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Standardisation of Fatwa in Malaysia: Management and Problems

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ABSTRACT

In a country where jurisdiction over Islam is placed under state administration, standardization is an aspect that continues to be a formidable challenge. In matters of law, difference in provisions creates complications in its implementation. Similarly, with regards to *fatwas* difference in *fatwas* between states on a particular legal problem can create confusion to the public. Although the nature of *fatwas* in itself allows for differences in opinions and decisions on a legal problem, such difference within a small country like Malaysia can lead to adverse consequences. Hence, this article aims to deliberate upon existing methods for the standardisation of *fatwas*, looking into the effectiveness of its implementation. For this purpose, several examples of differing *fatwas* which have been gazetted shall be highlighted. Standardisation methods which will be analysed include the method of administrative action, and the method provided for under the latest version of the State Administration of Islamic Law Enactment. This is in relation to *fatwas* on issues of national interest.

Key words: Fatwa Management, Fatwa Standardisation, National Fatwa Committee, Shariah Courts, Religious Council, Malaysia

Introduction

Standardisation of *fatwas* among different states in Malaysia is not a new issue (Othman 1981; Zaini 2004). However, because this problem has yet to arrive at a truly effective solution, it is wise to continue the debate on this matter. Among key issues raised in this matter is the issue of jurisdiction. Because the administration of Islamic Law falls under the jurisdiction of each individual state, the enforcement of *fatwas* also falls under the jurisdiction of each individual state. No individual state can be forced to accept a fatwa issued by the National Fatwa Council. All of the above directly affects the enforcement of *fatwas* and the public's perception towards the fatwa itself. Among others, why are different *fatwas* issued on the same legal problem? Different *fatwas* between states on the same *fiqh* problem may raise confusion among the public.

The Meaning of Fatwa:

In Islamic legal literature *fatwa* (legal opinion) or *ifta'* is defined as the elucidation of a legal ruling with no binding effect (al-Qasimi 1986). Whereas, according to the provisions of Malaysian legal system it can be defined as statement given by *Mufti* (the head of *fatwa* committee) which is published, and gazetted and known to the public through media. Even though this definition is not provided specifically by Malaysian legal system, it is understood from its existing provisions such as section 47 and 48 Administration of The Religion of Islam (State of Selangor) 2003. The status of *fatwa* in Malaysian legal system is different than that of Islamic law. (Hidayat 2011; Zaini 2005). This is because, from Malaysian legal perspective only the *fatwa* gazetted in media can be enforced and recognised by Islamic court, hence, having binding force on all Muslims residing in the related state. (Section. 49, Administration of The Religion of Islam (State of Selangor) 2003).

Development of Fatwa Administration in Malaysia:

Before amendments were made to the state Administration of Muslim Islamic Law Enactment in the late 80s and early 90s, *fatwa* was under the jurisdiction of each state's Islamic Religious Council, and was issued by the Council. The Council had the authority to issue and publicise *fatwas* either independently or through a Fatwa Committee appointed by the Council. Under this provision, any person who had a problem related to Islam or *nas*, could write to the Yang Dipertua Majlis Agama Islam to request for a *fatwa*. Once a written inquiry was received, the Yang Dipertua referred the request for *fatwa* to the state's *Shariah* Committee Chairman. Every *fatwa* request would be deliberated and a draft response was prepared, unless the Chairman was of the opinion that the problem was minor or if he had other justifiable reasons not to respond to the request.

Next, the *Shariah* Committee Chairman would hold a Committee meeting to deliberate and decide on the draft response. If the *Shari'ah* Committee failed to reach a unanimous decision, the matter would be referred to the Religious Council and the Religious Council would make its decision based on the opinion of the larger number of members present. The Islamic Religious Council, at any time and of its own volition, has the jurisdiction to announce any *fatwa* or decisions made by the *Shari'ah* Council.

