
FIQH PHARMACEUTICAL: THE CONCEPT OF *ISTIBHALAH* AS LEGAL INDICATOR IN IMPOSING *FATWA* OF ANTICOAGULANT, LOW MOLECULAR WEIGHT HEPARIN (LMWH)

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ABSTRACT

Debates over halal and haram regarding foods and non-foods have heatedly discussed amongst shariah scholar most of the times especially in Muslim country such as Malaysia. Through our naked eye, impure elements can be cleansed and purified by washing away the stain. By transforming from an impure form to pure form by mixing the thing with other substance in order to change it into a total content and form could be defined as *istibhalah*. Its validity as a measurement tool in determining the status of halal and haram over food and non-food issues is a legal method in Islam. However, there is school of thought in Islamic *fiqh* observed as more stringent and stricter in verifying *istibhalah* as legal indicator in imposing fatwa with regard halal and haram status as implemented by Malaysian National Fatwa Council (MNFC) towards porcine based medicine namely Low Molecular Weight Heparin (LMWH). Even though the present era shows its cruciality towards a need of accepting a contemporary way of *fiqh* approach, not to mention the efficacy, accessibility, and feasibility of LMWH, but MNFC remained observed has less enthusiasm upon *istibhalah* method because that Islamic *fatwa* organization in Malaysia is more prone to Shafi'iyyah school of thought which accepting *istibhalah* with exceptions only. This notion creates a query reason over the *fatwa* upon pharmaceutical issues nowadays which able to lead to misconception to the patients who might necessarily need LMWH. This qualitatively study attempts to propose a rational and harmoniously conforming to science and technology development in manufacturing the medicine which able to remove the Deoxyribonucleic acid (DNA) of the porcine. This study may contribute to solve the issue of pharmaceutical products which manufactured from impure basis by adapting a *shariah* compliance guideline provided at the end of study.

Keywords: *Istibhalah*, Malaysian National Fatwa Council (MNFC), Low Molecular Weight Heparin (LMWH), Deoxyribonucleic acid (DNA)

INTRODUCTION

Istibhalah is not an alien subject and has been debated over centuries among shariah scholars. Scholars' stance regarding *istibhalah* as indicator in halal and haram status over pharmaceutical field absolutely could affect Muslim patients' minds in prescription decision made. For instance, Islamic Fiqh Council (IFC) under the Muslim World League, *al-Lajnah al-DE' imah li al-BuhÉth al-ÑIlmiyyah wa al- 'IjtÉ'*, Saudi Arabia and local institutions such as Malaysian National Fatwa Council (MNFC) and State Fatwa Committee Meeting by Mahaiyadin & Osman, (2017). Today's world, rapid development in science and technology witnesses the sophisticated method of making medicine in order to save human lives simultaneously upholding the *maqÉ'id* shariah pragmatic under

perseverance of lives (*ÍjÐ al-nafs*). Even though the medicine prepared from prohibited substitute like porcine but through the technology, Deoxyribonucleic acid (DNA) of the porcine can be deleted totally from the medicine, how does Malaysian Shariah scholars determine that kind of medicine so that as sequel, shariah flexible seen as suit with time, places and problems in the area of *ÍjÐ al-nafs* and proved able to accommodate today's challenges especially in medical issues?

Observing this present breakthrough in pharmaceutical field, this research attempts to examine the validity of *istihalab* as an indicator in deducing fatwa in Malaysia regarding porcine base anticoagulant namely Low Molecular Weight Heparin (LMWH). This anticoagulant is preferred as first liner in treating blood clot sufferers especially in Malaysian government hospitals in virtue of its efficacy, feasible and accessible. However, due to its notorious ingredients which at the same time, had undergone the process of *istihalab*, this LMWH anticoagulant would be judged as permissible or impermissible to be used in this study. This qualitative methodology will employ document review to achieve the finding.

