



LEGAL IMPLICATIONS OF CONVERSION TO THE
RELIGION OF ISLAM IN MALAYSIA: AN
ANALYTICAL APPRAISAL OF LAW AND JUDICIAL
INTERPRETATIONS

BY

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A thesis submitted in fulfilment of the requirement for
the degree of Doctor of Philosophy in Laws

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International Islamic University
Malaysia

APRIL 2011

ABSTRACT

Recently, issues pertaining to conversion to the religion of Islam have invited substantial public attention. Notably, the issue has been raised globally in various societies for centuries. In the Malaysian context it has been debated for a long time as depicted by scholarly writings in available literature. However, it gained exceptional momentum recently as is evident by reportings in the mass media. To date, legal disputes relating to the conversion have received wide coverage in the daily newspapers and it commands substantial debates among the legal fraternity on a scale and volume which are not seen before. This study is undertaken to analyse certain aspects of legal implications of the conversion to the religion of Islam within Islamic and Civil law perspectives. This study is comparative in nature and it covers legal implications of the conversion in both Islamic and Civil laws pertaining to matters of personal law, including marriage and matrimonial obligation, property rights and criminal law. The study primarily undertakes to analyse the legal position adopted in all reported cases pertaining to the conversion. Content analysis technique has been used throughout the analysis. In addition, field study has been carried out in both Civil and Shariah courts in four states in Malaysia to gather data on relevant unreported cases in these courts. Necessary interviews with courts officials also had been conducted in order to gather informations which are unavailable in courts files. Compared to other states, these four states comprising of Federal Territory, Selangor, Sabah and Sarawak were selected as they represent significant segment of non-Muslim population in Malaysia and more cases pertaining to the conversion are expected to materialise. However, due to financial and time constraints, the study has been undertaken in the states capitals only. The purpose of the study is to identify and analyse any differences bound to occur between the reported and unreported cases. Apart from courts, significant study also has been carried out in relevant government departments, particularly, States Islamic Religious Affairs Departments which are entrusted directly with administration and management of conversion to the religion of Islam. The study has been able to provide certain interesting findings. The study has shown that legal conflicts in both civil law and Islamic law pertaining to the implications of conversion to the religion of Islam are bound to occur in all aspects of personal law under investigation. However, certain aspects of implications, for instance dissolution of marriage and conversion of minor children to the religion of Islam are frequently invoked in courts compared to other aspects. Nevertheless, certain legal avenues which will reduce the conflict have been identified. It is further found that governing legislations on the conversion, lack uniformity and standardisation in terms of substance and procedures. Certain states have complete rules and regulations pertaining to the conversion but other states have not even codified any rules and regulations. The gap is significant. Finally this study has been able to provide some suggestions and recommendations with regard to approaches to solutions to be adopted by law and policy makers.

