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THE LEGAL IMPLICATIONS OF BREAST MILK DONATION ON NASAB STATUS: YUSUF QARDHAWI'S PERSPECTIVE

The Legal Implications Of Breast Milk Donation On Nasab Status: Yusuf Qardhawi's Perspective

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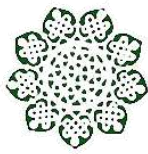
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ABSTRACT: This study examines the practice of breast milk donation in a village and its impact on nasab (lineage) status from Yusuf Qaradawi's perspective on breastfeeding regulations. The research aims to analyze how this practice influences mahram relationships in the village community. A qualitative approach with a case study method was used, employing in-depth interviews and documentation. The findings show that 19 residents have participated in breast milk donation. Among them, 10 individuals are considered mahram according to Yusuf Qaradawi's criteria, having been breastfed more than five times, while eight individuals are not mahram as they were only breastfed once. A unique case was found where a couple unknowingly married their milk sibling, leading to their children performing tajdidunnikah (marriage renewal). The village community believes that a single instance of breastfeeding establishes a mahram relationship, differing from Yusuf Qaradawi's view. The novelty of this research lies in its analysis of real cases within the context of Islamic family law and its application in rural society. This study contributes to the development of Islamic legal understanding regarding breast milk donation and provides a sociological perspective through Emile Durkheim's Structural Functionalism theory, demonstrating that mechanical solidarity plays a role in shaping legal norms in society.

Keywords: Breast milk donation, nasab status, mahram, Yusuf Qaradawi, Structural Functionalism.



ABSTRAK: Penelitian ini mengkaji praktik donor ASI di sebuah desa dan dampaknya terhadap status nasab berdasarkan perspektif Yusuf Qaradawi mengenai hukum penyusuan. Penelitian ini bertujuan untuk menganalisis bagaimana praktik ini memengaruhi hubungan mahram di masyarakat desa. Metode yang digunakan adalah kualitatif dengan pendekatan studi kasus, melalui wawancara mendalam dan dokumentasi. Hasil penelitian menunjukkan bahwa 19 warga telah berpartisipasi dalam donor ASI. Dari jumlah tersebut, 10 individu termasuk dalam kategori mahram menurut Yusuf Qaradawi karena telah disusui lebih dari lima kali, sedangkan 8 individu tidak termasuk mahram karena hanya disusui sekali. Kasus unik ditemukan pada pasangan yang tidak sadar menikah dengan saudara sesusuan hingga akhirnya anak-anak mereka harus melakukan tajdidun nikah. Masyarakat desa masih berpegang pada pandangan bahwa sekali penyusuan cukup untuk menetapkan hubungan mahram, berbeda dengan pandangan Yusuf Qaradawi. Kebaruan penelitian ini terletak pada analisis kasus nyata dalam konteks hukum keluarga Islam dan penerapannya dalam kehidupan sosial masyarakat desa. Hasil penelitian ini berkontribusi pada pengembangan pemahaman hukum Islam mengenai donor ASI serta memberikan perspektif sosiologis melalui teori Fungsionalisme Struktural Emile Durkheim, yang menunjukkan bahwa solidaritas mekanik berperan dalam pembentukan norma hukum di masyarakat.

Kata Kunci: Donor ASI, status nasab, mahram, Yusuf Qaradawi, Fungsionalisme Struktural

INTRODUCTION

In Islam, marriage is the only legitimate means of uniting a man and a woman in a husband-and-wife bond, with the purpose of building a household characterized by *sakinah* (tranquility), *mawaddah* (love), and *rahmah* (compassion).¹ One of the natural roles of a woman after marriage is to conceive, give birth, and breastfeed. Breast milk (*ASI - Air Susu Ibu*) serves as the primary source of nutrition for infants, especially during the first six months of life.² Islam strongly encourages breastfeeding, even making it obligatory until the weaning period. If a mother is unable to breastfeed her child, Islam permits the use of a wet nurse as a substitute, with certain legal consequences related to lineage (*nasab*) and *mahram* relationships.³

The practice of breast milk donation is increasingly widespread, driven by both medical reasons and social conditions where a mother is unable to breastfeed her baby. In Indonesia, the government regulates the obligation of exclusive breastfeeding through Government Regulation No. 28 of 2024,⁴ as an implementation of Law No. 17 of 2023 on Health. However, in the context of

¹ Sudarsono, "Hukum Perkawinan Nasional" (Jakarta: Rienika Cipta, 2005), 9.

