

Syariah-Compliant Milk Bank According to the Opinions of Early and Contemporary Islamic Scholars

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Abstract

Milk bank is undergoing a rapid development in western countries. The proposal to establish Milk Bank in Islamic countries, however, has created issues among the Muslim community. This is due to the fact that milk bank is synonym with nursing in Islam. Breast milk taken from a milk bank, when meets certain criteria, will have an impact on the institution of nursing mahram. In fact, the National Fatwa Council that convened in 2011 has banned the establishment of milk bank in Malaysia. Therefore, the purpose of this research is to identify the criteria needed to make sure that milk bank complies with syarak regulations and able to prevent overlapping in nursing mahram (unmarriagable kin) relationship. This research is based on qualitative method where data collected from documents and interview sessions were gathered and analyzed in terms of content analysis. The result of this research is a draft proposal for a syariah-compliant milk bank (BSPS) that may be able to save infants' lives while at the same time complies with syarak regulations.

Keywords: *Milk Bank, Syariah-Compliant, Nursing Mahram*

Introduction

Breast milk is the best food for newborns (Kumar et al., 2013). The reason being is the production of breast milk has started in a mother's body even before the baby was born (Siti Moin, 1995; Ebrahim, 1983). Furthermore, breast milk contains all nutritions needed by a baby's body (Datta, 2007). Nutritions and benefits of breast milk cannot be denied and it cannot be matched with formula milk available in the market today (Dickson & Slusser, 2004). However, there are some mothers who are incapable of nursing their children due to some unavoidable issues such as insufficient milk production or no milk production and busy with work (de Vries, 2002). Therefore, the proposal to establish BSPS arises to fulfill the needs of mothers who are incapable of nursing their children.

Actually, milk bank is really famous in western countries. There are thousands of milk bank established and it has developed rapidly till today. Milk bank emerged in the western countries after the existence of blood bank. Based on history, milk banking has existed since the early 1900th century with the purpose of treating numerous illnesses among newborns (AAP, 1997). Nevertheless, the practice of milk banking in the West is against the Islamic rulings because of milk intermixture. Milk collected from mothers will be mixed together without knowing the status of the milk. Based on this issue, the establishment of milk bank is interconnected with the Islamic ruling regarding the institution of milk kinship as a result of consuming breast milk. Consequently, there emerge a proposal to establish BPS without overlapping in nursing mahram and it is based on the opinions of Syafi'e sect as well as the opinions of early and contemporary Islamic scholars.

The Advocation of Breastfeeding

Breastfeeding is an honorable act. Islam advocates and encourages every mother to nurse her child to ensure excellent development and growth of a baby. There are evidences from the Quran that support the practice of breastfeeding. This proves the rights of a child which must be fulfilled by the mother. Islam has also made it compulsory for mothers to nurse their child up to the age of two. However, it is not a wrongdoing if they want to hire somebody else to nurse their children due to some reasons (Riḍā, 2005) in accordance with Allah SWT decree in surah al-Baqarah verse 233 which means:

“Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing (period)”.

Based on this verse, nursing a baby is the mother's obligation because a mother is more entitled to nurse than other women. Since it is a child's right is to be breastfed, then it is a mother's obligation to complete the nursing. In fact, in certain situations, a mother may be forced to feed her child. Firstly, when a child does not possess any wealth and the child's father also does not have any wealth to hire a wet nurse. Furthermore, there are no other women who voluntarily agree to nurse the child. Secondly, when a child refuses to consume milk except from his or her own mother (al-Zahabi, 1968). Thirdly, when there is no one else except the mother agrees to nurse the child even though the father can afford to pay a wet nurse.

The original ruling for breastfeeding is Sunnah (recommended). However, if there exist one of the three conditions mentioned above, then breastfeeding becomes definitely compulsory. And if the mother refuses, a judge may force the mother to nurse her child because in this situation, the law states that it is compulsory to nurse a child. The purpose why Islam set this guideline is to protect a baby's life so the baby may grow well and to avoid any harm towards the baby (al-Barri, 1964).

