The Role of Fatwa and Mufti in Contemporary Muslim Society

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ABSTRACT

Fatwa in general refers to the legal opinion issued by any Muslim jurist (mufti) relating to certain rulings of Islamic law. In principle, fatwa serves as a means of clarifying any issue that arises in Muslim society. This reflects that fatwa and mufti are two crucial significant tools of providing legal guidance within the ambit of the Shari’ah governing Muslims in their day-to-day affairs. This is because even though fatwa is not legally binding when it is issued, it carries a significant effect in contemporary society as it provides guidelines and rules to follow. This paper seeks to examine the significant role of fatwa and mufti, respectively in contemporary Muslim society. Discussion will include definition of fatwa, conditions of fatwa, qualification of persons eligible to issue fatwa, scope and purview of fatwa, legal effect of fatwa on the Muslim community and the role of fatwa and mufti, respectively in attending to issues and problems arising in contemporary Muslim society. The research will mainly adopt library research in providing a sound legal theory of fatwa under Islamic law. It is believed that the findings of the research will provide a clear guideline relating to the role of fatwa and mufti in contemporary Muslim society that will benefit the fatwa institution in Malaysia in particular and the public at large.

Keywords: Fatwa, mufti, Islamic law, role of mufti

INTRODUCTION

Fatwa and mufti are two common words in the field of Islamic jurisprudence. These subjects are very significant especially in the context of Malaysia today. This is because the public in general might not be aware of all detailed rules of Islamic law especially those that are probable (zanniyyah) in nature. Furthermore, there
might be new issues or cases that arise in society where there are no clear Islamic rulings. Therefore, references to learned people are necessary as the Quran states to the effect ‘Ask the learned person if you have no knowledge’ (The Quran; al-Anbiyaa’ 21; 7). Fatwa and mufti can answer and clarify questions that are raised by the community.

Definition of Fatwa

According to the Arabic lexicon, al-ifta’, al-futya, al-fatwa and al-fatwa refer to ‘giving answer, or a reply, stating the decision of the law, respecting a question, or a commonly used, a notification or an explanation of the decision of the law, or, in respect to a particular case, given by a faqih’. In other words, it is an answer or a reply to a question relating to a dubious judicial decision (Ibn Manzur, 1414H; Lane, 1968). According to Ibn Hamdan, al-ifta is notification of the Islamic ruling on events and circumstances with legal proof (al-dalil shar’ie) (Ibn Hamdan, 1380H). Meanwhile, according to al-Zaybari, fatwa technically refers to the text or statement answered by a mufti or legal ruling of the Shari’ah where the mufti provides clarification on certain issues (al-Zaybari, 1995). In short, fatwa can be generally understood as the legal ruling that is given by the mufti as an answer to enquiries by someone on a certain legal issue.

The person who holds the position of giving a fatwa is called al-mufti. He is a jurist consult (Lane, 1968) who notifies the decision of the law, in or respecting cases submitted to him for the guidance of the Qadi and others in matters relating to Islamic law (al-Mallah, 2009).

The word fatwa and its derivatives have been mentioned in the Holy Qur’an to convey the meaning of asking questions around uncertain matters, either religious or worldly. For example, The Qur’an; al-Nisa 4: 127 states to the effect, “And they ask you a decision about women. Say: Allah makes known to you,” and in al-Nisa 4: 176: “They ask you for a decision of the law. Say: Allah gives you a decision concerning the person who has neither parents nor offspring”, conveying the meaning of asking clarification in religious matters.

The derivation of the word fatwa has been also used in surah Yusuf asking for the interpretation of dreams: “the matter is decreed concerning which you inquired (The Qur’an; Yusuf 12: 41)”; “O chiefs! Explain to me my dream, if you can interpret the dream” (The Qur’an; Yusuf 12: 43); and “Yusuf! O truthful one! Explain to us seven fat kine which seven lean ones devoured” (The Qur’an; Yusuf 12: 46).

In the story of Bilqis, the queen of Saba, fatwa conveys the meaning of seeking advice and consultation, where the Quran states to the effect: “She said: O chiefs! Give me advice respecting my affair” (The Qur’an; al-Naml 27: 32). Finally, two verses from al-Saffat carry the meaning of firm questioning that intends to expose persons who are fraudulent; these verses are related to the challenge of the
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Prophet (pbuh) to non-believers. The Quran states to the effect: “then ask them whether they are stronger in creation or those (others) whom We have created” (The Qur’an; al-Saffat 37: 11); “Surely We created them of firm clay,” and “Then ask them whether your Lord has daughters and they have sons” (The Qur’an; al-Saffat 37: 149).

