

Patterns of Contemporary Ijtihad in Malaysia: Analysis on Fatwas of Malaysian National Fatwa Council

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Abstract --- The exercise of *ijtihad* (independent reasoning by qualified jurist) has been a significant process in the development of Islamic Law as witnessed throughout the history of Muslim society. *Ijtihad* has always been an important tool and source for Muslims to find Islamic rulings on various current and newcoming issues which they found no direct answers both in the Quran and the Prophet Muhammad's traditions. As a largest community in Malaysia, Muslim society which form 60% of 30 million of total population experiences a lot of new issues in their current life, from issues of personal religious duties to various mundane issues such as economics, ethnic relations, medicines etc. The urgent need of religious answers for these issues has engendered a rapid growth of *ijtihad* in its various form: *fatwas* (edicts), academic researches and legislation. This paper focuses on *fatwas* issued by Malaysian National Fatwa Council as it is regarded as highest and respectable religious institution in Malaysia. This institution has issued more than three hundred fatwas since its establishment in 1970. In completing this paper the researcher uses the datas acquired through funded research grant by University Malaya (RG421-12HNE) which is undertaken from 2012 until 2014.

Keywords --- *Ijtihad*, Malaysia, *Fatwa*, Malaysian National Fatwa Council

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I. Introduction

The Quran and the Prophetic traditions (Sunna) are regarded as two main resources of Islamic law (*shari`a*). Muslim refer to both the Quran and the Sunna to find guidance for their life. Generally, the Quran and the Sunna have provided complete guidance for Muslims religious and mundane lifes. Most of the verses of Quran and the sayings of the Prophet Muhammad outline the basic principles of Islam, its tenets and fundamental teachings of the religion. In dealing with the non fundamental matters especially with regard to the actions of Muslim in his mundane life, some verses explain the rulings explicitly (*qat`i*) and some others come with mutiple meanings and need further interpretation by the scholars. If Muslims find no direct guidance from the Quran and the Prophet's Sunna in facing a lot of new questions in their daily life, qualified jurists are given authority to use their intellectual reasoning to infer the specific rulings from what has been generally laid down by the Quran and the Sunna. The effort of the jurist is known as *ijtihad*.

A. Terms defined

Ijtihad is an Arabic word derived from root word *jahada* which means to struggle. Literally *ijtihad* means "to strive, endeavor, make every effort, take pains, exert oneself, and work hard in doing something." As an important subject in Islamic legal history the classical jurists defined *ijtihad* in various ways but with quite similar meaning. For example, Al-Shatibi defines it as "a process in which a jurist exerts his full efforts to his full capacity in order to acquire exact or probable knowledge or reach judgement in a certain case." Al-Amidi in the same

way defines it as “to spare no effort in the quest of discovering the supposed rules of the *shari’ah* in the sense that the mujtahid leaves no stone unturned.” Many other scholars such as al-Ghazzali, al-Qadi al-Baydawi, al-Bazdawi and Ibn Qudamah also defined *ijtihad* with similar meaning.

Based on these classical definitions, current prominent scholars such as al-Qaradawi illustrates *ijtihad* as a process practised by a qualified jurist to discover secondary divine legislations or rulings (*hukm*) regarding every aspects of human life and his diverse relations. Al-`Alwani, also a contemporary renowned scholar describes it as a creative but disciplined intellectual effort to derive legal rulings from those sources while taking into consideration the variables imposed by the fluctuating circumstances of Muslim society.

2. Discussions

A. Historical development of Ijtihad

The spirit of *ijtihad* has deeply rooted throughout the history of Muslim society from the very beginning. Though it is known that the source of *shari`a* at the time of the Prophet Muhammad was revelation, he also exercised *ijtihad* in the absence of revelation. The Prophet Muhammad himself began to educate his Companions in *ijtihad* and would on various occasions encourage them to practise it in his own presence. He also tolerate from them naïve interpretations while wisely and patiently improving their ability in exercising *ijtihad*. He however intervened when a serious breach of the methodology took place.

