



LEGALLY ACCEPTABLE PROCESS FOR COSMETIC PRODUCTS: A JURISPRUDENCIAL ANALYTICAL STUDY

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ABSTRACT

The technological development of modern manufacturing process and its methods has enabled man to exploit all elements of nature, including najis (impurities) and to use them in the manufacturing industry for various forms of production. This new manufacturing method has brought about a change in the process of converting materials which is more complex than the classical methods used in the time of early jurists. This results in so much fear and reluctance among Muslims regarding the use and consumption of products which are produced through transforming substances that are originally najis. The relevant questions here are: whether these najis substances attain purity upon such chemical conversion and are therefore lawful for use or will the substance remain impure and therefore not lawful for consumption and use? Or are there some legal conditions and regulations for using them? Consequently, this research sets out to analyze the legal effect of istihalah (chemical transformation) in cosmetic products and also to develop a model for the conditions and limitations of legally acceptable istihalah in these products. To achieve these two objectives, inductive, descriptive and analytical methodologies are used. Some of the findings reached include: that istihalah process has an effect on najis substances contained in the ingredients of cosmetic products; the process makes the said

substances tahir (clean) if the transformation is exhaustive but if the substances have not been completely transformed, then it will not be lawful to use the product except upon the fulfillment of certain conditions to wit: the existence of necessity or compelling need for its use, overwhelming belief of its usefulness, its use does not include application on the body and that such use of the products manufactured using the istihalah process will not lead to any harm to human health.

Keywords: cosmetic products- effect, limitations

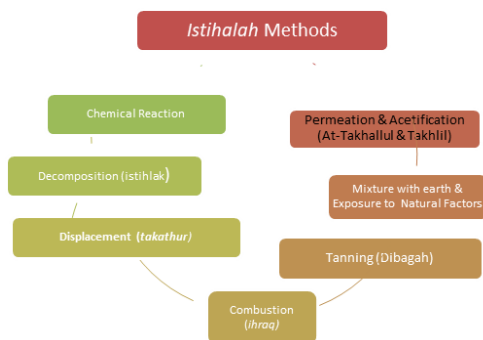
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1. INTRODUCTION

Many Muslim countries do not carry out strict checks on products imported and traded in their markets and commercial shops. Thus, there are no legal restrictions ensuring the certification of the products for consumption such as proper testing and special laboratory analyses of the products so as to ensure that only products that are free from *najs* and harmful contents are traded in the markets. As a result of this regulatory failure many cosmetics containing *najs* and harmful substances are traded in these countries. This raises the need for conducting a study on the effect of *istihalah* on these products as the material components of the products may consist of substances some of which have been chemically transformed while others have not. The question will then be asked whether such products upon undergoing *istihalah* are pure and clean (*tahir*) and therefore lawful for use and consumption or the product will remain in their original state of impurity and therefore not lawful for use and consumption; or that there are certain legal conditions that must be fulfilled before the use of the product becomes lawful? Some of these products include chemical dyes used for beautifying the hair and beauty powders applied on the face as well as different kinds of creams, oils and jellies used for beautifying the skin etc. below are sample of such products.



The research has made reference too many definitions of the term *istihalah* but prefers the following definition: “The change in the nature of a filthy (*najs*) or forbidden (*haram*) material and the conversion of its substance into a material different from it in name properties and attributes”¹. In common scientific term *Istihalah* is seen as “Chemical reaction that transforms a substance into another compound and that there are various methods for transformation and conversion of substances from one form to another. They include At-Takhallu & At-Takhlil (Permeation & Acetification, *istihlak* (decomposition), *Takathur* (Displacement), *ihraq* (combustion), *Dibagah* (tanning), mixture with earth and exposure to natural factors, and chemical reactio ².The last method which is chemical reaction is most common method for transformation of substances today. Therefore most of our discussion in this study will revolve around this method. The following figure shows the various *istihalah* methods.



