

Quranic Values in Malaysian Fatwa¹

Ahmad Hidayat Buang²

Abstract

In Malaysia an official fatwa must be based on the opinion of the Shafi'i school of law, as required by the State Enactments and administrative convention. The reasons behind this are basically historical and social and to certain extent political. As the Malaysian society especially the Muslim has progressively developed into a more open minded and civilized society stimulated by the process of globalisation and modern education, reference to the Shafi'i school in matter of fatwa is sometimes abandoned by the Muftis. The evidence of this can be seen in many of the fatwa issued by the Mufti in Malaysia. It is therefore opportune to see and analyse what are the reasons and factors for this change. As Quran is the main source of law in Islam the analysis of the above fatwa is made with respect to the legal values that are provided in the Quran. It is also served as a benchmark or controlling variable in the analysis. The data on the fatwa at hand are collected up to the year 2000. The paper contains three parts: (1) elaboration on the meaning of the Quranic values in respect of Islamic law (2) elaboration on the system of fatwa in Malaysia and (3) analysis on the selected fatwa issued in Malaysia in respect of the Quranic values.

Keywords: *Quranic values, fatwa, Islamic legal values*

Nilai al-Qur'an dalam Fatwa di Malaysia

Fatwa rasmi di Malaysia adalah berasaskan kepada mazhab Syafi'i sebagaimana yang diperuntukkan oleh undang-undang negeri serta amalan pentadbiran. Perkara ini berpunca daripada sejarah dan kadang-kadang latar belakang politik. Memandangkan masyarakat Islam Malaysia telah berkembang maju dan menjadi semakin terbuka akibat daripada pengaruh globalisasi dan pendidikan moden, rujukan kepada mazhab Syafi'i kadang-kadang tidak diikuti. Ini dapat dilihat kepada fatwa-fatwa yang dikeluarkan oleh Mufti di Malaysia. Oleh itu amatlah

¹ The first part of this article is based on Ahmad Hidayat Buang, "Quranic Values in Islamic Law," *Journal of Usuluddin* 18 (December 2003), pp. 123-136. Materials on fatwa were collected with financial assistance of IRPA 07-02-03-0403 and UMRG434-13HNE.

² Ahmad Hidayat Buang, PhD, is a Professor at the Department of Shariah and Law, and was a former Director of Academy of Islamic Studies, University of Malaya, Kuala Lumpur. Email: ahidayat@um.edu.my

sesuai sekali untuk melihat dan menganalisis apakah faktor-faktor yang mengakibatkan perubahan ini. Oleh kerana al-Quran merupakan rujukan utama dalam perundangan Islam analisis seperti di atas akan dibuat dengan merujuk kepada nilai-nilai perundangan yang terkandung di dalam al-Quran. Ia juga bertindak sebagai satu tanda aras atau variable kawalan di dalam analisis. Data fatwa yang digunakan dalam analisis ialah sehingga tahun 2000. Makalah ini mengandungi tiga bahagian iaitu (1) penjelasan mengenai nilai perundangan al-Quran, (2) penjelasan mengenai sistem fatwa di Malaysia dan (3) analisis fatwa-fatwa terpilih dari perspektif nilai-nilai al-Quran.

Kata kunci: *al-Quran, fatwa, nilai undang-undang Islam*

Quranic Values in Respect of Islamic Law

This is a popular theme written and discussed by many scholars. Hence the discussion here is probably a repetition of what that has been said elsewhere. Nevertheless my discussion below will be limited to the values of Quran in respect of Islamic law. Muḥammad Khudārī Bik in his famous *Tarīkh al-Tashrī'* concluded that Quranic values in respect of law can be summarized as the followings:³

- (1) There shall be no hardship in the religion and accordingly in the law. This is technically known as '*adam al-ḥaraj*'. In verse 78 surah al-Hajj Allah says: "God has imposed no difficulties on you in religion". This value has since become the basic principle in Islamic law. In the case of performing five-times daily prayers, the rules prescribed by the hadith must be observed. Nevertheless the cripples, the sick and the invalid can perform prayers in the manner that suits their physical condition, although this may contradict the rules. Such a tolerance is an example of the principle of no hardship in religion.
- (2) The provisions of the Quran in respect of the law are minimal, mainly basic and rudimentary or what Muḥammad Khudārī Bik called as *taqlīl al-takālīf* or lesser in obligation. Muslim jurists see this as a blessing and one should not indulge in the matter which the Quran is silence. It is therefore lawful to do things that the law is silence and only to abstain from doing things

³ Muḥammad Khudārī Bik, *Tarīkh al-Tashrī' al-Islāmī*, Maṭba'ah al-Istiḳāmah, 7th Impression, 1965, pp.17-19.

that the law clearly prohibits. This value is best expressed by the later jurists in the maxim which says: *al-aṣl ibāḥah* which means the origins of all things is permissibility.

- (3) The Quran in introducing any rule of law takes a gradual approach or better known as *al-tadrīj fī al-tashrī'*. This is on the consideration that abrupt prohibition of certain tradition or enjoinder of certain act would make people uneasy and difficult to adapt and probably resistance. To some Muslims they probably agree that the Quran did introduce its rule gradually, but after its gradual revelation all that was revealed must be followed *in toto*. Thus the question of gradual approach appears to be applicable only to the Quran but not to the later Muslims. This may have been an intense debate among Muslims in many places in contemporary times on the above subject, which is out of the scope of this paper.

