CULLING OF STRAY DOGS AS A MEAN TO ELIMINATE RABIES TRANSMISSION: AN ANALYSIS FROM MALAYSIAN AND ISLAMIC LAW PERSPECTIVE WITH SPECIAL REFERENCE TO ḤIFZ AL-NAFS (PROTECTION OF LIFE)

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Abstract

This paper aims to examine the position of culling of stray dogs during the 2015 rabies outbreak in Malaysia as a measure to eliminate rabies transmission from the perspective Malaysian legal framework and Islamic law with special reference to ḥifz al-nafs (protection of life). For that purpose, this paper discusses the Malaysian law and policy pertaining to rabies and rabies control as stated in two Malaysian statutes, namely Animals Act 1953 (Act 647), Animals (Amendment) Act 2013 (Act A1452) and Prevention and Control of Infectious Diseases Act 1988 (Act 342). It further analyses the position of culling of stray dogs in eliminating transmission of rabies from the Islamic law perspective by applying the concept of maṣlaḥah mursalah (consideration of public interest) and sadd al-dharāʾiʿ (blocking the means) in order to analyze the measure within the framework of maqāṣid al-Shariʿah (objectives of Sharīʿah) in general, and ḥifz al-nafs (protection of life) in particular. In the light of these objectives, it also evaluates the position of culling of stray dogs by outweighing the situation when the life of human was in conflict with the life of animals (i.e. stray dogs) using the Islamic legal maxim. This paper concludes that the position of culling of stray dogs as a measure in eliminating rabies transmission is permissible (mubah) in order to protect the public interest and to remove hardship in the society based on the evaluated determinant factors within the determined time scope, that are: i) the Malaysian experience and condition during the rabies outbreak; ii) the shortage of rabies vaccine in Malaysia during the outbreak; iii) the vital nature of the rabies virus; iv) the nature and habit of stray dogs as the main host of rabies virus; v) the nature of the conflicted harms between the harm to human and harm to stray dogs. It further concludes that the measure is important to protect the public health which consequently significant to achieve the social harmony.

Keywords: Infectious disease control, maqāṣid al-Shariʿah, maṣlaḥah mursalah, public health, sadd al-dharāʾiʿ
INTRODUCTION

The emergence of infectious zoonotic viral diseases becomes one of global health problems as humans has directly or indirectly contacted with animal in the ecosystem. The change in the environment, human behavior and habitat are identified as the factors led to the transmission of zoonotic disease from wildlife, livestock and domestic animal to human (Wang & Crameri, 2014). Among the examples of the zoonotic diseases brought by virus communicable from animal to human are rabies, avian influenza (bird flu), Influenza A (H1N1), Crimean-Congo hemorrhagic fever, Ebola and Rift Valley fever (World Health Organization, n.d.).

As one of the global communities, Malaysia faced similar problem when rabies was found in Pulau Pinang, Kedah and Perlis in September 2015 (Looi, 2015). The State Authorities in the affected states culled of stray dogs with the objective of eliminating the transmission of rabies from dogs to human as Malaysia was relatively unprepared to face the problem in such situation. However, the measure was consequently drawn the attention and critics among the public and media, especially from the Non-Governmental Organizations (NGOs) and animal activist which claimed such measure as inhumane and incommensurate with the severity of the problem.

This writing seeks to analyze the practice of culling of stray dogs as a measure to control and eliminate rabies transmission among dog’s population, as well as from rabid dogs to human in Malaysian legal framework and Islamic law perspective. For that purpose, the legal provisions in Malaysian statutes are highlighted in discussing the issue from the perspective of Malaysian law. Equally important, the issue is examined in the light of the principles of Islamic jurisprudence (uṣūl al-īfīḥ) in understanding or evaluating the legality of culling of stray dogs from the perspective of Islamic law by facilitating the concept of maṣlaḥah mursalah and sadd al-dhārāʿīʿ, as well as by applying the Islamic legal maxim. The analysis is made by taking into consideration the material fact of rabies virus, the nature of stray dogs’ behavior as well as the situation in the affected states within the particular time which compelled for an immediate action from the authorities.

The following Part of this paper provides an overview on the nature of rabies virus, the method and medium of its transmission, symptoms and treatment, as well as methods that are significant in controlling and preventing the disease. It follows with the discussion on the background of rabies in Malaysia in Part 3 which details out the chronology of 2015 rabies outbreak in Malaysia in understanding and appreciating the situation in the rabies affected area. Part 4 discusses the Malaysian legal framework concerning rabies prevention and management in Malaysia. Consequently, Part 5 analyses the practice of culling of stray dogs in eliminating rabies transmission from Islamic law perspective within the context of maqāṣid al-Sharīʿah’ in general, and ḥifz al-nafs or protection of life in particular. Last but not least, Part 6 provides the finding of the whole analysis before accordingly concludes the discussion.
RABIES – AN OVERVIEW

Rabies is an infectious disease transmitted from animal to human (zoonotic) and can be transmitted through species, which is through a mammal to another mammal. Therefore, rabies may be transmitted from a mammal animal to human. Rabies caused by rabies virus, of the Lyssavirus genus. The infection of rabies occurs when the saliva of rabid animal enters the body of the victim through infiltration of virus-laden saliva into a wound following a deep bite or scratch by an infected animal as the saliva sometimes presents on claws (Global Alliance for Rabies Control, n.d.).

