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## Application of Maslahah and Mafsadah Criteria According to Islamic Ethics Perspective on Post- Mortem of Corpses in Malaysia

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### Abstract

The post-mortem of the corpse is an inevitable and familiar thing among the community nowadays for Muslims. This is because it is an action that needs to be taken and done in the interest of the community to solve criminal or non-criminal cases as well as studies in the medical field. However, in the matter of post-mortem, does Islam stipulate the laws to be followed so that there is no contradiction between the *syarak* claim and the practice performed today. It may occur due to a clash between *maslahah* and *mafsadah* in the procedure. Hence, there is ambiguity in assessing the ruling of post-mortem practice until there is a possible violation of ethics and law when the concept of *maslahah* and *mafsadah* applied exceeds the prescribed limits. In the case of determining an ethics, this study will evaluate the extent of post-mortem practice in accordance with the requirements of *maqasid* which takes into account the concepts of *maslahah* and *mafsadah*. To obtain the necessary data, this study will be measured in two methods which is by identifying the opinions of scholars through the books of their essays in determining the ruling and analyzing according to inductive, deductive and comparative methods. Thus, this study found the feasibility of post-mortem in Malaysia by using a holistic approach based on the assessment of Islamic ethics under the concept of *maslahah-mafsadah* (benefit-risk). Three main strategies based on the concept of *maslahah-mafsadah* were applied. First; evidence-based approach, secondly; impact-based and third-based approaches; priority approach. The analysis concludes that the implementation of an autopsy can be categorized as a step in fulfilling the need for a *zaniyyah* (possibility) manner. However, it is seen to be effective in various current requirements, but there needs to be a Standard Operation Procedure (SOP) that must be carried out before the post-mortem is carried out.

**Keywords:** Maslahah-Mafsadah, Ethics, Legislation, Surgery

## Introduction

The Muslim community is exposed to the rapid pace of technology science especially in the medical field and is faced with issues that cause hardship and delirium in the search for answers from the point of view of Islamic ethics. Among the issues are post-mortem or post mortem carried out on corpses either for the purpose of criminal cases, identifying the cause of death, research and so on.

Based on this scenario, this writing attempts to identify the views of Islamic jurisprudence in issues related to post-mortem or post-mortem. The study is qualitative in nature, through the process of analysing the contents of the document as the main source of data. The collected data will be analysed using two main methods, namely deductive analysis, and inductive analysis.

The method of deductive analysis, better known as *Istinbat*, is a method that is very commonly used in issuing Islamic rulings on a *mukallaf* behaviour, from its specific evidence. The researchers in this matter are bound by the methodology of the knowledge of *Usul Fiqh* and are further strengthened by the opinions of the *muktabar* scholars through the relevant books and the opinions of the mufti.

While the method of inductive analysis, also known as *Istiqra'*, is very important to obtain the overall ruling, in the form of *dawabit*, *qawa'id* or *Maqasid Sharia*, on a category of mukallaf behavior, such as the category of political behavior related to the title of this study. In this regard, the disciplines of *Qawa'id Fiqhiyah*, *Qawaid Usuliyah* and *Qawaid Maqasidiyah* especially related to *maslahah* and *mafsadah* should be consulted and obeyed and strengthened with the views of authoritative scholar through the relevant books and opinions of the mufti.

Three main strategies based on the concept of *maslahah-mafsadah* have been applied to identify the ethical views of Islamic law can be adapted to the current demands. This is important as views on scientifically related ethics are needed nowadays as they have a positive impact on the Muslim community in Malaysia. Among the strategies taken are the majors; evidence-based approach, secondly; impact-based and third-based approaches; priority approach.

## Post-Mortem

Post-mortem means an examination carried out by a Government Medical Officer on a corpse in determining the causes of death, characteristics or extent of changes produced by illness or autopsy. This examination takes place either from an external point of view or (Noresah et. al., 1998).

What is interesting, the practice of post-mortem or post-mortem on corpses, or referred to as forensic medicine, was first introduced in Islamic Civilization pioneered by renowned Islamic scientists. Among them is Abu Qasim al-Zahrawi or in Europe he is better known as Abulcasis. He was born in the 10th century AD during the time of Caliph Abdul Rahman II who ruled in Spain's Cordova (Hanafi, 2010). This illustrates the medical knowledge in the field of interogacity starting from the Arab countries then it was adapted and expanded to Europe in turn to the rest of the world.