² Ibnu Khuzaimah, "Sahih Ibnu Khuzaimah Jilid III, ed. Rasydi Imam, jilid 3" (Jakarta: Pustaka Azzam, 2007), 536-38.

³ M. Quraish Shihab, *Tafsir Al-Misbahah: Pesan, Kesan Dan Keserasian Al-Qur'an*, Vol. 1 (Jakarta: lentera hati, 2002).

⁴ Pemerintah Pusat, "Peraturan Pemerintah (PP) Nomor 28 Tahun 2024 tentang Peraturan Pelaksanaan Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan," no. 226975 (2024): 656, <https://peraturan.bpk.go.id/Details/294077/pp-no-28-tahun-2024>.



Islam, breastfeeding is not only related to fulfilling an infant's nutritional needs but also has implications for lineage (*nasab*) status and future marriage relationships. Islam stipulates that a baby breastfed by a woman other than its biological mother becomes the milk child (*anak susuan*) of that woman and establishes a *mahram* relationship with her family. The prohibition of marriage due to milk kinship (*radha'ah*) is regulated in the Compilation of Islamic Law (*Kompilasi Hukum Islam* - KHI), particularly in Article 39, Paragraph (3), which outlines various categories of milk kinship that result in marriage restrictions.⁵

The originality of research is a crucial aspect of academic studies, as it establishes the researcher's position among previous studies and highlights both similarities and distinctions. Numerous previous studies have explored breast milk donation, whether within large communities or in discussions regarding the establishment of a Human Milk Bank in Indonesia.⁶ Several previous studies have examined breast milk donation from various perspectives. For example, research on Lactashare's breast milk donation practices in Indonesia, analyzed based on the Indonesian Ulema Council (MUI) fatwa, as well as a legal study on MUI Fatwa No. 28 of 2012, which serves as a guideline for the legality of breast milk donation. Additionally, previous studies have explored legal protection for breast milk recipients affiliated with the Indonesian Breastfeeding Mothers Association (AIMI) in Semarang.⁷

Furthermore, previous studies on milk sibling marriages from an Islamic and genetic perspective reveal that breast milk contains Micro-RNA (miRNA), which may establish genetic bonds between milk siblings.⁸ Other previous studies on consanguineous marriage in Islamic law and science highlight the health risks associated with close-kin marriages.⁹ Additionally, previous studies in Islamic criminal law discuss the prohibition of incestuous relationships, not only as a formal legal rule but also as a means to maintain social balance and prevent harm.¹⁰ This study adopts Yusuf Qardhawi's theoretical framework and is linked to previous studies on his perspectives on Islamic law, such as his stance on abortion. However, the key distinction lies in the research focus. While previous studies on abortion are conceptual and library-based, this research is field-based,

⁵ kementrian agama RI, "kompilasi hukum islam di indonesia" (jakarta, 2018).

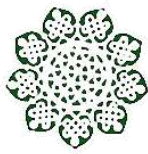
⁶ Hani Rifqial Aini, "Implementasi Donor ASI Pada Lembaga Lactashare Dan Kesesuaian Dengan Fatwa MUI Nomor 28 Tahun 2013 Tentang Donor ASI" (Universitas Islam Negeri Syarif Hidayatullah, 2021).

⁷ Khotifatul Defi Nofitasari, "'Hukum Donor ASI (Analisa Fatwa Mui No.28 Tahun 2012 Tentang Seputar Donor Asi)'" (Universitas Islam Negeri Sunan Kali Jaga, 2017).

⁸ Zidni Amaliyatul Hidayah, "Larangan Pernikahan Sepersusuan: Tinjauan Islam, Kesehatan, dan Genetika," *Prosiding Konferensi Integrasi interkoneksi Islam dan Sains* 4, no. 1 (2022): 134-42.

⁹ Rohman Muzadi, Surya Adi Jaya, dan Yosie Nurwida Sari, "Mengkaji Fenomena Pernikahan Sedarah Berdasarkan Hukum Islam, Undang-Undang dan Sains (Ilmu Kesehatan)," *Journal of Law and Nation (JOLN)* 2, no. 4 (2023): 331-39, <https://joln.org/index.php/joln/article/view/64/80>.

