

The Need for Collective Ijtihad between the Fuqaha and Experts in Health Science and Modern Medicine: A Review

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Abstract--- *A Fatwa is an answer for rulings in Islam which encompasses rulings that are halal (permissible) or haram (prohibited), harus (neutral) or otherwise, all of which are based on the rulings of the Shariah which are the absolute will of Allah SWT. Fatwas that are issued must go through several steps in research which become the basis of issuing a fatwa. This is to ensure that the ruling given in the issued fatwa truly adheres to the Shariah. Fatwas may also change due to innovations in health sciences and modern medicine. For example, the use of eye drops such as Eye Mo does not nullify the act of fasting since the eyes are not 'exposed entrances' into the body. The similar ruling goes for the use of Kohl, (a type of eyeliner) as it does not relieve hunger nor does it quench thirst. Instead, it is applied for health-related benefits. A fatwa was issued that the use of medicine for Angina, which is administered by putting tablets of the medication under the tongue and the use of inhalers for asthmatic people does not invalidate the fast. Health sciences and modern medicine are related very closely to the issue of worship validation. The researcher carried out the study based on two main forms of research, which are; qualitative research and field research. The researcher also applied content analysis to identify the contents and meaning of documents such as the Fatwa Compilation of the National Fatwa Committee (NFC) and their counterparts in each state whether in written form or online. The discussion in this paper includes evaluation towards the concept and approach of collective ijtihad among the Fuqaha (Islamic jurists) as well as experts in medical science to ensure the accuracy of the Fatwas issued. Every ruling will undergo the process of istinbat² before the form of the ruling is finalized. The practice of issuing fatwas does not only depend on an understanding of rulings in the Shariah but also requires a precise understanding of issues related to health science and modern medicine. Thus, the answer to such rulings must undergo a process of collective ijtihad as a comprehensive approach to issue accurate rulings for questions that arise.*

Key words--- *Istinbat Fatwa, Collective Ijtihad, Medical Science, Fiqh in Health*

I. INTRODUCTION

Under the influence of the new world and its developments including vast advancements in science and technology (Hairudin Harun, 2004), almost all aspects in today's modern living has to evolve in line with the world's development. According to al-Baghdadi (1990), a successful *Mufti* is able to issue rulings in Islam using the accurate method of *istinbat* according to the usuli school of thought until a rational form of the ruling is achieved.

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Hence, the institution of *fatwa* is also affected by the phenomenon. Therefore, revolution and reformation in its implementation must be done to maintain the credibility and the authority of *fatwas*.

The need for *ijtihad* remains perpetual with the advent of new occurrences or happenings. The necessity of *ijtihad* is also due to the ever-changing conditions and situations of society that constantly develop and as long as the Shariah can be

suited in every time and place. Especially in this modern age, *ijtihad* possesses a higher necessity compared to the past. This is because, the changes that have happened in the era of globalization, as well as the developments in science and technology, have influenced community life (Nurnaningsih Nawawi, 2013). This situation is in accordance to the theory of change in Islamic jurisprudence, in which every ruling with no basis in divine scripture, is built upon *ijtihad* and may change over time (al-Zuhayli, 1998), place and condition, intention and *'urf* (norm) (al-'Alwani, 2003; Abu Sannah, 2004).

The importance and significance in improving understanding of *fiqh* in health and modern medicine in the society are founded on current and local realities. Health science and modern medicine are fields of study that bring about a critical impact on the change of rulings within aspects of worship and *munakahat* (Islamic family law). A necessity of today, collective *ijtihad* between the *fuqaha* and experts in the related fields has become an essential requirement so that the process of finding the *'illah*³ is done accurately/with more accuracy and strength to determine the ruling for issues on health science and modern medicine. In accordance with that, this article focuses on the aspect of requirement for the application of collective *ijtihad* in the *istinbat* of *fatwas* for issues connected to health science and modern medicine.

