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The Mufti and the State Administration of Islam: Some Selected Fatwas in Contemporary Perlis, Malaysia

Mufti dan Pentadbiran Islam Negeri: Beberapa Fatwa Terpilih di Perlis, Malaysia

Norbani Ismail*

Abstract

The paper explores an Islamic institution in contemporary Malaysia. It studies the roles of the Mufti and the State mufti office as actors in issuing and informing religious edicts (fatwas) in Perlis, a northern state of Peninsular Malaysia. As an autonomous state institution coupled with the official state's subscription to *Ahlul Sunna wal Jama'ah* as a principle in interpreting Islam, the state has issued fatwas that are perceived to embrace the religious nuances of contemporary realities. The paper examines the fatwas issued by Perlis's Mufti Office on establishing paternity claim, unilateral conversion and child custody, child vaccination, and woman leaving marital home. The fatwas unveil a meticulous process that involves consulting relevant experts in both the religious scholarly fields and the modern scientific disciplines. The fatwas indicate deep appreciation and use of centuries old Islamic religious body. The fatwas also reflect the state's religious institution's commitment to and understanding of protecting the basic rights of individuals as much as serving the public good.

Keywords: fatwa, State Administration of Islam, Perlis, Malaysia, Mufti Office.

Abstrak

Artikel ini meneroka Institusi Keislaman dalam konteks Malaysia masa kini. Artikel ini meneliti peranan Mufti dan Pejabat Mufti sebagai pihak bertanggungjawab penting dalam mengeluarkan dan memaklumkan fatwa di Perlis, sebuah negeri di utara Semenanjung Malaysia. Sebagai institusi yang berautonomi, dan disokong oleh pegangan rasmi kerajaan negeri Perlis dengan fahaman Ahlul Sunna wal Jama'ah, Pejabat Mufti telah mengeluarkan fatwa yang dilihat mencakupi nuansa realiti masyarakat masa kini. Artikel ini meneliti teks fatwa yang dikeluarkan oleh Pejabat Mufti Perlis tentang

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isu-isu berkaitan dengan penentuan paterniti, pertukaran agama sebelah pihak dan penjagaan anak, pemvaksinan anak, dan isteri yang meninggalkan rumah. Berdasarkan penelitian, fatwa-fatwa telah disepakati melalui proses teliti dan cermat dengan merujuk kepada pakar-pakar dalam bidang agama dan saintifik. Selain itu, fatwa-fatwa ini mendedahkan tentang penghargaan mendalam terhadap legasi keilmuan Islam. Tambahan, fatwa-fatwa ini juga mencerminkan iltizam institusi keIslaman negeri dalam melindungi hak-hak individu serta melindungi kebaikan umum

Kata Kunci: fatwa, pentadbiran Islam negeri, Perlis, Malaysia, Pejabat Mufti.

Introduction

Islam has always been important in informing and shaping the state and society in Malaysia. The fifteenth-century Malacca sultanate, the earliest Muslim political entity that more than a decade later engendered other Malay Muslim states, had adopted Islam as an inspiration for the state's socio-economic and political administrations and policies. The *Undang-Undang Melaka* (Malacca Digest) that governed various laws from maritime to personal laws are profound examples of how Islam, together with the indigenous customary laws (*adat*), informed and dictated the state's sophisticated laws.¹ During the indirect British administration in the Malay states in late nineteenth century, the Malay rulers continued guarding Islam in its high position albeit reduced only to matters related to family and personal affairs. A little more than a decade after gaining independence in 1957, Malaysia embraced Islam as an important source that dictated various social, educational, financial as well as governing policies. In addition, federal and state Islamic institutions were established, institutionalized and bureaucratized. This paved the way for the government to vertically manage Islam and its affairs. The institutionalization and bureaucratization² of Islamic affairs helped the government of the day to inform what has been termed as 'state-sanctioned' interpretation of Islam to the Muslim public.

In contemporary Malaysia, the Council of Religious Affairs and Malay Customs, a state institution, manages Islam and its affairs under the royal patronage of the state Ruler. The state executive branch which

¹ Khasnor Johan, "The "Undang-Undang Melaka: Reflections On Malay Society In Fifteenth-Century Malacca", *Journal of the Malaysian Branch of the Royal Asiatic Society*, (1999): 72/2 (277): p. 136.

² Dominik M Muller, "The bureaucratization of Islam and Its Socio-legal Dimensions in Southeast Asia: Conception Contours of a Research Project", *Max Planck for Social Anthropology Working Papers*, (2017): no 187: p. 5.

is elected through the process of parliamentary democracy works together and supports the functions and roles of the state religious institution. This paper studies the administration of Islam in contemporary Malaysia through the roles of the mufti and its office which officially informs and sanctions interpretation and expression of Islam in the changing socio-economic and political contexts. The roles and functions of a state Mufti are important elements to examine ways the contemporary Muslim state administers the Islamic institutions it created. The official position and authority of the Mufti in a state administration can be perceived as negotiation, protection and delineation of the roles of muftis in contemporary state. Moustafa³ and, Yuki and Hiroko⁴ argue the bureaucratization of Islam and its administration, and particularly on issuing fatwa by the muftis, limits the freedom of interpretation and personal opinions of other religious scholars. The power and authority vested on the state mufti inevitably marginalizes the personal opinions of the Muslim scholars outside the state religious administration. This paper argues further that fatwa issuing particularly in a bureaucratized institution like that of the Mufti Office in Malaysia highlights the negotiation and re-reading of the muftis with the Islamic texts and rich corpus of intellectual heritage. Consequently, the muftis will re-apply the re-read the rich corpus of intellectual heritage within the newly emerging problems. The responses the Mufti Office provided towards the socio-religious concerns of the public are the main objectives for its establishment, thus undermines its position as a platform for political or ideological influences. The Mufti Office may issues fatwas for necessary religious legitimacy and public approval, but it may also issue them that it deems needed and beneficial to the public interests that are largely drawn from the Islamic intellectual legacy, thus challenges any biases or personal interests.

The paper also aims at highlighting the twentieth century Islamic intellectual and socio-cultural history of Malaysia that unveils the rich transnational ideational reform movements that significantly shaped the interpretation and application of Islam in Perlis, a tiny northern state. It helps tracing the dynamics and interactive connection between Southeast Asian primarily Indonesian and Malaysian scholars who formed a network of scholars that promoted reform in the Malay states in early twen-

³ Tamir Moustafa, "Judging in God's Name: State Power, Secularism, and the Politics of Islamic law in Malaysia", *Oxford Journal of Law and Religion*, (2014): 3/1: p. 162.

⁴ Shiozaki Yuki and Kushimoto Hiroko, "Reconfigurations of Islamic Authority in Malaysia", *Asian Journal of Social Science*, (2014): 42/5: p. 603.

tieth century. Perlis, that became the seat of the reform ideas in Malaysia through its state official adoption of reform ideas, proves the effort of those early scholars made a successful story. Perlis officially subscribes to the interpretation of Islam ‘*Ahlul Sunna wal Jama’ah*’ (The People of Sunna and the Community School), an understanding of Islam that is based on the Qur’an, and the established Sunna of the Prophet and his teachings. It also does not subscribe to any particular school of jurisprudence (madhhab), a stance that considerably differs from other Malaysian states that openly declare following of Shāfi‘ī school of jurisprudence. This paper does not compare the issuance of fatwas between various Malaysian states, rather it focuses on Perlis to showcase a state’s Islamic institution in producing fatwas that it deems necessary for the public.

