

Kedah (Malaysia): Fatwa cannot be questioned, say legislators

Sunday 22 April 2012, by [CHOOI Clara](#), [Correspondent\(s\)](#), [JAG](#) (Date first published: 20 April 2012).

A new law was passed by one of the States in Malaysia (Kedah) to the effect that any fatwa issued by the State Mufti cannot be questioned.

Women's groups in Malaysia issued the press statement below carried on Malaysian Insider yesterday. Others too have condemned the law (see below).

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Future fatwa by Kedah mufti or fatwa committee cannot be challenged in court

ALOR SETAR: Future fatwa issued by the Kedah mufti or Fatwa Committee cannot be challenged in court under an amendment to the Mufti and Fatwa (Kedah Darul Aman) Enactment 2008 passed by the Kedah State Assembly on Tuesday.

A new section - Section 22A - inserted in the enactment states that a fatwa decided by the mufti or Fatwa Committee, whether gazetted or not, cannot be challenged, appealed, reviewed, denied or questioned in any civil court or syariah court.

The insertion was among the amendments passed unanimously by the House on Tuesday.

In tabling the bill for the amendments, Mentri Besar Datuk Seri Azizan Abdul Razak said it was to clarify the membership of the Fatwa Committee and to give conclusiveness to any fatwa decided by either the mufti or Fatwa Committee.

* From The Star online:

<http://thestar.com.my/news/story.asp?file=/2012/4/17/nation/20120417194848&sec=nation>

RESPONSES BY WOMEN'S ORGANISATIONS

Kedah's new fatwa ruling equates man's word to God — Joint Action Group for Gender

Equality (JAG)

APRIL 20 — The Joint Action Group for Gender Equality (JAG) is shocked and deeply concerned by media reports on Kedah's new fatwa ruling. The amendments to the Mufti and Fatwa (Kedah Darul Aman) Enactment 2008 now bar a fatwa from being "challenged, appealed, reviewed, denied or questioned in any civil court or syariah court."

First and foremost, fatwas are theological and legal reasonings, opinions given by the mufti to enlighten and educate the public about Islam and to assist them in arranging their affairs in accordance with the *syariah*. They are regarded as advisory and are not binding and enforceable on the ummah. Over the centuries fatwas have developed into a question-and-answer framework where the mufti responds to questions posed by individuals. If a person was dissatisfied with the fatwa of one mufti, he or she was free to consult a different mufti or alim for an alternative opinion.

Throughout Muslim history, fatwas never had and still do not have the automatic force of law. In fact, when the Caliph Abū Ja'far Mansūr wanted to make Imam Malik's fatwas unchallengeable in 148 AH, Imam Malik himself stopped him, saying that differences of opinion are God's mercy to the ummah.

Within Mazhab Shafi'i or any other mazhab for that matter, the imams have had differences of opinions. Each imam would stand by his opinion, without discrediting or delegitimising other imams' opinions, for their positions were grounded in humility and in the knowledge that there is no such thing as an instance which could decide an issue in question once and for all.

It must be remembered that a fatwa council comprises humans who are not infallible and certainly not beyond committing errors. It is at best a projection of extreme *hubris*, and at worst *shirik*, the biggest sin of all, when muftis become demi-gods and their fatwas equal to divine word.

Such a move is an attempt to subvert the courts' power over religious authorities and force onto Muslims a particular version of Islam in Malaysia, one that they subscribe to and others may not contest. It is an unconstitutional and authoritarian attempt to consolidate power in the hands of a few, without the safeguard of any checks and balances.

In a modern democratic nation state, the government, if it wishes to enforce the fatwa of a mufti, must first put that fatwa through the legislative process for open debate before it can become law. Those not democratically elected, sitting in a closed body, and who do not believe that others have a right to discuss, debate and question matters of religion, cannot be allowed to legislate laws as that affect our fundamental liberties via a decree. Neither should the mufti of the state fatwa committee have the sole power to revoke or amend a fatwa as provided for by the legislation.

When Islam in Malaysia is used as a source of law and public policy with widespread impact on the lives of the citizens of a democratic country, any attempt to criminalise contestation of religious opinions is tantamount to theocratic dictatorship.

