THE LEGAL CONSEQUENCES OF BREASTFEEDING DONORS IN LACTASHARE PERSPECTIVE OF SADD AL-DZARI'AH

TUGAS AKHIR

oleh:

Ria Anjani

NIM 19210012



PROGRAM STUDI HUKUM KELUARGA ISLAM FAKULTAS SYARIAH UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG

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PERNYATAAN KEASLIAN TUGAS AKHIR

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Ketua Program Studi Hukum Keluarga Islam

Erik Sabti Rahmawati, MA.,M.Ag.

NIP. 197511082009012003

Malang, 10 April 2023

Dosen Pembimbing

Syabbul Bachri, M.HI.

NIP. 198505052018011002

BUKTI KONSULTASI



KEMENTERIAN AGAMA UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG

FAKULTAS SYARIAH

Jl. Gajayana 50 Malang Telp. (0341) 551354 Fax. (0341) 572533

BUKTI KONSULTASI

Nama

: Ria Anjani

NIM

19210012

Program Studi

: Hukum Keluarga Islam

Dosen Pembimbing : Syabbul Bachri, M.HI

Judul Skripsi

: The Legal Consequences Of Breastfeeding Donors In Lactashare

Perspective Of Sadd Al-Dzari'ah

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Ketua Program Studi Hukum Keluarga Islam

Erik Sabti Rahmawati, MA.,M.Ag.

NIP. 197511082009012003

PENGESAHAN SKRIPSI

Dewan Penguji Skripsi saudari Ria Anjani, NIM 19210012, mahasiswa Program Studi Hukum Keluarga Islam Fakultas Syariah Universitas Islam Negeri Maulana Malik Ibrahim Malang, dengan judul:

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Telah dinyatakan lulus dalam sidang ujian skripsi yang dilaksanakan pada tanggal 31 Maret 2023 Dengan Penguji:

- 1. Jamilah, MA. NIP. 197901242009012007
- Syabbul Bachri, M.HI.
 NIP. 198505052018011002
- Erik Sabti Rahmawati, MA., M.Ag. NIP. 197511082009012003

- HARRY

Sekretaris

Penguji Utama

Malang, 11 April 2023

Dekan

Wras Dr. Sudirman, MA.

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THE LEGAL CONSEQUENCES OF BREASTFEEDING DONORS IN LACTASHARE PERSPECTIVE OF SADD AL-DZARI'AH

Ria Anjani¹, Syabbul Bachri²

Universitas Islam Negeri Maulana Malik Ibrahim Malang Email: anjaniria43@gmail.com¹, Email: syabbulb@uin-malang.ac.id²

Abstract

Lactashare is an institution engaged in the field of breastfeeding donors which facilitates donors and recipients of breastfeeding donors in a safe, precise, fast, and according to Islamic law by utilizing existing technological advances. The process of donating breast milk has the possibility of mafsadatan (damage), which can lead to legal consequences, namely creating a mahram relationship so that it is forbidden to carry out marriages between breastfeeding relatives (radha'ah). This study aims to analyze the legal consequences of breastfeeding donors in Lactashare from the perspective of Sadd Al-Dzari'ah. This research uses normative juridical research methods. The legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. Data analysis was carried out qualitatively through five stages, namely verifying, organizing, editing, analyzing, and concluding. The results of the study show that the risk due to legal consequences for breastfeeding donors in Lactashare can be minimized by practicing breastfeeding donors by Islamic law with the precautionary principle which is a reflection of Sadd Al-Dzari'ah by referring to the opinion of Wahbah Az-Zuhaili and MUI Fatwa No. 28 of 2013 concerning breastfeeding donors, this still cannot eliminate the risk of damage (damage). So with these considerations in mind, the process of donating breast milk at Lactashare should be avoided because basically, Sadd Al-Dzari'ah is an act of refusing or obstructing a case that risks becoming a path to an act that causes mafsadat (damage).

Keywords: Breastfeeding donors, Lactashare, Sadd Al-Dzari'ah

Abstrak

Lactashare merupakan lembaga yang bergerak dalam bidang donor ASI yang memfasilitasi pendonor dengan penerima donor ASI secara aman, tepat, cepat, dan sesuai syariat Islam dengan memanfaatkan kemajuan teknologi yang ada. Proses donor ASI memiliki kemungkinan akan terjadinya kemafsadatan (kerusakan), yang mana dapat menimbulkan akibat hukum yaitu terciptanya hubungan mahram sehingga dilarang melakukan pernikahan antar saudara

sepersusuan (radha'ah). Penelitian ini bertujuan menganalisis akibat hukum donor ASI di Lactashare dengan perspektif Sadd Al-Dzari'ah. Penelitian ini menggunakan metode penelitian yuridis normatif. Bahan hukum yang digunakan adalah bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Analisis data dilakukan secara kualitatif yang melewati lima tahapan, yaitu verifikasi, penyusunan, pengeditan, analisis dan kesimpulan. Hasil penelitian menunjukkan bahwa resiko akibat hukum donor ASI di Lactashare walaupun dapat diminimalisir dengan melakukan praktek donor ASI yang sesuai syariat Islam dengan prinsip kehati-hatian yang merupakan cerminan dari Sadd Al-Dzari'ah dengan berpedoman kepada pendapat Wahbah Az-Zuhaili dan Fatwa MUI Nomor 28 Tahun 2013 Tentang Donor ASI, hal tersebut tetap tidak dapat menghilangkan resiko akan timbulnya kemafsadatan (kerusakan). Jadi dengan pertimbangan tersebut, maka proses donor ASI di Lactashare hendaknya dihindari karena sebagaimana pada dasarnya Sadd Al-Dzari'ah merupakan suatu perbuatan menolak atau menghalangi perkara yang beresiko menjadi jalan kepada suatu perbuatan yang menimbulkan kemafsadatan (kerusakan).