The development of medical science advances in surgical knowledge today is based on the knowledge of surgery introduced by Abu Qasim al-Zahrawi. This knowledge is developed and adapted from time to time through scientific research and writing in the field of medicine

especially in the 20th century has produced modern technology in the post-mortem of corpses in a more scientific way to seek the desired justice (Hanafi, 2010).

In the 21st century, post-mortem of corpses is an inevitable thing and is not alien among Muslims. This is because it is an action that needs to be taken and done for the benefit of society such as to solve criminal or non-criminal cases as well as studies in medicine. However, in the matter of post-mortem, Islam has set out a number of guidelines to be followed so that there is no contradiction between the *Sharia* claim and the practice done in the medical field.

Among the purposes of the post-mortem on the body is to verify the identity of the deceased and identify the cause of death, cause, manner, and time of death. In addition, among the purposes of the post-mortem are to remove doubts about the cause of death, show illness and disability, detect, draw and document external and internal diseases and injuries. In the meantime, the post-mortem also aims to obtain samples to be studied such as the study of germs, abnormal tissue, and others. The post-mortem is also very beneficial to cases involving crimes by taking photographs and video footage as evidence or case items as well as providing a complete written report on the findings in the examination of the corpse. In fact, this surgery can restore the condition of the body that was badly injured due to an accident or the like before being handed over to the next of kin. In addition, an autopsy is also performed for the purpose of academic studies, conducting studies and research in the field of medicine. (Department of Islamic Development Malaysia, 2023).

According to what is stated by the Department of Islamic Development of Malaysia besides the post-mortem of the body allowed according to the decision of the *Muzakara* (discussion meeting) of the National Fatwa Committee, there is also a necessary death to the post-mortem in accordance with the provisions of the law and instructions of the Ministry of Health Malaysia in accordance with the requirements of *Sharia* (*daruriyyat* and *hajjiyat*) namely (Department of Islamic Development Malaysia, 2023):

i. Medicolegal death case

Such cases involve all the sudden unusual deaths, suspected not ordinary cases, because of violent acts such as murder. It also includes common sudden deaths but not known causes of death medically. Similarly, such cases occur if death due to accident using a vehicle, death at work, accident, illness and poisoning at work, death from poisoning. (e.g., alcohol intoxication, coal gas, insecticides, barbiturates etc), death by suicide, death from use of medical gases during surgery, medical investigation procedures, equipment and technology used by hospitals/clinics and so on.

Among the cases of death that can be categorized in medicolegal are accidental death at home hospital / institution/general place, death due to negligence of officers and hospital/clinic staff such as negligence using medical procedures, equipment, medication, treatment and so on, death of police prisoners, remand, prisoners in concentration camps, deaths in Mental Institutions, asylums etc., death of newborns found, Child death due to suffocation, adoption-related death.

Included in the category of medico legal deaths are any deaths from fire and explosion, suffocation, any deaths outside the residential area such as on the side of the road, in rivers, waters and so on, where the residence of the deceased is unknown and death due to chemicals and industrial radiation such as toxicity, acid, radioactivity and so on.

## ii. Clinical Death Case

Such cases involve death from infectious diseases such as severe acute respiratory syndrome (SARS), AIDS, Anthrax, Japanese Encephalitis (JE) and the like. The same goes for deaths in the ward that are known to be caused but require further information about the cause of death and death of the mother during pregnancy (maternal death).

### **The Concept of Maslahah and Mafsadah**

Ibn 'Asyur (2001) defines *maslahah* as an act that produces good and benefits that are continuous for both the public and the individual. Al-Buti (2000) defines *maslahah* as a benefit directed by Allah SWT the Wise to His servants in order to preserve their religion, life, intellect, lineage and property according to the order of interest specified in the five matters according to al-Din (1983), *al-maslahah al-syar'iyah* which is a *maslahah* that is in accordance with the purpose of *Sharia* and is well recognized from the Koran, Sunnah, *Ijma'* or *Qiyās*. Thus, the discussion of *maslahah* is limited to the purpose of achieving many and true benefits and benefits, whereas the benefits and benefits are viewed from an Islamic perspective.

