

Bank Asi Perspective of Yusuf Qardawi and Wahbah Zuhaili

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Abstract: *A human milk bank is an institution that collects and distributes donated breast milk to infants in need. Its existence has generated debate in Islamic law regarding milk kinship, lineage, and marriage eligibility. This study aims to analyze and compare the views of Yusuf Al-Qaradawi and Wahbah Az-Zuhaili on the legal status of human milk banks. The research employs a library research method with a descriptive-comparative approach. Data were collected from classical Islamic texts, books, and relevant literature and analyzed using content analysis. The findings reveal that Yusuf Al-Qaradawi permits human milk banks because they provide significant benefits for infants and do not establish milk kinship that would prohibit marriage. In contrast, Wahbah Az-Zuhaili considers them prohibited because they may create uncertainty regarding lineage and mahram relationships due to unclear donor identities.*

Abstrak: *Bank ASI merupakan lembaga yang menghimpun dan menyalurkan air susu ibu (ASI) dari pendonor kepada bayi yang membutuhkan. Kehadirannya menimbulkan perdebatan dalam hukum Islam terkait hubungan persusuan, nasab, dan kemahraman. Penelitian ini bertujuan menganalisis serta membandingkan pandangan Yusuf Al-Qaradawi dan Wahbah Az-Zuhaili mengenai hukum Bank ASI. Penelitian menggunakan metode kepustakaan (library research) dengan pendekatan deskriptif-komparatif. Data diperoleh dari kitab, buku, dan literatur terkait, kemudian dianalisis menggunakan content analysis. Hasil penelitian menunjukkan bahwa Yusuf Al-Qaradawi membolehkan Bank ASI karena dipandang membawa kemaslahatan bagi bayi yang membutuhkan ASI dan tidak menimbulkan hubungan persusuan yang menghalangi pernikahan. Sebaliknya, Wahbah Az-Zuhaili mengharamkan Bank ASI karena berpotensi menimbulkan kerancuan nasab dan hubungan mahram akibat tidak jelasnya identitas pendonor.*

Keywords: *Yusuf Qardawi, Wahbah Az-Zuhaili, Bank ASI*

INTRODUCTION

In Indonesia, in particular, women's capacity to breastfeed their children remains limited. This is due to several factors, including a lack of understanding of the benefits of breastfeeding, the constant advertising of formula milk, and the increasing number of career women. About fifty years ago, the concept of starting human milk banks emerged across Europe. Most academics agree that newborns must be under two years old to be considered for breast milk.

According to the Shafi'i and Hanbali schools of thought, five consecutive breastfeeding sessions are prohibited because they consider them to be siblings. Several very strict requirements must be met before a breast milk bank can be established, including: Every breast milk collected in a breast milk bank must be stored separately from other breast milk in a designated place with the owner's name

written on it. Every baby who consumes breast milk must be recorded and informed of its fate by the owner of the breast milk. As a result, the mixing of genealogies that academics who prohibit it fear can be avoided (Laonso, H. 2005). Allah SWT has elevated humans and distinguished them from all other animals. The joy God brings to humans is immense. The nutritional benefits God bestows upon them from infancy, especially through breast milk, and the fact that breastfeeding is linked to religious law, are among these blessings. In fact, those who breastfeed are referred to as mothers in the Quran. In fact, breast milk donation and breast milk banks are becoming a new trend in urban areas.

With advances in science and technology, a number of breast milk banks have sprung up around the world today, including 154 in South America, 19 in France, 18 in Italy, and several hospitals in India and China, and 1 in Kuwait. In the Netherlands, breast milk banking is carried out by selecting donor mothers whose breast milk will be collected. The donor mother's breast milk is expressed and stored at home in a freezer. The breast milk is delivered to the mother's home by bank staff every two weeks in a refrigerated vehicle. The milk in the breast milk bank is sterile (washed hands, appropriate clothing/hats), and has been pasteurized before being distributed to recipients.

Only 33.6% of infants aged 0 to 6 months are exclusively breastfed, according to the 2010 National Socioeconomic Survey (Susenas). In Indonesia, very few infants are exclusively breastfed. This is due to several factors, primarily: a lack of understanding of the benefits of breast milk, the constant advertising of formula milk, and the increasing number of career women. About fifty years ago, the concept of starting breast milk banks emerged across Europe. This occurred after blood banks were established. To do so, they collected breast milk from women, purchased it, and mixed it in one place while waiting for customers to buy from them. This idea has begun to offend Muslims, and some individuals in Muslim-majority countries have done so.