The Difference between Conventional Milk Bank and BSPS

A milk bank is a place to collect and safekeep breast milk voluntarily donated by mothers to be used at certain times. The collected milk will be checked, processed, kept and distributed based on prescription given by the doctors to be given to the needing babies as part of the babies' growing process (AAP, 1997). Healthy mothers with excess breast milk production can become donors at the milk bank (Lauwers & Swisher, 2016).

Instigated from the problem of mothers with difficulties to nurse their babies to get breast milk, then milk banks were established to obtain breast milk supply. However, the milk banking system in the West today is against the syarak rulings. Other than that, breast milk handling process in the West was not governed by strict rules and controls because a baby may receive milk from more than one woman and at the same time, the process is completely anonymous. Since the establishment of milk bank in Islam may institute milk fosterage, emerged a proposal to establish BSPS without the institution of milk fosterage. This is due to the fact that the purpose of the establishment of a milk bank is to save babies' lives and provide greater goods for Muslims globally.

BSPS, on the other hand, is a place that collects, safekeep and distribute breast milk in compliance with the syarak regulations and it adheres to the opinions of Syafi'e sects without the creation of overlapping nursing mahram between the wet nurse and the nursling. This is because the donated milk is not intermixed with each other and every infant will be given less than five full-feeding from a certain woman. Milk donated by these concerned mothers will go through a recording system starting from collection process up till distribution process. Mothers with excess breast milk may voluntarily donate their milk at BSPS to be given to babies who are in dire needs of breast milk and under emergency state with strict rules. Therefore, BSPS needs to be established if its executions and handling can be controlled with strict and systematic procedures based on syarak rulings.

Scholars' Opinions towards Conventional Milk Bank

Based on yearly report produced by the Malaysian National Neonatal Registry (MNNR), premature birth statistics increase every year (MNNR, 2012). This proves that milk bank is the current needs to facilitate mothers to obtain breast milk supply. If a conventional milk bank is to be established in Malaysia, then numerous issues will arise because the impact of breastfeeding that may institute mahram relationship between the nursling and the wet nurse for Muslims (al-Baqir, 2016). The issue on the establishment of milk bank is viewed from two standpoints among the early and contemporary Muslims scholars; between those who allow it and those who ban it.

Scholar who allows the establishment of conventional milk bank is al-Qaradawi (1995) in his book titled *Contemporary Fatwas 2*. He has the tendency to abide to the opinion that something that may facilitate is umum al-balwa (general tribulation) considering humans' situations and as a courtesy towards them. Henceforth, scholars who abide to this approach believed that a greater good to the general public is more important than an individual interest (al-Qaradawi, 1995).

Besides that, Ibn Hazm al-Andalusi in his book titled al-Muhalla, concurs with the establishment of milk bank by defining “breastfeeding” only happens when a baby suck from a woman’s breast with his mouth. While a baby who consumes milk through a bottle or other tools or consumed with bread or other food or dripped into the mouth, nose or ear or injected, does not institute nursing mahram even though the milk become the baby’s food for the rest of the baby’s life (al-Zahiri, t.t.). Ibn Hazm reasoned based on Allah SWT commandment in surah al-Nisa’ verse 23 which means:

“Prohibited to you (for marriage) are your mothers, your daughters, your sisters, your mother’s sisters, your brother’s daughters, your sister’s daughters, your (milk) mothers who nursed you, your sisters through nursing, your wife’s mothers, and your step-daughters under your guardianship (born) of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And (also prohibited) are the wives of your sons who are from your (own) loins, and that you take (in marriage) two sisters simultaneously, except for what has already occurred. Indeed Allah is ever Forgiving and Merciful”.

