

THE USING OF PRE-EXPOSURE PROPHYLAXIS (PrEP) AMONG HIGH-RISK SEXUAL OFFENDERS (LGBTQ) ACCORDING TO THE SHARIAH PERSPECTIVE IN MALAYSIA: CONSIDERATION BETWEEN MASLAHAH AND MAFSADAH

^{i,*}Aufa Zamri & ⁱMushaddad Hasbullah

ⁱ Faculty of Syariah and Law, Universiti Sains Islam Malaysia (USIM), 71800, Nilai, Negeri Sembilan, Malaysia

*(Corresponding author) e-mail: aufa@gmail.com

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ABSTRACT

The phenomenon of LGBTQ (Lesbian, Gay, Bisexual, Transgender, and Queer) among Malaysians is growing. These groups often claim they are discriminated against and demand equality and fundamental rights. Islam also guarantees that human rights are granted to those entitled based on the guidelines set by the Sharia. Nevertheless, the effects of the perverted culture brought by them have invited danger to Malaysians and caused the spread of HIV infection to increase every year. Scientific studies prove the effectiveness of PrEP treatment in reducing HIV infection. The initiative program of giving PrEP medication for free to LGBTQ people at health premises should be evaluated based on maslahah and mafsadah in Islam. This study aims to identify the extent to which PrEP is suitable for this group based on the maslahah and mafsadah in Malaysia. Throughout the study, the researcher used research methods, which are data collection methods implemented through library research, to obtain relevant data. The study shows that the Initiative Program of providing PrEP for free needs to be reviewed and discussed again according to the considerations of maslahah and mafsadah so as not to lead to more significant harm to Malaysians.

Introduction

Human rights generally recognize the rights of individuals and communities in matters related to equal rights in the economy, society, politics, and others. Among the most important rights is the right to life, followed by other rights supporting life, such as freedom of religion and speech. (al-Zuhayli, 2000). In Islam, human rights are built on the foundation of justice. It is among the most fundamental principles of Islam that is part of the branch of grace that comes with Islam. A verse in the Al-Quran stated,

Translation: “O believers! Stand firm for Allah and bear true testimony. Do not let the hatred of a people lead you to injustice. Be just! That is closer to righteousness. And be mindful of Allah. Surely Allah is All-Aware of what you do.”

(Surah al-Maaidah 5:8)

In addition, Islam also recognizes and guarantees the protection of the right of every human being to receive equal treatment under the principle of human brotherhood and humanity regardless of race, skin color and nationality. The basic principle of human rights in Islam can be referred to as the principle of *maqasid Sharia*, which includes five basic principles in human life guaranteed by Islam. The principle is to protect religion, intellect, dignity, property and lineage. All these protected rights form other rights and freedoms that directly relate to human life and dignity, such as the right to freedom of expression, access to education, marriage and family, and so on.

However, controversial issues such as the fundamental rights of lesbians, gays, bisexuals, transgender people and queer (LGBTQ), the concept of gender equality between men and women, and the issue of pluralism or liberalism that is widely accepted in the West are among the issues that often-become debates and disputes by the Islamic world community includes Malaysia (Mohammad Ahmad, 2014).

In this article, we will highlight LGBTQ issues. LGBTQ is an abbreviation that refers to lesbian, gay, bisexual, transgender and queer people. Basically, according to Perry et al., (2009), lesbians and gays have similar characteristics, namely, men or women who have sexual tendencies and attraction towards the same gender as them. This sexual tendency, which is also referred to as a symptom of gays and lesbians, goes beyond the values of religion, ethics, custom and culture because it can eventually lead the group into perverse and unnatural sexual relations such as fornication (sex between men) and intercourse between women (*musahaqah*). Bisexual means the practice of sexual relations of a person who is free and inclined towards men and also women (both at once).

Hamdi et al. (2010) also stated that the definition of bisexual is not limited to someone who has sex with both sexes but also includes individuals who practice changing partners (free sex). While a transgender person, also referred to as a transsexual, is a man or woman who feels and looks like the opposite gender, there are even those who modify their sex organs through surgery and taking certain hormones. Not limited to external appearance alone, this transgender group also even has sexual tendencies towards the same gender as them. Queer always be used interchangeably with the abbreviation LGBT or as a catch-all term for people with a variety of sexual orientations, gender identities, gender expressions, and sex characteristics (SOGIESC). Many individuals who believe that their sexual orientation, gender identity, or gender expression prevent them from adhering to the economic, social, or political standards of a particular country use the term “queer” (ILO, 2022). According to Ahmad Zaharuddin et al., (2014), LGBTQ behavior is not included in the disease category but is an instinct beyond the limits that should be controlled within the scope of religion, tradition, custom and culture.

In the Qur'an, God commands us to stay away from all elements that bring us closer to this cursed act. In fact, God described the perverse actions of Prophet Lut's people as evil, despicable and facade. In the Al-Quran, Surah Al-Anbiyaa verse 74:

Translation: "And to Luth, We gave wisdom and knowledge and delivered him from the society engrossed in shameful practices. They were certainly an evil, rebellious people."

(Surah al-Anbiyaa 21:74)

While dealing with this issue, Rasulullah ﷺ also gave a stern warning regarding this act. Rasulullah ﷺ affirmed that this practice is something cursed by Allah. In the narration of Hadith:

Narrated Ahmad:

"God cursed from the work of Lot people; God cursed from the work of Lot people."

(Ahmad, n.d., Hadith No. 2913)

According to al-Imam Ibn al-Jauzi, the Messenger of God never cursed the perpetrator of a major sin three times in a row as he did to this homosexual perpetrator. Here, this clearly shows the firmness of His Majesty ﷺ in dealing with this problem.

