishes legal and policy materials from scholarship that provides context.

Table 1. Classical Juristic Texts (n = 5)

Author and year	Short title	Volume
Ibn Qudāmah al-Maqdisī (n.d.)	*al-Mughnī*	9
Al-Kāsānī (1986)	*Badā'i' al-Ṣanā'i'*	3
Al-Shāṭibī (n.d.)	*al-Muwāfaqāt*	2
Ibn Rushd al-Qurṭubī (2004)	*Bidāyat al-Mujtahid*	3
Ibn Qayyim al-Jawziyyah (1991)	*I'lām al-Muwaqqi'īn*	3

These classical texts provide the doctrinal basis for examining how contemporary fatwa councils assess assisted reproduction.

Table 2. Institutional Fatwas on Assisted Reproduction (n = 7)

Authority	Ruling and date	Issue
Majelis Ulama Indonesia (MUI)	IVF/Artificial Insemination Fatwa (1979)	IVF, third-party donation, surrogacy, and posthumous use
International Islamic Fiqh Academy (IIFA)	Resolution No. 16 (4/3), 1986	Permissible and prohibited forms of IVF
Muslim World League Fiqh Council	Resolution No. 55 (6/6) and revision (1984–1985)	Initial permission for co-wife surrogacy and its subsequent revocation
Dār al-Iftā' al-Miṣriyyah (Egypt)	IVF and Gamete Donation Fatwa (1980)	IVF within marriage and third-party participation
Al-Lajnah al-Dā'imah (Saudi Arabia)	Fatwa No. 21353 (1999)	IVF and third-party involvement
Office of Ayatollah Ali Khamenei (Iran)	Rulings on Gamete and Embryo Donation (1999)	Third-party gamete and embryo donation
National Fatwa Council (Malaysia)	IVF and Surrogacy Rulings (1982 and 2003)	IVF and surrogacy

The study uses legislation and policy materials to compare institutional fatwas with state regulation of assisted reproduction.

Table 3. Legislation and Policy Materials (n = 5)

Jurisdiction or scope	**Document**	**Provision or issue**
Iran	Act on Embryo Donation to Infertile Couples (2003)	Arts. 1–5: embryo donation
Indonesia	Health Law No. 36/2009 and Health Law No. 17/2023	Arts. 127 and 60, respectively: assisted reproduction
Nigeria	National Health Act 2014 and ART Regulation Bill (2022)	Part VI of the Act and the draft ART framework
Nigeria	Yusuff (2016), Clinical Governance Challenges in Nigeria	Governance of assisted reproduction
Comparative	Shabana (2021), Islamic Law, Assisted Reproductive Technologies, and Surrogacy	Islamic law and surrogacy

Empirical, clinical, and sociolegal studies show how these rules are applied and how they affect people.

Table 4. Empirical, Clinical, and Sociolegal Studies (n = 10)

Studies	**Setting or scope**	**Focus**
Bokek-Cohen et al. (2022), Inhorn (2022, 2025), and Monroe (2024)	Sunni Muslim patients, the Arab world, and Qatar	Gamete donation, reproductive decisions, and family planning
Muhsin et al. (2024, 2025)	Islamic bioethics and Malaysia	Embryo models and views on reprogenetic technologies
Obadina (2025) and Rahbari (2022)	Nigeria and Iran, respectively	Surrogacy regulation and child registration
Salter (2024) and Saniei & Kargar (2021)	Sociopolitical and Islamic bioethical perspectives	The politics of ART and its bioethical governance

The study selected sources based on explicit inclusion and exclusion criteria. Eligible sources (1) set out an authoritative juristic, statutory, or institutional norm directly governing IVF, gamete donation, surrogacy, or cryopreservation; (2) represented the four major Sunni legal schools (Ḥanafī, Mālikī, Shāfi'ī, Ḥanbalī) alongside Twelver Shi'i jurisprudence; or (3) documented legal and clinical governance in representative Muslim jurisdictions (Indonesia, Egypt, Saudi Arabia, Malaysia, Iran, and Nigeria). The primary corpus excluded nonbinding student course blogs, general theological essays, and studies unrelated to human reproduction. The study conducted systematic searches from August to September 2025 in al-Maktabah

al-Shāmilah, official fatwa portals (mui.or.id, dar-alifta.org, alifta.gov.sa, iifa-aifi.org), Scopus, and HeinOnline using Boolean strings combining ("assisted reproductive technology" OR "IVF" OR "surrogacy" OR "gamete donation" OR "talqīḥ ṣināʿī") AND ("Islamic law" OR "fiqh" OR "fatwa" OR "nasab"). The searches returned 94 records. After removing 21 duplicates and excluding 45 items that lacked normative relevance or fell outside the scope of ART, the study retained 28 sources and verified them against official institutional repositories. The final analysis included 27 sources.

