

Ta'sil Fiqhi (Fiqh Foundation) for a Husband's Status with the Child Breastfeeding with his Wife through Synthetic Hormon Injection

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Abstract

Innovation in technology and science has produced several new findings in the field of breastfeeding. Depoprovera is a synthetic hormone injection that was found to stimulate the production of breast milk. This article focuses on the milk-stimulating hormone injections and its implications under the status of the spouse in the case of married woman. In order to obtain the data, this qualitative study using the library research. The data were analyzed using content analysis. The article is conducted through a review of literature in fiqh, language, and hadith, as well as interview with medical experts and Islamic jurists. The status and position of a child related through suckling using the scientific method needs to be clarified in order to preserve the Maqasid al-Shariah which is 'the maintenance of lineage' (*hifz al-nasl*).

Keywords: Injection Depoprovera, Synthetic Hormones, Breastfeeding, *Spouse's Status*, Wet-Nursed Child.

INTRODUCTION

Innovation in science and technology which significantly contributes towards social change has produced several breakthrough in the study of breastfeeding. Synthetic injection (depoprovera) is a new found method discovered to induce lactation. Such discovery received overwhelming responses from women worldwide and especially so in Malaysia, particularly those who want to go through the adoption process or women who cannot conceive after years of marriage.

The injection of synthetic hormone is considered a contemporary issue, whereby *syara'* (Islamic law) is also governed by *ta'sil* (classical fiqh foundations) in the case of discussing this issue further. The status of milk kinship which subsequently leads to having milk siblings in the case of synthetic hormones usage must be dealt with accordingly to Islamic jurisprudence so as to safeguard Maqasid al-Shari'ah which is "*hifz al-nasl*" (lineage protection). Women who do not wish to get married or single not by choice and those who are married but are unable to conceive have moved on to other options made available by new scientific discovery on

inducing lactation. Such approach is an alternative in the hopes of breastfeeding another's baby into being one's mahram (unmarriageable kin).

By being a mahram, according to Islamic religious decree, would ease contacts between the mother and the adopted son or the father and the adopted daughter and likewise. The use of synthetic hormone injection to induce lactation is widely spread in Malaysia, however, there are still reservations among the Middle Eastern countries and Jordan as well according to recent interviews with their religious scholars. Religious scholars in those countries mentioned that such synthetic hormones injection has not existed there.

RESEARCH METHODOLOGY

This study is just using document analysis as a method of data collection. According to Riyanto (1996), document analysis was conducted by collecting data from books, letters, transcripts, magazines and others. Document analysis method is used to get a clear picture of the concept of freedom of expression in Islam. Description of freedom of speech in Islam is collected using data from classic and contemporary works. Therefore, this study data collection will be done by analyzing documents such as books, journals, previous studies, working papers related to the issue of freedom of speech and demonstrations in Islam.

Abu Bakr (2007) argues that the research should ensure that the analysis will be made to answer all the questions that were set at the beginning of the study. Therefore, results from this data collection will be analyzed using content analysis. According to Krippendorff (2013), content analysis is a research technique that is done by systematically concluded through data in the form of documents, text or symbols. Therefore, data acquisition and analysis in this study was developed based on information obtained from books, journals, research papers and so last.

FINDINGS

The general concept in milk kinship is based on what the Prophet's (pbuh) says:

"يُحْرَمُ مِنَ الرِّضَاعِ مَا يُحْرَمُ مِنَ النِّسْبِ"

Meaning "The one forbidden from lineage is also forbidden from breast milk".

(Ibn Qudamah, 2004)

Other than that, Allah s.w.t also mentioned in the holy Quran:

وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضَاعَةِ

Translation: "Your (milk) mothers who nursed you; your sisters through nursing".

(al-Nisa' 4:23)

The verse clearly states unlawful marriage between the milk-mother and her milk-children.

School of Hanafi:

In the Hanafi school of jurisprudence, *fiqh* methodology is used as a basis in determining a father's status being a mahram (unmarriageable kin) to the child breastfed by his wife. The factor taken into consideration in determining milk-fathers status is mentioned by al-Kasani (2000) by stated "mahram is because of the nursing process in which the cause for lactation is brought about by sexual intercourse between a man and a woman, therefore the rules of fosterage is applicable to both husband and wife due to the breastfeeding process".

