



Received: 30 September 2023

Revised: 20 December 2023

Accepted: 28 January 2024

<sup>1</sup> **Affiliation:** Faculty of Law, Universitas Muslim Indonesia, Makassar, Indonesia

<sup>2</sup> **Affiliation:** PhD student, Birmingham Law School, University of Birmingham, United Kingdom

**\*Corresponding author:** Department of Civil Law, Faculty of Law, Universitas Muslim Indonesia, Makassar, Indonesia

E-mail: [marsy@umi.ac.id](mailto:marsy@umi.ac.id)

## LAW & SOCIAL POLICY | RESEARCH ARTICLE

# Law of Trading in Mother's Milk Perspective of Shafi'i Mazhab In Makassar

Muhammad Arsy <sup>1\*</sup>, Normiati Normiati <sup>2</sup>

**Abstract:** This study aims to determine the factors and analyze to find out the legal basis regarding trade in mother's milk. And to find out the views of the schools of thought regarding the Trade of mother's milk. This research uses normative research methods. Data collection in this study is the view of the schools of thought regarding the Trade of mother's milk (breast feed). The results of this study indicate that Imam Hanafi and Hanbali that Trade in mother's milk is prohibited, because mother's milk is a part of the human body as well as blood, eyes and other body parts. In addition, mother's milk is also not a market object that can be traded, so it is forbidden to be traded. Meanwhile, according to Iman Maliki and Imam Syafi'i, it is permissible to buy and sell mother's milk, because mother's milk is a sacred object and can be used for babies, and it is lawful to drink it, so it can also be traded like sheep's milk. In addition, the difference is in the sacred as a condition for the validity of the object being traded and having a sale value. Imam Maliki and Shafi'i made it sacred and useful as a condition for the validity of the object being traded. Meanwhile, according to Imam Hanafi and Hanbali that sacred objects cannot necessarily be traded, for example natural water. Likewise with breast feed.

**Keywords:** Trade Law; Mother's Milk; Breast feed;

## 1. INTRODUCTION

Which is to perfect the sharia of the previous prophets. The teachings of Islam are very detailed in regulating human life, including the issue of *radha'ah* and the sharia law governing *mahram* relationships caused by breastfeeding which has legal consequences for the prohibition of marriage (Bin & Al-Sheikh., 2004). The *fiqh* scholars are unanimous in stating that breastfeeding should be paid for a maximum of two years. According to the *fiqh* scholars, the calculation of the mother's wages starts from the end of the husband and wife's relationship to the end of the iddah period or the death of the husband. If the breastfeeding is hired out to someone else, then the calculation of the wage begins when the contract between the two parties is agreed upon, because according to the fuqaha', the breastfeeding is under an *ijarah* contract (wage and salary) (Bin & Al-Sheikh., 2004).

In Indonesia, the Trade of mother's milk has been widespread in major cities, such as Jakarta, Surabaya, Batam, and several other cities. This is related to the regulation of the order regarding exclusive breastfeeding, as stipulated in Government Regulation Number 33 of 2012 concerning exclusive breastfeeding, which explains that every mother who gives birth must provide exclusive breastfeeding to the baby she gave birth (Doherty et al., 2020; Haider et al., 2021; Hamnøy et al., 2023). As well as the awareness of the benefits of breastfeeding for both the development of the baby and the mother herself.

As widely discussed in various studies conducted by health experts, where it is shown that children whose babies consume mother's milk are much smarter than those who do not consume mother's milk and suction on the mother's nipple will stimulate the release of Prolactin hormone and Oxytocin hormone (Aderibigbe & Lucas, 2023; Nawroth et al., 2018). Prolactin hormone that functions to produce mother's milk. And the hormone oxytocin which functions to secrete mother's milk and stimulate contractions continues to accelerate the cessation of postpartum bleeding and reduce other risks for both baby and mother. So mother's milk is the only food that is best for babies (Fair et al., 2021; Kimani-Murage et al., 2021).

This becomes a problem when it happens to a mother who cannot provide mother's milk to her baby exclusively due to several factors, for example, a mother who has a disease so that her milk cannot come out or other reasons. From these causes, mother's do various ways in order to provide the best food for their children, namely by looking for breastfeeding mother's. Meanwhile, there are some mother's who have excess mother's milk. They take the initiative to donate their mother's milk with the aim of helping babies who do not get mother's milk.

