

Maqasid Al-Shariah in the Gazetting of Fatwas in Selangor: An Analysis

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Abstract

In contemporary times, fatwas have become a primary reference for society to understand various legal rulings. A fatwa is defined as a legal answer given by a knowledgeable person (faqih) to a questioner (mufti), and it is not binding on the person asking. A person requested to provide a ruling must be knowledgeable in Islamic law, commonly known as a mufti. Recently, Malaysia has undergone various revolutions, including in administrative aspects. The institution of fatwas that previously existed is now known as the State Mufti Department, which is responsible for issuing fatwas. The implementation of fatwas in Malaysia differs from the definitions provided by classical scholars, as they are binding on the residents of each state. Determining a legal ruling must involve the elements of maqasid al-shariah to ensure that the issued rulings are relevant to the circumstances and conditions of the questioner. Using qualitative methods, this study aims to analyze some of the fatwas issued in Selangor from the perspective of maqasid al-shariah, given that Selangor is a state that has issued a significant number of fatwas with 179 from 1991 to 2024. The findings of this study indicate that the fatwas in Selangor generally consider maqasid al-shariah in their issuance processes, taking into account the protection of religion, life, intellect, lineage, and property, and also incorporating fiqh methodologies to reinforce the legal determinations. This underscores the importance of using a holistic and contextual approach in formulating Islamic laws that can serve as guidance for the community. Thus, fatwas not only address individual legal needs but also reflect the values and primary objectives of Islamic law in safeguarding the welfare of the community.

Keywords: Fatwa, Mufti, Maqasid Al-Shariah, Selangor.

Introduction

Fatwas in the current era have become the primary reference for society regarding specific rulings. In Malaysia, the institution responsible for issuing fatwas is the State Mufti Department, headed by the respective State Mufti. Fatwas are categorized into two types:

gazetted fatwas and non-gazetted fatwas. However, only gazetted fatwas hold legal authority as prescribed by law. Fatwas must align with the principles of Maqasid al-Shariah and not merely reflect personal opinions. This study aims to explore the extent to which gazetted fatwas in Selangor align with Maqasid al-Shariah.

Malaysia is the only Islamic country significantly influenced by a systematic fatwa issuance system, especially in light of the changing times and evolving circumstances. The country has recently undergone revolutions in various aspects, including legal and administrative developments, to keep pace with progress. Among the institutions that have undergone reforms is the fatwa institution, which is responsible for addressing public issues through rulings. Generally, fatwas issued in Malaysia fall into two categories: gazetted and non-gazetted fatwas.

Gazetted fatwas are binding on the Muslim community of a state and can be enforced against those who fail to comply. Non-gazetted fatwas, on the other hand, represent legal opinions that individuals may choose to follow or not. However, gazetting a fatwa is not a simple task, as it requires approval from the Head of Islamic Religion/Sultan or the State Islamic Religious Council to ensure that the gazetted fatwa has authoritative standing. The primary purpose of gazetting a fatwa is to prevent it from being trivialized by certain groups and to uphold the sanctity of Islam as the religion of the Federation, as recognized by the Federal Constitution (Salleh & Samuri, 2020).

Rulings issued must not be based solely on personal opinions without considering societal contexts, especially when the issue lacks definitive (qat'ie) textual evidence. One of the essential elements in fatwa issuance is Maqasid al-Shariah, which ensures the preservation of religion, life, intellect, lineage, and property while mitigating harm. The importance of Maqasid al-Shariah lies in preventing confusion and disorder among the Muslim community.

The Department of Islamic Development Malaysia (2017) has provided guidelines for issuing fatwas in Malaysia, detailing the sources and methods considered during the process. Among the criteria that must be met when issuing a ruling is adherence to public interests in line with Maqasid al-Shariah. These considerations must address genuine needs rather than assumptions, conform to local customs ('urf) consistent with Islamic principles, and be comprehensive in nature.

The question arises: to what extent do gazetted fatwas in Malaysia meet the elements of Maqasid al-Shariah? Research indicates that Selangor has the highest number of gazetted fatwas in Malaysia, with a total of 179. Therefore, this study intends to examine the gazetted fatwas in Selangor from the perspective of Maqasid al-Shariah within a systematic framework.

Fatwa

The term "fatwa," as defined by Ibn-Hamdani (2005), refers to the communication of Allah's ruling by those who are knowledgeable (faqih) along with its evidences. Some scholars have also defined fatwa as the explanation of a shari'ah ruling to an inquirer (mustafti) along with its evidences.