From the definition presented by the above scholars, it can be concluded that *maslahah* according to the term is all matters that safeguard the will and purpose of *Sharia* by preserving religion, soul, intellect, lineage, and property.

While *mafsadah* according to Al-Gazzali (2008), *mafsadah* is every matter that escapes the importance of the five (*al-usul al-khamsah*) is *mafsadah*. Al-Salam (1968) stated, *mafsadah* is a sorrow and its causes, pain and causes. While al-Razi (no date) is of the opinion, *mafsadah* is an expression of pain or a way (*wasilah*) that brings about the pain. In contrast to Ibn 'Asyur (2001) who defines it as if he wanted to separate between *maslahah* and *mafsadah*. He defined *mafsadah* as the nature of an act that produces damage or *darar* which is perpetual, habitual, occurring on most people or individuals.

Based on the understanding given by scholars, it can be concluded that *mafsadah* is the nature of an act that produces damage and loss of benefits that escape the interests of the five, occurring on most people or individuals. For example, the law of cutting hands for thieves is a *mafsadah* for a group of thieves because it can reduce the capacity in their lives. While stealing it is considered a *mafsadah* that can cause damage to human rights in general. Even if there is no rejection then it will lead to the expiration of *maqāsid al-sharia*.

Therefore, it should be emphasized here that the rejection of *mafsadah* is a complement to the existence of *maslahah* itself. The existence of *mafsadah* is due to the neglect of *maslahah* and acceptance of the elements of damage and leads to the expiration of *maqāsid al-syari'a*. So, the thing that lapses from *maqāsid al-syari'a* is *mafsadah*.

### **Authorities Related to Islamic Ethics in Malaysia**

Parties with authority in the practice of Islamic law in Malaysia are under the authority of the state government. Each state is empowered to enact administrative enactments of Islamic law. Thus, in each state, the Islamic Religious Council is established and officials such as Mufti, Kadi Besar and Kadi. The Mufti is usually the Chairman of the *Sharia* Committee who is given the task of issuing a fatwa if needed (Ibrahim, 1997).

In determining an Islamic law, mufti or fatwa committees appointed in the states of Malaysia are generally seen as based on the final opinion in Shafi'i sect. This is because according to the provisions of the law, every state in Malaysia except Perlis should give priority to Shafi'i sect in issuing fatwas. However, if the fatwa is contrary to the public interest, the mufti or the Fatwa Committee may follow the opinion of other sects namely Maliki, Hanafi and Hanbali which are considered reasonable with general benefits (Ibrahim, 1997; Ishak, 1981).

According to a study conducted by Buang (2004), there is no fatwa decided by the mufti and the fatwa Committee based on his own opinion and *ijtihad*. It is guided by the opinions of the sect as found in the books. Most references and guidance in issuing a fatwa are based on Shafi'i sect although there are also references based on other sect and books in contemporary form and comparison of sects.

### **Aspects of *Maslahah* And *Mafsadah* in The Issue of Handling Post-Mortem**

In determining the aspect of *maslahah* and *mafsadah* is to look at several matters to ensure that the post-mortem practice of the corpse is carried out based on the actual Islamic laws. It can be measured through studies on why a post-mortem should be performed, who determines the procedure and has the right to do so, what Islamic laws should be observed during the post-mortem.

The issue of cadaver surgery or post-mortem was not only presented at the state level, but it was also submitted to the Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia. This issue was presented to the Committee at its 8th *Muzakara* which convened on 24-25 September 1984 and the 61st time which convened on 27 January 2004. The same was also raised to the Selangor State Fatwa Committee which convened on 25 October 2007 (Department of Selangor State Mufti, 2023).

Based on the analysis, it can be said that part of the legal and ethical views on post-mortem presented by the Mufti and the Fatwa Committee is detailed and mentions the source of reference. In other words, the statement is considered to provide legal explanation to the Muslim community, especially those who are directly involved with the post-mortem problem. Since it is considered a new problem, some of the fatwas will cite several reasons and a record of reference authority.

However, issues regarding post-mortem are rarely presented to the mufti or the Fatwa Committee as problems involve only a few parties either from the family of the deceased or medical practitioners or researchers and students. The purpose of the fatwa was to ensure that the life activities of the Malay Muslim community in Malaysia are in line with the *maqasid sharia* which is based on *maslahah* and *mafsadah* and not according to the will and will of the desire or logic of reason alone.