Later writers of Islamic law add some refinements of the above summary. Muḥammad Abū Zahrah discussed the Quranic values in respect of relation between the governors and their subjects. He concluded that there are five values that should be observed by the governors in governing their subjects as the followings:⁴

- (1) A ruler must always uphold justice or *al-'adl* in respect of his citizens. Tyranny or *al-zūlm* must be avoided.
- (2) A ruler must rule the state based on consultation from the people or *syūrā*.
- (3) A ruler must rule for the betterment of the state and the people or *ilā al-aṣlah*.
- (4) There must be a cooperation between the ruler and the people and among the people themselves or *al-ta'āwun*.
- (5) A ruler must protect the state and their subjects from destruction and to protect their lives, property and dignity or *al-ḥimāyah min al-radhā'il (nafs, māl wa 'ird)*

⁴ Muḥammad Abū Zahrah, *Muḥāḍarāt fī Maṣādir al-Fiqh al-Islāmī: al-Kitāb wa al-Sunnah*, Ma'had al-Dirāsāt al-Islāmiyyah, 1956, pp.100-106. The same points were also repeated in his *Uṣūl al-Fiqh*, Dār al-Fikr, 1997 (reprinted from 1958 edition), pp.90-91.

Muḥammad Yūsuf Mūsā on the other hand explains the values of the Quran from the perspective of its special features compared with other sources of law in Islam as below:⁵

- (1) The words and meaning of the Quran are from God revealed to mankind in Arabic. Thus reading the verses of the Quran is considered as act of worship because it is God's words. But the most important is that its provisions are binding to all Muslims. It is a great sin to ignore the Quran and an act of apostasy to deny it.
- (2) Muslims believe that its teaching are comprehensive whether for mundane and religious affairs all the same. Its rules are universal and applicable to all whether individual or society.
- (3) Its approach in law is gradual. The verses of the Quran unlike other books of God are not revealed *in toto* but rather piece by piece in the period of 23 years.
- (4) Muslims believe that the teaching of the Quran can never be corrupted through the passage of times or changing of society. Nor it can be changed to suit political, economic and cultural demands. Moreover the true teachings of the Quran can only be referred to in Arabic. Translations of the Quran to non-Arabic languages though it is permitted, cannot be considered as the correct version of the Quran and in fact could not be considered as the Quran at all.⁶

It can be summarized that to Muslims the Quran is the first reference in all matters, its rules are immutable and permanent until the end of times. As such Muslims believe wholeheartedly that Quran is comprehensive and deals with everything that human need to know, because to deny this comprehensiveness is to deny its features as God's word, immutable and cannot be corrupted. Abū Ishāq al-Shātibī, a Mālikī jurist argues that: "the Quran explains everything subject to the above condition as already explained. A scholar who knows al-Quran is surely to know the general knowledge of the Shari'ah. A person who knows al-Quran

⁵ Muḥammad Yūsuf Mūsā, *al-Amwāl wa Naẓariyyah al-'Aqd fī al-Fiqh al-Islāmī Ma'a Madkhal li Dirāsāt al-Fiqh wa Falsafatihi*, Dār al-Fikr al-'Arabī, 1987, pp.116-117.

⁶ See Mannā' al-Qaṭṭān, *Mabāḥith fī 'Ulūm al-Qur'ān*, Maktabah Wahbah, 1997 (eight edition), pp.307-308.

is left with nothing”.⁷ Shāṭibī then claims that he has three evidences to support the above statements: (i) from the Quran itself, (2) from the Sunnah and (3) from the experience of learned people. In the last evidence he quotes a remark from a Zāhirī’s scholar Ibn Ḥazm who said: “every chapter in the law book has the origins from the Quran and al-Sunnah that we know, and for that we thank God, except a chapter on *al-qirād* or commenda partnership”.⁸

It was soon realized that the Quran in many occasion cannot be understood by itself. It has to be explained by other means in order to make its provision comprehensible correctly and more importantly the realization of its provision in practical terms. Shāṭibī points out that “the Quran cannot be understood solely on its own without seeking explanation or clarification from al-Sunnah ... if al-Sunnah cannot provide the explanation, the guidance on its meaning should be found from the interpretation of the people of the first century of Islam (*al-salaf al-ṣālih*)... if that cannot be done its meaning must be understood from the people who knows perfect knowledge of the Arabic language”.⁹

Professor ‘Alī ḤasbuLlāh of Cairo University provides some details of the above proposition that if a person seeks to benefit from the Quran he or she must observe the followings:¹⁰

- (1) The meaning of some verses in the Quran must be understood in the context of other verse in the Quran. Thus, in Surah al-Tawbah, verse 41 which reads “All must strike for Allah’s cause whether in comfort or not” must be read together with Surah al-Tawbah, verse 91 which reads: “it is an excuse for the poor, sick and pauper ...”. It is therefore a mistake just to understand the first verse solely on its own without looking at the second. This is what the Islamic scholar calls as the principle of *‘ām* and *khāṣ* (general and specification).¹¹
- (2) Certain words in the Quran are ambiguous in their meaning. The Sunnah provides clarification for this ambiguity. Thus in

⁷ Abū Ishāq al-Shāṭibī, *al-Muwāfaqāt*, Dār al-Ma‘rifah, 1997, volume 4, p.333.

⁸ Ibid., p.335

⁹ Ibid, p.333.

¹⁰ ‘Alī ḤasbuLlāh, *Uṣūl al-Tashrī‘ al-Islāmī*, Dār al-Ma‘ārif, 1959 (3rd Edition), pp.33-36.

¹¹ For further reading see Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Cambridge Islamic Texts Society, 1991, pp.104-113.

Surah al-Baqarah verse 238 the word *qānitīn* in Arabic language normally means prayers and full concentration and does not include the meaning of silence. It is the Sunnah that explains the word *qānitīn* to include the meaning of silence. Thus a Muslim must not talk when they are in prayers.