During the eras of the Rightly Guided Caliphs, as there were no more revelation, the practice of *ijtihad* was a necessity and thus it became very prevalent. In the second and third generations, *ijtihad* has been an important tool of Islamic law and regarded as a need of Muslim’s survival in facing their fast changing world. The development of *ijtihad* has reached its climax during the 2nd and 3rd centuries of Hijri, i.e. in the era of foundation of four Sunni school of legal thought (*madhhab*), i.e. the Hanafi, Maliki, Syafi`i and Hanbali *madhhabs*. At this time there were so many works on Islamic jurisprudence had been produced by the jurists. Subsequently, as there were no more absolute jurists (*mujtahid mutlaq*) the exercise of *ijtihad* had tremendously declined and then the era of *taqlid* emerged. *Taqlid* is a notion that

opposes the concept of *ijtihad*. *Taqlid* is defined as an act of following the jurist’s standpoint on particular question without knowledge of how the rulings were inferred. Accordingly, the phenomenon of *taqlid* has become more prevalent as most Muslims believed that the *ijtihad* as found in the legal works of previous jurists are sufficient and there were no further need for fresh *ijtihad*. Notwithstanding this fact, however, the exercise of *ijtihad* in its limited form (*ijtihad juz`i*) by jurists in a *madhhab* (*mujtahid madhhab*) persist until present days as a response to particular issues raised in Muslim society.

B. Ijtihad and Fatwa

According to al-Qaradawi, *ijtihad* nowadays may be exercised in three different forms, namely in form of scientific research (*bahth ilmi*), legal codification (*taqnin*) and religious edict (*fatwa*). *Fatwa* is an explanation of ruling on a particular question from *shari`ah* perspective given by a competent jurist called *mufti*. The practice of *fatwa* is not new in the Islamic tradition since the Prophet Muhammad was regarded a “*mufti*” himself. He answered questions that were directly forwarded to him, for example, questions about the rights of an orphan girl to have her inheritance. In this situation, a man who was her guardian wanted to marry her because he feared that her inheritance would fall into the hands of an outsider. The source of the given *fatwa* came directly from the revelation from Allah as recorded in verse 127 chapter al-Nisa’. Its translation is as follows:

“They ask your instruction concerning the women. Say: Allah does instruct you about them: and remember what has been rehearsed unto you in the Book, concerning the orphans of women to whom you give not the portions prescribed, and yet whom you desire to marry, as also concerning the children who are weak and oppressed: that you stand firm for justice to orphans. There is not a good deed which you do, but Allah is well-acquainted therewith.”

This practice of issuing *fatwa* continues till today, where the influence of *fatwa* remains strong in the Muslim community. *Fatawa* (the plural word for *fatwa*) are often sought by the Muslims since they are divinely encouraged to ask guidance from those who are qualified. Most of *fatwa* are frequently derived from fresh *ijtihad* by contemporary scholars, while others may come from old *ijtihad* prescribed from previous jurist as found in their works of jurisprudence (*fiqh*).

C. Fatwa in Malaysia

Scholars of the Malay-Muslim community have been reactively issuing *fatwa* as guidance for them in dealing with particular issues. The earliest collection of the *fatwa* that can be found is ‘*al-Fatawa al-Fataniyyah*’ by Sheikh Ahmad Muhammad Zain (1856-1906) which was published in about 1903. According to the Federal Constitution of Malaysia, Islam is a state subject, whereby every state has its own religious council to advise the ruler on Muslim affairs. Therefore, every state has their *mufti* and *fatwa* council which has been appointed by the ruler of the state. The objective of this council is limited to the state religious affair, while the National Fatwa Council (NFC) which is under the federal government has bigger scope in which it serves as referral council for the Conference of Rulers.

Established in 1970, the NFC uses the *ijtihad jama’i* (collective *ijtihad*) approach whereby it consists of a chairman, a secretary and *muftis* from all the 14 states in Malaysia, five Muslim experts of *shari’ah* and a Muslim law advisor.

