

THE EXCLUSION OF NICOTINE VAPE LIQUID FROM THE POISONS ACT 1952 (ACT 366): AN ANALYSIS FROM THE PERSPECTIVES OF *MAQASID AL-SHARIAH*ⁱ*Ezza Nasyitah Sulaiman & ⁱIntan Nadia Ghulam KhanⁱFaculty of Syariah and Law, Universiti Sains Islam Malaysia, Bandar Baru Nilai, 71800 Nilai, Negeri Sembilan, Malaysia*(Corresponding author) e-mail: enasytah@gmail.com**Article history:**

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ABSTRACT

Recently, the government has decided to exclude nicotine liquid from the Poisons Act 1952 (Act 366). This exclusion has led to the widespread and uncontrolled production and usage of nicotine. The retail value of the vape industry in Malaysia has surged by approximately 53 percent from RM2.27 billion in 2019 to an estimated RM3.48 billion in 2023. This study aims to identify the background of the exclusion of nicotine liquid from the Poisons Act 1952 (Act 366) and analyse the perspectives of *Maqasid Al-Shariah* on this exclusion. To obtain data, this research takes a qualitative approach utilizing document analysis, library research and interviews. The study's findings indicate that the exemption of nicotine liquid from the Poisons Act 1952 (Act 366) contradicts with the principles of *Maqasid Al-Shariah*. It is crucial to emphasize education to enhance awareness that vaping is not a recreational alternative. Hence, every government decision or policy should be grounded in *Maqasid Al-Shariah* and Islamic principles. Further discussion and research about the exclusion of nicotine vape liquid from the Poisons Act 1952 (Act 366) from the perspectives of *Maqasid Al-Shariah* need to be conducted.

Introduction

Electronic cigarettes, commonly referred to as vapes or vapours, are becoming more popular among youngsters and are marketed as a safer alternative to traditional combustible cigarettes which is the original smoked tobacco before e-cigarettes were invented. Wan Hassan et al., (2018) pointed out that Herbert A. Gilbert invented electronic cigarettes in 1963, but they were not commercialized and eventually became silent in 1967. Meanwhile, Abdul Razak et al., (2021) stated that e-cigarettes were first introduced back in 2003 and have been promoted as a support system for those who are struggling to quit smoking. Besides, electronic cigarettes that are used nowadays come from the idea and creation of a pharmacist from China, Hon Lik in 2003, which vaporized nicotine dissolved in liquid propylene glycol (Wan Hassan et al., 2018).

According to the Institute for Global Tobacco Control 2021, the sale, distribution or importation of unlicensed nicotine-containing e-cigarettes in Malaysia is prohibited. According to Section 17 of the Poisons Act 1952 (Act 366), the sale or supply of poisons is forbidden to people under 18 years, and it can only be sold by licensed pharmacies or registered medical practitioners. However, following the most recent laws, there are no regulations on e-cigarette and vape products with nicotine and they are now legally accessible to everyone including minors, after the government delisted the liquid nicotine from the Poisons Act 1952 (Act 366) to enable taxation on e-liquids on nicotine although tobacco regulations prohibit the sale of cigarettes and other tobacco products to those aged below 18 (Code Blue, 2023). This indicates that there is a lacuna in Malaysian legislation regarding the vape regulation.

In Malaysia, e-cigarettes were first debuted around 10 years ago (Ms et al., 2019). The Poisons Act 1952 (Act 366) is an Act of Parliament that regulates the handling, import, sale, storing, distribution, and possession of poisonous substances (Hassali, 2020). Under this Act, only authorised individuals are permitted to import poison anywhere outside Malaysia and no individuals are allowed to sell, distribute, preserve, store or transport any chemical toxic not listed by the Poisons Act 1952 (Ahmad Hassali, 2020). On the other hand, the Poisons Act 1952 (Act 366) continues to play a significant role in regulating the handling and control of poisonous substances in Malaysia, ensuring their safe use and minimizing the risks associated with their misuse or mishandling.

Fundamentally, the core purpose of vaping was originally reserved for medical applications, specifically designated as medical-based vaping (Nain, 2023). The nicotine levels within the vape were meticulously controlled to ensure non-hazardous concentrations. However, the current landscape of vaping diverges from its medical roots, as the nicotine content is uncontrolled and does not comply with medical standards. Originally, vaping devices or nicotine liquids were exclusively dispensed by licensed medical practitioners, including pharmacists. This provision was intended for individuals seeking to quit smoking but grappling with withdrawal symptoms such as restlessness and irritability (Nain, 2023).

The exclusion of nicotine vape liquid from the Poisons Act 1952 (Act 366) shocked the world of health and law. The decision also received intense protest and criticism from the community and relevant parties. The Malaysian Medical Association (MMA) has questioned the Health Ministry's decision to remove nicotine from the Poisons Act 1952 (Act 366) without governing any regulation for e-cigarette and vaping products (Trisha, 2023). Furthermore, according to the Malaysian Ministry of Health (MOH) (2021), this vaping phenomenon is against the policy to make Malaysia a country free from any form of smoking and not equal with the WHO Framework Convention on Tobacco Control (WHO FCTC) which Malaysia has signed since 2005. According to the survey conducted by the Institute for Public Health, National Institutes of Health, at the MOH, the prevalence of teenagers aged 13 to 17 years currently using e-cigarettes or vape climbed up from 9.8 percent in 2017 to 14.9 percent in 2022, showing an immense rise over a five-year period.

