



CHOOSING LIVES: Pandemic Emergency Triage from the Perspective of *Maqāshid*

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ABSTRACT

The spike in Covid-19 cases in Indonesia in mid-2021 has led to scarcity of various resources and resulted in a functional crisis of hospitals in accommodating patients. This condition puts health workers and relevant policy makers in difficult situation and ethical dilemma in triaging patients. In this context, there are at least two competing ethical approaches. The utilitarian approach demands maximum benefit in saving lives, whereas the egalitarian approach emphasizes equal rights and opportunities for treatment. This brings up several problems related to giving priority. The problems also include withdrawal of treatment in favour of other patients. This article normatively tries to discuss the issue from the *Maqāshid* perspective. This article is qualitative. Literature review of several related recommendations was carried out to explore the basic problems and then putting them in light of the *maqāshid* theory. This article argues that *Maqāshid* can be an alternative ethical approach in determining priorities. All considerations need to be read in the light of *Maqāshid* and its principles with primary focus on scientific and medical considerations.

ABSTRAK

Lonjakan kasus Covid-19 di Indonesia pada pertengahan tahun 2021 menyebabkan kelangkaan berbagai sumber daya dan krisis fungsional rumah sakit dalam menampung pasien. Kondisi ini menempatkan tenaga kesehatan & pengambil kebijakan berada dalam situasi sulit dan dilema etik untuk melakukan triase pasien. Dalam konteks ini, ada dua pendekatan etis yang bersaing yaitu utilitarian yang menuntut manfaat maksimal dalam menyelamatkan nyawa dan pendekatan egaliter menekankan persamaan hak dan kesempatan untuk mendapatkan perlakuan. Hal ini memunculkan beberapa permasalahan terkait pemberian prioritas. Artikel ini secara normatif mencoba membahas masalah tersebut dari perspektif *Maqāshid*. Artikel ini bersifat kualitatif. Tinjauan pustaka terhadap beberapa rekomendasi terkait dilakukan untuk menggali permasalahan mendasar dan kemudian meletakkannya dalam tinjauan teori *maqāshid*. Artikel ini melihat bahwa *Maqāshid* dapat menjadi alternatif pendekatan etis dalam menentukan prioritas triase. Seluruh pertimbangan yang ada perlu dibaca berdasar *Maqāshid* dan prinsip-prinsipnya dengan fokus utama pada pertimbangan ilmiah dan medis.

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Introduction

Around July 2021, Indonesia experienced a second wave of Covid-19 cases with a significant increase. Recorded daily cases in this wave reached 56,757 on July 15, 2021 where in the first wave the highest cases did not reach twenty thousand cases. As a consequence, the peak of active cases in this period reached 574,135 cases on July 24, 2021 and the peak of daily deaths reached 2,069 people on July 27, 2021.¹ As cases soared, scarcity of resources was widely reported. Some regions reported a medical oxygen crisis and deaths caused by delays in oxygen supply.² The bed occupancy rate in some hospitals has even reached 100% so they have to refuse patients.³ Not only that, the health workforce crisis was also threatening.⁴

Limited resources and the increasing number of patients requiring treatment put health workers in the field in a difficult position. More pressure is felt for health workers who handle emergency and intensive care. On several social media platforms, several posts of the dilemma faced by the health workers went viral. When it comes to choosing between multiple patients to prioritize intensive care, the choice often goes to the patient without comorbidities or the youngest. Frequently after a few minutes the patient who was not selected finally breathed his last. In selected patients, the provision of a therapy also often gives psychological pressure for health workers. It is a risky task with uncertain results. Intensive care for selected patients considerably does not show the desired results.⁵ The provision of care in a crisis time is not the same as in a normal condition. A decision made for one patient has consequences for another patient. The decision to give a therapy to one patient means other patients who also need it do not get the therapy. In this Covid-19 pandemic, it is not uncommon for the consequence to be loss of life.

¹Website Resmi Penanganan COVID-19, "Peta Sebaran," covid19.go.id, accessed December 2, 2021, <https://covid19.go.id/peta-sebaran>.

²Andri Saubani, "Pandemi di Indonesia Masuki Fase RS Krisis Oksigen Medis," *Republika Online*, July 23, 2021, <https://republika.co.id/share/qwp7ey409>; Haris Firdaus, "Krisis Oksigen RSUP Dr Sardjito, Label Hoaks, dan Liputan Kolaborasi," *kompas.id*, August 5, 2021, <https://www.kompas.id/baca/di-balik-berita/2021/08/05/krisis-oksigen-rsup-dr-sardjito-label-hoaks-dan-liputan-kolaborasi>.

³Jimmy Manan, "Krisis Pandemi COVID 19 di Indonesia Hampir pada Level Katastropi," *VOA Indonesia*, accessed December 2, 2021, <https://www.voaindonesia.com/a/krisis-pandemi-covid-19-di-indonesia-hampir-pada-level-katastropi/5936441.html>.

⁴Syailendra Persada, "Krisis Tenaga Perawat Hantui Indonesia," *Tempo*, July 9, 2021, <https://nasional.tempo.co/read/1481587/krisis-tenaga-perawat-hantui-indonesia>.

