THE FORMATION OF FIQH PANDEMIC IN MALAYSIA: STUDY ON THE RELATIONSHIP BETWEEN *MAṢLAḤAḤ* AND *MAFSADAH*

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ABSTRACT

The desired goal behind the obligation of a law is referring to the maqasid syariah. It is very important to master this knowledge especially to understand and interpret the Islamic texts. The cardinal principle is generally aims to preserve the five basic necessities of human life, namely preserving the religion, life, intellect, lineage, and property. Any effort that supports these necessities is known to be *maslahah*, and anything that negates them is known to be *mafsadah*. The concept of *maslahah* and *mafsadah* has always been the main backbone for the scholars in determining the law. During the pandemic COVID-19 hit in Malaysia, various Syariah rulings (fatwas) have been issued by the authorities at the state and federal levels to protect the Muslims affairs. The rulings are issued after considering the *maslahah* and *mafsadah* to be faced by Muslims in Malaysia. This study was conducted to identify the role of *maslahah* and *mafsadah* in influencing the Syariah rulings related to COVID-19 pandemic in Malaysia as well as showing how the process takes place (*takyīful fiqhī*). This study is qualitative in nature, using a library approach to collect primary and secondary data and then analyse it by content analysis. The results show that the principles of *maslahah* and *mafsadah* play a big role in determining the Syariah rulings in the COVID-19 pandemic situation as well as the need to set a clear standard of *maslahah* and *mafsadah* so that the rulings produced are accurate, precise and not made it on whim.

Introduction
Intellectual discourse regarding the concept of maslahah and mafsadah in the general context is often associated with the science of *Uṣūl al-Fiqh*, while in a specific context; it is linked to the science of *Maqasid syariah* (al-Raysūnī, 1995). According to al-Raysūnī (1995) and al-Ayubi (1998), the scholars from earlier generation (*mutaqaddimin*) provide no specific definition of maqasid sharia. Instead, they only reflect the results and objectives which are to achieve the intended purpose behind every Syariah rulings and the secrets either implicitly or explicitly contained in those rulings (Rasool, Yusof, & Ali, 2020). As for example, al-Ghazāli (2015) states that there are five goals of Syariah towards human beings, namely to protect religion, life, intellect, lineage, and property. Similarly, Ibnu Abdul Salam (2020) and al-Āmidī (2003) state the Syariah in its entirety consists of securing all the *maslahah* and preventing the *mafsadah*, be they minor or major. Therefore, modern scholars (*muta'akhirin*) have formulated the necessary definitions. Ibnu ʿĀshūr (2012), al-Yūbi (2012), and al-Fāsī (2013) define it as the purpose and wisdom behind the enactment of most the Syariah rulings to meet the human welfare.

Meanwhile, *maslahah* is defined by al-Ghazāli (2015) and al-Būṭī (1973) as a statement on the achievement of benefits and the rejection of harm. However, what is meant is not to fulfil human desires and goals, but rather to preserve the Syariah higher intent (maqasid syariah) in maintaining religion, life, intellect, lineage, and property. Meanwhile, *mafsadah* refers to all things that deprive the Syariah goals either in whole or in part (al-Ghazāli, 2015; Ibnu ʿĀshūr, 2012).

Methodology
This qualitative study uses documentary research method to evaluate books written by scholars and academicians. This method is applied to obtain and collect relevant data through documents, writings, and records that have been produced (Neely & Ponshunmugam, 2019; Prior, 2008). The main purpose of this method is to scientifically evaluate written documents whether public or private documents (Payne & Payne, 2004; Walsh, 2014). As for the purpose of this study, we evaluated both types of documents.

In this study, we have evaluated the major books that discuss the concept of maslahah and mafsadah such as *al-Mustaṣfā min ʿIlmi al-Uṣūl* by al-Ghazāli (2015), Qawāʿid al-Aḥkām fī Iṣlāḥ al-Anām by Ibnu Abdul Salam (2020), and *al-Muwāfaqāt fī Uṣūl al-Sharīʿah* by al-Shāṭibī (2011). We have determined that the data from these documents were the main data because these data have been a source of reference to the jurists until this day.

