

Perspectives on the role of National Fatwa Committee in handling food issues in Malaysia based on Maqasid Syariah

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Abstract

The National Fatwa Committee (NFC) is a body responsible for issuing fatwa in Malaysia. It has an important role in determining a fatwa on a certain issue whether permissible or not. Among the popular issue in the current community are food issues. These include the issues of swine DNA in food, consuming fish oil and other several significant food issues. This study aimed to study fatwa production of these issues by NFC. This fatwa tried to use the Maqasid Syariah and its understanding through scientific views and understanding. It was also noted that before a fatwa is produced, it will have to go through several processes before it is distributed to the public. This study used the qualitative method, by referring to files or documents, journals, and interviews. The study also found that most of the fatwa was made by referring to al-Shafie school of teaching and several methods in deriving laws based on *illah* (reason) as relevant *fiqh* methodology to understand the Maqasid Syariah through a scientific study. Therefore, the fatwa has been made by referring to not only the *fiqh* but also the science information obtained through the lab work.

1. Introduction

Nowadays, food issues concerning the well-being of Muslim people increasing day by day, especially in Malaysia. This matter occurs due to the development of applied science and manufacturing technology besides the movement of time factor that rapidly developing. As an example, chocolate products such as the Cadbury brand that was marked legitimate were sold in the market that was confirmed several years back to contain swine DNA. However, the factory where the products are being manufactured has provided certification of halal by JAKIM as evidence in recognizing their product output inviolability evidence (Che Ahmad, 2014). On top of that, controversial issues like the Babrikan beverage product on whether it was a type of beer or not had been questioned by the Muslim community (Subri, 2019). According to news from mStar online on 9 Jun 2011,

Jamil Khir said the company claimed that the beer contained only 0.01% of alcohol but a laboratory study conducted by the Johor Islamic Religious Department found that the alcohol content in the drink was 0.5% (mStar, 2011). Such situation confused users because these claims are from two different reliable sources.

Due to this situation, the Muslim community requires crucial and sufficient explanation and information from respective parties so that Muslim consumers can no longer be infiltrated with confusion and feeling of being frenzied. Here, the function of the National Fatwa Council plays an important role in order to facilitate Muslim consumers facing food issues by issuing fatwa as guidance. This paper will highlight the *illah* to understand the maqasid Syariah throughout the scientific study as part of the fatwa requirement.

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2. Definition of fatwa

The word *fatwa* in Bahasa Malaysia is derived from the Arabic word *al-fatwa* or *al-futya*. The word is taken from *فتوى* word and *فتو* that bring "الإبانة" meaning of explanation (Al-Mallah, 2009). From *Al-fatwa* or *al-futya* root word, *fatwa* or *al-futya* that arises said the derivative name (*masdar*) *al-ifta'*, which means to give an explanation. Thus, the word *al-ifta'* is a derivative name of the most fulfilling *al-fatwa* concept or *al-futya*. When an Arab says "العلم افتى" it means someone religious explains or provides replies on certain laws (Al-Fayyum, 2008).

Although the fatwas and *futya* contain the same meaning, Ibn Manzur (1233-1312H) asserted that fatwa word is more widely used (Ibn Manzur, 1968). In the context of the Malay language, the word fatwa has been accepted in Muslim Malay society, especially in Malaysia. In the *Kamus Dewan*, the term fatwa has been adopted in the Malay language which means the decision of religious law (which has not been decided yet) based on the Quranic texts, *hadiths* and other sources of law, including *ijtihad* by the mufti (or those who have authority over Islamic law decisions) (Baharum, 1994).

3. The authority body of issuance fatwa in Malaysia

In 1982, the Department of Islamic Development Malaysia, well-known as JAKIM, is established under the Islamic Affairs Division of the Prime Minister's Department with the responsibility to check and instil halal awareness among food producers, distributors, and importers including food services in premise, restaurants, and hotels (Yunos *et al.*, 2018). The body or institution is responsible for issuing a fatwa in Malaysia through the Committee of the National Fatwa Council (NFC). The Committee of NFC has responsibility for Islamic Religious Affairs of Malaysia (MKI) in issuing the fatwa from time to time. It is an institution or body that was established in 1970 (JAKIM).

