

## THE CONTROVERSY OF MILK BANKS: PERSPECTIVES OF YUSUF AL-QARADAWI AND WAHBAH AZ-ZUHAILI

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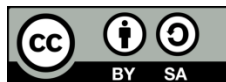
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### ABSTRACT

*This study analyzes the legal status of Breast Milk Banking (ASI) from an Islamic perspective by highlighting the differences in legal approaches between Wahbah az-Zuhaili and Yusuf al-Qaradawi, a theme that still leaves a research gap regarding the limits of radha'ah and the implications of lineage in a modern context. This study uses a library research method with a descriptive-analytical approach through a review of classical and contemporary works, fatwas of scholars, and relevant modern fiqh literature. Data are analyzed through source triangulation and an assessment of the consistency of legal arguments to identify the patterns of ijtihad of the two scholars on the issue of non-direct breastfeeding. The results show that Wahbah az-Zuhaili rejects the practice of Breast Milk Banking due to the potential for mixing lineages and the unclear mahram relationship, considering any form of breast milk entering the baby's body, whether directly or through media, as breastfeeding that has legal consequences. In contrast, Yusuf al-Qaradawi argues that Breast Milk Banking is permissible based on the principle of benefit, because breastfeeding that is not done through direct sucking does not create a mahram relationship. This comparison demonstrates differences in ijtihad methodology: Zuhaili's approach to protecting lineage stems from a precautionary approach, while al-Qaradawi emphasizes the flexibility of Islamic law in addressing contemporary social needs. This study confirms that the legal debate regarding breast milk banking is not only related to technical fiqh issues, but also concerns the methodology of legal istinbath in addressing new phenomena. These findings contribute to the development of contemporary fiqh studies and provide a basis for formulating policies that consider aspects of benefit, infant safety, and clarity of lineage.*

**Keywords:** radha'ah, mahraman, contemporary ijtihad, modern fiqh, milk banks

## 1. INTRODUCTION

The practice of breastfeeding has long held a crucial place in Islamic teachings because it directly relates to meeting infant nutritional needs and establishing the mahram relationship through the process of breastfeeding (*radha'ah*). In Islamic jurisprudence (*fiqh*), breastfeeding is understood not only as a biological act but also has legal consequences that affect kinship structures and marriage prohibitions (Aina, Rusdiyah, & Sa'adah, 2023). This complexity has become even more pronounced with the emergence of breast milk banks, institutions that collect and distribute breast milk to babies in need, especially when the biological mother is unable to breastfeed directly. Social changes such as the increasing number of women working, certain medical conditions, and infant nutritional needs have contributed to the increasing use of breast milk banks in the past two decades (Al Latifa, 2024).

In Indonesia, the existence of breast milk banks has grown in line with growing awareness of the benefits of exclusive breastfeeding for the health of infants and mothers. Various studies have shown that breastfeeding can reduce infant mortality, increase immunity, and strengthen the emotional bond between mother and child (Hidayah & Kumalawati, 2022). However, the emergence of breast milk storage and distribution institutions has raised new issues related to the clarity of donor identity, the potential for mixing bloodlines, and the status of mahram between recipient babies and donor families (Wulan, 2022). These issues have made breast milk banks a serious topic of debate in contemporary Islamic legal discourse.

Although numerous studies highlight the health benefits and medical aspects of breast milk banks, studies on the implications of Islamic law, particularly in the context of differing views among contemporary Islamic scholars, still show a research gap. Some literature emphasizes the technical aspects of breast milk bank management or normative reviews of fatwas, but has not yet examined in depth how the *ijtihad* methodologies of different Islamic scholars yield contrasting legal conclusions (Fery & Hamidah, 2025; Hasan & Shuhufi, 2024). Thus, a comparative analysis is needed to explain the epistemological foundations and arguments of each Islamic scholar in responding to this new phenomenon.