Moreover, if the mother has some difficulty that prevents her from breastfeeding her child, such as not being able to breastfeed her child because her milk is diseased, then the baby must automatically be breastfed by someone else by paying the breastfeeding mother a fee (Mas'ud, 2007). With this information, it is clear that breastfeeding the child is not obligatory on the mother. Rather, it is Sunnah. Allah commands or recommends that the mother breastfeed first because mother's milk is better for her own child than other people's milk (Mas'ud, 2007).

Giving wages to breastfeeding mother's in a proper manner is justified by Islam (Cornell, 2022; Kottek, 1989). This is as explained in the verse of the Qur'an which means which reads "And if you want to breastfeed your child to someone else, then there is no sin for you to give payment or a proper wage" (Bin & Al-Sheikh., 2004). Hiring or giving wages means giving compensation for the return of the benefits of the labor of others according to certain conditions. There are certain pillars and conditions. The pillars and conditions of hiring wages are: the person who makes the contract (has the requirement of being intelligent and not forced), something that is rented is required that the benefits can be felt by both parties (Mas'ud, 2007).

When viewed from both the terms and conditions of Trade in terms of Sharia, mother's milk can certainly be categorized as an object that can be traded. This is proven by the fact that mother's milk is not an unclean object or other things that can damage the terms and conditions of Trade. However, in this case it becomes very unique to be discussed because there are differences of opinion among the *Madzhab*. In the book *Tafsir Hukum Tema Kontroversial*, it is explained that mother's milk may be purchased (Kau, 2013). Sale and purchase of mother's milk On the one hand there are those who forbid it, namely: Imam Al-Kasani's opinion (*Hanafiyyah*) and on the other hand there are also those who allow it, namely Al-Khatib Ash-Sharbini (*Shafi'iyah*). First, Imam Al Kasani (*Hanafiyyah*) who does not allow selling human milk in the Book of *Bada'i Al Shana'i* Human milk is not a category of property, so it is not traded.

The second is the opinion of *Imam Al-Khatib Ash-Sharbini (Shafi'iyah)*. He is one of those who allow the sale of mother's milk in the book *Mugni Al-Muhtaj*, and it is valid to sell women's mother's milk because it is pure and can be benefited from, so it is equal to goat's milk. The same applies to the milk that men produce (if possible). This is based on the sanctity of the milk, and this view is the one that has been adopted in the chapter on *najasah*.

According to the principles of *fiqh*, an object that is not forbidden to consume means that it is not forbidden to consume the proceeds of its sale (Pasaribu, 2021). The description above shows that the two figures have different and even opposing opinions, both about the law and others, which is one of the backgrounds of the problems that will be raised in the preparation of this thesis. In addition to that issue, there is an issue regarding the Law of Trade in mother's milk, so what is needed is an impression of the contradiction of the legal reasons for Trade in mother's milk, so on the basis of this disagreement the author intends to examine and study the Law of Trade in mother's milk in the opinion of *Imam Al-Kasani (Hanafiyyah)* and *Imam Al-Khatib Ash-Sharbini (Shafi'iyah)*.

## 2. Methods

The type of research to be carried out includes normative legal research, namely legal research on legal principles and legal systematics, because the research will analyze the practice of Trade in mother's milk in Indonesia in the perspective of the *Shafi'i Mazhab*.

## 3. Results and Discussion

### *What is the legal basis for Trade in mother's milk*

MUI Fatwa No. 28 of 2013 on the Issue of Mother's milk Donation was made because in the midst of society there is an activity of sharing mother's milk for the sake of fulfilling the nutrition of children who do not have the opportunity to get their own mother's milk, either due to the lack of mother's milk supply of the biological mother, or other reasons that do not allow access to mother's milk for children. Nowadays, the need for mother's milk supply is very necessary, with circumstances and conditions that do not allow babies to get mother's milk such as the death of the

mother or the mother does not produce milk. So the problem of the need for mother's milk donors for babies who are difficult to get mother's milk becomes an emergency problem. There is an initiation from the community to coordinate the movement of various mother's milk and mother's milk donors, as well as a question that must be answered by the Indonesian Ulema Council regarding religious provisions on the issue of mother's milk donation to be used as a guide in activities. As for the explanation of mother's milk donation, the Indonesian Ulema Council stipulates that (Fatwa Majelis Ulama Indonesia, 2013).