Kata Kunci: Donor ASI, Lactashare, Sadd Al-Dzari'ah

INTRODUCTION

Along with the development of the times, most breast milk donors are done indirectly by taking it from a storage area called a breast milk bank. This is different when from the time of the Prophet when it was done directly by sucking the nipples of suckling mothers. Breast milk is very important for babies aged 0-6 months and can be perfected for two years as a staple food for babies which contains nutrients that cannot be replaced with any milk (Annisa, 2020). The Qur'an has mentioned the importance of breastfeeding in Surah al-Baqarah verse 233 namely:(Penerjemah, 2015:37)

"and mothers should breastfeed their children for two full years, for those who want to breastfeed perfectly".

It is estimated that more than 100,000 live births have more than a third born in an orphanage and in reality, not all mothers are able and able to provide breast milk to their children, which is caused by various things such as suffering from infectious diseases or currently taking certain drugs so that the baby's condition is at stake. Thus, innovation emerged to maintain the baby's health, by utilizing the positive side of breast milk and

reducing the negative side of formula milk, by donating breast milk from productive mothers for babies whose mothers cannot breastfeed (Mahfudin & Fatikha, 2020a).

In fiqh tradition, a baby who receives breast milk is like the biological son of a mother who is a breastfeeding donor. This lineage relationship then has implications for lineage channels. Biological children and milk children become equal and become mahrams. Marriage is not permitted among them because they are siblings (breastfeeding) or *radha'ah*. The Qur'an says in an-Nisa' verse 23, namely:(*Surat An-Nisa Ayat 23 Arab, Latin, Terjemah Dan Tafsir* | *Baca Di TafsirWeb*, t.t.)

حُرِّ مَتْ عَلَيْكُمْ أُمَّهَٰتُكُمْ وَبَنَاتُكُمْ وَ اَخَوٰتُكُمْ وَعَثَّنُكُمْ وَخَلَٰتُكُمْ وَبَنَاتُ ٱلْأَخِ وَبَنَاتُ ٱلْأَخْتِ وَالْمَّهَٰتُكُمُ ٱلَّتِي أَرْضَعْنَكُمْ وَرَبَّئِكُمُ ٱلَّتِي فِي جُجُور كُم مِّن تِسَاَئِكُمُ ٱلَّتِي بَخَاتُم بِهِنَ فَإِن لَمْ تَكُونُواْ وَأَنْ تَجْمَعُواْ بَيْنَ ٱلْأَخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ أَلَٰذِينَ مِنْ أَصْلَٰكِكُمْ وَأَن تَجْمَعُواْ بَيْنَ ٱلْأَخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ أَإِنِّ ٱللَّهُ كَانَ عَفُورًا رَّحِيمًا كَانَ عَفُورًا رَّحِيمًا

"It is forbidden for 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 breastfeed you; a suckling sister; your wife's mothers (in-law); the children of your wife who are in your care from the wife you have mixed with, but if you have not mixed with your wife (and have divorced), then you are not sinful to marry her; (and forbidden to you) the wives of your biological children (in-law); and bringing together (in marriage) two women who are sisters, except what has happened in the past; verily Allah is Oft-Forgiving, Most Merciful".

In the tradition of Indonesian citizens regarding sharing breast milk, they tend to rely more on conventional systems that emphasize trust, therefore this can have implications for protection from legal consequences that are less clear, even though clarity on donors and recipients of ASI donors is mandatory to be the most important requirement to ensure protection from legal consequences from the existence of breast milk donors who are carried out, especially if there is a marriage between breastfeeding relatives (Fitriasari, 2012).

From the practice of breastfeeding donors described above, of course, problems and damage may occur. In essence, the law of Sadd al-Dzari'ah aims to minimize the damage that occurs (Apriliani, 2022). From the perspective of Sadd Al-Dzari'ah, several things can cause damage to breast milk donors. Damage that has the opportunity to arise, such as medical problems to other damages that are unlawful, such as the possibility of marriage by breastfeeding relatives in the future.

Sadd al-Dzari'ah is a method of extracting Islamic law by preventing and prohibiting and closing the way for an act that was originally permitted, but because it can cause something that causes damage, then it becomes prohibited to do it (Yusuf, 2012:90), as in the practice of breastfeeding donors. In the rules of Fiqh, rejecting damage takes precedence over taking advantage (Syarifuddin, 2008:403). Thus, it is clearly said that everything that contains damage must be avoided. The way to minimize the legal consequences of the practice of breastfeeding donors so that they do not occur is to practice breastfeeding donors by Islamic law with the precautionary principle that reflects the concept of Sadd Al-Dzari'ah.

