

Vaccination from the Perspective of Islamic Legal Maxim

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Abstract

This article focuses on the vaccination from the perspective of Islamic legal maxims. In order to obtain the data, this qualitative study used the library research. The data were analyzed using content analysis. The article is conducted through a review of literature in classic and contemporary books and documents such as paper reports and rulings of the National Fatwa Committee of Malaysia. It is found that vaccination is permissible in Islam and is supported by various Islamic legal maxims; it is in line with the preservation of the *Maqasid al-Shariah* on 'the maintenance of life' (*hifz al-nafs*).

Keywords: *Vaccination, Islamic Legal Maxim, Maqasid Shariah, Anti-vaccination, Epidemic.*

INTRODUCTION

Since the 1950s, Malaysia has been giving free immunisation vaccine injections to children through the National Children's Immunisation Program. One of the reasons for giving this vaccination is to prevent 12 types of infectious diseases that are caused by certain bacteria and viruses. The government's initiative has seen positive results such as the decline in the mortality rate among children by 85% between 1970 and 2000. Huge success was achieved when vaccination successfully eradicated smallpox and polio around the world, including Malaysia. Poliomyelitis, which causes physical disfigurement in children and had 350,000 cases in 1988, was successfully overcome with zero cases in 2012 (Utusan Malaysia, 2016).

However, the Muslim community in Malaysia was lately shocked by the news of death linked to diphtheria. Six lives were lost due to this infectious disease, while 26 cases of diphtheria have been reported throughout the country since the first case on the 17th June, 2016 (Utusan Malaysia, 2016). The emergence of this disease is due to the attitude of some parents who reject free vaccination. Inaccurate information about vaccination had contributed to the reluctance of parents to give vaccination injections to their children. The Kedah State EXCO for Health, Datuk Dr Leong Yong Kong, stated that the frightening information about the negative side-effects of vaccination found in social networks written by those who claim to be highly qualified or doctors is one of the reasons parents are reluctant to have their children

vaccinated. This reluctance is related to the excuse that vaccines contain non-halal ingredients as well as wild accusations that the vaccine issue is an agenda by the enemies of Islam to weaken the resolve of Muslims. These presumptions had eventually led to a movement among Malaysians that rejected vaccinations, in particular.

According to the Ministry of Health records, the number of cases of parents rejecting vaccinations had increased from 470 cases in 2013 to 1292 in 2014. In the first three months of 2016 there were 500 cases of rejections by parents. What is worrisome is the implication of this movement; the statistics by the Health Ministry show that the number of vaccine preventive diseases has increased 157-fold compared to 10 years ago. For example, the number of pertussis cases has increased by 154-fold, from 0.2 cases per 100,000 population in 2006 to 3.08 cases per 100,000 population in 2016, including the number of death cases. In the case of measles, there has been a 18-fold increase, from 2.3 cases per 1,000,000 population in 2006 to 43.2 cases per 1,000,000 population in 2016, with two death cases (Utusan Malaysia, 2016).

RESEARCH METHODOLOGY

This study is carried out qualitatively. According to Idris Awang (2009), data in a qualitative research are sought through books, authentic articles, documents, artifacts, maps, pictures, and through interviews and observations. In this paper, data related to relevant Islamic Legal Maxims on vaccination are sought from classic and contemporary books, closely related articles, artifacts, and documents such as paper reports, news archive, and rulings of the National Fatwa Committee of Malaysia. This data collection is vital in determining whether vaccination is in line with the teachings of Islam, generally featured in its legal maxims, or it is not. The results of the collected data are analysed accordingly. Content analysis is used in many ways and in various contexts. According to Krippendorff, quoted in David Wilkinson and Peter Birmingham (2003), content analysis is a research technique for making replicable and valid inferences from data to their context.

FINDINGS

Generally, vaccination is permissible in Islam based on several Islamic legal maxims. These maxims are among strong arguments that set the anti-vaccination movement to a situation whereby they can no longer manipulate religious arguments in supporting their claim. The Islamic legal maxims, upon which the permissibility of vaccination is based, are as stated below.

