

# ADMINISTRATION OF MUSLIM LAW ACT

## (CHAPTER 3, SECTION 32)

### FATWA ISSUED

BY

### FATWA COMMITTEE, ISLAMIC RELIGIOUS COUNCIL OF SINGAPORE

*The Fatwa Committee has discussed on the issue put forward by KK Women's and Children's Hospital (KKH) in its 1st meeting on 17 November 2016 and 2<sup>nd</sup> meeting on 10 January 2017.*

### FATWA

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله رب العالمين ، والصلاة والسلام على سيد المرسلين وإمام المتقين نبينا محمد وعلى آله

وأصحابه أجمعين . اللهم أرنا الحق حقا وارزقنا اتباعه، وأرنا الباطل باطلا

وارزقنا اجتنابه، وبعد.

### FATWA BACKGROUND

1. The Muis Fatwa Committee had received a query from KKH on 12 October 2016 on its plans to set up a Human Milk Bank at KKH. The hospital wanted to get feedback from various stakeholders on the setting up of a milk bank in Singapore.
2. The question put forward to the Fatwa Committee was to understand the perspective of Muslim law on this issue, and whether premature Muslim babies can benefit from the milk processed at the abovementioned Milk Bank.
3. According to the ICA (Immigration and Checkpoints Authority), based on last few years' data, on an average there are about 42,000 births each year in

Singapore. The birth rate for the Malay population is 12.4/1000 residents, which is roughly 6500 births each year. Of this number, about 600 (9.5%) are born premature. Most of these babies require treatment in the Neonatal Intensive Care Unit (NICU) each year.

4. According to the hospital, scientific research has proven that breast milk is the gold standard for feeding human babies. The American Academy of Paediatrics states in its policy statement that, “The potent benefits of human milk are such that all preterm infants should receive human milk. If mother’s own milk is unavailable despite significant lactation support, pasteurized donor milk should be used”. This view is also supported by the World Health Organization (WHO) and UNICEF who issued a joint statement which states that, “Where it is not possible for the biological mother to breast feed, the first alternative, if available, should be the use of human milk from other sources. Human milk banks should be available in appropriate situations.” Milk from the KK Human Milk Bank will be offered to babies 34 weeks old and below after parental consent. This will stop when the baby reaches 34 weeks old, and/or weighs at least 1.8 kg, and has no other health complications or earlier if the baby’s own mother has enough of her own milk. The hospital will counsel and teach mothers from the beginning on how to increase their own milk supply. If the mother does not have enough of her own milk at baby’s discharge, an infant formula will be used after 34 weeks, as the risks of formula feeding are much lower. Parents can request to stop donor milk feeding for their baby at any point during the baby’s stay if they wish to.

## **PRODUCTION PROCESS**

5. The hospital has informed that they follow strict standards to ensure that the milk processed is safe to be consumed. The process begins with a health evaluation for the milk donor. This assessment aims to ensure that the donor is healthy and free from any bacteria and virus infections such as HIV, Hepatitis B etc. Milk produced by donors will then go through a pasteurization process, where

it will be heated to 62.5 degrees Celsius to kill any existing bacteria without removing the nutrients needed for growth. Following that, the milk will go through an examination process in a laboratory to ensure, once again, that it is free from germs and bacteria.

6. To avoid cross-contamination with other milk, the hospital will ensure that milk collected in whole from the donor will not be mixed with others. Milk from one donor will be collected to be processed only when it reaches 2 to 3 litres.

7. The hospital has also informed that records and personal details of donors and recipients will be kept for at least 21 years. The personal data will be categorised as classified information and will not be revealed except for clinical purposes, such as the need to trace the recipient and donor should contamination occur.

## **HOW MILK IS GIVEN**

8. The Fatwa Committee was informed that the hospital will give milk from the Milk Bank to premature babies in the event that the mother is unable to produce breast milk. The Milk Bank will store the milk in 50ml bottles. Each bottle will then be distributed to all the babies in the NICU. The amount given to each baby will vary, according to their respective conditions and age of birth. Typically, most premature babies are started off on small volume of feeds like 1-2 ml every 2-3 hours. This amount will be increased gradually, according to the strength of the baby and also the baby's readiness to take in an amount that will make it feel full – which is estimated to be about 12ml to 15ml per feed for babies weighing 1kg.