The two most frequently cited figures in the legal discourse on breast milk banks are Wahbah az-Zuhaili and Yusuf al-Qaradawi. Zuhaili believes that any form of breast milk entering a baby's body, whether through direct sucking or other means, carries the legal consequences of *radha'ah*. Therefore, the use of breast milk banks is considered to carry a high risk of disrupting lineage and potentially violating the laws of mahram (Mawardi & Nurcahaya, 2024). Conversely, al-Qaradawi argues that the breastfeeding relationship is only established through direct sucking from the breast, so breast milk given through a bottle or other container does not create mahram consequences (Hidayati & Rohman, 2021). This difference indicates a variation in legal *istinbath* methodology that deserves critical analysis.

This debate is increasingly relevant considering that several international *fiqh* institutions, such as the 1985 Jeddah Congress and the Organization of Islamic Cooperation (OIC), have issued regulations that tend to reject the establishment of breast milk banks due to concerns about confusing lineage. On the other hand, several Muslim

countries have developed breast milk banking models with strict donor registration systems to minimize legal risks (Rouf, 2022). These varied approaches demonstrate that the phenomenon of breast milk banking is not merely a medical or social issue, but also a matter of Islamic law that demands a new interpretation of Sharia texts and principles.

Based on this context, this study aims to comparatively analyze the views of Wahbah az-Zuhaili and Yusuf al-Qaradawi regarding the legal status of breast milk banking and its implications for the protection of lineage and mahram. This study not only highlights the differences of opinion but also reveals the methodological approaches underlying the *ijtihad* of both scholars. Therefore, this research is expected to contribute academically to the development of contemporary Islamic jurisprudence and serve as a reference in formulating policies related to the management of breast milk banking in accordance with Sharia principles.

## 2. RESEARCH METHOD

This research employed a qualitative approach based on library research, as the issue of breast milk banking and breastfeeding law is a normative issue that requires in-depth exploration of Islamic jurisprudence texts, scholarly studies, and interpretations of Islamic law. This approach was chosen based on the need to understand the legal arguments of two figures, Wahbah az-Zuhaili and Yusuf al-Qaradawi, through an analysis of relevant primary and secondary works (Aminullah, 2022).

Research data was collected through literature documentation, including classical fiqh books, contemporary fiqh works, research articles, Islamic law journals, and fatwas from authoritative institutions. The literature selection criteria encompassed three main aspects: direct relevance to the concept of *radha'ah* and breast milk banking, the author's authority in the field of fiqh, and the contemporary context linking the phenomenon of breast milk banking to modern social developments (Al Latifa, 2024; Fery & Hamidah, 2025). Literature that did not strongly correlate with the focus of the study was eliminated to maintain analytical clarity.

All collected data were analyzed through in-depth reading, thematic coding, and textual interpretation. The analysis process was conducted descriptively and analytically by examining the argumentative structure of each scholar, then identifying key themes such as the limitations of breastfeeding, the consequences of mahram, the basis of the principle of benefit, and the importance of maintaining clear lineage. This approach was enriched with a comparative analysis to examine the differences in legal *istinbath* methodology between al-Zuhaili, who tends to adhere to the principle of lineage protection, and al-Qaradawi, who emphasizes the flexibility of Islamic law to address modern social needs (Hidayati & Rohman, 2021; Mawardi & Nurcahaya, 2024).

Data validity was maintained through source triangulation, comparing various literature discussing similar themes to ensure consistency of legal argumentation. Furthermore, the views of both scholars were compared with fatwas and decisions of Islamic jurisprudence institutions such as the *Majma' Fiqh Islami* and OIC regulations to strengthen the accuracy of the analysis (Wulan, 2022). The use of triangulation helps the research produce conclusions that are not only descriptive, but also critical, comprehensive, and contextual.

Thus, this research method allows researchers to deeply explore the legal thinking of the two scholars in responding to the breast milk banking phenomenon, while simultaneously identifying its relevance for policy formulation and the development of contemporary Islamic jurisprudence.

