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**ANALYSIS OF PRACTICE AND METHOD OF FATWA
STANDARDIZATION IN MALAYSIA AND INDONESIA**

Fathullah Asni (a)*, Faisal Husen Ismail (b), Jasni Sulong (c)
*Corresponding author

(a) PhD Candidate, School of Humanities, Universiti Sains Malaysia, 11800 Penang, Malaysia,
fathasni90@gmail.com

(b) PhD Candidate, School of Humanities, Universiti Sains Malaysia, 11800 Penang, Malaysia,
titelfaisal80@gmail.com

(c) Associate professor, School of Humanities, Universiti Sains Malaysia, 11800 Penang, Malaysia, jasni@usm.my

Abstract

The purpose of this study is to identify the reforms and elements of integration in *fatwa* administration in Malaysia and Indonesia, in which, the result of *fatwa* being issued is strong, standard, and problem-solving and brings public interest (*maslahah*). This study uses a qualitative method, in which, the data were collected through library research and survey. Survey was conducted through interviews with the *muftis*, *istinbat* officers, and senior academicians. The findings show that the *fatwa* administration in Malaysia has undergone reform, whereby, the *fatwa* institutions are now equipped with professional workforces led by the *mufti*, provided with financial provisions and legal provisions, and the *fatwa* issued have a binding authority. On the contrary, Indonesia has no official institutions in charge of managing *fatwa* affairs. Despite that, in Indonesia, there are influential non-governmental organizations, known as Majelis Ulama Indonesia (Indonesian Ulama Council) (MUI), Muhammadiyah, and Nahdhatul Ulama (NU), whereby, MUI is the most dominant organization, and thus, it acts as a coordinator between Muhammadiyah and NU. The study discovers that there are some similarities between the *fatwa* institutions in Malaysia and Indonesia in terms of administration and method of issuing *fatwa*, particularly, in using certain references during the issuance of *fatwa*. Consequently, these references become under control in the issuance of a standardized *fatwa*. The similarities between Malaysia and Indonesia is also evident when the MJFK and MUI act as a coordinator among *mufti* institutions.

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1. Introduction

Most contemporary Islamic countries had established official fatwa institutions for the purpose of standardizing fatwa decisions, and thus, distinguishing them from personal fatwa. This action has made the official fatwa enforceable and authoritative (Asyur, 2016). Today, the administration of fatwa is uneven between the Islamic countries. There are countries which have several fatwa institutions with their own executive force, such as Malaysia, whilst there are also countries which do not have any official fatwa institution, but they have several considerably influential fatwa institutions, such as Indonesia (Asni, 2017). Even though these countries may have organizations which are responsible and influential for the issuance of fatwa, these organizations work differently, in terms of their administrative processes, decisions, and enforcement. Hence, this study aims to investigate the theories and methods used in the istinbat process of a fatwa, the steps of fatwa standardization, and the actions of its enforcement in the society.

2. Problem Statement

The problem of this study is that there are issues of differences in the administration of fatwa in states that are under Malaysia. This is because since the beginning of independence, the affairs of Islamic religious under the jurisdiction of the state. As a result, it was found that each state was free to determine the administration and production of fatwa (Asni, & Sulong, 2017). Inconsistency in administration and fatwa is not good because it does not indicate good governance and brings confusion to the community because it has different fatwa status in the same problem (Asni, & Sulong, 2016).

However, in the country of Indonesia is different from the Malaysian country when it does not have official institutions and jurisdiction specialized in fatwa matters. This would certainly bring a conflict to the Muslim community there because there is no official institution that organizes fatwa affairs (Bahri, 2017). Hence, based on these problems, the study will examine and explore the standardization and integrity of fatwa institutions in Malaysia and Indonesia.

3. Research Questions

The research question of the study is what are the efforts made in Malaysia and Indonesia to coordinate and standardize the fatwa institution? What is the similarity between fatwa institutions in Malaysia and Indonesia in terms of administration and methods of issuing fatwa, especially in using certain references during the issuance of fatwa?

