

THE CONCEPT OF FATWA (ISLAMIC VERDICT) IN MALAYSIA AND THE CONSTITUTIONAL DILEMMA: A LEGISLATION OR LEGAL OPINION?

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ABSTRACT

In Malaysia, fatwa has been considered as a religious verdict that assists in regulating Muslim's conduct of activities in the country. The Federal constitution of Malaysia has vested the responsibility for enacting laws in the hands of the Parliament at the Federal level and in the state Assemblies at the state level. On the other lane, the Administration of Islamic Law enactments of various states and Federal Territories in Malaysia have provided for the establishment of fatwa institutions in order to issue a binding fatwa and to regulate Islamic verdicts in various states in the country. This process of issuing legal verdicts has been drawing the attention of some people as to its constitutionality. Thus, it has been perceived as usurpation of the legislative powers of the Parliament and state Assemblies as enshrined in the Malaysian Federal Constitution. In reaction to the above, the paper attempts to examine the role and legal status of fatwa within the context of the Malaysian laws with a view to clarifying its legal position.

Keywords: Role of fatwa, Legal status of fatwa, Malaysia, Legislation, legal opinion

INTRODUCTION

The significance of fatwa and the role played by its institutions in Malaysia are enormous. It enhances the administration of justice and Islamic law in the country, thereby paving a way for the smooth implementation of Shari'ah within the diversity. Fatwa has been used as an instrument for clarification and harmonization of issues in Malaysian judicial, political and financial sectors. Once it is published in the Gazette, it becomes a binding and enforceable phenomenon in Malaysia. Hence, everybody including the Shari'ah courts should be bound by it. For that reason, it has been perceived as another form of legislation made contrary to the Constitution. It is therefore against this misconception, the paper discusses the concept of fatwa in Malaysia with a view to examining its constitutionality or otherwise. In doing so, the paper highlights on the legislation and the legislative making-process within the context of the Malaysian Federal Constitution. The concept of fatwa and its legal status in Malaysia will be juxtaposed with a view to striking a balance between the concept of legislation enshrined in the Constitution and the concept of fatwa in the country. Finally, the paper ends with conclusion.

LEGISLATION IN THE MALAYSIAN CONSTITUTION

In Malaysia, the powers to enact law for the peace, order and good government are vested in the Parliament and state Assemblies.¹ According to the Malaysian Federal Constitution,² the legislative powers of the Federation shall be vested in the Parliament which shall consist of the monarch (*Yang di-Pertuan Agong*) and the two legislative houses (two *Majlis*). To this end, the Federal Constitution provides:

“The legislative authority of the Federation shall be vested in a Parliament, which shall consist of the *Yang di-Pertuan Agong* and two *Majlis* (Houses of Parliament) to be known as the *Dewan Negara* (Senate) and the *Dewan Rakyat* (House of Representatives).”³

¹ Article 73 of the Federal Constitution of Malaysia 1988 (as amended), hereinafter referred to as “The Federal Constitution”. The Article provides: “In exercising the legislative powers conferred on it by this Constitution—(a) Parliament may make laws for the whole or any part of the Federation and laws having effect outside as well as within the Federation; (b) the Legislature of a State may make laws for the whole or any part of that State.”

² The Federal Constitution

³ Article 44 of the Federal Constitution

Except in the case of the prime monarch (*Yang di-Pertuan Agong*),⁴ most of the members in the Parliament are to be elected by the people (direct electorates) from their various constituencies.⁵ Such ultimate powers given to the Parliament to make laws is realized as a result of the people's mandate to be represented in their governance.⁶ In exercise of the legislative power by the Parliament, the Federal Constitution has laid down the basic procedure upon which each House of the Parliament can follow.⁷ However, that does not negate the right given to each House of the Parliament to make secondary regulations on how to go about making legislation (legislative procedure). Thus, the Constitution provides: "Subject to the provisions of this Constitution and of federal law, each House of the Parliament shall regulate its own procedure".⁸ Similarly, in exercise of the legislative powers conferred on the legislature (both at the federal and states levels) by the Constitution, they shall, subject to other provisions in the constitution, make laws only on matters specified in the required Legislative Lists in the Constitution. To this end, the Constitution provides:

"(1) Without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule);

(2) Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List."⁹

Going by the above provisions, one may conclude that the only institution responsible for enacting laws in Malaysia is the Parliament and state Assemblies. However, it does not also mean that laws and rules in the country could not be made through other means. In fact, the arguments and clarification on this will be canvassed later while examining the legal status of fatwa in Malaysia.

THE CONCEPT OF FATWA IN MALAYSIA:

The history of fatwa in Malaysia could not be divorced from discussion on the history of Islamic law in the country. Islamic matters in Malaysia are matters upon which state governments are vested with powers to control, through their respective religious leaders (*sultans*) and Islamic institutions. However, at the same time the Federal government at the center also established some religious coordinating bodies to oversee and control all the Islamic activities that are going on in the country. Thus, Malaysia Department of Islamic Development "*Jabatan Kemajuan Islam Malaysia*" (JAKIM) is the main Federal Government agency in Malaysia that is saddled with the responsibility of managing Islamic affairs in the country.¹⁰ Among its objectives *inter alia* include: the establishment of an institution that can be responsible for management and coordination of fatwa in the country; and also the coordination of *fatawa* that can be issued in different states for the purpose of developing the process of collective *ijtihad* (*Ijtihad jami'i*) in the country.¹¹ Broadly, JAKIM serves different roles in Malaysia, among its functions include: to legislate and standardize the Islamic law in Malaysia; to coordinate the Islamic administration in the country; and to adjust and develop the Islamic education in the country.¹² However, the Department can also perform some specific functions such as serving as the secretariat to the National Council of Islamic Affairs i.e *Majlis Kebangsaan Hal Ehwal Islam* (MKI) in the country for the purpose of streamlining and implementing the directives and resolutions of the Council of Rulers (*Majlis Raja-Raja*); serving as an advisory institution to the Federal Government on Islamic matters in general and as well as fatwa matters in particular; streamlining the standardization of Islamic law throughout the country; serving as an Islamic reference center in the country whereby all Islamic affairs are been referred to; enhancing coordination between the various State's fatwa institutions and that of the federal government, thereby developing an effective procedure for harmonizing and standardizing them. Finally, it ensures all the approved *fatawa* are effectively transmitted and well-disseminated to the larger public.¹³