### 3. RESULT AND ANALYSIS

#### **Conceptual Overview of Milk Banks from a Contemporary Islamic Jurisprudence Perspective**

A Milk Bank (ASI) is an institution that collects, stores, and distributes breast milk to babies in need, especially when the mother is unable to breastfeed directly. In practice, Breast Milk Banks collect breast milk from donors willing to donate their milk as a form of health and humanitarian solidarity. This phenomenon is growing rapidly in various countries, including the Islamic world, in line with the increasing nutritional needs of infants and public health demands. However, the operational practices of Breast Milk Banks cannot be separated from the framework of Islamic law, which for centuries has regulated the consequences of breastfeeding in establishing kinship and mahram relationships (Fery & Hamidah, 2025).

Normatively, the issue of Breast Milk Banks is rooted in the concept of *radha'ah*, namely, breastfeeding that establishes a mahram relationship between the infant and the woman who breastfeeds. The Quran and Hadith provide the legal basis for breastfeeding, particularly the obligation of mothers to breastfeed for two full years, as stipulated in QS. Al-Baqarah: 233. In classical Islamic jurisprudence, *radha'ah* is understood as the process by which a woman's breast milk enters a baby's body through direct sucking, and this is what then creates mahram status through the nursing relationship (Aina, Rusdiah, & Sa'adah, 2023). However, developments in health technology have given rise to debate regarding the limits of this definition, particularly whether *radha'ah* still occurs if breast milk is given through a bottle or other medium without direct contact between the baby and the mother's breast.

This difference in interpretation has given rise to two poles of view in contemporary Islamic jurisprudence. Some scholars, especially those who follow the classical Islamic approach, interpret that any form of breast milk entering a baby's body, whether directly or through an intermediary, still carries the legal consequences of mahram. This view is based on the principle of caution (*ihtiyath*) in maintaining lineage and eliminating potential confusion (Hasan & Shuhufi, 2024). On the other hand, contemporary scholars such as Yusuf al-Qaradawi emphasize that *radha'ah* requires direct sucking contact, so providing breast milk through breast milk banks does not automatically establish a mahram relationship. This methodological difference demonstrates that the issue of breast milk banks is not merely a technical one, but also relates to an epistemological approach to understanding sharia texts (Hidayati & Rohman, 2021).

The urgency of breast milk banks in the modern context cannot be ignored, especially for infants whose mothers are unable to breastfeed due to medical conditions, childbirth complications, or limited milk production. From a public health perspective, breast milk banks serve as a solution to ensure optimal nutritional fulfillment for infants, thereby reducing infant mortality, increasing immunity, and supporting children's cognitive and

emotional development (Hidayah & Kumalawati, 2022). Therefore, some scholars believe that the existence of breast milk banks can be considered based on the principle of benefit (*jalb al-mashlahah*) to ensure the survival of infants. However, these benefits must still be balanced with sharia caution regarding the clarity of the donor's identity, the potential for unclear lineage, and the status of mahram, which are at the core of the contemporary fiqh debate on breast milk banking (Rouf, 2022).

### **Analysis of Wahbah az-Zuhaili's Views on Milk Banks**

Wahbah az-Zuhaili's views on breast milk banking are based on a theological and methodological framework that stems from the principle of protecting lineage in Islamic law. In his works, Zuhaili emphasizes that the issue of *radha'ah* relates not only to the entry of nutrients into the infant's body but also reflects the social and legal structures that determine mahram relationships and prohibit future marriages (Zuhaili, 2007, as cited in Mawardi & Nurcahaya, 2024). Therefore, he employs a strict fiqh approach (*ihtiyath*) to minimize the risk of lineage mixing. This methodological premise plays a crucial role in fostering skepticism toward breast milk banking practices, which in many cases involve anonymous donors and the distribution of breast milk without guaranteeing identity.