Contemporary scholars also have different opinions regarding the issue of breast milk banks, including Yusuf Qardawi, According to him, establishing a milk bank with the stated aim of helping every weak person, whatever the reason for their weakness, is a good and noble goal that is approved by Islam. In addition, if the individual in question is a premature birth who lacks muscle and strength then it is very beneficial, but other contemporary scholars have opinions that contradict Yusuf Qardawi's opinion, one of them is Wahbah Zuhaili, he said that establishing a breast milk bank is haram. This research aims to: analyzing Yusuf Al-Qaradawi's views regarding the law on the establishment and use of breast milk banks.. Analyzing Wahbah Az-Zuhaili's views regarding the legal establishment and use of breast milk banks. Comparing the similarities and differences in the legal arguments of the two figures regarding the legal status of the Breast Milk Bank from an Islamic legal perspective.

METHOD

This study employed library research with a descriptive-comparative approach. Data sources were obtained from books, journals, and other literature relevant to the theme of breast milk banks, particularly the works of Yusuf Al-Qaradawi and Wahbah Az-Zuhaili. The data were analyzed using

content analysis techniques to identify the legal arguments of each figure. A comparative analysis was then conducted to identify similarities and differences in their views on breast milk banks.

RESULT AND DISCUSSION

Bank Asia

Breast milk is known by the abbreviation ASI in the Big Indonesian Dictionary (DepPenKeb 1988). Besides the fact that humans will never be able to create artificial milk with the same quality as breast milk, breast milk is also a gift from Allah SWT to all human descendants, making it the most important food and drink for babies, according to the provisions. To maintain the future survival of humanity and the health of mothers and children (Abdullah, AHA-S. 1993).

A breast milk bank is a container or place to store and distribute breast milk from donors to mothers who are unable to breastfeed their children. Breast milk donors can be healthy mothers who produce more milk than they need. Breast milk is usually stored in plastic or refrigerated containers to prevent bacterial contamination. One reason why breast milk banks must be developed is the challenge for mothers to provide breast milk to their children, especially during crises or disasters when breastfeeding mothers are often overwhelmed and unable to provide breast milk to their children (Mahjuddin 2003).

Law on Establishing a Breast Milk Bank

Since it is not known whether men and women will consume breast milk sold by breast milk banks, the sale of breast milk is prohibited to protect marriages between breastfed individuals (Mahjuddin (2003). Breast milk from breast milk banks is used under duress. Breastfeeding is optimal as long as the mother is still able to do so. When breastfeeding, a close psychological bond develops between mother and child. The mother believes that her milk will transform her baby into flesh and blood, and the baby feels loved. The situation changes if the child's milk is provided by a third party. Child development supported by an external party is similar to what we currently know about cow's milk and baby food.

However, there is also an opinion that selling breast milk has benefits for the community, namely better nutrition for babies than consuming other than breast milk. This is because we see many children who do not get breast milk, either because the mother is busy or conditions caused by the mother in question.

However, this view can be refuted because the losses incurred will be wider than the advantages, especially the occurrence of mixed genealogies. Even though Islam recommends that humans always look after their offspring. There is no doubt that this will make the problem worse. Giving breast milk to newborns purchased from a breast milk bank has the same drawbacks as not giving breast milk. So when two disadvantages or disadvantages meet, nothing remains except a disadvantage that is worse because the two disadvantages meet.(Mahjuddin 2003).

Impact of the Establishment of a Breast Milk Bank

Among the harms (impacts) that will arise from the establishment of a breast milk bank are:

- a. Lineage will be mixed up or unclear if the distribution of breast milk is not managed properly.
- b. Indonesia as a developing country does not really need to establish an ASI bank, because the costs that would be incurred in establishing it would be very large.
- c. The benefits of breast milk stored in a bank are reduced compared to breast milk that is directly expressed by the mother because stored breast milk has the potential to be exposed to viruses and dangerous germs and has the potential to experience a serious decline in quality.
- d. It is feared that mothers living in poverty will compete to sell their breast milk to banks at high prices instead of giving formula milk to their children because they see the possibility of doing so.
- e. Because they can buy breast milk from banks at any price, mothers who are active and have excess assets will be less likely to breastfeed their babies.

Age Restrictions

Scholars have differing opinions on the appropriate age for a child to begin breastfeeding, which may result in mahram. Most academics agree that infants under two years of age are the limit (Cholil, U. 1994).

