



DO FATWAS HAMPER MUSLIM WOMEN'S SOCIO-ECONOMIC PARTICIPATION IN MALAYSIA?

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Received: 02 Feb 2019,

Accepted: 15 May 2019

ABSTRACT

A number of studies show that, in Malaysia, women continue to make significant contributions to the country's economic and social development. Moreover, women's access to health and education has increased rapidly over the years. However, some studies claim that socio-economic discrimination against Muslim women persists. Although several factors contribute to this discrimination, fatwas (a legal opinion of Muslim jurists on Muslim affairs) are accused of discriminating against Muslim women in Malaysia such as prohibiting the appointment of female judges in shariah courts, employment of women for night shifts i.e. in the electronic factories, police force, and hospitals. Women's socio-economic participation is important as it empowers them and creates gender equality. This paper reviews 16 fatwas on five topics relevant to women's socio-economic participation in Malaysia issued by 11 state muftis (who issue fatwa) during the period of 1970 to 2012 in order to realize whether they hamper their participation. Using a qualitative content analysis approach, this paper concludes that fatwas had neither affected their socio-economic participation nor shaped their life negatively. This

paper is hoped to positively shape the society's impression of fatwas and help Muslim women in Malaysia abide to Islamic teachings by realizing the good impacts of fatwas issued.

Keywords: Fatwa, Muslim, women, socio-economic participation, Malaysia.

Cite as: Mohammad Monawer, A. T., Grine, F., Abdullah, M. F., & Mohd Nor, M. R. (2019). Do fatwas hamper Muslim women's socio-economic participation in Malaysia? *Journal of Nusantara Studies*, 4(1), 232-245. <http://dx.doi.org/10.24200/jonus.vol4iss1pp232-245>

1.0 INTRODUCTION

Fatwa, a legal opinion of Muslim jurists on Muslim affairs, has been an integral part of Muslim society since the early period of Islam, and most importantly after the period of the Prophet Muhammad (PBUH). A *fatwa* is issued in response to a particular problem or question concerning everyday Muslim life varies based on the time, place and circumstance. It guides the individual questioner by solving his problem or answering his question. Also, it educates and informs other Muslims on how to deal with the new problems they face. Therefore, *fatwas* have an essential place in Islamic law as it is considered a critical instrument which assists in developing Islamic law.

A *fatwa* is a non-binding advisory opinion of Muslim jurists. However, sometimes a legal status is given to *fatwa* by policymakers, legal authorities or a government of a country based on the circumstances and environment of that country. Such a legal status of a *fatwa* is evident for the Muslim community in Malaysia. As such, *fatwas* in Malaysia have legal force and a real application in Malaysia's Muslim society (Masud, Messick, & Powers, 1996; Rahman, Rahman, & Ali, 2012).

According to the principles of Islamic jurisprudence, if a *mufti* (Muslim jurist) follows a set of methodologies and the *fatwa* is issued according to the required procedure, it will play a positive role in society. Otherwise it risks having an adverse effect (Al-Umri, 1984). It is alleged that *fatwas* in Malaysia influence Muslim women's rights and discriminate against women's socio-political life in Malaysia (Alamgir, 2014). For example, women are not appointed as Judges in *Shariah* Courts (Foley, 2004); they are discouraged on employment for night shifts such as in the electronic factories, police force, hospitals, etcetera (Othman, 2006) which consequently affect their socio-economic life. Therefore, the impact of fatwa on women has resulted in a negative impression of fatwa among Malaysian society that ultimately leads

to the misunderstanding of Islamic teachings. Therefore, it is important to investigate how *fatwas* impact Muslim women's socio-economic life in Malaysia.

Studying the socio-economic participation generally involves examining how society's norms, values, ethics and philosophies influence the economic activities of women. According to Lutz (2009) social economics is the mutual relation between economics and social norms, ethics and philosophy. Although socio-economic life encompasses various types of participation, for this paper, it refers to women's participation in education and labour. This inquiry addresses the following research questions: What are the *fatwas* issued concerning women's work outside their homes? How do those *fatwas* influence their socio-economic life?