The importance of giving fatwa with basis had been stressed in the hadith to the effect: “Whoever is given a fatwa (verdict) that has no basis, then his sin will be upon the one who issued that fatwa”. This hadith conveys the meaning of permission and authorisation, where if a person gives permission to another to conduct a certain practice that has no basis and foundation in the permissibility of the practice, and if the questioner (al-mustafī) then commits a sin based on this fatwa, the sin (of the questioner) will be upon the mufti, not the questioner (Ibn Majah, 2007).

In another hadith, Abdullah ibn ‘Amr reported that the Prophet (pbuh) said:

Allah does not take away the knowledge by taking it away from (the hearts of) the people, but takes it away by the death of the religious learned men till when none of the religious learned men remains, people will take as their leaders ignorant persons who when consulted will give their verdict without knowledge. So they will go astray and will lead the people astray. (al-Bukhari, 1422H)

Conditions for the Issuing of a Fatwa

There are several conditions to be fulfilled before issuing a fatwa. Firstly, the fatwa must be issued by a qualified mufti who is considered as being learned or knowledgeable (ahl al-dhikr) as the Quran states to the effect: “And We did not send before you any but men to whom We sent revelation-- so ask the followers of the Reminder if you do not know” (al-Nahl: 43). Therefore, a person who has no knowledge in Islamic law and is not knowledgeable in the principle of derivation of the rule, is forbidden from delivering a fatwa as the Quran states to the effect,

Say: My Lord has only prohibited indecencies, those of them that are apparent as well as those that are concealed, and sin and rebellion without justice, and that you associate with Allah that for which He has not sent down any authority, and that you say against Allah what you do not know. (The Qur’an; al-A’raf 7: 33)

In another verse, it is given, “And, for what your tongues describe, do not utter the lie, (saying) This is lawful and this is unlawful, in order to forge a lie against Allah; surely those who forge the lie against Allah shall not prosper” (The Qur’an; al-Nahl 16: 116). According to al-Duski, it is not permitted for a Muslim to say that something is permitted or prohibited unless he knows that the permissibility and prohibition originated from the Lawgiver (al-Duski, 2007). This has been ascertained by the Prophet (pbuh) when he said to the effect:
whoever (intentionally) ascribes to me what I have not said, then (surely) let him occupy his house in Hell-fire; whoever is given fatwa without (having) knowledge, then his sin will be upon the one who issued that fatwa. If anyone advises his brother knowing that guidance lies in another direction, he has deceived him. (al-Hakim, 1990)

This hadith clearly indicates that one is prohibited from delivering a fatwa if one is not knowledgeable in the related matters and in the principle of deriving the rules.

Secondly, the fatwa must be in compatible and in agreement with definitive texts from the Quran and the Sunnah of the Prophet. In other words, the fatwa must not contradict with any definitive evidence as this contradiction will render the fatwa unfeasible. According to al-Dhahabi, Imam al-Shafii was reported to affirm his stand in the case of contradicting evidence by stating, “if you find in my book what is in contrast with the tradition of the Prophet (pbuh), take what the traditions of the Prophet said, and ignore my opinion (al-Dhahabi, 1985).

Thirdly, the fatwa must be originated from the renowned and authentic books. This is because the basis of the fatwa implies fair and rightful transmission on the transmission of fatwa. Therefore, information on fatwa from unknown books is forbidden, until the authenticity of the information has been verified. However, the content of the unknown work may be attributed as being authentic if it is known that the author adopted this method of verification, and he is a credible source who is known for his fairness and integrity. It is forbidden to issue a fatwa based on marginal annotation on the basis of lack of authenticity and verification (al-Duski, 2007).

Finally, fatwa must be compatible with the customs (’urf) of the person who seeks the explanation (mustafti). If the mufti has no background knowledge of the person who seeks explanation, he must perform an informal investigation to gain knowledge regarding the background of the mustafti; this information includes the person’s origin, his homeland, his mother tongue, his customs etc. (Al-Duski, 2007). According to al-Qarafi, there is no disagreement among the jurists that this is compulsory since the difference in customs and language etc, necessitates differences in fatwa and ruling. (Al-Qarafi, n.d.).