In terms of health factors, the Malaysian Ministry of Health (KKM) reported in the Global Aids Response Progress Report Malaysia that injecting drug addiction, female sex workers, transgender and homosexual men are the groups most affected by the spread of Human Immunodeficiency Virus (HIV) epidemic, which is more than 5 percent and most of those involved are over 25 years old (MoH, 2016). Data related to HIV transmission as of 2016 shows that almost 46 percent of transmission is among homosexual and bisexual men (MoH, 2016).

The report also states that the Ministry of Health aims to end the epidemic of acquired immunodeficiency syndrome (AIDS) by 2030, especially among high-risk groups such as transgender and homosexual men. Perseverance, this disease can be contracted through body fluids such as blood, semen, vaginal fluid and breast milk. Therefore, those who are exposed to HIV infection are those who have sex with infected individuals, either through the vagina or anus and also due to sharing needles or injection tools, especially drug addicts (MAC, n.d.). Studies show that, in the last ten years, the main cause of HIV infection is sexual contact, especially promiscuous sex. (Global AIDS Monitoring Report, 2022).

Therefore, it is not an exaggeration if it is said that AIDS originates from immoral behavior forbidden by God, especially sexual intercourse between men and men which has been declared bad and forbidden as Allah says in the Quran:

Translation: "And 'remember' when Lot rebuked the men of his people: "You certainly commit a shameful deed that no man has ever done before you."

(Surah Al-Ankabut, 29:28)

Over time, various advances and technologies have been used in treating and preventing infectious diseases. Nevertheless, AIDS is still a concern and poses a challenge to society and the country. Therefore, to deal with HIV infection, especially those who live with HIV patients, the Center for Disease Control and Prevention (CDC) recommends preventive measures by using condoms when having sex and also taking Pre-Exposure Prophylaxis (PrEP) medication (CDC, 2020).

PrEP medicine is a type of medicine that works to prevent infectious diseases, especially HIV disease. Among the factors that cause the transmission of the HIV are immorality and same-sex relationships, that this group mostly does. However, in the context of giving PrEP medication to LGBT people as an effort

to prevent HIV infection, an analysis needs to be carried out on whether this project should be prevented by viewing the consideration between *masalah* and *mafsadah* approach because it is feared that this group is increasingly engaging in same-sex relations due to the existence of drugs that can prevent infection HIV.

This article will answer several questions, among which are: (i) what is the view of Islamic scholars in Malaysia on giving PrEP medication to the LGBT group as an effort to prevent HIV infection? (ii) will the giving of PrEP medication lead to widespread immorality by the LGBT group? Moreover, (iii) analysis of the conflict of meaning in the issue of giving PrEP medication to LGBT people.

The Background of Pre-Exposure Prophylaxis (Prep)

Definition and History

PrEP stands for Pre-Exposure Prophylaxis. Pre-exposure means it has been taken before sex. Prophylaxis means to prevent disease in a person getting HIV (NHS,2022). PrEP is the use of antiretroviral medication to prevent people from acquiring HIV. At the same time, HIV is a virus that affects the human immune system if left untreated. The most common way to get HIV in the UK is through unprotected anal, vaginal, or frontal sex. Frontal sex is an alternative term for vaginal sex used by some trans and non-binary people (NHS, 2022). Pre-exposure Prophylaxis (PrEP) is an evidence-based new biomedical HIV prevention intervention which involves the pre-emptive use of daily (or event-based) antiretroviral drugs to reduce the risk of HIV acquisition if exposed (Hillis et al., 2020).

Besides, PrEP adds an extra HIV prevention option to the use of condoms and lubricant, behavioural counselling, post-exposure prophylaxis, treatment for sexually transmitted infections, voluntary male medical circumcision and antiretroviral therapy for partners living with HIV (Joint United Nations Programme on HIV/AIDS [UNAIDS], 2015). PrEP can also stop HIV from taking hold and spreading throughout your body. Currently, there are two FDA-approved daily oral medications for PrEP. A long-acting injectable form of PrEP has also been approved by the FDA.

Reason and condition for using Prep

Pre-Exposure Prophylaxis (PrEP) for HIV infection refers to the administration of antiretroviral (ARV) medications to individuals without HIV infection, with the goal of preventing the acquisition of HIV. The World Health Organization (WHO) advised in 2014 that PrEP should be made available to men who engage in sexual activity with other men (MSM). In 2015, the World Health Organization (WHO) expanded its recommendation for the use of PrEP to encompass all population groups that are at a significant risk of contracting HIV, based on additional research that demonstrated its effectiveness and acceptability (Ministry of Health and Wellness, Government of Barbados, 2018). PrEP should be offered as a supplementary preventive option within a comprehensive range of services that encompasses HIV and STI testing, counseling for risk mitigation and behavioral interventions, both male and female condoms, lubricants, PEP, ARV treatment for partners with HIV infection, voluntary medical male circumcision, and harm reduction interventions for individuals who engage in drug use.

PrEP exhibits a commendable safety profile. In 10 randomized controlled trials, the occurrence of any negative event was shown to be similar between the use of PrEP and a placebo. The incidence of medication resistance is minimal, observed in roughly 1 out of every 1000 PrEP users in clinical studies. Drug resistance primarily manifested in individuals who were already experiencing acute, albeit undetectable, HIV infection at the commencement of PrEP treatment. Hence, it is imperative to do HIV testing, evaluate recent HIV exposure, and screen for acute HIV infection prior to initiating PrEP in order to prevent the development of medication resistance. Furthermore, the provision of PrEP diminishes the incidence of new HIV infections, each necessitating long-term treatment, while also significantly reducing the ongoing risk of medication resistance. Therefore, it is anticipated that PrEP will reduce the overall impact of HIV drug resistance on public health. (World Health Organization, 2015).

