

The Binding of Laws to Personal Opinion of Muftis in Malaysia

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ABSTRACT

Fatwa production in Malaysia will be published after the decision by Fatwa Committee. Fatwa will bind the Muslim community in Malaysia. Muslim community is obliged to obey the gazette fatwa. Besides that, the gazette fatwa will become the sharia Islamic laws in Malaysia after the gazette. This can be seen in the State Act, Enactment and Ordinance of Islamic laws. However, the question is that does the personal opinion by the mufti without discussing in advance with the Fatwa Committee bind Muslim community in Malaysia? Therefore, there are two objectives of to resolve the question. The first objective is to explain the position of fatwa in Malaysia. The second one is to analyse the binding of law to personal opinion of muftis in Malaysia. To achieve these two objectives, thus the documentation method was performed. Documentation method was done to get data related to fatwa through books. The collected data were then analysed through content analysis method to explain the binding of law to personal opinion of muftis in Malaysia. The findings of this study indicated that the personal opinion of mufti is not regarded as a fatwa and a law in Malaysia.

Keywords: Fatwa, Law, Biding, Mufti

INTRODUCTION

Fatwa is an instrument of answer for every problem (Salleh, Samuri & Kashim, 2016). Fatwa is all answer by the mufti regarding Islam. The answer is the result of mustafti's enquiry. Fatwa production will happen in the existence of a mufti and a mustafti (Khairuldin, 2016). Mustafti

is the person who asks question related to Islamic laws. Meanwhile, mufti is the person answers the question.

In Malaysia, there is an institution to manage the fatwa. The institution consists of mufti and Fatwa Committee at the state level and Fatwa Committee at the national level (Kasan, 2001). At the state level, 14 muftis are appointed for 14 states. In each state, mufti will be assisted by Fatwa Committee. However, the name for the Fatwa Committee is different between the states. Meanwhile, National Fatwa Committee for Islamic Affairs (MKI) was founded to (MKI) standardize the fatwa decision in Malaysia (Yasin, 2007).

METHODOLOGY

Documentation method was applied in this article to obtain the clear information regarding the binding of law to the personal opinion of muftis in Malaysia.

Classical and contemporary documents were also referred to collect data in gaining as much information related to fatwa. Through the data collection, data were then analysed through content analysis method. Content analysis was performed to examine and illustrate the interpretations in the documents. The result from content analysis is to obtain a systematic conclusion (Krippendorff, 2004; Yusof, 2004). The findings of the analysis for the article will explain whether the law binds or not to the personal opinion of muftis in Malaysia.

ANALYSIS

Fatwa is defined from two aspects. First is from the language aspect which the explanation provided by a person when there is a question (IbnManzur, n.d.). Meanwhile, according to al-Fairuzabadi (1987), fatwa is something explained and made clear by a knowledgeable person.

Then, from the technical aspect, according to al-Harrani (1984), the answer provided by the mufti to the question related to religious laws is referred a fatwa. Meanwhile, according to al-Zuhayli (2001), fatwa refers to an answer posed by the mufti in relation to the question enquired to him and the answer utilises the methods of fatwa practice lined by Islam. Thus, it is clear that fatwa refers to the answer to the problem posed by a *mustafti* to the mufti and the mufti's answer should applies the methods established for fatwa practice.

POSITION OF FATWA IN MALAYSIA

Fatwa in Malaysia has its own position as Malaysia has a specific fatwa institution to manage matters related to fatwa. Fatwa actually plays a significant role in the matters regarding Islamic law in Malaysia.

According to Kasan (2001), there are three classifications of fatwa in Malaysia. First, fatwa produced by mufti together with Fatwa Committee and gazetted. Then, the second one is the fatwa produced by the mufti or through Fatwa Committee but not gazetted. The third one is the personal opinion of mufti or his personal assistant.

There are several allocations in the Act, Enactment and Ordinance of Islamic Laws saying that the explanation or answer of mufti to a certain problem regarding sharia laws is not named as fatwa if the explanation or answer is delivered without following the lined procedure. As an example, this can be seen in Section 8(9) Sabah Enactment of Fatwa year 2004 allocated that:

“Any statement made by State Council of Fatwa cannot be considered as a fatwa unless the statement is published in Warta (Gazette) according to subsection (6)”.

Procedure of fatwa production differs according to the state. For example, in state of Johor, any people can request for law explanation through a letter to Secretary of Council to produce a fatwa for the problem regarding sharia laws. After Secretary of Council receives the letter, he will present the letter to the mufti who acts as Chairman of Fatwa Committee.

Meanwhile, procedure of fatwa production in state of Selangor is under mufti's initiatives or request of explanation from individuals addressed to the mufti. And it should obtain commandment from Sultan of Selangor to make and announce the law or opinion in the Gazette of Fatwa regarding the request of explanation on sharia laws. Besides that, any answer and explanation from the mufti will not be referred as a fatwa until the answer or explanation is gazetted (Selangor Enactment of Islamic Laws Administration, 1989).

Clearly, based on the two procedures of fatwa production in Sabah and Selangor, it is specifically stressed that fatwa is an explanation related to sharia laws by mufti and Fatwa Committee that should follow procedures and be gazetted. In the contrary to Kasan(2001), he stated that there are three categories of fatwa in Malaysia. Despite, according to Enactment of Islamic Laws Administration in Johor and Selangor as the example, it stated that fatwa is the mufti's explanation to the question by mustafti together with Fatwa Committee which is gazetted. This means that besides gazetted fatwa, explanation by the mufti is not regarded as a fatwa.