D. Process of NFC’s Fatwas

The process of *fatwa* making begins with the study on the query that had been forwarded to the council. This query may be lodged by the public, government or private agencies or it may be an initiative taken by the Department of Islamic Development Malaysia (JAKIM) which is directly administered under the Prime Minister Department. A study on the forwarded issue will be carried out by the Research Unit of the JAKIM. This unit will first find out whether a *fatwa* relating to the issue does exist or not. If no specific *fatwa* related to the issue exists, then a research paper will be prepared. In order to provide that paper, officers attached to that unit will study the related evidences in the main references of Islam namely the Quran, *Sunnah*, *ijma’* (consensus of Muslim scholars) and the *qiyas* (analogical reasoning). They would also refer to the opinions of the Companions of the Prophet (*qaul al-sahabi*), followers of the Companions (*tabi’in*) as well as views of the past and present prominent scholars in *fiqh* on the matters related to the issue. If there are some things that need explanation from the experts in related field, the officers will conduct interviews with them.

The research paper will be presented during the meeting of *Shari’ah* Research Panel. This panel

facilitates the preparation of the proposal paper to be forwarded to the NFC. In this meeting, they also invite the experts if further explanation is needed. If the panel decided that the issue can be solved at the panel level and needs no more discussion, a *fatwa* will be issued. But if the panel members think that meeting with the NFC should be held to get more perspectives to solve the issue, a proposal paper will be forwarded to the NFC. The council may invite again the selected experts in order to have a clear understanding of the issue discussed. This meeting may be held for several times depending on the situation and need. Based on inputs from these experts and references from the Qur’an, *Sunnah*, *ijma’*, *qiyas* and existing *fatawa*, the council strives its best to decide on a new *fatwa*. Among methods of reasoning that being used in the decision making are *al-masalih al-mursalah* (public interest), *sadd al-dhara’i* (prevention of harm) and other recognized sources of Islamic law. The NFC will also refer to the related *fatwas* issued by the other organizations such as Majma’ al-Fiqh al-Islami Al-Duali in Jeddah, yet finally decision will be made by taking local need and context into consideration.

E. Patterns of Fatwas

Since its establishment in 1970, the NFC has issued more than 300 *fatwas* on various questions. The first *fatwa* issued in June 1970 was about organ donation whilst the latest *fatwa* issued in March 2014 was about the tragedy of flight MH370.

The categories and number of *fatwas* issued by NFC can be summarized as follows:

Table 1: Categories of *Fatwas*

Areas of Fatwa	No
Theology (‘ <i>Aqidah</i>)	41
Worship (‘ <i>Ibadah</i>)	24
Transactions (<i>Mu’amalat</i>)	38
Alms (<i>Zakat</i>)	27
Family	29
Foods and Drinks	28
Attire	2
Animals	16
Social Issues	89
Medicine	30
Others	1
Total	325

Source: Portal E-Fatwa

In their *ijtihad* to produce the *fatwas*, the council has taken all factors into consideration, including socio-economic factor. For example, in the context of *fatwa* on the issues related to applications of biological sciences, according to one of NFC members, it is not an easy task to weigh carefully the benefits and the risks of these applications. In general, Muslims are encouraged to adopt technology for their good, but their adoption should be grounded on the revelation and the objectives of *sharia* (*maqasid al-shari'ah*), not just on the logical thinking. This may cause delay for the council to announce an official *fatwa* in order to comprehend the issue and make the best decision for the benefit of the society. It is noteworthy to mention that *fatwa* is made based on the available scientific findings. There might be changes in the *fatwa* given, if there is new finding available regarding benefit or harm of the application. Apart from that the *fatwa* can be revised based upon request from any party, government or public alike.

In their *ijtihad*, the NFC primarily refer to the standpoints and methodologies acknowledged by the Shafi'i *madhhab*. This is as stated in the regulations of the National Council for Islamic Affairs that is established by the Conference of Rulers. However, opinions from other schools of *fiqh*, such as Hanafi, Maliki and Hanbali will also be taken into considerations if they provide stronger argument in terms of benefit for the society.

3. Conclusions

Ijtihad is an important ongoing process in the history of Islamic law and regarded as a significant tool for survival of Muslim society in facing the challenging world in present days. In the contemporary world, *ijtihad* in the form of *fatwas* is the most effective solution in providing the answers of Muslims' problems for it takes a shorter time compared to academic researches or legislation process which would normally takes years to complete. The *fatwas* issued by Malaysian NFC cover all aspects of Malay Muslim life and this suppose to provide them with best solutions for their never ending problems.

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