

# Legality of Medicine of Something Forbidden: Legal Analysis of Measles Rubella Vaccine According to Fuqaha'

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## Abstract:

The majority of Muslim intellectuals argue that legal treatment is mandatory. This is different when talking about the consumption of drugs from an illicit element. Today, there is much debate about *the Measles Rubella Vaccine (VAKSIN-MR)* regarding its legal use according to *syara'* because in the process it contains pigs and human organs. Considering the Minister of Health will give *Vaccine-MR* for newborns (Immunity). The Indonesian Ulema Council (MUI) issued a fatwa against *Vaksin-MR* but became *mubah* with sharia rule principles, namely *dharurat*. According to the researchers, this is ambiguous in taking legal formulation. Whereas there is the concept of *Istihalah* in the manufacture of *Vaccine-MR* which makes an element of haram become halal. This research is a type of qualitative-discrete research, using literature method with *tarjih* approach, using primary and secondary data in research. This study resulted in: *First*, rubella vaccine is legal even though it contains pigs or human organs, not because of emergency elements, but has changed from a normal form that is forbidden to something else either from *dzatiah* or its nature. *Second*, the concept of *Istihālah* using *the al-Tafā'ul al-Kimiyawī* method is the most powerful basis for stating that the Rubella vaccine is halal and holy.

**Keywords:** *Medicine, Something Forbidden, Measles Rubella Vaccine.*

## Introduction

There is a debate between Muslim intellectuals who focus on the field of jurisprudence regarding the law of medicine. Different debates on it are divided into 4 laws, namely: 1) Hanafiyah and Malikiyah think *mubah* law for treatment.<sup>1</sup> 2) According to Shafi'iyah and Ahmad the law is obligatory.<sup>2</sup> 3) Majority of hambali mazhab considers the ruling *mubah*, but leaving it is one of the steps *tawakal* in Allah.<sup>3</sup> 4) According to some of the Shafi'iyah, Ibn Al-Aqīl, Ibn al-Jawzī, it is *sunnah*.<sup>4</sup> Judging from the differences in medical law from Muslim intellectuals above, the law of taking the drug itself becomes the material difference also. From

<sup>1</sup>Jamal al-Din Muhammad bin Abdullah al-Zailai, *Tabyin al-Haqaiq Syarh Kanz al-Daqaiq*, (Bairut: Dar al-Kutub al-Ilmiyah, 2010), 6/32.

<sup>2</sup>Yahya bin Syarf al-Nawawi, *al-Minhaj Syarh Shahih Muslim bin al-Hajjaj*, (Bairut: Dar Ihya' al-Turats, 1392), 14/191.

<sup>3</sup>Mansur bin Yunus bin Idris, *Kasyf al-Qina' an Matan al-Iqna'*, (Bairut: Dar al-Fikr, 1402), 2/76.

<sup>4</sup>Al-Nawawi, *al-Minhaj Syarh Shahih*, 14/191.

the four things above, which are included in the discussion of this study focused on the argument that the law of medicine is mandatory, because the argument is favored by the majority of Muslim intellectuals.

Regarding the obligation of this treatment, there is still a difference of opinion among Muslim intellectuals regarding the legality of taking drugs containing banned elements. The meaning of the forbidden element is medicine mixed with something that has been confirmed forbidden in the Qur'an and al-Sunnah as well as dogs, pigs, human organs, rooms, human or animal urine, and others. This distinction can be mapped into three major opinions, namely: 1) haram. Seeing from the law the origin of the mixture of something forbidden.<sup>5</sup> 2) *tafshīl*. It is haraam if there are other drugs, and it is halal and mubah if no medicine is found other than something haraam.<sup>6</sup> 3) halal. This is because something haraam has changed the shape of both *datiyah* and its name.<sup>7</sup>

One health cause is to treat and take medicines either for people who are sick or for disease prevention. One of the diseases discussed today is rubella disease. According to research this type of Rubella disease can hit in children and young adults.<sup>8</sup> The impact of Rubella disease is not very noticeable for children, but can be characterized by the presence of red spots on the skin, fever, and flu.<sup>9</sup> The impact of rubella virus is clearly seen when the woman is pregnant young. This disease can cause miscarriage, outward defects for the fetus, or even death for the fetus.<sup>10</sup> Rubella virus according to medical experts is a virus that is easily spread and contagious. Transmission of this virus can be from breath, sneezing, coughing, or physical touch.<sup>11</sup>

Judging from the impact and process of transmission of rubella virus needs attention and proper handling, so that the virus does not spread widely that causes loss of physical health for Indonesian citizens. The steps taken by the Indonesian government are the right steps, because the vaccine becomes the basis for preventing rubella virus. However, what is a concern of academics is that the vaccine contains something that is clearly forbidden in the Qur'an and al-Sunnah, namely pigs. There have been a variety of studies related to the Measles-Rubella vaccine issue in the focus of different studies mainly over the past five years. Some studies focused solely on the characteristics of the extraordinary occurrence of the measles-rubella virus in one of the communities, written by Nur Hanna,<sup>12</sup> This study discusses the case of measles in one of the areas in Lampung by showing that measles is spread outside and

<sup>5</sup>Muhammad bin Isa al-Tirmidzi, *al-Jami' al-Kabir*, (Bairut: Dar al-Gharb al-Islami, 1998), 5/338.

<sup>6</sup>Ahmad bin Abd al-Halim bin Taimiyah, *Majmu' al-Fatawa*, (Bairut: Dar al-Wafa', 2005), 12/481.

<sup>7</sup>Ibid. 12/601.

<sup>8</sup>Sarwo Handayani, Dkk. "Imunisasi Terhadap Rubella pada Balita dan Wanita Usia Subur di Kota Surabaya dan Kabupaten Tabanan", *Bul. Panel. Kesehatan*, Vol. 36, No. 2, (Januari, 2008), 83.

<sup>9</sup>S. Darmadi, *Indonesia Journal of Clinical Pathology and Medical Laboratory*, "Gejala Rubella Bawaan (Kongenital) Berdasarkan Pemeriksaan Serologist dan RNA Virus", Vol. 13, No. 2, (Maret, 2007), 69.

<sup>10</sup>Ibid. 70.

<sup>11</sup>Acep T. Hardiana, dkk, *Jurnal Farmasi Klinik Indonesia*, "Analisis Penyebaran dan Genotipe Rubella di Jawa Barat Tahun 2011-2013", Vol. 4, No. 1, (Maret, 2015), 5.

