



Applying the Concepts of Benefit and Harm in Malaysian Bioethical Discourse: Analysis of Malaysian Fatwa

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Received: 5 August 2021 / Accepted: 19 January 2023
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Abstract Rapid developments in science and technology have resulted in novel discoveries, leading to new questions particularly related to human values and ethics. Every discovery and technology has positive and negative implications and affects human lives either directly or indirectly, involving all walks of life. Bioethical discourse in Malaysia must consider the multiracial and multireligious background of Malaysia and especially the Islamic view as the majority of Malaysians are Muslims and Islam is the religion of the federation. This article discusses several selected bioethical issues in Malaysia by studying the application of *maṣlahah* (the public good) and *mafsadah* (evil and harms) in Malaysian Islamic rulings (fatwas). This article uses the critical interpretation approach, as this is an ethical, interpretive, textual, and contextual analysis. In a situation when there is a conflict between *maṣlahah* and avoidance of *mafsadah*, it is preferred to attempt to address both needs. However, if *maṣlahah* and avoidance of *mafsadah* are mutually exclusive, the decision to choose

must be made by weighing (*tarjīh*) and choosing the one which is superior. The *maṣlahah* and *mafsadah* concepts play vital and significant roles in bioethical discourse to realize human essential interests, namely faith, life, lineage, intellect, and property, thus achieving *maqāṣid al-sharī'ah* (the ultimate goal of sharia). This concept helps in guiding bioethical discussions, especially in determining the priority between achieving benefits and avoiding harms. The application of this concept will also assist Malaysian authorities in formulating appropriate rulings, especially bioethical issues related to Malaysian Muslims' lives.

Keywords *Maslahah* · Benefit · Harm · *Maqasid al-shari'ah* · Fatwa · Malaysia

Introduction

Rapid developments in science and technology have resulted in novel discoveries, leading to new questions particularly related to human values and ethics. These advances bring new polemics and issues related to human ethics and values that are complicated and complex, demanding comprehensive and holistic answers and solutions. Consequently, bioethics, which is a cross-disciplinary discourse, is increasingly significant and important in science and technology discussions. Every discovery and new technology has positive and negative implications and affects human lives, either directly or indirectly,

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involving all walks of life. This is because every development and invention not only brings benefits but also implicitly affects the philosophies, systems, thought patterns, and interests of the people involved (including self-absorption, egoistic, individualistic, and hedonistic factors [Raquib 2015; Ghaly 2013]).

Bioethical discourse in Malaysia must consider the multiracial and multireligious background in Malaysia, and especially the Islamic view, as the majority of Malaysians are Sunni Muslims and Islam is the religion of the federation (Ibrahim, Rahman, and Saifuddeen 2018; Isa 2015). Therefore, research and analysis of bioethical issues in Malaysia should take an Islamic bioethical perspective. This is a discipline that colligates one or both of two distinct traditions of discourses of Islamic knowledge: juridical-moral discourse (*‘ilm al-fiqh*) and ethico-moral discourse (*‘ilm al-akhlāq*) (Abdullah 2014; Moosa dan Mian 2012; Ibrahim et al. 2019a, b). Islamic bioethical discourse involves several crucial “tools” of analysis, including the benefit or righteousness (*maṣlaḥah*) and harm or evilness (*mafsadah*) concepts. This is because any ruling that ignores human interest is not considered an Islamic ruling, even if it is ostensibly based on Islam (Ahmad 2016).

This article discusses several selected bioethical issues in Malaysia by studying the application of *maṣlaḥah* and *mafsadah* in Malaysian Islamic rulings (fatwas) in resolving these issues. This article uses the critical interpretation approach, as this is an ethical, interpretive, textual, and contextual analysis. This article is based on a literature review that scrutinizes journal articles, books, and other authoritative documents. The main objective of this article is to determine and explain the concept of *maṣlaḥah* and *mafsadah*, the standard of prioritization in conflicting situations, and their application in selected Malaysian fatwas. In addition, this article aims to present the process and procedures involved in Malaysian fatwa issuance and the roles played by *maṣlaḥah* and *mafsadah* in the fatwa formulation.

This paper is divided into eight sections. An overview is presented in the introduction. The next section explores the concepts of *maṣlaḥah* and *mafsadah*, including their definitions and their relationship with *maqāṣid al-Sharī‘ah*. The determination of *maṣlaḥah* and *mafsadah* is presented in the third section, and standards for prioritization of *maṣlaḥah* and *mafsadah* are discussed and presented in the fourth section.

The fifth section focuses on bioethical discourse in Malaysia, especially involving parties and stakeholders in the discourse. The process and procedures involved in issuing fatwas in Malaysia are discussed briefly in the sixth section. The next section discusses the application of *maṣlaḥah* and *mafsadah* in selected Malaysian fatwas related to bioethical issues. In the final section, all the discussions presented in this article will be reviewed and wherever possible resolved.

Concepts of *Maṣlaḥah* and *Mafsadah* in Islamic Bioethics

The twin concepts of *maṣlaḥah* and *mafsadah* are important in Islamic bioethical discourse, as they are directly related with *maqāṣid al-sharī‘ah*. *Maṣlaḥah* (plural—*maṣāliḥ*) and *mafsadah* (plural—*mafāsīd*) are the basis for and source of *maqāṣid al-sharī‘ah* (Kayadibi 2017; al-Husni 2013). To be clear, *jalb al-maṣāliḥ* (accomplishing benefit) and *dar‘u al-mafāsīd* (preventing harm) are the main essences in the term *maqāṣid al-sharī‘ah* (Ahmad 2004; al-Raysuni 2010). Moreover, the relationship between these two terms can be traced in the discussions of earlier Islamic scholars. In this regard, the term *maqāṣid al-sharī‘ah* has been used to mean “human interest” (*maṣāliḥ*). In addition, the words *maqṣad* and *maṣlaḥah* are often used synonymously and interchangeably in writings related to *maqāṣid al-sharī‘ah*. In fact, the earlier *maqāṣid al-sharī‘ah* discourse more commonly used the term *al-maṣāliḥ al-‘ammah* (general interest) or *al-maṣlaḥah al-mursalāh* (considerations of public interest) which consists of three levels of material interests: *al-ḍarūriyyāt* (essentials), *al-ḥājjiyyāt* (needs), and *al-taḥṣīniyyāt* (embellishments). Hence, most *ulama* (scholars and authorities) consider *maqāṣid* and *maṣāliḥ* as interchangeable terms (Audah 2006).

