



## Ulama’s Role in Addressing Public Health Needs: The Case for or Against Breast Milk Banks?

History of Author	Abstract
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### Introduction

This openness in understanding Islam from various disciplines has made Muslims aware of the importance of Islamic thought, which has been studied and developed by previous and contemporary Islamic thinkers. One of them is the issue of establishing breast milk banks. From a medical perspective, the establishment of breast milk banks has proven to be very beneficial and has been widely utilized and developed abroad.<sup>1</sup> Breast milk banks provide an important solution for mothers who are unable to breastfeed directly so that babies still receive optimal nutrition.

Dr Gambiro, a professor at the Faculty of Public Health, University of Indonesia, was one of the first to propose the establishment of breast milk banks in Indonesia. This proposal came in response to the need to provide breast milk to infants in need, especially in areas with limited access to health services. Breast milk banks are expected to reduce infant mortality and improve overall public health. The initiative also reflects progress in the understanding of the importance of exclusive

<sup>1</sup> Bridget E. Young et al., “Milk Bank Pooling Practices Impact Concentrations and Variability of Bioactive Components of Donor Human Milk,” *Frontiers in Nutrition* 7 (October 6, 2020), <https://doi.org/10.3389/fnut.2020.579115>.

breastfeeding for the first six months of a baby's life.<sup>2</sup> Through these steps, it is hoped that the public will increasingly realize the benefits of breast milk banks and support their existence for the health of future generations.

In Islam, one of the rights of children that parents must uphold is the right to breast milk. This reflects the important role breast milk plays in the physical and emotional development of the child. In addition, a father is also legally obliged to provide food and clothing to the mother as a result of the mother's command to breastfeed her baby until it reaches the age of two. If the baby is not yet two years old, both parents can agree on an appropriate time to wean him so that the process takes place properly and according to the needs of the child.<sup>3</sup>

The rulings governing the practice of breastfeeding by nursing mothers were discussed by the Salaf scholars long before breast milk banks were widely recognized. The practice of breastfeeding is considered to have a strong basis in Islamic tradition, where the Prophet Muhammad himself was breastfed by a woman named Halimah Binti Abi Zu'aib as-Sa'diyah during his childhood.<sup>4</sup> This custom of breastfeeding mothers goes back a long way, especially at a time when many families faced financial constraints. In some Arab countries, mothers who are breastfeeding their children often seek out babies from wealthy families to breastfeed in exchange for promised wages, especially if they are having difficulty making ends meet. This shows that the practice of breastfeeding serves not only to fulfill the nutritional needs of the baby but also as a source of income for mothers in need.

Islam even makes it easier for families who face challenges in breastfeeding by allowing them to pay another woman to breastfeed their child. Thus, Islam respects a mother's ability to breastfeed her child and protects a child's right to life. Allah's word in Q.S. al-Baqarah (2) verse 233 confirms that mothers should breastfeed their children for two full years for those who wish to complete breastfeeding. 'Mothers should breastfeed their children for two full years, for those who wish to complete breastfeeding.' (Q.S. al-Baqarah: 233) With a loving and caring approach, parents can ensure that their children get the necessary nutrients for optimal growth and development.

However, in the midst of this growing understanding, a confusing issue has arisen in Indonesia around breast milk banking. Many people do not realize that in the breast milk bank system, donors often do not know who receives their milk, and vice versa; recipients also do not know the origin of the milk they consume.<sup>5</sup> This raises concerns about the potential for un-Islamic nasab relationships. This concern stems from the possibility of marriage between breastfeeding siblings, which is forbidden in Islamic teachings when they grow up. Here, the practice of buying and selling breastmilk may in fact, raise ethical and health concerns.

Awareness of these values can help people better appreciate the important role breastfeeding plays in child development and family health. This is because awareness about the existence of breast milk banks is still unsatisfactory. Sharing information and socializing the idea of donating

<sup>2</sup> A. Sutjipto et al., "A Survey on Breast Feeding Practices at Dr Pirngadi Hospital Medan,," *Paediatrica Indonesiana* 21, no. 3-4 (1981): 51-60.

<sup>3</sup> Dwi Condro Wulan, "Bank Air Susu Ibu Dalam Perspektif Hukum Islam," *Jurnal Lex Renaissance* 7, no. 3 (2022): 571-86, <https://doi.org/10.20885/jlr.vol7.iss3.art9>.

