

The Views of Fuqaha on the Permissibility and Prohibition of Milk Bank

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Abstract

Milk Bank is something common in other countries. In fact, it is widely established in the United States, United Kingdom and other developed nations. The main objective of such establishment is to save lives of babies especially premature babies, babies whose mothers passed away, babies with allergies towards formula milk and others. The problem arises in the way they establish milk bank, which is against the way outlined by syarak (Islamic laws) and it may cause multiple and cross-cutting milk relationship that impedes marriage. Consequently, the negative effect has led The 97th Conference of the Fatwa Committee National Council for Islamic Religious Affair of Malaysia held in 15th – 17th December 2011 to forbid the establishment of milk bank. Therefore, the objective of this research is to find out the nursing conditions that institutes mahram (milk-kinship with its ensuing marriage prohibition) and to study the views of fuqaha (Islamic jurists) on the milk banking practice. This research is based on qualitative method that involved literature reviews. Meanwhile, data collection process is carried out through document analysis method.

Keywords: Milk Bank, Mahram, The Views Of Fuqaha

Introduction

Breast milk is extremely important for infants' growth. Its healthy and balanced nutritional contents help babies to be healthier and active. Nevertheless, there are mothers who are unable to nurse their children due to some unavoidable reasons. In Malaysia itself, cases such as premature births, birth of babies from HIV positive mothers and birth of twins, triplets and such are increasing from time to time. Research has shown that if an infant is given breast milk in the early days, the infant's risks towards critical diseases are significantly reduced. This is especially true in critical cases like premature births. This creates a need for the

establishment of milk bank in this country. Australia is one of the countries that has significantly succeeded in establishing milk bank in a systematic way. Perron Rotary Express Milk Bank (PREM Bank) was established at the King Edward Memorial Hospital. In PREM Bank, donors and recipients' records are properly kept and informed. The method used in PREM Bank is proven to be systematic whereby the process starts from getting the consent from mothers to donate their milk. Then mothers are screened to ensure they do not have critical diseases and after that interviewed to discover their eating habits and lifestyle. ([www.kemh.health.wa.gov.au/services/prem Bank](http://www.kemh.health.wa.gov.au/services/prem%20Bank)).

This milk banking system is created by collecting breast milk from women from all over the world and putting the milk in one specific place, just like in the case of blood bank. Such establishment may raise some issues when it is carried out. Amongst them are, will there be a milk-kinship between the baby and the milk donor and how to identify the milk's donor when it has been mixed up with other women's milk. This issue has generated two opinions among the scholars, between those who permit and those who prohibit such establishment. Both opinions are backed by certain arguments and daleel (evidence) in determining the jurisdictions regarding this issue.

In association with the establishment of milk bank, among the aspect of arguments among fuqaha is the concern about the mahram kinship that will bind the nursling (foster children) and the children of the foster mothers. Therefore, before the opinions of fuqaha are presented, the conditions of nursing institutes milk-kinship is discussed.

The Wet Nurse/Foster Mother

The person who nurse must be a woman. According to Shafi'i and Hanafi sects (al-Sharbini, 1978), the woman who nurses must be over 9 years old or has reached puberty. However, according to Ibn Rushd of Maliki sect, they did not make it compulsory for women or mothers who nurse to be of puberty age (Ibn Rushd, n.d). With regard to the wet nurse, she must be alive when nursing an infant. However, there are various scholars' opinions on this issue. The Shafi'i sect (al-Sharbini, 1978) governed that a woman must be alive when nursing. If she dies while nursing, then it does not create milk-kinship. According to them, if an infant consumes milk expressed from a woman's corpse, a mahram kinship is not established. The reason being is, milk from a dead woman is not halal. How could something with haram or impure properties forbids allowable matters such as marriage? (al-Sharbini, 1978).

Age Requirements for the Nursling

Scholars disagree in determining nursing that institutes mahram kinship between the foster mother and her nursling. According to the Shafi'i sect (al-Shafi'i, n.d), Abu Yusuf and Mohammad from the Hanafi sect (al-Kasani, 2000), Hanbali sect, a narration in Maliki sect, Umar, Ali, Ibnu Umar, Ishaq, Auza'i and Abu Thawr (Ibn Qudamah, 2004), the suckling infant must be under two years of age. This opinion is based on Allah's decree which means:

Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing (period).
(al-Baqarah: 233)

Therefore, if nursing is done for babies older than two years of age, then milk-kinship is not established. Other than the views from Shafi'i sect, this opinion is also seconded by some other scholars such as scholars from Hanafi, Maliki (al-Dusuqi, n.d) and Hanbali (al-

Buhuti, 2003) sects. Nevertheless, a prevalent opinion from amongst the Malik sect suggested that two years is the minimum period and there is no minimum limit on the nursing period. They suggested that if nursing happens slightly after two years, for example two years and one month or two months, then milk-kinship is still formed (al-Dusuqi, n.d).