This formulation, however, does not consider all types of *maṣāliḥ*, as there is still a difference between the two. In this regard, Ibn ‘Ashūr asserts that *maqāṣid al-sharī‘ah* is *maṣlaḥah*, but not all *maṣlaḥah* are *maqāṣid al-sharī‘ah* (Ashur 2001). Thus, the interpretations of the terms *maṣlaḥah* and *maqāṣid al-sharī‘ah* in some cases manifest the same meaning, and in certain cases *maqāṣid* gives a more general meaning than *maṣlaḥah* (al-Nahari 2016). This is because the term *maqṣad* refers to ultimate

and definite goals as the basis of religion, the basic rules of *sharī'ah*, and universal beliefs. *Maqṣad* is also certainty (*qaṭ'i*) or approaching certainty (*ẓannī qarīb min al-qaṭ'i*) depending on the method of its revelation. *Maṣlaḥah* refers to a matter that depends on the situation and is easily changed. Thus, *maqṣad* is in a higher position than *maṣlaḥah*.

However, the two are interrelated in terms of meaning and purpose. *Maqāṣid al-sharī'ah* is directly related to *maṣlaḥah* in two main aspects. Firstly, preservation of *maqāṣid al-sharī'ah* is a condition for recognizing *maṣlaḥah*. *Maṣlaḥah* can be interpreted the same as *maqṣad*, whilst *maṣlaḥah* also functions in accomplishing *maqṣad* (Arif 2012; Auda 2010; Kamali 2011). *Maṣlaḥah* which is accepted as *maqāṣid al-Sharī'ah* is sharia-compliant *maṣlaḥah*, that is, its basis, production, and propagation is based on *sharia'ah*. This *maṣlaḥah* sharia also does not contradict *nas* (explicit text), *dalīl* (guide, proof, and evidence), and *ijma'* (consensus). It is also not limited to worldly and materialistic matters only (al-Khadimi 2001; Kayadibi 2017). In this case, genuine *maṣlaḥah* will not contradict *maqāṣid al-sharī'ah*, hence any *maṣlaḥah* is not recognized unless it realizes *maqāṣid al-sharī'ah* (al-Jundī 2013). Therefore, human beings are not authorized to determine *maṣlaḥah*, since human instincts often lead to personal interests. Yet, *shari'ah* has full power in determining the real and absolute *maṣlaḥah* (al-Husni 2013). Secondly, neglect of *maṣlaḥah* will invalidate *maqāṣid al-sharī'ah*. As aforementioned, achieving genuine *maṣlaḥah* via *shari'ah* consideration will attain *maqāṣid al-sharī'ah*, as emphasized by *shari'ah*. Conversely, if there is neglect of genuine *maṣlaḥah*, this situation will cause the forfeiture of *maqāṣid al-sharī'ah* as well as contradict *shari'ah* requirements (al-Jundī 2013). Accordingly, in ensuring that the realization of *maqāṣid* is truly from *shari'ah*, both *maṣlaḥah* and *mafsadah* must be weighed through the systematic consideration of jurisprudence of balance (*fiqh al-muwāzanāt*) (Ahmad 2008).

Integration of accomplishing benefit (*maṣlaḥah*) and preventing harm (*mafsadah*) is a realization of *maqāṣid al-sharī'ah*. This integrated concept is considered as the highest goal of *maqāṣid al-sharī'ah*, the basis of *sharia'ah*. If this concept is viewed separately, then it is based on the principles of *fiqh* known as *maṣlaḥah al-mursalāh*, *sadd al-dharā'i'* (blocking the means) and *'urf* (custom) (Ahmad 2004).

The consideration of human interest (*maṣlaḥah*) is the main objective of *sharia'ah*, as its discussion in *maqāṣid al-sharī'ah* revolves around the aspect of human interest or benefit (*maṣlaḥah*) and harm or evil (*mafsadah*) (Kamali 2006).

Maṣlaḥah means the best of righteousness and goodness (*ṣalāh*). *Maṣlaḥah* is the nature of an act (*fi'l*) that produces righteousness and goodness, which are always or often beneficial to society or individuals (Ashur 2001). *Maṣlaḥah* is also defined as accomplishing benefit and preventing harm (Zaydan 1976; Kayadibi 2017). *Mafsadah* is the nature of an act that contradicts *maṣlaḥah*, causing damage and harm to society or individuals (Ashur 2001). Worldly *maṣlaḥah* and *mafsadah* and their causes can be ascertained by needs, experiences, customs, and reasonable assumptions (*al-ẓunūn al-mu'tabarāt*). This can be understood as analogous to using tree hybridization, as permitted by the Prophet, in order to obtain better crop yields. If there is ambiguity in the *maṣlaḥah* and *mafsadah*, then the actual position or interpretation is determined by looking at the evidence (al-Salam 2000). This aspect is a vital essence in assessing the *maṣlaḥah* or *mafsadah* of an action, especially involving consequences or implications (*al-ma'ālāt*). Therefore, a jurist must master the consequence of a legal decision (*al-ma'ālāt*) before it is decided (al-Yubi 2010). Additionally, *maṣlaḥah* is defined as matters that preserve the five essentials (*al-ḍarūriyyāt al-khams*), namely faith, life, progeny, intellect, and property. Contrastingly, matters that threaten, violate, or damage those five essentials are described as *mafsadah* (al-Ghazzali n.d.). *Al-ḍarūriyyāt al-khams* are essential matters which are safeguarded not only in Islam but also in world major religions (al-Raysuni 2018). However, this does not mean that Islam and others are equivalent, as championed by the ideology of religious pluralism. This is due to the differences in the Islamic path of legislation (*al-tashrī'*), as asserted by Allah (Quran 5: 48).