Al-Qarafi (n.d.) states that a fatwa is the communication of a ruling that the mustafti (the inquirer) is not necessarily obliged to act upon. Muhammad Sulaiman Al-Asyqar further classifies fatwas: if the communication of the ruling is not prompted by any inquiry, it is referred to as irshad (guidance); whereas if the ruling is provided in response to a question about a matter that has not yet occurred, it is referred to as ta'lim (instruction).

In summary, a fatwa is a communication or response from a faqih (jurisprudent) to an inquirer (mustafti) regarding a matter of uncertainty, along with its evidences. Those who are knowledgeable about shari'ah rulings are also referred to as mufti (individuals who issue rulings along with evidences). The essential components of a fatwa include four elements: the mufti, the mustafti, the act of ifta' (issuing a fatwa), and the fatwa itself.

Methodology

This study employs a qualitative research methodology to examine the issuance of fatwas in Selangor from the perspective of maqasid al-shariah. Data collection involves an in-depth review of secondary sources, including gazetted fatwas, official reports, and documents from the Selangor State Mufti Department. This analyze some of the fatwas issued in Selangor from the perspective of maqasid al-shariah, given that Selangor is a state that has issued a significant number of fatwas with 179 from 1991 to 2024. The study only analyze 10 gazzated fatwa only. Additionally, scholarly works on Islamic jurisprudence and maqasid al-shariah were analyzed to provide a theoretical framework for evaluating the fatwas. Content analysis was used to identify the integration of maqasid al-shariah principles, such as the protection of religion, life, intellect, lineage, and property, in the issuance processes. This methodological approach enables the study to evaluate the extent to which fatwas align with the overarching objectives of Islamic law while addressing contemporary issues and societal needs.

Findings and Analysis

Fatwa Implementation System in Malaysia

The implementation of fatwas in Malaysia is not a new development but has existed even before Malaysia gained independence. Historically, fatwas and muftis held significant positions in governance, religion, and judiciary, even though the roles or institutions were not formally named as the Mufti Department. Nevertheless, they served similar functions as religious and royal advisors (Salleh et al., 2020).

Positions such as mufti, kadi, imam, khatib, and Sheikh al-Islam, although varying in name, shared responsibilities akin to modern-day muftis (Hisham, 2009). Historically, muftis were not only advisors to rulers but also directly involved in judicial matters.

The Fatwa Institution or Mufti Department, as it is known today, functions specifically to issue fatwas. However, such a department did not exist in the past. The Mufti's position was previously part of the Department of Islamic Affairs or under the Islamic Religious Council. Today, fatwa-related matters are placed exclusively under the Mufti Department, which operates separately from the Department of Islamic Affairs, except in Kelantan, where the Mufti has never been under the jurisdiction of the Department of Islamic Affairs or the Islamic Religious Council (Buang, 2004).

Fatwas in Malaysia can be divided into three categories:

1. Gazetted Fatwas

Gazetted fatwas are rulings officially issued by the Mufti individually or through the Fatwa Committee and approved by the Head of Islamic Religion (Sultan) in the respective state for publication. These fatwas are binding on the Muslim population of the state, and non-compliance can result in legal action.

Once approved by the Sultan, the fatwa must be published in the Government Gazette. This is stipulated in the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505), Section 34(2):

"No statement made by the Mufti shall be regarded as a fatwa unless and until it is published in the Gazette under subsection (1)."

Section 34(1) further states:

"The Mufti shall, on the direction of the Yang di-Pertuan Agong, and may, at his discretion or upon the request of any person made in writing to the Mufti, issue and publish in the Gazette a fatwa or opinion on any unresolved or disputed question regarding or related to Islamic Law."

2. Non-Gazetted Fatwas

Non-gazetted fatwas are rulings issued by the Mufti or the Fatwa Committee but not gazetted, meaning they are not legally binding on the Muslim population of the respective state. These fatwas serve as guidance in Islamic law and are often treated as personal references for individuals or organizations. They do not carry legal consequences.