Thus, the mufti and the Fatwa Committee need to assess from the current reality point of view the problems that arise using the *ijtihad* approach considering the evidence, impact and priority in determining a ruling. However, even though they are using *ijtihad* (an effort to obtain a new conclusion through study or research based on valid sources and methods in relation to the Islamic religion) and their own decisions, they are still based on the rules or

guidance of the rulings which have been explained by the previous jurists through the books written by them.

### **Post-mortem Requirements Executed**

The practice of handling post-mortem in Malaysia is due to the existence of certain requirements to achieve the welfare of the parties involved whether it is related to an accident or criminal case. If the post-mortem is not carried out, then it will cause *mafsadah* in resolving an issue that requires a complete answer and resolution.

In addition, the post-mortem is carried out to meet the legal requirements to prove the truth and uphold justice for the deceased and the next of kin. In the meantime, it is able to avoid the *mafsadah* that appears in the future after the body is buried. The result of the surgery can be seen as an effort to save and protect the community in Malaysia from dangerous infectious diseases and *masfsadah* in the future. A post-mortem can increase the knowledge and expertise in the medical field. Studies from the results of post-mortem can improve the health and harmony of the community's life.

The *Muzakara* and the Council of Scholars have decided that the surgery of a Muslim's body can only be performed if the situation really requires (*darurat*) only such as being involved in criminal cases that require a post-mortem or the deceased swallowing a valuable thing or the deceased is pregnant while the pregnancy is still alive. The explanation of the *muzakara* on the permissibility is seen in accordance with what has been stated by scholars such as al-Syarbini and Ibn Hajar.

Al-Sharbini (n. d.) explained that if a woman's body is ready to be buried but there is in her stomach a foetus that is likely to be alive and the age of the foetus has reached six months or more, then it should be dug up and cut off the stomach and removed the foetus as a fulfilment of the obligatory ruling as fulfilling the obligatory law because it is obligatory to split his stomach before he is implanted. However, if the foetus has no hope of survival, then it should not be excavated or dismantled.

The same goes for dissecting the stomach of a corpse that swallows someone else's treasure. In the book *al-Tuhfah* of Ibn Hajar (1938) it is stated that if the body before its death has swallowed the property (in the form of goods or objects) belonging to another person and the owner of the property demands it and none of his heirs or others can replace the property with the same or its price, then it should be dug up and cut off its stomach and then removed the property from its stomach and returned to the owner of the property.

The same is true in the statement of ethics which was decided by the Terengganu State Fatwa Committee on women's post-mortem in accordance with Islamic law which was decided on 4 October 1994. The Terengganu State Fatwa Committee Meeting agreed that the problem is seen as like the statement made by al-Zawawi who mentioned this in the Fatwas Mufti of the Terengganu Government from 1953-1970 at number 85. In the fatwa, the surgery of the corpses as performed in hospitals today is a new thing that did not happen in the old days when Islam was still in its infancy because the need at that time was not yet urgent. Furthermore, the development of medical knowledge has not reached the present stage today (Department of Terengganu Religious Affairs, 1971).

This can be clearly seen in the decision made by the Terengganu State Fatwa Committee which states that the problem is not explicitly mentioned by past scholars in the books of *fiqh* only an-Nawawi (1997) mentioned in his book called *al-Majmu'* as follows:

"If being swallowed by the dead man will be a precious gem belonging to another person and reclaimed by his master, then it should be cut off his stomach then return the gem to his master and suppose to death a woman who is still pregnant and the child he conceives is still alive at that time should be cut off his stomach for removing the child with the purpose of preserving one life even by damaging one part of the corpse".

Hence, according to the above opinion, we find that it is important to maintain the limit of need or emergency in conducting an autopsy and it is seen to coincide with what stated by al-Suyuti (1990) in his book *al-Ashbah wa al-Naza'ir*. Therefore, the post-mortem is required based on the need (*hajat*) which is the reason for the surgery. However, the need here is a truly urgent need (*darurat*) in certain cases such as cases related to the rights of others to the deceased without doubt. The emergency becomes *'illah* or because that requires post-mortem. Otherwise it is prohibited because it is considered to be the mistreatment of the corpse, disrespecting it and degrading the appearance of the corpse. We believe that the condition due to the emergency is a condition that must be imposed or applied in all purposes of the post-mortem carried out i.e., either for reasons of identifying illness or for criminal factors.