The study analyzed the documents in four steps. First, the study extracted relevant passages and coded each primary document on five dimensions: (1) procedure type (homologous IVF, donor sperm/ovum, embryo donation, surrogacy, postmortem use), (2) whether the marriage was ongoing, (3) classical legal maxim or juristic source cited, (4) status of lineage and inheritance, and (5) application of the principle of blocking the means. Second, the study tabulated the coded rulings to compare points of agreement and disagreement among Sunni and Shiʿi authorities. Third, the study interpreted the coded material through three complementary lenses. Islamic bioethics (Ibrahim et al., 2018; Kamali, 2021; Shabana, 2019) guided the analysis of how jurists weigh clinical benefit (*maṣlaḥah*) against the preservation of progeny. The social construction of technology (SCOT) (Pinch & Bijker, 1984) guided the identification of relevant social groups (infertile couples, embryologists, religious scholars, legislators), interpretive flexibility (competing definitions of motherhood and reproductive fluid), and closure mechanisms (fatwa codification and clinic licensing). The adapted theory of institutional disruption (drawing on Christensen et al., 2018; Denning, 2016) shifts the focus from low-end market entry to how biotechnologies bypass biological constraints on sexual reproduction, unsettle kinship categories, and prompt changes to legal boundaries. Fourth, the study checked its preliminary interpretations against statutes and documented clinical cases to distinguish established legal rules from unresolved policy questions.

Results and Discussion

The analysis of 27 sources follows three themes. It examines the bioethical and legal limits that Sunni and Shiʿi authorities place on ART, uses SCOT to analyze how stakeholders negotiate kinship categories, and considers how statutes and institutions respond to biotechnological disruption. The discussion distinguishes evidence from classical juristic treatises, institutional fatwas, and national statutes from secondary scholarly commentary.

1. Islamic Bioethics and Jurisprudential Boundaries of ART

Comparative coding of the seven institutional fatwas shows that jurists assess each ART procedure according to the source of the gametes, who carries the pregnancy, and whether the marriage remains legally valid. In Indonesia, the Majelis Ulama Indonesia (MUI) Fatwa on *Bayi Tabung / Inseminasi Buatan* (issued June 13, 1979;

archived at MUI Digital, 2022) establishes a four-part legal classification: (1) IVF using a married couple's sperm and ovum, with the resulting embryo transferred to the wife's womb, is permissible as a legitimate treatment (*ikhtiar*); (2) IVF using donor sperm or ova is prohibited because it leads to *ikhtilāṭ al-ansāb* (mixing of lineages) analogous to illicit sexual intercourse (*zinā*) in its legal effects on lineage; (3) transferring an embryo formed from a married couple's gametes into a surrogate womb (including that of a co-wife) is prohibited because it can create uncertainty over legal motherhood and disputes over custody and inheritance; and (4) cryopreserved sperm from a deceased or divorced husband cannot be used after marital dissolution because the end of the marriage removes the basis for the marital presumption of paternity.

Major Sunni fatwa councils in the Arab world apply similar limits, as Table 5 shows. Egypt's Dār al-Iftā' al-Miṣriyyah (anchored in Grand Mufti Jad al-Haqq 'Ali Jad al-Haqq's landmark 1980 fatwa on *atfāl al-anābīb*, *al-Fatāwā al-Islāmiyyah*, Vol. 9, pp. 3213–3228) permits homologous IVF only if strict clinical safeguards prevent gamete mix-ups and both fertilization and implantation occur during a valid marriage. It prohibits the use of donor sperm, donor ova, or a surrogate womb. Similarly, Saudi Arabia's al-Lajnah al-Dā'imah li al-Buḥūth al-'Ilmiyyah wa al-Iftā' (Fatwa No. 21353; *Fatāwā al-Lajnah al-Dā'imah*, Vol. 19, pp. 412–418) prohibits artificial insemination or IVF involving any third-party genetic or gestational element, grounding its prohibition in the principle of blocking the means to lineage corruption and requiring full verification of the laboratory chain of custody. By contrast, Iran's Twelver Shi'i jurisprudence (based on Ayatollah Ali Khamenei's 1999 *istiftā'āt* and codified in the 2003 Embryo Donation Act) prohibits third-party sperm donation and unmarried surrogacy, yet allows infertile, legally married couples to receive donated ova or embryos under Family Court supervision (Rahbari, 2022; Saniei & Kargar, 2021).