4. Purpose of the Study

The purpose of this study is to identify the reforms and elements of integration in fatwa administration in Malaysia and Indonesia, in which, the result of fatwa being issued is strong, standard, and problem-solving and brings public interest (*masalah*).

5. Research Methods

This study is a qualitative study in which data are collected through library research and field research. Through a library research, researchers collect data on fatwa issues, fatwa institutions, fatwa production processes and fatwa legislation in both countries through relevant circulars, books and journals. Then the collected data were analyzed using the content analysis method. According to Jasmi (2012), document analysis is a method of obtaining relevant information from printed material in the form of documents. Hence, based on the study of the collected data, the researchers conclude that there are elements of standardization of fatwa institutions and fatwa production in both countries. Furthermore, in order to obtain more detailed information on practices at fatwa institutions in both countries, researchers have unstructured interviews with individuals directly involved with fatwa institutions in both countries, comprising JAKIM, Mufti and the Fatwa Committee.

6. Findings

6.1. Fatwa Unification Efforts

Fatwa unification efforts had actually taken place since the period of the *Sahaba* (Companions of the Prophet Muhammad S.A.W). For instance, Ibnu Mas'ud had followed 'Uthman's (the then Caliph) *ijtihad* and left his own *ijtihad* (Abu Dawud, 2009). Umar al-Khattab had emphasized on Abu Bakar's *ijtihad* (Al-Jawziyyah, 2014). In this regard, respecting the leaders who are authoritative, as well as those who are more knowledgeable is one of the methods of unification. Some of the *Sahaba* had very much welcomed and celebrated the views of pious *Sahaba* who lived in the same period as them, even though all of them had their own views (Asni, 2016).

Similar concept had taken place during the *tabi'in* and *tabi' tabi'in* periods when the most authoritative views were being followed and taken as official *fatwa* to avoid *khilaf*. For instance, during the Abbasid period, the Secretary of State, 'Abd Allah ibn al-Muqaffa' had suggested to the Caliph Abu Ja'far al-Mansur to appoint the Book of *al-Muwatta'* which is written by Imam Malik to be the representation of the Government's main view, and that Imam Malik's *ijtihad* to be formulated as a standard code of law (Sulong, 2014). Likewise, Caliph al-Mahdi and Caliph al-Rashid had intended to use the Maliki's sect views as official reference. Harun al-Rashid's Government had appointed Abu Yusuf as its chief judge and made the book of *al-Kharraj* as the main reference (Sulong, 2014). Thereafter, many *fatwa* and *fekah* writings were used as references and laws in countries such as the Bani Abbasid Empire, whereby, the book of *al-Ahkam al-Sultaniyyah* written by al-Mawardi was used as an official reference (al-Muhamid, 2001). This standardization did not only occur in the form of reference sources, but also in terms of the flow of the sects. For instance, during the Ottoman Empire period, Khadive Muhammad Ali Pasha had only appointed *mufti* from the Hanafi sect (Sulong, 2014).

The efforts of standardizing *fatwa* did not just stop there. The *fuqaha'* and administrators must also understand the method of *istinbat* based on the exact and standard rules of *Syarak*, so that the result of *ijtihad* leads to the same decision. Thus, 'Abd al-Rahman bin Mahdi suggested to Al-Syafi'i to write a book explaining the methodology of issuing legal rulings. This is aimed at outlining a standard procedures based on the references of the rules of *Syarak*, thereby, resulting in the issuing of a standard

legal rulings (Sulong, 2014). In addition to that, the standardization of *fatwa* is also encouraged by the imams of the four sects in implied form, whereby, they had informed the *ummah* to prioritize the strength of *dalil* (Dahlawi, 2016).