#### **Before the Post-Mortem Process**

The Terengganu State Fatwa Committee reminds and puts a number of conditions that must be met by those involved in order for the surgery to be carried out in the manner demanded by *Sharia*. Among them is to identify in advance the death of the body. This is to prevent him from being dissected in the last moments of his life (yet to really die). The post-mortem shall be in a case that concerns the rights of others to the deceased without a doubt. If a normal death does not have anything to do with someone else's claim against him, it should not be surgery. It should be a perfect state of emergency that forces to perform this surgery such as to ensure death due to the actions of criminals and so on. The surgical process should be done carefully, carefully and delicately to preserve the honor of the deceased. Must first obtain the consent of the heirs if they are still there. Permission is necessary for the purpose of safeguarding the feelings of his heirs (Department of Terengganu Religious Affairs, 1971).

The conditions presented by the above Fatwa Committee are seen as heavy on the ethics of conducting an autopsy on a corpse. Even if some scholars require the post-mortem of a corpse, the permissibility given is not absolute or wide open without limits or limits, according to the requirements of *Sharia* and the rules of *fiqh*.

According to the study, the conditions are seen to be in line with what is recommended by scholars especially scholars from Shafi'i sect. Al-Nawawi (2000) identified the death of the body before bathing the body. Especially for the surgical work on the corpse which involves the respect and perfection of the mortuary.

Among the ethics that need to be taken care of before post-mortem work is to take care of the *aurat* (those parts of the body that cannot be exposed or should be covered according to



Islam) of the corpses especially the corpses among women. Therefore, the number of people who are supposed to do post-mortem work on female corpses is from among the female surgeons as well. This is because it is haram to look at the aurat of the woman's body by a foreign man. This opinion is seen in accordance with the opinion of scholars such as al-Rafi'i (1997) who is of the opinion that it is impermissible for a foreign man to bathe the body of a foreign woman who has no *mahram* (relatives of the opposite sex that one cannot marry) relationship if there is no woman at that time or her *mahram*, it is permissible to bathe the body by pouring water on the entire body of the woman covered with a thick cloth without directly using her hand. According to al-Nawawi (2000), the body is not bathed but it is carried out.

Furthermore, in the book *al-Iqna'* of al-Sharbini (n. d.) that the ruling of haram touching is not due to death. In another sense even the woman has become a corpse. However, if there is no female surgeon, then there is no barrier to the surgical process by a male doctor due to an emergency.

Hence, the ethics that have been decided by the fatwa institution are seen using an evidence-based approach that shows that the surgery of the corpse or the post-mortem of the corpse has been discussed by scholars since time immemorial. The decisions that have been taken take into account the impact that will occur if the surgery is carried out and at the same time, they have given priority to cases that are *dharurat* and there is an urgent need.

#### **The party who determines the procedure and has the right to do so**

The post-mortem procedure cannot be performed arbitrarily without any specific procedures that must be followed in order to maintain good health and reject all forms of *mafsadah*. The following are some procedures and parties that are eligible to perform the post-mortem process:

- i. Permission to conduct a post-mortem is subject to:
  - a. Magistrates or Police Instructions for cases of medicolegal death.
  - b. Directive of the Director General of Health for certain cases such as infectious diseases in the public interest.
  - c. Obtain written permission and consent from the beneficiaries for clinical post-mortem cases.
- ii. Post-mortem on the body can only be carried out in Government hospitals or other suitable places (Section 330 of the Code of Criminal Procedure).
- iii. A post-mortem can only be carried out by a Government Medical Officer.

This procedure is observed in line with the ethical resolutions decided by the Terengganu State Fatwa Committee. This is said to be an effort to preserve *maslahah* or public interest which must be controlled and preserved currently, the practice of cadaver surgery should be done by those who are experts in knowledge (Department of Terengganu Religious Affairs, 1971).