Undoubtedly, fatwa is an Islamic concept which has been used as an instrument for making clarifications, modifications and harmonization of issues concerning the religion and contemporary matters arising there from. Basically, it is a developmental concept that requires much attention of the constituted authority for its effective management.¹⁴ Constitutionally, in Malaysia,

⁴ who shall be selected from one of the hereditary Rulers of the nine Malay states after every five years

⁵ See Article 45 and 46 of the Federal Constitution for the composition of the Members of the Senate and House of Representatives respectively

⁶ Chaleston C. K. Wang, *The separation and Balance of Power in Malaysia*, available at <http://www.wanglaw.net/files/Malaysia14.pdf>, accessed on 25/02/2014

⁷ See Article 66 of the Federal Constitution, where the provision stipulates that the Bill can be initiated from either of the two houses, to be passed by the initiating house and sent to the other house. Thereafter when the agreement has been reached between the two Houses, the Bill shall be sent to *Yang di-Pertuan Agong* for his assent and affixation of the Public seal, in which he is required to do within the period of thirty days.

⁸ Article 62 (1) of the Federal Constitution

⁹ Article 74 of the Federal Constitution

¹⁰ JAKIM, "Vision, Mission, Objectives, Functions and Clients Charter", available at <http://www.islam.gov.my/en/vision-mission-objectives-functions-and-clients-charter-5>, accessed on 19/10/2013

¹¹ *Ibid*

¹² Department of Islamic Development Malaysia (JAKIM), "JAKIM Functions", available at <http://www.islam.gov.my/en/jakim-functions>, accessed on 18/10/2013

¹³ JAKIM, "Vision, Mission, Objectives, Functions and Clients Charter", available at <http://www.islam.gov.my/en/vision-mission-objectives-functions-and-clients-charter-5>, accessed on 19/10/2013

¹⁴ *Ibid*

any Islamic matter or affair has been placed under the State Legislative List.¹⁵ That is to say, it is the matter that exclusively falls within the powers of the States Governments through their respective *Sultans*¹⁶ in the country to administer upon.¹⁷ By extension, fatwa can be overseen by the state government in Malaysia and it is strictly a state affair. Even though, in the past, the Federal Government by the advice and approval of the Council of Rulers (*Majlis Raja-Raja*) has established a mother fatwa committee at the National level called “The National Fatwa Committee”, to coordinate and standardize fatwa in Malaysia so as to avoid much differences and contradictions in the exercise.¹⁸ In fact, that should not be considered as a usurpation of the states’ powers based on the reasons that will be canvassed later in the paper.

The manner in which the Islamic activities (such as the issuance of fatwa), are been carried out in various states of Malaysia differs from one state to another. However, one common thing among them all is that, they have almost uniform enactments containing the provisions that regulate the manners and conducts of Islamic affairs in their respective domain. Such enactment is called: “The Administration of Islamic Law enactments”.¹⁹ The enactments provides for the creation of an Islamic Religious Council (*Majlis Agama Islam*)²⁰ which is the mother organization that is responsible for advising the Sultan in all matters relating to Islam.²¹ Except matters related to *Hukum Syarak* (Islamic law and administration of justice), of which the enactment has specifically made it as a responsibility for the mufti to advise the *Sultan*.²² Furthermore, the Council is also responsible for the promotion of other non religious matters which are inclined to the development of the economic and socio-political well-being of the Muslim *ummah* (community) in a state.²³

All members of the Council are appointed by the *Sultan* on the advice of the *Menteri Besar* i.e the Chief Minister (this is in the case of the Selangor state), except the ex-officio members such as the mufti and deputy mufti who can be appointed solely by the *Sultan* without seeking an advice from anybody.²⁴ However, the appointment of the mufti and deputy mufti in some other states such as Johor is based on the advice of the incumbent chairman of the Council. But in the Federal Territories, the *Yang di-Pertuan Agong* shall after consulting the Council (*Majlis*), seek the advice of the Minister.²⁵ The powers of issuing fatwa in Malaysia rest in the hands of the various states fatwa committees which usually comprises of: the mufti; the deputy mufti; the state legal adviser, representative of the *Majlis Agama Islam* (to be appointed by the *Majlis*); other specified members of the *Majlis* (as prescribed by the law); and a secretary who is usually appointed by the *Majlis* from the state’ mufti department. The Committee is responsible for the issuance of fatwa in line with the tenets of the “Shafi’i School of Islamic thought”, except in a situation where resorting to the Shafi’i School would defeat the objectives of fatwa in Islam. In such circumstances, resort could be made to other sunni schools of the Islamic thoughts like the Maliki School, Hanbali School and Hanafi School. When fatwa is prepared and issued by the above committee after a meeting, the mufti will, on behalf of the fatwa committee, submit the fatwa to the *Majlis Agama Islam* for its consideration and subsequent proceed over to the *Sultan* for his assent. If it is assented to by the *Sultan*, then it can be published in the Gazette and thereafter be announced to the public.²⁶

However, the issue of the *Sultan*’s assent as condition precedent for the publication in the Gazette seems to be lacking in the case of the Federal Territories where it appears that the fatwa can be published in the Gazette even if it has not been assented to by the *Yang di-Pertuan Agong*.²⁷ When a fatwa is published in the Gazette, it becomes binding and enforceable verdict on all persons

¹⁵ Article 74 (2) of the Federal Constitution 1988 as amended

¹⁶ Sultan is the Head of the Islamic religion of the states that have a Sultan. Therefore any religious Enactment/Bill must finally pass through him before it becomes a state law. Similarly, for the States that do not have a Sultan and the Federal Territories, *Yang di-Pertuan Agong* (a selected chair among the country’s *Salatin*) shall be the head of the Islamic religion for such States and the Federal Territories, in addition to his own State of origin.