LITERATURE REVIEW

Mahayaidin and Osman (2017) concluded that if only *istihalab* had been recognized by MNFC in issuing any *fatwa*, all dilemmas surrounding pharmaceuticals, cosmetics and foods issues may immediately have solved. They prefer to accept that *istihalab* can be defined as a valid indicator in medical treatment using unlawful sources in Malaysia in order to ease Muslims in prescription decision making. However, the authors rationalized the decision of MNFC to refute *istihalab* owing to the virtue of extra precaution (*ibhtiyat*) basis.

According to ×ammÉd (2004), he clarified both *istihalab* and *istihlak* either in the areas of food or non-food shall be recognized as verifying tools in imposing *fatwa* of halal or haram status without negligence their own provisions as both were approved in sight of shariah. Mohd Izhar Ariff (2017), Mohd Izhar Ariff et al., (2018) supported Hammad's opinions with regard *istihalab* concept by giving some examples of products that had been recognized at international and national *fatwa* regarding *istihalab* in some products. However, in order to achieve *istihalab* approval, it should be proved by laboratory proofs as evidence of purification for a complete *istihalab* (*istihalab tÉmmah*).

Based on those foregoing authors, ×anafiyah and Malikiyyah *madbhabs* stated that the detection of physically changes over *istihalab* and *istihlak* products through human eyes deemed as adequate to determine either perfect transformation (*istihalab ÍaÍÉÍab*) or imperfect transformation (*istihalab fÉsidab*) in their times. However, they prone to allow flexibility within the permissibility legal rule of unlawful products derivatives. However, their research was majorly performed in food area which are different as compared to this research. Whilst, our area of study are more on medical and pharmaceutical issues.

The porcine base anticoagulant LMWH was proven recently to be completely pure and negative of any porcine base DNA (Sanofi-Aventis, 2017), with its superiority in clinical evidences of safety profile it opens a new perspective in clinical practice especially among the Muslim practitioners. Besides, bio-chemical changes and properties of LMWH following complete *istihalab* process and its safety profile upon pregnant women (Irwan et al., (2018), Nur Zaireena et al., (2018), Zizi Azlinda et al., (2019)). However, despite the proven purity, the porcine base LMWH anticoagulant which had underwent *istihalab* and *istihlék*, they confirm that LMWH remain as prohibited medicine as imposed by MNFC.

Medicines are used to heal disease and to prevent from sickness such as LMWH is manufactured as blood thinner in medical purpose. Supposedly, *istihalab* theory is acceptable and reasonable nowadays in Malaysia but in merely certain issues such as porcine based medicine for insulin treatment (Saadan, 2009). However, the issues of gelatin base derivative in medicines had been imposed as permissible under *ĪarĒrah* yardstick. It is clear in Islam, *ĪarĒrah* is a situation when mankind forced to surrender his or her live or any *al-ĪarĒriyyĒt al-khamsab*. The researcher concluded that Saadan’s point of view inclusively justifying *ĪarĒrah* principle over *istihalab* principle which indirectly explained his opinion towards *istihalab*.

There were few *fatwas* on several products issued by MNFC which is permitted under *ĪarĒrah* situation such as bone China products, biothrax vaccine and rotate vaccine (Azri et al., 2017). This paper has cited the differences between few names of porcine base such as swine, pork, pig, porcine, sow, hog, boar, lard, bacon, ham and bristle. The author emphasized that *istihalab* theory is not widely accepted in Malaysia and this is the main factor of using principle of *ĪarĒrah* every time to handle the notorious issues in Malaysia specifically when it related to prohibited substance that necessarily need for human (Othman Jaludin et al., 2018).

Saadan (2014) attempted in analyzing the *ijtihĒd* in his paper entitled *Contemporary Ijtihad on Issues of Istihalab: A Comparative Study Between Fatwas by Middle East Jurists and Malaysian National Fatwa Council* as comparison in this issue. This paper included a comparison on the methodologies and other factors that were taken into *fatwa* organizations in middle east and Malaysia’ consideration in determining the ruling with using *istihalab* principle. Throughout his study, Saadan also described that although *istihalab* theory were usable by jurists in their *ijtihĒd* and would benefit Muslim society especially in choosing their halal food, drinks, medicine etc but the jurists in every locality had meticulously evaluated in all aspects according to the level of need of the state.