In 2018 an institution called Lactashare was established which cares about the importance of exclusive breastfeeding for babies. Lactashare as an institution engaged in the field of ASI donors has made a breakthrough that takes advantage of technological advances by creating applications that can facilitate donors and recipients of ASI donors in a timely, fast, easy, safe, and by Islamic law. The procedure for breastfeeding donors at Lactashare is carried out in a strict process and has various requirements, as well as claims to issue and distribute breastfeeding certificates between donors and donor recipients referring to MUI Fatwa Number 28 of 2013 concerning Breastfeeding Donors (*Lactashare. id - Temukan Donor ASI dan Ahli Laktasi di sini. Inisiator Wakaf ASI untuk Proses Donor ASI Aman Tepat Cepat dan Sesuai Syari'at.*, 2018.).

From the description above, with the existence of the Lactashare institution is a liaison institution between donors and recipients of breastfeeding donors from various regions in Indonesia. Meanwhile, on the one hand, the provision of breastfeeding donors in Islam risks the emergence of mahram relations which can become an obstacle in carrying out marriages. So it will be studied further whether the process of breastfeeding donors at Lactashare meets the criteria of *radha'ah* in Islam or not, which is a legal consequence of breastfeeding donors using the perspective of Sadd Al-Dzari'ah.

There have been various studies related to breastfeeding donors at Lactashare with different study focuses, especially in the last five years. Several studies focus on examining the concept of *radha'ah* to breastfeeding donors with case studies in Lactashare such as the writings of Atika Nur Annisa (Annisa, 2020) and Sheila Cantika Budi (Budi, 2021). Several articles explain breastfeeding donors at Lactashare from the perspective of Maslahah Mursalah such as the writings of Ilmiati Fatikha

(Fatikha, 2020) and Agus Mahfudin (Mahfudin & Fatikha, 2020) who analyze the process and factors of breastfeeding donors at Lactashare from Maslahah Mursalah's point of view. Meanwhile, a study conducted by Fatimatuz Zahro explained the system as well as the ASI distribution process at Lactashare along with an analysis of Islamic law for the breastfeeding bank (Zahro, 2020). About breastfeeding donors at Lactashare, Hani Rifqial Aini in his writings describes the practice of implementing breastfeeding donors at Lactashare institutions and is in line with MUI Fatwa Number 28 of 2013 concerning Breastfeeding Donors (Aini, 2021).

The main purpose of this research is to further examine how the analysis of the legal consequences of breastfeeding donors in Lactashare from the perspective of Sadd Al-Dzari'ah because there has been no research with a similar research focus before, so this research does not only aim to reveal the analysis of the topics discussed but it is also hoped that later this can become material for consideration in carrying out legal reforms in Indonesia, especially those relating to family law in the present and the future.

METHOD

This research is included in the type of normative juridical research which is library law research conducted by examining literature or secondary data that focuses on analyzing the legal consequences of breastfeeding donors in Lactashare from the perspective of Sadd Al-Dzari'ah (Soekanto & Mahmudji, 2003:13). This study uses a conceptual approach (conceptual approach) with qualitative analysis, where this research does not use statistics but goes through data collection, analysis, and then interpretation (Fadli, 2021). The primary legal materials used are books or journal articles related to the topic of discussion regarding Sadd Al-Dzari'ah and breastfeeding donors which are supported by secondary legal materials such as MUI Fatwa Number 28 of 2013 Concerning Breastfeeding Donor Issues and Government Regulation Number 33 of 2012 concerning Exclusive Breastfeeding from and supported by tertiary legal materials such as dictionaries or encyclopedias.

In this study, the data collection method was used using literature study, namely by looking for theories related to the topics discussed and using documentation, namely studying data in the form of documents. The research data that has been collected is then analyzed qualitatively by describing legal materials and then associated with the theoretical perspective of Sadd Al-Dzari'ah through data processing methods with stages including verifying, organizing, editing, analyzing, and concluding. In verifying, the completeness of the data will be checked and then selected selectively, then the selected data will be analyzed in terms of suitability with the topics discussed to produce systematic research (Kasiram, 2010:124). In the organizing stage, data is organized and grouped into chapters according to the discussion. Next, editing is done by rereading the data that has been compiled and adding or correcting if there are deficiencies at the editing stage. Then, in the analyzing stage, rules, legal arguments, and theories are applied to the data that has been compiled so that in the end it produces conclusions regarding the topic of discussion (Adi, 2005:16).

RESULTS AND DISCUSSION

a. Legal Consequences of Breastfeeding Donors in the Perspective of Islamic Law

The term breastfeeding donors in Islam is called *ar-radha'ah asy-syar'iyyah* (breastfeeding based on Islamic ethics). The definition of *radha'ah* according to jumhur scholars such as Abu Hanifah, Imam Malik, and Imam Syafi'i is the entry of breast milk into the stomach of a child who is not more than 2 (two) years old either through the process of direct or indirect breastfeeding. by using a container. In addition, *radha'ah* can also be interpreted as a mahram relationship resulting from breastfeeding by a woman to a baby who is not her biological child (Azzam & Hawwas, 2011:151).