In addition, the same methodology is also used to assess the results of studies reported in journal articles. Secondary data for this study are discussions in the field of maqasid syariah, determination of maslahah and mafsadah standards, as well as COVID-19. In addition, secondary data is also obtained from writing in indexed journals especially Scopus and WOS obtained from the Scopus database accessed through the EZproxy portal of Universiti Sains Islam Malaysia.

Then, the data obtained were analysed using content analysis method to understand and extract the important and useful information that is around the text of the document (Leavy, 2017). Since this study is a qualitative work, the content analysis in this study has been implemented inductively (Julien, 2008). This process is implemented repeatedly (recursive) involving the process of

data collection and analysis related to the application of definitions, rules, or procedures to obtain continuous results.

Findings and discussion

a) The concept of Takyiful Fiqhi

The concept of *al-takyif* often associated with because it's widely used in the determination of fiqh rulings. Literally, the word is derived from the word "*kay-ya-fa*", which means to cut or subtract something (Ibnu Manzur, 1992; Ibnu Sīdah al-Mursī, 2000). In addition, it is also defined as the state of a subject matter along with its properties (al-Fayūmi, 1994). According to Shabīr (2014), *al-takyif* technically means knowing the circumstances of a particular case and describing it. When *al-takyif* is combined with *al-fiqh*, The phraseology of "*takyif al-fiqhi*" will be formed and there are several definitions of it that have been expressed by contemporary scholars (Shabīr, 2014). Among the scholars is al-Qarḍāwī (1998) who defines it as a method of adapting the *naṣ* (source of Islamic law) onto the contemporary issues. In addition, Qalʻahjī and Qunaybī (1988) considered it as adjustment and state its significant relationship to a certain origin. Meanwhile, Gomaa (2014) consider it as among the four stages of formulating a fatwa, and it involves classifying the issue in question under the relevant categories and *furūʿ* (secondary issues) of jurisprudence. A more comprehensive definition has been given by Shabīr (2014) which states as follows.

"It is determining the reality of an issue in order to append it to a jurisprudential origin – that is the Islamic jurisprudence – singled it out with jurisprudential descriptions, with the intention of giving those descriptions for such issue upon verification of the resemblance and similarity between the jurisprudential origin and the issue in question" (Shabīr, 2014, p. 30)

This definition is determined as comprehensive because it encapsulates the four main elements in *takyif al-fiqhi* namely new cases (*al-wāqiʿah al-mustajiddah*), original cases (*al-aṣlu al-fiqhi*), original rulings (*aḥkām al-aṣlu al-fiqhi*), and affirms the uniformity and similarity between the original and the new cases (*al-taḥaquq min al-mujānisah wal-mushābihah bayna al-aṣl wal-wāqiʿah al-mustajiddah*).

Although the term *takyif al-fiqhi* looks new and modern as applied by contemporary jurists, basically, past jurists have used several other terms that have almost the same meaning as takyif al-fiqhi, among them is *ḥaqīqah al-shay'* (the fact of something), *māhiyyah al-shay'* (characteristics of something), *ṭabīʿah al-shay'* (nature of something), *qiyās* (analogical deduction), *al-takhrīj al-fiqhī* (extraction of rulings), and *al-ashbāh al-fiqhiyyah* (resemblance of rulings).

It is concluded from the aforementioned definitions that *takyif al-fiqhi* depends on the collection of two things: (a) Obtaining a correct understanding and a complete perception of the issue; and (b) that the beholder must have full knowledge of the rulings and rules of jurisprudence. There is no doubt that *takyif al-fiqhi* is among the important steps to develop a particular ruling (Ibrahim, 2013). This is because it places the issue in question within the framework of an accurate description of its reality, which helps to attach it to a

section of jurisprudence within its framework, and its judgment is sought in its context.