¹⁰ Sufrizal dan M. Anzaikhan, "Pernikahan Sedarah dalam Perspektif Hukum Pidana Islam," *Legalite: Jurnal Perundang Undangan dan Hukum Pidana Islam* 5, no. 2 (2021): 130-49, <https://doi.org/10.32505/legalite.v5i2.2782>.



investigating the social implications of breast milk donation on lineage status through a qualitative approach and empirical analysis.¹¹

However, these studies did not comprehensively address the practical consequences of breast milk donation in rural communities, particularly in relation to Islamic legal perspectives on *radā'ah* and kinship status, and the uniqueness of this study lies in its focus on the social phenomenon of breast milk donation and the research gap concerning marriages resulting from milk sibling relationships. Therefore, this research contributes new insights to the study of Islamic law and the social practices surrounding breast milk donation.

The main issues addressed in this study are: (1) What are the legal consequences of this practice on nasab status from the perspective of Yusuf Qardhawi? (2) How should local authorities regulate the practice of breast milk donation?. The objective of this research is to analyze the implementation of breast milk donation, examine its legal consequences on kinship status based on Yusuf Qardhawi's perspective, and provide recommendations for the role of local authorities in addressing this issue. This research contributes to the academic discussion on Islamic family law by providing an empirical study on the legal implications of *radā'ah* in the context of modern breast milk donation. Additionally, it offers practical recommendations for policymakers, religious leaders, and the local community to develop a more structured approach to breastfeeding donation, ensuring its compliance with both Islamic and national legal frameworks.

METHOD

This study focuses on several key aspects related to the legal consequences of breast milk donation. The main focus includes public understanding and awareness of the legal implications of donation, guardianship, documentation, and the preservation of religious and customary norms regarding milk kinship. The research was conducted in Sumberagung village, Bronodong sub-district, Lamongan district. The research data sources consist of primary and secondary data. Primary data were obtained through interviews with breast milk donors, recipient children, recipient mothers, and stakeholders such as the village head, religious leaders, and village midwives. Secondary data were obtained from literature, Islamic legal documents, and Yusuf Qardhawi's fatwas on breastfeeding laws.¹²

The data collection techniques used in this study include: In-depth interviews used to explore the views and experiences of individuals involved in breast milk donation. Informants were selected using purposive sampling, based on their direct involvement in the practice. The main informants included donor mothers, recipient mothers, recipient children, as well as religious leaders and the village head as local policymakers. Participant observation conducted by directly

¹¹ Desy Khairani Siregar, "Pendapat Yusuf Al-Qardhawi Tentang Hukum Aborsi," *Institut Agama Islam Negeri (IAIN) PADANGSIDIMPUAN*, 2015, 1.

¹² Muhaimin, "Metode Penelitian Hukum" (Mataram: Mataram University Press, 2020). 124.



observing social interactions and norms related to breast milk donation and how the community understands and applies Islamic legal regulations in this practice. Document study is analyzing various written sources such as fiqh books, scholars' fatwas, legislation, and administrative documents related to the documentation of breast milk donation.¹³

This study employs a qualitative design with a normative-empirical research type (applied law research) to deeply understand social and legal phenomena.¹⁴ The qualitative method allows researchers to explore the views, perceptions, and experiences of individuals involved in breast milk donation. This method combines a statutory approach with a socio-legal approach.¹⁵ The data analysis process uses an interpretive analysis method to understand the meanings behind individuals' views, perceptions, and actions. The analysis follows the steps developed by Miles and Huberman, as cited by Emzir,¹⁶ namely: Data reduction is simplifying data by selecting key aspects relevant to the research focus to facilitate analysis. Data presentation is the reduced data is presented in a descriptive narrative format for better understanding. Conclusion drawing is based on the processed data, interpretations are made to explain patterns, relationships, and key findings of this study. Through this method, this research aims to deeply understand the phenomenon of breast milk donation within the context of Islamic law and the sociology of religion.

RESULTS AND DISCUSSION

The Practice of Breast Milk Donation

The Village is familiar with the practice of breast milk donation,¹⁷ although it is still considered taboo when given to a child of a different gender than the one currently being breastfed. However, in emergency situations, donation is still carried out despite societal disapproval, as breastfeeding a child of the opposite gender carries serious legal consequences. Therefore, this practice is conducted with great caution in accordance with local customs. In this village, breast milk donation is carried out independently by mothers, and many donors interviewed stated that their extended families were unaware of the practice. From the interviews conducted, researchers obtained data from 18 breast milk donors, with both direct and indirect interviews. The reasons behind this practice vary, including cases where the biological mother has passed away, is ill, unable to produce milk, or due to medical and financial factors.