**Qualification of Person who Is Eligible to Issue Fatwa (Mufti)**

Muslim jurists have held the view that the qualification of persons who are eligible to issue fatwa equals the qualification of mujtahid since the practice of giving fatwa is similar to ijihad as both require effort from the mufti and mujtahid. The difference is only in terms of the scope of their roles. In other words, the mujtahid provides explanation from a vast and larger scope, and sometimes deliver the ruling before the actual occurrence. The fatwa, on the other hand, addresses a specific subject, and is issued only if there is a request for clarification.
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According to al-Nawawi, there are two types of mufti. The first is the independent mufti. They are the mufti who are knowledgeable in sources of the rulings from the Quran, the Sunnah, the consensus and the analogy. They must be knowledgeable in the principles of derivation of the rules. The mufti must possess knowledge in the sciences of the Quran, hadith, the principle of abrogation (al-naskh wa al-mansukh), the rules of Arabic grammar, language, morphology and the debates among scholars as well as their outcome. The mufti must also possess vast experience in derivation of the rules. They should also be knowledgeable in fiqh and its various issues. The mufti are called independent mufti/mujtahid as they act independently with respect to the evidence (dalil) without imitating or being restricted (muqallid) to any madhab. Other knowledge such as arithmetic or mathematics can be a requirement as well if the issue concern inheritance or finances (Al-Nawawi, 1999).

The second type of mufti is the dependent mufti. There are four categories of dependent mufti. The first is the mufti who follows the methodology of his teacher (imam) in deriving Islamic rulings. He, however, does not imitate the opinion of his teacher. (al-Nawawi, 1999; Ibn Husayn al-Makki, n.d.) The second is the mujtahid/mufti who is dependent on the methodology of his teacher but at the same time, also agrees with the view of the teacher. He does not pursue a view or principles of derivation of rules beyond what has been established by his teacher (al-Qasimi, 1986; al-Nawawi, 1999). The third category is the mufti who studies the view of his teacher together with the view of jurists from other schools or that of a disciple of his teacher’s or that of jurists from his own school of law (madhab) and then makes a preference accordingly (al-Qasimi, 1986; al-Nawawi, 1999). The fourth category is the mufti who engages in memorising different views relating to legal rulings in his school (madhab). However, this category of mufti has no ability to derive rulings. Therefore, if he is asked about certain legal positions, he is able to issue fatwa only on the basis of the views from scholars of his own madhab (al-Qasimi, 1986; al-Nawawi, 1999).

Scope and Purview of Fatwa

There are two main types of Shariah rulings under Islamic law. The first relates to belief. This ruling consists of knowledge of Allah the Almighty’s existence, His oneness (wahdaniyyah), His attributes (sifah) and the six pillars of faith. These rulings are considered critical and complex and are a delicate subject. Any questions regarding this topic is considered an unbearable responsibility. Therefore, the jurists are in agreement that no ijtihad or fatwa on this topic can be exercised (Al-Ashqar, 1976; al-Dusuki, 2007). The opinion of these mufti is based on the Qur’anic verse, “So know that there is no god but Allah, and ask protection for your fault and for the believing men and the believing women; and Allah knows
the place of your returning and the place of your abiding” (Muhammad 19). The purpose of ‘knowledge’ in the verse is merely to contemplate and to meditate, not to seek in-depth explanation. In another verse, “Most surely in the creation of the heavens and the earth and the alternation of the night and the day there are signs for men who understand” (Ali ‘Imran 190).

The companions of the Prophet (pbuh) had contented themselves with total submission where this topic was concerned as the Prophet had not assigned them to delve further, even if they knew the subject. They had also not been discharged from being a believer due to lack of knowledge of this subject, which prevents them from issuing *fatwa* on the subject. According to Amir Badshah, *fatwa* may be issued only on subjects that tend to be speculative, but not on belief. All that is required is mere knowledge of the subject (Amir Badshah, n.d.).

Total submission was adopted by jurists in the golden age of Islam spanning the first year of the Hijri calendar and the two centuries that followed, but even they were forbidden from thinking too deeply on the subject; this action was considered aberrant and ignorant (Al-Shawkani, 1999). The method of issuing *fatwa* adopted by Imam Malik ibn Anas in the case of *al-istiwa’* in al-Baqarah 2:29 is clearly demonstrates how the subject was handled in that period: “*al-istiwa’* is known, and the manner of ‘*istiwa’* is unknown, while believing in *istiwa’* is obligatory, and asking about it is an innovation” (al-Shatibi, 1992).

