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**THE POSITION OF FATWA SEEKER (MUSTAFTĪ) WHEN MULTIPLE
FATWAS ARE AVAILABLE FOR ONE QUESTION**

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Abstract

This paper discusses the proper stance of a fatwa seeker (al-mustaftī) when faced with multiple fatwas for a specific issue, especially in our age when channels of learning and knowledge are numerous, throwing lay people who look for legal opinions for their problems into confusion. What makes thing worse is that these platforms have been used by pseudo-scholars and people of innovation and false doctrines. This research resolves the problem of diversity of madhahib (fiqh schools) and their advocates, a problem that fatwa seekers encounter when looking for answers for their issues and questions. This study aims at highlighting some points, including: The position of fatwa seekers towards the multiplicity of fatwās and muftis, people whom a mustftī is prohibited to seek fatwa from, and the rule of Ijtihād (a discretionary legal opinion) reached by a layman ('amī) when it happens to conform to the ijtihād of a madhhab (fiqh school). The researcher used the inductive approach with the scholars' opinions, and the methods of weighting conflicting views, all in conformity with the research methods and policies adopted by the journal. This paper is composed of an introduction, seven sections and conclusion as the concept of fatwa, the concept of mustafti,

people whom a mustaftī is prohibited to consult for fatwa, which muftīs should be consulted? can a mustaftī prefer a specific opinion when multiple fatwas are available? when is a mustaftī obligated to follow a specific fatwa? And the validity of an action done by a layman without prior knowledge of its ruling if it happens to be compatible with the Ijtihād of a scholar. Conclusion includes the main findings of the research references.

Keywords: Mustaftī, muftī, fatwa.

I. Concept of Fatwā

Linguistically fatwā means an answer and an explanation of something ambiguous (Ibn Manzūr 1388AH: 15/145).

The technical definitions of fatwa stated by scholars of fiqh and Usul vary; yet their different definitions do not digress from the scope of the linguistic definition (Al-Qasimi 1986: 54, Ibrahim 2007: 15 and al-Qarafī 1994: 10/121). Fatwa can be defined as "non-binding information about the Shari‘ah ruling provided by one who knows it".

Today, the concept of fatwa, according to Dr. Wahbah al-Zuhaily (1985: 1/28), refers to: "conveying the statement of a mufti who is mujtahid to a fatwa seeker". To be more precise, it can be defined as "conveying the authoritative view of a madhhab regarding a certain question, by the scholars following this madhhab, to a fatwa seeker". This process is not a real practice of fatwa; rather the term is used here rhetorically or customarily.

II. Concept of Mustaftī

Linguistically, a mustaftī is the person requesting an answer for a question (Al-Zuabidī 1986: 39/212). Technically, a mustaftī is a person seeking to learn God's rule from those qualified (Al-Manawi 1410 AH: 65).

There are 3 types of mustaftīs:

- i. A mustaftī who is studying knowledge.
- ii. A mustaftī who wants to learn the view and madhhab of the muftī.
- iii. A mustaftī asking because of his ignorance of the answer; a person in this category is called muqallid and this is the type

meant by the term "mustaftī" when used by the scholars of fiqh and uṣūl in their books.

III. Section Three: People whom a mustftī is prohibited to consult for fatwa

Undoubtedly, a fatwa seeker must consult qualified muftīs. If the mustaftī is not sure about the muftīs qualifications, he is definitely required to investigate and verify that the person he is asking is adequately qualified (Ibn al-Sallāh 1407 AH: 85, Al-Nawawī 2003: 8/90 and Al-Muti‘ī: 1/91). It is unacceptable for a questioner to ask someone whose view is not recognized by Shari‘ah because it is a form of entrusting the ineligible, which is invalid according to consensus of scholars (Al-Shaṭībī: 4/131). So, it is not permissible to consult self-proclaimed scholars and instructors just because they assume or claim such positions (Al-Nawawī 2003: 8/90 and Al-Muti‘ī: 1/91).

IV. Which muftīs can be consulted?

If multiple muftis are available for the fatwa seeker, he can consult any of them if they are equal in knowledge. Otherwise, he should refer to the one who is more knowledgeable of his question or the one whom he trusts. If that is not applicable, then the scholars have three opinions for this situation (Zaidan 1976: 134, Al-Shawkanī 1999: 251 and Al-Ghazali 1992: 1/171):

First, the fatwa seeker should consult the one who is more knowledgeable and more righteous.

Second, he should inquire about the argument of each scholar, if he is capable of examining the arguments, and then he follows the argument he believes to be stronger. However, if he is not capable to do so, he follows the scholar he trusts.

Third, he should select the opinion adopted by the greater number of scholars.

The preponderant view among the above is the first one. However, just as it is obligatory to follow the stronger of two proofs and the more reliable of two narrators, once the mustaftī is aware of the most reliable mufti, he is required to follow him.

V. Can a mustaftī prefer a specific opinion when multiple fatwas are available?

When a fatwa seeker receives different fatwas, it is not permissible for him to merely follow his desire in preferring one fatwa over another as that is a form of acting on a whim. According to the consensus of scholars, such whim-based preference is prohibited for the mufti (Al-Arifī 2013: 116); that applies even more to the fatwa seeker (Al-Shatībī: 4/131 and Ibn al-Sallāh 1407 AH: 64).