Furthermore, *takyif al-fiqhi* has two types: simple and complex. The former is the clear, which is what made it easy to return the issue to a clear jurisprudential origin. The latter is what constitutes the return of the issue to a specific jurisprudential origin, but the issue attracts more than one origin.

b) *Takyif al-fiqhi* **in relevant categories and secondary issues of jurisprudence**

Takyif al-fiqhi has been used by contemporary scholars to obtain opinions or perceptions of Islamic law on a new cases or actions which has not existed or debated by previous Islamic jurists and mujtahids (A. U. F. Ahmad, Monawer, & Olorogun, 2020; Khairuldin, Hassan, Anas, Mokhtar, & Embong, 2020). *Takyif al-fiqhi* is widely applied in Islamic banking (A. U. F. Ahmad et al., 2020; M. A. J. Ahmad & Hussain, 2013).

Nevertheless, the application of *takyif al-fiqhi* is not only limited to the said field. This is because Islamic jurisprudence commonly divided into four quarter, quarter of worship (*al-ʿibādāt*), quarter of marriage (*al-munākaḥāt*), quarter of transactions (*al-muʿāmalāt*), and last but not least quarter of crime (*al-jināyāt*) (Baharuddin, Ahmad, Ismail, Mutalib, & Harun, 2019). Therefore, *takyif al-fiqhi* covers various fields of Islamic jurisprudence including the four general quarters, medicine, and *siyāsah syarʿiyyah* (Shabīr, 2014). *Takyif al-fiqhi* is practiced during the process of issuing the Syariah rulings carried out by the religious authorities. This was implemented to confront the pandemic COVID-19 in Malaysia mainly involving religious affairs. For a certain Syariah rulings to be issued, it shall first have determined the *maslahah* and *mafsadah* to be faced by the Muslims. This is clearly provided under Section 39 of Administration of Islamic Law (Federal Territories) Act 1993 where the issuance of any Syariah rulings or *fatwa* must not lead to a situation which is repugnant to public interest (*maslahah*).

c) Standards for determining *maslahah* **and** *mafsadah* **and its weighting (*tarjīḥ*) method**

Nevertheless, the issue arises as to what are the standards in determining *maslahah* and *mafsadah* on particular issue, and in the event of uncertain validity between the two, how to weight (*tarjīh*) among them. The jurists have made some guidelines in determining the standard of maslahah and mafsadah. Ibnu Abdul Salam (2020) who is a leading scholar in the field of maslahah and mafsadah has set the following parameters:
"When maslahah and mafsadah occur at the same time, and if it is possible to secure the maslahah and remove the mafsadah, we will do so following the command of Allah the Exalted: "Be careful of your duty to Allah as much as you can" (Quran 64: 16). If it is difficult to secure the maslahah as well as to remove the mafsadah, and if the mafsadah is greater, we will have to remove the mafsadah and will not worry about the loss of the maslahah. Allah the Exalted said: "They ask you about intoxicants and gambling. Say: In both of them there is a great sin and means of profit for men, and their sin is greater than their profit"(Quran 2: 219). He forbade the two because their harm is greater than their

benefit ... If the benefit is greater than the harm, we will secure the benefit along with the harm. If the benefit and the harm are of the same level, sometimes, one will have a choice, and sometimes one will have to pause, and sometimes, there is a difference of opinion regarding the variance of harms'' (Ibnu Abdul Salam, 2020, p. 136)

