

The Complexities of Implementing Gazetted Fatwas in Malaysia's Federal Territories

Nur Hazirah Zainal Abidin^{*1}, Zaini Nasohah²

^{1,2} Research Centre for Sharia, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia, Malaysia

Abstract

In Malaysia, non-compliance with a fatwa constitutes a breach under Shariah criminal jurisprudence. In such violations, it is imperative to undertake appropriate enforcement measures to address and mitigate the issue effectively. However, the implementation of enforcement has many challenges. One of the main challenges in enforcing a Shariah criminal offense is to meet the elements of proof for each offense committed. This article aimed to discuss some of the challenges regarding the enforcement of fatwas in the Federal State Territory. This research adopts a qualitative methodology, employing document analysis as a primary tool for data collection. Additionally, the study utilizes interviews to gather insights about the challenges encountered in enforcing fatwas within the community. The collected data is subsequently subjected to descriptive analysis for a comprehensive understanding. The results of the study found that among the main challenges faced by the Enforcement Division of the Federal Territory Islamic Religious Department (JAWI) are the weakness in fulfilling the elements of proving the wrongdoing of the fatwa, lack of specific expertise in matters related to investigation and intelligence as well as a lack of enforcement officers. This situation significantly influences the enforcement department's capacity to implement fatwa compliance measures within this state effectively.

Keywords:

Fatwa, gazette, challenge, enforcement, Enforcement Division, Malaysia.

* Corresponding author. Email: nhza198@gmail.com

Introduction

Regarding matters pertaining to fatwas issued by the Committee of the states in Malaysia, including those in the Federal Territories, not all are necessarily enforceable. There are several procedures that they have to go through for the fatwa to be enforced. A specific fatwa becomes actionable only subsequent to its gazettal. Nonetheless, there exist scenarios wherein a gazetted fatwa may encounter challenges in enforcement, including instances of non-compliance with the fatwa itself.

Nowadays, Islamic religious enforcers face various challenges during the enforcement process. Today, some Shariah criminal offenses, such as offenses violating fatwas, are common in the cyber world. This includes other crimes related to the fatwa, such as insulting the religion of Islam, spreading false teachings, denying the position of the religious authorities, or acts of contempt against them. All the crimes committed in the virtual environment require more law enforcement skills and expertise. The skills and expertise are crucial to track down perpetrators and gather pieces of evidence in the process of investigation. Cooperation between several agencies is needed to bring offenders to justice. Hence, this article will explore the challenges faced by the Federal Territories Islamic Religious Department concerning fatwa after it has been gazetted and then propose appropriate recommendations to resolve these challenges.

The enforcement of Shariah criminal offenses, such as violations of fatwas, coincides with the concepts of *al-Amr bi al-Ma'ruf wa al-Nahy 'an al-Munkar* (promotion of goodness and prevention of evil). It is the responsibility of Muslims to uphold peace and well-being in society. When a state government officially gazettes a fatwa, it assumes a binding legal status, mandating adherence by the Muslim

community within that jurisdiction. Such gazetted fatwas are subject to enforcement. This principle is equally applicable in the Federal Territories. However, the enforcement mechanism is typically considered as a final measure, reserved for instances where there is continued non-compliance with the fatwa among Muslims.

Under the Shariah Criminal Act/Enactment, each offense is defined by specific elements that constitute the infraction. Typically, these elements include demonstrable actions indicative of the involved parties' complicity in the alleged offense.¹ These elements must be substantiated in a court of law. A parallel process is requisite in the enforcement of a fatwa, where the element of breach must be conclusively established. Thus, in cases alleging a violation of a fatwa, it is imperative to provide not merely an exposition of doctrinal teachings but concrete evidence of the infringement.²

It is imperative to scrutinize the *sighah* (formulation) employed in articulating a fatwa to grasp the intended message accurately. The construction of a *sighah* in a fatwa warrants thorough examination and reassessment. Inadequacies or inaccuracies in the *sighah*, particularly in the context of legal substantiation, can lead to the prosecution's inability to establish the case against the defendant.³ Consequently, this raises a critical question:

¹ Siti Zubaidah Ismail. "Undang-Undang Kesalahan Jenayah Syariah di Malaysia." Kuala Lumpur: Penerbit Universiti Malaya (UM), 2017. 36.

² Maizatul Aliza Chee Din. "Cabaran Pendakwaan Berkaitan Kes Akidah." Interview, 10 Disember 2021.

³ Ibrahim Deris A.M.N & Hanifah Haydar Ali, Kesan Kelemahan Sighah Fatwa Terhadap Pendakwaan di Mahkamah Syariah, Universiti Islam Antarabangsa Malaysia (UIAM). https://www.academia.edu/7475596/KESAN_KELEMAHAN_SIGHAH_FATWA_TERHADAP_PENDAKWAAN_DI_MAHKAMAH_SYARIAH_Oleh.