<sup>4</sup> Mawardi Mawardi, "Fenomena Kehadiran BANK ASI Terhadap Konsep Kemarhaman Karena Radha'ah," *Jurnal Az-Zawajir* 4, no. 2 (2024): 101-15, <https://doi.org/10.57113/jaz.v4i2.372>.

<sup>5</sup> Nur Hafidah Hidayati and Fathor Rohman, "Bank Asi Dan Implikasinya Terhadap Hubungan Kemarhaman Perspektif Yusuf Qardhawi," *Jurnal Al-Hakim: Jurnal Ilmiah Mahasiswa, Studi Syariah, Hukum Dan Filantropi* 3, no. 1 (2021): 123-40, <https://doi.org/10.22515/alhakim.v3i1.3902>.

breastmilk in the community should yield impressive results.<sup>6</sup> People need to understand that while breast milk banks provide a solution for mothers who lack breast milk, there are ethical and social aspects to consider. With a careful and considerate approach, it is hoped that breast milk banks can operate well without causing controversy among Muslims. It is important to understand the social and economic context behind this breastfeeding practice, which has existed since ancient times and continues to evolve today.

In Indonesia, some contemporary scholars allow the establishment of breast milk banks, such as the opinion of Hasbi ash-Shiddieqy. On the other hand, some scholars oppose the existence of breast milk banks, such as the opinion of Umar Hubeis. Interestingly, both scholars have the same educational background and have studied under the same teacher, Sheikh Ahmad Surkati, an Islamic activist and reformer in the field of education in Indonesia. These differing views reflect the dynamics of thought within Muslim societies on contemporary issues, including the practice of breastfeeding and its values.

Firstly, Hasbi ash-Shiddieqy argues that breastfeeding mothers who provide breast milk to breast milk banks are not considered haram.<sup>7</sup> Secondly, Umar Hubeis gave a fatwa that breast milk banks should not operate due to the risk of mixing breast milk from various donors, which could create confusion and potential legal problems.<sup>8</sup> Here, the community needs to continue to discuss and find solutions that are in accordance with the principles of Islamic law in dealing with this development.

The debate on the existence of breast milk banks in Indonesia reflects the complexity of thought within Muslim societies, represented by two contemporary scholars. This raises important questions in this study: What are the legal considerations underlying these two views? To what extent can they be justified? Moreover, how can society strike a balance between the advancement of modern healthcare and the principles of Islamic law? By answering these questions, it is hoped that the study can provide a deeper understanding of the issue of breast milk banking and its implications in an Islamic context.

## Method

In this study, the type of research used is library research. This study aims to obtain the necessary data and information and analyze various problems through scientifically accountable library sources. These sources include books, journals, websites, and other literature that is relevant to the research topic. By using this approach, it is expected that the research can provide in-depth insight into the issues being studied.<sup>9</sup> Therefore, the data collection method uses documentation techniques, so primary data is obtained directly from books by the figures studied, such as Hasbi ash-Shiddieqy's work entitled *Kumpulan Soal Jawab*,<sup>10</sup> and the *Fatawa* book by Umar Hubeis.<sup>11</sup> Meanwhile, secondary data includes additional information from other relevant and current related literature.

<sup>6</sup> Julia M. Smyk et al., "Knowledge, Opinions and Attitudes of Polish Women towards Banking and Donation of Human Breast Milk," *Ginekologia Polska* 92, no. 11 (November 30, 2021): 784–91, <https://doi.org/10.5603/GP.a2021.0055>.

<sup>7</sup> TM Hasbi Ash-Shiddieqy, *Kumpulan Soal Jawab* (Jakarta: Bulan Bintang, 1973).

<sup>8</sup> Umar Hubeis, *Fatawa* (Pustaka Progressif, 1979).

<sup>9</sup> Noeng Muhadjir, *Metodologi Penelitian Kualitatif* (Yogyakarta: Rake Sarasin, 1996).

<sup>10</sup> Ash-Shiddieqy, *Kumpulan Soal Jawab*.

<sup>11</sup> Hubeis, *Fatawa*.

Data analysis is carried out using comparative strategy analysis to understand the differences and similarities in the opinions of the two figures.

## Results

Based on the research results, there are differences and similarities in the views on breast milk banks and the legal istinbath method used by Hasbi ash-Shiddieqy and Umar Hubeis. First, in terms of differences, Hasbi ash-Shiddieqy adheres to the principle of social solidarity and empathy for infant health. In contrast, Umar Hubeis is more protective of the potential for mixing breast milk. However, both scholars agree that the management of breast milk banks can result in damage to lineage or descendants, which is an important aspect of Islamic society.