The above statement can be deduced in Figure 1 below which states the three standards in determining the maslahah and mafsadah.
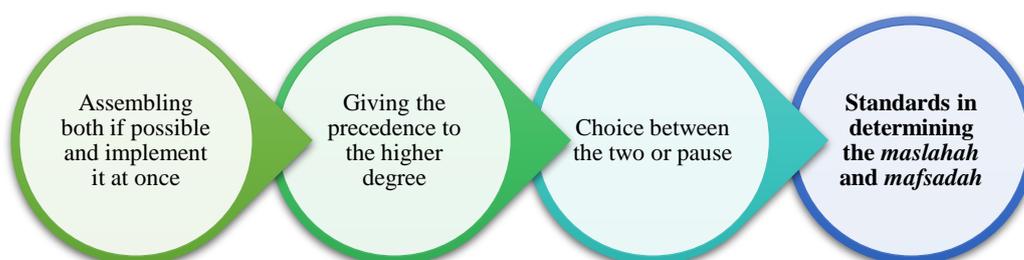

Figure 1: Standards in determining the maslahah and mafsadah

Figure 1 above illustrates three general standards of determining *maslahah* and *mafsadah* that have been formulated by the earlier Islamic scholars. These determining standards are still relevant and applicable to this day (R. Ahmad, 2004). Furthermore, these standards are implemented in stages subject to the circumstances and situations during the occurrence of an issue.

First standard: Assembling both if possible and implement it at once

If it is possible and feasible to gather between *maslahah* with *maslahah*, *mafsadah* with *mafsadah*, and *maslahah* with *mafsadah*, then both should be assembled and implemented at once (al-Ghazāli, 2015; Ibnu Abdul Salam, 2020). This is based on the legal maxim that says: "Practicing with two propositions (which are seen as contradictory) is better than ignoring one of the two" [*iʿmālu ad-dalīlaini awlā min ihmāli aḥadihimā*] (al-Nawāwī, 1972; Ibnu Hazm, 1983).

Second standard: Giving the precedence to the higher degree

If the two cannot be assembled, then priority and weightage should be made between the two according to their dominant position. The precedence will be given to the one with the higher degree (Ibnu Abdul Salam, 2020; Ibnu ʿĀshūr, 2012). There are several methods that have been issued by the Islamic jurists in relation to this standard and they have been formulated in Table 1 below.

No.	*Maslahah* Determination Standard	*Mafsadah* Determination Standard	Standard Determination Indicator
1	Certained *maslahah* (*qaṭʿiyyah*) takes precedence over uncertain maslahah (*mawhūmah*)	Certained *mafsadah* (*qaṭʿiyyah*) takes precedence over uncertain *mafsadah* (*mawhūmah*)	Certainty
2	Clearest *maslahah* (*arjaḥ*) takes precedence over unclear maslahah (*marjūḥ*)	Clearest *mafsadah* (*arjaḥ*) takes precedence over unclear *maslahah* (*marjūḥ*)	Clearity
3	Public interest takes precedence over specific interest	Public *mafsadah* takes precedence over specific *mafsadah*	Generality
4	Greater *maslahah* takes precedence over minor *maslahah*	Greater *mafsadah* takes precedence over minor *mafsadah*	Application
5	*Maslahah* that has been agreed	*Mafsadah* that has been agreed upon	Consensus of

	upon by the scholars takes precedence over the *maslahah* that is still debated	by the scholars takes precedence over the *mafsadah* that is still debated	Islamic scholars

Table 1: Standards on giving the precedence to the higher degree

Table 1 above is a summary related to the method of prioritizing one of the two *maslahah* or *mafsadah*. This method is used in the situation of clash between *maslahah* with *maslahah* and *mafsadah* with *mafsadah*. In addition, this method is implemented based on five standard determination indicators, namely certainty, clarity, generality, application, and scholars' consensus.