Deputy Director General of Health (Public Health), Datuk Dr. Norhayati Rusli in her statement on 1 December 2022 after speaking at the 2022 National World AIDS Day Celebration Ceremony, said that new HIV or AIDS infections in this country have decreased by 66% in the last 20 years. Although antiretroviral drug (ARV) treatment for People With HIV/AIDS (PLWHA) increased to 66% last year

compared to 28% in 2015, the rate of reduction in HIV cases and the increase in treatment coverage is still not enough for the country to contain AIDS until it is no longer a public health issue by 2030 (Bernama, 2022).

The United Nations Joint Program on HIV/AIDS (UNAIDS) in their report in August 2022, has mentioned the increase of HIV/AIDS from homosexual/gay activities (MSM) (HIV/AIDS rise again,2022). In the United States, more than 2/3 of the 56,300 young HIV/AIDS patients are from homosexual/gay/MSM relationships (Centers for Disease Control and Prevention,2005). Malaysia and the Philippines are also listed among the countries that have experienced an increase in this activity (UNAIDS,2022). Since the first case was found in Malaysia in 1986, a significant yearly increase has occurred. UNAIDS in 2021 has issued a report related to HIV/AIDS in Malaysia (UNAIDS, 2021):

- i. People Living with HIV: 92,000 people
- ii. Women Living with HIV: 17,000 people
- iii. New HIV infections: 6,100 people

A study entitled High Rates of Unprotected Anal Intercourse With Regular And Casual Partners And Associated Risk Factors In A Sample Of Ethnic Malay Men Who Have Sex With Men (MSM) in Penang, Malaysia (Lim et al.,2013) it was found that for the year 2010 a total of 350 Malay respondents in Penang was randomly selected and found that 284 respondents had sexual relations with other men (gay) in the period of January-December 2010 and produced the following results:

“Four men (1.9%) tested HIV positive. In the past 12 months, 64.7% of participants had regular sexual partners, 77.1% had casual sexual partners and 41.9% had both. Most participants (83.1%) reported unprotected anal intercourse (UAI), which was more common in regular partnerships. Over two-thirds of participants had never been tested for HIV. In multivariate analysis, agreement about sexual risk reduction practices was associated with a reduction in UAI with regular partners (adjusted OR (AOR)=0.14, 95% CI 0.05 to 0.40). Reporting difficulty in using condoms was associated with an increase in UAI with casual partners (AOR=9.07, 95% CI 3.35 to 24.5), and any exposure to HIV prevention was associated with a decrease in UAI with casual partners (AOR=0.22, 95% CI 0.09 to 0.54).”

The Background of the Issue

On 12 December 2022, the Minister of Health, Dr Zaliha Mustafa, announced that the Malaysian Ministry of Health (KKM) will conduct a pilot project to start a free Pre-Exposure Prophylaxis (PrEP) initiative program for people who engage in high-risk activities such as lesbians, gays, bisexuals and transgender people (LGBT) in selected health premises. Although according to the Minister of Health, the Ministry of Health has discussed this issue with religious experts regarding the law of its use, this still causes doubt from the general public as well as from Muslim medical practitioners (Bernama, 2022) because there is no official fatwa decision from the authority.

The use of this treatment among legal couples according to Islamic law and legislation is not the main issue in this study. The issue in dispute is that this PrEP will be given free to lesbians, gays, bisexuals, and transgenders (LGBT) on health premises.

The Ingredients of PrEP

PrEP can be pills or shots. There are two pills approved for daily use as PrEP. They are combinations of two anti-HIV drugs in a single pill:

1. Truvada® (emtricitabine/tenofovir disoproxil fumarate) is for all people at risk for HIV through sex or injection drug use. Generic versions Exit Disclaimer are also available (HIV.gov,2023).
2. Descovy® (emtricitabine/tenofovir alafenamide) is for sexually active men and transgender women at risk of getting HIV. Descovy® is not for people assigned female at birth who are at risk for HIV through receptive vaginal sex.

The FDA has also approved a long-acting injectable form of PrEP:

Apretude® (cabotegravir) is for people at risk for HIV through sex who weigh at least 77 pounds (35 kg). It is an injection given by health care provider every other month instead of daily oral pills (HIV.gov,2023).

The combination of tenofovir 300mg and emtricitabine 200mg (Truvada®, Tenof-Em®, FORSTAVIR-EM®, TENOHOPE E®) has been approved for use in the treatment of HIV infection in individuals aged 18 years and above (MIMS, n.d.)

The Halal Status of Prep

The National Pharmaceutical Regulatory Agency or NPRA does not set the obligation to obtain halal status recognition for all types of registered pharmaceuticals.

Miss Fatin Nabilah, a pharmacist assistant at Hospital Fatimah Ipoh, explained that Pre-Exposure Prophylaxis (PrEP) pills are not produced from animal fat and the ingredients for the Pre-Exposure Prophylaxis (PrEP) pill are derived from chemical laboratory processes using complex chemical compounds and reaction processes. Therefore, she believes that the ingredients used to make Pre-Exposure Prophylaxis (PrEP) pills do not contain prohibited elements.

View Of Scholars

The Ruling of Giving and Using PrEP in General

The initiative program of giving Pre-Exposure Prophylaxis (PrEP) for free to people who engage in high-risk activities, such as lesbians, gays, bisexuals and transgenders (LGBT) at selected health premises organized by the Ministry of Health has raised concerns and questions from among non-specialists because there is no official fatwa decision from the authorities. However, some Islamic Scholars in Malaysia have given their views on this issue.

