

# Regulating the Permissible: The Role of Taqyid al-Mubah in Malaysian Governance and Public Welfare

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DOI: <https://dx.doi.org/10.47772/IJRISS.2025.930000023>

Received: 10 December 2025; Accepted: 16 December 2025; Published: 25 December 2025

## ABSTRACT

This study examines the concept and application of Taqyid al-Mubah as a governance mechanism within the Malaysian administrative and legal system. Taqyid al-Mubah, defined as the restriction of originally permissible actions through legitimate authority, serves as an essential instrument for balancing individual freedoms with the collective welfare of society. Drawing on a qualitative research design, the study analyzes classical Islamic legal sources together with contemporary statutes, policy documents, and administrative practices to assess how this principle operates within modern governance structures. Findings demonstrate that Taqyid al-Mubah has long played a significant role in Islamic governance by preventing harm, ensuring justice, and maintaining social stability. In Malaysia, its relevance is evident across various regulatory domains, including price control mechanisms, national security policies, integrity and anti-corruption frameworks, and public health measures such as the Movement Control Order (MCO) during the COVID-19 pandemic. These interventions illustrate how the State restricts certain permissible activities in a contextual, proportional, and time-bound manner to safeguard public welfare (*maslahah ‘ammah*) and uphold the objectives of Shariah (*Maqasid al-Shariah*). The study argues that Malaysia’s adoption of Taqyid al-Mubah reflects an integration of classical Islamic jurisprudence with contemporary governance needs, producing a flexible yet principled framework for regulating human conduct. By aligning policies with the ethical foundations of *siyasah shar‘iyyah*, Malaysia demonstrates that strong, transparent, and accountable institutions are essential for sustaining justice, social harmony, and responsible public administration. The paper concludes that Taqyid al-Mubah remains a valuable tool for modern policy implementation and recommends strengthening its application through continuous policy evaluation, enhanced public awareness, and deeper incorporation of Maqasid Shariah into national governance frameworks.

**Keywords:** Taqyid al-Mubah, Governance; Justice; Legislative Process, Malaysia

## INTRODUCTION

The concept of Taqyid al-Mubah originates from two Arabic terms: *taqyid* and *al-mubah*. Linguistically, *taqyid* derives from *qayyada*, meaning “to restrict” or “to confine” (Ibn Faris, 2013), while *al-mubah* refers to an act that God permits, offering individuals the freedom to perform or abstain from it without moral consequence—neither praise nor blame (Al-Zuhaili, 2014). In juristic discourse, *Taqyid al-Mubah* denotes the process through which a government or legitimate authority, via legislative means, restricts or obliges certain permissible actions to safeguard public welfare (*maslahah ‘ammah*) and ensure a fair balance between collective and individual rights (Al-Alusi, 2015; Zaidan, 2018).

Islamic legal scholars have reached consensus that the exercise of *Taqyid al-Mubah* falls within the prerogative of governing authorities, as it serves to maintain order and protect societal stability (Duraini, 1987). In the realm of contemporary governance, particularly within Shariah-oriented administrations such as Malaysia, this

principle serves as a regulatory framework that legitimizes state intervention in permissible matters, especially when such intervention ensures alignment between individual rights and communal responsibilities. The approach involves conditional restrictions that are neither absolute nor permanent but rather contextual, applied under specific circumstances, to certain groups, or for limited durations (Mahdi, 2015).

This study focuses on the application and operationalization of the *Taqyid al-Mubah* approach within the framework of good governance and *siyasah shar'iyah* (Islamic legal-political governance) in Malaysia. By examining how permissible actions (*mubah*) are contextually regulated to serve public welfare (*maslahah 'ammah*), the research highlights the intersection of Islamic governance principles and modern administrative practices. It seeks to provide insights into how *Taqyid al-Mubah* functions as a mechanism for harmonizing individual rights with collective responsibilities, ensuring ethical accountability, societal harmony, and the realization of *Maqasid Shariah* (Principles of Shariah) in the Malaysian governance system.

## METHODOLOGY

This study adopts a qualitative descriptive research approach to examine the application of Taqyid al-Mubāḥ within Malaysia's governance system. The research focuses on understanding how the principle of restricting originally permissible actions operates in practice through legal and administrative mechanisms. Law is approached as a social and governance instrument, enabling analysis of how Islamic jurisprudential concepts are translated into contemporary public policies and regulatory practices.

