Do-Not-Resuscitate (DNR) Orders and Decision-Making in Islam

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To my father and mother…

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Abstract

In recent times, technological and medical developments have contributed to the prolongation of human life. However, these developments have also brought about problems that need to be solved in terms of ethics, and both social and religious positions. Problems that need to be solved in terms of Islamic religion have been imposed by Islamic law; in particular, medical problems have begun to be solved by the new field of Islamic bioethics. Islamic bioethics as a concept has started to be used since the 1980s - until then Islamic jurists had formulated legal-ethical rules by using the existing rules of Islamic law and any obtainable information from medical experts. Medical experts, health policy makers, social scientists, historians and Islamic studies scholars all give information on medical ethical issues. This information is used to inform *fatwa*s (legal opinions) by scholars of Islamic Law.

Nowadays, people consider it their right to make a decision about the end of their lives. Although people have the chance to be medically revived or resuscitated, some people may refuse to use this due to personal social or religious motivations. Sometimes, when treatment is futile, it is possible to make the end of life decision with a doctor's recommendation. Therefore, the end of life decisions is accompanied by issues that must be solved both in terms of ethical and Islam. One of these issues involves Do-Not- Resuscitate (DNR) orders. DNR is a decision which means that treatment methods are not applied to a patient when the person's breathing or heart has stopped for any reason. This decision is made either because of the testament that the person signed when he or she was healthy, or when the doctor is not able to perform any curative intervention for treatment in a futile case. In this work, the status and applicability of DNR orders from the perspectives of Islamic Bioethics will be investigated, and *fatwa*s used for clarifying DNR orders' permissibility in Islam, particularly from the Sunni majority perspective. Also, since DNR is, in effect, the patient refusing treatment, the provisions of seeking medical treatment in Islam have been extensively included.

Key words: Do-not-resuscitate orders, DNR orders, Seeking Remedy, Islamic Law, Islamic Bioethics.

Front Matter

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Declaration

I declare that I have developed and written the enclosed Master Thesis completely by myself and have not used sources or means without declaration in the text. Any thoughts from others or literal quotations are clearly marked. The Master Thesis was not used in the same or in a similar version to achieve an academic grading or is being published elsewhere.

Hatice Kubra MEMIS

04/09/2018

Introduction

Every living organism will inevitably encounter death. However, there is no prediction as to when and how death will occur. There is the possibility that a person may fall into a fatal disease, irreversible coma or lapse into a vegetative state after an accident. The fact remains that developments in the fields of technology, science, and medicine have made many possibilities for humanity to prolong lifespan in recent decades. Nevertheless, these possibilities also contain issues and problems that need to be solved. Considering that Islam is the second largest religion in the world, it is necessary to investigate and know whether these possibilities are 'ethical and *jā'iz* (permissible)' in terms of the Islamic viewpoint. This thesis examines the topic of DNR orders from the perspective of Sunni Islam, which is the tradition of the majority of Muslims worldwide. At the same time, it may be necessary to draw limits on their executive circumstances, functioning, and procedures.

Science does not always apply the best ethical or religion option related to this subject; on the contrary, it is interested in implementing what is possible. For this reason, Muslims and Muslim healthcare providers who want to maintain their lives by observing the boundaries drawn by God, may want to know how to comply with their Islamic attitudes and beliefs towards new progress which is made in science and medicine. These issues can be addressed from dimensions such as those of the faithful believer, theological, and philosophical perspectives, as well as the perspective of *fiqh* (Islamic Law) that relates to the practical life. Since the topics are contemporary, the expectations from the contemporary Islamic jurists are high. Therefore, these requirements are addressed by Islamic law and specifically Islamic bioethics.

Islamic bioethics has a variety of stakeholders who provide resources for growing and improving this discipline. Medical professionals, health policy makers or researchers, historians, social scientists and Islamic studies academicians all consider issues related to Islamic law, medicine and bioethics. Each of these stakeholders evaluates questions about how Islamic values interact with and influence medical practice. These evaluations are used to inform *fatwa*s for bioethical issues under Islamic Law. Thus, *fatwas* are used by doctors to

understand the acceptability of medical attention, and by Islamic scholars to obtain the principles of universal Islamic bioethics.[1]

The lives of human beings have been prolonged by technological advances, especially in medical science. In the 1960s, cardiopulmonary resuscitation (CPR), which has saved a great number of human lives, started to be used.[2] CPR is applied when a person's heart or breathing has stopped. This application has a purpose, which is to resuscitate a patient's life by using an electrical shock-powered device on the heart and giving oxygen to help with intubation. Currently, CPR is extensively performed in hospitals. CPR, although it helps to save lives, can also prolong suffering and the process of dying for patients. Indeed, everyone will be subjected to CPR because the stopping of the heart and the respiratory functions are inevitable at the time of death. The purpose of a CPR order is to save and prolong lives. The omission of a CPR order, which is termed a do-not- resuscitate (DNR) order, usually results in the patient dying. Therefore, a physician who omits CPR deliberately or by negligence is considered a murderer according to medical law. Until 1990, withdrawal of CPR was regarded as a professional mistake, but on 1st December 1991 the US Constitutional Court entered into force the '*Patient Self-determination Act*', which states that the patients themselves must decide on the treatment to be applied to them. However, the adoption of a patient-centred viewpoint has been the result, and such requests by patients have also been performed by physicians.[3]

On the other hand, DNR orders are not only issued on the patient's order, but it has also become a part of medical death performed by doctors. In a variety of countries, healthy people have signed DNR orders. The application of DNR orders is supported and implemented in many different countries by law like Belgium, Holland and Saudi Arabia. However, DNR orders are accompanied by various problems which have necessitated solutions, according to Islamic Law. However, in countries with a large Muslim population, for example Turkey, there

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[1] Padela, A. I., Shanawani, H., & Arozullah, A. (2011). Medical experts & Islamic scholars deliberating over brain death: Gaps in the applied Islamic bioethics discourse. *The Muslim World*, *101*(1), pp.1-2.

[2] Park, Y. R., Kim, J. A., & Kim, K. (2011). Changes in how ICU nurses perceive the DNR decision and their nursing activity after implementing it. *Nursing ethics*, *18*(6), 802-813.

[3] Baştürk, E. (2003). Do-Not-Resuscitate (DNR) Talimatının Temel Etik Ilkeler Açısından Değerlendirilmesi (An Appraisal of Do-Not-Resuscitate (DNR) Orders). *Turkiye Klinikleri Journal of Medical Ethics-Law and History*, *11*(1), pp. 18-20.

is no regulation specifically related to DNR orders.[4] However, DNR orders can be applied under certain conditions in Turkish hospitals.

This thesis investigates Islamic and ethical solutions of these new issues. The main topics of bioethics are organ transplantation, abortion, gene technology, artificial reproduction and both the beginning and end of life medical procedures. One of these important issues is the end-of-life decision-making process. In this study, the DNR orders are examined in terms of Islamic permissibility.

This thesis has been divided into four chapters. In the first chapter, detailed information about the sources of Islamic law is given. After explaining the main sources of Islam, which are the Qur'an and Sunnah, the importance of *ijtihād* and *ijmāʿ* which are the methods and sources of Islamic law, are further expressed because they answer the contemporary issues. The *ijmāʿ* group should include the specialist physicians, who have been brought together to discuss the reasons and potential solutions. The significance of responding to the medical issues of contemporary problems in terms of Islam was also mentioned. This chapter also mentions the studies on the end of life decisions and the DNR orders, the significance of the subject to modern-day life, and what the shortcomings of this issues are. In addition, the method of this dissertation was explained in detail.

In the second chapter, the definitions, and explanations necessary to understand the subject have been given in detail. In this context, the decision-making at the stage of the end of life have been examined both in terms of medical and Islamic perspectives. The definition of death was given both from medical and Islamic views because the application of a DNR order to the patient results in his/her death. At the end of this chapter, the definition of DNR orders, history, and effectiveness on patients are mentioned.

In the third chapter, which constitutes the most important part of this thesis, the legal position of seeking treatment first has been examined in the context of the different views of the four Sunni Islamic law schools. It is important to know the ruling of seeking treatment in terms of Islam, because DNR orders mean refusing the treatment. It is also important to determine who has the responsibility and authority to approve the signing or implementation of DNR orders for a patient, and who will make a decision about the end of life procedure. Furthermore, the permissibility of DNR in depends on whether doctors state that the treatment is futile or hopeless. Therefore, this thesis tries to explain in cases of medically futile treatment.

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[4] *Ibid*.

The fourth chapter considers the status of DNR orders in terms of Islamic thought. To do this, the *fatwa*s issued to different scholars and institutions were examined, similarities and differences were revealed. The results of these differences, as well as deficiencies related to the *fatwa*s, were mentioned.

The final sections of this thesis comprise the conclusion and the comprehensive bibliography. In the conclusion section, suggestions have been made to overcome these deficiencies. Within the bibliography, all works referenced in this thesis have been listed according to alphabetical order based on the authors' last name. It is hoped that this will enable readers to continue their study of this topic, and ultimately bring more light into this research area.

Islamic Sources

Throughout Islamic history, Muslim scholars have sought answers to the changing needs of society, in terms of Islamic legal sources. As long as this change continues, this endeavour will be continued. Understanding God's law is important in Islam. This is because these rules inform Muslims about the affairs which please God. Therefore, *Uṣūl al-Fiqh,* that is Islamic legal theory, was established for the purpose of finding the rules revealed by God.[5] Therefore, ijtihad is necessary for every period in order to enlighten and solve new issues brought by science and technology. Furthermore, the scope of *ijtihād* in biomedical issues is solving the novel medical problems by using *ijtihād* by Islamic scholars.

Islam, for Muslims, refers not just to a set of esoteric religious beliefs, but instead to a complete lifestyle. It responds to the wide range of questions from the most mundane to the most divine. Islam is different from many others in providing a life code.[6] The legal orientation of Islam creates an interesting area for ethical discourse. In the Western world there is much debate and conflict between law and ethics. *S̲harīʿa,* which is the general term for Islamic law, is as much an ethical system as it is a legal system.[7] Therefore, it can be said that there is no clear distinction between law and ethics in Islam. Moreover, it is impossible to write about

[5] Hallaq, W. B. (1984). Was the gate of ijtihad closed? *International Journal of Middle East Studies*, *16*(1), p. 4.

[6] Al-Bar, M., & Chamsi-Pasha, H. (2015). Contemporary bioethics. *Islamic perspective*, p.49.

[7] Hourani, G. F. (2007). *Reason and tradition in Islamic ethics*. Cambridge University Press, p. 1.

ethics without reference to law and vice versa.[8] This relationship between ethics and law can be clearly seen in the development of Islamic bioethics.

In recent times, technology and medical developments have led Muslims to face various health care decisions. This encounter has brought together the questions and problems which must be solved for Muslims. To answer these medical and ethical problems, Islamic scholars use legal and ethical discourses existing in Islam, try to synthesize them and find solutions to current problems. Thus, it may be useful to learn the method of Islamic law for resolving matters.

The substantive sources of Islamic law are the Qur'an and the Sunna. The Qur'an is the scripture source of the revelation, and the Sunna is the re-telling of stories about the Prophet's life and his community.[9] Both sources are known together as the Text, a true and legally relevant divine revelation, and in Arabic this Text is *naṣṣ*.[10] Human effort is needed to understand and apply the revelation or *naṣṣ* correctly, because it is a raw material. On the basis of this *naṣṣ*, the *mujtahid*, an Islamic jurist, formulates the law of God. [11] Also, the *mujtahid*s never make a judgment, they only formulate the rules laid down by God and hidden in the sources.[12]

The first and most important source of Islam is the Qur'an. The Qur'an is the word of God and constitutes the foundation of the Muslim's way of life and the origin of Islamic law. Although the Qur'an contains some clear laws, it consists mainly of the general and moral directives that Muslims should and should not do.[13] Although the majority of the bioethical problems encountered today are not clearly included in the Qur'an, it should be still used as the first reference source for answers to the questions of Islamic bioethics due to its moral principles. In addition to this, it is sufficient and valid for the Qur'an to be a source of priority for Islamic bioethics because of its superiority in Islam.[14]

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[8] Salim, M. K. (1991). *Islam: Ethics and Teachings*. Kitab Bhavan, p. 19.

[9] Weiss, B. (1978). Interpretation in lslamic Law: The Theory of Ijtihād. *The American Journal of Comparative Law*, *26*(2), p. 200.

