

STATE OF SABAH

I assent,

TUN DATUK SERI PANGLIMA HAJI AHMADSHAH BIN ABDULLAH,
Yang di-Pertua Negeri.

30TH AUGUST, 2004.

No. 7 of 2004

An Enactment to make new provisions on the establishment of Fatwa organization, appointment of Mufti, Majlis Fatwa Negeri connected therewith and other matters and incidental thereto.

ENACTED by the Legislature of the State of Sabah as follows:

PART I PRELIMINARY

Short title and commencement

1. (1) This Enactment may be cited as Fatwa Enactment 2004.
- (2) This Enactment shall come into operation on a date to be appointed by the Minister by notification in the *Gazette*. [01.06.2005 G.N 313/2005]

Interpretation

2. (1) In this Enactment, unless the context otherwise requires –

“*Ahli Sunnah Waljama’ah*” means the majority of Muslim who adhere to the Qur’an and Sunnah and who holds to –

(a) *Aqidah and Tauhid of Imam Abu Hassan al-Ash’ari and Imam Mansur al-Maturidi;*

(b) *Fiqh and Syariah of Mazhab Shafie* and also of *Mazhab Hanafi, Maliki and Hanbali* and other qualified scholars view; and

(c) *Tasawwuf of manhaj* qualified *sufi* such as *Imam Junaid al-baghdadi* and *imam al-Ghazali*;

“Islamic Law” means Islamic Law according to *Mazhab Syafie* or any one of *Mazhab Hanafi, Maliki, or Hanbali*;

“Jawatankuasa Muzakarah” means Jawatankuasa Muzakarah Majlis Kebangsaan Bagi Hal Ehwal Agama Islam Malaysia (MKI) established by the Ruler’s Conference under regulation 7 of the National Council for Religious Affairs Malaysia Regulations 2022;

“Majlis” means the Majlis Ugama Islam Negeri Sabah which is established under subsection 4(1) of the Majlis Ugama Islam Negeri Sabah Enactment 2004;

“Minister” means the Minister charged with the responsibility for the administration of Islamic affairs in the State of Sabah;

“Mufti” means the person who is appointed to be the Mufti for the State under section 4(1) and includes the Deputy Mufti appointed under section 4(2);

“Previous Enactment” means the Administration of Islamic Law 1992;

“State” means the State of Sabah;

“State Fatwa Council” means the committee established under section 6;

Saving of prerogative

3. Save as expressly provided in this Enactment, nothing contained in this Enactment shall derogate, from or affect the rights and powers of the Yang di-Pertuan Agong as the Head of the Religion of Islam in the State of Sabah as declared and set forth in the Constitution of the State of Sabah.

PART II
THE APPOINTMENT AND FUNCTIONS OF THE MUFTI,
POWER OF THE STATE FATWA COUNCIL AND *FATWA*
RELATING TO MATTER OF NATIONAL INTEREST

Appointment of Mufti and Deputy Mufti

4. (1) The Yang di-Pertua Negeri may, on the recommendation of the Minister, appoint any fit and proper person to be the Mufti for the State.

(2) The Yang di-Pertua Negeri, on the recommendation of the Mufti, may appoint Any fit and proper person to be the Deputy Mufti for the State.

(3) A person is qualified for appointment under subsection (1) and (2) if he –

- (a) is a citizen;
- (aa) has Sabah connections;
- (ab) adhere to *Ahli Sunnah Waljama'ah*;
- (b) has a wide knowledge on Islamic Law; and
- (c) has knowledge on various Islamic Laws applicable in the State.

(3A) A person shall be deemed to have Sabah connections for the purpose of this section if he is a Malaysian citizen who –

- (a) was born in Sabah; and
- (b) has been ordinarily resident in Sabah for a continuous period of five years or more.

(3B) The Mufti and the Deputy Mufti shall hold post for a period of three years and may be reappointed.

(4) The appointment of the Mufti and Deputy Mufti shall be published in the *Gazette*.

(5) Upon the commencement of this Enactment, the person who is the Mufti and Deputy Mufti for the State immediately before the commencement of this Enactment shall be deemed to have been appointed under this Enactment as a Mufti and Deputy Mufti for the State and shall continue to hold such appointment.

Vacation of office of Mufti and Deputy Mufti

4A. The office of Mufti and Deputy Mufti shall be vacated if –

- (a) he dies;
- (b) he becomes a bankrupt;
- (c) he is of unsound mind or is otherwise incapable to perform his duties;
- (d) he had failed to attend the meeting of State Fatwa Council for three consecutive times without the approval from the Yang di-Pertua Negeri;
- (e) he is not in Malaysia for more than three consecutive months without the written approval from the Yang di-Pertua Negeri;
- (f) his conduct, whether in connection with his duties as the Mufti or Deputy Mufti or otherwise, has been such as to bring discredit on the Yang di-Pertua Negeri or the Office of Mufti.
- (g) he has acted against the interest of the State;
- (h) his resignation is accepted by the Yang di-Pertua Negeri; or
- (i) his appointment is revoked by the Yang di-Pertua Negeri.