Radha'ah has several pillars and conditions that will affect the legal consequences that will arise. This means that if the pillars and conditions that apply are fulfilled then the radha'ah has legal consequences, but conversely if it is not fulfilled then it will not cause perfect legal consequences and cannot be called radha'ah (Nurizyanti Binti Mohammad Zat, 2019). Scholars agree that the pillars of radha'ah that must be fulfilled to cause legal consequences are Murdhi' (breastfeeding mother), Laban (breast milk), and Radhi' (breastfeeder babies) (Mawardi, 2021).

Meanwhile, regarding the conditions of *radha'ah* that must be fulfilled, scholars have different opinions. The first condition that must be

fulfilled for a Murdhi' (breastfeeding mother) is a human being who is female, so if she breastfeeds someone other than that then the mahram law will not apply as a result of the law of radha'ah, for example, breastfeeding an animal or breastfeeding a human being who is male because a man does not have milk (Rifai & Adinata, 2021). In this case, the scholars agree that every woman's milk creates a mahram law, both those who are adults or those who are not yet menstruating, as well as women who are pregnant or not. The second condition for *Murdhi'* (breastfeeding mother) is life. Life here in the sense that when breastfeeding is taking place it is still alive. In the opinion of the jumhur ulama, it will not create a mahram relationship for a child who breastfeeds a woman who has died through breastfeeding directly or indirectly. However, there is a difference of opinion on this matter, as stated by the scholars from the Malikiyah and Ibn Hazm groups that a child who suckles a woman who has died will still cause a mahram relationship. The third condition for Murdhi' (breastfeeding mother) is a woman who breastfeeds at the age of childbirth. If breastfeeding is carried out by a woman who is less than nine years old or a woman who is old or childless, then this will not cause legal consequences (mahram relationship) (BK, 2014).

Next is the condition regarding Laban (breast milk) which is the cause of mahram law as a result of radha'ah. The first is that breast milk serves as a staple food for babies who are breastfeeding which is filling so the milk plays an important role in the physical development of babies who are breastfed (Maria Ulfa, 2016). Therefore, if breast milk is not a staple food that depends on breast milk for babies who suckle, then this will not have legal consequences and will result in a mahram law. The second element is the purification of breast milk which is related to breastfeeding indirectly through a container, which means that the breast milk is not mixed with other substances. So, if there is a mixture of breast milk and other water then there will be no mahram relationship. This is required based on the opinion of some scholars including Abu Hanifah. Meanwhile, according to the Hanafi school of thought, breast milk that is mixed and cooked so that it changes the nature and condition of the existing breast milk, will not result in a mahram law. Another opinion was also conveyed by Ibn Qasim who stated that if breast milk dissolved in water or other substances is then drunk to babies who are suckling, then there will be no legal consequences. However, Imam Syafi'i thinks that mixed breast milk still causes a mahram relationship if the mixing does

not eliminate the nature and condition of the breast milk itself, but when the mixing mixes with the breast milk it does not cause a mahram relationship. In addition, according to Imam Malik, the purity of breast milk can be seen from the authenticity of the color. If the breast milk is black or any color other than the original color of the breast milk, then the mahram law will not occur (Rumatiga, 2019).

Then regarding the conditions of Radhi' (breastfeeder babies), one of them is that the breastfeeder babies must be alive so that the breastfeeding process runs perfectly because breastfeeding functions as the self-development of the breastfeeding mother so that it will give rise to a mahram law. Second, the age of Radhi' (breastfeeder babies). According to the majority of scholars, babies who are breastfed are still small and must not exceed the age of 2 (two) years because, at that time, breastfeeding is very important for growth and development so it has legal consequences, namely mahram relations. There are several differences of opinion on this matter, including according to Zahiri scholars, breastfeeding that occurs to babies who are more than two years old, even when they are adults, will still lead to a mahram relationship. In contrast to the opinion of Abu Hanifah and Asy-Syafi'i who argue that when a baby has been separated from his mother before he is two years old, even though he still needs breast milk, then breastfeeds another woman, then breastfeeding is still forbidden. While Imam Malik thinks that breastfeeding a baby who is more than two years old, a little or a lot is not forbidden because it is considered water in general and if a baby has been separated from his mother before he is two years old, then breastfeeds another woman then breastfeeding is not forbidden. Third, the drunk milk must reach the stomach of the sucker, where the benefits can be felt. Therefore, if there is breastfeeding where the milk only reaches his mouth or he vomits it out before it has time to enter his stomach, it will not affect the mahram relationship (Faizah, 2019).

Radha'ah leads to the prohibition of marriage because radha'ah has the same legal consequences in marriage as in bloodline relations. In radha'ah, the position of a woman who breastfeeds is the same as that of a biological mother. This means that the law is unlawful for children who are breastfed and children because of lineage. Thus, breastfed children are prohibited from marrying women who are breastfeeding. They are considered mothers of breastfed children, mothers of women who are

breastfeeding because they are grandmothers, sisters of women who are breastfeeding, and husbands of women who are breastfeeding. After all, they are aunts, children descended from women who breastfeed well from the side of boys and girls (grandchildren and so on) because of the presence of siblings, as well as sisters who are breastfed either from the same mother, half-sisters, or just the same father (Hafidzi & Safruddin, 2017). Apart from influencing family relations, this relationship also affects *mushaharah* relations, which means family relations due to marital ties. For example, if a person is prohibited from marrying his father's wife, then this also has an impact on the prohibition of marrying the wife of a breastfeeding father (Mawardi, 2021).