Maṣlaḥah exists in two types, namely (1) literal *maṣlaḥah*, as *maṣlaḥah* itself is a form of joy and happiness, and (2) metaphorical *maṣlaḥah* in which an action becomes *maṣlaḥah* because of its reasons (al-Salam 2000). For instance, the punishment of cutting off a thief's hand (from the wrist joint) literally is considered *mafsadah* to the thief, yet this punishment is a cause to accomplish the real *maṣlaḥah*,

which is protecting property from theft. As with *maṣlahah*, *mafsadah* also exists in two types, namely literal *mafsadah* due to sadness and pain, and metaphorical *mafsadah*; a matter becomes *mafsadah* due to certain reasons (al-Salam 2000). Therefore, the basis in determining *maṣlahah* and *mafsadah* must in fact be referred to the divine text, either recognizing them with detailed propositions, rejecting them with detailed propositions, or recognizing them if they conform to *maqāṣid al-sharī'ah*. Many things that are evil have their own benefits, such as alcohol and gambling (Ahmad 2004). In fact, in many cases, *maṣlahah* and *mafsadah* are contained together and almost inseparable from each other (al-Raysuni 2014). *Mafsadah* becomes insignificant in the case of *maṣlahah* overcoming *mafsadah* and vice versa. Therefore, it cannot be stated that the realization of *maṣlahah* will lead to the absolute rejection of *mafsadah* and vice versa, due to them being almost inseparable in certain matters (Ahmad 2004). Therefore, this situation is addressed by determining the dominance between *maṣlahah* and *mafsadah*.

Determining the good or bad of an action is performed through the Islamic legal maxims (*al-qawā'id al-fiqhiyyah*) (Ashur 2001). The determination is based on *sharī'ah* considerations without disregarding the mind's faculties. The mind functions by studying and revealing the wisdom of divine text and revelation. Mental activities are performed within the *sharia'ah* framework and are not contrary to the Islamic guidelines. The beneficial result of an action (in a worldly sense) does not necessarily justify the acceptance or rejection of that action; in contrast to utilitarianism or consequentialism, *maqāṣid al-sharī'ah* assesses utility, benefits, and interests as transcendental and unchanging objectives encompassing the interests of both this world and the world hereafter (Adi Setia 2015; Hashi 2015). Some action outcomes are seen as bad but are ethical and justified, such as defending property during robbery because the loss of property such as a house affects human dignity and freedom. Some actions seem good and beneficial but are prohibited in Islam. For instance, surrogate mothering is beneficial to women who are unable to conceive, but it is prohibited due to its consequences, which leads to lineage confusion. Thus, the benefits of an action are not based on utility alone; it must comply with the *sharī'ah* and be free from

any wrongdoing in its intentions, means, and goals (Ibrahim et al. 2019a, b).

Determination of *Maṣlahah* and *Mafsadah*

In determining *maṣlahah* or *mafsadah*, the determination is based on *sharī'ah*, and not based on human assessment only, due to the limitation of human intellect and ability (Raquib 2015). Herein lies the clear distinction between the moderate (*al-wasaṭiyyah*) and liberal streams (*al-mu'aṭṭilah al-judūd*), with the liberal stream tending to value the intellect over revelation (al-Qaradhawi 2008). Basically, a thing is evaluated as beneficial or good if the purpose and method is to bring people closer to Allah and vice versa (Raquib 2015; Ashur 2001). Every command (*al-amr*) of Allah contains *maṣlahah* and every prohibition (*al-nahy*) has a significant *mafsadah* (al-Shatibi 1997; al-Salam 2000). Therefore, *maṣlahah* and *mafsadah* are effective causes ('illah) of all Allah's commands and prohibitions whilst regarded as the wisdom of Allah's law as in the ratiocination of rulings (*ta'lil al-aḥkām*) (Arif 2012). As for *ta'lil al-aḥkām* in the field of *qiyas*, these still depend on 'illah, which consists of one attribute which is manifest (*zāhir*) and constant (*munḍabīṭ*) (Zaydan 1976). Bad deeds (*fāḥishah*), major sins (*kabā'ir*), sins (*ithm*), and rebellion (*baghy*) are *mafsadah* matters that are forbidden by Islam. The determination of punishment on *mafsadah* matters by the Prophet's companions and the *ulama* after them depended on the level of harm of the action on the individual and society. Rulings on *mafsadah* matters also establish whether they are reprehensible (*makrūh*) or prohibited (*ḥarām*) (Ashur 2001). Following are some criteria for determining *maṣlahah* or *mafsadah* as outlined in Islam.

Firstly, a benefit or harm must be definite (*muḥaqqaqan*) and regular (*muṭṭaridan*). For instance, consuming drugs for non-medical purposes is a harmful act that potentially causes death to the perpetrator. Secondly, a benefit or harm must be obvious to rational and sane people such that they would not choose the contrary thing when they make judgments. This type of *maṣlahah* and *mafsadah* are the most widely discussed in Islamic discussions due to the connection and closeness of both matters. It is exposed to various possibilities that need to be ascertained: whether those *maṣāliḥ* involve certain interest

(*maṣlahah rājiḥah*), probable interest (*maṣlahah mashkūkah*), or possible interest (*maṣlahah mawhūmah*) (*mafsadah*) (al-Buti 1973). Thus, determination of the dominance between *maṣlahah* and *mafsadah* is performed using a maxim, “effect is given to the most common and the most frequent” (*al-‘ibrah li aghlab wa akthar*) (al-Qaradhawi 1996). Take, for example, the case of rescuing a drowning person. Although the rescuer may harm himself due to fatigue and hypothermia, his act of saving the other’s life is more beneficial than the harm. Thirdly, the nature of an action or thing must be something that cannot be replaced by another action or thing, either to create good or bring harm. For example, alcohol consumption effects obvious harms such as damaging the mind, losing sanity, and wasting property, whilst its benefits include bringing courage and forgetting stress. However, the harm resulting from the act is irreversible, while the benefits of the act can be achieved through other better and rational means.