In Zuhaili's view, the definition of *radha'ah* encompasses all forms of breast milk entry into the infant's body, regardless of whether the process occurs through direct suction or through assistive devices such as bottles or pipettes. This understanding is based on the opinion of the majority of classical Islamic jurisprudence scholars, who believe that the legal effect of breastfeeding depends not on the medium through which the milk is delivered, but on the success of the nutrients reaching the baby's stomach (Aminullah, 2022). Therefore, according to Zuhaili, babies who receive breast milk from breast milk banks still have the potential to establish a mahram relationship with the donor, even if there is no physical contact. This thinking demonstrates his methodological consistency in prioritizing the protection of lineage over social flexibility.

Zuhaili's rejection of breast milk banks is also based on concerns about the risk of mixing lineages and the ambiguity of mahram relationships. He links this issue to the Islamic jurisprudence principle of *sadd al-dzari'ah*, the principle of closing the door to harm before its impact occurs (Hasan & Shuhufi, 2024). He believes that breast milk banks that collect milk from multiple donors are highly susceptible to creating situations where children who are breastfed are unaware of their biological and legal relationship and could be at risk of marrying each other in the future. From Zuhaili's perspective, this potential poses a serious threat to the Islamic family structure, making the practice of breast milk banking more harmful than beneficial. Therefore, he believes that legal prudence should take precedence over the operational convenience of modern healthcare institutions.

While strict, Zuhaili's view does not necessarily reject breast milk banking outright. He allows exceptions under very strict conditions, such as a single donor identity, accurate administrative records, and strict supervision to ensure there is no mixing of breast milk (Mawardi & Nurcahaya, 2024). This approach aligns with the decisions of the Islamic Fiqh Council and the Organization of Islamic Cooperation (OIC), which emphasize that breastfeeding is permissible only if the relationship between the two can be clearly traced (Rouf, 2022). Thus, while Zuhaili's basic position is rejection, he still allows for permissibility within strict sharia parameters to maintain the purity of lineage.

However, several academics consider Zuhaili's approach to be too conservative and insufficiently adaptable to modern healthcare needs. This criticism argues that Zuhaili's views remain deeply tied to a past social context, when breastfeeding was exclusively performed directly and a medical system that did not yet allow for detailed donor records (Hidayati & Rohman, 2021). Furthermore, his approach is considered insufficiently imbued with contemporary concepts of *maslahah* (benefit), even though advances in medical science have demonstrated that breast milk banking can save the lives of infants, particularly premature infants or those experiencing milk production failure. These criticisms underscore the need for a reinterpretation of the Islamic jurisprudence of *radha'ah* (religious law) to be more responsive to current medical and social challenges without neglecting the principle of protecting lineage.

### **Analysis of Yusuf al-Qaradawi's Views on Milk Banks**

Yusuf al-Qaradawi's views on breast milk banking are based on an epistemological framework that places the *maqasid sharia* at the center of legal considerations. Unlike the traditional *fiqh* approach, which tends to be literal, al-Qaradawi emphasizes the flexibility of Islamic law in responding to modern social needs as long as it does not conflict with the basic principles of *sharia*. Within this framework, law is understood not only as a normative text but also as an instrument for achieving benefits and preventing harm (al-Qaradawi, 1997, as cited in Hidayati & Rohman, 2021). This epistemological position allows al-Qaradawi to offer a more contextual reading of the issue of *radha'ah* and breast milk banking.

One of al-Qaradawi's main theological premises is the definition of *radha'ah*, which he believes requires direct sucking from the mother's breast. Thus, providing breast milk through other means such as bottles, medical devices, or breast milk banks does not create a *mahram* relationship because it does not involve biological and emotional contact as described in classical Islamic jurisprudence (Hidayati & Rohman, 2021). According to him, breastfeeding, which creates a *mahram* relationship, is not simply the entry of fluid into the baby's body, but also includes a direct maternal interaction. This approach allows for the reinterpretation of modern practices unknown during the development of classical Islamic jurisprudence.