<sup>12</sup>Nurlaila dan Nur Hanna, "Jurnal Keperawatan", "Karakteristik Kejadian Luar Biasa Campak Pada Salah satu Desa di Kabupaten Pesawaran Propensi Lampung", Vol. XII, No. 2, (Oktober, 2016).

resulting in a harmful impact on sufferers or others in the vicinity. There is also related side of knowledge about the MR vaccine (measles rubella) and the level of education of parents to the participation of MR immunization, written by Alisa Putri et al.<sup>13</sup> On the other hand, there are some research that explain the law of something that is forbidden by using the concept of *istihalah* such as the writing of Anjahana Wafiroha.<sup>14</sup> Meanwhile, a study conducted by Muhammad Danusiri,<sup>15</sup> talking about the Islamic view of immunization with the final conclusion of this study is allowed immunization of something that is forbidden when no immunization drugs are found from something that is permitted.

MUI (Majelis Ulama Indonesia) in charge of tracking the halallan and haraam something that can be consumed by the People of Indonesia provides illegal laws against the rubella vaccine. The legal decision from MUI is based on the results of research into the content of the vaccine in the form of pigs. However, with the element of *darurah*, then something haraam can turn into legal. Therefore, the final conclusion of MUI's decision on rubella vaccine is haram but mubah.<sup>16</sup> When viewed from the poses *istimbāt al-Aḥkām* used by mui based on the word of Allah surat al-Baqarah: 173, al-Naḥl: 115, and al-Anam: 145. Reviewing and re-examining the concept chosen by mui above, after conducting deeper research, researchers feel less fitting about the concept, because MUI seems not to review the concept of *istihlāl* in various Muslim intellectual views that focus in the field of jurisprudence and science. From this, it is necessary to re-research the law using the rubella vaccine using a comparison of the concept of *istihlāl* according to Muslim intellectuals.

This research is included in the type of qualitative-discrete research because this research is pure literature research, in the sense that all the data sources come from written data that has something to do with the topic discussed. The data sources in this study are divided into two parts: the primary sources (fiqh books such as, *al-Muḥalā*, *Tabyīn al-Ḥaqāiq Sharḥ Kanz al-Daqāiq*, *al-Kāfī fī Fiqh Ahl al-Madinah*) and secondary (*Tafsīr al-Ṭabarī*, *Ṣaḥīḥ Muslim*, *Sharḥ al-Muḥadḏab*). The study used a *tarjih* approach, which is to gather two conflicting arguments and then look for a meeting point between the two and favor one of two or more arguments. Departing from the doubts of Muslims in Indonesia regarding the legality of using rubella vaccine containing pig elements and has been diharmkan by MUI, this study aims to obtain a law that is more relevant to the space and time in Indonesia so that there is no doubt in using the rubella vaccine that is still a polemic among Muslims in Indonesia.

<sup>13</sup> Alisa Putri, Aslinar, Desiana, "Jurnal Ilmu Kedokteran Dan Kesehatan", Hubungan Pengetahuan Tentang Vaksin Mr (Measles Rubella) Dan Tingkat Pendidikan Orang Tua Terhadap Keikutsertaan Imunisasi Mr Di Desa Lam Bheu, Kecamatan Darul Imarah, Kabupaten Aceh Besar. Volume 7, Nomor 1, Januari 2020

<sup>14</sup> Anjahana Wafiroha, Jurnal Isti'dal, Tinjauan Konsep Istihalah Menurut Imam Al-Syafi'i Dan Imam Abu Hanifah, Dan Implementasinya Pada Percampuran Halal-Haram Produk Makanan), Volume 4, No 1, Tahun 2017

<sup>15</sup> Muhammad Danusiri, "Pandangan Islam Tentang Imunisasi," (Universitas Muhammadiyah Semarang, 2018).

<sup>16</sup> Putusan MUI Tahun 2018 No 33 tentang vaksin MR.

## Discussion

### Concepts and Methods of Istihālah The Perspective of Ulama Fiqh

#### 1. The Concept of Istihālah The Perspective of Ulama Fiqh

Before entering into the discussion of the concept of *Istihālah* the perspective of fiqh, first to be understood is the meaning of *Istihālah* itself either from a language or term point of view. After doing some research from the Arabic dictionary. The word *Istihālah* in the language perspective is *isim maṣḍar* which follows *wazn* استفعال. *Istihālah* is the *isim maṣḍar* of *fi'il* حَال يَحُول.<sup>17</sup>

The meaning of the word *Istihālah* in the language commentaries has the meaning of changing from its nature and behavior (تَغْيِيرٌ عَنْ طَبْعِهِ وَوَصْفِهِ).<sup>18</sup> Fairuz Abadī means *Istihālah* with three meanings: 1) the transfer from one place to another or from one position to another. 2) move on to something else. 3) leaning from one position and change.<sup>19</sup> Al-Manāwī explains the meaning of the word *Istihālah*, "changing something as it heats water and cools it even though its form and type still remain. And in *al-Miṣbāḥ* it is defined by the change of something from its nature."<sup>20</sup> Ramaūān Ḥamdun 'Alī further asserts in one of his articles after compiling all the meanings of *Istihālah* in the language, "of all the Arabic dictionaries *Istihālah* isim maṣḍar of *fi'il* Māūī حَال يَحُول when there is a change, displacement, or loss of something from its nature and nature of origin."<sup>21</sup>

If *Istihālah* is seen from the definition in terms of the scholars of fiqh, it is permissible that the meaning of *Istihālah* is to change something in something else. Although there is an agreement that the meaning of *Istihālah* as described above, there is a difference between the fiqh scholars when describing *Istihālah* in detail. Alā' al-Dīn al-Ḥanafī defines, "changing its attributes and habits from something unclean, to coming out of the dzatīyah something unclean, due to the loss of existing *najasah*."<sup>22</sup> Regarding this *Istihālah* Ibn 'Abidīn asserts, "when something *najis* has changed to something else, then something *najis* has become sacred. This is because *al-Shāri'* makes something unclean because it is unclean, and when some of its *kenajisan* is gone, then the law of uncleanness is gone. If some of his *kenajisan* has been unpunished, then what about the law when all its nature has changed?"<sup>23</sup>

Mengenai *Istihālah* these companions and tabi'in legalize and often apply it. It can be proven that 'Alī bin Abū Ṭālib, Ibn 'Abbās, Abū Dardā', 'Aṭā' bib Abū Rabāḥ, 'Umar ibn 'Abd al-'Azīz, and others argue that when liquor has occurred

<sup>17</sup> Al-Fayyūmī, Aḥmad bin Muhammad bin 'Alī, *al-Miṣbāḥ al-Munīr fī Gharīb al-Sharḥ al-Kabīr li al-Rāf'ī* (Bairūt: Dār al-Kutub al-'Ilmiyah, t.t.), 1/157.

<sup>18</sup> Ibid., 60.

<sup>19</sup> Fairūz Ābadī, Muhammad bin Ya'qūb, *al-Qāmus al-Muḥīṭ* (Bairūt: Muassasah al-Risālah, 2005), 3/532.