In this context, the unification of *fatwa* can occur by focusing on the strengths of *dalil*, as well as achieving *maslahat* and *maqasid*, regardless of the background of the sect (Jasim, 2017). This is based on the argument of *maslahah* that it facilitates the *kadi* and Muslim community in knowing about the rules of *Syarak*, reduces error in ruling, unites the nation's *fatwa* by taking the most *rajih hukum*, and avoids the disadvantages of dispute (Jasim, 2017). The determination of a unification of *fatwa* decision is the jurisdiction of the ruler under the principle of *siyasa al-syar'iyah*. When a leader has established a law, it is obligatory for the society to obey it (Al-Nisa': 59). Hence, Allah S.W.T orders the *ummah* to obey the *wali al-amr*, whether it is pledged to the rulers or to the Islamic scholars. In this case, the *fuqaha'* are responsible for the setting up of the legal rulings to be made as laws, whilst the rulers are responsible for enforcing the laws and making them obliged to be obeyed (al-Muhamid, 2001).

6.2. The Practice and Method of Fatwa Standardization in Malaysia

In Malaysia, there are 12 official *mufti* departments, which are headed by the *Mufti*, and they have the authority to issue a *fatwa* on the Islamic law through the *fatwa* committee. The legal *istinbat* by the State Government official department is carried out collectively (*ijtihad jama'i*). The *Mufti* and his committee are appointed by the King and the Sultan for the monarchy states and the Yang di-Pertuan Agong for the non-monarchy states (Asni, 2016).

There is no specific qualification that is clearly stated in the Enactment or the States' Islamic Religious Administration Act in terms of mufti qualification, whether in the fields of expertise, level of academic qualification or in terms of excellency. Notwithstanding the facts, in practical terms, all of the appointed mufti have at least a Bachelor's Degree (Yaacob, 1998). Based on the hierarchy structure, all states have three standard main positions, that is, mufti, deputy mufti, and secretary. However, there is a difference in terms of the composition of the state *fatwa* committee, whereby, the Selangor State Fatwa Committee is also comprised of the State Legal Advisor, unlike other states (Section 46). The difference is also in terms of the number of pious Islamic scholars who can be appointed as committee members, whereby, in Kelantan, the number of Islamic scholars who can be appointed as committee members is between eight to 15 persons (Section 33), whilst in Perak only between two to five persons (Section 35). This difference in numbers gives a difference in the strength of expertise and contribution of ideas among committee members.

The efforts of standardizing *fatwa* at the state and central level are made through standardizing the approach of reference method of the sects' views. Based on the provisions of the Enactment of Administration of Religious Affairs, each state, except Perlis has to follow *qawl mu'tamad* of the Shafi'i sect if it leads to public *maslahat*. However, if the situation is in the contrary, then the *qawl mu'tamad* of Hanafi sect, Maliki sect or Hanbali sect may be followed (Asni, & Sulong, 2017). Meanwhile, in Perlis (Section 7), control over the standardization is not made based on the narrow sectarian, but it is made based on the public interest and current affairs. This is to ensure that the *fatwa* attained are more precise and *rajih*, and that the Quran and Sunnah can be maintained as the two main sources in seeking the views

that conform to the *maslahat* in the scope of sectarian views recognized by the *ahl al-Sunnah wa al-Jama'ah* (Asni, 2016).

Besides that, as a move towards aligning *fatwa*, the National Fatwa Committee Muzakarah's (MJFK) recommendations are to be adopted in eight states based on an Enactment. Meanwhile, even though the Federal Territory (Jaafar, 2015), Terengganu (Muda, 2016), and Kelantan (Shukri, 2016) do not have such Enactment, the advice and recommendations of MJFK are adopted by them (Mohamad, 2015). The establishment of MJFK is important because there are separate jurisdictions on religious affairs in each state, and thus, it is indeed distinctive between the states. Thus, the Federal Government has taken the initiative by establishing the National Fatwa Committee (JFK) which serves as the national *fatwa* coordinator in charge of handling legal issues relating to policies, programs or activities (Yaacob, 1998). Members of the MJFK Fatwa Committee consist of a chairman appointed by the Islamic National Council (MKI), Mufti of every state, nine pious Islamic scholars and professionals, as well as a member of the law profession appointed by the Majlis Raja-Raja.