"Indeed, breastfeeding (which makes someone a mahram) occurs because of hunger" (HR Bukhari and Muslim)

Regarding the practice of breastfeeding that can be prohibited, scholars have their own opinions. However, the majority of scholars agree that the important thing is that the milk enters the baby's stomach so that its flesh and bones can grow, either directly through the mother's nipple, indirectly through As-Su'uth (inserting through the nostrils), or through Al Wujur (pouring directly into the throat) or by other means (Zuhdi, M. 2000).

The amount of milk that makes a Mahram

According to the Shafi'i and Hanbali schools of thought, breastfeeding is prohibited after five consecutive sessions. This is based on the hadith of Aisha (ra).the following is what it means:

Previously, in the Qur'an, the procedure that could lead to becoming a mahram was ten breast-feedings, then it was dinasakh (removed) with only five breast-feedings. Then the Messenger of Allah died, and the verses of the Qur'an were still read like that."(HR Muslim No. 3670)

Breast milk given to a child who is still receiving nutritional intake from his mother and is still under two years old is what is meant by breast milk that invalidates marriage.

On the other hand, the Hanafiyah and Malikiyah argue that as long as the baby is breastfed and full, there is no limit to the number of breastfed babies for a breastfeeding mother, so as to make

marriage unlawful. Meanwhile, according to Imam Syafi'i, in order for a baby to be declared a breast milk child, it requires at least five filling breastfeeds. And the amount of milk that fills you at least three times in a row, according to Tsur Abu Ubaid, Daud Ibnu Ali al-Zahiry, and Ibnu Muzakir.

How to Breastfeed

Regarding breastfeeding techniques that may be prohibited, scholars have different opinions: The majority of academics agree that breast milk is very important to enter the baby's stomach so that it can develop into flesh and bones, either by being sucked directly by the mother, "" such as su'uth "السَّغَطُ" (milk is put into his nostrils), ""/al-wujur (milk is poured down his throat), or in other ways (Ghozali, AR 2008). They adhere to the physical meaning of the word breastfeeding which is found in the word of Allah SWT which means:

“(It is forbidden for you to marry) your mothers who suckled you and your sisters through breastfeeding.”(QS. An-Nisa': 23)

According to Hanafiayah, Mazni, and Abu Tsur, if a woman's breast milk is mixed with other foods, drinks, medicines, or goat's milk and given to her baby, it will result in mahraman if the amount is more than it should be, but not if there is only a small amount (Sabiq, S. 2018).

Breast milk bank according to Yusuf Qardawi And shrine Zuhaili

According to Yusuf Qardawi, there is no doubt that the purpose of establishing a milk bank is to help all weak people, whatever the cause of their condition, as defined in the good and noble goals recommended by Islam. To clarify the law, Yusuf Qardawi divides this issue into several areas. First, it defines breastfeeding in terms that can be used by sharia to assess whether it is prohibited. Second, it outlines the amount of milk that can dissolve a valid marriage. The third rule is the doubt of milk in Islamic law (Qardawi, Y. 1995).

Yusuf Qardawi in his book entitled Contemporary Fiqh Volume 2 states that rada'ah according to the majority of fuqaha, namely the three imams of the madhhab consisting of Imam Abu Hanifah, Imam Malik and Imam Shafi'i is anything that reaches the baby's stomach through the esophagus or other means by sucking or other means such as al-wajur (pouring milk through the mouth into the esophagus) and they even equate it with the as-sa'uth method (pouring milk into the nose and then into the esophagus).

Yusuf Qardawi agrees with Ibn Hazm's view that breastfeeding does not inherently prohibit marriage; but only when a baby sucks his mother's breast with his mouth that can cause the dissolution of marriage, unlike when a baby is given woman's milk to drink using a vessel or poured into his mouth and then swallowed, eaten with bread or mixed with other food, poured into the mouth, nose, or by injection, then according to Yusuf Qardawi such a situation does not make the child, a suckling child.

Wahbah Zuhaili's views on Bank Breast milk

Wahbah Az-Zuhaili advises women to stay away from breast milk banks because it is impossible to know for sure who the breast milk belongs to when it is received through one of these facilities. Meanwhile, maintaining lineages is one of the goals of Islamic law, and because breast milk banks act as intermediaries which can result in mix-ups or doubts about lineages, it should be avoided to prevent further losses. More than just a lack of breast milk from breast milk banks, the existence of breast milk banks poses a greater risk, namely the mixing of bloodlines, one of them. In addition, witnesses do not need to be present, and consuming milk does not have to come from the mother's nipple. If a baby under two years old drinks it for five filling feedings... But there are still other ways to find a wet nurse for the baby than setting up a breast milk bank. Sheikh Wahbah Az-Zuhaili made this statement (Az-Zuhaili, W. 2011).