Does the challenge of enforcing a fatwa significantly hinge on the strength of its sighth? Additionally, the competence of the Islamic religious enforcement agency in the Federal Territories comes under scrutiny. Siti Zubaidah has broadly highlighted concerns regarding the proficiency of these agencies in conducting investigations and gathering evidence.⁴

This study is a qualitative study using the document analysis method. The documents analyzed include books, articles, journals, working papers, and statutes. This study also used a semi-structured interview method to get a clear picture of the challenges in the enforcement of fatwas in the Federal State Territory. The religious enforcement officers interviewed included Mr. Haris Abdllah, senior Islamic Affairs Assistant at the Investigation Branch, Enforcement Division of the Federal Territory Islamic Religious Department (JAWI), and Mrs. Norhanini Ismail, Assistant Director of the Enforcement Division, Federal Territory Islamic Religious Department (JAWI). Likewise, he engaged in a semi-structured interview with Puan Maizatul Aliza Chee Din, serving as the Shariah Prosecutor at the Federal Territory Shariah Prosecution Department. In academic research, such semi-structured interviews are typically qualitative, and the data derived from these interactions is subject to descriptive analysis.

Fatwa in Malaysia

In Islamic jurisprudence, both the institution of fatwa and the role of the Mufti hold esteemed positions, primarily due to their pivotal function in elucidating

⁴ Siti Zubaidah Ismail, "Undang-Undang Kesalahan Jenayah Syariah di Malaysia." Kuala Lumpur: Penerbit Universiti Malaya (UM), 2017. 47.

Islamic law. Scholars entrusted with the task of implementing or issuing fatwas are necessitated to embody specific qualities and characteristics, which are essential prerequisites for qualifying as a Mufti, an authoritative figure responsible for the issuance of fatwas or legal pronouncements.⁵ In the Malaysian context, the stature of the Mufti and the fatwa institution is highly esteemed. Muftis are primarily responsible for providing counsel to the king or sultan on matters pertaining to Shariah law. In Malaysia, a fatwa is defined as a Shariah law-related decree issued by the Mufti in conjunction with the state Fatwa Committee, deliberating on its potential gazettal. However, for a fatwa to be legally enforceable, it must undergo the gazette process.

According to Abdul Shukor Husin,⁶ under the Federal system practiced in Malaysia, matters related to fatwas and Islamic law are under the jurisdiction of the state except for the Federal State Territories because they fall under the Federal Government. The administration of fatwas in this country is regulated under a specific act or enactment.

At the Federal level, the Fatwa Committee Muzakarah was established under the National Council for Islamic Affairs of Malaysia (MKI) Regulations. From a legal point of view, Shariah law decisions issued at the Muzakarah level of the National Fatwa Committee do not have legal force until they are accepted and gazetted by the states. In other conditions, when it comes to fatwas that touch national interests, they must first be referred to the National Fatwa Muzakarah Committee. Therefore, the

⁵ Abdul Shukor Husin. "Institusi Kefatwaan di Malaysia: Cabaran Pemerkasaan, Bab 1: Fatwa dan Perbezaan Pandangan: Cabaran dan Penyelesaian" (2018). 8.

⁶ Abdul Shukor Husin, 9.

State Fatwa Committee should seek the opinion of the National Fatwa Committee before issuing any fatwa regarding the matter. This matter has been provided under the State Islamic Religious Administration Enactment. Only the Federal State Territories have provisions related to national interests. In the Malaysian context, disputes concerning fatwas are not uncommon in the realm of Islamic jurisprudence. Such conflicts, stemming from divergent opinions or perspectives that are not adequately reconciled, have had a detrimental impact on the Muslim community.

In Malaysia, fatwas are bifurcated into two distinct categories: those that are gazetted, thereby acquiring the status of law, and those that remain ungazetted and consequently do not attain legal force. Ungazetted fatwas cannot be employed as law by the courts; however, judges may utilize them as advisory or referential material. Conversely, official fatwas that have undergone gazettal by the state government are promulgated for public adherence. In the issue of gazetting, decisions, and views issued at the federal level will be channeled to the state fatwa authorities to be a fatwa and gazette.⁷ The publication process at the state level is different. This difference has caused problems in terms of the publication and also the content of the fatwa because, in some states, some of the members of the Islamic Religious Council are not experts in Islamic law and still have the authority to amend the fatwa or the views that the State Fatwa Committee has submitted.⁸ According to a study by

⁷ Farahwahidah Mohd Yusof. "Fatwa: Keberkesanannya Memerangi Ajaran Sesat di Malaysia." Penerbit: Universiti Teknologi Malaysia (UTM), Skudai, Johor Bahru, (2011). 67.