NFC since its establishment has been managed by The Department of Islamic Development Malaysia (JAKIM) with the Director General of JAKIM as the secretary to the Committee of NFC. Initially, there was no special division in JAKIM that managed the NFC, but after obtaining the 214th Conference of the Rulers' Meetings, the function of the committee of NFC was strengthened in terms of its structure. On September 17, 2008, the Cabinet's Ministerial Post-Cabinet Meeting in the Prime Minister's Department reached an agreement that the Committee of NFC on Islamic Religious Affairs of Malaysia should be upgraded and separated into a new division in JAKIM. From January 2, 2009, a new division was established in the administration under

the name of Fatwa Management and Development Division of the Ijtihad. After obtaining a warrant for the JAKIM rebranding proposal for Phase 1 which was effective on June 1, 2009, the NFC has officially formed a new section of the Fatwa Management Division (JAKIM).

The fatwa discussed and determined in the Muzakarah Committee Meeting of the NFC is issued through the direction of the Council of Conference of Rulers or by the Committee of the National Fatwa Council initiative. When there is a misinterpretation or problem regarding the law in the community, the Committee of the National Fatwa Council will organise a meeting or Muzakarah and the decision will be distributed to the Secretary of the State Fatwa Committee for dissemination and gazette.

4. The process of fatwa production by the National Fatwa Council

The process of issuing a fatwa by NFC is based on the following chronology.

- I. The acceptance of the rulings of the Rulers Council or accepting legal questions from the Muslim community on a religious issue which has not been satisfactorily clarified in the country.
- II. Confirm that the issue is national.
- III. Director General of JAKIM (DG JAKIM) as a secretary to the National Fatwa Council (NFC) and Chairman for approval to bring the issue to NFC Meeting.
- IV. After the Chairman of NFC agreed, DG JAKIM will order the Division of Fatwa Management and the Research Division to advocate experts in the relevant field to make a pilot study which eventually provides a basic fatwa paper.
- V. After completion of the basic paper, a panel meeting will be conducted depending on the field. If within the field of faith, the Expert Panel of the Faith EP will be called. If the Syariah field I concerned, the Syariah Expert Panel (SEP) will be called. In this meeting, fatwa's basic paperwork will be discussed in a "frank" manner so that all aspects of the problem are scrutinized by experts until there is no hesitation left. After that, a fatwa paper will be collected, drafted and reviewed thoroughly to be brought into the NFC meeting with a set date. The chairman is Hassan bin Ahmad, the former Mufti of Penang. At this stage, experts related to the field will be called in making a decision. Usually, these experts are from the major research centres or universities in the

country. For example, Zhari bin Ismail from the School of Pharmaceutical Sciences USM and Dzulkifly bin Mat Hashim from the Halal Product Research Institute (IPPH) was appointed to this committee. The panel also consists of several Mufti of State including Mufti of the Federal Territories, Mufti of Pahang and Mufti of Kelantan.

VI. Two weeks prior to the meeting, the JAKIM Fatwa Management Division will send an email to every mufti's personal assistant throughout the country comprises of a copy of the fatwa papers to be discussed during the meeting. This is done to provide information to each state mufti on the matters to be discussed and if any mistakes and opinions can be amended in the meeting.

VII. The meeting took place, and the fatwa result will be issued. Before the end of the meeting, the Chairman will appeal for each state mufti to discuss the issue at their corresponding state fatwa meetings for the purpose of endorsement and if thought fit, it is encouraged that the fatwa is gazette. The fatwa's proclamation is very important for the purpose of enforcement. Action will be taken on an individual who violates the fatwa in accordance with section 15 (contrary opinion of the fatwa) which if convicted shall be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or both.

VIII. Within two weeks a decision will be confirmed by JAKIM's legal advisor, which will be disseminated to every state mufti as a guide in determining the fatwa on the same issue at the state level (JAKIM).

5. Fatwa regarding food issued by National Fatwa Council

Through the fatwa production service, NFC can explain any legal issues arising out of the halal consumerism of the Muslim community, especially in food issues. Until now, NFC had issued more than hundreds of series of fatwa on various issues related to faith, worship, *muamalat*, *munakahat*, *faraid*, and social including food issues arising from the question of the Muslim community inside and outside the country from various backgrounds. Examples of the food issues such as swine DNA in food products, consumption of alcohol in food and perfumes, eating swallow products, consuming culture milk, consumption of cod oil and consuming civet coffee (JAKIM).