However, with the amendment and introduction of the new Administration of Islamic Law Enactment, beginning with Selangor in 1989, the law made a provision for the separation of administration of the Religious Council, the *Mufti* and the *Shariah* Court. From then on, matters related to *fatwa* falls specifically under the Mufti Department and no longer under the jurisdiction of the Council (Section 28, 30, Selangor Administration of Islamic Law Enactment 1989). For example, in the Federal Territories, section 34 of the Administration of Islamic Law (Federal Territories) Act 1993, provides:

(1) The Mufti shall, on the direction of the Yang di-Pertuan Agong, and may, on his own initiative or on the request of any person made by letter addressed to the Mufti, make and publish in the *Gazette*, a *fatwa* or ruling on any unsettled or controversial question of or relating to Islamic Law.

(2) No statement made by the Mufti shall be taken to be a *fatwa* unless and until it is published in the *Gazette* pursuant to subsection (1)

This provision clearly demonstrates that in terms of procedures, issues relating to *Shari'ah* Law or *fatwa* are to be directed to the *mufti*, and not through the Religious Council, as was the practice before the amendments were made. A *fatwa* can be issued either upon the *mufti*'s own initiative or under the instruction of the Yang di Pertuan Agong, or upon request from any person. Nevertheless, there exist some discrepancies in the provisions of different states. For example, in Terengganu, a *fatwa* may be issued when a written request is made to the Religious Affairs Commissioner (Section 25, Terengganu Islamic Affairs Administration Enactment 1986).

Enforcement of Fatwa:

Based on the provisions in existing Islamic Law Administration Ordinances, Enactments and Acts, a decision shall not be taken to be a *fatwa* if it was not issued in accordance with procedures, was not issued by a person or committee which has the authority to do so, or has not been gazetted in the *Warta*. Once a *fatwa* has been published in the *Warta*, it can then be enforced. In addition, because the Federal Constitution has determined that matters related to Islamic Religion fall under state jurisdiction, any *fatwa* issued by a state only binds residents living in the state where the *fatwa* is issued (Zaini 2005). For example, section 34 (3) of the Federal Territories' Administration of Islamic Law Act, states:

(3) Upon publication in the *Gazette*, a *fatwa* shall be binding on every Muslim resident in the Federal Territories as a dictate of his religion and it shall be his religious duty to abide by and uphold the *fatwa*, unless she is permitted by Islamic Law to depart from the *fatwa* in matters of personal observance, belief, or opinion.

(4) A *fatwa* shall be recognized by all Courts in the Federal Territories as authoritative of all matters laid down therein.

A *fatwa* must be certified by the state *Shari'ah* Court where the *fatwa* is gazetted. The state jurisdiction over the enforcement of *fatwas* actually contributes to the difficulty in standardising *fatwas* throughout Malaysia. To date, there have only been several cases where all states declared and gazetted an identical *fatwa*. For example, in the ban of *Aurad* Muhammadiyah's books and the al-Arqam group ([1986]1JH 32). In these cases, all states agreed to accept and to gazette *fatwas* produced based on the resulting decision from the National *Fatwa* Committee Conference and certified by the Majlis Raja-Raja (Conference of Rulers).

Fatwa Standardisation Among States in Malaysia:

The Role of the National Council for Malaysian Islamic Affairs and the National Fatwa Committee:

The National Council for Islamic Affairs (MKI- Majlis Kebangsaan Islam) which was established at the 18th Conference of Rulers held on the 1st of July 1969 was aimed at establishing effective and standard

coordination among states in matters of Muslim affairs administration within the country. All states are members of the council, except Kedah and Pahang. MKI was also established to discuss, deliberate and manage any issues referred to it, either by the Majlis Raja-Raja, the State Islamic Religious Council, or members of MKI. Under these circumstances, MKI can give advice and recommendations (Othman 1991).

Specifically, the Council's tasks and jurisdiction is provided for under section 7 of MKI Regulations which says:

- a) To discuss, deliberate and manage any issues referred to the Council by the Majlis Raja-Raja, any State Government or State Islamic Religious Council or member of the Council, for the purpose of providing advice or recommendation.
- b) Providing advice to the Majlis Raja-Raja, State Government or State Islamic Religious Council on any matter relating to Islamic Law or the administration of Islamic Law and Islamic education, for the purpose of improving, coordinating or encouraging the standardisation in law or administration.

