



Induction Lactation in Islamic Law Studies and Indonesian Positive Law

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Abstract

This study aims to examine the legal status of the practice of induced lactation using synthetic hormone injections under Islamic law and Indonesian positive law, as well as its impact on the status of the nursing child and mahram relationships. This is a literature study that analyzes texts from Indonesian positive law, the perspectives of the four Islamic schools of thought, fatwas from the Indonesian Ulama Council on *radha'ah*, and other supporting articles. The focus is on elucidating legal values and norms, as well as supporting arguments, using a comparative method between Islamic and Indonesian positive law. The library data are analyzed comparatively using a juridical-normative approach to illustrate the legislative scope of both legal systems and highlight aspects that remain contentious. Findings indicate that the practice of induced lactation with synthetic hormone injections is permissible in both Islamic and Indonesian positive law, provided that the substances used are free from haram elements and do not pose health risks to the woman or the child. However, according to the four Islamic schools of thought, the status of the nursing child is still determined by the origin of the milk production, not by the use of synthetic hormones. As a result, a husband who is not involved in the process of milk production is not considered the nursing father of the child nursed by his wife. In Indonesian Positive Law, there are provisions that regulate the rights of the child, including the right to breast milk, which must be provided without discrimination.

Keywords : Lactation Induction Practice , Synthetic Hormones, Foster Child, Adoption, *Radha'ah*

Article Info

Article History:

Received: 02-12-2024 Accepted: 06-29-2024 Publish: 06-30-2024



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: 10.51590/waraqat.v9i1.719

Introduction

One of the purposes of marriage is to continue offspring. This is the aim of the Prophet SAW to invite Muslims to start families so that Islam can develop in all times, in this way it can broadcast/enforce Islamic teachings. ¹In line with what the Prophet SAW ordered:

عن علقمة أنه قال : إني لأمشي مع عبد الله بن مسعود رضي الله عنه بمنى إذ لقيه عثمان رضي الله عنه فاستخلاه، فلما رأى عبد الله أن ليست له حاجة قال لي: تعال يا علقمة . فجئت فقال له عثمان : ألا نزوجك يا أبا عبد الرحمن بجارية بكر لعله يرجع إليك من نفسك ما كنت تعهد؟ فقال عبد الله : لئن قلت ذلك لقد سمعت رسول الله صلى الله عليه وآله وسلم يقول: (من استطاع منكم الباءة فليتزوج؛ فإنه أغض للبصر، وأحصن للفرج، ومن لم يستطع منكم فعليه بالصوم؛ فإنه له وجاء

From Alqamah, he said, "Indeed I walked with Abdullah bin Mas'ud in Mina, then Ustman met Abdullah bin Mas'ud. Ustman approached Ibn Mas'ud. When Ibn Mas'ud saw that she did not wish to marry, he said to Alqamah, come here, O Al-Qamah. Then I went to Ibn Mas'ud, Ustman said to Ibn Mas'ud with a girl, I hope that in this way you will remember your beautiful past. Abdullah bin Mas'ud said, if you say that, I have heard the Messenger of Allah say, "Whoever has the ability, let him marry. Because marriage will make a person able to restrain his gaze, better able to look after his private parts. "Whoever cannot afford to marry, let him fast, because fasting is able to restrain and fortify (sexual turmoil)." (Saheeh, Muttafaq Alaih). (HR. Abu Daud)²

However, in some cases, infertility ³makes a couple unable to have children. Infertility can take several ways to have children, both medically and non-medically, such as IVF and artificial insemination. ⁴Examples of non-medical efforts can be taken, such as through traditional medicine, herbs, acupuncture, massage and some even take the path of spiritual medicine. ⁵However, this article will focus on a couple's efforts to have children through adoption. Adoption is one way that can be taken to start or expand their family by adopting someone else's child who is treated like their own child. ⁶Adoption was chosen as an alternative, one of the reasons being the hope that an adopted child could trigger the birth of a biological child from a woman's womb.⁷

Even though she is an adoptive mother, of course a mother wants to provide the best nutrition for her baby. Apart from that, so that the adopted mother has a good emotional bond or bond with the adopted child, lactation or breastfeeding can help grow it. ⁸It is known that breast milk can form immunity in babies and the benefits that will be carried throughout

¹ Khoiruddin Nasution, *Hukum Perkawinan I Dilengkapi Perbandingan UU Negara Muslim Kontemporer* (Yogyakarta: Academia, 2013). hlm. 47.

² Muhammad Nasruddin Al Albani, *Shahih Sunan Abu Daud*, Cet. I (Jakarta: Pustaka Azzam, 2002). hlm. 794.

³ KBBI: Ketidakmampuan Menghasilkan Keturunan; Keadaan Kurang (Tidak) Subur.

⁴ Muhammad Faisal Hamdani, "Hukum Inseminasi Buatan Dan Bayi Tabung," *Jurnal Al-Abkam* 8, no. 1 (n.d.). hlm. 118.

⁵ Lenia Indri Safitri dan Siti Ina Savira, "Harapan Pada Perempuan Yang Belum Memiliki Anak," *Character: Jurnal Penelitian Psikologi* 9, no. 2 (n.d.). hlm. 254.

⁶ Muhammad Lutfi Syarifuddin, "Adopsi Perspektif Hukum Islam," *Jurnal An-Nuha* 1, no. 1 (Juli 2014), hlm. 66.

⁷ Muhammad Lutfi Syarifuddin, "Adopsi Perspektif Hukum Islam," *Jurnal An-Nuha* 1, no. 1 (n.d.). hlm. 77.

⁸ Kementerian Kesehatan RI, "Berikan ASI Untuk Tumbuh Kembang Yang Optimal," 2019, <https://ayosehat.kemkes.go.id/berikan-asi-untuk-tumbuh-kembang-yang-optimal>.

the baby's life.⁹ In addition, a strong emotional bond between mother and child will have a positive impact on the child's physical and psychological development, as well as contributing to the mother's health.¹⁰ Many women feel accomplished when they can provide breast milk to their adopted children.¹¹ Breast milk is not produced just like that, especially for adopted mothers, in certain cases mothers who have conceived and given birth to their babies sometimes find it difficult to produce breast milk.¹² Therefore, this lactation induction technique appears to be a way out of existing problems.