<sup>20</sup> Al-Manāwī, 'Abd al-Rāuf bin Taj al-'Ārifin bin 'Alī, *al-Tawqīf 'alā Muḥimmāt al-Ta'ārīf* (Kairo: 'Alām al-Kutub, 1990), 55.

<sup>21</sup> Ramaūān Ḥamdūn 'Alī, Impossibility in Islamic Jurisprudence (Fiqh), *Majallah Kuliyyah al-'Ulūm al-Islāmiyah*, Vol. 2, No. 14, (2013), 3.

<sup>22</sup> Al-Kāsāinī, 'Alā' al-Dīn Abū Bakar bin Mas'ūd bin Aḥmad, *Badāi' al-Ṣāni' fī Tartīb al-Sharā'i* (Bairūt: Dār al-Kutub al-'Ilmiyah, 1986), 1/85.

<sup>23</sup> Ibn 'Abidīn, Muhammad bin 'Umar bin 'Abd al-'Azīz, *Radd al-Mukhtār* (Bairūt: Dār al-Fikr, t.t.), 1/218.



*Istiḥālah*, then it is halal. This is as explained by al-Tahānawī.<sup>24</sup> Therefore, it is not wrong if Ibn 'Abidīn and Ṭahmās give examples when unclean goods have been burned and become ashes or fat of najsi animals have been processed and become soap, then it becomes holy.<sup>25</sup>

If *Istiḥālah* is described with shari'a perspective, then according to Rama'ūn Ḥamdūn is a change produced in unclean goods, thus changing its nature. Furthermore, because of this *Istiḥālah* his name changed due to a change of nature and was given a name that corresponds to his new nature.<sup>26</sup> Al-Hawāwī defines *Istiḥālah* using modern science, "the chemical change of something to another element. It's like turning oil and fat from something into soap."<sup>27</sup> Abū al-Wafā' also defines, "the change of something to something else is caused by a mixture of chemical elements. Like the change of alcohol into vinegar."<sup>28</sup>

After knowing the definition of *Istiḥālah* both in terms of language, terms, sharia, and modern science switched the next discussion regarding the concept of *Istiḥālah* itself the perspective of the great fiqh madzhab al-Ḥanafiyah, al-Shāfi'iyah, al-Mālikiyah, and al-Ḥanābilah. Below is a descriptive breakdown of the explanation to the scholars about *Istiḥālah* the perspective of the Ulama fiqh :

#### a. Ulama Ḥanafiyah

In general, there are three great thoughts of the Ḥanafiyah madzhab when discussing the issue of *Istiḥālah*. These three great thoughts are revealed by Ibn 'Abidīn, al-Kāsānī, and al-Sharanbilālī. Al-Kāsānī thinks that every thing that is *najis* when *Istiḥālah* has happened and there has been a change in its nature and meaning, it cannot be said *najis* anymore because it has changed and its name follows a new nature. *Kenajisan* can be said to be lost when its nature has been lost.<sup>29</sup> Furthermore Ibn 'Abidīn explained, From the agreement of the missionary scholars punished holy and halal. Although basically mission made of blood, but there has been a change. The point of change here is that *Istiḥālah* happens to something good. Thus, it is punishable sacred and halal.<sup>30</sup> Al-Sharanbilālī said that unclean things can become sacred when there has been a change in shape like a carcass that has become salt or ash.<sup>31</sup>

From the view of *Istiḥālah* the perspective of the al-Ḥanafiyah scholars can be found that the concept of *Istiḥālah* must meet three criteria, namely: 1) when

<sup>24</sup>Al-Tahānawī, Zafr Aḥmad al-'Uthmānī, *I'lāl al-Sunan* (Pakistan: Idārah al-Qur'ān wa al-'Ulūm al-Islāmiyah, 1418), 18/41.

<sup>25</sup>Ibn 'Abidīn, *Radd al-Mukhtār*, 1/316. Lihat juga, Ṭahmās, 'Abd al-Ḥamīd Maḥmūd, *al-Fiqh al-Ḥanafī fī Thawb al-Jadīd* (Mesir: Dār al-Shāmilah, t.t.), 1/47.

<sup>26</sup>Ramaḍān Ḥamdūn, *Impossibility in Islamic Jurisprudence*, 4.

<sup>27</sup>Al-Harāwī, Muḥammad, *Istiḥālah al-Najāsāt wa 'Alāqatuh Aḥkāmīha bi Isti 'māl al-Muḥaram wa al-Najis fī al-Ghadā' wa al-Dawā'*, *Majelis al-Urupa li al-Iftā' wa al-Buḥuth*. Dalam <http://www.islameqh.com/Nawazel/Nawazelltem.aspx?NawazelltemID+1145>

<sup>28</sup>Idris 'Abd al-Fattāḥ Maḥmūd, *Istikhdām al-Jilāfīn al-Khinzirī fī al-Ghadā' wa al-Dawā'*, *Majjalāh al-Buḥūth al-Fiqhiyah al-Mu'āṣirah*, Vol. 2, No. 31, (2017), 19.

<sup>29</sup>Al-Kāsānī, *Badāi' al-Ṣāni'*, 1/85.

<sup>30</sup>Ibn 'Abidīn, *Radd al-Mukhtār*, 1/209.

<sup>31</sup>Al-Sharanbilālī, al-Ḥanafī, *Nūr al-Idāḥ wa al-Najāh al-Arwāḥ fī Fiqh al-Ḥanafī* (Mesir: al-Maktabah al-'Aṣriyah, t.t.), 42.

there is a change of its original nature. 2) the change from something ugly / *najis* to something better. 3) the existence of such changes is a complete change from before the change of both *dzatiah* and its nature. Regarding these three concepts *Istihālah* is also explained by 'Alī Muhammad 'Alī Mahdī 'Uthmān:

إذا فالإستحالة عند الحنفية تطلق على ما تغيرت أوصافه, وعلى ما تغيرت أوصافه للطيبة, وعلى ما تغيرت ذاته وصفاته.<sup>32</sup>

b. Ulama Malikiyah

As a representative of the Mālikiyah madzhab on the concept of *Istihā*, the author presents three figures, al-Zurqānī, al-Dardīr, and al-Ḥaṭṭāb. Al-Zurqānī in his *Sharḥ al-Zurqānī 'alā Mukhtaṣar Khalīl* explains that anything unclean when it has turned to something good, then it is sacred.<sup>33</sup> Al-Dardīr revealed that the cause of its unclean vomiting was a change in something bad.<sup>34</sup> Furthermore, al-Ḥaṭṭāb explains the problem of *Istihālah* when discussing whether or not a person prays while the person uses a mission on his body or clothing. He argues that his prayers are punished lawfully by a missional argument that has become sacred, because *Istihālah* occurs in terms of his nature and name. Initially in the form of blood (foul smell) becomes a fragrant smell and which was originally called blood into perfume.<sup>35</sup> From the view of al-Ḥaṭṭāb, it is indicates that when unclean goods change their nature and become something useful or good, then the law is sacred and halal.