¹⁷ Article 80 (1) of the Federal Constitution 1988 as amended

¹⁸ Rajen Devaraj, “Religion: Understanding Fatwa in the Malaysian Context”, *Aliran Monthly* Vol 25 (2005): Issue 2. Also available at <http://aliran.com/archives/monthly/2005a/2h.html>, accessed on 31/10/2013

¹⁹ For example, see the Administration of the Religion of Islam (State of Selangor) Enactment 2003

²⁰ See Section 4 (1) of the Administration of Islamic Law (Federal Territories) Act 505, 1993, the section provides: “(1) There shall be a body to be known as the “Majlis Agama Islam Wilayah Persekutuan” to advise the Yang di-Pertuan Agong.” in matters relating to the religion of Islam.

²¹ See section 31 Administration of the Religion of Islam Enactment (Federal Territories) Act 505, 1993, the section provides for the: “The Majlis shall aid and advise the *Yang di-Pertuan Agong* in respect of all matters relating to the religion of Islam within the Federal Territories, except matters of Islamic Law and those relating to the administration of justice, and in all such matters shall be the chief authority in the Federal Territories after the *Yang di-Pertuan Agong*, except where otherwise provided in this Act.” This power is vested in the Council in line with the provision of Section 4 (1) of the Administration of the Religion of Islam Enactment (Federal Territories) Act 505, 1993 cited above.

²² See section 33 of the Administration of the Religion of Islam Enactment (Federal Territories) Act 505, 1993, the section provides: “The Mufti shall aid and advise the *Yang di-Pertuan Agong* in respect of all matters of Islamic Law, and in all such matters shall be the chief authority in the Federal Territories after the *Yang di-Pertuan Agong*, except where otherwise provided in this Act”.

²³ See section 7 (1) of the Administration of the Islamic Law (Federal Territories) Act 505, 1993, the section provides: “ It shall be the duty of the Majlis to promote, stimulate, facilitate and undertake the economic and social development and well-being of the Muslim community in the Federal Territories consistent with Islamic Law.”

²⁴ See Section 10 of the Administration of the Islamic Law (Federal Territories) Act 505, 1993, it provides for the membership of the Council to the effect that: “(1) The Majlis shall consist of the following members: (a) a Chairman; (b) a Deputy Chairman; (c) the Chief Secretary to the Government or his representative; (d) the Attorney General or his representative; (e) the Inspector-General of Police or his representative; (f) the *Mufti*; (g) the Commissioner of the City of Kuala Lumpur; and (h) fifteen other members, at least five of whom shall be persons learned in Islamic studies.”

²⁵ Rajen Devaraj, “Religion: Understanding Fatwa in the Malaysian Context”, *Aliran Monthly* Vol 25 (2005): Issue 2. Also available at <http://aliran.com/archives/monthly/2005a/2h.html>, accessed on 31/10/2013

²⁶ See generally on fatwa Part III (Sections 32-39) of the Administration of the Religion of Islam Enactment (Federal Territories) Act 505, 1993

²⁷ Rajen Devaraj, “Religion: Understanding Fatwa in the Malaysian Context”, *Aliran Monthly* Vol 25 (2005): Issue 2. Also available at <http://aliran.com/archives/monthly/2005a/2h.html>, accessed on 31/10/2013

and authorities in the state. It shall have the force of law except in matters of personal observance where a person has been permitted by *Hukum syarak* (Islamic law and administration of justice) to depart from it.²⁸

In exceptional circumstances, if the proposed fatwa is likely to affect the national interest, in some state like Selangor, it has been provided that the matter can be set aside and differed/adjourned for submission to *Majlis Agama Islam* (with the approval of the Sultan), in order to decide whether or not to take up the matter to the Council of Rulers (*Majlis Raja-Raja*) through the National Fatwa Committee for further deliberation and consideration.²⁹ If subject to agreement of the Council of Rulers, the National Fatwa Committee recommends for the suitability of the proposed fatwa, then it will be returned to the states' *Majlis Agama Islam* for its final decision on whether or not to ask the *Sultan* again for his assent to publish in the Gazette.³⁰

In fact, the Administration of Islamic Law enactments in various Malaysian states generally, provided for the appointment of mufti,³¹ and it equally gives the Islamic institutions such as the fatwa committee/office of the mufti powers by implication to make legislation (delegated legislation) for the betterment of the Malay-Muslims majority. This legislative process according to some opinions bypasses the Parliament and the states Assemblies their functions of making laws in the country.³² To the effect that any verdict issued by a fatwa committee (if it is published in the Gazette) shall be binding on all persons and the Government,³³ hence it is in fact a crime under the Shari'ah Criminal Offences Act to violate, disobey and derecognized any Gazetted fatwa.³⁴ Thus, the Act provides that:

“Any person who acts in contempt of religious authority or defies, disobeys or disputes the orders or directions of the Yang di-Pertuan Agong as the Head of the religion of Islam, the Majlis or the Mufti, expressed or given by way of *fatwa*, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.”³⁵

Similarly, the Act also criminalizes the communication of an opinion or view contrary to the Gazetted *fatwa*. Thus:

“Any person who gives, propagates or disseminates any opinion concerning Islamic teachings, Islamic Law or any issue, contrary to any *fatwa* for the time being in force in the Federal Territories shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.”³⁶

Not only that, in fact a provision in the Act goes further to criminalize the distribution or possession of any view issued contrary to Islamic law.³⁷ Therefore by implication, the Act prohibits any kind of disagreement (oral or written) to fatwa issued in Malaysia; including aiding and abetting anything that would lead to the dissemination of information contrary to the fatwa.³⁸

²⁸ See Section 34 of the Administration of the Religion of Islam Enactment (Federal Territories) Act 505, 1993. The Article 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). (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 he 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.”