The objective of this paper is to review whether fatwas allow or prohibit Malaysian women's socio-economic participation during the period from 1970 to 2012. The paper may positively shape society's impression of fatwa and help Muslim women in Malaysia abide by Islamic teachings by realizing the impact of fatwa issued throughout this period. This paper proceeds by reviewing the literature in the field of *fatwas* in Malaysia and the factors influencing the socio-economic participation of women. After discussing the methodology of the paper, it analyses the *fatwas* issued by the muftis of different Malaysian states that affect women. Finally, it discusses how those *fatwas* shape the socio-economic life of Malaysian women.

2.0 LITERATURE REVIEW

A *fatwa* generally means a response or judgement of any question that might arise related to Muslim affairs in performing their religious duties. Linguistically, *fatwa* originates from the root word *ifta*, which means explanation and clarification. In technical terms, it means a response to questions posed by individuals concerning ongoing human affairs (Masud et al., 1996; Rahman et al., 2012). Ibn Manjur (1992) defined it as "an Islamic legal opinion issued by a Muslim jurist" (p. 15/145). Modern scholars usually define *fatwa* as a formal legal opinion given by an expert on Islamic law. *Fatwa* sometimes means to reflect on classical *fiqh* books in a sense that what is written in those books are *fatwas* issued by Muslim jurists (*fuqaha*). It could also sometimes mean to reflect on the implementation of Islamic law within society. Since a *fatwa* is a clarification of Islamic law for any issue or problem, it is not issued unless there is a question or inquiry.

For any given question, Muslim jurists are likely to arrive at a variety of opinions, all of which are considered equally valid if they follow the methods accepted by one of the four

schools of jurisprudence (Moustafa, 2013). Jurists have many opinions, but what makes their opinion a *fatwa* is that it is a response to a question addressed by a *mustafti* (someone who asks a *fatwa*) and follows standard practices in arriving at a decision. In this sense, a general opinion, which is not grounded on a specific Muslim query, is not considered a *fatwa* (Assyaukanie, 2009).

A *fatwa* represents the most dynamic genre of Islamic legal literature. It is based on a structured procedure and scheme as widely discussed by Muslim scholars. The process normally involves two parties, i.e. the questioner (*mustafti*), who asks a question, and jurisconsult (*mufti*), who provides an answer to this question or solves the problem according to Islamic teachings. In this sense, the Prophet (PBUH) was the first *mufti* in the history of Islam for his ability to clarify and explain laws (Rahman et al., 2012).

2.1 *Fatwas* in the Malaysian Context

Malaysia's Administration of Islamic Law (Federal Territories) Act 1993 [Act 505], section 34 defines a *fatwa* as an opinion on any issue which is not resolved or questions related to Islamic law. A *fatwa* is issued after the Yang di-Pertuan Agong orders one, or any formal written request by the public, or by the *mufti* himself as required by the situation. It is a non-binding opinion of *mufti* until it is published in the gazette (Hooker, 1993). After it is published in the gazette, the *fatwa* becomes a binding rule and a part of the law that must be followed by all the Shariah courts of the state. In this way, a *fatwa* achieves legal status in Malaysia.

In Malaysia, there are 14 states, and all states have *fatwa* institutions that issue *fatwas* at the state level. All procedures in the *fatwa*-issuing process are subjected to the authority of the State Islamic Religious Council, which is generally bound to the state's enactment on the administration of the religion of Islam. At the national level, there is a National Fatwa Committee that acts as the authority, decision maker, and issuer of *fatwas* on any matter related to Islam and is referred to by the conference of rulers. This committee falls under the *Fatwa* Division. It consists of 22 individuals including the state *muftis*. However, the *fatwas* issued by this committee are not binding on all states in Malaysia (Rahman et al., 2012).

There is a good deal of uncertainty within the various state committees regarding their approach to addressing modern problems. The *muftis* often reach similar conclusions on various topics, but their reasoning is by no means consistent (Hooker, 1993).

