

Freedom of Speeches by Mufti According to Islam: Implication to Fatwa in Malaysia

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Abstract

This article discusses the freedom of speech by mufti advocated by Islam. Although Islam urged for freedom of speech, but there are certain limitations that need to be followed. In religious matters, the mufti is the responsible person to speak up. However, issues arise when mufti went overboard when preaching in front of societies whether in the media or directly through lectures and so on. This has led of confusion among the publics whether the statements issued by the mufti is considered as a fatwa or otherwise. Therefore, this article endeavors to examine the freedom of speeches by the mufti and fatwa implications. This study has three objectives. First, identify the concept of freedom of speech in Islam. Second, examine the fatwa position in the Administration of Islamic Law in Malaysia. Third, analyzing the implications on freedom of speech by the mufti according to Malaysia's fatwa. This article has been analyzed using analysis content based on the data collected through the library research. The results indicated that Islam please for freedom of speech in accordance of the constitution. The study also found the freedom that had been given to the mufti may have negative implications to the society whom considers all specified matters by mufti is a fatwa. Thus, a proper guideline about the declaration by mufti should be enacted to ensure there is no confusion arises beyond the mufti's capacity as the individual who issued a fatwa.

Keywords: Freedom of Speech, Fatwa, the Mufti, Malaysia, Islamic Research.

INTRODUCTION

Nowadays, a variation of issues began to arise. As a result of these problems, the religious leaders come forward to take an ownership to deal and respond to the various problems that arise. The law and reality clarification, especially on religion matters also start to be referred to those who have authority. This also involves the mufti as being authoritative in giving opinions, especially on issues of religious law.

On the other hand, the demand for law's clarification seem encouraging as it involves an authoritative references. It is also coincides with freedom of speech principle because it

involves issues related to religion. However, there was some confusion about the Muslim community in Malaysia. According to Nasohah (2005), one the problem that arises is what a fatwa itself is. This is because the mufti today's are free to express their opinions in a diversity of channels, including social media, writing, lectures and so on. This has led to confusion over the definition of an authentic fatwa (Yaacob, 2004).

The freedom of speech that has been advocated by the mufti becomes a question as whether it could impact the understanding of the fatwa's meaning in the society? When any matter is enclosed by the mufti from a diversity of channels, people will consider it as a fatwa because the opinion comes from the individual capacity whom is formally appointed by the government as a mufti. Therefore, this study attempts to discuss the extent of freedom of speech in Islam especially to a mufti and fatwa implications.

RESEARCH METHODOLOGY

This study practices the method of documentation analysis to achieve a clear picture of the actual definition of fatwa in Islam. Reference also based on the creation of classic and contemporary to explain the concept of freedom of speech and the concept of fatwa in Islam. In addition, observations of the documents related to the enactment of Islamic laws in Malaysia were examined. This assessment is examined to understand the exact position of the fatwa in Malaysia.

The results of this data collection will be analyzed using analysis of content. The analysis of content was used to examine and clarify the interpretation of the document. According to Yusof (2004: 34) and Krippendorff (2004: 18), the content analysis through the form of documents is a one of research method to draw conclusions in a systematic and objective way. While Marican (2005: 170) and Othman Width (2009: 146) defines analysis of content as a systematic explanation of a written text. This coincides with data collected from a particular document involves works or enactment of the law.

FREEDOM OF SPEECH IN ISLAM

Etymologically, the freedom of speech approach is defined as a condition, free movement, honesty, and also an aspect that is not limited in the ideas or insights (Peter, 1976). According to Kamali (1998), there are no comprehensive interpretations of freedom. In the context of the legal system, freedom refers to the ability of the individual to speak or perform any action without violating the rights of others. According to the Legal Dictionary, freedom is defined as the human nature in interprets feelings, thoughts and their instinct to communicate either orally, media or various other forms of communication. Article 19 (1) of the International Covenant on Civil and Political Rights (ICCPR) states that every individual has the right to express opinion and expression without any restrictions. Freedom of speech is considered as an absolute freedom to all mankind to clarify and express their views in any matter.

Freedom of expression is one of the principles that are also discovered in Islam. This principle in Arabic is known as *huriyyah al-ra'y* (al-Hawli, 2008: 3). Freedom of expression is defined as an individual's freedom to disclose the truth in all matters (al-Basyar, 2009; al-Hawli, 2008; Buang, 2006). Islam does not forbid at all to give opinion and thoughts as long as it does not violate the Quran and al-Hadith and providing it is interfere with the freedom of others ('Abd al-Jalil, 2009; Syauqar, 2002).