[10] Hallaq, (1984), p. 4.

[11] Vikør, K. S. (2005). *Between God and the sultan: A history of Islamic law*. Oxford University Press, USA, p. 31.

[12] Weiss, (1978), p. 200.

[13] Brockopp, J. E. (2003). *Islamic Ethics of Life: abortion, war and euthanasia. University of South Carolina press*. ISBN 1-57003-471-0, p. 3.

[14] *Ibid*.

There are two ways that the Qur'an is traditionally accessed. The first of these is through careful and textual analysis of the relevant passages; the second is the interpretation of the Qur'an, which has been developing for centuries. While these two methods, which are used to understand the Qur'an, are accepted as sacred and clear methods, it should also be taken into consideration that the scholars who examine and analyse put their own interpretations into the text. [15] Thus, whilst a verse in the Qur'an contains one meaning for one scholar, the same verse can be used for another scholar with a different meaning. Hence, careful interpretation of the Qur'an in terms of ethics, and particularly Islamic bioethics, has great prominence. The scholars should carefully select relevant verses and appropriate content to the issue, to remove current questions and problems from clouding their work.

The second main source of Islamic law is the Tradition of the Prophet[16], known in Islamic literature as the *Sunna* or *Hadith*. The Sunna is generally regarded as the complement, interpreter, and practitioner of the Qur'an. The Qur'an supports the authority of the Prophet's Tradition. God says in the Qur'an, 'O you who have believed, obey Allah and obey the Messenger and those in authority among you.' (*Sūrat an-Nisā'*, 4:29) and 'There has certainly been for you in the Messenger of Allah an excellent pattern for anyone whose hope is in Allah and the Last Day and [who] remembers Allah often.' (*Sūrat al-Ahzab*, 33:21) These two verses emphasize the glory of God and command the Muslims to obey the Prophet Muḥammad.

There is no clear statement about the current issues of end-of-life decisions in the Sunna, as in the Qur'an. However, the answers can be reached by interpreting the situations mentioned in the Hadiths. One of the most important points to be considered when interpreting and using Hadiths is the context. The Hadith can be used if there is parallel content or context to the contemporary issue. Therefore, both the contemporary issue and the context of the Hadiths must be known extensively. The most obvious and beautiful example of this parallel between classical Islamic sources and Islamic bioethics is suicide, murder and euthanasia. In Islam, suicide and murder are strictly forbidden. The verses of *al-Baqarah* 2:195 and *an-Nisā'* 4:29, concerning the prohibition of these two matters in the Qur'an, are clear and precise. These two verses are used as a basis when Islamic decision making about euthanasia which is the

[15] *Ibid*. pp. 3-4.

[16] Robson, J., "Ḥadīth", in: *Encyclopaedia of Islam, Second Edition*, Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. [Consulted online on 31 July 2018] http://dx.doi.org/10.1163/1573-3912_islam_com_0248

contemporary issue. Therefore, after finding a logical context, the Qur'an and Hadith can be interpreted and used as a source for a solution to contemporary issues.

With the Qur'an and the Sunna being the main sources of religious rules, Esposito (1998) who is the professor of religion and international affairs and Islamic studies at Georgetown University, states that it is possible, with rational thinking, to accept, understand and interpret these sources (p. 82). For this reason, revelation (*naql*) and reasoning (*ʿaql*) have a balance of importance and function in Islamic law. The most important of the concepts that symbolise the mission of reasoning with revelation is that of *ijtihād*. In the course of the development of Islamic law, intelligent use of reasoning and interpretation played an important role when there was no clear text or general consensus.[17] *Ijtihād* is an Arabic word which is derived from the root of '*jahd*', which has meanings like "self-exertion, effort, self-endeavour" and "to endeavour" [18] It literally refers to "the maximum effort expended by the jurist to master and apply the principles and rules of *fiqh* (legal theory) for the purpose of discovering God's law".[19] *Ijtihād* is one of the best way to reconcile the fixed *naṣṣ* and the problems of the changing and developing life, and also has the dynamism to resolving new problems encountered. This intellectual endeavour involves two forms which are *ijmāʿ* which means the juristic consensus[20] and *qiyās* which means analogy[21]. In fact, *ijmāʿ* and *qiyās* can take place between methodology and source.[22]

Ijmāʿ, meaning juristic consensus[23], literally meaning is 'the unanimous doctrine and opinion of the recognized religious authorities at any given time'[24] After the death of the Prophet, it gained importance in making legal decisions.[25] The authority of *ijmāʿ* is based on verses[26] and

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[17] Esposito, J. L. (1998). *Islam: The straight path* (Vol. 4). New York: Oxford University Press, p. 82.

[18] Weiss, (1978), p. 200; Ma'ṣūmi, M. Ṣ. Ḥ. (1982). Ijtihād Through Fourteen Centuries. *Islamic Studies*, *21*(4), p. 39.

[19] Bravmann, M. M. (1972). The Spiritual Background of Early Islam. Leiden: Brill, p.189.

[20] Al-Bar, & Chamsi-Pasha, (2015), p. 64.

[21] *Ibid*, p. 65.

[22] Rehel, E. M. (2005). Female Genital Cutting in the Context of Islamic Bioethics, p.14. (PhD dissertation)

[23] Al-Bar, & Chamsi-Pasha, (2015), p. 64.

[24] Bernand, M., "Id̲j̲māʿ", in: *Encyclopaedia of Islam, Second Edition*, Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. [Consulted online on 31 July 2018] http://dx.doi.org/10.1163/1573-3912_islam_COM_0350.

[25] Esposito, (1998), p. 83.

[26] *Sūrat an-Nisā'*, 4:59, 115.

Hadiths that ‘My community can never agree on an error’ [27], *ijmāʿ* can be used as a source and method when a rule is issued. The community of *ijmāʿ* should be constituted from legal scholars and religious leaders.[28]

On the other hand, *qiyās* is ‘judicial reasoning by analogy’[29] in the *fiqh* terminology. Islamic jurists take a principle or event from the Qur’an or the Hadiths (*aṣl*) to judge a matter not specified in any source (*farʿ*). This could be a religious, moral, or legal rule.[30] The chapters chosen from the Qur’an or the Sunna are not random; Islamic jurists choose the verses or hadiths taking into considering similarities such as the context of the subject and social functioning.[31] This is the same as in the case of suicide or euthanasia mentioned above.

Ijmāʿ and *qiyās* are concerned with *fatwā* (pl. *fatāwā)* which a kind of literature in Islamic Law is. A *fatwa* is known as a religious decision. *Fatwa* is the ‘technical term for the legal judgment or learned interpretation that a qualified jurist known as a *muftī* can give on issues pertaining to the *Shariʿa’*[32] *Fatwa*s are personal and non-binding because of their nature and therefore are also ‘only a rough guide to Muslim morality’[33] *Fatwa*s represent the personal opinions of the jurists, however, there may be differences in opinion among the scholars about the same matter. This can cause a divergence in the judgment which is given on the issue. Therefore, scholars have reached the conclusion that the concept of ‘*consensus edict’* can be preferred in cases where expert knowledge such as medical affairs is required. This group, which is specifically gathered to answer a medical issue, consists of both Islamic jurists and

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[27] Brown, N. O. (2009). *The challenge of Islam: The prophetic tradition*. North Atlantic Books, p. 67.

[28] Esposito, (1998), p. 83.

[29] Bernand, M. and Troupeau, G., “Ḳiyās”, in: *Encyclopaedia of Islam, Second Edition*, Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. [Consulted online on 31 July 2018] http://dx.doi.org/10.1163/1573-3912_islam_COM_0527.

[30] Rahman, F. (2002). *Islam* (2nd ed). Chicago: University of Chicago Press, p. 71.

[31] Esposito, (1998), p. 82.

[32] Hallaq, W.B. “Fatwa.” *Encyclopedia of the Modern Middle East and North Africa*. Retrieved July 28, 2018 from Encyclopedia.com: http://www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/fatwa.

[33] Brockopp, (2003), p.7.

specialist physicians. The doctors are included in the group to ensure the necessary background information for scholars.[34]

As is the case with organ transplantation and abortion discussions, *fatwa*s are one of the main sources of Islamic bioethics. It can be said that the *fatwa*s are the modern basis of the Islamic bioethics because scientific and religious authorities have contributed to the application of classical sources to modern issues. Researching in classical sources and applying it to contemporary problems, ensures that Islamic law develops and remains relevant. With direct regard to the DNR issue, there is no clear evidence or rule to be found in the Qur'an and Sunna, therefore, *ijtihād* is inevitable.

Methodology

In this thesis, the following steps, which are adapted from the studies by Padela, Shanawani, and Arozullah[35], will use to answer the research questions. Firstly, significant components which are the end of life and death will be identified and clarified. To do this, in the beginning, the end of life and death will be defined in both medical and Islamic terms, because the issues around DNR orders are closely related to the end of life and death. Thus, the problems related to DNR orders can be evaluated clearly from an Islamic perspective. Then, a definition of the issues around DNR orders will be given by using medical literature, dictionaries and encyclopaedias, along with sources from the field of bioethics and Islamic bioethics. The current and accepted practices on DNR within the field of medicine will be identified and clarified, and the facts and factors that may affect the decisions taken by doctors and medical experts when contemplating the actions needed for a terminally-ill patient will be also identified.

Secondly, the seeking remedy, the value of life and a person's rights over his or her body will be indicated, according to Islamic disciplines. Therefore, the research questions will be examined in the framework of the principles of Islamic bioethics. The responses and solutions will be generated in light of the discussions of Islamic legal experts in the sources and fatwas. Finally, the *fatwa*s regarding the DNR orders will be evaluated. One of the *fatwa*s was issued

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[34] Da Costa, D. E., Ghazal, H., & Al Khusaiby, S. (2002). Do not resuscitate orders and ethical decisions in a neonatal intensive care unit in a Muslim community. *Archives of Disease in Childhood-Fetal and Neonatal Edition*, *86*(2), p. 117

[35] Padela, Shanawani, & Arozullah, (2011), pp. 53-72.

in 1988 by the Presidency of the Administration of Islamic Research and Ifta' in Kingdom of Saudi Arabia, in its *fatwa* number 12086. The second *fatwa* was issued by Mufti Mohammed Tosir Miah in the website of Darul Ifta Birmingham in 2011, its *fatwa* number is 70. Furthermore, the opinion of The North American Islamic Medical Association (IMANA) on withholding and withdrawing life support machines will be used since it is closely related to the subject. Moreover, the views of Omar Kasule who is pioneer in integrating Islamic medicine into medical practice and teaching, on DNR orders will be applied in this thesis. Differences and similarities in the *fatwa*s, and closed expressions will be tried to be explained and evaluated.

Literature review

The issue of DNR orders is a new discussion. Thus, the classical source of *fiqh* do not discuss or address this topic. However, in recent decades, it has been brought to the agenda and discussions have been necessitated by it. Therefore, whilst it is not specifically included in the classical *fiqh* sources, some titles have information that can be considered as relevant to the matter and which can be used to obtain a point of opinion. This information is used by Islamic jurists to make *ijtihād*. In addition to these classical *fiqh* sources, medical and bioethical resources have also been used to understand the DNR process so that different viewpoints are provided.

The Qur'an and the Hadith will be provided some verses and hadiths relating to the main principles of the subject matter. These two sources have shed light on the work, particularly pertaining to what rights a human has over their own body and seeking treatment in Islam. These texts have also been useful when defining life and death in terms of Islam. Moreover, the six canonical collections of tradition, *al-Kutub al-sitta*, which are considered as the most important and reliable source of Hadith literature, have been used in this work. Another source used is the *Mejelle-yi Aḥkām-i̊ ʿAdliyye* (the civil code in force in the Ottoman Empire[36]), written by the Ottoman Empire scholar Ahmet Cevdet Pasha between 1868 and 1876, which tried to reconcile Islamic law and nineteenth century contemporary law. It contains the principles of Islamic law according to the *Ḥanafī madhhab*, and it was used to help address Islamic law principles in this work.

[36] Findley, C.V., "Medjelle", in: *Encyclopaedia of Islam, Second Edition*, Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. [Consulted online on 05 August 2018] http://dx.doi.org/10.1163/1573-3912_islam_SIM_5107.

