



## Intertextuality of Dhawabith Fiqhiyah in Mahram Breastfeeding: A Study of Article 8 of the 1974 Marriage Law and Article 39 of KHI

Fatawi,<sup>1</sup> B. Syafuri,<sup>2</sup> Ahmad Hidayat<sup>3</sup>

<sup>1,2,3</sup>Program Doktorat, Universitas Islam Negeri Sultan Maulana Hasanuddin, Banten

Email: [223611008.fatawi@uinbanten.ac.id](mailto:223611008.fatawi@uinbanten.ac.id),<sup>1</sup> [b.syafuri@uinbanten.ac.id](mailto:b.syafuri@uinbanten.ac.id),<sup>2</sup>

[ahmad.hidayat@uinbanten.ac.id](mailto:ahmad.hidayat@uinbanten.ac.id)<sup>3</sup>

### Keywords:

breastfeeding, mahram, fiqh principles, compilation of Islamic law (KHI).

### Kata Kunci:

menyusui, mahram, *ushul al-fiqh*, kompilasi hukum Islam (KHI).

### Abstract:

*Ar-radha'ah* (breastfeeding) that establishes mahram status—a kinship relationship prohibiting marriage—must meet specific conditions in Islamic law, such as the child being under two years old and breastfed at least five times by a woman capable of pregnancy. These conditions are based on the Qur'an, hadith, and scholarly opinions. However, Indonesian family law, including Marriage Law No. 1 of 1974 and the Compilation of Islamic Law (KHI), does not explicitly specify who becomes mahram through breastfeeding or the criteria involved, creating a legal gap. This study uses a qualitative, normative-empirical approach and a literature review. Julia Kristeva's intertextuality theory is applied to analyze how classical Islamic legal texts have influenced and been transformed within Indonesian national law. The results show that although Indonesian family law does not explicitly regulate breastfeeding as a basis for mahram status, there are traces of intertextuality indicating that Islamic legal principles have been absorbed into the national legal framework, both consciously and unconsciously. Mahram relationships from breastfeeding affect marriage prohibitions and certain social interactions, but do not impact other legal aspects such as inheritance or testimony. The study recommends updating legal interpretations to fill this gap and provide legal certainty for judicial practice regarding breastfeeding-based mahram status in Indonesia.

### Abstrak:

*Ar-radha'ah* (penyusuan) yang menyebabkan status mahram—yaitu hubungan kekerabatan yang mengharamkan pernikahan—harus memenuhi syarat tertentu menurut hukum Islam, seperti anak disusui di bawah usia dua tahun dan disusui minimal lima kali oleh perempuan yang dapat hamil. Ketentuan ini didasarkan pada Al-Qur'an, hadis, dan pendapat para ulama. Namun, hukum keluarga di Indonesia, seperti Undang-Undang Perkawinan No. 1 Tahun 1974 dan Kompilasi Hukum Islam (KHI), tidak secara eksplisit mengatur siapa yang menjadi mahram karena penyusuan dan syarat-syaratnya, sehingga menimbulkan kekosongan hukum. Penelitian ini menggunakan pendekatan kualitatif dengan metode normatif-empiris dan kajian kepustakaan. Teori intertekstualitas dari Julia Kristeva digunakan untuk menganalisis bagaimana teks hukum nasional menyerap dan mentransformasikan makna dari sumber hukum Islam klasik. Hasil penelitian menunjukkan bahwa meskipun hukum nasional tidak secara eksplisit mengatur penyusuan sebagai sebab mahram, terdapat jejak intertekstualitas yang menunjukkan bahwa prinsip-prinsip hukum Islam telah terserap dalam sistem hukum Indonesia. Hubungan mahram akibat penyusuan berdampak pada larangan pernikahan dan interaksi sosial, namun tidak memengaruhi

aspek hukum lain seperti waris atau kesaksian. Diperlukan pembaruan tafsir hukum untuk mengisi kekosongan ini dan memberikan kepastian hukum dalam praktik peradilan.
---

## A. Introduction

In Islam, milk kinship has legal implications similar to those of biological kinship in terms of marriage laws.<sup>1</sup> As a result of milk siblinghood, marriage between such individuals is prohibited. Islam also has specific regulations governing when milk kinship creates a mahram relationship, including the amount of breastfeeding received and the baby's age during breastfeeding. Moreover, breastfeeding must be clearly performed by a woman who is capable of bearing children.<sup>2</sup> Milk kinship occurs when a child is breastfed by a woman other than their biological mother, and the woman breastfeeding has a biological child or other children she breastfeeds. Consequently, the child who is breastfed by the same woman becomes a milk sibling to her biological child. Similarly, the breastfeeding woman becomes a milk mother, and the same applies to the siblings of the milk mother, who become milk siblings to the breastfed child.<sup>3</sup> The foundation of milk kinship laws comes from the Quran, Surah An-Nisa, verse 23, and numerous Hadiths of the Prophet, which scholars have detailed extensively, often providing real-life examples. After detailing the aspects of milk kinship law, subsequent scholars have drawn conclusions that serve as standards for evaluating future cases of milk kinship, which are known as *dhawabit fiqhiyyah*.<sup>4</sup>

The term *dhawabit fiqhiyyah* is the plural form of the word *ḍabīṭah*, which linguistically means "bond" or "rule". In the context of fiqh, *dhawabit fiqhiyyah* refers to rules that are particular in nature and serve as guidelines in applying Islamic law to more detailed branch cases. Unlike *qawā'id fiqhiyyah*, which is universal, *dhawabit* is usually limited to specific topics and is more applicable. In other words, *dhawabit fiqhiyyah* are practical formulations compiled by scholars to guide consistent rulings on similar issues.<sup>5</sup> This concept is essential in studying

<sup>1</sup> Peter Parkes, "Milk Kinship in Islam. Substance, Structure, History," *Social Anthropology* 13, no. 3 (2005): 307–29.

<sup>2</sup> Mushthafa Al-'Adawi, *Jami' Ahkam Al-Nisa'*, 1st ed. (Riyadh: Dar al-Sunnah, 1992).

<sup>3</sup> Badieah Badieah et al., "Implementasi RESTful Web Service Pada Sistem Informasi Donor ASI Terintegrasi Di Indonesia Implementation of RESTful Web Service on Indonesian's Integrated Breastfeeding Donor Information System," *SISTEMASI: Jurnal Sistem Informasi* 11 (2022): 455–69.

<sup>4</sup> Ladan Rahbari, "Milk Kinship and the Maternal Body in Shi'a Islam," *Open Theology* 6, no. 1 (2020): 43–53.

<sup>5</sup> Syaikhul and Ali Syahbana, *Konsep Ar-Rada'ah; Relevansi Dan Metode Pemikiran Ibnu Hazm Dan Ibnu Qudamah*, ed. Norwili, 1st ed. (Yogyakarta: Penerbit K-Media Yogyakarta, 2021).

Islamic law because it can help simplify the complexity of the branches of fiqh without neglecting the shar'i foundation.

The laws on milk kinship found in fiqh books serve as a genotype (reference) for forming marriage prohibition laws in Indonesian Family Law, particularly in Law No. 1 of 1974 and the Compilation of Islamic Law (KHI).<sup>6</sup> Several provisions in Law No. 1/1974 on Marriage and the Compilation of Islamic Law (KHI) show the influence of classical fiqh, especially regarding the prohibition of marriage due to breastfeeding relationship (*radā'ah*). The provisions regarding the prohibition of marriage due to breastfeeding relationship in Article 8 letter (b) of the Marriage Law and Article 39 KHI adopt concepts that have long been discussed in the *fiqh* literature of the Syafi'i school of thought and other schools of thought. This reflects the codification of *fiqh* norms into the Indonesian positive legal system. The preparation of the KHI itself refers to sources of Islamic law such as the Qur'an, hadith, ijma', and qiyas, as explained in the introductory section of the KHI and the authoritative interpretation of Islamic law used by the Indonesian Ministry of Religious Affairs in formulating the policy.<sup>7</sup> In addition, based on a study of the legislative history of Law No. 1/1974, it was found that the drafting of its articles also considered the principles in *fiqh* to develop a national family law in line with Islamic values in Indonesia<sup>2</sup>. Thus, the prohibition of breastfeeding in both regulations is a fact of codification of classical Islamic legal norms, not just an assumption.

