

THE APPLICATION OF FATWA IN COURT DECISION MAKING

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Abstract: *This article discusses the position and function of fatwa in the submission of judgments and decision making for Muslim divorce cases in Malaysia. This issue is raised when fatwa status is still vague and relevance is included as authority in case of court is still in question. The purpose of this article is first to identify the concept of fatwa and ijihad judges of shariah according to their applications in the context of Malaysia. This includes analyzing divorce cases, taking into account fatwa as an important element in the submission of each case. This suggests that fatwa can be applied and exploited by judges when imposing punishment for justice for the parties involved. The data in this study are qualitative data collected through document analysis and interviews, while analyzing data is done by applying descriptive approach through content analysis. The findings show that applications and fatwa implications exist in the judicial process of divorce cases. Therefore, this article hopes that mufti and judges will be able to work together in order to form the element of innovation between the fatwa and the judgment. A legal provision should be improved in the State Administration of the Islamic Religious Enactments so that the orders of the authorities can be observed more clearly and effectively. In addition, it is to be parallel and not contradictory to one another. This application definitely has a huge impact on court institutions, especially the Syariah Court. This application is aimed at avoiding confusion among the parties involved in particular and the Muslim community in general. This is what is*

said as a reformation in the fatwa sector in our country. Malaysia is the one and only country that has started this good thing and will be followed other states globally.

Keywords: *Reform, Fatwa, Divorce, Islamic Family Law*

Introduction

A judge who is an expert in his field well is able to adhere to the law relating to Islamic law. This is due to the background of shariah approval which can be fully developed in the profession. However, there may also be questions about the fatwa gazette by the mufti. How far can the fatwa authority be used as a source of reference by a judge in the context of a case involving Muslim divorce? The main problem to be addressed through this study is why the mufti and the judges do not partner on the issue of fatwa and apply said fatwa to the judgments being carried out? The sequence of this problem also affects the community in understanding *ibrah* and wisdom for fatwa and judgment in court. The fatwa and the judgment of the shariah judge are also one of the branches of knowledge that the people can draw closer to Allah and strengthen understanding of the Islamic religion in everyday life. Hence, this study will open a new dimension in the innovation of fatwa as a source of reference to be seen by judges in the context of cases involving Muslims in Malaysia. Reformation in the use of fatwa will make Malaysia the only country in the world to make a paradigm shift which will be followed by other countries in the future.

Research methodology

The study takes a socio-legal form, which is a research method that unites two key areas of research, namely social science and law. Since the law is set up as a mechanism for managing the affairs and conflicts that arise in social societies, the law has a close and difficult relationship with the community (Rohani Abdul Rahim, 2002). This study also involves systematic research on new and up-to-date legal issues with the use of authenticity and high creativity through traditional or conventional legal methods which incorporate the process of stating, interpreting and explaining existing laws (clarifying the existing law) in a legal field (Mahdi Zahraa, 1998).

The documentation method is the way of data collection by studying the documents related to the problem studied (Abdul Halim bin Mat Diah: 1987). Among those included in the document category are photographs, portraits, results, courts, laws and regulations (Imam Barnadib: 1982), autobiography, personal papers, diaries and newspapers (Koentjaraningrat: 1986).

In order to examine the fatwa research methodology for science and technology-based laws, content analysis has been used. This method requires a certain theme setting so that the analysis process of the text does not deviate (Muhammad Haji Yusuf, 1993). In this study, the theme is related to the fatwa research methodology for current legal issues. This content analysis is done by selecting the appropriate text based on the objective of the study. Therefore, the sample used for this purpose includes the selected fatwa which are legal in the impact of science and technology. There are six steps common to using this method. The first step is to identify the problem, followed by choosing the sample, reading and recording the content according to the objective rules, and interpreting the results of the study (Syed Arabi Idid, 1999).

Field research based on interviews is one of the forms of social research (Anwarul Yaqin, 2007), which is a social interaction aimed at gathering information for research purposes. Hence, this study focuses on gathering information and researchers about the categories of evidence based on the Syariah Court Evidence Enactment (Perlis) 2006.

This study uses both primary data and secondary data. Structured and unstructured interviews with experts in the relevant field are used to obtain the desired information (Anwarul Yaqin, 2007). In addition, books and articles are also referred to as information materials.