It is also prohibited to raise questions on matters that have been transmitted by a large group of people such as the matters relating to the pillars of Islam, prohibitions regarding mothers and daughters related to marriage etc. when, in practice, there is no suspicion that the group had gathered together to fabricate a falsehood as this is difficult to prove. In such matters it is considered that evidence has been transmitted and the method has been shared between the people and the jurists (al-Duski, 2007).

The second Shari’ah ruling is on matters related to the Muslim’s daily affairs such as contract of sales, marriage, divorce, manumission, administration, penance etc. These are matters related to which it is permitted to issue *fatwa* but based on the premise that if such a *fatwa* is forbidden, it is impossible for the person who seeks information to wait until he himself reaches the expertise of the *mujtahid*.

Furthermore, although it is the communal obligation of every Muslim to study, preventing or prohibiting the person who seeks explanation to ask questions may lead to forfeiture of a ruling and this may discourage any progress in improvement, thereby causing hardship for the people in the carrying out of their daily activities (al-Duski, 2007). Therefore, there is no other option except to seek answers from the person in charge i.e. the *mufti* as stated in the Quranic verse, al-Nahl: 43 as well as in the verse, “Abiding therein forever; surely Allah has a Mighty reward with Him” (Al-Tawbah: 22).
The Prophet (pbuh) also encouraged his companions to seek explanation if they encountered new cases such as that of the man who injured his head and had wet dreams (ihtilam), and who was then ordered by his friend to perform ritual ablution (ightisal), causing him to become rigid and stiff, and then to die. When the Prophet was informed of the incident, he said, “They have killed him, may Allah kill them. Is not a cure for a lack of knowledge to ask a question?” (Ibn Majah, 2007).

New Scope of Fatwa

As human life evolves with time and development, the emergence of new circumstances cannot be prevented. Although Muslims inherit a vast amount of works and knowledge written by the jurists, these works are not sufficient to provide answers and solutions to all new circumstances. This is where the fatwa institution plays a vital role; as long as human life continues to evolve and transform, and as long as Shariah is appropriate and compatible with every place and time, the request for fatwa will never cease (Al-Duski, 2009).

There are two main areas of great change that need attention, namely, the area of medical science and technology and the area of finance. The former includes matters related to information and communication technology, organ transplant and regeneration, chemical warfare etc. while the latter includes current practice and the products of finance and banking such as Islamic bond (sukuk) and modes of financing, among others (Al-Ashqar, 1976; al-Duski, 2007).

For example, one of the conditions to imposing the cutting of the hand of thieves is that the property stolen must be valuable and must have been put under the security of the owner, that is to say, it enjoyed physical security. The burden of proof regarding the security of the property is upon the owner as the said property was in his custody. However, recent developments in cloud storage do not imply physical security as the property stored is in the form of virtual property. The question may not arise as the law regarding intellectual property is regulated and implemented, but the question regarding the burden of proof upon the owner of the said property as well as the issue of ownership does arise. Most of the items in cloud storage are shared files, and the owner may not know for certain that his property has been taken or stolen. The said property may also have been used by the ‘unauthorised’ owner in another server or country. The activity of sharing or taking this same property can be repeated, and the owner may not know that his files have been used. The issue arises that the original owner may not even know that his property has been taken or stolen, and may have no mechanism for ascertaining proof in order to bring the perpetrator to justice. The only way of tracing the culprit is through certain organisations, and this requires a large amount of money (Netskope Report, 2015).
Legal Effect of Fatwa on the Muslim Community

Fatwa is an instrument under Islamic law that facilitates clarification on Shariah rulings regarding new circumstances based on detailed evidence related to the rulings. However, although the explanation comes after someone asks for explanation (mustafti), necessitating the effect of such fatwa only on the mustafti, technically the effect of fatwa is seen on other than mustafti provided that the same matter is being considered. This is because fatwa is related to general rulings of Shariah, which can be related to the mustafti and others as fatwa provide explanation on general matters as a whole (al-Mallah, 2009).

As the scope of fatwa is related to the act of worship, and the explanation found in the act of worship is in the form of clarification, it cannot be imposed legally by the Qadi (al-Qarafi, n.d.). For example, the Qadi is not permitted to deliver judgement that someone’s prayer is valid (sahih) or void (batil) as the explanation can only be delivered via fatwa. The mustafti may accept the fatwa if it is correct or he may disregard it and ask for a new fatwa from another mufti. However, the fatwa may become binding towards the mustafti if he is restricted to follow (muqallid) the madhhab of the mufti (al-Qarafi, n.d.). According to Al-Sheikh Muhammad Ali, since fatwa is merely an explanation of the Lawgiver’s rulings that is related to maslahah in this world and the hereafter, the obligation is specific to those restricted by the madhhab of the mufti.

