

**THE ROLES AND MANAGEMENT OF FATWA IN KELANTAN:
A CASE STUDY AT JABATAN HAL EHWAL AGAMA ISLAM
KELANTAN (JHEAIK)**

Noor Mazni binti Jusoh
(Matric No. P010533)

Academic project report submitted in partial fulfillment for the
BACHELOR OF DA'WAH AND ISLAMIC MANAGEMENT

Perpustakaan KUIM



1000012556

Faculty of Leadership and Management
KOLEJ UNIVERSITI ISLAM MALAYSIA
Kuala Lumpur

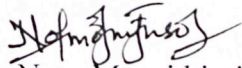
February 2004

AUTHOR DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby admit that this thesis is produced with my own ideas and efforts except for quotations and excerpts from another document in which each source of the documents has been mentioned.

Date: 28th February 2004

Signature: 
Name: Noor Mazni binti Jusoh
Matric No: P010533
Address: D/A Kedai Muji, Kg.
Pauh 9, 16050 Beris
Kubur Besar, Bachok,
Kelantan.

ACKNOWLEDGEMENTS

السلام عليكم ورحمة الله وبركاته..

For the Grateful and Al-mighty of Allah and His Messenger Muhammad s.a.w., I had already finished my Academic Project.

I would like to take this opportunity to thankful to Puan Najwa Hayaati bt Mohd Alwi, as my supervisor of this Academic Project for her continued support and guidance during the research, who has given a lot of helps, spent a lot of time, give a lot of ideas and guided me as well. Without her, it is quite difficult to me to complete and elaborate the ideas and information. Thank you also to my Prof. Dr. Mohamad Asin Dollah as a dean of Faculty Leadership and Management.

Secondly, I'm indebted to Ust. Murtadha bin Abdullah, 'Pegawai Zakat' at Jabatan Hal Ehwat Agama Islam Kelantan, for his pleasure and fully co-operation on our meeting and interview. He is a very friendly person and had entertained me very well.

Unforgotten also to Miss Dini Farhana bt Buharudin, who has given a lot of helps and spent a lot of times to translate my thesis. Special appreciation also goes to all friends for their help and support during this term of completing the Academic Project.

Lastly, most important my family, who never fail to provide me with love and warmth that helped to lessen the pressure of the task of accomplishing this Academic Project. A special appreciate also to my future husband Mohd Zawawi bin Salleh, who never bore to give me support and motivation.

Thank you.

ABSTRAK

Menurut hasil kajian yang dijalankan, mufti memikul tanggungjawab yang besar dalam menangani permasalahan semasa yang dihadapi umat Islam. Begitu juga fatwa, yang menjadi panduan umat Islam dalam menghadapi permasalahan atau isu semasa yang baru berlaku. Kajian ini bertujuan mengenalpasti peranan dan pengurusan institusi fatwa di negeri Kelantan. Untuk memperolehi data, beberapa teknik kajian telah diguna pakai iaitu temubual dan meneliti dokumen yang berkaitan. Hasil kajian telah menunjukkan bahawa peranan dan pengurusan di Jabatan Hal Ehwal Agama Islam Kelantan memainkan peranan yang penting di dalam menyelesaikan kemaslahatan umum. Dapatan dari hasil kajian ini menunjukkan bahawa Mufti dan fatwa adalah merupakan perkara penting dalam perundangan Islam. Kedua-duanya mempunyai peranan yang besar dalam kerancangan arus perkembangan hukum Islam.

ABSTRACT

This research aims at examining the importance of Mufti and its responsibility towards solving current Muslim issues. Since the fatwa is regarded as a guidance in facing current problems. The objectives of this research are to determine the roles and management of fatwa at Jabatan Hal Ehwal Agama Islam Kelantan. The researcher used interviews and reviewed the relevant documents for data gathering purposes. The findings indicate the roles that Jabatan Hal Ehwal Agama Islam Kelantan plays in solving the current problems. Finally, the study shows that Mufti and Fatwa are two important elements in Islamic law. Therefore, both of them contribute in developing Islamic hukm.

ملخص البحث

يهدف هذا البحث إلى دراسة مسؤولية المفتي في حل المشاكل التي تواجه الأمة الإسلامية. ذلك أن الفتاوى تعد من أهم الأسس الموضوعية لعلاج مشاكل الأمة الإسلامية في الوقت الحاضر. وقد خصصت الباحثة هذه الدراسة للتعرف على دور شؤون مركز الفتاوى في ولاية كلتن في خدمة الإسلام والمسلمين. وقد اتبعت الباحثة للحصول على المعلومات منهج المقابلات والرجوع إلى الوثائق الرسمية. وقد تبين للباحثة في النهاية أهمية الدور الذي يقوم به مركز شؤون الفتاوى في ولاية كلتن في حل مشاكل المسلمين وكذا دور المفتي في المساهمة الفعالة في إيجاد قوانين تخدم الحكم الإسلامي فيها.

CONTENT PAGE

TITLE	PAGE
AUTHOR DECLARATION	i
ACKNOWLEDGEMENTS	ii
ABSTRAK	iii
ABSTRACT	iv
MULAKHKHAS AL-BAHTH	v
CONTENT PAGE	vi
LIST OF FIGURES	viii
LIST OF APPENDICES	ix
GLOSSARY	x
TRANSLITERATION	xii
ABBREVIATION	xv
CHAPTER 1: Introduction	1
1.1 Background of Research	1
1.2 Significance of Study	2
1.3 Aim of Research	3
1.4 Objectives	3
1.5 Problems Statement	3
1.6 Scope of Research	3
1.7 Background of Department of Islamic Affairs	4
1.7.1 Vision of Department	5
1.7.2 Mission of Department	5
1.7.3 The Objectives of Department	5
1.7.4 The Functions of Department	6
1.7.5 The Responsibilities of the Department	6
1.8 Conclusion	8
CHAPTER 2: Literature Review	9
2.1 Introduction	9
2.1.1 The Definition of Fatwa	10
2.2 Mufti and Its Appointment	15
2.2.1 Conditions of Fatwa	16
2.2.2 Conditions of Mufti	18
2.3 Power and Duties of Mufti	19
2.3.1 Ethics of Mufti	21
2.3.2 The Difference Between al-Qadha and al-Fatwa	29
2.3.3 Fatwa and Its Significance	31
2.4 Fatwa in Islamic Rules	33
2.4.1 Fatwa History	34
2.4.2 Law on Giving Fatwa	36
2.5 Formation of the Fatwa	36
2.5.1 Jamaah Ulama	37