The practice of breast milk donation varies in terms of duration and frequency among donors. A mother with the initials Myh donated breast milk for two weeks,¹⁸ both in the morning and evening. Mrs.Nsk¹⁹ and Mrs.Mnt²⁰ donated

¹³ Nur Solikin, "Pengantar Metodologi Penelitian Hukum" (Pasuruan: Qiara Media, 2021).

¹⁴ Muhaimin, "Metode Penelitian Hukum" (Mataram: Mataram University Press, 2020). 116.

¹⁵ Bahtiar, "Metode Penelitian Hukum" (Tangerang: UNPAM Press, 2018).81-89.

¹⁶ Emzir, *Metodologi Penelitian Kualitatif: Analisa Data* (Jakarta: Raja Grafindo Persadaa, 2010).

¹⁷ Ibu-Ibu dan Tokoh Masyarakat, "kesimpulan dari wawancara."

¹⁸ Myh, "Wawancara bersama ibu pendonor ASI" (Unpublished, n.d.).



breast milk daily for one month. Meanwhile, Mrs.Jna,²¹ Mrs.Jah,²² Mrs.Rms,²³ Mrs.Drt,²⁴ Mrs.Mrt,²⁵ Mrs.Mkj,²⁶ and Mrs.Mlt²⁷ were involved in routine and repeated donations to babies under two years old, providing continuous breastfeeding support. In contrast, Mrs.Mst,²⁸ Mrs.Khs,²⁹ Mrs.Smt,³⁰ Mrs.Lfy,³¹ Mrs.Nm,³² Mrs.Nim,³³ and Mrs.Krm³⁴ donated breast milk only once, indicating that they provided occasional assistance rather than a long-term commitment. Additionally, Mrs.Atn³⁵ donated breast milk after the baby was older than two years, differing from the common practice of donating to infants under two years old. This variation highlights the diverse nature of breast milk donation within the community, influenced by individual circumstances, cultural considerations, and the needs of the recipients. This data was obtained by the researcher through direct interviews with breastfeeding donors.

In an interview with H. Akhiyar, M.Pd.I,³⁶ a community leader and the Head of the KUA (Religious Affairs Office), he explained that he had handled a case of *tajdidun nikah*, locally known as "*bilas nikah*", due to a marriage between milk siblings. One such case involved a married couple, Mrs. RM and Mr. SP, who unknowingly had a milk sibling relationship. As an infant, Mr. SP was entrusted to Mrs. RM's mother, who was also breastfeeding Mrs. RM's older sibling at the time. Over the years, Mr. SP and Mrs. RM eventually got married in 1966, built a family, and had three daughters, all of whom were married by their father and later had children of their own. After the father passed away in 2015, their mother revealed the truth about their milk sibling relationship. To eliminate doubts regarding their marital status, their three daughters approached H. Akhiyar and requested a *bilas nikah*. This statement confirms the occurrence of *tajdidun nikah* due to marriages that were conducted without prior awareness of the milk sibling relationship.

Milk Sibling Lineage

¹⁹ Nsk, "Wawancara bersama ibu pendonor ASI" (Unpublished, n.d.).

²⁰ Mnt, "Wawancara bersama ibu pendonor ASI" (Unpublished, n.d.).

²¹ Jnh, "Wawancara bersama ibu pendonor ASI" (Unpublished, n.d.).

²² Jah, "Wawancara bersama ibu pendonor ASI" (Unpublished, n.d.).

²³ Rms, "Wawancara bersama ibu pendonor ASI" (Unpublished, 2025).

²⁴ Drt, "Wawancara bersama ibu pendonor ASI" (Unpublished, n.d.).

²⁵ Mrt, "Wawancara bersama ibu pendonor ASI" (Unpublished, 2025).

²⁶ Mkj, "Wawancara bersama ibu pendonor ASI" (Unpublished, 2025).

²⁷ Mlt, "Wawancara bersama ibu pendonor ASI" (Unpublished, 2025).

²⁸ Mst, "Wawancara bersama ibu pendonor ASI" (Unpublished, n.d.).

²⁹ Khr, "Wawancara bersama ibu pendonor ASI" (Unpublished, n.d.).