Fourthly, where there is both *maṣlahah* and *mafsadah*, there must be statements or evidence to determine the more dominant element. For instance, fines against vandalism perpetrators are balanced against the value of the intentionally damaged property. The fine benefits the property owner but harms the perpetrator. However, the benefit received by the property owner are based on the principles of justice and property rights and the statement is recognized by every sane and rational human being. Fifthly, judgement must allow for cases where one of the benefits or harms is clear and definite while the opposite of it is vague and uncertain. For example, take the Prophet Muhammad’s prohibition on proposing to a woman after she has been proposed to by another man. The harm of the act of proposing over the other proposal is vague and uncertain if there is still no consent given by the woman to the first man’s proposal. The prohibition would be detrimental. Hence, the prohibition occurs only when the woman has accepted the first man’s proposal (Ashur 2001).

Determination of *maṣlahah* and *mafsadah* matters plays a significant role in discussing bioethical issues in Malaysia since the *maṣlahah* or *mafsadah* of an assessed thing or technology needs to be clarified correctly before assessment and evaluation to determine an accurate analysis and status. Determination of *maqṣad*, *maṣlahah* or *mafsadah* of matters or rulings is closely related with the concept of *ta’līl al-ahkām*

(Ahmad 2004). This is due to the determination that every Islamic ruling has its ‘illah in order to realize *maqṣid al-sharī‘ah* (Ashur 2001). Yet, this requirement raises the question of the meaning of ‘illah *al-ḥukm* and whether ‘illah plays the role of cause or motive (*al-bāiṭh*) or merely definien (*mu’arrif*) and sign (*amārah*) (‘Uthman 1993; Al-Shirazi 1995).

Ta’līl al-ahkām manifests ‘illah of rulings—whether it is *maṣlahah* or *mafsadah*—and meantime recognizes *maqṣad* of those rulings (Shalabi 1981; al-Juwayni 1997; Arif 2012). The manifestation of *maqṣad* is crucial, especially in determining the status of scientific discovery or technology, since the revelation of Allah is long discontinued and the nature of divine texts is limited (al-Zuhaili 1986). The unprincipled manifestation and application of the *maṣlahah* and *mafsadah* concepts which are included in *ta’līl al-ahkām* will lead to various deviations to the point of prioritizing the trivial over the real *maṣlahah* and the basing of rulings on outdated and no longer relevant *maṣlahah* or ‘illah (Ahmad 2008). Therefore, the *ta’līl al-ahkām* concept enables the arrangement of *maṣlahah* and *mafsadah* prioritization applied from the various available divine texts (Ahmad 2004).

Standards for Prioritization of *Maṣlahah* and *Mafsadah*

In a situation when there is a conflict between *maṣlahah* and *mafsadah*, it is best to address both needs if possible. For instance, if someone finds a drowning person asking for help when the time of prayer is almost ended, and he/she has not prayed, then he/she should first save the drowning person and then perform the replacing (*qada’*) prayer even if the prayer time has expired (Ahmad 2004; Zaydan 2001). Consideration in this situation requires mastery of the jurisprudence of priority (*fiqh al-awlawiyyāt*) as a reference in determining priority of action. Another example is that the property of a person who has performed the obligatory *umrah* (pilgrimage to Mecca) is better spent for the purpose of charity to the needy than performing supererogatory *umrah*.

If both achieving *maṣlahah* and avoiding *mafsadah* avoidance seem equivalently dominant needs, the decision must be made through a more nuanced weighing (*tarjīh*) to choose the one that is superior (Ahmad 2016; Ahmad 2004). Ulama have

divided *maṣāliḥ* into three main divisions, namely *al-daruriyyāt*, *al-ḥājiyyāt*, and *al-taḥsīniyyāt* (al-Juwayni 1997). Hence, the matter of obedience can also be divided into *al-fāḍil* (good) and *al-aḍḍāl* (better) according to the strength of the *maṣlahah* in the matter of obedience (al-Salām 1991). Therefore, a standard has been developed to resolve conflicts of priority between *maṣlahah* and *mafsadah* (Ahmad 2004; Ibrahim, et al. 2019a, b).

First, *maṣlahah* or *mafsadah al-daruriyyāt al-khams* is prioritized based on a systematic hierarchy starting from faith and ending with property, as stated by al-Shāṭibī through *dalil istiqrāʾ* (Harun et al. 2020). Priority is given to preservation of faith and life over preservation of property, since loss of property is replaceable whilst loss of faith and life permanent. Preservation of lineage is also prioritized over property. Human cloning, for instance, is capable of overcoming the reproductive problems of married couple, but is prohibited due to its threat to the preservation of faith, specifically the family institution—one of the most important Islamic institutions. Human cloning conflicts with the nature of human creation as it threatens legal marriage. Through human cloning, women no longer need a husband to conceive children, and cloning paves the way for lesbian couples or unmarried women to have children (Nordin 2015).

Second, *maṣlahah* or *mafsadah al-daruriyyāt* is prioritized over *al-ḥājiyyāt* and *al-taḥsīniyyāt* as the basis of *maṣlahah* is *al-daruriyyāt*—the loss of which will invalidate *al-maṣlahah al-ḥājiyyāt* or even *al-maṣlahah al-taḥsīniyyāt* (al-Shatibi 1997). Thus, in the conflict between *al-daruriyyāt* or *al-ḥājiyyāt* and *al-taḥsīniyyāt*, then the *al-taḥsīniyyāt* matter is side-lined if the conflict results in the nullification of *al-daruriyyāt* or *al-ḥājiyyāt* (al-Qaradhawi 2014; Ahmad 2004). For example, in a life-threatening situation, it is permissible to disclose someone's *ʿawrah* (intimate body parts) because life is *maṣlahah al-daruriyyāt*, while disclosure of the *aurat* is *mafsadah taḥsīniyyah* only (Zaydan 1976). In the conflict between *maṣlahah* or *mafsadah al-daruriyyāt* and *maṣlahah* or *mafsadah al-ḥājiyyāt*, *al-daruriyyāt* may be nullified and *maṣlahah* or *mafsadah al-ḥājiyyāt* will be disregarded. For example, if one cannot face the *qiblah* (that is, toward Mecca) during prayer, the obligation to perform the obligatory prayer is not annulled, as facing *qiblah* during prayer is a matter

of *ḥājiyyah* whilst the obligatory prayer is a matter of *al-daruriyyah* (Ahmad 2004).