In linking the two (Indonesian family law and *dhawabit fiqhiyyah*), this article uses the theory of intertextuality developed by French literary critic Julia Kristeva, who argues that a text becomes a mosaic of previous texts. This theory aligns with the legal interpretation theory through historical analysis.<sup>8</sup> The expected conclusion of this research is the identification of the influence of *fiqhiyyah* provisions on breastfeeding (*radā'ah*) on the formulation of specific articles in Law Number 1 Year 1974 on Marriage and the Compilation of Islamic Law (KHI), especially those that regulate the prohibition of marriage due to breastfeeding relationships. Although the law does not specify the categories of causes of mahram relationship due to

---

<sup>6</sup> Mursyid Djawas et al., "The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 139–55.

<sup>7</sup> Direktorat Urusan Agama Islam dan Pembinaan Syariah Direktorat Jenderal Bimbingan Masyarakat Islam Kementerian Agama Republik Indonesia, *Himpunan Peraturan Perundang-Undangan Tentang Perkawinan*, 2nd ed. (Jakarta: Direktorat Urusan Agama Islam dan Pembinaan Syariah Direktorat Jenderal Bimbingan Masyarakat Islam Kementerian Agama Republik Indonesia, 2015).

<sup>8</sup> Julia Kristeva, *Desire in Language a Semiotic Approach to Literature and Art*, ed. Leon S. Roudiez, Thomas Gora, and Alice Jardine, 1st ed. (New York: Columbia University Press, 1980).

breastfeeding, this study aims to show that these details are substantively derived from the *dhawabith fiqhiyyah* found in classical fiqh books. This approach is based on the doctrine of historical interpretation in legal discovery, which places fiqh texts as one of the normative references in the construction of Islamic law in Indonesia.

Previous discussion regarding Dhawabith Fikhiyah in mahram breastfeeding was found. Maizul Imran, in his research, discusses the status of adopted children who become mahrams according to the ijtiḥad of A'isyah (614-679). A'isyah's ijtiḥad became a source of law by emphasizing the limits of adopted children who could be breastfed.<sup>9</sup> Rabi'atul discusses how the Brunei Darussalam sharia court determines the limits of mahram or not to adopt children by the Shafi'i madhhab based on the 1959 Brunei Darussalam Constitution. The child becomes a mahram, and there must be ar-radha'ah testimony between the adoptive mother and the adopted child.<sup>10</sup> Furqaan, in his research, discusses how the status of adopted children becomes mahram from the perspective of Shafi'iyah, by breastfeeding when still small, adopting children from relatives of the husband or wife, and marrying adopted children. Then, there will also be a connection between inheritance rights and marriage experts.<sup>11</sup> In addition, Muniroh discusses the appointment of stepchildren in Islamic law and Law Number 3 of 2006 concerning religious courts in the maqashid syari'ah perspective. She found that based on the maqasid al-syari'ah daruriyah approach, adopted children must be protected as a whole. In the legal context, foundlings are treated as orphans, so they receive religious attention and treatment by virtue of this status.<sup>12</sup> Therefore, the author wants to discuss how Dhawabith Fikhiyah in mahram breastfeeding intertextualizes it with Law No. 8 of 1974 Marriage and Article 39 of KHI because no one has discussed it.

---

<sup>9</sup> Beni Firdaus and Aarsal Aarsal, "Adopted Children as Mahram: Responding to Ijtiḥad 'Ā'isyah (614-679 Ad) in the Flow of Modernization," *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam*, 2020, 165–80.

<sup>10</sup> Rabi'atul Shahnazirah Binti Mohd. Shahrenidzam and Cecep Soleh Kurniawan, "Implications of Ar-Radha'ah in Determining the Mahram of Adopted Children: A Case Study in the Syariah Court of Brunei Darussalam," *Jurnal Hukum Islam* 22, no. 1 (June 8, 2024): 223–44, [https://doi.org/10.28918/jhi.v22i1\\_7](https://doi.org/10.28918/jhi.v22i1_7).

<sup>11</sup> Muhammad Al-Furqaan and Muhammad Al Mustafa, "Status of Adopted Child Turned into Mahram According to Syafi'i Fiqih," *Al Mashaadiri: Jurnal Ilmu Syariah* 3, no. 2 (January 3, 2023): 113–29, <https://doi.org/10.52029/jis.v3i2.92>.

<sup>12</sup> Siti Muniroh and Khoiruddin Nasution, "The Adoption of Found Child According to Islamic Law and Law No. 3 of 2006 on Religious Courts in the Perspective of Maqasid Al-Shari'ah," *Millah* 21, no. 1 (August 2021): 89–112, <https://doi.org/10.20885/millah.vol21.iss1.art4>.

## B. Method

This is normative legal research with historical and intertextual approaches. The object of study is the legal texts contained in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), especially articles regulating the prohibition of marriage due to breastfeeding relationships. This research also examines classical fiqh texts containing *dhawabith fihiyyah* or formulations of partial rules used to understand the details of the breastfeeding law. The intertextual approach is used to see the relationship and mutual influence between the fiqh text and the positive law text, as promoted by Julia Kristeva's theory of intertextuality.<sup>13</sup> Data collection techniques are conducted through library research by examining legal documents and fiqh literature in depth. The data analysis method used is qualitative with a descriptive-analytical approach, which aims to describe and analyze the influence of *dhawabith fihiyyah* on the formulation of Islamic family law in Indonesia.<sup>14</sup> To maintain the focus of the study, this research is limited to an analysis of the normative influence of *dhawabith fihiyyah* on the legal provisions regarding mahram relationships due to breastfeeding in the Marriage Law and KHI. This research does not discuss aspects of legal implementation in court or social practices that develop in the community. In explaining the historical context of the formation of legal norms, the theory of historical interpretation of law (*Wethistorische and Rechtshistorische Interpretatie*) as developed by Ernst Utrecht is used, which emphasizes the importance of understanding the history and socio-political context in legal discovery.

## C. Results

This study finds that the concept of mahram through *ar-radhâ'ah* (breastfeeding) has a strong foundation in Islamic law derived from the Qur'an, hadith, and scholarly opinions. However, it has not been thoroughly accommodated in Indonesian family law, such as the Marriage Law and the Compilation of Islamic Law (KHI). By applying Julia Kristeva's theory of intertextuality, the study shows that Indonesian legal texts, consciously and unconsciously, absorb and transform meanings from classical Islamic texts. This is evident in how the concept of mahram through breastfeeding is implicitly understood and adopted in national law. The

---

<sup>13</sup> Kristeva, *Desire in Language a Semiotic Approach to Literature and Art*.

<sup>14</sup> Badieah et al., "Implementasi RESTful Web Service Pada Sistem Informasi Donor ASI Terintegrasi Di Indonesia Implementation of RESTful Web Service on Indonesian's Integrated Breastfeeding Donor Information System."

study also emphasizes that breastfeeding-based mahram relationships lead to marriage prohibitions and specific social interactions. However, they do not affect other legal aspects such as inheritance, financial support, or legal testimony. Therefore, the study recommends updating legal interpretations or jurisprudence to fill the legal gap in determining mahram status through breastfeeding in Indonesia.