Issues on Health Science and Modern Medicine

Various new issues emerged due to the social change of the Muslim community in Malaysia. The change is a result of vast developments in science and technology. This has become the turning point towards the need for focused collective *ijtihad* on research and the *istinbat* of *fatwa* in handling contemporary questions that emerge in society. The author listed down several issues under health science and modern medicine as follows;

Table:1

No	Issue	Reference
1.	Breeding -In vitro fertilization (IVF) -Embryo Destruction	Anuar Zaini, (1999), Kemajuan S&T dan Kesannya Terhadap Perkembangan Hukum Islam Malaysia Masa kini, dlm. Hukum Islam Semasa, (<i>The Development of Science & Technology (S&T) and Its Effect Towards the Development of Islamic Law in Present-day Malaysia, in Contemporary Islamic Law</i>) Kuala Lumpur: APIUM.
2.	Human Cloning	Anuar Zaini, (1999), Kemajuan S&T dan Kesannya Terhadap Perkembangan Hukum Islam Malaysia Masa kini, dlm. Hukum Islam Semasa, (<i>The Development of Science & Technology (S&T) and Its Effect Towards the Development of Islamic Law in</i>

		<i>Present-day Malaysia, in Contemporary Islamic Law</i> , Kuala Lumpur: APIUM.
3.	Gene Technology -Detection of disease through DNA -Transgenic animal gene transfer	Anuar Zaini, (1999), <i>Kemajuan S&T dan Kesannya Terhadap Perkembangan Hukum Islam Malaysia Masa kini</i> , dlm. <i>Hukum Islam Semasa, (The Development of Science & Technology (S&T) and Its Effect Towards the Development of Islamic Law in Present-day Malaysia, in Contemporary Islamic Law)</i> , Kuala Lumpur: APIUM.
4.	Organ Transplantation	Abd. Jalil Borham, (1999), <i>Keperluan Ijtihad Terkini Mengenai Pindahan Organ Manusia</i> , dlm. <i>Hukum Islam Semasa, (The Need for the Latest Ijtihad Regarding Human Organ Transplantation, in Contemporary Islamic Law)</i> , Kuala Lumpur: APIUM. Hajjah Zainab Othman, (1998), <i>Pemindahan Organ</i> dlm. <i>Jurnal Penyelidikan</i> , bil 11, (<i>Organ Transplantation in Research Journal, no 11</i>), Putrajaya: JAKIM.
5.	Post Mortem Examination	Abd. Jalil Borham, (1999), <i>Keperluan Ijtihad Terkini Mengenai Pindahan Organ Manusia</i> , dlm. <i>Hukum Islam Semasa, (The Need for the Latest Ijtihad Regarding Human Organ Transplantation, in Contemporary Islamic Law)</i> , Kuala Lumpur: APIUM.
6.	Euthanasia	Mohd Daud Bakar, (1997), <i>Memahami Kaedah Hukum Islam Dalam Pendekatan Perubatan Masa Kini</i> , dlm. Alwi Mohd Yunus (ed.) <i>Islam Dan Perubatan, (Understanding the Methods of Islamic Jurisprudence in Current Medical Approaches, in Alwi Mohd Yunus (ed.) Islam and Medicine)</i> Kuala Lumpur: INMIND.
7.	Surrogacy	Mohd Daud Bakar, (1997), <i>Memahami Kaedah Hukum Islam Dalam Pendekatan Perubatan Masa Kini</i> , dlm. Alwi Mohd Yunus (ed.) <i>Islam Dan Perubatan, (Understanding the Methods of Islamic Jurisprudence in Current Medical Approaches, in Alwi Mohd Yunus (ed.) Islam and Medicine)</i> Kuala Lumpur: INMIND.
8.	Establishing Organ Banks	Mohd Daud Bakar, (1997), <i>Memahami Kaedah Hukum Islam Dalam Pendekatan Perubatan Masa Kini</i> , dlm. Alwi Mohd Yunus (ed.) <i>Islam Dan Perubatan, (Understanding the Methods of Islamic Jurisprudence in Current Medical Approaches, in Alwi Mohd Yunus (ed.) Islam and Medicine)</i> , Kuala Lumpur: INMIND.
9.	DNA transfer	Umar A.Janie, (2003), <i>Ilmu Pengetahuan Dan Teknologi Dalam Perspektif Pemikiran Islam</i> , dlm. <i>Menyatukan Kembali Ilmu-ilmu Agama Dan Umum, (Knowledge and Technology in The Perspective of Islamic Thought, in Reuniting Revealed and Non-revealed Knowledge)</i> , Yogyakarta: Sunan Kalijaga Press.
10.	Therapeutic Cloning Laws	Keputusan Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia tahun 2005 <i>(Edict of The Muzakarah (Conference) of the Fatwa Committee of the National Council for Islamic</i>

