

Methodology for Determining the Halal of Medicinal and Food Products in Maslahah Perspective

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Abstract

Medicine and food are the two primary commodities needed for humans. Both are very important for maintaining human survival and also the environment. With the rapid development of science and technology (saintec), including the production of food and medicine, there have been many product innovations that utilize natural resources optimally or reprocess existing resources. It is undeniable that advances in science and technology are able to produce various products that not only make optimal use of resources, but are able to answer the various human needs for medicine and food. With the obligation, especially Muslim consumers, to only consume Halal medicines and foods, problems arise related to the halal status of medicinal and food products. Even though there have been many writings from scholars regarding the methodology of stipulating halal law or the prohibition of something, it will be, but with the phenomenon of the very wide variety of medicinal and food industry products, this methodology is still very important to be reviewed again. The aim of this paper is to produce a specific methodology for the determination of halal medicinal and food products from a Maslahah perspective. This paper is a literature study using an analysis of the istimbath process using the Maslahah perspective on medicinal and food products. The results of this study are a methodology that can be used as a basis for determining the halalness of medicinal and food products from the Maslahah perspective as well as practical instructions for non-Sharia communities to assess whether a product is Halal or not.

Keywords: Halal; medicine, food, istimbath; maslahah; methodology

INTRODUCTION

Medicine and food are the two primary commodities needed for humans. Both are very important for maintaining human survival and also the environment. With the rapid development of science and technology (saintec), including the production of food and medicine, there have been many product innovations that utilize natural resources optimally or reprocess existing resources. It is undeniable that advances in science and technology are able to produce various products that not only make optimal use of resources, but are able to answer the various human needs for medicine and food. With the obligation, especially Muslim consumers, to only consume Halal medicines and foods, problems arise related to the halal status of medicinal and food products. Even though there have been many writings from scholars regarding the methodology of stipulating halal law or the prohibition of something, it will be, but with the

phenomenon of the very wide variety of medicinal and food industry products, this methodology is still very important to be reviewed again.

The developments that occur in science and technology midwives have an impact on increasing the ability of factories to produce various products. At the same time, these developments have also resulted in an increasing need for various industrial products including food and pharmaceuticals. The increasing variety of industrial products as a result of science and technology innovation has the opportunity to use haram materials or elements, whether from plants, animals, microorganisms, minerals, or synthetic materials. A Muslim consumer will usually find it difficult to determine the halalness of a product due to lack of information about the product and also lack of knowledge about Sharia. For Sharia experts, they will need more and more information about product specifications. While field assessors are those who can analyze the halalness of a product, apart from needing an understanding of the product concept and process, they also need a certain methodology that they can use as a standard and reference for determining the halal law of a product. A methodology is a series of systematic methods or specific ways of working that are used to carry out a job to achieve the desired goals. While *istinbath* means problem formulation. *Istinbath* comes from Arabic which means to issue or determine. Terminologically, *istinbath* is the effort that must be made to formulate *syara'* laws based on the Koran and Sunnah by means of *ijtihad*. (Zein, 2009). One of the *istinbath* methods is *maslahah*.

The aim of this paper is to produce a specific methodology for the determination of halal medicinal and food products from a *Maslahah* perspective. Al-Ghazali explains the *maslahah* as the “preservation of the religion, life, mind, offspring and wealth.” According to him, “everything that leads to the preservation Ghazali, 1998). Hence, it is generally held that the Shari’ah in all its parts aims at securing a benefit for the people or protecting them against corruption and evil in various degrees. (Jalil, 2006)

RESEARCH METHOD

This paper is a literature study using an analysis of the process of establishing Islamic Law using the *Maslahah* perspective on medicinal and food products. The research method used is descriptive method in the form of case studies on the consumption of Medicines and food. This research is a qualitative research where the data collected is in the form of information regarding the results of studies, studies and research from experts, both in the field of Islamic law, as well as drug and food researchers. However, this article will not specifically examine one particular type of medicine or food. This study emphasizes more on the methodology of legal conclusion. Data

collection was carried out by observation (study) of literature. Data analysis was performed using deductive and inductive methods.