- (3) Understanding the reason why a particular verse was revealed (*asbāb al-nuzūl*). One cannot fully understand the Quran if a person has no knowledge on the reason why a particular verse was revealed. The logic for this qualification is that knowledge of the circumstance under which a particular verse was revealed helps to understand the Quran better. Similarly ignorance of this reason would probably restrict one's understanding and lead him/her into a wrong conclusion. In this respect Umar was reported to complain that why the Muslims differ in their opinions given the fact that they refer to the same Prophet and face the same *Qiblah*. Hearing this Ibn Abbās replied: "Oh Caliph, the Quran was revealed to us, we read it and we know the circumstance under which it was revealed. But the people who come after us they only know to read the Quran without knowing the reason why it was revealed. From this they started to interpret the Quran according to their own understanding and because of this they differ and in the end they quarrel".
- (4) Understanding on the custom of the Arab people in the period when the Quran was revealed. One will understand the Quran better if he or she knows the custom of the Arab people.

It is therefore important to note here that the values of the Quran in respect of law is simple, universal, humanitarian and permanent in its principle but pragmatic and flexible in its application. But to understand it correctly according to the orthodox tenets of Islam, one has to follow the methodology laid down by the Muslim scholars as explained above. To choose otherwise will make the understanding of the Islamic law according to the Quranic values incorrect as far as the orthodox tenets of Islam are concerned.

Fatwa in Malaysia

Fatwa means explanation on the practical points of Islamic law (or theology) which is not binding by a Mufti in responding to a question raised by public or government. It is therefore a consultation on the practical point of Islamic law.¹² Muḥammad Abū Zahrah says that the difference between *ijtihād* and fatwa or *iftā'* is that the latter is on practical points of law while the former may include speculative exercise of reasoning.¹³ In Malaysia a fatwa is defined by the state enactments as opinion given by a Mufti published in the State Gazette. The opinion could be a response from a question asked by individuals or government or by order of the government or by Mufti's own initiative.¹⁴ Thus, an opinion on religious matter not given by a Mufti is not officially a fatwa in Malaysia. A Mufti in Malaysia is a government servant with fixed salary appointed by the King or Ruler of a state in Malaysia in which the Mufti serves.

Malaysia is a federal type of government where matters pertaining to the religion of Islam including fatwa are under state's jurisdiction. There are about fourteen states in Malaysia¹⁵ and accordingly fourteen Muftis whose main job is to issue fatwa. In assisting the Muftis, a committee comprising persons who are learned in Islamic religion, is established in all states. This committee is known generally as Fatwa Committee of which the Mufti is the chairperson. In practice Mufti will personally answer the question if the matter can be easily settled. If the question is difficult and involved public interest, the Mufti will bring the matter to the attention of the committee for deliberation. Sometimes a short research or consultation with relevant people is conducted. At the Federal level there is a Committee for Muftis which is known as National Fatwa Committee Council. This Council is consultative body to the Council of Rulers. The latter has the power to instruct the former to deliberate matters of religious urgency in the Federal State of Malaysia. A fatwa

¹² Article *Iftā'*, *Mawsu'at al-Fiqh al-Islāmī*, Wizārah al-Awqāf, 1986, p.238.

¹³ Muḥammad Abū Zahrah, *Uṣūl al-Fiqh*, p.349.

¹⁴ See for example section 34(1) and (2), The Federal Territory Administration of Islamic Law Act 1993 (Act 505).

¹⁵ These states are Johore, Kedah, Kelantan, Pahang, Penang, Perak, Perlis, Malacca, Negeri Sembilan, Sabah, Sarawak, Selangor, Terangganu and Federal Territory.

originating from this Council is nevertheless not binding upon the individual state. It has to be endorsed by the state fatwa committee before the fatwa could be implemented in the state.

In Malaysia there are certain administrative procedures that must be observed in issuing an official fatwa.¹⁶ Some of these procedures are provided for by the state enactments. As an example the Federal Territory Administration of Islamic Law Act 1993 provides in article 39 (1)(2)(3) that a Mufti in issuing any fatwa as according to the law shall ordinarily follow the accepted views (*qawl mu'tamad*) of the Shafi'i school. If that cannot be done, a Mufti is allowed to refer to the accepted views of other sunni schools of Hanafi, Maliki and Hanbali. If this also cannot be done a Mufti is then allowed to use his own judgement or *ijtihad*. The use of other mazhab or the use of one's own opinion is with condition that resort to Shafi'i school will lead to a situation which is repugnant to public interest. The Federal Territory Act also requires Mufti in issuing a fatwa should consult the fatwa committee and may cause a research be conducted in a working paper (section 37 (5) and (6)).

A fatwa properly issued and published in the State Gazette is considered as a law and therefore it is binding to all Muslim citizens of the state in which it was gazetted. Before a fatwa could be gazetted it has to follow certain procedures. Normally as a matter of administration the draft fatwa is presented to the states authority such as Legal Adviser or Religious Council for approval. When this is done, the draft fatwa will be presented to the Ruler who will then proclaim an order that such fatwa to be published in the State Gazette (section 34 (1) Act 505). Henceforward disobedience of the fatwa by any Muslim who is the resident of the state shall be liable to criminal prosecution under the law. Section 9 of the Federal Territories Syariah Criminal Offences Act

¹⁶ See generally Ahmad Ibrahim, *Islamic Law in Malaya*, Malaysian Sociological Research Institute, 1975, pp.148-171. Information contained in this book is mostly outdated in respect of the legislation all of which were repealed, but the procedures provided in these laws are largely retained in the new legislation. For author more recent and current discussion on the matter is his "Acara Mufti Membuat Fatwa" (Mufti's Procedures in Issuing Fatwa), in Abdul Monir Yaacob and Wan Roslili Abd Majid (eds.), *Mufti dan Fatwa di Negara-negara Asean (Muftis and Fatwa in Asean Countries)*, IKIM, 1998, pp.95-111 and my edited book, *Fatwa di Malaysia*, JSU, APIUM, 2004.

