STANDARDISATION OF *FATWA* IN MALAYSIA: ISSUES, CONCERNS AND EXPECTATIONS

*Mohamed Azam Mohamed Adil**

Abstract: The establishment of the institution of *fatwa* can be traced back before the independence of Malaysia. In the beginning, a Mufti was placed under the respective Islamic Councils. To a certain extent, a Mufti was also a judge (kadi) and presided over cases in the Shari'ah courts. Legally, a Mufti's views are not considered as *fatwas*. Only *fatwas* issued by the respective States' Fatwa Committees are regarded as *fatwas*. A *fatwa* is binding upon Muslims of the state where it is issued after being consented to by the Sultan and later gazetted. The problem is that more often than not, conflicting *fatwas* at state and national levels do occur, and this has led to confusion and problems. This article attempts to analyse the problems surrounding the conflicting *fatwas*. It suggests that the standardisation of *fatwas* at state and federal levels could be done by requesting the respective States' Fatwa Committees to abide by the *fatwas* issued by the National Fatwa Committee. It is also suggested that *fatwas* issued by the respective States' Fatwa Committees should be brought up to the National Fatwa Council for standardisation. It is also suggested that a Grand Mufti should be appointed on rotational basis like the selection of the Yang Di Pertuan Agong, after being consented to by the Council of Rulers. However, the position of Grand Mufti will not supersede the position of the respective States' Muftis.

Introduction

The Ninth Schedule of the Federal Constitution provides powers and jurisdictions to the respective States to manage and administer Islamic affairs. This is in line with the position of the respective Sultans as heads of the religion of Islam except in the states of Penang, Melaka, Sabah, Sarawak and the Federal Territories.¹

The Yang Di Pertuan Agong (YDA) and respective Sultans hold the highest position in matters relating to Islamic affairs. The Islamic Religious Council is established in every state. It has a role to facilitate and to advise the YDA and the respective Sultans in matters relating to Islam. The importance of the Religious Council can be traced back to the establishment of the Religious Council of Kelantan in 1915.² The role of the Religious Council is to ensure the welfare of Muslims from the spiritual, social, educational and economical aspects.³ To ensure that the Islamic Councils are effective and efficient, the state governments separated the administration of the Islamic Councils from that of the Islamic Departments / Shari'ah Courts / Departments of Mufti. For the purpose of this

segregation, all states' enactments have a specific provision for the appointment of a Mufti and a Deputy Mufti (not in every state) to administer the *fatwa* affairs in the respective states.⁴

The Legal-Institutional Framework of *Fatwa*

(i) The Establishment of *Fatwa* Committee

The respective States' Islamic Administration Laws have empowered the states to establish a *Fatwa* Committee to assist the Department of Mufti in issuing *fatwas*.⁵ The Committee has several names, among others:

- Islamic Ruling Committee (*Jawatankuasa Perundangan Hukum Syara'*)
- Shari'ah Committee (*Jawatankuasa Syariah*).
- *Fatwa* Council (*Majlis Fatwa*).
- *Fatwa* Board/Body (*Lembaga Fatwa*).
- *Fatwa* Committee (*Lujnah/Jawatankuasa Fatwa*).
- Council of Ulama (*Jama'ah Ulama*).⁶

The total of the *Fatwa* Committee members differs from one state to another. Normally it consists of 5-17 members.⁷ For example, in Selangor, Administration of the Religion of Islam (State of Selangor) Enactment 2003 provides:

“There shall be a committee by the name of *Fatwa* Committee that consists of:

- a. Mufti – Chairman;
- b. Deputy Mufti;
- c. State Legal Advisor;
- d. Two members from the Islamic Council (*Majlis*);
- e. An officer from the Selangor Islamic Department who is an expert in Islamic rulings appointed by the Islamic Council (*Majlis*);
- f. No fewer than two members and no more than seven members who are fit to be appointed by the Islamic Council (*Majlis*); and
- g. An officer from the Department of Mufti to act as the secretary.”