The study relies on document analysis of secondary sources, including Malaysian statutes, regulations, and official policy documents related to price control, national security, integrity governance, and public health management. These are examined alongside classical Islamic legal writings and contemporary scholarly literature on Taqyid al-Mubāḥ, siyasah shar'iyah, and Maqāṣid al-Sharī'ah. The selection of legal and policy documents is guided by their relevance to state-imposed restrictions on permissible activities (*mubāḥ*), their stated objectives of protecting public welfare (*maṣlaḥah 'āmmah*), and their contextual or temporary nature.

Data analysis is conducted through thematic interpretation, focusing on recurring patterns of restriction, authority, public interest, and contextual application. Selected governance practices such as price control regulations, national security and integrity policies, and the Movement Control Order (MCO) during the COVID-19 pandemic are used as illustrative examples to demonstrate how Taqyid al-Mubāḥ is operationalized in Malaysia. This approach allows the study to highlight the practical relevance of Islamic governance principles within contemporary policy-making without extending to empirical measurement or comparative evaluation.

## RESULTS AND DISCUSSION

In the Malaysian context, *Taqyid al-Mubah* provides an important jurisprudential foundation for policies that aim to balance religious freedom with social welfare, particularly in matters of finance, public morality, and administrative governance. The method operates through four essential components: (i) the limitation of originally granted individual rights, (ii) the pursuit of *maslahah* or public benefit, (iii) the exercise of authority by legitimate governing institutions, and (iv) the contextual and temporal nature of the restrictions (Abd El-Aziz, 2020). Collectively, these elements establish *Taqyid al-Mubah* as a key instrument for harmonizing Islamic legal principles with modern governance, reinforcing justice, and safeguarding the moral and social fabric of society (Mohamed, 2022). Here are several forms of the implementation of the Taqyid al-Mubāḥ principle that have been identified in governance practices in Malaysia.

### Price Control Acts and Regulations

In Malaysia, price control measures are governed by a range of statutory instruments, including the Supply Control Act 1961, the Price Control and Anti-Profiteering Act 2011, and subsidiary regulations addressing specific goods and market conditions. Collectively, these legal instruments empower the State to regulate the distribution, pricing, and supply of essential goods, particularly during periods of market instability or heightened demand. Such interventions include price fixing, restrictions on hoarding, export limitations, and penalties for profiteering practices.

From the perspective of Islamic governance, these regulatory measures reflect a clear application of *Taqyīd al-Mubāḥ*, whereby originally permissible economic activities (*mubāḥ*) such as free price determination and unrestricted trade are selectively constrained to safeguard public welfare (*maṣlahah ‘āmmah*). The restrictions imposed are neither absolute nor permanent, but contextual and proportional, aimed at preventing market exploitation, ensuring equitable access to basic necessities, and maintaining economic stability.

Rather than constituting excessive state control, these price regulations demonstrate how legitimate authority may intervene in permissible matters to uphold justice and balance competing interests within society (Mahyudin, 2022). Accordingly, Malaysia’s price control framework illustrates the practical operationalization of *Taqyīd al-Mubāḥ* in contemporary governance, aligning market regulation with the objectives of *Maqāṣid al-Sharī‘ah*, particularly the protection of life, wealth, and social order.

### Formulating Policies for the Security and Peace of the Country

The *Taqyid al-Mubah* approach underpins policies aimed at ensuring national security and societal stability, where permissible freedoms are selectively restricted to protect public interest. Governments are entrusted to implement measures that safeguard public order, national harmony, and societal survival. In Malaysia, the Internal Security Act 1960 (ISA) exemplifies preventive detention, allowing individuals deemed a threat to national security to be detained without trial under sections 73(1) and 8. This mechanism restricts individual freedom in specific circumstances to protect the broader public interest, reflecting the Islamic governance principle of *maṣlahah ‘āmmah* and aligned with *siyasah shar‘iyyah*.