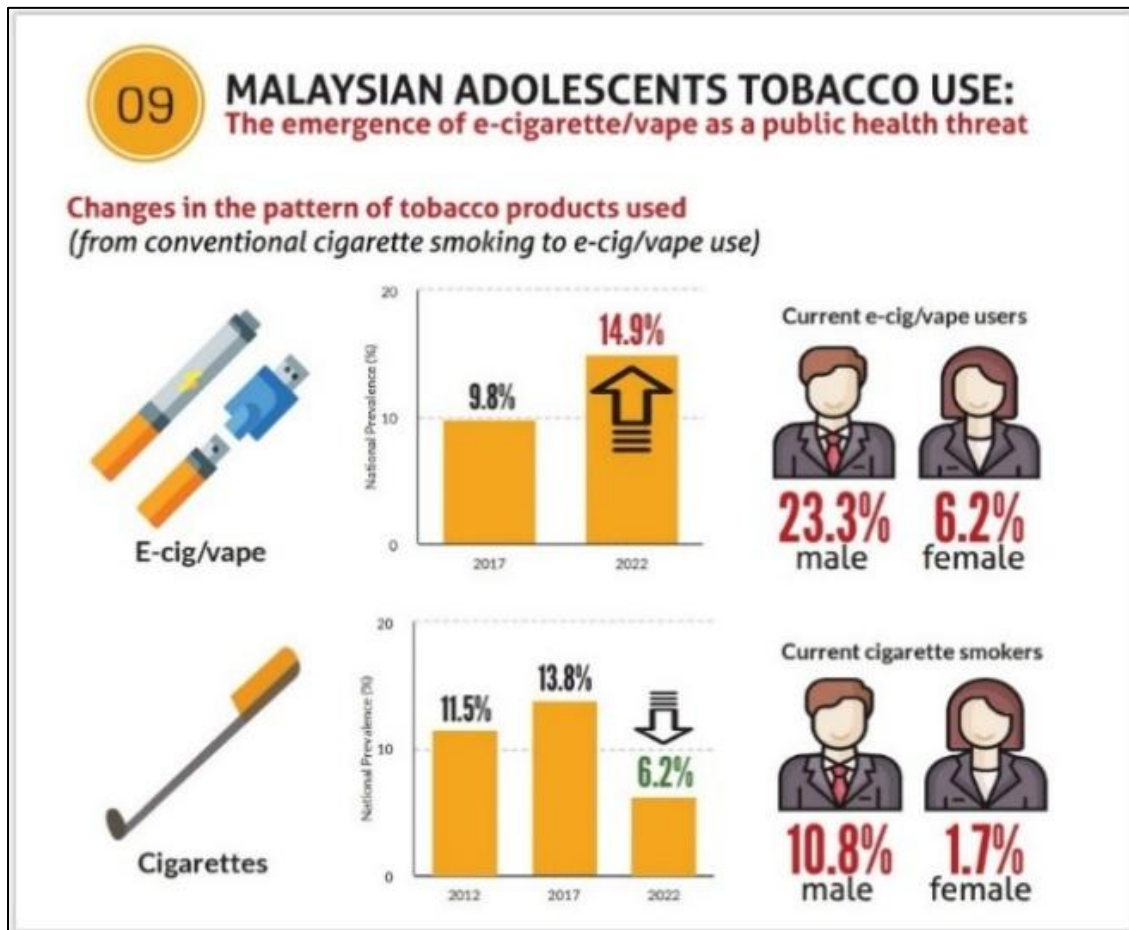


Figure 1. Malaysian Adolescents Tobacco Use

Source: (National Institutes of Health, Ministry of Health Malaysia)

Problem Statement

Nicotine is a tobacco product that creates addiction, interferes with brain function, and can lead to death. The exemption of nicotine vape liquid from the Poisons Act 1952 (Act 366) raises concerns because it may harm the individual’s health. Recently, on 1 April 2023, the Health Ministry, Dr Zaliha Mustafa published a gazette notice stating that nicotine liquids and gels used in e-cigarettes and vape products had been granted exemption from the Poisons Control Act 1952 (New Straits Times, 2023). Through this action, there would be positive and negative impacts in terms of the economic aspect as well as individual health. Apart from that, through this exception, irresponsible individuals will abuse this exception in an immoral way which will cause harm to themselves and other people. Huang et al., (2014) argued that aggressive marketing, low prices and lacuna in restricting youth access may have contributed to the rapid rise in electronic cigarettes among teenagers and young adults.

The National Center for Chronic Disease Prevention and Health Promotion (2021) confirmed that in February 2020, 2807, cases of e-cigarette or vaping use-associated lung injury (EVALI) and 68 deaths were attributed to that condition. Along with that, the long-term clinical impact of e-cigarettes will likely be linked to many different factors, including age of initiation, current and prior cigarette smoking status, and the existence of lung conditions such as asthma and Chronic Obstructive Pulmonary Disease (COPD) (Traboulsi et al., 2020). Thus, it shows that more research about the long-term health effects regarding vaping is much needed and crucial.

The recent development regarding this issue is very critical. According to Kusetiawan (2023), the Malaysian Green Lung Association (MGLA), the Malaysian Council for Tobacco Council (MCTC), and Voice of the Children (VOC) are suing the health minister over the removal of liquid and gel nicotine used in e-cigarettes and vaporizers from the Poisons Act 1952 (Act 366), list of scheduled poisons. The Minister of Health claimed that Anwar bin Ibrahim, Minister of Finance, proposed the decision to remove nicotine used in e-cigarettes and vaporizers from control under the Poisons Act of 1952 (Act 366). Furthermore, Rashid (2023) reports that the proposal was to put excise duty on nicotine-containing e-liquids.