This paper asks the following questions: what are the roles of contemporary Islamic institution like the Mufti Office in (re)thinking about Islam today? How does the Mufti Office internalize the state call for reform ideas in the state? The paper studies selected fatwa (religious edicts) issued by the office of the Perlis Mufti during the tenure of current Mufti Muhammad Asri Zainul Abidin. These fatwas are selected based on the attention and debate given to them by the Malaysian public. The paper aims to draw attention how fatwas are issued as responses to the concern of the public on challenges they confront. It studies the fatwas issued by the Mufti Office on paternity claim by a child whose parents married less than six months; child custody in unilateral conversion to Islam; a woman leaving marital home; and child vaccination. These fatwas are important cases to examine in exploring the state commitment to reform ideas and re-interpretation of Islam that fit within the multi-religious and changing realities of Malaysian context. These selected fatwa are studied to identify the principles and contemporary applications of the Islamic texts on which any fatwa was decided on.

Mufti and Its Roles in Islamic Tradition

The Qur’an mentions in two different verses (4:127; 4:176) the term (fa-ta-wa) in which the people sought socio-legal opinions from the Prophet on issues they needed clarification. In essence, *iftā’*, the legal rulings and advices were issued due to the emerging issues and concerns confronted the Muslims that required answers. For the Muslims who lived during that time, the Prophet was the best authority to seek opinions from. His roles in issuing socio-religious and legal advices provided foundational notion for succeeding generations to continue acknowledg-

ing the significant roles of muftis in informing and constructing religious knowledge and intellectual tradition.

A mufti may issue a fatwa on any issue at any time, however it remains a non-binding religious advice and it has “no power of coercion”.⁵ Despite of non-binding value of fatwa, the roles of mufti in informing, shaping and negotiating socio-religious issues to the public remains central to the Islamic communities. The interconnectedness of the roles of the mufti with the Muslim communities highlights the central function of Muslim scholars in construction of Islamic knowledge for the Muslim public in Islamic contexts. The fatwas issued by muftis can be understood to have utilitarian purposes⁶ such of which any fatwa issued can be used in the Islamic court as admissible evidence to adjudicate any religious rulings. In addition, when a fatwa on certain socio-religious issue is made, it informs the Muslim community on the issue that essentially provides platform for interpretive legitimacy and coherence of interpretations. Correspondently, the fatwas issued can also be seen as contesting power struggle between various religious and societal stakeholders. Therefore, it was not unknown historically that a fatwa was issued as a legitimate tool to attack or retaliate against political or religious opponents on various issues.

A Mufti was expected to be an independent scholar that estranged himself from any political state influences and favor. This political independence ensures his legitimacy and authority was admired by the public who expected the mufti to be issuing advices on issues of their concerns without fear and prejudices. In fact Muslims are well reminded of the 13th century prominent scholar Ibn Taymiyya’s imprisonment due his unpopular fatwas that were seen as challenging to the political ideology of the state⁷. Nevertheless Skovgaard-Peterson points out that it was not uncommon throughout the Islamic history for the ruling government to appoint an official mufti to be its official voice.⁸ It was recorded that the Umayyad Caliphate, the earliest Islamic dynasty in Islamic history, ap-

⁵ Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas for the Dar al-Ifta*, New York: Brill, (1997): p. 2.

⁶ The utilitarian purposes of the fatwas are drawn from the work of Caeiro. See Alexandre Caeiro, 2006. “The Shifting Moral Universes of the Islamic Tradition of Ifta” : A Diachronic Study of Four Adab al-Fatwa Manuals”, *The Muslim World*, (2006): 96:p. 661.

⁷ Elliott A Bazzano, “Ibn Taimiyya, Radical Polymath, Part I: Scholarly Perceptions”, *Religion Compass*, (2015): 10:110: p. 103.

⁸ Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State*, p. 8.

pointed its official muftis for the province of Egypt. This close relation between the muftis and the rulers continued to flourish throughout the Islamic dynasties and Mamluks in the 13th through 16th centuries, and up to the 20th centuries in Ottoman Empire. Skovgaard study shows the establishment of the late 19th century Egyptian's Dar al-Ifta' displays ways the modern Muslim states institutionalized of the roles of mufti and the fatwas.⁹ The contemporary Muslim states replicated this form of co-opting the religious scholars into the states religious apparatuses and bureaucracies that essentially continuing the centuries-old tradition of formalizing religious interpretation by the state.

State Administration of Islam and the Mufti in Malaysia

The present high status of Islam in the state administration in Malaysia is traceable back into its centuries of history. Islam was a forceful value to the state, regardless how one interprets its force, since the time of the fifteenth century Malay kingdom of Malacca; its Malacca Digest (*Undang-Undang Melaka*) that delineated the maritime and penal code laws was heavily inspired by both the customary law (*adat*) and Islamic laws. The administration of Islam and its application were placed under the purview of the ruler and the royal court in which the ruler/sultan was vested with absolute power for the implementation of the laws. After the collapse of Malacca kingdom in the early sixteen century that helped sprang other Malay states, Islam continued to be the force of important state's socio-economic policies. The role of the ruler and his court in protecting Islam has elevated the roles of Islam that shaped and informed the state socio-economic policies.

During the British indirect administration of some of Malay states in the late nineteenth century, the roles of the Malay rulers on Islam have been altered to facilitate the British interests. Even though the traditional structure of state administration was retained, the British officers expected the Malay rulers to heed their advices and acted upon them. Nevertheless, the rulers, although now significantly marginalized as state political leaders, continued to administer matters related to Muslim personal laws, marriage and inheritance. Bari affirms that "[it] was during the British administration that the councils to advise the rulers in matters pertaining to Islam and Malay custom were established".¹⁰ Roff¹¹ (2009)

⁹ Ibid, p. 9.

¹⁰ Abdul Aziz Bari, "Religion, Law and Governance in Malaysia", *Islam and Civilizational Renewal*, (2010): 2/1:65.

argues that these councils and the monopoly of the rulers on specific issues related to Islam helped to pacify both the British administration and the now politically stripped Malay rulers: the British now had their grip to contain and define the 'Muhammadan law' that fit within the narratives of the colonial power and its definition of judicial practice; the Malay rulers and their subjects believed that Islam, its laws and the Malay customs (*adat*) were still protected and practiced. Roff added that these councils and practices prescribed to the Malay rulers are the catalyst for the 'institutional Islamization' in Malaysia in the twentieth century in which now religious affairs are centralized to the government both at the federal and state levels.¹²

The institutionalization of Islam in Malaysia as it is in its contemporary form today can be linked to the political aspiration by the government back in the 1980's. The global Islamic resurgence in the 70's that impacted the religious awareness of national Muslim population prompted a pressure for the government to adopt Islam in its socio-economic and political administration. In the formal education, Islamic subjects and the texts books were introduced in the curriculum where previously they were taught as elective courses conducted outside the school hours. An (international) Islamic university was established as platform to showcase Islamization in higher education but also serves as producing human resources that inculcated with Islamic values and knowledge. The mass media particularly ones owned by the government also played important part to supply religious programs and contents, a sign there was a strong demand from the public on such programs. In economic sector, apart from conventional banking, Islamic banking system was introduced and adopted for Muslim customers who aspire to have 'interest' free banking. In Islamic law, Islamic judiciary system was given an autonomous entity, a separate independent judiciary system at par with the civil system.

