

## The *Sighah Fatwa* and its Significance in Malaysia

Muhammad Afham Suhaimi, Muhammad Amnan Idham, Wan  
Mohd Khairul Firdaus Wan Khairuldin

Fakulti Pengajian Kontemporari Islam, Universiti Sultan Zainal Abidin Kampus Gong Badak,  
21300 Kuala Nerus, Terengganu

Corresponding Author Email: amnanidham@gmail.com

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### Abstract

This article explores the concept, categorization, and significance of *sighah fatwa* in Malaysia, emphasizing its critical role in the development of Islamic law, public welfare and legal processes. Fatwas, derived from the Arabic term for legal opinion or guidance, are issued by *muftis* or Fatwa Committees to address religious and societal issues. In Malaysia, fatwas are categorized into gazetted fatwas, non-gazetted fatwas, and personal opinions of *muftis*. Only gazetted fatwas carry legal enforceability, while others serve as advisory references. The article outlines the types of *sighah fatwa*, including verbal, written, actions, gestures, and acknowledgment, with written fatwas highlighted for their precision, reliability, and lasting utility. The conditions for *sighah fatwa*—precision, conciseness, clarity, and adherence to Islamic jurisprudence—ensure their effectiveness and relevance. Additionally, the guidelines for drafting *sighah fatwa* emphasize consistency, including key components such as the title, introduction, legal background, evidence, and ruling. The significance of *sighah fatwa* is examined in two dimensions: daily life and legislation. In daily life, fatwas provide clarity and practical guidance for contemporary and complex issues, while in legislation, they support the enforceability of Islamic rulings. By categorizing fatwas for legal rulings, advisory purposes, and enforcement actions, *sighah fatwa* strengthens legal processes, ensuring clarity and minimizing legal ambiguities. The article concludes that a structured approach to *sighah fatwa* enhances the consistency, quality, and applicability of fatwas across Malaysia.

**Keywords:** Integrity, Teaching and Learning, Luqman al-Hakim

### Introduction

*Fatwa* is a borrowed term from the Arabic language adopted into Malay, where it is also interpreted as *petua* (advice or guidance). *Petua* refers to advice or instructions given by an individual regarding a particular matter or guidance that can serve as a reference. It can also mean useful advice, directions, or guidelines on how to effectively carry out or achieve something. Furthermore, the Kamus Dewan Bahasa dan Pustaka (Fourth Edition) defines

*fatwa* as a legal opinion or the decision of a *mufti* (Islamic jurist) in resolving religious matters based on the Quran, Hadith, and other sources of Islamic law.

In Arabic, *fatwa* is commonly referred to as *al-fatawa* (الفتاوى), which denotes legal opinions or guidance within the context of Islamic law. Other related Arabic terms include *futya* (فُتْيَا) and *futwa* (فُتْوَى), which signify explanations on various matters provided by a jurist (*faqih*). From a terminological perspective, Imam al-Qarafi describes a fatwa as the conveyance of a *mufti's* opinion to a *mustafti* (the one seeking guidance) regarding Allah's laws, whether obligatory or permissible (Khairuldin, 2020). Consequently, *fatwa* plays a crucial role in ensuring the unity of opinions among Muslims when addressing emerging issues or contrived matters that may cause confusion.

The *mufti* is responsible for drafting the *sighah* of a fatwa or legal opinion. The *sighah* of a fatwa refers to the form and arrangement of the textual content within a particular fatwa. This text can only be issued by the State Fatwa Committee after determining the relevant law or fatwa. Essentially, the *sighah* of a legal opinion or fatwa must comprise five key elements: the title of the law or fatwa, an introduction with details of the decision (meeting number, date, and location of the Fatwa Committee), background of the issue, arguments and evidence, and the final ruling or fatwa.