Table 5. Institutional Rulings on ART Across Muslim Jurisdictions

Authority and Date	**IVF Using Spouses' Gametes**	**Donor Sperm**	**Donor Ova or Embryos**	**Gestational Surrogacy**	**Use After Death or Divorce**
MUI, Indonesia (June 13, 1979)	Permitted (intact marriage)	Prohibited (lineage mixing)	Prohibited (lineage mixing)	Prohibited (co-wives included)	Prohibited (marriage ended)
Dār al-Iftā' al-Miṣriyyah, Egypt (1980, with updates)	Permitted (strict lab safeguards)	Prohibited	Prohibited	Prohibited	Prohibited (marriage ended)
Al-Lajnah al-Dā'imah, Saudi Arabia (Fatwa No. 21353, 1999)	Permitted (clinical oversight)	Prohibited	Prohibited	Prohibited	Prohibited
IIFA/OIC, Amman (Res. No. 16 [4/3], Oct. 1986)	Permitted (spouses' gametes and wife's womb)	Prohibited	Prohibited	Prohibited	Prohibited
MWL Fiqh Council, Mecca (1984, revised Jan. 1985)	Permitted (valid marriage)	Prohibited	Prohibited	Prohibited (co-wife exception revoked in 1985)	Prohibited
Iran (Twelver Shi'i) (1999 rulings and 2003 Act)	Permitted	Prohibited (patrilineal descent)	Permitted (Family Court approval)	Restricted or disputed (waiting periods and marriage impediments)	Restricted (waiting-period rules)

The classical juristic basis for linking reproductive legitimacy to marriage appears in Ibn Qudāmah's *al-Mughnī*: "*Wa al-nasabu yuthbatu bi-al-firāsh, wa huwa aqwā asbābih, fa-idhā wujida al-firāsh lam yuntaf al-nasab illā bi-li'ān*" (Lineage is established through the marital bed, which is its strongest legal cause; once *firāsh* exists, lineage cannot be negated except through mutual imprecation [*li'ān*]) (Ibn Qudāmah al-Maqdisī, n.d., Vol. 9, p. 39). While *al-firāsh* provides the primary basis for establishing paternal filiation within marriage, classical Islamic jurisprudence also recognizes alternatives such as *iqrār* (formal acknowledgment of paternity) and *bayyinah* (evidentiary proof). Legal schools also differ on the minimum period of gestation (Ḥanafī vs. Mālikī and Shāfi'ī rules). In ART, the marital presumption of paternity still

applies to ex vivo fertilization if both gametes come from the spouses and implantation occurs during a legally valid marriage.

Secular bioethical frameworks weigh patient autonomy, beneficence, nonmaleficence, and justice. Islamic bioethics also considers the status of human reproductive fluid (*al-mā'*), treating it as an entrusted substance governed by marital exclusivity. In *Badā'i' al-Ṣanā'i'*, al-Kāsānī states: "*Wa ammā al-mā' fa-huwa aṣl al-khalq, wa bihi yakūnu al-tanāsul, fa-kāna lahu ḥukm al-ṭahārah fī aṣlih*" (As for seminal fluid, it is the origin of human creation through which procreation occurs, and thus it holds a ruling of purity in its essence) (al-Kāsānī, 1986, Vol. 3, p. 214). Crucially, ritual purity (*ṭahārah*) alone does not explain the prohibition on donor sperm. Al-Kāsānī's reasoning links the status of *al-mā'* as the material origin of progeny (*aṣl al-khalq*) to the rule that transferring one's *mā'* into a womb outside a valid marriage violates the exclusivity of the marital bed and disrupts lineage (al-Kāsānī, 1986, Vol. 3, pp. 214–216). Secular models based on individual autonomy permit gamete donation through informed consent. Sunni bioethics gives priority to the preservation of progeny, which al-Shāṭibī classifies among the five universal necessities: "*Wa ḥifẓ al-nasl min al-ḍarūriyyāt allatī lā budda min murā'ātihā fī kull sharī'ah*" (The preservation of progeny is among the essential necessities that must be safeguarded in every divine law) (al-Shāṭibī, n.d., Vol. 2, p. 10).