According to the Perlis State Fatwa Committee, the group affected by HIV consists of various parties. It can infect those who have a halal relationship but their partner has sex with an HIV-positive person. On this basis, the government or medical practitioners are permissible (*Ibahah*) to provide PrEP to prevent HIV transmission.

Hence, the provision of PrEP as a protective measure for those who may be victims, such as a wife who is worried about the condition of her husband who may be involved in something dubious or a wife whose husband is in the process of drug rehabilitation then, is permissible (*Ibahah*). However, individuals who take PrEP to encourage themselves to have free or perverted sex are prohibited (*Haram*). (Muktabah Mufti Perlis, 2023)

In addition, the Selangor State Mufti Department believes that it is prohibited to give PrEP (Pre-Exposure prophylaxis) medication, which is used to prevent HIV infection to homosexual couples because it is considered complicity in matters of sin and disobedience. According to him, taking or giving the medicine is only required for married couples. That is, in a situation where one of them has been infected with HIV during intercourse (Iftitah, 2023).

Sabah State Mufti, Datuk Bungsu @ Aziz Jaafar is also of the view that it is prohibited to give Pre-exposure prophylaxis (PrEP) medication to homosexuals who are HIV-negative if they want to prevent them from contracting the disease. Giving PrEP medication to that group also contradicts the maqasid of Sharia and Islamic principles that prevent from helping evil (Hidayah, 2023).

Meanwhile, the Deputy Dean of the Faculty of Quran and Sunnah Studies at Universiti Sains Islam Malaysia (USIM), Associate Professor Dr. Ahmad Sanusi Azmi, stated that the provision of Pre-Exposure Prophylaxis (PrEP) medication for free to lesbian, gay, bisexual and transgender (LGBT) community would keep them away from the prohibition of Islam such as engaging in perverse acts, while in the Quran there are already outlined things that can save themselves from getting involved in such things. He also thinks the initiative is seen in the western way and is unsure how effective it will be (Roskhourah, 2022).

Prep Based on Maqasid Syariah

Muhammad Thahir Ibn Asyur (2001) defines *Maqasid Syariah* as the meaning and wisdom focused on the Sharia' as a whole or, in most situations, the revelation of commands without stating specific Sharia rulings. In addition, Dr Ahmad Al-Raysouni (1992) thinks that *Maqasid Syariah* is the purpose of Sharia for human welfare. Based on these two definitions, *Maqasid Syariah* can be broadly defined as the objective, meaning, and wisdom set by Islamic Sharia in the laws of Sharia that aim to safeguard human welfare.

Imam as-Syatibi is a great figure who has made a great contribution to the field of *Maqasid Syariah*. Al-Imam as-Syatibi elaborates on the field of *Maqasid Syariah* comprehensively, and regularly in his book entitled "*al-Muwafaqat*". Before Al-Imam as-Syatibi, other scholars, such as Imam al-Haramain al-Juwaini, had discussed this matter. Imam al-Haramain al-Juwaini (1997) often emphasizes the importance of *Maqasid Syariah* in interpreting sharia texts, where he states that: "And whoever does not understand the existence of *Maqasid* in the commandments and prohibitions of Sharia', then he does not obtain a clear and true view about Sharia".

According to Al-Ghazali (1993), the main goal of Sharia Law is to protect Muslims, which ultimately benefits human life. He also categorised *Maqasid Syariah* into three classifications: *daruriyyat*, *hajiyyat*, and *tahsiniyyat*. *Daruriyyat* is seen as necessary for the survival of individuals and communities as well as spiritual well-being. The division of *dharuriyyat al-khams* is used by Hujjatul Islam Imam al-Ghazali. He said:

"The meaning of Syarak is for five things, protecting them concerning religion, life, intellect, descendants, and property. Each contains the maintenance of these five basics, which is maslahat. With the lapse of one of them, it leads to mafsadah."

(*al-Mustafa*, 1993)

Furthermore, in the discussion of *Maqasid Syariah*, scholars such as al-Juwayni, al-Ghazali, and al-Izz bin Abdul Salam introduced the concept of protection and preservation. The main objective of Sharia has been identified with the word *hifz* (protection). In addition, the terms *maqasid* and *maslahah* are often used interchangeably to describe the same concept. In addition, according to Imam Al-Syatibi, the maintenance of human concerns is summarized under five main categories that must be maintained, as stated in his book:

"As for dharuriyyah, the meaning: it must be present in building religious and worldly benefits. Without the existence of these basic interests, the affairs of world life will not run properly. However, it will be broken, messed up and life will be destroyed. While in the afterlife, the loss of well-being and enjoyment and return with a real loss."

(*al-Muwafaqat*, 1997)

The provision of PrEP medication fulfills the *maqasid* of *Syariah* if it is given to the right group, i.e couples where one of them is HIV positive, employees not involved in sexual inversion . For example, if the PrEP drug is given to a family member infected with HIV brought by one of their family members, it can prevent the victim from being infected and indirectly, can preserve life and offspring which are among the two important aspects of the five *daruriyyat* in *Maqasid Syariah*.

However, if PrEP medication is given to people who are most likely to spread HIV infection and engage in reverse symptoms, the five objectives outlined in *Maqasid Syariah* cannot be met. For example, if PrEP is given to that group, it seems to encourage the individual to practice a perverted culture and the individual's religion will be affected if they involve themselves in the symptoms. At the same time, all religious demands cannot be fulfilled because they have violated what is was taught by religion.