In addition to ISA, Malaysia has implemented several key frameworks to strengthen governance, integrity, and national security. The National Integrity Plan (NIP) 2004 promotes ethical governance, transparency, and accountability, preventing corruption that could destabilize institutions and public trust. The National Anti-Corruption Plan (NACP) 2019–2023 complements this by establishing a whole-of-government approach to combat corruption in public and private sectors, thereby reinforcing societal stability. The Communications and Multimedia Act 1998 regulates the dissemination of information across media platforms, enabling authorities to limit content that may incite public disorder or threaten national security, balancing freedom of expression with public welfare. The Peaceful Assembly Act 2012 governs public gatherings, ensuring citizens’ rights to assemble while enabling regulation to prevent disruptions that could compromise societal harmony. Finally, the Police Act 1967 empowers law enforcement to maintain public order and respond to threats against national security, exemplifying controlled intervention in permissible activities to safeguard collective interests.

Collectively, these laws and frameworks demonstrate how Malaysia operationalizes *Taqyid al-Mubah* in governance, where permissible freedoms are deliberately constrained to protect public welfare (*maṣlahah ‘āmmah*), uphold societal order, and ensure national stability in line with Islamic governance principles (Jan, 2021).

### Movement Control Order (MCO)

The enforcement of the Movement Control Order (MCO) during the COVID-19 pandemic demonstrates the application of *Taqyid al-Mubah* in public health governance (Yusof, 2023). The Malaysian government implemented nationwide restrictions on movement, assembly, and business operations beginning 18 March 2020, including the closure of schools, workplaces, and places of worship except for essential services (Prime Minister’s Office, 2020, March, 16). The temporary suspension of congregational prayers, including Friday prayers, as endorsed by the Special Muzakarah Meeting of the National Council for Islamic Affairs, exemplifies selective limitation of permissible activities (*mubah*) to protect public welfare (*maṣlahah ‘āmmah*) (Department of Islamic Development Malaysia, 2020).

Non-essential businesses were closed, while essential services such as supermarkets, grocery stores, and convenience stores remained operational, ensuring access to necessities while minimizing public exposure. Mass gatherings for sports, cultural, social, and religious events were prohibited to reduce disease transmission (Musa, 2021). These measures illustrate how permissible freedoms can be temporarily restricted under *Taqyid al-Mubah* to harmonize individual actions with collective responsibility, safeguard public health, and maintain societal safety, aligning with the objectives of Maqasid Shariah in modern governance (Ahmad, 2022).

## Analytical Reflections on Taqyīd al-Mubāḥ: Islamic Jurisprudence and Contemporary Legal Perspectives

While the preceding sections demonstrate how *Taqyīd al-Mubāḥ* is operationalized in Malaysia through price regulation, national security measures, and public health interventions, a deeper analytical reflection is necessary to distinguish principled governance from excessive state control. Classical Islamic jurisprudence consistently treats *Taqyīd al-Mubāḥ* not as an unrestricted prerogative of authority, but as a conditional mechanism governed by ethical and legal constraints. Jurists emphasize that restrictions on permissible acts are only valid when exercised by legitimate authority, justified by genuine public interest (*maṣlaḥah ‘āmmah*), proportionate to the harm addressed, and limited by context and duration (Duraini, 1987; Kamali, 2019).

From an Islamic legal perspective, failure to observe these conditions risks transforming *Taqyīd al-Mubāḥ* into *ta’assuf al-sulṭah* (abuse of authority), whereby state intervention exceeds its moral and legal mandate (Mahdi, 2015). This concern is particularly relevant in modern governance, where security, economic regulation, and emergency powers may expand rapidly under crisis conditions. Accordingly, Islamic scholars stress that restrictions must remain instrumental rather than punitive, and preventive rather than coercive, ensuring that individual freedoms are curtailed only to the extent necessary to avert harm (Zaidan, 2018).

These jurisprudential safeguards closely resonate with principles found in contemporary legal theory, especially within constitutional and administrative law. The doctrine of proportionality, widely applied in modern legal systems, requires that any limitation on individual rights must pursue a legitimate aim, be necessary to achieve that aim, and represent the least restrictive means available (Alexy, 2002). Similarly, the rule of law framework demands that restrictions be grounded in clear legal authority, subject to accountability, and applied consistently rather than arbitrarily (Bingham, 2010). When viewed through this lens, *Taqyīd al-Mubāḥ* may be understood as an Islamic analogue to modern rights-balancing mechanisms, where public interest considerations are weighed against individual liberties.

