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Analysis of Hifz al-Nafs' (Protection of Life) Achievements on the Shariah Criminal Offenses Enactment in Malaysia Based on the Fuzzy Delphi Method

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Abstract

In Islam, life is considered extremely sacred. Thus, the protection of life is classified as one of the most important objectives in Maqasid Syari'ah. Malaysia, in particular, has established a provision of the Administration of Shariah Court Enactment whereby a person is excluded from offences committed under forced circumstances. This suggests that an individual who commits a Shariah crime under coercion will be murdered if he does not execute the crime. Although jurisdiction over the crime of murder is not specifically discussed in the Administration of Shariah Court Enactment, the purpose of the exemption has to do with the preservation of life (*Hifz al-Nafs*). Therefore, this study aims to evaluate the views of experts to seek their approval based on the exemption provisions in the enactment, whether this is consistent with the Maslahah. This study has adopted the fuzzy Delphi analysis method, with a survey conducted among 20 expert informants consisting of academics, syarie judges, and syarie lawyers. The finding shows that all expert informants agreed that the exemptions addressed in the Syari'ah Criminal Offenses Enactment in Malaysia acknowledge the *Maslahah of Hifz al-Nafs (preservation of life)*. The finding shows that the expert group of the study agreed that while the provision was not the death sentenced for the criminality of homicide, the exemption from punishment is justifiable under certain situation which could save human lives.

Keywords: Duress, Hifz al-Nafs, (Protection of Life), Malaysia, Fuzzy Delphi

Introduction

Life is the most fundamental quality in Islamic law. Muslims are obliged to protect and preserve lives. Acts of harming oneself and others are strictly prohibited in Islam. Therefore,

the act of intentionally injuring oneself is a great sin according to Islamic law. Additionally, the sin of committing suicide is not be forgiven by Allah S.W.T. The prohibition on suicide is a strictly addressed. Consequently, such acts will not only be reviled in the world, but also will be punished greatly in the hereafter.

The Prophet (ﷺ) said, "Amongst the nations before you there was a man who got a wound, and growing impatient (with its pain), he took a knife and cut his hand with it and the blood did not stop till he died. Allah said, 'My Slave hurried to bring death upon himself so I have forbidden him (to enter) Paradise' (Al-Bukhari, 1998).

Protecting the right to life is crucial as addressed by Muslim scholars, allowing a person to commit apostasy under forced circumstances (Ibn Abidin, 1967). For instance, if someone is compelled to worship idols and he commits the act because his life is threatened, then doing what he is commanded is not considered a sin (Al-Maqdisi, 1948).

The importance of saving human lives is also reflected in during emergencies. For example, it is permissible to consume carcasses, pork or alcohol during an emergency due to shortage of food and drink supply (Zahalan, 2021). This is because, difficulty will be resulted in the changes of the existing law, especially in matters related to religion, life, lineage, intellect and property (Hassan, 2020).

Literature Review

The ultimate purpose of Sharia, also known as Maqasid al-Syari'ah, is to protect five fundamental and inherent rights provided by Islam as outlined by (Al-Ghazzali, 2008). They include the protection of religion (*hifz al-din*), protection of the right to life (*hifz al-nafs*), protection of descent (*hifz al-nasl*), the right to a dynamic role and the value of intellect (*hifz al-aqli*), and Protection of property (*hifz al-mal*) (Sarif, 2012). The Islamic laws, for example, emphasises the severity of the punishment for a criminal case of murder caused by drunk driving. Al-Ghazzali mentions that the severe punishment is to preserve the general sanctity (Hashim, 2020).

Nevertheless, *Hifz Nafs* (preservation of life) is also a indicator of realizing the sanctity of Islam. Therefore, if the importance of protecting life is disregarded, efforts to preserve Islam will be stunted (Yusoff, 2020). For instance, each state's religious authorities announced the closure of mosques and practiced physical distancing during prayers, including prayer row (*saf*) when the COVID-19 pandemic hits Malaysia in early 2020. Therefore, the goal of preserving religion can only be fulfilled through preserving life (Bakri, 2020).

Additionally, *Hifz al-Nafs* (preservation of life) is undeniably important in Islamic law, as evidenced by the fact that it is given special emphasis in Maqasid al-Syari'ah. In this context, Allah s.w.t honoured human body not only while alive, but even after death. Therefore, it is not permissible to defile and denigrate the human body that has died. (Al-Suyuti, n.d). Thus, it is clear that Islamic law greatly respecting the human body. This is based on the Hadith of the Prophet S.A.W:

"Indeed, breaking the bones of a believer who has died is like breaking the bones of a believer who is still alive" (Abu Daud, 1985)

Concerning the terms of *Hifz* and *al-Nafs*, both are significantly different in meaning. *Hifz* simply means to preserve (Al-Bustani, 1956). Preserve in the context of the Malay language also carries several connotations such as save, nurture, preserve, breed and defend (Baharom, 1994). Ibn Manzur added the word *hifz* also means to preserve something and defend it from enemies. The word *al-Nafs* comes from the Arabic language and means soul or life (Ibn Manzur, 1993).