		<i>Religious Affairs Malaysia, 2005)</i>
11.	Sel Stem Research	Keputusan Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia tahun 2005 <i>(Edict of The Muzakarah (Conference) of the Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia, 2005)</i>
12.	Sperm Banks	Keputusan Fatwa Kebangsaan, (1981), Putrajaya: JAKIM <i>(Edict of the National Fatwa Committee, (1981), Putrajaya: JAKIM)</i>
13.	Test tube babies	Keputusan Fatwa Kebangsaan,(1981), Putrajaya: JAKIM <i>(Edict of the National Fatwa Committee, (1981), Putrajaya: JAKIM)</i>
14.	Abortion	Keputusan Fatwa Kebangsaan, (1990)Putrajaya: JAKIM <i>(Edict of the National Fatwa Committee, (1990), Putrajaya: JAKIM)</i>
15.	Blood Donations & Use of Muslim-blood for non-Muslims & vice versa	Keputusan Fatwa Kebangsaan, (1983), Putrajaya: JAKIM <i>(Edict of the National Fatwa Committee, (1983), Putrajaya: JAKIM)</i>
16.	Use of Direct Current Shock device	Keputusan Fatwa Kebangsaan, (1983), Putrajaya: JAKIM <i>(Edict of the National Fatwa Committee, (1983), Putrajaya: JAKIM)</i>
17.	Highly Purified Porcine Insulin Injections	Keputusan Fatwa Kebangsaan,(1983), Putrajaya: JAKIM <i>(Edict of the National Fatwa Committee, (1983), Putrajaya: JAKIM)</i>
18.	The Use of Agina Medication for Fasting Patients	Keputusan Fatwa Kebangsaan,(1984), Putrajaya: JAKIM <i>(Edict of the National Fatwa Committee, (1984), Putrajaya: JAKIM)</i>
19.	Rubella Vaccinations	Keputusan Fatwa Kebangsaan,(1988), Putrajaya: JAKIM <i>(Edict of the National Fatwa Committee, (1988), Putrajaya: JAKIM)</i>
20.	Hepatitis B Immunisations	Keputusan Fatwa Kebangsaan,(1988), Putrajaya: JAKIM <i>(Edict of the National Fatwa Committee, (1988), Putrajaya: JAKIM)</i>
21.	Measles, Tuberculosis, Diphtheria, Tetanus, Polio and Whooping Cough Immunisations	Laman Web e.fatwa www.Islam.gov.my <i>(The e-Fatwa Website www.Islam.gov.my)</i>
22.	<i>Susuk Norplant</i> System in the Family Planning Programme	Laman Web e.fatwa www.Islam.gov.my <i>(The e-Fatwa Website www.Islam.gov.my)</i>
23.	The Use of Skin Grafting	Laman Web e.fatwa www.Islam.gov.my <i>(The e-Fatwa Website www.Islam.gov.my)</i>
24.	The Use of Follicle-Stimulating Hormone-P (FSH-P or swine-based brain matter) to increase livestock	Laman Web e.fatwa www.Islam.gov.my <i>(The e-Fatwa Website www.Islam.gov.my)</i>
25.	Combining two Obligatory Prayers due to having to undergo treatment for chronic illness	Abdullah Abdul Rahman, (2001), dlm. Jurnal Penyelidikan Islam, bil 14, <i>(in Journal of Islamic Research, no 14)</i> , Putrajaya: JAKIM.
26.	The Use of Viagra Pills	Fatimah Saad, (1999), Penggunaan Pil Viagra Dan