²⁹ Rajen Devaraj, “Religion: Understanding Fatwa in the Malaysian Context”,

³⁰ Ibid

³¹ See Article 32 of the Administration of the Religion of Islam Enactment (Federal Territories) Act 505, 1993. The Article provides: “(1) The *Yang di-Pertuan Agong* may, on the advice of the Minister, after consulting the *Majlis*, appoint fit and proper persons to be the Mufti and the Deputy Mufti for the Federal Territories. (2) Upon the commencement of this section, any person who immediately before the commencement, was the Mufti of the Federal Territories appointed under the Enactment shall be deemed to have been duly appointed under this section to be the Mufti of the Federal Territories and shall hold office as such.”

³² Tamir Moustafa, Islamic Law, “Women’s Rights and popular Legal Consciousness in Malaysia”, pp 1-21

³³ See Section 34 of the Administration of the Religion of Islam Enactment (Federal Territories) Act 505, 1993. The Article 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). (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 he 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.”

³⁴ Section 9 of the Shari'ah Criminal Offences Act 1997

³⁵ Ibid

³⁶ Section 12 of the Shari'ah Criminal Offences Act 1997

³⁷ Section 13 of the Shari'ah Criminal Offences Act 1997, the section provides: “(1) Any person who: (a) prints, publishes, produces, records, distributes or in any other manner disseminates any book, pamphlet, document or any form of recording containing anything which is contrary to Islamic Law; or (b) has in his possession any such book, pamphlet, document or recording, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

The issuance of fatwa in Malaysia and any matter that has to do with fatwa falls specifically within the purview and powers of the fatwa committee.³⁹ To further buttress the foregoing position, the Federal Territories Administration of Islamic Law Act 1993 has also adopted a similar change. The Act provides as follows:

“(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).”⁴⁰

Both the Administration of Islamic Law Enactment for the Selangor state and Federal Territories Act have clearly indicated and demonstrated that any issue concerning Islamic law or any matter connected thereto, or any issue that bothers on fatwa or matters related thereto, are to be directed to the office of the mufti but not the Islamic Religious Council as practiced before the amendments of the law.⁴¹

Just like the legislative process in the Parliament or the States Assembly, fatwa can be initiated and issued by a mufti himself, or by the instruction of the *Sultan/Yang di- Pertuan Agong*, or sometimes it could be issued upon a request made by a questioner (*mustafti*). However, this process is not uniform; hence it varies from one particular state to another. For instance, under the Terengganu state Islamic Affairs Administration Enactment 1986, which provides that fatwa can be issued if a written request is made and channeled through the Religious Affairs Commission to the mufti.⁴²

It is the responsibility of the State to enforce fatwa once it is issued. However, such responsibility becomes viable, feasible, effective and valid if and only if the fatwa has been issued in accordance with the laws and enactments regulating the Islamic affairs in that state. Thus, if a fatwa is issued contrary to the provisions of the law, it shall be deemed invalid and therefore not enforceable by the authority. One of the fundamental requirements for the enforceability of fatwa is that, a fatwa must have to be published in the *Gazette* otherwise it should not have the force of law.⁴³ The legal implication of publishing fatwa in the *Gazette* is to make it have a full force of law and also to be recognized by the public as an authoritative legal statement but not just a mere opinion of a scholar. Another requirement is that the fatwa can be issued in compliance with the Shafi'i principles of the Sunni School of Islamic jurisprudence (*madhhab*). To this end, the Administration of Islamic Law Act provides:

“(1) In issuing any *fatwa* under section 34, or certifying any opinion under section 38, the Mufti shall ordinarily follow the accepted views (*qaul muktamad*) of the *Mazhab Syafie*. (2) If the Mufti considers that following the *qaul muktamad* of the *Mazhab Syafie* will lead to a situation which is repugnant to public interest, the Mufti may follow the *qaul muktamad* of the *Mazhab Hanafi*, *Maliki* or *Hanbali*. (3) If the Mufti considers that none of the *qaul muktamad* of the four *Mazhabs* may be followed without leading to a situation which is repugnant to public interest, the Mufti may then resolve the question according to his own judgment without being bound by the *qaul muktamad* of any of the four *Mazhabs*.”⁴⁴

Although, the above provision has restricted the issuance of fatwa in Malaysia to the Shafi'i *Madhhab*, but the intent of the provision is not to make it a total restriction, hence by making the *madhhab* to be onerous. However, where a mufti realizes that adhering to the Shafi'i *Madhhab*, may lead to a situation that contravenes the public interest or interest of the Nation, the mufti will resort to the schools of thought other than the Shafi'i School.⁴⁵

To sum up, if fatwa is issued and published in the *Gazette* in line with the requirements of the law, it shall become binding on the government and all people living in the state, at the same time, it is a duty of the state government to determine all matters related to Islamic religion. To this end, the Provisions in the Federal Territories' Administration of Islamic Law Act provide:

“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,

(2) The Court may order that any book, pamphlet, document or recording referred to in subsection (1) be forfeited and destroyed, notwithstanding that no person may have been convicted of an offence connected therewith.”

³⁸ Ibid

³⁹ See Sections 28-30 of the Selangor Administration of Islamic Law Enactment, 1989

⁴⁰ Sections 34 of the Administration of Islamic Law Enactment (Federal Territories) Act 505,1993

⁴¹ Ibid

⁴² Section 25 of the Terengganu Islamic Affairs Administration Enactment, 1986

⁴³ See sections 34 (3-4) of the Administration of Islamic Law (Federal Territories) Act 505, 1993

⁴⁴ See section 39 of the Administration of Islamic Law (Federal Territories) Act 505, 1993

⁴⁵ See Section 39 (2) of the Administration of Islamic Law (Federal Territories) Act 505, 1993

or opinion. A *fatwa* shall be recognized by all Courts in the Federal Territories as authoritative of all matters laid down therein.”⁴⁶

Currently, *fatawa* in Malaysia are issued by the various *fatwa* committees both at the national and state levels. The *fatwa* committees at the states level are the highest religious authority; they are part and parcel of the state administration and management of Islamic law. As stated earlier, the committees issue all rulings pertaining to Islam and follow the doctrines of Shafi'i School of thought (*madhhab*) in the process.