The observation method is the way of data collecting by observing directly on a research or object being studied (Samarudin Rejab & Nazri Abdullah: 1982). Observations are effective to determine the procedures and realities of execution taking place on the subject matter. Direct observations which are face to face with the respondent or target object can be studied and to reach the necessary formulations and conclusions.

The Concept of Divorce According to Islamic Law

Islamic law divorce in Malaysia can be divided by two perspectives, namely Islamic law and legislation in Malaysia.

According to Islamic law, divorce is a lawful thing on the side of religion but is hated by Allah S.W.T. This means that divorce is allowed by religion, but it is the last resort chosen when all the means to reconcile the two couples who have not found a solution. So, divorce has to be done for the betterment of those involved. Divorce in this context is more commonly known as *talak* from the legal point of syarak.

This divorce is divided into two types, namely *sorih* and *kinayah*. *Sorih* is that the divorce clearly describes his message and no other meaning. The three commonly used terms are *talak* or divorce, free or past, and separate. *Kinayah* can be interpreted with various terms such free, split, go back to your family, you are haram on me and others. These words can be interpreted as *talak* or other than *talak*. If the husband deliberately pronounces such terms, then only the husband knows what he means and he needs to be responsible and responsible. If a husband pronounces it with any other purpose other than throwing *talak* or does not intend anything, *talak* does not fall (Muhd Fauzi Muhamad, 2003).

Besides *talak*, the wife can also dissolve the marriage through the application of *fasakh* and *khuluk*. Other types of divorce include *taklik*, *li'an*, spouse leaving Islam, and the assumption of death (Mustafa Al-Khin (Terj.), 2016.)

Concept of Divorce According to Law

The history of Islamic law in Malaya began through the Malacca Code of Law and subsequently influenced laws in other states. The laws adopted before the arrival of the British are Islamic law mixed with customary law. There were some civil court decisions during British colonization indicating that Islamic law is not a foreign law but a local law.

When Malaya gained independence from the British in 1957, a special provision was included by the Reid Commission under Article 3, which gave position and privilege to Islam. But

Article 160 of the Federal Constitution itself abrogates the law of Islam in the definition of law (Ahmad Mohamed Ibrahim, 1997).

While the jurisdiction of the Syariah Court is as provided in the Ninth Schedule, List II (State List) and the Syariah Court (Criminal Jurisdiction) Act 1965 (Amendment 1984) specially assigned to the Syariah Court. In enforcing Islamic law, each state has its own Islamic Religious Administration Enactment. However, the administration of the Syariah Courts is not satisfactory as compared to the Civil Courts. As a result, a committee was established to determine the positions, power and status of each Syariah Court and the Syariah Court judge (Ahmad Ibrahim, 1999).

From the perspective of the dissolution of marriage, there is certainly an effect on the husband and wife. Starting the procedure of dispersing marriage and the types until divorce registration is complete. Usually divorce can be applied for by the husband, while the wife can use the method of *khuluk*, *taklik* or *fasakh* in dissolving the marriage. All these methods of dissolution of marriage have specific provisions in the Act or the Islamic Family Law Enactment of the States. There are many divorce cases reported on the dissolution of this marriage. A judge may be appointed for the application of a dissolution of marriage which is not agreed upon by either party.

The problems that arise in the cases are such as the husband ignores the wife either abandoning her or failing to provide a living, the presence of a husband or her absence during a trial, torture and assault by a husband over a wife who allows the wife to claim divorce through *taklik* or *fasakh*. Wife can claim *fasakh* on factors of a husband's inability to provide livelihood or shelter, insanity, harmful illnesses such as leprosy, lymph nodes and also obstruction of sexual intercourse due to her husband's disability such as her genital mutilation or impotence. Another factor is the husband going missing without news.

Another problem that exists in connection with the dissolution of marriage is *li'an*. It has a tremendous impact on the spouses that the husband or wife have not believed in each other and are thus willing to swear *li'an* that one of the parties has been cheating or the husband has denied his wife.

In addition, the dissolution of marriage can also occur when one party leaves Islam or embraces Islam. There are two important issues concerning the conversion of this religion. Firstly, when a non-Muslim husband or wife embraces Islam, the other party is provided in the Law Reform (Marriage and Divorce) Act 1976 to file the divorce. As long as this party does not petition the marriage, the Muslim cannot petition his marriage in the Syariah Court. Secondly, when one party leaves Islam, the application for the dissolution of marriage must be made in accordance with the provisions of the law of the state Islamic family. But before that, the outsider of Islam must first be confirmed by the Syariah Court. Jurisdiction issues also arose in this regard. Whether a Syariah Court or a Civil Court has the jurisdiction to certify a person out of Islam has been answered in the decision of the *Soon Sing vs Perim* case and another [1999] 1 MLJ 489 in which the Federal Court ruled only a Syariah Court having jurisdiction in confirming an Islam out from Islamic religion taking into account the provisions in Article 121 (1A) of the Federal Constitution.