In contemporary Malaysia, Islam and its affairs are co-opted as part of the state bureaucracies through institutionalization of religious bodies. In matters of fatwa, the power vested to the muftis started since the first decade of the 20th century in which *Shāfi'ī* school of jurisprudence was the basis for legal rulings, and that only appointed muftis were allowed to issue fatwas. Shiozaki's and Kushimoto's study on the fatwa

¹¹ William R. Roff, *Studies on Islam and Society in Southeast Asia*, Singapore: NUS Press, (2009): p. 99.

¹² Ibid, p. 100.

and the state in Malaysia uncovers that the first state to adopt such practice was the state of Kelantan where the Ulama Council was created to help state administration to issue fatwa. Other Malaysian states followed the same course with their establishment of the state Ulama Council for the same purpose.¹³

The roles and the authority of the state muftis were further strengthened and bureaucratized¹⁴ when the state of Selangor regulated that “for the appointment of a mufti by the sultan, the composition of fatwa committee under the *Majlis Agama* (Religious Council) and the instruction to observe the “generally accepted” opinions of the *Shāfi’i* school. In addition, it prescribed that all Muslims in Selangor must follow the instructions outlined in fatwas. Consequently the fatwas that have been announced in official gazette became legally binding. “There were even penalties, such as a fine and imprisonment not exceeding six months, for those Muslims who defy the fatwa”. One of the criticisms on official fatwa is that not only it legally binds to the citizens of the state, but also limits the alternative understandings of Islam. “But over and above these and myriad other substantive rules and regulations, it is the state’s monopoly on religious interpretation that is the most striking feature of Malaysian law. Once recorded in the official Gazette, fatwas from state appointed officials assume the force of law and the public expression of alternate views is prohibited.”¹⁵

In last decade of the twentieth century, the roles and authority of the muftis were not only administered by the state, but also was placed under the federal administration. Under the patronage of the Prime Minister Office, the National Council of Fatwa Committee was established to co-ordinate and standardize the issuance of fatwas in all Malaysian states. The extent of success and effectiveness of such coordination and standardization of fatwas issuance remains understudied. One fact remains that the Malaysian Constitution recognizes each Malaysian state has its state by-law that empowers it to appoint its state’s mufti who is also bound by the state’s laws. Legally, a mufti in a state may not have to adhere to the opinions and decisions made by the Federal fatwa body like the National Council of Fatwa Committee. Likewise, the independence

¹³ Shiozaki Yuki and Kushimoto Hiroko, “Reconfigurations of Islamic Authority in Malaysia”, p. 613.

¹⁴ Ibid, pp. 612-615.

¹⁵ Tamir Moustafa, “Judging in God’s Name”, p. 162.

of a state's mufti from the influence of the Federal body is protected by the Constitution of Malaysia (article 3).¹⁶

The bureaucratization of the muftis and fatwas issuance necessitates exploring the intricate balance between freedom of religious interpretation and adhering to the state legislative policies. Nevertheless, the mufti's consultation with the state Fatwa Committee whose members mostly consist of religious scholars helps him to issue a fatwa that serves best the interests of the Muslim public. Furthermore, any fatwa issued by the state Mufti may not necessarily become a state religious law because a fatwa must be gazetted for it to be binding to the public. As stipulated in the Perlis's *Enakmen Jenayah Dalam Syarak* (Islamic Criminal Offences) section 39, anyone that defies the gazetted fatwa issued by the state will be fined with not more than 3 thousands Ringgit or an imprisonment up to a year or both.¹⁷

In addition, the mufti office may issue as many fatwas as needed, yet only a few were officially gazetted.¹⁸ This non-gazetted fatwas by the state authority can be deemed as a non-forceful interaction of state religious authority with the public. Equally, it can also be perceived as the state's tolerance to the different interpretations favored by the public. Occasionally, the Mufti Office may issue a fatwa, yet the public opinion and reception indicate that was unnecessary announcement, thus the fatwa remains as just a matter of religious opinion that does not bear any religious and legal consequences. To illustrate, Selangor¹⁹ and Pulau Pinang²⁰, two Malaysian states have issued a gazetted fatwa in 1995 and 2004 respectively that smoking cigarette is deemed *haram* (unlawful) due to its harmful substance to a person's health. Yet, those who smoke cigarette in the two states never considered it as unlawful and continue with their habit. Consequently, with the scarcity of data, it is pertinent to

¹⁶ See

[http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf)

¹⁷ http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/State_Enact_Ori.nsf/100ae747c72508e748256faa00188094/768053d730e06a8d48257066003018d2?OpenDocument

¹⁸ Author's personal interview with Perlis's Mufti Dr. Mohd Asri Zainul Abidin, at the Mufti Office of Perlis, Kangar, on October 27, 2017 at 9am.

¹⁹ See

<http://www.muftiselangor.gov.my/en/fatwa-personalisation/yearly-fatwa/proclamation/1995-1999/260-fatwa-tentang-merokok>

²⁰ See <http://mufti.penang.gov.my/index.php/2014-11-12-02-48-39/fatwa/warta/377-fatwa-mengenai-rokok-18-november-2004/file>

explore how and to what extent the religious authority in both state legally reinforces this gazette fatwa.

Islam and Reform in Perlis: *Ahlul Sunnah wal Jama'ah* as a Principle

The official declaration of Perlis to adopt the *Ahlul Sunnah wal Jama'ah* as a principle in interpreting Islam today had taken its root in the state administration since the second half the twentieth century. Indeed, the historical origin of its rather reformed understanding of Islam can be traced from the larger transnational movement of reform that was taking place in Southeast Asia in the early part of the twentieth century. The reform idea that initially started in Indonesia in the late eighteenth century was then transferred first to the British Strait Settlements. Later, it was imparted to other Malay states through various reformed figures, writings and Islamic schools. It was within this intellectual transformation and climate that the state of Perlis embraced its interpretation of Islam known as *Ahlul Sunnah wal Jama'ah*, an epithet for an interpretation that espouses the principle of following the Qur'an and established practices founded in the Sunna, without obligation to follow any one particular school of jurisprudence (madhhab).