9. Milk that is given to premature babies below 32 weeks will be given through a tube inserted through the baby's nose. Between 32-34 weeks, trial of oral feedings will start. The objective of these trials is to train the baby, as at this

stage, the babies are still too premature to be able to take the entire feed volume by mouth.

## **FATWA COMMITTEE'S CONSIDERATIONS**

10. In deliberating the ruling pertaining to the Milk Bank and its implications, the Fatwa Committee acknowledged that this issue is related to the status of *mahramīyāh* (kinship or relations that bar marriage), that can come about from breastfeeding. The Fatwa Committee has looked into several scholarly views on the issue of *mahramīyāh* through milk supply from milk banks, and found the following:

Opinions that forbid the use of milk from milk bank for Muslim babies. These are the opinions of the Mufti of Selangor<sup>1</sup> and Majma' Fiqh<sup>2</sup> (International Islamic Fiqh Academy).

- Opinions that allow for it only in emergency situations. This is the opinion of the Mufti of Federal Territory<sup>3</sup> (Wilayah Persekutuan) Malaysia.
- Opinions that totally allow for the donation and establishment of breast milk banks. This is the opinion of several scholars.<sup>4</sup>

11. Some issues related to the issue of *mahramīyāh* were also studied by the Fatwa Committee, such as:

- a. Amount and number of feedings using breast milk.

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<sup>1</sup> Please refer: <http://www.muftiselangor.gov.my/fatwa-terkini/213-hukum-menubuhkan-bank-susu-di-malays>

<sup>2</sup> Please refer: <http://www.iifa-aifi.org/1584.html>

<sup>3</sup> Please refer: <http://www.muftiwp.gov.my/index.php/ms-my/perkhidmatan/bayan-linnas/1242-bayan-linnas-siri-70-isu-berkenaan-ibu-susuan-pelbagai-hukum-kad-atau-sijil-susuan>

<sup>4</sup> Sila lihat: <http://www.qaradawi.net/new/Articles-4731>

b. Issue of uncertainty (*jahālāh*).

c. Method of feeding.

**a. Amount and rate of feeding the milk**

12. The information gathered by the Fatwa Committee showed that even though the hospital can identify the donor, the source of milk supply given to the premature babies will not be limited to one donor for each baby. The hospital will in fact give the milk from one donor to a few babies in the ward until this supply is finished. For example, a particular donor's milk that has been processed will be kept in a bottle with a 50ml capacity. This will be split into the day's feeds for the baby. This means that even if the baby is on full feeding, he/she will probably only get 2-3 full feeds from the same donor. This means that a premature baby will receive milk from different donors throughout the time in the NICU, without knowing the total amount of milk consumed from each individual donor. If the baby's own mother starts producing milk, then her milk will be given first. Milk will be taken from the Milk Bank only if the baby requires additional supply.

13. Based on the information received by the Fatwa Committee from the hospital, each baby will be consuming milk from about 20 donors, throughout his or her stay of about a month at the NICU.

**b. Issue of uncertainty (*jahālāh*)**

14. The status of doubt that exists in the identity of the milk donor as well as in the amount and rate of milk being donated can cause the non-establishment of a *mahramīyāh* relationship between the donor and the premature baby. Imām As-Syāfi'e spoke about the element of doubt in breastfeeding in his book Al-Umm:

ولو شك رجل أن تكون امرأة أرضعته خمس رضعات فلا يكون محرما لها، ولو تحققت أنها أرضعته خمسا، ولكن شككت هي في الحولين أم بعضهما، فلا تحريم أيضا على الراجح.