According to the Hanafi school of jurisprudence, a lot of emphasisation is given on the cause of lactation in determining milk-father status because lactation has to occur caused by pregnancy -which happens due to sexual intercourse between husband and wife – and followed by the process of giving birth to the child.

School of Maliki:

According to Maliki school of jurisprudence, a stand is clearly stated on situations whereby a divorced woman got married to another man while still lactating and breastfeeding. The principal governing such occurrence is mentioned by al-Dusuqi (n.d) & Ibn Rusyd (1994):

"...أي لا من حين عقده عليها ولا من حين وطفه لها بغير انزال فيه، فإذا رضع ولد على امرأة ثم عقد عليها رجل أو رضعها بعد عقده عليها وقيل وطفه لها أو رضعها بعد أن وطفها ولم ينزل، لم يكن ذلك الرضيع ابناً لذلك الرجل"

Imam Maliki is of the opinion that "...unmarriageable kin relationship does not start from the aqad (marriage contract) with the woman nor by sexual intercourse without ejaculation, however, when the woman (already lactating) breastfeeds a child and gets married to a new husband or the woman breastfeeds a child after aqad with her husband without having any sexual intercourse, or sexual intercourse did happened but without ejaculation, there will not be milk-kinship between a woman's milk-child and of her new husband".

This situation depicted by Maliki school clearly stresses on the issue of how and why lactation occurs, and how does it become a determining factor of a milk-child status with a man. The deciding factor is not absolute only to the lineage factor but is also attributed to milk-kinship in terms of determining the aspect of unmarriageable kin.

School of Shafi'i:

Meanwhile, according to principles in the al-Shafi'i school of jurisprudence, which brings us to a situation whereby a woman marries another man after going through marriage with her first husband and then was divorced or widowed, al-Shafi'i (n.d) stated:

"ولو تزوجت زوجاً بعد انقطاع لبنها أو قبله، تم انقطاع لبنها وأصابتها الزوج فثابت لبنها، ولم يظهر بما حمل فاللبن من الزوج الأول، ومن أرضعت فهو ابنها وابن الزوج الأول، ولا يكون ابن الآخر"

Inferring from a verse found in *Ummbook* of law states “if a woman marries another man after she stops lactating or if she’s still lactating and it stops, and after engaging in sexual intercourse with her new husband causing lactation to resume without getting pregnant. Therefore, the source of lactation is attributed to her former husband, and if she’s breastfeeding, the child is a milk-child of the woman and her former husband, and is not the milk-child of her new husband – second husband-”.

Imam al-Shafi’i opinion focuses on the cause for lactation which is through pregnancy caused by sexual intercourse with one of her husbands either the former or latter. This goes to show that factors causing lactation in determining the status of a milk-father must be based on the cause of lactation because of sexual intercourse causing pregnancy and followed by the process of giving birth.

The same evaluation and assessment method are also pictured in a second situation stated by al-Syafi’i (n.d):

"وإن طُلِّقت امرأة، فلم يُنْقَطِعْ لبنُها وكانت تحيضُ وهي ترضعُ فحاضت ثلاثَ حيضٍ ونكحت زوجاً فدخل بها فأصابها فحملت، فلم يُنْقَطِعِ اللبن حتى ولدت فالولادُ قطعَ اللبنِ الأول"

Meaning: “if a woman is divorced, and she’s still lactating, and having menstrual during the breastfeeding period – she has had three menstrual cycles – and she re-marries, has sexual intercourse and gets pregnant. Her lactation does not stop until she has given birth. Giving birth to another child breaks the first cycle of breastmilk”. Deduced from this is the importance of knowing whether lactation happens caused by sexual intercourse with the first or second husband. In this situation, determining the cause for lactation is differentiated based on after the birth of a child with her new husband. Thus, breastfeeding with the purpose of creating milk kinship with breastmilk existing before giving birth, would also mean that the child is a milk-child to the former husband too.