In addition, the Laws of Constitution of Perlis requires the Ruler of state to adhere to the same principle of interpretation of Islam.²¹ The royal patronage and support have helped the reform idea to flourish in the state. Another contributing factor that facilitated the reform ideas in the state is the role of its religious figures. These local religious figures from various districts in the state who received education from major intellectual cities of the Muslim world such as Mecca, Cairo and Delhi were fascinated by the idea of reform and helped spreading it locally.²² One of the native religious pioneers for the Islamic reform idea in Perlis was Syeikh Abu Bakar Asyaari who was the main *imam* of Alwi Mosque, an important mosque of the capital state Kangar. Syeikh Abu Bakar was educated at al-Azhar University, and he transmitted the reform ideas through

²¹ Ahmad Yusof Amin, *Sejarah Pergerakan As-Sunnah di Perlis: Dahulu dan Sekarang*. Kangar: Jabatan Mufti Negeri Perlis, 2016, p. 16; Saadan Man, "Kedudukan Mazhab Syafi'e dalam Perkembangan Ahlus Sunnah di Negeri Perlis". *Jurnal Fiqh*, (2007): 4: p. 149; Mohd Radzi Othman and O.K Rahmat, *Gerakan Pembaharuan Islam: Satu Kajian di Negeri Perlis dan Hubung Kaitnya dengan Malaysia*. Pulau Pinang: Penerbit Universiti Sains Malaysia, (1996), p. 97.

²² Ahmad Yusof Amin, *Sejarah Pergerakan As-Sunnah di Perlis*, pp 11-15. ; Saadan Man, "Kedudukan Mazhab Syafi'e", pp: 147-149.

his charismatic personality and religious knowledge. Apart from giving lectures on reform ideas and practices at his mosque, he also wrote a dozen and half books on Islamic philosophy, women, Islamic rituals, Islamic history and interpretation (*tafsir*) of selected short chapters of the Qur'an.²³

The reform ideas of Southeast Asia at that time was largely inspired and influenced by the Egyptian Muhammad 'Abduh's call for the return to authentic teachings of Islam that solely based on two fundamental sources of Islam i.e. the Qur'an and Sunna. The reformed scholars argued some of the Islamic rituals and theological practices of the Muslims were corrupted with cultural elements that did not have any origin from the two sources. Furthermore, these practices and beliefs were considered a socio-cultural hindrance to intellectual progress that contributed to digression of the Muslims from moving forward at par with the rest of world civilizations. This 'puritanical' approach to interpretation and expression of Islam did not sit well with many traditional Muslim scholars and Muslim public at that time who believed those practices were well embedded in Islamic tradition, thus there was no harm of internalizing them. This clash of ideas between the two socio-cultural contesting parties was played part by the *Kaum Muda* and *Kaum Tua*.²⁴ The exchanged debates between the two groups encapsulated the struggle of the Muslim societies to balance its relation with past Islamic intellectual legacy, and its negotiation with the right approach to appreciate it. In his writing²⁵, Syed Shaykh al-Hady (1867-1934), the early 20th century reformed scholar voiced out that it was a controversy that plagued Malaya at that time where in essence it was a matter of opinion difference. The Ulamas across the history have expressed their opinions based on their understanding of the texts, and it is the task of the Muslims to inquire and examine those opinions. Muslims are not obliged to blindly follow the opinion of Ulama without examination and scrutiny of its veracity. His call to question the truthfulness of previous scholars' opinions was seen

²³ Saadan Man, "Kedudukan Mazhab Syafi'e", p. 149; Mohd Radzi Othman and O.K Rahmat, *Gerakan Pembaharuan Islam*, p. 99.

²⁴ Syed Shaykh Al-Hady, "Belief in the Ulama: Dispute Between Kaum Tua and Kaum Muda", *The Real Cry of Syed Shaykh al-Hady*, (ed. Alijah Gordon), Kuala Lumpur: Malaysian Sociological Report, (1999): pp. 201-202; Hamka, *Sebuah Polemik Agama: Teguran Suci dan Jujur Terhadap Mufti Johor*, Jakarta: Pustaka Panjimas, (1958): pp. 97-100.

²⁵ Syed Shaykh Al-Hady, "Belief in the Ulama", pp. 201-202.

as challenging the authority and power of the Ulamas, a fact that did not sit well with many traditionalists.

The Perlis state Ordinance legislated in 1959 declared the state Islamic administration adopted the *Ahlul Sunnah wal Jama'ah* as its official interpretation of Islam (5 (1): “*Agama bagi negeri ialah agama Islam Ahlus Sunnah Wal Jama'ah seperti telah diamalkan di dalam negeri*” (Man, 2006), the formal era of the influence of Islamic reform ideas in the state.²⁶ This official announcement annulled the previously subscription to *Shāfi'ī* school of jurisprudence among the state religious bureaucrats in the state. Man's study²⁷ finds it was not uncommon prior to the 1959 that *Shāfi'ī* school of jurisprudence was adopted by most Muslims in the state. He affirms “[in] fact when the Council of Islam and Malay Customs of Perlis was established in 1948, it was led by scholars who subscribed to *Shafi'e* school of jurisprudence”. Yet, the domination of *Shāfi'ī*-affiliated scholars in religious administration of the state waned when the Ordinance came into effective. The reform ideas in the state receive the support from the Chief Minister, the executive branch of the state government.

Selected Fatwa in Perlis: Contemporary (Re) Interpretation and Renewing of the Olds

The state administration of Islam perceives the need to manage Islam and its affairs from vertical position for utilitarian purposes. The assumption for such management outlook is that it helps the state authority to inform the public and impose coherence and standardization of interpretation of Islam with hope to maintain socio-religious stability in the state. It is within this broad social-religious context that muftis plays his roles to inform the public on certain emerging issues that do not have clear answers in the Islamic texts.

In the following paragraphs some selected fatwas issued by the Mufti Office of Perlis are examined. The study of these selected fatwas helps to understand the contribution of contemporary mufti as a state official in engaging with the Islamic texts and his response to the emerging issues. The fatwas under this study are selected based on the recent fatwas issued by the Office of Mufti of Perlis, under the leadership of the current Mufti Dr Muhammad Asri Zainul Abidin.

²⁶ Saadan Man, “Kedudukan Mazhab Syafi'e”, p.149; Mohd Radzi Othman and O.K Rahmat, *Gerakan Pembaharuan Islam*, p. 97.

²⁷ Saadan Man, “Kedudukan Mazhab Syafi'e”, p.145

a) Establishing Paternity

The social implications impacting a Muslim child born out of wedlock in Malaysia has created an intense debate among religious scholars and social practitioners. A child who was born during or before six months of the parents' marriage is considered illegitimate, thus the child's paternity is considered unknown.²⁸ It is a common practice in Malaysia that a Muslim child born in such situation assumes a generic surname 'Abdullah'. The National Registration Department, a civil federal body that issues identity card reinforces this practice thus further cascades the social stigma on the innocent child. The Mufti of Perlis and his Office view that this practice has given unnecessary emotional and mental stress to the child and the family. In light with the public concern on the problem, the Mufti Office had issued a fatwa to explain its official view on the matter to the public. It highlights how an issue becomes the concern of the religious state administration that demands clarity on the matter. The following is the translation from Malay text on the fatwa.

"The paternity status of a child born before six months of marriage

Question: Can a child born out of adultery of the parents adopts paternity of the now-legally wed parents to avoid shame and guilt of the parents socially stigmatize the innocent child?