Therefore, an in-depth analysis study must be conducted to see to what extent the exclusion of nicotine vape liquid can give impact to the industry and health of individuals. Moreover, this research will analyse this issue from *Maqasid Al-Shariah* perspective, and some recommendations are proposed to the authorities.

Research Question

- i. What is the background of the exemption of the nicotine vape liquid from the Poisons Act 1952 (Act 366)?
- ii. How is the *Maqasid Al-Shariah* perspective applied in the issue of the exclusion nicotine vape liquid from the Poisons Act 1952 (Act 366)?
- iii. What are the solutions and recommendations from the *Maqasid Al-Shariah* perspective?

Research Objective

- i. To examine the background of the exemption the nicotine vape liquid from the Poisons Act 1952 (Act 366).
- ii. To analyse the *Maqasid Al-Shariah's* view on the issue of the exclusion of nicotine vape liquid from the Poisons Act 1952 (Act 366).
- iii. To propose the recommendations from the *Maqasid Al-Shariah* perspective.

Literature Review

J Brown et al., (2014) conducted research about the characterisation of electronic cigarette design. The studies stated that an aerosol generator, a flow sensor, a battery, and a nicotine-containing fluid storage area are all common e-cigarette components. E-cigarettes now include a plethora of interchangeable parts, allowing users to alter the character of the supplied aerosol and prove the product's 'efficacy' as a nicotine delivery method. One of the risk concerns towards the user, especially children is battery explosions and the risk of exposure to the e-liquid. However, these studies somehow did not state the contents of the vape liquid in detail rather than pointed out the design and characteristics only. Thus, studies regarding the content of vape liquid such as the limit of nicotine liquid concentration, the effects on health and other substances used in vape liquid need to be detailed.

Research conducted by Wan Hassan et al., (2018) discussed about the application of *Maqasid Al-Shariah* in fatwas related to the use of electronic cigarettes and shisha in Malaysia. They indicate that the usage of electronic cigarettes is growing more widely among Malaysians, particularly adolescents. They discovered that the compounds in vape can cause addiction, blood clotting, and the death of lung cells. Furthermore, they point out that using electronic cigarettes is an utter waste of money because it is not advantageous and causes harm to themselves. However, these studies somehow did not analyse the relationship and *hukm* of electronic cigarettes in the context of *Maqasid Al-Shariah* towards the new issue, the exclusion of nicotine vape liquid from the Poisons Act 1952 (Act 366). Hence, the application of *Maqasid Al-Shariah* to the issue of the exclusion of nicotine vape liquid from the Poisons Act 1952 (Act 366) needs to be investigated.

Next, Cao et al., (2020) conducted research about a Review of Health Consequences of Electronic Cigarettes and the Outbreak of Electronic cigarettes, or Vaping, Product Use-Associated Lung Injury. They declared that the recent EVALI (vaping-associated pulmonary injury) outbreak underlines the potential risk that uncontrolled e-liquids offer to the rising proportion of teenage e-cigarette users. This is proof that the consumption of electronic cigarettes is dangerous and can potentially increase the number of deaths owing to the harmful components. However, these studies somehow did not clarify more about the effects of vaping towards health but only pointed out the effect on the lungs. Thus, the effect of vaping towards health needs to be emphasized in detail.

Furthermore, Al-Delaimy et al., (2015) conducted research about E-Cigarette Use in the Past and Quitting Behaviour. They observed that electronic cigarette users are more likely to attempt to quit cigarettes than non-users. Nonetheless, quitting is tough because the nicotine levels in it make the user addicted and hard to quit. However, these studies somehow did not put the classification of e-cigarettes and there is no solutions suggested by the authors on how to quit smoking and vaping. Thus, recommendations and solutions need to be proposed to the public in an effort to stop vaping and smoking behaviour.

Other than that, Ms et al., (2019) conducted research related to E-Cigarette use, its impact on tobacco smoking and the intention to quit. According to the Institute for Public Health 2016, only 16.2% of smokers have used electronic cigarettes as part of an effort to kick the habit. They also said that most e-cigarette users intended to quit the habit altogether, but not in a short time because they had been using e-cigarettes for a longer period. However, these studies somehow did not explore further into the effectiveness of e-cigarettes as a smoking cessation tool among Malaysian smokers. Thus, studies related to data and statistics of cigarette users who have successfully stopped smoking by replacing vaping should be analysed in more depth.

On top of that, Elkami et al., (2015) conducted research to explore the perceptions and opinions of Malaysian Muslim students towards smoking in the International Islamic University of Malaysia. The authors discovered that while a large majority of smokers were aware of the fatwa against smoking, just a few of them supported it. This finding is likely related to their thoughts that smoking is not harmful and should not be regarded as forbidden in Islam. In contrast, the same study additionally indicated that people with more faith in Islam are more inclined to avoid smoking. However, these studies somehow did not discuss issues related to the fatwa of e-cigarettes in Malaysia. Therefore, a fatwa related to the use of vape in Malaysia and the perspective of Maqasid Sharia regarding to the consumption of electronic cigarettes need to be discussed.

Besides, research conducted by Ma et al., (2022) discussed on the excise taxes and pricing activities of e-liquid products sold in online vape shops. According to their findings, the rise in e-cigarette popularity, particularly among teens and young adults, has led to public health concerns, prompting many states and municipalities in the United States to levy excise taxes on e-cigarettes. However, these studies somehow did not clarify more what is the pluses and minuses of the excise taxes imposed on e-cigarettes are in this study. Thus, the impact of the taxes on the vapes towards economy and individuals needs to be examined and analyzed in the issue of the delisting nicotine vape liquid from the Poisons Act 1952 (Act 366).