⁵Ahmad Muttaqin Alim, "Ketika Dokter Terpaksa Memilih," *detiknews*, July 5, 2021, <https://news.detik.com/kolom/d-5632004/ketika-dokter-terpaksa-memilih>; Afandi, "Dilema dr. Corona: Sekarang, Hampir Setiap Hari Saya Memilih Nyawa Pasien," *Cahaya Islam Berkemajuan* (blog), June 28, 2021, <https://muhammadiyah.or.id/dilema-dr-corona-rintawan-sekarang-hampir-setiap-hari-saya-memilih-nyawa-pasien/>.



In this situation, triage guide is needed. Several recommendations for COVID-19 emergency triage have been issued by several health agencies or organizations around the world.⁶ One important thing to examine from these recommendations is the ethical foundation. Differences in ethical grounds can lead to differences in recommendations. In the pandemic crisis, Savulescu argues that the utilitarian approach provides a good initial consideration to be guided in triage.⁷ On the other hand, Supady considered that the utilitarian approach during the current Covid-19 pandemic is still difficult to apply properly due to the lack of data that hinders the accuracy of predicting the outcome of the care provided to patients. Moreover, the use of a utilitarian approach will be very vulnerable to discrimination of certain groups.⁸ However, a good triage formulation needs to consider the ethical values in a balanced way.⁹ The discussion of these ethical values is necessary to choose between various options for the best outcome, define key objectives, and settle conflicting ethical principles. Unfortunately, many of the recommendations do not elaborate on this.¹⁰

Maqāshid as the paradigm of Sharia needs to be studied to provide a normative perspective and a balanced alternative approach that can be guided in determining and examining triage policies during crisis time. *Maqāshid* is a paradigm and framework that covers every line of human life. Not only limited to legal cases. Therefore, *Maqāshid* should be referred to in reviewing pandemic triage priority policies, especially in the context of emergencies and resource scarcity associated to life preservation. The *Maqāshid* theory used focuses on the theory expressed by Shatibi. For health workers, the existence of the religious view on the issue can strengthen them psychologically with the current situation. By looking at the recommendations issued by several health institutions and organizations regarding allocation of resources in the Covid-19 pandemic,

⁶Susanne Jöbges et al., "Recommendations on COVID-19 Triage: International Comparison and Ethical Analysis," *Bioethics* 34, no. 9 (2020): 948-59, <https://doi.org/10.1111/bioe.12805>; Hans-Jörg Ehni, Urban Wiesing, and Robert Ranisch, "Saving the Most Lives—A Comparison of European Triage Guidelines in the Context of the COVID-19 Pandemic," *Bioethics* 35, no. 2 (2021): 125-34, <https://doi.org/10.1111/bioe.12836>.

⁷Julian Savulescu, Ingmar Persson, and Dominic Wilkinson, "Utilitarianism and the Pandemic," *Bioethics* 34, no. 6 (July 2020): 620-32, <https://doi.org/10.1111/bioe.12771>.

⁸Alexander Supady et al., "Allocating Scarce Intensive Care Resources during the COVID-19 Pandemic: Practical Challenges to Theoretical Frameworks," *The Lancet Respiratory Medicine* 9, no. 4 (April 2021): 430-34, [https://doi.org/10.1016/S2213-2600\(20\)30580-4](https://doi.org/10.1016/S2213-2600(20)30580-4).

⁹Ezekiel J. Emanuel et al., "Fair Allocation of Scarce Medical Resources in the Time of Covid-19," *New England Journal of Medicine* 382, no. 21 (May 21, 2020): 2049-55, <https://doi.org/10.1056/NEJMs2005114>.

¹⁰Ehni, Wiesing, and Ranisch, "Saving the Most Lives—A Comparison of European Triage Guidelines in the Context of the COVID-19 Pandemic," 127-28.



it was found that several important legal-ethical issues need to be investigated. In response to this, this article begins by explaining the nature of *Maqāshid* theory as a policy-making paradigm which, although oriented to benefit and maximization, cannot be separated from the principles and values desired in the Sharia. In implementing this paradigm, there are several important topics of discussion including the issue of prioritizing based on age and non-medical criteria as well as the issue of withdrawal of treatment for the benefit of other patients with a better prognosis.

Maqāshid as a Triage Paradigm

Etymologically, *maqāshid* is the plural form of the word *maqshad* which means meaning, purpose, and intent. This term is often juxtaposed and attributed to the word *al-syarī'ah* (Sharia) which is widely used to denote what Allah has ordained for His servant as a guide of life. Terminologically, Raisuni defines *maqāshid al-syarī'ah*, "The goals that are laid down in the Sharia, for the benefit of the servant."¹¹ The attribution of the word *maqāshid* to the *al-syarī'ah* shows that this concept must be built on the foundation of the Qur'an and the Sunna as a medium for the revelation of Allah's will as the founder of the Sharia. When someone does *ijtihad* with the *maqāshid* approach, that person is nothing but trying with his capacity as much as possible to express the goals that are the will of Allah from the Sharia. Therefore, *maqāshid* cannot be separated from *Ushūl al-Fiqh* as an authoritative method in *ijtihad*.

The scope of *Maqāshid* is not only limited to the realms of conventional *fiqh*. Science and matters in Islam do not recognize the worldly and hereafter dichotomy where the former has absolutely nothing to do with the latter.¹² A Muslim believes that Allah is the highest moral authority whose moral judgment about what is good and bad or right and wrong must always be guided by and obeyed. This moral assessment includes all activities carried out by humans.¹³ This is a consequence of the purpose of human creation for servitude. In other words, in every aspect of life every Muslim is required to follow the will and moral provisions set by Allah. Thus, *Maqāshid* is the main theory for knowing and investigating the legal and moral provisions of all cases, especially cases for which categorical provisions are not found in the Qur'an and Sunnah. This

¹¹Ahmad Al-Raysuni, *Nazarīyāt Al-Maqāshid 'inda al-Imām al-Shāfi'ī* (Kairo: Dar al-Kalimah, 2014), 7.