Ibn Manzur (1993) further explains the interpretation of *al-Nafs* as life, soul, soul, body and brother (sedikit aneh). In addition, *al-Nafs* also have two distinct positions in human life, namely the role of intellect and the role of life. Therefore, it is implicitly assumed that Hifz al-Nafs (preservation of life) carries not only the connotation of preserving life, but also preserving man spiritually and mentally. For this reason, the justification was clearly emphasized in the work of Imam al-Ghazali, namely Ihya Ulum al-Dn, where the principle of Tazkiyah al-Nafs is the prominent idea in the work (Abu Darda, 2017).

In relation with the conventional law in Malaysia, there are several provisions relating to homicide offences and Penal Code, such as Section 39B of the Dangerous Drugs Act also carries the mandatory death penalty (Dangerous Drugs Act 1952, Section 39B). In addition, Section 121 of the Penal Code on the offense against the authority of the Yang Di-Pertuan Agong, Sultan, Raja or Yang di-Pertua Negeri, Kidnapping and Murder, (Act 574, Section 364 of the Penal Code) Robbery by Murder (Act 574, Section 396 of the Code Punishment) and making a person hostage to life. (Act 574, Section 374A of the Penal Code) All of these provisions are crimes punishable by death if convicted.

On the contrary, in connection with the enactment of the Syari'ah Criminal Code in Malaysia, there is no specific law illustrating homicide offences. However, there are equivalent provisions in enactment that can be applied to the concept of *Hifz al-Nafs*. It is set out in Section 65 of the Terengganu Syari'ah Criminal Offenses Enactment (Order 7, 2001), Section 49(1) of the Kedah Syari'ah Criminal Offenses Enactment, (Order 18, 2014), Section 53 of the Johor Syari'ah Criminal Offenses Enactment (Order 4, 1997) and Penang. (Regulation 3, 1996). Consequently, these provisions implied an exemption of a person from criminal liability committed under duress circumstances.

Therefore, a person is excepted from criminal liability as he is threatened and intimidated, and if he does not commit the act, he will die at that point. Duress in this sense is the act of compelling someone to do something they do not want to do (Muhammad, 1988).

This is further supported by the Malacca Shariah Criminal Offenses Enactment, which states: "The right to defend oneself against an attack that may result in death when an innocent person is harmed." (Act No. 6, 1991)" (Enactment 6, 1991).

Interestingly here, the enactment provides an example to more clearly illustrate the circumstances and situations of crime that may occur. The researcher cites the example as follows:

"A, was attacked by a group of rioters who tried to kill him. He could not exercise his right of self-defence adequately by not firing at the mob, and he could not fire the shot without endangering the danger of injury to children who were associating with the mob. A, it is not wrong to do anything if by firing the shot it injures any of the children" (Enactment 6, 1991). Based on this example, it proves that there is a significant relationship between *Hifz al-Nafs* (preservation of life) in the shariah Criminal Offenses Enactment of the states in Malaysia.

Methodology

In order to achieve the objectives of the study, the analysis of the fuzzy Delphi method is adopted. The fuzzy Delphi method is a modification with improvements of the Delphi method. Hence, the fuzzy Delphi method refers to technique of obtaining the agreement and consensus of a group of experts in a field on a subject. The data collected through interviews and questionnaires were later calculated in a quantitative form to create an empirical study (Jamil, 2021). The researcher administered 7-point Likert scale in the questionnaire. It shows in the following table.

Table 1: 7 Point Likert Scale

Likert scale 7						
1.Strongly disagree	2.Very disagree	3.Disagree	4.Moderately agree	5. Agree	6.Very agree	7.Strongly agree

The rationale for using a 7-point Likert scale is to reduce the ambiguity rate or fuzzy results. The 5-point Likert scale, on the other hand, denotes strong agreement, agreement, moderate or neutral agreement, and disagreement, all of which are rather inappropriate for use in this study. Some of the issues with this 5-point Likert scale, which involve uncertainty and ambiguity, are as follows:

- i. What is the percentage of agreement from a group of experts based on a scale of 5?
- ii. Does the scale of 5 represent 100% agreement of a group of experts?
- iii. The rate of ambiguity or fuzzy value is higher than the 7 Likert scale.