From all the commentaries that have been explained in the Mālikiyah madzhab it can be said that the concept of *Istihālah* used by the madzhab is *istihālah* can make something to be halal or sacred, but on condition that something unclean has changed shape and contains something good or *maslahat*. This is as revealed by al-Ḥaṭṭāb, If an something unclean that has undergone the *process of Istihālah* but does not contain good or benefit, then it cannot be punished as a sacred or halal item. This is something described by al-Dardīr.

c. Ulama Shāfi'iyah

Imām al-Ḥaramain, Ibn Ḥajar al-Haytamī, and al-Ḥaṣanī became representatives of the al-Shāfi'iyah figure chosen by researchers in giving an overview of the concept of *Istihālah* possessed by this madzhab. Regarding *this Istihālah* al-Ḥaramain gives the description *istihālah* that can change unclean to holy with enough just a change in the nature of something unclean and do not need a change in it's *dzatiah*.<sup>36</sup> Furthermore, al-Ḥaramain gives the

<sup>32</sup>Alī Muhammad 'Alī Mahdī 'Uthmān, *al-Istihālah wa Atharuha fī Taṭhīr al-Najāsah*, *Journal Hawliyah*, Vol. 1. No. 32, (2017), 2064.

<sup>33</sup>Al-Zurqānī, 'Abd al-Bāqī bin Yūsuf bin Aḥmad, *Sharḥ al-Zurqānī 'alā Mukhtaṣar Khalīl* (Bairūt: Dār al-Kutub al-'Ilmiyah, 2002), 1/48.

<sup>34</sup>Al-Dardīr, Aḥmad bin Muhammad al-'Adawī, *al-Sharḥ al-Kabīr* (Bairūt: Dār al-Kutub al-'Ilmiyah, 2000), 1/51.

<sup>35</sup>Al-Ḥaṭṭāb, Muhammad bin Muhammad bin 'Abd al-Raḥmān, *Mawāhib al-Jalīl li Sharḥ Mukhtaṣar al-Khalīl* (Bairūt: Dār 'Ālam al-Kutub, 2003), 1/97.

<sup>36</sup>Al-Juwainī, 'Abd al-Mālik bin 'Abdullah, *Nihāyah al-Maṭlab fī Dirāyah al-Madhhab* (Kairo: Dār al-Minhāj, 2007), 1/26.

example of liquor, liquor can become halal if the element that causes the severity of the hangover has been drained, without having to be in the form of other dzatiah.<sup>37</sup>

Not much different from al-Ḥaramain, al-Haytamī also titled, "*Basically Istihālah* only needs to change its nature without having to change its shape."<sup>38</sup>In addition, al-Ḥasanī also gives the same explanation as the two figures above, he explains that *Istihālah* is a change of something from its original nature to another trait.<sup>39</sup>

From the above commentary it can be concluded that the concept of *Istihālah* used by madzhab al-Shāfi'iyah is simpler than the concept of *Istihālah* used by the two previous madzhab. It can be seen that something unclean when it has changed its nature even though its shape is still fixed, then *Istihālah* remains valid and can change something that was originally haraam or unclean into something halal or sacred. Thus, the concept of *Istihālah* used by madzhab al-Shāfi'iyah only needs to change nature without needing anything else.

d. Ulama Ḥanābilah

Not much different from the argument of the Ulama madzhab that has been explained earlier. Ḥanābilah also argues that *Istihālah* can make something that was originally unclean or haraam to be holy or sacred. As evidenced by the Ḥanābilah, *istihālah* can be seen from the opinion of one of his madzhab, Abū Fa'ūl al-Ba'lā. He explained:

الاستحالة : إستفعال من حال الشيء عما كان عليه زال. وذلك مثل أن تصير العين النجسة رمادا أو غير ذلك.<sup>40</sup>

From the above editorial it is understood that *istihālah* is a change from a situation that can eliminate the state of asilnya. The example proposed by al-Ba'lā is not much different from the example used by the Ḥanafiyah and Mālikiyah madzhabs that is the change of uncleanness to dust. With the change of something unclean into dust, the dust that was originally a unclean object became holy. This is due to a change from one state to another that can eliminate the original nature of the unclean goods.

After exposing the four famous jurisprudences concerning *Istihālah*, it can be quoted several important points regarding the concept of *Istihālah* which is justified from one madzhab to another. Important points that can be typed can be summarized as follows: (1) From the Ḥanafiyah and Maliki madzhabs it *istihālah* with a change of the whole nature of the goods. It is the difference between the Shāfi'iyah and the Ḥanābi that can only make changes to some of them. (2) From the Shāfi'iyah and Ḥanafiyah madzhabs make it clear that

<sup>37</sup>Al-Juwainī, 'Abd al-Mālik bin 'Abdullah, *Nihāyah al-Maṭlab*, 1/27.

<sup>38</sup>Al-Haytamī, Aḥmad bin Muhammad bin 'Alī, *Tuḥfah al-Muḥtāj fī Sharḥ al-Minhāj* (Mesir: al-Maktabah al-Tijāriyah al-Kubrā, 1983), 1/303.

<sup>39</sup>Al-Ḥasanī, Abū Bakar bin Muhammad bin 'Abd al-Mu'min, *Kifāyah al-Akhyār fī Hall Ghāyah al-Ikhtiṣār* (Damaskus: Dār al-Khayr, 1994), 73.

<sup>40</sup>Al-Ba'lā, Muhammad bin Abū al-Faṭḥ, *al-Maṭla' 'ala Abwāb al-Fiqh* (Bairūt: Maktab al-Islāmī, 1981), 35.

*Istihālah* can purify unclean things simply by changing their nature even if their form does not change. (3) From the Mālikīyah madzhab gives the requirement regarding the sanctity of something that happens *Istihālah* must have benefits or something in the form of a good thing. This requirement of the Mālikīyah was not used by the Shāfi'iyah and Ḥanafīyah madzhabs. Even the Ḥanafīyah madzhab declared that it is sacred for something that has happened *Istihālah* even though something is useless and not good.