Next, self-preservation will also be affected because the reverse culture of same-sex sex (male with male), will contribute to HIV infection. In addition to that, if the patient taking PrEP medication does not follow

the doctor's advice about taking the medication, it will harm the patient with the side effects of taking the medication such as brittle bones and so on.

Furthermore, the preservation of intellect will also be affected if the administration of this PrEP drug is not re-examined because individuals are more likely to satisfy their lust by engaging in reverse sex that violates the nature of a human being. The objective of preserving the lineage as outlined by Sharia will fail due to the spread of thoughts that violate human nature and perverse cultural practices are becoming more widespread. The next generation will be damaged if this is not curbed little by little. Efforts to damage the thinking of the next generation will intensify if there are no restrictions on it.

Finally, the objective of preserving property to some extent will be undermined because the finances allocated for the health sector should focus on more critical diseases instead of treating diseases that an individual can void. For example, an individual can prevent himself from contracting HIV by not engaging in sexual inversion. Therefore, the individual does not need to be given PrEP because of his healthy lifestyle.

Consideration Between Maslahah And Mafsadah In Using PrEP For LGBTQ

Maslahah is defined as a benefit. Ibn Manzur (1994) interprets it as goodness. It is also defined as a benefit in two dimensions: by achieving good, the benefits of enjoyment or avoiding badness, pain and harm (Tahir, 2001). This definition aligns with the view of al-Ghazali (1993), who explains with a simple sentence: "getting benefits and avoiding harm". Al-Tufi (1993) explains *maslahah* from the perspective of *uruf* referring to reasons that lead to goodness and benefits. From the point of view of Sharia, it leads to the will of the Law Maker, which is *al-Shari'*, understood in terms of idiom or custom. It shows that the objective of the legislation is the final goal and *maslahah* is the mechanism that leads to the final goal.

Maslahah is antonym for *mafsadah*. All things forbidden by Allah SWT are included in the matter of *mafsadah* (Ibn Ashur 2001). The forbidden things mentioned in the Quran are things related to major sins, oppression and heinous deeds. In addition, things that have greater harm than their benefits and things that are followed by warning and torture are also included in the prohibited things. *Mafsadah* can be summed up as "acts that are not in line with the will of the syarak, that is, which hinder the objective of the syarak from providing happiness and well-being for people in this world and in the afterlife" (Zulkifli 2014). When good is challenged, it can bring bad things. When there is no good, bad will fill the void or something can be useless.

Therefore, Pre-Exposure Prophylaxis is a type of drug used to prevent infectious diseases, and the drug is not intended to encourage free sex or reverse sex by certain groups. Nevertheless, it cannot be denied that this drug will cause certain people to feel safe to continue the act because its existence can prevent HIV infection. It is based on a study conducted on gay and bisexual individuals, it was found that they are interested in taking the drug as a preventive measure (Santella et al., 2018).

Most women are reported to have acquired HIV infection from their male partners who engaged in same-sex intercourse without the woman's knowledge (CDC, n.d.). It is because gay people and those who engage in same-sex relationships cannot be identified in society through their external appearance, unlike transgender people. Based on a study that has been conducted, among the factors that women get HIV infection is their sexual orientation with their husbands or their partners who are involved in risky activities such as perverse or promiscuous sexual relations beyond their knowledge (Muda, 2021). Based on the situation mentioned above, the administration of PrEP medication to those who belong to the LGBTQ group, especially those who tend the same sex, is indirectly able to prevent HIV infection in innocent people such as women who do not know that they have been involved in a relationship with Gay persons. Studies also show that fetuses in the womb, as well as children who breastfeed from mothers who are HIV positive, are also at high risk of contracting the disease (WHO, 2020).

In addition, PrEP drugs are like other drugs in their role to treat and prevent disease. In this situation, the government's efforts are aimed at curbing the problem of HIV infection in the community, while also aiming to ensure that the community achieves a good level of health. This effort does not mean that the government is neglecting its responsibility in dealing with the social problems caused by LGBTQ people. In a study conducted by the Center of Excellence For Research In AIDS (CERiA), it was shown that the use of PrEP to prevent HIV transmission has saved as much as RM 47 million in costs for treating HIV

disease throughout the years 2006 to 2013 (RTM, 2023). When examined, there are two conflicting meanings in the issue of giving PrEP medication to LGBT people. First, giving PrEP to LGBT people will prevent the spread of HIV infection in the community, but will result in widespread immorality by this group. Second, banning the giving of PrEP to LGBT people aims to prevent the spread of immorality by this group, will cause the spread of HIV infection in the community. In a conflict between two harms (*mafsadah*) that both cannot reject, the larger harm (*mafsadah*) should be rejected by choosing the lighter *mafsadah*. This coincides with the method of fiqh 'Where there is a conflict between avoiding harm and gaining benefits, Islam instructs its followers to prioritize the avoiding of *mafsadah* (harm), as stipulated by the juristic maxim:

“Avoiding harm is prioritized over gaining benefits.”

Another method that can be applied in this regard is the fiqh method:

“Deliberation Between Two Harms”

(Ibn Nujaym, 1999)

Based on the first situation, which is the provision of PrEP to LGBT people, there are two situations that the government must refine. First, giving PrEP drugs to people who are believed to benefit from this drug and cause widespread immorality, such as those who are actively involved in the sex industry as sex workers, for example, those who have sex with men. For the situation of giving PrEP to this group, the concept of *sadd al-dharī'ah* can be applied, prohibiting the giving of this medicine because it is believed to cause greater *mafsadah*. However, in a situation where those who are identified as belonging to the LGBT group but are not actively involved as sex workers, this situation should be re-examined by the government in collaboration with the fatwa committee in Malaysia because it takes into account various factors and this matter requires a study deeper field.