Moreover, Ahmad Hassali et al., (2020) discussed about the pharmaceutical, cosmeceutical marketing and advertising in Malaysia. The author made an overview about the current governing laws and regulations in Malaysia. The studies mentioned that nicotine is categorised as a Group C poisons. According to the Sale of Drugs Act 1952 and the Control of Drugs and Cosmetics Regulations 1984, any preparation containing nicotine must be registered with the Drug Control Authority. One important act regulating toxic substances is the Poisons Act 1952 (Act 366). It is an act to control the import, ownership, production, transportation, storing, sale and utilization of poisons. However, these studies somehow did not discuss about how the nicotine was excluded from the Poisons Act 1952 (Act 366) as happened recently. Thus, the purposes and effects of excluding nicotine vape liquid from the Poisons Act 1952 (Act 366) made by the government need to be examined and evaluated.

Rashid et al., (2014) conducted research on the influence of smoking tolerance on support for smoke-free policies. According to him, the Penang State Government first designated six recreational places as smoke-free zones right after the Ministry of Health previously designated 21 areas as such. Even so, there is still a few of citizens still ignore these restrictions. Health education and promotion in Malaysia have always largely targeted smokers to persuade them to quit from smoking by educating them on the dangers of doing so. However, these studies somehow did not focus on the vape-free policies as it is considered important due to the high user of vape. Therefore, restrictions and law regulating vape-free policies need to be discussed and stipulated for the sake of public's health and safeguards.

Lastly, research conducted by Perez et al., (2020) explored the causes of the increased popularity of vaping among people of different ages. The authors observed that users can adjust the e-liquid or the device itself with the how-to videos for adding active ingredients and flavours to e-liquids are already provided on YouTube. These easily accessible resources encourage consumers to feel at ease and comfortable to continue their actions. Besides, although a complete prohibition on all tobacco products, including e-cigarettes, would be the best approach to protect public health, it is unlikely to be enacted. However, these studies somehow did not discuss about the law and regulation on the usage of nicotine vape liquid. Thus, proper regulation is much needed in handling the phenomena of vape among the adolescents and youth.

Therefore, based on the existing literature, numerous gaps and aspects related to the exemption of nicotine liquid from the Poisons Act 1952 (Act 366) have not been thoroughly examined. This is primarily because the issue of exempting nicotine liquid from the Poisons Act 1952 (Act 366) is relatively new. Subsequently, it is crucial to analyse the exemption of nicotine liquid from the perspective of *Maqasid Al-Shariah* because it has a significant impact on various entities. Furthermore, proposing recommendations regarding this exemption from the standpoint of *Maqasid Al-Shariah* is essential to ensure the welfare of the community is safeguarded. Hence, addressing these matters in this research, will contribute to filling the gaps in the existing literature.

Methodology

To achieve the purpose of this study, a qualitative method is the best approach to apply in this study. Document analysis was conducted to obtain information by using journals, case reviews and statutes. These include documents related to scientific articles from primary and secondary sources regarding vaping and its effects on humans. Along with that, interview sessions also have been conducted with Dr. Khairun Nain, a medical specialist at Universiti Sains Islam Malaysia and also with Associate Professor Dr. Lukman Abdul Mutalib, an expert in *Maqasid Al-Shariah*, as senior lecturer, at Universiti Sains Islam Malaysia. This interview also helps to strengthen all the findings of this study.

Significance of the Research

This research will contribute to the government and authoritative body whereas the Ministry of Health can use this study as a reference and guidance in accordance with the *Maqasid Al-Shariah*. In addition, this study can also be proposed to the government to reconsider their decision regarding this exclusion as it will bring more damage than good. Next, this study also benefits individuals and community by informing the readers that vaping is dangerous and will severely harm their health whereas according to *Maqasid Al-Shariah* this behaviour is clearly forbidden because it violates the five major importance elements which are the protection of religion, life, lineage, intellect and property. Not only that, but this study will also benefit the literature to fill in the gaps regarding this issue.

Scope and Limitation

This study focuses on how to adopt the *Maqasid Al-Shariah* perspective in the issue of the exclusion of nicotine vape liquid from the Poisons Act 1952 (Act 366). The aim and purpose of the study are to provide a new solution regarding the exclusion of the nicotine vape liquid from the Poisons Act 1952 (Act 366). In addition, this study also aims to examine the government's aims in regard to the exemption and how significantly the decision influences the industry and how it affects individual health. This study is conducted by using a qualitative method from statutes, data analysis and library research based on primary and secondary sources.

Results and Discussion

The Background of Exemption of the Nicotine Vape Liquid from the Poisons Act 1952 (Act 366)

Definition

E-cigarettes are classified as nicotine delivery systems (ENDS), along with other tobacco and non-tobacco items such as pipes, cigars, and shisha (Abdul Razak et al., 2021). Vaping is the process of inhaling into the lungs the vapour or aerosol created by an e-cigarette, whereas smoking is the act of inhaling and exhaling the smoke produced by burning or combusting tobacco. Traboulsi et al., (2020) defines that E-cigarettes consist of rechargeable batteries, atomizers and vegetable glycerin. Meanwhile, conventional cigarette smoke contains thousands of chemical compounds, many of which are known to be harmful or potentially carcinogenic (West, 2017). The vape juice or nicotine e-liquid, it contains a combination of nicotine, propylene glycol (propanediol), glycerin, (vegetable glycerin), water and flavorings such fruit flavours, candy and menthol (Cao et al., 2020). According to the analysis conducted by the National Poison Center, vape contains pure nicotine liquid with a concentration of 4mg/1ml.