خلاصة البحث

مؤخراً القضايا المتعلقة بالتحويل الى دين الإسلام أخذت بعض الإهتمام العام. رغم أن هذه القضايا أثّرت منذ عقود مضت لكن ما زالت تكتسب كثيراً من الزخم في الآونة الأخيرة. في ماليزيا حتى الآن المنازعات القانونية المتعلقة بقضايا التحول الى دين الإسلام تلقى تغطية واسعة في الصحف اليومية كما أنّها تلقى كثير من المناقشات بين الإخوة القانونيين على نطاق وحجم لم يشاهد من قبل. هذه الدراسة تقوم بتحليل الجوانب القانونية المترتبة على التحول الى دين الإسلام من حيث وجهات نظر القانون المدني والقوانين الإسلامية. هذه الدراسة مقارنة في طبيعتها وتشمل الآثار القانونية للتحويل الى دين الإسلام في كل من القانون الإسلامي والقانون المدني في المسائل المتعلقة بقوانين الأحوال الشخصية بما في ذلك الزواج وواجباته وحقوق الملكية والقانون الجنائي. كذلك تقوم الدراسة بتحليل الوضع القانوني كما هو مقرر في جميع الحالات المبلغ عنها والتي تتعل بالتحويل الى دين الإسلام. في هذه الدراسة تم استخدام تقنية تحليل المضمون في جميع أنحاء التحليل بالإضافة الى دراسة ميدانية نفذت في القضايا المدنية ومحاكم الشريعة الإسلامية في أربع ولايات في ماليزيا لتحليل الحالات غير المبلغ عنها في تلك المحاكم بالمقارنة مع الولايات الأخرى. غالبية السكان في هذه الولايات الأربع من غير المسلمين وعليه فإن أكثر حالات التحول الى الإسلام متوقعة في هذه الولايات الأربع مقارنة ببقية الولايات. الهدف من الدراسة هو تحليل أي ممارسة تمييز بين القرارات المبلغ والتي لم يبلغ عنها. بعيداً عن المحاكم هناك دراسة مهمة أيضاً أجريت في إدارة حكومية بالتحديد وزارة الشؤون الدينية للولايات والتي تتعامل مباشرة مع إدارة التنظيم على إعتناق الإسلام. الدراسة الميدانية تمكنت من توفير بعض النتائج المثيرة للإهتمام. الدراسة أظهرت أن القوانين المتعلقة بإعتناق الإسلام تعاني من عدم التماثل والتوحيد من حيث الجوهر والإجراءات. بعض الولايات لها قوانين وانظمة متكاملة متعلقة بإعتناق الإسلام ولكن في بعض الولايات هذه القوانين لا تدون حتى في القواعد واللوائح. الفجوة كبيرة. كما وجد أن المنازعات القانونية في كل الدول الإسلامية والقوانين المتعلقة المعنى والمضمون للتحويل الى دين الإسلام لا بد أن تحدث في كل جانب من جوانب قانون الأحوال الشخصية قيد البحث. ومع ذلك فإن هنالك بعض السبل القانونية التي سوف تقلل من الصراع تم تحديدها. وأخيراً فإن الدراسة تمكنت من تقديم بعض المقترحات والتوصيات لصناع السياسة والقانون.

APPROVAL PAGE

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Narizan Binti Abdul Rahman

Signature

Date.....

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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ACKNOWLEDGEMENTS

Alhamdulillah, All Praises to Allah, the Most Righteous and the Most Merciful, with the mercy and bounty of Allah, I completed this thesis.

For the efforts, encouragements and guidance in completing this thesis, I express my profound gratitude to my supervisor, Prof. Dr Mohd Altaf Hussain Ahangar, Profesor in the Department of Private Law, Ahmad Ibrahim Kuliyyah of Laws, International Islamic University Malaysia. I am deeply moved by his kind gesture and inspiring motivations which enabled me to carry out my doctoral research. His insightful comments and suggestions made this work meaningful. I also record my utmost appreciation to Associate Prof. Dr Najibah Mohd Zin and Dr Azizah Mohd for their critiques and comments.

I owe my sincere thanks to the University of Malaya which granted a fully sponsored study leave to me in order to complete this daunting task. My thanks also due to the University for further financial assistance throughout my research in the School of Oriental and African Studies, University of London.

I must acknowledge a sincere gratitude to all my colleagues in the Department of Shariah and Law, Academy of Islamic Studies, University of Malaya for their never ending encouragements, motivations and assistance rendered to me throughout my study.

I am also thankful to the librarians in the libraries of International Islamic University Malaysia, University of Malaya, National University of Malaysia for their co-operations and kind assistances rendered to me in assessing the materials needed. My thanks also due to the librarian in the National Archive of Malaysia and the School of Oriental and African Studies Library, University of London.

I would like to record my utmost gratitude to the High Court and Shariah Court Registrars in Kuala Lumpur, Shah Alam, Kuching and Kota Kinabalu for providing me with necessary materials and informations during my short stints in their departments. I also wish to record my attachment and gratitude to the *Muallaf* Registrars in the Islamic Religious Departments in Kuala Lumpur, Shah Alam, Kuching and Kota Kinabalu. Not forgetting assistance rendered to me by PERKIM's Officials and several Non-Governmental Organisation staffs.