It is also important to note that the Malaysian Federal Government through the approval of the Conference of Rulers (*Majlis Raja-Raja*) established the National *Fatwa* Committee at the national level in order to issue, oversee, coordinate and if possible harmonize the issued *fatawa* from the various states in the country. This is to reduce if not to avoid variations, disparity and contradictions amongst the states *fatwa* committees. However, a lot of the constitutional issues have been raised as to the legality of the committee. Amongst the key issues raised are: whose responsibility according to the Federal Constitution is to issue, coordinate, harmonize, manage and enforce *fatawa* in Malaysia; is it the state or Federal Government? Under what legal basis has the Federal Government established the National *Fatwa* Committee? Is it really that the Federal Government usurped the States Governments of their powers for controlling and regulating the Islamic affairs? What then is the legal position of the Committee? Of course, all of the above questions should be clarified in order to have a clear picture about the management of *fatwa* in Malaysia.

With regard to the first question raised, as to who is responsible for the issuance and management of *fatwa* in Malaysia? The answer is unambiguous; it is the states government. This is because *fatwa* is a religious phenomenon which has been placed in the Constitution under the State List (issues that are not within the powers of the Federal Government).⁴⁷ For the second question as to what is the legal basis for the establishment of the National *Fatwa* Committee at the federal level? The answer is also logical from the Federal Constitution of Malaysia that has extended the executive authority of the Federation (subject to the approval by the states' Assembly and the arrangement between states and Federal Government) to encompass all matters which Parliament may legislate on and all matters which the states Assembly may legislate on.⁴⁸ Thus, in the case of the National *Fatwa* Committee, it has been established by virtue of the extension of the federal authority after the approval and agreement of the states authority were sought. This is evident from the active participation of the states' muftis as members in the Committee. In fact, the membership of the Committee has reflected the true representation which can best be described as states' affair than that of the federal. It comprises the representatives (muftis) from each and every state in the country.⁴⁹ Similarly, another important justification for the establishment of the National *fatwa* committee could also be inferred from the Constitution, where the Islamic leader (*Yang di-Pertuan Agong*) has also been given the power by order to extend the legislative and executive powers of the states.⁵⁰ This by implication can be extended to the establishment of National *Fatwa* Committee to issue *fatawa* at the national level even though it is known to be a state affair. Therefore going by the above justifications, one can assert that the establishment of the National *Fatwa* Committee does not in any way contravene any of the constitutional provisions; neither does it attempt to usurp the states government of their own God's endowed powers. The Committee is just a collection or forum where the states' muftis come together and take collective decisions on matters relating to Islamic law in the country under the coordination of the National Council for Islamic Affairs (*Majlis Kebangsaan Hal Ehwal Islam-MKI*).⁵¹

The National Council for Islamic Affairs⁵² is a federal agency aimed at coordinating the states in matters relating to administration of Islamic affairs within the country. Almost all the states in Malaysia are having representation in that Council. Generally, the Council has been established to discuss, deliberate and manage all issues referred to it, either by the *Majlis Raja-Raja*, the State Islamic Religious Council, or by any of its members. Upon deliberations on the issue, the MKI is responsible only for giving advice and recommendation to the body concern. Specifically, the Council's role has provided for under its Regulations as follows:

⁴⁶ See Section 34 (3-4) of the Administration of Islamic Law (Federal Territories) Act 505, 1993

⁴⁷ See Article 80 (2) of the Federal Constitution 1988 as amended. The Article provides: "The executive authority of the Federation does not extend to any matter enumerated in the State List, except in so far as is provided in Articles 93 to 95, nor to any matter enumerated in the Concurrent List, except in so far as may be provided by federal or State law; and so far as federal or State law confers executive authority on the Federation with respect to any matter enumerated in the Concurrent List it may do so to the exclusion of the executive authority of the State."

⁴⁸ See Article 80 (1), (3) and (5) of the Federal Constitution 1988 as amended. Article 80 (1) provides: "Subject to the following provisions of this Article the executive authority of the Federation extends to all matters with respect to which Parliament may make laws, and the executive authority of a State to all matters with respect to which the Legislature of that State may make laws." Article 80 (3) provides: "So far as a law made under Clause (4) of Article 76 makes provisions for conferring executive authority on the Federation it shall not operate in any State unless approved by resolution of the Legislative Assembly of that State." Article 80 (5) provides: "Subject to any provisions of federal or State law, arrangements may be made between the Federation and a State for the performance of any functions by the authorities of the one on behalf of the authorities of the other and such arrangements may provide for the making of payments in respect of any costs incurred under the arrangements."

⁴⁹ Zaini Nasohah, Hayatullah Laluddin, Zuliza Mohd Kusrin, Mohd Rizal Muwazir, "Standardisation of *Fatwa* in Malaysia: Management and Problems", *Advances in Natural and Applied Sciences*, 6(6): 923-929, 2012

⁵⁰ See Article 95c of the Federal Constitution 1988 (as amended). The Article provides: "(1) Subject to the provisions of any Act of Parliament passed after Malaysia Day, the *Yang di-Pertuan Agong* may by order make as respects any State any such provision as may be made by Act of Parliament—(a) for authorizing the Legislature of the State to make laws as mentioned in Article 76A; or (b) for extending the executive authority of the State, and the powers or duties of any authority of the State, as mentioned in Clause (4) of Article 80."