Institutional fatwas do not produce uniform compliance. Empirical studies report broad moral acceptance of homologous IVF among Muslim couples in Indonesia, Qatar, and Malaysia ('Azhim Al As'hal & Fauzi, 2025; Monroe, 2024; Muhsin et al., 2025). Persistent infertility stigma and social pressure to have children nonetheless lead some Sunni couples to seek treatment clandestinely. Bokek-Cohen et al. (2022), for instance, document underground gamete donation among Sunni Muslim patients who privately justify donor use on grounds of medical necessity (*ḍarūrah*) despite explicit fatwa prohibitions. These accounts show that patients negotiate how religious rulings apply to their circumstances.

2. Social Construction of Technology (SCOT) and Kinship Negotiation

First, Pinch and Bijker's (1984) Social Construction of Technology (SCOT) framework explains how interactions among four groups shape the legal and moral meaning of ART: (1) infertile couples seeking biological offspring; (2) fertility clinicians and embryologists introducing ex vivo techniques; (3) religious scholars and fatwa councils defining permissible boundaries; and (4) state legislators codifying clinical and civil status rules. Following the birth of Louise Brown in July 1978, early debates among Muslim scholars and clinicians illustrated interpretive flexibility. Clinicians presented IVF as a treatment for tubal or male-factor infertility, whereas jurists asked whether fertilization in a laboratory severed the moral link between marriage and lineage (Shabana, 2021). Between 1979 and 1986, a series of rulings established a shared position across Sunni jurisdictions (MUI's 1979 fatwa, Dār al-Iftā' al-Miṣriyyah's 1980 ruling, and IIFA's 1986 Amman resolution). These rulings

accepted homologous IVF as religiously permissible and prohibited the use of third-party gametes and surrogacy.

These restrictions reflect Ibn Rushd's taxonomy of permanent marriage impediments (*al-mawāni' al-mu'abbadah*): "*Al-mawāni' al-shar'iyyah bi-al-jumlah tanqasim awwalan ilā qismayn: mawāni' mu'abbadah . . . fa-al-muttafaqu 'alayhā thalāth: nasab, wa ṣihr, wa raḍā'*" (Legal impediments to marriage are divided primarily into two categories: permanent impediments . . . of which three are agreed upon: lineage, affinity, and milk kinship) (Ibn Rushd al-Qurṭubī, 2004, Vol. 3, p. 34). Because third-party gamete donation introduces unrecorded genetic ties outside marriage, jurists concluded that it makes it harder to determine lineage and identify marriage impediments. Both safeguards help prevent inadvertent unions between close relatives.

Second, debate over the definition of motherhood persists when genetic, gestational, and social roles diverge. This tension appears in comparative Islamic legal analyses and ethnographic studies of Middle Eastern ART clinics (Inhorn, 2022, 2025; Shabana, 2021). While modern bioethics and clinical discourse already distinguish genetic, gestational, and social mothers (Scott, 2024; Takahashi, 2025), the documentary analysis shows how Muslim jurists draw on classical rules of milk kinship to assess whether the law recognizes the egg provider or the gestational carrier as the mother. Ibn Rushd articulates the classical rule: "*Al-umm hunā ismun li-kulli unthā lahā 'alayka wilādah min jihat al-umm aw min jihat al-ab*" and "*al-raḍā' bi-al-jumlah yuḥarrimu minhu mā yuḥarrimu min al-nasab, a'nī anna al-murḍi'ah tunazzalu manzilat al-umm*" ('Mother' here denotes every female connected to you through birth on the maternal or paternal side. Milk kinship generally prohibits what lineage prohibits, meaning the wet nurse is placed in the rank of a mother) (Ibn Rushd al-Qurṭubī, 2004, Vol. 3, pp. 34, 48). Contemporary authorities differ in how they apply this analogy. Most Sunni authorities (such as IIFA and al-Lajnah al-Dā'imah) recognize the egg provider as the primary mother and liken the gestational carrier to a wet nurse. In this view, the carrier's relationship with the child creates permanent marriage impediments without conferring full inheritance rights. A minority of jurists give priority to gestation, citing Qur'ān 58:2 (*in ummahātuhum illā allā'ī waladnahum*) (Shabana, 2021, 2022).