b. Lactashare as a Breastfeeding Donors Institution in Indonesia

Lactashare was founded by Dr. Meralda Nindyasti on May 11 2018 which took place in Malang City, East Java (*Lactashare. id - Temukan Donor ASI dan Ahli Laktasi di sini. Inisiator Wakaf ASI untuk Proses Donor ASI Aman Tepat Cepat dan Sesuai Syari'at.*, 2018). Lactashare aims as an effort to empower women and protect the rights of babies to breast milk who do not get exclusive breastfeeding from their mothers. Lactashare is also an institution whose job is to liaise between donors and recipients of breastfeeding donors and lactation experts ("Lactashare, Aplikasi Penghubung Donor & Resipien ASI," 2019). Lactashare also provides innovation in the field of ASI donors by creating a digital application called Lactashare along with a website, namely www.lactashare.id to make it easier for every layer of society in various regions of Indonesia to access and find out information related to Lactashare and to be able to register as a potential ASI donor by online.

Lactashare also assists parents who have problems with breast milk production through counseling with certified lactation experts both online and offline. Families receiving breast milk donors receive lactation counseling services as a form of support so they are empowered again to breastfeed so that breastfeeding donors are only given as a temporary solution during a critical period for babies or mothers. Lactashare has worked with 47 counselors who are doctors spread across 26 cities and 11 provinces throughout Indonesia (Annisa, 2020). This is also a facility provided by Lactashare to parties outside Malang so that the donor process remains under the supervision of Lactashare.

Lactashare has several important requirements that need to be met by potential breastfeeding donors' mothers, including (*Pekan Menyusui Sedunia*, 2019)

- a. Fill out the health form with the provisions of being physically and mentally healthy, not currently pregnant, having sufficient breast milk for your biological child, being willing to donate at least 5 liters, and not smoking or consuming alcohol before declaring ready to become a breastfeeding donors
- b. Willing to carry out screening or health checks which include DNA swab tests, urine tests, blood tests, and mental health tests to ensure good health which is fully paid for by Lactashare. For breastfeeding donors who have carried out the screening process and the results are negative for the disease, it is verified that they can become breastfeeding donors.
- c. Not currently taking certain supplements or drugs
- d. Must be having and breastfeeding a baby under 6 months old
- e. It is not permissible to give breast milk if the breastfeeding donor or biological baby has a cold until they feel better
- f. Have an excess of 2-3 liters of breast milk for a day

Every registration of prospective breastfeeding donors will be checked and verified through interviews both offline and online. If the prospective breastfeeding donor passes the file selection and medical examination, then a package of breastfeeding donor's equipment will be sent with a different barcode code for each donor's identity. Only recipients of breastfeeding donors under certain circumstances can be accepted (*Lactashare. id - Temukan Donor ASI dan Ahli Laktasi di sini. Inisiator Wakaf ASI untuk Proses Donor ASI Aman Tepat Cepat dan Sesuai Syari'at.*, 2018). Lactashare provides benchmark requirements for recipients of ASI donors as stipulated in Government Regulation Number 33 of 2012 concerning Exclusive Breastfeeding Article 7 which includes medical indications, the mother is not present, or the mother is separated from her baby (*PP No. 33 Tahun 2012 tentang Pemberian Air Susu Ibu Eksklusif [JDIH BPK RI]*, 2012.).

Lactashare also helps provide the donor's identity to donor recipients to distribute donor breast milk that has been pasteurized. Pasteurization is the process of sterilizing viruses and bacteria in donor

breast milk by heating it at 62.5°C for 30 minutes, then immediately cooling it at 25°C for 10 minutes, then cultivating it so that there are no viruses, bacteria, and fungi live in breast milk. After confirming that it is safe, it is stored again in the refrigerator and freezer with medical standards before distribution. The recipient of the breast milk can choose the donor according to his wishes by considering the similarity of religion, gender, domicile, and the age of the baby. Lactashare will only distribute breast milk to recipients with the donor's permission. The donors can agree or not, after receiving information about the identity of the prospective recipient. After obtaining approval from the donor, Lactashare provides support services for the delivery of donor breast milk which is ready to be sent to donor recipients who need it for medical indications. Lactashare as a non-profit organization does not provide tariffs for distributing breast milk to donors. The donors who have submitted their breast milk to Lactashare will receive a breastfeeding allowance in the form of groceries as a form of nutritional maintenance so they can produce quality breast milk while breastfeeding and donating breast milk (Lactashare. id - Temukan Donor ASI dan Ahli Laktasi di sini. Inisiator Wakaf ASI untuk Proses Donor ASI Aman Tepat Cepat dan Sesuai Syari'at., 2018.).