Al-Qaradawi also argued for the permissibility of breast milk banks by applying the Islamic jurisprudence principles of *al-dharar yuzal* (harm must be eliminated) and *jalb al-maslahah* (prioritizing the benefit). He argued that when a mother is unable to breastfeed due to medical, social, or psychological factors, the lack of breast milk for the baby constitutes a form of harm that must be eliminated according to *sharia* principles (Rouf, 2022). Through breast milk banking, babies receive a vital source of nutrition that can save lives and support their growth and development, so the benefits outweigh any potential legal concerns. Therefore, according to al-Qaradawi, the justification for the permissibility of breast milk banking is strong from a *maqasid* perspective, particularly in safeguarding the soul (*hifz al-nafs*) and offspring (*hifz al-nasl*).

From a social and humanitarian perspective, al-Qaradawi emphasized the strategic value of breast milk banking in improving public health access. He considered providing breast milk to babies in need a form of social service that aligns with the Islamic principle of compassion (Mawardi & Nurcahaya, 2024). However, he stipulated that the

management of breast milk banking must be transparent and accountable, supported by a clear administrative system to avoid confusion of lineage. This transparency includes recording donor and recipient data, as well as the distribution mechanism, so that potential legal issues can be minimized without compromising the health benefits for babies. Although al-Qaradawi's views offer a progressive perspective and are responsive to modern healthcare needs, his approach has received a number of academic criticisms. One major criticism is that his overly narrow definition of *radha'ah* potentially overlooks long-term risks if donor identities are not recorded in detail, thus leaving open the possibility of unclear lineages in the future (Hasan & Shuhufi, 2024). Furthermore, other critics argue that al-Qaradawi's thinking requires the support of a robust regulatory mechanism to ensure that the healthcare function of the Breast Milk Bank does not neglect the prudential aspects of Sharia. Nevertheless, his views remain an important contribution to the development of contemporary Islamic jurisprudence by opening up a new space for *ijtihad* that takes medical and social dynamics into account more comprehensively.

### **Comparative Analysis: Epistemological and Methodological Differences**

The differences in views between Wahbah az-Zuhaili and Yusuf al-Qaradawi regarding breast milk banking stem from their differing epistemological and methodological frameworks for conducting *ijtihad*. Zuhaili adheres to the classical *fiqh* paradigm, which emphasizes the protection of lineage and the stability of the family structure through a cautious approach (*ihtiyath*) and the principle of *sadd al-dzari'ah*, which excludes all possibilities that could lead to harm (Hasan & Shuhufi, 2024). In contrast, al-Qaradawi adopts the *maqasid sharia* approach, which places human welfare as the primary objective of law, allowing for greater flexibility in responding to modern social phenomena not found in classical literature (Hidayati & Rohman, 2021). This difference demonstrates the fundamental differences in the basis of *ijtihad* between the two scholars, even though they both refer to the same sources of Islamic law.

This methodological difference is closely related to how the two scholars define the concept of *radha'ah*. For Zuhaili, *radha'ah* encompasses every form of breast milk entering the baby's body, whether through direct sucking or through intermediaries, so the legal effects of breastfeeding remain valid (Aminullah, 2022). This approach follows the opinion of the majority of classical scholars, who believe that nutritional aspects are the primary determinant of the formation of a *mahram* relationship. Meanwhile, al-Qaradawi understands *radha'ah* more specifically as the direct sucking event involving physical and emotional contact between the baby and the nursing mother. According to him, consuming breast milk without sucking does not fulfill the requirements of *radha'ah* and does not give rise to legal consequences (Hidayati & Rohman, 2021). This difference in definition is the root of the legal divergence regarding *mahram* status in the case of breast milk banks.

The implications of these different definitions of *radha'ah* are clearly evident in the determination of *mahram* law. Believing that every consumption of breast milk can establish a nursing bond, Zuhaili believes that breast milk banks have a high potential for creating unconscious *mahram* relationships, thus posing a threat to the clarity of lineage and the prohibition of marriage established by Sharia (Mawardi & Nurcahaya, 2024). Conversely, al-Qaradawi asserts that babies who receive breast milk through breast milk banks do not have a *mahram* bond with the donor because there is no legitimate

interaction of *radha'ah* (religious kinship). Therefore, the risk to Sharia law is considered minimal as long as a sound administrative system is in place (Rouf, 2022). These two views demonstrate how technical definitions in Islamic jurisprudence can yield vastly different legal implications.