Meanwhile, the establishment of the National *Fatwa* Committee is enshrined under Section 11 (a). With regards to its tasks and roles, section 14 of the Council Regulations states:

The task of this *Fatwa* Committee is to deliberate, decide and issue *fatwas* on any matters related to the religion of Islam that are referred to it by the Majlis Raja-Raja. This committee shall tender its opinions to the Council that will submit it together with recommendations to the Majlis Raja-Raja.

Request for a *fatwa* ruling is to be directed to the Secretariat of the *Fatwa* Committee of the National Council for Malaysian Islamic Affairs. Whenever an issue is referred to the Council, it shall be deliberated and discussed, and recommendations or advice shall be outlined. Afterwards, the matter will be referred to the Majlis Raja-Raja for consideration. After it has been considered, the Majlis Raja-Raja will typically ask the National *Fatwa* Committee to study, decide and issue a *fatwa* with regard to the issue in question.

The decision arrived at will then need to be proposed to the National Council for Malaysian Islamic Affairs. The National Council will then deliberate, discuss and make recommendations on the decision made by the *Fatwa* Committee. Subsequently, the decision (that was made by the *Fatwa* Committee) will be referred once again to the Majlis Raja-Raja.

Any decision concerning a *fatwa* which has been agreed upon by the Majlis Raja-Raja cannot be arbitrarily amended by any member state without prior approval from the Majlis Raja-Raja (Regulation 9). In theory, here in lay the coordination and standardisation that the National Council for Islamic Religious Affairs attempts to implement. However, to enforce it at the state level, the *fatwa* must still be delivered to the *Fatwa* council of each state and gazetted in the *Gazette* in each respective state.

In practice, in situations where *fatwas* relating to *shariah* law have been agreed upon by the *Fatwa* Council, and consented to by the Majlis Raja-Raja, must then be submitted by the National Council for Malaysian Islamic Affairs Secretary to each state's *Fatwa* Committee Secretary, to be gazetted. Article 5 Item (7) of the National Council *Fatwa* Determination Procedure Manual affirms:

Fatwas that have been referred (*rafak*) and consented to by the Majlis Raja-Raja shall be submitted by the National Council for Malaysian Islamic Affairs Secretary to each State *Fatwa* Committee Secretary to be gazetted.

Clearly, the National *Fatwa* Committee acts as a coordinating body for state *Fatwa* Committees particularly in the discussion of significant and pressing issues, involving national interest or Muslims faith. Among issues that have been ruled upon is the haram or halal status of the Amanah Saham Nasional, the Al-Arqam faith, the anti-Hadith group and so on.

Nevertheless, based on an analysis of *fatwas* that have been ruled upon by the National *Fatwa* Committee, there is an inclination for the states to amend the *fatwa* text once it has been brought back to the state and decided on by the state's *Fatwa* Committee. Even though the *fatwa* decision made at the National level is a majority decision or a joint decision by muftis who are members of Committee, amendments still occur once it is discussed again at the state level.

In terms of law administration, any decision made at the national level by *muftis* who are members of the National *Fatwa* Committee, is not a *fatwa*. It is more like the result of a council discussion in determining the ruling on certain issues that bears upon the interest of the entire Federation. However, from the point of view of Islamic law, the decision is a *fatwa*. It is just that from a legal point of view, the *fatwa* is not enforceable so long as they are not gazetted by the state. The reality is, such technicalities are only understood by those who are connected with the *fatwa* institution itself.

For example, the 51st National Council for Malaysian Islamic Affairs *Fatwa* Committee Muzakarah held on the 11th of March 2002 in Kuala Lumpur concluded that human cloning for any purpose whatsoever is haram because it goes against the nature of human development as willed by Allah (Muzakarah Decision of the National *Fatwa* Committee, 11 March 2002). And with regard to divorce via Short Messaging System (SMS), the 59th National Council for Malaysian Islamic Affairs *Fatwa* Committee Muzakarah held on the 27th of August 2003 concluded that:

- a) Talak in the form of writing that is clearly from the husband specifically to his wife, through facsimile, SMS, e-mail or other such devices is a *kinayah talak* and is only valid if carried with intention.