### ***Istihālah* Method in the Perspective of Ulama Fiqh**

After conducting research on methods considered valid by Ulama fiqh regarding the sacredness of something unclean due to *Istihālah*, it can be concluded that there are seven methods of *Istihālah* namely:

#### 1. *Al-Ihrāq*

The meaning of *al-Ihrāq* here is to burn unclean or unclean objects with burning fire. This *al-Ihrāq* is explained by al-Manāwī, "putting something into a burning fire."<sup>41</sup> Furthermore, there is an opinion of the Ḥanafīyah scholars who assert that this method can be made holy something unclean. Al-Zayla'ī said:

والعذرة اذا صارت ترابا او احرقت بالنار. فان يحكم بطهارتها للاستحلال.<sup>42</sup>

"Dirt when it has become dust or burned with fire, it can be sacred, because there has been *Istihālah*."

#### 2. *Al-Takhalul*

*Al-Takhalul* here is more focused on something that can change by itself because of a long time. Al-Shāfi'ī in his work *al-um* explains:

المسلم يرث الخمر او توهب له لا تحل. فاذا صارت خلا حل ثمنها.<sup>43</sup>

"A Muslim is not allowed to bequeath or give liquor. But the absence has become vinegar, allowed."

From the above editorial it can be understood that al-Shāfi'ī legalized to take the price of khamar which had become vinegar. Thus, it can be concluded that the wine that has become vinegar is sacred. This method was agreed upon by the four madzhabs as one of the methods to purify unclean or mutant goods. This is evidenced by the explanation of al-Kāsānī from the Ḥanafīyah madzhab, which is the cause of *al-Takhalul's* method of *Istihālah* is: when something unclean has changed and changed both its nature or meaning, then something is out of uncleanness, because something is not included in the new name that characterizes it.<sup>44</sup>

#### 3. *Al-Istihlak*

<sup>41</sup> Al-Manāwī, 'Abd al-Rāuf bin Tāj al-'Ārifin bin 'Alī, *al-Tawqīf 'alā Muhimmāt al-Ta'ārīf* (Kairo: 'Alām al-Kutub, 1990), 40.

<sup>42</sup> Al-Zayla'ī, Uthmān bin 'Alī, *Tabyīn al-Ḥaqāiq Sharḥ Kanz al-Taqāiq wa Ḥashīyah al-Shilibī* (Kairo: al-Maṭba'ah al-Amiriyah, 1313), 1/76.

<sup>43</sup> Al-Shāfi'ī, Muhammad bin Idrīs, *al-Umm* (Bairūt: Dār al-Ma'rifah, 1990), 7/234.

<sup>44</sup> Al-Kāsānī, 'Alā' al-Dīn Abū Bakar bin Mas'ūd bin Aḥmad. *Badāi' al-Ṣāni' fī Tartīb al-Sharā'i*. Bairūt: Dār al-Kutub al-'Ilmiyah, 1986, 1/85.



According to the Ulama Fiqh, *al-Istihlāk* is to include something unclean on something else that is not unclean until there is a mixing between the two and can not be sorted again. With this model, the scholars agreed that something unclean is no longer known as unclean because there has been a intermingling between two elements, namely unclean and unclean. Al-Rāfi'i in his *al-'Azīz Sharḥ al-Wajīz* gives the example, uncleanness that is put in a lot of water and has been mixed, so it can not be punished as unclean anymore. Furthermore al-Rāfi'i gives a more detailed example, the person who drinks liquor that has been mixed with something and has mingled, then the person is not sanctioned as a drinker of liquor. Similarly, the person who runs ihram when he eats food mixed with perfume, then he gets fidyah.<sup>45</sup>

#### 4. *Al-Tabakhur*

*Al-Tabakhur* in the dictionary of the term fiqh is defined by the change of solid or liquid objects into gases that compound with smoke.<sup>46</sup> *Al-Tabakhur* is one of the methods to purify unclean objects from the perspective of some scholars such as only the Ḥanafiyah madzhab. Ibn 'Abidin explained, "anomia is collected from unclean things, the law is sacred."<sup>47</sup> Although the Ḥanafiyah sect recognizes the *al-Tabakhur* method as one of the *Istiḥālah* methods, this method is not considered correct by the Shāfi'iyah. It can be proven that al-Ramlī and Sulaymān Jamal gave affirmations:

واما النوشادر وهو مما عمت به البلوى فإن تحقق انه انعقد من دخان النجاسة او قال عدلان خبيران انه لا ينعقد الا من دخانها فنجس.<sup>48</sup>

From the above editorial, it can be understood that all unclean things that have happened *al-Tabakhur* still unclean. The person who is exposed to the smoke must purify himself. This can be justified when it is clear that the smoke is actually from unclean objects or by the presence of two fair witnesses who give explanations.

#### 5. *Al-Ta'arud li 'Awāmil al-Ṭabi'iyah*

One of the method of *Istiḥālah* that can purify unclean things is the natural change of the unclean object itself due to time. As the carcass is held then over time the carcass turns into dust, becomes clay, or caused by sunburn and rain so that it becomes another object. With this change, the originally unclean carcass became sacred.

This method is explained by al-Sarkhasī in his *al-Mabsūt*:

النجاسة تحرقها الشمس, وتفرقها الريح وتحول عينها, وينشفها الهواء فلا تبقي عينها بعد تأثير هذه الاشياء فيها فتعود الارض كما كانت قبل الاصابة.<sup>49</sup>

<sup>45</sup>Al-Rāfi'i, 'Abd al-Karīm bin Muhammad bin 'Abd al-Karīm, *al-'Azīz Sharḥ al-Wajīz al-Ma'rūf bi al-Sharḥ al-Kabīr* (Bairūt: Dār al-Kutub al-'Ilmiyah, 1997), 9/556.

<sup>46</sup>Muhammad Rawās Qal'ah Jī, *Mu'jam Lughah al-Fiqh* (Bairūt: Dār al-Nafāis, 1985), 120.

<sup>47</sup>Ibn 'Abidin, Muhammad bin 'Umar bin 'Abd al-Azīz. *Radd al-Mukhtār*. Bairūt: Dār al-Fikr, t.t., 1/325.

<sup>48</sup>Al-Ramlī, Muhammad bin Abū 'Abbās Aḥmad bin Ḥamzah, *Nihāyah al-Muḥtāj ilā Sharḥ al-Minhāj* (Bairūt: Dār al-Fikr, 1984), 1/248.

<sup>49</sup>Al-Sarkhasī, Muhammad bin Aḥmad bin Abū Sahl, *al-Mabsūt* (Bairūt: Dār al-Ma'rifah, 1993), 1/205.

"Something unclean when it has been burned by the sun, blown by the wind, and exposed by the air so that there is no longer the form of unclean objects, then the soil affected by something unclean is still punished holy as before the famous unclean object."

From the explanation above it can be understood that natural changes caused by time can make unclean objects become sacred objects.