Al-Maududi (1980: 26) states, Islam gives freedom of thought and speech to all Muslims who have the ambition of its own. Among its goals is based on the concept of doing good deeds and forbidding evil (hailing towards goodness and refuse evil). Each individual Muslim has the right to criticize and express an opinion on fellow Muslims either enjoin good or forbid evil. Rasulullah saw which means:

"Anyone who sees something in front of you, then you shall turn and stop with your hands (with the power in you), if you are not able (with your hands) then you must change with the tongue. If you are still not able to, then you must change the heart. It is a weak faith. "

(Narrated by Muslim, Hadith No. 184)

Freedom of speech is to express an opinion to seek and receive and impart information without restriction. Freedom is a human right by Islam in expressing their views because it is closely related to the concept of freedom of thought and freedom of conscience, that can not be prohibited by any individual to articulate the rights of that (Madani, 2011).

In Usul al-Fiqh, the scholars put a very strict condition to *ijtihad* (al-Zuhayli, 1996: 1043-1051). The purpose of this designation is to avoid any views which are not harmonized with Islamic law. The mufti plays an important role in the concept of free speech. According to Muhammad (2008) and Buang (2006), weakness in *ijtihad* nowadays led to a method of *ijtihad jama'i* or *fatwa jama'iyyah* (collective fatwa).

In Islam there are several conditions to emphasize their rights in issuing the opinion. This is expressed as to deny that there is freedom of speech in the liberal class (Riaz Ahmad Saeed, 2013). In general and as an introduction, the Liberal Islam preaching freedom of thought and freedom of religion interpret (Ibrahim, Majid & Othman, 2012). In other words, this group urges everyone is given the right to speak about Islam.

BASIC FREEDOM OF EXPRESSION ACCORDING TO THE QURAN

Islam has laid some foundation as a guideline in the framework of freedom of speech. Among these principles is as stated in the Quran:

First: To uphold truth and justice.

Meaning: Allah commands you to give back the trusts to their rightful owners, and when you judge between people, judge with fairness. Surely, excellent is the counsel which Allah gives you. Allah is He who hears and observes all.

(al-Nisa ', 4: 58).

Second: Rejecting the cruelty and imprefection.

Meaning: O believers! Fulfil your contract obligations. All four-legged animals from livestock are lawful to you other than those which are hereby announced. However do not violate the prohibition of hunting while you are in Ihram (Haji dress). Indeed Allah orders whatever He pleases.

(al-Ma'idah, 5: 2)

Third: Not forcing others to accept a particular point of view.

Meaning: If it had been the will of your Rabb that all the people of the world should be believers, all the people of the earth would have believed! Would you then compel mankind against their will to believe?

(Yunus, 10: 99)

Fourth: Respect and honor the rights of individuals.

Meaning: It is Our favor that We have honored the children of Adam, blessed them with conveyances on land and sea, provided them with good and pure things and exalted them above many of Our creatures.

(al-Isra ', 17: 70)

Fifth: Convey significance to the general public.

Had the residents of the towns believed and feared Allah We would have showered upon them riches from and the earth, but they disbelieved; so We seized them for their misdeeds.

(Surah al-A'raf, 7: 96)

HIERARCHY OF GROUP WITH FREEDOM TO EXPRESS ITS OPINION

According to al-Maududi (1995), every individual has the right to express his or her views. The definition of right here is the right of spreading the good and true. Islam ascertains that the freedom of right must be carried out. Therefore, anyone who tries to make denial of the right to this freedom, they are wrath to Allah SWT.

In this circumstance, societies must be bold in expressing opinions because through this way, it will create the idea of brainstorming is more critical and transparent in thought. Al-Attas (1992: 20) states, in this case there is a hierarchy that specializes in determining the category of individuals who are eligible to express their views. This classification is designed to educate people to be more intellectual and sensitive to the issues that are happening around them. Hierarchy of group with freedom to express its opinion as follows:

- 1- The Intellectuals: Individuals who specialize in a matter. Have a pure knowledge and requires its expertise in resolving issues that arise. This is because the ability of these groups to observe the problems that occur with the use of systematic methods, specifically by addressing the problem, defining the problem, analyzes the problem and solves the problem.
- 2- The Scholars: people who are aware of the problems that occur but do not understand the matter critically. Although this group is able to identify the problems that occur but still not be able to contribute a solution to the matter if there is no attentiveness.
- 3- The Publics (The sane people): individuals who are aware of the issues going on around them. This group is not the same criteria with intellectuals and scholars. Awareness is an important indicator in determining these people realize that the problem is a problem that should not have happened. Through this awareness, human rights to speak have to be upheld.