Next, certain benefit or harm (*maṣlahah* or *mafsadah qaṭʿiyyah*) is given precedence over the probable (*ẓanniyyah*), whilst *maṣlahah* or *mafsadah ẓanniyyah* is prioritized over the possible (*wahmiyyah*). In this context, priority is emphasized on *maṣlahah* or *mafsadah* which is certain rather than probable (*maẓnūnah*) or assumed to happen (*mauhūmah*) (al-Qaradhawi 2014). Abortion of a fetus more than 120 days old is permissible if credible medical experts confirm that the pregnancy is life-threatening to the mother. Preserving the mother's life is *maṣlahah qaṭʿiyyah* since the mother is considered the “source of life” and her life is well established compared to the infant's, which is regarded as probable (*ẓanniyyah*) (Iqbal dan Noble 2009).

Fourth, genuine or fundamental *maṣlahah* or *mafsadah* is prioritized over the outward and technical (al-Qaradhawi 2014). For instance, the use of sperm banks is prohibited to preserve human lineage from becoming mixed up and confused. Preservation of lineage is fundamental *maṣlahah* compared to addressing the problems of married couples where the husband is unable to produce healthy sperm. If a sperm bank is permitted, it will cause confusion in society regarding the status of children born using donated sperm, and there will be pressure in the future to legalize adultery, because there is no difference between using donated sperm and adultery. Confusion of lineage is fundamental *mafsadah* since the sanctity of lineage is highly protected in Islam.

Next, more dominant *maṣlahah* or *mafsadah* is prioritized, as stated in the maxim “effect is given to the most common and the most frequent” (*al-ʿibrah li al-aghlab wa al-akthar*). Priority is considered by comparing good with better and bad with worse. If something is more harmful than beneficial, priority is given to harm elimination, in accordance with the maxim, “repelling evil is preferable to securing benefit” (*darʿu al-mafāsīd awla min jalb al-maṣāliḥ*). Yet, if something is more beneficial than harmful, then it can be implemented, as outlined by the maxim “lesser evil is forgiven for the greater benefit” (*al-mafāsadah al-ṣaghīrah tuḡtafar min ajli al-maṣlahah al-kabīrah*) (al-Qaradhawi 2014).

Sixth, preventing greater *mafsadah* is prioritized over lesser *mafsadah*. For instance, amputation of a patient's infected leg due to gangrene is *mafsadah* to

the patient as he has lost his leg, yet the amputation is ethical to avoid greater *mafsadah*, which is transmission of the infection to other body parts, which could be fatal. This means that the loss of partial body parts is considered as a lesser *mafsadah* than the loss of life, which accords with the maxim “in the presence of two evils, the one whose harm is greater should be avoided by the commission of the lesser” (*idhā ta’āraḍa maḥṣadātān ru’iyya ‘aḥamuhā bi irtikābi akhāfuhā*) (Zaydan 2001).

Seventh, permanent and continuous *maṣlahah* or *mafsadah* has precedence over the temporary (al-Qaradhwā 2014). For example, conceiving a child via test tube baby technology is temporary *maṣlahah* for a married couple who suffer from reproductive problems but want to have children of their own. However, the use of third-party gamete cells causes lineage confusion, which violates the sanctity of lineage and is a permanent *mafsadah*.

Eighth, public or general benefit or harm (*maṣlahah* or *mafsadah ‘āmmah*) is given precedence over specific or private interest (*maṣlahah* or *mafsadah khāṣṣah*), as outlined in the maxim “a specific harm should be tolerated to ward off a general harm” (*yutaḥammal al-ḍarar al-khaṣ li dafi al-ḍarar al-‘ām*) (Ahmad 2004; Ashur 2001; Raquib 2015). This maxim applies in the prohibition against surrogacy for the general good of preserving lineage and progeny (Jabatan Kemajuan Islam Malaysia 2015a, 2015b; Islamic Fiqh Academy (Jeddah) 2000; Muslim World League Islamic Fiqh Council 2006). Although every married couple wishes to have a child, regarded as *maṣlahah khāṣṣah*, surrogacy is prohibited due to confusion in lineage and genetic relationship in the context of social life (*mafsadah ‘āmmah*). Confusion of lineage causes chaos in the Muslim community, especially in matters involving limitations of social interaction, *‘awrah*, *maḥram* relationships, and property inheritance. Therefore, surrogacy is forbidden to ensure well-being and harmony in the Muslim community.

Ninth, prioritizing greater benefit or harm (*maṣlahah* or *mafsadah kubrā*) is prioritized over the lesser (*maṣlahah* or *mafsadah ṣuḡhrā*) in which the greater has more negative implications if ignored than the lesser such as the prohibition of surrogacy to ensure sanctity and preserve human lineage (Ebrahim 1988). Priority is also given to *maṣlahah* or *mafsadah* which is emphasized by *shari’ah* over the less

emphasized. For example, an individual who fasts but is therefore unable to perform the obligatory prayers due to severe pain should perform prayers instead of fasting because Islamic law prioritizes prayers so much so that some scholars advocate punishment, including death, for those who leave prayers, but do not do so for those who do not fast. Priority is also given to *maṣlahah* or *mafsadah* that is closer to one’s own interests and those of one’s relatives, as can be seen in the actions of the Prophet.

Finally, prohibition is given precedence over command in situations where *maṣlahah* and *mafsadah* are equal by giving *maṣlahah* or *mafsadah* which consists of the obligatory (*wājib*) or recommended (*sunnah*) precedence over the abominated (*makrūh*). Moreover, *maṣlahah* or *mafsadah* that consists of the obligatory, recommended, abominated, and prohibited (*ḥarām*) are prioritized over the dispensable (*mubāh*). In conclusion, it’s clear to see the significant roles *maṣlahah* and *mafsadah* play in determining the status of technologies and in evolving bioethical debates, especially in the era of the Industrial Revolution 4.0.