The process of issuing a fatwa involves several stages, either through the National Fatwa Committee Meeting (MKI) (under the direction of the Conference of Rulers) or the National Fatwa Committee Deliberation (without the direction of the Conference of Rulers). This structured approach is essential because a fatwa is a source of Islamic legal jurisprudence, and the credibility of a *mufti* and the legitimacy of a fatwa are established through procedures prescribed before recognition by the Department of Islamic Development Malaysia (JAKIM) in alignment with Malaysian laws. This article explores the concept, categorization, and significance of *sighah fatwa* in Malaysia, emphasizing its critical role in the development of Islamic law, public welfare and legal processes

#### *Fatwa Categories in Malaysia*

The fatwa institution is one of the most critical institutions in Malaysia, functioning to address issues and serve as a reference point for the Muslim community when doubts arise, particularly concerning Islamic law (*syarak*) (Rahman, Thaidi & Rahman, 2020). In Malaysia, fatwas are divided into three categories: gazetted fatwas, non-gazetted fatwas, and personal opinions of a *mufti*, whether verbal or written, regarding religious questions posed by individuals. Only gazetted and non-gazetted fatwas are considered official fatwas, while personal opinions are deemed unofficial.

A gazetted fatwa is an official ruling issued by a *mufti* or the Fatwa Committee after receiving the consent of the state ruler (*Duli Yang Maha Mulia Sultan*). It is then published in the State Government Gazette and recognized by courts and all relevant authorities within that state (Wahab, 2001). Any decision made without adhering to the prescribed procedures, or issued by an unauthorized body, and not published in the gazette is not recognized as a fatwa. Once gazetted, a fatwa is legally enforceable and becomes part of the law of the state. Muslims residing in the state where the fatwa is issued are bound by it (Nasohah, 2005). Gazetted fatwas can be disseminated to the public, used for official purposes, and even serve

as evidence in court proceedings (Hassan, Yunus, Umar, Muslim & Alias, 2014). The enforcement of fatwas as law and the imposition of penalties on individuals issuing contradictory rulings aim to strengthen the fatwa institution and prevent irresponsible fatwa issuance (Sham, Ibrahim & Endot, 2000).

The second category comprises non-gazetted official fatwas, which are issued by the Council, either through the Syariah Committee or as the opinion of a *mufti* in their individual capacity. Non-gazetted fatwas issued personally by a *mufti* without going through the Syariah Committee also fall under this category. These fatwas are not recognized by any authority, nor do they have legal binding force on individuals, organizations, or courts since they are not published in the State Government Gazette. These fatwas serve only as references or responses to questions requiring explanations or resolutions on Islamic legal matters. However, these fatwas can be gazetted with the approval of the state ruler (*Duli Yang Maha Mulia Sultan*) or authorization from the Council in some states (Kasan, 2001).

Non-gazetted fatwas are still considered official due to the *mufti's* appointment by the state ruler, granting them the authority to make independent decisions. This distinguishes them from personal opinions shared through mediums like radio, television, or books. The *mufti's* level of knowledge is deemed more authoritative than that of an ordinary individual not appointed as a *mufti* (Wahab, 2001). According to Hassan et al. (2014), not all issues or questions referred to the Fatwa Committee or *mufti* need to be gazetted as laws for a state. Official requests made through letters or inquiries are considered government documents and must follow relevant regulations. Some fatwas in this category are classified as confidential and do not need to be publicized.

The third category includes questions posed to a *mufti* but not discussed during meetings of the Syariah Advisory Committee because they are considered minor or insignificant. These questions can be answered directly by Islamic affairs officers, deputy muftis, or the *mufti* without being brought to the committee. The *mufti* has the discretion to decide whether a matter needs to be discussed during a meeting (Wahab, 2001).

This category represents the *mufti's* individual responses, either verbal or written, to queries on religious matters. These responses are provided directly or within a specific timeframe. Fatwas in this category remain the personal opinions of the *mufti* and serve as knowledge and reference for Islamic law (*syarak*) (Hassan et al., 2014). According to Kasan (2001), these fatwas clarify issues already addressed in classical and contemporary Islamic texts but may be unfamiliar to the inquirer. The individual seeking clarification is not obligated to adhere to or accept these fatwas as they are not considered official. Additionally, they cannot be processed for publication in the State Government Gazette.

### **Type of *Sighah* Fatwa**

The term *sighah fatwa* refers to any form of response provided by a *mufti* to address a specific question posed by a *mustafti* (the seeker of the fatwa) in particular circumstances. This response clarifies the ruling on an issue, such as whether an action is permissible (*halal*) or prohibited (*haram*), valid (*sah*) or invalid (*batil*), and so on. Fatwas differ from judicial rulings in terms of their form; while judicial rulings must be delivered verbally, fatwas can take

various forms. These include verbal responses, actions, gestures or signals, written responses, and acknowledgment or affirmation (*iqrar*) (Soleh, 2008).