The duties and role of a physician were highlighted in a book called 'at-*Ṭibb al-Nabawī*', translated as 'The Prophetic Medicine', by ʿAbd al-Malik b. Ḥabīb (d. 238, h. 853 cc). He states that a doctor should be qualified, capable, and should ask for the permission of the patient, otherwise he could be found guilty of misconduct (2002, pp.165-174). Comprehensive details of human behaviour and ethical rules are given in a book called '*at- Ṭibb al-Nabawī* translated as The Prophetic Medicine, by Ibn Qayyim al- Jawziyya (d.751/1350) (2004). He also mentions that healthcare providers should be competent, enthusiastic about their work, and should become trained (pp.202-214).

Abū Bakr al- Rāzī (313/925) is considered to be one of the major scientists in the field of medicine in Islamic history. He was known as the 'Galen of Arabs' because of his success and authority in the medical field and was also qualified as the 'father of Islamic medicine', as he was a prominent Muslim physician.[37] In his works *Mihnet al-Tabīb* and *Akhlāq al-Tabīb,* he provides recommendations for the ethical rules that a physician should obey by giving practical examples. *Akhlāq al-Tabīb* was written over a thousand years ago. However, it was a well-organised book with important conclusions, which are largely still maintained today. It also includes various ethical codes with regards to medicine. He advises that a physician should be virtuous in their job and should be a good role model with regards to ethics. His opinions can be summarised in three important points, which are the responsibilities of physicians to patients, patients to physicians, and the physician's responsibility to his or her self.[38]

In additionally, there are a number of *fatwa* councils, and their decisions have been used when presenting the *fiqh* dimensions of the DNR orders in this work. These include *Majmaʿu al-Fiqhu al-Islāmiyyi* (the Council of International Islamic Fiqh Academy), *al-Majmaʿu al-Fiqhiyyi al-Islāmī* (Islamic Fiqh Academy), which is related to Rābiṭat al-ʿālem al-Islāmiyya, The Council of Senior Scholars in Saudi Arabia, called *Hayʾatu Kibāri al-ʿUlamā*. These councils' *fatwas* about DNR orders have been used to solve the issue of DNR orders in terms of Islam.

In addition, studies have been carried out on Islamic law that deal with, and elaborate on, bioethical issues separately. In these studies, the views of Islamic law on issues like organ transplantation, euthanasia, and abortion are discussed. Islamic biomedical studies have also been found in Western literature. For example, *Islamic Medical Ethics in the Twentieth Century*

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[37] Karaman, H. (2011). Abu bakr al-razi (rhazes) and medical ethics. *Ondokuz Mayıs Üniversitesi İlahiyat Fakültesi Dergisi*, *30*(30), p. 79.

[38] Karaman, 2011, pp.10-13.

was written by Vardit Rispler-Chaim in 1993; *Islamic Bioethics: Problems and Perspectives* was written by Dariusch Atighetchi in 2007; Abdulaziz Sachedina wrote *Islamic Biomedical Ethics* in 2009; and *Contemporary Bioethics: Islamic Perspective* was written by Mohammed Ali Al-Bar and Hassan Chamsi- Pasha in 2015. These books do not give comprehensive detail about DNR orders, but they do give some information about euthanasia, withholding and withdrawing life support machines in terms of Islamic thought.

Apart from these, studies that address the issue not from Islam's point of view, which is usual among studies based in the West, but from the perspective of ethics and philosophy, were also used as sources in this thesis. For example, *Principles of Biomedical Ethics* (2001) by Tom L. Beauchamp and James F. Childress, who pioneered and taught the basic principles of medical ethics in their books; the *Encyclopaedia of Bioethics*, a bioethics encyclopaedia spanning five volumes and edited by Stephen G. Post, is one of the most fundamental works referenced which helped to recognise the main concepts and make preliminary readings. Nowadays, the Western world includes an important part of the literature dealing with medicine and bioethics. For this reason, Western-based and often secular investigations dealing with the ethical aspects of DNR orders include basic theoretical and practical discussions of end-of-life decisions, euthanasia, and one's own body. These studies have played an important role in shaping the framework of this thesis.

Background

The decision-making process about the end of life is one of the most controversial issues of medical ethics and bioethics because it contains difficult questions. These dilemmas are mainly concerned with who will, or who can, make the decisions about the time-period when the patient, who is terminally ill, is nearing death. In this difficult process there are many dilemmas experienced by terminal patients, based on 'raising quality of life or extending life'.[39]

The end of life decisions also includes issues that continue to be discussed in terms of Islam. The most controversial of these issues include euthanasia, the withholding and withdrawing of life support machines and the application of DNR orders. DNR orders include concern like the futility of resuscitation, the waste of medical resources, the role of family, and the possibility of abuse occurring as a kind of euthanasia. The majority of academic studies are about euthanasia and whether or not a terminally-ill patient, who is not able to be improved

[39] Aksoy, Ş., Çevik, E., & Edisan, Z. (2002). Yaşamın sonunda verilen kararlara ilişkin bir etik tartışma (An Ethical Discussion on The End of Life Decision Making). *Turkiye Klinikleri Journal of Medical Ethics-Law and History*, 10 (4), p. 263.

medically, has the right to end their life or to refuse their treatment. However, it seems that today there is a consensus among Islamic scholars that active euthanasia, in particular, is forbidden (*ḥaram*) in Islam. Active euthanasia is prohibited according to Yusuf al-Qaradāwī [40], the Egyptian muftis[41], and Islamic Medical Association of North America (IMANA)[42], the Islamic Medical Association (IMA)[43]. At the *fatwa* assembly meeting held at al-Azhar University, it was decided that it was absolutely not permissible to kill the patient for any illnesses and any suffering. According to the assembly, it is absolutely not permissible (*jāʾiz*) for the patient to kill himself, and it is also not permissible (*jāʾiz*) to kill the patients by physicians even with the patient's permission.

On the other hand, in the case of a patient's brain death, a life support machine can be stopped, according to the decision taken by the Council of the Islamic Fiqh Academy[44] in 1986 in Amman. This decision has since been the foundation for many countries' decision. According to this verdict, if a person's heart and respiration are completely stopped and the physicians decide that it is no longer possible to resuscitate them, and if all the functions of the brain have stopped and that the brain has begun to dissolve, his death may be seen as acceptable.[45] From this perspective, it can be argued that it is *jāʾiz* to terminate the life support devices which a patient in this situation is connected to.

According to the *fatwa* on the rejection of CPR (cardiopulmonary resuscitation), DNR may be applied if there is the consensus of three specialists that further treatment is futile and harmful for the patient. Obviously, the stopping of treatment causing the death of the patient is not acceptable on principle. However, it is exempt in circumstances where the consensus of specialist physicians on the treatment applied is that it is futile or harmful to the patient. This issue has been discussed in the book namely *Islamic Biomedical Ethics* written by Abdulaziz

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[40] Nikookar, H. R., & Sooteh, S. H. J. (2014). Euthanasia: an Islamic ethical perspective. *European Scientific Journal, ESJ*, 10 (10), p. 1.

[41]Dar al-Ifta al Missriyyah, (2018), http://www.dar-alifta.org/Foreign/ViewFatwa.aspx?ID=453&text=euthanasia [Consulted online on 31 July 2018].

[42] IMANA Ethics Committee. (2005). Islamic medical ethics: the IMANA perspective. *Journal of the Islamic Medical Association of North America*, 37 (1), p. 234.

[43] Yousuf, R. M., & Mohammed Fauzi, A. R. (2012). Euthanasia and physician-assisted suicide: A review from Islamic point of view. *International Medical Journal Malaysia*, 11 (1), p. 66.

[44] Islamic Development Bank. (2000). Resolutions and Recommendations of the Council of the Islamic Fiqh Academy (1985–2000), p. 30.

[45] *Ibid*.

Sachedina. He stated that the 'right to die' cannot exist in Islam and he explained the situation in the light of the *Mejelle* code (19)[46] that 'injury may not be met by injury'. According to this, if the treatment induces new pain and it will not cure the patient, it is recommended that the intensive treatment should be abandoned. Instead, palliative care, which seeks to ease the patient's pain only, should be undertaken. However, in this situation, it is upon the evaluation of the physician that the treatment is futile rather than the patient's opinion, that the decision will be based.[47]

The studies on the end of life decision are usually focused on cases in which the treatment is futile. It has been seen that there are no detailed studies in the Arab and Muslim world related to DNR orders.[48] The studies written were mainly focused on the *fatwa* issued in 1988 by the Presidency of the Administration of Islamic Research and Ifta, Riyadh, in Saudi Arabia.[49] Moreover, it has been observed that there are negative attitudes towards DNR orders in some studies in Muslim countries.[50] It is also reported that there are conflicting perspectives on the DNR orders in these countries.[51] There is a limited number of DNR order studies in Islamic

[46] *Mejelle-yi Aḥkām-i ʿAdliyye* (The Ottoman Courts Manual (Hanafi)) http://legal.pipa.ps/files/server/ENG%20Ottoman%20Majalle%20(Civil%20Law).pdf [Consulted online on 16 July 2018].

[47] Sachedina, A. (2009). *Islamic biomedical ethics: principles and application*. Oxford University Press, pp.170-171.

[48] Gouda, A., Al-Jabbary, A., & Fong, L. (2010). Compliance with DNR policy in a tertiary care center in Saudi Arabia. *Intensive care medicine*, *36*(12), p. 2149.

[49] Takrouri, M., & Halwani, T. (2008). An Islamic medical and legal prospective of do not resuscitate order in critical care medicine. *Internet J Health*, 7 (1), 12-16; Saiyad, S. (2009). Do not resuscitate: a case study from the Islamic viewpoint. *Journal of the Islamic Medical Association of North America*, 41 (3), pp. 109-113; Chamsi-Pasha, H., & Albar, M. A. (2017). Ethical dilemmas at the end of life: Islamic perspective. *Journal of religion and health*, 56 (2), pp. 400-410.

[50] Mogadasian, S., Abdollahzadeh, F., Rahmani, A., Ferguson, C., Pakanzad, F., Pakpour, V., & Heidarzadeh, H. (2014). The attitude of Iranian nurses about do not resuscitate orders. *Indian journal of palliative care*, 20 (1), 21; Fallahi, M., Banaderakhshan, H., Abdi, A., Borhani, F., Kaviannezhad, R., & Karimpour, H. A. (2016). The Iranian physicians attitude toward the do not resuscitate order. *Journal of multidisciplinary healthcare*, *9*, p. 279.

[51] Thibault-Prevost, J., Jensen, L. A., & Hodgins, M. (2000). Critical care nurses' perceptions of DNR status. *Journal of nursing scholarship*, 32 (3), p. 260; Abdallah, F. S., Radaeda, M. S., Gaghama, M. K., & Salameh, B. (2016). Intensive care unit physician's attitudes on do not resuscitate order in palestine. *Indian journal of palliative care*, *22*(1), p. 38; Gouda, Al-Jabbary, & Fong, (2010), p. 2149.

countries, contradictory conclusions[52], and suggestions for further study on the issue[53]. In addition, non-standard, informal and verbal DNR orders are common in many countries where Muslims constitute the majority of the population.[54] These references show that detailed study of DNR orders will help fill the gap of this issue. In this work, the main research question seeks to find whether that according to analysing the *fatwa*s that exist already, DNR may be decided, and if so which circumstances require to sign it. It has also been examined as to who can make the DNR decision.

End-of-life decision

End-of-life care refers to the health and social care system necessary to meet the physical, social, mental and emotional needs of patients who have a terminal illness and who are in the final stages of their life.[55] In recent years, rapid developments in science and technology have influenced many aspects of human life. Developments in the medical and pharmaceutical industries in particular provide a wide range of opportunities to treat serious and fatal diseases and to extend someone's lifespan. Some patients who should have died prematurely carry out their lives in a healthy manner thanks to the great progress in medicine. Some of these terminally ill patients 'continue' their lives depending on the life-support machinery in the coma or the vegetative life. These developments have contributed to the treatment of patients by prolonging their lives[56]; on the other hand, they have brought up other issues that need to be examined from medical, ethical, social and religious perspectives. Therefore, most of the lines and differences that were already very clear and certain, have been blurred by these advance developments, including the lines between life and death.

Medically, the decisions made at the end of life potentially include, firstly, the withholding or withdrawing of treatments that extend the prolonging life of the patient. These treatments are, for example, mechanical ventilation, tube-feeding, and dialysis. Secondly, in

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[52] Fallahi, et al. (2016), p. 280; Abdallah et al, (2016), p. 36.

[53] Mogadasian, et al. (2014), p. 24.