School of Hanbali:

Ibn Qudamah (2004) mentioned in the *al-Mughni*:

"وجميع أقرارهما ينتسبون إلى المرتضع كما ينتسبون إلى ولدهما من النسب، لأن اللبن الذي تاب للمرأة مخلوق من ماء الرجل والمرأة، فنشر التحريم إليهما..."

In Hanbali school of jurisprudence it is mentioned that “all the heirs from among the husband and wife is related to the milk-child as to how the child is because of lineage. This is because the breastmilk existence is caused by the semen of the husband and wife, therefore creates unlawful marriage kinship for the two”.

Al-Khiraqi (2009) puts a condition to unlawful marriage relationship between a milk-child and the man (husband) who causes the production of breastmilk due to his sexual intercourse. Lactation must be caused by pregnancy due to sexual intercourse with the husband.

In an issue brought up in Al-Mughni is about a milk-child's status, when the production of breastmilk is caused by two husbands. The situation pictured is as such:

"إذا كان لامرأة لبن من زوج، فأرضعت به طفلا ثلاث رضعات، وانقطع لبنها، فتزوجت آخر، فصار لها منه لبن، فأرضعت منه الصبيّ رضعتين، صارت أما له، بغير خلاف علمناه عند القائلين بأن الخمس محرّمات، ولم يصر واحد من الزوجين أباً له؛ لأنه لم يكمل عدد الرضاع من لبنه، ويحرم على الرجلين لكونه ربيها، لا لكونه ولدهما".

Meaning: "when a woman (wife) is lactating while being married to her husband, and she breastfeeds her child three times full. And then the lactation stops, and the woman gets married to another man and she lactates from this new marriage and breastfeeds the same child twice till full. Thus, the child is the woman's milk-child without any doubt to which is said milk kinship is established when the child is breastfed five times till full. A milk-father relationship does not occur with either one of her husbands because the condition to milk kinship was not fulfilled in terms of the number of times breastfeeding happens. The child becomes mahram through milk kinship because of *rabib* to his wife and not because the child is theirs".

From the *nas* in *al-Mughni* it stresses on the reason milk kinship happens between the milk-child and her husband is because her husband contributes to the stimulation and production of breastmilk. Other than the reasons stated above, it is unlawful for the child to have milk kinship with the wife because milk gets rid of hunger, strengthen the bones and for the growth of the milk-child.

Referring to a father's status with the milk-child breastfeed by the wife who lactates as a result of synthetic hormone injection, milk kinship is established due to *rabib* because of the sexual intercourse between the husband and wife, but her husband does not have the milk-father status. The justification is that the wife lactates not due to sexual intercourse resulting in pregnancy and birth. Meanwhile according to Islamic scholars, the condition for unlawful marriage to happen is that the wife lactates as a result of sexual intercourse.

CONCLUSION

The issue of synthetic hormone injection has brought about a few findings. Amongst others are:

- 1- The *hukm* for a woman taking synthetic hormone injection to facilitate lactation is recommended if the substance in the injection are not *haram* and do not cause harm to the woman or her milk-child.

- 2- Hence, the child that feeds on the milk produced from the synthetic hormone injection would be considered her milk-child, according to the four *mu'tabar* schools which are Hanafi, Maliki, Shafi'i and Hanbali.
- 3- All four schools is of the opinion that lactation caused by sexual intercourse and pregnancy or labour is the cause for the child being breastfeed by a woman to become milk-child of her husband or ex-husband.
- 4- Meanwhile, her new husband that does not have a hand in causing lactation whether by sexual intercourse or labour will not be the milk-father to his wife's milk-child in accordance to the four schools.
- 5- The milk-child of a wife that is injected with synthetic hormone is analogically compared to the situational principal of the four schools which is the breastmilk must be caused by sexual intercourse and giving birth, both in which causes lactation. The child shall be the milk-child to the husband.
- 6- Meanwhile the status of a husband with the milk-child of his wife who undergoes this medical approach shall not be established as the milk-father of the child. However, the milk-child of his wife exists as milk kinship due to the *rabib* of his wife.

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