- b) All divorces must be tendered into the shari'ah court in order to establish the *talak*.
- c) *Talak* delivered using modern communication devices is deemed as a divorce not in accordance to the divorce procedure delineated by Islamic law (Muzakarah Decision of the National *Fatwa* Committee, 27 August 2003).

To turn the above mentioned decision into enforceable *fatwas* in any state, the decision has to be delivered to these states and gazetted through the states' *Fatwa* Committee according to procedures determined under each state's Administration of Islamic Law Enactment. Thus, the states have the right to accept, reject or amend the *fatwa*, and to gazette or not to gazette the *fatwa*. Records show that there are actually many decisions made by the National *Fatwa* Committee's muzakarah that are not gazetted in the states. But it is better for the *Muftis*, upon their own initiative, to gazette these *fatwas* regardless if there are any requests for them from any party.

For example, the 37th National Council for Malaysian Islamic Affairs *Fatwa* Committee Muzakarah ruled that smoking is haram from the Islamic point of view (Muzakarah Decision of the *Fatwa* Committee, 23 March 1995). However, only a small number of states have gazetted this as a *fatwa*. So far, only Selangor has accepted and gazetted this as a *fatwa*. For Kedah, although the state has arrived at the same *fatwa* for the issue, it has not gazetted it (Minutes of Meeting, MAIK *Fatwa* Committee 1995). The same goes for Perlis and Sarawak (Perlis State *Fatwa* Decision 1995; Sarawak State *Fatwa* Decision 1995). In the state of Pahang, the *Shari'ah* Law Consultation Committee only declared that smoking is haram within the vicinity of a mosque or surau, citing that smoking is against Islamic traditions. The Committee requested the Pahang Islamic Religious Department, through Mosque Committees, to erect sign boards indicating that mosques and suraus are non-smoking areas (Minutes of Meeting, *Fatwa* Committee of Pahang, 5 October 1996).

With regard to the alleged problem of Malay disunity, the 188th Conference of Rulers held on the 22nd of March 2001 has acknowledged the decision made by the National Council for Malaysian Islamic Affairs *Fatwa* Committee, which states:

- a) There are no restraints on the use of the word Islam by any organisation, in fact the usage is encouraged but it must be based on the discipline of knowledge, iman and ihsan. However, any person or organisation using the word Islam to confuse the society or to deviate faith, is in the wrong and their action is in conflict with the principles of Islamic law, and action can be taken against them in accordance with existing legal provisions;
- b) A person is acknowledged as a Muslim if he adheres to the Pillars of Islam and Pillars of Faith. Therefore it is wrong and beyond any person's authority to impose any other conditions to determine whether a person is a Muslim. The ideology that additional conditions are necessary aside from the adherence to the Pillars of Islam and Pillars of Faith, such as the declaration or support to any party, before that person can be declared a Muslim is wrong in Islam. As such, any person who practices, teaches, preaches or spreads, such an ideology, by any means whatsoever, is engaging in an act tantamount to the spread of wrong or deviant teaching;
- c) The determination of heaven or hell lay solely with Allah Almighty. Therefore, claims that the declaration or support to a person or organisation is necessary before a Muslim is eligible to enter heaven or hell is wrong according to Islamic teaching. As such, anyone who practices, teaches or spreads such beliefs, by any means, is engaging in an act tantamount to the spread of wrong or deviant teaching.

Nevertheless, have all states accepted and gazetted this *fatwa* so as to be enforceable? And for states which have gazetted the *fatwa*, was it gazetted without any amendments to the original text? To date, seven states - the Federal Territories, Penang, Melaka, Perak, Negeri Sembilan, Johor and Kedah - have gazetted it as a *fatwa*. The Federal Territories gazetted it on the 15th of March 2002, Penang (9 May 2002), Melaka (13 September 2001), Perak (2 August 2001), Negeri Sembilan (13 October 2001) and Johor (6 February 2002). (Melaka- Warta No. 19.2001; Perak- Warta No. 508/2001; Johor- Warta No. 7/2002). Meanwhile, in Selangor, Kelantan and Perlis, the *fatwa* have been received, but have not been gazetted. For the states of Terengganu, Pahang and Sabah the status of this *fatwa* is unclear (E – *Fatwa* : Malaysia Islamic Development Department - <http://www.e-fatwa.gov.my/mufti/fatwa>)

Analysis made on the *Fatwa* Committee Decision text for a number of states that have decided and issued *fatwas* regarding this issue shows that only Melaka and Kedah have accepted and approved the *fatwa* without any amendments to the original text issued at the National level. For other states, there have been some amendments in terms of language and sentence structure. The most notable difference can be seen in *fatwas* issued by the states of Perlis and Selangor. However, the message of the *fatwa* does not deviate from the original *fatwa* text issued by the National *Fatwa* Committee.