Breast milk itself is the main source of nutrition for a baby, so IDAI (Indonesian Pediatrician Association), UNICEF, WHO and the Government of the Republic of Indonesia recommend giving exclusive breast milk to babies. It is hoped that giving breast milk to babies can prevent an increase in the incidence of malnutrition and stunting in babies and children. Adequate nutrition will have a good effect on the growth and development of babies and children.¹³

Giving breast milk by the mother (breastfeeding) is a biological action that generally occurs after entering pregnancy.¹⁴ During pregnancy the breasts develop and are prepared to take over the role of the baby's nutrition from the placenta. This development occurs from the age of 16 weeks of pregnancy without any intervention from the mother.¹⁵ However, with certain efforts, breast milk can be produced without having to experience pregnancy.¹⁶ The medical effort offered so that a mother who adopts a baby can breastfeed is to induce lactation.¹⁷

In Islamic law, breastfeeding a non-biological baby provides a lifelong maternal bond, not only with the mother but also with the immediate family unit. This is stated in the Qur'an Surah An-Nisa verse 23.¹⁸ That "it is forbidden for you to marry your mother, your daughter, your sister, your father's sister, your mother's sister, your brother's daughter, the daughter of from your sisters, your wet nurse who takes care of you, your sisters through nursing."¹⁹

Indonesia is a country where the majority of the population adheres to Islam and has a legal system that covers both aspects, namely Islamic law and positive law. In this context, the practice of lactation induction is an interesting issue to research because it relates to

⁹ American College of Obstetricians and Gynecologists Women's Health Care Physicians, "Barriers to Breastfeeding: Supporting Initiation and Continuation of Breastfeeding" 137, no. 2 (nd). p . 2.

¹⁰ Any Setyarini, Maria Mexitalia, and Ani Margawati, "The Effect of Exclusive and Non-Exclusive Breastfeeding on the Emotional and Mental Mentality of Children Aged 3-4 Years," *Medica Hospitalia* 3, no. 1 (nd). p . 37.

¹¹ Norsyamliana Che Abdul Rahim, Zaharah Sulaiman, and Tengku Alina Tengku Ismail, "Factors Influencing Muslim Women's Decisions about Induced Lactation: A Qualitative Study," *MDPI Journals* 11, no. 7 (nd), doi:<https://doi.org/10.3390/socsci11070279>.

¹² R Pranajaya and Novita Rudiyantri, "Determinan Produksi ASI Pada Ibu Menyusui," *Jurnal Keperawatan IX*, no. 2 (n.d.). hlm. 228.

¹³ Ella Amalia and Dkk, "Edukasi Kandungan ASI Dan Pemberian ASI Eksklusif Pada Bayi," *Logista : Jurnal Ilmiah Pengabdian Kepada Masyarakat* 5, no. 2 (2021). hlm. 32.

¹⁴ Manoj Kumar Jena and et al, "Molecular Mechanism of Mammary Gland Involution: An Update," *Science Direct* 445, no. 2(nd): 2. Pg . 2.

¹⁵ Purwo Sri Rejeki, *Catatan Kami Tentang ASI* (Surabaya: Oksana Publishing, 2013). hlm. 1

¹⁶ Arifki Budia Warman, "Ketentuan Dalam Islam Mengenai Pemberian Air Susu Ibu (Asi) Hasil Induksi Laktasi Untuk Menjadikan Anak Angkat Sebagai Mahram," *El 'Aailah: Jurnal Kajian Hukum Keluarga* 1, no. 2 (2022): 17–31, doi:10.59270/aailah.v1i2.112.

¹⁷ katan Dokter Anak Indonesia, "Relaktasi Dan Induksi Laktasi," 2018, <https://www.idai.or.id/artikel/klinik/asi/relaktasi-dan-induksi-laktasi>.

¹⁸ Zainab Abdul Hadi Al-Mohsen and Hasan Frookh Jamal, "Induction of Lactation After Adoption in a Muslim Mother With a History of Breast Cancer: A Case Study," *Journal of Human Lactation* 37, no. 1 (2020). Pg . 137.

¹⁹ *Alqur'an Al-Quddus Dan Terjemahnya* (Kudus: CV. Mubarakatan Thoyyibah, n.d.).

reproductive health and individual rights. However, views and regulations related to lactation induction within the framework of Islamic law and Indonesian positive law have not been studied in depth.

It is important to understand the religious and legal views that apply to the practice of lactation induction, especially because it involves the use of hormones to stimulate breast milk production in nongestating mothers. In addition, with increasing awareness of the importance of exclusive breastfeeding for the health of the baby, questions regarding the legality and ethics of the practice of lactation induction are becoming increasingly relevant. Thus, this research aims to fill the knowledge gap by investigating the perspectives of Islamic law and Indonesian positive law related to the practice of lactation induction. It is hoped that this research will provide a deeper understanding of this issue, as well as provide valuable insights for policy makers, health practitioners and the general public in better understanding and managing the practice of lactation induction. Based on the explanation presented, this article will discuss the legal status of the practice of induced lactation in Islamic Law and Positive Law in Indonesia, as well as the mahram status of children adopted by induced lactation with their adoptive mothers and fathers based on these two laws.

Previous research related to lactation induction highlights provisions in Islam regarding giving breast milk (ASI) resulting from induced lactation to make an adopted child a mahram, this research focuses on how to make an adopted child a mahram with a nursing mother by giving breast milk (ASI) the result lactation induction.²⁰ Then, Ruth A. Lawrence highlighted various situations that require induction of lactation or relactation, including health or social issues for the mother, adoption, and emergencies or disasters that separate the baby from the mother.²¹ A study was also conducted to explore the factors that influence Muslim women's decisions about induced lactation in Malaysia. The results show that the main factor is the desire to connect with the breastfed child.²²

Furthermore, studies related to *radha'ab* highlight differences in views of ulama regarding the level of breastfeeding that can determine mahram status, with the highest preference being for the hadith which regulates five sucklings, both in terms of the quality of sanad and matan.²³ Then there are also those who highlight that breast milk which can cause a mahram relationship is one that is able to fulfill the baby's main nutritional needs, such as eliminating hunger and providing adequate intake.²⁴ Next, Anwar Hafidzi and Safrudin reviewed the concept of *radha'ab* in determining nasab by explaining the arguments and views of Wahbah Zuhaili and Sayyid Sabiq regarding the status of mahraman in the practice of *radha'ab*.²⁵ Previous research tends to explore provisions in Islam regarding the provision of breast milk resulting from induced lactation to make an adopted child a mahram to the nursing mother, as well as several studies related to *radha'ab* that have not linked its application to the modern context, especially in the case of induced lactation involving medical technology such

²⁰ Warman, "Ketentuan Dalam Islam Mengenai Pemberian Air Susu Ibu (Asi) Hasil Induksi Laktasi Untuk Menjadikan Anak Angkat Sebagai Mahram."