In addition, most women who are infected with HIV are caused by their partners who are involved in reverse sex activities without their knowledge. Sexual inversion treatment involving LGBT people is described as repetitive and most of those infected with HIV are men (Sinar Harian, 2023). Therefore, giving PrEP to LGBT people as stated in the situation above, can prevent the transmission of HIV infection in the community especially to those who are innocent such as wives and babies of men who practice reverse sex without the knowledge of family members. Based on the second situation, which is to prevent PrEP medication being given to LGBT people to prevent immorality from spreading. What is feared by some parties is the spread of HIV infection in the community. Hence, realistically, it is impossible to eradicate this group quickly. Subsequently, statistics released by the Ministry of Health show that in the last ten years, the trend of increasing HIV infection in the community is increasing due to the practice of sexual inversion by LGBT people (MoH, 2022). The increase in this trend indirectly shows that immorality among them is also becoming more prevalent. This clearly shows that despite the absence of PrEP medication at that time, this group seems not to be afraid to have sexual inversion even if they are exposed to HIV infection.

Based on the situation explained above and its connection with the trend of HIV infection, it is clear that the absence of PrEP medication does not prevent this group from continuing to commit immorality. Thus, preventing the administration of PrEP medication to LGBT people does not guarantee that the practice of sexual inversion among them will decrease, but it will create a risk of transmission of this disease in society. The fact is, in both of the above situations, whether PrEP is allowed to be accessed by LGBT people or not, both of these situations will still bring consequences either in terms of immorality or HIV infection which is becoming more prevalent in society. As a result, between the two harms (*mafsadah*) mentioned above, it is necessary to consider rejecting one of the harms (*mafsadah*) considered heavy. Giving PrEP to LGBT people will cause widespread immorality while preventing the giving of PrEP to LGBT people will cause the spread of HIV infection in the community.

Moreover, based on the trend of HIV infection among this group, they seem not to be afraid of being infected with the HIV. Giving PrEP to LGBT people can certainly prevent the transmission of HIV

infection but cannot prevent the spread of immorality. Preventing the provision of PrEP to LGBT people does not guarantee a reduction in immorality among them but will cause the spread of HIV infection. Based on the situation stated above, the researcher thinks that in the issue of giving PrEP medication to the LGBT group, the method of rejecting the greater *mafsadah* needs to be applied and it is the responsibility of the government in collaboration with the fatwa committee in Malaysia to take into account the ability of the authorities to combat the total amount of immorality committed by that group.

Realistically, in a society with a bad social system, the immoral acts committed by this group cannot be eradicated in a short time. A holistic and efficient approach that involves various concerned parties needs to be carefully formulated along with long-term planning needed to deal with social problems among LGBT people and also the problem of HIV transmission in the community. The fact is that efforts to deal with the problems of the LGBT group will take a long time and measures to deal with the problem of HIV transmission caused by this group should be implemented.

In addition, the researcher suggested that an in-depth study be conducted on the benefits and implications of giving PrEP medication to LGBT people who are not involved as sex workers in the sex industry as previously stated. Consideration of the *mafsadah* that will arise due to immoral acts by this group that cannot be stopped in a short time, needs to be done to safeguard the interests of the community, especially the family members of LGBT practitioners who may be saved from contracting the HIV if PrEP medication is given. The situation stated above needs to be taken into consideration and considered by those in authority before issuing an absolute law regarding the provision of PrEP medication to LGBT people in general. This is because the situation of those who tend to gender is different from the situation of those who are actively involved in the sex industry. In the situation of those who are involved in the sex industry then, the administration of PrEP drugs should be prevented because there is a strong suspicion that they will take advantage of the drug and cause widespread immorality.

Meanwhile, the Ministry of Health will bear the high and unreasonable costs using allocations from Malaysian taxpayers. Statement from the Malacca Health and Anti-Drug Exco, Dr Muhammad Akmal Saleh explained in a press conference after the 4th session, First Term of the 15th Melaka State Legislative Assembly (DUN) in Seri Negeri, Ayer Keroh, that the funds that will be used to finance this PrEP pilot project will be allocated by The Global Funds (The Global Fund, 2011) (RTM, 2023). However, there has not been any official statement from the Ministry of Health regarding the continuation of this treatment (after the end of Global Funds sponsorship), whether it will use Malaysian taxpayers' money or other sources and the hidden side costs that will be incurred such as tests periodic laboratory, use of services at all levels in health care, treatment of complications/side effects/other infectious diseases.

In addition, a cost comparison study between HIV/AIDS treatment using PrEP and antiretroviral therapy (ART) in South Africa found that treatment using the first method is more cost-effective than the second method (Stover, 2010). National revenue collected through taxpayers will be spent further allowing individuals at risk in terms of behavior to continue their activities while abandoning high-risk acts by providing correct health facts from a health aspect and motivation from a moral point of view. Taxpayer money should not be used solely to fund those perverts, it should be used to treat more critical illnesses.

Therefore, the researcher suggested that an in-depth study be conducted on the benefits and implications of giving PrEP medication to LGBT people who are not involved as sex workers in the sex industry as previously stated. Consideration of the *mafsadah* that will arise due to immoral acts by this group that cannot be stopped in a short time needs to be done to safeguard the interests of the community, especially the family members of LGBT practitioners who may be saved from contracting the HIV if PrEP medication is given. The situation stated above needs to be taken into consideration and considered by those in authority before issuing an absolute law regarding the provision of PrEP medication to LGBT people in general. This is because the situation of those who tend gender is different from the situation of those who are actively involved in the sex industry. In the situation of those who are involved in the sex industry then the giving of free PrEP drugs should be prevented because there is a strong suspicion that they will take advantage of the drug and cause widespread immorality.