2.5.2 Differences with Other Committee Formation	39
2.6 Religion Development Committee	41
CHAPTER 3: Research Methodology	43
3.1 Introduction	43
CHAPTER 4: Analysis	45
4.1 Introduction	45
4.2 The Roles and Management of Fatwa in Kelantan	46
4.3 Procedure in Making Fatwa	50
4.4 History of the Establish of Fatwa Institution in Kelantan	50
4.5 Fatwa	52
CHAPTER 5: Conclusion	57
5.1 Introduction	57
5.2 Problems and Limitation	57
5.3 Recommendation	58
5.4 Conclusion	58
BIBLIOGRAPHY	59
APPENDICES	60

LIST OF FIGURES

	Page
Figure 4.1: Fatwa Process in Jamaah Ulama'	49
Figure 4.2: The Organization Mufti Office of Kelantan State Government	56

LIST OF APPENDICES

	Page
Appendices A: Questionnaire	61
Appendices B: Letter	62
Appendices C: Organization Chart	64
Appendices D: Examples of Fatwa in Kelantan	66

GLOSSARY

Al-Quran/Koran	the Quran is Islam's book being the uncreated word of God revealed through to Prophets Muhammad s.a.w.
As-Sunnah	'customary practice' to indicating the specific actions and saying or the Prophet Muhammad himself.
Adab	a wide variety of meanings ranging from 'culture' and 'good manners' to 'belles-nations'.
Akhlak	moral, character of person.
Amar Ma'ruf Nahi Mungkar	enjoining good and forbidding evil.
Da'wah	missionary movement.
Fatwa	a technical term used in Islamic law to indicate a formal legal judgment or view.
Fard'	religious duty
Hadith	record of the sayings and doing of the Prophet Muhammad and his companions.
Haqq	the truth / divine truth.
Haram	that which is forbidden and unlawful, also sinful.
Hukm/hukum	judgement, valuation, opinion, decision.
Ibadah	worship, devotional action, observance require by the Islamic faith.
Iman	theologically and Qur'anically this Arabic word has come to mean 'faith', 'belief', right belief'.
Istihsan	legal discretion, preference.
Istishab	seeking a companion or link.

Istislah	taking into account the public good.
Jamaah	gather, collect.
Mufti	one who delivers, or is qualified to deliver a <i>fatwa</i> . He may or may not hold the rank of <i>qadi</i> .
Qada	divine decree, divine judgment, divine will the function of God as Judge
Qadi	judge
Qiyas	analogy, analogical reasoning.
Saiyidatina Ai'syah	third wife of the Prophet Muhammad.
Ulama/ulama'/ulamas	religious scholars.
Ummah	community, people, nation.
Wajib	obligatory.

TRANSLITERATION TABLE
ARABIC WORDS TRANSLITERATION SYSTEM

1. ALPHABET

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ء	,	فار	fa'r
ب	b	برد	burd
ت	t	تَلّ	tall
ث	th	ثوب	thawb
ج	j	جدار	jidār
ح	h	حليب	halīb
خ	kh	خادم	khādim
د	d	ديك	dīk
ذ	dh	ذهب	dhahab
ر	r	رفيق	rafīq
ز	z	زميل	zamīl
س	s	سلام	salām
ش	sh	شعب	sha [°] b
ص	s	صخر	sakhr
ض	d	ضيق	dayq
ط	t	طازخ	tālib
ظ	z	ظالم	zālim
ع	c	عقل	[°] aql
غ	gh	غلام	ghulām
ف	f	فيل	fil
ق	q	قلب	qalb

ك	k	كلام	kalām
ل	l	لبّ	lubb
م	m	مال	māl
ن	n	نجم	najm
ه	h	هول	hawl
و	w	ورق	waraq
ي	y	يم	yamm

2. Short Vowel

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ا	a	كتب	kataba
ي	i	علم	°alima
و	u	غلب	ghuliba

3. Long Vowel

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ي , ا	ā	عالم, فتى	°ālim, fatā
ي	ī	عليم, داعي	°alīm, dā°ī
و	ū	علوم, أدعو	°ulūm, Ad°ū

4. Diphthong

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
و	aw	نوم	nawn
ي	ay	ليل	layl
يَّ	iyy	شافعي	shāfi [°] iyy (ending)
وَ	uww	علوَّ	[°] uluww (ending)

5. Exemptions

5.1 Arabic letter ء (hamzah) found at the beginning of a word is transliterated to the letter “a” and not to ’ .

Example: أكبر transliterated to: akbar (not ‘akbar).

5.2 Arabic letter ة (ta’ marbutah) found in a word without ال (al) which is coupled with another word that contains ال (al) at the beginning of it is transliterated to the letter “ t ”

Example: مكتبة الإمام transliterated to: maktabat al-imām.

However if the Arabic letter ة (ta’ marbutah) found in a word with ال (al), in a single word or in the last word in a sentence, it is transliterated to the letter “ h ” .

Example: المكتبة الأهلية transliterasi: al maktabah al-ahliyyah

قلعة qal[°]ah

دار وهبة dār wahbah

ABBREVIATIONS

ed.	editor
n.a.	no author
p.	page
pp.	pages
IKIM	Institut Kefahaman Islam Malaysia
AS	alayh al-salam
Dr.	Doctor
ibid.	ibidem (in the same place)
n.d	no date
n.pl	no place
Prof.	Profesor
s.a.w.	salla Allāh [◌] alayh wa sallam
s.w.t	subhānahu wa ta [◌] ālā
trans.	translator/translated by
vol.	volume

INTRODUCTION

CHAPTER

1

CHAPTER 1

INTRODUCTION

1.1 Background of research

Institution of *fatwa* in Malaysia.

In Malaysia, only a *fatwa* issued by a Mufti or a *Fatwa* Committee is recognized and regarded as an official *fatwa*. *Fatwa* in Islamic Law, highlighted several important issues regarding *fatwa*:

- The only recognized *fatwa* in Malaysia is an official *fatwa* that is published by State Mufti by State *Fatwa* Committee or by National *Fatwa* Committee with the consent of Conference of Rulers;
- Other personal opinion on Hukum Shara' is not conclusive and not legally enforceable. It is just an explanation on a legal ruling to the public;
- An official *fatwa* is a conclusive legal ruling enforceable in this country. It should not be questioned because:
 - It is based on the provisions of al-Quran and as-Sunnah;
 - It is sanctioned by a Ruler, in the case of State, or by Yang di-Pertuan Agong and Conference of Rulers, in case of national *fatwa*; and
 - It is gazette as a law.