²¹ Ruth A. Lawrence, "Induced Lactation and Relactation (Including Nursing an Adopted Infant) and Cross-Nursing," *Breastfeeding (Ninth Edition) A Guide for the Medical Profession*, 2022, 628–45, doi:<https://doi.org/10.1016/B978-0-323-68013-4.00019-5>.

²² Rahim, Sulaiman, and Ismail, "Factors Influencing Muslim Women's Decisions about Induced Lactation: A Qualitative Study."

²³ Bunga Putri Anisah, "Kadar Air Susu Yang Menyebabkan Saudara Sepersusuan (Telaah Ma'ani Al-Hadits)," *Jurnal Riset Agama* 2, no. 2 (2022): 58–83, doi:[10.15575/jra.v2i2.16737](https://doi.org/10.15575/jra.v2i2.16737).

²⁴ Maimun Maimun, "Kadar Susuan Dan Cara Penyusuan Yang Dapat Menyebabkan Mahramiyah," *Syarah: Jurnal Hukum Islam & Ekonomi* 10, no. 2 (2021): 193–212, doi:[10.47766/syarah.v10i2.214](https://doi.org/10.47766/syarah.v10i2.214).

²⁵ Anwar Hafidzi and Safruddin Safruddin, "Konsep Hukum Tentang *Radha'Ab* Dalam Penentuan Nasab," *Khazanah: Jurnal Studi Islam Dan Humaniora* 13, no. 2 (2017): 283, doi:[10.18592/khazanah.v13i2.1615](https://doi.org/10.18592/khazanah.v13i2.1615).

as injections. synthetic hormones. However, there has been no study that comprehensively compares the views and implementation of lactation induction law between Islam and Indonesian positive law, which is a space that needs to be filled to clarify and regulate this practice more firmly in the context of national law.

This research is a library research *which* was carried out by collecting and analyzing legal texts related to lactation induction as well as other supporting articles. The focus of this research is to analyze the values and norms contained in law as well as supporting arguments, using a comparative method between Indonesian positive law and Islamic law. The literature data is discussed comparatively with a juridical-normative approach where the researcher tries to extract values and norms from legal points or arguments contained in the law ²⁶with the aim of describing in depth the scope of legislation in the two legal systems, as well as highlighting aspects that are still being debated. The primary data for this research consists of an analysis of statutory regulations and arguments in Islamic law relating to *radha'ah*, while the secondary data focuses on a literature review that supports the research.

Results and Discussion

Definition Induction Lactation

Lactation induction is an attempt to stimulate breast milk production in mothers without having to go through the process of pregnancy. This is done by creating conditions that are similar to those experienced by pregnant women. Among them is by supplying synthetic hormones into a woman's body and also through lactation massage. ²⁷Even though it is produced in different ways, the quality of breast milk produced by mothers through pregnancy or through induced lactation remains the same. So the benefits received by the baby remain the same. ²⁸The main goal of induced lactation is to enable mothers who have not given birth to give breast milk to babies, whether adopted or born by a partner or other donor. This process involves the use of various methods, including hormone administration, breast stimulation, dietary changes, and emotional support. Lactation induction is often carried out by non-gestating mothers who want to provide the nutritional and health benefits their babies need through breastfeeding, as well as to build an emotional bond between mother and child. Although often associated with women adopting children, this practice is also relevant in other family contexts where the biological mother is unable to breastfeed the baby naturally.

Lactation, as a complex hormonal process in the body of a woman who conceives and gives birth, begins early in pregnancy. At around 16 weeks of pregnancy, the mammary glands begin to produce breast milk in response to an increase in the hormone prolactin. However, breast milk production can experience a temporary decrease due to high levels of the hormones estrogen and progesterone during pregnancy. Breast milk production will become active again after the baby is born and the placenta is expelled, allowing the baby to get nutrients that are important for growth and development. ²⁹

²⁶ P. Ishwara Bhat, *Ideas and Methods of Legal Research*, 1st ed. (New Delhi: Oxford University Press, 2020). p. 93.

²⁷ Dyah Febriyanti, "Induksi Laktasi: Menyusui Bayi Adopsi," *Praboni Lactation Team*, 2017, <http://www.praborinilactationteam.com/2017/09/09/induksi-laktasi-menyusui-bayi-adopsi/>.

²⁸ Meristika Yuliana Dewi, "Induksi Laktasi, Metode Merangsang ASI Untuk Para Ibu Adopsi," *Alodokter Dan Kementerian Kesehatan*, accessed September 26, 2023, <https://www.alodokter.com/induksi-laktasi-sebagai-alternatif-dalam-menyusui>.

²⁹ Vincencius William and Michael Carrey, "Domperidone Untuk Meningkatkan Produksi Air Susu Ibu (ASI)," *Continuing Professional Development* 43, no. 3 (n.d.). hlm. 226.

Breast milk is not simply produced by a woman's body, but rather the breast receives orders in the form of signals from the brain. The signals that enter the brain are in the form of hormones and also stimulation from the breasts. Therefore, we refer to this principle in carrying out the lactation induction process. *First*, breast milk is produced through stimulation, namely through lactation massage or regular breast pumping. *Second*, by administering the hormones estrogen and progesterone, which is useful for conditioning the adoptive mother as if she were pregnant. Another hormone is galactagogue which conditions an adoptive mother's body as if she were giving birth. Galactagogues themselves function to increase breast milk production as do the hormones prolactin and oxytocin. These hormones make the mother's body feel like she has been pregnant or given birth. Therefore, the brain can receive signals to then produce breast milk.³⁰ The administration of this hormone must be under the supervision of a doctor to avoid side effects that are detrimental to the baby.³¹

Radha'ah Studies in Islamic Law

Etymologically, *Radha'ah* comes from the words *ardha'a - yurdhi'u - irdho'an* where this word means breastfeeding.³² The term *Radha'* is generally used to refer to the act of breastfeeding or suckling, both in humans and animals. However, in jurisprudence, the term *radha'ah* is more specifically used for breastfeeding human children, not animals.³³ In terminology, breastfeeding refers to the act of obtaining pure milk from a woman through suction that reaches the esophagus to the stomach of a small child (under the age of two years).³⁴

The general concept in mahram breastfeeding is the hadith of the Prophet SAW.

