



Original Article

Management of Breast Milk Donor (Istirdla') in Institution of Lactashare Application and Facebook of Breastmilk Donor Based on Islamic Law

Faridatul Fauziah^{1✉}, Muchammad Fauzan Muchlis², Imas Putri²

¹²³Universitas Sultan Ageng Tirtayasa, Indonesia

Corresponding Author: faridatulfauziah@untirta.ac.id ✉

Abstract:

This study is a qualitative study with a normative juridical approach, namely an approach that relies on laws and regulations as the main material to provide arguments for the hypotheses and perspectives that researchers present. The data used in this article are secondary data that researchers obtain from various credible sources, namely laws and regulations. The data used are analyzed using comparative legal interpretation techniques with the interpretation results below. According to its type, this research is normative legal research, namely doctrinal legal research, research that examines a set of theories or related written rules, or research like this which is also common in the world of research is called library research, namely research that emphasizes extracting sources. legal materials from the library.

Keywords: Breast Milk Donor, Lactashare Application, Breastmilk Donor

Introduction

In the Indonesian dictionary, ASI stands for *Air Susu Ibu* Breast milk is the most important food and drink for babies, apart from the fact that humans will never be able to produce artificial milk of the same quality as breast milk, it is also a gift from Allah Subhanahu Wa Ta'ala to all children in order to ensure the health of mothers and children, and to ensure the survival of the human child in the future (Abdul Hakim, 1993)

Breast milk (ASI) is an emulsion in a solution of protein, lactose and organic salts secreted by both sides of the mother's breast glands after childbirth, and is useful as baby food. Breast milk is a natural liquid that is easily gained and flexible, can be drunk without special preparation at the appropriate temperature for the baby and free from bacterial contamination, thereby reducing the risk of intestinal disorders.³ Breast milk is a liquid secreted by the mother's breast glands (Iman Jauhari, 2018). Exclusive breast milk is breast milk that is given to infants from birth to 6 (six) months, without adding and/or replacing with other foods or drinks (Peraturan Pemerintah, Nomor 33 Tahun 2012).

Some explanation described above can provide an understanding that breast



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milk is milk produced by the mother and contains all the nutrients needed by the baby for the growth and development needs of the baby. Babies are only given breast milk, without the other fluids such as orange juice, honey, tea, mineral water and no additives solid foods such as bananas, papayas, milk porridge, biscuits, and rice porridge, for 6 months. Breastfeeding a baby is a nature given by Allah SWT to a mother, Allah SWT has given the right to mothers to breastfeed their children, and He has determined it for them without being revoked, unless there are difficulties, then in this case Allah SWT says in the another verse, which means: "And if you find it difficult, then another woman may breastfeed (the child) for him. As for some of the obstacles that make a woman have *uzur syar'i* not to breastfeed her children, they are as follows: 1) You are suspected of having an infectious disease which you are worried about infecting babies who are suckling from your breast milk. 2) Your breast milk does not come out, or dry. In this condition, you are one of those who are weak and fall out of this obligation. 3) Your nipples are injured or blistered so it is feared that there are bacteria that can harm your baby. 4). The baby refuses to be breastfed.

It should be an understanding for mothers, that breastfeeding a child from her own breast milk has a very huge meaning. Breast milk contains very high levels of nutrients, strongly help the process of physical and mental growth of children. Breast milk can bid perfectly the seeds of disease that exist in the child's body. It also contains various levels of protein that the body needs ([Iman Jauhari, 2018](#)).

Breast milk donation is donating excess breast milk that a mother has to other babies who need it, and it is given voluntarily. Breast milk donation is carried out to babies who really cannot get their own mother's milk, for example in the following circumstances: 1) Mothers die after giving birth. 2) Mothers have Hepatitis B (which attacks the liver). 3) Mothers are in the process of being treated for cancer. 4) Mothers have heart problems. 5) Mothers experience hormonal disorders