⁸ Abdul Shukor Husin. "Institusi Kefatwaan di Malaysia: Cabaran Pemerkasaan, Bab 1: Fatwa dan Perbezaan Pandangan: Cabaran dan Penyelesaian." (2018) 8-9.

Shamrahayu A. Aziz,⁹ when the fatwa is gazetted, it is considered law, and the fatwa binds every individual Muslim in the state involved. Those who violate the gazetted fatwa will be considered to have committed a shariah offense.

Enforcement of Fatwa

The muftis in Malaysia issued fatwas through the State Fatwa Committee or the State Shariah Committee based on the procedures and powers given through the respective state Islamic Religious Administration Act/Enactment.¹⁰ According to the Islamic Legislation embedded within the enactments of each state, fatwas that fail to adhere to all established procedures and protocols are not recognized as valid fatwas.

The State Fatwa Committee is responsible for preparing a fatwa for each state at the order of His Majesty the Sultan (*Yang di-Pertuan Agong*), at the request of the Committee itself, or the request of the Muslim community made through a letter addressed to the Mufti regarding any question that is not yet final, or that causes controversy regarding Islamic Law. In the formulation of laws or fatwas, the majority of states typically base their decisions on the final *qawl* (opinion) of the Shafi'i school of thought. However, suppose the final *qawl* of the Shafi'i school contradicts public interest. In that case, reference can be made to the final *qawls* of other schools, such as Hanafi, Maliki, and Hanbali, or any other jurisprudential schools closely aligned with these teachings. Should the Fatwa

⁹ Shamrahayu A. Aziz. "Isu Penguatkuasaan Undang-Undang Jenayah Syariah di Malaysia." Kuala Lumpur: Dewan Bahasa dan Pustaka (2016). 34.

¹⁰ Mohd. Mahadis Yasin. "Pengurusan Dan Penyelarasan Fatwa: Pelaksanaan Dan Cabaran Di Malaysia." *Jurnal Pengurusan dan Penyelidikan Fatwa* (1) (2007) 119-135.

Committee determine that adherence to these final *qawls* conflicts with the public interest, they are then empowered to exercise their *ijtihad* (independent reasoning).

The fat was determined by the Muzakarah of the National Fatwa Committee (MJFK) and does not inherently obligate any state or its committee members due to the absence of explicit legal jurisdiction. This contrasts with fatwas issued by the State Mufti Department, which, upon gazettal, become binding for Muslims within that specific region. This is attributed to the fact that the administrative jurisdiction over Islamic affairs resides at the state level. Consequently, state-issued fatwa decisions wield greater enforcement authority compared to those made at the national level. The implications of these state fatwas are both valid and influential within the respective states. However, 14 distinct Mufti departments in Malaysia can lead to enforcement discrepancies, particularly in instances where inter-state fatwa interpretations differ.¹¹

The Muslim community in each state is bound to obey the fatwa that has been gazetted.¹² However, when disagreements arise in each state, there is a conflict at the enforcement and legislative levels for each state. For example, one state issues a fatwa on something with prohibition, while in another state, it is requisite. Therefore, the community has the opportunity to free itself from the enforcement of the fatwa that prohibits a particular matter by moving and settling in another state.¹³

¹¹ Muhammad Fathullah et al. "Penyelarasan Fatwa Antara Negeri-Negeri: Analisis Amalan Dan Kaedah Penyeragaman Di Malaysia." *Jurnal Pengurusan dan Penyelidikan Fatwa*, Vol 9 (2017) 86-109.

¹² Suwaid Tapah. "Perundangan dan Penguatkuasaan Fatwa dalam Fatwa di Malaysia." Kuala Lumpur: Jabatan Syariah dan Undang-Undang (2004).

¹³ Muhammad Ikhlas Rosele et al. "Konflik Fatwa di Malaysia: Satu Kajian Awal." *Jurnal Fiqh* 10 31-56, (2013).

The Mufti and the Mufti Department do not function as enforcers of fatwas; instead, this responsibility falls within the purview of the State Islamic Religious Council. This body is tasked with the enforcement of fatwas and possesses the authority to prosecute any entity that contravenes or disregards a fatwa. Additionally, gazetted fatwas exert an influence on legislative processes. Fatwas promulgated by individual states are binding exclusively on the residents within those respective states.¹⁴ As provided in the Islamic Religious Administration Enactment in each state, for example, the Penang State Islamic Religious Administration Enactment (2004) under Section 49 says:

“When published in the Gazette, a fatwa shall be binding on every Muslim living in the State of Penang as the teachings of his religion and it shall be his duty in terms of the Islamic religion to obey and adhere to the fatwa unless it is permitted by Shariah law not to follow the fatwa is in matters of practice.”