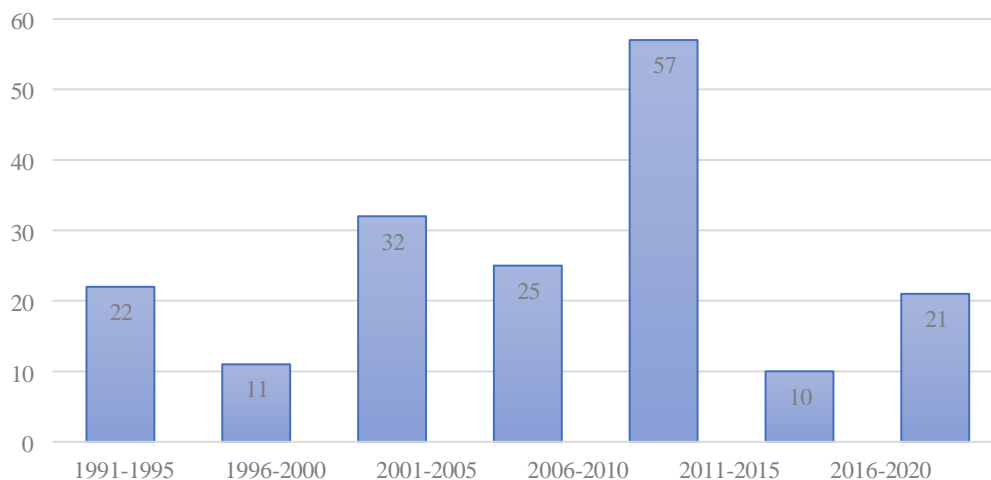
3. Mufti's Opinion

These are rulings or answers provided directly by the Mufti, either orally or in writing, to specific inquiries. These inquiries may arise during public lectures, television Q&A sessions, emails, online queries, or through walk-in consultations at the Mufti's office. Such fatwas are not considered formal fatwas like gazetted or non-gazetted fatwas. Instead, they are seen as the personal opinions of the Mufti and can be adopted or ignored by the inquirer.

Statistics of Gazetted Fatwas In Selangor

According to the study, 179 fatwas were gazetted in Selangor from 1991 to 2024.

Table 1
Gazetted Fatwas in Selangor



The table above shows the number of fatwas gazetted in Selangor over five-year periods, except for 2021 to 2024. The study found that 179 fatwas were gazetted in Selangor. Specifically, from 1991 to 1995, 22 fatwas were gazetted, while from 1996 to 2000, 11 fatwas were gazetted. In the era from 2000 to 2005, 32 fatwas were gazetted, and from 2006 to 2010, 25 fatwas were issued. Between 2011 and 2015, the number of gazetted fatwas reached 57, while from 2016 to 2020, 10 fatwas were gazetted. During the period from 2021 to 2024, 21 fatwas were gazetted.

Following the statistical review of gazetted fatwas in Selangor, the study proceeded to analyze some of these fatwas from the perspective of maqasid al-shariah.

Table 2
Categories of Gazetted Fatwas in Selangor

No.	Fatwa	Category	Year
1	Ruling on the Use of Tartaric Acid in the Halal Food Industry	Food and Beverages	2024
2	Fatwa on Determining the Zakat Fitrah Rate for Selangor	Zakat	2024
3	Liberalism and Religious Pluralism Ideologies	Creed (Aqidah)	2014
4	Using DNA to Determine Lineage	Social/Shariah	2014
5	Ruling on Establishing a Milk Bank in Malaysia	Social/Shariah	2012
6	Ruling on Non-Muslim Shariah Lawyers	Social/Shariah	2011
7	Ruling on Using Aids for Marital Intimacy	Marriage (Munakahat)	2007
8	Ruling on Pyramid Schemes	Social/Shariah	2006

9	Fatwa on the Teachings of Hassan Bin Jonit	Creed (Aqidah)	1998
10	Ruling on Smoking	Social/Shariah	1996

Based on the table above, the gazetted fatwas in Selangor can be categorized into five areas closely related to societal needs: food and beverages, zakat, creed (aqidah), social/shariah, and marriage (munakahat). All these fatwas have taken into account the elements of maqasid al-shariah in their issuance, as explained below:

1. Food and Beverages

A fatwa issued in 2024 addressed the permissibility of using tartaric acid in the halal food industry. The fatwa concluded that it is permissible to use tartaric acid derived from non-alcoholic by-products. This issue arose when a company applied for halal certification for its food products, which included tartaric acid derived from alcoholic processes. In such cases, certification would not be granted unless sought in another state. The elements of maqasid al-shariah considered in this ruling include the preservation of intellect and wealth. The preservation of intellect ensures that society avoids consuming products detrimental to mental well-being, while the preservation of wealth prevents individuals from spending money on dubious products.