In Islamic law, the legal basis for breastfeeding donors is found in QS Al-Baqarah Verse 233 and regarding breast milk donors itself is found in the MUI Fatwa Number 28 of 2013 concerning the Problems of Donating Breast Milk (*Istirdla'*). The tradition of breastfeeding babies to other people in Islamic history is not something strange because the Prophet himself was breastfed by a Bedouin Arab woman named Halimah As-Sa'diyah when he was a baby. However, what has become a tradition in Islam is that to breastfeed a baby can be done to a certain woman whose identity can be identified. Milk only came out for a few days, so Aminah was forced to take her baby to someone who could breastfeed someone else's baby by getting reward. Breastfeeding other people's babies is the custom of the Arabs since ancient times until now. Muhammad SAW was then breastfed by a mother named Halimah As Sa'diyah. Halimah was very happy to receive the presence of the baby, Muhammad SAW ([Arief Hakim, 2003](#)).

Based on the strongest story, Prophet Muhammad's birth time was on Monday evening on the 12th of Rabi'ul Awal. He was born orphaned, his father Abdullah died when Siti Aminah, Abdullah's wife, was only two months pregnant of the Prophet Muhammad. Then, he was raised by his grandfather, Abdul Muthalib and breastfed by the Bani Sa'ad because it was a dry season so that farms and agricultural fields dried up ([Muhammad Sa'id Ramadhan Al-Buthy, 1999](#)).

Several tribes have a very good reputation in terms of breastfeeding and child raising. One of them is the Bani Sa'ad ibn Bakr. They are a remote Hawazin tribe who live in southeast of Mecca. Siti Aminah (Prophet Muhammad's mother) wanted to entrust her son to be raised by a woman from the tribe, namely Halimah bint Abi Zu'aib As-Sa'diyah who at that time was accompanied by her husband, Haris and she recently had a baby boy who were taking care of themselves ([Martin Lings, 2007](#)).

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woman named Halimah As-Sa'diyah when he was a baby. However, what has become a tradition in Islam is that to breastfeed a baby can be done to a certain woman whose identity can be identified.

Even though the fiqh scholars have discussed the issue of breastfeeding in which the breast milk is accommodated in a container such as a glass or bottle, the fiqh scholars have different opinions about its permissibility. In this case, what needs to be considered is the relationship between children who get breast milk and mothers who give breast milk. Breastfeeding law works when the breast milk is given to the child from the ages of 0 to 2 years old by means of direct breastfeeding or through milking ([Fatwa MUI, Nomor 28, 2013](#)).

According to Islamic law, the relationship between a child who is breastfed and a mother who gives her breast milk is one of the factors that can hinder marriage between the man and the woman due to the factor of breastfeeding. It has been recognized that the milk which can make love (family) is breast milk ([Yanggo & Anshary, 2009](#)).

Breastfeeding is only forbidden in terms of marry. Breastfed children and breastfeeding mothers do not inherit from each other. It is not obligatory for one of the two parties to provide for the other. The punishment of *qishas* does not come off from the breastfeeding mother, if she kills her breastfed child. The breastfeeding mother cannot be a guardian in marriage and soon. Therefore, in this law both are like *ajnnabi* (not mahram). The breastfeeding mother's responsibility is limited to whether she eats and drinks from something which is halal and *thoyyib*. Because what she eats and drinks will become breast milk, which is then swallowed by the breastfed child and her biological child ([Q&A Kulwap Lactashare Roadshow, 2011](#)).

Fiqh scholars have different opinions regarding the law of donating breast milk, namely either by direct breastfeeding or by being accommodated firstly in a container or bottle and regarding whether or not it is permissible to breastfeed a baby with breast milk taken from another woman because it is feared that in the future when the child grows up to be big and mature, one day he/she will marry a woman or a man who turns out to have consumed breast milk from the same donor mother. This is a concern when the child never knows the babies who have breastfed from the donor mother and the donor mothers whom the child has breastfed. Therefore, it is not clear to someone who has mahram with whom ([Ria Fariana, 2019](#)).

Based on Islamic law, breastfeeding can lead to a mahram relationship between the donor mother and the child, meaning that it is forbidden to marry due to breastfeeding, regardless of whether breastfeeding is carried out directly or indirectly. So, between children who are breastfed and mothers who donate breast milk, as well as brothers and sisters who become mahrams for breastfeeding mothers, they cannot have marital relationship.