From the long explanation that we emphasize, it is clear that the legal istinbath method used by these two scholars is different. Hasbi ash-Shiddieqy uses the *ijtihad bi al-ra'yi* method, which means he equates the provision of breast milk from a breast milk bank with the provision of breast milk directly by a nursing mother. Meanwhile, Umar Hubeis uses the *ijtihad bayani* method, which refers to the explanation in the Qur'an and Hadith regarding the issue of breast milk banks. He emphasizes that the terms *radha'*, *mash*, and *imlaj'*, which mean breastfeeding, sucking, and sucking, are actually indications that the process of providing breast milk must be done directly without going through any intermediary.

## Discussion

### A. Breast Milk, Infant Health, and Legal Basis

Breastfeeding is an expression of a mother's love and affection for her baby, which also strengthens the emotional bond between the two. In the embrace of the mother, while breastfeeding, the baby will feel warmth, security, protection, and deep love and affection. The benefits of breast milk (ASI) are very diverse and directly protect against various diseases. ASI provides an environment that supports the growth of good bacteria, known as "normal flora," so that it can protect the baby from infection by bad bacteria, viruses, and parasites.

Based on the time of release, breast milk is divided into two main types: *foremilk* and *hindmilk*.<sup>12</sup> Foremilk is breast milk that is released at the beginning of a breastfeeding session and functions to reduce the baby's hunger because it is produced in large quantities. This breast milk has a high content of lactose, sugar, protein, minerals, and water but is low in fat. After the foremilk runs out, hindmilk will appear when the breastfeeding session is almost over. Hindmilk has a thicker consistency and is rich in vitamins and fats, making it very nutritious for babies. Both types of breast milk play an important role in meeting the baby's nutritional needs and supporting their optimal growth. By understanding the difference between foremilk and hindmilk, mothers can be more aware of the importance of effective breastfeeding for their child's health and development.

The legal basis for providing breast milk (ASI) has also been regulated positively by Indonesian law as well as Islamic law. In Indonesia, Government Regulation (PP) No. 33 of 2012 was made to implement the provisions of Article 128 Paragraph (1) of Law No. 36 of 2009 concerning Health,

<sup>12</sup> Mawardi, "Fenomena Kehadiran BANK ASI Terhadap Konsep Kemarhaman Karena Radha'ah."

which stipulates that every baby has the right to receive exclusive ASI from birth for six months unless there are medical indications stating otherwise. This provision shows the government's commitment to ensuring the health and nutrition of babies in their early lives. In addition, Islamic law also guides providing ASI, which is explained in Surah Al-Baqarah Verse 233 and QS Al-Ahkaf Verse 15. In this context, the two sources of law complement each other and provide a strong foundation for breastfeeding practices as part of parents' responsibility for their children's health.

## B. Breast Milk Bank: Emancipation, Creation, or Nutritional Deficit?

However, not all parents, especially mothers, are able to breastfeed their children. This is due to a variety of factors, such as the mother's busy life as a career woman with many responsibilities, as well as health issues such as milk loss or the presence of infectious diseases such as HIV.<sup>13</sup> In some cases, more tragic circumstances may occur, such as when a mother passes away before being able to breastfeed her baby. Therefore, it is important to understand the challenges faced by mothers in the breastfeeding process and find alternative solutions to ensure the baby continues to get the necessary nutrients.

The impetus for the establishment of breast milk banks was greatly influenced by the rise of the women's emancipation movement in the West.<sup>14</sup> This movement emphasized the importance of women's rights, including the right to work and actively participate in society without compromising their role as mothers. Some strongly argue that breast milk banks are a Western product that does not recognize religious norms, especially Islam.<sup>15</sup> However, in this context, breast milk banks have emerged as a solution to help mothers who find it difficult to breastfeed directly, either for health reasons or busy career women.

In addition, technological developments and an understanding of the importance of nutrition for infants have also contributed to the establishment of breast milk banks. With the existence of breast milk banks, it is expected to fulfill the need for milk for babies who do not get breast milk directly from their mothers. Therefore, breast milk banks not only function as institutions that provide milk but also as a support for mothers in carrying out their roles in this modern era. This shows that social change can create innovations that benefit society, especially in terms of children's health.