Besides that, transmission of rabies can also occur when the saliva of infected rabid animal come into direct contact with human mucosa or fresh skin wounds. In addition, rabies may also be transmitted through inhalation of virus particles through aerosol transmission or through transplantation of an infected organ particularly corneas, pancreas, kidneys and liver (The Centre for Food Security and Public Health, 2012). Skin intact with a person or animal suffered from rabies will not cause the transmission of the disease (The Centre for Food Security and Public Health, 2012).

Among the sources of rabid animals are bats, foxes, raccoons, skunks, jackals and mongooses. However, dogs are the source of the large reported number of rabies and are the main cause of human rabies in Asia and Africa (World Health Organization, n.d.-a). It is also reported by the World Health Organization that more than 99% of all cases of human rabies are caused and transmitted by dog (World Health Organization, 2013). It is also reported that rabies existed in all continents except Antarctica, however; more than 95% of human death due to rabies occur in Asia and Africa, mainly in remote rural area (World Health Organization, n.d.-a). Limited access to healthcare and expensive treatment are identified as the factors lead to the occurrence of human death among rabies infected people (Global Alliance for Rabies Control, n.d.).

Usually, rabies in human can be detected between 20-90 days after the exposure and up to 6 years or more (Jackson, 2002). However, it varies with the incubation period of animal infected with rabies. The clinical sign in dogs, for example, may be appeared as early as 10 days (Niezgoda, Hanlon, & Rupprecht, 2002). Fever is a common symptom of rabies, which followed with pain and unexplained tingling or burning sensation at the wound area. The rabies virus spread through the central nervous system, hence fatal inflammation develops in the spinal cord in consequence of the transmission of the virus (World Health Organization, n.d.-a). In an extreme case of rabies, people infected with rabies also suffered from hydrophobia and aerophobia (Niezgoda et al., 2002). In addition, hyperactivity and excited behavior will be shown by the people with rabies, which then followed with death after a few days (World Health Organization, n.d.-a). Besides that, rabies may cause paralysis to the affected person. Usually, a coma slowly develops after the muscles gradually paralyzed starting at the area of the bite or scratch before followed with death (World Health Organization, n.d.-a).

The clinical diagnosis for rabies is difficult particularly when rabies-specific signs are not appeared. Normally, there is no treatment chance after a clinical symptom is proven to exist and the concept of treatment in such situation is to remove and neutralize the infectious virus before it enters the nervous system (Haupt, 1999). However, vaccine can be used as its preventable measure or as a protection strategy from the infection of the disease and it not forms
as an exclusive solution to the disease. In rabies cases among human, the post-exposure prophylaxis (PEP) or treatment of a bitten victim may be started immediately after exposure to the virus in order to prevent its infection and prevent the symptoms or death of the person (World Health Organization, n.d.-a). The available and recommended measures of the treatment are basically depending on the severity of the contact of the human with the suspected rabid animal.

A multiplex strategy is needed in controlling rabies transmission in animals and humans. The strategies are basically classified as: i) Surveillance, which involved monitoring and laboratory process in order to identify the existence of rabies virus in a specific area. The surveillance process also involved with the identification and record of the numbers of pet and stray dogs, as well as the numbers of vaccinated dogs; ii) Prevention, which take in the form of legislation and policy for dog population control, dog movement control and dog immunization, and health promotion; iii) Outbreak response, which includes confinement of pet dogs, mass vaccination of dogs in order to interrupt the transmission cycle of rabies virus from animal to human, as well as humane elimination of rabies or culling of the animals for disease control. All the strategies must be performed or executed holistically and simultaneously in combatting rabies transmission. However, above all; the strategy under the ‘outbreak response’ is regarded as the rapid and effective method in controlling the disease (Rahizad Abd Shukor, pers. comm.).

On the similar ground, Garg (2014) highlighted that the most effective measure in preventing the disease is to avoid rabies exposure, to reduce the population of stray dogs as well as to eliminate the spreading of rabies among the stray dogs. Therefore, the control of rabies transmission to human must be begun with the control and elimination of the disease’s spread among the animal population. Because of the reason, apart from mass vaccination of dogs, it is suggested that the unsupervised and ownerless stray dogs’ population must be reduced and managed in order to control the disease. The stray dogs’ management includes habitat control, capture and removal of stray dogs from an area to another area, as well as reproductive control by neutering and releasing the dogs to their original habitat are also recommended since dogs are easily or highly affected with rabies due to the nature of male dogs behavior of dispersal and fighting, as well as during copulation period with female dogs (Garg, 2014).