³⁰ Smt, "Wawancara bersama ibu pendonor ASI" (Unpublished, n.d.).

³¹ Lfy, "Wawancara bersama ibu pendonor ASI" (Unpublished, 2025).

³² Nm, "Wawancara bersama ibu pendonor ASI" (Unpublished, 2025).

³³ Nm, "Wawancara bersama ibu pendonor ASI sekaligus ibu Resipien" (Unpublished, 2025).

³⁴ Krm, "Wawancara bersama ibu pendonor ASI" (Unpublished, 2025).

³⁵ Atn, "Wawancara bersama ibu pendonor ASI" (Unpublished, n.d.).

³⁶ Akhiyar, "Wawancara bersama kepala KUA kecamatan Brondong," n.d.



The term *nasab* originates from the Arabic verb *nasaba-yansabu*, which means kinship or familial ties. According to the Indonesian Dictionary (KBBI), *nasab* refers to paternal lineage.³⁷ Terminologically, *nasab* refers to a family's lineage or blood relations. This relationship can be vertical, connecting to previous generations such as fathers, mothers, grandfathers, grandmothers, and other ancestors. Additionally, *nasab* also has a horizontal aspect, encompassing relationships with siblings, uncles, aunts, and other relatives within the same family line. In Islam, there are two categories of women prohibited for marriage. The first category is permanent, while the second is temporary. Permanent prohibition arises due to kinship through blood relations (*nasab*), marriage (*musaharah*), or milk kinship (*radha'ah/persusuan*).³⁸

Milk lineage (*nasab* due to breastfeeding), also known as *mahram sepersusuan*, is established through the process of breastfeeding and carries legal consequences similar to biological lineage, including the prohibition of marriage. To establish *mahram sepersusuan*, several conditions must be met. First, the *murdi'ah* (the woman who breastfeeds) must meet certain criteria. According to the Hanafi and Shafi'i madhhabs, the minimum age for a nursing woman is nine years old, whereas the Maliki madhhab does not impose any age restriction.³⁹ The Hanbali madhhab requires that the nursing woman be pregnant at the time of breastfeeding; if she is elderly, infertile, or still a child, the breastfeeding does not establish *mahram* status. The majority of Islamic madhhabs agree that breastfeeding still results in *mahram* status even if the nursing mother has passed away. However, the Shafi'i madhhab holds a different opinion, arguing that it does not establish *mahram* status if the mother is deceased.⁴⁰

Second, the *radi'* (the nursing infant) also has an age limit. According to the Shafi'i, Hanbali, and some Hanafi madhhabs, the maximum breastfeeding age is two years. The Maliki madhhab sets the limit at two years and two months, while the Hanafi madhhab allows breastfeeding up to 30 months.⁴¹ Additionally, the nature of the breast milk itself is also a consideration. The Maliki and Hanafi madhhabs require that the milk be in liquid form and not mixed with food,⁴² although the Malikis make an exception if the milk is the dominant component in a mixture. Meanwhile, the Shafi'i and Hanbali madhhabs maintain that breast milk remains valid in establishing *mahram* status even if mixed with other foods,

³⁷ "Kamus Besar Bahasa Indonesia (KBBI) Kamus versi online/daring (dalam jaringan)," n.d., <https://www.kbbi.web.id/resipien>.

³⁸ Wahbah Az-Zuhaili, "al-Fiqh al-Islami wa Adillatuhu (Terjemah) jilid 9: Pernikahan, Talak, Khulu', Ila', Li'an, Zhihar, Masa Iddah," *Dar Al-Fikr* 57 (2010): 58. 239.232.

³⁹ Abdurrahman Al-Jaziry, *l-Fiqh Ala Al-Mazahib Al-Arba'ah, Jilid IV* (Beirut: Dar Al-Kutub Al-Ilmiyah, 223M).223.

⁴⁰ Abdurrahman Al-Jaziry, *l-Fiqh Ala Al-Mazahib Al-Arba'ah, Jilid IV* (Beirut: Dar Al-Kutub Al-Ilmiyah, 223M).227.

⁴¹ Abdurrahman Al-Jaziry, *l-Fiqh Ala Al-Mazahib Al-Arba'ah, Jilid IV* (Beirut: Dar Al-Kutub Al-Ilmiyah, 223M).225.