Fatwa concept and its position in Malaysia

British colonialists established mufti positions in judicial and legislative systems in several states of Malaya who carried out some important tasks such as issuing a fatwa. In the Straits Settlements, for example, mufti and fatwa were references in the judgment. In the case of Munakahat, the Mohamedan Marriage Ordinance Act 1880 for the Straits Settlements was amended in 1908 by establishing the Mufti position on the appointment of the Governor to carry out his role as an advisor on Islamic law. It was created to assist the Registrar to resolve cases of appeals about marriage and divorce which had previously been the scope of the duty of a kadi. (Abdul Monir Yaacob 2005 and Othman Ishak 1981).

In Johor in 1919, a civil court was obliged to refer to the mufti to determine a disputed law in court, especially when questions arose regarding Islamic law (Mohd Hisham Mohd Kamal 2009). After independence, the role of mufti as a religious referrer is still ongoing.

In the context of Malaysia, as discussed from the perspective of the historical development of the law, the mufti continues to play a role in modern legal landscape post-independence, especially from the perspective of shariah law.

According to Ahmad Hidayat Buang (2004), the fatwa given by the mufti and the clerics in the State Council or the Courts during the British rule in Malaya remained elected and became an authority even though basically, the fatwa did not bind the court. In the English administration, the position of mufti was lifted into one body and given fixed salaries, which were previously paid through tax and fines. When appointed and accepted in the government's administration, the provision of mufti is made under the jurisdiction of religion. Thus, the administration and administrative facilities have been improved from time to time (Hasnan Kasan 2008).

Ramah vs. Laton [1927] 6 FMSLR 128 opened a new chapter to the existence of the Mufti office in the Federated Malay States. The Court of Appeal of the Federated Malay States has ruled that the case of Ramah v Laton [1927] 6 FMSLR 128 shall be referred to a kadi / mufti as it involves Islamic law (Mohd Hisham Mohd Kamal 2009).

The Court of Appeal in Selangor during the year had ruled that Islamic law was a state law and the court had to recognize and apply the law (Ahmad Mohamed Ibrahim 1999). When a claim on a *sepcarian* property is made in a civil High Court, the judge summons some cadres to clarify to the court in respect of the property of a *sepcarian*.

Ahmad Hidayat Buang (2004) explains that in one case, Kadi Hulu Langat and Kadi Besar Selangor were called to testify on Islamic law relating to the property of the company between husband and wife. The post of Kadi Besar at that time served as mufti because the position was officially unavailable at that time.

According to Othman Ishak (1981), the first Mufti of Selangor State was appointed only in 1953 by Tuan Haji Yusof Shahabuddin. This is solid backing in claiming that civil courts should and should refer to the mufti as an expert in Islamic law, especially on the capacity of expert opinion through the fatwa issued in the dispute involving legal litigation.

Findings

This study has shown the extent to which the fatwa became an authority of the Syariah Court. All Islamic Religious Administration Enactments States in Malaysia except Kelantan have provided that fatwa is recognized as authoritative on all matters set out therein. But practically, the Syariah Courts use various methods of accepting the status of fatwa authority in their judgment. For example, one court receives and refers a fatwa issued by their state. In other circumstance, the court issued a decision which is not in line with the gazetted fatwa. Syariah-related cases have been referred. Fatwa status in Civil Courts is not discussed at all (Mohd Kamel Mat Salleh, Mohd Al Adib Samuri, Mohd Izhar Ariff Mohd Kashim, 2016).

This study has proven that civil judges are not bound to accept and comply with the fatwa issued by the Fatwa Committee, as well as the mufti's opinion, as the civil law is more important to be referred to in resolving disputes in court without the need for guidance from mufti. However, in order to ensure that the court gains exposure and information on the existence of a fatwa in connection with the dispute issue, both lawyers and judges themselves should seek the views of the fatwa and expertise, due to their inability to control the law of syarak. Improvements and legislative reforms should be made in harmonizing the position of fatwa and mufti's opinion so that it can be viewed as credibility as an additional source of reference to judges in court, since there is currently no law or regulations specifically specifying that fatwa should be referenced in civil court (Mohd Kamel Mat Salleh, Mohd Al Adib Samuri, Mohd Izhar Ariff Mohd Kashim, 2018).