Functions of the Mufti

5. The Mufti shall aid and advise the Yang di-Pertua Negeri in respect of all matters of Islamic Law, and in all such matters shall be the chief authority in the State after the Yang di-Pertuan Agong and Yang di-Pertua Negeri, except where otherwise provided in this Enactment or other Enactment which is applicable in the State.

State Fatwa Council

- 6.** (1) There shall be a committee known as the State Fatwa Council.
- (2) The Council shall consist of –
- (a) the Mufti, as Chairman;
 - (b) the Deputy Mufti;
 - (c) a members of the Majlis nominated by the Majlis;
 - (ca) the State Attorney General or his representatives;

(d) not less than four and not more than eight fit and proper persons to be appointed, on the advice of the Mufti, by the Yang di-Pertua Negeri; and

(e) an officer of the Mufti's Office as Secretary.

(3) Any person who, before the commencement of this Enactment, was a member of the State Fatwa Council established under the previous Enactment shall, subject to subsection (4), be deemed to have been nominated or appointed as a member of the State Fatwa Council and shall, be a member of the State Fatwa Council until the expiry of his term of appointment under the previous Enactment.

(4) Subsection (3) shall not apply to any person, except the Mufti and Deputy Mufti, who was an ex-officio member of the State Fatwa Council mentioned in subsection (3).

(5) The State Fatwa Council may, subject to this Enactment, determine all questions relating to its procedure and practice.

(5A) In the absence of the Mufti, the Deputy Mufti shall preside over the Council's meeting.

(6) There shall be paid to members of the State Fatwa Council as specified by the Minister, allowance from the Fund of the Majlis as approved by the Minister from time to time.

(7) The appointment of the member of State Fatwa Council under subsection (2) shall be published in the *Gazette*.

Power of the State Fatwa Council to prepare a *fatwa*

7. Subject to section 11, the State Fatwa Council shall, on the direction of the Yang di-Pertua Negeri, and may on its own initiative or on the request of any person by letter addressed to the Mufti, prepare a *fatwa* on any unsettled or controversial question relating to Islamic Law.

Procedure in making a *fatwa*

8. (1) Before a State Fatwa Council makes a *fatwa*, the Mufti may cause any study or research to be carried out as directed by him and a working paper to be prepared.

(2) Whenever the State Fatwa Council proposes to make a *fatwa* the Mufti shall call

a meeting of the State Fatwa Council for the purpose of discussing the proposed *fatwa*.

(3) After a proposed *fatwa* is made, the State Fatwa Council shall notify the Majlis of such proposed *fatwa*.

(4) The Mufti shall, after notifying the Majlis, submit the proposed *fatwa* to the Yang di-Pertua Negeri to be assented..

(5) [Deleted by En. 12 of 2023]

(6) After a proposed *fatwa* has been assented by the Yang di-Pertua Negeri , the Mufti shall cause the *fatwa* to be published in the *Gazette*.

(7) [Deleted by En. 12 of 2023]

(8) A *fatwa* shall be published in the national language in the *Rumi* script, but the text of the *fatwa* in the *Jawi* script may also be published.

(9) [Deleted by En. 12 of 2023]

Authority of Mufti

8A. (1) Notwithstanding section 8, the Mufti may, for the purposes of *Maslahah*, issue any *fatwa*.

(2) The Mufti may, if he thinks necessary, discuss with the State Fatwa Council before issuing any *fatwa* under this section.

A *fatwa* published in the *Gazette* is binding

9. (1) Upon its publication in the *Gazette*, a *fatwa* shall be binding on every Muslim in the State as a dictate of his religion and it shall be his religious duty to abide by and uphold the *fatwa*, unless he is permitted by Islamic Law to depart from the *fatwa* in matters of personal observance.

(2) A *fatwa* shall be recognised by all Courts in the State of all matters laid down therein.

Amendment, modification or revocation of *fatwa*

10. (1) The Mufti or State Fatwa Council may amend, modify or revoke any *fatwa* that has been published in the *Gazette* under this Enactment or under the previous Enactment.

(2) An amendment, modification or revocation of a *fatwa* shall be deemed to be a *fatwa* and the provisions of section 8, except subsection 8(7), shall apply thereto.

(3) An amendment, modification or revocation of a *fatwa* published in the *Gazette* shall be accompanied by a statement that the *fatwa* is made under subsection (1).

