

The Principle “Private Harm May Be Tolerated To Prevent Public Harm” And Its Role In Supporting Neonatal Food Security: An Analytical Jurisprudential Study

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ABSTRACT

This study offers a foundational and objective-based analysis of the Islamic legal maxim “private harm may be tolerated to prevent public harm”, considering it a central jurisprudential rule applicable in cases of conflict between interests or harms, particularly in emergencies and exceptional circumstances.

The research explores the relationship between this principle and food security systems, focusing on newborns as the most medically and legally vulnerable group.

The study adopts an analytical approach, without delving into applied details, aiming instead to connect the principle with concepts of harm in Islamic thought, the higher objectives of Sharia (maqasid), and modern medical ethics.

Findings highlight the importance of defining concepts like harm, public interest, and proportionality before applying the principle. The study further emphasizes the need to integrate it into flexible legal frameworks for critical cases, balancing the protection of life with the safeguarding of individual rights

Keywords: Private harm, public harm, legal maxims, food security, newborns, medical ethics, maqasid al-sharia, legal necessity.

1. INTRODUCTION

One of the most remarkable features of Islamic law is its resilience and adaptability to evolving human needs, thanks to a deep jurisprudential system grounded in overarching legal maxims. Among the most prominent of these is the principle “private harm may be tolerated to prevent public harm”, which embodies the jurisprudence of balancing interests and exemplifies how Islamic law considers the objectives of legislation when conflicts arise between benefits or harms.

This principle is based on a fundamental objective-oriented approach that prioritizes public interest or averting greater harm, even if that entails bearing a lesser harm—provided that certain ethical and legal conditions are met. It is a utilitarian rule, though not purely pragmatic; it is constrained by the principles of justice, necessity, and proportionality.

Given the health and nutritional challenges confronting modern societies, newborns are among the most vulnerable groups due to their underdeveloped immune systems and complete dependency on external nutrition. Any disruption in food security systems disproportionately affects them. Hence, a more flexible yet disciplined jurisprudential perspective is essential.

Contemporary crises—such as wars, pandemics, and climate-related disasters—have forced healthcare systems to take extraordinary measures like distributing alternative foods, restricting imports, or prioritizing certain groups. These decisions can only be evaluated through jurisprudential frameworks capable of reconciling competing rights and interests.

Islamic law, with its comprehensive maxims, provides a balanced outlook for addressing such issues. Revisiting the principle “private harm may be tolerated to prevent public harm” through the lens of Sharia objectives and bioethical principles is thus imperative. Properly conceptualized, this principle can serve as a legal foundation for regulating food emergency jurisprudence and neonatal care in Muslim-majority contexts.

This study aims to analyze the principle comprehensively—its concepts, foundations, limits, and connection to modern ethical discourse—offering a structured understanding for decision-makers, jurists, and practitioners working in this critical domain.

2. RESEARCH PROBLEM

Despite the deep roots of this principle, its misapplication in contemporary food and healthcare policies has resulted in two opposing outcomes:

- Either its complete neglect due to fear of overextension;
- Or its misuse in decisions affecting public policy.

The central research questions are:

- How valid is this principle in the context of modern medical emergencies?
- What are the points of convergence or divergence between this principle and bioethics?
- What are the permissible limits of legal concessions under this principle?
- How can real public harm be distinguished from imagined threats in today's world?

3. RESEARCH OBJECTIVES

- To analyze the theoretical structure of the principle and its position among major legal maxims.
- To understand the jurisprudential meanings of “private harm” and “public harm.”
- To present a critical jurisprudential perspective on the role of the principle in modern Islamic discourse.
- To compare the principle with ethical concepts such as justice, beneficence, and minimizing harm.
- To establish criteria for responsible legal reasoning in neonatal health emergencies.

4. METHODOLOGY

This study employs an integrative analytical methodology combining jurisprudential foundations, moral philosophy, and contemporary critique, with the aim of producing a jurisprudential analysis attuned to evolving food and health realities. The methodological approaches used include:

1. Jurisprudential Foundational Method:

This involved rooting the principle in its original sources: Qur'an, Hadith, Sharia objectives, and classical jurisprudence. Sources included Al-Muwafaqat (Al-Shatibi), Al-Qawaid al-Kubra (Al-'Alā'ī, Al-Suyuti), Majmu' al-Fatawa (Ibn Taymiyyah), and Al-Majmu'.