RESULT AND DISCUSSION

Stage 1. Conditioning Around The Consumption of Medicines and Food

Islam gives a big balance attention for human health both physically (body) and mentally (spirit), so they can perform their duties optimally as a Khalifah and the servant of almighty God on this Earth. That's why, Islam emphasize the importance of consuming Halal and good food, both in physical and spiritual aspect. Islam also avoids consuming forbidden (Haram) food. Islam also requires people to take a medicine if they get disease. But the medicine that they use must be Halal certified medicine or medicine which came from Halal substance. Unless, there is an emergency situation and there is no Halal certified medicine that can be used to cure the disease. The treatment itself is the human effort to get well and healthy, but at the end, the True Healer is Allah. That's why, there must a be synergized between initiative and prayer. (M., 2015) Base on these, in consuming food and medicine, we can say that there are several initial considerations that must be considered as basic principles, as follows:

- a. A Muslim must ensure that whatever enters his body is halal (this includes food and medicine) and good, physically and spiritually.
- b. A Muslim must avoid himself from consuming (in this case including food and medicine) which is prohibited (Haram).
- c. Every Muslim must take medicine if he gets sick (don't let himself get sick).
- d. Medicines consumed by a Muslim must be Halal certified medicine.
- e. Unless there is an emergency and there is no Halal certified medicine that can be used to cure illnesses, then the consumption of drugs and food that is Haram or not yet certified as Halal requires ijtihad for legal stipulation.
- f. The treatment of disease itself is actually a human effort to get well and be healthy, but the True Healer is Allah. There must be a synergy between initiative and prayer.

Stage 2. Approach in The Process of Establishing Islamic Law (Istinbath)

For the determination of Islamic law on the use of food and medicine, it is necessary to approach the problem which is determined based on the characteristics of the problem.

One example of the characteristics of this problem system is that it is a combination of modern scientific studies and classical science studies (Sharia) whose contextualization is very dependent on the causes, processes, and outputs of the study. The approach taken in the process of determining law (istinbath) is a combination of modern discussion methods and classical Islamic studies. The amalgamation of modern science and classical science is one of the most intermediate methods used by various modern Islamic mass organizations or Halal certification bodies, especially in Indonesia. Making a legal decision on a certain topic is carried out through a presentation mechanism or Focus Group Discussion (FGD). In it there were questions and answers, until a final conclusion was drawn which was formulated by the committee which later became a decision. In the decision-making trial, a paper is submitted to be presented and the opinions of experts from different disciplines are asked for the proposed topic. Then formulated by the formulating committee from the opinions that arise not only from experts but also from the participants and resource persons. So the resulting decision is *juhud jama'iyah* as a representation of the views of the institution / organization. Even though the approach taken has involved the theory and views of various competent parties, it is still necessary to realize that even if it has

There is an agreement by the ulama with the same formula, but it is not certain that the results of *ijtihad* are the same. This is because it still depends on determination, expertise, accuracy in making a single decision, and a review of its various aspects. For this reason, it needs to be seen and re-analyzed regarding an *ijtihad* that has been issued either by an institution or individually, even though there is a *fihiyyah* rule which says that an *ijtihad* cannot erase other *ijtihad*. (Hisbah & Board, 2011)

Stage 3. Islamic Law Study Methodology

Methods are procedures, techniques, or steps to do something, especially to achieve certain goals. Whereas methodology is a scientific procedure which includes the formation of concepts, prepositions, models, hypotheses, and theories, including the method itself. The methodology of study for establishing law is a scientific procedure which includes the formation of concepts, prepositions, models, hypotheses, and theories, and methods for fixing a problem in a particular legal position. There are various methods used in

researching law. One of the mechanisms used is the *al-istiqrâ` al-ma'nawî* method which is generally accepted in legal research, the details of which are as follows:

- Step 1. : Determine the problem or theme that will be the target of the research or the answer will be sought. In this context, the issue of Islamic Law, both about *ushûl* rules, *fiqh* rules and specific laws.
- Step 2. : Formulate a problem or theme that has been determined or selected. In the process of searching for the provisions of a law, even in a simple form, the formulation of the problem is important. Because this is where the data, in this case the arguments and empirical facts relevant to the problem, can be collected.
- Step 3. : Collect and identify all legal texts that are relevant to the problem to be searched for. As it is believed that in a problem there are many verses of the Koran and Sunnah which discuss one or several issues, both universal and detailed. In the new cases identified where particular arguments are not found, what is collected are universal arguments containing explanations of universal values, both positive and negative values, the details of which are left to human thought or in the expression "*fa huwa râjî 'ilâ ma'nan ma'qûl ilâ nazhr al-mukallaf.*"
- Step 4. : Understand the meaning of the legal texts one by one and the relationship between one another. For this, as already mentioned, an adequate knowledge of *lafaz* forms and other linguistic aspects is required. However, considering that understanding these texts is not sufficient in terms of language, it is also necessary to relate them to things, namely: first, the textual context (*siyâq al-nash*) itself. Second, the context of the conversation (*siyâq al-khithâb*). Third, the context of the significant condition (*siyâq al-hâl*). So, the legal texts must be understood in detail one by one, comprehensively, either the text, the context or the historical background of the emergence of the texts.
- Step 5. : Taking into account the conditions and significant indications of a society, which are implicitly understood from the concept of *al-Syâthibî* about *qarâ`in ahwâl*, especially the *ma'qûlah* or *gairu manqûlah*. In connection with the need to look at the indications in this category of *gairu manqûlah*, legal researchers have examined *al-Syâri* 'silence regarding the law, even though there is a