**ANIMAL CULLING FOR DISEASE CONTROL AND RABIES TRANSMISSION IN MALAYSIA EXPERIENCE**

Basically, animal culling is commonly practiced as a method of controlling disease transmission from animal to human. The World Organization for Animal Health (OIE) sets out general standards in the OIE Terrestrial Animal Health Code (the Terrestrial Code) which functions as an international standard of reference for the Veterinary Authorities worldwide. Chapter 7.6 of the Terrestrial Code sets out general standards that must be given specified intention prior and subsequent of the killing of animal for disease control purpose. The Chapter recommends that any decision for animal killing for such purpose must be executed by a competent and skillful person. It requires the observation of the animal welfare in various aspects such as method of handling and movement of the animals, method of killing and availability of effective equipment needed for killing process, as well as other issues relating to biosecurity, environmental, legal, as well as health and safety of the personnel conducting the killing.
In addition, Chapter 7.7 of the Terrestrial Code specifies guiding principles for stray dogs population control without unnecessary suffering to the animal which among others aim for the prevention of rabies and other zoonotic diseases. The Chapter recognizes the importance of dog population control programme which demands the responsibilities and competencies of the veterinary authority, government agencies, private sector veterinarians, non-governmental organizations, local government authorities as well as dog owners. It suggests a number of measures that could be adapted by a State in term of education and legislation for responsible ownership of dogs, dogs licensing, as well as control of the animal reproduction and movement.

As far as rabies is concerned, Chapter 8.13 of the Terrestrial Code recognized that dogs are the most common rabies transmitter to human. Hence, control of rabies in dogs must be prioritized in order to reduce the public health risk due to rabies. It is suggested that effective surveillance should be operated in investigating the existence of rabies. In parallel with the surveillance, specific regulatory measures should be implemented and stray dogs’ management programme must be maintained.

Rabies has been known to occur in Malaysia since 1884, and rabies in human is recorded on 1924. Most of the recorded cases happened in the Malaysian states bordering Thailand which is an endemic county for rabies (J. Ganesan, 1993). The last recorded animal rabies in Malaysia was in 1999 (Naidu, 2015). As a result of the holistic management and control of rabies in Malaysia, it was declared as free from the disease by the WHO and the OIE in 2012 (Nor’azman & Othman, n.d.). However, two rabies cases found in Seberang Prai and Balik Pulau (Pulau Pinang) in the early of September 2015 has alarmed a vigilantly attentive siren for its sudden occurrence (Sue-Chern, 2015b). By 21st September 2015, third case of rabies was reported in Pulau Pinang (Thevadass, 2015). Consequently, the Chief Minister of Pulau Pinang, Lim Guang Eng; ordered the culling of stray dogs in the State after consulted the health experts and veterinary services as a mean to control and eliminate the transmission of the disease out of necessity and for the benefit of the society at large (Boon, 2015b; Sue-Chern, 2015a). Following the first two cases of rabies in Pulau Pinang, it was estimated that 2,500 stray dogs to be culled in the State (Boon, 2015a).

Apart from the rabies outbreak in Pulau Pinang, rabies cases were also reported in its neighboring State that are Kedah and Perlis. It is reported that 70 dog bite cases were reported in Kedah and a couple was infected with rabies (Chow, 2015). On 17th September 2015, it was widely reported in the mass media that Pulau Pinang, Kedah and Perlis were declared as rabies infected States (“900 Dogs Culled to Curb Spread of Rabies,” 2015; Looi, 2015). In contrast, the culling of stray dogs taken by the authorities in the States as a measure to control the disease transmission was widely criticized by the Non-Governmental Organizations (NGOs) and animal activist groups which claimed the measure is cruel, inhumane and must be stopped (Loh, 2015; Tariq, 2015) The Society for the Prevention of Cruelty to the Animal (SPCA) of Selangor, for example; suggested (through a letter to The Star’s editor) that transmission of rabies must be eliminated through vaccination (Chow, 2015). Likewise, the World Animal Protection also suggested similar approach (through a letter to the New Straits Times’ editor) (Ford, 2015). In addition, it is also suggested (through a letter to the New Straits Times’ editor) that the elimination of rabies transmission to human must be made by neutering the stray dogs in order to control the population increment instead of culling of the animals (Sitheravellu, 2015).
In response to the suggestions, the Chief Minister of Penang claimed that Malaysia experienced the shortage of rabies vaccine since it was declared as rabies-free State by the WHO in 1999 (Zachariah, 2015). He also highlighted that the State Government of Pulau Pinang is ready to vaccinate the dog if the rabies vaccine was available (‘Guan Eng Slams NGOs ‘Lying’ Over Dog Culling Controversy,” 2015). Hence, the measure taken by the State Government is to put human life into priority (“Penang CM Defends Culling Move to Protect Lives,” 2015). Besides that, the Pulau Pinang Veterinary Service Department also exposed the fact that the State was ran out of rabies vaccine and the new stock of rabies vaccine must be imported which it will take a certain period of time to be delivered to Malaysia (“Doggone It, Vaccine Supply is Not Enough,” 2015, “Penang Runs Out of Rabies Vaccine,” 2015).