Verbal fatwas are the most common and explicit form of *sighah* in Islamic law. One key advantage of this format is its ability to provide clear and specific answers, as well as facilitate direct dialogue between the *mufti* and the *mustafti*. This ensures the intended meaning is conveyed accurately. Verbal fatwas are frequently referenced in the Quran and Sunnah. For instance, Allah SWT states in Surah al-Baqarah, verse 69 as an example (Soleh, 2008).

Fatwas delivered through actions are used for practical matters requiring in-person interaction with the *mustafti*. This form of *sighah* is simpler than others as it employs both verbal instructions and physical demonstrations to explain the required actions in accordance with *shariah*. For example, the Prophet Muhammad SAW employed this method by teaching the Companions how to perform prayers through demonstration. Similarly, if a *mufti* finds it challenging to explain certain matters verbally, they may resort to demonstrating the actions to provide clarification (Soleh, 2008).

Fatwas through gestures involve non-verbal communication such as movements of the hands, head, or other signals that convey meaning. This method is particularly useful in situations where verbal or written responses are not feasible (Soleh, 2008).

Written fatwas are considered the most reliable and effective form of *sighah*, especially in contemporary times. Unlike other formats, written fatwas ensure precision and clarity in legal rulings, reducing ambiguity for the *mustafti*. They serve as a lasting reference for those seeking guidance on Islamic law, particularly when confusion arises over specific rulings. Moreover, written fatwas are immune to manipulation by individuals with malicious intent, such as discrediting the *mufti* or misusing the fatwa to infringe on others' rights. The permanence of written fatwas ensures their authenticity and preserves their authority (Soleh, 2008).

In this form, the *mufti* does not explicitly deny or correct what they observe, thereby implicitly permitting the action. However, a *mufti* will not remain silent if the observed action is impermissible under *shariah*. According to *al-Shatibi*, a Maliki jurist, acknowledgment is a form of action, as refraining from objection is itself an act. For example, if a *mufti* refrains from objecting to a specific act, this can indicate the permissibility of the act. Scholars of *usul al-fiqh* affirm that acknowledgment is a recognized proof in Islamic law and is included under the Sunnah of the Prophet Muhammad SAW. This principle is extended to the context of fatwas (Soleh, 2008).

#### *Conditions for Fatwa Structures (SIGHAH FATWA)*

This section elaborates on the conditions for *sighah fatwa*, focusing on verbal and written formats as these are the most commonly employed. A *mufti* must adhere to these conditions when issuing fatwas either orally or in writing. These conditions include: first, the fatwa must be precise and relevant to the question; second, the fatwa must be concise; third, the fatwa must be clear; and fourth, the fatwa should be presented in Arabic and align with *fiqh* (al-Khanin, 2008).

### *The Fatwa Must Be Edited and Relevant to the Question*

The *sighah fatwa* must be precise and relevant to the question posed, addressing the legal and contextual requirements. An accurate *sighah* helps eliminate confusion and resolve issues effectively. Therefore, the *mufti* must choose expressions that specifically meet the *mustafti's* needs, avoiding responses unrelated to the question asked. Providing irrelevant answers further confuses an already perplexed *mustafti* (al-Khanin, 2008).

Additionally, the *mufti* should avoid vague or overly general responses that fail to address the specifics of the query. This practice can lead to misrepresentation and deviation from the truth. For instance, if someone inquires about *faraid*, a *mufti* should explain the rights of heirs and the barriers (e.g., slavery, disbelief, murder) that prevent certain individuals from inheriting. Similarly, when asked whether a divorced woman can reconcile with her husband, the *mufti* should outline the conditions directly relevant to the case, such as the waiting period (*iddah*), rather than distant or rare conditions like apostasy-induced divorce.