⁵¹ Zaini Nasohah, Hayatullah Laluddin, Zuliza Mohd Kusrin, Mohd Rizal Muwazir,

⁵² It was established at the 18th Conference of Rulers (*Majlis Raja-Raja*) on the 1st of July, 1969

“(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) To provide 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 standardization in law or administration.”⁵³

The National Fatwa Committee was established under the MKI Regulations⁵⁴ in order to deliberate, decide and issue *fatawa* on matters related to Islam that are referred to it (through the secretariat of the Fatwa Committee of MKI) by the *Majlis Raja-Raja*.⁵⁵ Thereafter, the Committee shall file its opinion to the Council (MKI) for it to make recommendations and submit to the *Majlis Raja-Raja* for consideration.⁵⁶

If a Fatwa is issued by the National Fatwa Committee and has agreed upon by the *Majlis Raja-Raja*, is binding on everybody in Malaysia including the states' authorities. It cannot be sluggishly and arbitrarily amended by any member state except with the approval of *Majlis Raja-Raja*.⁵⁷ Even though by the law, fatwa is a matter that falls under the states' government jurisdiction, and it shall not become a binding one except if it has been published in the Gazette by the states authorities. However, it is also a duty incumbent upon the Federal Government to standardize and coordinate the affairs and activities that are to be carried out in the Country.⁵⁸ In view of this, the federal government shall be responsible for the implementation of fatwa issued by the National Fatwa Committee. Hence, in an attempt to implement or enforce *fatawa* issued by the National Fatwa Committee at the states level, it is still a procedural law requirement, to deliver it back to various states' Fatwa Committees for deliberation and for publication in the Gazette.⁵⁹ To this end, the states Administration of Islamic Law enactments in its recent modifications in the early 2008, has approved the amendments in the new version of the Enactment at the level of the *Majlis Raja-Raja* to encompass the provisions that deals with the standardization of fatwa on issues that affects National interest and need to apply the advice and recommendations provided for by the National Fatwa Committee.⁶⁰ To this effect, in Selangor for example, the Enactment provides that the state fatwa committee should adjourn session in respect of any matter that affects the national interest, in order to consult with the Sultan through the state Council of Islamic affairs (*Majlis Agama Islam*) for further proceeding to the National fatwa committee.⁶¹

After the Issuance of fatwa, the most important thing to understand is its legal status in Malaysia. Although the general rule under Islamic law is that, fatwa does not carry any force of law or any legal implication in case of any action or omission. This is of course, due to the following reasons, namely: the opinions of scholars in Islam remains a non-binding opinion on the ground that in Islam there is no central authority; there is no tentative and definite definition of “legal expert”, that is to say, the meaning of the Islamic legal experts who are responsible for the issuance of fatwa is subjective; the emergence of the various Sunni schools of Islamic thoughts has made the concept of fatwa also subjective; differences among people in understanding of the basic sources of Shari'ah such as the Qur'an and Sunnah; and lastly, the sociology of knowledge for different scholars.⁶²

However, due to bureaucratization and institutionalization of fatwa in some jurisdictions such as Malaysia, the concept of fatwa has been made part and parcel of the state legislation. Hence in such circumstances, it shall be considered as law proper. Just like

⁵³ Section 7 of the *Majlis Kebangsaan Hal Ehwal Islam* Regulations, hereinafter referred to as MKI Regulations

⁵⁴ Section 11 of the MKI Regulations

⁵⁵ See section 14 of the MKI Regulations

⁵⁶ Ibid

⁵⁷ See Section 9 of the MKI Regulations

⁵⁸ See generally, the provision of Articles 80 and 95c of the Federal Constitution 1988 as amended

⁵⁹ Article 5 item (7) of the National Fatwa Determination Procedure Manual

⁶⁰ Zaini Nasohah, Hayatullah Laluddin, Zuliza Mohd Kusrin, Mohd Rizal Muwazir, 923-929

⁶¹ See sections 51 and 52 of the Administration of Islamic Law Enactments Act (Selangor 2003). Section 51 provides: “(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 Rules 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 also provides: “(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 Rules 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.”

⁶² Azly Rahman, Between Cybernetics and Existentialism, available at <http://azlyrahman-illuminations.blogspot.com/2013/02/on-fatwas-ten-questions.html>, accessed on February, 2013

the law in *stricto sensu*, fatwa shall be binding and enforceable on all people and Governments. To this end, fatwa in the Malaysian context does not stand as a mere non-binding legal opinion.⁶³ It has been considered as a binding phenomenon on all the Muslim citizens and the governments. Such force of law that has been endowed upon fatwa in Malaysia derives its authority from the Administration of Islamic Law enactments of various states in the country. In fact, such enactments do not only enabled the fatwa institutions to issue binding *fatawa* but also makes them to bypass the legislative institutions such as the Parliament and state Assemblies.⁶⁴

Similarly, the bindingness of fatwa in Malaysia also depends on its confirmation by the courts of law. Where a court decides on a matter based upon a fatwa issued by the mufti, it shall become binding as a matter of judicial precedent and subject to the rules governing the doctrine of the judicial precedent under Islamic law.⁶⁵ Furthermore, the bindingness of fatwa also depends on the compliance with the procedure for its making process. For example, in Malaysia, after the issuance of fatwa, it shall be taken to the *Sultan* (the Islamic Head) for his assent, thereafter it shall be published in the Gazette. Thus, any fatwa issued without following the due process of the law shall not be regarded as a valid one, hence it shall not be binding and enforceable by the court. To this end, fatwa can be issued after making a thorough and broad research on a subject matter by a mufti, thereby taking into cognizance some schools of Islamic thought and consensus among the varied scholars; and the mufti should logically and skillfully tackle the problem in such a manner that would be of beneficial to the community.⁶⁶