1997 (Act 559) provides: “Any person who acts in contempt of religious authority of 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”. In 1997 three Muslim women were prosecuted under the Selangor Syariah Offences Enactment 1995 under section 31 (3) for disregarding official fatwa prohibiting Muslim women from entering pageant contest. Two were convicted with the payment of fine of RM1,400 or imprisonment for four months and six months of good conduct.¹⁷ The other woman was reported to have fled and still at large.

Not all fatwa are gazetted, although the question was discussed by the fatwa committee. Some questions relating to sensitive issues raised especially by the government which seeks a fatwa cannot be disclosed to public. For this reason the deliberation of the fatwa committee from administrative point of view are confidential and the general public and sometimes researchers have no access. Fatwa issued by the committee can only be released to the public after it has been approved and declassified by the authority concerned such as the Mufti or the Religious Council or sometimes State Government. Because this fatwa is issued by the committee, it is normally known as an official fatwa as opposed to gazetted fatwa. The difference between these types of fatwa is that the latter is binding to all Muslim resident in the state whereas the former is not.

Study conducted by researchers like Professor Hooker and Othman Ishak have collected more than a thousand fatwa issued in all states of Malaysia.¹⁸ All fatwa are in form of gazetted and official fatwa. My study between 1997-1999 collected more than

¹⁷ Shah Alam’s (State of Selangor) Shariah High Court, Criminal Case Nos. 510/97 and 511/97. See also *New Straits Times*, 19.2.1998.

¹⁸ Othman Ishak collected about 1,464 fatwa from 1950s to 1980s while Professor Hooker collected about 1,539 fatwa from the period of 1960s to 1985s. See Othman Ishak, *Fatwa Dalam Perundangan Islam* (Fatwa in Islamic Law), Fajar Bakti, 1981, p.90 and M.B. Hooker, “Fatawa in Malaysia 1960-1985”, *Arab law Quarterly*, no.8, vol.2, 1993, pp.96-7.

3,822 fatwa issued by the state fatwa committees and Muftis.¹⁹ From this total I classify the fatwa into three: (1) gazetted fatwa, (2) official fatwa and (3) religious question and answer. The latter is informal and impromptu answers given by Muftis but were recorded in Mufti’s Official Bulletin.²⁰ Out of 3,822 fatwa collected 150 fatwa are in form of gazetted fatwa, 1,354 official fatwa and 2,318 religious questions and answers. If all this fatwa were to be classified according to academic headings such as Shariah, Usuluddin and Social Issues, the distribution of this fatwa can be seen in Table 1 below:

Table 1: Statistics of Fatwa in Malaysia According to Their Forms and Academic Headings

Heading	Gazette	Official	Q&A	Total
Shariah	18	1,120	1,972	3,110
Usuluddin	128	157	189	474
Social Issues	4	77	157	238
Grant Total	150	1,354	2,318	3,822

Source: Ahmad Hidayat Buang et.al.

From the table above it is clear that the majority of the fatwa which is about 81.4 percent is Shariah fatwa, 12.4 percent Usuluddin and 6.2 percent social issues. Although the Shariah fatwa is the majority, the bulk of them are in form of informal questions and answer. The Usuluddin fatwa the other hand are more significant since 85.3 percent of them are the gazetted fatwa. However the numbers of the official and questions and answer fatwa are not reliable since not all states supply their fatwa to the project for records. The reason for this is that production all of these official fatwa may offend certain regulations concerning official records which consider some of these fatwa as classified materials. In respect of fatwa in the form question and answer not all states or Muftis recorded their fatwa in their official bulletin (some of them even do not have the bulletin). Thus only the

¹⁹ See Ahmad Hidayat Buang et.al., *Laporan Projek Penganalisaan Fatwa-fatwa Semasa di Malaysia* (Project Report on The Analysis of Contemporary Fatwa in Malaysia), Syariah and Law Department, University of Malaya, 2000, p.85.

²⁰ Example of this Bulletin are *Majallah Pengasuh* which is perhaps the oldest bulletin still published. It was first published in 1918. See Abdul Hamid Yunus, “Fatwa di Malaysia: Satu Penilaian Sejarah” (Fatwa in Malaysia: A Historical Assessment”, *Jurnal Penyelidikan Islam*, BAHEIS, Jabatan Perdana Menteri, 1414H/1993M, No.8, p.26.

gazetted fatwa are accurate in respect of their number since they are published for public knowledge and the project has full access to these types of fatwa.

Analysis of Selected Fatwa from Quranic Values Perspective

The following paragraphs attempt to analyze certain selected fatwa from the collection shown above. Before doing that, few details of this fatwa collection made by the project need to be explained, especially in regards of their classification under the academic headings. Fatwa under Shariah heading can be classified under several sub-headings such as worship, transaction, mosque, marriage and others as Table 2 below shows.

Table 2: Fatwas under Shariah Sub-Headings

Sub-Heading	Gazette	Official	Q&A	Total
Worship	7	454	999	1,460
Transaction	5	191	244	440
Mosque	2	227	60	289
Marriage	2	97	415	514
Others	2	151	254	407
Grant Total	18	53	1,972	3,110

Source: Ahmad Hidayat Buang et.al.