This epistemological conflict also reflects the dynamics between Islamic jurisprudence's literalism and contextual approaches to understanding Islamic law. In Zuhaili's position, literalism serves to maintain the authority of classical law and protect family values considered fundamental to Sharia (Hasan & Shuhufi, 2024). Meanwhile, al-Qaradawi's contextual approach allows for consideration of developments in medical science, changes in societal structures, and public health needs. The tension between these two approaches not only enriches contemporary Islamic jurisprudence discourse but also highlights the challenges of translating classical principles into a modern context.

The relevance of the two scholars' differing views becomes even more apparent when confronted with the need for public health regulation. On the one hand, Zuhaili's approach emphasizes the importance of a strict legal system that eliminates the possibility of misunderstanding or mixing of lineages, a crucial concern in policymaking in Muslim countries (Wulan, 2022). On the other hand, al-Qaradawi's view is considered more compatible with modern medical realities, which require rapid and safe access to donor breast milk, especially for premature babies or those experiencing nutritional disorders (Hidayah & Kumalawati, 2022). This difference emphasizes that policies related to breast milk banks must balance the protection of Sharia values with meeting public health needs.

Ultimately, this comparative analysis demonstrates that the epistemological and methodological differences between Zuhaili and al-Qaradawi reflect the rich tradition of *ijtihad* in Islam. Both represent two important poles: sharia conservatism, which emphasizes prudence to maintain social structures, and *maqasid* progressivism, which supports adapting law to contemporary needs. These differences have significantly contributed to the development of modern *fiqh*, particularly in issues of bioethics, reproductive health, and medical technology. Thus, the discourse on breast milk banking can provide a space for constructive dialogue to formulate Islamic law that is relevant, responsive, and rooted in fundamental sharia principles.

#### 4. CONCLUSION

This study concludes that the differing views of Wahbah az-Zuhaili and Yusuf al-Qaradawi regarding breast milk banking are rooted in differing epistemological and methodological frameworks in understanding the concept of *radha'ah* and its implications for mahram law. Zuhaili emphasizes the protection of lineage through a broad definition of *radha'ah*, thus deeming breast milk banking to have a high potential for unconscious mixing of lineages and mahram relationships. In contrast, al-Qaradawi uses a more adaptive *maqasid* sharia approach, arguing that breastfeeding without direct sucking does not create a nursing relationship, thus breast milk banking is permissible as long as it provides benefits and is managed transparently.

The findings of this study indicate that the debate among scholars is not merely technical, but reflects the dynamics between *fiqh* literalism and contextual approaches in responding to developments in modern health technology. Breast milk banking serves as



a concrete example of how contemporary fiqh is required to navigate the tension between protecting lineage and meeting medical needs, especially for infants who are highly dependent on breast milk. Thus, this discussion provides a theoretical contribution to the development of bioethical jurisprudence and health regulation from an Islamic perspective.

Practically, the research findings emphasize the need for policy formulation that integrates the precautionary principle of Sharia with public health-based medical needs. Mechanisms for recording donor identities, monitoring breast milk distribution, and a strict verification system need to be implemented to ensure that breast milk banking practices can operate without creating legal risks. Strengthening synergy between health institutions, religious scholars, and regulators is also necessary to develop operational guidelines for breast milk banking that comply with Sharia standards and public health needs.

This research opens the door to further research, particularly regarding the regulatory model for breast milk banking based on the maqasid of Sharia, mapping lineage risks in the context of donor breast milk distribution, and developing medical ethics protocols in Muslim communities. By expanding the study to social, technological, and legal aspects, further research is expected to enrich contemporary Islamic jurisprudence discourse and offer more comprehensive solutions to bioethical issues in the modern era.

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