Answer: This question was answered during my tenure as the Mufti of Perlis (200-2008) and a fatwa regarding the question was issued by the Fatwa Committee of Perlis. Attached here is the decision of the Committee on the issue:

Claiming Paternity of the Mother's Husband Even When the Period of the their Marriage is Less than 6 Months

In a meeting of the Shari'ah Committee of Perlis conducted on September 2008 chaired by the Mufti of Perlis SS Dr. Muhammad Asri bin Zainul Abidin, a decision was made on the issue on a child's paternity claim when the marriage of the child's parents is less than 6 months. The decision is as follows:

"A child born in less than six months of the mother's marriage may claim paternity from the mother's husband unless the husband denies the paternity".

²⁸ A fatwa on this matter issued by the state of Selangor, see http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Upd.nsf/100ae747c72508e748256faa00188094/c673a21540cbbac848256f3b000bee28?OpenDocument

The decision on this issue was approved at a meeting conducted by the Religious Council and the Malay Customs chaired by the DYTMM The State Regency Tuanku Syed Faizuddin Putra Ibn DYMM Tuanku Syed Sirajuddin Jamalullail on November 4, 2008.

Meaning of the Fatwa:

A woman who gave birth to a child in less than six month may claim the paternity from her husband even when they have been married less than six month with the condition the husband does not deny paternity claim.

Background of the fatwa:

In Malaysia, the registration department refuses to allow a Muslim child to adopt paternity of the mother's husband when their marriage is less than six months. The customary of adopting the father's name to that child was denied due to assumption that the child was born out of wed lock thus the paternity is unknown and rejected.

As a result many innocent children who were born in this way could not claim the paternity from their biological fathers. In some situation, an innocent child who was born this way could not figure why his parents' mistake became his social burden and stigma. Furthermore, the Muslim parents now regret their mistakes yet are uncomfortable to talk about their past may face crisis of moral trust with innocent child. Due to these situations, the Fatwa Committee of Perlis discussed this matter and made the decision after it examined and studied the evidences from the Islamic texts as well as various opinions of scholars.

Basis for the Decision:

The Hadith narrated by al-Bukhari and Muslim:

"A child's paternity is the based on the biological blood" (Al-Waladu lil-firash)

There was a dispute between Sa'd ibn Abi Waqqas and 'Abd bin Zam'ah on paternity claim of a young child. Sa'd insisted that the young child who was at time with Zam'ah custody was actually his biological child. Sa'd proved his insistence on the paternity of the child by proving the physical similarities between the child and his biological brother 'Utbah bin Abi Waqqas. Sa'd paternity claim was objected by Zam'ah's son 'Abd who firmly asserted the young child was his father's son who was now married to the child's mother. The dispute of the two claims was then heard by the Prophet who found the visible physical similarities of the child with Sa'd brother 'Utbah. But the Prophet decided that the paternity of the young child, regardless the similarities, belonged to

Zam'ah, the man who was now married to the child's mother. The Prophet said: "The child's paternity is based on the conjugal relation of the mother with a man. Paternity as a result of adultery cannot be claimed".

The Hadith shows that the Prophet conferred paternity claim to the husband of the child's mother even though the child might have been born out of adultery relation. The decision of the Prophet on granting the paternity to the mother's husband can also be assumed to have protecting the past mistake (adultery) of the parties involved. Granting the paternity claim made by a man outside the custodian relation of the child, despite of clear physical evidence, might requires unpacking the moral mistake made in the past, thus risks of personal shame and disintegration of family. The principle is as long as the mother's current husband does not deny, the child's paternity is at the hand of the husband's mother. The paternity claim cannot be granted to a man who is not married to the mother of the child.

Among the Muslim scholars, there are scholars who view that a child born out of wed lock may claim paternity from the man who had committed adultery with the child's mother even if the man is not married to the mother. This situation remains valid with the condition the mother is not married to any man. If she is married, the paternity claim can be made to the husband of the mother, as shown in the previous Hadith.

According to Dr Yusuf al-Qaradawi: "Man and woman who have committed adultery then repented by getting married are legally recognized by Islamic laws. In addition, the classical scholars like 'Urwah ibn Zubair, al-Hassan al-Basri, Ishaq ibn Rahuyah and others viewed a child born of out wed lock may claim the paternity from the man with whom the mother had committed adultery with, as long as the mother remains unmarried. This opinion was supported by Shaykh al-Islam Ibn Taymiyyah and his disciple Ibn al-Qayyim. (see: Islamonline.net)

Caution: The decision of the Fatwa Committee was made on the permissibility of paternity relation between a child and the husband of the child's mother when their marriage is less than six months. Even though the child was born out of wed lock and as result of adultery relation, the paternity can be assumed by the husband of the mother, with the condition he does not deny the paternity.

Among the objectives of this Fatwa:

i) Protecting the dignity of the couple who have committed adultery, a shameful act and mistake in Islam

ii) An innocent child born out of wed lock whose paternity is known yet denied by the authority may be spared from social stigma by conferring the paternity relation

iii) Providing social and spiritual support for parents who have committed adultery in the past yet repented by lawfully getting married to build family.

Action Required:

The state registration department should give paternity relation to the child born out wed lock yet remains in the custody with the mother and her husband. The child should be given the right to assume the surname of the mother's husband, unless the husband denies that right to the child.

Truthfully, Dr. Mohd Asri bin Zainul Abidin (Mufti Kerajaan Negeri Perlis)"

The fatwa issued by the Mufti Office of Perlis above unpacks the dynamics of fatwa issuance in contemporary Malaysia. It indicates the power and authority vested at the Office of the Mufti to issue a fatwa that may contradict with the Perlis Family Law Enactment, Part VIII, article 111 where it states that a child may only be claiming paternity from the mother's husband if the marriage took place for duration longer than 6 months.²⁹ It highlights the intricate interconnectedness of various religious and civil bodies that govern Muslim life in the state. The fatwa on paternity claim of a Muslim child born out of wed lock may not necessarily be strictly solved from Islamic point of views. In Malaysian context, the registration of a child's identity is not governed by a religious body, but is managed by the federal civil office. All children, regardless of their religions, will be registered at the National Registration Department (NRD). However, for registration of identity, the NRD requires every Muslim child a proof for paternity that usually done through the submission of marriage certificate of the child's parents. The NRD also will only register the child identity if it is satisfied with the paternity requirement i.e. the proof that the birth of the child occurred after six months of the child's marriage. It deems that a child born out unmarried mother or born less than six months of marriage is considered illegitimate. Perhaps the basis for the NRD's refusal to acknowledge the status of a Muslim child born out of this situation can be speculated from the