It appears from the table above that sub-heading of worship counts for the most Shariah fatwa which is about 47 percent. This trend is easily understood since the main concern of the Muslim public in Malaysia from the questionnaire conducted²¹ is that of personal matters relating to religious daily obligations such as praying, fasting, paying zakat and the like. From the survey conducted it was found that 27.2 percent of the main problem is issues pertaining to religious daily obligations. The second main problem was transactions which are about 20.7 percent.²²

Under the second heading of Usuluddin are the sub-headings of deviant teachings, books or publications (which are against Islamic tenets), theology, sufisme, *sam'iyat*, pillars of Islam and

²¹ About 5,000 respondents of Muslims public from all states in Malaysia were selected as sample for questionnaire conducted from the period of October to November 1998. The technique used in selecting the respondents was simple random sampling. See Ahmad Hidayat Buang et.al., *op.cit.*, p.94.

²² *Ibid.*, p.107.

others. Table 3 below shows the statistics of this fatwa under these sub-headings:

Table 3: Fatwas under Usuluddin Sub-Headings

Sub-Headings	Gazette	Official	Q&A	Total
Deviant teachings	58	85	13	156
Publications	60	22	12	94
Theology	4	13	34	51
Sufisme	4	14	23	41
<i>Sam'iyat</i>	-	4	21	25
Pillars of Islam	-	4	20	24
Others	2	15	66	83
Total	128	157	189	474

Source: Ahmad Hidayat Buang et.al.

It is clear from the above table that deviant teachings is the main concern not only for the Muslim public but also for the government as all these fatwa constitute about 33 percent of the total Usuluddin fatwa. More than 37 percent of this fatwa was gazetted in order to prohibit general Muslim public from following these teachings considered as deviant or heretic according to the teaching of orthodox Islam or *ahl al-sunnah wa al-jamā'ah*.

The last heading of social issues comprises of sub-headings such as clothing, ceremonies, custom, behaviour, music and entertainment, social interaction and others. Table 4 below shows the statistics of these sub-headings:

Table 4: Fatwas under Social Issues Sub-Headings

Sub-Headings	Gazette	Official	Q&A	Total
Clothing	-	8	49	57
ceremonies	1	4	24	29
Custom	-	13	14	27
Behaviour	1	6	17	24
Music and Entertainment	2	10	10	22
Social interaction	-	11	11	22
Others	-	25	32	57
Grant Total	4	77	157	238

The issue of clothing is the most popular where 23.9 percent of the total fatwa were issued. It was followed by ceremonies and custom of which the total fatwa issued are 12.2 percent and 11.3 percent respectively.

From the above statistics it is clear that all the fatwa issued are wide ranging covering all aspects of Islam. For this reason one can conclude that all these fatwa have an important and significant interest with the social, economic and political development of the Muslim society in Malaysia. This tendency is correspondent to the values of the Quran in respect of law, especially flexibility and the principle of no hardship as discussed above. Analysis of certain selected fatwa below attempts to show this.

(1) Friday Prayer

According to the Shafi'i school the Friday Prayer can only be conducted in an area where the number Muslim inhabitants are 40 or above who are adult male with the status of *mastawfin* or permanent resident of that area.²³ The area must also have a building or an open place with roof where the prayers or congregation can be held. These requirements are probably suitable to a peasantry society like the Malays in the old days where movement of people from one place to another was infrequent. With the process of modernization urban areas like cities and towns have emerged and most of the population living and working in these areas are not permanent residents. Majority of the cities dwellers are persons with the status of *muqim* or temporary resident. In the Shafi'i school a *muqim* is not a member of the Friday Prayer congregation. The similar situation arises if the attendees of the congregation are person who are being held in restricted places like jails and detention camps or in security area like military base where free movement inside and outside the base would pose security problems.

In addition to these fiqh requirements, permission from the state authority must be obtained for holding the Friday Prayer congregation.²⁴ The Religious Council of the Malaysian states have received many application from the detention place and

²³ See Muhammad al-Syirbīnī al-Khaṭīb, *al-Iqnā' fī Ḥall Alfāz Abī Shujā'*, Maṭba'ah al-Nahdī, n.d., volume 1, pp.154-55.

²⁴ As an example section 73 (1) of the Federal Territory Administration of Islamic Law Act 1993 provides; "No person shall without permission in writing of the Majlis (Council) erect any building to be used as a mosque...". The mosque is defined by section 2 of the Act as: "a building used for holding Friday and other prayers ...".

military camps authorities to permit them to organize Friday Prayer congregation in the detention and military camps. Upon receiving the application the Council refer the matter to Mufti or Fatwa Committee for fatwa. At first the Fatwa Committee of Malaysian states were reluctant to give permission especially in regard of military camps. In respect of prisons only fatwa from the state of Penang appears to disapprove the request to hold the congregation. Thus the Fatwa Committee of the State of Penang decided on 9th March, 1982 not to permit application to organize Friday Prayer congregation in a prison on the grounds that (1) prison is a detention place where movement is restricted and this is a legal excuse for not attending the congregation (2) the detainees are not *mastawtin* and (3) to organize the congregation in such a place is not concordant with the spirit of the Friday Prayer.²⁵ Other states on the other hand approved the application. Thus Kedah Fatwa Committee decided on 30th April, 1987 and 19th June, 1996 to allow Friday Prayer to be conducted in prison since it could help to rehabilitate the inmates through religious values.²⁶ Other states like Negeri Sembilan and Perak appear to allow the issue before Kedah since latter's reference to the former states. Pahang Fatwa Committee decided similarly on 11th November, 1981.²⁷

With regard to Friday Prayer in military camps, initially disapproval was given by Penang and Kedah Fatwa Committees on 11th November, 1981 and 17th August, 1996 respectively. The Kedah Fatwa Committee gave the reason that the nearby mosque is already sufficient for that purpose.²⁸ Recent development nevertheless shows that States Fatwa Committees have begun to allow Friday Prayer to be held in military camps. Thus the State of Kedah Fatwa Committee, reversing its decision after appeal, on 5th October, 1996 held that Friday Prayer can be organized at the military camp for security reason by following the opinion of Hanafi school.²⁹ Since the matter was decided according to the

²⁵ Ahmad Hidayat Buang, *Fatwa Collection – Volume 1 (Shariah)*, Department of Shariah and Law, University of Malaya, (unpublished), 2000.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ For requirements of holding Friday Prayer congregation in the Hanafi school see Ibn 'Abidin, *Hashiyah Radd al-Muhtar*, Dar al-Kutub al-'Ilmiyyah, 1994, volume 3, p.40.