## D. Analysis and Discussion

### 1. Mahram Due to Breastfeeding is Equivalent to Mahram Due to Blood Relations

*Ar-Radbâ'ah* can be read with a *fathah* on the letter *ra* and can also be read with a *kasrah* on the letter *ra*, which is *al-ridbâ'ah* or breastfeeding. The word *Ar-Radbâ'ah* comes from the verb (*fi'il madi*) *radha'a*. *Ar-Radbâ'ah* is a *masdar* form of the *fi'il thulathi*: *radhi'a* – *yardhi'u* or *yardha'u* – *radh'an*, which means giving breast milk or breastfeeding. A breastfed baby is called *ar-radhi'* or *al-râdhi'*, while a mother who breastfeeds her child is called *al-murdhi'*. Meanwhile, a breastfeeding mother or a woman who breastfeeds someone else's child is called *al-murdhi'ah*.<sup>15</sup> In terms of the terminology of breastfeeding, Jazairi does not limit the entry of milk into the baby's stomach. It does not have to be through the mouth, nose, or other means. It does not have to be from the direct nipple. Thus, Jazairi accommodates the current technology with the existence of Milk Banks. This means that with a Milk Bank, a baby who drinks milk from the Milk Bank with milk donors stored by the Milk Bank causes a mahram relationship.

Breastfeeding results in mahram status, which impacts the following laws: first, a permanent marriage prohibition (*muabbad*). Second is the permissibility of looking (*jawaz al-nadzr*), being alone (*khulwat*), being safe from temptation, and traveling together. The mahram relationship due to breastfeeding does not affect other aspects, such as lineage. The mahram relationship due to breastfeeding does not change the inheritance law. This means that a mahram due to breastfeeding does not result in mutual inheritance. There is no obligation to provide maintenance. It is not forbidden to be a witness to one another. Emancipation of enslaved people through ownership, no right to annul *qisas* (*budud* punishment), rejection of

---

<sup>15</sup> Abdul Rahman bin Muhammad Awad Al-Jazairi, *Al-Fiqh 'ala Al-Madzhab Al-Arba'ah Vol. 4*, 2nd ed. (Beirut: Dar al-Kutub al-Ilmiyah, 2003).

testimony, and so on. For the last-mentioned matters, the mahram relationship due to breastfeeding has no legal impact.<sup>16</sup>

Linguistically, mahram means forbidden or opposed to halal. In terms, mahram means someone who cannot marry because of a kinship relationship that arises from breastfeeding or due to Islamic law provisions.<sup>17</sup> The provisions on who cannot be married are based on the scholars' interpretation of the word of Allah SWT in Surah An-Nisa [4]: 23. Al-Qurtubi in his commentary mentions that this verse of the Quran explains that lawful women and those who are prohibited for marriage. According to him, seven women are forbidden to marry from the category of lineage, and six from the category of breastfeeding and marriage (affinity). Still, Qurtubi presents a mutawatir hadith narrated by Ibn Abbas that mentions seven from lineage and seven from breastfeeding and affinity forbidden for marriage. According to Surah An-Nisa, verse 23, the seven who are prohibited from marriage are mothers, daughters, sisters, paternal aunts, maternal aunts, nieces from brothers, and nieces from sisters. Meanwhile, women who are forbidden due to breastfeeding and affinity relationships are: the breastfeeding mother, sisters who are breastfed by the same woman, mother-in-law, stepdaughters, combining two sisters, and women who were married to one's father.<sup>18</sup>

*Tafsir al-Baghawi* explains that in this verse, there are 14 mahrams (family ties) or muharramaat (women who are forbidden to marry) categorized into two groups: seven from the category of lineage and seven from the category of reasons. Bagawi, in his explanation, first mentions the mahram from the category of reasons. Two are breastfeeding, four are because of affinity, and the rest are married women. From the lineage category, Bagawi details the following: first, mothers. Bagawi includes mothers and grandmothers from the father's and mother's sides. Second, daughters, Bagawi includes granddaughters. Third, sisters, both paternal and maternal. Fourth, paternal aunts, including paternal great-aunts. Fifth, maternal aunts, including maternal great-aunts. Sixth and seventh, nieces from brothers and sisters, including grandnieces. Bagawi calls mothers and grandmothers ashal, daughters and

---

<sup>16</sup> Al-'Adawi, *Jami' Abkam Al-Nisa'*.

<sup>17</sup> Wizarah al-Auqaf wa al-Syu'un Al-Islamiyah, *Al-Mausu'ah Al-Fiqhiyah Al-Quwaitiyah*, 1st ed. (Kuwait-Kairo: Wizarah al-Auqaf wa al-Syu'un al-Islamiyah - Dar al-Salasil - Dar al-Shafwah, 2006).

<sup>18</sup> Muhammad bin Ahmad Al-Qurthubi, *Al-Jami' Li Abkam Al-Qur'an*, ed. Ahmad Al-Barduni and Ibrahim Athfis, 2nd ed. (Cairo: Dar al-Kutub al-Mashriyah, 1964).

granddaughters are called *fushul*, and sisters and their children are called *fushul anwali ushul*. He calls paternal aunts and maternal aunts upwards, *anwalu fashlin min kulli ashlin badabu*.<sup>19</sup>

Muhammad Ali al-Shabuni states that the prohibition of marrying those related through breastfeeding is similar to that of those related by lineage, with seven prohibitions. However, the Quran only explicitly mentions mothers and sisters. Al-Shobuni refers to mothers as *ushul* and sisters as *fur'u*. Al-Shobuni explains that the ban from the perspective of *ushul* includes all *ushul* and *al furu'*. Shobuni clarifies that the Prophet's hadith specifies the prohibition of marriage due to breastfeeding.<sup>20</sup>

Based on various commentaries on Surah An-Nisa, verse 23, mahram is categorized into three causes: lineage, breastfeeding, and marriage. This discussion focuses only on the mahram resulting from breastfeeding. It should be explained that mahram through breastfeeding is a family relationship between two individuals who become mahram (forbidden to marry each other) through the breastfeeding relationship. This means that two individuals who have a breastfeeding relationship with the same person are considered siblings legally and therefore cannot marry each other forever.

Furthermore, it should be explained that a mahram through breastfeeding means a family relationship between two individuals who become mahram through the breastfeeding relationship. Therefore, they cannot marry each other. This means that when two individuals have a breastfeeding relationship with the same person, they are legally considered siblings. Thus, they cannot marry but can live together and see each other within certain limits. *Dhabith* is a summary (general fiqh) derived by scholars from detailed fiqh cases, whether from the Quran or hadith.

The evidence that prohibits marriage due to breastfeeding includes siblings through breastfeeding, the one who breastfeeds, and her siblings. This hadith is well-known because it has been narrated by many and has numerous versions. The essence of the hadith said, *"Prohibitions due to breastfeeding are like prohibitions due to blood relations."*

The reason behind the revelation of the hadith narrated by Aisha r.a. is her milk brother visiting her. The context of the hadith narrated by Ibn Abbas is the Prophet's desire to marry the daughter of Hamzah. Hamzah was the Prophet's uncle, but Hamzah was also his

---

<sup>19</sup> Abu Muhammad al-Husain bin Mas'ud Al-Baghawi, *Ma'alim Al-Tanzil Fi Tafsir Al-Quran*, ed. Muhammad Abdullah Al-Nimr, Utsman Jum'ah Dhumairiyah, and Sulaiman Muslim Al-Harash, 1st ed. (Riyadh: Dar Thayyibah li al-Nashr wa al-Tawzi', 1997).