Which means: *If a man is in doubt whether or not a woman has breastfed him on five occasions, then he is not a mahram (a person who is barred marriage from the subject) to her. Likewise, if he is confident that breastfeeding has occurred over five times, but the woman doubted if those instances occurred when he was two years old [and below], then mahramīyāh does not occur as well, based on the chosen opinion.*<sup>5</sup>

15. Ibn Qudāmāh from the Hanbali mazhab said:

وإذا وقع الشك في وجود الرضاع، أو في عدد الرضاع المحرم: هل كمل أو لا؟ لم يثبت التحريم؛ لأن الأصل عدمه، فلا نزول عن اليقين بالشك كما لو شك في وجود الطلاق وعدده.

Which means: *When there is doubt whether breastfeeding took place, or doubt on the number of breastfeeding occasions – whether the number is sufficient [to establish mahramīyāh] or otherwise – [then] mahramīyāh is not established, because the original status is that [mahramīyāh] is not established, and a ruling that is certain cannot be replaced by one that is based on doubt, as in the case when one doubts whether [he has] divorced [his wife], or on the number of times [that he has divorced her].*<sup>6</sup>

16. According to a fatwa issued by Egypt's Dār al-Iftā' in 1983, mahramīyāh does not exist between the donor and the baby as long as there is doubt on the identity of the donor.<sup>7</sup> The text of the fatwa seeks to explain the Islamic ruling in

<sup>5</sup> As-Syāfi'e, **Al-Umm**, Beirut, Dār Al-Ma'rifāh, vol.5, pg.33

<sup>6</sup> Ibn Qudāmāh Al-Maqdisī, **Al-Mughnī**, Makatabāh Qāhirāh, vol.8, pg.17

<sup>7</sup> Please refer: <http://dar-alifta.org/>

the situation where milk collected has been mixed together, and the identities of the women as well as the amount which was collected from each woman are unknown. Part of the fatwa text is as follows:

فالنصوص الفقهيَّة واضحة في أنه لا مانع من الزَّواج بين الصغيرين اللذين تناولوا هذا اللَّبن من الوجهة الشرعية؛ لعدم إمكان إثبات التَّحريم في حالة عدم تعيين السيدة، أو السيدات اللاتي ينسب إليها، أو إليهن لبن الرضاعة. أما في حالة تبريد اللَّبن وبقائه من شهرين أو ثلاثة صالحًا للتناول، أو إعطائه للأطفال بحالته الطبيعية - فإن عامل الجهالة يبقى دائمًا أيضًا، ومن ثم لا يكون هناك مانع من الزَّواج بين أبناء الرضاع.

Which means: *Jurisprudence (fiqh) texts clearly established that marriage is permissible between two children who have consumed the milk. There is no basis to establish mahramiyyāh when the woman or the group of women who donated the milk could not be identified, such that the milk cannot be affirmatively attributed to a definite donor or donors. As for the situation in which the milk was frozen, and stored for two or three months so that it remains good to be consumed, or even if it is given to the infants in its original condition, the issue of doubt (jahālāh) remains valid. Therefore, there are no barriers to marriage between two children who drink from this supply of milk.*

17. The opinion from Egypt's Dār al-Iftā' is based on the approach of the Hanafi school of thought<sup>8</sup> that states that *mahramiyyāh* will exist only if there is no doubt on the status of the donor and, if the milk is also not mixed with other substances or with other donors' milk.

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<sup>8</sup> Please see: <http://dar-alifta.org/Foreign/ViewFatwa.aspx?ID=7437&text=milk>

**c. Method of feeding**

18. Based on information received from the hospital, premature babies are fed milk through a tube inserted through the baby's nose. Trial of oral feeding will start only after 32 weeks, and milk is given in small amounts. This is an issue that has been debated among scholars. Although the majority of scholars such as the Shāfi'e<sup>9</sup> and Hanafi<sup>10</sup> jurists have established that all methods of breastfeeding can lead to *mahramīyāh*, there are some differing opinions by several scholars who examined the meaning of Surah al-Nisa' 'verse 23:

وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ

Which means: "... And your mothers are those who have suckled you."  
[Surah An-Nisa': 23].