2.2 General Role of *Fatwas* in Muslim Society

Fatwas are a key element in Islamic legal history that facilitate employing Islamic principles in social change. It is instrumental and fundamental as a guide for Muslims to deal with new problems in their life. In Muslim societies, *fatwas* play very different roles. For example, in Indonesia, *fatwas* have been used to support Islamist ideology as an alternative for practices that are perceived as non-Islamic (Pradana Boy ZTF, 2012). *Fatwas* can be referred to as a form of *ijtihad* and an instrument for Islamic law to contextualise its teachings. It also enables Muslims to interpret basic Islamic legal principles in accordance with the quest of contemporary circumstances (Pradana Boy ZTF, 2012). In addition, it can be used as an instrument to impose and promote a certain ideology within society. Hooker (1993) believes that *fatwas* can accommodate between the principles of the *Shari'ah* and institutions of the modern nation-state. In other words, a *fatwa* helps moderate belief and action according to Islamic teachings. It helps to preserve the security of the Muslim community and their identity as well as ensure social security.

There is an inter-relationship between *fatwas* and the realities of the society. Masud et al. (1996) presented evidence of the strong inter-relationship between *fatwas* and the conditions of a society. Accordingly, *fatwas* influence the socio-economic life of Muslim women in Malaysia. A lot of research has been done in the field of *fatwa*, but most of the research does not focus on the inter-relationship between *fatwas* and the real life of a society. Rahman et al. (2012) surveyed students' research related to *fatwa* submitted to Malaysian public universities from 1980 to 2008 and concluded that researchers have not focused on the inter-relationship between a *fatwa* and the real condition of the society. Hooker (1993) surveyed about 25 of *fatwas* focusing on extreme *fatwas* issued by state *fatwa* committees in Malaysia and tried to highlight the process of accommodation between the principles of the *Shari'ah* and institutions of the modern nation-state. However, none of those *fatwas* was about women.

2.3 Factors that Influence Women's Socio-Economic Life

Abdullah, Noor, and Wok (2008) identified factors that influence women's socio-economic life such as family involvement, government, and lack of institutional support among others. Sociological literature documents that different religions have different attitudes towards gender roles and the division of labour within a family (Lehrer, 1995), and this can affect women's decision to work outside the home. Moreover, religion plays an important role in inducing social changes. Whether the change is for the better or worse, the roles played by

religion and belief cannot be overlooked (Pradana Boy ZTF, 2012). As for Islam, although *fatwas* should help improve social conditions, its improper practice could affect the society adversely. Othman (2006) Abdullah (2009), and Alamgir (2014) mentioned that some *fatwas* discriminate against women in Malaysia, and the legislative use of *fatwa* affects women's rights in the country. Thus, they consider *fatwa* as one of factors that influence women's socio-economic life.

2.4 The Socio-Economic Status of Malaysian Women

Women in Malaysia have the opportunity to participate with men in all social areas albeit their rate of participation is not yet equal. Malaysian women are highly important contributors to the country's economic and social development. Women's socio-economic life is increasing rapidly in Malaysia. In addition, their contribution is increasing in educational, professional, political and other leadership fields. In politics, their participation has increased considerably in the previous decades. Their access and contribution to health and education have also increased rapidly over the years (Ahmad, 1998).

Malaysian society has been undergoing rapid changes from its strong traditional religious and cultural norms to modern values about women (Koshal, Gupta, & Koshal, 1998). Hence, there has been a rapid social, political, and legal change in Malaysia (Hooker, 1993). However, according to the Global Gender Gap Report, Malaysia was ranked 100th by the World Economic Forum in the Gender Gap Index (Hausmann, Tyson, & Zahidi, 2009). Despite an increase in women's socio-economic activity, the ratio is not satisfactory. Although Malaysia signed the Beijing Platform for Action (BPFA) in 1995, the state still has a long way to go in enhancing the participation of women in Malaysian politics, economy and culture (Abdullah, 2009).