Hanafi school special permission from the Ruler is needed to endorse and approve the fatwa.³⁰

(2) The Payment of Zakat From Salary Income

The issue arises mainly as a result of Shaykh Yusuf al-Qaradawi's thesis which suggests that fixed income from salary and professional fees should be levied for zakat.³¹ Fatwa Committees in Malaysia appear to agree with this suggestion and accordingly several fatwa were issued in this regard.³² Thus Kelantan Fatwa Committee held that zakat should be levied on this income with condition as below:³³

- The source of income is from systematic salary scheme
- The amount of salary commensurates or more that of currency rate of *niṣāb* and exceeds the *ḥawl* (full financial year).
- The date of *ḥawl* begins from the starting working date with payment rate of 2.5 percent
- Zakat is levied on the net amount of the basic salary after deduction of the minimal basic needs of personal and family.

Majority of the Malaysian states follow suits such Melaka,³⁴ Perlis³⁵ and Federal Territory.³⁶ Perlis Fatwa Committee is probably different from the above states in respect of determining the rate of payment where Zakat payers were given an alternative of paying the zakat as according to the rate of crops, which is 5 percent after deduction of basic needs.

³⁰ Section 38(1) Kedah Administration of Islamic Religion Enactment 1962 (no.9).

³¹ Yūsuf al-Qaradāwī, *Fiqh al-Zakāt*, Mu'assasah al-Risālah, 1981, volume 1, pp.487-520.

³² The acceptance of this thesis is nevertheless a gradual process through seminars, public lectures, discussions and writings by the academics, Muslim economists and Zakat's officers who have vigorously urged the religious authority in particular the Muftis to issue the fatwa to the effect. For detailed discussion in Malaysian context see Mujaini Tarimin, *Zakat Pendapatan: Hukum dan Persoalannya* (Zakat on Income: Law and Its Issues), Kahisha Services, 1995.

³³ Government of Kelantan State Gazette no.550/1999.

³⁴ Government of Melaka State Gazette no.M.P.U14 on 25th May, 2000.

³⁵ Decided on 20th October 1991.

³⁶ Federal Territory Gazette no. P.U.(B) 152 on 29th April, 1999.

(3) Distribution of Zakat's Proceeds

Generally the distribution of zakat's proceeds is according to the principle laid down by the Quran in Surah al-Tawbah verse 60 that is to equally distribute the zakat among the eight class of beneficiaries or *aṣṇāf*.³⁷ Some states such as Selangor and Perlis in fact issued a fatwa to this effect.³⁸ It is also a principle in the Shafī'ī school that distribution must be made immediate and no surplus must be retained.³⁹ Due to practical reasons, as shall be mentioned below, these principles cannot be upheld. Equal distribution cannot be made since some the beneficiaries mentioned in the Quran especially *al-riqāb* or slaves can no longer be found. Moreover equal distribution is not practical since the needs and of various beneficiaries and their numbers are not the same. The need of the poors is greater than others and likewise their numbers. Hence priority in distributing zakat proceeds is given to the poors. Fatwa issued in Selangor, Federal Territory and Kelantan decided that zakat distribution is only to be made to all *aṣṇāf* except that of *al-riqāb* and *al-ghārimīn*.⁴⁰ Nevertheless certain states have given fresh definition to the meaning of *al-riqāb* and thus making the payment of zakat to this class possible. In Perlis for example *al-riqāb* is defined as any effort in eradicating ignorance and assistance in improving studies in religious schools.⁴¹ In the Federal Territory although no distribution of zakat to *al-riqāb* was made, redefines it as financial assistance to Muslims who struggles in the name of Islam.⁴²

³⁷ Abū Zakariyā Yahyā al-Nawawī, *al-Majmū'*, Dār al-Ihyā' al-Turāth al-'Arabī, 1995, volume 6, p.205.

³⁸ Government of Selangor State Gazette no.P.U. 130 on 29th August 1994 and Perlis official fatwa decided on 20th October 1991.

³⁹ Al-Nawawī, *al-Majmū'*, volume 6, p.206.

⁴⁰ See Mustafā Abd Rahman, "Sumber Hasil dan Perbelanjaan Utama Majlis Hal Ehwal Agama Islam" (The Main Sources of Income and Expenditure of the Islamic Religious Council), *Jurnal Penyelidikan Islam*, number 6, 1407/1986, pp.29-33.

⁴¹ Perlis Fatwa Committee decided on 8th October 1989.

⁴² Federal Territory Fatwa Decisions 1975-1986, Minute number 77.