Another one that supported the establishment of conventional milk bank was the resolution suggested by al-Azhar’s Fatwa Committee in 1960. When asked about the establishment of milk bank by the Health and Shara’ Consideration Committee of Indonesia, this committee presented their opinions based on the book al-Durr al-Mukhtar which stated if a daughter was nursed by a woman in a village, and then it was not known who was the nursing mother, and someone from the village wants to marry her, if there is no proof or signs that they are milk siblings and if there are no witnesses, then the rulings state that marriage is allowable. Besides that, ‘Abid Ibn ‘Ali opined that the ruling is it is allowable because this matter falls under rukhsah (facilitation) to ease marriage and it is not considered as a true method of nursing which may institute marriage ban (Health and Shara’ Consideration Committee of Indonesia ,1976).

Nevertheless, there are people who banned the establishment of conventional milk bank. Amongst them are the scholars from the four sects; they refused the arguments presented by some scholars who allow such establishment. According to al-Su’aydan (2007) in his book titled Isu-Isu Fiqh Perubatan Semasa (Contemporary Fiqh of Medicine Issues), the opinions that permit the establishment of milk bank will open a way to a greater damage in order to prevent an uncertain damage. Nursing a child can be carried out by hiring a west nurse in the absence of the child’s mother. Furthermore, there are a lot of women who voluntarily breastfeed their children. Besides, the advancement of food technology may replace breast milk with other milk and the absence of women to nurse may be replaced with milk produced in factories. This is ample to fulfil the objectives though it cannot match the benefits of breast milk. With regard to this, there is no emergency need to establish milk bank because such establishment means opening a way for a damage that is certain in order to prevent a damage which is not certain (al-Su’aydan, 2007).

On the other hand, Ibn Qudamah (1983) the author of the book *al-Mughni* suggested that nursing that grows flesh and bones are real nursing even though it is done through mouth and nose drips. If milk from this conventional milk bank is given to a baby then it will grow flesh and bones of the baby. This opinion is seconded by Syafi'e as Hanbali sects (Ibn Qudamah, 1983).

Therefore, *Majma' al-Fiqh al-Islami* had discussed this issue in its second conference in Jeddah that took place from 22nd to 28th of December, 1985 and decided that the establishment of milk bank in the Islamic world is forbidden and it is haram to consume milk from such bank. This is due to Islam considers milk siblings as blood siblings hence no difference in blood lineage. With this regard, whatever is haram based on blood lineage is haram for milk siblings. (al-Taskhiri, 1997).

Other than that, al-Barudi (2009) in his book titled *Tafsir Wanita dalam al-Quran* (Tafsir of Women in the Quran) suggested that milk banking system is prone to lineage mixed up or drink that creates ambiguity. He also suggested that social relationships in the Islamic world make it highly possible to naturally nurse newborns born via normal methods or newborns who really need breast milk. Therefore, there is no urgency to establish a conventional milk bank (al-Barudi, 2009).

Meanwhile in Indonesia, an article titled "Perspektif Pendapat Suruhanjaya Fatwa Majelis Ulama Indonesia Pusat terhadap Bank Air Susu Ibu dan Akibat Hukum terhadap Kedudukan Anak" (Perspectives of Fatwa Committee of Indonesian Scholars Regarding Milk Bank and It's Rulings on Child's Lineage) was written by Muhammad Fajri Andika on 27th of March 2014. A summary that can be deduced from this article is The Committee of Indonesian Scholars specifically Fatwa Commissions suggested that they were more prone towards the prohibition of the establishment of milk bank. This is based on the decision set by *al-Majma' al-Fiqh al-Islami*, Islamic Conference Organization (OKI) on second conference in Jeddah, Saudi Arabia that has taken place between 10-16 Rabi' al-Thani 1406 H/22nd-28th of December 1985 that decided that the establishment of milk bank is prohibited and it is haram to consume milk from this milk bank (al-Taskhiri, 1997).