Other studies have concluded that in the case of Islamic banking and finance issues, the fatwa promulgated by a fatwa institution are not the highest source of reference in court. This is because under the written law, the binding authority of the courts, especially the civil courts, is the decision agreed by the Bank Negara Malaysia's Shariah Advisory Council as the sole body referred to in court. Despite being an authority, the judges' acceptance of the decisions of the Shariah Advisory Council is seen to differ in some cases. This may be due to the point of view of the view that the judges may not be bound by certain views in deciding a judgment in court. This study finds that there is a weakness in terms of implementation because the dispute regarding *muamalat* does not refer to the fatwa issued by the fatwa institution, whereas it relates to Islamic law that should be referred to the shariah judges as well (Mohd Kamel Mat Salleh, Mohd Al Adib Samuri, Mohd Izhar Ariff Mohd Kashim, 2017).

This study only found three articles on the status of fatwa and their acceptance in court. The findings show that the national fatwa is not binding on a state as it has no special provision in any deed or enactment. However, state fatwa is binding and legitimate to be referred to. The findings also urge mufti to remain in line with the legal intent of the court. The criteria for the appointment of the mufti should be reviewed especially in the aspect of the background of approval must be in the shariah field.

Methods Used by Judges in Decision-Making in Court

Based on the references to the cases reported have shown that certain rules are commonly adopted by a judge in making a judgment. Source references are by priority. It begins with reference to the Qur'anic Book, followed by the reference of Hadith, the main Turath Book, the gazetted Law, the

National Fatwa or gazetted state fatwa, the Law Book and the cases that have been decided previously.

It can be concluded that the position of the fatwa reference is in the fifth priority. This shows that the fatwa was referred to in many court cases. It just does not show its use and it should be included in the provisions of the existing law.

Fatwa Application in Divorce Case Decision

Interviews were made possible with two experts who were directly involved in the process of making judgments in cases in the Syariah Court. This interview was conducted randomly by selecting the states of Kedah Darul Aman and Kelantan Darul Naim as two states representing the northern zone and east coast zone which recorded the highest number of divorce after Selangor, Johor and Sabah. Divorce case is the main case of Syariah Court. There will be other cases such as hadhanah, maintenance and others.

The first interview was with the Syariah Judge in Kulim District of Kulim, Kedah. Among the inputs obtained were in Kedah, the judge adopted the state fatwa as a reference during the judgment. Trend to be created now is the method of presenting ustaz in the mosque to be parallel between the fiqh, the fatwa and the law. Mufti can be commercialized as Mufti Wilayah and Selangor. But not for judges for maintaining the ethics and confidentiality of clients.

Meanwhile, the second interview with Syariah Judge at the Syariah High Court in Kota Bharu, Kelantan. According to him, fatwa are complementary to the law. Judges refer to Islamic law as well. If it is not in Islamic law, the judge will refer the fatwa and if no judge will adhere to the law. The task of the mufti is to issue a fatwa for a lawless condition. The judge will also determine if there is a fatwa for a new issue. An example is the determination of husband's abandonment after a divorce pronouncement. Judge is just the law of the matter. Good things like Divorce Fast Track in Selangor and Post in Terengganu to expedite the process of divorce verification can be followed by other states in streamlining *talak* verification certification.

There are several cases in the Shari'a Court which make the fatwa and mufti's opinion as a reference and accepted in the judgment. Three shortlisted cases related to this study were obtained from the Shariah Law Report, The Current Law Journal and the Law Journal.

1. Norhairy Cheong Abdullah @ Cheong Foo Siong [2010] 3 LNS 15.

This case is related to the declaration of the dissolution of marriage because of the incitement of Islam heard at the Syariah High Court of Seremban. Judge Mohd Nadzri Haji Abdul Rahman had decided and confirmed that the marriage between the applicant and his wife Cheok Bee Hun was dissolved as a result of the applicant's embracing Islam on 29th July 2008. His wife Cheok Bee Hun did not follow the steps to embrace Islam. The judge in his judgment used a fatwa issued by the Muzakarah of the 11th MKI Fatwa Committee on March 16, 1976 as authorization and reference. The fatwa decision reads:

"Married couples who are non-Muslims will be disconnected if one of them embraces Islam but if the other convert to Islam in the iddah, then they remain. In the event that one of the non-Muslim spouses converts to Islam is to be explained to them about the separation that will occur (if the other person is not converted to Islam) he embraced Islam ".