All members of the Committee including Muftis and Deputy Muftis are appointed by the respective Sultans and YDA. The National *Fatwa* Council is set up by the Council of Rulers (MRR) in accordance with the National Rulings of Islamic Affairs amended in 1971, 1973, 1976 and 1980.⁸

In carrying out its duties and roles, the National *Fatwa* Council has endorsed two approaches: National *Fatwa* Council Meeting under the order of Council of Rulers (MRR); and National *Fatwa* Committee Discourse (*Muzakarah*) in which this meeting takes place occasionally without order from the Council of Rulers (MRR).⁹

Membership of the National *Fatwa* Council should consist of the following:

- a. Chairman;
- b. Respective States' Muftis;
- c. Five members appointed by the Council of Rulers (MRR); and
- d. A member who is a Muslim from the legal or judicial profession appointed by the Council of Rulers (MRR).¹⁰

Except the Chairman and respective states' Muftis, the other candidates must first obtain consent from the Prime Minister before submitting the names to the Council of Rulers (MRR). Such appointment is valid for three years, and can be extended after the term expires should the authority think to do so. Without prejudice, the members, at any time, can tender a resignation without giving any reasons.¹¹

(ii) The Role of Mufti and *Fatwa* Committee

The States' *Fatwa* Committees assist and advise the respective Sultans over matters relating to Islamic rulings. The Mufti shall advise the Sultan in respect of all matters of Islamic law. He shall be the chief authority in the State after the Sultan, except where otherwise provided in the Enactment.¹² The State's *Fatwa* Committee can act on its own or upon the request from the public, which should be addressed to the Mufti to seek a *fatwa* over a disputed matter.¹³ A Mufti could issue a *fatwa* or give his view or evidence in case requested by either the Civil Court or the *Shari'ah* Court. But the judge is not obliged to accept the view given by the Mufti as he is deemed competent to handle a case brought before him. However, a Mufti cannot be summoned to be present before a judge.¹⁴

In *Isa Abdul Rahman and Others v the Penang Islamic Council*,¹⁵ the view of Mufti and the gazetted *fatwa* were referred to by the Court when the plaintiff who was the next-of-kin of the owner wakaf property objected to the plan by the Penang Islamic Council to demolish *Masjid Jamek* Haji Abdul Wahab and to erect a new five-floor building which places Bank Islam (floors 1-3) and mosque (floors 4-5) on the *wakaf* land.

The High Court turned down the injunction applied by the plaintiff and requested the Penang Islamic Council not to continue with the plan until a new *fatwa* is issued on this matter. Apparently, there were two conflicting *fatwas*: the former *fatwa* was meant that the *wakaf* land was for the purpose of building a mosque; and the latter *fatwa* giving a nod for the Penang Islamic Council to demolish the mosque and to erect a new building but with condition to reserve two floors for mosque purposes.

What was interesting about this case was that the provisions in section 36 (4-5) of the Penang Administration of Islamic Law No. 7/1993 provide that all written *fatwas* must be recognised by all courts in the State of Penang, and any written document made by the Mufti is considered as *fatwa*.

Judge Abdul Hamid Mohamad who presided over the case did not accept these provisions as he believed that the “courts” referred to here were the Shari’ah courts, and not the civil courts. As a result, laws passed by the Penang State Assembly do not take away the powers and jurisdiction of the civil courts as enshrined by the Federal Constitution.

Apparently, a *fatwa* that is in accordance with written laws is referred to by the civil court. In *Re Dato Bentara Luar (Deceased), Haji Yahya Yusoff & Others v Hassan Othman & Others*,¹⁶ the High Court of Johor made reference to the *fatwa* issued by the Mufti of Johor over a specific *wakaf* (*wakaf khas*). It was decided that such *wakaf* was valid under Islamic law as provided in Section 11 of Prohibition *Wakaf* Enactment of Johor, 1911 and Section 41 Administration of the Religion of Islam Enactment of Johor, 1978.

Interestingly, at the Supreme Court, Salleh Abas (CJ) ruled out that the court should neither accept nor decline the *fatwa*. But since the judges were not competent in Islamic law and the *fatwa* was in line with other scholars’ writings, they could accept such *fatwa*.

In *Hajjah Halimatussaadiah v Public Service Commission, Malaysia & Anor*,¹⁷ the appellant, who was a clerk at the Perak Legal Advisor’s Office, was given a warning followed by a show-cause letter because she did not conform to the General Order that prohibits women from covering their face during office hours. She argued that her understanding from verse 24 of Surah al-Nur was that covering her face except the eyes was obligatory. Indeed, such attire could protect her dignity. She also argued that such practice was guaranteed in Article 11(1) of the Federal Constitution.