The Maxim of الأصل في الأشياء الإباحة (The Basis [of Rules] in Everything is Permissibility)

The maxim, “*al-Aslu fi al-Ashya’ al-ibaha*” (The basis [of rules] in everything is permissibility) (al-Burnu, 2003), means that all actions, food, beverage etc. could be initiated or consumed as long as there are no religious decrees (*hukum*) prohibiting (*haram*) it, then the basic permissibility status, i.e. *haram* or *halal*, is maintained. Similarly, if there are no religious decrees necessitating an action to be compulsory, then it is maintained according to the basic permissibility status. An example is the religious decree regarding the use of Power Point software application in teaching, since there is no religious decree, be it in al-Qur’an, Sunnah or

ljma', prohibiting, permitting, or making its use compulsory or *Sunnah*, then the action could be maintained according to the basic decree, the permissibility.

In the context of vaccinations, there has not been in the Qur'an or Sunnah a religious injunction prohibiting it. Moreover, vaccination is included in the category of exerting 'human efforts to avoid harm'. It is similar to wearing a life jacket when going to the sea to avoid unforeseen calamity. Just like human efforts that are intended to avoid harm, vaccination is a means of exerting human effort to preventing diseases. All of these efforts are permissible and, in some cases, necessary.

The Maxim of اليقين لا يزول بالشك (Certainty is not Dispelled by Doubt)

The maxim, "*al-Yaqin la yazulu bi al-Shakk*" (Certainty is not dispelled by doubt) (al-Zarqa, 1989), means that doubt without proof is insufficient to dispel an established religious decree or injunction. For example, if one is confused as to whether one has performed two or three rak'ah during Zuhr prayers, one should stick to two rak'ah because the established ruling is to 'build on the convincing or least number'. In this case, two rak'ah is more convincing, whereas 3 rak'ah is in suspect.

In the context of vaccinations, doubt is casted on the component of the ingredients used in the vaccine. There are allegations, in some quarter, that there exists in the vaccines the DNA of pigs. All allegations in this regard are simply 'doubts' with no concrete proof to validate them. Conversely, what is convincing is the sanctity of the vaccinations based on the assurance given by the Deputy Health Minister, Datuk Seri Dr Hilmi bin Yahya, at the Dewan Rakyat about the absence of pig DNA in all 12 vaccines used in the national immunization program for children, and hence its *halal* status. More interestingly, the five-in-one vaccine administered for prevention of various diseases, diphtheria included, is included in the 12 types of vaccines mentioned. Only Rotavirus vaccine, used for preventing diarrhoea, contains pig DNA, and the government has not made it compulsory (Utusan Malaysia, 2016).

Thus, the vaccine, been assured of its sanctity through an expert authoritative clarification, could be used by Muslims without any fear entertained. Any doubt about the sanctity of the vaccine, without a substantiating proof, should therefore be disregarded.

The Maxim of ما لا يتم الواجب إلا به فهو واجب (That without which an Obligatory Act could be achieved is itself an Obligation)

The maxim, "*maa laa yatimm al-Wajib illa bihi fa huwa wajibun*" (That without which an obligatory act could not be achieved is itself an obligation) (Ibn Najjar, 1993), means that when the fulfilment of an obligation depends solely upon an element, then the element needed in fulfilling such an obligation becomes obligation as well. In this instance, it is obligatory on rightful Muslim men to perform *Jum'ah* (Friday) prayers, and the fulfilment of this obligation cannot be accomplished without going to a *Masjid al-Jami'* (central Mosque) where *Jum'ah* prayers are held. Hence, going to the *Masjid* for the *Jum'ah* prayers becomes an obligation in itself. In this context, the obligation of vaccinations to safeguarding human life is clear.

Allah *S.W.T* has clearly prohibited humankind from putting themselves in danger or self-destruction (al-Baqarah: 195). Safe-guarding life includes taking care of one's physical health

and avoiding threats against it, such as diseases. Thus, if taking care of one's health, which is an obligation, could not be achieved without taking vaccinations, then the vaccination becomes obligatory. When determining whether the vaccination could prevent a life-threatening disease, the *'urf* (acceptable normal practices of a people) and *ra'y al-Khabir* (expert opinions), which are two ways of delivering a religious decree based on the discipline of *Usul al-Fiqh* (Principles of Jurisprudence), could become the basis.