Major factor that attracts the eyes of many people to use vape is that they perceive vaping as a less harmful and gateway to smoking. According to the World Health Organization in September 2008, there are no credible studies proving that e-cigarettes are both safe and effective as nicotine replacement therapy. Cao (2020) discovered that although e-cigarettes were initially advertised as a safer alternative to combustible cigarettes, they tend to expose users to known toxins and carcinogens. It can be harmful to themselves and can lead to second-hand exposure known as passive smoker. Wan Zulkifli et al., (2018) stated that passive smokers are those who are in the same room with the smokers, who inhale the vapor and smoke from vape or cigarettes which will cause harm to both parties. However, despite all the effects of vaping, many people are still addicted to those actions because their body and mind already immune to nicotine. It is because, nicotine can cause addiction just like heroin and cocaine (Wan Zulkifli et al., 2018).

The above discussions indicate that, vaping has been misconstrued by society nowadays because they believe that the level of harm from vaping is lowered compared to smoking cigarettes. However, in reality, both vaping and smoking pose similar dangers and have negative effects on individual health. This is because vaping contains many harmful chemicals, one of which is nicotine. Generally, nicotine users develop a dependency on it, leading to addiction and making it challenging to curb the use of vape. Therefore, in essence, vaping has adverse effects and the consequences of its use should be thoroughly examined.

Purpose of the Exemption

Recently, the move and decision by the government have stunned and shocked numerous parties. During the presentation of Budget 2023 on 24 February 2023, the Government has announced a proposal to impose an excise duty on liquid or gel products containing nicotine used for electronic cigarettes and vaping (Finance Ministry of Putrajaya, 2023). This is historic in Malaysia and considered as brave move because the delisting of nicotine vape liquid from the Poisons Act 1952 (Act 366) had been gazetted on 1 April 2021 by the Minister of Health (New Straits Times, 2023).

Before the amendment, nicotine liquid was listed in the Poisons List which is set out in the First Schedule of the Act. The main purpose removal of liquid nicotine from the Poisons Act 1952 (Act 366) is to allow the government to tax the vape industry which is estimated to be worth over RM2 billion and encourage efforts to stop vaping (Finance Ministry of Putrajaya, 2023). On top of that, half of the revenue from this excise duty will be relocated to the Ministry of Health as part of an effort to improve the quality of health services, as announced in the Budget of 2023 (Finance Ministry of Putrajaya, 2023). Compared to this new amendment, the effect of the previous listing on e-cigarettes can impede the growth of vape sales and diminish the production of unlicensed vapes.

According to the Federal Government Gazette Excise Duties (Amendment) Order 2023, e-cigarette liquids or gels containing nicotine would be subject to an excise tax of RM0.40 per millilitre or gels containing nicotine enforced on 1 April 2023 (Daim et al., 2023). Besides, the decision to eliminate nicotine from the Poisons Act's controlled substances list indicates that vape liquids and gels, regardless of nicotine level, can be lawfully and openly sold to anyone, including minors of any age (New Straits Times, 2023).

Furthermore, vape industry participants, particularly local manufacturers who produce nicotine-containing liquid or gel, are given time until 30 April 2023 to register their manufacturing activities with the Ministry of Agriculture and Forestry (Finance Ministry of Putrajaya, 2023). Early registration will prevent manufacturers from facing complications such as being compounded due to late registration (Kenneth Tee, 2023). Through the statement given by the Finance Ministry, Dato' Seri Anwar Ibrahim, early registration will enable full industry compliance and efficient tax collection by May 2023 and the Excise Act 1976 licensing registration can be completed online using the MyExcise system (Bernama, 2023).

Implications of the Exemption on Health and Economy

This exemption significantly impacts both the health sector and the industrial sector. This section discusses the implications of the exemption on these two aspects.

a) Health Issue

First and foremost, the fundamental debate surrounding the use of e-cigarettes is whether it benefits smokers by providing an alternative to cigarettes and reducing harm, or whether it offers more damage to society by introducing and propagating new forms of nicotine addiction. Even though e-cigarettes do not produce combustion, it cannot be regarded as a safe alternative (Schaller et al., 2013). Nicotine-containing liquids can be dangerous since nicotine is poisonous and addictive (Schaller et al., 2013). Other than that, nicotine is also capable of increasing blood pressure and heart rate as well as the likelihood of dying is high if they are exposed to large doses of nicotine around (30mg-60mg) (Wan Hassan et al., 2018).

Furthermore, the inhalation of vaporizers could give an effect on the respiratory system. Traboulsi et al., (2020) stated that acute lung injury case reports have been numerous over the last decade, leading to the recognition of a new clinical entity known as EVALI in 2019. In Malaysia, according to the National Poison Center Malaysia, over 77 poisoning cases were recorded caused by nicotine exposure from e-cigarettes in 2015 until 2022. Meanwhile, more than 2,800 persons were hospitalized in the United States with EVALI in 2019 and early 2020, with at least 68 deaths confirmed (Nation, 2023). Nain (2023) stated that in the short-term effect of this nicotine, there is reliance on respiratory support machinery and for the long-term effects, this leads to damage to the lungs and related cancerous diseases.