As for the method of weighting the clash between *maslahah* and *mafsadah*, the jurists have outlined seven methods as in Figure 2 below.
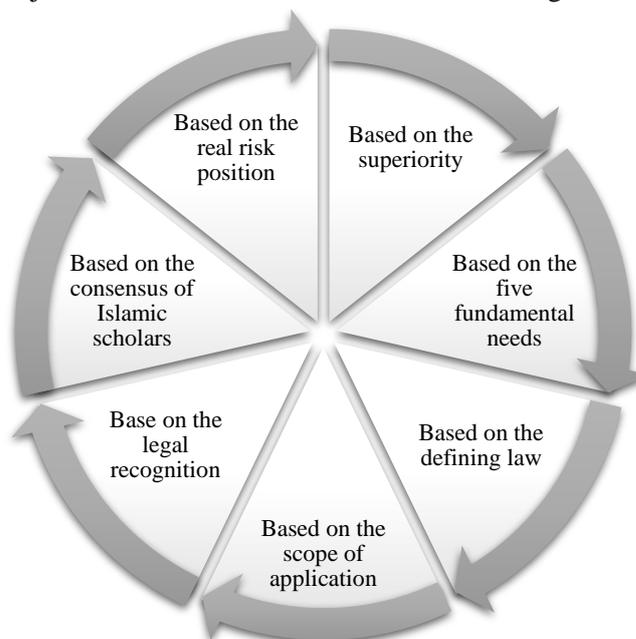

Figure 2: Weighting methods in managing the clash between *maslahah* and *mafsadah*

Based on Figure 2 above, there are seven weighting methods that have been set by the jurists in managing the clash between fellow *maslahah*, fellow *mafsadah*, and *maslahah* with *mafsadah*. The researcher in this study will briefly describe these methods in the following discussion, as well as attach examples of *takyif al-fiqhi* implemented in COVID-19 issues to the extent that it is appropriate.

First method: Based on the superiority

When there is a clash between *maslahah* and *mafsadah* that cannot be assembled and related to the underlying nature, then, the precedence is given to the superior degree (al-Ghazāli, 2015; Ibnu Abdul Salam, 2020; Ibnu Qayyim al-Jauziyyah, 2011). This means that if mafsadah dominates, rejection should be given precedence and preference, and vice versa (R. Ahmad, 2004; al-Shāṭibī, 2011). Nevertheless, Ibnu Abdul Salam (2020) stated that the determinant of this domination is part of human's natures. Later, al-Shāṭibī (2011) explained that the ascertainment of this dominating standard applicable only to matters related to custom and human behaviour. This principle does not apply to matters other than those stated.

Second method: Based on the five fundamental needs

The clash between *maslahah* and *mafsadah* within the framework of *ḍaruriyyat*, *ḥājiyyat*, and *taḥsīniyyat* often occurred and discussed in the discourse of Islamic jurisprudence. Therefore, R. Ahmad (2004) has summarized and formulated them in his study as follows:

a) prioritize *maslahah* on religious and life matters over *mafsadah* against property;
b) prioritize *maslahah* lineage over *mafsadah* against property;
c) prioritize *maslahah* in *ḍaruriyyat* over *mafsadah* in *ḥājiyyat* or *taḥsīniyyat*;
d) prioritize the rejection of *mafsadah* against religion over the achievement of other *maslahah*;
e) prioritize the rejection of *mafsadah* in *ḍaruriyyat* over the achievement of *maslahah* in *ḥājiyyat* and *taḥsīniyyat*; and
f) prioritize the rejection of *mafsadah* in *ḥājiyyat* over *maslahah* in *taḥsīniyyat*.

This method has been implemented by the authorities in facing the COVID-19 pandemic in Malaysia. Its implementation can be seen through the policy and action of postponing Friday prayers, congregational prayers performed with physical distancing, the temporary closure of mosques and suraus, and limiting the number of individuals to perform congregational prayers. These policies and procedures are implemented in order to prevent the people from COVID-19 infection which can lead to death. The COVID-19 pandemic is a *ḍaruriyyat masfasah* because it can endanger human life. In fact, life preservation is one of the Syariah goals. While performing Friday prayers or congregational prayers (without denying the obligation, priority, and importance) is positioned in *ḥājiyyat* or *taḥsīniyyat*, rather than *ḍaruriyyat* (Mohamad, 2020; Pejabat Mufti Wilayah Persekutuan, 2020). Therefore, the authorities have implemented such policies and procedures because they prioritize the rejection of *mafsadah ḍaruriyyat* over the achievement of *maslahah ḥājiyyat* and *taḥsīniyyat*.

