



**MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR**

**BAHAGIAN RAYUAN KUASA-KUASA KHAS**

**[PERMOHONAN SEMAKAN KEHAKIMAN NO: 25-204-10/2014]**

Dalam perkara menurut Artikel 5, 7, 8, 10(1)(a), 10(1)(c), 10(2)(a), 10(2)(c), 11 dan 121(1) Perlembagaan Persekutuan

DAN

Dalam perkara s. 13 Enakmen Kesalahan Jenayah Syariah (Selangor) 1995 (Enakmen 9 Tahun 1995)

DAN

Dalam perkara s. 47 dan Bahagian III Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003 (Enakmen 1 Tahun 2003)

DAN

Dalam perkara mengenai fatwa bertarikh 17.7.2014, dengan nombor rujukan MAIS/SU/SUU/01-2/002/2013-3(4), yang digazetkan pada 31.7.2014 di bawah Bahagian III Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003 (Enakmen 1 Tahun 2003)

DAN

Dalam perkara satu permohonan untuk semakan kehakiman untuk relif di bawah perenggan 1 Jadual kepada Akta Mahkamah Kehakiman 1964 selaras dengan Aturan 53 dan Aturan 92 Kaedah-kaedah Mahkamah 2012

**ANTARA**

1. **SIS FORUM (MALAYSIA)**  
(No. Syarikat: 266561-W)
2. **ZAINAH MAHFOOZAH BINTI ANWAR**  
(No. K/P: 540406-01-6190)
3. **DATUK MOHD ZAID BIN IBRAHIM**  
(No. K/P: 510410-03-5071) ... PEMOHON-PEMOHON

**DAN**

1. **JAWATANKUASA FATWA NEGERI SELANGOR**
2. **MAJLIS AGAMA ISLAM SELANGOR**
3. **KERAJAAN SELANGOR ... RESPONDEN-RESPONDEN**

**GROUNDS OF DECISION**

**Introduction**

[1]



## **Background Facts**

[2]

## **The Applicant's Case**

[3]

## **Whether The High Court Has Jurisdiction**

[4] The Applicants contended that the Fatwa is invalid on the grounds that it is inconsistent with Section 7 of the Printing and Press Act and Article \_\_\_\_\_ of the Constitution.

[5] The first issue which I have to deal is whether the High Court has jurisdiction to hear the Applicant's application for judicial review to challenge the validity of the Fatwa issued by the Fatwa Committee on 31.7.2014 under the Administration of Islamic.

[6] It was submitted for the Respondent that this Court do not have jurisdiction. Whether the Applicant's application on the ground that the validity of the Fatwa made by the Fatwa Committee under Section 47 of the Enakmen Pentadbiran Agama Islam (EPAI) falls under the jurisdiction of the Syariah Court.

[7] Learned counsel for the Applicants argued that the Respondent are stopped from revising the issue of jurisdiction at the substantive hearing as this issue was raised as a preliminary objection by the Attorney General's Chambers but was overruled by the Justice Asmabi Mohd (now JCA).

[8] It is noted that the Respondents were not present at the hearing of the leave application. The question is whether at the substantive hearing, the \_\_\_\_\_ Respondents can raised a preliminary objection on

the issue of jurisdiction of this Court to hear the Applicant's application for judicial review of the decision of the Respondent in respect of the future which was gazetted on 17.7.2014 by the State Authority pursuant to Enakmen Pentadbiran Agama Islam.

[9] In *Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman* [2015] 3 CLJ, the Respondent at the substantive hearing of the JR application raised a preliminary objection that the High Court did not have jurisdiction to hear the matter on the ground that the application was filed out of time and the extension of time was sought by the Applicant at the leave stage. At the leave stage, the AGC did not object to the leave application, and hence the High Court granted leave to the Applicant.

[10] The Federal Court in *Kijal Resort* asked the question whether was it then open for both the Respondent to raise the same preliminary objection as the substantive hearing.

[11] The Federal Court held that it was open for the Respondent to raise the same preliminary objection at the substantive hearing. The Federal Court stated that the Respondents not having been served with ex-parte leave application, were of course not present at the hearing of the leave application and accordingly, were not in a position to raise any preliminary objection at the stage of the proceedings. In the light of the above authority, the objection by the Applicant is overruled.

### **The Jurisdiction Argument**

[12] The Federal Court in *R Ramachandran v. The Industrial Court of Malaysia* [1997] 1 MLJ 145 held as follows:

*“the decision whether to exercise it, and if so, in what manner, are matters which call for the utmost care and circumspection,*

*strict regard being had to the subject matter, the nature of the impugned decision”*

(See *Pathmanathan a/k Krishnan v. Indira Ghandi a/p Mutho* [2016] 1 CLJ 911)

[13] It is important to note that the Applicants in this present proceeding is challenging the validity of the Fatwa made by the Fatwa Committee, pursuant to section 47 of the EPAI. The Applicant is not challenging the validity of EPAI.

[14] The power given to the Fatwa Committee pursuant to section 47 of EPAI is to prepare a fatwa on any unsettled or controversial question of or relating to Hukum Syarak.

[15] The term Hukum Syarak in fact has the same meaning as Islamic Law used in item 1 List II (State List) the Ninth Schedule of the Federal Constitution.

[16] The validity of the Fatwa relates to a religious issue.

[17] Recently the Federal Court in *Zi Publications Sdn Bhd & Anor v. Kerajaan Negeri Selangor; Kerajaan Malaysia & Anor (Intervener)* [2015] 8 CLJ and *Hj Raimi v. Siti Hasnah Vangarama Abdullah* [2014] 4 CLJ 253 followed the subject matter approach.

[18] Delivering the judgment of the Federal Court in *Hj Raimi v. Siti Hasnah Vangarama Abdullah* [2014] 4 CLJ 253, Ariffin Zakaria (Chief Justice of Malaysia) held as follows:

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**(Hanipah Farikullah)**

Judge



Kuala Lumpur High Court  
Appellate & Special Powers Division

**Dated:** 19 SEPTEMBER 2016

**COUNSEL:**

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**Case(s) referred to:**

*Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman [2015] 3 CLJ 861*

*R Ramachandran v. The Industrial Court of Malaysia [1997] 1 MLJ 145*

*Pathmanathan a/k Krishnan v. Indira Ghandi a/p Mutho [2016] 1 CLJ 911*

*Zi Publications Sdn Bhd & Anor v. Kerajaan Negeri Selangor; Kerajaan Malaysia & Anor (Intervener) [2015] 8 CLJ 621*

*Hj Raimi v. Siti Hasnah Vangarama Abdullah [2014] 4 CLJ 253*

**Legislation referred to:**

Printing and Press Act, s. 7

Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003, s. 47

Federal Constitution, Ninth Schedule