<sup>20</sup> Muhammad Ali Al-Shabuni, *Rawa'i' Al-Bayan Fi Tafsir Ayat Al-Abkam*, 3rd ed. (Damascus: Maktabah al-Ghazali, 1980).



milk brother. A slave of Abu Lahab named Suwaibah breastfed both Hamzah and the Prophet before the Prophet was breastfed by Halimah. The hadith narrated by Umm Salamah concerns the age limit of the baby, stating that breastfeeding that causes mahram relationships must occur below the age of two years.<sup>21</sup>

The differences in wording for describing mahram due to blood relations also exist. Some narrate it as "*min nasab*" and others as "*min al-wiladah*." These variations mean the same, referring to birth relations, as nasab arises from birth. Several similar hadiths provide the basis for the rule against marrying milk siblings and those who breastfeed them.<sup>22</sup>

Another hadith from the Musnad Ahmad states that the Prophet desired the daughter of Hamzah, the hero of Uhud and the Prophet's uncle. The Prophet said: "She is the daughter of my milk brother (al-Radha'ah). What is prohibited by breastfeeding is what is prohibited by blood relations." The hadith is considered authentic (marfu), with narrators such as Ibn Abbas, a companion and nephew of the Prophet, Jabir, a friend of Ibn Abbas, Qatadah (trustworthy but also accused of lying, residing in Wasit, Basrah), Hammam (trustworthy, residing in Basrah), Hadabah bin Khalid (trustworthy), and Hasan bin Sufyan (trustworthy).

This hadith serves as a specific rule and its evidence. Furthermore, this fiqh rule clarifies the word of Allah SWT that stated: "*Your mothers who breastfed you; your sisters through breastfeeding.*" (QS An-Nisa [4]: 23). In this context, there are four groups related to blood relations and four other types of in-laws, totaling eight types. Just as blood relatives are prohibited due to breastfeeding, in-laws are also forbidden due to breastfeeding, based on analogy from blood relations and understanding from the aforementioned verse and hadith. Thus, the general principle is that what is prohibited due to breastfeeding is what is not permitted due to blood relations or in-laws, except in two situations where the rules differ.<sup>23</sup> Two important dhawabith fihiyyah of breastfeeding establish a lineage relationship (nasab): the substitute nutritional intake and the number of breastfeedings that create a mahram relationship.

---

<sup>21</sup> Rahbari, "Milk Kinship and the Maternal Body in Shi'a Islam."

<sup>22</sup> Nurul Fadlillah, Muhid Muhid, and Andris Nurita, "Hadis Tentang Menikah Dengan Mahram Melalui Pendekatan Psikologi," *El-Sunnah: Jurnal Kajian Hadis Dan Integrasi Ilmu* 5, no. 2 (2024): 224–35.

<sup>23</sup> Muhammad Hasnan Nahar, "HADIS-HADIS LARANGAN MENIKAHI SAUDARA PERSUSUAN: Studi Maâ€™an Al-Hadith," *Diya Al-Afkar: Jurnal Studi Al-Quran Dan Al-Hadis* 7, no. 02 (2019): 299–322.

## Substitute Nutritional Intake

مَتَى حَصَلَتِ التَّغْذِيَةُ مِنَ الرَّضَاعِ ثَبَتَ التَّحْرِيمُ

*"When breastfeeding has nourished, the prohibition (of marriage) is established."*

This means that breastfeeding, which establishes mahram relations, is the type that provides food to the baby, even if it is only a small amount. In other words, breastfeeding has occurred as long as the baby feels satisfied even a little. However, the milk given is not considered baby food until it enters the baby's stomach. This milk causes the growth of the body and bones, whether directly breastfed or converted into other forms like cheese or mixed with other foods. If specific criteria are met, all these conditions lead to mahram relationships. Breastfeeding leads to mahram relations because the milk given by the breastfeeding mother becomes part of the baby.

As a condition, Al-Zuhaili states, breastfeeding must occur within the first two years of the baby's life. If breastfeeding happens after this period, mahram relations do not apply. This is the view of most scholars, supported by the hadith of Prophet Muhammad SAW, "There is no breastfeeding except within the first two years." Conversely, Imam Malik allows an additional two months beyond the two years as the time limit.<sup>24</sup>

Another condition is that there must be five separate breastfeeding sessions occurring in a usual manner, where the baby is allowed to choose when to stop nursing without interruptions like breaths, light rests, or other distractions. However, it is not required that every session must make the baby complete. This view is upheld by the Shafi'i and Hanbali schools and is considered the strongest within their internal views.<sup>25</sup> In the Shafi'i school, besides the two conditions, additional requirements are that the breastfeeding woman must be of legal age, and the milk must reach the baby's stomach while the baby is under two years old.<sup>26</sup>

This rule is based on the hadith narrated by Bukhari in his Sahih, numbers 5102 and 4737. The hadith from Abul Walid, Shu'bah, Al-Ash'ath, his father, Masruq, and Aisha r.a. states that the Prophet entered Aisha's room while a man was with her. The Prophet's expression changed as if he were displeased. Aisha said: he is my milk brother, to which the

---

<sup>24</sup> Wahbah az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, 2nd ed. (Beirut: Dar al-Fikr al-Muassir, 2007).

<sup>25</sup> Al-Jazairi, *Al-Fiqh 'ala Al-Madzahib Al-Arba'ah Vol. 4*.

<sup>26</sup> Ahmad al-Barluzzi Umairah and Ahmad Salamah Al-Qalyubi, *Hasyiyata Qalyubi Wa 'Umairah* (Beirut: Dar al-Fikr, 1995).

Prophet replied: Verify your milk brothers, for 'breastfeeding relations stem from hunger.' A similar hadith is also found with the exact text in numbers 2504 and 4814.

This opinion refers to the view of Imam Al-Nawawi and Al-Rafi'i, who stated that the breastfeeding that causes a mahram relationship is the breastfeeding that affects the physical growth of the child, such as strengthening the bones and flesh, which usually only occurs when the baby feels full or satisfied after breastfeeding. Therefore, not every drop of milk makes a mahram, but only those that fulfill these conditions.<sup>27</sup> This is based on a hadith of the Prophet Muhammad narrated by Muslim: "No breastfeeding makes a mahram except that which strengthens the bones and grows the flesh" (HR Muslim No. 1452).<sup>28</sup> Furthermore, this mahram relationship due to breastfeeding also impacts social laws such as the permissibility of looking at each other between mahrams, as explained in QS. An-Nūr [24]: 31 excludes mahrams from the prohibition of looking.

Similarly, the mahram relationship still applies if breast milk is converted into dairy products like cheese or yogurt. This is the view of the majority of Shafi'i scholars.<sup>29</sup> In this context, Syaikh and Syahbana provide views from the four schools regarding breast milk converted into other dairy products. They state that the Hanafi and Maliki schools require that breast milk given must be in its natural form, not mixed with other foods or drinks like bread, porridge, and the like. However, the Maliki school makes an exception if the milk is more than or equal to the mixture, or if the milk is processed into cheese, the mahram status remains. On the other hand, the Shafi'i and Hanbali schools accept that mixed milk is valid and affects the mahram status, regardless of whether milk is more, equal, or less than the mixture. This mixing is allowed in Shafi'i and Hanbali schools, as long as the milk reaches the baby's stomach each time it is fed until five feedings are completed. Additionally, in Shafi'i and Hanbali schools, milk is not required to be liquid. Even if processed into cheese and consumed by the baby, the mahram status applies.<sup>30</sup>

---

<sup>27</sup> Abu Zakaria An-Nawawi, *Al-Majmu' Syarh Al-Muhazẓab*, Jilid 3 (Beirut: Dar al-Fikr, 1997).