Third, secondary research shows that access to ART varies with socioeconomic status, the location of clinics, and public health coverage (Mertens, 2025; Salter, 2024). In many Muslim-majority settings, private fertility centers are concentrated in metropolitan areas and require substantial out-of-pocket spending. These costs limit access to permissible homologous IVF for lower-income couples, while wealthier patients can seek cross-border reproductive care when domestic laws prohibit donor procedures (Bokek-Cohen et al., 2022; Inhorn, 2025). Analogously, classical Islamic jurisprudence recognizes that material capacity and valid delivery govern lawful transactions, as noted in Ibn Rushd's commercial principle that payment obligations

attach only upon valid delivery of the contracted benefit (*lā yajib al-thaman 'alā al-mushtarī illā ba'da qabḍ al-sil'ah*) (Ibn Rushd al-Qurṭubī, 2004, Vol. 3, p. 142). The literature identifies equitable access to clinical services as a policy challenge alongside questions of religious permissibility.

3. Institutional Disruption and Regulatory Reconfiguration

The study adapts disruption theory (Christensen et al., 2018; Denning, 2016) from market innovation to explain an institutional challenge in Islamic family law. ART can separate aspects of reproduction conventionally joined within marriage, creating arrangements that existing civil registries and inheritance codes were not designed to classify. Muslim jurisdictions have responded to this disruption with markedly different statutory approaches. In Iran, the Act on Embryo Donation to Infertile Couples (Qānūn-i Naḥwah-yi Ihdā-yi Janīn bi Zawjayn-i Nābārwar, enacted July 20, 2003, Articles 1–5) authorizes licensed fertility centers to transfer embryos created from a legally married donor couple's gametes to an infertile married woman with Family Court approval (Rahbari, 2022; Saniei & Kargar, 2021). Under Iranian statutory law and Twelver Shi'i jurisprudence, third-party sperm donation remains prohibited because patrilineal descent requires a valid marital link. Iran permits regulated ovum and embryo donation, and recipients assume duties of care, upbringing, and maintenance. Statutory inheritance and biological descent remain legally distinct from full natural filiation (Rahbari, 2022).

Nigeria illustrates the consequences of regulatory gaps in a plural legal system where Islamic personal law coexists with statutory and customary law. While Nigeria's National Health Act 2014 (Part VI) establishes general standards for human tissue and reproductive materials, the country lacks a comprehensive federal ART statute. The Nigerian ART Regulation Bill seeks to address this gap, and legal analyses warn of commercial surrogacy disputes, gamete brokerage, and uncertain parentage claims (Obadina, 2025; Yusuff, 2016). As clinical services expand, these developments expose gaps in civil law and leave some children conceived through ART with uncertain legal status. Whether doctrine has changed in Nigerian *Sharī'ah* courts remains an open question. In considering contractual or procedural devices that could obscure third-party parentage, the analysis draws on Ibn Qayyim al-Jawziyyah's discussion in *I'lām al-Muwaqqi'īn*: "*Wa kullu hādhihi ḥiyal bāṭilah*" and "*fa-hādhā tamlīk talbīs wa khidā' wa makr, lā tamlīk ḥaqīqah*" (All such stratagems are invalid. This is an attribution built on obfuscation, deception, and artifice, not true legal entitlement) (Ibn Qayyim al-Jawziyyah, 1991, Vol. 3, pp. 114, 138).

Articles in *Customary Law Review* similarly examines how living law and established legal norms adapt to social and technological change. Research on digital inheritance among the Osing community shows how legal pluralism across adat, Islamic jurisprudence, and digital platform governance requires communities to adapt their practices to clarify rights and obligations (Muhtar et al., 2026). Similarly, studies of *Adat Basandi Syarak* in Minangkabau examine how customary practice, the

objectives of Islamic law, and customary authority interact as social practices change (Ahmad & Pujiono, 2026), while investigations into Sama-Bajau customary sea law and marine *ulayat* rights show how disputes over boundaries between customary norms and state maps can create uncertainty about jurisdiction (Yusof et al., 2026). Applied to ART, these comparisons underscore the need for clear rules on lineage, the marital bed, and inheritance when biotechnology unsettles conventional kinship categories.