[54] Baştürk, (2003), p. 19.

[55] Colello, K., Mulvey, J., Sarata, A. K., Williams, E. D., & Thomas, K. R. (2009). End-of-life care: Services, costs, ethics, and quality of care. *Congressional Research Service. Report*, p. 5.

[56] Van der Heide, A., Deliens, L., Faisst, K., Nilstun, T., Norup, M., Paci, E., ... & Van der Maas, P. J. (2003). End-of-life decision-making in six European countries: descriptive study. *The Lancet*, 362 (9381), p. 345.

cases where the disease cannot be treated, it is called palliative care, which is the use of pain or other symptom relief medicines, but which may hasten death or give additional side-effects. Finally, depending on the wishes of the patient, the drug is given to end his or her life, such as euthanasia and doctor-assisted suicide. Medical end-of-life decisions can be made in any setting where patients have died, in hospitals, hospices, nursing homes, and at home.[57]

With the influence of rapid developments in the modern world, mankind wants to manage nature, society and even his fate. This desire to have control over matters of life also extends to the concept that a person has the right to decide about his own death. For this reason, the right to make decisions at the end of life is based on the principles of medical ethics, beneficence, non-maleficence, and the relief of pain. The principle of respect for autonomy was included in these principles by Beauchamp and Childress in the late 1970s. Beauchamp and Childress use the term ‘respect for autonomy’, indicating a difference between the capacity of an individual for self-rule, and the reaction of other people to that capacity.[58] This notion focuses on the wide concept of individual values that are possible in societies where private freedom exists. In addition to personal liberty, people also demand freedom from other burdens to have the capacity to act autonomously, including psychological, economic, and legal pressures.[59] As a logical extension to their argument on ‘respect for autonomy’, Beauchamp and Childress (2009) claim that patients have the right to choose a treatment which they find suitable. Furthermore, it is they as a patient who gives the authority about decision-making to a family member, a deputy, and even to the treating doctor. Beauchamp and Childress (2009) add that patients have a fundamental obligation to ensure that they have the right to choose or refuse information, for example about a diagnosis, as well as the choice of treatment to be undertaken. This means that information obtained by coercion, forced choices and evasive statements are inconsistent with this obligation. However, they also say that the doctor should give sincere recommendations to the patient and should respect any cultural differences that may be found (p.58). According to the principle of respect for autonomy, it has been argued that the patient has the right to end his or her life.

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[57] Van der Heide, et al, 2003, p. 345.

[58] Beauchamp, T. L., & Childress, J. F. (2001). *Principles of biomedical ethics*. Oxford University Press, USA, p. 58.

[59] Aksoy, S., & Elmali, A. (2002). The core concepts of the four principles of bioethics as found in Islamic tradition. *Med. & L.*, 21, p. 216.

Correspondingly, the right to die with medical support for patients with fatal illness or within the terminal period is on the agenda. There may have various causes of recognition of this right for the patients. For example, if the treatment being applied is futile, the patients do not want to suffer, the devices in the intensive care unit are expensive, or the capacity of the hospital is inadequate. The most controversial issues of end of life decisions are euthanasia, treatment rejection, stopping life support devices and Do-Not-Resuscitate (DNR) orders.[60] The attitudes towards the decision-making process on end of life in many countries are displayed such as Denmark, Netherlands, UK and USA.[61] Regardless of the existence of the law, worldwide the decision to die with medical support is being implemented/undertaken. For example, legally, Netherlands and Belgium are the first countries to put euthanasia law into force.[62]

End of Life Decision-Making in Islam

According to Islamic belief, every living thing will encounter the reality of death (Q: 21/35).[63] However, knowledge and authority about when, where, and how the death will come will belongs to only God as the Creator. (Q: 56/60)[64] There is no knowledge and authority of man about the place of death, the time, and the way to come. Nevertheless, no one has the power to hasten their death or to postpone it; the duration of life for each person is determined by God. (Q: 7/34; 10/49)[65] Therefore, the fact that the subject of the debate that people have the right to die contradicts Islam's principles. In addition to this, a human does not desire death because of his nature. The desire for the longer life and endeavour to realise an immortal life which continuing throughout the history of mankind may be a sign of it. Therefore, the right to the die should be researched in terms of Islam.

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[60] Zahedi, F., Larijani, B., & Bazzaz, J. T. (2007). End of life ethical Issues and Islamic views. *Iran J Allergy Asthma Immunol*, *6* (Suppl 5), p. 5.

[61] Van der Heide et al. (2003), p. 345; Dickenson, D. L. (2000). Are medical ethicists out of touch? Practitioner attitudes in the US and UK towards decisions at the end of life. *Journal of Medical Ethics*, 26 (4), 254-260.

[62] Daveson, B. A., Bausewein, C., Murtagh, F. E., Calanzani, N., Higginson, I. J., Harding, R., ... & Hall, S. (2013). To be involved or not to be involved: a survey of public preferences for self-involvement in decision-making involving mental capacity (competency) within Europe. *Palliative Medicine*, 27 (5), p. 2.

[63] 'Every soul will taste death.' (*al-Anbya*, 35)

[64] 'We have decreed death among you, and We are not to be outdone' *(al-Waqi'ah*, 60)

[65] 'And for every nation is a [specified] term. So when their time has come, they will not remain behind an hour, nor will they precede [it].' (*al-A'raf*, 34)

In Islamic law, while any issues are being settled, the five fundamental principles that are called as ‘*Maqāṣid al-Sharīʿa*’ which means the aims or purposes of law[66], are taken into account. These principles are the protection of intellect (*ʿaql*), religion (*dīn*), property (*māl*), generation (*nasl*) and soul (*nafs*). Correspondingly, decision making on end of life issues involves ethical concerns in terms of Islam about the sanctity of human life. This verdict is appreciated in the Qur'an in the *Sūrat al-An'am*: ''Do not take life which God has made sacred except in the course of Justice'' (Q; 6:151) Moreover, human life is very valuable; ‘whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely’ (Q; 5:32). Therefore, no one has the right to terminate neither his or her own life nor others life.

In Islam, the protecting and saving of life are considered one of the highest value and obligation.[67] Physicians have to do all kinds of interventions to prevent premature deaths. However, when death is inevitable, and treatment is futile as a result of the clinical evaluation, the obligation disappears.[68] Islam accepts that people have to define their limits and allow nature to go on its own path.[69] Therefore, it is unacceptable to resort to futile treatment to stop death in Islam.[70]

The treatment implement may not cause any changes in the patient's condition or quality of life. In such cases, Islamic jurists have indicated that it is possible to discontinue life-support treatments which, on the basis of informed consent, by collective decision-making between the physicians and the patient or the patient's relatives.[71] However, if the invasive treatment has been intensified to save the life of the patient, according to Muslim jurists, life-support equipment should not be shut down if the doctors not sure about the inevitability of death.[72]

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[66] Gleave, R.M., “Maḳāṣid al-Sharīʿa”, in: *Encyclopaedia of Islam, Second Edition*, Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. [Consulted online on 01 August 2018] http://dx.doi.org/10.1163/1573-3912_islam_SIM_8809.

[67] Zahedi, Larijani, & Bazzaz. (2007), p. 11.

[68] Khan, F. A. (2002). Religious teaching and Reflections on Advance Directive-Religious Values and Leagal Dilemmas in Bioethics: An Islamic Perspective. *Fordham Urb. LJ*, *30*, pp. 274-275.

[69] *Sūrat al-Zumar*, 39:42.

[70] Zahedi, Larijani, & Bazzaz. (2007), p. 13.

[71] *Ibid*; Sachedina, A. (2005). End-of-life: the Islamic view. *The lancet*, *366*(9487), p. 776.

[72] Sachedina, (2005), p. 776.

Definition of death

The latest developments in modern medicine have led to the vagueness and discussion of many basic concepts such as the beginning and the end of life. The medical developments in the 20th century caused the concept of death to change. Today, it is more difficult to define death than it is in the past. In the past, when the heart or lungs stopped working, that is, when breathing or blood circulation stopped, death was deemed to have occurred. However, these vital organs were completing their duties almost at the same time.[73] The developments in the medical area led to the development of life support devices used in intensive care units. With the advancement in the field of life support, the line between life and death has blurred.[74] These developments in the 20th century constituted various diseases. This classic definition of death has begun to be questioned by the emergence of a disease such as brain death. All over the world continues to be heavily debated this issue by people of different religions and cultures. In the case of brain death, the patient's brain functions are lost, but the heart and lungs continue to operate due to the machine. Therefore, the death has to be redefined in order to physically and legally announce the patient's death.[75]

In 1981, the Uniform Determination of the Death Act (UDDA) in the United States was undertaken to resolve the confusion concerning the death certificate. According to the UDDA's decision, if the patient has lost either the heart and lungs or the brain and brain stem permanently, the patient will be judged to have died.[76]

Definition of death in terms of Islam

The definition of death for Muslims cannot be obtained only from medical facts or from scientific research. Physicians can only explain experimental physiological conditions, but they cannot address religious-ethical and legal questions about the beginning of death with respect to these terms. Therefore, the most critical issues in determining the time of death are not medical or scientific, but mainly religious and ethical. According to Islam, God is the giver life

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[73] Center for Bioethics University of Minnesota, (2005). *End of Life Care: An Ethical Overview*. University of Minnesota, p. 7.

[74] Capron, A.M. (1995). Definition and determination of death: II. Legal issues in pronouncing death. In: Reich WT, editor. Encyclopedia of Bioethics. New York: Simon & Schuster MacMillan, pp. 536-537.

[75] Center for bioethics, (2005), p.7.

[76] The National Conference of Commissioners on Uniform State Laws. (1981). The Uniform Determination of Death Act (UDDA).

and death to the man, and classically, death is roughly defined as the separation of the soul from the body. Of course, this distinction is not directly apparent to experimental observations. Therefore, it is the greatest source of uncertainty in determining the exact moment of death.[77]

In recent times, the Islamic Fiqh Academy has summarised two conditions in its decision regarding the termination of life support where the death of the patient can be decided. The first condition is that 'complete cardio-respiratory arrest and confirmation by physicians that such arrest is irreversible'; and the second condition is that 'cessation of all brain activity and confirmation by physicians that such cessation is irreversible and that the brain has entered the state of decomposition.' Therefore, if one of these two conditions are finalised, even though the patient continues to work with the respiratory system and blood circulation connected devices, the person is deemed dead.[78]

Do-Not-Resuscitate Orders

The resuscitation is a medical procedure. The purpose of resuscitation is to restore blood circulation and respiratory functions of patients with cardiac or respiratory arrest. Cardiopulmonary resuscitation (CPR) is applied when a person's cardio or respiratory has stopped. This application has a purpose which is to resuscitate a patient's life by using an electrical shock-powered device on the heart and giving oxygen to aid with intubation. Nowadays, CPR is widely practiced in hospitals.[79] CPR is routinely administered to any patient who has a heart and / or respiratory arrest and is hospitalized. The prognosis of the patient plays an essential role in the effectiveness of CPR. Therefore, there is a belief that CPR should only be applied to patients who have a high chance of survival.[80]

There is anxiety on the administration of CPR on the patients with chronic illness or those with little chance of survival. Since supportive and sustainable treatments of life can be useless for these types of patients. Moreover, it can also cause the patient to suffer more. Patients with diseases such as cancer are less likely to survive. On the other hand, the patients for whom CPR is successful, they can often be exposed to aggressive treatments within the intensive care

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[77] Sachedina, (2009), pp. 146-147.

[78] The Council of the Islamic Fiqh Academy. (2000). Medical Treatment. In *Resolution and Recommendation of the Council of the Islamic Fiqh Academy (1985-2000).* Jeddah: Islamic Development Bank, p. 30.

[79] Jan, M. M. (2011). The decision of do not resuscitate in pediatric practice. *Saudi medical journal*, *32*(2), p.115.