Generally, the *Fatwa* Committee in Malaysia is responsible to develop Islamic Law especially concerning current issues, which are relevant to the Muslim population.¹

The basic sources of Syariah are al-Quran and as-Sunnah. Both explain the legal injunctions to be observed and followed by all Muslims. In the settlement of disputes, Muslim must refer to al-Quran and as-Sunnah. Othman Ishak elaborates in details

¹ . Farid Sufian Shuaib. 2001. *Administration of Islamic Law in Malaysia*. Kuala Lumpur. Malayan Law Journal. p. 268.

various definitions of *fatwa* given by Muslim as well as western scholars. Some of the new practices may come into conflict with the teaching of Islamic law. In such cases, the jurist may in their *fatwa* make an attempt to reconcile the new practices with the Islamic law.²

During the lifetime of the Prophet Muhammad s.a.w., the Prophets always relied on the Quranic revelations or his divinely inspired *ijtihad* whenever his companions consulted him. However, these divine revelations stopped by the demise of Prophet Muhammad s.a.w while, at the same time, the companions were still in need of guidance to cater new problems that arose. Therefore, in cases where there was no specific ruling in al-Quran and as-Sunnah, the companions and the next generations of jurists exercised their own *ijtihad* on order to find solutions for more complicated new cases. Subsequently, the Islamic law developed through the practice of *ijtihad*. Among the famous forms of *ijtihad* practiced by them was *fatwa*.³

1.2 Significance of study

Researcher chooses this place because the Department of Islamic Affairs (JHEAIK) manages *fatwa* under the Council Religion. JHEAIK is a state government department in Kelantan, centralized in Kota Bharu, Kelantan. The important of my research is how the *fatwa* management do the there work and give new information for Muslim about hukum hakam. The topic is needed because it is can give contribution and knowledge to Muslim about any problems related to Islam.

² . Farid Sufian Shuaib. 2001. *Administration of Islamic Law in Malaysia*. Kuala Lumpur. Malayan Law Journal. p. 263.

³ . Farid Sufian Shuaib. p. 264.

1.3 Aim of research

The goals of research to know about functions, roles and tasks of *fatwa* management especially in Kelantan. The functions of *Fatwa* Committee are; first, to aid and advise the Ruler. Second, to discuss and issue a ruling on new problems on which there is no ruling in al-Quran, as-Sunnah and *ijma'*. Third, to amend, modify or revoke any previous *fatwa* issued by the same *Fatwa* Committee or their predecessors. Fourth, when necessary, the *Fatwa* Committee would make an order that a study and research to be conducted on any issue submitted to them.

1.4 Objectives

1. To identify the roles of *fatwa* management in Kelantan.
2. To know the methods of *fatwa* council in solves the problems.
3. To identify the method of spreading the *fatwa* to the Muslim in Kelantan.

1.5 Problems statement

The problems statement related to the topics are; first, solution of the problem is different for different state. Second, the management process is a take very long time to solve any problems (hukum). Third, disagreed by all in *fatwa* produce.

1.6 Scope of research

Scopes of research are discussing about roles and management of *fatwa* in Kelantan and other states between hukm and structure of hukm. Its also include background and historical of Mufti, organizing of *fatwa*, example of *fatwa* and the other issues. Scope of research area is at Jabatan Kemajuan Agama Islam in Kelantan (JHEAIK),

especially to the Islamic society new issues. In this academic project researcher select and focus to Jabatan Hal Ehwal Agama Islam Kelantan, which conducted the Institution of *Fatwa*. The Department of Islamic Affairs (JHEAIK) manages *fatwa* under the Council of Islamic Religion. JHEAIK is a state government department in Kelantan, centralized in Kota Bharu, Kelantan. JHEAIK was officially established in January 1, 1980 with the aim of helping the Kelantan Council Islamic Religion and Malay Custom in its effort enhancing da'wah activities and the development of Islamic Religion in Kelantan. The Council of Islamic Religion also has a role in department of mosques and surau matters in this state, such as preparing all the facilities needed for the Muslims to perform their ibadah. It is the responsibility of the Council to issue a *fatwa* to decide certain hukm and arising problems. For that reason, the Council formed a body namely, the Jamaah Ulama', where the members are appointed by the Sultan and Chaired by the Kelantan Mufti.

1.7 Background of Department of Islamic Affairs

In Kelantan, the Department of Islamic Affairs (JHEAIK) manages *fatwa* under the Council of Islamic Religion. JHEAIK is a state government department in Kelantan, centralized in Kota Bharu, Kelantan. JHEAIK was officially established in January 1, 1980 with the aim of helping the Kelantan Council of Islamic Religion and Malay Custom in its effort of enhancing da'wah activities and the development of Islamic Religion on Kelantan. The Council of Islamic Religion also have a role in development of mosques and surau matters in this state, such as preparing all the facilities needed for the Muslims to perform their ibadah. It is the responsibility of the Council to issue a *fatwa* to decide certain hukm and arising problems. For that reason, the Council formed a body namely, the Jamaah Ulama', where the members are appointed by the Sultan and Chaired by the Kelantan Mufti.

The main duty and role of the Council is as provided under Section 5 (1) of the Kelantan Council of Islamic Religion and Malay Custom Enactment 1994, to help

the Sultan and the Council must act according to the command and order of the Sultan in all matters in relation to Islamic Religion and Malay Custom foe Kelantan. The Council of Islamic Religion is the main authoritative body in Kelantan. In its early establishment, in December 1, 1950, JHEAIK was once the Religion Supervisor office or famously known as the ‘Pejabat Pencegah Maksiat’ because of its focus on the aspect of deterrence, arrests and criminal lawsuits of Muslims Family. This office exists under the Kelantan Mufti Office. In around March 1978, the government has formed the Islamic Religion Department at the Kelantan State Secretary Office. From 1960s until now, JHAEIK has experienced a vast development in respect of its duties position structure, also its administration, suitable with the needs and changes of time and situation.

1.7.1 Vision of Department

To make agencies and manage Islamic developments with efficient in produce godly and pious Muslim to God.

1.7.2 Mission of Department

To help in produce Muslim and pious good practice according to the Islamic teaching and based on the motto of country “Develop in Islamic” efficiently and impressively.

1.7.3 The Objectives of Department

- i. To perform the policy of County Government and Islamic Council and Customary according to the rules and country Enactments.
- ii. Panning, maintain and perform the physical development and human resources management.

- iii. Planning and performing the Muslim developments programs intellectually.
- iv. Enforcement Islamic Law efficiently.
- v. To perform the program family development according to the Islamic Family Law in Kelantan.
- vi. To do the research and assessment towards Islamic current issues connected to the faith, Islamic family, moral, social, publishing and others.