يحرم من الرضاع ما يحرم من النسب

"Mahram because of breastfeeding is the same as mahram because of lineage"³⁵

Then it is also mentioned in Surah An-Nisa' verse 23

أُمَّهَاتِكُمُ الَّتِي أَرْضَعْنَكُمْ وَأَخَوَاتِكُمْ مِّنَ الرَّضَاعَةِ

" And moms you did it hbreastfeeding you , and brothers , and brothers milk You ..."³⁶

That verse in a way explicit forbid Mother breastfeeding and breastfed children . In *radha'ah* there are three elements of limitations for being able to be said to be *al-radha'ah ash-syar'iyyah* or dairying based on Islamic ethics. Namely *Labanu adamiyyatin* (the presence of human milk), *Wushulubu ila jawfi thiflin* (the milk enters the baby's stomach), *Duna al-hawlayni* (the baby is not yet two years old). Therefore, the pillars of *al-radha'ah asy-syar'iyyah* have three elements: First, the child who breastfeeds (*ar-radhi'*), Second, the woman who breastfeeds (*al-murdhi'ah*), and Third, the water content of the milk (*miqdar al-laban*) which meets the minimum

³⁰ Ikatan Dokter Anak Indonesia, "Relaktasi Dan Induksi Laktasi."

³¹ The Academy of Breastfeeding Medicine Protocol Committee, "ABM Clinical Protocol #9: Use of Galactagogues in Initiating or Augmenting the Rate of Maternal Milk Secretion," *Mary Ann Liebert* 6, no. 1 (2011). hlm. 15.

³² Ahmad Warson Munawwir, *Kamus Al-Munawwir*, 5th ed. (Surabaya: Pustaka Progresif, 1999). hlm. 504.

³³ Muhammad bin Ismail Al-Amir Ash-Shan'ani, *Subul As-Salam Syarb Bulugh Al-Mabram* (Jakarta: Darus Sunnah Press, 2015). hlm . 158.

³⁴ Muhammad Azzam ibn Abdul Aziz, *Fiqh Munakahat*, 3rd ed. (Jakarta: Amzah, 2015). hlm. 152.

³⁵ Imam Abu Husein Muslim bin Hajjaj Al-Kusyairi Annaisaburi, *Sahih Muslim*, 1993. p 289.

³⁶ *Alqur'an Al-Quddus Dan Terjemahnya*.

threshold. A case (*qadhiyyah*) can be called *al-radha'ah asy-syar'iyyah* and therefore contains legal consequences that must apply if there is a breastfeeding relationship that meets sharia requirements, such as breastfeeding that occurs in infancy under two years and occurs more than five times giving milk.³⁷

In the book *Bidayat Al-Mujtabid Wa Nibayat Al-Muqtashid* it is stated:

إِنَّ لَمْ يُوَجَدْ سِوَى عُنْصُرٍ وَاحِدٍ فَلَا يُمْكِنُ أَنْ تُسَمَّى الرِّضَاعَةَ فِي هَذِهِ الْحَالَةِ بِالرِّضَاعَةِ السِّيَّارِيَّةِ
فَلَا تَسْرِي عَلَيْهَا آثَارُ الْقَانُونِ السُّورِيِّ وَأَمَّا الْمَرْأَةُ الَّتِي أَرْضَعَتْ فَقَدْ اتَّفَقَ الْعُلَمَاءُ عَلَى أَنَّهَا قَدْ بَلَغَتْ
سِنُّ الْبُلُوغِ أَوْ لَمْ تَبْلُغْ سِنُّ الْيَأْسِ أَوْ لَمْ تَكُنْ بِنَاتٍ أَوْ مَتَزَوَّجَةً أَوْ حَامِلٌ أَوْ غَيْرَ حَامِلٍ كُلُّ حَالِيَةٍ
يُسَبِّبُ الرِّضَاعَةَ السَّرِيعَةَ مِمَّا لَهُ إِنْعِكَاسَاتٌ عَلَى رِفَاهِيَةِ الطِّفْلِ الَّذِي يُرْضَعُ

"If one of the elements is not fulfilled, then the *al-radha'ah* in that case cannot be considered as *al-radha'ah as-syar'iyyah*, so the consequences of sharia law do not apply. Ulama agree (*mujma' alayah*) that women who can breastfeed may be mature or not, menopausal or not, female or married, pregnant or not pregnant. The milk from all of them can cause *al-radha'ah as-syar'iyyah*, which has an impact on the welfare of the child being breastfed."³⁸

A baby should receive breast milk intake for at least two full years according to Jumhur Ulama, including Imam Syafi'i, Imam Malik, and Imam Ahmad. The legal basis is Surah Al-Baqarah verse (233), and breastfeeding for more than two years does not cause harm.³⁹ The Fuqoha have different opinions about the amount or level of milk that a child should drink, which can lead to the formation of a sexual relationship which results in incompatibility with the nursing mother.⁴⁰

Imam Malik is of the opinion that one milk feeding is enough to cause haram, and some Malikiyah scholars are of the opinion that there is no specific limit on the number of *radha'ah* required.⁴¹ while Hanafi, Shafi'i and Hanbali scholars have different views regarding the amount of breast-feeding required to create mahraman. Hanafiyah scholars are divided into three groups in responding to this problem. The first group believes that one or two breast-feedings do not cause mahram relations, while three or more breast-feedings are considered haram. The second group believes that five separate feedings cause haram, and Imam Syafi'i agrees with this view. The third group believes that ten breastfeeds are necessary for haram, while breastfeeding less than five times separately does not cause haram.⁴²

Fiqh scholars who require intimate relations in the context of sexual intercourse explain this as follows: First, the milk must come from a woman with a clear identity as whether she is married or not. Second, the milk enters the child's esophagus through direct sucking or through milk storage devices, such as glasses, bottles, etc. Third, breastfeeding is carried out through the child's mouth or nose (nasal) to the stomach (gastric) using a nasogastric tube. However, there are differences in views between the Maliki school of thought and other

³⁷ Sayyid Sabiq, *Fiqh Al Sunnah*, Volume II (Beirut: Dar al Fikr, 1998). hlm. 191.