6. The following elucidates the fatwa of food issued by the National Fatwa Council to the people in Malaysia

6.1 Swine DNA in food products

The Exceptional Muzakarah of the National Council of Fatwa Committee on Islamic Religious Affairs was held on 12 July 1999 (Jawatankuasa Muzakarah Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia, 1999), that discussed biotechnology in food and drink. The Muzakarah has decided on the following:

- I. Processed goods, foods, and beverages containing the swine DNA through biotechnology methods are illegal.
- II. The use of swine DNA biotechnology in the processing of goods, food, and beverages has not yet extended to an emergency state because there are alternatives.
- III. The *ijtihad* is to follow the method of *fiqh* as follows: *المصالح جلب على مقدم المفسد دبره*, where it is meant as "Repelling injuries takes priority over procuring benefits".

6.1.1 Descriptions/arguments:

Biotechnology is a process that uses organism cells whether bacterial, plant, or animal cells to produce a product or service. All creatures of God whether humans, animals, microorganisms, bacteria, or fungi have cells, and each cell contains a nucleus. The nucleus has a chromosome which is known as Deoxyribonucleic Acid (DNA).

DNA is a chain of Deoxyribonucleic Acid, consisting of four nucleotides: adenine (A), guanine (G), cytosine (C), and thymine (T). The combination of these four A, G, C and T is the DNA chain. This chain of genetic information will be copied and converted into proteins.

Allah SWT has made the genetic information system through this DNA universal system. The mechanisms by which this DNA chain is derived and converted into proteins or the amino acid chain are based on genetic codes A, C, G, and T regardless of whether they are bacteria, fungi, plants, animals, or humans.

Biotechnology has allowed the DNA of different origins to be united and produced a protein that is similar to the source. The process of transferring genetic information or known as recombinant DNA technology transfers DNA or genes from one organism to another. For example, the genetic information of non-halal components is included in a plant where the 'original

copy' of DNA is derived from an animal. Genetic modification completes the recombinant DNA technology that does not change the original state or appearance of the plant.

According to the *usul fiqh* method, "The origin of a substance which is halal is considered halal and the origin of something illegal is considered as illegal. When mixed with something lawful to the lawless or many, then the law is illegal."

The issue of swine DNA biotechnology has been raised internationally since the year 1996. Food and beverage arrangement through biotechnology such as soybeans and maize has long been practised in other countries. However, the legal determination of either halal or illegal goods through this process has become an important matter because it involves impermissible (haram) materials in Shariah, such as pigs. In the process of DNA biotechnology, as long as the swine protein ingredients are intersection or cell that becomes seed either to humans, animals or plants for breeding and fertility, it is not lawful to halal because the swine material is a major impurity or *najs mughallazah*.

The use of the *fiqh* method المصالح جلب على مقدم المفساد درء of is unpredicted in the cell transference or swine genes through the biotechnology process because it will cause deformation and the Muslims would be confined to unlawful matters.

For the issue of swine DNA in food products, scientists found that pig protein substances are available in the host or hostel or cells that become seeds either to humans, animals, or plants-plants for reproduction and fertility. The lengthy debate is discussed above. It should not be considered halal because pig material is a major impurity or *najs mughallazah*.

These arguments have clearly explained the scientific study has indicated that Swine DNA in food products and that pig protein substances are available in the host or hostel or cells. In this case, is still impermissible with the existence of *illah* of Swine DNA. Therefore, the Maqasid Syariah is not allowed to make the illegal become legal, but the right understanding must be practised accordingly.

6.2 Fish oil

The Muzakarah of the National Fatwa Council for the 107th Islamic Religious Affairs Fatwa Committee was organised on 10–11 February 2015 (Jawatankuasa Muzakarah Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia, 2015) to deliberate on the law of processing processed fish oil without disposing of stomach or faeces.

The Muzakarah has made the following decisions: after examining the facts, arguments, and views, the content of the fish's belly is among the laws that were not mentioned clearly in either the Quran or the Sunnah of the Prophet SAW. Ibn Hajar, Ziyad, al-Ramli, and others have decided that anything in the belly of a small fish, whether it is blood or stool, is considered pure and edible. Al-Ramli stated that the law is also applied to big fish. If it is purged, the law establishes that it depends on the opinion of a trusted physician whether it may be harmful or not.

If it is harmful, it cannot be eaten due to its harmful effects on health because it is the opposite of consuming fish oil. In this regard, based on the discomfort (*masyaqqah*) that needs to be allocated to process fish in large quantities, it is too challenging to remove the contents of the fish's stomach, and the present reality of the current commercial oil processing industry is to comply with strict standards. The standards ensure it is clean and safely used besides considering the importance, benefits, and use of fish oil to human health. The Muzakarah agreed that commercially processed fish oils in quantities involving several thousand tons of fish without removing their abdomen are sacred and halal for consumption.