In Indonesia, many organizations and associations handle the operations of breast milk banks. These organizations play an important role in collecting whole milk from generous donors, with the aim of meeting the milk needs of children who do not get breast milk directly from their mothers. Breast milk banks are expected to help address the problem of nutritional deficiencies in infants, especially for those born to mothers who have difficulty breastfeeding. Research data shows that the lower the birth weight, the more difficult it is to feed the baby with the mother's milk, and the later enteral nutrition starts. If donor breast milk is given steadily, it takes fewer days to start enteral nutrition.<sup>16</sup>

<sup>13</sup> Girum Sebsibie Teshome and Lebtsi Maud Modiba, "Strategies to Eliminate Mother-to-Child Transmission of HIV in Addis Ababa, Ethiopia (Qualitative Study)," *HIV/AIDS - Research and Palliative Care* Volume 12 (December 2020): 821-37, <https://doi.org/10.2147/HIV.S277461>.

<sup>14</sup> Jufri, Hamzah Hasan, and Muhammad Shuhufi, "Kontroversi Ulama Kontemporer Tentang Keberadaan Bank ASI," *Al-Ubudiyah: Jurnal Pendidikan Dan Studi Islam* 5, no. 2 (July 8, 2024): 92-104, <https://doi.org/10.55623/au.v5i2.341>.

<sup>15</sup> Nurliana, "Bank ASI Perspektif Hukum Islam," *Jurnal Al-Himayah* 4, no. 1 (2020): 1-13.

<sup>16</sup> Kosuke Oikawa et al., "Survey of a Nutrition Management Method for Very Low Birthweight Infants: Status before Wide Use of Breast Milk Banks in Japan," *Pediatrics International* 62, no. 2 (February 27, 2020): 180-88, <https://doi.org/10.1111/ped.14074>.

In addition, breast milk banks also provide an opportunity for mothers with excess milk to share with babies in need, thus creating solidarity within the community. The milk collection and distribution process is carried out with strict procedures to ensure the quality and safety of the breast milk distributed. Thus, the existence of breast milk banks in Indonesia not only fulfills the nutritional needs of babies but also strengthens social bonds among mothers and communities. This shows that social initiatives can have a significant positive impact on the health of children in the country.

Some scholars have allowed giving breastmilk to breastmilk banks because of the *maslahat* contained in it. One of the main benefits of this institution is that it helps mothers who have difficulty breastfeeding, either because their milk does not come out smoothly or because their health conditions prevent them from breastfeeding. By utilizing breast milk banks, these babies can get the breast milk they need so that they do not suffer from malnutrition. In addition, the existence of breast milk banks also reflects positive values in society, such as helping each other and sharing.

The story of the Prophet Muhammad being breastfed by Halimah as-Sa'diyah when he was a child is a clear example of breastfeeding practices that involve help from others.<sup>17</sup> In this context, breast milk banks can be considered as a modern form of social solidarity that has existed since ancient times. Therefore, support for the establishment of breast milk banks should not only focus on the health aspect but also human values and togetherness in meeting the needs of babies. Thus, this institution can be a useful solution for families who face challenges in breastfeeding their children.

### C. Breast Milk Bank Challenges

*The Human Milk Banking Association of North America* (HMBANA), founded in 1985, has developed strict procedures for handling human milk donors to ensure the quality and safety of donated milk.<sup>18</sup> One of the strategies implemented by HMBANA is to follow the nature of breast milk from disadvantaged donors so as to give special attention to those in need of support. The procedure starts with carefully identifying breast milk donors, including checking their health history and medical conditions to ensure that the donated milk is safe for babies.

Once the donor is verified, the donated milk must be frozen to maintain its freshness. Furthermore, before distribution, the milk is thawed for 30 minutes at room temperature to ensure that its quality is maintained. After the thawing process, the milk is then sterilized at 62.5 degrees Celsius to kill any harmful bacteria and microorganisms that may be present.<sup>19</sup> With these measures, HMBANA strives to ensure that every drop of breast milk given to babies is safe and nutritious. This procedure not only protects the health of the recipient baby but also provides a sense of security for the donors and parents who receive breast milk from the bank.<sup>20</sup>

However, establishing a breast milk bank can raise several issues that need to be considered by the community and stakeholders. One of the main issues is the potential for mixed ancestry

<sup>17</sup> Mahmudin Hasibuan, "Transaksi Susu Asi Dan Dampaknya Pada Nasab Sesusuan Perspektif Hukum Islam," *Journal Of Islamic Law ElMadani* 2, no. 1 (2023): 1-7.