²⁹http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Upd.nsf/f831ccddd195843f48256fc600141e84/00cc82dd5e60744d482578f5002e3f0e?OpenDocument

fatwa issued in 2004 by the National Council for the Islamic Affairs, Federal Fatwa institution. The fatwa defines that a child is deemed illegitimate when the birth was out of wedlock, or born in less than 6 months of marriage, or one or both parents admitted the child was conceived before the legal marriage took place.³⁰ What is evident here is the legitimacy of a Muslim child is not only defined by the Islamic legal pronounce, but also by a federal civil body like the NRD. The issue is further complicated by the independence jurisdiction of the NRD, and the state religious authority including the Mufti Office has no power to influence its decision on the matter. The complexity of the issue of Muslim child paternity claim can only be solved³¹ with the cooperation and coordination of both religious and civil bodies, at the federal or state levels. Each case of paternity claim must be individually examined by the NRD by requesting clarification and assistance from Mufti Office before granting such claim. Further complication may arise since NRD is a federal body thus it may not have to consult the state religious authority like the Office of the Mufti because it is not bound by the state laws or bodies. As for the state of Perlis, this fatwa may facilitate claim of paternity under the circumstances described above in hope for better protection of the child's rights, individual's privacy, and family life. This fatwa is similar with the fatwa issued by the European Council for Fatwa and Research, an Ireland based independent body consists of scholars and clerics had issued a similar fatwa (Paternity of a Child out of Wedlock) on November 7, 2018. Nevertheless, Mufti Office's stance on the matter is rather unique in Malaysian context since other states which have their independent religious institutions have yet to consider the same fatwa. Its decision to issue such fatwa is not solely based on the opinions of the Mufti; it in fact took into considerations of various Islamic textual and legal opinions both the classical and contemporary ones. Furthermore, the decision was reached at through the Mufti's consultation with other religious experts in the Fatwa Committee, a sign of a thorough discussion and examination on the matter was conducted. It is also evident that the Mufti Office weighed heavily the interest and welfare of the affected child and the family when deciding on the matter. Nine other states, and the National Fatwa Council, have issued a fatwa that required any paternity claim can be made if a

³⁰ Md Zawawi Abu Bakar, Wan Ibrahim Wan Ahmad, and Mahyuddin Abu Bakar, "Registration Problems of Illegitimate Children among Muslims in Malaysia", *Journal of Islamic Studies and Culture*, (2017): 5/1:p. 13.

³¹ Ibid, p. 12.

Muslim child was born after six month of the mother's marriage.³² The fatwa by these states significantly differ from that of Perlis's in that the marriage of the child mother is conditioned to be longer than six months.

b) Unilateral Conversion and Child Custody

Another fatwa issued by the Fatwa Committee of Perlis is on child custody. The issue of child custody when one of the parents converted to Islam became a contentious issue among the Malaysian public. The conversion of one of the parent has endangered debates on the parental rights to custody, and the rights of the children to choose religion. The personal aspects of Muslims and non-Muslims like marriage, divorce and custody are subjected to different legal and judicial systems that are independent from each other. When one of the non-Muslim couple converts to Islam the tangled web of various legal and judicial complexity demands attention. The issue was intensely debated among the public, thus the Fatwa Committee had issued the following Fatwa (translation from Malay to English is mine):

In the 18th meeting of Fatwa Committee of Perlis conducted on 22-23 April 2015, an issue on child custody was discussed. It viewed that when one of the non-Muslim couple converted to Islam, the custody of their child/children is not decided based on the religion of one the parents. The custody of the child is determined by the ability of one of the parent, regardless his/her religion to ensure the child's emotional, physical and moral development are protected. At the same time, the Muslim parent has the right and duty to introduce Islam to the child. The following are the details of the decision:

Custody on a child who still nurses: If the child still nurses, the custody is given to the mother. If the child is no longer nursed by the mother, the custody is given to one of the parent who will best serve the development and welfare of the child.

On the custody of a child who is no longer nursing, yet has to achieve the age of discerning/distinguishing between right and wrong (*mumaiyyiz*), the parent who serves best the interest and development of the child is granted the custody. A child who has reached the age of discernment, has the right to choose which parent he/she wants to be the custodian, unless it is proven that the parent of his/her choice may bring harm to the welfare and life of the child.

³² Ibid, p. 12.

The Muslim parent has the duty and right to introduce Islam to the child, even the custody is not granted to the Muslim parent. The Muslim parent must be given opportunity and space to exercise that right and duty.

The fatwa indicates the custody of a child is not determined by the parent's religion. Rather it seeks to clarify that the governing principle in granting the disputed custody is based on the interest and the welfare of the child. If one of the parents has become a Muslim, it is his/her parental rights and duty to ensure the child receives necessary knowledge and upbringing about Islam, regardless if the child is under the care of the Muslim or non-Muslim parent. The text of fatwa issued here is very brief and explicit; it does not provide much detail on the legal nor textual explanation for the decision concluded. It is unclear on what Islamic legal basis the Mufti Office reached the decision on the issue. The ruling in this fatwa bears similarity with the opinions of the Malik's and Hanafi's school of jurisprudence. Mohamed Adil's study on the rights of non-Muslim parent to custody explores the opinions of the four major jurisprudence schools of thought on the matter. He finds that both Shāfi'ī's and Hanbalī's school requires a parent must be a Muslim to claim for parental right. Being a non-Muslim parent is a solid ground of losing custodial rights. On the other hand, both Mālikī's and Hanafī's schools do not see being a Muslim as a requirement for custodial rights. Rather, the ruling on this matter focuses on the child's rights to be raised as a Muslim. A non-Muslim parent may have custodial rights with the condition that the child is raised as a Muslim. The non-Muslim child is prohibited from influencing or imposing non-Muslim way of life to the child.³³

The issue of a child below 18 whose conversion to Islam is decided by the Muslim parent became a national debate in Malaysia. The unilateral conversion of children by a parent unveils intersectionality of legal-religious dilemmas that reinforce complexity and dynamics of multi-religious coexistence within contemporary Malaysia. Islamic family laws in all Malaysian states disallow union of Muslim and non-Muslims thus any legal-religious issues that may arise from such marriage are non-existent. But conversion to Islam by one of the couple who married as

³³ Mohamed Azam Mohamed Adil, "Custodial Issue Arising upon the Conversion of One Spouse to Islam", *Islam and Civilisational Renewal*, vol. 7, no. 3 (2016)p. 416.

non-Muslims “is recognised as grounds to dissolve a marriage under both Act 164 and the Islamic Family Law/Enactments”.³⁴

The religion and civil laws intersects when one of the couples converted to Islam in which the converted spouse is now governed by Islamic laws while the non-Muslim is governed by the civil laws. The situation gets entangled mostly into the deep legal sentiments when it involves custody and unilateral conversion of children. A recent federal court decision on this issue is an example of the intricate relation between Muslim non-Muslim legal and religious dynamics. On a decision made on January 29, 2018 the court nullified the unilateral conversion to Islam of three children by converted ex-husband of a non-Muslim mother.³⁵ The non-Muslim mother sought the legal help when the converted Muslim father converted all the children to Islamic faith without her consent. She challenged the previous court decisions at the Federal Court which the latter decided the word ‘parent’ should not be translated vaguely or literally. Rather it is understood that both Muslim and non-Muslims parents must consult each other, and both have the right to decide the religion of the children. Thus, children below 18 years must get the consent from both parents for conversion. The fatwa from the Mufti Office indicates its emphasis on the welfare of the children in deciding for custodial rights. It adds however, the Muslim parent has the right and duty to introduce Islam as a religion to the child.

