

**Contemporary *Ijtihad* on Issues of *Istihalah*: A Comparative Study Between *Fatwas* by Middle East Jurists and Malaysian National Fatwa Council**

Saadan Man

University of Malaya

Address:

Department of Fiqh and Usul

Academy of Islamic Studies

University of Malaya

50603 Kuala Lumpur

MALAYSIA

Email:

[saadan@um.edu.my](mailto:saadan@um.edu.my)

[saadan69@gmail.com](mailto:saadan69@gmail.com)

Tel:

+60379676027 (O)

+60377727376 (H)

+60193965683 (HP)

Fax:

+60279676141

**Abstract**

Islamic consumerism (*al-fiqh al-istihlaki* or *istihlakiyyat al-Islamiyyah*) is regarded as among the most popular areas of *ijtihad* nowadays, especially in terms of issues regarding *halal* and *haram* of food and beverage products, pharmaceuticals, cosmetics, toiletries and other external use items. This is due to the fact that in the rapid development of industries related to those products, there is an important issue that need to be alert, i.e. the mixing between clean and unclean materials (*najasa*), especially those elements originated from pigs, alcohol and others which are impure according to Islamic law of purity (*taharah*). In discussion on the issue of mixing between clean and unclean materials, the jurists regularly refer to the concept of *istihalah* as a choice of solution.

*Istihalah* is a concept that refers to change of a substance from its original state to a new material that is different from the original material in terms of its substance, attribute as well as its name. A simple example of the change of a substance to another substance that can be frequently found in the classical *fiqh* literatures is liquor which normally transforms to vinegar. This transformation process which is called *istihalah* is regarded as lawful method (*syar`i*) and the result of the change i.e. vinegar is considered *halal*.

However, in determining the rulings on various products mixed with unclean elements as mentioned above, the jurists used to differ in their *ijtihad*. It is known that the Middle East jurists generally tend to widely acknowledge the applicability of *istihalah* on most cases. Contrarily, the jurists of Malay world, especially in Malaysia are quite strict in their *fatwa* on the issue of *istihalah* and this can be prevalently found in most

*fatwas* issued by the Malaysian National Fatwa Council (MNFC) on this particular issue.

This paper attempts at analyzing the *ijtihad*s in form of *fatwas* by both jurists of the Middle East religious authorities and MNFC as comparison on this issue. This will include comparison on the methodologies and other factors that are taken into their consideration in determining the ruling. Data of this study are mainly acquired from funded research grant sponsored by University of Malaya (RG421-12HNE) which is conducted from 2012 until 2014. Among the main finding of this study is: the difference of *fatwas* on this issue are mainly triggered by jurists' different interpretations of the concept of *istihalah*.

**Keywords:** *Ijtihad, Istihalah, Islamic Consumerism, Fatwa in the Middle East and Malaysia.*

## Introduction

Halal industry has been one of the most rapid growth industries in the world nowadays. It generates not only multibillion dollars income for the players, but has also resulted in a global phenomenon in trading world and struck unexpectedly to nations such as Latin America and African countries. Notwithstanding this fact, halal industries is still dwarf in the giant world of global market and hence, Muslim society are still facing various issues regarding halal industries. One of the never ending issue encountered by Muslim nowadays in this industry is the mixture of impure substances (*najasah*) in “halal” foods, drinks as well as pharmaceutical products and other external usage goods. For both local and imported products, if there are no confirmation on their halal status, Muslim have a strong reason to doubt those products.

Such impure substances that are mixed in those products may be in form of elements extracted from pigs, such as gelatine, porcine, collagen, glycerine etc.; or elements from liquor/ alcohol; or they may also be in form of elements extracted from human excrements. The mixture of such impure elements in various products is regarded by most Muslims as threats for halal industry as their presence are hardly to trace without being meticulously tested in laboratory and frequently appear on labels as unknown codes and scientific names. The question is: are the elements which are derived from impure substances, but then went through a long chemical processed and lastly produced in new forms and new names, still regarded as impure and haram in the perspective of Islamic rulings? In answering this important question, the jurists frequently refer to the theory of changing of substance which is known in Islamic jurisprudence as *istihalah*. This concept has been significantly discussed by previous and current jurists in their *ijtihad* on issues of mixture of halal and haram materials.

This paper attempts to discuss this issue and analyze the jurists’ standpoints and their arguments in addressing the application of this concept in halal industry.