The *fatwa* issued by the Mufti through the State Fatwa Committee can be divided into two categories, that is, first, an official *fatwa* is a *fatwa* gazetted in the State Government Gazette (Section 39) which can be enforced by law, and thus, it is recognized by the court and all parties in the state. Second, the *fatwa* is issued by the Mufti individually or through the Fatwa Committee, but it is not gazetted in the State Government Gazette. It is only a legal reference and cannot be enforced on any individual, body or court (Asni, 2017). All states allocate punishment for those who violate the gazetted *fatwa*. For instance, in the Federal Territory (Section 29), any person who act in a manner of insulting the religious authority or denies, violates or disputes the order or instruction of the Yang di-Pertuan Agong as the head of Islam, the Council or Mufti expressed or given through a *fatwa*, is considered has committed an offence. Upon conviction, the person shall be liable to a fine not exceeding RM3,000 or sentenced to imprisonment for a term not exceeding two years or both. Likewise, the offence of propagating any opinion which contradicts with the *fatwa* (Asni, 2017).

Based on the information presented, in general, the provisions on the mufti jurisdiction in the states are almost standard and not much different than one another. This is a sequence of efforts towards the standardization of *fatwa* in specific and the Islamic law in general, which have become one of the agenda of the Federal Government over the states as enacted in the Constitution (Article 76(1)(b)).

6.3. The Practice and Method of Fatwa Standardization in Indonesia

In Indonesia, there is no official *fatwa* institution which is organized by the government - either at the national level or at the regional level. Religious questions will usually be asked directly to the Council of Indonesian Ulama (MUI), Lajnah Fatwa Muhammadiyah or Lajnah Fatwa Nahdhatul Ulama (NU), all of which are non-governmental organizations (Bahri, 2017). Nevertheless, the MUI *fatwa* are much referred to by the government and the public (Asni, & Sulong, 2017). This is because the existence of MUI is a representation of the combination of Indonesian Islamic scholars, in which, its committee members are among the religious leaders of the Nahdhatul Ulama and Muhammadiyah (Efendi, 2011). Hence, MUI can be considered as dominant and a coordinator of influential *fatwa* bodies in Indonesia, namely Muhammadiyah and NU (Yahya, 2017).

The MUI branch is established in all regions of Indonesia. Services are provided, whereby, issues directly or indirectly presented by the public are dealt with in order to solve their problems (Bahri, 2017). The MUI creates a special *fatwa lajnah* named as “Komisi Fatwa (Lajnah Fatwa)” for the issuing of *fatwa* (Khozainul, 2014), since the MUI also performs other responsibilities, such as issuing halal certificates (Fatwa Munas VII Year 2005 MUI). However, the *fatwa* presented by the MUI Lajnah Fatwa is only advisory and not compulsory. Despite that, the *fatwa* presented by the MUI Lajnah Fatwa is usually followed and believed by various parties due to its authority in the field of *fatwa*. The steps taken by the MUI in issuing *fatwa* begins with the problems raised by the community or the efforts of the Lajnah Fatwa committee in discussing matters concerning the public. Following that, the Lajnah Fatwa committee will hold a meeting of fellow members to discuss about the questions that have been raised (Khozainul, 2014).

In addition to that, *fatwas* are also issued through annual seminar held by the MUI which is also attended by Islamic scholars from various parts of Indonesia. In the annual seminar, issues that require *fatwa* will be discussed collectively (*jama'i*). For instance, during the national level seminar of the Islamic scholars that was held in 1980, which discussed about the law of switching private parts through surgery, the misdirection of Ahmadiyya, and the Muslims' marriage with spouse of other religion (Bahri, 2017). After the Islamic scholars have reached a consensus on the issue, the decision will be handed over to the MUI Lajnah Fatwa to be announced publicly (Khozainul, 2014).