		Hukum Mengenaunya, dlm. Jurnal penyelidikan Islam, bil 12, (<i>The Use of Viagra Pills and its Ruling, in Journal of Islamic Research, no 12</i>), Putrajaya: JAKIM.
27.	The Use of Period Delay Tablets during Ramadan	Yusuf Al-Qaradhawi, (1988), Hadyul Islam Fatawi Mu'asirah, Beirut: Dar al-Ma'rifah
28.	The Ruling for Injections during Ramadhan	Yusuf Al-Qaradhawi, (1988), Hadyul Islam Fatawi Mu'asirah, Beirut: Dar al-Ma'rifah
29.	The Ruling of <i>Fasakh</i> and the development of Medical Science	Azhar Abdul Aziz, (2002), Peranan Sains Perubatan Dalam Menentukan Hukum Keharusan Fasakh Kerana Penyakit, Disertasi Sarjana Syariah, (<i>The Role of Medical Science in Detemining the Neutral Ruling of Fasakh Due to Illness, Dissertation in Masters of Shariah</i>) Kuala Lumpur: APIUM.
30.	Hair Dyes	Cawangan Syariah, (2002), Mewarna Rambut Menurut Pandangan Islam, dlm. Jurnal penyelidikan Islam, bil. 15, (<i>The Dyeing of Hair According to Islam, in the Journal of Islamic Research, no 15</i>), Putrajaya: JAKIM.
31.	The Use of Assisted Reproductive Technologies to Achieve Pregnancy	Norliah Sajuri, (2003), Percantuman Benih Untuk Mendapatkan Zuriat Melalui Kaedah Membantu Kehamilan (Assisted Reproductive Technologies), dlm. Jurnal Penyelidikan Islam, bil 16, (<i>The Combination of Human Gametes To Gain Offspring Via Assisted Reproductive Technologies, in the Journal of Islamic Research, no 16</i>), Putrajaya: JAKIM.
32.	Abortion for Thalassaemia Patients	Norliah Sajuri, (2003), Percantuman Benih Untuk Mendapatkan Zuriat Melalui Kaedah Membantu Kehamilan (Assisted Reproductive Technologies), dlm. Jurnal Penyelidikan Islam, bil 16, (<i>The Combination of Human Gametes To Gain Offspring Via Assisted Reproductive Technologies, in the Journal of Islamic Research, no 16</i>), Putrajaya: JAKIM.
33.	Sperm Donation	Siti Zubaidah Ismail, (1998), Pendermaan Sperma Menurut Perspektif Islam, dlm. Jurnal Syariah, jld. 6, (<i>Sperm Donation According to the Islamic Perspective, in the Journal of Shariah, (6th ed)</i>), Kuala Lumpur: APIUM.
34.	<i>Fatwas</i> on Cloning	Noor Naemah, (2004), Fatwa-fatwa Klon, dlm. Jurnal Fiqh, no.1, (<i>Fatwas on Cloning, in the Journal of Fiqh, no.1</i>), Kuala Lumpur: APIUM.
35.	Hormone Treatment for Menopausal Women	Anisah Ab. Ghani, (2004), Fatwa Mengenai Hormon bagi Wanita Menopausal Dan Darah Yang Keluar Semasa Mengambil Hormon, dlm. Jurnal Fiqh, no. 1, (<i>Fatwa on Hormone Treatment for Menopausal Women and the Blood Produced During Hormone Intake, in the Journal of Fiqh, no.1</i>), Kuala Lumpur: APIUM.