In the Qur'an Surah Al-Baqarah verse 233, Allah commands mothers to breastfeed their children for 2 whole years. If you want to wean before 2 years, you must consult first and have to be willing to each other, as stated in the word of Allah Subhanahu Wa Ta'ala, which means: "Mothers should breastfeed their children for two whole years, that is, for those who want to perfect breastfeeding. And fathers have to feed and clothe the mothers in a ma'ruf way.

A person is not burdened but according to the level of his/her capacity. A mother do not feel misery because of her child, and the heir is obliged to do so. If it is deliberation between both, there is no sin on one another. And if you want your child to be breastfed by someone else, there is no sin for you to give the proper payment. Have faith to Allah and know that Allah is All-Seeing of what you do."

Regarding the length of breastfeeding time, Allah SWT has determined it into two whole years. The provisions that Allah SWT has set for breastfeeding time is not absolute time, Allah SWT only informs mothers who want to breastfeed perfectly are for a period of two full years, but Allah SWT also gives relief to mothers with the

willingness of their husbands to wean breastfeeding before two years in which it is done by having discussion between the mother and father with consideration solely for the benefit of the baby.

The law of breastfeeding children to other people is not necessarily carried out without supervision or regulations. Breastfeeding to other people requires regulation from the government, especially the Minister of Health. The regulation regarding breastfeeding children to other people is summarized in Government Regulation Number 33 of 2012 concerning Exclusive Breastfeeding, in fact, it has stipulated special requirements for donors and recipients of breast milk donors. 1). In the case that the biological mother is unable to provide exclusive breastfeeding for her baby as referred to in Article 6, exclusive breastfeeding can be provided by the breast milk donor. 2). Exclusive breastfeeding by breast milk donors as referred to in paragraph (1) is carried out with the following requirements: a. The request of the biological mother or the concerned baby's family; b. The identity, religion, and address of the breast milk donor are clearly known by the mother or the family of the infant receiving breast milk; c. Approval of breast milk donors after knowing the identity of the breastfed baby; d. The breast milk donor is in good health condition and has no medical indication as referred to in Article 7; and e. Breast milk is not traded. 3). Breastfeeding as referred to in paragraphs (1) and (2) must be carried out based on religious norms and taking into account the socio-cultural, quality and safety aspects of breastfeeding.

Methods

Based on the comprehensive explanation above, it can be simplified if this study aims to analyze the two decisions of the highest judicial institutions in Indonesia which are at odds in terms of the age limit requirements for Regional Heads in Indonesia ([Chartier 1972](#)). This study is a qualitative study with a normative juridical approach, namely an approach that relies on laws and regulations as the main material to provide arguments for the hypotheses and perspectives that researchers present ([Lexy J. Moleong 2018](#)). The data used in this article are secondary data that researchers obtain from various credible sources, namely laws and regulations ([Henni 2015](#)). The data used are analyzed using comparative legal interpretation techniques with the interpretation results below ([Abdurahman 2016](#)). According to its type, this research is normative legal research, namely doctrinal legal research, research that examines a set of theories or related written rules, or research like this which is also common in the world of research is called library research, namely research that emphasizes extracting sources. legal materials from the library. Soekanto & Sri Mamudji ([Soerjono, 2011](#)) suggests legal research consists of: 1) Research in the form of an inventory of positive laws. 2) Research in the form of efforts to discover the principles and philosophical basis (doctrine) of positive law. 3) Research seeks to find inconcrete laws that are appropriate to be applied to resolve a particular case. 4) Empirical legal research.

If the type of research is empirical legal research or also called sociological legal research, what needs to be done is to formulate a hypothesis. The hypothesis is a temporary conclusion that is found on the basis of theory and observation of existing phenomena (empirical facts). Soerjono Sukanto explained that normative legal research is library research, namely research that examines primary and secondary legal materials, through a proportional assessment. Normally normative research examines theory, comparative theory, legal views, legal principles, legal norms, legal rules and others. In this study, writing conducted research that focused on legal review of the contracts for depositing haj funds and the use of hajj funds for infrastructure development in Indonesia, through research on existing legal material literature.