³⁸ Ibn Ar-Rusyd Al-Qurthubiy Al-Andulusiy, *Bidayatbul Al-Mujtabid Wa Nibayatul Al-Muqtashid*, Juz I (Beirut: Dar Al-Kutub Al-Ilmiyyah, 1998). hlm. 30.

³⁹ Muhammad Ali Asabuni, *Rawai'ul Bayan Ayat Al-Ahkam Min Al-Qur'an Translation of Tafsir Ayat Ahkam Ash-Shabuni* (Surabaya: PT. Bina Ilmu, 2008). hlm. 354.

⁴⁰ Al-Andulusiy, *Bidayatbul Al-Mujtabid Wa Nibayatul Al-Muqtashid*.

⁴¹ Abi Abdillah Muhammad Al-Maghribi, *Quratul Ain* (Beirut: Maktabah Tijariyah Al-Kubro, 2011).

Pg . 60.

⁴² Al-Andulusiy, *Bidayatbul Al-Mujtabid Wa Nibayatul Al-Muqtashid*. hlm . 30.

schools of thought regarding the use of injection equipment in breastfeeding practices. Hanafi, Shafi'i and Hanbali scholars are of the opinion that if milk is given to children through means such as injection, this does not result in peace between the woman who owns the milk or her offspring and the breast-feeding child. However, according to the Maliki school of thought, the use of injection equipment in breastfeeding practice is still considered haram. Thus, determining the legal status of the practice of lactation induction in the context of Islamic law requires a careful understanding of the views of different schools of jurisprudence.⁴³

***Radha'ah* Study in Indonesian Positive Law**

One of ⁴⁴the studies of *radha'ah* in Indonesian positive law is stated in the Compilation of Islamic Law (KHI) where this rule is written in Article 39 paragraph 3 that a person is prohibited from marrying:

- a. With women who breastfeed and their offspring upwards in a straight line.
- b. With breast-feeding women and their descendants downward in a straight line.
- c. With siblings and their descendants downwards.
- d. With breast-feeding aunts and breast-feeding aunts' grandmothers and above.
- e. With children breastfed by his wife and their offspring.

Based on the KHI provisions above, the main focus lies on two aspects: first, women who breastfeed as mentioned in point 1, and second, children who are breastfed as in points 2-5. However, KHI does not cover several other important things, for example the time limit for breastfeeding, the age of the child being breastfed, the definition of breastfeeding, the marital status of the woman who breastfeeds, the amount or frequency of breastfeeding, the method of breastfeeding whether directly from the nipple or using tools such as bottles, infusions, and services. Clarity regarding the intensity of breastfeeding in Article 39 Paragraph 3 of the Compilation of Islamic Law (KHI) is relatively limited.

On the other hand, regulations regarding the frequency of breastfeeding are also important so that people understand clearly and do not carelessly give or receive breast-feeding to babies. This aims to avoid illicit marriages between children and their milk siblings when they grow up. In short, the existence of regulations regarding the frequency of breastfeeding which can result in prohibited marriages is very important to regulate in order to prevent religiously prohibited marriages from occurring. Finally, overall, regulation of breastfeeding frequency is necessary in the public interest and to prevent possible harm. This is in accordance with the principles of fiqh law:

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

*"It is more important to avoid harm than to seek benefits."*⁴⁵

The principle above indicates that avoiding harm has a higher priority than obtaining benefits. Regarding the issue of adoptive families, to avoid misunderstandings about breastfeeding practices in society, a detailed explanation is needed regarding the prohibition on marriage between breast-feeding siblings stated in the KHI and Marriage Law No. 1 of 1974.

⁴³ Wahbah Zuhailiy, *Fiqh Al-Islami Wa Adillatuhu*, Juz VII (Damascus: Dar al-Fikr, 2008). hlm. 669.

⁴⁴ Kementrian Agama RI, "Kompilasi Hukum Islam" (2018). hlm. 19-20.

⁴⁵ A. Djazuli, "Kaidah-Kaidah Fiqh (Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Praktis)," 2007. hlm. 27.

These provisions are also regulated in Marriage Law Number 1 of 1974, which stipulates the prohibition of marriage in Article 8. This article explains that marriage is prohibited between two individuals who:⁴⁶

- a. Related with lineage , fine to on nor to lower .
- b. Involved in connection blood horizontally , incl between brother , between individual with you more siblings old , and between individual with you from lineage his grandmother .
- c. Involved in connection semenda , like in-laws , children step , daughter-in-law , and mother or father step .
- d. Involved in connection care , including parents milk , child milk , brother susuan , and auntie or uncle milk .
- e. Involved in connection between brother and wife , or in relation as aunt or nephew from wife , especially If a husband own more from One wife .
- f. Involved in prohibited relationship according to religious teachings or applicable regulations , which govern prohibition wedding .

Radha'ah studies in Indonesian Positive Law refer to the laws governing child custody and care. In this context, *radha'ah* refers to a mother's right to breastfeed a child who is not her offspring. In Indonesia, this principle is reflected in Law Number 1 of 1974 concerning Marriage which stipulates that a child who is breastfed by a woman for six months or more is considered to be the woman's milk child. The principle reflected in Law Number 1 of 1974 concerning Marriage is reflected in Article 43. This article states that "Milk children, namely children who are breastfed by a woman for six months or more, are children whose biological mother is unknown and does not exist." If anyone claims to be the biological mother, the child is considered to be the milk child of the woman who breastfed him." Thus, the Indonesian Marriage Law provides a legal basis for recognizing the relationship between a child and a woman who breastfeeds the child for at least six months as a milk child, regardless of the child's biological status. This shows the importance of recognizing the relationship between a child and a wet nurse in the Indonesian legal framework, as well as providing legal protection for children who are breastfed by a woman who is not their biological mother.

Apart from that, Article 6 of Law Number 23 of 2002 concerning Child Protection also regulates that every child has the right to basic needs, including breast milk, and must receive equal treatment without discrimination. Article 6 of Law Number 23 of 2002 concerning Child Protection states that every child has the right to basic needs, including breast milk (ASI), and must be treated fairly without discrimination. This emphasizes the importance of protecting children's rights, including the right to receive breast milk as one of the basic needs that is important for optimal growth and development. Thus, the Indonesian Child Protection Law emphasizes that children's rights must be fulfilled without discrimination, including in terms of breastfeeding. This shows the state's commitment to providing protection to every child and ensuring that their basic needs, including the right to receive breast milk, are met fairly and without discrimination.