The Maxim of الضرورة تبيح المحظورات (Necessity Permits (Makes Lawful) Prohibitions)

The maxim, "*al-Darurah tubih al-Mahzurat*" (Necessity permits (makes lawful) prohibitions) (al-Zarqa, 1989), means that when one is in a situation that endangers one's life, the one whose life is threatened could do what is, in normal circumstances, prohibited to save his life. For instance, when one is starved, and there is no *halal* food or water in sight, one could consume what is, under normal circumstances, *haram* but in a measured amount. In *Usul al-Fiqh* (Principles of Jurisprudence), this allowance is referred to as *rukhsah* (leniency/permission) and there are different levels of religious decrees in the context of using it. In several circumstances, it is compulsory (*wajib*) to use *rukhsah*, whereas in other circumstances, it is *afdal* (most preferred) to use the original religious decree. There are also circumstances where using or not using *rukhsah* is the same without one being more *afdal* (preferred) than the other.

In the context of vaccination, this method would not be prominent if all vaccines used are *halal*. The religious decree would be similar to consuming vitamins, supplements or medication that is *halal* for health reasons or prevention of diseases. This method becomes prominent when *haram* element(s) is present in the vaccine. The religious decree is similar to that for medications that are *haram*. Thus, if there are no *halal* medications available or not yet available, then the use of medication with *haram* ingredients is permissible in the form of *rukhsah* only and in dire situations. The determination of a dire situation must be prudently determined by authoritative and trusted experts. Application of the maxim *الضرورة تقدر بقدرها* - *Darurah tuqaddar bi qadariha* - (Necessity is determined according its degree (extent)) (al-Zarqa, 1989) should be considered so that the term dire situation is not abused. Only the minimum use of *haram* ingredients based on the extent of the dire situation should be considered and nothing more.

The Maxim of الأخذ بأخف الضررين (The Preference of the lesser of Two Harms)

The maxim, "*al-Akhdh bi akhaff al-Dararayn*" (The preference of the lesser of two harms) (al-Zarqa, 1989), means that when there is a clash of two harmful situations and we are to choose either of the two, we have to choose the lesser of the harmful situations. There is another maxim (method) that carries a similar meaning to this, which is "when two harmful situations clash, then choose the more general one". This means that when two harmful situations collide, one involving an individual or a handful of individuals and the other involves a whole community, we, in this situation, must avoid the harmful situation involving the whole community although this may harm one or more individuals. For example, when one steals and is found guilty, one's hand must be severed as stipulated in the Qur'an. The severance of one's hand causes a specific harm to one; one loses one's hand and one becomes handicapped for

life. If one's hand is not severed, theft would become more rampant and the society would become insecure and unsafe, and there would be loss of security and safety in the society in general. In this case, the harm that would befall the general society, the insecurity and lack of safety, must be avoided through implementing the Qur'anic stipulated injunction on one.

In the vaccination context, although the assumption is that the vaccine might cause harm to some of the consumers, it must still be administered because the consequence of the harm, if not administered, would be greater. The harm that befalls an individual would be much less serious compared to the harm in the form of a disease that endangers the whole society. Some bacteria, if not vaccinated against, could remain dormant in individual's body. The *pneumococcus* bacterium for example, could remain in the body for months or even years waiting for the right time to be active again. Parents who send their children to kindergarten or nursery have to be careful as these children face much greater risk of contracting *invasive pneumococcal* or *acute otitis media* diseases. This is because their immune system is still not mature enough and they are exposed to *pneumococcus* carriers in the kindergarten or nursery who have not been vaccinated. One way to protect these children from *pneumococcal* diseases is through vaccination. Unfortunately, there are parents who refuse to take preventive measures such as this and choose to face the risks instead. They fail to understand that this bacterium is like a time-bomb that could explode anytime and harm the general public.

In addition, the refusal to receive vaccinations from birth actually cause harm, not only to the children involved but also other children, adults included. This is not a baseless assumption either. The infection of health workers is a clear proof that if this virus is not contained from the beginning it could infect adults too. This leads to government's initiatives to study suggestions on providing vaccinations to adults as a protection against diphtheria.