1. A mother may breastfeed a child who is not her biological child. It is also permissible for a child to receive mother's milk from a mother who is not his biological mother, as long as she fulfills the *shar'i* requirements.  
It means that the obligation of a mother to breastfeed her child is because mother's milk is the best food and drink naturally and medically (DiLauro et al., 2016). herefore, Islam also provides support to provide help to all those who are weak, whatever the cause of their weakness. Especially when it comes to premature babies who have no power and strength. All that is done so that the baby gets the development that is in accordance with the needs of the baby and improves the quality of life in the future, it is necessary to have the role of the community, especially women who have mother's milk fertility to be given to babies in need with provisions in accordance with the guidelines of the Fatwa Majelis Ulama Indonesia and Government Regulations.
2. The permissibility of giving and receiving mother's milk must fulfill the following conditions:
  - a. Mother's who breastfeed must be healthy, both physically and mentally. It should be noted that breastfeeding will affect the child physically and psychologically. Therefore, if you want to breastfeed your child to another woman, Islam recommends that parents entrust their children to pious and intelligent women in order to form a better generation. This provision agrees with the author because mother's milk is an indispensable intake for the growth of babies who are not yet two years old, so it is recommended to choose a mother who is healthy both physically and mentally because these provisions greatly affect the health of the baby and the personality of the milk child in the future.
  - b. Mother's who are not pregnant and breastfeeding must be well nourished because there is a fear of malnutrition. A mother who is pregnant and breastfeeding needs to eat foods with higher protein and carbohydrate content, as this requires additional energy.
3. Breastfeeding as referred to in provision number 1 causes *mahram* (haram of marriage) due to *radla'ah* (breastfeeding). Breastfeeding that is not from the biological mother will result in breastfeeding siblings with this provision, it can forbid marriage, this is explained in the Prophet's hadith which meaning: The women who are forbidden because of breastfeeding are the same as those who are forbidden because of blood relationship (Al-Fauzan, 2005).
4. *Mahram* due to breastfeeding as in number 2 is divided into eight groups as follows:
  - a. *Ushulu Al-Syakhsi* (the base or parent of one's descendants), namely: The breastfeeding mother (mother's milk donor) and the mother of the breastfeeding mother continuing upwards (grandmother, great-grandmother and so on).
  - b. *Al-Furru' Min Al-Radhaa'* (descendants of a breastfed child), namely: The breastfed child himself, then the child of the breastfed child continues down (grandchildren, great-grandchildren and so on).
  - c. *Furru' Al-Abawaini min Al-Radhaa'* (descendants of breastfeeding parents), viz: Children of the breastfeeding mother, then the children of the children of the breastfeeding mother and so on downwards (grandchildren and great-grandchildren).
  - d. *Al-Furru' Al-Mubaasyirah Min Al-Jaddi wa Al-Jaddati min Al-Radhaa'* (descendants of breastfeeding grandparents), namely: Aunts who are the siblings of the mother's milk donor's husband and aunts who are the siblings of the mother's milk donor's mother. As for their children, they are not *mahrams* in the same way as the children of an uncle or aunt from the same lineage.
  - e. *Ummu Al-Zawjah wa Jaddaatiha min Al-Radhaa'* (breastfeeding mother of the Wife and her ancestors), i.e.: The breastfeeding mother (mother's milk donor) of the wife, then the mother of the wife's breastfeeding mother up to the top (ancestors).
  - f. *Zawjatu Al-Abi wa Al-Jaddi min Al-Radhaa'* (the wife of the father of the breastfed child and his maternal grandfather), namely: The wife of the mother's milk donor's husband (the second, third or fourth wife of the mother's milk donor's husband), then the wife of the mother's milk donor's husband's father and above (the second, third or fourth wife of the mother's milk donor's husband's father up to his grandparents).
  - g. *Zawjatu Al-Ibni wa Ibni Al-Ibni wa Ibni Al-Binti min Al-Radhaa'* (the wife of the son of the breastfeeder and the wife of the grandson of the breastfeeder and the son of the

daughter of the breastfeeder), ie : The wife of the child of the doula, the wife of the grandchild of the doula and so on downwards (great-grandchildren and so on). Similarly, the wife of the son of a daughter of the same sex and so on downwards (grandchildren, great-grandchildren and so on).