¹²Jasser Auda, *Al-Manhajīyah al-Maqāshidīyah* (Dar al-Maqasid, 2021), 11.

¹³Abu Ishāq Al-Shāfi'ī, *Al-Muwāfaqāt*, ed. Abdullah Darraz (Kairo: Dar Ibn al-Jauzi, 2013), bk. II: 30.



theory was built and developed by scholars by deriving from the commandments and prohibitions as a broad framework of thinking in responding to various problems faced by a Muslim, including ethical issues.

When referring to *Maqāshid* according to Imam Shathibī, the discussion of *Maqāshid* includes two parts of the higher objectives of The Lawgiver (*maqāshid al-shāri'*) and human objectives (*maqāshid al-mukallaf*). *Maqāshid al-shāri'* has four structures. The first is the Lawgiver's main higher objectives in establishing the law (*qashd al-shāri' fī wadl' al-syarī'ah ibtidā'an*). This objective structure is the main structure where other structures support and explain it. This structure stipulates that the initial purpose of the Sharia is for the benefit of the servant both in this world and in the hereafter. The second structure is the Lawgiver's higher objectives in establishing the law for people's understanding (*qashd al-shāri' fī wadl' ihā lil' ifhām*). This goal explains that in order for the Sharia and its initial purpose to be carried out correctly, Allah made the Sharia understandable. The third is the Lawgiver's higher objectives in establishing the law as a standard of conduct (*qashd al-shāri' fī wadl' ihā lit-taklīf bimughtadlāhā*). The point is that just as Allah wills that a servant can understand His Sharia, Allah also wills that the Sharia can be implemented and within the limits of the servant's ability. The fourth structure is The Lawgiver's higher objectives in bringing human beings under the law's jurisdiction (*qashd al-shāri' fī dukhūl al-mukallaf tahta hukmihā*). Allah wills from submitting to His Sharia so that servants obey it on the basis of servitude to Him. It is this structure that demands the urgency of discussing human objectives by Shatibi so that the intentions and goals of a servant in carrying out the Sharia do not conflict with what God wants in the Sharia. These four structures need to be understood coherently. When a servant knows that the nature of the *taklīf* of the Sharia is for his benefit, Allah makes the Sharia understandable to the human mind and achievable according to his ability so that the Sharia can be carried out properly. Then in carrying out this Sharia, Allah does not intend that the Sharia be carried out by a servant only for the purpose of achieving his benefit but as a form of his servitude to Allah.¹⁴

¹⁴ Al-Raysuni, *Nazarīyāt Al-Maqāshid 'inda al-Imām al-Shāṭibī*, 121-43; Edi Kurniawan, "DISTORSI TERHADAP MAQĀSHID ALSYARĪ'AH ALSYĀṬIBĪ DI INDONESIA," *Al-Risalah* 18, no. 2 (December 12, 2018): 117, <https://doi.org/10.30631/al-risalah.v18i2.301>.



Based on the first *maqāshid* structure, all of the Sharia laws in various cases contain benefits for humans. This includes achieving benefit (*maslahah*) and preventing harm (*mafsadah*). This benefit includes both worldly and hereafter, although it should be mentioned that worldly benefits are considered in its function to serve the achievement of the benefits of the hereafter.¹⁵ Regarding the types of benefits, there are five main benefits (*kullīyāt*). Where some contemporary scholars such as Najjar tried to modify this type of main benefit, the majority of scholars stated that these five main benefits were an agreement of the scholars based on the induction of sharia laws.¹⁶ These five benefits as formulated by Ghazali are the preservation of religion (*dīn*), soul (*nafs*), reason (*‘aql*), offspring (*nasl*), and property (*māl*). These five elements also reinforce each other. If there is no religion, there is no expected reward especially those otherworldly. If there is no soul, there is no human who upholds religion. If there is no reason, there is no obligation. If there is neither offspring nor continuation of the things above. If there is no property, there is neither life nor soul. As essential benefits, other legal benefits are part of and can be derived from one or more of these five main benefits. In triage issues, soul preservation is the main focus. Judging from the urgency and influence, the benefits in general can be classified in three levels. The first level is *dlarūrīyah*. This level shows that a benefit is necessary so that its absence from the worldly side causes chaos, destruction or loss of soul. While in the hereafter, its absence causes punishment and real loss. The level below it is *hājīyah*. This level includes the benefits needed to provide relief which its absence causes difficult and burdensome situations. The third level is *tahsīnīyah* which includes benefits that support the increase in dignity, beauty, and nobility. The absence of *tahsīnīyah* is not as influential on the benefits at the higher level as good clothing in prayer.

On the other hand, the second *maqāshid* structure emphasizes the basic compatibility of the Sharia with reason (*ma’qūlīyat al-syarī‘ah*). Sharia can be understood by reason. One of the derivations is that the human reason has the ability to reveal from the commands and prohibitions in the texts of the Sharia a conceptual framework that can be used to provide a moral legal assessment of cases for which the provisions are not found explicitly in the texts of

¹⁵Al-Shāṭibī, *Al-Muwāfaqāt*, bk. II: 30-31.