Based on the above opinions, scholars are prone to prohibit the establishment of conventional milk bank because it may create confusions in nursing mahram bond created by the actions of breast milk donor. Besides, conventional milk bank may create a lineage that will impact marriage permissibility in Islam. Due to all arguments presented, Malaysia abides to the rule that forbids the establishment of milk bank. This matter was issued by the 97th Conference of the Fatwa Committee National Council for Islamic Religious Affair of Malaysia held in 15th – 17th December 2011. The conference decided that protecting lineage is included in one of the five compulsory matters that must be protected at all times in the Islamic syariat. Therefore, any actions or behaviors that may cause harm towards lineage must be avoided (JAKIM, 2015).

Simultaneously, the establishment of conventional milk bank is closely related to marriage prohibition due to nursing where babies who nurse with one woman or many women

will become milk siblings and marriage amongst them is prohibited when certain criteria are met. This opinion is in parallel to the opinion of jumhur fuqaha (majority of founders of the four school of thoughts in Islam) which stated a baby will become a milk child whether through direct or indirect breastfeeding (JAKIM, 2015). They reasoned based on the hadith narrated by Abu Daud which means:

“From Ibn Mas`ud he said, there is no nursing except those that strengthen bones and grows flesh”.

(Abu Daud, Book of Marriage, Chapter on Breastfeeding, Hadith No. 2045)

With this regard, the establishment of milk bank may cause lineage mixed up, that may cause Muslims to be under uncertainty state and fall into haram matters. There is also no emergency need for such establishment that may threaten the greater good of the public. Therefore, the committee agreed that the establishment of milk bank is prohibited. And to fulfil the needs of premature babies that need treatments, mothers with scarce milk production, mothers with chronic or infectious diseases which prohibit them from nursing their babies, then women are permitted to voluntarily donate breast milk to the needing babies but they must ensure the family of the baby and the breast milk donor know each other (JAKIM, 2015).

The Opinions of Muslim Intellectuals in Malaysia towards Syariah-Compliant Milk Bank (BSPS)

There are several opinions presented by Islamic intellectuals consisting of muftis and experts in the field of fiqh that discussed on the permissibility to establish BSPS, the ruling of BSPS in Malaysia and whether such establishment brings more maslahah (greater good) or mafsadah (greater harm). The discussion on the permissibility of BSPS establishment was presented by the Mufti (a Muslim legal expert who is empowered to give rulings on religious matters) of Sabah, Sahib al-Samahah Dato' Hj. Bungsu @ Aziz Hj. Jaafar (2016). He approved the milk bank establishment with conditions that all process related to milk bank execution starting from collection, storage until distribution of milk must abide to syarak regulations. All those must be done meticulously and with integrity to avoid future issues with overlapping milk mahram.

According to Sahibul Samahah Datuk Dr. Zulkifli Mohamad al-Bakri (2016), the Mufti of Federal Territory, in emergency situations, BSPS may be established but in small scale under strict supervision in accordance to syariah regulations and it is really being used under emergency situations. They are not for long-term storage and such but in the form of BSPS which is really being used under emergency situations.

Meanwhile, the deputy Mufti for the state of Kelantan, Sahibul Samahah Dato' Hj. Nik Abdul Kadir Hj. Nik Mohamad (2016) suggested that milk bank may be established and there is no prohibition if it is done under strict control and strict rules. Besides, such establishment is allowed when the situation reaches critical state as suggested by fiqh method, which means, “emergency situation allows a certain matter which is normally forbidden”.

He also emphasized that the establishment of syariah-compliant milk bank, if not carried out well, may lead to its forbidment. This is due to the concern towards lineage protection, specifically marriage between milk siblings. This is in parallel to fiqh method that states “to block matters which may lead to haram matters”. Therefore, to prevent such things from happening, then BSPS execution must be done meticulously and syarak rules must be of top priority. If this milk bank can be carefully controlled for example by providing only four feedings, then it can be established in Malaysia.