### The Concept of *Istihalah*

*Istihalah* is an Arabic word literally means change or transform (Sa`di Abu Jayb). Technically, *istihalah* is defined by classical jurists as a transformation of a substance from its original condition or property to a new condition that does not return it to the original nature of the substance. (Qal`ahji. 1988; al-Husayni, n.d.). There are a few other terms which are always used interchangeably with *istihalah* in the works of previous jurists, namely *istihlak* and *inqilab al-`ayn*.

In the context of contemporary usage, scholars use this term to refer to a transformation process of a particular substance which is originally impure or haram, to a new state or condition which is pure and halal. The transformation process may take place naturally or by using certain intermediaries such as chemicals and other methods to accelerate the process. (Nazih Hammad, 2004, Wahbah al-Zuhayli, 1997).

From above definitions we can conclude that *istihalah* is a change of an impure substance or something haram from its original property to a state of pure or halal which is totally different in terms of attributes, form and name. In summary, the

process of conversion has resulted in a new kind of substance that is completely different from what it was before (Qadhafi, 2008).

### The Origins of the Concept of *Istihalah*

The notion of *istihalah* is derived from the basic sources of *shari`ah* itself, i.e. the Quran and the Sunnah of the Prophet. Allah says in the Quran (al-Nahl: 66):

وَإِنَّ لَكُمْ فِي الْأَنْعَامِ لَعِبْرَةً لَتُسْفِيكُمْ مِمَّا فِي بُطُونِهِ مِنْ بَيْنِ فَرْثٍ وَدَمٍ لَبْنَا خَالِصًا سَائِغًا  
لِلشَّارِبِينَ

And indeed, in the cattle, there is a lesson for you. We give you to drink of that which is in their bellies, from between excretions and blood, pure milk; palatable to the drinkers..

This verse clearly describes how the milk produced by livestock is pure and clean even though it is placed between stool and blood, two substances which are haram to be eaten. Milk is produced from the blood which is also originated from food eaten by the animal. The food is then processed and partially become meat, blood and milk, while the rest become excrement. This illustrates the natural changing process of a substance which resulted in different kinds of substances.

There are also a lot of Prophet's Sunnah that guide to the use of *istihalah* concept, such as in case of liquor that turns to vinegar; deer blood that turns to musk, and animal skin after it is cleaned. In each case the Prophet said:

نَعْمَ الْأُدْمُ أَوْ الْإِدَامُ الْخَلُّ

The best food is vinegar. (Muslim: 5245)

أَطِيبَ الطَّيِّبِ الْمَسْكُ

The best perfume is musk. (Ahmad: 11208; Muslim: 5773)

هَلَا أَخَذْتُمْ آهَابَهَا - جِلْدَهَا - فَدَبِغْتُمُوهُ فَانْفَعْتُمْ بِهِ؟ فَقَالُوا أَلَمْ يَمِيتَهُ، فَقَالَ النَّبِيُّ (ص) إِنَّمَا  
حَرَامُ أَكْلِهَا

(When the Prophet saw a dead sheep on the side of the path) "why do not you take its skin, clean it and then you can use it? The companions said, "Indeed it has become a carcass." Then the Prophet said, "surely it is only haram to eat it. (Al-Bukhari, 1492)

It can be concluded that the idea of *istihalah* is a concept authorized by the textual evidences, i.e. the Quran and the Sunnah and thus, it has a strong basis that can be adopted in relevant cases.

## The Objective (*Maqasid*) of *Istihalah*

*Istihalah* is a theory formulated by jurists' *ijtihad* based on evidences from the Quran and the Sunnah. The objective of this theory is to determine the halal status of a substance that has gone through the process of transformation and then totally changed from its original state of impure to a clean state. This theory is usable by jurists in their *ijtihad* and would benefit Muslim society especially in choosing their halal food, drinks, medicine etc.

### Analysis on Jurists Perspectives

Before we begin discussion on different standpoints of contemporary jurists on *istihalah*, it is noteworthy to review opinions of previous scholars on this issue. Though they were in agreement on the fact that *istihalah* is one of purification process of impure substance, they differed in some aspects of its application. Some jurists perceived that the process of *istihalah* can be only applied on certain cases, while some other believed that it can be applied on every case that involved the element of change of substance. The first group seemed to be strict in applying this concept whilst the second group applied this concept in a broader sense.