After considering the *fatwa* issued by the Federal Territories’ Mufti, the Court held that Islam neither make it compulsory nor encourages such veil. It was also held that freedom of religion as provided in Article 11(1) of the Federal Constitution was not absolute as this Article must read together with Article 11(5) that restricts religious freedom on the ground of public peace, public health and morality. Hence, such prohibition regulated in the General Order never takes her constitutional right in professing and practicing her religion.

In another case, *Dalip Kaur v Bukit Mertajam’s Police Officer and Others*,¹⁸ the appellant made an appeal before the Supreme Court seeking a declaration that his late son was non-Muslim at his last breath and therefore she could claim the body. The Kedah *Fatwa* Committee held that his late son was a Muslim at his death because there was evidence that he had converted to Islam, and no declaration had been made by any *Shari’ah* Court otherwise. The Supreme Court also accepted the *fatwa* issued by the Kedah *Fatwa* Committee for the following reasons:

- a. Whereby a Muslim who has made a deed-poll declaration that he is no longer practicing the religion of Islam is indeed an apostate.
- b. That a Muslim who prays in the Sikh temple and seeking Sikh prayers is indeed an apostate.
- c. That a Muslim who has converted to Sikhism is indeed an apostate. However, such rule can only be made by the *Shari'ah* court. Unless and until such declaration is made, that person is considered as Muslim.
- d. That a Muslim who consumes pork is still regarded as Muslim.
- e. That a male who converted to Islam but did not circumcise is considered as Muslim.

Hence, the Kedah *Fatwa* Committee held that the appellant's son was a Muslim at his death because there was evidence that he recited the testimonial (*shahadah*) and became Muslim. Furthermore, there was no declaration made by any Shari'ah courts that showed he was not a Muslim upon his death.

(iii) Issuance and Gazetting of *Fatwas*

Legally, only a gazetted *fatwa* is binding. A Mufti's view cannot be binding even if it is done before a judge. With an exception in Penang, a written statement by the Mufti is regarded as *fatwa* by the Court.¹⁹

In most practices in the states of Malaysia, the process of *fatwa* starts with an inquiry to the Islamic Council (*Majlis*). The inquiry is then passed over to the Mufti, Chairman of the *Fatwa* Committee. Occasionally, it is addressed directly to the Mufti. The Mufti, as Chairman of the *Fatwa* Committee, upon receiving the request/inquiry will prepare a concept paper.²⁰

On many occasions, a research committee is set up to carry out thorough research. The result of the research will then be discussed before the members of the State *Fatwa* Committee. Later, the office of the Department of Mufti will prepare a *fatwa* draft and refer it to the State Legal Advisor for scrutiny. The draft will be discussed and debated in the State *Fatwa* Committee and later brought to the Islamic Council meeting chaired by the Chairman. Once the *fatwa* is accepted, it will then be brought up to the Sultan for consent and later gazetted. The gazetted *fatwa* is binding upon all Muslims in the state concern and should be recognised by the court at that state.²¹

The State *Fatwa* Committee Structure:

As for the state of Selangor, Section 48 of Administration of the Religion of Islam (State of Selangor) Enactment 2003 provides the procedure for issuing a *fatwa*. A Mufti can request research to be carried out before the State *Fatwa* Committee sits for a meeting. The research committee is expected to prepare a concept/working paper. The Mufti will call the State *Fatwa* Committee for a meeting to discuss the proposed *fatwa*.

After an in-depth discussion and debate in the meeting, the Mufti will then pass the proposed *fatwa* to the Islamic Council (*Majlis*). The Islamic Council (*Majlis*), after scrutiny of the proposed *fatwa* could suggest the proposed *fatwa* to be brought up to the Sultan for consent and later gazetted. The proposed *fatwa* should be written clearly under sub-section (4) together with details and comments. Once the *fatwa* is approved by the Sultan, the Islamic Council (*Majlis*) should inform the State Government before the *fatwa* is published in the gazette. A *fatwa* published in the gazette shall be followed by a statement that the *fatwa* is made under this section.

All *fatwas* shall be published in Bahasa Melayu in Romanised transcript but the Bahasa Melayu version can also be made public. Statements made by the State *Fatwa* Committee could not be regarded as *fatwa* unless it is published in the gazette under sub-section (6).