As a form of protection against the legal consequences of the ASI donor process, Lactashare brings together families of donors and recipients of ASI donors to establish friendships because they will become breastfed relatives. Lactashare also holds Sarasehan or Gatherings as donors and recipients of breastfeeding donors which are held every 2 years as a form of effort to maintain a friendship so that we know each other between breastfeeding siblings (Mediatama, 2019). In addition, Lactashare, which issued it, then provided a breastfeeding certificate and a mahram diagram referring to the MUI Fatwa Rule Number 28 of 2013 concerning Breastfee, carried is carried out once a year to donors and recipients of breastfeeding donors by mentioning the names of both. Existing mahram data can be made at any time through the Lactashare website, namely www.lactashare.id if there is an addition or absorption of the donors or recipient family members. This data will be connected to the Population Data System of the Republic of Indonesia and the Data System of the Office of Religious Affairs to prevent inter-mahram marriages from occurring in the future. This certificate is useful for use as proof of lineage which can be accounted for at any time (Lactashare. id - Temukan Donor ASI

dan Ahli Laktasi di sini. Inisiator Wakaf ASI untuk Proses Donor ASI Aman Tepat Cepat dan Sesuai Syari'at.,2018.).

c. Concept of Sadd Al-Dzari'ah

Sadd Al-Dzari'ah means blocking or rejecting an action that is at risk of causing damage. Prevention is done because the damage is prohibited (Dahlan, 2010:236). In other words, Sadd Al-Dzari'ah is an attempt to avoid damage that has been legalized and has provisions in Islam (Djazuli & Aen, 2000:223). In addition, Sadd Al-Dzari'ah is also interpreted as an act of forbidding something permissible according to Islam law, because it has the potential to cause actions that are forbidden. However, on the other hand, Sadd Al-Dzari'ah is part of the rule of jalbul mashalih (attracting benefit or goodness) and is included in the principle category of dar'u al-mafasid (rejecting mafsadat or damage) (Sieny, 2017:101).

The grouping of dzari'ah according to ushul fiqh scholars is divided into two, namely in terms of the quality of mafsadatan (damage) and terms of the type of mafsadatan (Haroen, 1997:163). Dzari'ah when viewed from the quality of mafsadat is classified into four types as stated by Imam al-Syathibi, namely actions that are carried out towards mafsadatan with certainty, permissible actions because they rarely cause mafsadat, actions that are usually at risk of causing harm, and actions that originally contain benefits, but does not rule out the possibility of also causing losses. Whereas dzari'ah when viewed from the type of mafsadatan that appears according to Ibn Qayyim al-Jauziyyah is an act that leads to mafsadatan and an action that was originally permissible but becomes a way of action that is forbidden with intention or not (Effendi, 2005:173).

There is nothing clear and definite in the texts or ijma' of scholars regarding whether or not it is permissible to use Sadd Al-Dzari'ah. Therefore, the basis for taking it is only for ijtihad which is based on careful actions when doing charity and facing clashes between maslahat and mafsadat (damage) and not taking actions that can cause damage (Kawakib dkk., 2021). If an action creates a dominant benefit then it may be done, but if an action causes more dominant damage then it must be avoided. If maslahat and mafsadat are equally strong, then to maintain the prudential principles that apply, provisions in the rule must be taken: (Hidayat, 2022)

"Refusing damage takes precedence over taking benefit".

"If you mix the unlawful with the lawful, then the unlawful defeat the lawful".

As a guide for scholars who take careful steps in doing charity are the words of the Prophet:

"Leave that which doubts you to take that which does not doubt you".

The guidelines for careful action in question are the benefits and harm factors. Jumhur scholars place the benefit and harm factors as a material consideration in determining the law, which accepts the Sadd Al-Dzari'ah method, although the acceptance differs. Malikiyah scholars and Hanabillah scholars state that Sadd Al-Dzari'ah can be accepted as one of the arguments for enforcing syara' law. Whereas the Hanafiyyah and Syafi'iyyah scholars can accept Sadd Al-Dzari'ah as a proposition for syara' law only in certain cases and reject it in other matters. There is a difference of opinion between Malikiyyah and Hanabillah scholars with Hanafiyyah and Syafi'iyyah on the other hand, in arguing about Sadd Al-Dzari'ah there is a reason, namely because there are differences of opinion about intentions and lafadz in contract matters (Syarifuddin, 2004:120). Hanafiyyah and Syafi'iyyah scholars think that in a contract what is seen and measured is the contract, not the intention of the person making the contract. If the contract that applies between two people has fulfilled the pillars and conditions, then the contract is valid. Meanwhile, the intentions hidden in the contract must be fully surrendered to Allah SWT. as long as there is no visible indication of the perpetrator's intent. This is different from the views of the Malikiyah and Hanabillah scholars who argue that an action is measured as valid or not by the intention, purpose, and consequences of the action itself. Whereas the Zahiriyyah scholars reject Sadd Al-Dzari'ah as one of the arguments in enforcing Sharia law' because their principle is to only act based on literal texts and not accept the interference of logic regarding legal matters (Haroen, 1997:165).

d. Analysis of the Legal Consequences of Breastfeeding Donors in the Lactashare Perspective of Sadd Al-Dzari'ah

Lactashare as an institution engaged in the field of breastfeeding donors in Indonesia has the goal of building a breast milk bank that has facilities and is validated as safe, precise, reliable, fast, and by medical regulations and Islamic sharia (*Lactashare.id - Temukan Donor ASI dan Ahli Laktasi di sini. Inisiator Wakaf ASI untuk Proses Donor ASI Aman Tepat Cepat dan Sesuai Syari'at.*, 2018). The emergence of breast milk banks like Lactashare nowadays certainly raises some doubts in society, especially Muslims, such as questions regarding the status of mahrams that arise as a legal result of the presence of breastfeeding donors which of course raises concerns about the marriages between breastfeeding relatives which are forbidden in Islamic law in the future day.