The governing body of the Organization of the Islamic Conference, the Majma' al-fiqih al-Islami Council, held its second round of meetings from December 22, 1985 to December 28, 1985 AD. From this meeting they stated that:

- a. Breast milk banking was a Western experiment that proved to have many flaws, both technologically and scientifically. As a result, the experiment eventually began to lose its luster and ceased to attract attention.
- b. In fact, breastfeeding is viewed in Islam as a form of kinship that can prevent people from marrying each other due to the milk-related relationship. Maintaining and preserving lineage is one of the fundamental goals and missions of Islamic law (al-muhaafazhah alan nasab). Meanwhile, breast milk banking creates confusion and ambiguous lineages.
- c. Social relations in Islam are actually able to meet the needs of premature babies, babies with abnormal weight, or babies who need breast milk in certain circumstances through natural breastfeeding by other women, this is the basis for the Islamic world not needing the institution of breast milk banks itself.

Based on this, the Majma' al-Fiqih al-Islami session decided:

- d. It is forbidden for breast milk banks to be established in countries that adhere to Islamic law.
- e. Breastfeeding children with milk obtained from breast milk banks is prohibited (Bahraen, R. 2017).

Kinship or blood relations and breastfeeding relationships prevent a person from marrying. According to Ibn Sayuti Asybah Wa Nadhair, among the basic principles of Islam are the following:

Disadvantages cannot be avoided, and they will even increase problems(Yahya, M., & Fatchurrahman 1986).

The correlation with this discussion is that the absence of breast milk for a baby is a harm Therefore, providing breast milk from a breast milk bank to a baby in need is also considered a

form of harm. Therefore, when these two harms meet, it will only create a new harm. Because Fiqh is not physics, where two poles meeting at the same point will produce different results. Therefore, taking action in response to something considered an emergency is also not permitted in Islam (Yahya, M., & Fatchurrahman, 1986).

According to Wahbah Az-Zuhaili in his book *Al-Fiqh Al-Islami Wa Adillatuhu* 10, it is explained that breastfeeding a child is obligatory for a mother in three ways, as follows:

- a. A child only consumes breast milk from its biological mother. In this situation, a mother must breastfeed her baby to ensure its safety. Similarly, a mother who breastfeeds her child while earning a wage assumes her baby is not receiving milk from anyone else.
- b. Unable to find another woman to breastfeed, she must breastfeed her baby for the baby's safety in this situation.
- c. A mother is obliged to breastfeed her child to prevent its death, if her husband and child do not have sufficient assets to pay the rent of a woman who wants to breastfeed.

Scholars' opinions on this issue may differ because they have different interpretations of what "radha'ah" is, what the legal age is, what kind of breastfeeding method, and how many sucklings make siblings.

The establishment of breast milk banks will have negative and dangerous consequences for Muslims and us. Several problems with breast milk banking procedures are very clear. The creation of breast milk banks opens the door to sin for both buyers and sellers. The quality of the milk consumed also affects the growth and development of the baby. As we know, breast milk banks include various groups.

According to the teachings of the Prophet Muhammad (peace be upon him), humans should avoid breastfeeding with women who lack understanding (idiots), as it will affect those being breastfed. Breast milk banks also combine the breast milk of Muslims and non-Muslims, as well as those of good or bad morals, resulting in newborns inheriting poor health and mental health. The emergence of disease is very plausible when the woman whose breast milk is taken by the bank is an unhealthy woman and suffers from certain diseases, even chronic ones. This causes the infant who drinks her breast milk to be infected with the disease. Moreover, sometimes the disease cannot be treated with current medical technology, such as HIV-AIDS, for example. Medical experts have also confirmed that this disease can spread through consuming breast milk. Furthermore, the mixing of generations causes the breakdown of marriages and the birth of a weak generation through these marriages. It is feared that when a man wants to marry a woman, it turns out that the woman is his relative through breastfeeding, but they are unaware of this because of the role of this breast milk bank. Giving breast milk from a biological mother to her child is also included in part of testing a woman's nobility. Strong gender authorities could feel insulted if this breast milk bank process goes ahead. Because, in the process of buying breast milk, women express milk like animal milk. Selling genitals without necessities. There is no doubt that in the

process of buying breast milk, workers will indirectly look at the genitals of women who sell their breast milk, and as we know, these workers are generally men, and this can be included as something that is ungrateful to the gift of breast milk that has been given by Allah SWT (Al-Hasani, SMBAA-M. 2005).