1.7.4 The Functions of Department

- a. To foster and strengthen the religious belief of Islamic in Kelantan with the main purpose is to produce Islamic community for their Islamic relationship.
- b. To encourage and inverse in the welfare efforts which is according to Islamic principal for the purpose discouraging the wring habit.
- c. To produce the dynamic and progressive Islamic community who have the sense of awareness of Allah's deeds.

1.7.5 The Responsibilities of the Department are as below

- 1. To received and implement the government resolutions.
- 2. To co-ordinate the implementation of the Malaysian Islamic Council resolution appropriate and suitable for the country.
- 3. To coordinate and if necessary helping the implementation of Islamic Council and Kelantan Malay Custom's policy and resolution.
- 4. To give Islamic services and welfare to the people, to implement religious education and teaching services to Muslim including religious courses and the others.

4. To give Islamic services and welfare to the people, to implement religious education and teaching services to Muslim including religious courses and the others.
5. To implement the organizing Islamic teaching classes for children in the country.
6. To co-ordinate the activities of Islamic welfare organizing including the propagation activities and voluntary departments.
7. Helping and giving hand from energy and financial to Islamic welfare organizations on their activities the religions department.
8. Responsibilities to study if any weaknesses in the administrations and Islamic activities management within the department, agencies and other organizations. Also giving the ideas or suggestion and helping to overcome the weaknesses.
9. Upgrading the quality of Syariah Law Enforcement to determine the Muslims being no bait and making suggestions on the steps can be taken from time to time.
10. Development and Islamic Affairs (JHEAIK) also responsible for the implementation of forces, which is staked in the Enactments below:
 - a. Syariah Court Management Enactment bill 3/82
 - b. Islamic Family Enactment bill 1/83
 - c. Civil Clarification bill 5/84
 - d. Syariah Crime Code Enactment bill 2/85
 - e. Syariah Court Clarification Enactment bill 2/91
 - f. Syariah Crime Event Enactment bill 9/93
 - g. Islamic Council and Kelantan Malay Custom Enactment 4/94.

1.8 Conclusion

Researcher chooses this topic because to know about the roles, functions and management of *fatwa* especially in Kelantan state. The functions of *Fatwa* Committee are; first, to aid and advise the Ruler. Second, to discuss and issue a ruling on new problems on which there is no ruling in al-Quran, as-Sunnah and *ijma'*. Third, to amend, modify or revoke any previous *fatwa* issued by the same *Fatwa* Committee or their predecessors. Fourth, when necessary, the *Fatwa* Committee would make an order that a study and research to be conducted on any issue submitted to them. The objectives of this research are; first, to identify the roles of *fatwa* management in Kelantan. Second, to know the methods of *fatwa* council in solves the problems. Third, to identify the method of spreading the *fatwa* to the Muslim in Kelantan. Scope of research area is at Jabatan Kemajuan Agama Islam in Kelantan (JHEAIK) Researcher chooses this place because the Department of Islamic Affairs (JHEAIK) manages *fatwa* under the Council Religion. The important of my research is how the *fatwa* management do the there work and give new information for Muslim about hukum hakam. The topic is needed because it is can give contribution and knowledge to Muslim about any problems related to Islam.

CHAPTER

2

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

Fatwa has a vital role in Islam because it helps to explain Allah's law in both religious and worldly matters. Due to their major implications of *fatwas*, legislators are particularly cautious when announcing *fatwas*. In fact, al-Quran strictly warns those who debate Allah's law in ignorance.

In Sura al-'Araaf, verse 33 states:

﴿ قُلْ إِنَّمَا حَرَّمَ رَبِّيَ الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ وَالْإِثْمَ وَالْبَغْيَ بِغَيْرِ الْحَقِّ وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزَّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لَا تَعْلَمُونَ ﴾

(Al-Quran. Al-'Araaf, 7:33)

“Say: the things that my Lord hath indeed forbidden are: indecent deeds, whether open or secret; sins and trespasses against truth or reason; assigning of partners to Allah, for which He hath given no authority; and saying things about Allah of which yr have no knowledge”.

Ulamas are aware of the importance of *Fatwa* and thus handle it as meticulously as possible. They have researched and analyzed each every discussion of Usul al-Fiqh, as well as composed others, either briefly or at great length. Due to the significance of *Fatwas* and their relevance in our daily lives, the media disseminates them in various ways, be it in the form of reading and listening materials or even on Internet websites.⁴

⁴ . Dr. Adel M. Abdulaziz al-Gharyani. 2003. The Historical Development of Fatwa. *Buletin Infad*. Kuala Lumpur: Penerbit KUIM. Vol. 1. Ogos. pp. 14.

2.1.2 The Definition of *Fatwa*

Fatwa comes from the Arabic root word “afta” which means ‘to describe or enlighten’. The al-Wasit dictionary states: “*Fatwa*; solution to any problem, whether related to Shariah or legal matters; the plural versions are *fatawi* and *fatawa*, ‘Istifta’ means to inquire or to ask for a *fatwa* and opinion”. The usage of the word can be found in al-Quran:

﴿ فَاسْتَقِهِمْ أَهْمَ أَشَدِّ خَلْقًا مِنْ خَلْقِنَا إِنْ خَلَقْنَاهُمْ مِنْ طِينٍ لَازِبٍ ﴾

“Then ask them (these polytheists, O Muhammad): “Are they stronger as creation, or those (other like the heavens and the earth and the mountains) whom We have created? Verily, We created them of a sticky clay”.

﴿ إِنَّمَا التَّوْبَةُ عَلَى اللَّهِ لِلَّذِينَ يَعْمَلُونَ السُّوءَ بِجَهَالَةٍ ثُمَّ يَتُوبُونَ مِنْ قَرِيبٍ فَأُولَئِكَ يَتُوبُ اللَّهُ

عَلَيْهِمْ وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا ﴾

(Al-Quran. An-Nisaa’ 4:17)

“They ask thee for a legal who decision. Say: Allah directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance: if (such a deceased was) a woman, who left no child, her brother takes her inheritance: if there are two sisters, they shall have two-thirds of the inheritance (between them): if there are brothers and sisters, (they share), the male having twice the share of the female. Thus doth Allah make clear to you (His law), lest ye err. And Allah hath knowledge of all things”.

﴿يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنَّ أَمْرُؤُا هَلَكَ لَيْسَ لَهُ وَكْدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَكْدٌ فَإِنْ كَانَتَا أَنْثَىٰ فَلَهُمَا الشُّرْطَانِ مِمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رَجَالًا وَنِسَاءً فَلِلَّذَكَرِ مِثْلُ حَظِّ الْأُنثَىٰ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ﴾

(Al-Quran. An-Nisaa' 4:127)

“They ask your legal instruction concerning women, say: Allah instructs you about the”.