The following are the examples of fatwa text and decisions made by state fatwa committees:

State of Perlis

Fatwa 1:

"There is no restriction in the use of the word Islam by any organisation, and in fact it is encouraged".

Fatwa 2:

“A person can be declared a Muslim solely with the recitation of the shahadah. Subsequently adhering to the Pillars of Islam and Pillars of Iman, for as long as he does not make *halal* which is *haram*, or make *haram* which is *halal*. As stated in a *Hadith* by the Prophet (S.A.W) : Which means : “Anyone who recites there is no god worth of worship except Allah shall enter paradise”. Also his decree, which means: “A Muslim is bound to conditions except a condition that changes *haram* into *halal*, or *halal* into *haram*”.

State of Selangor:

The Selangor Islamic Legal Consultative Committee Meeting has concluded that the word ‘Islam’ may be used by any organisation or association that wishes to implement Islamic programmes, so long as it does not go against the Sunni (*Sunnah Wal-Jamaah*) faith.

Federal Territories (Kuala Lumpur, Labuan and Putrajaya):

A person is declared a Muslim if he adheres to the pillars of Islam and pillars of iman, and as such, it is wrong and beyond the authority of any party to impose any other conditions to determine whether a person is a Muslim. The ideology that there needs to be additional conditions, other than the adherence to the pillars of Islam and the pillars of iman, such as the support or recommendation of certain parties before a person is deemed a Muslim, is wrong in Islam. Therefore, Muslims are prohibited from practicing, teaching, preaching or spreading such an ideology by any means whatsoever.

State of Perak:

(1) There is no restriction in the use of the word Islam by any association, in fact the use of the word is encouraged with a discipline in knowledge, iman and ihsan. Any person or association that uses the word Islam for the purpose of confusing or deviating faith is in the wrong and action can be taken against them in accordance with existing legal provisions.

(2) A person is already certified a Muslim once he adheres to the Pillars of Iman and Pillars of Islam. Therefore, it is wrong and beyond the authority of any party to impose any additional conditions in determining whether or not a person is Muslim. Such an ideology is wrong in Islam. As such, any person who practices, teaches, preaches and spreads such beliefs by any means whatsoever, then such act is tantamount to the spread of wrong or deviant teaching.

(3) The determination of heaven or hell lay solely with Allah Almighty. Therefore, any claim that the declaration or support for any person or association is necessary in determining whether or not a person is deemed eligible to enter heaven or hell is wrong in Islam. As such, any person who practices, teaches, preaches and spreads such beliefs, by any means whatsoever, then such an act is tantamount to the spread of wrong or deviant teaching.

The Role of Provisions in the Latest Version of the Administration of Islamic Law Enactment:

As of early 2008, 6 states have approved the latest version of the Administration of Islamic Law Enactment, whose draft has been approved earlier at the level of the Majlis Raja-Raja. Among amendments in the new enactment is the inclusion of a provision for the standardisation of *fatwa* on issues that are of national interest. It also includes a provision on the need to apply the advice and recommendations provided by the National *Fatwa* Committee. For example, in Selangor, section 51 and 52 of the Administration of Islamic Law Enactment 2003 provides:

Section 51:

(1) Notwithstanding the powers of the Fatwa Committee under section 47, whenever it appears of the *Fatwa* Committee that a *fatwa* proposed to be made is related to matters affecting national interest, the *Fatwa* Committee shall adjourn its discussions on the proposed *fatwa* and submit the matter to the Majlis.

(2) After deliberating upon the matter, the Majlis may make a recommendation to His Royal Highness the Sultan for his assent to refer the proposed *fatwa* to the National *Fatwa* Committee, through the Conference of Rules.