3.0 METHODOLOGY

The paper adopts a qualitative content analysis approach which is a systematic analysis of text focusing on the counting, comparison and interpretation of the underlying texts (Mayring, 2000; Hsieh & Shannon, 2005). In order to review the *fatwas* on the socio-economic participation of women, it reviews the official websites of 11 state bodies across Malaysia. This is because any *fatwa* published in an official gazette has legal status in Malaysia. *Fatwas* issued during the last 42 years starting from 1970 to 2012 were a total of 16 *fatwas* issued by 11 states including the National *Fatwa* Council. This time period is chosen based on the availability of

the fatwas in the official websites. Data gathered from the official websites were thematically analysed. They were divided into five categories which are namely (1) appointment of women as judges, (2) their participation in beauty pageant, (3) women leadership and working outside, (4) voice of women and (5) women's Qur'an recital competition.

4.0 FINDINGS

When a *fatwa* achieves a legal status, it becomes binding after publishing in the official gazette of a state. However, non-gazetted *fatwas* are not binding for Muslims in Malaysia. Therefore, not all the *fatwas* issued by the *muftis* of all states are available in the official websites. We have gone through the official websites of 14 states in Malaysia and found a number of *fatwas* concerning Muslim women and their work outside their homes. More specifically, we found 16 *fatwas* regarding the socio-economic life of Muslim women. We break them down into five parts: (1) appointment of women as judge, (2) participation in beauty pageant contest, (3) women's leadership and working outside, (4) voice of women and (5) women's Quran recital competition.

4.1 Fatwas on the Appointment of Women as Judges

The ruling on the appointment of women as judges is a controversial *fatwa*. The *muftis* from different states in Malaysia issued *fatwas* on this issue such as the *muftis* of Pahang, Kedah, Terengganu, Wilayah Persekutuan, Kelantan, Penang, and Sarawak. In 2006, the *mufti* of Kedah allowed women's appointment as *Shari'ah* judges in civil cases only and not in cases of *hudud* and *qisas* adopting the view of prominent Islamic scholar Muhammad Said Ramadan al-Buty and Yusuf al-Qaradawi albeit it is the view of minority scholars. It is also in line with the decision of the *Fatwa* Committee of the National Council for Islamic Religious Affairs, Malaysia. The *mufti* of Wilayah Persekutuan in 2007, Cabinet scholars of Religious and Malay Custom Kelantan sitting in 2008, and Islamic Law Consultative Committee Meeting Pahang in 2012 also agreed on this ruling, but the *mufti* of Wilayah Persekutuan emphasised that the selection and appointment should be made carefully and methodically.

A different *fatwa* was issued from the Terengganu Shariah Court in 2011 forbidding the appointment of women as judges based on the view of the majority of scholars who forbid the appointment of women as judges. The *Fatwa* Committee Meeting of Penang in 2010 agreed with this view. However, they allowed the appointment of women as judges in desperate

situations and referred this ruling to *Kitab Risalah al-Ahkam* as a complete reference in this regard. It means they strictly adhered to the viewpoint of the *Shafi'i* School of jurisprudence.

All the *fatwas* issued on the appointment of women as judges are non-gazetted except the *fatwa* by Wilayah Persekutuan which allows the appointment of women as judges. Given that it now takes on legal force as opposed to the earlier *fatwas*, we can conclude that this *fatwa* indicates that Malaysia is in favour of Muslim women's appointment as judges rather than hindering their participation.

4.2 Fatwas on Participation in Beauty Pageant Contests

This is perhaps the most criticised *fatwa* by feminists in Malaysia. A number of studies argue that participation in a beauty pageant empowers women and increases their self-esteem. (Hinojosa & Carle, 2016; Crawford et al., 2008; Shissler, 2004). Therefore, preventing women from this contest may hamper their socio-economic status. The *muftis* of Selangor and Terengganu decided in 1995 that it is illegal for Muslim women to participate in any kind of pageant. Prior to this, the *mufti* of Sabah issued a similar ruling in 1986. Another *fatwa* issued in 2012 by the *mufti* of Penang is more detailed. The *muftis* considered joining, organising or advertising or engaging in any activity connected therewith as illegal according to the religion of Islam and made it subject to laws that have been enacted. The *mufti* of Wilayah Persekutuan issued a *fatwa* on this issue in 1996 which is more general by considering it illegal and sinful for Muslims to join, organise or contribute to any form of organisation of any beauty pageant. This *fatwa* is gazetted by Wilayah Persekutuan whereas it is non-gazetted in other states. Thus, none of the *muftis* allowed it because it conflicted with the Creator's command for humility as embodied in covering the *aurah* (parts of privacy) which is fundamental and deeply rooted in Muslim women's dignity.