But who has the right to the deceased to give permission for the post-mortem process to be carried out? These cases of death are not related to police cases such as infectious diseases or death in wards. Government Medical Officers must obtain permission from the beneficiaries before performing an autopsy (Department of Islamic Development Malaysia, 2023). In cases of public interest such as cases under the Prevention and Control of Infectious

Diseases Act 1988 (Act 342), post-mortem is allowed without the need to refer or obtain the consent of the heir (Attorney General's Chambers Malaysia, 2023). In this regard, it is seen that the authorities have the right to conduct an autopsy without reference to the heir. This is based on what is allocated to the Magistrate or Police who issued instructions (Form Pol. 61) to the Government Medical Officer to carry out a post-mortem without the need to refer or obtain the consent of the heir.

In this issue, it is quite different from the stance of the Terengganu State Fatwa Committee which is of the opinion that the person who has the right to give permission is those who have the right to make a blood claim or abort it i.e., every person who is entitled to the estate of the deceased either through *nasab* (lineage) or marital relations. This opinion is in line with what is stated by Shafi'i, Hanifah and Ahmad. They are of the opinion that the people who have the right to perform qisas or make blood-related claims are all those who inherit the estate of the deceased whether male or female (al-Kasani, 1328H; al-Shirazi, no date; al-Buhuti, no date). This opinion is different from what Imam Malik said that the people who have the right to make blood claims on the killer are men who receive the estate of the deceased based on '*asabah*' only (Al-Dirdir, 1301H).

Although the post-mortem procedure determined by the Police and Magistrate conflicts with the laws, there may be certain reasons that allow the hospital to carry out the *sisat* surgery without the consent of the heirs in order to obtain a greater *maslahah* than *mafsadah*.

Hence, the ethics that have been decided by the fatwa institution are seen as using an evidence-based approach that shows that the surgery is in line with what has been decided by scholars since time immemorial. The decisions that have been taken take into account the impact that will occur if the surgery is carried out and at the same time, they have given priority to cases that are *darurat* and there is an urgent need.

### **During the Corpse Surgery Process**

In the process of conducting this post-mortem, there are several steps to be taken as follows (Department of Islamic Development Malaysia, 2023)

- i. An external examination carried out is to document the injuries of the corpse. Government Medical Officers will make a detailed examination of the bodies including the deceased's clothing, the condition of the body as a whole, external changes related to death and disease as well as signs of injury. If the cause of death can be identified, then cadaver surgery will no longer have to be performed.
- ii. An internal examination is carried out in the event of an external examination it is still not possible to identify the cause of death. This includes opening the head cap, chest cavity, abdomen, pelvis, and others where necessary.
- iii. The intake of specimens i.e., taking bodily fluids for toxicology analysis and other tests such as radiological examination, germ study, tissue study and Forensic photography.

In discussing the ethics of the legislation, the Penang State Fatwa Committee explained that the post-mortem (dead surgery) should be for the purpose of upholding justice based on several methods. However, such surgery should follow the principles and fundamentals of Islamic *Sharia* which is prohibited from hurting the body except with *syar'i* (Department of Islamic Development Malaysia, 2023). This illustrates that Islam prohibits those who carry out the post-mortem process from doing something that can cause *mafsadah* to the body.

Then the Fatwa Committee presented several methods of *fiqh* which are used for the determination of rulings based on the reference of the scholar, al-Suyuti (1990) in his book *al-Ashbah wa al-Naza'ir*. Among them are

- i. "Harm is eliminated but not with sanctity"
- ii. Ibn Subki said "Excluded from this method if one of the harms is greater".

The answer in the above fatwa shows that the *Muzakara* Fatwa Committee of the National Council for Islamic Religious Affairs considers the views presented by the scholars and it describes the problem of post-mortem or post-mortem of the corpse taking into account *maslahah* and *mafsadah* on the body.

Among the reasons for the fatwa to be issued is to preserve the public interest or interest in the future so as not to make a case of accusations against an innocent person. Even with a body surgery or post-mortem, it can control a person's *mafsadah* due to the rampant crime in order to uphold justice. For example, one person is accused of poisoning another person and there are false witnesses who witnessed him or a person who died of the poison thrown his body into the river to confuse his death with drowning, but by performing surgery or post mortem will be able to prove the fact of what happened (Department of Religious Affairs Terengganu, 1971).