<sup>18</sup> Mary Rose Tully and Mary L. Overfield, "Report of the Third Annual Meeting of the Human Milk Banking Association of North America," *Journal of Human Lactation* 4, no. 1 (March 1, 1988): 17-18, <https://doi.org/10.1177/089033448800400116>.

<sup>19</sup> Sydney McCune and Maryanne Perrin, "The Effects of Refrigerated Storage of Donor Human Milk with Limited Bacterial Presence After Holder Pasteurization on Nutrient Concentration and Bacterial Growth," *Breastfeeding Medicine* 18, no. 7 (July 1, 2023): 534-39, <https://doi.org/10.1089/bfm.2023.0084>.

<sup>20</sup> Laura M. Candelaria, Diane L. Spatz, and Noreen Giordano, "Experiences of Women Who Donated Human Milk," *Journal of Obstetric, Gynecologic & Neonatal Nursing* 47, no. 4 (July 2018): 556-63, <https://doi.org/10.1016/j.jogn.2017.12.007>.

when breast milk distribution is not properly managed. This can lead to confusion in determining lineage and family relationships, which are important aspects of society. In addition, establishing a breastmilk bank requires significant operational costs, including collection, storage, and distribution of breastmilk. In addition, banked breast milk is susceptible to infection and harmful microorganisms if not handled with strict procedures. The nutritional properties of breastmilk can be drastically reduced due to non-ideal storage processes,<sup>21</sup> resulting in lower benefits from stored breastmilk compared to breastmilk directly sucked by the child from the mother.

Whatever the dynamics, in summary, this phenomenon may make mothers who are busy with daily activities and have excess funds less motivated to breastfeed their children directly. They may prefer to purchase breastmilk from banks, considering it a practical solution without considering the importance of the emotional and health bonds gained from direct breastfeeding. Therefore, people need to understand these impacts and make informed decisions regarding the use of breast milk banking services.

#### D. Scholars' Response to Breast Milk Bank

Some scholars, such as Ali Mustafa Yaqub and Yusuf al-Qaradhawi, have allowed the establishment of breast milk banks.<sup>22</sup> According to them, the purpose of establishing breast milk banks is a good and noble purpose, which Islam supports to provide help to all those who are weak, whatever the cause of their weakness. This is especially so when the person concerned is a prematurely born baby who lacks strength and power. Receiving breast milk reduces the likelihood of complications associated with prematurity, which is evidence of the importance of breast milk banks in clinical practice.<sup>23</sup> This objective is highly relevant to the principles of Islamic law, which emphasize the importance of helping those in need. In addition, there is also a fatwa that allows the establishment of breast milk banks, namely the MUI Fatwa with the issuance of a fatwa on breast milk donation number 28 of 2013 concerning the issue of donor breast milk (*istirdla'*). This fatwa emphasizes that breast milk donation can be done under strict conditions to ensure the safety and quality of breast milk.

In addition, some scholars oppose the existence of milk banks, namely Wahbah al-Zuhaili, and most scholars (Hanafiah, Malikiyah, and Shafi'iyah) are of the opinion that realizing the institution of milk banks is not permissible in terms of sharia. Likewise, the *Majma' al-Fiqh al-Islami* through the body of the *Islamic Congress* held in Jeddah on December 22-28, 1985, AD / 10-16 Rabiul Akhir 1406 AH. In its decision, this institution opposes the existence of breast milk banks in all Islamic countries and forbids the collection of milk from these banks. Interestingly, in Indonesia, the discussion is dynamic and is considered to contribute to the contemporary Islamic intellectual tradition. Hasbi ash-Shiddieqy and Umar Hubeis are among the many Muslim figures who can represent this “intellectual confrontation”.

Hasbi ash-Shiddieqy argues that there is no reason to prohibit the establishment of breast milk banks if the purpose is for the benefit of the people. The collection of milk from breast milk banks

<sup>21</sup> Vanesa Valls et al., “Assessment of Dornic Acidity in Breast Milk Based on Storage Time in the Freezer and Place of Expression,” *Archivos Argentinos de Pediatría* 121, no. 2 (April 1, 2023), <https://doi.org/10.5546/aap.2021-02511.eng>.

<sup>22</sup> Wulan, “Bank Air Susu Ibu Dalam Perspektif Hukum Islam.”