A fatwa seeker is free to choose which mufti to consult if he believes that all available muftis are equal; similarly, a mustaftī can select the fatwa to follow if all the muftīs are equally qualified in his opinion and he is unable to weight their opinions as explained above.

Scholars disagreed about how the mustaftī's selection of the fatwa can be free from whims and is not dictated by Satan; they have the following five opinions (Al-Qasimi 1986: 105):

1. The mustaftī should follow the hardest fatwa.
 - i. He should choose the most lenient opinion because Islam is a religion of ease and mercy.
 - ii. He should exert his effort to know the most knowledgeable and reliable scholar.
 - iii. He should take the opinion adopted by the greater number of scholars.
 - iv. He can choose any opinion if he finds that the muftīs are equal in all respects; if he finds that one opinion outweighs the others he is required to follow it. The mustaftī is given the option to choose in this specific case because it is a rare case of necessity (ḍarūrah) (Al-Ghazali 1992: 4/153 as cited in Ibrahim 2007: 683).

VI. When is a mustaftī obligated to follow a specific fatwa?

The fatwa seeker is required to follow a specific fatwa in the following cases (Ibn al-Sallāh: 90, Al-Muti'ī: 1/95 and Ibrahim 2007: 683):

- i. If there is only one muftī; in such a case his fatwa must be followed.
- ii. If the mustaftī finds that one opinion outweighs the other available opinions.

- iii. If he chooses a muftī based on discretion and starts implementing his fatwa.
- iv. If he consults the most knowledgeable and reliable.
- v. If it is a judgment delivered by a judge; that applies in questions that require referring to court like whether divorce should be considered three or one in the case of triple divorce, when a man repeats the divorce statement three times in one session or states the number of divorce occurrences.
- vi. If the question at hand relates to the public and is not limited to the fatwa seeker; in such case the fatwa of the scholar appointed by the ruler should be followed.
- vii. If the ruler or his deputy, like the judge, chooses a specific opinion. The choice of the ruler or the person he delegates removes the disagreement except in matters related purely to acts of worship.

VII. The validity of an action done by a layman without prior knowledge of its ruling if it happens to be compatible with the Ijtihad of a scholar.

Imam al-Suyūṭī, may Allah be pleased with him, narrated from many scholars the statement: There is not harm if the acts of laymen coincide with the opinion of a scholar. This opinion is held by Sheikh Mar‘ī al-Hanbalī on the condition that such compatibility of the action with the scholarly opinions occurs by coincidence, not through intentional pursuing of rukhas (legal concessions). That was the approach of ‘Abdullah ibn al-Mubarak, may Allah be pleased with him. He said: It happens that I hear a hadith and record it, though my opinion is not to act upon it or to narrate it. Yet, I write it for my companions; if they act in accordance with it I will say then that they are acting upon the hadith (Al-Qasimi 1986: 156-171 and Al-Khaṭīb 2003: 2/468).

In my opinion, the view that sounds stronger, and Allah knows best, is that if the question relates to an act of worship, the person is required to ask for fatwa and also repeat the act of worship that he had done, even if the action involved confirms to a scholarly opinion. That is because acts of worships require intention, and a firm intention is missing in this case.

On the other hand, for matters that relate to transactions (mu‘amalāt) or matters open for reasoning (ma‘qulat al-ma‘na), if the layman's action is found to be compatible with a scholarly

opinion, that will be fine. Otherwise, if there is room for validating that action then it is valid; if not then it is considered corrupt and invalid.

VIII. Conclusion

At the end of this humble study, here are the most important findings:

- i. Fatwa is the non-binding information about a Shari'ah ruling provided by one who knows it.
- ii. It is obligatory for the fatwa seeker to refer to a qualified muftī; seeking a fatwa from unqualified people is prohibited.
- iii. If there are more than one muftī available, the fatwa seeker can consult any of them if they are equal in knowledge. Otherwise, he should refer to the one who is more knowledgeable of his question or the one whom he trusts. If that is not applicable, he should ask the more righteous. But once the mustaftī is aware of the most reliable mufti, he is required to follow him.
- iv. It is prohibited for the fatwa seeker to prefer one fatwa over other fatwas based on mere desire because this is considered whim-following. However, he is free in his initial selection of the mufti if he believes all available muftis are equal in knowledge. The mustaftī can also choose any fatwa if he finds all muftis equally qualified and he cannot determine who is better among them.
- v. A mustaftī is forbidden to pick scholars' opinions that please him even if they go against textual evidence.
- vi. The fatwa seeker is required to follow a specific fatwa in some cases like when there is only one mufti; when he finds that one opinion outweighs the others; when he chooses a mufti based on discretion and starts implementing his fatwa; when he consults the most knowledgeable and reliable; when a judgment is delivered by a judge in a question that requires referring to court; If the question relates to the public and is not limited to the questioner –in such a case the scholar appointed for fatwa by the ruler must be followed or when the ruler or his deputy chooses a specific opinion, except in matters related purely to acts of worship.

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