The provision above means that every published fatwa is valid for Muslims residing in their respective states. Therefore, Muslims are obliged to adhere to and obey the fatwa as long as there is no prohibition in Islamic law.¹⁵

The Mufti has no authority to ensure that the community in the Federal Territory follows and obeys the gazetted fatwa. The Mufti of the Federal Territory's Office (PMWP) only carries out its duties as a body that issues laws on certain matters. When gazetted, it automatically

¹⁴ Zaini Nasohah, Undang-Undang Penguatkuasaan Fatwa di Malaysia, *Islamiyyat 27 (1) (2005)*: 25-44.

¹⁵ Wan Mohd Khairul Firdaus Wan Khairuldin. “Pengurusan Fatwa di Malaysia.” Penerbit: Universiti Sultan Zainal Abidin (UNISZA) Kuala Terengganu, (2020) 171.

becomes a law. However, follow-up actions against the published fatwa need to be carried out to ensure that the community complies with the fatwa. The Mufti of the Federal Territory's Office is not an enforcement body, as mentioned in Section 31, which Enactment of the Administration of Islamic Law (Federal Territories) 1993 states:

“The Council shall assist and advise the *Yang di-Pertuan Agong* concerning all matters relating to the Islamic religion within the Federal Territories, except matters of Shariah Law and those relating to the administration of justice, and in all such matters shall be the main authority in the Federal Territories after the *Yang di-Pertuan Agong*, unless otherwise provided for in this Act.”

The provision above elucidates that the Federal Territory Islamic Religious Department (JAWI) is vested with the authority to manage Islamic religious affairs and enforce relevant laws. JAWI holds a significant position of authority within the state, second only to DYMM Sultan. Consequently, enforcement actions are undertaken by JAWI's Enforcement Division in collaboration with federal entities, including the Ministry of Home Affairs, police authorities, and other relevant agencies.¹⁶

As stated above, the fatwas that have been issued and gazetted by each state will be effective and binding on everyone residing there. Every Muslim community that lives in the state concerned will be subject to a prescribed punishment if they fail to comply with the fatwa that has been gazetted.¹⁷ This is as provided in the enactments of

¹⁶ Mohd Haris Abdllah. “Cabaran Penguatkuasa Dalam Menguatkuasa Fatwa.” Interview, 15 June 2021.

¹⁷ Zaini Nasohah. “Undang-Undang Penguatkuasaan Fatwa di Malaysia.” *Islamiyyat* 27 (1) (2005): 25-44.

each state. Referring to Section 9 of the Syariah Criminal Offenses (Federal Territories) Act 1997:

“Any person who acts in a manner that insults the religious authority or disobeys violates or disputes the orders or instructions of the *Yang di-Pertuan Agong* as the Head of the Islamic Religion, the Council or the Mufti, which is stated or given through a fatwa, is committing an offense and upon conviction may be fined not exceeding three thousand ringgit or imprisoned for a period not exceeding two years or both.”

Meanwhile, Section 12 under the same act provides:

“Any person who gives, develops, or spreads any opinion about Islamic teachings, Shariah Law, or any issue that is contrary to any fatwa currently in force in the Federal Territory is considered to have committed an offense and upon conviction may be fined not exceeding three thousand ringgit or imprisoned for a period not exceeding two years or both.”

The above points explain that any individual convicted of insulting and disobeying religious authorities and expressing any opinion contrary to the fatwa will be subject to appropriate punishment as stipulated in the act. Some states provide the same punishment rates as the Federal Territories; among them are the states of Selangor, Terengganu, and Penang, which impose a fine of not exceeding three thousand ringgit or imprisonment for a period of not exceeding two years or both if convicted of the same offense.¹⁸ This punishment aims to remind the Muslim community that the fatwa issued by the state mufti

¹⁸ Wan Mohd Khairul Firdaus Wan Khairuldin. “Pengurusan Fatwa di Malaysia.” Penerbit: Universiti Sultan Zainal Abidin (UNISZA) Kuala Terengganu. (2020). 171.

is based on Islamic law and that individuals residing in the state must comply with it.

Challenges in the Enforcement of Fatwa in the Federal Territories

In enforcing the fatwas that have been gazetted, several challenges need to be faced and resolved by the Religious Authority. Among the main challenges that can be identified are:

There is a weakness in fulfilling the elements of proving the wrongdoing of the fatwa

Evidence plays a pivotal role in judicial proceedings and is essential for presentation in court. In the context of Arabic legal terminology, evidence is denoted as '*ithbat*' (affirmation), signifying the act of presenting evidence before a judge to substantiate a claim regarding rights. For the realization of justice in a trial, it is imperative that the facts and issues brought forth are underpinned by comprehensive and valid proof, which must be presented to the judge. This proof must be conveyed through specific methods as outlined in the prevailing legal provisions. Utilizing inappropriate means and channels for presenting evidence can lead to its invalidation and rejection by the court, as the methodology of proof is critical in establishing the integrity of an alleged offense.¹⁹