<sup>23</sup> Javier Torres-Muñoz et al., “Clinical Results of the Implementation of a Breast Milk Bank in Premature Infants (under 37 Weeks) at the Hospital Universitario Del Valle 2018–2020,” *Nutrients* 13, no. 7 (June 25, 2021): 2187, <https://doi.org/10.3390/nu13072187>.

brings significant benefits to babies in need, such as fulfilling their nutritional needs. Many babies cannot get enough breast milk for various reasons, such as the mother's busy life as a career woman, health conditions that prevent the mother from breastfeeding, or even because the mother dies.<sup>24</sup>

Hasbi ash-Shiddieqy argues that breastfeeding from breast milk banks is equivalent to breastfeeding directly by the mother, especially in the context of legal settlements related to breast milk banks. In his view, the applicable law of origin is *rada'ah*, in which drinking breast milk becomes the *'illah* underlying the kinship relationship. Direct breastfeeding by the mother is considered the origin (*asl*), while breastfeeding from breast milk banks is the branch law (*far'*). Through this *rada'ah* route, kinship relations can be established in accordance with the applicable law.

Hasbi in his book *Collection of Questions and Answers regarding breast milk banks* argues that giving milk to an institution or milk bank by breastfeeding women is not haram.<sup>25</sup> It is permissible for a breastfeeding woman to give her milk to a milk bank for storage. However, using that milk for infants who need milk is likely to lead to the breaking of the ruling. He realizes that taking milk from a breast milk bank can cause harm, especially in relation to the mixing of lineages that can confuse family identities.

According to Islamic law, if a baby suckles a woman or drinks her milk five times, there is a *rada'ah* ruling, and it is forbidden for the child to marry his breastfeeding relative. But the child does not know whose milk he has drunk. The child does not know whose milk he has drunk, whether the one glass of water belongs to one woman, or whether it has been mixed from the milk of several women in one big jar. If the milk is given to a hospital, then it is stored in a certain can and given a certain name, and one day, it is given to a child, then, if the child asks for it five times, the *rada'ah* relationship is established.

In the context of breast milk banks, Hasbi applies *qiyas* to resolve this case by comparing the situation of breastfeeding from banks with direct breastfeeding by mothers.<sup>26</sup> With this approach, he attempts to provide a solution that is in accordance with the principles of Islamic law while taking into account the existing social dynamics. Therefore, Hasbi's thoughts on breast milk banks reflect an attempt to answer modern challenges in the context of Islamic law.

On the other hand, Umar Hubeis rejects the existence of breast milk banks because they are considered more complicated and dangerous. One of the main reasons for his rejection is the potential mixing of milk from different mothers, which could lead to uncertainty regarding the origin of the milk. This could lead to legal and social problems, especially in relation to the lineage and kinship between the child and the breastfeeding mother.

In his book entitled *Fatawa*, Umar Hubeis expressed his concern and anxiety towards the existence of breast milk banks by saying that breast milk banks are more cumulative and more dangerous, where many mothers do not know what is mixed with their breast milk.<sup>27</sup> He is guided by QS an-Nisa verse 23: "Forbidden to you (to marry) your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, the daughters of your brothers, the daughters of your sisters, your mothers who breastfed you."

<sup>24</sup> Ash-Shiddieqy, *Kumpulan Soal Jawab*.

<sup>25</sup> Ash-Shiddieqy.

<sup>26</sup> Ash-Shiddieqy.

<sup>27</sup> Hubeis, *Fatawa*.



Umar Hubeis uses the terms *radha'*, *mash*, and *imlaj'* to support his beliefs about the Qur'an and Hadith, which specifically refer to the processes of breastfeeding, suctioning, and sucking, indicating that the process of breastfeeding should be done directly without intermediaries. Umar Hubeis argues that the practice of breast milk banks is incompatible with the principles of Islamic law, which emphasize the importance of a direct relationship between mother and baby. According to him, this definition confirms that the relationship between mother and baby in the context of breastfeeding is important and cannot be replaced by the practice of breast milk banks.<sup>28</sup>

In addition, Umar Hubeis argues that breast milk banks have a lot of mess and risks, especially since many mothers do not know what is mixed with the breast milk they donate. This can lead to serious problems, such as mixing up the lineage and identity of the baby receiving the breast milk. In her view, the idea of setting up a breast milk bank is like the use of artificial insemination systems using sperm from men who are not husbands, which He considers to be against family norms and morality.<sup>29</sup>

He believes that such practices can undermine family structures and blur the boundaries that should exist in relationships between individuals. Therefore, He encourages society to reconsider the ethical implications of establishing breast milk banks and their impact on traditional values. Thus, his critique of breast milk banks is not only related to the legal aspects but also to the broader moral and social dimensions. This suggests that the discussion on breast milk banks should involve multiple perspectives to reach an agreement that is in line with religious principles and societal norms.