The editing process for fatwas should also emphasize the strongest opinion (*rajih*) in cases of scholarly disagreement to prevent confusion. As Ibn Salah asserted, simply mentioning conflicting views without identifying the preferred one does not constitute a proper fatwa. Al-Qurafi similarly noted that such an approach leaves the *mustafti* uncertain about which opinion to follow. If the *mufti* is uncertain about specific aspects, they should explicitly state the need for further study. Furthermore, when the *mustafti* requires definitive guidance to avoid potential deviation, the *mufti* should provide a binding fatwa to address the concern (al-Khanin, 2008).

### *The Fatwa Must Be Concise*

A concise fatwa employs precise language and avoids unnecessary repetition or verbosity. This approach ensures the fatwa meets its purpose without overcomplicating the matter. In Arabic rhetoric, brevity is considered a virtue, as encapsulated in the adage: "*Balaghah is brevity.*" However, if elaboration is required to clarify complex issues, the *mufti* should provide detailed explanations as necessary (al-Khanin, 2008).

### *The Fatwa Must Be Clear*

Clarity is essential for a fatwa to be effective. The language used must be comprehensible to the *mustafti* and clearly convey the intended ruling. This includes balancing brevity with adequate explanation and avoiding ambiguity. The goal of a clear fatwa is to prevent misunderstandings or confusion.

For broader issues that impact public or governmental interests, the *mufti* should provide detailed explanations supported by evidence. Such elaboration ensures that the issue's importance is understood and potential harms are mitigated. Additionally, when questions involve multiple scenarios or conditions, the *mufti* should address each case individually and specify its ruling. This ensures that the fatwa remains relevant and applicable to the *mustafti's* situation (al-Khanin, 2008).

### *The Fatwa Must Be in Arabic and Aligned with Fiqh*

A *mufti* must be proficient in Arabic, including grammar, terminology, and legal expressions, to deliver fatwas effectively. Clear and accurate language ensures that the fatwa is accessible

and comprehensible. Ibn Salah emphasized the importance of using respectful and precise expressions to educate the public without offending individuals.

If the *mustafti* does not speak Arabic, the *mufti* may rely on a translator to ensure accurate communication. Regardless, the fatwa must be written in a clear and concise manner to facilitate understanding. Additionally, the fatwa must adhere to the principles of *fiqh* and avoid harsh or inappropriate language (al-Khanin, 2008).

### **Guidelines for Drafting *Sighah Fatwa* in Malaysia**

To this day, fatwas continue to play a crucial role in the development of Islamic law. In several Islamic countries, *muftis* hold significant positions and are part of official bodies that address various issues faced by the Muslim community (H. Nawawi, n.d.), as seen in Malaysia. Fatwas are issued by *muftis* and fatwa committees authorized to determine Islamic rulings. These committees deliberate and consider various aspects during the fatwa issuance process, including references to the Quran, Sunnah, *fiqhiyyah* principles, and societal customs (*'uruf*) or local social conditions (Yahya, Sulaiman & Ahmad, 2018). Once a majority consensus is reached among scholars and Islamic legal experts, the fatwa is finalized.

The National Fatwa Committee (JFK) serves as the authoritative body for issuing fatwas (Daud & Abdullah, 2019). Following the decision on a ruling or fatwa, the *sighah* (structure) of the fatwa must be prepared. However, the process for drafting the *sighah* at the state level depends on the method adopted by each State Fatwa Committee. There is no standardized guideline for drafting *sighah*, and the process is typically based on a draft prepared by the secretary or fatwa officer (Halim, Ismail & Rahman, 2018).

Nonetheless, as a general principle, the drafted *sighah* should include the following elements (JAKIM, n.d.):

- I. The title of the fatwa or ruling.
- II. An introduction or preamble to the decision, including the meeting number, date, and venue of the Fatwa Committee or Muzakarah.
- III. Background information on the fatwa issue.
- IV. The ruling or fatwa itself.
- V.

After these elements are included, the decision is presented to the council, and the fatwa is subsequently gazetted.

In the drafting process, the initial *sighah* must be outlined and reviewed by legal advisors before being released to the public. Upon obtaining their agreement, the *sighah* is forwarded to the fatwa management body for gazetting.