From the technical point, a proposed *fatwa* must be scrutinised by the Selangor State Legal Advisor before bringing it up to the Sultan. Once it is approved by the Sultan, the *fatwa* can be for gazetted.²²

iv) The Position of National *Fatwa*

At the Federal level, a *fatwa* is issued by the National *Fatwa* Committee or National *Fatwa* Discourse meetings, which take place under the National *Fatwa* Council, headed by a Chairman. Usually, the National *Fatwa* Discourse (Muzakarah) meets regularly because it does not require an order from the Council of Rulers (MRR). All State Muftis are automatically members of the National *Fatwa* Council including those who are from the judicial and legal service who are appointed by the Council of Rulers (MRR).²³

The National *Fatwa* Council secretariat is placed under the Department of Islamic Development Malaysia (JAKIM).²⁴ A *fatwa* can be decided either unanimously or by a majority vote of two-thirds of the members excluding the Chairman. Unfortunately, a *fatwa* decided by the National *Fatwa* Council is not binding from the legal perspective. In fact it is only binding within the states if the states adopt and enforce the *fatwa*.²⁵

Normally, a *fatwa* issued at the Federal level will be forwarded to the respective States' *Fatwa* Committees for consideration. If accepted, the *fatwa* will be brought up to the next process for gazetting purposes. Apparently, the National *Fatwa* Council is a "body of discussion" to decide on a *fatwa* involving national interest. It does not bind the states including the Federal Territories.²⁶

The Controversy over Conflicts of *Fatwas*

(i) Conflicts between *Fatwas* issued by the National *Fatwa* Council and the Respective States' *Fatwa* Committees

Conflicts between *fatwas* can be traced in the Emotional Spiritual Quotient (ESQ) Leadership training module. The Federal Territories *Fatwa* Committee in its meeting on 27 August 2009 simply banned ESQ fearing that it could harm the faith and the religion of Islam.²⁷ A similar stand was also taken in Perlis by its *Fatwa* Committee. However, the National *Fatwa* Council in its meeting on 16 June 2010 gave a green light for ESQ organisations to continue their activities with conditions that they must appoint *Shari'ah* Advisors to monitor their activities. This stand was also taken by the Pahang and Penang *Fatwa* Committee which have endorsed the ESQ organisations.²⁸

Another example is the question of investment in Amanah Saham Bumiputra (ASB)/Amanah Saham Nasional (ASN). The States of Selangor and Penang have prohibited it because, apparently, ASB/ASN investment is involved in interest (*riba*) transactions which are non-*Shari'ah* compliant. But there was confusion in the Penang *fatwa* issued on 30 August 1983 which allowed Muslims to perform *haji* using money from the ASN.²⁹

The National *Fatwa* Council in its meeting on 1-3 February 2008; the Federal Territories *Fatwa* Committee in its meeting on 27 May 2008; and the Kelantan *Fatwa* Committee in its meeting on 27 December 2009 have opined that putting an investment in ASB/ASN is permissible mainly because it is the only institution that is available to Malay-Muslim investors for purpose of earning profits considering the low and poor economic background of the majority Malays. Another point made was that if PNB, which is the agent of ASB/ASN pulls out its share from Maybank which is considered the largest bank in the Asia Pacific, it could easily harm the economy of the Malays who are Muslims. What is important is that, PNB does not invest in the provision of gambling services and the production of liquor. In its investments, PNB has managed to invest 70% of its investment activities in *Shari'ah* compliant ways. The remaining 30% investment in Maybank which is non-*Shari'ah* compliant is strictly monitored by the *Shari'ah* Advisors appointed by PNB under the Special Project.³⁰

Indeed, according to the National *Fatwa* Committee, the schools of Hanafi, Maliki, Shafi'ie and Hanbali are of the views that Muslims are permitted to invest in companies that invest in both *halal* and *haram* activities under certain circumstances based on public interest (*maslahah ammah*). In sum, the Committee is of the view that protecting the interest (*maslahah*) of the Muslims is more important than avoiding harm (*mafsadah*) and that this should be the main criteria in this regard.³¹

Another example is the prohibition of smoking. Some states have made it abominable (*makruh*) while others have regarded it as forbidden (*haram*). The states of Kedah and Selangor have made it forbidden (*haram*), while Pahang banned smoking in places of worships. At the Federal level, the National *Fatwa* Council has banned smoking completely.³² In reality, the respected States' *Fatwa* Committee should adopt the National *Fatwa* Council's *fatwas*. For example, Section 52(1) the Selangor Islamic Administration, 2003 provides:

“The *Fatwa* Committee should adopt the advice and recommendations made by the National *Fatwa* Council in matters that have been consented by the Council of Rulers (MRR) as enshrined in Article 38 2(b) of the Federal Constitution.”