(4) *Waqf* Lands

Waqf is a gift of real properties in perpetual to the benefit of the nominees in the *waqf* deeds or declaration. In Malaysia under the state laws, the religious council is the sole trustee of all *waqf* in the state.⁴³ There are two kinds of *waqf* in Malaysia: public or *waqf 'am* and private or *waqf khas*. In the Shafi'i school the administrator or trustee of the *waqf* must honour the intention of the *waqf* settlor in the use of these *waqf* properties.⁴⁴ This can be a problem when some of these *waqfs* are attached with specific condition. In this regard sometimes the original condition attached to the property is no longer beneficial and in certain situation detrimental to the well-being of the beneficiaries. Similarly, when the property is destroyed and the original intention can no longer be implemented. Hence the original intention or condition needs to be adjusted to the current situation which is more advantageous or profitable to the beneficiaries. Technically this is known as *istibdal*.⁴⁵ As mentioned before the Shafi'i legal theory is quite rigid and adamant that the original intention should be retained at all cost especially in case of a mosque where the property must be left alone to perish and cannot be exchanged with another property.⁴⁶ As an example a gazetted fatwa in Malacca outlines policy pertaining to *waqf* properties in the state as the followings:

- No *waqf* properties can be transferred in ownership by way of sale or gift.

⁴³ For example section 61 of the Federal Territory Administration of Islamic Law Act 1993 which provides: "Notwithstanding any provision to the contrary contained in any instrument or declaration creating, governing or affecting the same, the Majlis shall be the sole trustee of all wakaf, whether wakaf 'am or wakaf khas...".

⁴⁴ In the notes of *Hāshiyah al-Iqnā'* by Ibrāhīm al-Bājūrī, it is held that: "the condition on the use of *waqf* properties is equal to the Shariah law, thus the administrator of the *waqf* properties cannot disregard the intention of the *waqf* settlor", volume.ii, p.84.

⁴⁵ For further discussion on this topic in present Malaysia see Siti Mashitoh Mahamood, *The Administration of Waqf, Pious Endowment in Islam: A Critical Study of the Role of the State Islamic Religious Councils as the Sole Trustees of Awqaf Assets and the Implementation of Istibdal in Malaysia With Special Reference to the Federal Territory of Kuala Lumpur*, Ph.D. Thesis (unpublished), University of Birmingham, 2000.

⁴⁶ Muḥammad ibn 'Abd al-Raḥmān al-Dimashqī, *Raḥmat al-Ummah fī Ikhtilāf al-A'immaḥ*, Dār al-Fikr, 1996, h.142.

- If the *waqf* land is taken by government through legal means, the compensation must be paid to the Council and a replacement for a new land should be provided for the purpose of *waqf*.

Application from the Religious Council to the Muftis requesting permission to develop some of these properties for the benefit of the Muslims in contradiction to the original intention of the *waqf* settlor is nevertheless allowed by the Mufti. Thus Fatwa Committee of Kedah held that the original intention of the *waqf* land can be changed for the purpose of development with conditions as below:⁴⁷

- the sale price is according to market value
- the property cannot be sold to parties which have interest with the *waqf* settlor or administrator
- the substituted property must be better than the original property
- the transaction must be in cash
- permission from the Sultan must be sought since the approval is based on Hanafi school of law

(5) Successions

Most of the properties succeeded in form of succession in Malaysia among the Muslims are in form of real property such as agricultural land and house. Testamentary succession is very rare. Since distribution of these properties is made intestate according to Islamic law, problems arising from this form of distribution is fragmentation of the land into small division which is difficult administratively and detrimental economically.⁴⁸ In this respect a fatwa has been issued in the State of Penang to solve this problem by providing that the land must not be divided among the heirs but it should be sold to the Baitulmal and price of such sale be divided among the heirs.⁴⁹ This fatwa although did not modify the principle of Shariah law but certainly provide a practical solution to the problem. According to the fatwa committee such a sale is desirable in order to avoid damage (*mafsadah*) to the property of which the Shariah seeks to protect.

⁴⁷ Decided in 19th July 1987 minute no.6 and 16th February 1995 minute no.4.1.

⁴⁸ For further reading see Dato Sir Mahmud Mat, "Land Sub-Division and Fragmentation", *Intisari*, volume 1, no.4, pp.11-17.

⁴⁹ Decided on 20th September 1981.

The second problem is in the case where the property could not be distributed exhaustively to the heirs in the absence of agnate heirs (*‘aṣabah*). The later scholars (*mutakakhirūn*) of the Shafi‘i school maintain that the surplus is returned *pro-rata* to the surviving Quranic heirs (*aṣḥāb al-furūd*) which is known as *radd*, in case where the Baitulmal is not properly managed.⁵⁰ Following the original fatwa of the Shafi‘i school which is based on the systematic scheme of the Quranic and al-Sunnah intestate distribution, the Fatwa Committee of Penang decided that surplus in succession is paid to Baitulmal and the principle of *radd* is no longer applicable.⁵¹ The principle of non-*radd* is now widely practiced in all states of Malaysia.

Conclusion

Although the number of fatwa selected for the analysis as above might not be considered as representative of all the fatwa in Malaysia, I hope some of them could somehow reflect the development of thought among the Muftis in Malaysia in respect of Islamic law. I agree that the above fatwa are a tiny fragment of massive numbers of fatwa in Malaysia but at the same time it is an arduous job to analyse all of them. Flawed the methodology may be, nevertheless through the above fatwa, I suspect there is a changing in thought and attitude of the Muftis in respect of issuing fatwa which concerns the well-being of the Muslim community. If all the above fatwa were to be seen from a micro perspective, it is clear the Muftis are ready to abandon the rule of Shafi‘i school in favour of other school if this is for the benefit of the Muslim. From this premise I conclude that the values of the Quran in respect of the law such as simplicity, non-hardship, humanitarian, pragmatic and flexibility in the application of its principle as discussed above are evident in the Malaysian fatwa. I believe this is a trend not only in Malaysia and but also in other places of Muslim residence and state. This is a proof that Islamic law is dynamic and adaptable to the changing needs and challenges of the modern times. In future I believe the practice of Islamic law, especially with regard to public matters, is no longer sectarian but taking the

⁵⁰ Al-Nawawī, *Minhāj al-Ṭālibīn wa ‘Umdat al-Muftīn*, Maṭba‘ah al-Ḥaramayn, n.d., p.74.