After studying further the breastfeeding donor process at Lactashare, it can be understood that the breastfeeding donor process at Lactashare fulfills the criteria of *radha'ah* in Islam. In the MUI Fatwa Number 28 of 2013 concerning Breastfeeding Donors, it has been stated regarding breastfeeding donors who can lead to mahram status, including (Ulum, 2017)

- a. The maximum age for babies who receive donor breast milk is 2 years
- b. The donor's identity is known
- c. The amount of breast milk consumed has reached at least 5 feedings. The five feedings that are meant are if the baby feeds the nursing mother then the milk is drunk a little, then stops, and then the baby returns to breastfeeding, then one feeding is counted. It cannot be an apparent separation that separates the layers dated by an apparent separation. However, if the milk has reached the baby's cavity, it is called one feeding, and five feedings are not enough to fill you up, then this breastfeeding cannot lead to a mahram relationship (Asy-Syafi'i, 2002:29).
- d. How to breastfeed can be done directly or indirectly
- e. Breast milk is consumed until full

Lactashare implements mahram registration for the donors and recipient families who have carried out the breastfeeding donor process and have fulfilled the requirements as stipulated in the MUI Fatwa Number 28 of 2013 concerning Breastfeeding Donors as a condition for fulfilling mahram status between the two. Therefore, Lactashare feels confident in providing breastfeeding donor services to medical principles and also Islamic law (*Lactashare. id - Temukan Donor ASI dan Ahli Laktasi di sini. Inisiator Wakaf ASI untuk Proses Donor ASI Aman Tepat Cepat dan Sesuai Syari'at.*, 2018).

Prof. Dr. Wahbah Az-Zuhaili thinks that it is better to avoid breastfeeding donors because it is feared that the ownership of breast milk obtained through a breast milk bank cannot be identified (Sabiq, 1990:103). In his book entitled Figh Islam Wa Adillatuhu, Wahbah Az-Zuhaili stated that the prohibition of marriage as a result of breastfeeding creates a mahram status because a woman's breast milk affects the growth and development of the body physically and spiritually in babies who are breastfed. In essence, according to Wahbah Az-Zuhaili, drinking breast milk from mothers breastfeeding whose identity is not clear is not permissible because it will result in unshari'ah mixing of lineages and will create a mahram relationship between the donors and the recipient of the breastfeeding donor even without direct breastfeeding. Therefore, to overcome this, Lactashare innovates to make a breast milk bank different from others by establishing a breast milk bank that is by medical and shari'a principles by providing and issuing mahram certificates so that later it will clarify the identification of breastfeeding siblings as legal protection, so there is no need to worry anymore about the clarity of the identity of the donors or recipient of breast milk. In addition, Lactashare only offers breastfeeding donors as a last resort when efforts to consult with a lactation expert are fruitless (Annisa, 2020).

The practice and process of breastfeeding donors need special attention because breastfeeding donors have a direct impact. Lactashare is very careful about the consequences that will occur, namely the occurrence of a mahram relationship or marriage between breastfeeding relatives. The breastfeeding donor process carried out by Lactashare when viewed from an Islamic legal perspective, it can be said that Lactashare does follow the rules of Islamic law and positive law in Indonesia, namely the MUI Fatwa Number 28 of 2013 concerning Breastfeeding Donors which is also by the perspective of Sadd Al-Dzari'ah. This is reflected in the use of the precautionary principle which is upheld starting from the registration, recruitment, and selection carried out for ASI donors until the issuance of

breastfeeding certificates which will be valid evidence that a mahram relationship has occurred and results in a ban on marriage between donors and recipients of donors. As previously explained in the description above, prospective donors must meet the requirements for passing health eligibility and screening, handling breast milk which must be pasteurized, and ensuring that the good nutritional content in it does not change or disappear, as well as distribution and direct supervision by Lactashare for the certificate issuance process breastfeeding as written evidence that prohibits marriage between breastfeeding relatives, applies as stated in Islam that requires every muamalah interaction to be recorded (*Lactashare. id - Temukan Donor ASI dan Ahli Laktasi di sini. Inisiator Wakaf ASI untuk Proses Donor ASI Aman Tepat Cepat dan Sesuai Syari'at.*, 2018).

In the distribution process, Lactashare will only distribute breast milk donors from the Lactashare storage office for the Malang and Jakarta city areas, while outside these two cities, Lactashare will only connect donors and recipients to establish communication and suggest taking it directly to the donor's house as a form of intention well, if the conditions of disbursement have been met. (Zahro, 2020). This is a weakness in legal protection because the supervision process by Lactashare if distribution is outside cities other than Malang and Jakarta is only limited to reporting the number of breastfeeding that has been drunk from the recipient's family who has received breast milk from the donor. Besides that, in the direct supervision process carried out by Lactashare, it is not known whether the supervision lasts for 24 hours or not, because basically, this can be a gap where there is a risk of the breastfeeding process that is not by the available data, for example when the recipient's mother gave her breast milk donors to someone else without Lactashare's knowledge. This can pose a risk of spreading radha'ah relationships which are prohibited in Islam due to the absence of Lactashare supervision so that legal protection against the risk of breast milk donors being carried out cannot be completely eliminated.