36.	The Use of Botox	Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal ehwal Ugama Islam Malaysia, kali ke-74, pada 25-27 Julai 2006, dlm. Buletin JAKIM, bil 86, Putrajaya: JAKIM. <i>(The 74th Muzakarah (Conference) of the Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia, on 25-27 July 2006, in the JAKIM Bulletin, no. 86, Putrajaya, JAKIM)</i>
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The chosen current issues mentioned above aims to clarify how important it is to refer to experts in health science and modern medicine within the framework of *istinbat* for *fatwas*, especially in Malaysia. Undeniably, the current developments of today have led to numerous issues which require new rulings to be issued. Those issues prove the necessity and the importance of collective *ijtihad* between the *fuqaha* and experts in medicine and health to provide accurate and credible rulings.

The Concept & Approach of Ijtihad

The emerging variety of legal issues related to health and modern medicine is a direct outcome of scientific and technological development. As a result, several new rulings emerged regarding current issues that were not discussed in detail by classical Islamic scholars. The dynamism of science and technology has affected the change in Islamic jurisprudence and the issuing of rulings which then done more effectively.

Several *fatwas* on contemporary *munakahat* implicated by health science and modern medicine are as follows (JAKIM, 2013)

1. The Ruling of Using DNA to Determine the Biological Status of Children
2. The Rationale of Making the Pre-Marital HIV Screening Test Compulsory
3. The Ruling of Using Sex Instruments for Sexual Intercourse
4. The Use of In Vitro Fertilisation to Gain Offspring
5. Family Planning Pills
6. The Ruling of Fasakh due to Cases of Erectile Dysfunction

The views of Islamic jurists during the golden age of Islam were the pinnacle of thought in the said field and are highly valued. However, the development of science and technology, specifically Health Science and Modern Medicine is a challenge against an effective and accurate process of *ijtihad*. The fact was emphasized by Mahmood Zuhdi (2001) in which the application of Islamic jurisprudence, according to history has proven that the possibility of reforming rulings can be done through the approach of *ijtihad* that takes into account the local and current needs.

In principle, the process of *ijtihad* must have a certain set of conditions and criteria to ensure the synchronization of both the Shariah and the greater good of the *ummah*:

- i. To ensure the preservation of the Islamic Shariah and its flexibility in order to suit any time and place.
- ii. To celebrate desires and *maslahah* (the greater good).

- iii. To eliminate loose ends of current man-made laws.
- iv. To synchronize the Quran and Sunnah with the *maslahah*.
- v. To celebrate or accept the situation of today.

Aside from that, there are also several guidelines for *ijtihad* within the framework of contemporary times which must be observed, according to al-Qaradawi (1996) those guidelines are:

- i. There is no *ijtihad* without the expending of energy or effort.
- ii. There is no room for *ijtihad* for matters that are *qat'iyyah* (definitive).
- iii. Issues that are *zanni* (speculative) should not be made *qat'i* (definitive) through means of *ijtihad*.
- iv. Connecting the fiqh and hadith.
- v. Avoid burdening people.
- vi. Celebrating something new yet beneficial.
- vii. Avoid from neglecting the soul (spirit) of the times and its needs.
- viii. Shifting to *ijtihad jama'i* (collective *ijtihad*) to realize the principle of 'Shura' in a true way.
- ix. Being open minded over errors done by the *mujtahid*.

Today if we observe the proses of forming academic research, every study done must have a connection with the problem which has arisen, hence, the researcher will find the best solution to overcome the said problem (Sabitha Marican, 2005). To find the best solution for a problem an accurate method of research is crucial. Based on this principle, a form of research process is also involved in the process of issuing *fatwa*. Both of them (issuing *fatwa* and conducting academic research) began from the need to address problems and are ultimately solved via an extensive research method which is called as *ijtihad* and is translated in the method of *istinbat* of *fatwa*.