Therefore, in the context of Indonesian positive law, *radha'ah studies* highlight the importance of recognizing and protecting the rights of children who are breastfed by non-gestational mothers, as well as the implications in the context of family law and child protection. Recognition of the rights of children breastfed by non-gestational mothers is important in ensuring that their basic needs, including the right to receive breast milk, are met fairly and

⁴⁶ Ahmad Mun'im, "Intensitas Penyusuan Dalam Larangan Perkawinan Susuan (Analisis Pasal 39 Ayat 3 Kompilasi Hukum Islam)," *Jurnal Al-Abwal* 1, no. 9 (2016). hlm. 231.

without discrimination. The implication in the context of family law is to provide a legal basis for the relationship between a breastfed child and a wet nurse, while in the context of child protection, this emphasizes the importance of ensuring that the rights of breastfed children are legally recognized and protected.

Analysis Induction Lactation Perspective of Islamic Law and Positive Law

The general concept in breastfeeding mahram, as stated in the hadith of the Prophet Muhammad, is that mahram resulting from breastfeeding have the same status as mahram based on lineage. Where a case (*qadbiyyah*) can be called *al-radha'ah asy-syar'iyah* and contains legal consequences that must apply if there is a breastfeeding relationship that meets sharia requirements, such as breastfeeding that occurs during infancy under two years and occurs more than five feedings of milk.⁴⁷ This hadith illustrates that mahram relationships formed through breastfeeding are equivalent to mahram relationships formed through lineage or descent. Apart from that, the concept of mahram breastfeeding is also found in the words of Allah SWT in Surah al-Nisa ' verse 23, which states:

"...and your mothers who breastfed you, and your breast-brothers..."

This verse clearly indicates that the relationship between a breastfeeding mother and the children she breastfeeds is as forbidden as the relationship between a biological mother and a biological child. This confirms that the concept of mahram breastfeeding is recognized in Islamic teachings, and this relationship has the same legal status as blood relations. Thus, the principles of mahram breastfeeding are important in determining the boundaries of family relationships and laws relating to breastfeeding in the Islamic context.

In the Hanafi school of thought, the principles of fiqh determine the status of a husband Mother breastfeeding The status as a mahram for children who are breastfed by the wife is revealed in the book *Bada'i al-Sana'i*.⁴⁸ This statement can be interpreted to mean that the mahram relationship was formed due to breastfeeding. The milk produced is the result of a mixture of male and female semen. Therefore, the law of breastfeeding for the milk produced by both of them is in line with the status of the child. Thus, the baby is considered a suckling child by both the man and the woman. The Hanafi School highlights the importance of the origin of breast milk in determining the status of a nursing father, namely milk produced as a result of intimate relations that lead to pregnancy and through the birth process. Thus, in this context, the status of a nursing father is determined by the origin of the formation of milk which comes from the process of fertilization and birth which involves both.

The Maliki School emphasizes its view regarding the situation where a woman or wife is divorced and married to another man, but has milk and is breastfeeding the baby. The Maliki principle in this context emphasizes that determining mahram status does not depend on the contract (*aqad*) with the woman or intimate relations (*jima'*) without *inzal* (excretion of semen).⁴⁹ If a woman breastfeeds a baby with pre-existing breast milk, then marries a man, or if she breastfeeds a baby after a marriage contract with that man before intimate relations or after intimate relations without inhalation, in both situations, the breastfed child is not considered as a baby for the new husband. The approach applied by the Maliki school in describing this situation emphasizes the creation of breast milk as the main criterion for determining the status of a man's breastfed child. This determination does not only depend

⁴⁷ Ibn Qudamah, *Al-Mughni* (al-Urdun: Bayt al-Afkar al-Dawliyyah, 2004). hlm . 1971.

⁴⁸ Al-Kasani, *Bada'i Al Shana'i Fi Tartibi Al-Sya'i*, Juz VI (Beirut: Darul Fikr, 1996). hlm . 397.

⁴⁹ Ibn Rushd and Abi al-Walid Muhammad bin Ahmad, *Al-Mudawwanah Al-Kubra* (Lebanon: Dar al-Kutub al-Ilmiyyah, 1994). hlm. 299.

on the lineage relationship but is also linked to aspects of breastfeeding in the mahram context.

According to the al-Shafi'i school, Imam al-Shafi'i describes a situation where a woman marries another man after living with her first husband who later died or divorced. Imam al-Shafi'i said in the book *al-Umm* that if a woman marries another man after stopping breastfeeding or before, and even though her milk does not appear, but then her milk comes back, even though the woman is not pregnant, then the law on that milk considered to originate from the first husband. If a wife breastfeeds a baby, then the baby's status is considered to be the wife's breast-feeding child and also the husband's first breast-feeding child. The baby did not become a breast child for the second husband.⁵⁰

Imam al-Syafi'i's opinion highlights the importance of considering the origin of the formation of breast milk, namely through the process of pregnancy which occurs due to intimate relations between one of two husbands. This shows that in determining the status of a husband or nursing father, it is necessary to take into account how mother's milk is formed, namely through intimate relations that lead to pregnancy and birth.

A similar approach applied in the second situation according to Imam al-Shafi'i's view in *al-Umm* can be described as follows: "If a woman who is still breastfeeding is divorced, and she is still experiencing menstruation, during the breastfeeding period she has experienced menstruation for more than three "Then, the woman becomes pregnant from a marriage with another man. Her milk production does not stop until birth.

The essence of this statement is the importance of understanding the origins of milk production, whether from intimate relations and pregnancy with the first or second husband. In this context, the marker of separation is the birth of a child from the second husband, which indicates that the milk produced previously is not related to him. Therefore, if a baby is breastfed from breast milk that existed before the birth of the child, the baby is considered a suckled child for the first husband as well.