⁴² Abdurrahman Al-Jaziry, *l-Fiqh Ala Al-Mazahib Al-Arba'ah, Jilid IV* (Beirut: Dar Al-Kutub Al-Ilmiyah, 223M).227.



including when consumed in solid form, such as cheese, as long as the infant has nursed at least five times.⁴³

Table 1
Comparison of the Concept of *Raḍā'ah* According to the Four Madhhabs

Madhhab	Hanafi	Maliki	Shafi'i	Hanbali
Nursing Woman	Minimum 9 years old (alive/deceased)	No age limit (alive/deceased)	Minimum 9 years old (alive)	Must be pregnant (alive/deceased)
Nursed Infant	Maximum 2 years / 30 months	Maximum 26 months	Approximately 2 years	Maximum 2 years
Amount of Breast Milk	No limit	No limit	Minimum 5 feedings	Minimum 5 feedings
Nature of Breast Milk	Pure breast milk	Pure breast milk	No specific condition	No specific condition
Method of Breastfeeding	Direct nursing / Expressed milk	Direct nursing / Expressed milk	Direct nursing / Expressed milk	Direct nursing / Expressed milk
Mahram Status	Mahram	Mahram	Mahram	Mahram

Yusuf Qardhawi's Fatwa on Breast Milk Donation

Yusuf Qardhawi emphasizes that breastfeeding, which establishes a *mahram* relationship, must occur directly, with the baby suckling milk from the wet nurse's breast. If the milk is given through other means, such as being poured into the mouth, mixed with food, or administered via medical instruments, it does not establish a *mahram* relationship. This view is based on Allah's statement in the Qur'an: "*and your nursing mothers and your milk-siblings*" (Surah An-Nisa: 23), which is interpreted to mean that breastfeeding leading to marriage prohibition must involve direct suckling.⁴⁴

Regarding the required amount of breastfeeding, Qardhawi follows the opinion of the Shafi'i and Hanbali madhhabs, which stipulate a minimum of five complete nursing sessions for a *mahram* relationship to be established. A nursing session is considered complete when the baby suckles until full in one sitting, with each session counted separately. Breastfeeding that occurs only briefly or does not significantly impact the baby's growth does not establish a *mahram* relationship.⁴⁵

In cases of uncertain breastfeeding, Qardhawi emphasizes that legal rulings should not be based on mere assumptions. If there is no certainty regarding whether a baby was truly breastfed or the number of nursing sessions, a *mahram* relationship cannot be established. This aligns with the Islamic principle that doubt cannot override an already established legal ruling.⁴⁶

⁴³ Abdurrahman Al-Jaziry, *l-Fiqh Ala Al-Mazahib Al-Arba'ah*, Jilid IV (Beirut: Dar Al-Kutub Al-Ilmiyah, 223M).232.

⁴⁴ yusuf al-qardhawi, "Min Hady Al-Islam Fatawa Mu'Ashirah" (Kuait: Dar qalam, 1991). 552.

⁴⁵ yusuf al-qardhawi. "Min Hady Al-Islam Fatawa Mu'Ashirah" (Kuait: Dar qalam, 1991).552.

⁴⁶ yusuf al-qardhawi. "Min Hady Al-Islam Fatawa Mu'Ashirah" (Kuait: Dar qalam, 1991).555.



Regarding breast milk donation, Qardhawi permits milk banks as long as they do not contradict Islamic law. However, he asserts that breast milk given through intermediaries, such as bottles or containers, does not establish a *mahram* relationship. According to him, direct breastfeeding creates the emotional and physical bond that forms the basis of *mahram* status. This view aligns with that of Ibn Hazm, who maintains that only direct suckling can result in the prohibition of marriage, whereas expressed breast milk consumed through other methods does not have the same legal consequences.⁴⁷

Based on the research findings, the study identified 19 cases, consisting of 18 breast milk donors and 1 case of marriage between milk siblings. The data has been classified into two categories. This study categorizes breast milk donors into two groups based on the frequency and duration of breastfeeding and its implications for *mahram* status according to the perspective of Yusuf Qardhawi.