In the meantime, the Fatwa Committee also rejects the opinion that the ruling of the surgery of a Muslim's body is haram because Islam preserves Adam's child and commands the living to glorify the corpse and do not hurt it. To reject the argument, the Committee put forward the *tasyri'* method adopted by al-Suyuti (1990) which is that all the rulings of *syara'* are paid off based on controlling the benefits and *maslahah* and avoiding *mafsadah*. So, any matter which is in him benefits and a heavier *maslahah* is commanded to do it and instead any which is in it the heavier *mafsadah* is told to leave.

This view is in line with what was expressed by H. Makhluaf (of the former Mufti of the Kingdom of Egypt and Yusuf ad-Dajwi a prominent scholar in Egypt who has ruled that the surgery of the body of a Muslim should be with the reasons presented above (Council of Senior Scholars in the Kingdom of Saudi Arabia, 2023).

### **Limitations in Post-mortem**

Similarly, al-Suyuti (1990) stressed that in carrying out something considered urgent need (*darurat*), it should be done to the extent necessary, including post-mortem work. This is because the post-mortem permissibility should be measured based on the rate of need or emergency as mentioned by al-Suyuti (1990) in his book, which states the *fiqh* method which says "*al-darurah tuqaddar bi qadariha*" (the *darurat* is measured according to its needs). Based on this method, the surgery should not be performed in a manner that goes beyond the limits or limits of *rukshah* or the sanitation that has been permitted by *Sharia*, as considering the original ruling of the surgery of the corpse without any reason is haram. Therefore, in carrying out a post-mortem it is an obligation to only dissect any part of the body which is believed to help the relevant party achieve the goals of the post-mortem.

In addition, among the ethics that need to be taken care of during the post-mortem work is to honor the dissected corpse by carrying out the surgery in the most careful manner with

manners that do not damage the honor and dignity of human remains. This is stated by Imam an-Nawawi (1997) in talking about what should be done on the body immediately after his death. He stressed that family members are required to close his eyes and cover his entire body with a cloth, as well as face his face towards the *qibla*. It should be done by the most gentle and conscientious family member among his *mahram*.

There is also an issue highlighted by the community is about the ruling of taking any part of the body to be done an in-depth study of the results of an autopsy as evidence in court or for the study of a doctor pursuing medical studies at a university (Department of Terengganu Religious Affairs, 1971).

In responding to the above question, the Mufti and the Fatwa Committee are of the opinion that the taking of any part of the body for study following an autopsy to be used as evidence in court or for medical studies is permissible in limited circumstances i.e. when the study is absolutely necessary or in an emergency where justice cannot be done without the post-mortem. This opinion is guided by the discussion of contemporary scholars in their writing on the issue.

The above ethical-legislative statements are also seen as mentioning maintaining the limits of requirements or emergencies in carrying out post-mortem work. This seems to coincide with what al-Suyuti (1990) stated in his book *al-Ashbah wa al-Naza'ir*. In this situation, the post-mortem is required based on the need (wish) which is the reason for the surgery. However, the need here is a truly urgent need (*darurat*) in certain cases such as cases related to the rights of others to the deceased without doubt.

In deciding the ruling related to dissecting the body, *Muzakara* and the Selangor State Fatwa Committee were seen to take the opinion of two Egyptian Mufti who were seen as having different views from each other. Some of them say it is not necessary to dissect a corpse if the purpose is to know the forms and functions of human organs because such is sufficient to be known through the organs of animals. Among those who say so is al-Muthi'e, the former Mufti of Egypt. While others such as H. Makhluaf say it should be done in case of emergency (Al-Qassar, 1999).

### **Alternative to Post-mortem**

Meanwhile, the 73rd *Muzakara* of the Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia which convened on 4 - 6 April 2006 discussed the ruling of using the Virtual Autopsy method as an alternative to post-mortem of corpses. *Muzakara* is seen to be adopting new technological methods used in the field of surgery. Hence, they have decided that the use of the Virtual Autopsy method (Virtual Autopsy) in mortuary post-mortem if it meets the requirements, must be given priority over the current post-mortem method (Federal Territory Islamic Religious Department, 2023).