(ii) Conflicts of *Fatwas* between the Respective States' *Fatwa* Committee

Conflict among *fatwas* issued by different states is quite apparent in some cases. One example is *zakat* on income. The states of Selangor and Perak have a different stand in making *zakat* on income obligatory. The Selangor *Fatwa* Committee has gazetted a *fatwa* that made it obligatory for Muslims in Selangor to pay *zakat* on income since 9 May 2001. What is interesting about this *fatwa* is that such

zakat must be handed over to Lembaga Zakat Selangor (LZS), the collector of *zakat* for the Selangor Religious Council. The payment of *zakat* on income can be made through salary deduction despite the fact that this method of collection does not meet the requirement of *nisab* and *haul* according to the majority of the schools of Islamic law. The approach taken by LZS is basically based on *ta'jil al-zakat* (payment of *zakat* before the *haul*) but it does not meet the requirement that the payment of income/salary *zakat* can only be made if it meets the *nisab*.³³ A similar approach was also taken by the Federal Territories' Religious Council (MAWIP) requirements of *ta'jil* where a *fatwa* gazetted on 29 April 1999 has made it obligatory upon Muslims in the Federal Territories to pay *zakat* on any income including salary, allowances and bonus.³⁴

The National *Fatwa* Council did not make it compulsory for Muslims in the Federal Territories to pay income *zakat* but made it optional (9 December 1992). However, on 22 June 1997 it changed its *fatwa* by making it compulsory for Muslims who were earning a steady income. In its meeting on 7 May 2003, the National *Fatwa* Committee had issued the calculation for the income *zakat* payment which was based on 2.5% from *nisab* in one-year *hijrah* (*haul*) period.³⁵

In contrast, the Perak *Fatwa* Committee is against the stand taken by Selangor, Federal Territories and National *Fatwa* Council in requiring Muslims to pay income (salary) *zakat* simply because income/salary will only be taxable when it reaches the one-year *hijrah* period. In its meeting on 7 March 2013, the Perak *Fatwa* Committee had endorsed one statement:

“That *zakat* on income/salary is only obligatory when it reaches the *nisab* and *haul* as agreed by the majority schools. Hence *zakat* on income/salary is not compulsory”.³⁶

Will Standardisation of *Fatwas* Resolve the Conflicts?

Standardisation of *fatwas* is often discussed by many parties. This is because conflicting *fatwas* have caused confusion and problems in society. In general, conflicting *fatwas* can occur due to several reasons, among others, conflict of *fatwas* between issuing institutions of *fatwa*. This can be seen in different *fatwas* issued by the National *Fatwa* Council and the respective States' *Fatwa* Committee. Similarly, different *fatwas* are issued in different states. Another conflict between *fatwas* involves private *fatwas*. This occurs as a result of a conflict between *fatwas* issued by institutions and *fatwas* issued by private; there is also conflict between some private *fatwas* and other private *fatwas*.³⁷

Datuk Seri (now Tun) Abdullah Ahmad Badawi, then Vice-President of the United Malays National Organisation (UMNO), the dominant party in the ruling

Barisan Nasional coalition in Malaysia, once commented:

More often than not, we hear of contradictory views or rulings by Mufti in matters pertaining to *zakat fitrah* and others. Therefore, it's important to have a standardised *fatwa* so that people will no longer be confused.³⁸

Apparently, all Muftis have endorsed the proposal. Based on our research,³⁹ 13 Muftis (93%) agreed that the activities of all *fatwa* bodies should be coordinated and standardised. As for the officers, 10 of them (71%) agreed that the activities on the respective *fatwa* bodies should be coordinated and standardised. Three officers (21%) did not agree and one officer (7%) did not come out with any comments. Those who disagreed gave the following reasons for their views:

- i) *Fatwa* is a state matter as provided in the state constitution.
- ii) Powers relating to Islam are under the respective Sultans and states' government jurisdictions.
- iii) The background and environment vary from one state to another.
- iv) Diversity of opinions is good practice.⁴⁰

Nevertheless, the outcome of our research shows that many high-ranking religious officers did not agree with the standardisation of *fatwas*. Among reasons given are:

- i) It is provided in every state's enactment that a Sultan shall appoint a Mufti to advise him in matters relating to Islam.
- ii) The appointment of Mufti within the respective states is effective as he is the expert in matters pertaining to Islamic law, which falls under state jurisdiction. This is very different from Egypt and Saudi Arabia.
- iii) The establishment of Mufti in every state could be an impetus for the states to set up the Council of *Fiqh* (*Majma' al-Fiqhi*) for collective *fatwas*.⁴¹

However, there are views that support the coordination of *fatwa* bodies because too many Muftis will lead to inefficiency in the issuance of *fatwas*. To a certain extent, there should not be a Mufti appointed at a state level. Instead, there should be coordination among all *fatwa* issuing bodies so that they could produce standard *fatwas* for the entire nation taking into account the public interest. However, if the *fatwa* meets the local needs, for example, by determining the rate of *zakat fitrah*, it should not be standardised.⁴²

As for the public, 95% responded that a standard *fatwa* is important to ensure that no misunderstanding of the *fatwa* takes place. Some suggested the appointment of Grand Mufti. This was proposed in Parliament in 17 Sept. 2003. The issue was originally raised by Tuan Haji Mo'min Abdul Aziz, Chairman, Melaka Islamic Religious Committee in 1996. It was then re-suggested by

(Dato') Dr. Syed Ali Tawfik al-Attas, the Former Director-General of IKIM in December 2006. However, Tan Sri Dato' Seri Harussani Zakaria, the Mufti of Perak stood against the idea. Dato' Seri Najib Tun Razak (the then Deputy Prime Minister) and Datuk Seri Dr. Ahmad Zahid Hamidi (the then Minister in the Prime Minister's Department) were also of the view that the proposal to appoint a Grand Mufti was not suitable.⁴³ The reasons for objections include:

- i) The appointment of Mufti is under the privilege of the respective Sultans (YDA for non-Sultans' states).
- ii) Sultans are not willing to lose their small powers given by the Federal Constitution.
- iii) The suggestion seems contrary to Article 74 and Ninth Schedule of the Federal Constitution.⁴⁴

However, the standardisation of *fatwa* bodies could be possible if there is a political will.⁴⁵

With effect from 2 Sept. 1997, there was an agreement by the respective Muftis that they should refer to the National *Fatwa* Council before gazetting a *fatwa*.⁴⁶ But does this take place? It was revealed that 36% of Muftis in Malaysia do not agree on the establishment of National *Fatwa* Council. This is because the Council has no power and cannot compete with the States' *Fatwa* Committee. *Fatwa* issued by the National *Fatwa* Council is not binding at all. What has been decided at the National *Fatwa* Council can be challenged by the State *Fatwa* Committees. The National *Fatwa* cannot be gazetted and as a result it has to be brought to the respective States' *Fatwa* Committee for consideration and later gazetted, if they wish to do so.⁴⁷

In order to introduce a standard *fatwa*, a proposal to set up a Federal Darul Ifta' was turned down by the Council of Rulers (MRR). As a result, the secretariat for the National *Fatwa* Council has been streamlined. On 2 January 2009, the Division of Management and Development of *Fatwa* was introduced at JAKIM. One of the objectives of the setup was to undertake in-depth study before a *fatwa* is issued. This does not mean that such study was not carried out before.⁴⁸

It is quite difficult to come out with a common *fatwa* in Malaysia as there are 14 Muftis with different backgrounds. Furthermore, there are 14 States' *Fatwa* Committee with differing views. More often, the State *Fatwa* Committees are reluctant to accept *fatwas* issued by the National *Fatwa* Council. They have two simple reasons:

- a. That the powers and jurisdictions of the religion of Islam are within the exclusive rights of states and Sultans; and
- b. That powers and jurisdictions are clearly provided in Ninth Schedule, List II State List and Article 74(2) of the Federal Constitution.