Legal materials consist of primary legal materials, secondary legal materials and tertiary legal materials. The primary legal material in this study is Law No. 34 of

2014 concerning Hajj Financial Management, while the secondary legal material in this research is the legal rules that apply to other laws and regulations such as the 1945 RI Constitution, UU, Perpu, DSN MUI Fatwa RI and the Koran, hadith and sunnah of the Prophet Muhammad SAW. Meanwhile, secondary materials consist of books, research journals and expert opinions. As for tertiary legal materials, namely other materials that explain primary and secondary legal materials such as dictionaries (laws), encyclopedias ([Amirudin, 2016](#)).

The collection of legal materials is carried out using a documentation system. This documentation study is done by examining several existing documents and legal regulations, both directly or indirectly related to the contract and the use of Hajj funds. such as the RI Constitution, Perpu, DSN MUI RI Fatwa, Koran and Hadith. The results obtained from this documentation study are recorded in research cards with the aim of facilitating their preparation in discussing the problems raised in the problem formulation ([Amirudin, 2016](#)).

Results

Regional Head ElectionThe Concept of Breastfeeding Donor Institutions

Throughout history, women have provided breast milk for babies whose mothers themselves were unwilling or unable to do so. At Mother's Milk Bank in Austin, Texas, potential donors are carefully screened using a blood test, and the donated breast milk is pasteurized and retested before being fed by the baby.¹⁴ In America, breast milk donors and breast milk banks are carried out by collecting breast milk from selected donor mothers. A mother who wants to donate her milk must be healthy and meet the qualifications that the mother does not have *HIV I-II*, *HTLV I-II*, *Hepatitis B*, *Hepatitis C*, *Syphilis*, *CMV*, free of narcotics and illegal drugs, must pass a toxicology test, free alcohol, amphetamines, marijuana, morphine, cocaine, heroin, ecstasy, and others ([Nina Planck, 2007](#)).

Prospective donors start pumping breast milk and pour the results of the pump every day into the breast milk bag that has been provided, if the donor's milk has been collected within 1-2 weeks, put it in a *styrofoam* and cardboard equipped with *dry ice* and a special sticker code, which will be later taken by the ASI Bank expedition. Donor milk that has just been received by the ASI Bank is thawed in a special cooling medium. And it will be processed under sterile conditions. Donor breast milk is also routinely pasteurized before being given to donor recipients so it is relatively safe.

In Indonesia the awareness of mothers to give exclusive breastfeeding for 6 (six) months has begun to increase as a result of very massive campaign from various parties. But in reality there are some cases of mothers unable to breastfeed. This is the starting point of breast milk donation.

The head of breast milk of the Indonesian Pediatrician Association (IDAI) Dr. Elizabeth Yohmi SpA IBCLC explained that breast milk donors are indeed needed. But the growing facts today are different. The practice of donating breast milk in Indonesia has gone in an uncontrolled direction. The era of social media makes communication between donors and recipients of breast milk just got easier. The search for breast milk donors often circulates in instant messaging groups or social media.

Therefore, several foundations are trying to collect breast milk from other mothers who have abundant breast milk in order to be generous in giving some of their milk to mothers who need breast milk for their babies. The purpose of the foundation or institution is to help mothers who cannot breastfeed their babies directly due to various obstacles and to support mothers to exclusively breastfeed their babies.

Lactashare is a foundation that was established in Malang, on September 4, 2018 with the Decree of the Ministry of Law and Human Rights Number AHU-0011989.AH.01.04. The establishment of Lactashare has the following aims and objectives: a). Carrying out the collection, processing and distribution of breast milk

from prospective breast milk donors to prospective breast milk recipients in accordance with medical and religious principles. b). Raising funds for breastfeeding donor operations in accordance with medical and religious principles. c). Providing full facilities in the process of donating breast milk with the concept of waqf. d). Establishing, fostering and/or assisting institutions engaged in the health of breastfeeding mothers, infants and matters related to them.

Lactashare's vision is a solid human civilization with the goodness of breast milk. Lactashare's mission is to build an integrated breast milk donor system with various preventive, educative, and promotive services around lactation and child health. Lactashare's target is to establish an ASI Bank in Indonesia, as the organizer of an integrated breastfeeding donor system that is safe, precise, fast, reliable and in accordance with religious principles.