Connections were drawn between this principle and others, such as “harm must be eliminated”, “necessities permit prohibitions”, and “harm is not eliminated by equal harm”, illustrating the coherent epistemological structure of Islamic legal reasoning in conflict scenarios.

2. Analytical Maqasid-Based Method:

This examined how the principle aligns with major Sharia objectives like protection of life, progeny, ease, and livelihood. It explored the principle as a tool for realizing legitimate public interest and balancing between legal rigor and dispensations during emergencies.

3. Comparative Ethical Method:

The study compared the principle with bioethical standards including:

- o Justice
- o Beneficence
- o Non-maleficence
- o Autonomy

These were measured against Islamic values to assess alignment and divergence in moral decision-making frameworks.

4. Structural Critical Method:

This approach analyzed the conceptual structure of “harm,” “generality,” “necessity,” and “particularity,” noting the risk of misuse if these concepts are not precisely defined. It emphasized the need for legal precision to prevent unintended injustice or unjustified prioritization.

5. FINDINGS

The study reached several theoretical conclusions that support the intellectual grounding of the principle and affirm its validity in addressing neonatal-related health emergencies:

1. The Principle's Jurisprudential Authenticity:

This is not a novel principle but a derivative of the rule “harm must be eliminated”, and it appears in various forms in classical literature, underscoring its foundational role.

2. Broad Scope of “Harm” in Islamic Thought:

Harm in Islamic jurisprudence encompasses psychological, social, and spiritual dimensions—not just physical effects—making it applicable to evaluating group-level impact even when individual harm is minimal.

3. Conditions for the Principle's Valid Use:

- o Public harm must be verified, not speculative.
- o Private harm must be tolerable or compensable.
- o The principle must not justify unethical or discriminatory actions.

4. Alignment with Ethical Principles of Justice and Beneficence:

The principle supports distributive justice in medical ethics and legitimizes decisions that safeguard systemic integrity, even at the cost of some individual privileges—provided there is ethical restitution.

5. Jurisprudential Potential for Modern Fatwa Development:

The principle provides a fertile foundation for balanced fatwas that integrate legal integrity with practical realities, enabling proactive guidance rather than reactive problem-solving.

DISCUSSION

The study emphasizes the principle's strategic role in shaping modern food and medical jurisprudence but insists that its effectiveness depends on a disciplined interpretive framework.

1. The Individual vs. Collective Dilemma:

Prioritizing public interests (e.g., protecting food supply chains) may require limiting individual access (e.g., excluding certain specialized infant formulas due to quality control issues). This raises ethical concerns if “private harm” is generalized unjustly.

2. Moral Framework as a Critical Factor:

Comparing Islamic law with medical ethics highlights the necessity of integrating compassion and compensation. Public interest must be pursued with mechanisms to minimize or offset private harm—this is well established in the writings of Al-Shatibi, Al-Zarkashi, and Al-Juwayni.

3. Skepticism Over Overextension of “Public Harm”:

In crises, the term “public harm” is sometimes overused to rationalize policies that are politically motivated rather than evidence-based. A precise, multidisciplinary definition of “harm” is crucial.

6. CONCLUSION

After an extensive examination of the structure and application of the principle “private harm may be tolerated to prevent public harm,” the study concludes the following:

1. It is a Regulatory Necessity, Not a Theoretical Luxury:

This principle is a pragmatic, textually supported legislative tool that can help regulate the balance between competing interests in crisis situations.

2. Terminological Precision is Crucial:

Many challenges stem from unclear definitions of harm, tolerance, and necessity. Clarifying these terms is as important as extracting rulings.

3. Convergence with Ethical Standards:

The principle aligns with justice, beneficence, and minimal harm principles in bioethics, enabling a cohesive and value-consistent legal narrative.

4. Institutionalization is Required:

Its application in sensitive domains like infant food security must be institutionalized through joint juristic-medical bodies, not left to individual reasoning.

5. The Principle's Valid Use Requires Three Pillars:

Knowledge: Understanding the scope and nature of harm.

Justice: Ensuring fairness and compensation.

Intention: Acting to prevent harm, not serve narrow interests.

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