

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]

Interpretation

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

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

“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);

“National Fatwa Committee” means the committee established by the Ruler’s Conference under regulation 11 of the regulations of the National Council for Religious Affairs, Malaysia;

“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, on the advice of the Majlis, with the Minister’s approval, may appoint any fit and proper person to be the Mufti for the State.

(2) The Yang di-Pertua Negeri, on the advice of the Majlis, after consulting 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;

(b) has a wide knowledge on Islamic Law; and

(c) has knowledge on various Islamic Laws applicable in the State.

(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.

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) two members of the Majlis nominated by the Majlis;

(d) not less than three persons and not more than seven, fit and proper on the advice of the Mufti and appointed by the Majlis; and

(e) an officer of the Mufti's Office appointed by the Majlis, 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.

(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 *fatwa* is prepared by the State Fatwa Council, the Mufti shall, on behalf and in the name of the State Fatwa Council, submit the *fatwa* prepared to the Majlis.

(4) The Majlis may, after deliberating upon the *fatwa*, make a recommendation to the Yang di-Pertua Negeri for his assent for the publication of the *fatwa* in the *Gazette*.

(5) The recommendation made under subsection (4) shall be accompanied by an explanatory memorandum and comments from the Majlis if the Majlis considers such explanation of comments are required.

(6) When a *fatwa* has been assented to by the Yang di-Pertua Negeri, the Majlis shall inform the State Government of the *fatwa* and thereafter shall cause the *fatwa* to be published in the *Gazette*.

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

(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) Any statement made by the State Fatwa Council shall not be taken to be a *fatwa* unless such statement is published in the *Gazette* in accordance with subsection (6).

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, may cause a further research to be made as to whether the national interest is inline with the “*Maslahah*” under Islamic Law or otherwise, and inform the same to the Majlis.

(2) After deliberating upon the matter, the Majlis may make a recommendation to the Yang di-Pertua Negeri for his assent to refer the proposed *fatwa* to the National Fatwa Committee, 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), Majlis shall, before the *fatwa* is referred to the National Fatwa Committee, inform the State Government about of the reference.

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

(6) If the National Fatwa Committee 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 National Fatwa Committee, the Majlis 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 National *Fatwa* Committee

12. (1) The State Fatwa Council shall adopt any advice and recommendation of the National Fatwa Committee 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.