Every time a fatwa is issued, there is a possibility that some states will make a decision that is quite different from the decision agreed upon at the national level. This difference stems from a legal aspect, either from the point

¹⁹ Suhaizad Saifuddin et al. "Kaedah Pembuktian Dalam Undang-Undang Keterangan Mahkamah Syariah dan Mahkamah Sivil di Malaysia: Satu Kajian Perbandingan." *30 Kanun (2) Januari* (2019) 1-34.

of view of the law itself or modifying *sighah* (formulation) according to one's taste.²⁰

The invocation of the term 'fatwa' within the context of adjudicating cases concerning heretical or erroneous teachings endows the fatwa with a supportive role for the prosecution in substantiating the case in court. Essentially, the validation of a fatwa becomes a requisite element in establishing the charges levied against the accused. In this process, the content of the fatwa undergoes scrutiny to address several critical questions. These include, firstly, determining whether the teachings purportedly propagated by the accused align with those prohibited by the referenced fatwa, and secondly, ascertaining whether the accused's actions at the time of arrest contributed to disseminating the proscribed teachings. It is important to note that these considerations are specifically pertinent to cases involving heretical or incorrect teachings.²¹ For example, a person has been arrested for insulting religious authorities by disobeying, violating, or disputing orders or instructions, which include fatwas. In the circumstances characterized by such subjectivity, there is an imperative for a more comprehensive explanation and analysis. These situations necessitate the careful crafting of fatwas that encapsulate all dimensions of the misconduct associated with practitioners and followers of heretical doctrines. Absent

²⁰ Muhammad Ikhlas Rosele et al. "Konflik Fatwa di Malaysia: Satu Kajian Awal." *Jurnal Fiqh* 10 31-56 (2013).

²¹ Ibrahim Deris A.M.N. & Hanifah Haydar Ali Tajudin, Kesan Kelemahan Sighah Fatwa Terhadap Pendakwaan di Mahkamah Syariah, Kes Ayah Pin, https://www.academia.edu/7475596/KESAN_KELEMAHAN_SIGHAH_FATWA_TERHADAP_PENDAKWAAN_DI_MAHKAMAH_SYARIAH_Oleh.

this, the evidence may prove inadequate for securing a conviction of the accused for the alleged offense.

Likewise, when looking at the forms of offenses committed in cyberspace, there is indeed difficulty in meeting the elements of proof to convict of Shariah crimes, especially individuals who convey teachings that are contrary to the real Islamic teaching. Among the methods of proof that can be done is by using Section 33 of the Syariah Court Evidence Enactment (Federal Territories) 1997 [Act 561] with expert opinions, namely:

“When the court needs to make an opinion on a matter regarding the law of a foreign country or on science or art, or on the identity or authenticity of handwriting or fingerprints or related to the determination of genealogy, then the opinion on the matter is from a person who has special skills in the law of a foreign country, that science or art, or in the matter of the identity or authenticity of handwriting or fingerprints or related to the determination of *nasab* (decent), is *qarinah* (indication).”

The expert's testimony, the testimony made in court, is sufficient to help the judge identify relevant evidence, especially in the field of science and technology.²² Expert opinion is one of the methods of proof accepted in Islamic law. Acceptance of expert opinion as a means of proof is stated in the Qur'an and Sunnah. In the context of a trial, when a judge faces a problem, he should ask a person who knows it as practiced by the Companions of the Prophet.²³

²² Mohd Sabree Nasri & Ruzman Md Noor. “Keterangan Pendapat Pakar Sebagai Kaedah Pembuktian Dalam Kesalahan Jenayah Syariah di Alam Siber.” *Journal of Law & Governance Vol 3, No 1. (2020): 84-95.*

²³ Suhaizad Saifuddin et al. “Kaedah Pembuktian Dalam Undang-Undang Keterangan Mahkamah Syariah dan Mahkamah Sivil di Malaysia: Satu Kajian Perbandingan.” *30 Kanun (2) Januari (2019) 1-34.*

Strong and undisputed evidence is the main thing that needs to be identified before arrest and charges can be made.²⁴ Therefore, the element of proof for the error of the fatwa needs to be more explicit by stating the characteristics and form of the error of the fatwa in detail.²⁵

Table 1.1 Summary of Interview Findings for Weak-Fatwa Proving Elements

Code	Excerpt of the Interview
Weaknesses of a fault fatwa element	How and what elements need to be included in the fault elements in a published and gazetted fatwa.
	Respondent 1 The challenge is to fulfill that element itself. Challenges from an expert point of view and the elements of evidence-finding. Respondents 2

Source: Interview results of respondents.

In the case of Shi'a teachings, for example, the Religious Enforcement Officer (PPA) is responsible for handling Shia-related cases that are issued as strays and deviants in the Federal Territory. The PPA has obtained solid and detailed information by fulfilling sufficient elements to be proven and brought to the prosecution level.