⁵¹ Decided on 14th December, 1982.

best view from all the schools of law in Islam and applying it according to the spirit and values of the Quran. In my opinion, the Malaysian Fatwa to some extent has shown this.

Bibliography

- Abdul Hamid Yunus, "Fatwa di Malaysia: Satu Penilaian Sejarah," *Jurnal Penyelidikan Islam*, No.8, 1414H/1993.
- Abdul Monir Yaacob and Wan Roslili Abd Majid (eds.), *Mufti dan Fatwa di Negara-negara Asean (Muftis and Fatwa in Asean Countries)*, IKIM, 1998.
- Abū Zahrah, Muḥammad, *Muḥāḍarāt fī Maṣādir al-Fiqh al-Islāmī: al-Kitāb wa al-Sunnah*, Ma'had al-Dirāsāt al-Islāmiyyah, 1956.
- Abū Zahrah, Muḥammad, *Uṣūl al-Fiqh*, Dār al-Fikr, 1997.
- Ahmad Hidayat Buang et.al., *Laporan Projek Penganalisaan Fatwa-fatwa Semasa di Malaysia* (Project Report on The Analysis of Contemporary Fatwa in Malaysia), Syariah and Law Department, University of Malaya, 2000.
- Ahmad Hidayat Buang, "Quranic Values in Islamic Law," *Journal of Usuluddin* 18 (December 2003), pp. 123-136.
- Ahmad Hidayat Buang, *Fatwa Collection – Volume 1 (Shariah)*, Department of Shariah and Law, University of Malaya, (unpublished), 2000.
- Ahmad Hidayat Buang, *Fatwa di Malaysia*, Jabatan Syariah Dan Undang-undang, Akademi Pengajian Islam, Universiti Malaya, 2004.
- Ahmad Ibrahim, *Islamic Law in Malaya*, Malaysian Sociological Research Institute, 1975.
- Al-Dimashqī, Muḥammad ibn ‘Abd al-Raḥmān, *Raḥmat al-Ummah fī Ikhtilāf al-A‘immah*, Dār al-Fikr, 1996.
- Al-Nawawī, Abū Zakariyā Yahyā, *al-Majmū‘*, Dār al-Iḥyā’ al-Turāth al-‘Arabī, 1995.
- Al-Nawawī, Abū Zakariyā Yahyā, *Minhāj al-Ṭālibīn wa ‘Umdat al-Muftīn*, Maṭba‘ah al-Ḥaramayn, n.d.
- Al-Qaraḍāwī, Yūsuf, *Fiqh al-Zakāt*, Mu’assasah al-Risālah, 1981.
- Al-Qaṭṭān, Mannā‘, *Mabāḥith fī ‘Ulūm al-Qur‘ān*, Maktabah Wahbah, 1997.
- Al-Shāṭibī, Abū Ishāq, *al-Muwāfaqāt*, Dār al-Ma‘rifah, 1997.

- Al-Syirbīnī al-Khaṭīb, Muhammad, *al-Iqnā' fī Ḥall Alfāz Abī Shujā'*, Maṭba'ah al-Nahdī, n.d.
- Bik, Muhammad Khudārī, *Tarīkh al-Tashrī' al-Islāmī*, Maṭba'ah al-Istiḳāmah, 7th Impression, 1965.
- Federal Territory Gazette no. P.U.(B) 152 on 29th April, 1999.
- Government of Kelantan State Gazette no.550/1999.
- Government of Melaka State Gazette no.M.P.U14 on 25th May, 2000.
- Government of Selangor State Gazette no.P.U. 130 on 29th August 1994.
- ḤasbuLlāh, 'Alī, *Uṣūl al-Tashrī' al-Islāmī*, Dār al-Ma'ārif, 1959.
- Hooker, M.B., "Fatawa in Malaysia 1960-1985", *Arab law Quarterly*, no.8, vol.2, 1993.
- Ibn 'Abidin, *Hashiyyah Radd al-Muhtar*, Dar al-Kutub al-'Ilmiyyah, 1994.
- Kamali, Mohammad Hashim, *Principles of Islamic Jurisprudence*, Cambridge Islamic Texts Society, 1991.
- Mahmud Mat, "Land Sub-Division and Fragmentation", *Intisari*, volume 1, no.4.
- Mawsu'at al-Fiqh al-Islāmī*, Wizārah al-Awqāf, 1986.
- Mujaini Tarimin, *Zakat Pendapatan: Hukum dan Persoalannya*, Kahisha Services, 1995.
- Mustafa Abd Rahman, "Sumber Hasil dan Perbelanjaan Utama Majlis Hal Ehwal Agama Islam," *Jurnal Penyelidikan Islam*, number 6, 1407/1986.
- Othman Ishak, *Fatwa Dalam Perundangan Islam*, Fajar Bakti, 1981.
- Siti Mashitoh Mahamood, *The Administration of Waqf, Pious Endowment in Islam: A Critical Study of the Role of the State Islamic Religious Councils as the Sole Trustees of Awqaf Assets and the Implementation of Istibdal in Malaysia With Special Reference to the Federal Territory of Kuala Lumpur*, Ph.D. Thesis (unpublished), University of Birmingham, 2000.
- The Federal Territory Administration of Islamic Law Act 1993 (Act 505).
- Yūsuf Mūsā, Muḥammad, *al-Amwāl wa Nazariyyah al-'Aqd fī al-Fiqh al-Islāmī Ma'a Madkhal li Dirāsāt al-Fiqh wa Falsafatihi*, Dār al-Fikr al-'Arabī, 1987.