<sup>28</sup> Muslim bin al-Hajjaj Al-Naisaburi, *Shahih Muslim*, ed. Fuad Abdul Baqi (Beirut: Dar Ihya' al-Turats al-'Arabi, 1955). 1075, Hadits No. 1452

<sup>29</sup> Muhammad bin Muhammad al-Khatib Al-Syarbini, *Mughni Al-Muhtaj Ila Ma'rifat Ma'ani Alfazh Al-Minhaj*, ed. Ali Muhammad Ma'wad and Adel Ahmad Abdul Mujawwad, 1st ed. (Beirut: Dar al-Kutub al-'Ilmiyah, 1994).

<sup>30</sup> Syaikh and Syahbana, *Konsep Ar-Rada'ah; Relevansi Dan Metode Pemikiran Ibnu Hazm Dan Ibnu Qudamah*.

It is also essential to state that the milk must reach the stomach. Therefore, any method that leads to these results in mahram relations includes three main elements: the milk reaches the baby's stomach, the baby is under two years old, and the feeding happens five times.<sup>31</sup>

### Amount of Breastfeeding that Causes Mahram Relations

If the previous discussion was about quality, this one deals with quantity. In other words, how much does breastfeeding cause the baby to become mahram? To answer this, the scholars establish a fiqh rule with:

لَيْسَ فِي أَقَلِّ مِنْ خَمْسِ رَضَعَاتٍ تَحْرِيمٌ.

“Breastfeeding less than five times does not cause mahram relations.”<sup>32</sup>

The rule of five feedings comes from a hadith narrated by Ummul Mu'minin, Aisha r.a., who said: “It used to be revealed in the Quran that ten feedings known (by everyone) cause mahram relations. Then, this was reduced to five known feedings. The Prophet (SAW) passed away while this rule was still in the Quran, and at that time, these verses were still being recited.”<sup>33</sup>

This hadith indicates that five feedings are a legal requirement for causing mahram relations. Initially, it was ten feedings, then reduced to five. Citing Ibn Kathir, Warman explains that scholars believe it is impossible to establish mahram relations with fewer than five feedings, based on the hadith in Sahih Muslim, through the chain of Malik, from Abdullah bin Abu Bakr, from Urwah, from Aisha r.a., referring to this hadith.<sup>34</sup>

There is an interpretive issue related to the hadith about breastfeeding that leads to mahram relations, particularly concerning the mention of the abrogation of verses without specifying which verse was abrogated or which served as the abrogator. In the Quran itself, there are no explicit verses that mention ten or five instances of breastfeeding. To clarify this, Ali al-Shabuni offers a categorization of *naskh* (abrogation) in the Quran into three types: first, abrogation of both the recitation and the ruling (*naskh al-tilāwah wa al-hukm*); second,

---

<sup>31</sup> Atika Nur Annisa, “Rekontekstualisasi Radha’ah Di Era Digital,” *El-Mashlahah* 10, no. 2 (December 2020): 1–13, <https://doi.org/10.23971/maslahah.v10i2.1816>.

<sup>32</sup> Ahmad bin Muhammad bin Ali bin Hajar Al-Haytami, *Tubfat Al-Mubtaj Fi Syarh Al-Minbaj* (Cairo: Al-Maktabah al-Tijariyyah al-Kubra, 1983).

<sup>33</sup> Al-Naisaburi, *Shabih Muslim*. 1075, hadith no. 1452.

<sup>34</sup> 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 (July 2022): 17–31, <https://doi.org/10.59270/aailah.v1i2.112>.

abrogation of the recitation but not the ruling (*naskh al-tilāwah dūn al-ḥukm*); and third, abrogation of the ruling while the recitation remains (*naskh al-ḥukm dūn al-tilāwah*). According to al-Shabuni, the breastfeeding verse falls under the first category—abrogation of both recitation and ruling—meaning the verse was removed from the Quranic text and its legal effect was nullified. He explains that the original ruling of ten feedings was reduced to five before the verse was abrogated, so the verse is no longer found in the mushaf. Still, its verdict was understood through hadith reports before being abrogated completely.<sup>35</sup>

This rule can be exemplified when a baby breastfeeds from his mother five times separately, and the mahram status is established between the baby and the mother.<sup>36</sup> Another example given by Warman is if someone wants to make an adopted child mahram through induced lactation, the milk from the adoptive mother must reach the baby's stomach, either directly or through an aid, at least 3-5 times over 6-8 weeks. This is because the time limit for milk production from induced lactation is only 6-8 weeks from the start, until the milk stops. If the baby breastfeeds fewer than three times during this period, mahram status is not established.<sup>37</sup>

## 2. Intertextuality of Marriage Prohibition due to Breastfeeding: Indonesian Family Law and *dhawabith fiqhīyyah*

Islamic Family Law, according to Subekti, is the law that regulates all aspects of legal relationships arising from family ties. He also uses the term family law. Thus, according to him, family law is the law that regulates relationships between family members. The family referred to by Subekti is the nuclear family, consisting of a father, mother, and children, whether they still live together in one household or after separation due to divorce or death. With the addition of the word Indonesia, family law in Indonesia refers to the legal regulations that govern family relationships based on Islam in the Indonesian legal territory.<sup>38</sup>

In Arabic, Islamic family law is called *al-ahwal al-syakhsīyah* and is sometimes referred to as Nidham al-Usrah, while al-Usrah means nuclear/small family. The use of this term in

<sup>35</sup> Al-Shabuni, *Rawa'ī' Al-Bayan Fi Tafsir Ayat Al-Abkam*.

<sup>36</sup> Zakariya bin Muhammad Al-Anshari, *Asna Al-Mathalib Fi Syarh Raudh Al-Thalib*, vol. 3 (Cairo: Dar al-Kitab al-Islami, n.d.), 211.

<sup>37</sup> Warman, "KETENTUAN DALAM ISLAM MENGENAI PEMBERIAN AIR SUSU IBU (ASI) HASIL INDUKSI LAKTASI UNTUK MENJADIKAN ANAK ANGKAT SEBAGAI MAHRAM."

<sup>38</sup> Anis Khafizoh, "Perkawinan Sedarah Dalam Perspektif Hukum Islam Dan Genetika," *Syariat: Jurnal Studi Al-Qur'an Dan Hukum* 3, no. 01 (May 2017): 61–76, <https://doi.org/10.32699/syariat.v3i01.1142>.

Indonesia not only relates to Islamic family law but is also often referred to as Marriage Law or Personal Law. In English, this term is usually called Personal Law or Family Law. Wahbah al-Zuhaili uses the term Islamic Family Law with *al-ahwal al-syakhsiyah*. Similarly, the author of *al-fiqh ala al-madzahib al-khamsah*, Jawad Mughniyah, uses *al-ahwal al-syakhsiyah* for Islamic family law, and he even wrote a book, *al-Mughniyah*, discussing two main topics: *al-Ibadat and al-Ahwal as-Syakhsiyah*.<sup>39</sup>

Indonesia has family laws governing marriage, such as Law No. 1 of 1974. This law encompasses all aspects related to marriage and divorce. There is also the Compilation of Islamic Law (KHI), which consists of books: Book I on Marriage Law, Book II on Endowment Law, and Book III on Inheritance Law.