Third method: Based on the defining law

According to R. Ahmad (2004), the position of *maslahah* and *mafsadah* has a close relationship with the defining law (*al-ḥukm al-taklīfi*). Generally, defining law is a locution or communication from the Lawgiver addressed to the competent persons (*mukallaf*) concerning of their conducts consisting of a demand or a prohibition (al-Zuḥayli, 2006; Elgasim, Ansariand, & Arifin, 2013; Zaydān, 2013); it occurs in the five varieties of; *wajib* (obligatory), *mandūb* (recommended), *haram* (forbidden), *makruh* (abominable), *mubah* (permissible). The position on the priority of *maslahah* and *mafsadah* depends entirely on the command or a prohibition itself (R. Ahmad, 2004). Furthermore, Ibnu Abdul Salam (1996, 2020) formulated the priorities in *maslahah* and *mafsadah* with regards to the defining law as follows:

Priorities in maslahah = Wajib > Mandub > Mubah
Priorities in mafsadah = Haram > Makruh

Next, when there is a clash between the command containing *maslahah* and the prohibition containing *mafsadah*, then the rejection of *mafsadah* should be given precedence if the position of *mafsadah* and *maslahah* are equal (al-Burnu, 2002; al-Nadwī, 1994). However, if one of them is more dominant, then the dominant player must take precedence among both (al-Zarqā, 2012). Then, priority is also given to any *maslahah* or *mafsadah* that contains the *wajib* as opposed to *makruh* based on its higher position in the category of defining law (R. Ahmad, 2004; Ibnu Abdul Salam, 2020). Meanwhile, when there is a clash between *maslahah* and *mafsadah* which contains the law of *mandub* and *makruh*, any one that contains *mandub* over *makruh* will be given priority (Al-Zuhayli, 1986). In addition, when there is a contradiction between *maslahah wajib* and *sunat* or *mafsadah* which contains *haram* and *makruh* with *mandub* which contains both, then *wajib*, *mandub*, *makruh*, and, *haram* will be given priority over *mubah* (R. Ahmad, 2004).

This method is illustrated through the debate related to prayer while wearing a face mask that covers the nose and mouth during the COVID-19 pandemic. Originally, it was abominable for a person to pray when his mouth is covered with something or his mouth is closed (al-Khaṭīb al-Sharbinī, 2004). This is

because it can hinder the perfection of reading in prayer as well as perfection in prostration (Mullā ʿAli al-Qārī, 2002). However, if there is a need to do so, then the act of closing the mouth during the prayer is permissible. Furthermore, in this COVID-19 pandemic, the *mafsadah* that will occur if not wear a face mask is more dominant than *maslahah* not closing the mouth during prayer. This is because the transmission of COVID-19 can occur through saliva, phlegm and mucus that spread through the air during coughing or sneezing (Han & Yang, 2020; Jayaweera, Perera, Gunawardana, & Manatunge, 2020; Lotfi, Hamblin, & Rezaei, 2020). Therefore, performing prayer with wearing a face mask is permissible due to the necessity, which is to prevent the COVID-19 from spreading. This is because by wearing a face mask, it can prevent people from getting infected with others.

Fourth method: Based on the scope of application
The weighting between *maslahah* and *mafsadah* is also seen based on their scope of application. Therefore, priority is given to any general *maslahah* or *mafsadah* over the specific. This method has been widely applied by the authorities in formulating the Syariah rulings related to COVID-19 in Malaysia. As for example, the postponement of Friday prayers and the temporary closure of the mosque or surau announced are to safeguard the public interest of Muslims in Malaysia (Mohamad, 2020). The general benefit is to prevent Malaysians from the deadly COVID-19 infection.