- h. *Bintu Al-Zanjah min Al-Radhaa' wa Banaatu Awlaadibaa* (the wife's breastfeeding daughter and the granddaughter of her son's breastfeeding daughter), namely: the breastfeeding daughter of the wife (if the wife donates mother's milk to a daughter, then if the husband of the wife has had intercourse, the breastfeeding daughter of the wife becomes a *mabram*, but if the husband has not had intercourse, the breastfeeding daughter of the wife does not become a *mabram*). The same applies to the daughter of the son of the wife's breastfeeding daughter downwards (great-grandchildren and so on).

The above statement explains the eight groups of *mabrams* that occur as a result of breastfeeding. There are women who are permanently forbidden to marry a man, which is called the eternal prohibition, and women who are temporarily forbidden to marry a man, which is called the temporal prohibition. There are three reasons for the eternal prohibition of women, namely kinship, continuity and breastfeeding, while the temporal prohibition of marrying a woman has five causes, namely marrying a woman to bring polygamy between two *mabrams*, the existence of other people's rights depending on the woman who wants to marry, a husband who divorces a married woman three times, a man marries four free women other than the wife he married, and women who are not of the heavenly religion (Thariq, 2019).

5. *Mabram* (forbidden marriage) occurs as a result of *radla* (breastfeeding) if :
  - a) The age of the child receiving breastfeeding is a maximum of two *qamariyah* years. In this case, if a mother gives mother's milk to a baby who is not her biological baby, more than two years old, the baby does not make a breastfeeding brother or *mabram*, this is in accordance with the opinion of the scholars that breastfeeding that makes *mabram* is only for babies under two years old because milk is the basic food for the baby and satisfies the baby.
  - b) The mother's milk donor mother's identity is clearly known. To prevent the occurrence of marriage due to breastfeeding, Government Regulation of the Republic of Indonesia Number 33 of 2012 concerning Exclusive Breastfeeding regulates that in article 11 paragraph 2 part b says: the identity, religion, and address of the mother's milk donor are clearly known by the mother or family of the baby receiving mother's milk. This is done to minimize the occurrence of forbidden marriages due to breastfeeding.
  - c) The amount of mother's milk consumed for at least five feedings.
  - d) The method of breastfeeding is done either directly to the mother's nipple (*imtishash*) or through milking.
  - e) The mother's milk consumed by the child is filling.
6. Breastfeeding, which brings the law of breastfeeding into effect, is the introduction of mother's milk into the stomach of a child between 0 and 2 years of age by direct breastfeeding or by expressing it.

he relationship of breastfeeding siblings occurs when breastfeeding is to relieve hunger, then this will certainly enter the stomach so that there will be a *mabram* (breastfeeding sibling), The majority of scholars differ in their opinion that breastfeeding is only permissible for children aged 0 to 2 years, because milk is a staple food for infants that can fill them up.
7. It is permissible for a Muslim woman to breastfeed a non-Muslim baby, because breastfeeding a baby who needs mother's milk is part of the kindness between human beings.

Based on number 7 above, it explains that Allah *swt* said in Q.S Al-Maidah / 5: 2 meaning: "And help one another in righteousness and piety, and do not help one another in sin and enmity. The verse explains that it is obligatory for believers to help each other in good deeds and prohibits them from supporting each other in matters of falsehood and cooperation in sin."
8. It is permissible to give and receive remuneration for services in the implementation of mother's milk donation, provided that; (i) it is not for commercialization or sale; and (ii) *ujrah* (remuneration) is obtained as a childcare service, not as a form of Trade in mother's milk.

Based on Article 8 above, it means that it is permissible to receive or give compensation for services in mother's milk donation as long as the compensation is not the result of Trade in mother's milk but rather wages for childcare services. Regarding the issue of Trade in mother's milk, which is currently in the spotlight in the community, it needs to be handled seriously by the relevant parties. The practice of mother's milk donation is common in big cities such as Jakarta and Surabaya. The information is often conveyed through social media to mother's who need the recipient sicalon contact the donor if all agree, they will agree on the mechanism of mother's milk



collection. Mother's milk donation is an alternative solution for mother's who are committed to providing mother's milk but experience obstacles. Among them, mother's who are disabled so that they cannot move their arms and legs and are hospitalized, as well as mother's who are prohibited by doctors to provide mother's milk because it can transmit diseases to babies and of course babies whose mother's die.