In Indonesian legislation, in Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), only determining who is considered mahram due to breastfeeding is regulated. In Law No. 1 of 1974 on Marriage, Article 8 states that marriage is prohibited between two people who, under point d, are related by breastfeeding, foster children, siblings, and aunts/uncles by breastfeeding. Similarly, Article 39 of the Compilation of Islamic Law (KHI) mentions the prohibition of marriage. This article states the reasons for the ban on marriage: due to blood relations, affinity, and breastfeeding. The reasons for the ban on marriage due to breastfeeding are explained as follows:

- a. With the woman who breastfed and her upward lineage;
- b. With a woman who was breastfed by the same woman and her downward lineage;
- c. With a breastfed sister and niece's downward lineage;
- d. With a breastfed aunt and the upward lineage of the breastfed aunt;
- e. With a child breastfed by his wife and her descendants.<sup>40</sup>

Thus, the principle "Haram due to breastfeeding is the same as haram due to blood relations" has been accommodated in the legislation.

It should be noted that Law No. 1 Year 1974 has changed, particularly regarding the minimum age of marriage as stipulated in Law No. 16 Year 2019. This change stipulates that the minimum marriage age for men and women is 19 years old, replacing the previous provision that stipulated a minimum age of 16 years old for women. Although this change is

---

<sup>39</sup> Wahbah az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

<sup>40</sup> Direktorat Urusan Agama Islam dan Pembinaan Syariah Direktorat Jenderal Bimbingan Masyarakat Islam Kementerian Agama Republik Indonesia, *Himpunan Peraturan Perundang-Undangan Tentang Perkawinan*.

not directly related to providing a mahram due to breastfeeding, it shows the dynamics and updates in regulating the marriage law in Indonesia.<sup>41</sup>

As indicated by Julia Kristeva, any text is constructed as a mosaic of quotations. According to her, every written work is an absorption and transformation of another written work. In this context, Kristeva emphasizes that every writer not only reads a text in isolation but also reads it along with other texts, making the understanding of the text that emerges after reading inseparable from other texts (hypogram texts). Intertextual elements include expansion, conversion, modification, transformation, haplology, parallelism, existence, and defamiliarization.<sup>42</sup>

Julia Kristeva, born on June 24, 1941, is a feminist, philosopher, and expert in linguistics, literary criticism, and philosophy of Bulgarian descent. Kristeva is also known as a psychoanalyst and novelist. Although born in Bulgaria, Kristeva has lived and worked in Paris since the mid-1960s. Julia Kristeva asserts that every text is like a mosaic of quotations and is the result of the absorption (transformation) of other texts. This means that each text takes positive elements from other texts based on its responses and then reworks them in its creation. This process can be done after observing, absorbing, and assimilating interesting aspects, either consciously or unconsciously. By responding to other texts and assimilating literary conventions, aesthetic concepts, or ideas, Kristeva transforms them into her work with personal ideas and aesthetic concepts, creating a new blend. For writers studying intertextuality in legal texts, such as legal interpretation based on historical context introduced by Utrecht, legal texts cannot be separated from the context of their creation.<sup>43</sup> Kristeva solidifies the understanding of intertextuality by stating that intertextuality theory has specific rules and principles. These rules and principles include: expansion, conversion, modification, transformation, haplology, parallelism, existence, and defamiliarization.<sup>44</sup>

The prohibition of marriage between couples due to breastfeeding in the Marriage Law and KHI is an expansive intertext from Fiqh principles. The provisions in Article 8 of the

---

<sup>41</sup> Fransiska Litania Ea Tawa Ajo, Indah Maria Maddalena Simamora, and Andryawan Andryawan, "Analisis Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Menjadi Undang-Undang Nomor 16 Tahun 2019 Mengenai Batasan Usia Dalam Perkawinan," *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 1, no. 7 (2022): 1195–1206.

<sup>42</sup> Christopher W Forstall and Walter J Scheirer, "What Is Quantitative Intertextuality?" in *Quantitative Intertextuality: Analyzing the Markers of Information Reuse* (Springer, 2019), 3–21.

<sup>43</sup> Mar'atul Mufarrihah, "Dr. Ernst Utrecht: Pakar Hukum Dan Politik Dalam Reformasi Indonesia," *lk2fhui.law.ui.ac.id*, 2024.

<sup>44</sup> Abdullah Hadani, Abu Bakar, and Abd Kholid, "Intertextuality in Nusantara Qur'anic Exegesis: A Study of Tafsir Al-Itqān Fī Ma'ānī Umm Al-Qur'ān by KH. Ahmad Haris Shadaqah," *TAFSE: Journal of Qur'anic Studies* 9, no. 2 (2024): 154–76.

Marriage Law and Article 39 of the Compilation of Islamic Law (KHI) explicitly prohibit marriage between parties who have a mahram relationship, including due to breastfeeding. This provision is heavily influenced by the Syafi'i school of fiqh, which is the primary reference in the preparation of KHI, as seen in the provision of five times breastfeeding as the basis for mahram relationships due to breastfeeding. In Syafi'i fiqh, the prohibition of marriage due to mahram also applies based on qiyas to the mahram relationship of nasab and mushahaharah, which is also applied to the relationship of breastfeeding. If analyzed using Kristeva's theory of intertextuality, then KHI and the Marriage Law are not stand-alone texts, but rather a mosaic of previous fiqh texts. The intertextuality can be seen in how the structure of Islamic law is contextualized in Indonesian national legislation, where fiqh texts become hypograms that are absorbed and reprocessed by the authors of KHI and the Marriage Law.<sup>45</sup>

Expansion, in the context of Julia Kristeva's intertextuality, is a concept that a text can contain the potential or ability to generate new texts or trigger associations with other texts. Kristeva views texts as open and productive domains, where interpretation and creation can continuously evolve. This principle of expansion highlights the idea that texts are not confined to static meanings but can inspire the formation of new meanings through intertextual relationships with other texts. Thus, expansion is one principle reflecting intertextuality's dynamic and creative potential.<sup>46</sup>

In Law No. 1 of 1974 on Marriage, Article 8 states that marriage is prohibited between two individuals who: d. have a breastfeeding relationship, foster children, siblings, aunts, or uncles by breastfeeding. Article 39 of the Compilation of Islamic Law expands on what is considered mahram due to breastfeeding in the Marriage Law. Meanwhile, in Fiqh principles, it is stated:

يَحْرُمُ مِنَ الرِّضَاعِ مَا يَحْرُمُ مِنَ النَّسَبِ

"Breastfeeding creates the same prohibitions as blood relations."

The Prophet's hadith, which is the basis of this principle, equates the prohibition of marriage due to breastfeeding with the ban due to blood relations. Among the bans due to blood relations is the prohibition of marriage.<sup>47</sup> Article 8-point d of the Marriage Law is

---

<sup>45</sup> Ahmad Mun'im, "Intensitas Penyusunan Dalam Larangan Perkawinan Sesusuan (Analisis Pasal 39 Ayat 3 Kompilasi Hukum Islam)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 2 (2016): 229–44.

<sup>46</sup> Jullul Wara, Ahmadi Ahmadi, and Lukman Marsaton, "Intertextuality in Tafsir Al-Jāmi 'Li Ahkām Al-Qur'ān by Al-Qurṭubī," *An-Nur International Journal of The Quran & Hadith* 2, no. 2 (2024): 24–33.