Bioethical Discourse in Malaysia

Under the Federal Constitution, Islam is the religion of the Federation of Malaysia (Ghazali 2012). Malaysia is a multiracial and multireligious nation and more than 60 per cent of the population are Malay Muslims (Ibrahim, Rahman, and Saifuddeen 2018). Accordingly, the practice of Islamic values (including worship rituals, worldview, customs, etc.) is clearly displayed in daily lives, influencing bioethical discourse in Malaysia with Islamic teachings (Isa, Baharuddin et al. 2015; Musa 2004). The discussion and implementation of bioethics policy in Malaysia involves several parties, including the Malaysian Medical Council (MMC), which is responsible for the control and regulation of ethical conduct within the medical profession; the National Bioethics Council of Malaysia, an advisory panel on bioethical issues that may have an impact concerning the environment, society, health, culture, laws and religions and Malaysian society in general; and the Institute of Islamic Understanding Malaysia (IKIM), an Islamic think tank that proactively discusses emerging bioethical issues (Isa 2013). In formulations of Islamic ruling (*fatwa*), Malaysia tends to practice collective *ijtihad*

rather than individual *ijtihad*. As Islamic affairs are under state jurisdiction, each state in Malaysia has its own fatwa committee responsible for issuing fatwa on bioethical issues (Ibrahim, Rahman, and Saifuddeen 2018; Isa 2015).

Historically, the advent and development of Islam in Malaysia brought many changes to the thought, society, and culture of the Malay community because Islam is a guide and teaching that is complete, comprehensive, rational, logical, practical, and easily accepted by the Malay community (Mohammad 2008). The rationalism brought by Islam caused Malay society to reject the Hindu beliefs and Animism previously practiced (Ishak 1992). The political system and government in Malayan society were harmonized with the *shari'ah* after the advent of Islam. The title of king and the concept of *dewaraja* (the God's king), for example, were replaced by the title of sultan and equated with the caliphate system as introduced in the Islamic political system. The title is bestowed on individuals who are entrusted to govern a state, at the same time serving as the caliph of Allah on earth. Even so, obedience to the sultan is conditional and not absolute like in the concept of *dewaraja* (Aris et al. 2015).

Fatwa Issuance in Malaysia

In Malaysia, each state plays an important role in the administration of Islamic affairs. This means that the states have jurisdiction to issue a fatwa. A fatwa issued by the State Fatwa Committee (JFN) is considered the government's official view on an Islamic legal issue. This is because the JFNs have been formally established under the provisions of acts, enactments, and ordinances of the administration of Islamic Law of the States (Muzakarah Jawatankuasa Fatwa 2017). Although Islamic affairs are placed entirely under state authority, the Malaysian National Islamic Religious Council (MKI) coordinates tasks, activities, and administration of Islamic affairs at the federal level. The Muzakarah (conference) Committee of the Malaysian National Islamic Religious Council (MJFK) has the role of considering, deciding, and issuing fatwas on matters on Islam referred to it by the Malaysian Conference of Rulers (MRR). After the MJFK meeting, the decision and legal views are presented to the MKI meeting chaired

by the Prime Minister. Then, the MJFK's decisions and MKI recommendations are submitted to the MRR for discussion by the JFNs for recognition and gazetting at the state level (Jabatan Kemajuan Islam Malaysia n.d.a, n.d.b). The establishment of the MKI and the MJFK is crucial due to the inconsistency of Islamic laws, verdicts, and rulings by *shari'ah* courts among the Malaysian states. Through the establishment of those federal coordination bodies, the best approach may be taken to avoid obvious discrepancies in Islamic rulings among the Malaysian states (Daud and Abdullah 2019). Although religious affairs are entirely under state authority, the MJFK acts as a coordinator at the federal level to ensure consistency in fatwas on certain issues. Therefore, there are two influential fatwa entities in Malaysia: the MJFK and the JFN. The MJFK consists of the mufti of each state in Malaysia and is chaired by the Department of Islamic Development. The JFN is chaired by the mufti in each of the fourteen states appointed by the state Islamic religious leader, the ruling sultan (Asni and Sulong 2017).

Every application for a fatwa must be submitted to the Secretary of the MJFK. The MKI will weigh the problem, discuss, and make recommendations or advice. The matter will then be referred to the MRR for consideration. After consideration, the MRR will usually ask the MJFK to study, decide, and then issue a fatwa in relation to the problem. After that, the decision must then be submitted to the MKI, which will consider, discuss, and make recommendations on the MJFK decisions. After that, the decision will be referred again to the MRR for consent (Nasohah 2005).

A fatwa that has been decided and agreed to by the MRR cannot be amended arbitrarily by a member state without first obtaining the MRR's consent (Rule MKI, rule 9). In this situation, the MKI will coordinate the matter. However, to make the fatwa effective in the states, the agreed fatwa still needs to be brought to the JFN of the state and then gazetted (Nasohah 2005). In other words, fatwas decided by the MJFK are not binding on any state or its own committee members as there is no clear legal jurisdiction, in contrast to the fatwas decided and gazetted by state department of mufti, which are binding on Muslims in those states. In other words, fatwa decisions at the state level have enforcement power unlike fatwa decisions at the

federal level. since the management of Islamic affairs is under the jurisdiction of the state (Asni and Sulong 2017). Besides the MKI, the coordination of fatwas in Malaysia is also supported by the Guidelines for Fatwa Issuance, which is a guide to the state fatwa committees in issuing fatwas. These guidelines explicitly explain the process of issuing fatwas and acts as a coordination mechanism for fatwa issuance (Muzakarah Jawatankuasa Fatwa 2017).

The administration of fatwas in the Malaysian context is quite different from the administration of fatwas from a more general Islamic point of view. As already stated, Islamic affairs are subject to the jurisdiction of the states, in accordance with Schedule 9 in the Federal Constitution of Malaysia. The religious institutions of mufti and fatwa have their own role and responsibility in resolving questions regarding Islamic law and explaining the ambiguity and confusion related to novel questions (*ahkam al-nawazil al-fiqhiah al-mua'sirah*). This institution is given power and responsibility under the Federal Constitution and state law to advise the Yang di-Pertuan Agong (the head of state) (for non-sultanate states including Penang, Malacca, Sabah, Sarawak, and Federal Territories of Kuala Lumpur, Putrajaya, and Labuan) and the sultans (head of the Islamic religion for sultanate states) on matters relating to Islamic affairs and laws. This is in line with the position of Islam as the religion of the Federation of Malaysia (Ghazali 2012). Therefore, there are differences of legal views between states even within one country (Abdul Aziz, Rahman, and Subri 2018).