According to the Hanbali School, as explained by Ibn Qudamah in his work *al-Mughni*, all inheritance rights of husband and wife are related to breastfed children, just as hereditary relations are related to the children of the husband and wife. This is because the milk produced by the wife comes from the contribution of the husband's and wife's semen. Therefore, there was a ban between the two of them. In the Hanbali school, views on the status of a nursing father and a nursing child are also greatly influenced by factors in the formation of breast milk. Al-Khiraqiy emphasized that the prohibition between a nursing child and the nursing mother's husband occurs if the milk produced comes from intimate relations between the two. The milk must come from intimate relations that cause pregnancy, and the cause of pregnancy must occur from sexual intercourse with the woman's husband.⁵¹

Ibn Qudamah in the book *al-Mughni* discusses a situation where a woman who is still producing breast milk then divorces and is still of menstrual age. During the breastfeeding period, the woman has experienced three or more menstruations. Then, the woman remarried another man and had a child as a result of that marriage, but her milk did not stop during pregnancy and after giving birth.

The situation is as follows: A woman, who was previously married, has breast milk from a relationship with her first husband. She then breastfed a baby until it was full three times.

⁵⁰ Abi Abdillah Muhammad bin Idris al Shafi'i, *Al-Umm* (Baghdad: Dar el-Fikr, 1990). hlm. 893.

⁵¹ Ibn Qudamah, *Al-Mughni*, Juz VIII (Egypt: Al-Maktabah Cairo, 1992). hlm. 974.

After that, her breast milk production stopped. The woman then married a new husband, and as a result of this marriage, her breast milk was produced again. The woman then breastfed the same baby until she was full twice. In this context, the baby was not recognized as the breast-fed child of her two husbands because it did not meet the specified number of breast-feeding requirements. The explanation from Ibn Qudamah in al-Mughni states that the status of a wet nurse only applies if the breast milk is produced from an intimate relationship which results in the production of breast milk. Even though the breast milk used to breastfeed the baby is the result of a relationship with her husband, each husband does not fulfill the minimum requirements for the amount of breastfeeding. The conclusion from the context of this case is that the baby becomes a mahram with his wife because he is breastfed by the wife and fulfills the requirements for being a mahram. Then, the baby did not become a mahram with the first and second husbands because it did not meet the requirements for the amount of milk given by each husband (five milk feedings until full) even though the husband played a contributory role in stimulating and producing milk.⁵²

In the book al-Mughni, it can be concluded that the cause of the status of a nursing father with a breastfed child for the husband is because the husband plays a role as a contributor in stimulating and producing milk. Apart from this, the prohibition against being a breastfed child for a wife occurs because milk functions as a quencher for hunger, strengthens bones and stimulates the growth of flesh for babies who are breastfed. In this situation, the status of a nursing father for a child who is breastfed by the wife, whose breast milk is produced after the use of synthetic hormone injections, is considered a breastfeeding mahram. This is based on the principle that the relationship is similar to a husband-wife relationship, and not the status of a wet-nurse father. The reason is that the breast milk produced by the wife does not come from the process of pregnancy and birth due to intimate relations. According to the majority of views, the main condition for prohibition to occur is that the wife's breast milk must be produced as a result of intimate relations.

On the other hand, Islam allows a woman who is not pregnant and has given birth to a child to be able to adopt a child. Jumhur fuqoha also does not have a requirement that a woman must experience pregnancy first in order to breastfeed a child. This is in line with the views of the Hanbali, Shafi'i and Hanafi schools which state that a woman who wants to breastfeed a child is not required to have a husband.⁵³ In this regard, the use of drugs or injections to stimulate the release of breast milk in adoptive mothers who do not go through pregnancy and childbirth is permitted provided that the woman concerned has reached puberty and the synthetic hormones supplied to the body do not contain unclean or *harmful elements*.⁵⁴ Analysis of lactation induction from a positive legal perspective in Indonesia includes several important aspects. In the context of child protection, Law Number 23 of 2002 concerning Child Protection emphasizes the right of every child to basic needs, including breast milk. Therefore, the practice of induced lactation can be seen as an attempt to fulfill this right, especially in cases where the biological mother is unable to breastfeed naturally. However, regulations regarding the authority of nursing mothers and legal protection for breastfed children need to be clarified. Although the law recognizes the rights of children who are breastfed by non-gestating mothers, its implementation still requires further clarification in terms of determining the legal status and rights of children as well as the obligations of

⁵² Qudamah. hlm. 982.

⁵³ Muzakarah Jawatan kuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia Kali Ke-96 Malaysia, "Hukum Wanita Menyusukan Anak Angkat," 2014, <http://www.e-fatwa.gov.my>.

⁵⁴ Muzakarah.

nursing mothers. This involves clear recognition of the relationship between wet nurse and wet nurse within the framework of Indonesian family law.

The fatwa of the Indonesian Ulema Council which legalizes the use of contraceptive devices such as IUDs, birth control pills and KB implants,⁵⁵ is an indication that in the context of the Islamic religion, the use of the hormones estrogen and progesterone⁵⁶ for medical purposes is acceptable. This analogy can be applied in the case of lactation induction, where the process also involves the use of hormones to stimulate breast milk production in non-gestating mothers. Even though lactation induction involves exogenous administration of hormones, the goal remains to support the health of the baby and mother and meet the baby's nutritional needs. Therefore, it can be considered that the practice of inducing lactation using hormones has a legal basis similar to the use of hormones in contraceptives which is widely accepted in the Islamic religious view. Thus, this argument can be used to support the view that lactation induction is an acceptable practice within the framework of Islamic law and ethics, especially when the aim is for the welfare of the mother and child.

The fatwa can be considered an indication that, in the MUI's view, the use of such hormones for reproductive health and birth control purposes is acceptable within the framework of Islamic law. Thus, it can be analogous that the use of the hormones estrogen and progesterone in lactation induction, which also aims to support reproductive health and baby welfare, could have a similar legal basis in the MUI's view. Even though there is no specific fatwa regarding lactation induction, the views given in the fatwa regarding contraceptives can provide guidance on how Islam views the use of hormones in the context of reproductive health.