2. THE WRITER THEN PROCEEDED TO DISCUSS THE POSITION OF TRANSFORMATION OF *NAJS* SUBSTANCES IN ISLAMIC JURISPRUDENCE AND ARRIVED AT THE FOLLOWING FINDINGS

That where alcohol is transformed or it permeates on its own thereby converting into vinegar, it will thus become pure and clean according to the consensus of Muslim jurists³. But if the alcohol is converted through the introduction of a chemical agent, then jurists have expressed three different opinions most preferred of which is that acetification of alcohol is not allowed and that where alcohol is acetified through the use of some other substance, then it will not thus attain purity and lawfulness⁴. The reasons for the said preference include the strength of the authorities of the jurists that expressed the said preferred view. The authorities relied on by these jurists are stronger and more authentic than those cited by other jurists whose authorities are mostly not of proven authenticity. The latter's authorities cannot therefore be used as a basis for their position and the analogies drawn by them cannot also override proofs which are of clear proven authenticity. And even if the authorities were sound and authentic the opposing jurists have given a clear and perfect refutation and rebuttal on them.

Jurists are divided into two concerning Purity of *Najs* Substances – other than alcohol-through transformation but the most preferred view here is that such substances attain purity through the process⁵. Some of the reasons for preferring this view include the strength of the authorities of the jurists that expressed it, for example, they stated that where a *najs* material undergoes *Istihalah* and its name, description and properties changed, it is no longer a *najs* or impurity for it has transformed into something else with character and description different from the original material. Thus, the injunction applicable to the material will change for *hukm* or injunction usually follows name and description in terms of existence and non-existence. This reasoning is a clear refutation and debunking of the argument that even after transformation, *najs* materials will remain *najs* based on *istishab* or the presumption of continuity. Here the material has changed its character from what it used to be; so the presumption of continuity is inapplicable to this case. Consider also the argument that based on *qiyas* or analogy with alcohol which changes on its own, skin of dead animal which has been tanned, and an animal that feeds on filth where it is restrained. Here, the correct *qiyas* will dictate the extension of this rule by way of analogy to all other *najs* materials that undergo transformation.

3. COSMETIC PRODUCTS CONTAINING *NAJS* AND HARMFUL INGREDIENTS

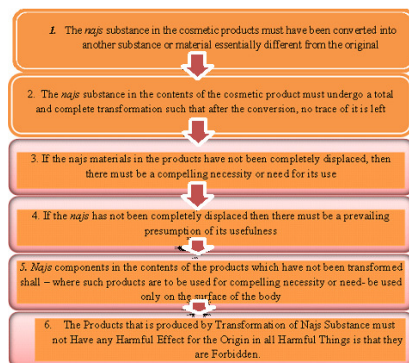
On this, the writer found that cosmetic products currently prevalent in Muslim countries such as dyes, lotions, creams, powders and oils which contain *najs* or harmful substances in their ingredients but which substances were completely displaced, obliterated and melted away into other clean substances, such products are considered clean and lawful for use. This is based

on the fact that any *najs* substance that undergoes transformation and is thus converted into material different in all respect from the original *najs* material, the product of such chemical conversion is *halal* and lawful according to the majority of jurists. But if the said substance (*najs* and harmful) have not been completely transformed, then Muslim jurists are in disagreement concerning the lawfulness of their use. There are three different views but the writer prefers the view of the Shafi' school which said that it is not permissible to use such product except in circumstance of necessity and taking into consideration the degree of such necessity. Consequently, if the *najs* substances contained in cosmetics has not been fully transformed, it will not be lawful to apply it on the body except in the case of compelling necessity and lack of lawful alternative and must have been prescribed by a trusted Muslim doctor with requisite medical expertise.