#### E. Breastmilk Bank Dialogue Meeting Point

Based on the description above, it can be concluded that although the benefits of breast milk banks are important, Hasbi ash-Shiddieqy's opinion can be further considered by seeing that the harm caused may outweigh the benefits. Therefore, it is important to conduct an in-depth evaluation of the risks and benefits of establishing a breast milk bank. This includes an analysis of how the mixing of lineages may affect the social and legal structure of society. Thus, while there are good intentions behind the establishment of breast milk banks, the decision to go ahead or reject this initiative should comprehensively consider all aspects.

Hasbi Ash-Shiddieqy's concern seems to be confirmed by the opinion of Umar Hubeis, who is concerned about the negative impacts that may arise from the use of breast milk banks in society, including the potential for mixing of bloodlines and confusion of family identity.<sup>30</sup> The mixing of milk from different donors can cause serious legal and social problems. Umar Hubeis, therefore, urged the need for a more cautious approach in addressing issues related to breastfeeding and breastfeeding. He urges people to reconsider the practice of breast milk banking and its impact on family values and social norms. Thus, efforts to maintain the integrity of lineage and family identity should be prioritized in any discussion on this issue.

The two figures are also very close in their views; consuming milk from a breast milk bank on a baby results in a violation of the law, namely the law of *rada'ah* (breastfeeding), and can result in

<sup>28</sup> Hubeis.

<sup>29</sup> Hubeis.

<sup>30</sup> Hubeis.

damage to the nasab / offspring. In addition, the operation of breast milk banks is more risky because many mothers mix breast milk that is not recognized, which can lead to the destruction of lineage. In both cases, a strong concern about safeguarding the objective of Shari'ah is a necessity: *hifzul nasl* (safeguarding offspring). It would not be an exaggeration if some people think that the existence of breast milk banks is not in accordance with *Maqashid Sharia*.<sup>31</sup> This is clearly different from Yusuf Qardhawi's view, which states that the requirement to make a nasl connection is not because of consuming breast milk from a breast milk bank, but because the suckling must suckle directly on the nipple of the breastfeeding mother.<sup>32</sup>

From here, the *Istinbath* method of breast milk bank law initiated by Hasbi is more likely to use *Ijtihad Bi al-Ra'yi*, and Umar prioritizes *Ijtihad Bayani* (Al-Quran and Hadith). *Ijtihad Bi al-Ra'yi* is an approach recommended by Hasbi to overcome and answer various problems that arise, where mujtahids can use several techniques, such as *qiyas*, *istihsan*, *istislah*, and *istishab*. Meanwhile, Bayani *Ijtihad* is carried out by analyzing and interpreting sacred texts to gain a deeper understanding of the applicable law or focusing on efforts to find and explain the laws of sharia contained in the Nash.

#### F. Breast Milk Banks: Challenges and Opportunities

In practice, there has been less attention paid to breast milk stored in breast milk banks at the international level,<sup>33</sup> especially in relation to who can consume it and the legal implications in the context of Islamic jurisprudence. This raises concerns about the possibility of marriage between breastfeeding siblings, which should not occur. If the system does not take these aspects into account, then channeling surplus breast milk to a milk bank could be considered haram, and consuming it would also be haram. This is because the child receiving the breast milk will not know who breastfed them in the past.

Therefore, to address this issue, breast milk banks need to label each bottle of breastmilk with information about the source of the breastmilk. This information should include data on who the donor is and where the milk was obtained from. In this way, the risk of confusion regarding lineage and kinship can be minimized, allowing families to make more informed decisions regarding the use of banked breast milk.<sup>34</sup> In addition, transparency in the management of breast milk banks will help increase public trust in the institution. Thus, these measures are essential to ensure that the practice of breast milk banking is in accordance with the principles of Islamic law and prevailing social norms.

In addition, breast milk banks are biological products that are susceptible to contamination. Therefore, microbiological testing is an important step in determining the presence of microbial contamination in breast milk. However, to date, a universal microbiological analysis method for human milk banks globally is underdeveloped. This suggests that consistent and effective testing standards have not been fully implemented in different countries. In the absence of rigorous screening

<sup>31</sup> Mawardi, "Fenomena Kehadiran BANK ASI Terhadap Konsep Kemarhaman Karena Radha'ah."