¹⁶Othman Muhammed Gharib, “Five Essentials Between the Restriction and Addition,” *Journal of Arts, Literature, Humanities and Social Sciences* 12 (2017): 54–76; Al-Raysuni, *Naẓarīyāt Al-Maqāshid ‘inda al-Imām al-Shāṭibī*, 234.



the Sharia. Because the Sharia is oriented towards benefit, this framework can then be guided in determining benefit wanted by The Lawgiver.

Simultaneously, the third *Maqāshid* structure can be seen as embodiment of Sharia realism (*wāqi'iyat al-syarī'ah*). Sharia was revealed by taking into account human capacities. The burden contained in the Sharia does not exceed this capacity. Sharia in this case also pays attention to the reality of the situation that includes humans. In other words, Sharia considers both internal and external factors to ensure that obligations are possible to do.

The fourth structure shows the importance of one's intentions and goals in obedience to the Sharia within the framework of Sharia law. This objective emphasizes the importance of anyone having awareness to be servant in what he does and be responsible for it. In the context of bioethics, this objective also shows the need to integrate intuitionist considerations in policy making. A health worker, in addition to considering the recommendations and policies determined by the agency or organization that oversees him, must refer to his conscience in the policies he takes on awareness to be accountable for his actions especially to Allah. In this regard, the Messenger of Allah said, "Leave what you doubt for what you do not doubt." (Al-Tirmidhi: 2518; Ahmad: 1723; Nasa'i: 5711). Another Hadith also says, "Ask your conscience... even if people give you a fatwa." (Ahmad: 18028).

From here, *Maqāshid* as a paradigm is able to answer various contemporary bioethical problems. The realm of bioethics can be categorized as the field of *siyāsah syar'iyah*. In general, good and bad in this field are not directly regulated by the Sharia texts. This field is oriented towards benefit and has the flexibility to follow the development of science. Even so, this field is still subject to the principles and objectives of the Sharia. Bioethical decisions and policies with the *maqāshid* paradigm must be based on the navigation of several approaches that include deontological voluntarism (good is either based on God's commands or what is deduced from it), teleological utilitarianism (good is what maximizes benefit and/or minimizes harm), as well as intuitionism (good is what can bring peace of mind).¹⁷ In allocation of scarce resources during

¹⁷Aasim I Padela, Mansur Ali, and Asim Yusuf, "Aligning Medical and Muslim Morality: An Islamic Bioethical Approach to Applying and Rationing Life Sustaining Ventilators in the COVID-19 Pandemic Era," *Journal of Islamic Ethics* 5, no. aop (April 15, 2021): 27, <https://doi.org/10.1163/24685542-12340061>.



the Covid-19 pandemic, where the benefits of souls are competing with each other, *maqāshid* can be a paradigm guiding the consideration of triage priority decisions and policies.

Maqāshid between Utilitarian and Egalitarian Approaches

Discussing the allocation of scarce medical resources in the context of the Covid-19 pandemic crisis means determining the priority of some patients over others. In this case, patients who are not included in the priority do not get proper care and the worst result is death. This is due the high number of patients requiring treatment. This is a dilemma that demands an ethical solution. In medical ethics, there are two main related principles that need to be focused. These two principles are the principles of beneficence and justice.¹⁸

The principle of beneficence requires maximizing the benefits of existing resources. Under normal circumstances, triage can still be done with an individual approach. Triage gives priority to the worst off immediately. In crisis conditions, the paradigm shifts to maximizing the benefits of resources. Maximizing this benefit from the point of view of utilitarianism can refer to several policies; saving as many lives as possible, saving as many potential lifetimes as possible, or saving based on quality-adjusted life-years (QALYs).¹⁹ With this approach, the crisis situation to some extent can be controlled again. If it is not possible to save all patients, it is still possible to help some.

On the other hand, the deontological egalitarian perspective demands the upholding of the principle of justice based on the equality of human rights for every human being. This principle requires all patients to be given equal rights in getting the care they need. There are different methods of how this principle can be implemented. One of the methods is using the first come; first served. However, some argue that this method also has the potential to contain discrimination that benefits certain patients, such as those who are close to health facilities. Some recommendations in some countries explicitly do not recommend this method.²⁰ From here, another recommended method is through a lottery that is free from human intervention. Just as

¹⁸R. Sjamsuhidajat, Putri Dianita Ika Meilia, and Itsna Arifatuz Zulfiyah, "Etika Kedokteran dalam Kegiatan Tanggap Darurat Bencana," *Jurnal Etika Kedokteran Indonesia* 4, no. 1 (February 25, 2020): 3, <https://doi.org/10.26880/jeki.v4i1.39>.

¹⁹Savulescu, Persson, and Wilkinson, "Utilitarianism and the Pandemic," 623–24; Jöbges et al., "Recommendations on COVID-19 Triage," 949.

²⁰Jöbges et al., "Recommendations on COVID-19 Triage," 950.



humans have no control over a pandemic crisis situation, it is not their power to determine patient prioritization decisions in triage.