The shortage of rabies vaccine had drawn the attention of Worldwide Veterinary Services to sponsor 40,000 doses of rabies vaccine to Pulau Pinang. However, the supply of vaccine would take 3 – 6 months to reach Malaysia, and therefore the State Government claimed to retain with culling option (Yuan, 2015). In a report on 9th October 2015, the state government of Pulau Pinang (through his Chief Minister) revoked the order to cull rabies-infected dogs as there was no new recorded rabies case in the state since 21st September 2015 (“Mass Culling of Stray Dogs Ends in Penang,” 2015; Mok, 2015).

MANAGEMENT AND PREVENTION OF RABIES IN MALAYSIAN LEGAL FRAMEWORK AND POLICY

Malaysia legislated two statutes encompassing rules and regulations pertaining rabies, namely; Animals Act 1953 (Act 647) which certain sections has been amended with Animals (Amendment) Act 2013 (Act A1452), and Prevention and Control of Infectious Diseases Act 1988 (Act 342).

The Animals Act 1953 provides special provisions relating to dog and in connection with rabies in Malaysia as provided in Part III of the Act which specified for the prevention of the disease spread. The Act requires any person who wishes to own, keep, harbor or maintain any dog that is more than 3 years old to apply for a license (section 38(1)) and he shall be liable to a fine of RM100 (section 38(8)(a)). A serially numbered metal badge shall be supplied to the owner upon the application and payment of the prescribed fee (section 38(5)). For monitoring purpose, the Act also required the dog owner to cause the metal badge to be seen by fastening it to the dog’s collar and it shall be consistently worn by the dog out of door (section 38(6)) so that it can be distinguished with ownerless or stray dogs. In failure of so doing, the owner shall be liable with a fine of RM50 (section 38(8)(b)).

As a precaution against rabies infection, the Chief Minister of a State has power to declare through an Order that such State or any part of the State as a rabies infected area (section 39(1)) and such Order must be published in the State Gazette (setion39(2)). Following the declaration, any dog shall not be taken out from the rabies-infected area unless with a written permit from the State Director (section 39(3)). Any dog owner who contravened the provision shall be liable to a fine of RM500 or three months’ imprisonment (section (39(6)(a). In addition, the Act requires the owner to effectively control their dogs either by way of confining or tying it up securely, or by leading the dog with a proper and strong harness unless the State Director is satisfied that the dog is immune from rabies infection (section 39(4)) and the owner shall be
liable to a fine of RM250 in failure of so doing (section 39(6)(b)).

The Act permits any dogs that are not under effective control in such rabies infected-area to be destroyed by any person who has been authorized in writing by the State Director or the Chief Police Officer of the State in order to prevent and control the transmission of rabies (section 39(5)).

Moreover, it permits the veterinary authority to immediately cull any animal that are reasonably suspected with the infection of rabies or to quarantine the dog for detention and observation (section 40(1)), unless it is satisfied that the animal is free from rabies (section 40(3)). Besides that, the Act also gives power to the veterinary authority or police officer not below the rank of Inspector to order any dog owner to produce the dog that are reasonably believed to have bitten any person. Such dog may be detained or quarantined (section 41(1)).

In addition, the Chief Minister of a State also has power to make an Order for all dogs in such State or any part of the State to be vaccinated with anti-rabies vaccine within a specified period or until the cancellation of the order (section 42(1)). As a result of such Order, dog or group of dogs shall be produced at a specified place and time for the purpose of vaccination (section 42(4)). The vaccinated dog shall have carried upon it a serial numbered badge or any evidence of vaccination, and any dog found without the evidence of vaccination within the area declared in such Order may be destroyed accordingly (section 42(6)(a)). With the effect of Animals (Amendment) Act 2013 (Act A1452), the owner or person in charge of a dog shall be liable to a fine of not more than RM5000 for any unreasonable incompliance with section 42(1) and section 42(4) of the Act (section 42(8)).

Apart from the Animals Act 1953, the Prevention and Control of Infectious Diseases Act 1988 (Act 342) also plays a significant function in controlling and eliminating rabies in Malaysia where the disease is listed in the First Schedule of the Act and defined as an ‘infectious disease’ (section 2(1)). In overall, the Act holistically regulates any matter related to the prevention and control of infectious disease. It includes the regulation concerning the prevention of importation of infectious disease from and to an area that is declared as an infected area (Part III) and the measure that must be taken in controlling the spread of the infectious disease (Part IV).

In order to effectively control the infectious disease (including rabies) and implement the Statutes, the Department of Veterinary Service Malaysia (Jabatan Perkhidmatan Veterinar Malaysia) under the Ministry of Agriculture and Agro-Based Industry Malaysia (Kementerian Pertanian & Industri Asas Tani) sets out standard operation procedures which significantly relevant in controlling and preventing rabies transmission, that are Survelan Untuk Penyakit Haiwan (APTVM 22(g):1/2011) and Penghapusan (APTVM 22(e):1/2010). Both SOPs are basically coordinate and detail out the procedures that must be observed by the Division as a veterinary authority in Malaysia concerning the surveillance and culling off animal as well as disposal of animal product in controlling and eliminating transmission of animal disease to human.