To all individuals who had directly or indirectly contributed and rendered their assistance towards the completion of this thesis, too numerous to mention individually here, I must express my utmost gratitude to them. To name a few of them, Kak Zah, Utih, Achik, Mokna, Ngah, Ibrahim, and all my in-laws, thank you!. Last but not least to my dearest husband, Khairil Anuar Ramli, words are not enough to express my profound gratitude in providing me with emotional support throughout my study and during my few month research in SOAS, London for the sake of *'Ilm*. This thesis is dedicated to my beloved father and mother, Haji Abdul Rahman Abdullah and Hajjah Habshah Binti Embong. May Allah grants their souls in peace. *Aminn*.

Narizan Binti Abdul Rahman

Bandar Kinrara,

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LIST OF ABBREVIATIONS

All ER	All England Reports
AJISS	American Journal of Islamic Social Sciences
AIR	All Indian Reports
AMR	All Malaysia Reports
AJCL	American Journal of Comparative Law
CLJ	Current Law Journal
Cal.W.N	Calcutta Weekly Notes
ILR	Indian Law Report
IA	Indian Appeals
IKIM LJ	IKIM Law Journal
FMSLR	Federated Malay States Law Reports
JH	Jurnal Hukum
JS	Jurnal Syariah
JMCL	Journal of Malaysian Comparative Law
JMBRAS	Journal of the Malayan Branch of the Royal Asiatic Society
JSBRAS	Journal of the Straits Branch of the Royal Asiatic Society
Ky.	Kyshe Reports
LR IA	Law Reports Indian Appeals
LR	Law Review
Leic.	Leicester Reports
MC	Malayan Cases
Mal.LR	Malayan Law Review
PLD	Pakistan Legal Decision
MLJ	Malayan Law Journal
ShLR	Shariah Law Reports
SSLR	Straits Settlement Law Reports
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CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND

Religious conversion is not a new phenomenon¹ as it is being practiced hundred years ago². Religious conversion basically derives its principle from the freedom of religion which is supported and advocated by many constitutions in the world³. The principle is further affirmed by many conventions, declarations and covenants, for example, the United Nations Universal Declaration of Human Rights 1948, The United Nations Declaration on The Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief 1981.

The term “conversion” is derived from the root word “convert”. Literally, “convert” refers to the act of changing one thing from another. The word also connote “altering, amending, changing into, changing over, commuting, diversifying, rearranging and reforming⁴. It has been similarly defined as the act of changing from one form to another or the process of being exchanged.⁵ On the other hand, the term “conversion” originally derived from the Latin word, *convertere*, which means

¹ Frank K Flinn “Conversion: Up From Evangelism or the Pentecostal and Charismatic Experience”, in Christopher Lamb and M Darrol Bryant Cassell (eds.), *Religious Conversion Contemporary Practices and Controversies* (London and New York: Cassell, first edition, 1999), 51; V Bailey Gillespie, *Religious Conversion and Personal Identity: How and Why People Change* (Birmingham, Ala.: Religious Education Press, 1979) and Harold B. Barclay, “Muslims Experience in Canada,” in Harold Coward, Leslie Kawamura (eds.) *Religion and Ethnicity* (Waterloo Ontario: Wilfred Laurier University Press, 1978), 20.

² Such as the celebrated individual conversions of Augustine Hippo, Siddharta Gautama and Thomas Merton. see *Ibid.*, Frank K Flinn., 51

³ Refer for instance, Roger S. Clark, *The United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (Philadelphia: University of Pennsylvania Press, 1983), 23, Muhammad Imam, “Freedom of Religion Under Federal Constitution of Malaysia: A Reappraisal”, [1994] 2 CLJ lvii and ABM Mahbulul Islam, *Freedom of Religion in Shariah: A Comparative Analysis* (Kuala Lumpur: A.S. Noordeen, first edition, 2002).

⁴ William C Burton, *Legal Thesaurus*, MacMillan Publishing Company, second edition, 1980 at 120.