Donor Group That Establishes Mahram with or not Status

This group consists of mothers who repeatedly donated breast milk over an extended period, thereby making the recipient baby their *mahram*. There are **10 mothers** in this category:

1. Myh (2 weeks, morning & evening)
2. Nsk & Mnt (1 month, daily)
3. Jnh, Jih, Rms, Drt, Mrt, Mkj, and Mlt (routine & repeated donations to babies under 2 years old)

This group consists of mothers who donated less than five times or after the baby was older than two years, meaning it does not establish a *mahram* relationship according to Yusuf Qardhawi. There are 8 mothers in this category:

1. Mst, Khr, Smt, Lfy, Nm, Nmh, and Krm (only one-time breastfeeding)
2. Atn (donated after the baby was older than two years)

This data indicates that *mahram* status in breast milk donation is highly influenced by the frequency and duration of breastfeeding, in accordance with the Islamic legal interpretation followed.

Legal Consequences of Breast Milk Donation

In Indonesia, the practice of breast milk donation remains a topic of debate, particularly in the context of both positive law and Islamic law. From the perspective of positive law, as outlined in Government Regulation (PP) No. 28 of 2024,⁴⁸ Law No. 23 of 2002,⁴⁹ and MUI Fatwa No. 28 of 2013,⁵⁰ regulations

⁴⁷ Al-Qadhawi, "Fatwa-fatwa kontemporer 3," *Gema Insani* 2, no. 1 (2005): 50–62. 268.

⁴⁸ Pemerintah Pusat, "Peraturan Pemerintah (PP) Nomor 28 Tahun 2024 tentang Peraturan Pelaksanaan Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan."

⁴⁹ Presiden Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 23 Tahun 2002 Tentang Perlindungan Anak*, 2002, <https://doi.org/10.3390/nu12092836>.

⁵⁰ Komisi Fatwa Majelis Ulama Indonesia (MUI), "FATWA MAJELIS ULAMA INDONESIA Nomor: 28 Tahun 2013 Tentang SEPUTAR MASALAH DONOR AIR SUSU IBU (ISTIRDLA')" (2013), [http://ascelibrary.org/doi/pdf/10.1061/\(ASCE\)0733-9410\(1994\)120:1\(225\)%0Ahttp://dx.doi.org/10.1016/j.conbuildmat.2013.07.024%0Ahttp://eprints.uanl.mx/5481/1/1020149995.PDF%0Ahttp://scholar.google.com/scholar?hl=en&btnG=Search&q=intitle:windenergie+report+](http://ascelibrary.org/doi/pdf/10.1061/(ASCE)0733-9410(1994)120:1(225)%0Ahttp://dx.doi.org/10.1016/j.conbuildmat.2013.07.024%0Ahttp://eprints.uanl.mx/5481/1/1020149995.PDF%0Ahttp://scholar.google.com/scholar?hl=en&btnG=Search&q=intitle:windenergie+report+).



regarding breast milk donation are still limited and do not explicitly govern the mechanisms and legal implications related to children's rights and family protection. Meanwhile, in Islamic law, breast milk donation affects lineage (*nasab*) and *mahram* relationships, as explained in the jurisprudence (*fiqh*) of breastfeeding. However, there are several regulations concerning breast milk donation from the aspects of health, children's rights, and medical ethics.

Although breast milk donation is permitted and has a legal basis in practice, Islamic law imposes broader legal consequences, particularly regarding *mahram* status. This is because breastfeeding can create *mahram* bonds, potentially becoming a barrier to marriage. This prohibition is also stipulated in Law No. 1 of 1974, Article 8, and the Civil Code (KUH Perdata), Article 30.⁵¹

In the village that serves as the research site, the practice of breast milk donation has involved 19 residents,⁵² including both donors and recipients. The collected data reveals variations in the number of breastfeeding sessions received by each child. A total of 10 individuals meet the criteria for *mahram* status according to Yusuf Qardhawi's perspective, as they were breastfed more than five times. Meanwhile, 8 other individuals received only a single breastfeeding session, which, from Qardhawi's viewpoint, is insufficient to establish a *mahram* relationship. However, the majority of the village community still adheres to the belief that even a single breastfeeding session is enough to create a *mahram* bond,⁵³ as taught in certain *madhhab*. Due to the lack of a uniform understanding, there was a case in which a married couple only discovered that they were milk siblings (*saudara sepersusuan*) after having children. As a result, their children's marriages had to be renewed through *tajdidun nikah*.⁵⁴ These findings indicate that regulations and public understanding of the laws of breastfeeding (*hukum persusuan*) remain diverse, potentially leading to legal consequences in marriage and *nasab* status.