Other than that, the Mufti of Terengganu, Sahibul Samahah Dato’ Dr. Zulkifly Muda (2016) opined that the establishment of milk bank is permitted if it meets the criteria set by syarak. This is seconded by Ahmad Tirmizi Taha (2016) who stated that milk bank can be established in Malaysia under certain conditions. It must fulfill syarak regulations in terms of its establishment criteria. According to him, the milk bank to be established is not just in terms of milk banking, but it is more towards providing help for the needing babies. He also emphasized on the purpose of milk bank establishment which is to fulfill emergency needs.

Meanwhile Associate Prof. Dr. Wan Yusof Wan Chik (2016) suggested that the establishment of milk bank in Malaysia is permitted based on some reasons in order to save babies’ lives. This is seconded by Associate Prof. Dr. Basri Ibrahim (2016) who suggested that milk bank can be established in Malaysia if the purpose of such establishment is to save premature babies’ lives and not for commercial or trading purposes as currently practiced in the West.

With regards to discussions on the status of rulings for BSPS, according to the Mufti of Terengganu, Sahibul -Samahah Dato' Dr. Zulkifly Muda (2016), he found that the establishment of milk bank fulfills syarak regulation but due care must be taken in terms of execution and maqasid in order to avoid overlapping nursing mahram. Meanwhile the deputy Mufti of Kelantan, Sahibul -Samahah Dato' Hj. Nik Abdul Kadir Hj. Nik Mohamad (2016) suggested that the establishment of milk bank almost satisfy syarak regulations if it is adopting the method of only four feedings for each baby. Nonetheless, the management of BSPS must be done carefully because nursing may institute mahram relationship which is similar as in blood relationship. The Mufti of Sabah, Sahibul -Samahah Dato' Hj. Bungsu @ Aziz Hj. Jaafar (2016) suggested that milk bank meets syarak regulations if it is carried out with due care and with integrity to prevent overlapping of nursing mahram.

Similar opinion was suggested by the Mufti of Federal Territory, Sahibul Samahah Datuk Dr. Zulkifli Mohamad al-Bakri (2016), whose view is in terms of execution of BSPS which is different than the practice in the West. Furthermore, milk from animals nowadays can be frozen, unfrozen and thawed. Therefore, it is more befitting to the current situations.

Next is the opinion from an expert in fiqh, Associate Prof. Dr. Basri Ibrahim (2016). He proposed that if the milk bank to be established fulfills a certain set of conditions, then its establishment meets syarak regulations. This is due to less than five feedings are given to a certain baby and it does not oppose the opinions from Syafi’e sect. Moreover, fatwas that

prohibit milk bank institution emerged based on the reason to prevent problems later due to milk mixed up issues.

This is supported by Associate Prof. Dr. Wan Yusof Wan Chik (2016). He stated that milk bank as outlined in this research satisfies syarak regulations and there is no problem if milk is given to a certain baby for less than five feedings. Meanwhile according to Ahmad Tirmizi Taha (2016), the milk bank to be established satisfies the criteria set by syarak rules and it has to be established under strict conditions. He emphasized the purpose of such establishment which is to fulfill the concept in terms of fulfilling emergency need to save babies' lives.

Next are the discussions on whether the establishment of milk bank will bring more masalah or mafsadah. According to the deputy Mufti of Kelantan, Sahibul Samahah Dato' Hj. Nik Abdul Kadir Hj. Nik Mohamad (2016), he opined that BSPS may bring masalah if it can be controlled correctly and carefully. Even though originally it is a mafsadah, if it is regulated according to the rules set in Islam, then it may change into a masalah especially for those in dire need of breast milk. This opinion is backed by the Mufti of Sabah, Sahibul Samahah Dato' Hj. Bungsu @ Aziz Hj. Jaafar (2016) and the Mufti of Terengganu, Sahibul Samahah Dato' Dr. Zulkifly Muda (2016).