#### 6. *Al-Dibāgh*

*Al-Dibāgh* is one of the methods of *Istiḥālah* agreed upon by all jurisprudence. The agreement concerning *al-Dibāgh* became the method of *Istiḥālah* because of the hadith of the Prophet explaining the sacred skin in the same. This hadith about *al-Dibāgh* is as narrated by the Muslim from Ibn 'Abbās in his Book of *Ṣaḥīḥ*:

قال الرسول الله صلى الله عليه وسلم: اذا دبغ الارهاب فقد طهر.<sup>50</sup>

*Al-Dibāgh* in fiqh review means to remove more and more skin of animals affected by blood or feces.<sup>51</sup> Animal skin that has been tanned from the perspective of ulama fiqh can be used for blankets, clothing, and others. Equally this is the same as changing the shape of a different unclean into a holy object.<sup>52</sup>

#### 7. *Al-Tafā'ul al-Kimiyawī*

This method developed in modern times, when advanced tools were found from the laboratory. Nowadays, this method is more dominant to be used as *istiḥālah* process. Alī Muhammad explained about this method, "with the development of technology and chemicals can change something that was originally unclean to be holy on the condition of strict supervision. Just like animal oil taken from carcasses that are used as food or medicine so that it can be used by humans."<sup>53</sup>

### The Law of Producing and Utilizing *Najis* or *Mutanajjis* After *Istiḥālah*

Basically the classical Ulama Fiqh have discussed this problem in the matter of soap made from unclean objects such as pork oil or oil mixed with something unclean. Researchers think this discussion needs to be re-raised with a review, if for beauty furniture is allowed, then for more medicine is allowed. This can be understood by using the concept of *maḥmūl awlawī* in the study of *uṣūl fiqh*.

Regarding the controversy that occurred between Ulama Fiqh regarding the use of soap made of unclean oil or mixed with unclean goods Qadāfī 'Izzāt al-Nanānim tried to weigh the power of the two opposing opinions which ultimately

<sup>50</sup>Muslim bin al-Ḥajjāj al-Naysabūrī, *al-Musnad al-Ṣaḥīḥ al-Mukhtaṣar bi Naql al-'Adl 'an 'Adl ilā Rusūlillah* (Bairūt: Dār al-Iḥyā' al-Turāth al-'Arabī, t.t.), 1/277.

<sup>51</sup>Muhammad bin Qāsim al-Ghazzī, *Fath al-Qarīb al-Mujīb fī Sharḥ Alfāz al-Taqrīb* (Bairūt: Dār al-Kutub al-'Ilmiyah, 1978), 27.

<sup>52</sup>Muhammad Khātib al-Sharbīnī, *Mughnī al-Muḥtāj ilā Ma'rifah Ma'ānī Alfāz al-Minhāj* (Bairūt: Dār al-Fikr, t.t.), 1/238.

<sup>53</sup>Alī Muhammad, *al-Istiḥālah wa Atharuha fī Taṭhīr al-Najāsah*, 2075-2056.

concluded that the first opinion is superior to the second opinion. This is because *Istiḥālah* is a concept agreed upon by the majority of fiqh scholars to purify unclean objects or goods.<sup>54</sup> The refusal of Abū Yūsuf and some of the followers of the Ḥabābilah madzhab who rejected *istiḥālah* as one of the concepts of *Istiḥālah* to purify the difference of uncleanness is considered to be in violation of the opinion of the majority of scholars.

### The Level of Utilizing Objects That Have Experienced *Istiḥālah* And Its Laws

When reviewed from the scales of science fiqh against the needs of mankind on everything can not be separated from three things. This is also true when discussing something that has happened *istiḥālah* to be used by humans in general. These three scales of fiqh are often referred to as *al-Maqāṣid al-Sharī'ah*: *al-Yarūriyāt* (when human needs are so urgent that they cannot avoid them or seek anything else), *al-Ḥājiyāt* (the need for them is not so urgent, but it can be), and *al-Taḥsīniyāt* (the need for it is only a complement to the nature of human perfection alone). Below is an explanation of the three elements when included in the discussion of *Istiḥālah*:

#### 1. *Al-Darūriyāt*

When something that has happened *istiḥālah* is an urgent need for people, then in these circumstances it is legalized to take advantage of it. Even the law of the use of it can reach the rank of obligation. Just as sick people need certain medications or capsules that contain something that has been forbidden. In these circumstances taking drugs or capsules is legal even if there is no substitute drug can be punished mandatory to consume the drug.

#### 2. *Al-Ḥājiyāt*

The need for something that has happened *Istiḥālah* is not so urgent and when not using it does not come to death. Just like using soap made from unclean oil or mixed with unclean oil, using unclean oil directly, or using drugs that are not so urgent for the safety of his soul. In these circumstances the law uses something that has happened *Istiḥālah* mubah law on condition that there should be no danger that threatens him after using the goods. However, if there is a danger that threatens after using it, then it is haraam. Nevertheless it is still essentially legalized.

As for the legality of something that has happened *Istiḥālah* in this position *al-Ḥājiyāt* is something that has happened *Istiḥālah* is basically sacred law and legal to use it under any circumstances. While the basis of haraa when there is a danger based on the rule of jurisprudence "it is not allowed to harm yourself or others."<sup>55</sup>

#### 3. *Al-Taḥsīniyāt*

Using it is not urgent for the user, but it is used to embellish its appearance only. Just like using cosmetics mixed with unclean objects that have happened *Istiḥālah*

<sup>54</sup>Qādaḥī 'Izzāt al-Nanānim, *al-Istiḥālah wa Ahkāmuhā fī al-Fiqh al-Islāmī* (Urdūn: Dār al-Nafāis, 2007), 193.

<sup>55</sup>Al-Suyūṭī, 'Abd al-Raḥmān bin Abū Bakar, *al-Ashbāh wa al-Naẓāir* (Bairūt: Dār al-Kutub al-'Ilmiyah, 1403), 88.

with the aim of beautifying yourself. Regarding this situation, there is a difference of opinion. Some of them are forbidden and some are legal. But according to the personal author's view, using cosmetics mixed with something unclean after the *istihālah* is legal. However, if using it can pose a danger, then it is haraam to rule based on the rules that the author has explained in the discussion of *al-Ḥājiyāt*.

### The Law of Treatment with *Muḥramāt*

Regarding the ruling on medicine with something clearly forbidden the scholars of jurisprudence there are still differences of opinion among them some are legalized and some are forbidden. This dissent arises because of the hadith of the Prophet Muhammad from Ibn Mas'ūd which explains the prohibition of treatment with something that is forbidden. The editorial of the hadith is as follows:

إِنَّ اللَّهَ لَمْ يَجْعَلْ شِفَاءَكُمْ فِي مَا حَرَّمَ عَلَيْكُمْ.<sup>56</sup>

"Allah does not put healing on anything that is forbidden to you."