#### a. First Standpoint

The first group which consists of jurists of Syafi'i and Hanbali *madhhabs* and Abu Yusuf from Hanafi *madhhab* perceived that impure substance would not be clean by change of attributes only, but it has to be confirmed by clear textual evidences i.e. from the Quran or the Sunnah. If there are no clear textual evidence, no *istihalah* is regarded to have taken place. Hence, according to this group, the transformation of a substance from unclean state to a clean or halal state is applied in three cases as mentioned before, i.e. liquor that turns to vinegar, deer blood that turns to musk, and animal skin (except from pig and dog) that has been cleaned. (Misy'al: 2007). This group of scholars also opined that in case of liquor turns to vinegar, there is no *istihalah* if the process is unnatural which means that it is intentionally accelerated by using any kind of intermediaries. (al-Nawawi, 1997; Ibn Qudamah 2004)

The basis of this viewpoint is the concept of *ihdiyati* (precaution), i.e. a concept that is very familiar in the Syafi'i *madhhab*. (Qadhafi 2008).

#### b. Second Standpoint

The second group of jurists which consists of the Hanafis, Malikis, Zahiris, Zaydis, Ibn Taymiyyah, Ibn al-Qayyim and al-Shawkani pointed out that *istihalah* is a process of transformation of an impure substance to the pure one whether it happens naturally or unnaturally, i.e. by using any kind of intermediaries such as mixing with other materials or using certain action such as burning and so on. Among the examples of *istihalah*, other than what have been stated in the Sunnah is carcass that turns to salt when any kind of animal fell into the pool of salt (*mamlahah*) died and then decayed in it. Animal feces which is burned and turned into ashes is also one of the examples of *istihalah*. (Misy'al 2007).

The basis of this standpoint is *qiyas*. For them any kind of substance transformation from one to another can be equalized to transformation of liquor into vinegar. Ibn Taymiyyah says, "If the liquor which is the mother of all impure substances (*umm al-khaba'ith*) can transform into something pure i.e. vinegar, we must accept that the lower degree of impure substances can also transform to something pure. (Ibn Taymiyyah. 1977).

Ibn al-Qayyim asserts that something clean can transform into unclean and it is impure according to Islamic ruling. Likewise something unclean can transform to something clean as it is a nature, and thus it is pure in Islamic point of view.(Ibn al-Qayyim n.d.)

According to this viewpoint, Islamic ruling on something impure is based on the nature of impurities found in that substance. When the impurities disappear by the process of transformation, it becomes clean. (Qadhafi 2007).

### **Contemporary Ijtihad on Issues of *Istihalah***

The contemporary jurists frequently refer to the concept of *istihalah* and using it in formulating their ijtihad on relevant issues such as the issue of using substances derived from pig, alcohol, liquor and other impure elements in food, pharmaceutical and external use products. Among their *ijtihad*s are as follows:

#### **a. "Impure" Substances in Food**

The fast growth of science and technology nowadays witnesses a huge development in food industry in terms of the variety of food ingredients and its processing technologies. Various materials are used as ingredients to vary the food products with different tastes to meet the needs of consumers. These include the use of impure materials extracted from pig sources (such as gelatine, porcine, glycerine etc) or other halal animals which are not slaughtered according to shari`ah law, or alcohol or bacteria derived from human feces and other, as additives, emulsifier, preservative, seasonings and so on in food products such as chocolates, ice cream, cakes, biscuits, bread and etc.

For the jurists, these kind of food if mixed with raw impure materials such as pig fat or pork, they are considered impure and thus haram to be taken as the *istihalah* process did not happen in this case. It is just a case of mixture of raw material. However, if it is mixed with something that has gone through the process of *istihalah* such as gelatine, porcine, bovine etc and others that are derived from impure substances, most jurists consider it as pure and halal.

Among the jurists who are on this viewpoint are Yusuf al-Qaradawi, Wahbah al-Zuhayli, Nazih Hammad, Taha Jabir al-Alwani, Muhammad al-Hawari dan Syeikh Muhammad Ali al-Hanuti from the Middle East. This is also the standpoint decided by scholars at the 8<sup>th</sup> Symposium of Islamic Management on Medicine 1995. This standpoint are in accordance to the second group of previous jurists.

**b. “Impure” Substances in Medicine**

This includes insulin extracted from pig pancreas for diabetic treatment, gelatine as drug capsules and alcohol in cough syrup and so on. According to the jurists of the Middle East, as decided in the 1995 Islamic Jurisprudence Seminar on Medicine, gelatine produced through the process of transformation of collagen from pig bones, skin or any internal organs by using chemical process is pure and halal. The process of *istihalah* is considered to have taken place and thus it transformed the impure substance into the pure one. (Nazih Hammad, 2004; Muhammad `Abd al-Salam, 1995; Muhammad al-Hawari, 1995).