THE DISCUSSION FROM THE ISLAMIC LAW PERSPECTIVE IN THE CONTEXT OF MAŠLAḤAH MURSALAH AND SADD AL-DHARĀʿI’

From the Islamic law perspective, the status of culling of stray dogs in eliminating the
transmission of rabies in general, and during the 2015 outbreak in Northern states in Peninsular Malaysia (Pulau Pinang, Kedah and Perlis) in particular can be firstly analysed from the context of maṣlaḥah mursalah. Basically, maṣlaḥah mursalah forms as one of the methods in deducing the ḥukm in Islamic law where the interest of the public at large takes priority over the interest of a person or a particular group of people. The concept of maṣlaḥah applies in a situation where the ḥukm is made in order to seek the benefit and repel any harm as the term ‘maṣlaḥah’ itself reflects or carries the meaning of ‘benefit’ or ‘interest’ (Nyazee, 2003). However, the concept is not applicable in the matter where the Prophet has ruled or the authority from the ḥadīth concerning the matter is available (Mohammad Hashim Kamali, 2003).

The concept of maṣlaḥah mursalah is embodied in the Qur’ān and the ḥadīth. As for example, Allah, as the Lawgiver, said that the revelation of religion is not to impose hardship as he says:

“…He has chosen you, and has imposed no difficulties on you in religion; it is the cult of your father Abraham…” (Surah Al-Hajj:78)

In addition, Allah also says:

“…God does not wish to place you in a difficulty…” (Surah Al-Maidah:6, Ali, 2005, p. 111).

Besides that, there are a number of ḥadīth that are generally encompasses the essence of the concept of maṣlaḥah mursalah. For example, the Prophet said: “No harm shall be inflicted or reciprocated in Islam.” (Ibn Majah: no. 2340). In another ḥadīth, the Prophet said: “Muslims are bound by their stipulations, unless it be a condition which turns a ḥarām into ḥalāl, or ḥalāl into ḥarām.” (Abu Dawud: no. 3587). It is also reported by ‘Āishah that the Prophet only chose the easier of two alternatives, so long as it did not amount to a sin.’ (Muslim: no. 1546).

Mohammad Hashim Kamali (2003) divides maṣlaḥah into three major types, which are: the ‘essentials’ (ḍarūriyyāt), the ‘complementary’ (ḥajiyyāt) and ‘embellishments’ (taḥšiniyyāt) (Mohammad Hashim Kamali, 2003). The essential or ḍarūriyyāt masālīḥ refers to the matters that are fundamentally important and constitutes as the essence for the life survival of the human being, in which its absence will definitely lead to chaos or disorder. It consists of the five essential values, namely; religion, life, reason or intellect, lineage as well as property (Mohammad Hashim Kamali, 2003). In addition, the complementary or ḥajiyyāt masālīḥ is basically refers to the supplementary elements to the five essential values (i.e. religion, life, reason, lineage and property), which the omission of the essential values would lead to life difficulty of the human being or society even though it would not lead to its collapse (Mohammad Hashim Kamali, 2003). For example, the concession (rukhsah) of shortening the prayer (ṣalāh) during the state of travelling is a form of ḥajiyyāt masālīḥ which aimed to prevent hardship in a person’s area of ritual or religious matter (i.e. the religion). Not least, the embellishments or taḥšiniyyāt masālīḥ refers to the interest in the matter that leads to the improvement of what is desirable by the human being (Mohammad Hashim Kamali, 2003), in which its protection would improve the quality of the person’s life eventhough not up to the utmost level. For example, the consumption of nutritious food is a taḥšiniyyāt that improve the quality of a human life as compared to the need for basic food (ḥajiyyāt).
As a rule, the subject matter of hukm need to be ascertain according to the conditions that have been set for maṣlaḥah to be validly applicable. Mohammad Hashim Kamali (2003) highlighted the conditions, which among others, the maṣlaḥah must not contradictory with a principle or value which are already indicated or determined by the naṣṣ or ijmāʿ, it must be genuine (haqīqīyyah) and must be general (kullī). In other words, maṣlaḥah is applicable when the principle governing the subject matter is unavailable in the primary sources of Islamic law and meant to secure the benefit and prevent harm from the society as a whole or not intended to secure the interest of a particular or group of people and to protect the political interest of a person or party.

Apart from maṣlaḥah mursalah, the analysis on the position of culling of stray dogs as a measure of controlling rabies transmission can be approached with the concept of sadd al-dharāʾiʿ. Literally, the term dharāʾiʿ means ‘to an end’. It is synonymous with the word wasīlah, which signifies the ‘means or mediums in obtaining a certain end result’, whereas the word sadd means ‘blocking’. Technically, the term sadd al-dharāʾiʿ implies “blocking the means to an expected end that is likely to materialize if the means towards it is not obstructed” (Mohammad Hashim Kamali, 2003).