This method is a method of imaging technology that is usually done on living patients as one of the screening procedures or detecting a disease such as tumours, cancer and so on. The same method can be done on the body which aims to identify the cause of death without touching the body. Virtual autopsies have an advantage especially in investigating criminal

cases that require proof of origin on the body of the corpse without any changes or contamination due to the classical surgical procedures practiced today.

According to the *Muzakara* of the National Fatwa Committee, this method is considered to be compatible with Islam. This is because Islam teaches that its *ummah* glorifies those who have died. Committing harm that can physically disfigure the deceased person is a persecution and aggression on the dignity and honor of the corpse. Thus, autopsy especially classical autopsy is a field of medicine that is considered sensitive not only in terms of religion but also by the culture of the society of this country.

The *Muzakara* of the Fatwa Committee also affirms that Islam adheres to the principle that the body of a deceased person still has the dignity, values and rights of humanity that must be respected and preserved as the living person. Torturing a corpse is prohibited by Islam. If there are other methods in the post-mortem of the corpse that are better, the method is best used. The discovery of the Virtual Autopsy method if comparable to the existing post-mortem or post-mortem method, gives the impression that an autopsy is no longer the only procedure that can be used to find the cause of death, study the disease or learning purposes. This means that the classic autopsy is no longer a *darurat*. If the Virtual Autopsy is accepted as an alternative or complement to the existing post-mortem, this method should be a priority for the sake of keeping the *maslahah* on the body (Federal Territory Islamic Religious Department, 2023). This illustrates when the use of Virtual Autopsy should be seen as an alternative that has a more prominent aspect of *maslahah* than *mafsadah*.

### Conclusion

The study found that most fatwas on post-mortem are influenced by the opinion of past Islamic scholars who are *mu'tabar* (honourable) based on the sources of authority in the treasury of fiqh. Only a small part considers the views of contemporary scholars. Thus, the study found that the mufti and the Fatwa Committee when making a fatwa decision are indeed cautious, open and leniency as well as giving choice and *talfiq* to the Muslim Malay community that is compatible with the elements of Islamic legal flexibility that are in line with the general interest, *maslahah-mafsadah* and in line with the objectives of *Sharia (maqasid al-sharia)*.

This is because performing a post-mortem or post-mortem on a corpse due to an illness, is seen to contain some general justification. Among them is to save people from infectious diseases. In addition, it can improve the health and harmony of the community's life through the provision of proper treatment and medication.

In criminal cases, post-mortem for the purpose of maintaining the validity of the sentence in the trial, rejecting all forms of tyranny, and guarding and preventing individuals from engaging with vengeance and hostility.

So, some of these justifications are common justifications that need to be prioritized. Some scholars of Shafi'iyah, Hanafiyyah, Malikiyyah and Hanabilah analogize the permissibility of post-mortem on corpses for the purpose of detecting crime and detecting the disease with the surgical permissibility of the corpse's stomach to remove its contents because it saves lives. The same goes for dissecting the stomach of a corpse for removing the property of a

living person as mentioned earlier. Therefore, post-mortem for the purposes of the above needs is more important.

The application of the criteria of *maslahah* and *mafsadah* is very important in this procedure as it involves all the bodies regardless of race, ethnicity and religion. Adhering to the ethical requirements based on *maslahah* and *mafsadah* on matters arising from the post-mortem is a trust that is obligatory to be fulfilled especially the post-mortem involving the body of a Muslim. The aspect of post-mortem implementation that is more influenced by ethical factors than clinical aspects should be taken seriously not only by medical practitioners but also by policymakers. Knowledge of the aspects of *maslahah* and *mafsadah* in this issue has deep meaning and implications and can help solve many problems either in the present or in the future.

If we have a lack knowledge about the balance of fiqh (*fiqh muwazannah*), we will close our doors to what we should be tolerant and compassionate about. This causes us to adopt the philosophy of rejection as the basis for all affairs. Closing the door of oneself as a way to escape from facing the problems and challenges of the opponent against himself. It is the easiest thing for us to say: "No" or "illegal" in every matter that requires thought and perseverance.

Based on the fiqh priority (*awlawiyyat*), we will find that there is a way to compare between situations with other situations, circumstances with other circumstances, and the priority between profit and loss, in the short and long term, at the individual level, and at the level of society. Then after that we choose what we see whether it brings *maslahah* or avoids *mafsadah*.

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