The difference exists according to the differing choice of context. Fatwa referred in the state enactment as the gazetted fatwa is based on the state laws of Islamic laws administration. Meanwhile, fatwa categories mentioned by Kasan (2001) is a mere literal definition of fatwa.

Fatwa gazetted by State Gazette will cause the law effect to Muslim community in Malaysia (Nasohah, 2005). This means that Muslim community in Malaysia is bound to the gazetted fatwa. If there is any individual who does not obey the gazetted fatwa, it is considered as a crime (Salleh, Samuri & Kashim (2016). It can be viewed in Section 49 (1) Enactment of Islamic Laws Administration (State of Selangor) 2003 which allocated that:

When published in gazette, any fatwa must bind every Muslim in State of Selangor as teaching of his religion and obligation of religion to obey and hold to the fatwa, unless he is allowed by sharia laws to not following the fatwa in matters of personal practice.

Moreover, sharia court should recognise the gazetted fatwa. This means that, sharia court is bound to the gazetted fatwa (Nasohah, 2005). According to Salleh, Samuri and Kashim (2016), the gazetted fatwa will be the main reference for the judiciary in Malaysia.

However, there are several situations in which the court calls for mufti to explain on sharia laws in a certain case. There are also situations in which the mufti poses his own opinion regarding the sharia laws. Thus, the question is that does the law binds with the explanation and answer made by the muftis in Malaysia?

THE BINDING OF LAWS TO PERSONAL OPINION OF MUFTIS IN MALAYSIA

According to Nasohah (2005), mufti is not allowed to provide opinion or statement regarding sharia laws neither in sharia court nor civil court. But if any court besides sharia court needs opinion on sharia laws, then the mufti can be requested to pose his view on the arising problem.

This can be witnessed in several allocations of enactment as section 40 Enactment of Pahang Islamic Laws Administration (1991) allocated that:

“Regardless of whichever contradicting written laws, Mufti cannot be fined of giving opinion or statement about sharia laws in any civil court or sharia court but if in any other court besides sharia court in which a certain question of sharia laws should be decided, the court is allowed to seek opinion from the mufti on the problem, and mufti can address his opinion to the court.

Furthermore, in section 35 Enactment of Selangor Islamic Laws Administration (2003) also provided that:

“If in any court besides Sharia Court, any question of sharia laws should be decided, the court is allowed to seek opinion from Fatwa Committee on the problem, and mufti can approve the opinion of Fatwa Committee to the requesting court.”

Section 53 Enactment of Islam Religion Administration (State of Penang) 2004 allocated that:

“In any court besides Sharia Court, any question of sharia laws to be decided, the court can request the opinion of Fatwa committee on the matter, and mufti can approve the opinion of Fatwa Committee to the requesting court.”

Besides that, section 38 Act of Islamic Laws Administration (Federal Territories) 1993 provided that:

“Even though any written laws that mufti cannot be summoned to give his opinion or statement regarding sharia laws in any civil court or sharia court, but if in any court besides Sharia Court, any problem of sharia laws should be decided, the court is allowed to seek view from mufti on the matter, and mufti can approve his opinion to the requesting court.”

Therefore, it is clear that the judge can be called by any court excluding sharia court. So, there is no issue of whether the court is bound or not to the explanation and personal opinion of the mufti if he is called to the sharia court to explain the laws as he is unable to be summoned to present in Sharia Court for the law explanation.

Nevertheless, a question arises in which whether there is any law allocating for the court except sharia court to be bound to the mufti’s opinion when is he called to explain on the sharia laws.

This can be witnessed in the case of Isa Abdul Rahman & Ors vs. Islamic Council of Penang ([1995] 10JH222), Civil Court requested mufti of Penang to address his opinion on the decision of Islamic council of Penang to demolish a mosque on a charitable land to construct a building. Plaintiff claimed that the decision by the Council to demolish the mosque and build another building on the land was contradicting with the purpose of the charitable land.

Although mufti of Penang was asked to deliver his opinion on the matter, actually there had been already two different fatwas produced by the Fatwa committee.

The first fatwa was produced in year 1973 stating that:

“Sharia Committee opined that the request made by the authority of Simpang Enam Mosque to build a two-storeyed building in which the ground level is for business and the upper level is the praying area (mosque) is contradicting with sharia laws and therefore, the suggestion cannot be implemented as the construction at ground level is also considered as the mosque.”

Meanwhile, the second fatwa which was produced in 1989 stated that:

Sharia Committee after considering the request of Islamic Council, had produced the following fatwa:

a) It is neutral (allowed) from the aspect of sharia laws to build a new building consisting of Islamic Bank office at the first, second and third storey, and the mosque at the fourth and fifth storey on the land of current Simpang Enam Mosque.

b) This does not contradict with sharia laws as the purpose if charitable land does not arrive at a halt and the charity of the donator (the person doing the charity) will continue and the mosque will be replaced with the wider one than the existing Simpang Enam Mosque and more comfortable for the users.

In this case, mufti of Penang posed his opinion on the two contradicting fatwas. Mufti said that the two fatwas are ijtiḥad and both can be applied. However, he believed that the decision by Islamic Council of Penang to demolish the mosque and construct a building on the land was permissible.

But, in this case, the judge decided that the decision of Islamic Council of Penang contradicted with the trust written in the agreement letter.

Conclusively, although the court besides Sharia Court calls for mufti to explain the matter related to sharia laws, there is no specific law included in the judiciary saying that the court is bound to the opinion of mufti.

CONCLUSION

In conclusion, the views of mufti in Malaysia are not bound by law unless requested by some parties including the king and the court. Therefore, their views do not represent the fatwa institution they are presiding over based on the states' enactments.

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