<sup>32</sup> Hidayati and Rohman, "Bank Asi Dan Implikasinya Terhadap Hubungan Kemahraman Perspektif Yusuf Qardhawi."

<sup>33</sup> Cuiqin Huang, Wei Han, and Yajing Fan, "Knowledge and Attitude on Donation of Breast Milk in Hospitalized Mothers," *Gaceta Sanitaria* 35, no. 3 (May 2021): 213–15, <https://doi.org/10.1016/j.gaceta.2019.09.013>.

<sup>34</sup> Atika Nur Annisa, "Rekontekstualisasi Radha'Ah Di Era Digital (Studi Lactashare Sebagai Lembaga Filantropi Dalam Bidang Donor Asi Pertama Di Indonesia)," *El-Mashlahah* 10, no. 2 (2020): 1–13, <https://doi.org/10.23971/maslahah.v10i2.1816>.

and adequate testing procedures, banked breast milk can be a carrier of harmful pathogens.<sup>35</sup> This contamination can threaten the health of infants who consume it, especially those with weakened immune systems. In addition, breastfeeding should be encouraged in neonatal intensive care units, and efforts should be made to increase breastfeeding rates for very preterm infants.<sup>36</sup>

Therefore, breast milk banks need to implement strict safety protocols in the collection, storage, and distribution of breast milk.<sup>37</sup> With these measures, the risk of contamination can be minimized, and the health of the baby can be well maintained. Infant safety and health should always be the top priority in any breastmilk bank-related practice. In Indonesia, one of them is *Lactashare*, which has carried out the donor process in accordance with medical provisions and refers to the 2013 MUI Fatwa on Breast Milk Donation, as well as issuing a “sepersusuan certificate”.<sup>38</sup>

## Conclusion

This research highlights the complexities surrounding the establishment of ASI banks in Indonesia from an Islamic law perspective. The contrasting views between ash-Shiddieqy and Hubeis illustrate the ongoing debate among scholars on how modern practices intersect with substantive and philosophical Islamic values. By encouraging dialogue among academics and practitioners, this study contributes to a deeper understanding of how breast milk banks can be integrated into Muslim societies while respecting ethical and religious considerations.

Thus, it can be said that in one aspect, the future of breast milk banks plays an important role in meeting the health needs of the community by providing breast milk for babies who cannot receive breast milk directly from their mothers. In another aspect, Islamic law sees that while the existence of breast milk banks can be considered as a solution to support efforts to help others, the principles taught in religion to maintain clarity of lineage and kinship relations also need to be taken seriously. This conclusion corroborates previous studies.<sup>39 40 41</sup> In addition, support from the government through health regulations and policies is also crucial to ensure that breast milk banks operate to safe and effective standards. Therefore, the integration of breast milk banks, Islamic law, and public health needs is highly relevant to creating a supportive environment for infant growth and development in Indonesia.

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<sup>35</sup> Ke Liu et al., “Detection of Clostridium Perfringens in Donor Milk at a Human Breast Milk Bank: A Case Report,” *BMC Infectious Diseases* 23, no. 1 (November 17, 2023): 810, <https://doi.org/10.1186/s12879-023-08822-8>.

<sup>36</sup> Zhi Zheng et al., “High-Proportion Breast Milk Feeding Is Associated with a Reduction in the Incidence of IVH in Very Preterm Infants,” *Frontiers in Neurology* 13 (January 18, 2023), <https://doi.org/10.3389/fneur.2022.993985>.

<sup>37</sup> Bruna Gutierrez dos Santos et al., “Donation Barriers, Enablers, Patterns and Predictors of Milk Bank Donors in the United States and United Kingdom,” *Maternal & Child Nutrition* 20, no. 3 (July 12, 2024), <https://doi.org/10.1111/mcn.13652>.

<sup>38</sup> Annisa, “Rekontekstualisasi Radha’Ah Di Era Digital (Studi Lactashare Sebagai Lembaga Filantropi Dalam Bidang Donor Asi Pertama Di Indonesia).”

<sup>39</sup> Mawardi, “Fenomena Kehadiran BANK ASI Terhadap Konsep Kemarhaman Karena Radha’ah.”

<sup>40</sup> Jufri, Hamzah Hasan, and Muhammad Shuhufi, “Kontroversi Ulama Kontemporer Tentang Keberadaan Bank ASI.”

<sup>41</sup> Nurliana, “Bank ASI Perspektif Hukum Islam.”

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