It will not be lawful to use cosmetic products where experts declared them to be containing harmful substances. In this regard many medical doctors (Such as Dr. Ahmad Abd Al-Hakam, Dr. Muhammad Taufiq, Dr.Umar An-Najjari and Dr. Chris Flower) have revealed that some of these products cause harm to the body. For example there are some hair dyes that cause acute skin sensitivity. Also some skin moisturizers do cause skin rashes, itching, and redness, dryness, cracking and scaling of the skin. There are also powders used by ladies that are made from chemical substances that are harmful. Also some chemical components used in cosmetics are considered cancerous 6. Again, a research conducted by Watch Organization has revealed that 87% of consumers are not aware of the risks associated with body creams and other cosmetics. Furthermore, a US Report stated that personal care products such as cosmetics, soaps and shampoo are some of the most common causes of poisoning in children below the age of five. Again, a report by the Department of Health of the state of New York revealed that the Centre for Poison Control receives about seventy thousand calls a year reporting conditions 35% of which involve children under the age of five suffering from poisoning. The report also stated that 90% of the cases of poisoning at home were as a result of use of cosmetics, soap and shampoo, and that among the causes of poisoning in children are creams that are used with diapers⁷.

The writer has also concluded that if substances with unknown status or source are used in the manufacturing of the products and the effects of such substances remain in the products then the obvious position is that such products are lawful based on the principle of public affliction (*umum al-balwa*) and ignorance of source and also because most of the manufactured products have gone through processing that have converted them from their original form. In this circumstance, there is nothing preventing the use of doubtful products except where the doubt reaches the degree of certainty or strong probability of the impurity of the products. But avoidance of such products for piety is more appropriate. However, if the said products are manufactured in countries in which *najs* and forbidden materials are notoriously known to be used in the manufacture of such products, then preference should be given to this prevalent notoriety as a precautionary measure and in order to avoid doubtful matters.

Finally the writer deduced and set out legal conditions and limitations for acceptable *istihalah* in cosmetic products which are shown in the figure below:



4. ANALYSES OF THE CONDITIONS AND LIMITATIONS OF ACCEPTABLE COSMETIC PRODUCTS

1. The najis substance in the cosmetic products must have been converted into another substance or material essentially different from the original. Therefore this chemical conversion is a condition precedent in this regard. This rule is distilled from the various definition proffered by scholars on istihalah 8.
2. The najis substance in the contents of the cosmetic product must undergo a total and complete transformation such that after the conversion, no trace of it is left whether in terms of color, taste or smell. Therefore if these attributes are changed, the substances will no longer be najis. This condition is also distilled from some of the views of jurists⁹.
3. If the najis materials in the products have not been completely displaced, then there must be a compelling necessity or need for its use, such as where it is used for medication in the absence of a lawful alternative cure and with a prescription from a trusted Muslim doctor with requisite expertise in medicine. Jurists in this respect have allowed the use of najis and forbidden materials for medication but subject to certain conditions¹⁰.
4. If the najis has not been completely displaced then there must be a prevailing presumption of its usefulness where it is used for necessity or need such as medication. This should be confirmed from a trusted Muslim doctor. But where it is found out that the product does not have any desired benefit then its use will not be lawful. This is so because the original rule regarding the use of najis and haram for medication is that it is forbidden due to the general application of the relevant authorities to that.
5. Najis components in the contents of the products which have not been transformed shall – where such products are to be used for compelling necessity or need- not be used for oral consumption (eating and drinking) except for application on the surface of the body. This is based on the authorities which indicated the impermissibility of the use of the parts of najis animal for eating and drinking. This is the view held by the majority of jurists.
6. The Products that is produced by transformation of najis substance must not have any harmful effect for the origin in all harmful things is that they are forbidden and also because the protection of the sanctity of life is one of the objectives of Islamic law to which great importance is attached. It is therefore imperative upon every Muslim to protect himself from harm.

The above conditions were presented to a group of expert researchers in *halal* all of whom expressed their agreement with them and their suitability for use as model for determining the acceptable *istihalah* in cosmetics and other products.

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