ASI Bank or ASI Waqf Institution, is the most suitable concept to realize the purpose of Lactashare establishment. Therefore, the establishment of the first ASI Bank in Indonesia, as a form of innovative and solution-based sustainable health development efforts, has become the main target of Lactashare in the 2019-2024 period. We believe that ASI Bank is an innovation in terms of health in which it is awaited to its usefulness in Indonesia. So the establishment of the ASI Bank is an urgency to support the health efforts of Indonesia's infants and toddlers. Unfortunately, this urgency cannot be immediately answered if only waiting for recipients of breast milk just got easier. The search for breast milk donors often circulates in instant messaging groups or social media ([Beritasatu, 2020](#)).

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Lactashare quickly takes a role, by being the initiator and driver, for the

realization of ASI Bank innovation in Indonesia. A strong foundation is needed to support the sustainability of the breastfeeding donor program into the future. Therefore, the Lactashare Donation Partner Program is designed as a long-term solution in gathering and maintaining sustainable support from the wider community.

Since its operational establishment in 2017, Lactashare has been firmly committed to spreading goodness through a breastfeeding donor program that is in accordance with medical and religious principles. Although the main program is as a *regulator* of breastfeeding donors in Indonesia, Lactashare also provides consulting services in the field of lactation for pregnant and lactating mothers. Other programs, such as the breastfeeding mother allowance, are one of Lactashare's efforts to fulfill nutritional adequacy for mothers and babies through the provision of staple foods. *How Indonesia Human Milk Bank Works* (A Note on Lactashare Foundation's Efforts to Establish a Human Milk Bank in Indonesia), the following steps must be followed: 1) Breastfeeding mothers who have an excess supply of breast milk can register as a Prospective Breast Milk Donor, provided that: 2) Physically and mentally healthy. 3) Not pregnant. 4) Sufficient breast milk for biological children. 5) Donate at least 5 liters of breast milk. 6) Do not smoke and consume alcohol

. If those conditions are met, prospective breast milk donors can fill out the online registration form on the lactashare application or website www.lactashare.id 1). Prospective breast milk donors who have registered at lactashare will go through the first verification stage, namely the interview process by telephone. 2). The validity of the interview data is evidenced by the attachment of the health history data of the prospective breast milk donor along with the baby's history from the medical records of the treating health facility. 3). If the prospective breast milk donor passes the interview selection, the prospective donor will receive a file and a package of examination tools.

Provisions in Islamic Law

There are three mahram relationships in Islam, one of which is a mahram because of the relationship between breastfeeding. Breastfeeding creates laws that determine the meaning of breastfeeding itself. Narrated from Ibn Abbas ra, he said: "He is not lawful for me. She is my sister's daughter according to breastfeeding and what is forbidden because of lineage (descendants) is also forbidden because of breastfeeding." (Narrated by Al-Bukhari and Muslim)

Mahram due to the breast milk relationship is the existence of breast milk relationship between a man and a woman making the woman a mahram for the man (i.e. it is forbidden to marry a man who is breastfeeding with her), as is the case with mahram in lineage. Therefore, a woman who has breastfed a boy (by fulfilling the requirements of breastfeeding) is considered the same as his own biological mother (ie to be a mahram for the boy whom she breastfed and therefore it (Ibn Hajar Al-As. is haram for her to marry him). Similarly, his sister -in -law and all women who are forbidden to marry him due to the relationship of lineage with his mother.¹⁸

The meaning of *radha* ' (breastfeeding) which is the reference of *syara*' in establishing the prohibition (marriage), according to *jumhur fuqaha*, including three imams, namely Imam Abu Hanifah, Imam Malik, and Imam Shafi'i, is everything coming to the baby's stomach through esophagus or other. Named *radha'* and *radha* '/*ridha*' (breastfeeding) is unless the child who is having breastfeeding takes the breast of the woman who is breastfeeding with his mouth, then sucks it ([Quraish Shihab, 2008](#)).