2. Zakat

A fatwa regarding the zakat fitrah rate in Selangor was issued in 2024. Zakat fitrah is mandatory for every capable Muslim, male or female, provided they meet the requirements (Lembaga Zakat Selangor, 2024). While the Prophet Muhammad (PBUH) mandated the payment of zakat fitrah in the form of a sa' (measurement) of staple food, contemporary circumstances necessitated adopting the Hanafi school's opinion, which allows payment in cash. The purpose of this fatwa aligns with maqasid al-shariah, particularly the preservation of wealth. This adaptation ensures that the poor's needs are adequately addressed, as providing rice alone may no longer meet modern requirements. To prevent waste, the fatwa permits zakat fitrah payments in cash, determined based on local customs ('urf).

3. Creed (Aqidah)

A fatwa issued in 2014 addressed the ideologies of liberalism and pluralism, declaring them prohibited. Liberalism involves interpreting religious rulings freely, ignoring the guidance brought by the Prophet Muhammad (PBUH), and incorporating Western philosophies into Islamic rulings (Mohd Salleh et al., 2021). Pluralism, on the other hand, equates all religions in terms of purpose and practice (Ahmad Mohamad et al., 2021). These ideologies manipulate established religious principles, posing a significant threat to Islamic beliefs. Consequently, the Selangor Fatwa Committee ruled these ideologies as haram, considering the preservation of religion a core element of maqasid al-shariah.

Another fatwa issued in 1998 prohibited the teachings of Hassan Bin Jonit, as his doctrines contradicted true Islamic beliefs. This ruling reflects the preservation of religion and wealth. The preservation of wealth aspect arises from preventing the public from spending money on books that promote incorrect teachings.

4. Social/Shariah

A fatwa issued in 2014 allowed the use of DNA to determine lineage in cases of disputes or potential baby mix-ups in hospitals. However, it prohibited DNA use for denying paternity in marital disputes, as it contradicts the Quranic method of li'an. The maqasid al-shariah element considered here is the preservation of lineage, ensuring that accusations do not lead to unjust outcomes and protecting the child's rights.

In 2012, a fatwa prohibited the establishment of milk banks in Malaysia. The concept involved storing excess breast milk for mothers unable to breastfeed. However, the ruling cited potential lineage confusion, as breastfeeding establishes kinship that carries marriage prohibitions. The ruling aimed to preserve lineage, preventing conflicts over familial ties.

A 2006 fatwa declared pyramid schemes haram due to elements of fraud and gambling, which lead to losses for one party. The fatwa emphasized the preservation of wealth, protecting individuals from financial exploitation.

A 1998 fatwa prohibited smoking, citing its harmful effects. Only Pahang and Selangor gazetted this ruling, while other states did not. The maqasid al-shariah considerations include the preservation of life and wealth. Smoking harms health, as evidenced by medical experts, and wastes financial resources. The ruling also aligns with the fiqh principle al-darar yuzalu (harm must be eliminated), prioritizing harm elimination over economic benefits from tobacco sales.

In 2011, a fatwa prohibited non-Muslim syariah lawyers. The Selangor Fatwa Committee ruled that non-Muslims are unfit to handle Islamic matters, even if they are knowledgeable. The fatwa emphasized the preservation of faith, ensuring that Islamic legal arguments remain clear and free from confusion caused by non-Muslim lawyers.

5. Marriage (Munakahat)

A 2007 fatwa permitted using aids for marital intimacy, provided they do not harm either spouse. The ruling considered the preservation of lineage, as marriage aims to protect lineage. The fatwa allowed such aids for couples facing challenges preventing natural intimacy, provided no harm arises.

Conclusion

After reviewing the scenarios of gazetted fatwas in Selangor, it is clear that the fatwa decisions made by the Mufti and the Fatwa Committee have considered the aspects of maqasid al-shariah. This can be seen through their efforts in maintaining and preserving five key aspects: in terms of the preservation of religion, the fatwas aim to safeguard the sanctity of Islam; in terms of the preservation of life, the fatwa decisions take into account the safety and well-being of individuals; in terms of the preservation of intellect, the fatwas are issued to ensure that society can think wisely and rationally; in terms of the preservation of lineage, fatwas related to lineage or family are carefully studied to protect future generations; and in terms of the preservation of wealth, fatwas are issued to protect property and ensure the economic well-being of society. Therefore, the fatwa decisions in Selangor reflect a holistic and responsive approach to societal needs, aligning with the principles of maqasid al-shariah.

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