RESEARCH METHODOLOGY

This study employed the qualitative methodology. Qualitative means “an inquiry process of understanding a social or human problem, based on building a complex, holistic picture, formed with words, reporting detailed views of informants and conducted in a natural setting” (Creswell, 2014). This research is within the lens of Islamic foundation and relied on *fiqh* normative research system. The data procured through documents review method.

FINDING AND ANALYSIS

Istihalab is not recognized as determinant of legal rules in Malaysia religious affairs unless in few natural ambits only stemming from a concession in Shafi’iyyah *madhhab*. Doubtless to state, religious authorities in Malaysia opts to adhere to the opinions of Shafi’iyyah *madhhab* in practicing daily jurisprudence legal rules, even though there was no official statement regarding that matter in Malaysian Federal Constitutions except Perlis which stating that “Islam as a state official religion by following Ahli Sunnah Wal Jamaah”, instead of any single *fiqh* madhhab (Md Nor et al., 2019).

Table 1.0: Checklist of *istihalab* prerequisite in justifying the LMWH legal rule

Sample/ product	<i>Isti'Élah</i> steps checklist	Type of <i>Isti'Élah</i>	Justification
Low Molecular Weight Heparin: Enoxaparin Sodium	1. Raw material		Accessibility
	2. Conversion agent (Porcine DNA Removal): - Oxidation - Decolorization	<i>Isti'Élah TÉmmah</i>	Feasibility Efficacy
	3. Final Product		Safety Profile
Islamic legal rule on LMWH (Enoxaparin or Clexane)		Permissible	

Based on the table 1.0, the researcher analysed the prerequisite of LMWH (Enoxaparin) manufacturing process; either conforming *istibalab tÉmmah* or not. For example, does the process of *istibalab tÉmmah* has halal conversion agent even though the raw material is produced from forbidden sources? As analysed in the table 1.0, the legal rule of LMWH can be declared as permissible because it fulfils whole requirements of *istibalab tÉmmah*. Lawful legal rule yielded from the analysis is supported by some jurists for instance Al-ZaylaÑiyy, (1897), Ibnu QudÉmah (1997), ×ammÉd (2004).

Recently, there are two certificates from accredited laboratories by JAKIM confirmed that there has been no residual of porcine trace or element found in Enoxaparin sodium which represented as LMWH in this study. The first certificate issued carried out by TPM Biotex, (2015) laboratory and most recent certificate performed in UKM Unipex laboratory, (2019). TPM Biotex laboratory released the result of percentage of nucleotide impurities as well as protein impurities remains in that LMWH while UKM Unipex mentioned that Enoxaparin Sodium (Clexane) has no residual porcine DNA only without further details mentioned.