(3) Without prejudice to the generality of subsection (1), a *fatwa* shall be deemed to be related to matters affecting national interest if the question is related to any matter, policy, programme or activity which directly affects the interest of the Federal Government, a State Government or any of its ministries, departments or agencies.

- (4) If His Royal Highness the Sultan gives his assent under subsection (2), the Majlis shall, before the *fatwa* is referred to the National *Fatwa* Committee, inform the State Government of the reference.
- (5) When a proposed *fatwa* has been referred to the National *Fatwa* Committee, the Committee shall present its advice and recommendations to the Conference of Rulers in accordance with subsection (2) on the matter.
- (6) If the National *Fatwa* Committee advises or recommends that the proposed *fatwa* be made, with or without any modification as it may recommend, or advises or recommends another *fatwa* on the same matter and the Conference of Rulers have agreed with the advice and recommendation of the National *Fatwa* Committee, the Majlis shall consider the advice and recommendation and thereupon may course the *fatwa* according to such advice and recommendation to be published in the Gazette without any amendment or modification, and the provision of section 48, except subsection 48(7), shall apply thereto.
- (7) A *fatwa* published in the Gazette shall be accompanied by a statement that the *fatwa* is made under this section.

Section 52:

- (1) The *Fatwa* Committee shall adopt any advice and recommendation of the National *Fatwa* Committee which affects any act or observance which has been agreed upon by the Conference of Rulers as an act or observance which extends to the Federation as a whole pursuant to Article 38 (2)(b) of the Federal Constitution.
- (2) The advice or recommendation adopted by virtue of subsection (1) shall be deemed to be a *fatwa* and section 48, except subsection 48(7), shall apply thereto.

For Sabah, the state government has approved the Sabah *Fatwa* Enactment No. 7 / 2004. Among the provisions included is the same provision in section 51 and 52 of the latest Administration of Islamic Law Enactment. Even though the provision under section 51 above already exists, in practice it still relies on the function of the National Council for Malaysian Islamic Affairs, the Majlis Raja-Raja and the National *Fatwa* Committee. This provision only aims to ensure the need for discussions at the level of the National *Fatwa* Committee, for issues related to shari'ah law that carries national interest, are postponed. Instead, the issues are to be referred to the National *Fatwa* Committee beforehand, through MKBHEIM or the Majlis Raja-Raja. Its effectiveness is still dependent upon the states' commitment in accepting the *fatwa* which have been ruled upon at the national level. For example, on the issue of stunning slaughter animals, the National *Fatwa* Committee's Special Muzakarah held on the 29th of September 2005 ruled on the issues of the use of Electric Stunning and Waterbath Stunning, as well as the use of drugs or carbon dioxide in animal slaughtering procedures.

An analysis conducted through E-*Fatwa* in Mei 2012 indicates that only the state of Selangor has approved and published that *fatwa* in *Gazette* (Published in October 2007 – Sel. PU. 334). The issue of animal slaughter is a national issue, and as such it is appropriate that all states give the issue serious attention.

As for section 52, the provision aims to strengthen the existing practices, for issues already agreed upon under Article 2 (b) Item No. 38, of the Federal Constitution. Matters under this category only include the determination of the date for the beginning of Ramadhan, the day for *Aidil Fitri* and the day for *Aidil Adha*. Matters that fall under this category are normally accepted for implementation throughout the Federal Territory without any problem.

Conclusion:

More earnest efforts need to be undertaken by those responsible, to find and implement the best mechanism to standardise *fatwas* in different states. Admittedly such efforts will have its pros and cons. What's certain is the fact that religious power lay with the Sultans and the states. This will undoubtedly test the commitment of the states. Different social environment between various states may also allow for different *fatwas* for a particular legal issue. Some may feel that a particular issue is of national interest, but others may feel it is only a local issue. Taking into consideration all factors above, the coordination mechanism of administrative action is deemed the best method for *fatwa* standardisation for now. Provided the state authorities are ready to give their commitment. Even though it has been provided for by the law with the enactments, in practice, it still requires the voluntary commitment of state religious authorities.

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