Under this fatwa and other sources of reference, the judge decided on the dissolution of marriage between Norhairy Cheong Abdullah @ Cheong Foo Siong and Cheok Bee Hun. Among the judges' references in this case as listed in the judgment is the Fatwa Decision of the 11th MKI Fatwa Committee Muzakarah on March 16th, 1976. As of January 2016, out of many cases in the Syariah Court, this is the only case in the judgment that the source referred to is the decision of fatwa Muzakarah of the Fatwa Committee of the MKI. This proves that MKI's fatwa decision can only be referred to and has the reputation of authoritative authority even though its nature does not bind the state. This reference demonstrates the strong confidence of the judges to refer the fatwa at the national level in deciding a case dispute in court.

2. Halijah Abdul Rahman v. Zambree Baharom [2009] 1 CLJ (Sya) 402.

This case deals with *talak* through short message service (SMS). Seremban Syariah High Court talks about a review application for the case previously discussed in the Port Dickson District Syariah Subordinate Court. In that case, a Subordinate Court Judge has ruled that a *talak* not clicked through a short messaging service (SMS) made by the defendant to his wife who says "if you go out to meet the fallen three" is a clear (obvious) does not require the intention to make it lawful on the sidelines. For that reason, the judge has confirmed the divorce. The judge said, however, that he was in doubt about the legitimacy or accuracy of the decision reached had raised the case to the Syariah High Court for review. In the presence of Yang Arif Judge of the Syariah High Court, the question arose whether the *talak* of SMS through SMS has the same effect as pronouncing through writing. If that's the case, whether such an exclamation, if it is still in shape, still requires the intention to bring divorce. The Syariah High Court Judge accepts the review of this case for re-hearing whether by the same judge or other judge.

The court has referred to the divorce case through several books and views of the ulama including the decision of the 59th MKI Fatwa Committee Muzaffar on 27 August 2003 that Divorce Through Short Message System (SMS) is valid if it is accompanied by intent. All divorces must be submitted to the Syariah Court for the purpose of conviction. Judges in such cases are seen as making the decision of the National Fatwa Muzakarah as the authority in the judgment even though the fatwa was not gazetted by the Negeri Sembilan Government.

In this case, the judge decides and orders the re-hearing and between the decisions is:

... According to Mazhab Syafie (and also Maliki), *talak* through writing, albeit in the form of sorcery, is not dropping *talak* and does not imply except with intention. Apart from these conditions, the Syafie School also requires that the writing be written by the husband himself to his wife. It should also be noted that the fatwa as issued by the National Fatwa Council on 27 July 2003 states that "a divorce in a clear form of husband addressed specifically to his wife such as via facsimile, SMS, e-mail and so forth is a *kinayah talak* and is valid if accompanied by intent ".

Considering all this, it can be concluded that the divorce made in writing is punished as a kind of divorce and requires the intention to make it legitimate.

It has become a necessity to prove whether the divorce was accompanied by intent or not, the case should be discussed again. The wise act of the judge in this case refers to the relevant fatwa on issues and new issues arising in society. The decision to recapture the case is also a proactive act of judges in ensuring justice can be enforced in society even more so in the case of the need for the intentions, *iqrars*, *bayyinah* and so forth. The case is also an example of a fatwa authorization issued by MKI Fatwa Committee Muzakarah as a national fatwa producer body. Although the fatwa which is supposed to be followed and binding is the state fatwa because the power to enforce fatwa is the state's right, but the judge is not bound to follow any fatwa, whether state or national fatwa.