Meanwhile, according to Sahibul Samahah Datuk Dr. Zulkifli Mohamad al-Bakri (2016), the Mufti of Federal Territory, he views the ongoing issue based on its execution. If the execution is done righteously, correctly and within the allowable scope such as for the sake of emergency situation which leads to desperation, *fi amril hajah*, then it can be said that masalah existed. However, if the execution is uncontrolled, free and done without *dhawabit (allowable perimeter)* which is allowed by Syarak, then it has many mafsadah. It is afraid that a baby that becomes a nursling later marries his or her milk siblings and such. This is what the scholars are concerned about; openness and uncontrollable freedom.

According to Ahmad Tirmizi Taha (2016), the establishment of milk bank brings more masalah than mafsadah to the society. However, the need and importance of breast milk for a certain baby must be verified by specialist doctors. Meanwhile, Associate Prof. Dr. Wan Yusof Wan Chik (2016) and Associate Prof. Dr. Basri Ibrahim (2016) also supported the opinion of Ahmad Tirmizi Taha (2016) that BSPS brings more masalah than mafsadah.

Associate Prof. Dr. Wan Yusof Wan Chik (2016) added, this milk bank will be mafsadah if breast milk is commercialized by irresponsible people and if it's not well protected and if it does not bound by certain procedures. This is owing to the foundation of nursing is makramah or honor for humans. Basri Ibrahim (2016) suggested that the establishment of milk bank must be based on advice and guidance from specialist doctors in terms of medical ethics, milk storage period and the amount of milk taken from a certain donor must be discussed by medical experts. This is due to the fact that BSPS creation incurs high expenses. It is afraid that if the maintenance cost of this bank increases, then the actual procedures of milk bank according to the set rules cannot be properly executed.

Therefore, it can be concluded that BSPS to be established in Malaysia is a milk bank that complies to syarak regulations and the opinions of Syafi'e sect and its criteria of establishment is based on the rules outlined by early and contemporary as well as Islamic intellects in Malaysia.

Criteria for the Formation of Syariah-Compliant Milk Bank

As a result of scholars' and muftis' opinions combined with guidelines from numerous venerated books in Syafi'e sect, there are several criteria that have been highlighted as guidelines to establish BPS. Amongst the criteria are; firstly the purpose of milk bank establishment is to save babies' lives especially babies in dire need for breast milk under emergency situation only. Secondly, the purpose of such establishment is not for commercial or trading with the public. Thirdly, in terms of rules on who can take milk from milk bank, only Muslim specialist doctors can give instructions to take milk from milk bank to be given to babies in dire needs only. Individuals are not allowed to take milk from this bank in order to avoid disruption in controlling the overlapping of nursing mahram issues. Fourthly, the milk itself must be managed by Muslim staff. If it has to be managed by non-Muslim staff, then he or she must be exposed on the importance of protecting lineage and properly trained whether in terms of science or Islam. Fifthly, every baby is given only up to four feedings of milk from one woman. This means for babies who consume breast milk from the milk bank, even though the numbers of wet nurses are more than ten, none of the women becomes milk mother. This is due to the fact that milk consumed is less than five full feeding which is in adherence with Syafi'e sect (al-Syafi'e, 1984; al-Sartawi, 2007).

Conclusion

As a conclusion, BPS to be established is a milk bank that complies with syarak guidelines and adheres to the opinions of Syafi'e's sect. Babies who consume milk from milk bank, even though their wet nurses are more than ten women, none of those women become their milk mothers. This demonstrates that the problem of overlapping milk kinship can be avoided. Therefore, the suggestion to establish BPS today is viewed as relevant and it becomes a necessity because it provides assistance for mothers with certain problems. In fact, it also helps in solving problems faced by babies who really need breast milk since breast milk is the best cure to treat and reduce infection risks of any diseases (MKC Nair & Naveen Jain, 2008).

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