The impact of breast milk donor is related to the bond from the breastfeeding mother in which the baby and the breast milk donor mother have inner bond, on the other side the baby also gets some of the nature of the breast milk donor mother. dr. Dian N. Basuki, MD, MSC, IBCLC., explains DNA in proteins in breast milk. "In DNA, many human traits are carried including any antibody substances. So, a child

who gets donor breast milk, on the one hand he also gets some of the nature of a mother who donates (Yusuf Qardhawi, 1998).

In accordance with QS Al-Baqarah Verse 233, a mother breastfeeds her child Haulaini (approximately 2 years), then it is recommended to be weaned. From this verse also explicitly indicates that the ideal distance from the birth of the child is 30 months, in contrast to the WHO which requires 33 months. Breastfeeding is very important for the growth and development of the baby. In the Qur'an, there is an admonition to give breast milk to newborns up to two years old. QS Al-Baqarah Verse 233 meaning: "Mothers should breastfeed their children for two full years, that is for those who want to perfect breastfeeding." and Hadith meaning: "From Ibn Mas'ud Radhiyallahu Anhu that the Prophet sallallahu 'alaihi wa sallam said, "There is no breastfeeding except that which strengthens bones and grows flesh". (Narrated by Abu Dawud)

Based on Islamic law, the relationship between a child who receives breast milk and a mother who gives her milk is one of the factors that can lead to the obstruction of marriage between men and women due to the presence of breastfeeding factors. It has been recognized that milk that can make the bond of love (family) is breast milk.

Some scholars say that for the occurrence of breastfeeding that results in mahram, then there must be witnesses. This is in line with the opinion proposed by Ash Sharabshi, the scholar of Azhar. But other scholars say there is no need for witnesses. It just needs information from women who are breastfeeding. For those who require witnesses, the mahram relationship caused by breastfeeding must involve two male witnesses or one male and two female witnesses instead of one male witness. Meanwhile, according to other scholars, there is no need for witnesses in the matter of breastfeeding. The important thing is that women who breastfeed their babies say it.

Scholars also have different opinions about breastfeeding procedures that can be forbidden. The majority of scholars say that what is important is that the milk reaches the baby's stomach, so that it forms flesh and bones, either by sucking the nipples of the woman's breasts directly or by means of *as-su'uth* (inserting milk into the nostrils), or by the way of *al-wujur* (pouring directly into his throat), or in any other way.²² The Madhhab Dhahiriyah says that breastfeeding is forbidden only by the way a baby sucks a woman's nipples directly. Other than that, it is not considered forbidden milk.

Suggestion

It is a great hope for researchers that this article can be the most fundamental reference for other academics in developing the science that has been presented comprehensively. Not free from various shortcomings, researchers hope that this work can be criticized so that the existing shortcomings can be minimized and eliminated in the future.

Conclusion

The form of Hajj fund deposit uses a wakalah contract. Wakalah contract, namely the contract of granting power of attorney from the muwakkil representing a number of funds in this case the prospective hajj pilgrims to the wakiil in this case the BPKH (Hajj Financial Management Agency) to manage BPIH funds (Hajj Travel Expenses) deposited by the prospective pilgrims as a condition for get the number of the portion of the pilgrimage because there is a long and long queue of pilgrimage departures (tens of years). In practice, the wakalah contract between pilgrims and BPKH is only in the form of a statement from one of the parties, namely the prospective pilgrims stating that the prospective pilgrims authorize the funds that have been deposited to BPKH to be managed without any statement of acceptance from BPKH.

The use of haj funds should comply with syara' requirements through a wakalah contract that is in accordance with Islamic law. Existing haj funds can be used by BPKH as the representative of the pilgrims to manage the funds that have been entrusted and entrusted. The results of the ijtima of Ulama IV in 2012 in Cipasung The fatwa commission of the Indonesian Ulema Council (MUI) stated that the management of hajj funds for productive sector investment purposes such as infrastructure development is still possible, provided that the investment has a low level of risk, has a value for the benefit of pilgrims and its management is based on sharia principles. This is also in accordance with Law No. 34 of 2014 where BPKH is given the authority to manage haj funds with the option of developing hajj finance that can be carried out by BPKH in the form of banking products, securities, gold, direct investment and other investments.

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