On top of that, nicotine can be characterized as a syndrome as it is a substance that can lead to addiction and is one of the mental disorder types (Nain, 2023). This is because users will consistently think about and constantly crave the vape. When they are unable to satisfy their cravings, rebellious behaviour or loss of control may occur. Among the symptoms that may manifest are tolerance, wherein a higher dose of the substance is constantly needed meanwhile the second is withdrawal symptoms such as fever and body aches, accompanied by a restless mind (Nain, 2023).

These effects can be proven in the case of *Rai v. Ava* (2023) MLJU 2482, the issue is whether the plaintiff should be granted access to the child, and if so, what specific terms should govern such access. The defendant made several allegations against the plaintiff including claims of threatening to abscond with the child, exhibiting rough behaviour towards the child, displaying neglectful parenting, and engaging in objectionable habits such as vaping, substance abuse, and pornography addiction. Furthermore, the defendant claimed to have secured an Interim Protection Order for herself and the child due to allegations of domestic abuse by the plaintiff. Thus, the court decided that the plaintiff was ordered to pay spousal maintenance in the monthly amount of RM3,000.00, child-related expenses agreed to by the plaintiff to be borne by him, and child access.

With that, e-cigarettes have no age restriction. According to the Centers for Disease Control and Prevention, use of cigarettes among youth nearly doubled between 2011 and 2012, when an estimated 1.78 million pupils in schools 6-12 had tried the devices. Minors had already begun using this vape before it was exempted from the Poisons Act 1952 (Act 366) and after the delisting, uncounted numbers of minors even adults are free to use it. Chronic nicotine exposure during adolescence is extremely dangerous because adolescence is a critical stage of brain development and cause long-term consequences on cognitive behaviour (Yuan et al., 2015). According to the National Health and Morbidity Survey 2022, the use of electronic cigarettes or vape products among teenagers aged 13 to 17 has increased from 9.8% in 2017 to 14.9% in 2022 (Trisha, 2023).

Not only that, but a death also classified under EVALI (Electronic Vape Associated Lung Injury) cases which the girl died from acute heart failure with pulmonary embolism in Selangor was reported by the Ministry of Health that involved a 16-year-old girl with three-year vaping history (Trisha, 2023). Based on samples of the e-liquids analysed in the lab, it appears that the deceased last vape products were closed-system devices with flavoured vape liquids with nicotine levels of up to 28mg/ml which is approximately 3% of nicotine (Abdul Razak, 2023).

b) Economy

The Malaysian Vape Chamber of Commerce (DPVM) has revealed that the retail value of the Malaysian vape industry has grown dramatically by approximately 53 percent from RM2.27 billion in 2019 to an estimated RM3.48 billion in 2023 (Berita Harian Online, 2023). When it comes to economics, this exclusion on the said items perhaps offers a good impact on the economy aspect. Dr. Zaliha Mustafa, Minister of Health, stated that the regulation was made to enforce the government's plans to tax vape liquids beginning 1 April 2023 (Daim et., 2023). The government started to impose an excise tax of RM 0.4 per milliliter on e-liquid containing nicotine (Ministry of Finance Putrajaya, 2023). According to Khoo Bee Leng, Japan Tobacco International (JTI) Malaysia, when a tax on the sale of nicotine-containing liquids is implemented, it subsequently generates revenue to the government and can be used for various purposes but also to eliminate illegal and untaxed cigarettes smuggled from neighbouring nations (New Straits Times, 2023).

Despite that, from a household's perspective, excluding nicotine liquids from this Poisons Act will impose greater harm on the household economy (Abdul Mutalib, 2023). This withdrawal leads to tighter budgets for families. For instance, people may spend several months' worth of income on purchasing vape products and the requisite costs for medical treatments also involve a high financial commitment. Therefore, it indicates that a waste of money will occur due to the purchase of vape products.

The above discussion indicates that the consequences could be either beneficial or harmful. This is because the exemption creates greater opportunities for people to take advantage of, and society is allowed to use it without restriction. From the perspective of health, it will cause concern from the relevant parties because this vape is easily accessible to people of various ages and genders. However, when it comes to the economy, the revenue from the tax imposed may increase the national economy. Thus, it can be seen that the impact of this exception is unbalanced and should be reviewed.

Application of Maqasid Al-Shariah Perspective in the Issue of the Exclusion of Vape Liquid from the Poisons Act 1952 (Act 366) in Malaysia

It is vital to examine the objectives and purposes of Islamic law and assess whether the exclusion of vape nicotine from the Poisons Act 1952 (Act 366) aligns with those objectives. *Maqasid Al-Shariah* provides a framework for evaluating legal and policy matters following the fundamental principles of Islam. The first fundamental principles of *Maqasid Al-Shariah (daruriyat)* which are the protection of religion *حفظ الدين*, protection of life *حفظ النفس*, protection of intelligent *حفظ العقل*, protection of lineage *حفظ النسل* and protection of property *حفظ المال* must be evaluated in this issue since it may be against these principles. Then followed with urgent necessities (*hajiyyat*), and finally Islamic guarantees for non-urgent necessities (*tahsniyyat*). The preservation of human needs is summarized under five main categories that must be preserved. Imam al-Shatibi said:

فَأَمَّا الضَّرُورِيَّةُ، فَمَعْنَاهَا: أَنَّهَا لَا بُدَّ مِنْهَا فِي قِيَامِ مَصَالِحِ الدِّينِ وَالدُّنْيَا، بِحَيْثُ إِذَا فُقِدَتْ لَمْ يَجْرَ مَصَالِحُ الدُّنْيَا عَلَى اسْتِقَامَةٍ بَلْ عَلَى فِسَادٍ وَتَهَارُجٍ وَفَوْتِ حَيَاةٍ، وَفِي الْأُخْرَى فَوْتُ النَّجَاةِ وَالتَّعِيمِ، وَالرُّجُوعُ بِالحُسْرَانِ المُبِينِ

Translation: As for *dharuriyyat*, the meaning is something that must be present in building religious and worldly benefits. Without these fundamentals, life in the world would not run smoothly. But it will be broken, messed up and life will be destroyed. While in the afterlife, the well-being and enjoyment will be lost and return with a real loss.