[80] Cooper, J. A., Cooper, J. D., & Cooper, J. M. (2006). Cardiopulmonary resuscitation: history, current practice, and future direction. *Circulation*, *114*(25), p. 2847.

units. As a result of aggressive treatments, complications such as rib fractures, neurological problems or impaired physical condition can be seen.[81] Severe and untreated cognitive deficits require continuous medical care without entering any healing process.[82] Poor living conditions can be observed in patients who are constantly vegetative or in a coma. It is a complicated neurological condition in which the patient seems conscious but is not aware of self and his/her environment.[83] The recovery of the patient in this condition can often not be possible, and he may have to live in this poor position. Some intensive care specialists refuse to treat this kind of patients because they do not benefit from treatment.[84] Therefore, patients who suffer from continual medical intervention can create a cost burden for both the hospital and their families.[85] On the other hand, there is an opinion that medical resources should be used when the patient benefits.[86] It is thought that if the patient cannot benefit from medical treatment, the medical sources are unnecessary to use and to overuse of resources, and may cause the risk of exhaustion in the future.[87] Thus, if the treatment applied to the patient is futile, health providers cannot apply CPR.

The success of CPR intervention is usually measured by the improvement of patients who resuscitated to death, the hospital discharge.[88] Researches report that around 20% of

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[81] Yuen, J. K., Reid, M. C., & Fetters, M. D. (2011). Hospital do-not-resuscitate orders: why they have failed and how to fix them. *Journal of general internal medicine*, *26*(7), p. 791.

[82] Inbasegaran, K. (2004). Consensus on Withdrawal and Withholding of Life Support in the Critically Ill. *Berita Anestesiologi*, 6(1), p. 1.

[83] Monti, M. M., Laureys, S., & Owen, A. M. (2010). The vegetative state. *BMJ (Clinical Research ed.)*, p. *341*.

[84] Inbasegaran, (2004), p. 2.

[85] Deakin, C. D., Nolan, J. P., Soar, J., Sunde, K., Koster, R. W., Smith, G. B., & Perkins, G. D. (2010). European resuscitation council guidelines for resuscitation 2010 section 4. Adult advanced life support. *Resuscitation*, *81*(10), p. 1307.

[86] Kasule, O. H. K. (2012). Outstanding ethico-legal-fiqhi issues. *Journal of Taibah University Medical Sciences*, *7*(1), 5-12; Rathor, M. Y., Rani, M. F. A., Shah, A. S. B. M., Leman, W. I. B., Akter, S. F. U., & Omar, A. M. B. (2011). The principle of autonomy as related to personal decision making concerning health and research from an 'Islamic Viewpoint'. *Journal of the Islamic Medical Association of North America*, 43 (1), p. 31.

[87] Kasule, (2012), p. 9.

[88] Danciu, S. C., Klein, L., Hosseini, M. M., Ibrahim, L., Coyle, B. W., & Kehoe, R. F. (2004). A predictive model for survival after in-hospital cardiopulmonary arrest. *Resuscitation*, 62 (1), p. 41.

patients survive after CPR until discharged from the hospital.[89] According to research findings in the US, it has been confirmed that 10-15% of surviving patients after CPR live until to the discharge. These statistics have not changed for 30 years.[90] These evidences demonstrate the survival success rate of physicians, patients and their relatives after this procedure.[91]

Do-not-resuscitate (DNR) orders are a decision not to apply CPR for the patient. DNR is usually applied when the resuscitation will successful, but the disease cannot be cured so death is an inevitable, or when it will only prolong the death process of the dying patient.[92] It is a medical, ethical[93] and legal issue, especially in the end-of-life care[94], to decide on the futile of therapeutic interventions, and the application of DNR.[95] DNR orders were offered as an alternative to end-of-life care in the US in the early 1970s.[96] In 1976, the first hospital policies on DNR orders were published.[97] Since these dates, DNR orders is still being discussed today due to the legal and ethical difficulties.[98]

DNR is a decision not to resuscitate only when the patient's heart or breathing stops. Therefore, should not affect other aspects of patient care. The aim of DNR is intended to

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[89] Peberdy, M. A., Kaye, W., Ornato, J. P., Larkin, G. L., Nadkarni, V., Mancini, M. E., ... & NRCPR Investigators. (2003). Cardiopulmonary resuscitation of adults in the hospital: a report of 14 720 cardiac arrests from the National Registry of Cardiopulmonary Resuscitation. *Resuscitation*, 58 (3), p. 297.

[90] Yuen, et al. (2011), p. 791.

[91] Adams, D. H., & Snedden, D. P. (2006). How misconceptions among elderly patients regarding survival outcomes of inpatient cardiopulmonary resuscitation affect do-not-resuscitate orders. *The Journal of the American Osteopathic Association*, *106*(7), 402-404; Breault, J. L. (2011). DNR, DNAR, or AND? Is language important? *The Ochsner Journal*, 11 (4), p. 303.

[92] Rustom, C. T. L. M., Palmer, J., & Thomas, G. L. (2010). Ethical issues in resuscitation and intensive care medicine. *Anaesthesia & Intensive Care Medicine*, 11 (1), p. 5.

[93] Sahadevan, S., & Pang, W. S. (1995). Do-not-resuscitate orders: towards a policy in Singapore. *Singapore medical journal*, *36*, 267-270.

[94] Samuels, A. (2016). Do not resuscitate: Lawful or unlawful? *Medico-Legal Journal*, 84 (4), p. 192.

[95] Hinkka, H., Kosunen, E., Metsänoja, R., Lammi, U. K., & Kellokumpu-Lehtinen, P. (2001). To resuscitate or not: a dilemma in terminal cancer care. *Resuscitation*, 49 (3), 289-297.

[96] Castledine, G. (2004). Nurses should be more involved in DNR decisions. *British journal of nursing*, 13 (3), p. 175; Mogadasian, et al, (2014), p. 21.

[97] Loertscher, L., Reed, D. A., Bannon, M. P., & Mueller, P. S. (2010). Cardiopulmonary resuscitation and do-not-resuscitate orders: a guide for clinicians. *The American journal of medicine*, 123 (1), 4-9.

[98] Samuels, (2016), p. 192.

provide a comfortable death without treatment for the futile of the patient.[99] However, the religious beliefs, cultures and values of patients, relatives or doctors play an important role in the acceptance or rejection of DNR decisions.[100]

DNR orders are one of the contemporary issues in both medical and Islamic frameworks. Therefore, the issue of DNR is not specifically discussed by classical Islamic jurists.[101] For this reason, while investigating the issue of DNR in Islamic perspective, it will be related to the current debate. DNR orders which are the act of giving up resuscitation, can be related to the matter of the search for a treatment for any disease and who can make a decision in terms of Islam.

Seeking Remedy and Treatment in Islam

Islam is a religion that gives form and direction to every field of the Muslim's life in terms of both personal and social aspects. The happiness of the World (*al-dunyā*) and the Hereafter (*al-ākhira*) presented by Islam to mankind is only possible if Islam is well understood and applied to life. To do this, the individuals and societies who will live Islam must be healthy both physically and spiritually. A physically and spiritually healthy lifestyle of people depends on the development of the medical science and the successful transfer of treatment methods to humans.

In the Qur'an, the diseases were mentioned for a variety of reasons[102], but, there is no clear provision for treatment. In the Qur'an, belief-related diseases such as profanity and *shirk,* the term given for the sin of polytheism, are mentioned.[103] Nevertheless, the Qur'an states that

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[99] Oh, D. Y., Kim, J. H., Kim, D. W., Im, S. A., Kim, T. Y., Heo, D. S., ... & Kim, N. K. (2006). CPR or DNR? End-of-life decision in Korean cancer patients: a single center's experience. *Supportive care in cancer*, 14 (2), p. 103.

[100] Cheraghi, M. A., Bahramnezhad, F., Mehrdad, N., & Zendehdel, K. (2016). Development of the draft clinical guideline on how to resuscitate dying patients in the Iranian context: A study protocol. *Indian journal of palliative care*, 22 (3), p. 335.

[101] Malek, M. M., Rahman, N. N. A., & Hasan, M. S. (2018). Do Not Resuscitate (DNR) Order: Islamic Views. *Al-Qanatir: International Journal of Islamic Studies*, *9* (1), p. 36.

[102]*Sūrat al-Baqarah*, 2/184, 185; *Sūrat an-Nisā'*, 4/43; *Sūrat al-Māʾidah,* 5/6; *Sūrat at-Tawbah*, 9/91; *Sūrat an-Nūr*, 24/61; *Sūrat al-Muzammil*, 73/20.

[103] 'In their hearts is disease, so Allah has increased their disease; and for them is a painful punishment because they [habitually] used to lie.' *Sūrat al-Baqarah*, 2/10; '[Remember] when the hypocrites and those in whose hearts was disease said, "Their religion has deluded those [Muslims]." But whoever relies upon Allah - then indeed,

"healing is for the breasts"[104]; for believers "healing and mercy"[105]. Some rulings mentioned alleviation of responsibility for Muslims due to physical illnesses or excuse. However, the treatment of diseases may not be mentioned, because seeking treatment is a natural need and the rational method. In addition, the verses that "do not throw [yourselves] with your [own] destruction [by refraining]"[106], "do not kill yourself"[107] and "in which there is healing for people"[108] have been considered evidence of the legitimacy of cure.

There are clear statements about the treatment in the Hadiths. The Prophet points out those who are legitimate in their treatment methods and explains that being treated does not contradict faith trust in God (*tawakkul*). 'Anas bin Malik narrated that a man said: "O Messenger of Allah! Should I tie my camel and have Tawakkul (trust in Allah for her protection) or should I leave her untied and have Tawakkul." He said, "Tie her and have Tawakkul."'[109] As the Hadiths purpose, the treatment of the disease must first be investigated, and the result of treatment should be left to God. Besides, he warns those who are negligent about health. In this context, he said that 'Never Allah sent a disease without sending its cure.'[110] Also, he mentioned that 'the *Badawī* Arabs came to the Prophet and asked: should we seek remedy? He replied: O servants of Allah seek remedy for Allah in his Glory did not put a disease without putting for it its cure, except one ailment. They asked: which aliment? He said: Old age (senility).'[111] In the Hadiths, the Prophet recommended that be the treat, but do not use

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Allah is Exalted in Might and Wise.' al-Anfal 8/49; 'So you see those in whose hearts is disease hastening into [association with] them, saying, "We are afraid a misfortune may strike us." But perhaps Allah will bring conquest or a decision from Him, and they will become, over what they have been concealing within themselves, regretful.'*al-Māʾidah*, 5/52; 'But as for those in whose hearts is disease, it has [only] increased them in evil [in addition] to their evil. And they will have died while they are disbelievers.' *at-Tawbah*, 9/125.

[104] *Sūrat Yunus*, 10/57.

[105] *Sūrat al-Isra*, 17/87.

[106] *Sūrat al-Baqarah*, 2/195.

[107] *Sūrat an-Nisā'*, 4/29.

[108] *Sūrat an-Nahl*, 16/69.

[109] at-Tirmidhī M.I. (2007). Jāmiʿ al-Tirmidhī. Abu Khaliyl (trans.). *English translation of Jāmiʿ al-Tirmidhī*. Darussalam, Riyadh, vol. 4, p. 509, Hadith No: 2517.

[110] al-Bukhārī M.I. (1997). Sahih al-Bukhārī, Dr. Muhammed Muhsin Khan (trans.) *The translation of the Meanings of Sahih al-Bukhārī.* Darussalam, Riyadh, Kitāb At-tib, vol. 4, p. 8.

[111] at-Tirmidhī, vol. 3, p. 258, Hadith No: 2109; Abū Dawūd, S. A. (2008). Sunan Abū Dawūd. Yased Qadhi (trans.). English Translation of Sunan Abu Dawud, Darussalam, Riyadh, Kitāb at-Tib vol. 4, p. 3, Hadith No: 3855.

ḥarām in treatment. Moreover, the Prophet himself applied for treatment when he was sick. He also stated that one of the two blessings people do not recognise is the health.[112] Moreover, when He prayed to God, He wishes to become healthy[113]; He would not approve the death wish[114] and would recommend the long life expected to be spent with a good deed[115]. It was reported that during the Prophet's last illness before his death, his doctors were making efforts to treat him.[116] In summary, the Prophet advises to seeking remedy and states that any disease other than death could be a cure.[117] In some Hadiths, the emphasis is placed on the importance of patience against diseases, but this may not mean that a sought-after treatment is not necessary. The purpose of these Hadiths is that the patience must be kept on the front line in human life.

Seeking Remedy in the Different Schools of Islamic Law

Islamic scholars have discussed whether treatment or patience is significant in the case of illness. There are some differences the opinions of the schools (*madhḥab* pl. *madhāḥib*) about seeking treatment. According to Imām Muḥammad Shāfī (d.1221/1806-7), some Ḥanafī and Mālikī scholars, seeking remedy can be considered as a *mandūb* which means meritorious and recommended actions[118], and they encouraged to seeking remedy.