19. According to several scholars, only the act of suckling directly from the breast of the woman would cause *mahramīyāh* to be established. This is because the term "*ummahātukum*" in that verse refers to the concept of motherhood as a whole, which includes breastfeeding and also the bond of love between a mother and a baby as a result from direct latching. Therefore, they argued that without these two aspects, it will not be considered that the two has shared a breastfeeding bond (*raḍa'ah*) that makes it *harām* (impermissible) for marriage between them.<sup>11</sup>

**FATWA DECISION**

20. Based on the explanation given by the hospital on the needs of premature babies to be breastfed so that they have a better chance to develop and grow, the

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<sup>9</sup> Taqyu Ad-Dīn As-Syāfi'e, *Kifāyāh Al-Akhyār Fī Hilī Ghāyāh Al-Ikhtistṣār*, Damascus, Dār Al-Khāir, vol.1, pg.435

<sup>10</sup> Badru Ad-Dīn Al-'Ainī, *Al-Bidāyāh Sharh Al-Hidāyāh*, Beirut, Dār Al-Kutub Al-'Ilmiyyāh, vol.5, pg.217

<sup>11</sup> Please refer: <http://www.qaradawi.net/new/Articles-4731>



Fatwa Committee is of the view that there exists a situation of great difficulty (*masyaqqāh*) that brings about *hājāh* or a need for a solution for such babies. Therefore, the Fatwa Committee is of the view that the plan for the establishment of a milk bank for this purpose is an initiative in line with the objectives of Sharī'āh (*maqāsid sharī'āh*) which, among others, emphasize the need for the preservation of human life. The principles in Islam are very clear on this matter, as embodied in the following legal maxims of *fiqh*:

a) الضرر يزال<sup>12</sup>

Which means: *Any harm [must] be eliminated.*

b) المشقة تجلب التيسير<sup>13</sup>

Which means: *Hardship begets facility.*

c) اذا ضاق الامر اتسع<sup>14</sup>

Which means: *When the condition becomes tight, then [the law] is widened.*

21. On the issue of *mahramīyāh*, the Fatwa Committee affirms the principle that *mahramīyāh* between an infant and his wet nurse exists only if they fulfil the conditions set out in *fiqh*<sup>15</sup> and there is no doubt about the matter.

22. The Fatwa Committee is of the opinion that feeding milk from the Milk Bank which has been planned to be set up at KKH, does not result in *mahramīyāh*. This is due to a combination of factors and basis such as the following:

- Restrictions to access information on the identity of the donor

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<sup>12</sup> As-Suyūṭī, *Al-Ashbāh wa An-Nazāir*, Dār As-Salām, vol.1, pg.208

<sup>13</sup> Ibid, vol.1, pg.194

<sup>14</sup> Ibid, vol.1, pg.208

<sup>15</sup> Such as: 1) The number of milk should achieve at least five feedings till the baby is full, 2) Milk suckled must reach the baby's stomach; and 3) the baby's age not exceeding two years, according to the month of Qamarīyyāh. Please see: Wahbāh Zuhailī, *Fiqh Islāmī Wa Adillatuhu*, Damascus, Dar Al-Fikr, vol.10, pg.7283

- Inability to define the number of times and amount of breast milk that a premature baby receives from a single donor, such that it satisfies the conditions for the establishment of *mahramīyāh* or otherwise.
- Premature infants are fed donated human milk not through direct latching but through other methods.
- Uncertainty on the amount of milk required for a premature baby to be fully fed, given that the amount of milk is small.
- The act of feeding through milk from milk banks is for the purpose of prevention of serious illnesses and to develop the digestive system.

23. Based on the above considerations, the Fatwa Committee rules that premature Muslim babies in Singapore can benefit from milk processed by the Milk Bank. It does not cause affinity of *mahramīyāh* due to the above-mentioned combination of factors and uncertainties that exist.

الله أعلم ، وبالله التوفيق ، وصلى الله على سيدنا محمد وعلى آله وصحبه وسلم.

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