6.2.1 Description/argument:

JAKIM's Malaysia Halal Confirmation Panel (MPPHM) meeting on 10th October 2013 has raised the issue recently recognized through audits made to halal certificates issued to companies that produce cod fish and capelin oil-based products sold in pharmacies and supermarkets all over the country.

The issue is related to cod fish or capelin that is processed to make the oil is not cleaned accordingly, for instance not discarded or abrasion before being processed in producing the oil.

Based on the clarification given, capelin oil is gained from fish caught especially for fish oil. The fish are processed unceasingly without being washed or cut in advance. This is because it is processed in large quantities or quantities involving thousands of tons of fish (one ton contains about 40,000 capelin fish weighing between 15-30 g).

Capelin fish that were captured by fishermen will continue to be transported to the factory site for storage before being processed. The process is passed out by steaming the fish to break the cells to produce oil. Then, the fish will be isolated to separate between the solids and liquid. The mechanical process is then used to isolate between oil and water. Ready-made raw fish oil will be stored in storage tanks.

All of these ready-to-process capelin oils fulfil the European Union (EU) hygiene requirements and are safe for human consumption.

The information provided also states that the same process (standard) is used by the manufacturer to produce cod oil, omega-3 oil and related products worldwide.

A briefing given by the GSK company to JAKIM on February 12th, 2014 provided the same information. In the meeting, it was also explained in detail the process implemented by a producer of fish oil (wet reduction process). Once the fish is transported down from the vessel involving the process of cooking, pressing, evaporating and separating between water and oil, further drying and grinding excess to make fish food. There is a concern, particularly among the public and sectarian practitioners, mainly *al-Shafie* sect about the necessity of eating fish together with the contents of the fish's belly. This is because there is a view of fuqaha school of teaching that excludes the eating of stools found in the belly of fish. There are also opinions that only banned eating stools from the fish belly that is considered as big and there are also among the fuqaha that allow it.

For the issue regarding fish oil being processed without disposing of stomach or faeces, the scientific facts state that the present reality of the current commercial oil processing industry is to comply with strict standards. The standards have to ensure that it is clean and safely used besides considering the importance, benefits, and use of fish oil to human health and it is *illah* of halal. This shows that scientific studies have been made that it is harmless and safe. The Muzakarah agreed that fish oil processed without disposing of stomach or faeces is halal for consumption.

6.3 Alcohol in food and perfume

Based on the explanations by experts from IPPH and the decisions that have been decided in the Muzakarah Fatwa Committee of the National Council for Islamic Religious Affairs in Malaysia, the Exceptional Muzakarah of the National Council Fatwa Committee for Islamic Religious Affairs Malaysia has discussed the issue of alcohol in food, beverages, fragrances, and medicines on 14–16 July 2011 (Jawatankuasa Muzakarah Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia, 2011).as follows:

I. Each alcoholic drink contains alcohol. However, not all alcohol is alcoholic. Only alcohol produced from the process of winemaking is considered illegal and unclean.

II. Alcohol that has not been obtained from the process of winemaking is considered clean but illegal. It is illegal and should not be consumed in its original form because it is poisonous and can cause death.

III. Soft drinks processed or made not intended for producing alcohol and having alcohol under 1% v/v can be consumed.

IV. Soft drinks prepared with the intention and the same method of producing wine, whether it contains many, little, or distilled alcohol are considered illegal for consumption.

V. Food or beverages containing natural alcohol such as fruits, nuts, or cereals and their extracts or contained alcohol that is incidentally occurring during the food or beverage manufacturing process is clean and should be consumed.

VI. Food or beverages containing flavours or dyes containing alcohol for stabilization purposes should be consumed if the alcohol is not produced from an alcoholic process. The quantity of alcohol in the final product is not intoxicating and the alcohol content should not exceed 0.5%.

VII. Medicinal products and fragrances that contain alcohol as the solvent is considered legal and could be taken if the alcohol is not taken through the alcoholic process.

6.3.1 Description/argument:

In the issue of alcohol in food and beverages, the scientific facts have demonstrated the use of alcohol is intended as stabilisation. It should not be intoxicating, and the alcohol content does not exceed 0.5%. The law concluded that it can be used if the alcohol is not produced from the process of winemaking and the quantity does not exceed 0.5% and these two reasons as *illah* of halal in this case.