²⁴ Maizatul Aliza Chee Din. "Cabaran Pendakwaan Berkaitan Kes Akidah." Interview, 10 December 2021.

²⁵ Mohd Haris Abdllah. "Cabaran Penguatkuasa Dalam Menguatkuasa Fatwa." Interview, 15 June 2021.

However, the investigation file that was advanced to the prosecution stage undergoes a filtering process. From this angle, it is difficult for religious enforcement to handle the Shia-related case. The PPA believes they have completed the elements of proof for the wrongful fatwa. However, the prosecution informed us otherwise. All of these are related to the provisions of the law so that charges can reach the prima facie level, and a conviction can be made against the accused.²⁶

Lack of specific expertise in matters related to investigation and infiltration

Proficiency in executing investigations and infiltrations is crucial for discerning the nuances or shortcomings of a fatwa. It is noteworthy that the skill set of the PPA intelligence unit differs from that of the professionally trained police intelligence. Despite established collaborations with entities adept in identifying fatwa-related cases, there remains a deficit of experts with specialized intelligence and investigative skills in the legal domain, particularly in matters about fatwa. The efficacy of a meticulously devised plan is negated if it falls short in the realms of investigation or intelligence gathering. For this reason, expert expertise is required to prove the elements of wrongdoing related to fatwas.²⁷ Therefore, intelligence and investigative skills need to be improved.

Table 1.2 Summary of Interview Findings Related to Lack of Specialized Expertise

²⁶ Norhanini Ismail. "Cabaran Penguatkuasa Dalam Menguatkuasa Fatwa." Interview, 15 June 2021.

²⁷ Mohd Haris Abdllah. "Cabaran Penguatkuasa Dalam Menguatkuasa Fatwa." Interview, 15 June 2021.

Code	Excerpt of the Interview
Lack of specialized expertise in the field of investigation, intelligence, and law	<p>Respondent 1</p> <p>Fatwa-related cases, from the point of view of the PPA infiltration aspect, are also lacking.</p> <p>Need to have legal skills before working as a PPA.</p> <p>Expertise in making investigations and infiltrations is essential to identify the characteristics or faults of a fatwa.</p> <p>Lack of skilled expertise in the field of law, including related to fatwas</p> <p>It still requires skilled expertise in proving the elements of fatwas-related wrongdoing.</p> <p>Respondent 2</p> <p>Religious enforcement members need to train, focus, and maintain adequate training.</p> <p>Lack of skilled expertise</p>

Source: Interview results of respondents.

Lack of religious enforcement officers

The Enforcement Division within the Federal Territories is confronted with a staffing shortfall, impeding its ability to operate efficiently and effectively. The current workforce is insufficient to conduct the extensive surveillance necessary to address fatwa offenses across the state. Consequently, the investigative process for managing cases is protracted and necessitates a substantial contingent of enforcement personnel. The table below shows the total number of staff involved:

Table 1.3 Total JAWI Enforcement Division Staff for the entire Federal Territories

Branch	Religious Enforcement Officer Members (person)
Kuala Lumpur	81
Putrajaya	18
Labuan	18
Total	117

Source: Administration and Training Unit, JAWI Enforcement Division, Kuala Lumpur, 15 June 2021.

In the Federal Territories, there are 117 religious enforcement officers in total. This number includes 81 officers stationed in the Kuala Lumpur branch, with the remaining 18 members distributed across Labuan and Putrajaya. The Enforcement Division is empowered to execute raids against any offenses involving Muslims, in accordance with the stipulations of the Syariah Criminal Offenses Enactment (Federal Territories) of 1997. The number of members in the intelligence and resource unit under the JAWI Kuala Lumpur branch is only 7, including

the supervisor and officers. This shows that the Religious Enforcement Officers division lacks staff members to carry out investigative and infiltrative activities. The Enforcement Division of JAWI has an organization in carrying out its duties to fight crime in this state.²⁸

Table 1.3 Summary of Interview Findings for Staff Shortage of Religious Enforcement Officers (PPA)

Code	Excerpt Of the Interview
Lack of Religious Enforcement Officer (PPA) staff members	<p>Respondent 1</p> <p>Lack of PPA's staff members</p> <p>PPA's division lacks staff members.</p> <p>Members are carrying out investigative and intelligence activities.</p> <p>takes quite a long time in the investigation process for a case.</p> <p>Respondent 2</p> <p>Enforcement agencies need to take a long time to investigate cases.</p> <p>The enforcement division also collaborates with JAWI's Research Division in investigating cases related to heresy.</p>

Source: Interview results of respondents.