The problem of Trade in mother's milk if it is related to the Compilation of Sharia Economic Law (KHES), then the sale and purchase seen from the object is not valid, because when viewed from the differences in opinion of the scholars, the sale and purchase of mother's milk is equated with the sale and purchase of human flesh and it is forbidden (article 78 letter D). But on the other hand, if viewed in terms of the contract, the sale and purchase is permitted, because there is an agreement in an agreement between two or more parties to carry out certain legal actions (article 20, book II) and according to KHES merchandise is interchangeable goods (article 20 book II).

The procedure for Trade in mother's milk or mother's milk donation is as follows:

1. Healthy and have no contraindications to breastfeeding

As is known, mother's milk is one of the main needs of babies, especially babies under 6 months old. Therefore, when consuming mother's milk from a donor, it is necessary to pay attention to the health condition of the donor. It should be noted whether a person has certain health problems. If necessary, get checked by a doctor first. Ask if it is permissible for you to donate mother's milk or if your health condition is healthy enough to become a mother's milk donor.

2. Mother's milk production meets the baby's needs

Quoted from the website of the Indonesian Pediatric Association (IDAI), when you want to become a mother's milk donor, make sure that the mother's baby has fully fulfilled her mother's milk needs. In other words, becoming a donor should only be done when the production is already excessive and does not risk making the child actually lack milk supply.

3. Not currently receiving a blood transfusion

One of the other procedures that you need to know when you want to donate mother's milk is that you are not currently receiving a blood transfusion, especially at least 3 months before the donation. This is because blood transfusions can pose a risk of viral and bacterial contamination that may be transferred through mother's milk. Mother's milk that contains viruses and bacteria is very likely to be transmitted to the baby who consumes it.

4. Not taking certain drugs or herbal supplements Consumption of certain drugs or herbal supplements

is one of the things that needs to be considered by mother's milk donors. Avoid donating if you are regularly taking certain drugs or herbal supplements, especially if the drugs or supplements are feared to affect the components and quality of the mother's milk itself. In addition to drug consumption, other bad habits such as smoking and drinking alcohol also need to be considered when you want to donate mother's milk.

### *Based on the results of research and interviews in writing What are the views of the madhhab on the sale and purchase of mother's milk?*

- a. According to Imam Hanafi MUI

One of the conditions for the validity of objects that are traded is that they are pure and can be utilized based on Shara'. Basically, mother's milk is a pure object, but the *Hanafis* argue that selling mother's milk is not allowed on the grounds that the original law of mother's milk is haram because it is equated with human flesh, human flesh cannot be eaten and it is not permissible to sell it. They also said that anything that is pure cannot be sold. Like water, it cannot be sold unless it has been treated and preserved. Milk that has separated from a woman's breast has become carrion. Islam strictly forbids selling and utilizing carrion. Therefore, separating a woman's mother's milk and storing it in a container, then trading it, is the same as trading in carrion, which is forbidden by Allah, as He says in *Surah al-Ma'idah* verse 3 (see Chapter III page 57) that it is forbidden for you to eat carrion, blood and pork. Based on logical reasoning, mother's milk is not wealth, so it cannot be traded. Mother's milk is part of the human body, and the human body with all its organs is forbidden to be eaten, and it is noble, therefore it does not belong to the glory and honor of human beings to be traded.

- b. According to the view of Imam Maliki

According to Imam Maliki, some of the *Maliki Mazhab* are of the opinion that the sale and purchase of mother's milk is permissible because mother's milk is pure and can be used and drunk. Women may express their milk and store it in a vessel, then give it to the person they are breastfeeding, this is a form of grant or transfer of ownership from her to the baby, everything that

is owned will be transferred ownership, and may be traded. It is permissible to trade mother's milk based on the Qur'an, Sunnah and the evidence of reason, Surah Al-Baqarah verse 275 (see chapter III page 71) that Allah has legalized buying and selling. According to the evidence of reason, mother's milk is pure and can be used and is lawful to drink, so it is also permissible to trade it, just like sheep's milk. Trading mother's milk can bring positive things for mother's and babies who need it, and this is very helpful for those who find it difficult to get mother's milk

c. According to *Imam Syafi'i*

According to *Syafi'i*, in general, Trade can be said to be valid if it fulfills the conditions and pillars, namely that it is pure, can be useful, belongs to the person doing the contract, can be handed over, and the goods can be known. For this reason, according to the *Shafi'is*, the permissibility of Trade in mother's milk is because it is pure and can benefit the baby.