As shown in the case, the issue of unilateral conversion may not necessarily be solved only through the issuing of fatwa alone. The non-Muslim parent is not binding with the state’s Islamic personal laws, thus may seek civil legal help and justice such as from the civil court system. “Problems arise when one of the spouses in a marriage converts to Islam because conversion is recognized as grounds to dissolve a marriage under both Act 164 and the Islamic Family Law/Enactments. Also, when only one of the parties is a Muslim, both judicial systems in Malaysia have jurisdiction over the matter, thus causing a power overlap”.³⁶ The above mentioned court case also showcases the dynamics and complexity of the Malaysian socio-religious life that are governed and protected by both

³⁴ Mohamed Azam Mohamed Adil, “Custody and Religions of Minors in Malaysia”, *Islam and Civilisational Renewal*, (2017): 8/2: p. 272

³⁵ <https://www.thestar.com.my/news/nation/2018/01/29/federal-court-unilateral-conversion-of-indira-gandhis-3-children-is-null-and-void/>

³⁶ Mohamed Azam Mohamed Adil, “Custody and Religions of Minors in Malaysia”, p. 272.

Islamic and civil laws, and the Constitution. It requires genuine negotiation and adaptation of living in the pluralistic and diverse society that sometimes may not be solely dealt with by the state Islamic administration. As the Mufti of Perlis argues "... when we defend Muslim rights we should not be so emotional as to oppress non-Muslims. Islam is fair to all...."³⁷

c) Child Vaccination

The Fatwa Committee of Perlis also has issued a ruling on vaccination. The text of the fatwa is as follows:

"The ruling on Vaccination

The parents have the duty to protect their children from any form of harm. As of date, the vaccination of children has been proven the most effective ways in protecting children from infectious bacterial diseases such as measles, polio, influenza, meningococcal, diarrhea and others. It is considered a religious obligation (*wajib*) for parents or guardian to protect their children against these illnesses through vaccinating them. Any negligence of this duty on the part of the parents or guardian that may lead to any form of harm to the child is considered committing a sinful act. In addition, refusing to take any preventive measure to protect the society from such illnesses is also another form of sinful act."

The fatwa issued on vaccination reverberates the public debates especially among the Muslim parents who fear that not only the vaccines may contain unlawful substances such as porcine, but they may also be hazardous to children' health.³⁸ Vaccination is not new to controversy in the Muslim society worldwide. The Muslims are confronted with challenging situation where the vaccination is seen as medically necessary for the health yet there is a rational fear for possibility of its Islamically unhygienic and unlawful substances. Their dismay may not be baseless because some vaccinations may have contained the forbidden substances. The World Health Organization (WHO) reported a large group of Muslim scholars have concluded in 1995 that "the transformation of pork products into gelatin alters them sufficiently to make it permissible for observant Muslims to receive vaccines containing pork gelatin and to

³⁷ Mohd Asri Zainul Abidin, *Islam in Malaysia: Perceptions and Facts*, Petaling Jaya: Matahari Books, (2010): p. 61.

³⁸ Nurul Jannah Binti Mustafa Khan and Zuhaira Nadiah Binti Zulkipli, "Compulsory Vaccination for Children in Malaysia: Legislation and Realization", *YURIDIKA*, (2018):vol 33/3:p. 409.

take medicine packaged in gelatin capsules”.³⁹ However, it is uncertain how far the above mentioned decision by the unidentified religious group of scholars may change the perceptions of the Muslims about the impure contents of vaccination. In fact other religious groups like the Jews and the Christians express similar concern with the Muslims that they too share similar concern on the safety, dietary restrictions and “tampering with natural order by not allowing events to take their course”.⁴⁰

The fatwa on vaccination issued by the Mufti Office demonstrates its understanding of the rationale behind vaccination. With relatively scarce clear evidences of how this fatwa was decided on, we can only assume the Committee must have been confident the vaccination is free from any unlawful as well as harmful substances, and there are real and necessary benefits of the vaccination to humans. What is evident the fatwa weighs heavily on the importance of protecting the life of a child that vaccination is perceived to provide. The fatwa prescribes that vaccinating children for their health reason is fulfilment of religious duty due to the parents, an obligation that one ought not to take it lightly. It also indicates the Fatwa Committee had taken into serious consideration the medical opinions on the importance of vaccination on health, an indication that modern science like medical science also informs a fatwa significantly.

d) Woman Leaving Marital Home

The Fatwa Committee of Perlis also issued a fatwa a woman may leave her marital home as ways to protect her from any marital abuse. The following is the fatwa issued on the matter (translation is mine):

”A 24th and 25th meetings Perlis Fatwa Committee on 20th and 21st December 2016 on Ruling on a Wife leaving marital home for fear of Threat

As a rule, a wife may not leave her marital home (bayt al-zawjiyyah) that she shares with and provided for by her husband unless the husband’s permission. The husband is the protector, guide, and the leader of the family in which the wife is under his responsibility (that she feels safe)

A wife may not leave the marital home and choses to live outside it because that may jeopardize the basic principles of good relationship.

³⁹ <http://www.vaccinesafety.edu/Porcine-vaccineapproval.htm>

⁴⁰ Abul Fadl Mohsin Ebrahim, 2013. *Islam and Vaccination*. South Africa: Islamic Medical Association of South Africa, (2013): pp. 40-41.

In a situation, when the wife strongly fears for her life/safety, dignity, family and wealth may be in danger that recognized by Islamic law, she may leave the marital home without the husband's permission. This measure can be taken by the wife after she has determined there is no other way to safely protect her from threat except through leaving the marital home.

A woman may also leave the marital home when the husband fails to provide a safe home for her, or reasonable maintenance. If she leaves home for the reasons mentioned, she is not considered committing unreasonable disobedience. She will have to return to marital home when the husband is able to fulfill his duties of providing safe home and maintenance.”

The above fatwa premises on the socio-cultural and Islamic legal expectations that marital relationship assumes. The husband is obligated to provide shelter and maintenance for the wife in exchange for his rights owed to her. Both spouses owe each other rights and duties that executing them provide an ideal foundation for a happy marriage. In a situation when the husband satisfies the spousal needs of the wife, she is expected in return to display her obedience including staying at the home he provides. The wife is expected to subscribe to the usual norms of living at the marital home provided for by the husbands. Leaving the marital home as sign of protest due to marital dissatisfaction, or leaving without the husband's permission risks the wife of committing the act of *nushūz* i.e. a wifely behavioral disobedience towards husband. There is a stark connection between her disobedience and her claim to maintenance. Refusal of living at home or leaving without his permission signifies her refusal to permit physical intimacies that she owes to him thus automatically forfeits her rights to spousal maintenance.⁴¹ In light of losing the spousal claim due to her as a result of leaving the home, the fatwa is issued to clarify what situations warrant her leaving the marital home justifiable.

The fatwa above differentiates between leaving the conjugal marital home as an act of disobedience and as a means of rescuing oneself from harmful situation. A wife may challenge this spousal norm if she feels the home that is supposed to provide for her security and safety is no longer protecting her. The fatwa emphasizes that a woman who faces security threatening situation is protected by Islamic law on the principle of that she has the right to protect the five aspects of her life: life,

⁴¹ Kecia Ali, *Marriage and Slavery in Early Islam*. London: Harvard University Press, (2010): p. 83.

dignity, lineage, property, and reason/mental. This fatwa has challenged the notion that women have to put up with abuses at the marital home without legal rights that protect them. It also signifies the concern of the Mufti Office to protect women from the husbands' possible impulsive claim of *nushūz* on the part of the wives as ways to refuse their claim for rightful maintenance.