The researchers used the literature review to develop the research questionnaire for the Fuzzy Delphi method. This includes books, articles, magazines, newspapers and related websites. The data obtained were screened, analyzed and interpreted to develop a questionnaire before reviewed by the experts.

Table 2: Informants of the Expert Group

Experts	Positions	Areas of Expertise	Experience
Expert 1	Associate Professor	Shari'ah Fiqh Usul	16-20 years
Expert 2	Associate Professor	Shariah Laws	10-15 years
Expert 3	Associate Professor	Shariah Laws	10-15 years
Expert 4	Professor	Syari'ah Fiqh Usul	16-20 years
Expert 5	Associate Professor	Syari'ah Fiqh Usul	16-20 years
Expert 6	Associate Professor	Shariah Laws	10-15 years
Expert 7	Syarie Judge	Shariah Laws	10-15 years
Expert 8	Syarie Judge	Shariah Laws	10-15 years
Expert 9	Chief Syarie Judge of Malaysia	Shariah Laws	20 years and above
Expert 10	Chief Syarie Judge of Melaka	Shariah Laws	20 years and above
Expert 11	Syarie Judge	Shariah Laws	10-15 years
Expert 12	Syarie Judge	Shariah Laws	20 years and above
Expert 13	Syarie Judge	Shariah Laws	20 years and above
Expert 14	Chief Syarie Judge of Pahang	Shariah Laws	20 years and above
Expert 15	Syarie Lawyer	Shariah Laws	10-15 years
Expert 16	Syarie Lawyer	Shariah Laws	16-20 years
Expert 17	Syarie Lawyer	Shariah Laws	10-15 years
Expert 18	Syarie Lawyer	Shariah Laws	10-15 years
Expert 19	Syarie Lawyer	Shariah Laws	10-15 years
Expert 20	Syarie Lawyer	Shariah Laws	10-15 years

Based on the table above shows that the selected Experts have significant expertise and experience in their respective fields with involvement of not less than 10 years. As a result, the reliability of the data is acceptable.

Table 3: Interpretation of 7 Likert scale to Fuzzy Delphi scale

LEVEL OF AGREEMENT	LIKERT SCALE	FUZZY SCALE		
Strongly agree	7	0.9	1	1
Very agree	6	0.7	0.9	1
Agree	5	0.5	0.7	0.9
Moderately agree	4	0.3	0.5	0.7
Disagree	3	0.1	0.3	0.5
Very disagree	2	0	0.1	0.3
Strongly disagree	1	0	0	0.1

Source: Jamil, 2021

Data Analysis

The data was analysed systematically using Microsoft Excel software before being computed into Fuzzy number data form. The researcher further applied three conditions based on the Fuzzy Delphi technique to validate each element, item and sub item in the questionnaire. Jamil (2021) suggested conditions one and two are tied to each other because they are in the part of the fuzzy triangle (Triangular Fuzzy Numbers).

The first condition in this fuzzy Delphi method, the researcher uses the value of Threshold, d by the following formula method: (Lin, 2002).

Figure 1: Formula of threshold value calculation method

$$d(\tilde{m}, \tilde{n}) = \sqrt{\frac{1}{3} [(m_1 - n_1)^2 + (m_2 - n_2)^2 + (m_3 - n_3)^2]}$$

Source: Jamil, 2021

The second condition is the percentage expert agreement. The researcher analyzed the agreement of a group of experts with a percentage of no less than 75%. That is, if the percentage of agreement of an expert group is less than 75%, the item or point is considered not accepted by the expert group (Chu et al., 2008). The third condition aims to analyse the data through the fuzzy score to identify the position and priority of each item in the questionnaire (Chen et al., 2000).

Results and Discussion

The consensus from the Experts group is used to evaluate Maqasid al-Syari'ah, mainly for the exclusion of criminal liability for the which committed under forced circumstances. The approval of the study experts in this matter is also based on the following questions:

Elements of *Hifz al-Nafs* (preservation of life) and Items in the questionnaire: “I believe that the provision for Syari’ah criminal offences committed under forced circumstances should be excluded from criminal liability based on the Syari’ah Criminal Offenses Enactment of the States in Malaysia, which exceeds the level of *Hifz al-Nafs* (preservation of life).