According to the Ḥanafī *madhḥab* (school) seeking remedy is not compulsory even if patient dies because of inactivity.[119] For example, al-Mawṣilī (d. 683/1284) who is the Ḥanafī scholar, in his book namely *al-Ikhtiyār* mentioned that if the person who does not seek a medical treatment, there is no sin for him and he add that 'because there is no certainty that this treatment will cure him, and it is possible that he will become well without treatment.'[120] Badr al-Dīn b. Qāḍī Samāwnā (d.823/1420) who is Ottoman jurist, mentions that the

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[112] al-Bukhārī, Rikak, 1.

[113] Abū Dawūd, Adab, 101.

[114] al-Bukhārī, Marda, 19.

[115] al-Tirmidhī, Zuhd, 21.

[116] Aḥmad b. Ḥanbal. (2012). al-Musnad. Nasiruddin Al-Khattab (trans.). *English Translation of the Musnad Imam Ahmad Bin Hanbal*. Vol VI. Riyadh-Saudi Arabia, p. 67.

[117] al-Bukhārī, Kitāb At-tib, vol. 1, Hadith no 5678.

[118] "Mandūb", in: *Encyclopaedia of Islam*, Second Edition, Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. [Consulted online on 25 July 2018] http://dx.doi.org/10.1163/1573-3912_islam_DUM_2504.

[119] Padela, A. I., & Qureshi, O. (2017). Islamic perspectives on clinical intervention near the end-of-life: We can but must we?. *Medicine, Health Care and Philosophy*, 20 (4), p. 549.

[120] *Ibid*.

elimination of harm can withstand three different actions which are certain, probable and doubtful. For example, the acts of eating and drinking remove the harm of hunger and thirst. Therefore, these are a certain position that removes the cause of hunger and thirst harm. However, medical treatment is in the probable category and it is not a sin to reject it for this reason. He also mentioned the possible exception of this rule. If a person knows according to personal experience that a particular treatment will definitely remove the damage caused by the disease, then it may be necessary to use specific treatment for that person. [121] The Ḥanafīs may less likely to recommend treatment and seeking a remedy, because of 100% efficacy of clinically treating is rare.

The predominant opinions of Shāfī *madhḥab* are that it may be recommended act that seeking remedy. However, if the clinical efficacy is definitive or highly probable, or if cessation of treatment results in the death of the patient, treatment in such cases is obligatory. According to al-G͟hazālī (d. 505/1111) who is Shāfī jurist and theologian, when treatment is definite, and the recommended treatment is life-saving, in these cases, seeking medical treatment is mandatory.[122]

The provision of seeking treatment among the jurists of the Mālikī *madhḥab* is discussed. However, they did not give details about which types of treatments are mandatory. In general, in the Mālikī *madhḥab*, legal arrangements for seeking medical treatment are based on the expected clinical effectiveness of the treatment or the certainty of the damage without treatment. If the treatment is not performed, the patient will die, in this position seeking medical treatment is become obligatory.[123] According to Ḥanbalī *madhḥab*, seeking medical treatment is permissible, but it is more praiseworthy to refuse treatment. Ibn Taymiyya (d. 728/1328) who is the Ḥanbalī jurist and theologian state that ‘seeking remedy may be *ḥarām* (prohibited) or *makrūh* (reprehensible action), may be facultative i.e. optional (*mubāḥ*), it may be preferred (*mandūb*) or may be obligatory when it is lifesaving’. He also adds that according to the opinion of the majority of scholars that seeking medical treatment is not obligatory.[124] Ibn Taymiyya states that according to Islamic jurists, seeking a remedy is *ḥaram* to be treated with a method that was prohibited by Islam like magic. However, if the treatment is highly likely to be

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[121] *Ibid.*

[122] Albar, M. A. (2007). Seeking remedy, abstaining from therapy and resuscitation: an Islamic perspective. *Saudi Journal of Kidney Diseases and Transplantation*, *18*(4), p. 629.

[123] Padela, & Qureshi, (2017), p. 550.

[124] Albar, 2007, p. 632.

effective and the disease progresses in the absence of treatment, it is considered to be an essential (*wājib*) to seek treatment in this case.[125]

Ibn Ḳayyim al-Jawziyya (d. 751/1350) who is an author of Zādu al-Maʿād (Provision of the Hereafter) and, the Ḥanbalī jurist and theologian, states that the treatment is recommended in Hadiths and is not contrary to *tawakkul*. On the contrary, treatment means trusting the causes of God, in this respect, he said that rejection of treatment may be against to *tawakkul*. Moreover, he adds that in the Hadiths, every illness has a treatment, this means that Prophet encourages both patients to be treated, and physicians to research for treatment.[126]

Seeking Remedy: Contemporary Scholars' Views

The contemporary scholars' opinions about the seeking remedy that Yusuf al-Qaradāwī (born 1926) who is an Egyptian Islamic theologian, has stated that treatment is necessary if severe suffering is felt, treatment is successful possibility and recovery is hopeful. Considering patients and their relatives in situations where recovery is not hopeful, the doctor considers it permissible and legal to start or stop treatment. According to him, maintaining the treatment with devices, medicines, etc means extending the disease and suffering the patient for a long time. Although the patient actually died, respiration and blood circulation continue depending on the life support machines. However, the patient is not aware of it. The patient's stay in this condition requires a great expense and causes other patients in need of life support to be deprived of the device. In this case, stopping the device means that the treatment is abandoned, which is permissible.[127] According to the consensus of the Islamic Jurisdictional Council in the Kingdom of Saudi Arabia in Jeddah from 9 to 14 May 1992, the basic rule for all medical treatments is permissible. However, they have been stated that the provision of treatment according to the patient will be different and if the disease is a loss of life or organ or if the disease is transmitted to someone else, in these case, the seeking medical treatment becomes *wājib*.[128]

[125] Barr, M. A. (1995), *Aḥkām at-Tadāwī,* Jeddah, p.18.

[126] al-Jawziyya, I. Q. (2003). Tibb al-Nabawi. Abdel Qader. (trans.) *The Prophetic Medicine*. Dar al-Ghadd al-Gadeed, Egypt, Al-Mansoura, pp.13-14.

[127] al-Qaradāwī, Y. (1996). *Fatawa al-Mu'asira*, Kuwait, vol. II, pp. 525-529.

[128] The Council of the Islamic Fiqh Academy. (2000), pp. 139-140.

It can be said that the views of classical Islamic jurists in the search for medical treatment are now partly outdated and have weak their relevance regarding the arguments. However, their arguments are still relevant for addressing the new issues and arguments. Although the structure of modern health services, the type and capacity of the intervention made to the patient are much different than in the past, contemporary scholars often do *qiyas* on the classical scholars' opinions. More precisely, modern technology and medical facilities are evolving at a time when classical jurists may not be able to imagine and anticipate. Therefore, it may be necessary to review and evaluate these classical positions. This is because the bioethical framework needs to be updated as human knowledge increases and scientific developments result. Religious interpretations and arguments can also be reshaped depending on these developments.[129] However, it seems that modern jurists are suffering on accounting of the revival of modern technology and medicine. For example, looking at the seeking medical treatment decision of the Islamic Fiqh Academy, it seems to be largely compatible with the views of the Shāfī and the Mālikī *madhḥab* about the seeking treatment issue. This decision does not contain information on the moral obligation of the clinical efficacy. It is also unclear whether this council has entered into debates about the epistemology of medical science, or how biostatistics are used to assess clinical efficacy.[130]

As a result, it can be noted that the updated decision is also insufficient for modern biomedical. However, the moral status within the context of the search for medical treatment in the light of the structure, epistemology and means of contemporary biomedical construction for the construction of a holistic Islamic bioethics should be taken into consideration.[131] Otherwise, when a *fatwa* is issued on bioethical issues, the rate of fall to mistakes may increase.

Decision-Making Responsibility

The issue that who is the authority to decide whether to continue or stop treatment, is still under debate, especially if the treatment is futile. This discussion includes ethical controversial issues such as mercy killing, assisted suicide, the withholding and withdrawing treatment, and DNR orders. In general, the physician-centred (paternalistic) approach was based on the decision at the end of life. A paternalistic model is an approach that encourages a physician to

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[129] Padela, & Qureshi, (2017), p. 551.

[130] Ghaly, M. (2009). *Islam and disability: Perspectives in theology and jurisprudence*. Routledge.

[131] Padela, & Qureshi, (2017), p. 551.

profit a treat to the patient considered by the doctor the most beneficial treatment.[132] However, this approach is exposed to criticism. One of these criticisms is that the patient has been inappropriately obedient to the doctor's decision, resulting from incorrect or incomplete consent.[133] It renders the physician-centred approach to hold one-sided decisions where the patient yields to it.[134] Due to this continuity, the paternalistic approach especially the doctor who determined the end of life, has shifted to the self-determination, patient-centred or patient autonomy.[135] In the USA, this paradigm-changing was legitimated by the approval of the Patient Self-Determination Act at 1991. This is a law that supposes healthcare providers to have the right to make decisions about their patients and to appoint a medical proxy at the end of their lives.[136] With the acceptance of patient autonomy, it is expected that the patient will be well informed and will have the right and freedom to decide on his own treatment. Thus, infringement resulting from the paternalistic approach will be reduced.[137]

There are some dilemmas about leaving the decisions of the end of life completely to the patient or the doctor. For example, in a paternalistic approach, there is still the dilemma about whose opinion should be applied in case of disagreement between the opinions of the doctor and the patient or patient's family or guardian. On the other hand, is it safe to leave the decision to the patient when the doctor is undecided about medical futility? Ultimately, the end-of-life decisions are becoming more complex and more ethical dilemmas are emerging.[138]

Islamic scholars, however, have not common discourse about who can make the decision in the decisions of the end of life.[139] Among the Islamic scholars, the paternalist approach is more common because of the thought that the doctor is the specialist on the medical issues, not

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[132] Lim, L. S. (2002). Medical paternalism serves the patient best. *Singapore Med J*, 43 (3), p. 144.

[133] McNamara, B. (2004). Good enough death: autonomy and choice in Australian palliative care. *Social science & medicine*, 58 (5), p. 931.

[134] Winkler, E. C., Hiddemann, W., & Marckmann, G. (2012). Evaluating a patient's request for life-prolonging treatment: an ethical framework. *Journal of medical ethics*, medethics-2011, p. 1.

[135] Lorenzl, S. (2013). End of one's life—Decision making between autonomy and uncertainty. *Geriatric Mental Health Care*, *1*(3), p. 64.

[136] McCormick, A. J. (2011). Self-determination, the right to die, and culture: A literature review. *Social work*, *56*(2), p. 120.

[137] Rathor, et al. (2011), p. 28.

[138] Malek, M. M., Rahman, N. N. A., Hasan, M. S., & Abdullah, L. H. (2018). Islamic Considerations on the Application of Patient's Autonomy in End-of-Life Decision. *Journal of religion and health*, p. 1530.

[139] *Ibid*. p. 1531.

the patient or guardians. In this regard, the universal principle that respect for autonomy should be studied in detail in terms of Islamic values. In some issued *fatwa*s on the end of life, it is emphasised that the stakeholders of decision who are the patients, the doctors, and the patient's family or the guardian, has the balanced role.

The Islamic Religious Council of Singapore has ruled on the permissibility of patient's autonomy utilisation in establishing advance medical directive. The verdict in particularly mentions that:

> 'it is permissible by Islamic law for a sane individual to make pledge to refuse the life support treatment at the event of dire straits (terminally ill). It can be assumed that he or she decides to be patient and more willing to die naturally believing that death cannot be avoided at a certain point'[140]

The Iftaa' Department of the Hashemite Kingdom of Jordan, in *fatwa* number 117, with respect to removing life support from a patient who does not have the hope for recovery, with the following rule:

> ... there is no prohibition in the Shari'ah to refrain from putting a cancer patient on life support or respirator or dialysis if the medical and treatment team have confirmed and are certain that there is no hope of benefit for the patient in these measures, on the condition that this report is prepared by a medical team consisting of not less than three physicians, being specialists, fair, and trustworthy. The patient himself has the right to abstain from treatment if he is content with what Allah has decreed for him (namely, death), and prefers patience to disease, but it is not permissible for a physician to withhold treatment from a patient under the pretext that it is useless, and life and death are by Allah's hand only.[141]

These two *fatwa*s mention that the patients have the freedom to take their own decisions about the end of life. Islam does not refuse the conceptions of patient autonomy and self-determination. In fact, these concepts have been adopted by Islam, because everyone has their own rights, and they are responsible for their own welfare. In Islam, however, there are concerns about situations and decisions that put the life and health of the patient in jeopardy, in particularly at the end of life decisions. Therefore, universal autonomy is accepted in the field of medicine. However, there may be differences in the interpretation and application of autonomy. [142] Despite the fact that the right of life of the person is recognized in Islam, it is

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[140] *Ibid*. p. 1530.