Dar al-Fatwa is the *Fatwa* institution. A Mufti is a government appointed official who has to answer questions relating to Shariah and is the person issuing the *fatwa*. The terminological meaning of *fatwa* is that it is the Faqih's explanation of laws and frequently asked questions. Another definition of *fatwa* in the Syara' law expounded by a Mufti to an inquirer in a non-restrictive form. Hence, the inquirer is not restricted or bound by the law arising from the Mufti's *fatwa*. The inquirer has the right to seek *fatwa* from another Mufti of Muftis. Furthermore, he can apply the *Fatwa* from another Mufti, provided the Mufti is 'Alim or pious and well qualified to issue *Fatwas*. Several Muslim intellectuals describe the process of issuing *Fatwa* as “describing Allah's law generally and comprehensively in accordance with the demands of Syara' guidelines”.

Issuing *fatwa* is fard' kifayah. Therefore, it is wajib (compulsory) for an 'Alim or pious person to give *fatwa* when no another pious is available. On the other hand, if there is another pious person in the same district, this rule will not apply because there is more than one qualified person to issue the *Fatwa*.⁵

⁵ . Dr. Adel M. Abdulaziz al-Gharyani. 2003. The Historical Development of Fatwa. *Buletin Infad*. Kuala Lumpur: Penerbit KUIM. Vol. 1. Ogos. pp. 14.

According to Kamus Dewan, *fatwa* means decision on a certain religious rule (*hukm*) (that has never been decided yet) based on the Quranic proofs (*nas*), Hadith and others sources such as *Ijtihad* by the Mufti.⁶

Literally, *fatwa* originated from on Arabic word; *fata*, *yatfu*, *fatwa* and *futya*. It means to answer matters that become a doubt for somebody such as “I ask *fatwa* from him then, he gave *fatwa*”. Thus, to give *fatwa* means to explain answers to a certain question or doubt. This explanation is known as *fatwa*. Allah Most High said:

﴿ وَقَالَ الْمَلِكُ إِنِّي أَرَى سَبْعَ بَقَرَاتٍ سِمَانٍ يَأْكُلُهُنَّ سَبْعٌ عِجَافٌ وَسَبْعَ سُنبُلَاتٍ خُضْرٍ وَأُخَرَ يَابِسَاتٍ يَا أَيُّهَا الْمَلَأُ أَفْتُونِي فِي رُؤْيَايَ إِن كُنْتُمْ لِلرُّؤْيَا تَعْبُرُونَ ﴾

(Al-Quran. Yusuf 12:43)

The king (of Egypt) said: “I do see (in a version) seven fat kind, whom seven lean ones devour, and seven green ears of corn, and seven (others) withered. O ye chiefs! Expound to me my vision if it be that ye can interpret visions”.

Literally ‘Istifa’ means to ask for an answer on a questionable matter. This means that one who wanted to get an answer or an explanation on a certain matter that is questionable and raise the question or issue is called *istifta*’.

Allah Most High said:

﴿ سَيَقُولُونَ ثَلَاثَةٌ رَّابِعُهُمْ كَلْبُهُمْ وَيَقُولُونَ خَمْسَةٌ سَادِسُهُمْ كَلْبُهُمْ رَجْمًا بِالْغَيْبِ وَيَقُولُونَ سَبْعَةٌ وَثَامِنُهُمْ كَلْبُهُمْ قُل رَّبِّي أَعْلَمُ بِعِدَّتِهِمْ مَا يَعْلَمُهُمْ إِلَّا قَلِيلٌ فَلَا تُمَارِ فِيهِمْ إِلَّا مِرَاءً ظَاهِرًا وَلَا تَسْتَفْتِ فِيهِمْ مِنْهُمْ أَحَدًا ﴾

(Al-Quran. Al-Kahfi 18:2)

⁶ . *Kamus Dewan*. 2002. “Fatwa”. Vol. 3. Kuala Lumpur. Dewan Bahasa dan Pustaka.

(Some) say they affair said: “Let us surely build a place of worship over them”; (others) say they were five, the dog being the sixth, doubtfully guessing at the unknown; (yet other), (yet others) say they were seven, the dog being the eight. Say thou: “My Lord knoweth best their number; it is but few know their (real case)”. Enter not, therefore into controversies concerning them, except on a matter that is clear, not consult any of them about (the affair of) the Sleepers.

In other verse, Allah Most High said:

﴿فَاسْتَفْتِهِمْ أَهْمُ أَشَدُّ خَلْقًا أَمْ مَنِ خَلَقْنَا إِيَّا خَلَقْنَاهُمْ مِّن طِينٍ لَّازِبٍ﴾

(Al-Quran. As-Syafaat 37:11)

Just ask their opinion: are they the more difficult to create, or the (other) beings We created? Them have We created out of a sticky clay!

Literally, ‘Mufti’ means someone who can give an answer to all the issue or matters raised by somebody. According to terminology, ‘*fatwa*’ is to explain *hukm syara’* to the party who raise the question for a certain matter based on *hukm syara’* on the issue in question. The person that gives the answer is called Mufti. He must be someone who has enough and vast knowledge on syariah. Furthermore, according to some ulama, he must be a mujtahid because his answer must be supported and based on *dalil* and arguments from *hukm syara’*. There are also ulama that interpret *fatwa* as explaining a certain *hukm* given or *istinbat* by an absolute mujtahid or mujtahid in scholar. This interpretation stressed on some important aspects for *fatwa* and Mufti that are:

- a. *Fatwa* aims to explain *hukm syara’* for a certain matter or question.
- b. The *hukm* explained is *hukm syara’* that has been *istinbat*. The process of extracting and *istinbat* of *hukm syara’* are the Holy Quran, as-Sunnah and other sources such as al-Qiyas, Istihsan, Maslih al-Mursalah and other.

- c. The answer given by the Holy Quran and as-Sunnah on a certain issue or question is not called as *fatwa* because it is not hukm that has undergone istinbat process.
- d. The individual that extract and istinbat hukm syara' from sources must be someone that is pious, dynamic, an absolute mujtahid at level a mujtahid of school.
- e. The answers given by the Prophet on questions posed is not *fatwa* because it is Revelation (wahyu). If it is revelation that is read, it is referring to the Holy Quran while if it is not read, it is as-Sunnah. Both are the main sources of hukm syara' and does not come from istinbat of an absolute mujtahid or mujtahid of school.