Conclusion

HIV disease is one of the diseases at the global level that still does not have a cure. If we think back, will giving prep medicine for free to all groups guarantee a reduction in HIV or invite greater harm? The researcher's point of view stated that the authorities need to review the initiative to give PrEP to LGBTQ people by considering whether the initiative will contribute more to good or bad. This is due to shows that there is a greater meaning than the problem and the Prep treatment so far has not proven that the transmission of HIV disease in Malaysia can be reduced because the effectiveness of the Prep treatment depends on individual discipline. The authorities also need to make every effort to find and discuss HIV prevention measures for a long period in addition to focusing on the best solution to give awareness to the community involved or not yet involved with this perverse symptom to avoid practices that violate human nature. Therefore, the cooperation of various parties is very important to play the role of their respective organizations, especially bodies from the health, religious and non-governmental sectors, to benefit all Malaysians.

References

- Ahmad, N., & Mahyeddin, M. (2018). *Hak asasi manusia dari perspektif Islam dan undang-undang di Malaysia: Isu dan penyelesaian*. Kertas kerja dibentangkan di International Seminar on Syariah and Law 2018 (INSLA). <https://www.researchgate.net/publication/354820144>
- Al-Ghazali, A. H. M. B. M. A. (1993). *Al-Mustasfa*. Dar al-Kutub al-Ilmiyyah.
- Al-Raysouni, A. (1992). *Nazhariyyatul Maqasid 'inda al Imam as-Syatibi*. Dar al-Alamiyyah lil Kitab Al-Islami.
- Al-Ṭufi. (1993). *Risalah fi Ri'ayah al-Maṣlaḥah* (A. 'A. al-Sayah, Ed.). Al-Dar al-Miṣriyyah al-Lubnaniyyah.
- Al-Zuhayli, W. (2000). *Haqq al-Hurriyah fi al-Alam*. Dar al-Fikr al-Mu'asir & Dar al-Fikr.
- As-Syatibi, A. I. I. B. M. B. M. (1997). *Al-Muwafaqat*. Dar Ibn Affan.
- Bernama. (2022, Disember 12). "KKM akan lakukan projek rintis penggunaan ubat PrEP - Dr Zaliha". *Astro Awani*. <https://www.astroawani.com/berita-malaysia/kkm-akan-lakukan-projek-rintis-penggunaan-ubat-prep-dr-zaliha-396478>
- Centers for Disease Control and Prevention. (2007). *HIV/AIDS surveillance in adolescents and young adults (through 2005)* (Slide 1, 2007-34. Department of Health and Human Services.
- Centers for Disease Control and Prevention. (2022). *HIV/AIDS*. <https://www.cdc.gov/hiv/default.htm>
- Generic medicine info: Tenofovir+Emtricitabine. (n.d.). *Monthly Index of Medical Specialties*. <https://www.mims.com/malaysia/drug/info/tenofovir%20+%20emtricitabine?mtype=generic>
- Halkitis, P. N., Mattis, J. S., Sahadath, J. K., Massie, D., Ladyzhenskaya, L., Pitrelli, K., Bonacci, M., & Cowie, S. E. (2009). The meanings and manifestations of religion and spirituality among lesbian, gay, bisexual, and transgender adults. *Journal of Adult Development*, 16(4), 250–262.
- Hamdi, A. Z., & Tonny, D. O. (2010). Tak pernah berhenti bercinta: Studi tentang seksualitas sepuluh ODHIV di Surabaya. *Jurnal Gandrung*, 1(2), 73–102.
- Hidayah Sani. (2023, Januari 21). Haram beri PrEP pada pasangan homoseksual. *The Merdeka Times*. <https://themerdeketimes.com/news/2023/01/haram-beri-prep-pada-pasangan-homoseksual-mufti-sabah/>
- Hillis, A., Germain, J., Hope, V., McVeigh, J., & Van Hout, M. C. (2020). Pre-exposure Prophylaxis (PrEP) for HIV prevention among men who have sex with men (MSM): A scoping review on PrEP service delivery and programming. *AIDS and Behavior*, 24(11), 3056–3070. <https://doi.org/10.1007/s10461-020-02855-9>
- HIV.GOV. (2023, November 20). *Pre-Exposure Prophylaxis*. <https://www.hiv.gov/hiv-basics/hiv-prevention/using-hiv-medication-to-reduce-risk/pre-exposure-prophylaxis/>
- Ibn 'Ashur, M. Ṭ. A. (2001). *Maqasid al-Syarī'ah al-Islamiyyah*. Dar al-Nafa'is.
- Ibn Manẓūr, M. B. M. (1994). *Lisan al-'Arab*. Dār al-Ṣādir.
- Ibn Nujaym, & al-Miṣrī, Z. A. I. B. I. (1999). *Al-Ashbāh wa al-Naẓa'ir*. Dar al-Kutub al-Ilmiyyah.
- Imam al-Haramain al-Juwaini. (1997). *Al-Burhan fi Usul al-Fiqh*. Dar al-Kitab al-Ilmiyyah.
- International Labour Organization. (2022). *Inclusion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons in the world of work: A learning guide*. <https://www.ilo.org/wcmsp5/groups/public/---dgreports/--->