The Malaysian experience illustrates this convergence between Islamic governance principles and modern legal rationality. Price control regulations, security laws, and the Movement Control Order (MCO) were not framed as permanent suspensions of freedom, but as context-specific interventions justified by economic instability, security threats, or public health emergencies. Such measures align with the *Maqāṣid al-Sharī‘ah*, particularly the protection of life (*ḥifẓ al-naḥs*), wealth (*ḥifẓ al-māl*), and public order, while simultaneously reflecting contemporary governance norms of necessity and proportionality (Kamali, 2019; Ahmad & Rahman, 2022).

Nevertheless, acknowledging the analytical strength of *Taqyīd al-Mubāḥ* also requires recognition of its limitations. Excessive reliance on restrictive policies may generate public resistance, enforcement inconsistencies, or tensions with civil liberties if transparency and accountability are insufficient. These risks underscore the importance of continuous evaluation and ethical restraint in policy implementation. Thus, *Taqyīd al-Mubāḥ* should be conceptualized not merely as a legal tool, but as a normative governance framework that demands balance, restraint, and moral responsibility.

In this regard, integrating Islamic jurisprudential controls with contemporary legal standards enhances the analytical robustness of *Taqyīd al-Mubāḥ* as a governance mechanism. Rather than legitimizing unchecked authority, the concept affirms that effective governance whether Islamic or modern must be anchored in justice, proportionality, and the sustained pursuit of public welfare.

### Comparative Perspectives on the Application of Taqyīd al-Mubāḥ

Before comparing Malaysia with other Muslim-majority jurisdictions, it is important to situate governance practices within both global and Islamic normative frameworks. Conceptually, contemporary good governance frameworks and Islamic governance principles share significant normative convergence, albeit grounded in different epistemological foundations. In the global regulatory context, good governance is institutionalized through frameworks such as the United Nations (UN, n.d), World Bank (World Bank, 2024), OECD (OECD, 2017), and ASEAN (Asean Development Bank, 1998), which emphasize transparency, accountability, participation, regulatory effectiveness, and integrity as benchmarks for ethical and effective administration.

These principles are operationalized through measurable indicators, institutional reforms, and policy mechanisms aimed at ensuring administrative efficiency, rule of law, and public trust.

In contrast, Islamic governance conceptualizes good governance through the framework of *siyāsah shar‘iyyah*, where administrative authority is exercised in accordance with divine guidance and the objectives of Shariah (*Maqāṣid al-Sharī‘ah*). Rather than relying solely on procedural accountability, Islamic governance embeds moral responsibility and ethical restraint as intrinsic elements of governance. Principles such as *shūrā* (consultation), *‘adl* (justice), and *amānah* (trust) function not only as administrative values but as religious obligations that guide policy-making and the exercise of authority. Central to this framework is the principle of *maṣlaḥah ‘āmmah*, which legitimizes the regulation or restriction of permissible acts (*Taqyīd al-Mubāḥ*) to prevent harm and secure collective welfare.

In the Malaysian context, these two paradigms converge through a hybrid governance model. National initiatives such as the National Integrity Plan (2004), the National Anti-Corruption Plan (NACP) 2019–2023, and the Madani Governance Framework (2023) reflect global good governance standards, while the Malaysia Shariah Index (MSI) institutionalizes Islamic ethical objectives by assessing policy alignment with *Maqāṣid al-Sharī‘ah*. This dual framework demonstrates that Islamic governance does not operate in opposition to modern regulatory standards but rather complements them by integrating moral, spiritual, and ethical accountability into the governance process. As such, Malaysia illustrates how *siyāsah shar‘iyyah* enhances contemporary good governance by providing normative depth, value-based legitimacy, and ethical coherence in policy implementation.

To further contextualize Malaysia’s application of *Taqyīd al-Mubāḥ*, it is useful to compare its governance approach with other Muslim-majority jurisdictions, particularly Brunei Darussalam and Indonesia. Both countries offer contrasting yet instructive models of how permissible acts (*mubāḥ*) are regulated through legitimate authority to safeguard public welfare (*maṣlaḥah ‘āmmah*), reflecting different institutional, legal, and socio-political arrangements within the Islamic governance spectrum.

Brunei Darussalam represents a centralized and Shariah-integrated governance model, where Islamic legal principles are directly embedded within state authority. The implementation of the Shariah Penal Code Order and the prominent role of the State Mufti exemplify a governance structure in which religious authority and executive power operate in close alignment. In this context, *Taqyīd al-Mubāḥ* is applied through a top-down approach, where restrictions on permissible conduct particularly in matters of public morality, religious observance, and social order are justified explicitly through *siyāsah shar‘iyyah* and *Maqāṣid al-Sharī‘ah* (Ali, 2019; Ibrahim, 2021).