demand to be made. This issue has been detailed in the previous discussion, but it needs to be pointed out here, that legal researchers must be able to identify the silence of al-Syâri 'on problems that have nothing to do with worship and His silence on issues related to worship.

Step 6. : Observe the reasons ('illah laws) contained by the texts, to be derived from a significant context in responding to the existence of these legal reasons and applying them in empirical cases. It is necessary to pay attention to 'illah-'illah in legal texts, especially concerning amar and nahî, because according to al-Syâthibî, the reasons why something was ordered and why something was prohibited, sometimes clearly known ('illah ma'lûmah) and sometimes unknown ('illah gairu ma'lûmah). If the 'god is known, then his demands must be followed. Like marriage, the reason ('illahnya) is for the benefit of the offspring, buying and selling for the benefit of the use of the object being transacted, legal sanctions (hadd) for the benefit of survival or survival. 'Illah-'illah is known through the concept of masâlik al-'illah as many have stated in the science literature of ushûl al-fiqh. If it is known the 'illah', it is known that the aim of al-Syâri 'is what' illah-'illah demands, both 'illah to do and to be abandoned. The question arises, what if the 'god is not known? According to al-Syâthibî, when this happens, then in principle there must be no attitude (tawaqquf). However, tawaqquf here are two definitions that must be discussed: (1) we must not go beyond what has been stated in the law or certain causes. Because, all forms of exaggeration (expansion of meaning) without knowledge of the 'god means establishing laws without argument, and would be in conflict with the aims of al-Syâri'. So, tawaqquf is done here, because there is no evidence at all; (2) that basically the syara 'laws cannot be exceeded by their scope of meaning, until the purpose of al-Syâri' is known about the reason for the exceeding (expansion). The reason for the permissibility of this expansion, according to al-Syâthibî, lies in the concept of masâlik al-'illah or from the universality of the argument.

Step 7. : Reducing legal texts to become a unified whole, through a process of abstraction by considering universal and particular texts, so that those particular texts can be included in a universal framework.

Step 8. : To determine or conclude the law being sought, whether it is universal in nature, in the form of *ushûliyah* rules and jurisprudence rules as well as specific laws. This is what is called a legal product. Observing the concept of *al-Syatibi* about the relationship of texts with reason, the relationship of texts with tradition or social development and the requirements of *ijtihad*, as well as the characteristics of the *al-istiqrâ` al-ma'nawî* method, the above method of work can be applied by following two or one of the two conceptual frameworks, namely *min al-a'lâ ilâ al-adnâ* or identical to the term up-down and which are *min al-adnâ ilâ al-a'lâ* or identical to the term bottom-up. The first begins with understanding collective, particular and universal texts, to draw a legal conclusion. Then the law is projected onto cases or symptoms that occur in society. Meanwhile, the second conceptual framework begins with studying cases or social phenomena in depth, to draw a tentative legal conclusion. Then the tentative law was confirmed with legal texts. If there are conflicting elements, then these texts give values that are in accordance with the general objectives of the *syarî'ah*. In connection with the above methods of work, the question arises as to whether the patron used by *al-Syâthibî* in this *al-istiqrâ`* method. In the case of texts and *qarâ`in ahwâl* which refer to the same coordinate point, this kind of problem is not that complicated. However, it becomes important because of the texts which each lead to a different coordinate point. (Nawî, Syariah, Raden, & Palembang, 2013)

Stage 4. The Form Change of The Matter (Istihalah)