As earlier on mentioned, in Malaysia, fatwa is considered not just as a binding religious phenomenon but also as something that can preserve and protect the integrity of Islam and Muslims altogether. This is evident in the recent case of prohibiting non Muslims to use the word "Allah" (The Almighty God) in their religious activities. The case emanated from the State of Selangor, where the *Sultan* (His Royal Eminent Sharafuddin Idris Shah) acted upon the fatwa issued and Gazetted on the 18th February 2010 by the State mufti, banning and prohibiting non Muslims from using the word "Allah" in their publications and religious activities. The ruler further instructed the Selangor Islamic Religious Council (*Majlis Agama Islam Selangor* MAIS) and the Selangor Islamic Affairs Department (*Jabatan Agama Islam Selangor* JAIS) not to relent on the decision and they should take firm action against non Muslims that continued to question the State fatwa (Edict) and the 1988 state law restricting the usage of Arabic word by non Muslims.⁶⁷

In response to the above verdict, the Catholic Christian leaders have expressed their sorrow and dismay over the Decree which banned them from using "Allah" to describe their God. According to them, the application of Islamic law in the country has been laid out specifically for the Muslims faithful but not against the non Muslims. As a result of that, they instituted a legal action against the state in the High Court, challenging the validity of the fatwa (Edict) that prevented them from using the word "Allah". Thus, the Court in 2009, ruled in their favor to the effect that the word "Allah" was not restricted to Muslims alone and the prohibition was unconstitutional. According to the Court, the Catholic Church had the right to publish the word in the Malay section of its weekly Newspaper, Herald. Although, in same ruling, the High Court Judge, Justice Lau Bee Lan expressed that "a non Muslim could be committing an offence if he uses the word 'Allah' to Muslims not to his fellow non Muslims", but the non Muslims may continue to use it among themselves.⁶⁸ The pronouncement of the judgment has resulted into crises which led to the attacks of several places of worship in the state. In an attempt to subside the crises in the country, the Government immediately filed an appeal against the decision of the trial court to the Court of Appeal. And the Appeal Court quickly issued a stay against the decision of the High Court pending determination of the appeal. Interestingly, the ruling for the application by the Appeal Court to stay the proceeding was not opposed by the Catholic Herald (the Respondent).⁶⁹ On the 14th day of October 2013, the Appeal Court (by its three learned Justices led by Muhammad Apandi Ali) after a careful observation of the High Court proceedings and decisions, upheld the government's ban against the use of the word "Allah" to refer to God in non Muslims faith thereby setting aside the decision of the High Court. Hence it is confirmed by the court that the use of the word "Allah" is not an integral part of the Christian faith and practice. According to the learned justice, the judgment does not in any way contravene the Federal Constitution. He added that the use of such word by the Christians, if allowed will inevitably cause confusion within the community.⁷⁰

Another case to exhibit the legal implication and the status of fatwa in Malaysia is in respect of the appointment of female as Shari'ah judges in the Federal Territories in Malaysia. There has been an agitation for long (since late 1990s) by the women group called Sisters in Islam (SIS),⁷¹ calling for the states government to look into the matters that affect the women interest

⁶³ See section 34 of the Administration of Islamic Law (Federal Territories) Act 505, 1993

⁶⁴ Tamir Moustafa, Islamic Law, Women's Rights and Popular Legal Consciousness in Malaysia, Simons papers in security and Development, No. 12/2011, School of International Studies, (Simon Fraser University, Vancouver, August, 2011)

⁶⁵ Ibid, 23

⁶⁶ Jakor Skovgaard-Peterson, "Defining Islam for the Egyptian State: Muftis and Fatwa of the Dar al-Ifta", *International Journal of Middle East Studies*, vol 31, No.2. Also available at the Dar Al-Ifta website <http://www.dar-alifta.org/>

⁶⁷ Non-Islamic Religions (Control of Propagation Amongst Muslims) Enactment which was passed in the state Assembly some decades ago and enforced in July 1988 has also restricted the use of the word. Section 9 of the Enactment strictly forbids the word 'Allah' to be used by non-Muslims in any matter related to their religions.

⁶⁸ Debra Chong (Asst. News Ed.), "Question over "fatwa" effect of non-Muslims after Selangor Sultan's 'Allah' decree", available at <http://www.themalaysianinsider.com/malaysia/article/questions-over-fatwa-effect-on-non-muslims-after-selangor-sultans-allah-decree>, Reported on 09/01/2013 and accessed on 03/03/2013

⁶⁹ International Religious Freedom Report for 2011 United States Department of State • Bureau of Democracy, Human Rights and Labor, Malaysia 12

⁷⁰ Malaysia court rules non-Muslims can't use word 'Allah', available at <http://english.alarabiya.net/en/News/asia/2013/10/14/Malaysia-court-rules-non-Muslims-can-t-use-Allah-.html>, accessed on 15/10/2013

⁷¹ Two Women appointed as Shari'ah Judges in Malaysia, available at http://www.qantara.de/webcom/show_article.php?pwcn=741_101&wc_c=478&wc_id=1111, accessed on 17/10/2013

especially in the country's judiciary, as women too can contribute their own quota towards the development of the nation. This agitation was supported by so many religious leaders and stake holders and thus, it has subsequently yielded a positive result. Among the supporters of the agitation was the chairman of the National Fatwa Council of Malaysia (Professor Datuk Shukor Husin). He affirmed that the appointment of female as judges was not contrary to the teachings of Islam. Hence, it was in line with the objectives of Shari'ah provided that no fundamental Islamic injunctions will be violated.⁷²

So based on the fatwa issued legalizing the appointment of female as a judge in the country, the Federal Territories in July 2010, announced the appointments of the two Shari'ah judges whose appointments were to take effect from August 2010.⁷³ However, the actual moves to appoint female as a judge has started long time since 2006.⁷⁴ The first female Judges appointed are: Rafida Abdul Razak, from Penang, who was assigned to the Federal Territory- Kuala Lumpur Shari'ah Court; and Suraya Ramli, from Sabah who was assigned to the Federal Territory- Putrajaya Shari'ah court.⁷⁵