Fifth method: Base on the legal recognition
Based on this method, weightage is done based on the extent of human needs on both of them in terms of Syariah. Therefore, any *maslahah* or *mafsadah* that *qaṭʿiyyah* shall take precedence over the *wahmiyyah*, as well as on the matters of *dhanniyyah* over *wahmiyyah*.

Sixth method: Based on the consensus of Islamic scholars
The weighting of *maslahah* or *mafsadah* that has been on the Islamic scholars' consensus should be given precedence over the *maslahah* or *mafsadah* that is still debated among them (al-Suyūṭī, 2013). This is based on the famous Islamic legal maxim "avoiding from disagreement is commanded" (*al-khurūj min al-khilāf mustaḥab*).
Furthermore, Ibnu Abdul Salam (2020) and Tājuddin al-Subkī (1991) explicate that some Syafie great scholars state that avoiding disagreement is more excellent than engaging it in all conditions. In addition, Ibnu Abdul Salam (2020) further formulated methods in dealing with this disagreement as follows:

a) When the disagreement is between prohibition and permissibility, avoiding disagreement through abstention is more excellent;

b) When the disagreement is between desirability and obligation, doing it is more excellent; and

c) When the disagreement is in matter of the Syariah, then, doing it is more excellent.

The stated maxim is applicable when the proofs (*adillah*) are close in matters of disagreement so that the opinion of the opponent is not too far-fetched (Ibnu Abdul Salam, 2020). This is the case where it is desirable to avoid disagreement so as to avoid the possibility of the truth being on the opponent's side. In fact, Syariah is cautious with regards to doing the obligations and desirable things just as it is cautious with abandoning prohibitions and desirable things.

Seventh method: Based on the real risk position
When there is a clash between *maslahah* and *mafsadah*, weightage can be carried out through a careful assessment of the risk (*al-maʾāt*) of an act. Such assessment will be able to help the authorities in determining which position

truly achieves *maslahah* or *mafsadah*. The obvious risks of COVID-19 have been taken seriously by various authorities, especially the National Security Council, Ministry of Health Malaysia, Minister in the Prime Minister's Department (Religious Affairs), and States religious authorities. That is why various Syariah rulings related to the COVID-19 pandemic have been issued to protect the interests of Malaysians and to prevent *mafsadah* from being implicated by any Malaysian. The current COVID-19 pandemic is a threat that can lead to death, so any policy and action to stay away from this pandemic is a true preservation of the problems of Malaysians and prevent any *mafsadah* to be faced, not just a complement to the concept of *hifz al-nafs*. Any delay in the policy of blocking this pandemic will result in death.

Third standard: Choice between the two or pause
Sometimes, a situation occurred where it is difficult to know or determine any dominant position between *maslahah* with *maslahah*, *mafsadah* with *mafsadah*, and *maslahah* with *mafsadah*, or they occur at the same time and are of the same level. Under these circumstances, Ibnu Abdul Salam (2020) held sometimes one will have a choice to select between them, and sometimes one will have to pause that is not to make a decision or law on it. This approach was also proposed by other scholars like al-Rāzī (1997), al-Qarāfī (1995), al-Āmidī (2003), al-Shāṭibī (2011), Ibnu Qayyim al-Jauziyyah (2011), and Ibnu Taimiyyah (1995).

Conclusion
In conclusion, the determination of *maslahah* and *mafsadah* plays an important role in building a law. This is because the backbone principle ordained by Syarak that is to maintain the public interests and avoid them from any harm. In addition, the previous jurists have established the determination of *maslahah* and *mafsadah* standards. This standard has been used as a guide principle for the other jurists in later times until today. Furthermore, this determination has a close relationship in influencing Syariah contemporary rulings, especially during the COVID-19 pandemic in Malaysia. Several rulings have been issued by the authorities at both the state and federal levels. It is done to take care of the affairs of Muslims in Malaysia. These rulings were decided after considering the *maslahah* and *mafsadah* that will be faced by Muslims in Malaysia. These actions have directly shown how the process of *takyīful fiqhī* is implemented.

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