<sup>47</sup> Fadlillah, Muhid, and Nurita, "Hadis Tentang Menikah Dengan Mahram Melalui Pendekatan Psikologi."



inspired by this principle or other texts with similar meanings in Shafi'i Fiqh, as the drafters of the Marriage Law were predominantly Muslims, and the law was intended for Indonesian Muslims. The wording of these articles aligns with the beliefs of the lawmakers and the society that will use the law. The provisions of Article 8, letter d of Law No. 1/1974 on Marriage and Article 39 of the Compilation of Islamic Law (KHI) that prohibit marriage due to breastfeeding relationships reflect the influence of the Syafi'i school of fiqh, which explicitly states that mahram relationships due to breastfeeding have the same legal implications as blood relationships. The Shafi'i fiqh rule states: "Ma ḥurrīma bi an-nasab fa huwa ḥarām bi ar-raḍā'" (what is forbidden because of lineage is also prohibited because of breastfeeding). This shows that these national legal provisions cannot be separated from the construction of Islamic law, especially the Shafi'i school of thought, which dominates religious practice in Indonesia. This opinion is reinforced by M. Atho Mudzhar, who states that KHI was compiled with a fiqh approach, especially Syafi'i, as its primary reference.<sup>48</sup>

Law No. 1/1974 on Marriage and the Compilation of Islamic Law (KHI) does not classify the form or amount of breastfeeding as a measure of whether or not a mahram relationship due to breastfeeding is valid. However, Article 8, letter d of the Marriage Law and Article 39 of KHI explicitly mention the prohibition of marriage due to breastfeeding relationships, without specifying the quantitative or qualitative breastfeeding requirements. In practice, judges cannot reject requests to determine mahram relationships if there is evidence or legally valid recognition. Normatively, the provisions in both regulations are inseparable from the influence of munakahat fiqh, especially those affiliated with the Syafi'i school of thought. In the Shafi'i school of thought, breastfeeding that occurs at least five times in a child within the first two years of age can lead to mahram status, and consequently, a marriage ban applies, as referred to in the rule: "Ma ḥurrīma bi an-nasab fa huwa ḥarām bi ar-raḍā'". This argument is reinforced by the opinion of M. Atho Mudzhar, who states that the Compilation of Islamic Law is the result of the codification of Indonesian Islamic law that refers to classical fiqh, especially the Shafi'i school of thought, because it is most in line with the practice of the majority of Muslims in Indonesia.<sup>49</sup>

The intertextuality between Article 8 letter d of Law No. 1/1974 on Marriage and Article 39 of the Compilation of Islamic Law (KHI) with the principles of the Syafi'i school of fiqh related to the prohibition of marriage due to breastfeeding relationship shows the

---

<sup>48</sup> Atho Mudzhar, *Pendekatan Studi Islam: Dalam Teori Dan Praktek* (Pustaka Pelajar, 1998).

<sup>49</sup> Mudzhar.

interconnection of conceptual and legal values between classical fiqh and Indonesian positive law. This intertextuality is evident, among other things, in understanding the relationship of breastfeeding (raḍā'ah). In Shafi'i fiqh, there are several main requirements to establish the status of a breastfeeding relationship: first, there is a straightforward process of direct breastfeeding; second, the number of breastfeedings is at least five times; third, the breastfed child is no more than two years old; and fourth, there is a statement or witness that reinforces the recognition. Although Article 8 of the Marriage Law and Article 39 of KHI do not specify these conditions, the substance of the prohibition of marriage due to breastfeeding relationships still shows a common thread with the legal construction in the munakahat fiqh of the Syafi'i school of thought. The Marriage Law and KHI reflect the values of Islamic law, generally adopting these principles as a basis for prohibiting marriage, even if it does not explicitly mention the detailed causes of breastfeeding that result in mahram status.

## **E. Conclusion**

Breastfeeding that leads to mahram (non-marriageable) status occurs when specific conditions are met: the milk must nourish the baby, the breastfeeding woman must be capable of pregnancy, the child must be under two years old, and breastfeeding must happen at least five times. These requirements are based on the Quran and the hadith of the Prophet. When fulfilled, they establish a mahram relationship equivalent to one created by blood ties, prohibiting future marriage between the individuals involved. In Indonesia, the marriage law for Muslims is primarily governed by Law No. 1 of 1974 and the Compilation of Islamic Law (KHI). Although these laws may not explicitly detail the criteria for mahram status through breastfeeding, they align with fiqh (Islamic jurisprudence), which prohibits marriage based on breastfeeding relationships. This suggests an intertextual connection between Indonesian legal sources and classical Islamic legal principles. Understanding this relationship benefits from legal theories such as Ernest Utrecht's historical interpretation and Julia Kristeva's intertextuality theory. These frameworks help scholars and legal practitioners interpret how Islamic values are embedded in national legislation. Therefore, even without explicit mentions, the prohibition of marriage due to breastfeeding is recognized in Indonesian law through its Islamic legal foundations.

## F. Declaration of Conflict of Interest Statement

The author declares that there is no conflict of interest in the publication of this article.

## G. Acknowledgement

The author has no acknowledgments to declare.

## H. Reference

- Ajo, Fransiska Litanía Ea Tawa, Indah Maria Maddalena Simamora, and Andryawan Andryawan. “Analisis Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Menjadi Undang-Undang Nomor 16 Tahun 2019 Mengenai Batasan Usia Dalam Perkawinan.” *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 1, no. 7 (2022): 1195–1206.
- Al-ʿAdawi, Mushthafa. *Jamiʿ Ahkam Al-Nisaʿ*. 1st ed. Riyadh: Dar al-Sunnah, 1992.
- Al-Anshari, Zakariya bin Muhammad. *Asna Al-Mathalib Fi Syarh Raudh Al-Thalib*. Cairo: Dar al-Kitab al-Islami, n.d.
- Al-Baghawi, Abu Muhammad al-Husain bin Masʿud. *Maʿalim Al-Tanzil Fi Tafsir Al-Quran*. Edited by Muhammad Abdullah Al-Nimr, Utsman Jumʿah Dhumairiyah, and Sulaiman Muslim Al-Harash. 1st ed. Riyadh: Dar Thayyibah li al-Nashr wa al-Tawziʿ, 1997.
- Al-Furqaan, Muhammad, and Muhammad Al Mustafa. “Status of Adopted Child Turned into Mahram According to Syafiʿi Fiqih.” *Al Mashaadir : Jurnal Ilmu Syariah* 3, no. 2 (January 3, 2023): 113–29. <https://doi.org/10.52029/jis.v3i2.92>.
- Al-Haytami, Ahmad bin Muhammad bin Ali bin Hajar. *Tuhfat Al-Muhtaj Fi Syarh Al-Minhaj*. Cairo: Al-Maktabah al-Tijariyyah al-Kubra, 1983.
- Al-Jazairi, Abdul Rahman bin Muhammad Awad. *Al-Fiqh ʿala Al-Madzahib Al-Arbaʿah Vol. 4*. 2nd ed. Beirut: Dar al-Kutub al-Ilmiyah, 2003.
- Al-Naisaburi, Muslim bin al-Hajjaj. *Shahih Muslim*. Edited by Fuad Abdul Baqi. Beirut: Dar Ihyaʿ al-Turats al-ʿArabi, 1955.
- Al-Qurthubi, Muhammad bin Ahmad. *Al-Jamiʿ Li Ahkam Al-Qurʿan*. Edited by Ahmad Al-Barduni and Ibrahim Athfis. 2nd ed. Cairo: Dar al-Kutub al-Mashriyah, 1964.
- Al-Shabuni, Muhammad Ali. *Rawaʿiʿ Al-Bayan Fi Tafsir Ayat Al-Ahkam*. 3rd ed. Damascus: Maktabah al-Ghazali, 1980.