4.3 Fatwa on Women's Leadership and Working Outside of Their Homes

A *fatwa* from Kedah in 1989 states that women cannot be appointed or assigned to a general power (*wilayah Ammah*) in many specific areas such as holding a ministry or head of district religious administrative officer or district officer appointed by the Sultan to administer a district on his behalf. Although the *mufti* disallowed women's leadership in the field of general power in 1989, he allowed women's work outside of their homes. A *fatwa* from Kedah in 1989 states that there is no barrier for women to work to earn a living if the need arises with the conditions of preserving their *aurah*, keeping communication with men protected from defamation, and

consent from husbands if they are married. Other *fatwas* were issued by the state *muftis* of Perak, Terengganu, and Kedah on women working outside. It is worth mentioning that there are some works that cannot be performed without women such as capturing those people who do not pray Friday prayer in addition to jobs that are limited to women by nature. That is why the *mufti* of Terengganu issued a *fatwa* in 1999 allowing women to mount operations to capture or compound any man who does not attend the Friday prayer. A *fatwa* from Perak in 2002 allows the appointment of women as employees in *zakat* management (Amil Zakat). It shows that *fatwas* related to women's work outside their homes did not create any barrier in their socio-economic participation. Although some *fatwas* placed conditions in this regard, they are to protect their dignity in the workplace and not to prohibit them from work.

4.4 Fatwa on Women's Voice

A *fatwa* was issued on women's voice by the state *mufti* of Kedah in 1970 which states that the voice of women is not *aurah* (part of privacy), and therefore it is allowed for listeners to hear their voice if it does not lead to slander or cause carnal desire. Another *fatwa* from Pulau Pinang in 2012 agreed with this view clarifying that women are free to speak, teach, learn, trade, chat, and so on. By stating so, the *mufti* allowed women to sing Islamic songs and considered hearing women's singing as not recommended (*makrooh*) unless it is guaranteed to be free from libel (*fitnah*). However, singing accompanied with inappropriate style, dance, and extreme make-up as well as if viewed by men who are strangers (*ajnabi*) is illegal. In addition, the *mufti* set guidelines for women if they want to sing Islamic songs. In addition, the purpose of singing should be for the sake of preaching (*da'wah*) and remembrance of Allah, and to promote an understanding of Islam. Since it is allowed for women to speak, teach, learn, trade, and chat according to this *fatwa*, it does not hinder women from speaking to others in their workplace when necessary.

4.5 Fatwa on Women's Quran Recital Competition

The *mufti* of Kedah allowed the participation of women in Quran recitation contests and considered it required because it does not create libel. An opposite *fatwa* is issued from Perlis in 1988 which prohibited women's participation in Quran recitation contests. This *fatwa* is not related to the normal voice of women but the voice which is artistic and more attractive to men and may cause libel to men. This is why listening to their singing is considered *makruh*. However, women should participate in such contests for the purpose of *da'wah*.

5.0 DISCUSSION

The case of a woman's appointment as a judge was prohibited by the *fatwas* issued by Terengganu and Penang. However, the *mufti* of Penang allowed it when a male judge is not available. On the other hand, the *muftis* of Kedah, Wilayah Persekutuan, Kelantan as well as other states have allowed the appointment of a woman as a judge. However, the *fatwa* of the *mufti* of Wilayah Persekutuan is the only *fatwa* that reached a legal status. Therefore, there is no legal barrier for a woman to be a judge in the *Shari'ah* court. Hence, it can be concluded that Malaysian *fatwas* support the appointment of a woman as a judge.