A triage decision with a focus on one of these two principles can lead to clear differences in the resulting triage. In fact, these two principles in the context of the pandemic crisis can contradict each other. Prioritizing one of these principles also has its own drawbacks and disadvantages. From an egalitarian perspective, a benefit-maximizing-based approach is very vulnerable to discrimination, especially for marginal groups. This in turn can lead to strong protests from the general public. In addition, limited data due to novelty of the disease hinders accurate predictions from being made.²¹ On the other hand, an egalitarian approach can lead to inefficiency in the use of very limited resources.²² In this situation the worst thing is that the death toll will increase even more. From a utilitarian perspective, this is the responsibility of the health worker concerned. Healthcare policy makers are not only responsible for what they do but also for what they fail to achieve. In this case it is saving more lives.²³ As Savulescu says, justice is impossible in a time of pandemic.²⁴

Maqāshid as in its first structure has an orientation to bring benefits to humans. Allah is the One with all goodness and always wills good. If in a case the benefit is greater than harm, Allah will order to carry out the case. Otherwise, Allah will forbid it. Every benefit is considered in Sharia to be achieved. Even when at first glance there is a conflict between several benefits, a solution must be found so that one of them is not sacrificed. A rule states that achieving two benefits is better than prioritizing one of them.²⁵ Thus, the *Maqāshid* paradigm can be the basis for the orientation of maximizing benefits.

For some, flicking a glance at *Maqāshid* will imply that the *Maqāshid* paradigm is compatible with the utilitarian paradigm. Like utilitarianism, Sharia also uses a consequentialist approach in

²¹Supady et al., "Allocating Scarce Intensive Care Resources during the COVID-19 Pandemic," 432; Dominic J C Wilkinson, "Ethics and Evidence: Learning Lessons from Pandemic Triage," *The Lancet Respiratory Medicine* 9, no. 4 (April 2021): 328-30, [https://doi.org/10.1016/S2213-2600\(21\)00132-6](https://doi.org/10.1016/S2213-2600(21)00132-6); Ehni, Wiesing, and Ranisch, "Saving the Most Lives—A Comparison of European Triage Guidelines in the Context of the COVID-19 Pandemic," 127.

²²Supady et al., "Allocating Scarce Intensive Care Resources during the COVID-19 Pandemic," 432.

²³Savulescu, Persson, and Wilkinson, "Utilitarianism and the Pandemic," 625.

²⁴Savulescu, Persson, and Wilkinson, 620.

²⁵The Zayed Charitable Foundation, *Ma'lamat Zayid Li al-Qawā'id Al-Fiqhīyah Wal-Ushūlīyah*. (Abu Dabi, 2013), bk. IV: 117-24.



achieving benefits. Both are considered to be oriented towards maximizing benefits. Opinions like this are not precise. There are some basic differences regarding the concept of benefit between the two. This can be seen in depth in the writing of Buti, *Dawābith al-Mashlahah*. One of these differences is that the benefit of religion in the *Maqāshid* perspective is the basis for other benefits. One of the derivations is that good and bad are the consequences of God's law. Rational or empirical considerations cannot independently be the basis for assessing benefits. As a consequence, there is a need for supervision of the Sharia texts in the consideration of benefits.²⁶ Hence, texts from the Qur'an and Sunnah that include principles need to be followed, including those that emphasize justice. The *maqāshid* approach is thus in a position between two poles; deontological and utilitarian. The *maqāshid* approach seeks to balance and measure to the right degree the principle of benefit and justice. In this context, Padela mentions, "Islam is an eclectic blend of deontological moral imperatives (such as the absolute sacredness of life) tempered by consequentialist (*mashlahah*-oriented) precepts."²⁷

Islamic Bioethical Principles of

a) Equal Nobility of the Soul

Among several relevant principles to consider here is the principle of nobility of the soul. Life is a gift from God. In the creed of a Muslim, this life essentially belongs to Allah. Only Allah has the right to determine when the life of a soul ends.²⁸ Therefore, the preservation of the soul is one of the main objectives in *Maqāshid al-Syarī'ah*. Every living soul has its nobility without exception. This is confirmed by the word of Allah, "Therefore, We established (a law) for the Children of Israel that whoever kills someone not because (the person killed) has killed another person or because he has done mischief on the earth, it is as if he has killed all the humans." (Qur'an 5:32) This verse in addition to showing the glory of the life clearly states that the glory is the same for every human being. In the fiqh literature, this principle can be clearly observed in the case of a sinking ship. In this case, fiqh scholars argue that every soul has the same right to survive without discrimination. Some even straight forwardly reject the distinction in this

²⁶Muhammad Said Ramadhan Al-Buti, *Dawābith Al-Mashlahah* (Damaskus: Al-Risalah, 1973), 45-70; A. Setia, "Freeing Maqasid and Maslahah from Surreptitious Utilitarianism," *Islamic Sciences* 14 (2016).

²⁷Padela, Ali, and Yusuf, "Aligning Medical and Muslim Morality," 16.

²⁸Padela, Ali, and Yusuf, 14.



respect between a non-Muslim and a Muslim and even a free person and a slave.²⁹ For them, this refers to the nobility of every soul (*syaraf al-nafs/ 'ishmat al-dam*). The solution in this case should be non-discriminatory. Therefore, where some jurists use instrumental considerations by throwing the person who is the heaviest, some prefer to use the lottery as in the story of the Prophet Yunus. However, some jurists such as Ibn Ashur still argue that it is not permissible to throw anyone into the sea if all the property has been thrown but the ship will still sink. He argued that in this case the passengers of the ship must be patient and leave all fate to Allah's destiny.³⁰

b) Autonomy

This principle can be called the principle of non-coercion. Autonomy in bioethics describes a person's right to make decisions regarding his medical care based on correct information. In the fiqh literature, scholars agree that there are two conditions for treatment. The first is that health workers have qualifications in medical science and obtain permission from the responsible authority. The second is obtaining consent to do so from a competent patient.³¹ Even more, majority hold the opinion that treatment is not obligatory.³² However, unlike in the West where the principle of autonomy is the main principle with an emphasis on individualism, autonomy in Islamic bioethics is redefined to conform to a religion-based collective order that emphasizes communal benefits in an integrated legal and moral system.³³