d. According to the view of *Imam Hambali*

According to the *Hanbalis*, the sale and purchase of mother's milk is prohibited, because mother's milk is not considered property, so it is not allowed to take advantage of mother's milk, mother's milk is only allowed in emergencies for babies who cannot obtain nutrition in other ways. This is also because mother's milk is not traded in the market because it is not considered part of property.

Similarities and Differences in Opinions among *Madzhab* Imams on the Sale and Purchase of Mother's milk.

a. It can be seen that the similarities between the two opinions are that in determining the law of Trade in mother's milk, both of them are based on the Al-Quran and As-Sunnah, and if there is no text in these two sources, they determine the law through qiyas in determining the law of Trade in mother's milk by paying attention to the same *illat* between the two. So that the issue of Trade in mother's milk raises new laws that are not found in the Al-Quran and As-Sunnah but are still based on the two sources of law.

In this case Imam Hanafi used qiyas on a law that has no basis in the text. He compared mother's milk to human flesh. And mother's milk is also not considered a valuable item, it is the same as carrion, which becomes nutrition only in times of emergency, and is not a treasure that is allowed to sell it. In addition, Imam Hanafi also mastered the science of *istinbath* (exploring the law) from the hadith, so that he could take the essence that was beneficial to the people, and did not conflict with the text. So it is not allowed in the sale and purchase of mother's milk because it will contain harms that will damage marriage for humans and for the benefit of mankind.

Likewise, Imam Maliki also used qiyas that mother's milk is the same as animal milk, namely goats or cows. Basically, mother's milk is halal to drink and halal to sell.

Based on the explanation above, it can be seen that there are similarities between Imam Hanafi and Imam Maliki, they use qiyas in determining the law regarding the sale and purchase of mother's milk.

b. There is a difference of opinion among the Madhhabs regarding the sale and purchase of mother's milk.

In this difference, there is a valid requirement for the object being traded, according to Imam Hanafi, the valid requirement for the object being traded is pure, while according to Imam Maliki here it can be seen that the goods can be utilized and can be transferred. Thus it can be seen that Imam Hanafi's opinion on the sale and purchase of breast milk is not allowed, even though mother's milk can be drunk by babies, and mother's milk is also not considered a valuable item, it is the same as carrion, which becomes nutrition only when it is an emergency, and is not a property that is allowed to sell it. Likewise, according to *Imam Hanabilah*, the sale of mother's milk is not allowed, because mother's milk is not one of the assets that are traded in the market. Meanwhile, according to Imam Malik, Trade in mother's milk is permissible, because according to him, holy mother's milk is beneficial and can be drunk by babies, even according to him that something that is not forbidden to eat it is not forbidden also the price (the money from the sale). Based on this, the milk is permissible to drink, so the money from its sale is not forbidden. The reason for this is that mother's milk is pure and can be utilized, and it is permissible to drink it, so it can also be traded like sheep's milk. Similarly, according to *Imam Shafi'i*, Trade in mother's milk is permissible because mother's milk is pure and can be used for babies who need it.

Thus, it can be said that the *Hanafis* and *Hanbalis* look more at the sale of mother's milk on the sanctity of the object and the damage to the marriage that occurs when the sale of mother's milk takes place, while the *Maliki* and *Shafi'i* look at the benefits of the goods being traded.

Based on the opinions among the Imams above, it is known that mother's milk brings benefits to the baby, so it is very good for the baby's health and development. However, there is another solution to keep getting mother's milk by changing the contract. The contract used is not a sale and purchase contract but a wage contract, this is as explained in QS. al-Thalaq Ayatt 6 that "When they have suckled your children, then give them their wages". Thus it is clear that in certain conditions

we may look for breastfeeding mother's who are willing to be foster mother's as well as breastfeeding mother's, so that here will create the nature of helping each other among humans in need, as in the word of Allah in Surah Al-Maidah verse 2. "And help each other in (doing) righteousness and piety, and do not help each other in sin and transgression."