Usually, raids are made after the enforcement agency receives a report or complaint from any party. The complaint will be investigated, whether it is true or false. However, in the case of a violation of a fatwa involving

²⁸ Mohd Haris Abdllah. "Cabaran Penguatkuasa Dalam Menguatkuasa Fatwa." Interview, 15 June 2021.

beliefs related to heresy, the enforcement authorities cannot continue to take action by arresting those who are said to be involved in heresy. On the other hand, the enforcement authorities need to take a long time to investigate the case before taking any action, including impersonating a member of such a group. At the same time, the enforcement division also cooperated with the JAWI Research Division in investigating cases related to heresy. The religious enforcement authorities also work together with the police to investigate a case. Due to these factors, this matter makes it difficult and hinders the work of religious enforcement agencies in conducting investigations and infiltration, especially in cases of fatwa violations.

During that period, those involved will be able to collect evidence to show that the teachings are deviant. Once the proof of the accused is obtained and the arrest is made, a full report will be given to the Federal Territories Syariah Prosecution Department (JAPENS).²⁹

Due to the lack of enforcement personnel, the parties involved in taking action against those who violate the fatwa include the State Government and the Federal Government. Actions involving the Federal Government are usually carried out when the movement or heresy is believed to be militant and may threaten national security. Similarly, the parties involved, such as the Ministry of Home Affairs (KDN), the police, and so on, will play their respective roles to fight against the opposing movements and teachings in this country. Furthermore, the Immigration Department contributes by preventing individuals known for propagating heretical teachings from

²⁹ Norhanini Ismail. "Cabaran Penguatkuasa Dalam Menguatkuasa Fatwa." Interview, 15 June 2021.

entering Malaysia.³⁰ With solid cooperation from all parties, it is possible that the enforcement of the fatwa can run smoothly and the community can accept it as best as possible.

The jurisdiction of the arresting of religious enforcement officers is limited in the Federal Territory

The division of jurisdiction between the Federal authorities and the states involving matters of jurisdiction over Islam is stated in Article 74 (2) and details 1. List of States, Ninth Schedule. Both provide for state jurisdiction in matters involving the Islamic religion and Shariah Law.³¹

Religious enforcers who were given the power to arrest warrants can only do so in the state where they were appointed. In addition, enforcement officers are responsible and have jurisdiction to summon witnesses who live in this state only for questioning. This means enforcement officers cannot force witnesses who live outside the state to appear for questioning.³² What if the offense is committed in cyberspace through the latest virtual platforms?

Surveillance conducted by religious enforcement authorities typically centers on individuals who directly engage in lecturing or teaching within mosques or surau, contingent upon the possession of a religious teaching certificate. Should these educators disseminate teachings that deviate from orthodox Islamic understanding or present viewpoints that may engender public doubt and

³⁰ Norhanini Ismail. "Cabaran Penguatkuasa Dalam Menguatkuasa Fatwa." Interview, 15 June 2021.

³¹ Norhanini Ismail. "Cabaran Penguatkuasa Dalam Menguatkuasa Fatwa." Interview, 15 June 2021.

³² Shamrahayu A. Aziz. *Isu Penguatkuasaan Undang-Undang Jenayah Syariah di Malaysia.* Kuala Lumpur: Dewan Bahasa dan Pustaka (2016). 34.

confusion and potentially incite disputes and divisions, enforcement measures include revoking their religious teaching certificate.³³

However, if the delivery is made in the cyber realm, it causes enforcement officers to be limited in monitoring. Due to Malaysia being hit by COVID-19, the situation is getting more complex and has an impact on religious enforcement. Similarly, there are too many dissemination mediums in cyberspace, so it is difficult for religious enforcement to identify mistakes made by irresponsible parties.³⁴

An arrestment is one of the essential initial actions to ensure that the accused can be investigated and subsequently convicted of the alleged offense. The Enforcement Division, JAWI, is the party responsible for arresting any person who commits a Shariah criminal offense in the Federal Territory. This happened in Kassim Ahmad's³⁵ case, where the evidence was sufficient to prosecute the accused. The enforcement authorities have an arrest warrant and make an endorsement in the Syariah court in Kedah to arrest the accused. However, a technical error occurred at the enforcement level. The arrest process was invalid and void because the offense occurred in the Federal Territory while the accused fled to Kedah. Therefore, the enforcement authorities do not have jurisdiction to make such arrests.³⁶

³³ Mohd Sabree Nasri & Ruzman Md Noor Keterangan Pendapat Pakar Sebagai Kaedah Pembuktian Dalam Kesalahan Jenayah Syariah di Alam Siber, *Journal of Law & Governance Vol 3, No 1. (2020): 84-95.*

³⁴ Mohd Haris Abdllah. "Cabaran Penguatkuasa Dalam Menguatkuasa Fatwa." Interview, 15 Jun 2021.

³⁵ Kassim @Osman bin Ahmad v. Dato' Seri Jamil Khair bin Baharom Menteri di Jabatan Perdana Menteri (Hal Ehwal Agama Islam) & Ors [2016] 7 MLJ 669.

