Ethical decision making in medicine through Islamic ethico-legal deliberation

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This article conveys the Islamic interpretive-evaluative maxims of problem solving to medical ethics, taking the issue of sex assignment surgery (SAS) for infants with disorders of sex development (DSDs) or intersex as a case study. The main objective is not to proffer an Islamic legal rule on the issue examined, but to converse problem-solving maxims within the matrix of Maqasid al-Shariah through which such moral dilemmas in medical field, particularly can be revised and resolved. Indeed, Maqasid al-Shariah reflects the holistic view of Islam and integrated code of life and its goals encompasses the whole life, individual and society; in this world and the hereafter. Alongside with Qur'an and hadith, a number of bioethical questions can be discussed and evaluated on the maqasidic scheme of benefits and harms. Any practice which overweighing benefits is considered permissible, meanwhile those overweighing harm is considered prohibited. The case of SAS for newborns with DSDs for instance, affects the overall future livelihood of those affected infants or individuals and the process of decision making seemed to be very complex since the time of making decision, in some cases, has to be done during the early age of those individuals for some emergency problems so as to avoid future medical problems. The decision making must consider the amount of benefits and harms to the individuals, taking into account, their future wellbeing.

Keywords: sex assignment surgery (SAS), ethical decision making, Maqasid al-Shariah, Intersex, Islamic interpretive-evaluative maxims

I. INTRODUCTION

In countries where religion plays an important role in society and everyday lives’ practices, the engagement of religious consideration in every professional practice and decision making seemed to be very significant. In fact, many Muslims integrate their religion in almost every aspect of their lives. They practice the divine teachings in the Qur’an and traditions of the Prophet, believing that their actions are very much responsible and subject to definitive judgement.  

Malaysia, particularly in the Muslim society, some decision makings in medical practices need to be evaluated from the Islamic point of view especially for some cases which related to the overall welfare of the affected individuals as Muslims (Mohamed & Nor, 2010). In fact, Islam is a huge influence for both Muslim and non-Muslim as an official religion since 1970 in line with a broader phenomenon of Islamic revivalism with more assertive force (Al Attas, 1995; Nagata, 1982). The role of fatwa (Islamic legal verdicts) which is endorsed by JAKIM, the governmental department, in giving a guidelines for muslims in many affairs of life (JAKIM, 2007). Since Malaysia is multireligious county where the majority is Muslim (DOS, 2000), there are many affairs in the country which involved a mutual interaction between people with different religion and they need to concern and sensitive about the needs and concerns of Muslim in various aspects. Therefore, fatwa not only affect muslim, but also non-muslim in the country.

This article conveys the Islamic interpretive-evaluative mechanism to analyze issues in medical ethics, taking the issue of sex assignment surgery (SAS) for infants with disorders of sex development (DSDs) or intersex as a case study. The main objective is not to proffer an Islamic legal rule on the issue examined, but to converse problem-solving maxims within the matrix of Maqasid al-Shariah through which such moral dilemmas in medical field, particularly can be revised and resolved. Indeed, Maqasid al-Shariah reflects the holistic view of Islam and integrated code of life and its goals encompasses the whole life, individual and society; in this world and the hereafter.

Alongside with Qur’an and hadith, a number of bioethical questions can be discussed and evaluated on the maqasidic scheme of benefits and harms. Any practice which overweighing benefits is considered permissible, meanwhile those overweighing harm is considered prohibited (Bouzenita,

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1 Qur’an, Surah At-Tur: verse 21

2 Qur’an, Surah An-Nisa: verse 85
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