6.4 Consuming swallow bird's nest

The Muzakarah of the Council of Fatwa for the 79th Malaysian Islamic Religious Affairs Meeting on 6–8 September 2007 (Jawatankuasa Muzakarah Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia, 2007) discussed the law on consuming swallow bird's nest. The Muzakarah decided that it is permissible to consume the bird's nest based on the following points:

I. The law of eating the swiftlet nest is considered legal, then it is necessary to maintain it as well.

II. The Quranic verses have mentioned the demands of eating halal food. Islam does not allow its followers

to eat something that can harm their physical or spiritual elements. There is a halal diet, but it is not necessarily good for our bodies, as sugar and excess fat can cause various diseases.

- III. Islam guides its people to maintain their health through devotion to nutritious food and a proper diet. This embraces questions including eating food that has not been eaten before.
- IV. Eating the bird's nest is not a habit of Malaysian people. After the discovery of the swallow nest eaten by a group of minorities living near the cave, the people began to observe its benefits and properties. Today, the bird's nest has breached the global market.
- V. The bird's nest became well-known after studies were conducted and found that it has health benefits for the human body.

6.4.1 Description/argument

For the issue of consuming the bird's nest, the scientific facts have demonstrated that the swallow's nest is beneficial to humans, and it is *illah* of halal for consuming the bird's nest. The law concludes that it is not contrary to the Shari'ah law based on the principle of "the origin of a substance which is halal is considered halal."

6.5 Consumption of civet coffee

The Muzakarah of the Council of Fatwa for the 98th Malaysian Islamic Religious Affairs Council decided that the civet (Luwak) coffee is considered *mutanajjis* and it should be used as a drink following these conditions:

- I. The coffee is still in a good condition, not hollow, not broken, and can grow if planted. The coffee beans should be cleaned from any dirt from the civet's faeces.
- II. The Muzakarah has decided that the Luwak coffee should obtain a halal certificate from JAKIM or State Islamic Religious Council (MAIN) before it is marketed to the Muslim community.

6.5.1 Description/argument

In the issue of consumption of civet coffee, scientific facts have shown that the coffee bean is not physically mixed in the faeces in terms of its substance which is *illah* of halal for consumption of civet coffee. It also not considered *mutanajjis* (unclean). The law concluded that it can be made into a beverage as long as it is purified.

6.6 Yogurt and probiotic drink products

The Muzakarah of the National Council of Fatwa Committee for the 62nd Malaysian Islamic Religious Affairs Meeting on March 16, 2004 (Jawatankuasa Muzakarah Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia, 2004), discussed the law on using bacteria isolated from baby's stool as a yoghurt catalyst agent. The Muzakarah has decided that the law of using isolated cultured bacteria from any defilement as a catalyst agent in yoghurt must be issued to the process of isolation and sanctification under Islamic law because the bacteria found in the baby's stool is *mutanajjis*.

6.6.1 Description/argument

In the issue of bacteria in yoghurt and probiotic drink products, scientific facts have shown that there are employing good bacteria that are beneficial to the human body as the *illah* of halal. In fact, bacteria are creatures created by Allah SWT and there is no mention of the ban or the status as harmful or unclean. Although bacteria have always been defined as causing illness, scientific studies exposed another secret of the greatness of Allah SWT that everything that is made on this earth is not in vain. Based on the principle of "the origin of a substance which is halal is considered halal", using good bacteria for human benefits is not contrary to the law or Shariah.

7. Conclusion

Halal has been considered a crucial issue in Malaysia and globally. The importance of products in the market having a clear halal status for foods and beverages is regarded as a consumer's issue that is often featured in the press. This study has highlighted the *illah* as a relevant *fiqh* methodology to understand the Maqasid Syariah through a scientific study. Both the *fiqh* method and scientific facts have been referred to by the Committee of NFC in the issuance of fatwas. This study has indicated the role of the ulama and scientists in deciding a fatwa in fatwa management in Malaysia. The role includes identifying the halal status of the elements in the products. According to Abu Bakar (2017), halal elements of the products need to comply with the principles of *halalan toyyiban*. It is believed that the management of fatwas in Malaysia on halal issues can be trusted, which removes any doubts about a product that has been certified as halal. This discussion can be concluded that the scientific facts have been demonstrated in the Muzakarah such as research studies (science laboratory study) proving that the substance of a product is beneficial to human beings and the substance of the product is safe. The collaboration of scientists in fatwa management to handle the issue of halal products is very meaningful in the development of halal status in

Malaysia besides being an example to other countries. Finally, the *fiqh* method and scientific facts must be understood and hence could be conducted together in fatwa management. It could enhance the trust in the fatwa produced and remove doubts about products that have been certified as halal.

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