The fatwa issuance process in Malaysia is unique. As a Sunni Islamic country, most states in Malaysia will issue fatwas based on the final statement (*qawl*) in the Syafi'i school. Even so, if the final statement of the Syafi'i school is contrary to the public interest, any final statement of the Hanafi, Maliki, and Hanbali schools, or any other school that has a method of inferring laws similar to these schools can be taken into account. In fact, in certain circumstances where such final statements are in conflict with the public interest, then the JFN can use their own reasoning (*ijtihad*) (MJF 2017). This shows the flexibility of fatwas in Malaysia to protect the welfare of the community. In addition, based on the Guidelines for the Issuance of Fatwas in Malaysia,

every application to obtain a law or fatwa from the JFN must be submitted to the mufti. The JFN may also sit down and issue legal views or fatwas in the capacity of the Ruler's Order or on its own initiative (Muzakarah Jawatankuasa Fatwa 2017).

Selected Malaysian Fatwa Related to Bioethical Issues

There are several bioethical issues discussed and debated among Malaysian bioethicists, scholars, and experts in related fields, such as scientists and medical practitioners. Since Malaysia is an Islamic country, most bioethical discussions revolve around Islam and issues are resolved through fatwas.

Closure and Suspension of All Activities in Mosques and Musalla due to COVID-19

The special meeting of the MKI held in March 2020 discussed and decided on nationwide closure and suspension of all activities in mosques and musolla, such as congregational prayers, including the obligatory five daily prayers and Friday prayers (Naquidin 2020). COVID-19 is an infectious respiratory disease which is highly transmissible and caused by a novel coronavirus called SARS-CoV-2 (Ouassou, et al. 2020). Public gatherings such as congregational prayers evidently increase the number of COVID-19 cases, as the virus can spread easily in conditions of proximity, endangering lives, especially of those in the high-risk category (Malek 2021; Quadri 2020). Therefore, COVID-19 is a deadly infection and regarded as a harm to human life (*mafsadah qarūri*). The decision made by the MKI to mitigate COVID-19 transmission especially among congregants, hence, is accordant with *maqāsid al-shari'ah* in protecting and preserving human life. As commanded by Allah, it is forbidden for a person to deliberately expose himself to danger and destruction by not taking the prescribed precautionary measures (Quran 2: 195):

And do not throw yourselves into destruction [by not spending your wealth in the cause of Allāh] and do good. Truly, Allāh loves Al-Muhsinūn [the doers of good].

This mitigative measure also accords with the Islamic legal maxim, "harm may neither be inflicted

nor reciprocated” (*la darar wa la dirar*) (Malek 2021). Although the congregation prayers are regarded as *maṣlahah*, *mafsadah* caused by COVID-19 is greater and should be avoided, as outlined by the Islamic legal maxim “repelling evil is preferable to securing benefit” (*dar’u al-mafasid awla min jalb al-maṣalih*) (Zaydan 2001).

COVID-19 Vaccine

The 10th special meeting of the Malaysian National Committee of Islamic Religious Council (MKI), held in December 2020, discussed and decided the permissibility of the use of the COVID-19 vaccine. For those who have been instructed by the government, it is obligatory to do so (Minister’s Office in the Prime Minister’s Department (Religious Affairs) 2020). This permissibility accords with a maxim, “harm must be eliminated” (*al-darar yuzal*) (Zaydan 2001). The vaccination is a scientifically and medically recommended method of achieving the preservation of human life (*hifz al-nafs*), as required under *maqasid al-shari’ah*. Although the COVID-19 vaccine may have side effects (fever, fatigue, etc.) which are harmful, COVID-19 is more deadly and can be avoided, thus the benefit outweighs the harm of side effects, in accordance with the maxim “the lesser of evils is to be preferred” (*yukhtar ahwan al-sharrayn*) (Zaydan 2001). Although the success of vaccination is a probability (*zan*) not a certainty—like other medical treatment—it is scientifically proven that the vaccine is effective in preventing COVID-19 transmission, reducing mortality, and lessening harm from the infection (Minister’s Office in the Prime Minister’s Department (Religious Affairs) 2020). This means the elimination of COVID-19 by any permissible action, such as vaccination, is an obligation, as commanded by the Prophet, and must be done.

Uterine Donation and Transplant

In October 2014, the 106th MJFK discussed uterine transfer and decided that it is impermissible. This was due to the following reasons: (1) conceiving children is merely complementary (*takmilīyyah*) to family life, (2) the need to have children via uterine donation and transplant does not reach the level of necessity (*darūrah*), and (3) the need to have children via uterine donation and transplant is an embellishment

(*taḥsīniyyah*) due to other available options (Jabatan Kemajuan Islam Malaysia 2015a, b). Although uterine transplant is beneficial to women with uterine problems or who have no uterus, the safety of this procedure is still not assured for mothers and babies. It exposes mothers and babies to the risk of complications during the gestational period and at delivery (Daolio et al. 2020). Conceiving a child is regarded as an embellished benefit (*maṣlahah taḥsīniyyah*) because it is beyond human control (Ibrahim et al. 2019a, b). The life of women with uterine problems is an essential (*darūri*), safeguarded by the requirement for preservation of life in *maqāsid al-shari’ah*, but her life is threatened (*mafsadah*) if she undergoes this procedure in which safety is not assured. In this case, the benefit of conceiving a child is outweighed by the harm of uncertain safety, as outlined by the Islamic legal maxim “in the presence of two harms, the one whose harm is greater is avoided by the commission of the lesser” (*idha ta’aradat mafsadatan ru’iya a’zamuḥuma dararan bi irtikab akhaffihima*) (Zaydan 2001).

Body Donation for Research Purposes

The 105th MJFK held in February 2014 decided that body donation for research purposes is impermissible for Malaysian Muslims. The original ruling allowing the donation of a human body or corpse was rejected, as Islam places great emphasis on respecting the human body in life and death. An Islamic legal maxim states that “the basic principle regarding dignity and honour is forbidden” (*al-aṣl fi al-’arḍ al-taḥrīm*). This is in accordance with the Prophet Muhammad’s words (al-Bukhari 1993; Muslim 1991):

Your blood, property and honour are sacred to one another (Muslims) like the sanctity of this day of yours, in this month of yours and in this city of yours.