A ruling or fatwa is finalized for gazetting to ensure that it has legal enforceability. Generally, the *sighah* prepared for gazetting should contain the following components (JAKIM, n.d.):

- I. The title of the fatwa.
- II. An introduction, including relevant enactments and sections.
- III. Details of the Muzakarah meeting, including the date and venue.
- IV. The finalized fatwa or ruling.
- V. Details of related offenses, deviations, or rulings.
- VI. Prohibitions and legal elements.

These elements are not necessarily mandated for all State Fatwa Committees. However, to ensure uniformity and consistency in *sighah fatwa*, the National Fatwa Committee has issued these guidelines as a basic reference for state committees.

Overall, there are no specific guidelines strictly established for drafting *sighah fatwa* in Malaysia. Nevertheless, this flexibility provides both advantages and disadvantages that require further examination to ensure the quality of the fatwas issued. The introduction of these guidelines contributes significantly to the effectiveness and consistency of fatwas issued across various states in Malaysia.

#### *Significance of Sighah Fatwa Drafting in Malaysia*

The drafting structure (*sighah*) of fatwas plays a vital role in preserving public welfare and advancing Islamic law and *shariah*. Fatwas have a significant impact on harmonizing communities by addressing legal matters from multiple perspectives.

#### *The Importance of Fatwa Drafting in Everyday Life*

Fatwas are essential for safeguarding public welfare by addressing contemporary issues raised by society. These often involve modern complexities that require *ijtihad* (independent reasoning) from authorized scholars. Both classical and contemporary scholars emphasize the necessity of considering current realities and conditions in the fatwa issuance process, ensuring the rulings align with local needs and contexts.

In today's context, understanding societal circumstances is a priority before issuing a ruling. Historically, Islamic legal rulings under different schools of *fiqh* have demonstrated that values, contemporary realities, and environmental contexts significantly influence fatwas, legal opinions, and *ijtihad* outcomes (Ghazali, 2015).

Fatwas, whether gazetted or not, are structured with specific *sighah*. For instance, the concise and accessible fatwas issued by the State of Kelantan are tailored to provide practical guidance for daily life. Similarly, the fatwa on forex trading through electronic platforms issued by the National Fatwa Council for Islamic Affairs Malaysia provides clear rulings and detailed explanations, making it easy for the public to comprehend and apply.

Written fatwas offer lasting references that individuals can revisit whenever needed. They are also valuable for academic discourse and research. Hence, the *sighah* of fatwas significantly impacts everyday life by providing clarity, accessibility, and guidance (al-Khanin, 2008).

#### **The Significance of Fatwa Drafting in Legislation**

When discussing the function of fatwas, it is crucial to note that only gazetted fatwas hold legal enforceability. The purpose or role of a fatwa depends on the issues it aims to address. The *sighah* used in formulating a fatwa is determined by its objectives, which can be categorized as follows:

- I. Fatwas for Legal Rulings: For example, fatwas on the permissibility of celebrating non-Muslim festivals.
- II. Fatwas for Guidance or Advice: For instance, fatwas on the permissibility of accompanying Quran recitation with music.

III. Fatwas for Enforcement Actions: For example, fatwas banning deviant teachings.

The *sighah* of a fatwa must correspond to its purpose. For example, when banning deviant teachings, the language used should be assertive and include detailed explanations of why and how such teachings are prohibited. This specificity ensures the fatwa fulfills its enforcement purpose effectively.

Fatwas categorized under enforcement actions significantly influence *shariah* law, not only by clarifying rulings but also by providing detailed guidance that prevents offenders from exploiting loopholes. The role of the *Syarie* judge is also critical in analyzing and interpreting the relevant conditions for case convictions where fatwas are used as evidence. A lack of supporting *sighah* in fatwas can lead to dilemmas in legal convictions and weaken the judicial process.

### Conclusion

Fatwas play a vital role in Islamic jurisprudence, especially in Malaysia, by addressing contemporary issues and maintaining the relevance of Islamic law. Through a structured process, including the precise *sighah*, fatwas ensure clarity and alignment with maqasid *shariah*. Categorized into gazetted, non-gazetted, and personal opinions, fatwas guide daily life, promote public welfare, and enhance legal systems. To advance this field, future research should explore standardized fatwa drafting methodologies using modern technology, such as AI, and conduct comparative studies on global fatwa practices to foster consistency and innovation in Islamic jurisprudence.

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