Upon all of the above developments, fatwa has been seen by the conservatives as something that threatens and usurps the legislative powers in the country. To this end, some organizations such as the group of "Sisters in Islam" have been agitating for a review of the legal status of fatwa in Malaysia in such a way that it should not be law. According to them, the procedure for the issuance of fatwa and its implication, contravenes the Federal Constitution, as it is always end up in "confusion, selective prosecution and victimization in their enforcement."⁷⁶ However, the organization has neglected and failed to emphasize on the significance of fatwa as a conduit pipe of harmony in the state. It has also refused to pinpoint and make recourse to some other constitutional provisions which have given various states in Malaysia power to administer Islamic affairs.⁷⁷ Worthy also to note in this regard is that, the powers given to the fatwa committees/muftis have been stipulated in the Administration of Islamic law enactments of various states in Malaysia including the Federal Territories Act.⁷⁸ In fact, such Enactments are also the product of the Parliament which comprises the elected members from various constituencies in the country.⁷⁹

CONCLUSION

The concept of fatwa in Malaysia is beyond a mere legal opinion of a mufti. Hence it is a binding piece of legislation that attracts a force of law. The fatwa making-process in Malaysia is bureaucratized and institutionalized in such a way that any verdict issued and published in the Gazette, shall become binding on all Muslims and the Shari'ah courts. It has been considered as another form of making legislation in the country but in a delegated manner. To this effect, it has been noticed that fatwa and its making-process in Malaysia is constitutional and have not usurped the legislature of their constitutional powers as used to be perceived by some people. In addition, fatwa and its institutions do not prevent the legislature in carrying out their constitutional duties, since all the laws (including those regulating fatwa) in the country are product of the Parliament and state Assembly. Hence, fatwa and its institutions do not stand as hurdles to the legislature and legislative making- process in the country. To this end, we appeals that people should try to understand and distinguish between the legislation whose authority has been derived from the Constitution on one hand, and the concept of fatwa whose legitimacy has been enabled by the legislative enactments of various states and federal Territories in the country on the other hand. The former (legislation) binds everybody in the country, whereas, the latter shall be only binding on Muslims and the Shari'ah courts. As it is understood that there is no gainsaying in respect of the legal status of fatwa in Malaysia, however, it is indeed one issue to have an institutionalized fatwa, and also

⁷² Rehendhi, "Appointment of Female Judges in Muslim Countries", May 9, 2010, available at <http://rehendhi.wordpress.com/2010/05/09/appointment-of-female-judges-malaysia/>, accessed on 17/11/2013

In the Article: the legality of the appointment of female has been classified into two parts. On the first part is the opinion of the classical jurists: thus according to *Jumhur* in Sunni School of Islamic Jurisprudence such as Imams Maliki, Shafi'i Ahmad Ibn Hanbal, have regarded women as being ineligible to be appointed as judges based on an interpretation of Surah an-Nisa' 4:34, that men are *Qawwamuna* (protectors) over women and also based on the Hadith that says: "a nation that makes a woman their ruler will never succeed". However, the minority view of Imam Abu Hanifah, opined that the authority of a judge is not valid unless he possesses the qualifications necessary for a witness. Thus this opinion allows women to be appointed judges in all cases except *hudud* and *qisas* cases. This notion stem out of the Imam Abu Hanifa's interpretation of *Surah al-Baqarah*, 2:282, on women's eligibility to be witnesses in commercial transactions. Similarly, other jurists like al Tabri and Ibn Hazm are of the opinions that female can be appointed as judges provided they fulfilled the requirements for being a judge. They have relied on the provision in *Surah at-Taubat*, 9:71 that describe both believing male and female are *awlhiyya* (protecting friends and guardians) to one another and which relatively by implication, gives female to be considered as male in some cases. On the other part, is the opinion of the proponents who opined that female can be appointed as judges based on the reasons that there are no explicit provisions in the Qur'an and Sunnah that prohibits it; and that Islam in all the times give due respect and honour to female. See Rehendhi, Appointment of Female Judges in Muslim Countries, May 9, 2010, available at <http://rehendhi.wordpress.com/2010/05/09/appointment-of-female-judges-malaysia/>, accessed on 17/11/2013

⁷³ Vaudine England, Malaysian groups welcome first Islamic women Judges, available at <http://www.bbc.co.uk/news/10567857>, accessed on 17/11/2011

⁷⁴ Two Women appointed as Shari'ah Judges in Malaysia, available at http://www.qantara.de/webcom/show_article.php?pwcn=741_101&wc_c=478&wc_id=1111, accessed on 17/10/2010

⁷⁵ Vaudine England, Malaysian groups welcome first Islamic women Judges, available at <http://www.bbc.co.uk/news/10567857>, accessed on 17/11/2011

⁷⁶ Sisters in Islam, "Fatwa shouldn't be the Law", <http://thenutgraph.com/fatwas-shouldn-t-be-law>, accessed on 19/10/2013

⁷⁷ For instance, Article 81 of the Federal Constitution 1988 as amended

⁷⁸ See for instance Articles 4-31 of the Administration of Islamic Law Act (Federal Territories) which empowers the Islamic Religious Council of the Federal Territories (*Majlis Agama Islam Wilayah Persekutuan*) to oversee the Islamic affairs of the Federal Territories. Article 32 of the Act talks about the appointment of a Mufti, and shall be done by *Yang di Pertuan Agong* in consultation with the *Majlis*. A mufti in collaboration with his committee members, and with the assistance of the Islamic Legal Consultative Committee, is responsible to issue fatwa on behalf of the State (Section 37 of the Act). The consultation of the Islamic Legal Consultative Committee by the Fatwa Committee is one of the factors that make fatwa to have a force of law as stipulated under Section 34 of the Act.

⁷⁹ See Articles 44, 45 and 46 of the Malaysian Federal Constitution 1988 as amended

another issue entirely to ensure compliance with fatwa. In view of this, the paper in this respect, suggests for the implication for further research to examine the extent of the application of fatwa in Malaysia.

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