In addition, there are other hadiths that are similar to the explanation above. This hadith is narrated by Abū Dāwūd of Abū al-Dardā':

إِنَّ اللَّهَ عَزَّ وَجَلَّ أَنْزَلَ الدَّاءَ وَالذَّوَاءَ، وَجَعَلَ لِكُلِّ دَاءٍ دَوَاءً، فَتَدَاوُوا، وَلَا تَدَاوُوا بِحَرَامٍ.<sup>57</sup>

"Surely Allah has sent down sickness and medicine. And Allah created the disease and the cure. Therefore, seek treatment and never seek treatment with anything haraam."

In addition, there is a difference of opinion between Ulama Fiqh regarding medicine and something that is forbidden arises from the basic principle in *istimbāṭ al-Aḥkām* in the matter of whether the sick and do not find a remedy legalized by *al-Shāri'* is classified as an emergency so that it is permissible to consume something that is forbidden as explained in the word of Allah (Q.S. al-Baqarah: 173). From this issue, Ulama who consider such conditions included in emergencies allow to consume something that is forbidden, but with certain conditions. While scholars who think such conditions do not belong to the emergency assume it is not permissible to consume something that is forbidden.

From the two hadiths of the Prophet Muhammad above, Ulama differed because of the interpretation of the hadith. Ulama who declare haram based on the textual understanding of the hadith. While the legal Ulama try to reinterpret the redaction of hadith and contextualize the hadith above. From the two hadiths above it clearly shows that it is not permissible to use something that is forbidden to be used as medicine, because there can be no good in something that is clearly forbidden by the conditions of Islam.

<sup>56</sup>Al-Bayhaqī, Aḥmad bin al-Ḥusain bin 'Alī, *al-Sunan al-Ṣaḡīr li al-Bayhaqī* (Pakistan: Universitas Dirāsāt al-Islāmiyah, 1989), 4/84.

<sup>57</sup>Abū Dāwūd, Sulaymān bin al-Ash'at bin Ishāq, *Sunan Abū Dāwūd* (Bairūt: Dār al-Risālah al-'Ilmiyah, 2009), 6/23.



While the basis of Athār used by this group is the word Ibn Mas'ūd which explains that God could not provide healing to man through something that has been forbidden to man. The editorial of Ibn Mas'ūd's words is as follows:

إِنَّ اللَّهَ لَمْ يَجْعَلْ شِفَاءَكُمْ فِي مَا حَرَّمَ عَلَيْكُمْ.<sup>58</sup>

"Allah does not put healing on anything that is forbidden to you."

After explaining and weighing two opinions that are opposite regarding the law of medicine with *maharramāt* above, researchers are more inclined to the opinion of scholars who legalize consuming something that is forbidden or unclean for treatment in an emergency. Researchers can argue that, because in an emergency everything that was originally haraam turned into halal. In addition, maintaining self-safety is more important than avoiding something that is forbidden. Here, the basis used by Ulama who stated the legality of medicine from something that is forbidden is quite stronger than those who claim not legalized.

### Rubella Action Vaccine Content Analysis From Experts' Perspective

Rubella is also known as German measles caused by a virus called Rubella. Measles and Rubella are infectious diseases of the airways caused by the Measles and Rubellavirus.<sup>59</sup> Indonesia's health profile in 2016 reported 6,890 cases of 2016, with 5 deaths.<sup>60</sup>

Through the Ministry of Health took measures to prevent such epidemic by disseminating MR vaccine from Serum Institute of India (SII). However, after a study on the content or composition contained in the MR vaccine from SII was found to contain pork gelatin. For this matter, it is important to know the stages of vaccine production in more detail.

Below is an explanation of the two *usnūr* mentioned by Mui in his fatwa so as to issue a fatwa against the MR vaccine.

#### 1. Gelatin derived from pig skin

Gelatin is a protein derivative compound obtained by extracting animal collagen and drying it. As for the source of gelatin itself is collagen substance extracted from farm animals on the skin, bones, and connective tissue.

#### 2. Enzyme tripsin from the pancreas of pigs

Trypsin is an important enzyme for both research and pharmaceutical, medicinal and health industries, especially to be developed as a raw material for digestive enzymes. When viewed from the function of this trypsin can be used to reduce allergy symptoms, it can also be used as a dietary supplement and show the effects of tumor.<sup>61</sup>

<sup>58</sup>Al-Bayhaqī, Ahmad bin al-Ḥusain bin 'Alī, *al-Sunan al-Ṣaḡīr li al-Bayhaqī* (Pakistan: Universitas Dirāsāt al-Islāmiyah, 1989), 4/84.

<sup>59</sup>IDAI, 2017. Imunisasi Campak - Rubella (MR). <http://www.idai.or.id/artikel/klinik/imunisasi/imunisasi-campak-rubella-mr>.

<sup>60</sup>Depkes RI (2017) Pedoman Pengelolaan Vaksin Jakarta: Dirjen Bina Farmasi dan Alat Kesehatan.

<sup>61</sup>Trismilah, dkk, Isolasi dan Karakterisasi Protease Serupa Trypsin (PST) dari *Lactobacillus Plantarum* FNCC 0270, *Jurnal Ilmu Kefarmasian Indonesia*, Vol. 12, No. 1, (April, 2014), 57.

The enzyme tripsin made from pig pancreas is needed for the process of making vaccines to grow seeds of several vaccines. Until now, no substitute for the tripsin making material has been found.<sup>62</sup>

### Vaksin Rubella dalam Tinjauan Konsep *Istihālah*

Below is a detailed explanation of the law of gelatin made of something forbidden:

#### 1. Gelatin Law Controversy

##### a) Legalized groups

The perspective of this group is all gelatin made from the carcasses of halal animals or pigs is halal law and can be used by Muslims. It is reviewed that the gelatin has occurred in its entirety in terms of its nature that is different from its original form. This argument arose from the final decision in 1419 conducted in Kuwait. The conclusions that can be drawn from the results of the muktamar are:

ان الجيلاتين المتكون من استحالة عظم الحيوان النجس وجلده واوتاره طاهر, واكله حلال.<sup>63</sup>

"indeed gelatin made of unclean animal bones, skin, or tail after the process of *Istihālah*, then the ruling is sacred and lawful to consume it."

From this explanation it is clear that the gelatin law made of something that is forbidden remains legalized and sacred law. However, provided that there must have been a process of *Istihālah*. In addition, according to this group, *Istihālah* that occurred in the process of making gelatin has changed in its entirety, thus the concept of *Istihālah* has occurred in this matter.