These interpretation clearly show that *fatwa* is hukm syara' that is of general nature. General meaning the hukm based on *fatwa* is not specific for a certain group people such as pious people only or specific cases. But it is general and practiced by the person who raised the issue as well as other who does not. Beside that, it also involves specific cases that may raise doubts or cases that have similarities, whether is happening or will happen at the time and other places.

Beside that also, there are ulama' that interpret *fatwa* as an information on hukm syara' but not binding. This interpretation explained that *fatwa* is part of hukm syara' told to the person asking or wanted to know about it. However, after being inform about the hukm syara', the person who asked about it not bound by it or obligated to follow and practiced it.⁷

⁷ . Abdul Monir Yaacob & Wan Roslili Abd Majid. 1998. *Mufti dan Fatwa di negara-negara Asean*. Kuala Lumpur. IKIM. p. 80.

2.2 Mufti and Its Appointment

The early history of Islam proves that the Prophet s.a.w. was the Highest Judge for the Muslims. At that time, he became the reference for any problems and the solver of any hardships faced by the Muslims in solving any enmities or fights among them. When the Islamic state develops, by the opening of new Islamic states, more and more problems have to be dealt with.

Thus, the ruler must choose and appoint those who are competent and suitable to become a place of trust for the people. If he refused the offer and the appointment, the ruler have the right to force in the appointment of mufti on those who are competent and suitable if there exist any refusal to accept the post.

Mufti is a mujtahid and faqih according to the method of the *usul al-fiqh* knowledge. Scholars of *Usul al-fiqh* explained that mufti could be divided into four types, according to their level or status:

1. A knowledgeable Mufti in relation to the holy Quran and Hadith and the companion's opinion. He is known as a mujtahid on *hukm* revealed. However, although he holds on to other opinions of scholars, he holds on the more knowledgeable scholar's opinions.
2. Mufti is a mujtahid who holds on to a specific school. He knows all about the *fatwa*, opinions and Islamic law sources for the school that he follows. He can produce *al-Qisas* on his own without following his imam whether from the aspect of *hukm* or *dalil*. He also has his own way of doing *ijtihad* and giving out *fatwas*.
3. Mufti is a mujtahid who hold on to a specific school. He holds on to the school that he follows and support the *dalil* given by the school and of full believe about the *fatwa* given by the school. He does not *fatwa* which differ from the ones given

by his imam. When his imam has given a *fatwa* on a certain problem, he will not refer to other sources to give his *fatwa*.

4. Mufti is a knowledgeable person in various schools and remembers all the *fatwas* and all branch of hukm. He regards himself as a follower of school in all respect. If he gives a dalil from the Holy Quran and Hadith about a problem, it is merely for the sake of getting blessing and not as an argument.⁸

2.2.1 Conditions of *Fatwa*

Fatwa is a syarie law (hukum syara') given by the mufti. Thus, the conditions of a *fatwa* depend on the condition of the mufti. Abu al-Husain al-Basri explained that a mufti is one with the characteristics of becoming a mujtahid and the mufti who wants to issue a *fatwa* for him or for the others, and one who give a hukm to a problem, must have certain characteristics. He must be someone who can make an ijthad, really understand all the dalil (proofs) in the holy Quran and Hadith, and can give istinbat from a physical understanding or by using the process of istidlal by the using al-Qiyas.⁹

Imam al-Ghazali explained that he scholars agreed it is a must for a mufti, which is mujtahid, and just to issue a *fatwa*. Mufti must also have a vast and deep knowledge in relation to religion. He must be just and knows a lot on Hadith narrators.¹⁰

Imam al-Shirazi explained that mufti know the sources of hukm from the Holy Quran and Hadith, understand the content of both sources in relation to the lawful (halal) and the

⁸ . Abdul Monir Yaacob & Wan Roslili Abd Majid. 1998. *Mufti dan Fatwa di negara-negara Asean*. Kuala Lumpur. IKIM. p. 6.

⁹ . Dr Othman bin Hj Ishak. 1981. *Fatwa Dalam Perundangan Islam*. Universiti Malaya. Fajar Bakti Sbn. Bhd.. p. 11.

¹⁰ . Dr Othman bin Hj Ishak. 1981. *Fatwa Dalam Perundangan Islam*. p. 12.

unlawful (haram), stories, example, advices, have knowledge on the Arabic language about al-balaghah, nahu, qiyas and ijtiḥad and the status of the Islamic sources.¹¹

Al-Amidi explained that Mufti must be from those who are competent to give ijtiḥad, knows all the type of al-aqliyah and al-sam'iyah dalil, the way of giving priority to hukm, the process of giving hukm, must be just and knowledgeable and it is recommended (sunnat) for the mufti to have intention that the reason he gives the *fatwa* is to give guidance and teachings to the people about Islamic hukm. He also stressed that a competent mufti that can issue a *fatwa* must be from those who have a complete nature to do ijtiḥad, whether mutlak or fi mazhab, with the conditions, that he knows in detail the Islamic legal rule / method used by the Imam of the school he is following.¹²

Ibn al-Hajib explained mufti, a knowledgeable person who knows Usul Fiqh, sam'iyah and aqliyah dalil, must issue that *fatwa*. Ibn al-Qiyim explained that Imam al-Syafie stressed that one cannot issue *fatwa* except if he really understands the Holy Quran about nasakh and mansukh matters, hukm related to it, the reason of the revelation of the verses (ashab al-nuzul), Mecca or Medina verse, and the interpretation for a certain verse. He must really know Hadith as he know the Holy Quran, he must understand Arabic language and those which are related to it, understand the needs and necessities if the present society in a certain state in relation to a certain hukm given. When he discuss about the status of *fatwa* in Islamic law, he explained that *fatwa* may be changed or differ in its hukm because of different time, place, situation and reason the *fatwa* is issued and the issue that needs to the *fatwa*.¹³

Ibn Hajar al-Haitimi explained that it is fard kifayah to famous Islamic scholars to issue *fatwa* in relation to doubts arise so that it can become a reference. Al-Badakhshi explained that is a Mujtahid, who is a Muslim that have fulfill the condition in making ijtiḥad, and at that time, he can give *fatwa* in relation to syarie law (hukm syara'). Ibn

¹¹ . Dr Othman bin Hj Ishak. p. 12.

¹² . ibid. p. 12.

¹³ . ibid. p. 13.

Abidin explained that a Mufti must be one who is very conscientious, have vast and deep knowledge about syariah, shill full in asaluh hukm, and it is not enough if he is only remember the problems and dalil (proof) without using his attentiveness Ibn Abidin, when explaining on the scholar's vie in relation to *fatwa* matters in Islamic law stressed:

إن المجتهد والمقلد لا يجمل لهما الحكام والإفتاء بغير الرجح لأنه اتباع للهوى وهو هرام اجماعا.