- Al-Syarbini, Muhammad bin Muhammad al-Khatib. *Mughni Al-Mubtaji Ila Ma'rifat Ma'ani Alfaẓh Al-Minhaj*. Edited by Ali Muhammad Ma'wad and Adel Ahmad Abdul Mujawwad. 1st ed. Beirut: Dar al-Kutub al-'Ilmiyah, 1994.
- An-Nawawi, Abu Zakaria. *Al-Majmu' Syarb Al-Mubazzab, Jilid 3*. Beirut: Dar al-Fikr, 1997.
- Annisa, Atika Nur. "Rekontekstualisasi Radha'ah Di Era Digital." *El-Maslahah* 10, no. 2 (December 2020): 1–13. <https://doi.org/10.23971/maslahah.v10i2.1816>.
- Badieah, Badieah, Ahmad Mujib, Muna Yastuti Madrah, Andi Riansyah, and Nur Muhammad. "Implementasi RESTful Web Service Pada Sistem Informasi Donor ASI Terintegrasi Di Indonesia Implementation of RESTful Web Service on Indonesia's Integrated Breastfeeding Donor Information System." *SISTEMASI: Jurnal Sistem Informasi* 11 (2022): 455–69.
- Binti Mohd. Shahrenidzam, Rabiahtul Shahnazirah, and Cecep Soleh Kurniawan. "Implications of Ar-Radha'ah in Determining the Mahram of Adopted Children: A Case Study in the Syariah Court of Brunei Darussalam." *Jurnal Hukum Islam* 22, no. 1 (June 8, 2024): 223–44. <https://doi.org/10.28918/jhi.v22i1.7>.
- Direktur Urusan Agama Islam dan Pembinaan Syariah Direktorat Jenderal Bimbingan Masyarakat Islam Kementerian Agama Republik Indonesia. *Himpunan Peraturan Perundang-Undangan Tentang Perkawinan*. 2nd ed. Jakarta: Direktorat Urusan Agama Islam dan Pembinaan Syariah Direktorat Jenderal Bimbingan Masyarakat Islam Kementerian Agama Republik Indonesia, 2015.
- Djawas, Mursyid, Gamal Achyar, Nursyirwan Bustanul Arifin, Masri Reza, and Baharuddin Umar Yakub. "The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 139–55.
- Fadlillah, Nurul, Muhid Muhid, and Andris Nurita. "Hadis Tentang Menikah Dengan Mahram Melalui Pendekatan Psikologi." *El-Sunnah: Jurnal Kajian Hadis Dan Integrasi Ilmu* 5, no. 2 (2024): 224–35.
- Firdaus, Beni, and Aarsal Aarsal. "Adopted Children as Mahram: Responding to Ijtihad 'Ā'Isyah (614-679 Ad) in the Flow of Modernization." *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam*, 2020, 165–80.
- Forstall, Christopher W, and Walter J Scheirer. "What Is Quantitative Intertextuality?" In *Quantitative Intertextuality: Analyzing the Markers of Information Reuse*, 3–21. Springer, 2019.

- Hadani, Abdullah, Abu Bakar, and Abd Kholid. "Intertextuality in Nusantara Qur'anic Exegesis: A Study of Tafsīr Al-Itqān Fī Ma'ānī Umm Al-Qur'ān by KH. Ahmad Haris Shadaqah." *TAFSE: Journal of Qur'anic Studies* 9, no. 2 (2024): 154–76.
- Khafizoh, Anis. "Perkawinan Sedarah Dalam Perspektif Hukum Islam Dan Genetika." *Syariati: Jurnal Studi Al-Qur'an Dan Hukum* 3, no. 01 (May 2017): 61–76. <https://doi.org/10.32699/syariati.v3i01.1142>.
- Kristeva, Julia. *Desire in Language a Semiotic Approach to Literature and Art*. Edited by Leon S. Roudiez, Thomas Gora, and Alice Jardine. 1st ed. New York: Columbia University Press, 1980.
- Mudzhar, Atho. *Pendekatan Studi Islam: Dalam Teori Dan Praktek*. Pustaka Pelajar, 1998.
- Mufarrihah, Mar'atul. "Dr. Ernst Utrecht: Pakar Hukum Dan Politik Dalam Reformasi Indonesia." [lk2fhui.law.ui.ac.id](http://lk2fhui.law.ui.ac.id), 2024.
- Mun'im, Ahmad. "Intensitas Penyusunan Dalam Larangan Perkawinan Sesusuan (Analisis Pasal 39 Ayat 3 Kompilasi Hukum Islam)." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 2 (2016): 229–44.
- Muniroh, Siti, and Khoiruddin Nasution. "The Adoption of Found Child According to Islamic Law and Law No. 3 of 2006 on Religious Courts in the Perspective of Maqasid Al-Shari'ah." *Millah* 21, no. 1 (August 2021): 89–112. <https://doi.org/10.20885/millah.vol21.iss1.art4>.
- Nahar, Muhammad Hasnan. "HADIS-HADIS LARANGAN MENIKAHI SAUDARA PERSUSUAN: Studi Maâ€™<sup>TM</sup> an Al-Hadith." *Diya Al-Afkar: Jurnal Studi Al-Quran Dan Al-Hadis* 7, no. 02 (2019): 299–322.
- Parkes, Peter. "Milk Kinship in Islam. Substance, Structure, History." *Social Anthropology* 13, no. 3 (2005): 307–29.
- Rahbari, Ladan. "Milk Kinship and the Maternal Body in Shi'a Islam." *Open Theology* 6, no. 1 (2020): 43–53.
- Syaikhu, and Ali Syahbana. *Konsep Ar- Rada'ah; Relevansi Dan Metode Pemikiran Ibnu Hazm Dan Ibnu Qudamah*. Edited by Norwili. 1st ed. Yogyakarta: Penerbit K-Media Yogyakarta, 2021.
- Umairah, Ahmad al-Barlussi, and Ahmad Salamah Al-Qalyubi. *Hasyiyata Qalyubi Wa 'Umairah*. Beirut: Dar al-Fikr, 1995.
- Wahbah az-Zuhaili. *Al-Fiqh Al-Islami Wa Adillatuhu*. 2nd ed. Beirut: Dar al-Fikr al-Muassir,

2007.

Wara, Jullul, Ahmadi Ahmadi, and Lukman Marsaton. "Intertextuality in 'Tafsīr Al-Jāmi 'Li Ahkām Al-Qur'Ān by Al-Qurṭubī.'" *An-Nur International Journal of The Quran & Hadith* 2, no. 2 (2024): 24–33.

Warman, Arifki Budia. "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 (July 2022): 17–31. <https://doi.org/10.59270/aailah.v1i2.112>.

Wizarah al-Auqaf wa al-Syu'un Al-Islamiyah. *Al-Mausū'ah Al-Fiqhīyah Al-Quwaitīyah*. 1st ed. Kuwait-Kairo: Wizarah al-Auqaf wa al-Syu'un al-Islamiyah - Dar al-Salasil - Dar al-Shafwah, 2006.

## I. Authors' Biography

### Fatawi

Doctoral Program Student at the Faculty of Sharia with a specialization in Islamic law at UIN Sultana Maulana Hasanudin Banten, and has been promoted to obtain a doctoral degree on May 3, 2025.

### B. Syafuri

Observer and researcher of contemporary Islamic law, Faculty of Sharia, Department of Islamic Law, UIN Sultan Maulana Hasanudin Banten.

### Ahmad Hidayat

Activist for the integration of Islamic law and national law at the Faculty of Sharia, Islamic Family Law Department at UIN Sultan Maulana Hasanudin Banten.

DOI, Copyright,  
and License

DOI: <https://doi.org/10.14421/al-mazaahib.v13i2.3819>

Copyright (c) 2025 Fatawi, B. Syafuri, and Ahmad Hidayat

This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License



How to cite	Fatawi, Fatawi, Syafuri, B., and Hidayat, Ahmad. "Intertextuality of Dhawabith Fiqhiyah in Mahram Breastfeeding: A Study of Article 8 of the 1974 Marriage Law and Article 39 of KHI." <i>Al-Mazaahib: Jurnal Perbandingan Hukum</i> 13, no. 2 (2025): 150-72. <a href="https://doi.org/10.14421/al-mazaahib.v13i2.3819">https://doi.org/10.14421/al-mazaahib.v13i2.3819</a>
-------------	--