In deducing the hukm or value of a subject matter in Islamic law, the concept of sadd al-dharāʾiʿ applies in the context of blocking the means which possibly leads to evil or harm. In other words, it applies in the situation where the means to a matter is lawful but the expected result is unlawful or lead to a harmful result. Because of the reason, the reliance on the likeliness or possibility of its benefit or harmful result must be thoroughly analyzed in order to block the means.

The concept of sadd al-dharāʾiʿ is based on the principle of preventing the harm that likely leads to evil before its actual occurrence. In an example, the religion of Islam forbids khalwah (close proximity) since the act would be likely lead to zinā with the aim to protect the lineage of a person as Allāh says:

“Nor come near to adultery: for it is a shameful (deed) and an evil, opening to the road (to other evils)” (Surah Al-Isra’:32, Ali, 2005).

In another example, Allāh forbids business transaction during the time of Friday congregational prayer eventhough business transaction is originally permissible in Shariʿah, as He says:

“O you who believe! When call is proclaimed to prayer on Friday (the Day of Assembly), hasten earnestly to the Remembrance of Allah, and leave off business (and traffic): that is the best for you if you but knew” (Surah Al-Jumuʿah:9, Ali, 2005).

However, the mean that obstruct the prayer (i.e. the business transaction) is forbidden (i.e. blocked) during the prayer time only as it would lead to abandon of the prayer (i.e. the evil result) among the Muslims with the aim to protect the religion.

The ‘ulamāʾ of uṣūl divided sadd al-dharāʾiʿ into four types based on the degree of the probability of the means that is expected to lead to a harmful or an evil end. The first type of sadd al-dharāʾiʿ is when the means is definitely lead to evil (Mohammad Hashim Kamali, 2003). As an illustration, the countenance of business license for a person to operate a gambling centre or wine bar in a Muslim neighborhood possess a high probability of encouraging or promoting
immoral life (i.e. evil) among the individuals in the neighborhood. Therefore, the operation of the gambling centre of wine bar (i.e. the means) must be blocked before the evil is actually take place.

Second, when the means is most likely lead to evil, and is rarely expected lead to benefit (Mohammad Hashim Kamali, 2003). For example, planting and harvesting of tobacco is most likely lead to evil since the main use of the plant is to produce cigarette due to the fact that tobacco contains a higher concentration of nicotine as compared to most other plant in the same genus of herbs Nicotiana. Since tobacco consumption either by smoking, chewing or snuffing most likely lead to evil or harmful effect, such as lung cancer, strokes and heart attack (National Academy of Sciences, n.d.; Rogers, 2012). Hence, planting and harvesting the plant must be prohibited based on its degree of probability that is most likely lead to harmful effect.

Third, when the means is frequently lead to an evil, but there is no certainty or high probability that it will always be the end result (Mohammad Hashim Kamali, 2003). This situation implies an equal probability between harm and benefit. As an illustration, marrying a woman in temporary solely to satisfy one’s sexual desire without life-long positive commitment can be considered as forbidden as it frequently leads to harmful or abuse to the woman and their offspring. This view is based on the opinion of Malikī and Ḥanbalī since both scholars concerned on “the objective of the contract of marriage and the necessary caution that must be taken in order to prevent an evil” (Mohammad Hashim Kamali, 2003).

Fourth, when the means are rarely expected to lead to evil and most likely to lead to benefit (Mohammad Hashim Kamali, 2003). Generally, it refers to the value or state of something that is originally permissible (mubah) in the view of Shari‘ah. For example, selling of palm juice (known as ‘nira’ in Malay language) is permissible even though there is possibility that the juice might be fermented to be consumed as palm toddy (known as ‘tuak’ in Malay language). However, the degree or state of the possibility that it would lead to evil or mafsadah is rarely expected since its benefit or manfa‘ah is more prevail.

In a brief analysis within the context of maslahah, the measure of culling the stray dogs in the rabies infected areas taken by the authorities in Perlis, Kedah and Pulau Pinang is vital in eliminating the disease transmission as it is ḍarūriyyāt since it mainly aimed to protect the life of people in the infected areas due to the urgency and critical situation and due to unavailability of sufficient rabies vaccine in Malaysia within that particular period. Hence, in order to rapidly response to the outbreak, the measure must be employed in order to rapidly control the transmission of the disease. Moreover, the measure fulfilled the conditions of maṣlaḥah as no governing naṣṣ or ijma’ pertaining the matter is available. It is also genuine or haqīqīyyah based on the fact and nature of rabies virus, medium or factor of its transmission and severe impact to human being. In addition, the measure was taken with the intention to secure the benefit and life of the people’s interest and not for the political survival of a political party or certain politician; hence, it is general or kullī.

Likewise, within the context of sadd al-dharā‘i’, the situation during the 2015 rabies outbreak must be analyzed by taking into account the possibility and rapidity of the disease to be spread among the animal as well as to the people. Apart from the insufficiency of the rabies vaccine, the mass stray dogs in the states also worsen the condition due to their nature and behavior. In other words, it was an unusual condition faced by the States which relatively unprepared. Besides the direct threat of rabies communicable from the stray dogs to human, the
rabies virus could possibly infect the pet dogs which could consequently infect their owners.