Istihalah can be defined as the change of form by mixing the matter with other substance to create a new product that has different form and content. The inference drawn here is that *istihalah* means transformation of one matter into another new completely different one by means of mixing. The first notion to extend its customary practice come from Hanafî Maliki Ibn al-‘Arabi, Ibn Taymiyyah, Ibn al-Qayyim, al-Syawkani and Ibn Hazm al-Zahiri. They put the theory of *istihalah* in a more general scope. This is due to that they accept this theory as one of the processes which can alter something impure (*najis*) into something ritually pure, such as the process of ripening of arack into vinegar. Al-Hanafiyah and Al-Malikiyah madhabs declare that *istihalah* changes the

state of najis law into halal. Their statement, which hold that something ritually unclean (najis) and changes into something new (by means of istihalah) is lawfully pure, is considered as a rojih (strong) one. Among their reason is because the law revolves around its ‘illah (cause or reason). When the ‘illah exists, the law exists. When the impure characteristics have gone, so has the law. That is what is elaborated by ushuliyah, Translation: “The law revolves around its ‘illah. When the ‘illah exists, so does the law. On the contrary, when the ‘illah does not present, neither does the law”. This is the more appropriate notion to be applied nowadays. We should remember that crude oil come from carcasses of animals which had been buried for thousands of years. Animal carcasses are obviously impure. Crude oil is regarded as impure based on Syafi’iyah and Hambali notion, and if we cling on that notion, that becomes a problem in our present era. Both Asy-Syafi’iyah and Al-Hanabilah madhab persist that najis ‘ain like swine cannot be purified although it has undergone total alteration, unless three conditions are met. First, wine that turns into vinegar by itself. Second, dead animal skins other than those of the dog and swine can be purified through tanning. Third, something that turns into animal like carcasses turn into maggots because a new form of life has begun. Based on that notion, something experiencing change of form is still consider impure if it comes from impure source, unless there are three conditions met. Najis from animal being burned into ash stays impure because it derives from najis source. However, if that najis turns (istihalah) completely into something new, it is pure. An example is when wine turns into vinegar. Hambali madhab hold the stance that something impure cannot be purified by means of istihalah except wine turning into vinegar by itself. Transformation process caused by burning, tanning or mixing with other ingredients does not ritually purify.

Based on the Islamic scholars’ notion in extending or narrowing the concept of istihalah, it is inferred that Hanafi madhab scholars’ notion is more relevant to be applied and conforms the present world. This opinion complies with rapid science and technology development. Various findings and research have been conducted, and the phenomenon has led to the emergence of new issues especially in food production. (Wijayant & Kaukab, 2019)

Stage 5. Formulation of Islamic Law Establishment Methodology (Istinbath) from Maslahah Perspective

After the research process or study of legal propositions, the next stage of this paper is to formulate the Islamic Law Establishment Methodology (Istinbath). The process of an ijthihad itself is inseparable from the main concept of Muslims, namely, the Qur'an and hadith, as well as several other sources which of course also refer to the two things above. The formation of an Islamic law must be based on criteria predetermined by previous

scholars. Istinbath of law is known in fiqh science itself as a deductive method, which is a method of drawing specific (micro) conclusions from general propositions (al-Qur'an and hadith). [4] In general, the methodology of Islamic legal decision making can be divided into three:

- a. The introduction to the decision-making methodology contains the definition (boundaries) of the law in language and terms. In the legal taking methodology it is said that law is establishing something on something else or preventing it.
- b. The source of Islamic law is al-Qur'an and as-Sunnah. It is said that the Koran is qath'iy al-wurud (the narration is convincing), and from the point of view of its appointment, the Koran is sometimes qath'iy al-dilalat (certain) and sometimes Zhanniy al-dilalat (not sure, cryptic). So the Hisbah Council determines the manhaj in deciding or making legal decisions having the main basis is al-Qur'an and saheeh Hadith.
- c. The legal Istinbath method consists of six, namely first, the ushuliyah rule (language rule) which includes the division of lafazh in terms of meaning, obscurity and understanding of meaning. Second, how to complete texts that seem contradictory. Third, the causes of differences of opinion. Fourth, the principles of doing istidlal with the al-Qur'an. Fifth, the principles of beristidlal with hadith. Sixth, problems for which the legal provisions of al-Qur'an and hadith are not stipulated, are resolved by means of ijihad jama'i (collective) with the formula:
 - 1) Not accepting absolute consent in the field of worship, except for a friend's consent.
 - 2) Not accepting qiyas in mahdhah worship, being in a matter of ghair mahdhah worship, qiyas can be accepted as long as it meets the requirements of qiyas.
 - 3) If there is a conflict of argument (ta'arudh al-adillat), the steps to be taken are combining (tariqat al-jam'I) as long as possible, looking for stronger arguments (tariqat al-tarjih) and eliminating if (the initial one is and finally) the postulate can be known.
 - 4) In berijihad, the Hisbah Council uses the rules of ushul fiqh as is customary for jurists.
 - 5) The Hisbah Council does not tie itself to one mazhab (sect), but the opinion of the Imam of the mazhab is taken into consideration in making decisions, as long as it is in line with the spirit of the al-Qur'an and as-Sunnah.