One reason why the doctrine of binding precedent did not evolve in Islam is due to the belief that the opinion of one mujtahid can never be regarded as the final wisdom in understanding the infinite message of the Quran. Another alim can give an equally valid opinion based on his learned understanding of the text. In the context of law-making in a democracy, these differences of opinion should be debated and the legislative body then decides which opinion it wants to turn into law.

The implications of such absolute power are frightening. The criminalisation of individuals or groups that even question a fatwa and the inability to challenge these opinions in court indicates the ease with which it can easily be used as a tool to persecute minority groups deemed as a threat by those

in power. This view is reinforced by recent events that further reflect the increasing rigidity and intolerance of many in religious authority, such as the arrest of 200 Shiites in 2011.

We find these developments not only disturbing, but also dangerous as they violate fundamental principles of democracy. We are also concerned how a united Malaysian nation that is democratic, liberal, tolerant and progressive under the banner of 1 Malaysia and Vision 2020 can ever be achieved if an important segment of society, the religious establishment, in their words and deeds are fundamentally opposed to that vision, and are bent on governing the lives of Muslims in their obscurantist mould.

There must be a public sphere for engagement and debate for Malaysians who disagree with those Islamic scholars and preachers who already dominate the public space in perpetuating an intolerant, exclusive and elitist Islam.

Therefore, JAG calls on the prime minister and the Cabinet to take a strong stand and stop this headlong descent into a theocratic dictatorship engineered by those in religious authority both in the government and in the opposition circle.

** The Joint Action Group for Gender Equality comprises Sisters in Islam (SIS), Persatuan Sahabat Wanita Selangor (PSWS), Women's Aid Organisation (WAO), All Women's Action Society (AWAM), the Perak Women for Women Society (PWW) and Empower.*

** This is the personal opinion of the writer or publication. The Malaysian Insider does not endorse the view unless specified.*

RESPONSE BY RELIGIOUS SCHOLAR

Kedah's law on fatwas un-Islamic, says Perlis mufti

By Clara Chooi

KUALA LUMPUR, April 19 — Kedah's new legislative provision which bans the challenge of religious edicts (fatwa) in the courts goes against Islamic principles, Perlis Mufti Dr Juanda Jaya has said.

The religious scholar asked if Kedah PAS-led administration wanted to become a theocratic government instead of forming Pakatan Rakyat's (PR) often-promoted progressive, welfare state.

"The new fatwa enactment shows they are actually heading towards theocracy and intend on imposing beliefs (on others)," he told The Malaysian Insider yesterday.

"This is against Islam," he said.

Juanda (picture) noted that Islam accepts and respects differing views from those of other faiths.

He was responding to a report in English daily The Star yesterday on the Kedah legislative assembly's amendment to the Mufti and Fatwa (Kedah Darul Aman) Enactment 2008 during its sitting on Wednesday.

According to the report, the amendment, which was passed unanimously by the House, stipulates that “any fatwa decided by the state mufti or Fatwa Committee, whether gazetted or not, cannot be challenged, appealed, reviewed, denied or questioned in any civil or syariah court”.

The DAP and PKR have yet to react to the move by their partner which leads the Kedah government under the PR umbrella.

Bar Council Constitutional Law Committee chairman Syahredzan Johan told The Malaysian Insider that the enactment was unconstitutional as it went against the basic principles of a functioning democracy, which underlines the separate of powers between the legislative, executive and judiciary arms of government.

“You have one making the law, one that executes it, one that interprets it. As a general principle, anything that ousts the jurisdiction of the civil and syariah courts goes against this and the principle of rule of law,” he said when contacted yesterday.

Syahredzan added that the state assembly does not possess such powers to usurp the jurisdiction of the courts as enshrined under Article 121 of the Federal Constitution.

“The Constitution now says that the civil court has jurisdiction over matters as provided for by federal law.

“Meaning, only federal law (and not state) can oust the jurisdiction of the civil courts... meaning, only Parliament can do so,” he said.

Article 121 of the Constitution, which governs the judicial powers of the Federation, states that “the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law”.

The controversial Article was amended in 1988 during the Mahathir administration to state the above, which critics have long complained had limited the powers of the judiciary and made it subservient to the executive.

* From The Malaysian Insider:

<http://www.themalaysianinsider.com/malaysia/article/kedahs-law-on-fatwas-un-islamic-says-perlis-mufti>

P.S.

* Posted on SIAWI, Sunday 22 April 2012:

<http://www.siawi.org/article3538.html>