On 21 December 2015, the Special Muzakarah of the Fatwa Committee of the National Council for Islamic Religious Affairs of Malaysia decided that the use of electronic cigarettes and vaping is haram (Wan Hassan et al., 2018). The Muzakarah's decision-making takes into consideration into the *Maqasid Al-Shariah* in deciding the law of its usage and the opinion of medical experts on the impacts of vaping (Wan Zulkifli et al., 2018). This is because cigarettes and electronic cigarettes have the same *i'llah* or similarity which brings harm to life. From the perspective of Shariah, the prohibition of eating or drinking or taking harmful substances is mentioned by scholars from all four schools of thought, namely Hanafi, Maliki, Syafie and Hambali in their books. They state that substances that are harmful to the body are forbidden to eat, drink or take even if they are pure such as poison, soil, glass and other such things (JAKIM, 2015).

The higher level of *maslahah daruriyyat* is the protection of religion. One of the ways to protect this principle is to avoid anything that violates and destroys the principles in other *maslahah daruriyyat*. For example, when an individual vapes, it is considered he or she violated the Islamic law and that act is sinful. The act will also cause harm to themselves because of the unsafe substances contained in the vape. According to Ibn 'Ashur, *maqasid daruriyyat* is a crucial benefit for the ummah as a whole and individually, where the rules will be flawed without it. If it is not implemented, then the condition of the people will be damaged and chaotic (Abdul Mutalib, 2023).

Furthermore, the second principle is the protection of life. Many studies have shown that vaping might be just as dangerous as smoking cigarettes. According to Schaller (2013), since 2008, the Food and Drug Administration (FDA) in the United States has received 47 reports about the adverse effects of electronic cigarettes including congestive heart failure and burns due to explosion of the product. As for the government, it is their responsibility to protect the lives and safety of the community (Abdul Mutalib, 2023). Some argue that the rate of increase in national income from tax collection will not be able to pay the rate of medical expenses to treat patients in hospitals and also not be able to control the death rate (Trisha, 2023).

Muslims should not risk their lives by doing things that are not beneficial and the government should not make any decision that will bring harm to others. One of the methods in *usul fiqh* that is related with this issue is:

Translation: Do not harm (yourself) and give harm (to others).

(Ibn Majah, Kitab al-Ahkam, Chapter Man Bana Fi Haqqihi, Hadith 2431)

The third principle is the protection of intelligence. Excessive and uncontrolled consumption of nicotine will damage the brain. Dr. Daniel Lee, Medical and Respiratory Specialist at Prince Court Medical Centre, stated that electronic cigarettes contain nicotine which can increase the pulse rate and the flow of the hormone adrenalin' as well as dampen the nervous system and potentially cause abnormal pulses, narrowing of the arteries and heart attacks (Mufti Wilayah Persekutuan, 2015). Not only the adults, but the underage teenagers are also exposed to the world of vaping which will damage their growth process. Apart from that, the fourth principle is the protection of lineage. This vape consumption is not only among men but some women also purchasing vape. The consequence is that expectant mothers who engage in vaping are at risk of experiencing miscarriage and causing harm to their unborn children (Abdul Mutalib, 2023).

The expense of buying a vape is a waste and does not bring any benefit (Abdul Mutalib, 2023). This aligns with the fifth principle of *Maqasid Al-Shariah*, which aims to safeguard property. The use of electronic cigarettes and vaping is a form of waste that is prohibited by religion because it is a useless expenditure and even harmful to the body. The cost of the device itself may range from a few hundred to a thousand Malaysian Ringgit.

Moreover, when an individual falls ill, they must also bear the burden of covering medical expenses. It may be inferred that if a person does not purchase a vaporizer, he does not have to bear the medical costs associated with the effects of nicotine liquid use. It also burdens the national economy to finance the cost of treatment for related diseases (Wan Hassan et al., 2018). In the Al-Quran also, Allah has forbidden mankind to spend money on unnecessary things.

Translation: And spend (your wealth) in the way of God, and do not let yourselves fall into destruction, and do good, for verily God loves those who do good.

(Surah Al-Baqarah, 2:195)

Moreover, the concept of *sa'd zarai* also needs to be applied in this issue. This concept of Sa'd Zarai means to close the door that leads to damage. The removal of nicotine liquid from the Poisons Act 1952 opened a wide door for society to use nicotine without any restrictions. Thus, people are more accessible to buy vape anywhere and the demand for the manufacture will indirectly increase. According to the findings of studies by medical experts, electronic cigarettes and vaping are still unproven as alternative addiction treatments. It does not help smokers quitting smoking or overcome nicotine addiction instead it makes more people trapped in this problem (Wan Hassan et al. 2018).