Requirements on Nursing Amount

To determine the amount or nursing sessions that creates mahram kinship, scholars are divided into three opinions. The first opinion, Hanafi (al Hanafi, n.d) and Maliki (al-Asbahi, n.d) sects stipulated that marriage bars due to nursing is not based on how little or how much the amount of milk consumed, in fact marriage bars is created even with a single nursing. This opinion is supported by some scholars namely Maliki sect, al-Awza'i and Sufian al-Thawri. Among the companions of the Prophet SAW who supported it were Ibn Mas'ud, Ibn 'Abbas, and Ibn 'Umar. (al-Jawziyyah, 1992; al-Sartawi, 2007; al-'Asqalani, 2000). They reasoned based on the following verses from the Quran, which means:

And you (milk) mothers who nursed you, your sisters through nursing
(al-Nisa' : 23)

This verse clearly demonstrated that marriage prohibitions due to nursing does not depend on how much or how little the suckling is. They reasoned based on the generality of this verse and their acceptance is absolute (al-Jawziyyah, 1992).

The second opinion, which is the opinions of Shafi'i and Hanbali sects suggested that marriage prohibition due to nursing happens when an infant suckled five times, in five different time periods. This also means five times fully-fed nursing, then the baby is considered as her nursling. This opinion is seconded by several companions such as Sayyidatina 'Aishah and Ibn al-Zubayr as well as some prominent scholars and tabi'in (generation of Muslims who were born after the passing of the Prophet Muhammad but who were contemporaries of the companions) such as Imam Ahmad and Sa'id bin Musayyab (al-Sartawi, 2007).

They reasoned with an authentic hadith narrated by 'Aishah r.a., which means: (al-Sartawi, 2007)

Narrated from 'Aishah r.a, she said: It had been revealed in the Qur'an that ten clear sucklings make the marriage unlawful, then it was abrogated (and substituted) by five sucklings and Allah's Apostle (peace be upon him) died and it was before that time (found) in the Qur'an (and recited by the Muslims).

The third opinion is the opinion of Abu Thawr, Dawud Al- Zahiri, Zayd bin Thabit and an opinion from Hanbali sect that suggested that for a marriage prohibition to come into effect, a certain sessions of nursing must be met; which is three sessions of sucklings. If suckling is done only once or twice, then marriage prohibition does not come into effect (al-Qurtubi, 1988; al-Sartawi, 2007). They rely on the hadith of the Prophet s.a.w, which means:

Marriage is not prohibited with one or two sucklings.

In this hadith Rasulullah s.a.w. stated that marriage bans is not applicable with one or two sucklings. So the best is three sessions which is the least amount (al-San'ani, 1987).

As a result, in determining the amount of suckling, scholars disagree and they presented their opinions with their respective daleel and justifications. According to al-Zuhayli, *rajih* (righteous) opinion is the second opinion which was suggested by scholars from Shafi'i and Hanbali sects who suggested that for a marriage prohibition to come into effect, an infant must be fully-fed five times based on daleel and strong justifications from them (al-Zuhayli, 1989).

Scholars who Agree with the Establishment of Milk Bank

Scholars who agree on the establishment of milk bank have strong inclinations towards the opinion that suggested *umum al-balwa* (an unfavorable widespread situation affecting most people and is difficult to avoid) is something that may be lessened considering the human situation and as a facilitation for them. This means a harm towards a child's health must be prioritized and taken care of because without proper nursing, an infant may be exposed to numerous kind of diseases that may be fatal. Therefore, scholars who believe in this opinion adopted the approach of *maslahah* (for greater good) (Zaydan, 2012) of the general public preceded individual importance (al-Qaradawi, 2000)

Some scholars who agree with this establishment also argued that fosterage due to nursing does not happen if milk donated is in small quantity. In fact, when the milk is dried and processed into powder, the milk powder must be added with lots of water and therefore it diminishes the originality of the milk because it has been mixed with something else. The same goes for scholars who adhered to the opinion of Ibn Hazm who interpreted that nursing happens when an infant suckled a woman's breast with his mouth. (Ibn Hazm, n.d)

When an infant is given breast milk from a container, or consumed milk with bread or other food, or dripped milk into his mouth, nose and ears, or injected with milk, marriage prohibition due to milk-kinship is not instituted even though the milk becomes his food for the rest of his life. This means milk given to an infant from a milk bank does not create an unmarriageable situation between towards the donor and the suckling. This is the opinion of Ibn Hazm (al-Qaradawi, 2000). The same view is shared by al-Hafnawi in *Fatawa Syariyyah Mu'asirah*, because the benefits gained from milk bank is tremendous and it can save babies' lives (al-Hafnawi, 2009).

The al-Azhar's Lajnah Fatwa in 1960 also supported the establishment of milk bank. When such establishment was questioned by the Indonesian Health Consideration and Syarak Committee, this committee presented their view based on the book *al-Durr al-Mukhtar* (Ibn Abidin, 1992) which stated, if a baby (of a woman) is nursed by somebody at some place, and it is not known who nursed the baby, and one of them wants to marry another, if there is no proof or signs that they are milk siblings and there are no witnesses, then the rulings are they are not milk siblings and marriage is allowed (Majlis Pertimbangan Kesehatan dan Syarak Indonesia, 1976).