According to Wahbah Az-Zuhaili, the purpose of the Shari'at on breastfeeding (*radha'ah*) is to safeguard lineage because breast milk bank is a way to mix lineages which is at risk of causing harm, so it is recommended to avoid this so that this does not happen, poses a greater danger. (Sabiq, 1990). Yusuf Qardhawi also expressed his opinion and advised Muslims to always be careful in donating breast milk because it is

related to mahram and lineage. Thus, breastfeeding donor can only be done in an emergency, for example when a baby needs breast milk, then the last way that must be taken is through breast milk donors while still applying the precautionary principle as a reflection of Sadd Al-Dzari'ah so that the mafsadatan risks that arise can be minimized. (Aini, 2021).

As stated by Imam al-Syathibi, breastfeeding donors are included in actions that initially contain benefits but may also cause harm. Meanwhile, when viewed in terms of the type of mafsadat that appears according to Ibn Qayyim al-Jauziyyah, it is an act that leads to a mafsadatan. Analysis of Sadd Al-Dzari'ah's accusations about breastfeeding donors is by the opinion of Malikiyyah and Hanabillah scholars who state that Sadd Al-Dzari'ah can be accepted as one of the arguments in establishing syara' law because an action is judged to be valid or not with the intention, purpose, and consequences of the act itself. Breastfeeding donation is an act that can cause legal consequences, in which case it contains mafsadat (damage). Meanwhile, if viewed from the intention and purpose, the breastfeeding donor contains maslahah (benefits), namely to help recipients who need it for their survival and help recipient mothers who experience problems in the lactation process. So it can be concluded that breastfeeding is an act that is equally strong in causing mafsadat and maslahah simultaneously, so the precautionary principle that applies in Sadd Al-Dzari'ah provisions must be taken according to the applicable rules, namely rejecting mafsadat is more important than taking benefit, therefore, with the risk of legal consequences for breastfeeding donors in Lactashare which allows for harm to occur, which risk cannot be eliminated even though Lactashare has made efforts to minimize it. So, with all the consideration of the existence of risks and supported by the opinion of Prof. Dr. Wahbah Az-Zuhaili, then donating breast milk at Lactashare must still be avoided because basically, Sadd Al-Dzari'ah is an act of refusing or obstructing a case that risks becoming a path to an act that causes mafsadatan (damage).

CONCLUSION

Based on the discussion described above, it can be concluded that the breastfeeding donors process at Lactashare is based on the provisions of radha'ah in Islam and the MUI Fatwa Number 28 of 2013 Concerning Breastfeeding Donors does have legal consequences in which this becomes a way of causing mafsadatan (damage), such as the emergence of radha'ah relationships so that the law is forbidden to marry between siblings, so it must be avoided because it is forbidden.

After an analysis using the perspective of Sadd Al-Dzari'ah, the final results show that the risk due to the legal consequences of breastfeeding donors in Lactashare can be minimized by practicing breastfeeding donors by Islamic law with the precautionary principle which is a reflection of Sadd Al-Dzari'ah guided by the opinion of Wahbah Az-Zuhaili and the MUI Fatwa Number 28 of 2013 concerning Breastfeeding Donors, this still cannot completely eliminate the risk of harm (damage) arising as a legal consequence of the process of breastfeeding donors. This risk can arise from a weakness in legal protection because the supervision process by Lactashare if distribution is outside cities other than Malang and Jakarta is only limited to reporting the number of breastfeeding that have been drunk from the recipient's family who have received breast milk from the donor and in the direct supervision process carried out by Lactashare for which the estimated time is not known, whether the supervision lasts for 24 hours or not because basically, this can be a gap where there is a risk of breastfeeding process that is not by the available data, for example when the recipient's mother gives her breast milk to someone else without Lactashare's knowledge. This can pose a risk of spreading radha'ah relations which are prohibited in Islam due to the absence of Lactashare supervision. So, the process of donating breast milk in packaged Lactashare is avoided because, basically, Sadd Al-Dzari'ah is an act of refusing or blocking a case that risks becoming a path to an act that causes mafsadatan (damage).

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DAFTAR RIWAYAT HIDUP



Nama : Ria Anjani NIM 19210012

TTL : Malang, 24 April 2001

Alamat : Jl. Norman Umar RT.07 Kab. HSU

No. Telp : 0856-4662-0119

Email : anjaniria43@gmail.com

Riwayat Pendidikan

No.	Nama Instansi	Alamat	Lulus
1.	SDN Murung Sari 1	Jl. K.H.A. Dahlan	2013
		No.06 Kota Amuntai	
2.	MTs Negeri 2 Hulu Sungai Utara	Jl. Empu Jatmika	2016
		No.214 Kota Amuntai	
3.	MAN 2 Hulu Sungai Utara	Jl. Sukmaraga No. 045	2019
		Kota Amuntai	
4.	UIN Maulana Malik Ibrahim	Jl. Gajayana No.50	2023
	Malang	Kota Malang	