Contrary to the above, all the *muftis* in Malaysia unanimously agreed on the prohibition of women's participation in beauty pageant contests. Some may argue that it hampers their socio-economic participation as participating in a beauty pageant empowers women and is an instrument for their liberation (Hinojosa & Carle, 2016; Crawford et al., 2008; Shissler, 2004). However, a number of studies argue that a beauty pageant contest should be prohibited as it is a means to objectify women. This is because it emphasises their physical beauty and puts pressure on women to be physically beautiful even though it is sometimes unattainable. In order to be physically attractive, some women are encouraged to diet even if it is harmful to their bodies. In the pursuit of attaining physical beauty, some even choose to undergo cosmetic surgery.

Moreover, this contest serves the interest of the fashion and beauty-products industry (King-O'Riain, 2007; Serani, 2005; Walsh, 2009; Watson & Martin, 2004). Therefore, it can be argued that the prohibition of joining a beauty contest is not necessarily causing damage to woman's socio-economic participation but is increasing their social status by maintaining their modesty. Nevertheless, if the argument of the first group is accepted and that the pageant empowers women, then it can be argued that the *fatwa* does not impede their socio-economic participation significantly since participation in a pageant concerns a very small portion of women.

The most important *fatwa* in relation to women's socio-economic participation in Malaysia is the *Shari'ah* ruling for a woman to work outside of her house. All the *fatwas* issued by the state *muftis* in Malaysia have allowed it unanimously subject to certain conditions to protect their dignity such as covering the private parts, having proper communication with the opposite gender and getting permission from one's husband. This *fatwa* may be the key argument that Malaysian *fatwas* generally facilitate women's economic participation. Even

though a *fatwa* was issued by the state of Kedah prohibiting the appointment of women to hold top administrative positions, it does not impede a woman's socio-economic participation significantly.

Furthermore, all the *fatwas* in Malaysia do not consider a woman's voice as *aurah*. Therefore, it is allowed for her to speak freely while trading, teaching and learning and other socio-economic activities. With this, Malaysian *fatwas* have given women the freedom to work, conduct businesses and pursue professions. Moreover, women are allowed to join the Quran recitation competition.

Moreover, the above findings are supported by the actual practices of society. The socio-economic participation of women in Malaysia increased during that sampled period. According to a Malaysian Government Report to the UN Committee for the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (2004), the participation of Muslim women in public service increased steadily over the years. From 1990 to 2001, women's participation in public services increased from 33% to 44.7%. The total number of male and female lecturers were respectively 11,042 and 8,262 in 2000. The number of female lecturers increased to 20,851 in 2011 while the number of male lecturers was 19,197. Women's participation in professional and technical jobs increased from 5.3% to 9.4% from 1970 to 1990. Had *fatwas* hampered women's socio-economic participation in Malaysia, the above development of their participation would not have been possible.

Therefore, it can be concluded that the *fatwas* issued during the studied period did not generally prohibit Muslim women from their socio-economic participation. In some occasions, *fatwas* prohibited a woman from some social participation, i.e. to join beauty pageant contest. This does not impede their socio-economic participation but maintains their status by preserving their modesty. The continuous progress in women's socio-economic participation in the study period further confirms that *fatwas* were not barriers. However, women's participation was less than men during the sample period due to other reasons as mentioned by Abdullah et al. (2008).

6.0 CONCLUSION

This paper calls for the re-evaluation of the perception that *fatwas* discriminate against women in Malaysia. After reviewing a number of *fatwas* issued by all the states in Malaysia from 1970 to 2012, we conclude that although there is an inter-relationship between *fatwas* and the realities of the society, it has not had a negative impact on women's socio-economic life in

Malaysia. Almost all the *fatwas* permitted women's participation in the workforce. *Fatwas* only prohibited women's participation in beauty pageants in order to preserve their modesty. The paper observed only selected areas of women's socio-economic participation, i.e. holding the position of judge, working outside of the house, joining a beauty pageant contest, women's voice and Quran recitation contests. Further research can be done to broaden the perspective by including other types of women's socio-economic participation. Moreover, a survey is important to gain insights into the effects of *fatwas* on women's participation according to the perceptions and attitudes of women.

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