The Maxim of تصرف الإمام منوط بالمصلحة (The Ruler's Decision is Dictated in Favour of the People)

The maxim, "*Tasarruf al-ImĒm manut bi al-Maslahah*" (the Ruler's decision is dictated in favour of the people) (al-Zarqa, 1989), means that every decision made by the ruler must be based on the beneficial aspect or priorities (*maslahah*). Beneficial aspects here mean benefits to the general public and not benefits accrued to only a section of the public. The determination of benefits could become the basis for making decisions, which could be referred to earlier discussions pertaining the types of benefits.

In the vaccination context, if the government wishes to formulate legislation or regulations that make it mandatory for children to be vaccinated, then it needs to be based on general benefits. Efforts in this direction are being initiated whereby the Health Ministry is reported to be in discussion to formulate new legislation that makes it mandatory for parents to provide vaccination for their children as a form of protection against diseases. A newspaper report quotes the Health Minister, Datuk Seri Dr S. Subramaniam, as saying that the ministry has had discussions with the National Fatwa Council and the council agreed that vaccinations are mandatory. In addition, the Health Ministry has the capacity to provide vaccinations for this purpose (Utusan Malaysia, 2016).

The government has shown seriousness in ensuring that all children receive immunization through the Health Ministry's program that carries out immunization screening

initiative for standard 4 and 5 pupils in all schools in the country. The Health Minister also said that if there are pupils who have not received vaccinations or have not completed their vaccinations, then the ministry would provide it according to the pupil's needs. The Health and Education Ministries would make it mandatory for all pupils entering Standard 1 to adduce their immunization report to the school authorities for verification. According to him, these efforts are to ensure that all primary school pupils are given complete immunization before going on to secondary school and most importantly, a step towards preventing diseases (Utusan Malaysia, 2016).

The refusal of parents, particularly Muslims, to provide vaccination for their children is worrisome; it impedes the children's chance of receiving formal education that would ensure their survival in Malaysia. Efforts by some Western countries to disallow students without immunization to enter schools could also be practiced here in Malaysia. Without formal education, Muslims would be left behind in every aspect. We should therefore not sacrifice the health and education of our children for unfounded allegations and baseless presumptions.

Vaccination is also correspondent to *Maqasid al-Shari'ah* (The objectives of Shari'ah), the protection of which Islam emphasizes through the legislation of various rules and regulations. Generally, there are five *Maqasid al-Shari'ah* that must be protected. They are: *Hifz al-Din* (protection of religion), *Hifz al-Nafs* (protection of life), *Hifz al-'Aql* (protection of the intellect), *Hifz al-'Ird* (protection of dignity) and *Hifz al-Mal* (protection of wealth). Vaccination is a means to protect life because without it, life will be exposed to fatal epidemic.

CONCLUSION

The issue of vaccination from the perspective of *Maqasid al-Shari'ah* has brought to surface several Islamic Legal Maxims that support its implementation. These legal maxims are: 1) The basis [of rules] in everything is permissibility; 2) Certainty is not dispelled by doubt; 3) That without which an obligatory act could be achieved is itself an obligation; 4) Necessity Permits (makes lawful) prohibitions; 5) The preference of the lesser of two harms; and 6) The ruler's decision is dictated in favour of the people).

The legality of vaccination is also concordance to several rulings and guidelines of *Muzakarah jawatankuasa fatwa kebangsaan bagi hal ehwal agama Islam* (The conference of national fatwa committee) in 1988. The seemingly existence of prohibited ingredients in any vaccine can only be validated by expert personel and not simply based on hearsays or rumors spread on social media. Islam recognized expert opinions (*ra'y al-khabir*). The concept of *tabayyun* (seeking for the validity of any information) must me practiced by all members of the society. This is in line with the teaching of al-Quran in *surah al-Hujurat* verse six. The Malaysian Minister of Health has confirmed the non-existence of forbidden elements in the vaccine used. Even if there is, it is still permissible due to the concept of *rukhsah* (leniency) in using or utilizing forbidden item and/or action due to *dharurah* (dire necessity). In that case, the responsibility of producing *halal* vaccine rests on the shoulders of Muslim community. The protection of the community's general health from epidemic that could not only weaken them

but could also be fatal is a necessity. This is in agreement with the *Maqasid al-Shari'ah*; the protection of human life.

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