[141] *Ibid*.

[142] Aksoy, & Elmali, (2002), p. 216.

necessary for the Muslims to be treated according to the teachings of Islam.[143] Therefore, complete autonomy in Islam is limited. Accordingly, autonomy should reflect one's responsibility towards God and be compatible with Islamic law at the same time.[144]

In the end of life decisions, the power of the decision makers between the patient, the doctor and the patient's family or guardian must be balanced. The fact that a single power is not handed down when a decision is making can lead to more just and healthy decisions. Therefore, the process of decision-making in the end-of-life debates should be initiated collectively by including physicians, patients, and their relatives or guardians to ensure that the best decision is made and ultimately to comply with Islamic teachings, rather than making debates on who can decide.

In the end-of-life decisions, the most practical model of who will make decisions can be the shared decision-making.[145] The model of shared decision-making was first introduced in 1982. This model defined as 'an approach where clinicians and patients share the best available evidence when faced with the task of making decisions, and where patients are supported to consider options, to achieve informed preferences'.[146] This model provides a balanced role distribution among stakeholders in the decision-making process and supports comprehensive discussions. Shared decision-making is also ideal for the planning of treatments that may be done to the patient in the future as well as the patient's autonomy. The physicians have two tasks to fulfil in this process. The first of these should provide precise and enough information to the patient during the decision-making process. The second is to support and encourage the patients in the best decision.[147] The doctors should precisely explain the condition of the disease and treatment options as clearly as possible and strive to clarify the moral values of the

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[143] Kamali, M. H. (2008). *The right to life, security, privacy and ownership in Islam*. Islamic Texts Society, p. 1.

[144] Westra, A. E., Willems, D. L., & Smit, B. J. (2009). Communicating with Muslim parents:"the four principles" are not as culturally neutral as suggested. *European journal of pediatrics*, 168 (11), p. 1384.

[145] Thompson, B. T., Cox, P. N., Antonelli, M., Carlet, J. M., Cassell, J., Hill, N. S., ... & Thijs, L. G. (2004). Challenges in end-of-life care in the ICU: statement of the 5th International Consensus Conference in Critical Care: Brussels, Belgium, April 2003: executive summary. *Critical care medicine*, 32 (8), p. 1781.

[146] Elwyn, G., Laitner, S., Coulter, A., Walker, E., Watson, P., & Thomson, R. (2010). Implementing shared decision making in the NHS, p. 971.

[147] Elwyn, G., Frosch, D., Thomson, R., Joseph-Williams, N., Lloyd, A., Kinnersley, P., ... & Edwards, A. (2012). Shared decision making: a model for clinical practice. *Journal of general internal medicine*, 27 (10), pp. 1362-1363.

end of life. Thus, the patients and their relatives or guardians can make their decisions with the best available information and options.

Futility of Treatment

At the end-of-life decisions, the common point that is expressed by Islamic scholars is medical futility which is decided by physicians. The futility of treatment is crucial on the permissibility of DNR orders in Islam and Medicine. At the same time, the fatwas clearly contain that scholars allow DNR orders, withholding and withdrawing life support machines for the patients in this case.

The notion of medical futility has emerged in the last twenty years.[148] Medical futility refers to interventions that are not likely to provide a significant benefit to the patient.[149] The concept of futile is not a verbally accurate, exact, and easily identifiable measure. While the concept of futility is used by different physicians, it has been shown that a particular outcome may lead to different possibilities. According to the American Medical Association (AMA), some doctors say that to say that any treatment is ineffective, the success rate must be 0%; in addition to this, other physicians consider that the success rate should be at most 13%. Futility, on the other hand, the perception of medical treatment goals and the evaluation criteria of the result differs from one physician to another according to the AMA.[150] For example, in a patient with cardiopulmonary arrest, the purpose of CPR is only physiological; the reversal of the cardiac arrest and the recovery of the respiratory system. If the CPR is assessed in such a scenario and the patient is kept alive by the first intervention, the application is deemed as successful. Conversely, if resuscitation cannot reverse vital functions, it is considered as futile.[151]

The American Heart Association (AHA) states that as a guide for futile practices, medical futility allows physicians to unilaterally suspend or stop resuscitation on the following conditions: First, in situations in which the functions of circulation and respiration cannot be successfully reversed, despite being tried with appropriate basic and improved life support.

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[148] Lorenzl, (2013), p. 65.

[149] *Medical Futility*, (2014). https://depts.washington.edu/bioethx/topics/futil.html. [Consulted online on 8 August 2018].

[150] American Heart Association. (1986). Standards and guidelines for cardiopulmonary resuscitation (CPR) and emergency cardiac care (ECC). *JAMA*, 255, 2905-2984.

[151] *Ibid*.

Secondly, the worsening of the vital signs of the patient despite maximum curative effort; thirdly, studies have shown that no patients survived the conditions specified after the application of CPR. For example, in studies with a series of CPR applications in metastatic cancer patients, no patients have survived until discharge from the hospital.[152] Under these exact and precise conditions, holding or stopping resuscitation is an appropriate medical decision.[153]

It is clear that the concept of futile treatment agrees with the view of Islamic scholars that the treatment of the patient can be refused if the treatment is not known to be successful. However, since the correct determination of the limits of medical futility is a matter of specialization, the decision-makers should be expert physicians in this regard. In Islam, the DNR decision must be compatible with the Islamic legal principles stating that 'certainty cannot be voided by doubt or speculation' (*Mejelle* Code, 4).[154] At this point, certainty is crucial in determining the suitability of DNR practice, and according to Islamic *ijtihād*, the responsibility for clarifying the scientific or medical situation falls on the expert.[155] The expert's opinion on life support care, experience, and extensive knowledge plays a major role in making a DNR orders decision. Nevertheless, it is understood that the grey area showing the uncertainty as to whether treatment was successful is highly dominant when compared with certainty. For this reason, the decision of the physician based on his or her previous experience in similar circumstances can be accepted and considered as a justified DNR order.

Islamic Views on DNR orders

Decision-making on the implementation of DNR orders is not an easy process, both in terms of ethical and moral perspectives. In this regard, Muslim scholars offer general Islamic principles to the patients. In general, from the Islamic point of view, the medical procedure, including DNR orders, is based on the principle of intent (*niyya*). In the case of DNR orders, they may be allowed in Islamic terms if the intent is to stop or implement treatment due to

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[152] Faber-Langendoen, K. (1991). Resuscitation of patients with metastatic cancer: is transient benefit still futile? *Archives of internal medicine*, 151 (2), p. 238.

[153] Tomlinson, T., & Brody, H. (1990). Futility and the ethics of resuscitation. *jama*, 264 (10), p. 1277.

[154] Kasule, (2012), p. 6.

[155] Hileel et al, (2006), Ruling on removing life support equipment from a patient who has no hope of recovery. http://aliftaa.jo/DecisionEn.aspx?DecisionId=236#.W2rzPC2ZNmB, decision number 117. [Consulted online on 8 August 2018].

medical futility. However, DNR is not allowed in situations where the intention is to alleviate the patient's pain by accelerating the death.[156] In addition, there are some *fatwas* issued showing the *ijtihād* of Islamic scholars regarding the acceptability of DNR on the patient under some medical situations.

Fatwas on Do-Not-Resuscitate orders

The Presidency of the Administration of Islamic Research and Ifta', Riyadh, Kingdom of Saudi Arabia (KSA), in *fatwa* number 12086 issued in 1988,

> First: If the patient is dead on arrival at the hospital, there is no need to use resuscitators.
> Second: If the patient's condition is not fit for resuscitation according to the medical report of three trustworthy specialist doctors, there is also no need to use resuscitators.
> Third: If the patient is suffering from an obstinate illness that is not responding to treatment and their death is certain, according to the testimony of three trustworthy specialist doctors, there is also no need to use resuscitators.
> Fourth: If the patient is incapacitated or in a state of mental inactivity due to a chronic illness, or suffering from an advanced stage of cancer, a chronic heart or lung illness, or the recurrence of heart and lungs failure, and it is the decision of three trustworthy specialist doctors, there is no need to use resuscitators.
> Fifth: If the patient shows evidence of untreatable brain damage according to the medical report of three trustworthy specialist doctors, there is no need to use the resuscitator, as it will be of no benefit.
> Sixth: If resuscitation of the heart and lungs will be ineffective and inappropriate in a specific case, according to the medical opinion of three trustworthy specialist doctors, there is no need to use the resuscitator. No consideration should be given to the opinion of the patient's family as to whether or not resuscitation should be applied, because this is not their area of expertise.[157]

Based on this *fatwa*, the 'No Code' policy or 'Do-Not-Resuscitate' status policy is applied in Saudi Arabia hospitals. These policies generally focus on decisions about the resuscitation and the advanced life support. Furthermore, these policies have been significant instruments for perceiving the restricted value of aggressive life support in patients with advance medicinal conditions.[158] This policy includes the following statements; the DNR status is applied after the approval of at least three specialists in the field, and the relatives of

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[156] Kasule, (2012), p. 8.

[157] Permanent Committee for Scholarly Research and Ifta. Ruling on Resuscitating the Patient if he is Dead, His Health Condition is not fit for Resuscitation or His Disease is Incurable. Fatwa Number 12086. (1989). http://www.alifta.net/Fatawa/FatawaChapters.aspx?View=Page&PageID=299&PageNo=1&BookID=17, [Consulted online on 8 August 2018].

[158] Arabi, Y. M., Al-Sayyari, A. A., & Al Moamary, M. S. (2018). Shifting paradigm: from "No code" and "Do-Not-Resuscitate" to "goals of care" policies. *Annals of thoracic medicine*, 13 (2), p. 67.

the patient will be informed about the decision taken. Also, if the physician's decision is not accepted by the family, it may be the case that the patient is transferred to another hospital. As a result of the DNR policy, significant reductions in futile or hopeless CPR practices have been observed. DNR orders were written by 66% and 84% of patients who die in Intensive Care Units and wards.[159]

If the patient is conscious and competent enough, he or she should be informed and should take part in discussions on the treatment to be applied. If the patient is not competent enough or is in a coma or in a vegetative state, the treatment should be discussed with the patient's family members, especially with the most appreciative and understanding person. However, according to the *fatwa*, the DNR order is a very paternalistically-based decision that does not require the patients' families. The patient's families and guardians cannot decide on the application or removal of resuscitation measures and procedures, because they are not qualified about resuscitation or medical practice. The *fatwa* specifically addresses this by saying that it is not their area of expertise. The DNR order is legal only if it is signed by three qualified physicians who are mostly two consultants and one staff physician, in Saudi Arabia.[160] It can also be accepted at the hospital only when the patient is admitted. When signed the DNR order form, it is kept on the patient's registry and should be reviewed by physicians according to the policies of the institution. However, this *fatwa* is contrary to the principle of 'respect for autonomy' in the biomedical ethics. This principle expresses the right of the patient to decide on the interventions for the body and health. However, it has been observed that surveys which are about 'end of life care beliefs among 461 Muslim physicians', do not accept more paternalist decisions than half of the participants. Moreover, about 29% of the participant physicians think that religious teachings are not clear.[161]

The second *fatwa* on DNR have found in Darul Ifta Birmingham. Displayed on the website, it is based on a question and answer format, with the questions answered by Mufti

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[159] Rahman, M., Arabi, Y., Adhami, N., Parker, B., Al Malik, S., & Al Shimemeri, A. (2001, March). Current practice of Do-Not-Resuscitate (DNR) orders in a Saudi Arabian tertiary care center. In *Critical care* (Vol. 5, No. 1, p. P257). BioMed Central, p. 121.

[160] Al-Bar, & Chamsi-Pasha, (2015), p. 250.

[161] Saeed, F., Kousar, N., Aleem, S., Khawaja, O., Javaid, A., Siddiqui, M. F., & Holley, J. L. (2015). End-of-life care beliefs among Muslim physicians. *American Journal of Hospice and Palliative Medicine®*, 32 (4), p. 391.