Implications Of Breast Milk Donation On Nasab Status

The research findings indicate that the practice of breast milk donation in this village still faces inconsistencies in understanding, particularly in determining the limits of *mahram* relationships resulting from breastfeeding. Among the 19 residents involved in breast milk donation, 10 individuals received breast milk more than five times, which, according to Yusuf Qardhawi's perspective, establishes a *mahram* relationship. Conversely, 8 other individuals received breast milk only once, which, in his view, is insufficient to establish a *mahram* bond. However, the local community continues to adhere to the belief that a single instance of breastfeeding is sufficient to create a *mahram* relationship, in line with the Shafi'i *madhhab*. This discrepancy has had serious consequences, as seen in the case of a married couple who later discovered that they were *milk siblings* after having children, requiring their children to undergo *tajdidun nikah* (renewal of marriage vows).

⁵¹ Presiden Republik Indonesia, "UU No. 1 Tahun 1974 Tentang Perkawinan," 1974, 1–15.

⁵² masyarakat desa Sumberagung, "Wawancara Bersama Ibu Pendonor ASI," 2025.

⁵³ Masyarakat, "kesimpulan dari wawancara."

⁵⁴ Akhiyar, "Wawancara bersama kepala KUA kecamatan Brondong."



According to Yusuf Qardhawi, the conditions for breastfeeding to establish *mahram* status must be based on the understanding that it only occurs if breastfeeding happens at least five times or more. This view is supported by a hadith stating that "a small amount of breastfeeding does not establish a *mahram* relationship" (Sahih Muslim). Thus, Qardhawi argues that the legal ruling on breastfeeding should not be applied excessively without a strong basis, as it may lead to difficulties in social and familial relationships. However, the village community, which largely follows the Shafi'i madhhab, demonstrates a social norm that is more collective and passed down through generations without deep engagement with differing opinions in Islamic jurisprudence (*fiqh*).

From a sociological and normative perspective, this lack of consensus suggests that the community continues to rely on deeply ingrained legal standards without considering alternative, more contextual approaches. This reflects Emile Durkheim's concept of mechanical solidarity, in which social rules are collectively accepted with little debate.⁵⁵ However, in practice, this misunderstanding has the potential to create serious legal consequences. The case of a marriage requiring *tajdidun nikah* serves as evidence that a lack of comprehensive understanding of breastfeeding laws can directly affect marital status and the lineage of children born from such marriages.

The social impact of this practice extends beyond legal aspects to interpersonal relationships within the community. When there are differing views on who is considered *mahram*, social tensions may arise, particularly in defining interaction boundaries between men and women within the community. Additionally, disputed lineage status can have implications for inheritance rights, further complicating family law matters in the village. Therefore, greater efforts in education and socialization regarding Islamic breastfeeding laws are needed, especially by introducing more moderate perspectives such as those proposed by Yusuf Qardhawi. This would help ensure that breast milk donation does not lead to broader legal and social issues in the future.

CONCLUSION

This study highlights the complexities and legal implications of breast milk donation in the village, particularly in relation to *mahram* status and lineage according to Islamic jurisprudence. The findings reveal a significant discrepancy between the local community's understanding and the perspective of Yusuf Qardhawi, where most residents still adhere to the belief that a single act of breastfeeding establishes *mahram* status, while Qardhawi's view requires at least five instances. This divergence has led to serious legal and social consequences, including cases requiring *tajdidun nikah*.

Based on these findings, it is essential to provide further education and awareness regarding Islamic laws on breastfeeding to ensure that breast milk donation does not create unintended legal and social complications. A more comprehensive and contextual approach should be adopted to bridge the gap between traditional beliefs and scholarly interpretations. Future research should explore broader perspectives on breast milk donation, incorporating different

⁵⁵ Miftahul Fikria dan Agoes Moh. Moefad, "Analisis Teori Tindakan Sosial Max Weber Dan Fakta Sosial Emile Durkheim Dalam Pengenalan Tradisi Lokal Kemasyarakatan," *An-Nuha* 11, no. 1 (2024): 109-19.



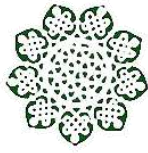
Islamic schools of thought, medical perspectives, and legal frameworks to develop a more unified understanding of the issue.

This study has certain limitations, particularly in terms of sample size and scope, as it focuses on a single village. Future research could benefit from a comparative study involving multiple regions to assess variations in legal interpretations and social norms regarding breast milk donation. Additionally, interdisciplinary studies integrating legal, sociological, and medical perspectives could provide deeper insights into the broader implications of the practice.

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