In terms of sources of reference, the MUI Lajnah Fatwa refers to the basic reference of the Islamic law, that is, the Quran, *Hadith*, *Ijma'*, and *Qiyas*. The MUI Lajnah Fatwa does not take a certain sect as a belief which binds the issuing of *fatwa* decisions (Majelis Ulama Indonesia Provinsi Jawa Timur, 2013). In terms of method, Lajnah Fatwa often looks at the opinions and views of *imams* of the sect of *muktabar* on the matter and his *dalil*. If it concerns matter of *al-ahkam al-qat'iyah*, Lajnah Fatwa will judge based on the Quran and *Sunnah*. Meanwhile, for issues which raised disputes among the Islamic scholars, Lajnah Fatwa sought to compromise (unify) on the opinion of the sects (*manhaj al-jam'u wa al-taufiq*). If unification is still unreachable, Lajnah Fatwa will use the method of *tarjih* (opinion polls) on the opinion of the sects based on the *muqaranah al-mazhab* of *Usul Fiqh Muqaran* method (Majelis Ulama Indonesia Fatwa No. 25, Year 2012).

Meanwhile, for contemporary questions, whereby, the views of previous Islamic scholars cannot be found in any sect or other *mujtahid*, Lajnah Fatwa uses the *ijtihad* collectively (*ijma' jama'i*) to settle a certain law based on the method of *bayani*, *ta'lili* through *qiyas*, *istihsan*, *ilhaq* or *sad al-zari'ah* (Bahri, 2017). Nevertheless, Lajnah Fatwa takes into account the factor of *maslahah 'ammah* (public benefit) and *maqasid al-syari'ah* (the purpose of *Shari'a*) in the process of issuing *fatwa* (Bahri, 2017). The MUI Lajnah Fatwa also cooperate with experts, such as the specialist doctors when it comes to the discussion of problems regarding the halal or the prohibition of baby vaccination (immunization), etcetera (Majelis Ulama Indonesia Fatwa No. 04, Year 2016).

In summary, the elements of standardization are evident in the practice of *fatwa* in Indonesia. Although there is no specific enactment present in regulating and administering the *fatwa* in Indonesia, it appears that there are unofficial systems controlling the issuing of *fatwa* that makes the coordination and standardization of *fatwa* possible. As of today, the *fatwa* standardization efforts in Indonesia can be seen through the standardization of method. The MUI Lajnah Fatwa practices similar method of legal *istinbat*

at various levels as a form of *fatwa* standardization, even though the *fatwa* issued is not tied to a particular sect. Likewise, the *fatwa* issued by the MUI either at the central level or branch level are being followed by the other branches. The standardization is obvious when the *fatwa* issued by the MUI are believed and followed by various parties compared to others (Bahri, 2017).

Besides that, the factor of standardization can also occur when a complex, contemporary problem that has never been discussed before by the previous Islamic scholars arises, in which, the process of *ijtihad jama'i* will be conducted, whereby, the MUI Lajnah Fatwa committee members will gather in larger numbers. This will result in a mutually agreed *fatwa*. In fact, the idea of organizing national seminars makes the standardization of *fatwa* even more effective, since the *fatwa* is agreed by a large group of Indonesian Islamic scholars who come from all corners of the Indonesian region. Hence, despite the fact that there has been no reform from the perspective of the *fatwa* administration system as in Malaysia, there is still a *fatwa* body led by the credible Indonesian Islamic scholars (Yahya, 2017).

7. Conclusion

The study shows that the unification efforts of *fatwa* through various mechanism have been carried out since the period of the Sahaba. This is because, in addition to Shari'a, it also brings great benefits and maslahah. The study discovers that the concept of *fatwa* practice in Malaysia and Indonesia is different, but that there are elements which could unite the views of the *fatwa* through the management of *fatwa* conducted by certain parties either expressly or implicitly. Among the *fatwa* unification approaches in Malaysia are through the *fatwa* legal references, the structure of *fatwa* committee members, rules, enforcement, MJFK recommendations, federal government efforts, and safeguarding public interest. Meanwhile, the *fatwa* unification approach in Indonesia are through *fatwa* legal references; the combination of Islamic scholars in a large, influential organization, that is, the MUI which also coordinates Muhammadiyah and NU; *ijtihad jama'i*; organizing national seminar of Indonesian Islamic scholars under the supervision of MUI; referring to the existing *fatwa* of MUI; and prioritize public interest. The study also discovers that the administration and management of *fatwa* in Malaysia is more structured compared to Indonesia since in Malaysia there are provisions in terms of financial and law.

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