

Go beyond current mindsets

by [shahanaaz habib](#)



Controversial game: Malacca mufti Datuk Syeikh Muhamad Baderudin Ahmad holding a newspaper article on Pokemon Go. If the state has a fatwa against playing the game, you can be charged because you are giving an opinion contrary to the fatwa, says Fahda.

If PAS president Datuk Seri Hadi Awang's motion to amend the Syariah Courts (Criminal Jurisdiction) Act is approved by Parliament, what impact will the enhanced punishments have on syariah offences like expressing an opinion contrary to a state fatwa or discussing Islam with non-family members – including friends – without getting a tauliah (credentials) from the state's religious body?

IF you hold a breastfeeding clinic, tell mothers to breastfeed their newborn for two years, and quote the Quran as the source of that advice, can you be charged by the state Islamic religious authorities?

Most people would say “definitely not”. Well, think again.

Because under the current Syariah Criminal Offences Enactment and Act, most states only allow people to talk about “matters to do with Islam” within the confines of their homes, and even then only to family members, unless they have a *tauliah* (credentials) from that particular state’s religious authority.

This has got lawyer Fahda Nur Ahmad Kamar, who practises both civil and syariah law, thinking and questioning what is allowed and what is not.

“Islam is a way of life. How you raise your child, whether you breastfeed, and do you breastfeed for two years, all of that relates to Islam. So will you be charged if you talk about how the Quran encourages women to breastfeed? Because you are talking about ‘matters relating to Islam’.

“The law is vague. State religious authorities have got to make it clear because, technically, people can be charged for something like quoting the Quran to encourage breastfeeding,” she says.



Fahda: ‘The law is vague. People can be charged for something like quoting

the Quran to encourage breastfeeding.’

Referring to the Syariah Criminal Offences Enactment for the different states, she points out that in the Federal Territories, Penang and Johor “anyone who teaches or professes to teach any matter relating to the religion of Islam” without a *tauliah* is guilty of an offence and if convicted, they are liable to a fine up to RM5,000 or imprisonment for a term not exceeding three years, or both.

In Selangor, a person can be fined up to RM3,000 or jailed up to two years, or both. In Perlis, the fine is not more than RM1,000 or a jail sentence of up to six months, or both.

Most states in the country have more or less the same law. It is only the sentence that varies.

The exception to this *tauliah* rule is “any person or class of persons” exempted by that state’s religious authority and “any person who teaches or professes to teach any matter relating to Islam in his residence to members of his own household only”.

And if you already have a *tauliah* from your state’s religious authority, it does not grant you the right to speak in other states. You would need to apply individually for the *tauliah* from each respective state that you want to speak in!

Constitutional law expert Datuk Dr Shad Saleem Faruqi touched on this at the “How Much Do You Know About Hudud” forum last month, describing the law on *tauliah* as “unthinking”, saying that it needs to be reviewed because it “makes us look like fools”. (Dr Shad writes the fortnightly *Reflecting On The Law* column in *The Star*.)

Fahda Nur says Islam is all about thinking, *dakwah* (preaching), and the religion celebrates learning. So for her, the *tauliah* rule goes against the

very spirit of *dakwah* in Islam.

“This is one religion which always tells us to ask questions and to think. God never tells us to follow without thinking. The word *aql* (intellect) appears many times in the Quran. Islam tells us to use our mind and intellect.

“It is amazing how such a progressive religion can end up with people who are just afraid to think. The beauty of Islam is that the more you question, the more you love it,” says Fahda Nur, who graduated with a law degree from the International Islamic University in 2000 and received the Best Law Student’s Award, the President’s Award and Overall Best Student Award from her university.

Two years after she was called to the Bar, she did her LL.M (Master of Laws) degree at Britain’s prestigious University College London and was awarded the Sir Jack Jacob QC Prize for her distinction in Civil Litigation.

Fahda Nur – who is a syariah counsel in the Federal Territory, Selangor, Penang and Negri Sembilan – has also written a chapter on “Legal Framework for Islamic Finance” in the textbook *Islamic Finance: Principles And Operations*, published by the International Shariah Academy for Islamic Finance.

As for the *tauliah* rule, even a mufti is not exempt from it.

Perlis mufti Datuk Seri Asri Zainul Abidin – who is well-liked and respected for his progressive views, and is one of the youngest mufti in the country – has found himself banned from speaking in Selangor, Terengganu and Johor. He has described the ban as being politically motivated with a hidden agenda against him.

Other Islamic scholars who have been hauled up by state religious authorities for not having a *tauliah* from the state they speak in include

Wan Ji Wan Hussin (PKR) in Selangor and Umno's Dr Fathul Bari Mat Jahya in Negri Sembilan.