Scholars Who Rejected the Establishment of Milk Bank

Even so, most scholars from the four sects rejected the opinions suggested by some scholars who approved the establishment of milk bank. For example, al-Walid ibn Rashid al-Suwaydan, when asked about the establishment of milk bank, indicated that the opinions that approved such establishment created a way for a large harm just to avoid an unclear harm. Nursing a child can be done by hiring a woman to nurse if the child's mother is not available. Furthermore, there are a lot of women who voluntarily nurse infants. Moreover, advanced development in food technology may replace breast milk with other milk and the unavailability of woman to nurse may be replaced with formula milk. These can fulfil the objectives, though they cannot replace breast milk. With relate to that, there is no desperate need to establish milk bank because such establishment means creating a major harm in order to prevent an unclear harm (al-Suwaydan, 2007).

This view is also supported by Shafi'i and Hanbali sects, because it will become the flesh and bones of the infants as stated in a hadith narrated from Ibn Mas'ud:

The Prophet s.a.w said again, which means:

There is no nursing except those that strengthen bones and grows flesh.

With this regard, Majma' al-Fiqh al-Islami had discussed this issue in Jeddah on 10th - 16th Rabiul Awal 1406H/22nd-28th December 1985M, and decided that they prohibit such establishment in the Islamic world and it is haram to provide milk from milk bank. Truly, Islam considers milk-kinship similar as blood kinship, hence no difference than blood lineage, and therefore whatever is forbidden based on blood lineage is forbidden for milk-kinship. On the other hand, among the general objectives of syariat (religious laws) is to protect lineage, whereas milk bank is prone to cause multiple and cross-cutting milk relationship. In addition to that, social relationship in the Islamic world makes it very possible to provide natural nursing for the children born normal or children in dire needs of milk. Therefore, there is no necessity to establish milk bank (Majalah Majma' Fiqh Islami, 1985)

The group of scholars who agree with the establishment of milk bank have opened a way towards greater harm in order to avoid unclear harm. Greater harm here is related to lineage or descendants that will be complicated if an infant consumes milk from the milk bank, due to unknown milk donor. Islam protects lineage or descendants and it is included in protecting the five principles in Islam. Therefore, the establishment of milk bank is not needed based on the opinions of scholars as discussed.

Based on the discussion, Malaysia adhered to the opinions that prohibited the establishment of milk bank. This was decided by the 97th Conference of the Fatwa Committee National Council for Islamic Religious Affair of Malaysia held in 15th – 17th December 2011 that discussed the rulings regarding the establishment of milk bank as follows:

“The Conference believe that protecting lineage is one of the five obligations that must be protected in the Islamic syariat. Therefore, any actions or behaviors deemed detrimental towards lineage or descendants must be avoided. The committee also suggested that the rulings regarding the establishment of milk bank are closely connected with the laws of marriage

prohibition due to nursing whereby infants suckling from a woman or more than one woman will be milk siblings and marriage amongst them is haram when the outlined conditions are met. This opinion is parallel to the opinions of the majority of scholars which stated that a baby is legally a nursling either through direct breast feeding or indirect feeding (Anon, 2012).

With relate to that, since the establishment of milk bank may cause lineage mixed-up and causes Muslims to fall into uncertainty and haram matters, and the need to establish it is not exigency that may threaten public wellness, the Committee concluded that the establishment of milk bank is not permitted. The committee also decided that to fulfill the need for premature babies that require treatments, also mothers with chronic/infectious diseases, and unable to nurse, it is permitted for mothers to voluntarily donate milk for babies or their families and they must know each other." (Anon, 2012)

Other than that, there is one article prepared by scholars from the National University of Malaysia with relate to this subject. Amongst the conclusion made by them is the possibility of milk bank to be turned into a trading bank. Wealthy mothers may become lazy and refuse to nurse their own children. Instead, they just obtain milk from the milk bank. On the other hand, poor mothers will be busy selling milk to the milk bank to the extent of depriving their own children from having enough milk. Consequently, Islam advocates for mothers to nurse their own children will not be carried out well. Moreover, milk obtained from milk bank does not have the same nutritional content as the real breast milk. It may be contaminated with microbe that may endanger babies (Abbood Alwan, Ahmed; Moursi El-Seoudi, Abdel Wadoud Moustafa; Muhammad Husni, Ahmad, 2012).

CONCLUSION

Based on the above opinions, apparently the rulings regarding the establishment of milk bank have their own pros and cons. The authors believe that if milk banking system causes milk mixed-up and mahram confusion that may happen as what has happened in the west nowadays, then it must be avoided. This is due to the fact that protecting the lineage purity and mahram relationship fall under daruriyat (essential) matters that must be looked after. Nonetheless, there is still a room for those who wants to establish this milk bank. The relevant authorities such as Health Ministry, experts in syariah and health science have to sit together and form a resolution to create a milk bank model that fulfill the Islamic means where mahram confusions can be avoided and lineage purity can be preserved. If experts can find a way so that the donated milk do not get mixed up with one another and the needing infant is fully-fed less than five times, then milk bank establishment is possible. Even though it is a challenging task, it is an honorable effort because it helps infants especially those premature ones to go on with their lives well with the help of breast milk donated through milk bank.

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