Legal decisions are made on the basis of juhud jama'iyah (joint effort) in specialized hearings which mostly discuss contemporary topics, such as transplants, urine treatment, check trading and others. (Hisbah & Board, 2011)

Prof. Dr. Wahbah az Zuhaili in his book *Ushul Fiqh al Islamiy* said that *maslahah* is attracting benefits and avoiding *madharat*. What is meant by *maslahah* here is to preserve the objectives of *shari'at* (*almuhafadzah 'ala maqshud al-syar'* i) which covers five main things in the form of *hifdza al din*, *hifdz al nafs*, *hifdz al aql*, *hifdz al mal* and *hifdz al nasl*. . So every thing that contains the maintenance of these five principles is called *maslahah*. Anything that can negate these five basic principles is called *mafsadah*, while eliminating *mafsadah* is *maslahah*. According to Prof. Dr Wahbah az Zuhaili is the same as his predecessors, which is only in the field of *muamalah* and does not apply in the field of worship. The operational requirements for the *maslahah mursalah* according to Prof. Dr. Wahbah az Zuhaili are:

- a. If the act or charity is in the form of a real *maslahah* (*haqiqatan*), it is not just a conjecture (*wahmiyah*) if it can manifest benefit and reject *madharat*.
- b. Nor is it when doing charity with *maslahah* is contrary to the laws or principles that have been established based on the texts or *Ijma'*.
- c. The last provision according to Prof. Dr. Wahbah az Zuhaili that the coverage of *maslahah* is general, that is, it can bring benefits to many people.

According to Prof. Dr. Wahbah az Zuhaili, the scholars differ in taking *maslahah* levels for a law while the one who uses the most *istidlal* with *maslahah* is Imam Malik then Imam Ahmad then Imam Hanafiyah then Imam Syafii. Then Prof. Dr. Wahbah az Zuhaili himself is more inclined to the opinion of Imam Ghazali and Ibn Daqiq to be more careful in taking this principle because it requires thorough understanding and depth of *istinbath*. (Ariyadi, 2017)

CONCLUSIONS

From the above discussion, we can conclude that the methodology of establishing law from the perspective of problems is a series of stages, each of which has a specific method and purpose of implementation. The methodology paper that we produce is a process of preparing procedures starting from the formulation stage of the conditions or basic thinking, the assessment stage, the assessment stage of the process of changing material or raw materials, the legal determination stage, and the legal determination stage from the Problem Perspective. Future research will revise this methodology and supplement it with a flow chart of the law enforcement methodology along with more detailed case studies.

REFERENCES

- Ariyadi. (2017). Metodologi Istinbath Hukum Prof. Dr. Wahbah Zuhaili. *Jurnal Hadratul Madaniyah*, 4(I), 32–39.
- Hisbah, A., & Board, P. (2011). Penerapan Kaidah-Kaidah Hukum Islam dalam Istinbath Hukum (Analisis Kajian Dewan Hisbah/Persis). *Kanun: Jurnal Ilmu Hukum*, 13(3), 59–74. <https://doi.org/10.24815/kanun.v13i3.6252>
- Jalil, A. (2006). The Significances of Maslahah Concept and Doctrine of Maqasid (Objectives) Al- Shari ' Ah in Project Evaluation. *The Journal of Muamalat and Islamic Finance Research*, 3(1), 171–202.
- M., M. G. (2015). An Islamic Perspective on Halal Food and Pharmaceutical Products. *Tafsere*, 3(2), 90–102.
- Nawî, T. K. A. A., Syariah, F., Raden, I., & Palembang, F. (2013). Metode Penetapan Hukum Islam Menurut Al-Syâthibî (Suatu Kajian. *Al- 'Adalah*, XI(2), 205–221.
- Wijayant, R., & Kaukab, M. E. (2019). Istihalah Issue of Halal Food, Medicine, and Cosmetics. *Journal of Islamic, Social, Economics and Development*, 4(Mac 2019), 203–213.
- Zein, S. E. dan M. (2009). *Ushul Fiqh*.