This tension between biological lineage and social caregiving also emerges in intergenerational disputes over whether parenthood should depend on genetic ties or a commitment to care (Chandran, 2022; Chen, 2024; Hee, 2024). Classical Islamic jurisprudence resolves this tension by separating caregiving and marriage prohibitions from lineage and compulsory inheritance. Ibn Qayyim al-Jawziyyah cites the Prophetic maxim "*al-walad lil-firāsh wa lil-ʿāhir al-ḥajar*" (The child belongs to the marital bed, and the adulterer receives the stone) and explains that *al-ḥurma wa al-maḥramiyyah* (sanctity and marriage prohibition) can be established without transferring full inheritance and maintenance entitlements (Ibn Qayyim al-Jawziyyah, 1991, Vol. 3, p. 142). Under this rule, the adulterer has no claim to paternity. He also invokes the juristic maxim "*al-khālah bi-manzilat al-umm fī al-istiḥqāq*" (The maternal aunt holds the rank of the mother in entitlement) in discussing child custody after parental separation. The rule gives maternal relatives priority in caregiving without assigning biological maternity or intestate inheritance rights (Ibn Qayyim al-Jawziyyah, 1991, Vol. 3, p. 145). Applied to ART, the distinction helps clarify how caregiving relates to legal filiation.

Finally, collective juristic reasoning (*ijtihād jamāʿī*) has come to involve repeated deliberation among jurists, embryologists, and medical ethicists. The Islamic Fiqh Council of the Muslim World League (MWL) in Mecca illustrates how that process can lead to a revised ruling. At its seventh session in 1984, the Council initially permitted gestational surrogacy between co-wives of the same husband. At its eighth session in January 1985, the Council revoked the permission after technical and legal consultations identified unresolved conflicts over maternal identity, the postpartum waiting period, and sibling inheritance rivalries (Shabana, 2021). This reversal illustrates al-Shāṭibī's view that the preservation of progeny is a primary necessity that should guide responses to technological innovation (al-Shāṭibī, n.d., Vol. 2, p. 10) and Ibn Qayyim's rejection of formalistic legal stratagems (*ḥiyal*) that undermine substantive *Sharīʿah* objectives (Ibn Qayyim al-Jawziyyah, 1991, Vol. 3, p. 114).

Synthesis, Legal Reform, and Actionable Recommendations

Taken together, the 27 sources show how jurists and states carry the marital presumption of paternity and the preservation of progeny into clinical protocols and civil registration rules as they respond to ART. Across Sunni jurisdictions (Indonesia, Egypt, Saudi Arabia, Malaysia, and transnational councils), authorities permit homologous IVF within an intact marriage because it maintains the alignment of genetic, gestational, and marital relationships. The same authorities invoke the principle of blocking the means to prohibit third-party gamete donation and surrogacy, whereas Twelver Shi'i legislation in Iran accommodates regulated ovum and embryo donation while maintaining a strict ban on donor sperm. Earlier scholarship has examined individual fatwas (Ibrahim et al., 2018) or focused on ethnographic accounts (Inhorn, 2022, 2025). This study's matrix traces how contemporary jurists use classical distinctions among reproductive fluid, filiation, milk kinship, and child custody.

Philosophical work that combines reasoning from the objectives of Islamic law with ethical and educational principles draws on *al-Muwāfaqāt* and *Iḥyā' 'Ulūm al-Dīn* to show how contemporary frameworks can preserve the ethical foundations of classical principles (Kuliyatun et al., 2026). In Islamic family law and ART, the analysis points to the need for explicit statutory and ethical safeguards on parentage and inheritance to protect progeny and promote child welfare.

These findings identify statutory gaps that call for targeted reform, particularly in Indonesia and Nigeria, where clinical practice has advanced faster than family law. In Indonesia, while Law No. 17 of 2023 on Health (Article 60) restricts assisted reproduction to legally married couples using their own gametes, the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI, Articles 99–100) leaves three issues unaddressed. These are (1) the status of embryos or gametes if a husband dies during an IVF cycle, (2) mandatory clinical audit trails to prevent gamete mix-ups, and (3) civil registration and child welfare safeguards, including obligatory testamentary bequests (*waṣiyyah wājibah*), to protect children born through unauthorized third-party procedures from statelessness or social stigma without misrepresenting biological descent. In Nigeria, the National Assembly should enact ART legislation that aligns clinical licensing under the National Health Act 2014 with clear parentage and birth-registration rules across statutory and Islamic personal law courts (Obadina, 2025).