With due regards and considerations to the factors and by outweighing the possibility of rabies transmission to human, shortly, the situation falls under the second types of sadd al-dharāʿiʿ, that is when the means (i.e. stray dogs) are most likely lead to evil, and is rarely, if ever; expected to lead to a benefit. Therefore, the means to rabies transmission must be blocked or obstructed in order to preserve the maṣlahah since rabies is mafsadah in nature.

THE DISCUSSION IN THE VIEW OF MAQASID AL-SHARĪʿAH – WITH SPECIAL REFERENCE TO THE PROTECTION OF LIFE (ḤIFẒ AL-NAFS)

The term ‘maqṣid’ literally refers to a purpose, objective, goal or end. On the other hand, the term ‘maqāṣid al-Sharīʿah’ refers to the objectives or purpose behind the Islamic rulings (Auda, 2008). Historically, the philosophy of maqāṣid al-Sharīʿah was discussed by a number of the uṣūl scholars in a thorough discussion in their writings, such as Abū al-Maʿālī al-Juwaynī, Abū Ḥamid al-Ghazālī, Al-ʿĪzz ibn ʿAbd al-Salām, Shihāb al-Dīn ibn al-Qayyim, and Abū ʿĪsāq al-Shāṭībī (Auda, 2008). In addition to the discussion, the contemporary scholars such as Muhammad ʿĀbid al-Jābiri, ʿAbd al-Raysūnī, Yūsuf al-Qarāḍāwī, Jamāl al-Dīn ʿĀṭiyyah and Muhammad Hashim Kamali extend the discussion and dimension of maqāṣid al-Sharīʿah in order to adapt and suit the current needs of modern and global people (Mohammad Hashim Kamali, 2003). However, this writing limits the discussion within the scope of Al’Ghazali’s discussion of maqāṣid al-Sharīʿah, where he proposed and categorized that Sharīʿah objectively pursued five essential matters that are religion, life, intellect, lineage and property. The lists of the essential objectives are generally based on the prescribed ḥudūd penalties provided in the Qur’ān (Mohammad Hashim Kamali, 2008).

In the context of this writing, the analysis of culling of stray dogs in this context of discussion should be viewed from the perspective of maqāṣid al-Sharīʿah in general, and with specific reference to the protection of life (ḥifẓ al-nafs) in particular since human life is directly affected by rabies. Islam and Sharīʿah honour the human life; hence the religion forbids murder and regards a killing of a person as equal to an act of killing the whole mankind. As an honour to human life, the punishment for the act of unjustifiable killing is expressly provided in the Quran and falls under the qiṣāṣ offence. For example, Allāh says:

“Those who do not invoke, with Allah, any other god, nor slay such life as Allah has made sacred, except for just cause, nor commit fornication; - and any that does this (not only) meets punishment, (But) the Penalty on the Day of Judgment will be doubled to him, and he will dwell therein in ignominy.” (Surah Al-Furqan:68-69)

In addition, Allāh says in another verse which prescribed the qiṣāṣ punishment in case of murder:

“O you who believe! The law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman…” (Surah Al-Baqarah:178)

It is undeniable that human life in the rabies infected area in Pulau Pinang, Kedah and Perlis were affected due to the 2015 epidemic outbreak. It is demonstrated with the fact and numbers of people that are positive with rabies and the increment numbers of dog bitten victims which
lead to the possibility of being infected with the rabies virus. Therefore, the state authorities were in obligation to remove the hardship (mafsadah) among the people in order to protect the life of the people.

As equal as human life, Islam values and regards the animal life and its welfare. Hence, the religion forbids animals killing unnecessarily and their life must be protected by human being from undue pain or suffering. It can be based on the Qur’ānic verse where Allāh recognizes animals are just as humans in the sense of they are also created to live the life, as Allāh says:

“There is not an animal (that lives) on the earth, nor a being that flies on its wings, but (form parts of) communities like you…” (Surah Al-An’am:38, Ali, 2005)

Similarly, the Prophet ordered the killing (if it is to be done) and slaughtering of animals to be carried in the best manner without causing unnecessary suffer to the animals (Muslim: no. 4818).

The condition in the rabies infected area in the states of Pulau Pinang, Kedah and Perlis during the period of the outbreak rendered a situation where the life of human were in conflict with the life of stray dogs. In other words, the culling of stray dogs in controlling the transmission of rabies demonstrated the conflict between harm to human (by the infection of rabies virus) and harm to stray dogs (by the measure of culling).

In the eye of Sharīʿah, the conflict can be resolved by balancing or outweighing the two harms. On this ground, it can be approached by applying the Islamic legal maxim, idhā taʿāradat mafsadatān rūʿiya ijtīnāb ashadduhumā bi-īrtiķāb akhaffihimā or “when there is a conflict between two harms, the greater harm is avoided by the commission of the lesser” (Azman Ismail & Md. Habibur Rahman, 2013). Thus, it can be deduced that culling of stray dogs is a lesser harm as compared to the greater harm that would be encountered by the people if they were infected with rabies.