According to this hierarchy, a mufti is the highest ranking as the qualified person to speak freely, especially in matters religious. This is because they are adept people and have the ability to exercise ijtihad based on their knowledge.

MUFTI'S PLACEMENT IN ISLAM

Mufti is an important pillar of the verdict apart from *mustafti* (the questioner), *Istifta* 'and fatwa ('Abd al-Karim Zaidan, 2006: 140; al-Barawi, 2009: 11). Al-Mallah (2006: 2/577) explained the mufti is a faqih who are liable to justify a law of Allah SWT in such a state. Mufti is also a capable mujtahid in issuing the Islamic laws from the sources in conformity with the rules of ijtihad.

Hassan (1998: 276) defined a mufti is someone whom explaining Islamic law in general. al-Harrani (1380H / 1984: 4) and al-Hafnawi (1995: 319-320) defined a mufti is a person who preach or explain the law of God with the knowledge of their counsels to the questioner.

Based on the definitions stated previously, a mufti acts as a responsible person to explain the Islamic laws on the issue or issues raised by the questioner. Clarification of the law should conform to the framework and the rules of law prescribed by the Islamic scholars.

Although previously, mufti was referred as an individual who is able to interpret Islam and express their views in matters of religion, but afterwards the mufti had made a special position. Special positions have been introduced to the person who issued the fatwa who is mufti during the reign of 'Umar' Abd al-'Aziz (al-Zirikli, 1986: 193). Mufti appointed by the officials or the government and assigned to solve religion matters that have been raised. This appointment is made to ensure the fatwa is issued in accordance with Islamic law.

IMPLICATIONS' ANALYSIS OF FREEDOM OF SPEECH BY MUFTI ACCORDANCE ISLAMIC PERSPECTIVE AND LAW

Islam is really emphasizing on individual who expressing its opinions or ideas on religious matters. This is because the validity of the information also has implications for society to accept these opinions. In Islam, a mufti is an individual who has a high position and qualified and may speak freely in such a circumstance.

Mufti and fatwa cannot be separated. Islamic scholar considers things spoken by mufti a fatwa based on definitions. Fatwa is defined by the various definitions by the classical scholars or contemporary Islam. Al-Harrani (1984: 4) states fatwa is a result of the passage by mufti or Islamic law specified by the mufti through fatwas. Thus, the fatwa refers to an answer which is addressed to a mufti related to Islamic laws. When there is a response, then it implies that there are questions. These questions are the questions addressed to the mufti or there are questions to be answered by the mufti based on local matters.

This definition is supported by the definition given by other Islamic scholars fatwa for example the definition given by Qal'ah Ji and Qunaibi (1985: 339) and Rahman (2003: 45). Both definitions stated that fatwa was information's reaction or a response to questions posed to the mufti. In other words, when there are questions or concerns, and then there will be a ruling in response.

In addition, al-Zuhayli (2001: 1156), Himsi (1996: 410), Hasan (1998: 205) and Sanu (2000: 312) also elaborate the definition in details and comprehensive. They defined that fatwa as the mufti's response when any questions asked to him based on the rules laid down by the verdict of Islam. This definition emphasizes the use of *istinbat* legal rules granted in fatwa's process.

In other hand, Al-Asyqar (2004: 9) and Syaltut (1395H: 7) differentiate the law described by the mufti who has questions or not. From their point of view, a fatwa about the religious law must be preceded by the question of the petitioner. Otherwise, the hukm's explanation only called as *irshad* (guidance). They concluded fatwa as the introduction of the law of God to the questioner arguments based on the current legislation questioner. Yusuf Qaradawi (1999: 1) defined fatwa as the Islamic law's explanation in answer to the questions posed by the questioner on any religious problem. The mufti can decide Fatwa either by individual or group discussions (fatwa jama'iyah).