Which means that mujtahid and muqallid cannot issue a hukm or *fatwa* based on unclear opinion because on act like that is based on desire which is unlawful (haram) and this is agreed upon by all Islamic scholars.

Muhammad Abu Zahrah when discussing on the differences between *fatwa* and ijti had explained that:

الافتاء أخص من الاجتهاد. فان الاجتهاد استنباط الأحكام، سواء أكان سؤال في موضوعها

أم لم يكن... أما الأفتاء فانه لا يكون الا إذا كانت واقعة وقعت، ويتعرف الفقيه حكمها.

Which means that *fatwa* is more specific than ijti had, because ijti had is done to get hukm, whether problem has happened or not, while *fatwa* must be given on a problem that has really happened and faqih knows about the hukm that will given.¹⁴

2.2.2 Conditions to be a Mufti

A person cannot hold the office of Mufti or give *fatwa* except if he has fulfilled all the conditions needed, because the post of Mufti is an important port according to the Islamic perspective. Ulama' have discussed upon the conditions thoroughly. Briefly, it can be summarized follows:

1. One who is pious and competent; and his competency cannot be argued.

¹⁴. ibid. p. 13.

2. Baligh is not a condition to become *fatwa*. Therefore, a child who can think ('aql) can give *fatwa* but however, therefore are certain parties that recognize baligh as a condition.
3. Can think ('aql). Ulama accept that a Mufti must be one who can think. People who are crazy / mad and children that cannot think cannot give *fatwa*.
4. Have Iman (faith). There is no clear condition that shows a Mufti must be someone with iman but in reality, *fatwa* is asked towards the Muslim only. In addition, *fatwa* is part of hukm syara' and it is reasonable that hukm syara' is given and istinbat from its sources by one who have iman. If a condition of kadi is being referred to, it is clear that Islam is also one of the conditions. Therefore, it is also true for Mufti.
5. Just is also a condition to become Mufti. An unjust Mufti is unreasonable to become a place of reference for questions for questions in relation to syara'. Ulama has discussed upon this matter. Although some ore of the opinion that *fatwa* by one is fasiq can be accepted, this opinion is weak and is not supported by dalil or argument.
6. Independent or freedom is not a condition to become Mufti and one who is solved can also give *fatwa*.
7. Male is also not a condition to become Mufti. A female can give *fatwa* and even Saiyidatina Aishah herself is very famous among the companions as one who has given a lot of *fatwa*.¹⁵

2.3 Power and Duties of Mufti

During the development of Islam until the existence of schools, the duty to make *fatwa* is on the ulama', this includes judges. The Caliph Harun al-Rashid once asked Abu Yusuf, Chief Judge to explain certain problems that bothers the Caliph. Although the duty of giving explanation and answer in relation to the issue or problem raised is part of the

¹⁵. Abdul Monir Yaacob & Wan Roslili Abd Majid. 1998. *Mufti dan Fatwa di negara-negara Asean*. Kuala Lumpur. IKIM. p. 84.

responsibility of ulama' however, ulama' such as Imam Malik states that he can only solve only partly. For certain ulama' they refuse to give *fatwa* in matters that are merely speculation except if the matter really exists.

In the acceptance of *fatwa* or opinions by famous ulama such as the four imams; Imam Malik, Imam Abu Hanifah, Imam Syafie and Imam Ahmad bin Hambal, they do not ask us to accept their opinions without looking and studying the sourced used in obtaining the *fatwa* or opinion. Even from years back, Mufti in this country had been given the duty and trust to explain and give *fatwa* to solve issues or problems that happened in the society or solve doubts in relation to certain hukm. Sometimes Mufti is asked to explain hukm that has been explained in texts. In this situation, the duty of the Mufti is only to give explanation on those matters as related in the text, but sometimes misunderstanding happens among the society. Some perceive every hukm stated or explained by the Mufti is *fatwa*. A matter only becomes a *fatwa* if it fulfills the conditions of *fatwa* as provided in the law on hukm syara' administration of the state.

The Malaysian Constitution provides that a religious matter is under the jurisdiction of the state and Sultan acts as the Head for the state. Today, every state including the Federal Territories, have its own law on Islamic administration. In this law, provisions included in relation to Mufti are:

- i. The appointment of Mufti / Deputy Mufti.
- ii. Mufti's Powers.
- iii. *Fatwa* (how it is made).
- iv. Amendment of *Fatwa*.
- v. *Fatwa* Committee.
- vi. The Position of Mufti in giving expert opinions in Court.
- vii. School to be followed.¹⁶

¹⁶. Abdul Monir Yaacob & Wan Roslili Abs Majid. 1998. *Mufti dan Fatwa di Negera-Negera Asean*. Kuala Terengganu. .IKIM. Kuala Lumpur. p. 130-131.

2.3.1 Ethics of Mufti

As we all know, every Muslim must behave in a proper way (akhlak). The Prophet s.a.w. become the Messenger of Allah to complete man's akhlak. Excellence, justice, perfection and beauty of Islam can only be proven by the understanding of Islam as a complete or syumul religion. In relation to this, Islamic akhlak is one of the aspects in the Islamic teachings besides syariah and aqidah.

The ethics of a Mufti means akhlak or manners that must be own by a Mufti in his life. This is because, Mufti is doing the duty that has done by the Prophet s.a.w. and explaining hukm syara'. Mufti also gives answer to every question posed a certain party and this duty has been ceaselessly done by ulama of the companions and ulama after them.

Ulama always give important to the understanding of adab al-qadi by judges because it is one of the ways that can guarantee Islamic justice. This is also true for *fatwa*. Ulama' has also discussed on adab al-Mufti or ethics of Mufti. Thus, *fatwa* given will be more effective and his competency can be defended because it came from one who has good *akhlak* and respected.¹⁷

One who gives *fatwa* must have knowledge that can enable him to give the *fatwa* and true in its nature. This is because, this sacred duty has been done by the companions, ulama' and previous ulama'. Allah forbids one from giving a *fatwa* or punish without knowledge. If this is being done it is a great sin. Allah Most High said:

﴿ يَا بَنِي آدَمَ إِمَّا يَأْتِيَنَّكُمْ رُسُلٌ مِّنْكُمْ يَقُصُّونَ عَلَيْكُمْ آيَاتِي فَمَنْ اتَّقَى وَأَصْلَحَ فَلَا خَوْفٌ

عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ ﴾

(Al-Quran. Al-A'raf 7:33)

¹⁷. ibid. p. 85.