Changing the contract for Trade in mother's milk to hiring or breastfeeding mother's would be better, because if mother's milk is bought and sold, it will bring considerable harm, damage the *nasab* and ruin future marriages. By changing the contract, there is less worry about the baby's health, and we can avoid the harms of Trade in mother's milk.

It should be added that mother's milk that is separated from the mother's breast and given to a biological baby does not rule out the possibility that it is carrion, because this often happens to mother's who often store mother's milk in mother's milk storage to make it easier for them to go about their activities and make it easier for the baby to get mother's milk. And the mother's milk received by the baby is valid if the mother's milk is separated from the breast and collected into a container, because it is only a transfer of place and does not reduce the benefits of mother's milk for the baby and this is only for babies who have a blood relationship to the mother.

This thesis can be concluded as follows: Prostitution continues to grow rapidly from year to year in every region in Indonesia, big cities, small cities, especially in the Makassar City area which is not spared from the practice of prostitution. Many factors influence the development of prostitution practices, both internal and external factors. External factors are factors outside the individual that focus on the environment, which has a correlation with crime, while internal factors are factors that come from within the individual himself.

#### 4. Conclusions and Suggestions

The legal basis for the trade or donation of mother's milk in Indonesia is established through various sources, including religious fatwas, government regulations, and interpretations of Islamic jurisprudence. The Indonesian Ulema Council (MUI) has issued Fatwa No. 28 of 2013, providing guidelines on the donation of mother's milk to address the urgent need for infants who cannot access their biological mother's milk due to various reasons. The Fatwa outlines several key points regarding the permissibility and conditions for giving and receiving mother's milk is a mother may breastfeed a child who is not her biological child, and it is permissible for a child to receive mother's milk from a woman who is not his biological mother, as long as she fulfills certain shar'i requirements. The permissibility of giving and receiving mother's milk is subject to conditions such as the health of the breastfeeding mother, her nutritional status, and the health of the child receiving the milk. Breastfeeding establishes *mahram* relationships, which may affect marriage restrictions between individuals based on breastfeeding relationships. *Mahram* relationships due to breastfeeding are categorized into eight groups, specifying individuals considered forbidden for marriage. *Mahram* relationships occur as a result of breastfeeding if the child is under two years old, the identity of the breastfeeding mother is known, a sufficient amount of milk is consumed, and the method of breastfeeding is appropriate. Breastfeeding, which triggers the legal implications mentioned above, is defined as introducing mother's milk into the stomach of a child between 0 and 2 years of age through direct breastfeeding or expressing. It is permissible for a Muslim woman to breastfeed a non-Muslim baby as an act of kindness between human beings. While compensation for services related to mother's milk donation is allowed, it should not involve commercialization or sale. Remuneration should be considered a compensation for childcare services, not a form of trade in mother's milk. Regarding the sale and purchase of mother's milk, the views of different Islamic madhhabs vary, Hanafi Madhhab: Selling mother's milk is not allowed, as it is equated with selling human flesh, which is considered haram. Mother's milk is not seen as a tradable commodity. Maliki Madhhab: The sale and purchase of mother's milk are permissible, as long as the milk is pure and can be used. It is compared to animal milk and is considered halal. Shafi'i Madhhab: Trade in mother's milk is considered valid if it fulfills the conditions of being pure, useful, owned by the contracting parties, transferable, and recognizable. Hambali Madhhab: The sale and purchase of mother's milk are prohibited, as mother's milk is not considered property and is only allowed in emergencies for babies unable to obtain nutrition in other ways. The legal basis for the trade or donation of mother's milk in Indonesia is grounded in religious fatwas, government regulations, and interpretations of Islamic jurisprudence. The views among different madhhabs on the sale and purchase of mother's milk vary, with some allowing it under specific conditions and others prohibiting it based on different interpretations of Islamic law. The focus on ensuring the well-being of infants and maintaining proper Islamic principles is evident in the guidelines provided.