³⁶ Norhanini Ismail. "Cabaran Penguatkuasa Dalam Menguatkuasa Fatwa." Interview, 15 June 2021.

Table 1.4 Summary of Interview Findings for Limited Religious Enforcement Officer's Arrest Jurisdiction

Code	Excerpt of the Interview
Limited arrest jurisdiction	<p>Respondent 1</p> <p>The medium of dissemination is too much in cyberspace, so it is difficult for religious enforcement authorities to identify mistakes made by irresponsible parties.</p> <p>Respondent 2</p> <p>PPA arrest jurisdiction is only in the Federal Territories</p> <p>If someone is found guilty because they do not live in WP and violates the fatwa, it's hard to take some action; the fatwa does not apply to the person who committed the offense.</p>

Source: Interview results of respondents.

In instances where an individual not residing in the Federal Territory disseminates teachings and beliefs that

contradict the fatwa, it presents a challenge for religious enforcement authorities in executing their duties. This difficulty arises because Religious Enforcement Officers lack the jurisdictional authority to initiate legal action against those who breach the fatwa but are not state residents.³⁷ However, subject to the provisions of Section 26, which is the power to hunt and recapture, it explains:

“If a person in lawful custody escapes or escapes from custody, the person from whose custody he escapes or escapes may immediately hunt and arrest him in any place, whether within or outside the jurisdiction where he is in such care and treat him during the first arrest.”

This limited jurisdiction is one of the hindering factors in carrying out Shariah crimes in cyberspace.

Lack of logistics resources

The JAWI Enforcement Division is also contending with the challenge of limited logistical support, particularly in terms of equipment and vehicles. Religious enforcement personnel have used the primary mode of transportation, an old van, since 2014. This van, being the main vehicle for external assignments, is in a state of disrepair. The lack of replacement or upgrade for this vehicle contributes to the inefficiency and sluggish response of the enforcement agencies in fulfilling their responsibilities. Moreover, the use of a malfunctioning vehicle further complicates the execution of daily tasks, given its uncomfortable and unreliable condition.³⁸

³⁷ Norhanini Ismail. “Cabaran Penguatkuasa Dalam Menguatkuasa Fatwa.” Interview, 15 June 2021.

³⁸ Mohd Haris Abdllah. “Cabaran Penguatkuasa Dalam Menguatkuasa Fatwa.” Interview, 15 June 2021.

Religious enforcement officers still use the staffing services of the “S” scheme

The religious enforcement authorities still use the civil servant rotation system, scheme S, which uses officers from external departments. This causes the skills of other religious enforcement officers to be lost and need to be re-polished through training. In addition, certificates will also be given as evidence in court. When there is a frequent change of department, this affects the skills of enforcement members and the integrity of the enforcement department itself.³⁹

Table 1.5 Summary of Interview Findings for S-scheme System Services Still Used by Religious Enforcement

Code	Excerpt Of the Interview
The religious enforcement authorities still use the services of the system S scheme	<p>Respondent 1</p> <p>A short period of exchange and existing expertise are exchanges.</p> <p>Because the positions in this scheme change frequently every year, the changes to be made that involve all the work movements cannot be carried out perfectly.</p> <p>Existing expertise and skills disappeared due to the exchanges</p>

³⁹ Norhanini Ismail. “Cabaran Penguatkuasa Dalam Menguatkuasa Fatwa.” Interview, 15 June 2021.

Respondent 2

The Religious Enforcement Officer still uses the system S scheme to use the services of officers from other departments.

causing other Religious Enforcement Officer members to lose their skills

It's challenging and hinders the work of the Religious Enforcement Officer in conducting investigations and infiltration, especially in fatwa violation cases.

Source: Interview results of respondents.

Conclusion

In summary, the enforcement of fatwas primarily falls under the purview of religious enforcement authorities. The study has identified various obstacles and challenges these entities encounter, particularly in the Federal Territories. These challenges encompass deficiencies in establishing the evidentiary elements of fatwa offenses, a shortfall in specialized skills pertinent to investigation and infiltration, inadequate Religious Enforcement Officers, restricted jurisdictional authority for arrests, and a scarcity of logistical resources. Addressing these challenges effectively and sustainably is crucial to ensure that the enforcement of fatwas yields its intended maximal impact on the community.

Hence, it is recommended that the government, particularly the state religious authorities, augment the training opportunities for all involved officers. Such training initiatives could be effectively conducted in collaboration with the Royal Malaysian Police. Additionally, there is a pressing need to expand the current staff complement in proportion to the escalating population ratio and the growing complexity of cases. This expansion should also extend to addressing the increasing logistical challenges. All these factors must be carefully considered to ensure the seamless execution of enforcement actions. Regarding the constrained scope of detention jurisdiction, establishing collaborative mechanisms with law enforcement agencies in other states is essential to prevent offenders from evading capture easily.

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