Fatwa illustrated in different manner by Ibn al-Qayyim (1968: 9) compared to other Islamic scholars. For Ibn Qayyim (1968), a fatwa is a manifestation from Rasulullah SAW that comprehend all the rules with a crystal clear explanation. He also declared the obligation to obey the Prophet's fatwa and arbitrate with him after the Qur'an.

Moreover, Sanu (2000: 312) interprets that a word not binding in ruling. Non-binding refers to the needs to not compliance with a ruling issued by a mufti or qualified academics. Therefore, the fatwa also indicate that the description of Islamic law by a mufti is not binding. Fatwa issued by a mufti does not necessarily carried out by the public because sometimes fatwa is only reserved for individuals or groups. If the government of Islam gazettes them, the people under that government shall comply with the ruling. This opinion is also supported and explained by other Islamic scholars including Jayb (2003: 281), Madkur (1969: 399) and Buang (2001: 39).

The overall definition of a fatwa by the Islamic scholars pointed on the freedom in the mufti verdict. All matters specified by the question whether based mufti or fatwa is not categorized as. This is because, of all the statement specified by the mufti in matters of religion is defined as fawta.

However, the freedom of speech given to the mufti may not necessarily be classified as fatwa. Kasan (2001: 53) divides the opinion of the mufti into three categories. First, the mufti or fatwa issued by the Council and the Committee formally gazetted in the Government Gazette. The court ruling and all parties in the country recognize Fatwa proclaimed by every government. This was stated in the deed of administration of Islamic law in Malaysia such as in Section 34 (3) of the Administration of Islamic Law Federal Territories:

"None of the statements made by the mufti is considered as a fatwa unless and until it is enacted by subsection (1)."

Second, the fatwa issued by a mufti or Council through the Committee cannot be enforced by law to any individual, entity or court because of it is not gazetted. If it were not gazette, the fatwa would only be an answer of reference or as a personal opinion of the mufti (Nasohah, 2006). But this fatwa can only be processed until it is established by the permission of the Sultan or by the Council itself (Kasan, 2001: 53).

Third, the clarification of law devoted by the Mufti, which is prevailed in Islamic law. This fatwa is a legal clarification that has been recorded but it is unresolved to the petitioner and it is the most prevalent (Kasan, 2001: 53). This Fatwa is normally be issued to the Mufti in gaining the clarification directly, and it is not compulsory be accepted by the petitioner and cannot be processed in Government Gazette. There are some rules in issuing a fatwa, as an example of the Administration of Islamic Law Selangor 1989 stipulates in Section 31 (2) of the

Administration of Islamic Law Negeri Sembilan 1991 in section 30 (2) and Section 34 (3) of the Administration of Islamic Law Federal Territories.

There are some distinctions in defining the position of fatwa by the mufti based on enactment of the law in Malaysia. This confusion of defining the fatwa by mufti had caused everything stated by the mufti is considered a fatwa. This is the implications of freedom of speech by the mufti in the definition of fatwa.

CONCLUSION

According to the Islamic perspective, freedom of expression by the mufti seen in several aspects. First, conditions and feasibility of a mufti. Second, the framework of freedom of expression guidelines set by Islam. Mufti is the individual who is responsible for explaining the laws of the issues and problems that occur in society. However, the explanation that they do must meet the eligibility requirements mufti and framework guidelines outlined in the Quran and al-Sunnah.

Next, framework guidelines established in the Quran and al-Sunnah also an important aspect of freedom of expression. Among the first, the concept was said to be aimed *ma'aruf amar nahi unjust*. Second, uphold truth and justice. Third, resist injustice and *kefasidan*. Fourth, Islam does not force the receipt of an opinion and the fifth, must respect and honor the rights of individuals and can give importance to the general public. Both of these aspects as elements to the mufti to resolve the problems of society. In fact, all that is explained by the mufti affects society as mufti individuals entrusted with the verdict.

When examined on the aspect of freedom of expression in the perspective of Islamic mufti and Islamic law in Malaysia, the clarification issued by the mufti is bound religious ceremony through sharia committee and authorized by His Royal Highness the Sultan of the respective states. The explanation is a mufti on issues not considered a fatwa. In fact, *penjelasant* is only considered as a personal opinion by a mufti. Therefore, to avoid confusion with the fatwa, a mufti should explain the statements made are purely personal opinion. This can avoid confusion and at the same time lift the fatwa authority decided that only after enacted in law.

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