⁵ Bryan A Garner, *Black's Law Dictionary*, West Group, Seventh edition, 1999 at 620.

“to revolve”, “turn around” or “head in different direction”⁶. Slightly differs, the *Encyclopaedia of Religion and Religions* states that it is derived from another Latin word, *conversio* which means a turning around⁷. Conversion, therefore would signify alteration, interchange or transformation⁸.

Technically, an English Dictionary has defined conversion as “a change of religious allegiance or profession, thing, condition, opinion, party or religion to another”⁹.

Based on the above definitions, it can be simplified that religious conversion is an act of changing of religious allegiance or association. This meaning is in consonance with what transpires in any religious conversion, namely, transformation of religious belief.

Religious conversion either individual or masses has certain implications. In India, for instance, conversion of Hindus to Islam or Christianity was viewed with suspicion and hatred. A vast majority of Hindus had associated the act of conversions and the converters with betrayal of the nations¹⁰. On the contrary, in several parts of the world, conversion to Islam was viewed positively. For instance, in England, a study conducted on the native British converts in England had brought positive implications to the native converts. A male respondent in the study had stated that his mother viewed his conversion to Islam positively, by telling him that he should

⁶ Frank K Flinn, 52.

⁷ Royston E. Pike, *An Encyclopaedia of Religion and Religions* (London: George Allen & Unwin Ltd, Ruskin House Museum Street, 1982), 112.

⁸ William C. Burton, 120.

⁹ *Chambers English Dictionary* (Edinburgh and Cambridge: Chambers and Cambridge University Press, 1988), 113.

¹⁰ Faizan Mustafa and Anurag Sharma, *Conversion: Constitutional and Legal Implications*, Kanishka Publishers and Distributors, 2005, at 72.

have had converted to Islam years ago. The mother further attributed his son recent good behavior to his conversion to Islam.¹¹

Elsewhere, within the Malay Archipelago, historians and scholars similarly highlighted the positive implication of conversion to Islam to the people in the Archipelago. The conversion of the Malay region and their societies to Islam had completely transformed many aspects of Malay status, view and thinking. Malay states, Melaka,¹² for instance, had achieved her golden years as a trade centre and knowledge hub when the Malacca rulers and people converted to Islam¹³.

This was confirmed by Barbara and Leonard Andaya, well known Malaysian historians that once Melaka had accepted Islam sometime in the early fifteenth century, the kingdom became transformed and expanded territorially¹⁴. The historians further viewed that Melaka's main contribution to the evolution of Malay culture was the incorporation of Islamic ideas.

Although Islam had been promoted earlier by Samudra-Pasai, the new religion became so closely identified with Malay society in which to become a Muslim is akin to "masuk Melayu" (to enter the fold of a Malay)¹⁵. According to Mubin Sheppard¹⁶, although the fall of Malacca in 1511 destroyed the Malacca Empire which had united the whole of the Peninsular and the East Sumatran Kingdom under

¹¹ Ali Kose, *Conversion to Islam: A study of Native British Converts* (London: Keegan Paul International, First edition, 1996), 138.

¹² Also referred to as Malacca.

¹³ Refer writings such as Abdullah Ishak, *Islam di India, Nusantara dan China* (Kuala Lumpur: Nurin Enterprise, 1991), 121, M.A. Rauf, *Iktisar Sejarah Islam dan Hubungannya Yang Khusus Dengan Semenanjung Malaysia*, Rustam A sani (pentrj.), Edisi Kedua (Petaling Jaya, Penerbit Fajar Bakti Sdn Bhd, 1987), 133, Watson Barbara Andaya and Leonard Y. Andaya, *A History of Malaysia* (Basingstoke: Palgrave Publisher Limited, Second Edition, 1982 Reprinted 2001), 53 and 56, Syed Muhammad Naguib al Attas, *Preliminary Statement on A General Theory of the Malay- Indonesian Archipelago* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1969), 12.

¹⁴ Ibid., Watson Barbara Andaya and Leonard Y Andaya, 56.

¹⁵ Ibid, 57.

¹⁶ A well known historian of Malaysia.