In the context of the Covid-19 pandemic, this principle provides justification for patients if they choose not to receive medical care. Moreover, with the novelty of disease, medical treatment has not shown adequate effectiveness for patient recovery. In fact, some medical therapies have their own risks. This position is further strengthened by the issue of the scarcity of medical resources.³⁴

²⁹Mona Saleh and Mohammed Ghaly, "Islamic Ethical Perspectives on the Allocation of Limited Critical Care Resources During the COVID-19 Pandemic," CILE - Research Center for Islamic Legislation and Ethics, accessed November 4, 2021, <https://www.cilecenter.org/resources/articles-essays/islamic-ethical-perspectives-allocation-limited-critical-care-resources>.

³⁰Muhammad al-Tahir Ibn 'Ashur, *Al-Tahrir Wal-Tanwir* (Al-Dar al-Tunisiyyah, 1984), vol. XXIII: 175.

³¹Mohammed Ali Al-Bar and Hassan Chamsi-Pasha, *Autonomy, Contemporary Bioethics: Islamic Perspective [Internet]* (Springer, 2015), https://doi.org/10.1007/978-3-319-18428-9_6.

³²Wizārat al-Auqāf wal-Shu`ūn al-Islāmīyah Al-Kuwaytīyah, *Al-Mausū'ah al-Fiqhīyah* (Kuwait, 2007), bk. XI: 117-8.

³³Abdulaziz Sachedina, *Islamic Biomedical Ethics Principles and Application* (Oxford University Press, 2009), 12-13, <https://doi.org/10.1093/acprof:oso/9780195378504.001.0001>.

³⁴Padela, Ali, and Yusuf, "Aligning Medical and Muslim Morality," 12-13.



c) Intention as the basis for action

Intention is the first foundation in every decision. Intentions here can indicate goals and motivations. In determining the triage policy, this principle emphasizes the importance of clear goal formulation and sincerity in implementing the policy. The assessment of a policy is not only based on the results but more importantly the intention and seriousness of the effort in achieving the stated goals. From here, if the best results cannot be achieved after a policy direction properly determined and carried out optimally, the responsibility cannot be fully borne by the health workers. This is in contrast to the utilitarian approach where all judgments are based solely on results. If health workers fail to achieve the goals of good policies, it is the same as implementing bad policies. The utilitarian approach holds not only accountability for what health workers do but also for what they fail to do. In more straightforward terms, failure to save a patient's life can mean responsible murder. This is of course very demanding and difficult for health workers who in this pandemic condition have received a lot of psychological pressure. For patients, this principle must underlie their autonomy, especially those who forgo life-saving treatment. In conditions of scarcity of resources, forgoing the provision of ventilators and necessary therapy can be justified if it is with the aim of altruism.

Consideration of Benefits Related to Triage

In patient care, the benefits that are used as goals include the achievement and maximization of benefits in the form of healing as well as elimination and minimization of harm in the form of pain. In the face of the Covid-19 disease, many cases show the risk to be loss of life. The limited resources and increase in patients exceeding the capacity of health facilities have resulted in conflict of benefits of souls among one another. Providing care to a patient may mean prioritizing the life of that patient over the life of another patient. Of course, the basic rule of *Maqāshid* in the form of plural benefits (*al-jam' bain al-mashālih*) demands that every life be saved as long as possible as in normal situations. However, the state of the pandemic crisis requires health workers in triage to choose among lives to be saved. Therefore, priority criteria must be determined correctly and appropriately.

One of the important concepts in the consideration of *Maqāshid* is *i'tibār al-ma'āl*. This concept means legal considerations based on the consequences. If a legal case leads to a benefit, it is



required. On the other hand, if it results in something bad, it needs to be avoided.³⁵ These considerations indicate the consequentialist nature of the *maqāshid* approach. However, since intention is the foundation, the consequentialist side of *Maqāshid* emphasizes the seriousness in determining policy objectives and their implementation rather than merely the final result as in the utilitarian approach. In the pandemic crisis, saving as many lives as possible is the main goal while still paying attention to the principles. Based on clinical practice, this can be achieved by performing prognosis on patients to assess the potential benefit of the treatment for them based on the available medical data. Priority should be given according to medical criteria based on prognostic data. One of the important rules related to *Maqāshid* says that the benefits that apply more generally take precedence over those that are rarely applied (*taqaddum al-mashlahah al-ghālibah 'alal-mashlahah al-nādirah*). In this consideration, there is no distinction between patients with certain backgrounds, either race, social strata, or religion. Although basically it cannot be justified to prioritize some people over others, consideration of benefits in the *Maqāshid* approach can be the basis for giving priority to some patients over others based on the potential benefit of treatment to maximize the benefit of available resources. In this case, there are several rules that can be used as reference.

■ المصلحة العامة مقدمة على المصلحة الخاصة

General benefit takes precedence over specific/individual benefits. If one benefit is wider in scope due to its beneficial to the general public and another benefit is limited to certain groups or individuals, priority is given to the benefit with a wider scope. In determining triage during a pandemic crisis, triage needs to be directed to save as many patients as possible.