## References

- Aderibigbe, O., & Lucas, R. (2023). Exclusive breastfeeding in African American women: A concept analysis. *Journal of Advanced Nursing*, 79(5), 1699–1713. <https://doi.org/10.1111/jan.15301>
- Al-Fauzan, S. (2005). *Fiqih sehari-hari*. Gema Insani.
- Bin, A. B. M. B. A., & Al-Sheikh, I. (2004). *Tafsir Ibnu Katsir: Terj. Abdul Ghoffar* (3rd ed.). Pustaka Imam Asy-Syafi'i.
- Cornell, R. E. (2022). Ascetic Spirituality in Islam. In *The Wiley Blackwell Companion to Islamic Spirituality* (pp. 297–315). <https://doi.org/https://doi.org/10.1002/9781118533789.ch16>
- DiLauro, S., Unger, S., Stone, D., & O'Connor, D. L. (2016). Human Milk for Ill and Medically Compromised Infants. *Journal of Parenteral and Enteral Nutrition*, 40(6), 768–782. <https://doi.org/10.1177/0148607116629676>
- Doherty, T., Horwood, C., Haskins, L., Magasana, V., Goga, A., Feucht, U., Sanders, D., Tylleskar, T., Kauchali, S., Dhansay, M. A., Rollins, N., Kroon, M., & Engebretsen, I. M. S. (2020). Breastfeeding advice for reality: Women's perspectives on primary care support in South Africa. *Maternal & Child Nutrition*, 16(1), e12877. <https://doi.org/10.1111/mcn.12877>
- Fair, F. J., Morrison, A., & Soltani, H. (2021). The impact of Baby Friendly Initiative accreditation: An overview of systematic reviews. *Maternal & Child Nutrition*, 17(4), e13216. <https://doi.org/10.1111/mcn.13216>
- Haider, R., Thorley, V., & Yourkavitch, J. (2021). Breastfeeding practices after a counselling intervention for factory workers in Bangladesh. *Maternal & Child Nutrition*, 17(2), e13113. <https://doi.org/10.1111/mcn.13113>
- Hamnøy, I. L., Kjelsvik, M., Bærug, A. B., & Dahl, B. M. (2023). A balancing act—midwives' and public health nurses' experiences with breastfeeding counselling. *Scandinavian Journal of Caring Sciences*, n/a(n/a). <https://doi.org/https://doi.org/10.1111/scs.13198>
- Kau, S. A. (2013). *Tafsir Hukum Tema-Tema Kontroversial* (II). Sultan Amai Press.
- Kimani-Murage, E. W., Wilunda, C., Macharia, T. N., Kamande, E. W., Gatheru, P. M., Zerfu, T., Donfouet, H. P. P., Kiige, L., Jabando, S., Dinga, L. A., Samburu, B., Lilford, R., Griffiths, P., Jackson, D., Begin, F., & Moloney, G. (2021). Effect of a baby-friendly workplace support intervention on exclusive breastfeeding in Kenya. *Maternal & Child Nutrition*, 17(4), e13191. <https://doi.org/https://doi.org/10.1111/mcn.13191>
- Kottek, S. S. (1989). Breast-Feeding in Islam. *Acta Paediatrica*, 78(5), 777–779. <https://doi.org/10.1111/j.1651-2227.1989.tb11143.x>
- Mas'ud, I. (2007). *Fiqih Madzhab Syafi'i*. CV. Pustaka Setia.
- Nawroth, J., Rogal, J., Weiss, M., Brucker, S. Y., & Loskill, P. (2018). Organ-on-a-Chip Systems for Women's Health Applications. *Advanced Healthcare Materials*, 7(2), 1700550. <https://doi.org/10.1002/adhm.201700550>
- Pasaribu, R. H. (2021). *Hukum Jual Beli Air Susu Ibu (ASI) Pendapat*. Universitas Islam Negeri Sultan Syarif Kasim.
- Fatwa Majelis Ulama Indonesia, Pub. L. No. 28, 1 (2013). <https://fatwamui.com/storage/112/No.-28-Seputar-Masalah-Donor-ASI.pdf>
- Thariq, M. (2019). Hak Ex Officio Hakim: Pertimbangan Hukum Hakim terhadap Pembebanan Nafkah Iddah dan Mut'ah dalam Perkara Cerai Talak Verstek Perspektif Maqashid Syariah (Kasus di Pengadilan Agama Kabupaten Malang). *Sakina: Journal of Family Studies*, 3(2 SE-Article). <http://urj.uin-malang.ac.id/index.php/jfs/article/view/264>