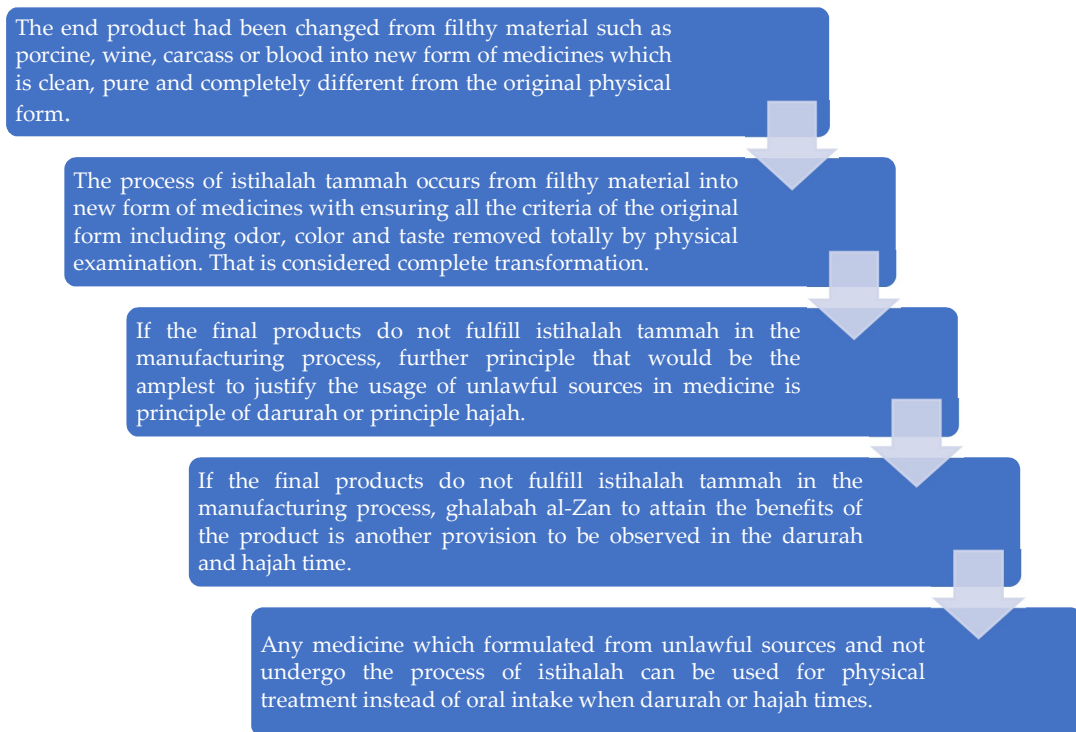
Throughout this analysis, the most obvious finding to emerge from the analysis is that the discovery of DNA code in products is prime significant to impose on Islamic law of any products as emphasized by Izhar Ariff (2015) either halal or haram status even though porcine protein and nucleotide impurities still exist in LMWH. It is interesting to note that in the determination status either haram or halal, the investigation on the subject matter is recommended not too bog down in the details owing to a doctrinal of straight jacket by uncovering the widespread of prohibited or *shubhab* items which eventually may end into phases of difficulties to derive a legal rule.

The researcher' finding with regard to *istibalab* might be contradicted to the stance decided by MNFC in 2009. Tuan Sidek & Rizwan (2017) putting forward a reality that the most appropriate methodology in deriving legal rules used by Malaysia Muslim scholars which is suitable to its social and culture is the concept of al-*isti'Éb* as most of the chores and interactions practiced in Malaysia adhering firmly with Shafi'iyah *madbbab*. The concept of *isti'Éb* emphasizes on the first legal rule

and applied to the next situation (Abdul Raġmġn, n.d.), in another word, this method recognizes the raw material rather than the end of the product.

In relation to this LMWH issue in preventing lethal event like blood clot disease, the researcher views that the most appropriate approach that can implemented in order to achieve the harmonization between this research and the implementation of the ruling in Malaysia is through the guideline of permissibility of unlawful sources of medicines under *istihalah* process. This guideline is adapted from ‘Abdul Rab (2018) study regarding the guideline of using unlawful sources in cosmetic. This guideline can be practiced by shariah scholars and Muslim medical doctors as well;

Table 1.1: Guideline of using unlawful sources in medicines under *istihalah* process. (Illustrated by the researcher)



The items in the guideline above (Table 1.1) can be considered as significant elements that need to be checked out to decide the permissibility of medicines which had undergone *istihalah* process in Muslim countries. It is supported by recent shariah scholar, Al-Jalġd (2008) who recommend the prescription of medicine to Muslim patients to be given according to the hierarchy of prioritization which begin with the halal medicine. If the halal medicine does not pose efficacious and less safety data, then the medicine which had been undergone the process of *istihalah tġmmah* is prioritized.