■ يرجح خير الخيرين بتقويت أدناهما ويدفع شر الشرين بالتزام أدناهما

Prioritizing the best of the two goods by abandoning the lesser and rejecting the worst of the two evils by bearing the lesser. Each arriving patient needs to be triaged to find out his condition and needs. The priority of treatment is assessed based on the level of benefit whether the treatment needed includes *dlarūrīyah*, *hājīyah*, or *tahsīnīyah*. In conditions of limited resources, the priority

³⁵Muhammad A Hamad, "I`tibār Al-Ma`ālāt Wa `atharuhu Fi al-Fatāwā al-Mu`ashirah," *Majallat Kullīyat Al-`Ādāb Jāmi`at al-Fayyūm* 12, no. 2 (July 1, 2020): 1304-5, <https://doi.org/10.21608/jfafu.2020.41108.1126>.



is providing care for those with a risk of death. Intensive care should take precedence and other curative treatments can be second priority.

■ النفع المتعدي أفضل من القاصر

Benefits that spread are more important than limited benefits. In conditions of scarce resources, treatment policy that allows more lives to be saved is paramount. One of the derivations is that the less resources a patient requires, the more priority he or she has. If Ahmad and Adam have the same chance of healing and surviving but three people are needed to take care of Ahmad (such as requiring the installation of an ECMO device) while one person is enough to treat Adam, Adam in this case is more prioritized than Ahmad. This is because caring for Adam allows other health workers to treat other patients. Likewise, if Ahmad and Adam have the same opportunity, but based on the prognosis, Adam is more likely to recover quickly than Ahmad. Patients with the possibility of a faster recovery are prioritized because this allows other patients to get treatment.

■ الضرر لا يزال بمثله ولا بأكثر منه بالأولى

A harm cannot be eliminated by a similar harm especially one with more or greater harm. Pain in the *maqāshid* perspective is a harm that needs to be eliminated. Based on this rule, the solution given must not have adverse consequences of the same or more severe degree. The novelty of the Covid-19 disease and the lack of data have meant that there are still limited referrals that can be used by health workers to consider appropriate steps and treatments for each of the different conditions of patients affected by Covid-19. Despite these limitations, health workers must still try to make a thorough consideration of the knowledge and available resources in ensuring the right therapy for each patient. Actions that have the potential to cause complications that risk worsening the patient's condition should be avoided. Another application of this rule is that it is not justifiable to transfer life-saving treatment from one patient to another if both have the same chance of survival.

■ الضرر يزال بقدر الإمكان

A harm is eliminated as much as possible. As previously mentioned, illness, either as a bodily condition or a condition that causes discomfort to a person from the *maqāshid* perspective is a harm that needs to be eliminated. Covid-19 infection can cause different symptoms from mild,



moderate, severe, to critical degrees. When a patient comes to a health facility to seek treatment, it is the duty of the health worker there to provide services to the extent of their ability. An example is when a patient needs intensive care. Where the patient is not given priority or altruistically forgoes care due to limited resources, the patient is entitled to palliative care whenever possible.

Implementation of *Maqāshid* in Triage

a) Age Criteria

In the utilitarian perspective, it is important to consider how long a benefit can be felt. This is important because it concerns how much a benefit is generated. From this, with regard to life-saving care, this criterion indicates that life-saving treatments with a longer life expectancy take precedence over saving lives with a shorter life expectancy. Based on this criterion, young patients seem to have intrinsically more important values than elderly patients because elderly people tend to die faster than young people.³⁶ If the life expectancy of Indonesian men is 73 years, while Ahmad is 23 years old and Adam is 53 years old, it is better for Ahmad to be saved because he has fifty years of life expectancy, thirty years more than Adam.

This is different from the perspective found in fiqh literature. As mentioned in the case of the sinking of the ship, there is no intrinsic priority for certain groups or individuals over others in saving lives. It includes no difference between young people and old people. This goes back to the main value of the nobility of souls which is owned by every soul. Further confirming this is that age is the secret of Allah. No one knows it except Allah Himself. Young people can die earlier and old people can live longer. There is no certainty how long human life is as well as it is not known where he will die (Al-Munafiqun: 10-11; Nuh: 4; Luqman: 34).

From here, the Islamic perspective on priority consideration based on age needs to be detailed. In Islam, considerations based solely on age are not justified on the basis of a longer life expectancy as in the perspective of utilitarianism. However, in consideration of benefit, age considerations can be used as an integral part of the prognosis to assess the potential benefit of treatment in the context of a pandemic crisis. In other words, the age criterion cannot be a stand-alone criterion. The same as the consideration of age is the consideration of comorbidities. The

³⁶Savulescu, Persson, and Wilkinson, "Utilitarianism and the Pandemic," 623.



comorbidities criteria are highly considered when referring to Quality-Adjusted Life Years (QALYs) criteria in utilitarian perspective. The criteria are of course also a wide door for discrimination for some groups such as patients with comorbidities and patients with disabilities.³⁷ These two types of criteria cannot be used as independent criteria for priority in triage except as part of the overall prognosis to assess the potential usefulness of treatment and potential cure.

b) Non-Medical Criteria

Setting aside medical criteria and instead using non-medical criteria to determine priority patients in triage during a pandemic crisis is of course an unfair action and therefore cannot be justified. In the provision of intensive care, this can mean prioritizing one's life based on social strata, economic strata, religion, race, or other elements that can be judged as an act of discrimination. This clearly violates the principle of justice based on the nobility of the soul in Islam.