A woman who breastfeeds a toddler less than 2 years old until she becomes the mother of the child she breastfeeds (a nurse mother), therefore her child becomes a relative with the child she breastfeeds. The nursing mother's female relatives will become her nursing aunts, as will her relatives (Qardawi, Y. 2005).

Islam provides a solution: infants who are entitled to consume breast milk from donors are infants whose mothers are unable to produce milk, whose mothers are sick, or whose mothers have died. As we know, during the Prophet's era, there was no prescription milk; goat's or cow's milk was not recommended, but breast milk from a wet nurse. The Prophet Muhammad (peace be upon him) received breast milk not only from his mother but also from a wet nurse named Halimah Sa'diyah. So in this case, it is permissible as long as the issue of lineage is always considered. However, in the case of breast milk banks, the author finds it difficult to accept, because we know that breast milk banks are centralized for women who want to sell breast milk. With the public eager to buy breast milk, it will be very difficult to identify wet nurses, leading to concerns that marriage between wet nurses or wet nurses will be prohibited.

CONCLUSION

The consequences of breastfeeding from breast milk donors through breast milk banks can create a risky situation in the mahram or kinship relationship. Because the donor will only reveal general information about himself, such as when donating blood. And after that, the babies who receive breast milk from the breast milk bank will not be clear who their mahram is due to the unclear identity of the donor. The result is that a man will marry a woman later who is reported to have consumed breast milk from a woman who is also the same breast milk donor. So when this happens, it means that the man and woman are in a kinship relationship, therefore, it is haram for a mahram marriage that occurs due to a sibling relationship by breastfeeding, just as it is haram for a marriage within a kinship relationship. And this is one of the real negative impacts of the existence of breast milk donors stored by breast milk banks. The establishment of breast milk banks is permitted by modern scholar Yusuf Qardawi because it is a good and noble goal and because breast milk banks do help those who need breast milk, especially newborns and premature babies. Breast milk banks are also supported by Islam and because consuming breast milk from breast milk banks according to Yusuf Qardawi does not include mixing lineage, it is permissible and halal for those who consume it. On the other hand, Wahbah Az-Zuhaili, a contemporary scholar, advises against using breast milk banks because it is unclear who owns breast milk if obtained through a breast milk bank. Meanwhile, protecting lineage is one of the goals of sharia in our religion, and also breast milk banks here will act as an intermediary or wasilah and can cause confusion or

concern about lineage, so it is best avoided to prevent further damage. The risk of mixing lineages in this case is more dangerous than simply a lack of breast milk in the breast milk bank. Wahbah Az-Zuhaili argues that establishing a breast milk bank is haram.

REFERENCES

- Abdullah, A. H. A.-S. (1993). Keutamaan air susu ibu. PT Fikahati Aneska.
- Al-Hasani, S. M. B. A. A.-M. (2005). Fiqih keluarga: Seni berkeluarga Islami (Cetakan pertama). Bina Media.
- Az-Zuhaili, W. (2011). Fiqih Islam wa adillatuhu (Vol. 10). Gema Insani.
- Bahraen, R. (2017). Fiqih kontemporer kesehatan wanita. PT Pustaka Imam Asy-Syafi'i.
- Cholil, U. (1994). Agama menjawab tentang berbagai masalah abad modern (Cetakan ke-2). Ampel Suci.
- Departemen Pendidikan dan Kebudayaan. (1988). Kamus besar bahasa Indonesia. Balai Pustaka.
- Ghozali, A. R. (2008). Fiqh munakahat. Kencana.
- Laonso, H. (2005). Hukum Islam: Alternatif terhadap masalah fiqih kontemporer. Restu Ilahi.
- Mahjuddin. (2003). Masailul fiqhiyah: Berbagai kasus yang dihadapi hukum Islam masa kini. Kalam Mulia.
- Qardawi, Y. (1995). Fatwa-fatwa kontemporer (Jilid 2, A. Yasin, Penerjemah). Gema Insani Press.
- Qardawi, Y. (2005). Halal haram dalam Islam. Akbar.
- Sabiq, S. (2018). Fiqih sunnah (A. Hidayat, Penerjemah). Insan Kamil.
- Yahya, M., & Fatchurrahman. (1986). Dasar-dasar pembinaan hukum Islam. Al-Ma'arif.
- Zuhdi, M. (2000). Masail fiqhiyah: Kapita selekta hukum Islam (Cetakan ke-11). PT RajaGrafindo Persada.