



Legal Aspects of Breast Milk Donation in Indonesia

Mustika Chasanatusy Syarifah^{*1,2,3}, Diana Arum Lisnawati^{1,4}, Nurul Hidayatih⁴

¹*Departemen Ilmu Kedokteran Forensik dan Medikolegal, Fakultas Kedokteran Universitas Nahdlatul Ulama Surabaya, Indonesia*

²*Magister Hukum Konsentrasi Hukum Kesehatan, Fakultas Hukum Universitas Hang Tuah Surabaya, Indonesia*

³*KSM Forensik dan Medikolegal RS Bhayangkara H.S. Samsoeri Mertojoso Surabaya, Indonesia*

⁴*Unit Penelitian dan Pengabdian Kepada Masyarakat, Fakultas Kedokteran, Universitas Nahdlatul Ulama Surabaya, Indonesia*

Jl. Raya Jemursari No. 51 - 57 Surabaya, Jawa Timur, Indonesia

Jl. Arif Rahman Hakim No.150 Surabaya, Jawa Timur, Indonesia

Jl. Ahmad Yani No. 116 Surabaya, Jawa Timur, Indonesia

Corresponding author: Mustika Chasanatusy Syarifah

Email: mustika4n6@unusa.ac.id

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ABSTRACT

Breast milk is the ideal source of nutrition for infants, supporting optimal growth and development. Beyond its nutritional value, breast milk plays a crucial role in strengthening infants' immunity and fostering emotional bonds between mother and child. Breast milk donation provides an alternative for infants who cannot receive exclusive breastfeeding from their mothers. This study analyzes the importance of breast milk donation, the legal framework governing the practice, and its perspective in Islamic law. This study uses a normative legal research method by conducting searches of regulations and literature related to the problems. The results of this study state that breast milk donation is important for babies who cannot get exclusive breast milk from their mothers for many reasons. Regulations on breast milk donation have been regulated in Indonesian law and are also permitted in Islamic law with proper recording.

Keywords: Breast milk; Breast milk donation; Law; Ethics, Islam.

Introduction

Breast milk is the most important thing in fulfilling the nutritional needs of infants; in addition to providing significant health benefits, it also contributes to the optimal growth and development of children [1] and prevents malnutrition [2]. However, not all mothers can provide exclusive breastfeeding to their babies due to medical, social, or certain conditions that can hinder the breastfeeding process. In this condition, breast milk donation can be an alternative to overcome these challenges [3], ensuring that babies continue to receive optimal benefits from breast milk.

In Indonesia, the practice of breast milk donation has received special attention in the legal realm to ensure its safety for recipients and regulate various ethical and moral aspects involved in this practice [4]. The Health Law stipulates that from birth to the first six months of life, all babies can receive exclusive breast milk unless medical indications require other alternatives. According to WHO, breastfeeding can be continued until the age of two years, accompanied by the provision of complementary foods (MPASI) [5][6]. This regulation aims to ensure the safety and sustainability of breast milk supply for babies in

need and to maintain ethics and morality in breast milk donation.

This practice also considers legal aspects such as kinship in Islamic law, where breastfeeding by another mother can have legal implications for mahram relations [7]. In addition, health law emphasizes the need for health tests to ensure that breast milk is free from infectious diseases, as well as mechanisms to ensure that breastfeeding is carried out safely and ethically.

In addition, the Indonesian Ulema Council (MUI) Fatwa Number 28 of 2013 also serves as a guideline in implementing breast milk donation, especially in ensuring that this practice does not harm the relationship between the recipient and donor families. As one of the mechanisms for managing breast milk donors, breast milk banks must meet strict standards by collecting, storing, and distributing breast milk to ensure the safety and quality of breast milk given to recipient babies [8].

With clear regulations and strict supervision, breast milk donation can be an effective solution for babies in need without neglecting the legal, health, and ethical aspects that apply. Therefore, understanding the legal aspects of breast milk donation is very important for the community, health workers, and parties involved in this practice to carry out the breast milk donation process safely and follow applicable provisions. This study will analyze and provide insights into the importance of breast milk donation, its legal framework, and its perspective within Islamic law.

Methods

This study uses a normative legal research method by examining library materials or secondary data as basic material for research by conducting searches of regulations and literature related to the problems. Secondary data analysis was carried out using normative qualitative juridical.

The secondary data were obtained through a literature study from national legal sources, Indonesian Ulama Council (MUI) Fatwa, and international regulations on breast milk donation.

Results and Discussion

Breast milk is the best natural food for babies; it provides optimal nutrition, increases immunity, and forms an emotional bond between mother and child [9]. WHO recommends exclusive breastfeeding for the first six months, followed by breast milk and complementary foods until two years or more. However, in cases where the mother cannot provide

breast milk, breast milk donation is a solution that can help babies continue getting the best nutrition.

Donor human milk is superior to formula. Typically, human milk donors are parents who have delivered their babies at term and provide mature milk [10]. Human milk contains Epidermal Growth Factor (EGF), a significant growth-promoting substance in humans and crucial for infants. Although human milk donors have relatively lower levels of EGF, the formula contains little to no EGF. Research has shown that EGF concentrations are reduced during the first 60 days of life in infants who are exclusively fed formula compared to those who are exclusively fed human milk [11]. The research indicates that the absence of an EGF in the formula may have health implications for humans. Short periods of formula feeding have been linked to a higher risk of Necrotizing Enterocolitis than infants who receive only parent-owned milk [12][13]. Even breast milk donations are superior to formula, but they have become an obstacle/challenge to our society and government policy [14].