The *ijtihad* approach includes:

1) Comparative and selective *ijtihad* by reflecting the *ijtihad* outcome of classical Islamic jurists along with the *daleels* (evidence) which has the classical *fiqh* tradition, and make comparisons between them.

The process of selecting a stronger opinion (*tarjih*) must be done effectively. The criteria used in the selection of a stronger opinion are:

- i. The opinion should be more suitable with the lives of people today.
- ii. The opinion should bring about more *rahmat* (mercy) towards humankind.
- iii. The opinion should be nearer to the concessions allowed by the Shariah.
- iv. The opinion should prioritize the existence of the Shariah, bring about *maslahah* for His creations and distance them from harm.

2) Constructive Innovative *Ijtihad*, which is the issuing of rulings on various new complications that are unknown to classical Islamic Jurists. This is due to several factors which include;

- i. The matter of said ruling has not yet existed in the past, or
- ii. A familiar matter but contemporary Islamic jurists have possessed a new opinion which has never been mentioned by any *fuqaha* in the past.

Hence, it is a precondition for modern-day *fuqaha* to be well-versed in knowledge related to the issue at hand, in addition to prerequisite knowledge in *ijtihad*.

3) Collective *Ijtihad*, Collective *Ijtihad* is indispensable as the limitation of one's knowledge is parallel with the ever-tightening specialization of today's academic disciplines. Therefore, *ijtihad fardi* or *ijtihad* which is done individually is rather inadequate to produce a ruling which can actualise the greater good of the collective *ummah*.

This is imperative because answers of such nature will continuously guide society to accept rulings issued by *fatwa* with full confidence. Al-Qaradawi describes this importance by likening the mufti as a doctor who treats their patients. If the doctor does not possess a deep understanding of matters concerning medicine and treatment, this will definitely worsen the patient's condition (al-Qaradawi, 1988). The same goes for a Mufti who gives a *fatwa* without deeply understanding the issue faced by the parties involved, the *fatwa* will definitely cause difficulty for them.

It is difficult for scholars of Islamic jurisprudence to issue an accurate ruling without the aid of medical experts. Islamic jurists must first listen to the views given by medical experts, specifically, surgeons regarding information about the method and the mechanism of organ transplantation (Hajjah Zainab Othman, 1988 and Abd. Jalil Borham, 1999). After understanding organ transplantation in detail, only then the discourse on the matter according to *usul al-fiqh* (Islamic jurisprudence) to determine the ruling may begin. Thus, collective *ijtihad* in this day and age is more relevant and significant in accordance with contemporary developments as well as modern discipline specialization.

II. CONCLUSION

The reality of human life will always develop in accordance to the intellectual development of humanity itself. The societal change caused by globalisation is seen at a macro-level which includes the ideological, educational, sociocultural, economic and political aspects. This change is heavily influenced and affected by the rapid development of science and technology. Hence, matters regarding *fiqh* in health and modern medicine are also directly involved. Matters concerning these two disciplines also create issues in Islamic jurisprudence which are more contemporary and require answers which are consistent with its flexibility and are relevant throughout the ages. The need for an accurate and clear *istinbat* of *fatwa* requires the views of experts in the related fields.

The tradition of *istinbat* of *fatwa* must be strengthened through the approach of collective *ijtihad* which is modified to parallel the developments and needs of today. Everything is rapidly developing. The complexity of life goes beyond the aspects of 'physical' or 'material' change. In fact, the change in intellectuality and spirituality are also affected. The institution of *fatwa* must always be prepared to conduct collective *ijtihad*, which is the inclusion of *fuqaha* and experts in health sciences and modern medicine in the effort to *istinbat* a *fatwa* for matters concerning the two fields.

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