If that choice is not able to treat effectively, then the doctor should find the less haram medicine although not undergone *istihalah* process compared to a medicine contains dominantly

haram ingredients. If the less haram sources medicine still poses bad effect to the patients, then the last option is to consume the haram medicine even though it is *Īarm li dhÉtibi* to cure patients.

That hierarchy constructed by Al-JalŃud indeed, resembles with the guideline provided above, instead the guideline focuses directly to medicine which had undergone *istihalab tÉmmah* as the first option of medical doctors in prescribing medicine which manufactured from unlawful materials.

Based on the principle of *istihalab tÉmmah*, the researcher contemplates that it is pertinent to apply *qÉŃidab* of *takyÉf fiqhíyy* as comprehended by Islamic fiqh sects, Hanafiyyah and Malikiyyah in pharmaceutical field even though MNFC is considered as unenthusiastic towards the substance in LMWH. In addition to that matter, following *qÉŃidab fiqhíyyah* that held firmly by Hanafiyyah *madbbab* namely *al-aĪlu fÉ al-ashyÉ' al-Īubr ĪattÉ yadullu al-dalÉl ŃalÉ al-najÉsatibi* means the origin of everything is permissible until there is legal proof to indicate it is impure (Ibnu Nujaym, 1999).

Hence, this research does not intend to blame the decision made by MNFC regarding *istihalab* stance because there is still relevancy due to the situation of Malaysia as Islamic country and guarded by law officially. The relevance of the stance can be observed as extra caution (*ihŃiyat*) as well-known method held firmly by Syafi'iyah *madbbab*. It is noteworthy that, method of *ihŃiyat* is yet reliable to be implemented, concurrently to blocking any evil intention towards porcine trading for commercial purpose (Mahaiyadin et al, 2017).

However, the researcher views that in this new modern era can be deemed as timely initiative for Malaysian shariah scholars to accept *istihalab tÉmmah* as legitimate tool to impose *fatwa* in Malaysia which is aligning with current rapid change. This stance is favourable in the view of researcher, provided it is limited to merely pharmaceutical issue, not including food or cosmetic sector.

According to guideline of *istihalab*, it clearly shows that, transformed substitute under the principle of *istihalab tÉmmah* is indeed deemed as legal tool in LMWH manufacturing process. The medicine which does not undergo the process of *istihalab* completely or classified as *istihalab nÉqíĪab* on another hand, another principle should be used as mentioned in the guidelines such as principle of *ĪarÉrah* and *ĪÉjab*.

CONCLUSION

Based on those foregoing literatures regarding *istihalab*, the researcher prefers to agree that *istihalab* has been accepted as Islamic legal ruling indicator, next to *ĪarÉrah* and *ĪÉjab*. It is to eliminate the Muslim' burdens and hardships in their daily chores and interactions particularly for Muslim consumers in Malaysia. In this research, *istihalab* considered as a supporting theory, while, *ĪarÉrah* and *ĪÉjab* are the main theories in the usage of LMWH during pregnancy and puerperium, based on the argumentation in Malaysia.

Theory of *istihalab* is not unfamiliar around *fiqh* pragmatic, yet still limited in its implementation in Malaysia. Porcine based medicines stumbled upon tremendous difficulties attributed to bioethics in the strong-rooted Malay-Muslim community in Malaysia. However, in term of *fiqh* discipline, it is, indeed, a substantial contribution which able to solve the issues in bioethics as numerous products made out of lawful, unlawful and conglomerate items in pharmaceutical issues.

To conclude, the implementation of *istihalab* concept in pharmaceutical sector supposedly not to create problems as highlighted above, either as commercial interest or in political turmoil

because its implementation should be supported with the guideline/checklist in using medicine which undergoes *istihalah* process. In fact, this solution may solve many problems in pharmaceutical sector nowadays. This proposal may be applied temporarily till the whole Muslim world able to lead the pharmaceutical sector without any single prohibited derivatives.

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