Table 4: Data findings of Fuzzy Delphi method Expert consensus study on the elements of Hifz al-Nafs

No.	EXPERT/POSITION	ITEM
		3
1	Associate Professor	0.072
2	Associate Professor	0.203
3	Associate Professor	0.203
4	Professor	0.072
5	Associate Professor	0.203
6	Associate Professor	0.203
7	Syarie Judge	0.203
8	Syarie Judge	0.203
9	Chief Syarie Judge of Malaysia	0.072
10	Chief Syarie Judge of Melaka	0.072
11	Syarie Judge	0.786
12	Syarie Judge	0.189
13	Syarie Judge	0.072
14	Chief Syarie Judge of Pahang	0.189
15	Syarie Lawyer	0.189
16	Syarie Lawyer	0.072
17	Syarie Lawyer	0.189
18	Syarie Lawyer	0.189
19	Syarie Lawyer	0.072
20	Syarie Lawyer	0.072
The value of d of each item		0.176
Expert Group Agreement Percentage Value, %		95.0%
AVERAGE OF FUZZY NUMBER (SKOR FUZZY)		0.827

* Method 1: Threshold Value (d) \leq 0.2 = Accept

** Method 2: Percentage of agreement $>$ 75% = Expert group gives consensus

Based on the table, the value of item recorded a valued Threshold (d) \leq 0.2 than. This result indicates that the items has gained an expert consensus (Chen & Lin, 2002).

Table 5: Final findings of Fuzzy Delphi technique analysis data of expert group consensus

Item / Elemen 1 Hifz al-Nafs (Protection of Life)	Triangular Fuzzy Numbers Requirements		Fuzzy Evaluation Requirements			Process	Expert Consensus
	Threshold value, d	Expert Group Agreement Percentage, %	m1	m2	m3	Fuzzy Score (A)	
	0.176	95.00%	0.680	0.850	0.950	0.827	ACCEPT

Based on the table above, showing the threshold value (d) by each item is less <0.2 which is 0.176. This means that the study expert gave consent to the item. Cheng, C.H et al (2002) suggested to obtain the agreement of the expert group the study threshold value (d) should be less than 0.2. In addition, the table above also shows the average value of the fuzzy score on the item exceeding 0.5 with a total of 0.827. This indicates the agreement of the study experts on the item in the survey. This is confirmed by Ridhuan (2021), which suggests that only fuzzy score values greater than 0.5 can be counted. As a result, the item was approved by the research expert group.

According to Chu and Hwang expert agreement can be taken into account when the percentage of Expert agreement exceeds 75% (Chu et al., 2008). Based on the table above also shows that the percentage value of the expert group of the study of 95%. In other words, the Expert group of the study agreed that the Shariah Criminal Offenses Enactment of the states in Malaysia meet the requirements of the *Maslahah Of Hifz al-Nafs (preservation of life) as mentioned in the Administration of Shariah Court Enactment*.

Furthermore, Ibn Hajar mentions that a compulsive situation means threatening a person to commit an act he hates (Ibn Hajar, 1989). The researcher sees that each of these provisions is an attempt to fulfil Maslahah of Hifz al-Nafs. However, Maslahah Hifz Nafs not only emphasizes not putting the lives of others at risk, but doing something to save one's life is also another form of Hifz al-Nafs. Al-Khadimi added that *Hifz al-Nafs (preservation of life)* is considering doing everything possible to save lives and prevent them from dying (Al-Khadimi, 2006). Therefore, the provision exclusively translates the implementation of Hifz al-Nafs (preservation of life) through the exceptions enshrined in the decree.

Conclusion

In brief, the Fuzzy Delphi finding indicates that 20 experts, including academics, Syariah judges, and Syariah lawyers, all conformed that the exemption provisions in Malaysia's Shariah Crimes Law are consistent with the principle of *Hifz's al-Nafs (life preservation)* as addressed in Maqasid al-Shariah. In fact, harming oneself and others is strictly forbidden in Islam. Therefore, Malaysia has demonstrated the elevation of the *maslahah of Hifz Nafs* for the preservation of life in terms of exemption from criminal liability committed under coercive conditions through the Administration of Shariah Court Enactment. Therefore, under Sharia laws, if a person is compelled to commit a crime, the person can be exempted from punishment. This is due to the act is done under duress and to save lives. Therefore, an exception clause was included in the edict adhere the principle of *Hifz al-Nafs (Preservation of Life)* in Maqasid al-Syari'ah.

Recommendation

The human life in Islam is remarkably vital and therefore, there is an urge for authorities of the Administration of Shariah Court to further clarified on this matter. It is necessary to add a more specific enactment to strengthen the exception. For instance, any act of intimidation that is believed to be capable of harming or killing oneself or others should be provided with a specific clauses. Equally, the threats received do not apply to circumstances involving coercion to commit adultery, rape, harm or kill a person. This means that the exemption does not apply when a person is forced into adultery, rape or murder as this is contrary to the aim of preserving life in Maqasid al-Shariah.

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