Indonesia, by contrast, demonstrates a pluralistic and decentralized governance model, shaped by its constitutional commitment to religious diversity and regional autonomy. While Islamic principles inform public policy through advisory bodies such as the Majelis Ulama Indonesia (MUI), regulatory authority remains largely within the civil legal framework. This dual-track approach reflects an indirect operationalization of *Taqyīd al-Mubāḥ*, where Islamic legitimacy complements rather than determines state regulation. While this model allows flexibility and accommodates Indonesia’s diverse social landscape, it also results in uneven enforcement and varying degrees of compliance across regions.

When compared with Malaysia, both Brunei and Indonesia highlight distinctive adaptations of *Taqyīd al-Mubāḥ*. Malaysia occupies a hybrid position, combining a strong civil legal system with institutionalized Islamic governance mechanisms such as the National Council for Islamic Religious Affairs and the Malaysia Shariah Index (MSI). Unlike Brunei’s centralized Shariah authority, Malaysia applies *Taqyīd al-Mubāḥ* primarily through statutory law and administrative regulation, supported but not dictated by religious endorsement. At the same time, Malaysia exhibits greater legal uniformity and coordination than Indonesia, particularly in nationwide measures such as price control policies and the Movement Control Order.

Analytically, this comparison underscores that *Taqyīd al-Mubāḥ* is not a monolithic concept but a flexible governance instrument shaped by constitutional structure, institutional design, and socio-religious context. Brunei emphasizes moral and religious coherence through centralized authority, Indonesia prioritizes pluralism and decentralization with supportive religious guidance, while Malaysia integrates Islamic ethical objectives

within a formal legal-administrative framework. These variations demonstrate that the effectiveness of *Taqyid al-Mubāh* depends not only on doctrinal validity but also on governance capacity, public trust, and institutional coordination.

Overall, the comparative perspective reinforces the argument that *Taqyid al-Mubāh* can function as a viable governance mechanism across diverse Muslim-majority contexts. However, its application must remain context-sensitive, proportionate, and aligned with both Islamic ethical principles and contemporary governance standards to ensure legitimacy and public acceptance.

## CONCLUSION AND RECOMMENDATION

This study highlights the practical application of *Taqyid al-Mubah* within Malaysia's governance framework, demonstrating how permissible freedoms (*mubah*) can be selectively regulated to safeguard public welfare (*maslahah 'ammah*) and ensure societal harmony (Kamali, 2019). Three key areas were examined: price control regulations, national security and integrity policies, and the Movement Control Order during the COVID-19 pandemic. In each case, state interventions limited individual liberties in a controlled and purposeful manner, aligning with Islamic governance principles (*siyasah shar'iyah*) and the objectives of *Maqasid Shariah*. The findings show that Malaysia operationalizes *Taqyid al-Mubah* not merely as a legal mechanism but as a holistic instrument to balance individual rights with collective responsibility, protect public interest, and maintain social and economic stability.

Based on the findings, several recommendations emerge. First, continuous monitoring and evaluation of state interventions under *Taqyid al-Mubah* should be institutionalized to ensure proportionality, transparency, and effectiveness in achieving public welfare. Second, integration of *Maqasid Shariah* into policy-making processes should be further strengthened, particularly in emerging governance challenges such as health crises, economic regulation, and digital media oversight. Third, public awareness programs should be enhanced to educate citizens on the rationale of selective restrictions, fostering trust, compliance, and participatory governance. By implementing these recommendations, Malaysia can further consolidate a governance model that harmonizes Islamic ethical principles with contemporary administrative practices, ensuring sustainable and resilient national development.

## ACKNOWLEDGMENT

The authors express their highest appreciation and sincere gratitude to Universiti Sultan Zainal Abidin (UniSZA), Terengganu, Malaysia, for the financial and institutional support provided for the research project entitled "*Pembangunan Model Keluarga Ikatan Sakinah (MKIS) Berasaskan Pendekatan Al-Farabi dan Al-Ghazali bagi Menangani Konflik Perceraian dalam Kalangan Golongan Muda*" (Grant No.: UniSZA/2024/DPU2.0/07 | RD105).

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