Table 6 identifies who would carry out each proposed reform, the legal basis for action, and the limits on implementation.

Table 6. Proposed ART Governance Measures

Responsible Body	**Proposed Action**	**Legal Basis**	**Scope and Limits**
Fatwa councils (MUI, Dār al-Iftā', al-Lajnah al-Dā'imah, IIFA)	Set joint clinical and legal rules on gamete traceability, embryo storage limits, and non-use after divorce or death.	Preservation of progeny (al-Shāṭibī, *al-Muwāfaqāt*, Vol. 2, p. 10). Marital presumption of paternity (Ibn Qudāmah, *al-Mughnī*, Vol. 9, p. 39). Blocking the means.	Religious guidance. State enforcement is needed for private clinics.
Health ministries and licensing boards (Kemenkes RI and Nigeria's Federal Ministry of Health)	Require biometric or barcode verification registries, ban unlicensed cross-border gamete brokerage, and require counseling about informed consent and its implications for *Sharī'ah* and civil status.	Indonesia's Health Law No. 17/2023 (Art. 60) and Nigeria's National Health Act 2014 (Part VI).	Applies to licensed domestic clinics. Oversight of patients seeking donor ART abroad is limited.
Religious affairs bodies and legislatures (Kemenag RI, Religious Courts, and Nigeria's National Assembly)	Codify filiation for children conceived through homologous IVF. Provide for obligatory bequests and registration of maternal filiation in cases of irregular ART.	KHI Art. 99. *Maṣlaḥah mursalah* (unrestricted public interest) for child protection. Ibn Qayyim on care and financial protection as distinct from filiation (*I'lām*, Vol. 3, p. 142).	Protects child welfare and identity within existing restrictions on donation and surrogacy.

Conclusion

The documentary analysis shows that assisted reproductive technology (ART) challenges Islamic family law by separating genetic contribution, gestation, and marital filiation. Collective juristic reasoning continues to preserve core rules governing lineage. The 27 sources show that Sunni authorities, including Indonesia's MUI (1979), Egypt's Dār al-Iftā' al-Miṣriyyah (1980), Saudi Arabia's al-Lajnah al-Dā'imah (1999), IIFA (1986), and the MWL Fiqh Council (1985), consistently permit homologous IVF within an intact marriage and prohibit donor sperm, donor ova, surrogacy, and postmortem fertilization under the principles of preserving progeny and blocking the means. By contrast, Twelver Shi'i jurisprudence in Iran (1999 *istiftā'āt* and the 2003 Embryo Donation Act) prohibits donor sperm while permitting

regulated ovum and embryo donation, illustrating how Islamic legal responses to ART differ across jurisdictions.

This study contributes a matrix that traces how classical juristic concepts inform contemporary regulation. It examines *al-mā'* as the material origin of progeny (*Badā'i' al-Ṣanā'i'*), *al-firāsh* as the marital criterion of filiation (*al-Mughnī*), milk kinship as a basis for analogy in assessing gestational relationships (*Bidāyat al-Mujtahid*), and blocking the means to prevent the use of formalistic legal stratagems (*I'lām al-Muwaqqi'īn*) through SCOT's account of closure and an adapted model of institutional disruption. The documentary analysis offers an explanation for why institutions quickly reached agreement on homologous IVF and why third-party reproduction remains contested across Muslim societies.

The study's reliance on documents limits its conclusions to institutional norms and recorded cases. Direct ethnographic fieldwork would be needed to examine how Muslim households negotiate motherhood and marriage impediments in everyday life. The purposive selection of six jurisdictions and reliance on English translations or secondary accounts of certain non-Arabic statutes (such as Iran's 2003 Act and Nigerian regulatory bills) limit how far the findings can be generalized to other Muslim-majority countries. These limitations primarily affect claims regarding grassroots patient compliance and clinic-level enforcement. Future research could draw on interviews at multiple sites with fertility clinicians, Religious Court judges, and ART-conceived families to examine how institutional fatwas operate in judicial and clinical practice.

Declarations

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Ethical Statement. The study was conducted in accordance with the principles of voluntary participation, confidentiality, anonymity, and respect for participants' rights. The researchers obtained informed consent before collecting data. The authors declare that the study complies with applicable ethical research principles.

AI Usage Declaration. The authors used ChatGPT to help formulate theoretical concepts. The authors bear full responsibility for all published content.

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