Therefore, fatwa is more general in ruling but more specific in obligatory requirement (Al-Sheikh Muhammad Ali, 2009).

In a nutshell, fatwa will become binding only if the mustafti seeks clarification that requires immediate attention, and no other solution available. Otherwise, if there is time to seek explanation from another mufti, the solution given may be ignored to facilitate convenience in Muslim daily activity (al-Nawawi, 1999).

Role of Fatwa and Mufti in Attending to Issues and Problems Arising in Contemporary Muslim Society

The institution of fatwa as a mechanism in providing explanations enjoys a significant position, which is gravely important and enormously advantageous. Fatwa provides an explanation and clarification on obscure matters related to religious affairs. It provides guidance on what is considered the correct pathway to success.

The importance of fatwa raises the position of the mufti to that of the Prophet, in providing and giving explanation as well as with regards to their khalifah. This point of view is based on the premise that the early Muslim scholars (the ulama) were the successors to the Prophet in terms of providing explanations and solutions, as well as having been his companions. With regards to this, the Quran states, “O you who believe! Obey Allah and obey the Messenger and those in authority from among you; then if you quarrel about anything, refer it to Allah and the Messenger, if you believe in Allah and
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Since their duty is to deliver and spread the Lawgiver’s ruling to the people, as well as since their fatwa is correct, obeying their fatwa is similar to obeying the command of Allah (al-Duski, 2007).

According to ibn al-Qayyim, the position of the mufti is similar to that of a minister (wazir). The privilege of the position of a minister appointed by the king is verified, and his standing is not unknown, as his position is one of the highest ranks. The position appointed by Allah the Almighty enjoys the same privilege as the one appointed by the Lawgiver i.e. the messenger of Allah (Ibn al-Qayyim, 1991).

The life of Muslims and their personality is clear and plain in terms of their beliefs, worship, social life, economic activity, legislation, litigation and the law. The institution of fatwa will continually guide and support the development of Muslim lives. The fatwa that follows the correct method that is based on the Quran and the Sunnah, as well as the correct rules of derivation will give the positive effect of preserving the identity of Muslims. This process will continue to prevent any corruption and depravation in the heart of Muslim society (al-Mallah, 2009).

Muslim jurists were warned of the consequences of taking for granted the leniency of the Syara’ in fatwa where the fatwa is not based on authentic sources. They were also warned not to give fatwa based on their own wishes and desires as the effect of those actions would affect Muslim society (al-Ashqar, 1976). The evidence of this is vast, such as the fatwa on the status of Muslims regarded as non-believers because of disagreement in denominational issues and the fatwa on the permissibility of sexual intercourse with a newly deceased wife (Abu Daka, 2011; Khan, 2014).

In Malaysia, the institution of fatwa plays a vital role in providing explanations for new developments that cater specifically for new issues arising in Malaysian society. Examples can be seen in the fatwa regarding child marriage (child under the age of puberty), womb donation, various types of vaccine, gold sales and investment and indelible ink, among others (e-Fatwa, 2015) Fatwa is an effort by Islamic authorities to provide explanation and clarification in order to prevent hardship from afflicting Muslim society. Nevertheless, whether the mustafti follow the fatwa issued is another matter.

Fatwa and mufti play a very significant role in Muslim society. If no one is entrusted with the role of issuing fatwa, society would descend into chaos to the extent that people are not able to differentiate between what is permissible and what is prohibited. Perhaps, in such a scenario, what is permissible might become prohibited while what is prohibited might become permissible. Therefore, fatwa and mufti are necessary in order to meet with the religious needs of society.
CONCLUSION

The role of *fatwa* in giving clarification and explanation with regard to new developments is crucially needed today where speedy solutions are expected. The notion that the Shariah is applicable at any time and in any place will always be practical if one of the mechanisms in providing solutions, which is the institution of *fatwa*, is utilised to its full capacity. It is hoped that this role will not be tarnished by some secluded and remote cases as *fatwa* is based on personal judgement in cases that are purely speculative, making it non-binding on *mustafti* in general and the Muslim society as a whole. It is also worth mentioning that derivation of *fatwa* and rulings prove that Shariah represents the flexibility and evolution of Islamic law in every age and place.

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REFERENCES


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