Mohammed Tosir Miah. The DNR *fatwa* was issued by Mufti Mohammed Tosir Miah in 2011 and the *fatwa* number is 70, in the following;

> A Do Not Resuscitate or DNR order is a written order from a doctor that resuscitation should not be attempted if a person suffers cardiac or respiratory arrest. Such an order may be instituted by the patient or his immediate relatives. In addition, there are fatwas of scholars in some medical situations not to resuscitate the patient.
> DNR is considered to be a form of medical treatment and the majority of scholars agree that medical treatment is not something which is obligatory but something which is *Mustaḥabb* (desirable). (Nizamul Fatawa p.350 v.1)
> It is stated in Fatawa Hindiyyah that there are three means used for removing harms:
> 1. Those that remove harm for certain such as drinking water to quench thirst and eating food to remove hunger. In this category abstaining from eating and drinking is not considered as putting trust in Allah, rather it is unlawful to refrain from using these means.
> 2. Those means where it is presumed one's health will be restored such as medical treatment. In this category, using medication is not against putting trust in Allah and abstaining from it is not a sin.
> 3. Those means which may cure like amulets, taweez. In this category complete reliance in Allah is only achieved by abstaining from using them. (p.355 v.5)
> The conclusion we can come to is that in a situation where further treatment is futile then to pass a DNR order over the patient with the consent of the patient or his immediate relatives is permissible. Also, it will be permissible for the patient to make a will that give permission to withdraw treatment in such situations.[162]

This *fatwa* says that DNR orders can be permissible under certain circumstances in terms of Islam. It is stated that the DNR decision depends on the patient or the patient's family under the fact that the advanced treatment is futile. Also, in the *fatwa* where DNR is considered as the form of treatment, DNR orders are based on the opinion of the Islamic jurists on the issue that the search for treatment is not mandatory, but it is recommended or desirable. As long as these conditions are met, it has been ruled that DNR decisions are permissible.

It can be clearly noted, however, that there are significant differences between Saudi and Birmingham *fatwa*s. The first of these differences, is that while the Saudi fatwa is based upon a paternalist viewpoint, which means that it is physician-centred, the decision-making process which was adopted by the Birmingham *fatwa* is patient-centred. However, the Saudi *fatwa* is contrary to the principle of biomedical ethics, the automatic and inherent respect for autonomy, because it requires that three specialists in the field can decide DNR. However, the field of

[162] Death & Burial, Fatwa Number: 70, Darul Ifta Birmingham, (2011), http://daruliftabirmingham.co.uk/dnr/, [Consulted online on 7 August 2018].

doctors' expertise are not given in detail, not is it specified how to ensure that they are trustworthy. Al-Bar and Chamsi-Pasha (2015) described the doctors' fields as being two consultants, and one staff physician (p. 250), but they do not go into detail. The Birmingham *fatwa* has supported patient autonomy by saying DNR can be permissible on the consent of the patient, or his or her relatives. Similarly, although the Saudi *fatwa* says that the doctors must be trustworthy, there are no parameters given by how such a trait might be established. For whom should they be trustworthy? By leaving this unspecified, it is difficult to determine which doctors or physicians are able to fulfil the conditions and formulate decisions for DNR orders.

A second major difference is that according to Birmingham *fatwa*, people can sign the DNR orders as an advance directive when they are healthy. This option is not mentioned as available to the patient or individual under the Saudi *fatwa*; it is not specified as to whether it is permissible or not. Instead, this option is only implied as being unavailable, because the Saudi *fatwa* explicitly says that the individual and their family or guardians are not experts, and thus are unable to make such a judgement.

A further distinction between the two *fatwa*s is that whilst the Saudi *fatwa* has elaborated on what conditions DNR application is permissible, albeit without providing any basis, the Birmingham *fatwa*, on the other hand, directly references a previous ruling. This is the *Fatawa Hindiyyah,* which is one of the reference *fatwa* books of Hanafi *madhḥab* written in India in the 1700s, and the Nizam ul-Fatawa.[163] Therefore, the legitimacy of the Birmingham *fatwa* was proved by using classical references.

On the other hand, The North American Islamic Medical Association (IMANA) believes that when a patient becomes terminally ill, the patient should be allowed to die without unnecessary procedures, as determined by physicians who specialise in observing terminally illnesses. If the patient is still alive, all medical treatment should be continued. IMANA does not believe in continuing the misery with the life support machine in a vegetative state. All the procedures of life support machine can be considered as temporary measures. When death, as determined by a team of doctors, including critical care physicians, becomes unavoidable, the patient should be allowed to die naturally without the intervention of unnecessary and futile procedures. While all ongoing medical treatments are in progress, no further or new initiatives should be undertaken to sustain artificial life support. If the patient is receiving mechanical

[163] Death & Burial, Fatwa Number: 70, Darul Ifta Birmingham, (2011), http://daruliftabirmingham.co.uk/dnr/, [Consulted online on 7 August 2018].

support, this can be then withdrawn. However, full respect, comfort prevention, and pain control should be given to the patient. Moreover, nutrition and hydration should not be prevented.[164] On the contrary, if food and water are denied, this could be considered as an act of murder in Islamic law. If hydration and nutrition are stopped, the patient will not die in peace and comfort; on the contrary, they may suffer thirst and hunger for up to two weeks. It may be more humane to lethal injunction and kill the patient within minutes instead of torturing them for the duration of these weeks. However, this is regarded as a form of euthanasia, which is definitely forbidden in Islam.[165]

In addition, Omar Kasule (2012) who is a pioneer in integrating Islamically-appropriate medicine into medical practice and teaching, emphasized that the patient was already allowed to DNR while in the process of death, so the act of not attempting resuscitation would not be considered as murder. In this sense, the DNR application only prevents doctors from interfering with the natural process of patient death (p. 7). Therefore, the termination of resuscitation depends on the precise nature of the death process. This view can be said to be compatible with the fact that resuscitation attempts can be abandoned when exposed to the untreatable conditions specified in the *fatwa*s. The discourse of Kasule offers a guide that may be considered as complementing the *fatwa*s, pointing out the necessity of ensuring the inevitability of death, especially after the pre-death conditions emphasized by the *fatwa*s.[166] Although Islamic scholars mention that DNR is allowed, the conditions necessary to do so are not to be ignored.

Conclusion

The issues surrounding life and death are important matters in Islam. The development of genetic science and the use of new medical technologies have brought about new ethical and religious dilemmas concerning life and death. Protecting life from all kinds of harm is always emphasized by Islam. Life is considered sacred because Islamic doctrine teaches that its source is from God. The existing guidelines for evaluating medical issues, including DNR, should be audited and reviewed to be compatible with the development of modern medicine. Especially

[164] IMANA Ethics Committee. (2005), pp. 36-37

[165] Albar, & Chamsi-Pasha, (2015), p. 250.

[166] Malek et al, (2018), p. 38.

when dealing with for many Muslim patients[167], it should be taken into consideration that every regulated area must be compatible with Islamic beliefs. With regard to DNR, some issues may be directed by Islam, based on the general principles of the Qur'an, the Prophet's tradition, and Islamic legal views. However, the majority of modern medical issues do not take place or have any explicit provision in the Qur'an and the Sunna. Therefore, it is necessary to make *ijtihād* on novel topics like DNR orders. In fact, it may be more beneficial to establish a *consensus edict* to which both physicians and Islamic scholars participate, while seeking an Islamic response to medical matters.

In Muslim countries, scholars are not actively involved in daily negotiations to formulate modern national health policies within the moral and legal boundaries provided by Islamic sources. New technologies are generally imported from industrialised countries, without respect for the political, economic, social and individual values of the public. However, there is an urgent need for Muslim jurists to conduct a specific discourse on this subject, in order for a more comprehensive Islamic guide to DNR orders. As a result of such investigations, it has been determined that there are limited *fatwa*s related to the DNR topic. For example, Dar al-Ifta al Misriyyah[168] *fatwa* website which was established in 1895, and the Republic of Turkey Prime Ministry Presidency of Religious Affairs[169] did not find a single clear *fatwa* relevant to the subject at the official website. Although Turkey is advanced in medicine, it is remarkable that there is the absence of clear legal provisions and *fatwa* related to the DNR issue. The reasons for this situation may be subject to a detailed examination. The common denominator of the *fatwas* which are used in this thesis, is that the application of DNR is permissible according to Islam when – and only when – further medical care is futile or hopeless. However, there is no common discourse on who will decide the DNR decision, and according to the dominant opinion in the Saudi *fatwa*, that prerogative belongs solely to three doctors who are specialists in the field and, by some measure, trustworthy. Furthermore, in the *fatwa*s, only the legal aspect of the DNR orders has been addressed, but the ethical aspect has been ignored.

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[167] This is a like more related to the social point. Therefore, there can be social research conducted to show how important this issue if for Muslims.

[168] Dar al-Ifta al-Missriyyah, (2018), http://www.dar-alifta.org/Foreign/Module.aspx?Name=aboutdar, [Consulted online on 16 August 2018].

[169] Din İşleri Yüksek Kurulu Başkanlığı, (2018), https://kurul.diyanet.gov.tr/Ana-Konu-Detay/1071/tip-ve-saglik?enc=qa%2b3h8UGDkeSyDWQQ2nyig%3d%3d, [Consulted online on 16 August 2018].

There is no consensus among Islamic scholars about who has the right to make the decision at the end of life decisions. Moreover, in the *fatwa*s which are used in this dissertation, there is a contradiction in the authority making the decision. Saudi and IMANA *fatwa*s both stated that patients and their relatives or guardians could not decide because of their lack of expertise in the field. They mentioned that the decision-making authority had to be three expert doctors. This is paternalistic based. On the other hand, there is a discourse parallel to the bioethical principles which is based upon the respect for autonomy, found within the Birmingham *fatwa*. Accordingly, in the Birmingham *fatwa*, it is emphasised that the patient, or his or her relatives, have the authority to make decisions at the end of life. In end-of-life decisions, the most practical and appropriate model for decision-making can be shared decision-making. Thus, the power of the decision-making authority can be balanced or shared between different parties, or stakeholders. If the patient does not have the ability to make decisions, then the patient does not have the autonomy to decide. In this case, the patient's family or guardian should be included in the decision-making group. Islam also has the opinion that doctors have an important role in this decision process.

In the case of seeking medical treatment, there are differences among the four Sunni school of law, *madhḥab*s. However, it has been seen that in *fatwa*s issued under today's conditions, their opinions and verdicts are parallel to classical views. On the other hand, it can be said that the developments in science and medicine have advanced in ways that cannot be imagined, revealing the need to revise the classical legal formulas. With these evaluations, it would be useful to use a holistic point of view, including ethics as well as Islamic and legal provisions for medical issues, because such medical issues also contain matters that need to be examined ethically. Taha Jabir al-Alwani who call for a 'collective or instutional *ijtihād*' (*al-ijtihād al-jimāʿi/ al-ijtimāʿi*) and he specifically states that in experts should be participate if the issue is a specialist field that concerns areas outside fiqh books such as doctors for medical issues. Moreover, through the creation of collective *ijmaʿ* groups, in which appropriate stakeholders such as Islamic Jurist who are all *fiqh* and *Uṣūl* schools, law, Hadith, tafsir as well as physicians, linguistics, and philosophers are present,[170] *fatwas* about medical issues can be discussed, considered and implemented. These *ijmaʿ* groups, with their focus on breadth of knowledge and expertise, also enhance the reliability of decisions.

With modern medical developments and universal practices, Muslim jurists are responsible for searching for the solution to ethical and legal issues about the health services

[170] Al Alwani, T. J. (2005). *Issues in contemporary Islamic thought*. IIIT, p.132.

for fatal illnesses. Jurists from all sects in Islam participate in the negotiations held regularly under the sponsorship of the Islamic Juridical Council (IJC), as an organ of the Organization of Islamic Conference (OIC) to provide solutions to modern medical situations. These negotiations and final decisions approved by the Council are published in the IJC quarterly journal *Majallah Majma'al-Fiqh al-Islami*.[171] However, for the Muslim physicians and patients, these studies, if made more available in the Muslim world, could be beneficial to systemise and expand work. Furthermore, it would enable greater collaboration between doctors and physicians of different faiths if there is wider knowledge and awareness of the possible religious – including Islamic – positions on contemporary medical issues.

[171] Sachedina, (2005), p. 774.

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