- gender/documents/publication/wcms_846108.pdf
- Jawatankuasa Fatwa Negeri Perlis. (2023, November). *Hukum pemberian ubat Pre-Exposure Prophylaxis (PrEP) kepada golongan yang berisiko*. Pejabat Mufti Negeri Perlis. <https://muftiperlis.gov.my/index.php/himpunan-fatwa-negeri/835-hukum-pemberian-ubat-pre-exposure-prophylaxis-prep-kepada-golongan-yang-berisiko>
- Kementerian Kesihatan Malaysia. (2016). *The global AIDS response progress report 2016*. https://iptk.moh.gov.my/images/Scientific_Papers/2021/8.pdf
- Lim, S. H., Bazazi, A. R., Sim, C., Choo, M., Altice, F. L., & Kamarulzaman, A. (2013). High rates of unprotected anal intercourse with regular and casual partners and associated risk factors in a sample of ethnic Malay men who have sex with men (MSM) in Penang, Malaysia. *Sexually Transmitted Infections*, 89(8), 642–649.
- M.I.A.M.A, M. S. S., Hanapi, H., & Hassan, F. M. (2018). Salah laku LGBT dalam perundangan Malaysia: Undang-undang sebagai mekanisme pembanterasan dan kawalan. *Journal of Advanced Research in Social and Behavioural Sciences*, 13(1), 19–34.
- Malaysian AIDS Council. (n.d.). MAC - Malaysian AIDS Council. <https://mac.org.my/v4/auto-draft/>
- Mashrom Muda. (2021). Cabaran hidup penghidap HIV dalam kalangan wanita. *Jurnal Pengajian Melayu*, 32(2), 74–93. <https://jummec.um.edu.my/index.php/JPM/article/view/33182/13825>
- Ministry of Health and Wellness Government of Barbados. (2018, November 26). *Guidelines for Pre-Exposure Prophylaxis (PrEP) of HIV infection in Barbados*. https://www.prepwatch.org/wp-content/uploads/2019/05/2018_PrEP_Guidelines_Barbados.pdf
- Ministry of Health Malaysia. (2022). *Global AIDS monitoring 2022: Malaysia HIV/AIDS progress report*. https://www.moh.gov.my/moh/resources/Penerbitan/Laporan/Umum/MYS_country_report_2021.pdf
- Muhammad Tahir Hakim. (2002). *Ri'ayah al-Maslahah wa al-Hikmah fi Tashri' Nabi al-Rahmah SAW*. Al-Jami'ah al-Islamiyyah bi al-Madinah al-Munawwarah.
- NHS Inform. (2022, Julai). *What is HIV PrEP*. <https://www.nhsinform.scot/hiv-prep-pre-exposure-prophylaxis/what-is-hiv-prep/>
- Nisar Mohammad Ahmad. (2014, Mei 17). Human rights are part and parcel of Islam. *The Malaysian Insider*. <http://www.themalaysianinsider.com/sideviews/article/human-rights-are-part-and-parcel-of-islam-nisar-mohammad-ahmad>
- Nur Iftitah Rozlan. (2023, Januari 19). Dilarang beri ubat PrEP kepada pasangan homoseksual. *Sinar Harian*. <https://www.sinarharian.com.my/article/241402/berita/nasional/dilarang-beri-ubat-prep-pada-pasangan-homoseksual>
- Pretorius, C., Stover, J., Bollinger, L., Bacaër, N., & Williams, B. (2010). Evaluating the cost effectiveness of pre-exposure prophylaxis (PrEP) and its impact on HIV-1 transmission in South Africa. *PloS One*, 5(11), Artikel e13646.
- Roskhoirah Yahya. (2022, Disember 17). 'Sudah jelas apa sepatutnya kita jauhi'. *Sinar Harian*. <https://www.sinarharian.com.my/article/236521/berita/nasional/sudah-jelas-apa-sepatutnya-kita-jauhi>
- RTM. (2023, September 30). PrEP kurangkan kadar jangkitan HIV. *Berita RTM*. <https://berita.rtm.gov.my/nasional/senarai-berita-nasional/senarai-artikel/prep-kurangkan-kadar-jangkitan-hiv>
- Sabri, A. Z. S. A., Owoyemi, M. Y., & Mangsor, F. (2014). Leading by example: Causes and treatment by an experienced LGBT counsellor. *International Journal of Innovation and Scientific Research*, 10(2), 255–261.
- Spieldenner, A., Santella, A. J., Cooper, S. C., Rosales, K., Goedel, W. C., & Jones, H. E. (2022). Knowledge, attitudes, and practices towards PrEP from cisgender men and transgender women who have sex with men in the largest suburban HIV epidemic. *International Journal of Environmental Research and Public Health*, 19(18), Artikel 11640. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9517439/>
- The Global Fund. (2011). *Malaysia joins the Global Fund portfolio with HIV and AIDS grant*.
- The Star. (2022, Ogos 1). HIV/AIDS is on the rise again, Malaysia among countries with rising numbers. *The Star*. <https://www.thestar.com.my/lifestyle/health/2022/08/01/unaid-reports-that-hiv-aids-is-on-the-rise>
- UNAIDS. (2022). *In danger: UNAIDS Global AIDS Update 2022*. https://www.unaids.org/sites/default/files/media_asset/2022-global-aids-update-

[summary_en.pdf](#)

World Health Organization. (2015). *WHO expands recommendation on oral Pre-Exposure Prophylaxis of HIV infection (PrEP) policy brief*.

World Health Organization. (2020). *Global HIV/AIDS statistics*. <https://www.who.int/news-room/fact-sheets/detail/hiv-aid>

Zulkifli Mohamad Al-Bakri. (2014). *Maqasid Syariah Satu Pengenalan Umum*. Pustaka Cahaya Kasturi.