Finally, the use of the concept of *Maqasid al-'Ammah*, *Maqasid al-Khassah* and *Maqasid al-Juz'iyah* should be applied. The government must decide by taking into account the greater public interest compared to the small entity. The exclusion of liquid nicotine from the Poisons Act 1952 made the individual more vulnerable to harm. Many studies have been done that show that the dangers of smoking and vaping are the same and there is no legal certainty that using vaping is a safe way to replace smoking addiction (Schaller et al., 2013). This clearly shows that the exclusion will cause the risks of increasing the death rate and harming society. Although imposing taxes on vaping can help the country's economic growth, it is only a small benefit and only benefits the government.

The general objectives (مقاصد عامة) in preserving the five basic interests are of utmost importance. This is because all five fundamental principles are intertwined with this issue. When the withdrawal of nicotine liquid occurs, it undermines all five main principles in the *Maqasid Al-Shariah* (Abdul Mutalib, 2023). Furthermore, for specific objectives (مقاصد خاصة) the state requires a productive and competitive population. When an individual relies on vaping, it indicates weakness as a citizen (Abdul Mutalib, 2023). Lastly, there are particular objectives (مقاصد جزئية). The wisdom behind the prohibition of cigarettes or vape is significant. Among them is the enhancement of worship quality and the conservation of household expenditures.

Recommendations

Based on the above discussion, it can be concluded that the exclusion of nicotine liquid from the Poisons Act 1952 (Act 366) is not a wise decision and confuses the public. They think that the use of vape is considered halal and allowed. Not only that, but there are also many criticisms and questions forwarded by various parties related to the government's decision. Therefore, some suggestions are proposed to improve the existing gaps and deficiencies.

The government should review previous decisions and consider them in the context of *Maqasid Al-Shariah*. Undoubtedly, taxing the sale of nicotine liquid will help generate national income, but the community's health and well-being should be the priority. At the same time, the government issued a statement that the purpose of establishing a vaping tax is to minimise vaping use and support individuals who wish to quit vaping. Nonetheless, the exemption's bad impact is higher and more destructive than the government's beneficial benefit. Therefore, the government should avoid further damage first than over

attaining beneficial purposes. Hence, the government should not remove nicotine from the Poisons Act 1952 (Act 366) to prevent the free access use of nicotine liquid in the community.

This matter can be related to the method of *usul fiqh* which is:

دَرَةُ الْمَفَاسِدِ أَوْلَى مِنْ جَلْبِ الْمَصَالِحِ

Translation: Avoiding damage is more important than obtaining good.

The government should then enact a specific and permanent regulation that regulates the use of nicotine liquid in vaping. The control of liquid nicotine and vaping in this context means that the government bans the manufacturing, distribution, sale, storage, and provide punishment against those who are convicted. The sale of nicotine liquid vape is widely available, including sales on social media and in physical stores. This makes it easier for both adults and minors to get their hands on those items. Through clear and fixed laws, the public cannot arbitrarily purchase vapes easily and use them without control.

Besides, alternative punishment for children can be reconsidered due to their young age, such as moral and character development programs. Meanwhile, adults who sell and facilitate their purchases should face serious penalties for exposing the public and children to this kind of damage. This is not impossible if the government can achieve an agreement and pass a new bill. The proof is that several countries such as Brunei Darussalam, Singapore and Thailand have passed laws banning vaping (Adnan, 2023). For instance, according to the Ministry of Health Brunei Darussalam, Section 6 of the Tobacco Order 2005 in Brunei Darussalam prohibits the importation, sale, or offer for sale of any vaporizers such as electronic cigarettes (e-cigarettes or vapes), e-pipes, e-cigars, and any person who is guilty of the offence is liable to a fine not exceeding BND \$5,000.

Apart from the responsibility of the government, parents also play a crucial role. Parents are the closest people to children and monitor their growth process. The chance of selling and distributing vapes might not be completely stopped, but taking steps to prevent more people from using vapes is a doable initiative. Teenagers tend to try new things and are quickly influenced by their surroundings, making this stage one of the most challenging. It is detrimental to children's development if they are introduced to vaping at a young age. This is because addiction is a form of mental illness that is difficult to cure and prevention is better choice. Parents should educate and expose their kids to the hazardous impacts of vaping and smoking from an early age. In the meantime, strong and sufficient religious education is essential as a shield against things that are not beneficial and wrong in Islam.

Last but not least, the need for education to enhance awareness is crucial, starting from the school benches, and it involves enlightening society that vaping is not an alternative for recreation. The best way is to refrain from using any devices for inhaling or vaporizing substances (Nain, 2023). Vaping should ideally be reserved for treating withdrawal symptoms in individuals aiming to quit tobacco smoking. However, presently, the usage of vape is increasingly extending to recreational purposes.

Conclusion

To sum it up, the exclusion of nicotine vape liquid from the Poisons Act 1952 (Act 366) is not an appropriate action and it constitutes a step backward. Through this exemption, public health will become increasingly concerning, and the use of vape will continue to rise. Not only that, but the sale of vapes will become publicly accessible, encouraging many individuals to use vapes without considering the negative effects of such actions. This is why every decision or policy from the government should be grounded in the *Maqasid Al-Shariah* and Islamic principles. From the point of view of *Maqasid Al-Shariah*, the exception brings more harm than good. That is clearly against the principles of Islam and *Maqasid Al-Shariah* itself. Muslims must protect the blessings of health given because health is one of the greatest and invaluable gifts from Allah S.W.T. If there is a clash between two entities, specifically the society and the government, the government should reach a decision that addresses the needs of the public interest. This is interrelated with the *usul fiqh* which is “government policies and actions must be subject to the *maslahah* of the societies”.

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