3. Nor Aniza bte Idris v. Mohammad Fauzi bin Ahmad [2006] 3 ShLR 102.

In this case, the Federal Territory Syariah Subordinate Court has heard cases involving the verification of divorce outside the court. The defendant has sent a short messaging service (SMS) that the plaintiff has allegedly has the purpose of divorce. In the trial, the defendant had pronounced a few words in the form of a *lafaz* which would have to be considered as a divorce requiring the conviction of the intention of whether the defendant really wanted to divorce the plaintiff. This was denied by the defendant stating that he did not intend to divorce. What was sent in SMS was never pronounced and what was written was done when he was angry. The issue of this case is merely about the question of whether the defendant when writing SMS of divorce implies a valid divorce or not. In this case, the judge decides to dismiss the plaintiff's application to register the divorce, as the content of the allegedly charged SMS does not depend on the defendant's intention to divorce the plaintiff. This trial was supported by an oath made by the defendant to deny that its purpose is for divorce. Thus, the judge decided:

i. It does not matter that the defendant's intentions dropped *talak* on both SMSs. Thus, the court rules that there should be no problem related to the two SMSs. The plaintiff's wedding and defendants are still in line with the law:

ii. The plaintiff's claim to register the divorce is denied.

In this case, there is a relevant fatwa and can be referenced by the judge, but is not taken as an authority in the judgment. The decision of the MKI Fatwa Committee on 59th meeting on 27 August 2003 decided:

i. *Talak* in clear form of husband specifically addressed to his wife such as via facsimile, SMS, email and so on is a *talak* of *kinayah* and it is valid if accompanied by intent;

ii. All divorces shall be submitted to the Syariah Court to convict such divorce;

iii. The divorce by using modern communication means is a divorce method that does not conform to the law of divorce which is outlined by syarak.

Although a fatwa is nationally instead of state issued, the judge can only make it as a reference if he wants it, but there is no statement in the judgment that the fatwa becomes an argument and a backup. In the case of Halijah Abdul Rahman v. Zambree Baharom [2009] 1 CLJ (Sya) 402, as discussed earlier, the judge incorporated the above national fatwa in his judgment. In this case, there is a relevant fatwa that could only be a reference to a judge, but no statement says that the fatwa is the authority of the judge.

The case study finds that there are applications and fatwa implications in the judicial process of divorce cases. The intended application is when the judge himself chooses to refer fatwa and respect the fatwa institution, thereby raising the value of fatwa in the eyes of the public. The implication relates to fatwa attachment. The lack of a state fatwa is more binding than a binding element. Even in a case that has been decided, there is no issue whether the fatwa is state or national. The implication remains the same when the judge uses the fatwa and the results can be seen as a court decision with higher yields. The interviews with the authorities indicated that they support any effort to uphold the fatwa institution. The response provided shows that they are committed to uphold Islam in their homeland.

Suggestions

Firstly, this article proposes that fatwa be established, applied, and exploited by judges when imposing punishment for justice for the parties involved. Ministers in the Prime Minister's Department (law) and lawmakers at the federal and state levels should play a role in this and propose drafting.

Secondly, the appointment of the Mufti should be amended by requiring a mufti that it must have a background in the approval of the shariah study, so that fatwa are gazetted parallel to the judges as the authoritative source. Relevant provisions may be included in the terms of appointment of the Mufti.

Thirdly, the appointed religious or religious teacher is not allowed to give personal views that conflict with the fatwa or ijihad judges to confuse society. Such responsibilities should be entirely submitted to the Mufti, who has more authority. This will show a better Islamic image by respecting those who have been officially authorized and respected.

One possible obstacle is that the Sultan represents each state as the head of Islam. The move to overcome is to propose to the Rulers Council to be discussed jointly and brought by the Sultan to be implemented at the state level.

Therefore, the recommended conclusion is that the sharia judges must refer to the gazetted state fatwa as one of the formalities and automatically become the procedure in dropping the law. The next purpose serves as 'check and balance' on whether a fatwa is reasonable or not.

Limitation and Suggestion of Upcoming Review

First, the concept of the fatwa amendment must become an authority. The amendments need to be uniform and uniform in each state. Interviewees of judges and mufti of each state or zone. Secondly, the academic qualification is the priority of the shariah mufti and the legality of the compliance of the fatwa. Also, civilians should be consulted. Additionally, the position of the mufti

office should be regarded as a new superior rating, such as the situation of the Egyptian mufti. Also, mufti should be placed under the royal authority through a State Mufti Act.

Conclusion

This article indicates that the mufti and judges will be able to work together in order to form the element of innovation between the fatwa and the judgment. In addition, these are to be parallel and not contradictory. This will definitely have a huge impact on court institutions, especially the Syariah Court. This application is aimed at avoiding confusion among the parties involved in particular and the Muslim community in general.

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