Moreover, honouring the Muslim corpse is an Islamic insistence; hence, donating a corpse is regarded as a violation and an act of disrespect—a harm (*mafsadah*). Although medical research using human bodies is a good deed (*maṣlahah*), the need to use Muslim corpses for research purposes is not urgent or necessary because research needs can still be fulfilled with available alternative methods (Jabatan Kemajuan Islam Malaysia n.d.a, n.d.b).

Euthanasia

The 97th MJFK held in December 2011 discussed euthanasia or mercy killing. This conference was of the view that terminating a person's life using any means or excuse is forbidden and prohibited by Islam. Thus, the MJFK decided that hastening death through euthanasia (whether voluntary, non-voluntary, or involuntary) is prohibited and that it conflicts with Malaysian medical ethics (Jabatan Kemajuan Islam Malaysia n.d.a, n.d.b). This decision is in line with Allah's words (Quran 4: 92): "It is not for a believer to kill a believer except (that it be) by mistake ...".

The MJFK also stressed that a doctor's responsibility is to help patients in matters of goodness. However, helping to hasten death is forbidden and sinful.

Any effort to preserve someone's life is *maṣlahah*, whilst any act threatening or violating it is *mafsadah*. Although a patient may suffer from unbearable stressful pain and may request mercy killing, it is forbidden to fulfil the request because euthanasia is a harm similar to suicide or murder. In Islamic law, there is no immunity for medical practitioners who unilaterally and actively decide to assist a patient to die (Sachedina 2009).

Abortion Where Mothers Are Infected With Zika Virus

Several Malaysian states, including Sabah (February 2017) (Pejabat Mufti Negeri Sabah 2017), Selangor (January 2017) (Jabatan Mufti Negeri Selangor 2017), Pahang (December 2016) (Jabatan Mufti Negeri Pahang 2016), Sarawak (October 2016), and Johore (October 2016) through their respective fatwa committees discussed abortion where mothers are infected with Zika virus. These committees decided that Zika virus transmission in Malaysia at that time had not reached a critical or emergency (*darūrah*) status requiring a general determination about abortion. The Ministry of Health guidelines for the management of Zika virus infection during pregnancy state that congenital Zika syndrome alone is not an indication for abortion, which is coherent with current laws and regulations related to abortion in Malaysia. Each case involving abortion should be handled in accordance with existing termination of pregnancy guidelines. Microcephaly caused by Zika virus can be detected in the fetus after twenty-eight

weeks of pregnancy, which exceeds the 120 days in which abortion is permissible. However, the percentage of these defects that will occur is very small. In a study in Brazil, 2 to 8 per cent of the 16,208 births from 2012 to 2015 were found to have microcephaly (Araújo et al. 2016). From an Islamic perspective, abortion of a fetus carried by a mother infected with Zika virus that reaches the age of 120 days and above is impermissible, as the majority of Islamic clerics (ulama) agree that at this stage the soul is breathed into the fetus, as stated by the Prophet (al-Bukhari 1993):

The creation of every one of you starts with the process of collecting the material for his body within forty days and forty nights in the womb of his mother. Then he becomes a clot of thick blood for a similar period (40 days) and then he becomes like a piece of flesh for a similar period. Then an angel is sent to him (by Allah) and the angel is allowed (ordered) to write four things; his livelihood, his (date of) death, his deeds, and whether he will be a wretched one or a blessed one (in the Hereafter) and then the soul is breathed into him.

Based on this hadith, abortion at this stage is prohibited (*ḥarām lidhātihi*). The fetus at this stage is probably alive (*maṣlahah zanniyyah*) (Rahman 2015). Nevertheless, if the pregnancy endangers the mother's life, which is regarded as well established and definite (*maṣlahah qaṭ'iyyah*), the abortion is permitted due to the necessity (*darūrah*) in which the threat is an evil (*mafsadah*) (Iqbal dan Noble 2009; Shaltut 2004). If the fetus infected with Zika virus likely suffers from severe deformity and has not reached the age of 120 days, then the pregnancy should be aborted due to needs and *maṣlahah*. This is due to the probability of severe and incurable deformity (*mafsadah zanniyyah*); if the child is born, their life span will be noticeably short and there may be physical and mental suffering to themselves and their family (Uthman 2012). In considering abortion of a fetus infected with the Zika virus, the following conditions must be fulfilled: (1) there must be confirmation by trustworthy medical experts, (2) the abortion must not lead to more severe harm, (3) decisions must be made on a case-by-case basis, and (4) consent must be given by the spouse (Jabatan Kemajuan Islam Malaysia n.d.a, n.d.b).

Conclusion

In conclusion, the twin concepts of *maṣlahah* and *mafsadah* play a vital role in bioethical discourse in realising human essential interests, namely faith, life, lineage, intellect, and property, thereby accomplishing *maqāṣid al-sharī'ah*. These five essentials are safeguarded not just in Islam, but in other major religions. This concept helps in guiding bioethical discussions, especially in determining the priority between achieving benefit and avoiding harm. This standard helps bioethicists and religious authorities in fatwa issuance in Malaysia. As a multiracial Sunni country, these concepts play significant roles, especially in preserving human interests in accordance with Islamic teachings. Every formulated fatwa must consider benefits and harms in order to protect individual and community interests as well as preventing or averting any potential harmful risk. Every stakeholder must be considered to ensure their interests are protected and preserved. As mentioned, fatwa issuance in Malaysia involves rulers, academics, and religious authorities. This cooperation demonstrates that fatwa issuance in Malaysia is a serious matter that affects all of Malaysia's population, and especially Muslims. This concept has assisted Malaysian religious authorities in formulating appropriate rulings and fatwas, especially for bioethical issues related to Malaysian Muslims' lives. This concept, however, is relevant for global application in bioethics since most of its principles are universal.

Declarations

Competing Interest The author(s) declare no competing interests.

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