However, this can be different when medically two or more patients have a same chance of recovery and benefit from the same treatment. One of the alternative criteria that emerged was the priority for health workers. There are at least two main things that underlie it, namely the principle of reciprocity and instrumental value. The principle of reciprocity in this case is that in dealing with the pandemic crisis, health workers are at the forefront and are at greatest risk of being exposed to Covid-19 disease with their work. Therefore, they are the most entitled to be prioritized. This principle is difficult to consider and will be very vulnerable to discrimination. In dealing with the Covid-19 pandemic crisis, health workers in health facilities are only one part of the response system. There are such health protocol discipline enforcers who are no less at risk of being exposed to the same. It is also vulnerable to causing discrimination for marginal groups such as the poor who have to continue to scavenge for food on the streets and the homeless who are forced to live on the streets. Living conditions on the roads make them no less exposed to the risk of transmission while their condition may be caused by systemic inequality and marginalization. On the other hand, consideration of instrumental values -even though they are still contrary to the principle of justice- in a pandemic crisis can be justified from the *Maqāshid*

³⁷Jöbges et al., "Recommendations on COVID-19 Triage," 949; Emanuel et al., "Fair Allocation of Scarce Medical Resources in the Time of Covid-19," 2052.



perspective. This is because health workers are an important resource in dealing with the pandemic crisis. After getting cured they can return to treating patients. This refers to the emergency rules that allow prohibited cases (*al-dlarūrāt tubīh al-mahdhūrāt*). Because permission in an emergency needs to be limited and in order to avoid discrimination, health workers here still need to be classified with priority given only to important health workers who are not easily replaced because they need certain qualifications. This argument is actually also used to justify the priority of other workers with important and significant instrumental values, such as scientists researching drugs or vaccines for Covid-19.

Based on the above, the principle of justice remains the main provision to be enforced. The priority of care in times of pandemic crisis remains to save as many lives as possible without discrimination based on any criteria. Therefore, medical criteria become the main reference in determining priorities. Under conditions of equal medical opportunity between several patients, the instrumental value of the patient can be considered within certain limits while the rest use fairness-based mechanisms such as lottery.

c) Withdrawal of Care for Other Patients

The Covid-19 pandemic has been noted to have resulted in a shortage of essential equipment and services including ICU beds and ventilators. One of the problems that arise is the withdrawal of intensive care from one patient to be given to another patient such as ventilators. Where withholding of care is ethically acceptable, withdrawal has more severe consequences.³⁸ The clinical implications of discontinuing ICU care can range from disability to death sometime after withdrawal. Under normal conditions, there are two conditions in which withdrawal of ventilator assistance can be considered ethical and legal, namely with a request from the patient or his relatives and when treatment is considered futile or inappropriate.³⁹ In a pandemic crisis, this withdrawal problem arises when there are patients who come later with better prognostic data than patients who are receiving treatment. In a utilitarian perspective, in order to achieve optimal results, attracting intensive care for patients with better opportunities can be done.⁴⁰

³⁸Savulescu, Persson, and Wilkinson, "Utilitarianism and the Pandemic," 624-25.

³⁹Robert D. Truog, Christine Mitchell, and George Q. Daley, "The Toughest Triage – Allocating Ventilators in a Pandemic," *New England Journal of Medicine* 382, no. 21 (May 21, 2020): 1973-75, <https://doi.org/10.1056/NEJMp2005689>.

⁴⁰Savulescu, Persson, and Wilkinson, "Utilitarianism and the Pandemic," 624-25.



First come first served consideration is irrelevant here. On the other hand, some ethicists even consider this act to include unlawful killing in addition to other ethical controversies.⁴¹

From the Sharia perspective, withdrawal of intensive care from one patient to another with better prognostic data on the basis of maximization benefit of resources cannot be justified unless the treatment has been judged futile or inappropriate. This refers to the *Maqāshid* rule that preventing harm is more important than achieving benefit (*dar' al-mafāsid awlā min jalb al-mashālih*). In this case, withdrawal definitely endangers the patient who is receiving treatment while the benefit for the second patient is still a possibility especially with the limited medical data that can be referred related to Covid-19. Elimination and minimization of harm can only be done on condition that it does not cause harm for other parties as in the hadith, “One must not harm himself or bring harm to others (*lā dlarara wa lā ddirār*)” (Al-Bayhaqi: 11718). This is also reinforced by the principle of equality of the nobility of the soul.

Conclusion

The *Maqāshid* theory provides the basics for determining and examining triage policies during the pandemic crisis. *Maqāshid* as a triage paradigm is a paradigm with a benefit orientation while remaining in the corridor of Sharia principles. Just as *Maqāshid* has aspects of teleological utilitarianism, *maqāshid* also has aspects of deontological voluntarism. In the case of scarcity of resources, allocation is oriented towards maximizing benefit while still upholding the principles of Sharia, including the main thing is the dignity of the soul. From here, the determination of triage policies and recommendations must consider scientific findings and medical data in light of the *Maqāshid* paradigm. Due to the novelty of Covid-19 disease, these policies and recommendations also needs to be periodically evaluated to adjust scientific findings and the latest data to achieve maximum benefit from resources.

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⁴¹Kathleen Liddell et al., “Who Gets the Ventilator? Important Legal Rights in a Pandemic,” *Journal of Medical Ethics* 46, no. 7 (July 1, 2020): 422–23, <https://doi.org/10.1136/medethics-2020-106332>.



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