Conclusion

The selected fatwas issued by the Mufti Office of Perlis studied above have given a compelling indication of strong commitment of the state to reform ideas. These fatwas seek to highlight that Islam is the religion that facilitates human life rather than complicates it. The Mufti himself is an advocate for “a path to Islam that is easy and practical, as it was in the majestic era of the Prophet *pbuh* and his Companions. If not, the Divine religion will be made exclusive to a certain group, and their suffocating practices will cause it to be abandoned by people”.⁴² As the text of the fatwas indicate, these fatwas were discussed in the meetings of the Fatwa Committee, though only one fatwa from these clearly demonstrates clear method of consulting fundamental texts of Islam as well as the opinions of both the classical and contemporary scholars. The consultation of the Fatwa Committee with these sources indicates that Muslim scholars always make use of the intellectual legacy from the past and the present. These scholars also show their creativity and symbiotic ability to reinterpret and reapply of these resources that help answering the present pressing questions. They also see themselves as the custodians of the past intellectual legal heritage in their ability to reinvigorate that legacy within the new contexts. Apart from being the protectors of the knowledge of Islam, the scholars including the Muftis provide the bridges for the public to make connection with the past. Thus calling for reform does not necessarily calls to negate and abandon the past. Hunter reiterates that the ulamas who advocate for reform do not automatically call for disjuncture of the past from the present.⁴³

The paper shows that religious scholars in contemporary Muslim societies seek to be active members of the societies by engaging with the current discourse and debates on issues concerning Islam. The roles of

⁴² Muhammad Asri Zainul Abidin, *Islam in Malaysia*, p.34.

⁴³ Shireen T. Hunter, “Conclusions and Prospects”, *Reformists Voices of Islam: Mediating Islam and Modernity* (ed. Shireen T Hunter). New York: Routledge, (2009): p. 289.

the Mufti is not only to help state bureaucrats to administer Islam in the state, but also to carry out the state's aspiration of reforms through re-interpretation of issues that protect the welfare and interests of the individuals and the public. In addition, the embodiment of the Mufti Office to serve the public good through the reinvigorating fatwas showcases the common narrative that Muslim scholars are modern and always take part in modernity (Zaman, 2007).⁴⁴ Muslim scholars in contemporary Muslim societies hardly take the back seat and become the social-political spectators of their contexts. The contemporary muftis have the sense of duty to demonstrate their aptness for a "... a reformulation of Islam as simple, rational, just and easily applicable - a vision of Islam that has been highly influential in the twentieth century".⁴⁵

The Mufti Office issued these fatwas after the consultation with the Fatwa Committee in the state had indirectly imparted the official voice of Islam in the state. In this context, it is not an exaggeration to consider that the Mufti Office, with coordination and approval from the other state bureaucrats in the state, had issued what many scholars have termed as 'Official Islam' of the state. Official Islam is a concept that is understood to refer to "elements of religious authority under the direct or indirect control of the regime. ...are a part of bureaucracy, meaning that they have some autonomy from the regime itself but this autonomy can be checked by the regime as with any other bureaucratic department".⁴⁶ Indirectly, through the voice of the fatwas, the Mufti Office carries and imparts the messages of Islam, and that reinforcement is what Skovgaard essentially coins as 'defines the Islam of the state'.⁴⁷

The cooperation of various religious as well as legislative bodies in the state highlights the myriad interconnectedness of these bodies to inform the public about the official interpretation of certain issues related to Islam. The consent of the Ruler of Perlis, who is considered the highest authority of Islam in a state, as well as the approval from the state executive bodies on the fatwa issued by the Mufti Office, indicates the fatwa issuing is not necessarily in the hand of the Mufti and his Office alone. It requires independence and respect of trust, authorities and

⁴⁴ Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: The Custodian of Change*. Princeton: Princeton University Press, (2007): p. 50.

⁴⁵ Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State*, p. 29.

⁴⁶ Michael Robbins and Lawrence Rubin, "The Rise of Official Islam in Jordan", *Politics, Religion and Ideology*, (2013): pp. 3.

<http://dx.doi.org/10.1080/21567689.2012.752359>

⁴⁷ Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State*, p. 28.

boundaries of these stake holders before any fatwa is issued. As Perlis has shown, its commitment to reform and its non-adherence to any specific school of jurisprudence might have allowed greater latitude of freedom of interpretation on issues that demand a slight maneuver due to changing circumstances. From the selected fatwas studied in this paper, it is clear that bureaucratization of the religious authority in contemporary Malaysia may have allowed issues to be interpreted differently, thus allowing greater benefits to the public. This coherence of views on the selected fatwas in Perlis indicates the lack of or a total absence of inter-religious institutions competition for authorities since the religious apparatuses in the state are put under the same state bureaucracies. Brown argued⁴⁸ that competing and overlapping states religious apparatuses have pose a challenging task to form unanimous opinions and coordination among the state religious institutions. His study affirms that the interpretation of Islam in modern Muslim states not monolithic; rather, just like in Malaysian case, it is a scholarly and intellectual discretion of the state religious authority to embark on interpretation that may suit its notion of state reform ideas. It also unveils that reformed interpretation of Islam may be possible even within the state bureaucratization of Islam if the state religious authority (mufti) receives full moral support from both the head of the state (the Sultan/Ruler) and the head of the government (Chief Minister).

The selected fatwas in this paper uncover that many issues affecting contemporary Muslim today that require solutions beyond the literal readings of the textual evidences and opinions of scholars. These fatwas reveal new challenges confront the Muslims today yet they may not find clear answers in the previous books of jurisprudence. In this respect, these fatwas are also "... insights into parts of daily life which were ignored by any other genres".⁴⁹ The fatwas reveals the Muslims in Malaysia tackle many issues that may not necessarily found in other places. The Muslim and non-Muslim's sharing the custodian rights and duties who are subjected to different legal and judicial systems is one of the examples that a fatwa can be very unique, time and space specific. The act of re-thinking on finding solutions for the concerns confronted the Muslims in the new socio-cultural environments is hardly a new invention. It had always been a practice of the Muslim scholarly communities since its in-

⁴⁸ Nathan J. Brown, *Official Islam in the Arab World: The Contest for Religious Authority*. Washington DC: Carnegie Endowment for International Peace, (2017): p. 8.

⁴⁹ Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State*, p. 12.

ception to always come out with solutions that are not clearly prescribed in the texts. In this respect, the fatwas shows the dynamics of Islamic legal thinking that require the muftis to showcase adaptability of Islam with time and space changes. In addition, the Fatwa Committee in Perlis deduced these fatwas based on the principle of ‘considering public interests’ (al-maslahah al-‘amah) of the general public, and also on the individual’s rights to protecting life, dignity, property, reason and lineage. The scholars who believe Islam protects human rights and provides justice for all time and space maintain this principle facilitates them to deduce understanding on newly emerging issues today. The selected fatwas also highlight the common recurrent theme in contemporary fatwas. It reveals that far from treating issues related to Muslims from purely Islamic legal perspective, the fatwas show the deep layers of constructing Islam-based solutions for Muslims in contemporary context.

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