radha'ab material from an Islamic legal perspective and a positive legal perspective regarding the permissibility of techniques used in lactation induction. The lactation induction method is used so that a woman can produce breast milk without having to go through the process of pregnancy and giving birth. However, when a woman succeeds in producing breast milk using this method, the legal implications do not immediately occur. New legal implications will arise when the woman starts breastfeeding a child or baby. In the context of positive law, regulations such as the Compilation of Islamic Law (KHI) and the Marriage Law in Indonesia currently still do not provide comprehensive guidelines related to technical aspects of breastfeeding such as time limits for breastfeeding, definitions of breastfeeding, and breastfeeding methods. This lack of clarity has the potential to create legal uncertainty which could lead to potential conflicts in the future, especially related to the legal status of wet-nurses and wet-nurses. Improvements are needed in more detailed and clear regulations to ensure fair and definite legal protection for all parties involved in this breastfeeding context. In this analysis, the need for updates or adjustments in legal regulations related to lactation induction in Indonesia is also highlighted. The importance of adequate legal protection for breastfeeding children and nursing mothers in the practice of lactation induction must be considered. Although positive law in Indonesia recognizes children's rights to breast milk and the rights of children breastfed by non-gestational mothers, the implementation and application of these rights still requires further clarification. Therefore, it is necessary to add a clear legal framework that regulates the rights and obligations of wet nurses, as well as the legal relationship between wet nurses and wet babies. This will ensure that the rights of both

⁵⁵ Eva Dyah Pratiwi and Susiana Sariyati, "Agama Dengan Keikutsertaan Keluarga Berencana (KB) Dan Pemilihan Jenis Alat Kontrasepsi Pada Pasangan Subur (PUS) Di Desa Argomulyo Sedayu Bantul Yogyakarta," *Journal Ners and Midwifery Indonesia* 3, no. 2 (2015).

⁵⁶ F. Y. Widodo, "Efek Pemakaian Pil Kontrasepsi Kombinasi Terhadap Kadar Glukosa Darah," *Jurnal Universitas Wijaya Kusuma Surabaya*, 2022.

parties are protected and legally recognized, as well as preventing potential legal conflicts in the future.

The conclusion from the views of the four schools of thought in Islam regarding the status of a nursing father and a nursing child is that the main factor in determining this status is the formation of breast milk which comes from intimate relations between husband and wife as well as the causes of pregnancy and birth. The four schools of thought agree that milk produced from intimate relations, pregnancy and childbirth is the main criterion in determining the status of a nursing father. Thus, if milk is produced from intimate relations between a husband and wife, the husband will be considered the wet father for the child who is breastfed by his wife. Therefore, what is important to emphasize from the views of the four schools of thought is that the origin of milk is a key factor in determining the status of a nursing father.

In the context of lactation induction, the views of the four schools of thought in Islam highlight the origin of milk formation as the main criterion in determining the status of a nursing father and a nursing child. If lactation induction is carried out with the aim of breastfeeding a child from a husband who is not involved in the process of producing milk, such as in the case of using synthetic hormone injections, the view of the four schools of thought emphasizes that the status of a wet nurse does not apply to the new husband, because the milk does not come from the relationship, intimacy that causes pregnancy and birth between husband and wife. Therefore, even if lactation induction is carried out, the status of a nursing father will not apply to husbands who are not involved in the process of producing milk.

The views of the four schools of thought offer a clear and structured framework for determining the status of a wet-nurse father. This clarity provides concrete guidance for Muslims in daily practice. By having strict criteria regarding the origin of milk formation, there is clarity in family relationships and marital status, which is very important in maintaining the boundaries and rules of sharia.

However, although the views of the four schools of thought provide clear guidance, there are limitations in their application to the modern context, especially in the case of lactation induction involving medical technologies such as injections of synthetic hormones. Traditional schools of thought may not provide straightforward answers to cases involving modern medical interventions, which creates a legal vacuum that needs to be filled. The main limitation of this view is the lack of adaptation to developments in technology and modern medical practice. In the case of induced lactation, where breast milk is produced through medical intervention without pregnancy and birth, the views of the four schools of thought may not be directly relevant. This shows the need for *ijtihad* or a more contemporary legal interpretation to deal with new issues that do not exist in the traditional context.

The author believes that although the views of the four schools of thought provide a strong basis, there is an urgent need for reform in the legal regulations regarding lactation induction. This is important to accommodate developments in technology and modern medical practices that are not discussed in classical texts. The author supports the implementation of a more flexible and adaptive approach, which still respects the basic principles of sharia but also takes into account the current context and needs so as to provide adequate legal protection for nursing mothers and breast-feeding children, and remains in accordance with sharia principles.

Conclusion

From the analysis regarding the use of synthetic hormone injections, it was found that according to the principles of Islamic Law and Indonesian Positive Law, women who use

synthetic hormone injections to increase breast milk production are considered legal, as long as the ingredients used do not contain haram substances and do not endanger the health of the mother and baby. breastfed. In this situation, breast milk produced after the use of synthetic hormone injections and then given to the baby is considered the woman's breast milk, in accordance with the views held in the Hanafi, Maliki, Shafi'i and Hanbali schools of thought. Apart from that, the Fatwa of the Indonesian Ulema Council legalized the use of contraceptives such as IUDs, birth control pills, KB implants. Considering that contraceptives contain the hormones estrogen and progesterone, it is the same as lactation induction, which is applied by supplying the body with hormones. So in this case it can be analogous/similar to the case of lactation induction.

The four schools of thought in Islam view that milk production is the basis for determining the status of a breastfed child. The four schools of thought also agree that milk produced due to intimate relations, pregnancy and childbirth is a factor that makes children breastfed by a wife become breastfed children for the husband or ex-husband. A new husband who is not the cause of the production of breast milk because he is not involved in the sexual intercourse and birth process does not have the right to claim the wife's nursing child according to the views of the four schools of thought.

In the context of Lactation Induction, the relationship between a wife's breast-feeding child and a husband who is not involved in the milk production process is considered to have no right to claim the status of a breast-feeding child according to the views of the four schools of thought. Therefore, the husband has no right to punish the baby as his baby. Thus, this study concludes that the views of the four schools of thought on this issue focus on the aspect of the cause of the appearance of breast milk as the main criterion in determining the status of a breastfed child, and taking synthetic hormone injections by women to stimulate milk production does not change this view.

In this context, if someone intends to adopt a child, it is advisable to consider adopting a child from the sibling line. These adjustments can be made according to individual preferences, for example, if you want to adopt a boy, it is recommended to take a child from the wife's side of the family (who is mahram with the wife), and conversely, if you want to adopt a girl, it is better to take a child from the husband's family (which is mahram with the husband). This approach is intended to maintain the continuity of mahraman status, including in the context of maintaining the boundaries of private parts when living in the same house with adopted children.

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