In addition to the biological aspect, breastfeeding practices have significant social and legal dimensions. In Islam, the Qur'an Surah Al-Baqarah verse 233 provides comprehensive guidance on the breastfeeding period, children's rights, and the relationship between breastfeeding mothers and babies. Thus, a deep understanding of the Islamic perspective is crucial in formulating breast milk donation policies and practices following religious and legal values.

Legal Aspects of Breast Milk Donation in Indonesia

Children's rights have been outlined in the child protection law; it can be understood that children's rights are part of human rights whose existence must be protected and fulfilled by all parties, including parents, family, society, and the government [15].

One way to fulfill a child's fundamental rights is to provide exclusive breast milk (ASI) to babies for the first six months after the baby is born [16]. For this reason, the government is responsible for establishing policies to guarantee children's rights [15].

Regulations related to breast milk donation in Indonesia have been regulated in several laws and regulations;

1. Article 42 Indonesian Health Law (UU Kesehatan) Number 17 of 2023, regulates babies' exclusive access to breast milk.
2. Article 24 Indonesian Health Law (UU Kesehatan) Number 28 of 2024, explains the

conditions under which breast milk can be excluded.

3. Article 27 Indonesian Health Law (UU Kesehatan) Number 28 of 2024, regulates breast milk donation, including donor and recipient identity requirements, and prohibits selling and purchasing breast milk.
4. Regulation of the Minister of Health (Peraturan Menteri Kesehatan) Number 15 of 2013 regulates the management of breast milk banks, from collection and storage to distribution.

Islamic Perspective and Fatwa of the Indonesian Ulama Council on Breast Milk Donation

In Islam, breast milk donation is allowed with the note that the breastfeeding relationship needs to be adequately documented to avoid marriage between individuals who have mahram relationships due to the breastfeeding process [17]. Breast milk donation is increasingly receiving attention in the context of maternal and child health. Islam strongly recommends the provision of breast milk as stated in the Qur'an Surah Al-Baqarah verse 233 [18]. The Indonesian Ulama Council has issued a fatwa that allows the existence of breast milk banks with the condition that its management follows Sharia principles [19].

First, regarding the permissibility of breast milk donation, most scholars agree that breast milk donation is permitted in emergencies, namely when the baby's life is threatened if they do not receive breast milk. The permissibility of breast milk donation is based on the *maslahah* (benefit) principle, where the main goal is to save lives. Second, another important aspect is the recording of lineage. Given the potential for forming mahram relationships through the provision of breast milk, the lineage recording must be done clearly and accurately. Lineage record aims to avoid marriages that Sharia prohibits in the future. Third, the existence of breast milk banks as facilities for distributing donor breast milk also needs to be adequately regulated. The management of breast milk banks must meet sharia principles, such as honesty, justice, and transparency. Complete recording of the identities of breast milk donors and recipients is essential to ensure the safety and sustainability of the breast milk donation program [20].

Ethics and Morality in Breast Milk Donation

Based on Government Regulation Number 33 of 2012 concerning Exclusive Breastfeeding, breast milk donation must be carried out based on religious norms and considering socio-cultural aspects, quality, and safety of breast milk [16]. The result is that breast milk donation practices must pay

attention to several ethical and moral aspects [7][16][21]:

1. Priority of Infant Welfare: Infants receiving breast milk must be ensured to get the best benefits without health risks [22].
2. Confidentiality and Transparency: The identities of donors and recipients must be well documented to avoid legal and social problems.
3. No Commercialization Elements: Breast milk may not be traded and must be given voluntarily for the sake of humanity.

Legal Consequences of Violation of Breast Milk Donation Practices

Regarding the activity of buying and selling breast milk, if viewed by Islamic law, it cannot be categorized as a prohibited norm. Based on positive law in Government Regulation (Peraturan Pemerintah) Number 33 of 2012, it can be categorized as a prohibition norm but not a criminal act because it does not meet the elements of formulating a criminal act. The Government Regulation also has no provisions regarding sanctions in the administrative, civil, or criminal realm. The matter of mothers who buy and sell breast milk cannot be held criminally responsible based on the principle of legality [23].

Then, the practice of breast milk donation cannot be separated from the role of medical personnel. It is essential to comply with the screening requirements and procedures not to endanger the condition of the donor mother and the recipient baby. Although breast milk donation is allowed, it must be based on mature medical considerations and clear objectives in its implementation [21]. Violations of breast milk donor regulations can be subject to sanctions, including:

1. If negligence in breast milk health testing causes the baby to contract a disease, the breast milk bank and health workers can be subject to administrative or criminal sanctions [24].
2. Based on Indonesian Law No. 17 of 2023, obstructing the exclusive breastfeeding program can be punished with imprisonment of up to one year or a maximum fine of IDR 50,000,000 [25][26].

Conclusion

Breast milk donation is a solution for babies who cannot get breast milk from their biological mothers. However, this practice must be carried out following applicable regulations to ensure the safety and health of the baby and avoid legal implications, especially from an Islamic perspective regarding kinship and mahram relationships. With strict

policy implementation and high ethics, breast milk donation can be a positive step in supporting the health and welfare of babies in Indonesia.

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