Al-Ghananim states in his work *al-Istihalah wa Ahkamu-ha fi al-Fiqh al-Islami* that among scholars who agree on the point the concept of *istihalah* should be used in determining the halal status of the modern medicine that mixed with impure substance are Syaykh Mahmud Syaltut, `Abd al-Karim Zaydan, `Abd al-Majid al-Salahin dan `Abd Allah al-Tarifi (al-Ghananim 2008).

**c. “Impure” Substances in Toiletries and Cosmetic Products**

Similar to the cases of foods and medicines, impure substances are also regularly used in products of cosmetic and toiletries, such as lipstick, moisturizer, conditioner, shampoo, soap and others. This has been discussed by scholars in the 8<sup>th</sup> Symposium of Islamic Management on Medicine in 1995 and they concur to the view that such products which contain substances extracted from impure sources and went through chemical process until it completely become another substance are considered pure and halal to be used. However if it did not go through the process of *istihalah*, it is impure and haram. (al-Zuhayli: 2004).

**Ijtihad on Cases Relevant to *Istihalah* in Malaysia**

Generally, *ijtihad* in Malaysia is based on principles and methodologies of Syafi`i *madhhab* as Muslims in Malaysia subscribe to this *madhhab* since the advent of Islam in Malaya. However there are some exception where other *madhhabs*' standpoints are also adopted especially in cases that relate to public interests. In this context of application of *istihalah*, most fatwas issued by the Malaysian National Fatwa Council (MNFC), i.e. the most reputable institution that consists of all state Muftis, selected religious scholars, academicians and experts are based on the Syafi`i *madhhab* principles. Among them are as follows:

- i. In 1981, the MNFC issued a fatwa stating that gas produced from the process of burning the pig's excrements is impure.
- ii. On the same year, the MNFC in their fatwa stated that fertilizer made from pig's excrements are impure at highest level (*najās mugahllazah*), but using it for plants is reprehensible (*makruh*).
- iii. In 1983, the MNFC issued a fatwa on the permissibility of using highly purified insulin for diabetic treatment. This permissibility is based on the principle of *darurah*.

- iv. In 1999, a fatwa issued by the MNFC stated that food and drink made by the process of biotechnology using pig's DNA is impure and haram.
- v. The MNFC in 2006 decided that cosmetic products made from the mixture of materials taken from impure animals are impure and haram.
- vi. Regarding an issue of feeding the fish in pond with impure food, the MNFC in 2006 decided that fish is considered haram to be eaten.
- vii. In 2012, the MNFC issued a fatwa regarding the halal status of Luwak coffee but with condition that the coffee beans need to be clean first before processing.
- viii. On the same year the MNFC issued a fatwa on bone china made from mixture of pig bone ashes or ashes of cow bone not slaughtered according to Islamic law. They decided that the process of *istihalah* has not taken place and thus the use of bone china made from those sources are haram.

From above fatwas, it is clearly seen that the MNFC has adopted the principle of the Syafi'i *madhhab* with regard to the issue of *istihalah*. Compared to the *fatwas* of the jurists of Middle East, the MNFC *fatwas* on this issue seem to be more stringent.

## Conclusions

The process of *istihalah* is a natural phenomenon that can be utilized by human beings. Nothing in this world is made Allah without any use. Men can utilize everything that are made for them accordingly. However, the methods to use them should be in accordance with the principles of Shari'ah. This is what is being done by the the jurists even if they have differing views in terms of defining the standard of *istilahah*. Difference of opinion is a normal in juristic matters as the jurists differs in adopting *ijtihad* methodology and this has made Islamic jurisprudence develop as can be seen throughout the history of Islamic law.

Whether the fatwa is seen "loose" or "tight", the jurists have taken every aspects of the issue into account. As long as their *ijtihad* does not deviate from its methodologies and does not break the principles of Shari'ah, then it is acceptable. Perhaps it is seen that the Middle East jurists are somewhat lenient in their fatwa regarding issues of *istihalah*, and the Malaysian jurists are stringent in this case, but we must bear in mind that they have considered all aspects meticulously including the textual evidences, reality of local society, public interest and so on. When the conditions differs, so does the judgement.

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