In addition, the maxim al-ḍarūrāt tuqaddaru bi-qadrihā or “necessity is determined by the extent thereof” (Azman Ismail & Md. Habibur Rahman, 2013). In the situation during the rabies outbreak, the culling of stray dogs due to necessity in protecting the human life in the rabies affected areas is proportionate when no other possible, rapid and yet effective options is available in controlling the disease to the extent of period when rabies vaccine received by the infected states.

ANALYSIS AND FINDING

In determining the position of culling of stray dogs taken by the authorities in Pulau Pinang, Kedah and Perlis as the measure to control and eliminate rabies disease in the affected areas, it is important to view the issue based on several determinant, that are, firstly; the unusual situation and condition of the States which are relatively unprepared when the rabies epidemic outbreak was reported. Secondly, the shortage of rabies vaccine in Malaysia since it was declared as rabies-free country by the WHO. Thirdly, the nature of the rabies virus that rapidly spread based on the reported numbers of people and dog that are positively infected with the virus, and with the fact that dogs are the main transmitter of rabies virus to human. Fourthly,
the natures of rabies virus that are threaten the human life and led to death. Fifthly, the nature and habit of stray dogs as main host of rabies virus, particularly the behavior of male dog when dispersing, fighting, as well as during copulation period with female dog.

By analyzing all the determinant factors within the framework of maṣlaḥah mursalah and sadd al-dharāʾi, generally, the culling of stray dogs as a measure to control the transmission of rabies is the best possible method to be taken during the period of rabies outbreak and within the rabies infected areas only. It can also be seen as the best possible option in removing the hardship and secure the benefit of the people at large which at the same time significantly important to achieve the maqāṣid al-Sharīʿah (i.e. to protect the human life).

It is undeniable that animal life is recognized and protected by the Sharīʿah. However, by comparing and outweighing the human life and the life of stray dogs, it can be concluded that the human life must be put into priority and be accordingly protected against the infection of viral disease. However, the measure of culling of stray dogs must be strictly observed and executed according to the conditions and requirements of Sharīʿah by removing any unnecessary harm, pain and distress to the stray dogs.

Therefore, it is submitted that the culling of stray dogs is permissible from the perspective of Islamic law provided that each aspect related to the execution of the measure must be critically observed, such as the welfare of the stray dogs and the safety of the executor. In addition, the provisions in Malaysian law and policy concerning the matter are basically in parallel with the spirit of Islamic law and maqāṣid al-Sharīʿah.

Undoubtedly, Islamic law or Sharīʿah is a flexible and realistic law which suits any situation and conditions regardless of the place and time. Due to the nature, the Sharīʿi ruling or ḥukm of a subject matter might change in consequence of the change in condition, situation, time and place. It can be illustrated with the ruling of Caliph ʿUmar when he removed the punishment of theft (ḥudūd) during the famine period despite of the clear nāṣṣ of the Qurʾān in consequence of the change of condition and situation within that particular period. It is also illustrated in an Islamic legal maxim; lā yunkar taghayyur al-āḥkām bī-taghayyur al-azmān, or “it cannot be denied that changes in rulings follow changes in time” (Azman Ismail & Md. Habibur Rahman, 2013). Hence, the measure of culling of stray dogs may be forbidden if it is employed in non-infected rabies area or when the disease is not genuinely presence. The flexibleness of Islamic law shows the mercy of the religion which consequently important in achieving the social harmony in all aspects of human life.

CONCLUSION

The subject of the discussion in this writing must be viewed and analyzed in exhaustive by considering all the determinant factors in the preceding discussion in Part 7 of this writing. The determinant factors are: Firstly, the unusual situation and condition of the Malaysia in general, and in the infected States in particular which relatively unprepared to face the outbreak. Secondly, the shortage of rabies vaccine in Malaysia in such critical situation which strongly compelled for an immediate action in controlling the disease spread during the rabies outbreak. Thirdly, the nature of rabies virus which are rapidly spread which proven with the reported numbers of dogs and people that are positively infected with the virus. Fourthly, the nature of rabies virus that are threaten the human life and cause death. Fifthly, the nature and habit of
stray dogs as the main host of rabies virus mostly contributed to the rapid spread of the virus among animals and humans.

By facilitating the principles of Islamic jurisprudence as discussed in the preceding Parts of this writing, it is submitted that the measure of culling of stray dog in eliminating the rabies transmission within the dog population and to the people in the infected area within the time scope is generally permissible (mubāḥ) so long that the welfare of the animals is observed accordingly. In contrary, the position may be changed to forbidden (ḥarām) if there are other less severe options available during the scope of time, or if the measure of culling of stray dogs is applied after the scope of time, or if allied outside of the rabies infected areas. The culling of stray dogs is permissible as it is important in protecting the public health in general, and to secure the interest of the people in the infected areas in particular, and consequently lead to social harmony.

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Animal Act 1953 (Act 647)


Prevention and Control of Infectious Diseases Act 1988 (Act 342).