The powers and jurisdiction of Islam are under the purview of the respective states have made it difficult to standardise *fatwas* in Malaysia. Standardising *fatwas* across the nation is not impossible since the National *Fatwa* Council is set up to assist on the standardisation. The role of the National *Fatwa* Council seems limited but one could find that this Council could advise to the Council of Rulers, State Governments or States' Islamic Councils to look at matters concerning the Islamic law or Islamic administration and the religious studies. The composition of *Fatwa* Committee is also insufficient. Very few of the members of the *Fatwa* Committee are highly educated. Out of 129 of members of *fatwa* committee throughout the nation, only 27 are from academics. Another factor that contributes to the conflicting *fatwas* is the difference *fatwa* methodologies applicable in Malaysia. The state of Perlis which based on *Ahli Sunnah wal Jama'ah*'s teaching, does not practise the Shafi'i's school which is dominant across Malaysia.⁴⁹

Similarly, some Muftis issue conflicting *fatwas* on controversial issues in the mainstream media, which has led to confusion among the public. What is worse is that an "open debate" on a particular issue does not solve any problem. In fact, debates should take place in designated institution like the National *Fatwa* Council or during the National *Fatwa* Committee Discourse (*Muzakarah*) meetings.

Actually, there was an attempt to standardise the process of *fatwa* in Malaysia. For example, an informal body called the Council of Muftis Malaysia (*Majlis Mufti-mufti Se-Malaysia*) was established in 1998. The council comprises all state Muftis. It serves as a platform for discussion between them in matters of religion more freely. For example, the first decision by the Council was to seek a reduction of Bollywood movies on television in Malaysia. In response, the government adopted the view of the Council and subsequently made a study of the decision.⁵⁰

Conclusions

From the above discussion, it can be said that conflicts between *fatwas* do occur in Malaysia because every State *Fatwa* Committee has a power to issue *fatwa*. As a result, a resolution is required so that *fatwas* issued by the National *Fatwa* Council would be adopted in the respective states.

- It is suggested that *fatwas* issued by the respective States' *Fatwa* Committee should be brought up to the National *Fatwa* Council for standardisation.
- To appoint a Grand Mufti who is highly knowledgeable with *Shari'ah* background. The present Chairman of the National *Fatwa* Council has no *Shari'ah* background and only functions as a spokesperson. The Grand Mufti must be senior by age. This criterion is to include the State Muftis.

- The appointment of Grand Mufti is on a rotation basis like the selection of YDA. It must be approved by the Council of Rulers (MRR). The position of Grand Mufti will not supersede the position of respective States' Muftis.
- *Fatwas* issued by the Grand Mufti are binding. The respective States' Muftis must accept the *fatwas* issued by the Grand Mufti so that they are not in conflict. This could be done by amending the Ninth Schedule, List II – State List and Article 74 of the Federal Constitution.
- The States' Muftis are prohibited from issuing controversial statements. Only the Grand Mufti is authorised to issue any statement after discussing the matter at the National *Fatwa* Council.
- As for remuneration, the Grand Mufti should be at par to Turus III. As for States' Muftis, they should be remunerated at par to JUSA A.

Notes

- * *Mohamed Azam Mohamed Adil* is Associate Professor and Deputy CEO, International Institute of Advanced Islamic Studies (IAIS) Malaysia (Email: mazamadil@iais.org.my).
1. Article 42 (10) of the Federal Constitution.
 2. Abdullah Alwi Hassan, *The Administration of Islamic Law in Kelantan*, Dewan Bahasa & Pustaka, Kuala Lumpur, 1996, pp. 69-70.
 3. Section 7, Administration of the Religion of Islam (State of Selangor) Enactment 2003.
 4. For example, Section 44 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003.
 5. Farid Sufian Shuaib, Tajul Aris Ahmad Bustami & Mohd Hisham Mohd Kaal, Administration of Islamic Law in Malaysia – Text and Material, *Malayan Law Journal*, 2001, pp. 266-70.
 6. Suwaid Tapa, *Perundangan dan Penguatkuasaan Fatwa* in Ahmad Hidayat Buang, *Fatwa di Malaysia*, Jabatan Syariah dan Undang-undang, Akademi Pengajian Islam, Universiti Malaya, 2004, pp. 26-7.
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