##### b) Illegal arguing groups

This group assumes that the scattered gelatin does not change completely, but only changes in part. Thus, it is not haraam to use gelatin made from carrion or animals that are forbidden in the Qur'an and hadith of the Prophet Muhammad, because the requirements of *Istihālah* which is considered true by this group must change as a whole. This illegal law arises from the results of the world fiqh majma' muktamar held in 1914 issued the following conclusions:<sup>64</sup>

<sup>62</sup>Majelis Ulama Indonesia, Fatwa MUI No 4 Tahun 2016. Tentang Imunisasi. Komisi Fatwa Majelis Ulama Indonesia. 2016.

<sup>63</sup><http://www.islamset.com/arabica/abioethics>

<sup>64</sup>Faṭmah Muhammad Rashād, *Aḥkām Isti'māl al-Mawād al-Kimiyawiyah fī al-Fiqh al-Islāmī*, Tesisi (Jami'ah Um al-Qurā, 2018), 174.

يجوز استعمال الجيلاتين المستخرج من المواد المباحة, ومن الحيوانات المذكاة تذكية شرعية, ولا يجوز استخدامه من محرم كجلد الخنزير وعظامه وغيره من الحيوانات والمواد المحرمة.

"it is permissible to make use of gelatin produced from something that is added and animals that have been slaughtered with the slaughter of conditions. It is not permissible to take advantage of gelatin from anything that is forbidden such as pig skin, bones, from forbidden animals, and something that is clearly forbidden.

2. The basis of the halal rubella vaccine containing pigs according to ulama fiqh  
Entering the discussion of rubella vaccine containing elements of pigs or human cells as described by mui in his fatwa and after a deeper study of the concept of *Istihālah*, and after presenting arguments from health experts, it can be concluded that rubella vaccine mixed with elements from pigs and humans in the view of legal researchers is absolutely legal for human consumption. Thus this after reviewing that the elements of pigs and other mixtures have changed from their annealing form to other forms. Apart from the change in the whole or not, because some of the Shāfi'iyah have considered halal and holy unclean objects or mutants when *istihālah* has occurred even though only a part has changed.<sup>65</sup>

Moreover, the explanation that has been collected from medical experts states that gelatin from pigs only serves to breed the seeds of the vaccine and after that is separated from the vaccine. Furthermore, for the process of achieving a vaccine that can be consumed by humans, it takes a long process, either from the purification process or re-washing.<sup>66</sup> With this process, it is clear that rubella vaccine is not a pig and although it has mixed with pigs, but this has happened *Istihālah*. If *Istihālah* has occurred, then it is not appropriate for the Rubella vaccine to be punished as haraam, because *Istihālah* can purify something unclean and in the permissible something that was originally haraam.

If it has been determined as described above, then rubella vaccine can be consumed by anyone and under any circumstances. The emergency foundation is very inappropriate to legalize the Rubella vaccine. Researchers can argue that, because there is no basis for preventing something that has not happened so as to legalize something that is forbidden by emergency reasons. There is an emergency when it has actually struck, not a mirage.

Therefore, researchers strongly disagree with the MUI fatwa decision that explains that rubella vaccine from SII is illegal but mubah with emergency reasons and no other halal vaccines are found.<sup>67</sup> Impressed from mui fatwa in order to legalize rubella vaccine under the pretext of emergency. Though there

<sup>65</sup>Al-Juwainī, *Nihāyah al-Maṭlab*, 1/26.

<sup>66</sup>Endang, Peran Enzym Tripsin, dalam <https://seruji.co.id/ipetek/kesehatan/peran-enzym-tripsin-babi-dalam-proses-produksi-vaksin/>

<sup>67</sup>Majelis Ulama Indonesia, Fatwa MUI No 4 Tahun 2016. Tentang Imunisasi. Komisi Fatwa Majelis Ulama Indonesia. 2016.

is no emergency at all on the condition of babies who get rubella vaccine. The position of the baby can be categorized as an emergency if the baby who gets the Rubella vaccine has a real rubella virus infection. If it has not been completely infected, then the law of mubah with emergency reasons cannot be justified. This is true if MUI still thinks that rubella vaccine is illegal.

Moreover, from the fatwa MUI seemed not to explain in detail the concept of *Istihālah*. Whereas with a more detailed explanation of the concept of *Istihālah* can give a more accurate decision in his fatwa. However, this was not mentioned by mui when formulating rubella vaccine problem. In fact, MUI focuses more on the emergency issue of the perspective of the fiqh rules and opinions of fiqh scholars. This is what makes mui fatwa results tend to prohibit rubella vaccine but mubah because there is no substitute for other vaccines other than those issued by SII. When there are other vaccines that do not contain anything that is forbidden, then it is haraam to use rubella vaccine from SII.

If MUI focuses more on the concept of *Istihālah*, then it can be certain that the decision of fatwa is not so, but it is more likely to be permissible, because *istihālah* has occurred with the method of *Al-Tafā'ul al-Kimiyawī*<sup>68</sup> as the researcher have explained in the previous discussion.

If MUI focuses more on the concept of *Istihālah*, then it can be certain that the fatwa decision is not so, but it is more likely to be permissible, because *istihālah* has occurred with the method of *Al-Tafā'ul al-Kimiyawī*<sup>69</sup> as the researcher have explained in the previous discussion.

## Conclusion

From this study can be concluded three main points. (1) that the law prevents the disease from being forbidden has no solid basis regarding its legality even though it is illegal to use drugs, and if a person has been afflicted with a disease and there is no cure other than something clearly haraam, then the law and in this case fall into the category of emergency. (2) that the law of immunization with rubella vaccine containing pigs according to the scholars fiqh: there is a difference of opinion between the scholars fiqh regarding drugs containing elements of pigs or human organs. Some scholars have legalized it and some have forbidden it. However, according to the author, rubella vaccine is legal even if it contains pigs or human organs, not because of emergency elements, but rubella vaccine containing pigs or human organs has changed from the original form of something that is forbidden to something else either from dzatiah or its nature. (3) that the halal foundation of rubella vaccine containing pigs according to the scholars fiqh: the concept of *Istihālah* using the method of *Al-Tafā'ul al-Kimiyawī* is the most powerful basis for stating that rubella vaccine is halal and sacred. Thus, it can be used by Muslims.

In this study only focused on legal issues using rubella vaccine using *istihālah* concept approach. This research can be a consideration to formulate the law of problems related to the halal industry. Exploring the concept of *Istihālah* became

<sup>68</sup> Alī Muhammad, *al-Istihālah wa Atharuha fī Taṭhīr al-Najāsah*, 2075-2056.

<sup>69</sup> Alī Muhammad, *al-Istihālah wa Atharuha fī Taṭhīr al-Najāsah*, 2075-2056.



very important in modern times, because it is thus not easy to say something that is haraam. The obstacle in this study is to focus only on the problem of argumentation of Islamic scholars and health experts without looking directly from the laboratory to prove the truth. Therefore, this study needs to be reviewed in terms of its authenticity in the laboratory.

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