Say: the things that my Lord hath indeed forbidden are; shameful deeds, whether open or secret; sins and trespasses truth or reason; assigning of partners to God, for which He hath given no authority; and saying about God of which ye have no knowledge.

This verse stressed that Allah forbids any unlawful deeds, trespassing against truth or reason, assigning of partners to Allah and saying things about Allah when he has no knowledge on it. Therefore, a Mufti or Kadi is not included in the group that says something about Islam without knowledge or lies towards Allah.

In other verse, Allah Most High said:

﴿وَلَا تَقُولُوا لِمَا تَصِفُ أَلْسِنَتُكُمُ الْكَذِبَ هَذَا حَلَالٌ وَهَذَا حَرَامٌ لِّتَفْتَرُوا عَلَى اللَّهِ الْكَذِبَ
إِنَّ الَّذِينَ يَفْتَرُونَ عَلَى اللَّهِ الْكَذِبَ لَا يُفْلِحُونَ﴾

(Al-Quran. An-Nahl 16:116)

But say not, for any false that thing your tongues may put forth,- “Tis is lawful, and this forbidden”, so as to ascribe false things to God. For those ascribe false things to God, will never prosper.

This verse clearly parents us from saying or giving any hukm of lawful (halal) and unlawful (haram) without knowledge and reason. This is also true for acts and giving hukm based to find glory or name metely for the sake of the present.

A Mufti must be one with knowledge, truthful and *fatwa* given must be based on finding Allah’s blessings, upholding the justice to solve problems and answering problems or questions based on hukm syara’. A Mufti must be a Muslim who is justice and it is void if a non-Muslim gives a *fatwa*. *Fatwa* of a fasiqun is also unreasonable to be accepted

because he cannot be trusted fully. If he gives a *fatwa*, the *fatwa* cannot be followed thoroughly.¹⁸

Allah Most High said:

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا إِن جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَن تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْبِحُوا عَلَىٰ مَا
فَعَلْتُمْ نَادِمِينَ ﴾

(Al-Quran. Al-Hujurat 49:6)

O ye who believe! If a wicked person comes to you with any news, ascertain the truth, lest ye harm people unwittingly and afterwards become full of repentance for what ye have done.

With this reminder from Allah, so that we must be careful in accepting news from the *fasiqun*, it is reasonable to reject their *fatwa*. Whereas for Mufti, he must be just and have good behaviour (*akhlak*).

According to Imam al-Nawawi, *ulama'* gives the view that a Mufti must clearly show his piousness, his faith of religion is well-known to the public and he always take good care of his faith. This is because; Imam Malik usually practices things that are not usually practiced by the public. He said that one is not regarded as an *'alim* until he practiced those, which are not usually practiced by the public as the practice, if not practiced, is not a sin.¹⁹

A Mufti must be careful in his acts and behaviour as well as the needs of *syariah*. This is because; the public follows the Mufti's words and action. Based on his actions, *hukm syara'* will be clearer to the public because it can be observed. Whereas, the tendency to

¹⁸ . *ibid.* p. 86.

¹⁹ . *ibid.* p.87.

perform the teachings and guidelines of a Mufti is based upon his actions. Beside that, Mufti must have the feeling of need ask for Allah's help, hoping to get His guidance (taufiq). Mufti also must work hard in giving *fatwa* and istinbat of hukm to get Allah's blessing, in line with Allah's command:

﴿وَأَنِ احْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ فَإِنْ تَوَلَّوْا فَاعْلَمْ أَنَّمَا يُرِيدُ اللَّهُ أَنْ يُصِيبَهُمْ بِبَعْضِ ذُنُوبِهِمْ وَإِنَّ كَثِيرًا مِّنَ النَّاسِ لَفَاسِقُونَ﴾

(Al-Quran. Al-Maidah 5:49)

And this (He commands): Judge thou between them by what God hath revealed, and follow no their vain desires, but beware of them lest they beguile thee from any of that (teaching) which God hath sent down to thee. And if they turn away, be assured that for some of their crime it is God's purpose to punish them.

In executing duties and completing responsibilities, Mufti must be sincere and have a pure intention of doing it merely for Allah. A Mufti also has to purify his spirit. When, giving a *fatwa*, Mufti must have the correct intention and aim to carry out the duty of the Prophet s.a.w. in explaining about hukm syara', raising the desire to practice the teachings of the Holy Quran and as-Sunnah besides guiding man to practice the teachings of the Holy Quran and as-Sunnah. In relation to that, he must also ask for Allah's help and guidelines so that he can avoid intention or feelings of the *takbur* or proud.

When giving a *fatwa*, a Mufti must be calm and comfortable. Mufti is unreasonable to give a *fatwa* when his *akhlak* has changed to unjust, or cannot give fully attention to his duties due to certain reasons. This include anger, hunger, thirst, sad, overjoyed, bored, sleepy, too hot and cold, sick, pressurized by interested parties and other situations that can lead him not giving full attention when giving *fatwa* because his heart and mind is not

in peace. If there, aspects, in his judgment, will not bother with his duties in giving the correct *fatwa*, then; it is not considered as harmful. However there is still anger in it.

There is no need for a Mufti, in giving his *fatwa*, hastily. He must first think deeply and calmly, balancing the haqq and batil and take into consideration the effect of the *fatwa*. Then a *fatwa* can be given. Imam Malik is very careful in giving *fatwas*. Sometimes, he does not eat or drink because too conscientious and very particular in giving a *fatwa*.²⁰

According to Imam al-Nawawi, it is unlawful for a Mufti that gives as easy attitude towards attitude towards *fatwa*. If his attitude is know, the act of asking for a *fatwa* from him is also unlawful. An example is when a Mufti hastily made a *fatwa* before the reconfirms the matter or the question that needs his *fatwa*.

A Mufti must also follow what he has said in his *fatwa*. If it is a good thing, he must use and practice it. On the other hand, if it is unlawful or unrecommended (makruh), it must be avoided. This is to ensure that his acts and practices are in line with the *fatwa* and his words. If his actions are in conflict with the *fatwa*, his actions clearly negate the *fatwa* given. This may make the person asking for the *fatwa* to be doubtful in accepting and practicing the *fatwa*. Allah reminds us to practice and do what we have said. Therefore, there will be co-ordination between words and actions.

Allah Most High said:

﴿ كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لَا تَفْعَلُونَ ﴾

(Al-Quran. As-Saff 61:13)

Grievously odious is it the sight of God that ye say that loves those fights in His Cause in battle array, as if they were a solid cemented structure.²¹

²⁰ . ibid. p. 88.

²¹ . ibid. p. 89.