“It is always the intelligent people who are getting clamped down on,” says Fahda Nur.

Most states have more than 40 syariah criminal offences in their law.

Other than teaching without a *tauliah*, it is also an offence to express an opinion contrary to a fatwa (religious edict), show contempt of or defiance against religious authorities, to publish, sell or have books or material contrary to Islamic law, and to abet any syariah offences.

The punishment for abetment is the same as for the offender.

Fahda Nur says in Selangor and the Federal Territories, for example, any person who “gives, propagates or disseminates any opinion” contrary to a fatwa in those states can be found guilty and fined up to RM3,000 or sentenced to two years in prison, or both. Most states have this law.

“Say Malacca has a fatwa against playing Pokemon Go, and you go to Malacca and say something in favour of Pokemon Go, you can be charged because you are giving an opinion contrary to the state's fatwa!” she says.

Selangor has a fatwa out against NGO Sisters in Islam stating that they are a deviant society. Sisters in Islam are challenging this in court.

Fahda Nur says with this fatwa, if someone in Selangor gives out information about Sisters in Islam or propagates or disseminates their views, it could get them in trouble with the Selangor religious authorities because they would be deemed as giving “an opinion contrary to the state's fatwa”.

A fatwa can have an impact on businesses, too.

Fahda Nur points out that if Selangor has a fatwa that declares Sisters in Islam a deviant group, then anyone who publishes an article, book or any material about or from them in Selangor would be committing an offence and guilty of abetment.

And people in Selangor who have in their possession books, articles or material about or from Sisters in Islam would also be committing an offence.

“Do we know when they are going to enforce the fatwa?”

She says if PAS president Datuk Seri Hadi Awang’s motion to enhance punishments for syariah offences under the Syariah Courts (Criminal Jurisdiction) Act (the motion popularly known as RUU355) is passed in Parliament, it is going to be even more serious if the punishment for offences like expressing an opinion against a fatwa or speaking without a *tauliah* or abetment is increased.

(Hadi tabled the motion in November last year to increase punishments to a maximum of 30 years of jail, a RM100,000 fine, and 100 lashes.)

Fahda Nur says the working paper for a fatwa from a state fatwa committee is normally prepared by the fatwa committee secretary.

“In one sitting you have a number of fatwas presented, so how thoroughly are they discussed? Does the committee do its own homework and examine the original documents and literature that has been published?”

“Or do they only read what is presented to them in the working paper presented by the secretary? And is the secretary the type who does research? We don’t know.”

She says the crucial decision about a fatwa might lie in the hands of one person who draws up the working paper.

“What if what is presented is actually wrong? And we cannot review what is presented either.”

Fahda Nur says the people sitting on the fatwa committee are generally very old.

“I don’t think they are the sort who would go out and gather documents and interview people before they decide on a fatwa,” she says.

Fahda Nur feels there should be an avenue for public consultation when states want to issue a fatwa.

“Right now nobody can give their feedback. I think we are all intelligent people. We want to give our feedback.

“If you want to build a high rise building you will have public hearings because it will affect everybody. Why can’t we do the same for fatwas?”

She points out that a fatwa could even put a company out of business so people should be able to give their input.

“Sometimes, the fatwa committee may have not looked at one aspect of it. If we are talking about things which are very scientific like stem cells or the processing of perfumes or chocolates, how sure are they that the information given covers everything they need to know?

“Maybe they are deprived of some crucial information? But they decide based on what is fed to them in the working paper.”

She points out that if the religious authorities add on a process like a public hearing for a fatwa, they are actually making their life easier as administrators “because someone else will do the research for you”.

“Someone who cares enough will take the trouble to present their side of the story so you have the input that is necessary for you to make a good

decision because when you make a fatwa you need to look at so many things.”

Fahda Nur says it would be better if religious authorities look at a structural reform to raise the image of Islam in the country rather than focus on enhancing punishments in RUU355.

She feels that religious departments should go beyond their current mindset, that everything to do with Islam has to be taken care of by people with religious degrees.

She points out that in Singapore, the person taking care of *wakaf* (assets and property given to the state for purpose of charity and Islam) for their religious authority has an MBA.

“But in Malaysia, it is managed by someone with a religious degree. *Wakaf* is all about assets and property. It is all about asset management, fund collections, and audits.

“You are sitting on billions’ worth of property. If we get someone who is competent, who has knowledge of business and finance, I am sure these assets will be better managed.”

Related stories:

[Interesting syariah cases](#)

[Laws need to be flexible](#)