***Fatwa* which relates to matters of national interest**

11. (1) Notwithstanding the powers of the State Fatwa Council under section 7, whenever it appears to the State Fatwa Council that a *fatwa* proposed to be made is related to matters affecting national interest, the State Fatwa Council shall adjourn its discussions and cause a further research to be made as to whether the national interest is inline with the "*Maslahah*" under Islamic Law or otherwise.

(2) After deliberating upon the matter, the State Fatwa Council may make a recommendation to the Yang di-Pertua Negeri for his assent to refer the proposed *fatwa* to the Jawatankuasa Muzakarah, through the Conference of Rulers.

(3) Without prejudice to the generality of subsection (1), a *fatwa* shall be deemed to be related to matters affecting national interest if the question is related to any matter, policy, programme or activity which directly affect the interest of the Federal Government, a State Government or any of its ministries, departments or agencies.

(4) If the Yang di-Pertua Negeri gives his assent under subsection (2), State Fatwa Council shall, before the *fatwa* is referred to the Jawatankuasa Muzakarah, inform the State Government about of the reference.

(5) When a proposed *fatwa* has been referred to the Jawatankuasa Muzakarah, the Committee shall present its advice and recommendations to the Conference of Rulers in accordance with subsection (2) on the matter.

(6) If the Jawatankuasa Muzakarah advises or recommends that the proposed *Fatwa* be made, with or without any modification as it may recommend, or advises or recommends another *fatwa* on the same matter and the Conference of Rulers have agreed with the advice and recommendation of the Jawatankuasa Muzakarah, the State Fatwa Council shall consider the advice and recommendation and thereupon may cause the *fatwa* according to such advice and recommendation to be published in the *Gazette* without any amendment or modification, and the provision of section 8, except subsection 8(7), shall apply thereto.

(7) A *fatwa* published in the *Gazette* shall be accompanied by a statement that the *fatwa* is made under this section.

Adoption of advice and recommendation of Jawatankuasa Muzakarah

12. (1) The State Fatwa Council may consider to adopt any advice and recommendation of the Jawatankuasa Muzakarah which affects any act or observance which has been agreed upon by the Conference of Rulers as an act or observance which extends to the Federation as a whole pursuant to Article 38(2)(b) of the Federal Constitution.

(2) The advice or recommendation adopted by virtue of subsection (1) shall be deemed to be a *fatwa* and section 8, except subsection 8(7), shall apply thereto.

(3) A *fatwa* published in the *Gazette* shall be accompanied by a statement that the *fatwa* is made under this section.

Request for opinion of State Fatwa Council

13. If in any Court other than a Syariah Court, any question on Islamic Law calls for a decision, the Court may request for the opinion of the State Fatwa Council on the question, and the Mufti may certify the opinion of the State Fatwa Council to the requesting Court.

***Qaul muktamad* to be followed**

14. (1) In issuing any *fatwa* under section 8, or certifying an opinion under section 13, the State Fatwa Council shall ordinarily *qaul muktamad* (follow the accepted views) of the *Mazhab Syafie*.

(2) If the State Fatwa Council is of the opinion that following the *qaul muktamad* of the *Mazhab Syafie* will lead to a situation which is repugnant to public interest, the State Fatwa Council may follow the *qaul muktamad* of the *Mazhab Hanafi*, *Maliki* or *Hanbali*.

(3) If the State Fatwa Council is of the opinion that none of the *qaul muktamad* of the four *Mazhabs* may be followed without leading to a situation which is repugnant to public interest, the State Fatwa Council may make the *fatwa* according to *ijtihad* without being bound by the *qaul muktamad* of any of the four *Mazhabs*.

Protection for Mufti and member of State Fatwa Council

15. (1) Notwithstanding any written law to the contrary, the Mufti and any member of the State Fatwa Council shall not be liable to be summoned to any Civil or Syariah Court to give opinion or evidence relating to Islamic Law, but if in any court other than a Syariah Court, any question of Islamic Law calls for a decision that court may request the opinion of the Mufti on the question, and the Mufti may certify his opinion to the requesting court.

(2) The Mufti and any members of State Fatwa Council shall not be summoned to any Syariah and Civil Court for any *fatwa* that has been gazetted, provided that the *fatwa* was given in good faith and in accordance to the power provided for under this Enactment.

PART III GENERAL

Rules

16. Yang di-Pertua Negeri, on the advise of the Mufti through notification of the *Gazette*, may make rules for carrying out the provisions of this Enactment, such rules may provide for -

- (a) the procedure of State Fatwa Council;
- (b) the code of ethics for the members of State Fatwa Council;
- (c) the allowance payable to the members of the State Fatwa Council; and

- (d) other rules which is deemed necessary for the fatwa organization and Mufti, in

performing the function of the Mufti and the requirements under this Enactment.

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Tuesday, the 10th day of August, 2004.

DATUK JAMES ANDREW VITALES,
Deputy Speaker,
State Legislative Assembly.